

**PRECEDENT AGREEMENT
FOR FIRM TRANSPORTATION OF NATURAL GAS
MACKENZIE VALLEY PIPELINE**

Between:

IMPERIAL OIL RESOURCES VENTURES LIMITED

- and -

[SHIPPER]

_____, 2004

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**PRECEDENT AGREEMENT
FOR FIRM TRANSPORTATION**

MACKENZIE VALLEY PIPELINE

This Precedent Agreement is made as of the _____ day of _____, 2004 between:

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

- and -

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

RECITALS:

WHEREAS, Imperial Oil Resources Ventures Limited, the Mackenzie Valley Aboriginal Pipeline Limited Partnership ("**MVAPLP**"), ConocoPhillips Canada (North) Limited, Shell Canada Limited and ExxonMobil Canada Properties are currently proposing to develop a new natural gas pipeline system (the "**Mackenzie Valley Pipeline**") which is currently proposed to be a single phase NPS thirty (30) mainline pipeline with an initial design capacity of approximately $34 \times 10^6 \text{ m}^3$ (1.2 Bcf) per day, at a design pressure of 18 MPa (2,600 psi), originating near the outlet of a processing facility to be located near Inuvik and terminating at the point of interconnection with the facilities of NOVA Gas Transmission Ltd. located in northwestern Alberta near the Northwest Territories-Alberta border, with an anticipated in service date of November 1, 2009;

AND WHEREAS, Transporter proposes to construct and operate the Mackenzie Valley Pipeline for and on behalf of the Pipeline Owners and will be designated by the Pipeline Owners to be the operator of the Mackenzie Valley Pipeline;

AND WHEREAS, Transporter has, in an "open season" process conducted by it, invited potential shippers to commit to contracting for firm capacity on the Mackenzie Valley Pipeline and Shipper has requested Transporter to provide the Requested Service, and subject to the terms and conditions of this Precedent Agreement, has agreed to contract for firm capacity on the Mackenzie Valley Pipeline;

AND WHEREAS, subject to the terms and conditions of this Precedent Agreement, Transporter will commence applying for all governmental and other Authorizations which are or may be required to enable Transporter to construct and operate the Mackenzie Valley Pipeline;

AND WHEREAS, subject to the terms and conditions of this Precedent Agreement, Shipper will apply for Authorizations if required in respect of certain field and pipeline gathering facilities which Shipper must construct and which are necessary for Shipper to utilize the Requested Service;

AND WHEREAS, upon and subject to the terms and conditions of this Precedent Agreement, Transporter and Shipper have agreed to enter into the Firm Service Transportation Agreement for the transportation of Natural Gas and which will, from and after the Date of Commencement thereunder, provide for the Requested Service to be rendered by Transporter to Shipper, and the payment by Shipper to Transporter of certain charges;

AND WHEREAS, the commitments given by Shipper in this Precedent Agreement and commitments given by other shippers in other precedent agreements with Transporter will be used in support of applications to be made by Transporter for regulatory approvals in respect of the Mackenzie Valley Pipeline.

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

ARTICLE 1 INTERPRETATION

1.1 Definitions

Except as specifically provided herein, all words and phrases used herein and defined in the Firm Service Transportation Agreement or the Tariff shall have the same meanings as ascribed to them in the Firm Service Transportation Agreement or the Tariff, as the case may be. In this Precedent Agreement, including the Recitals and Schedules, the following words and phrases have the following meanings:

"**Affiliate**" means a corporation, partnership or trust that is affiliated with the Party 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 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), a partnership is directly controlled by another partnership, corporation or trust if that partnership, corporation or trust beneficially owns more than a 50% 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 general partner, by any Person that controls a general partner or general partners having more than a 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 or more other corporations, partnerships or trusts; and
- (b) where two 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;

"Affiliated Guarantor" means either: (a) an Affiliate of Shipper which meets the requirements of Section 4.6(a) and which Affiliate has provided to Transporter a guarantee, which will be in a form acceptable to Transporter at the time of the execution of such guarantee, guaranteeing all of the obligations of Shipper pursuant to this Precedent Agreement and any Firm Service Transportation Agreement entered into pursuant to this Precedent Agreement, which guarantee shall not require the Affiliate to guarantee anything in excess of Shipper's obligations under this Precedent Agreement and any Firm Service Transportation Agreement entered into pursuant to this Precedent Agreement, as applicable; or (b) an Affiliate of an assignee which meets the requirements of Section 9.1(a) and which Affiliate has provided to Transporter a guarantee, which will be in a form acceptable to Transporter at the time of the execution of such guarantee, guaranteeing all of the obligations of such assignee pursuant to this Precedent Agreement and any Firm Service Transportation Agreement entered into pursuant to this Precedent Agreement, which guarantee shall not require the Affiliate to guarantee anything in excess of Shipper's obligations under this Precedent Agreement and any Firm Service Transportation Agreement entered into pursuant to this Precedent Agreement, as applicable;

"Alternate Pipeline" has the meaning ascribed thereto in Section 4.4;

"APG Equity Investors" means those investors which provide equity or subordinate debt to the MVAPLP for the Mackenzie Valley Pipeline;

"APG Senior Lenders" means those banks, financial institutions or other senior investors which provide senior credit facilities to the MVAPLP for the Mackenzie Valley Pipeline;

"Applicable Debt" has the meaning ascribed to it in Section 4.6(a);

"**Authorities**" means all governmental and regulatory authorities and other bodies, to the extent, having valid jurisdiction or authority over or in respect of: (a) the Mackenzie Valley Pipeline, including the NEB and the MVLWB; and (b) any Shipper's Authorization;

"**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;

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

"**Commissioned**" means that those facilities which are required to provide the Requested Service have been completed, tested and are available to provide service and that leave to open such facilities has been granted by the NEB and "**Commission**" and derivatives thereof have corresponding meanings;

"**Contract Demand Quantity**" means the quantity of Natural Gas, expressed in GJ per day, which Shipper has requested Transporter to transport on a firm basis under the Firm Service Transportation Agreement as set out in Schedule E, and as may be amended from time to time pursuant to Section 5.1;

"**Controlling Party**" means in respect of Shipper, any corporation, partnership or trust which exercises direct or indirect control over Shipper and for the purpose of determining whether a corporation, partnership or trust directly or indirectly controls Shipper it will be deemed that:

- (a) if Shipper is a corporation, then it is directly controlled by any other corporation, partnership or trust if shares of Shipper to which are attached more than 50% of the votes that may be cast to elect directors of Shipper 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 Shipper;
- (b) subject to (c), if Shipper is a partnership, then it is directly controlled by another partnership, corporation or trust if that other partnership, corporation or trust beneficially owns more than a 50% interest in the partnership;
- (c) if Shipper is a limited partnership, then it is directly controlled by the Person that controls the general partner of such limited partnership or, if there is more than one general partner, by any Person that controls a general partner or general partners having more than a 50% aggregate voting interest in the limited partnership;
- (d) if Shipper is a trust, then it is directly controlled by the Person who is entitled to elect or appoint the majority of the trustees of the trust; and

- (e) Shipper is indirectly controlled by another corporation, partnership or trust if control as defined in (a) through (d) above, as the case may be, is exercised over Shipper through one or more other corporations, partnerships or trusts;

"**CPCN**" means a certificate of public convenience and necessity issued by the NEB pursuant to Part III of the NEB Act, in respect of the Mackenzie Valley Pipeline, after the issuance of same has been approved by the Governor in Council;

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

"**Delivery Point**" means the point of interconnection between the Mackenzie Valley Pipeline and the facilities of NOVA Gas Transmission Ltd. located in northwest Alberta near the Northwest Territories-Alberta border or any upstream point of interconnection between the Mackenzie Valley Pipeline and any downstream pipeline facilities, as set out in the Requested Service;

"**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;

"**Fifteen Year FSTA's**" means those firm service transportation agreements executed by Transporter and shippers within one hundred and twenty (120) days of the NEB Decision Date which have a Primary Term extending for a fifteen (15) year period commencing on the first day of the month next following the month in which the date of commencement of service thereunder occurred including those firm service transportation agreements pursuant to which short-haul transportation is being provided;

"**Firm Service Transportation Agreement**" means an agreement which will, in all material aspects, be in the form of the agreement attached hereto as Schedule A;

"**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 Shipper to obtain any Shipper's Authorization;

"**General Terms and Conditions**" means the general terms and conditions of Transporter as set out in the Tariff;

"**Independent Resources Evaluator**" means the third party reservoir engineering consulting firm retained by the APG Senior Lenders and the APG Equity Investors, for the sole purpose of preparing a Lending and Investment Report in accordance with Section 4.5(f);

"**Issuer Rating**" means the opinion of a particular Rating Agency of the ability of a shipper or its Affiliated Guarantor to honor 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 a shipper or its Affiliated Guarantor to meet its financial commitments as they come due;

"**Lenders**" means any banks, financial institutions or investors, including any Pipeline Owner or an Affiliate of a Pipeline Owner, which, in any case, provides either construction or long term debt financing to a Pipeline Owner in respect of the Mackenzie Valley Pipeline;

"**Lending and Investment Report**" means a consolidated resources report, commissioned by the APG Senior Lenders and the APG Equity Investors, prepared by an Independent Resources Evaluator, of resources and supplies of Natural Gas proposed to supply the Natural Gas being transported by all shippers on the Mackenzie Valley Pipeline. The consolidated resources report shall reflect and contain identifiable field resource assessments as reasonably required by the APG Senior Lenders and the APG Equity Investors;

"**Minimum Ratings Requirement**" means, for a particular Rating Agency, the minimum rating set out for such Rating Agency in Schedule D or the then equivalent rating used by any such Rating Agency in substitution or replacement for such minimum rating;

"**MVLWB**" means the Mackenzie Valley Land and Water Board established pursuant to the MVRMA or any replacement or successor regulatory or governmental authority or authorities having jurisdiction to approve the use of land and water in the Mackenzie Valley;

"**MVRMA**" means the *Mackenzie Valley Resource Management Act* (Canada), as amended from time to time and includes any legislation enacted in replacement thereof;

"**Natural Gas**" means any hydrocarbons or mixture of hydrocarbons and other gases, consisting primarily of methane, which at a temperature of fifteen (15) degrees Celsius and an absolute pressure of 101.325 kPa, is in the gaseous state;

"**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 over the approval, licencing, construction, operation, tolls or tariffs of interprovincial pipelines in Natural Gas service under the NEB Act or 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**" means the decision or decisions of the NEB, including any reasons for decision, in connection with the application of Transporter for a CPCN pursuant to Part III of the NEB Act and in respect of the Toll Principles and the Tariff Principles pursuant to Part IV of the NEB Act;

"**NEB Decision Date**" means the date on which the NEB releases the NEB Decision; provided that if the NEB does not release the NEB Decision on all matters on a single date then the date on which the last of the reasons for decision respecting each of such matters shall be considered to be the "**NEB Decision Date**";

"**NPS XX**" means the nominal pipe size where XX is the nominal outside diameter of the pipe, expressed in inches. NPS 30 is a nominal thirty (30) inch diameter pipe;

"**Party**" means a party to this Precedent Agreement and "**Parties**" means both parties to this Precedent Agreement;

"**Performance Assurance**" means any assurance of performance of Shipper's obligations under this Precedent Agreement which may be provided in cash, by a letter of credit or other form of security or other assurance, in an amount and a form acceptable to Transporter, acting reasonably, from time to time by a Performance Assurance Provider in favour of Transporter;

"**Performance Assurance Provider**" means Shipper, its Affiliated Guarantor or any third party which is providing a Performance Assurance for or on behalf of such Shipper;

"**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;

"**Pipeline Owners**" means those Persons which are owners of the Mackenzie Valley Pipeline at a particular time, or are parties to the agreement to develop the Mackenzie Valley Pipeline if the Mackenzie Valley Pipeline does not yet exist at such time and, as of the date hereof, are IORVL, MVAPLP, ConocoPhillips Canada (North) Limited, Shell Canada Limited and ExxonMobil Canada Properties;

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

"**Primary Term**" is the period of time commencing on the date of commencement of service under a firm service transportation agreement and extending through either a twenty (20) or fifteen (15) year period, as specified in the Schedule of Service for such firm service transportation agreement, with the start of such period being at the commencement of the first day of the month next following the month in which such date of commencement occurred;

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

"**Receipt Point**" means the point of interconnection between an upstream gathering pipeline, compression station or processing facility and the Mackenzie Valley Pipeline as set out in the Requested Service;

"**Requested Service**" means the firm service requested by Shipper as set out in Schedule E;

"**Shipper's Authorizations**" means those Authorizations listed in the most recent notice, which Shipper has provided to Transporter in accordance with Section 4.2 and "**Shipper's Authorization**" means any one of them;

"**Shipper Default**" has the meaning ascribed to it in Section 8.2;

"**Tariff**" means the tolls, terms and conditions, as filed with and approved by the NEB under which Transporter will transport Natural Gas on the Mackenzie Valley Pipeline including the General Terms and Conditions;

"**Tariff Principles**" has the meaning ascribed to it in Schedule C;

"**Termination Fee**" has the meaning ascribed to it in Section 6.4;

"**Toll Principles**" has the meaning ascribed to it in Schedule B;

"**Transporter's Authorizations**" means Authorizations which Transporter determines are necessary as set out in Section 4.1 and a "**Transporter's Authorization**" means any one of them;

"**Transporter Default**" has the meaning ascribed to it in Section 8.1; and

"**Twenty Year FSTA's**" means those firm service transportation agreements executed by Transporter and shippers within one hundred and twenty (120) days of the NEB Decision Date which have a Primary Term extending for a twenty (20) year period commencing on the first day of the month next following the month in which the date of commencement of service thereunder occurred including those firm service transportation agreements pursuant to which short-haul transportation is being provided.

1.2 Schedules

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

Schedule A - FIRM SERVICE TRANSPORTATION AGREEMENT

Schedule B - TOLL PRINCIPLES

Schedule C – TARIFF PRINCIPLES

Schedule D – RATING AGENCIES AND MINIMUM RATINGS REQUIREMENT

Schedule E - REQUESTED SERVICE.

1.3 Interpretation and References

Whenever the singular or masculine or neuter is used in this Precedent 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 Precedent Agreement. Words such as "hereunder", "hereto" and "herein" and similar expressions refer to the whole of this Precedent Agreement and not to any particular Section, or Schedule hereof. The word "including" shall mean including, without limitation.

1.4 Transporter's Actions

In all situations under this Precedent Agreement, excluding Section 9.1(a)(ii), where Transporter is required or entitled to provide its consent or approval in respect of any matter or is permitted to exercise its discretion in any way, Transporter shall be entitled to take any action or exercise its discretion in the manner which takes into account, the views of, the requirements of or the recommendations of any Lender. In acting upon any such views, requirements or

recommendations including views, requirements or recommendations to withhold any consent or approval, Transporter shall not be considered to have acted unreasonably hereunder.

**ARTICLE 2
TERM**

2.1 Term

This Precedent Agreement shall become effective as of the date hereof and shall continue in effect until the execution and delivery of the Firm Service Transportation Agreement unless this Precedent Agreement is terminated earlier pursuant to any provision hereof.

**ARTICLE 3
REPRESENTATIONS AND WARRANTIES**

3.1 Representations and Warranties of Transporter

Transporter represents and warrants that:

- (a) it is duly organized and validly existing under the laws of Canada and has all requisite legal power and authority to execute this Precedent Agreement and carry out the terms, conditions and provisions hereof;
- (b) this Precedent Agreement constitutes a valid, legal and binding obligation of Transporter, 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;
- (c) there are no actions, suits or proceedings pending or, to Transporter's knowledge, threatened against or affecting Transporter before any court or Authority that might materially and adversely affect the ability of Transporter to meet and carry out its obligations under this Precedent Agreement;
- (d) the execution and delivery by Transporter of this Precedent Agreement has been duly authorized by all requisite corporate actions and all requisite actions of the Pipeline Owners; and
- (e) it has or will have, at the relevant time, all requisite authority from the Pipeline Owners to take or to refrain from taking any action that Transporter may be entitled to take hereunder.

3.2 Representations and Warranties of Shipper

Shipper represents and warrants that:

- (a) it is duly organized and validly existing under the laws of _____ and has all requisite legal power and authority to execute this Precedent Agreement and carry out the terms, conditions and provisions hereof;

- (b) this Precedent Agreement constitutes a valid, legal and binding obligation of Shipper, 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;
- (c) there are no actions, suits or proceedings pending or, to Shipper's knowledge, threatened against or affecting Shipper before any court or Authority that might materially and adversely affect the ability of Shipper to meet and carry out its obligations under this Precedent Agreement; and
- (d) the execution and delivery by Shipper of this Precedent Agreement has been duly authorized by all requisite [**corporate, partnership or trust**] action.

ARTICLE 4 OBLIGATIONS OF PARTIES

4.1 Application for Transporter's Authorizations

When Transporter has determined that it has entered into precedent agreements with shippers for a sufficient quantity of Natural Gas to be transported on the Mackenzie Valley Pipeline and subject to the terms and conditions of this Precedent Agreement, Transporter will commence to apply for and thereafter will proceed with due diligence to obtain from all Authorities such Authorizations which Transporter determines are necessary:

- (a) for the construction and operation of the Mackenzie Valley Pipeline and to render the transportation service as contemplated in the Firm Service Transportation Agreement and other firm service transportation agreements to be entered into with other Shippers, including authorizations from the NEB pursuant to Part III and Part IV of the NEB Act and authorizations from the MVLWB pursuant to the MVRMA; and
- (b) to perform Transporter's obligations as contemplated in this Precedent Agreement and the Firm Service Transportation Agreement.

Transporter reserves the right to file and prosecute any and all applications for such Authorizations, any supplements and amendments thereto, and, if necessary, any court review, in such manner as it deems to be in the Pipeline Owners' best interest; provided that Transporter's initial application to the NEB pursuant to Part III of the NEB Act shall be for a single phase mainline pipeline with a diameter of not less than NPS thirty (30) with an initial design capacity of approximately $34 \times 10^6 \text{ m}^3$ (1.2 Bcf) per day, at a design pressure of 18 MPa (2,600 psi). Transporter shall advise Shipper, by notice, of any decision made by the Pipeline Owners to downsize the mainline pipeline of the Mackenzie Valley Pipeline to a diameter of less than NPS thirty (30) within ten (10) days of such decision being made. Transporter shall advise all Shippers on an ongoing basis, in a timely fashion and in any event not less frequently than every six (6) months, of the status of such applications. Upon the request of Shipper, Transporter will also provide Shipper, in a timely fashion, with a copy of any application made by Transporter for any significant Transporter's Authorization and a copy of each significant Transporter's Authorization upon receipt of same.

4.2 Listing of Shipper's Authorizations

On or before July 1, 2005 Shipper will provide a notice to Transporter specifically listing the Authorizations which Shipper or an Affiliate of Shipper will be seeking 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 pipeline gathering facilities to connect such gas field to the Receipt Point;

in relation to the Natural Gas which is to be shipped by Shipper under the Firm Service Transportation Agreement. From time to time after July 1, 2005, and no less frequently than once every six (6) months, Shipper shall provide a notice to Transporter which sets out a current listing of Shipper's Authorizations and identifies any additions, changes or deletions to the immediately preceding listing of Shipper's Authorizations.

4.3 Application for Shipper's Authorizations

Shipper may file and prosecute any and all applications for Shipper'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; provided that Shipper shall not take any action which would obstruct, interfere with or delay the receipt by Transporter of the authorizations or exemptions and supplements and amendments thereto contemplated hereunder or otherwise jeopardize implementation of the Mackenzie Valley Pipeline. Shipper shall advise Transporter on an ongoing basis, in a timely fashion and in any event not less frequently than every six (6) months, of the status of such applications. Shipper will notify Transporter when an application for a Shipper's Authorization has been filed with an Authority. Upon the request of Transporter, Shipper will also provide Transporter, in a timely fashion, with a copy of any application made by Shipper for any Shipper's Authorization and a copy of each Shipper's Authorization upon receipt of same; provided that Shipper shall not be required to provide Transporter with any information in connection with any application for a Shipper's Authorization which was filed and accepted by an Authority, on a confidential basis.

4.4 Support for Transporter

Shipper will and will cause its Affiliates to actively support any application to be made by Transporter for any Transporter's Authorization where Transporter reasonably believes that Shipper's support would be of assistance in obtaining approval from any Authority in respect of such Transporter's Authorization. Shipper will not take and will not cause any of its Affiliates, to take or omit to take any action where such action or omission would be inconsistent with the performance by Shipper of the terms of this Precedent Agreement. The Parties acknowledge that during the term of this Precedent Agreement, proposals may be made by a third party for the construction of a pipeline or pipelines from the Mackenzie Delta or through the Mackenzie Valley (an "**Alternate Pipeline**") other than the Mackenzie Valley Pipeline. During the term of this Precedent Agreement, Shipper will not make, or agree to make, and will not cause any of its Affiliates to make, or agree to make with any Person involved with an Alternate Pipeline:

- (a) any commitment for the transportation, on such Alternate Pipeline, of any Natural Gas which is to be shipped by Shipper utilizing the transportation service to be provided under the Firm Service Transportation Agreement; or
- (b) any commitment for the transportation, on such Alternate Pipeline, of any other Natural Gas produced in Canada, unless Shipper or such of its Affiliates has first afforded Transporter a reasonable opportunity to enter into an arrangement to provide transportation service for such Natural Gas.

Nothing in this Section 4.4 shall preclude Shipper or any of its Affiliates from making any commitment for the transportation of Natural Gas produced in Canada on any pipeline located wholly upstream of the Mackenzie Valley Pipeline which interconnects with the Mackenzie Valley Pipeline. Nothing in this Section 4.4 shall be interpreted as a dedication of any particular Natural Gas resources of Shipper to this Precedent Agreement.

4.5 Information

- (a) Within ten (10) Business Days of Transporter's request, Shipper will provide Transporter with any information available to Shipper and required by Transporter in connection with any application to be made by Transporter for a Transporter's Authorization, including information relating to Shipper's resources and supply of Natural Gas which is to be shipped by Shipper utilizing the transportation service to be provided under the Firm Service Transportation Agreement, the deliverability of such Natural Gas, upstream and downstream transportation arrangements and market arrangements; provided that Shipper will not be required to supply any information other than that which may be necessary for Transporter to comply with the requirements of the particular Authority which will be reviewing such Transporter Authorization. Shipper further agrees to provide witnesses, respond to any requests for further information and to prepare any necessary evidence as may be reasonably required to assist Transporter in obtaining any Transporter's Authorization; provided that Shipper shall not be obligated to participate in or incur any costs associated with any judicial review relating to any such application.
- (b) Subject to Section 4.5(d), Shipper shall make available to Transporter, upon Transporter's request, the audited consolidated financial statements of Shipper and of its Affiliated Guarantor or other Performance Assurance Provider, if any, setting forth in comparative form the corresponding figures of the preceding fiscal year together with an auditors report thereon, prepared in accordance with Shipper's, its Affiliated Guarantor's or other Performance Assurance Provider's usual practice for such financial statements. Such financial statements shall be provided within one hundred and twenty (120) days after the end of each fiscal year of Shipper, its Affiliated Guarantor or other Performance Assurance Provider, as applicable. Transporter may, at its sole discretion, accept unaudited consolidated financial statements.

- (c) Subject to Section 4.5(d), Shipper shall make available to Transporter, upon Transporter's request, the unaudited consolidated financial statements of Shipper and its Affiliated Guarantor or other Performance Assurance Provider, if any, prepared on a basis consistent with the corresponding period of the preceding fiscal year. Such financial statements shall be provided within sixty (60) days after the end of the third fiscal quarter of each fiscal year of Shipper, its Affiliated Guarantor or other Performance Assurance Provider, as applicable.
- (d) If a Shipper does not have audited financial statements or unaudited financial statements or if such statements are not generally publicly disclosed by such Shipper then such Shipper will be relieved of its obligations pursuant to Section 4.5(b) and Section 4.5(c); provided that such Shipper has an Affiliated Guarantor or other Performance Assurance Provider and such Affiliated Guarantor or other Performance Assurance Provider has provided the financial statements referred to in Section 4.5(b) within the one hundred and twenty (120) day period referred to in Section 4.5(b) and the financial statements referred to in Section 4.5(c) within the sixty (60) days period referred to in Section 4.5(c) in respect of such Affiliated Guarantor or other Performance Assurance Provider in lieu of such Shipper providing its financial statements.
- (e) Shipper shall make available and shall cause any Affiliated Guarantor or other Performance Assurance Provider to make available to Transporter any additional information regarding the business affairs, operations, assets and financial condition of Shipper or any Affiliated Guarantor or other Performance Assurance Provider as Transporter may reasonably request from time to time in order to assess the creditworthiness of Shipper or any Affiliated Guarantor or other Performance Assurance Provider. Shipper shall provide and shall cause any Affiliated Guarantor or other Performance Assurance Provider to provide the requested information within ten (10) Business Days of Transporter's request.
- (f) If, at any time the MVAPLP is seeking to finance an ownership interest in the Mackenzie Valley Pipeline, the MVAPLP requires a Lending and Investment Report to be prepared, the MVAPLP will so advise Transporter. Upon being so notified, Transporter shall provide a notice to Shipper that a Lending and Investment Report is to be prepared. Within five (5) Business Days of the receipt of such notice from Transporter, Shipper will advise the MVAPLP as to which one (1) of the following three (3) types of information that Shipper elects to provide access to the Independent Resources Evaluator, for the sole purpose of preparing a Lending and Investment Report:
 - (i) all relevant, available non-public resource and supply data in Shipper's possession, which is reasonably required by the Independent Resources Evaluator;
 - (ii) interpretations of all relevant, available public and non-public resource and supply data that have been prepared by Shipper; provided that the Independent Resources Evaluator shall have the right to audit such

interpretations and shall have access to such non-public resource or supply data that it reasonably requires for the purpose of preparing a Lending and Investment Report; or

- (iii) interpretations of all relevant, available public and non-public resource and supply data that have been prepared for Shipper by an independent third party consulting reservoir engineering firm; provided that the Independent Resources Evaluator shall have the right to audit such interpretations and shall have access to such non-public resource or supply data that it reasonably requires for the purpose of preparing a Lending and Investment Report;

in order that the Independent Resources Evaluator may provide an assessment of the economically recoverable resources and the deliverability associated therewith, which relate to the resources and supply of Natural Gas from commercial discoveries and Significant Discovery Licences and any other resources and supply, that, in the expectation and judgment of Shipper, acting reasonably, is to be transported by Shipper on the Mackenzie Valley Pipeline pursuant to Shipper's Requested Service as set forth in Schedule E. Shipper shall also, to the extent reasonably required by the Independent Resources Evaluator, arrange for any of Shipper's Affiliates to provide access to the Independent Resources Evaluator to any such relevant available data, or interpretations thereof, as the case may be, in accordance with Shipper's election as to the type of information that it will provide access to the Independent Resources Evaluator in respect of such resources and supply of Natural Gas that is not in Shipper's possession but that is in the possession of such Affiliate. Within thirty (30) days of Shipper's receipt of a notice from Transporter that a Lending and Investment Report is to be prepared, Shipper shall provide access to the Independent Resources Evaluator in accordance with Shipper's election which it made to the MVAPLP. Nothing in this Section 4.5(f) shall require Shipper or any of Shipper's Affiliates to provide access to the Independent Resources Evaluator to:

- (i) any interpretations of such data which have been prepared by Shipper or any of Shipper's Affiliates unless Shipper has elected to do so;
- (ii) any such data, or interpretations thereof, which Shipper or any of Shipper's Affiliates is precluded from disclosing because of third party confidentiality restrictions; or
- (iii) any such data, or interpretations thereof, more frequently than once in any one (1) year period.

While Shipper will endeavour to provide resource and supply data, or interpretations thereof, that are accurate, such data, or interpretations thereof, are provided with no representations or warranties as to their accuracy or completeness. Such resource and supply data, or interpretations thereof, will only be required to be provided if the Independent Resources Evaluator has first

entered into a confidentiality agreement with Shipper and such Affiliates of Shipper, on terms and conditions which are satisfactory to Shipper and such Affiliates of Shipper, acting reasonably, agreeing to: maintain all such data, or interpretations thereof, confidential; not disclose to any other Person including any APG Senior Lender or any APG Equity Investor any such data, or interpretations thereof which have been provided by Shipper to the Independent Resources Evaluator; and only use such data, or interpretations thereof, for the purpose of assessing the quantities of Natural Gas which would be available for transportation on the Mackenzie Valley Pipeline in connection with the preparation of a Lending and Investment Report. The Independent Resources Evaluator will be entitled to provide a Lending and Investment Report to those APG Senior Lenders and APG Equity Investors which have also entered into a confidentiality agreement with Shipper and such Affiliates of Shipper, which has been executed by an officer of the APG Senior Lender or the APG Equity Investor, as the case may be, on terms and conditions which are satisfactory to Shipper and such Affiliates of Shipper, acting reasonably, agreeing to maintain all such information contained in such Lending and Investment Report confidential and to only use such report for the purpose of assessing the quantities of Natural Gas which would be available for transportation on the Mackenzie Valley Pipeline; provided that the Independent Resources Evaluator shall not provide a Lending and Investment Report to any APG Equity Investor which is an active participant in the oil and gas exploration or production sector or to any APG Equity Investor, other than a financial institution, which has an Affiliate which is an active participant in the oil and gas exploration or production sector, unless Shipper and such Affiliates of Shipper provide their prior consent, such consent to not be unreasonably withheld. Transporter shall consult with Shipper and all other shippers which have precedent agreements with Transporter in an attempt to ascertain the names of those third party consulting reservoir engineering firms which would be acceptable to such shippers as an Independent Resources Evaluator. Transporter shall provide the names of such third party consulting reservoir engineering firms to the MVAPLP for subsequent referral by the MVAPLP to the APG Senior Lenders and the APG Equity Investors. Any information to be supplied pursuant to this Section 4.5(f) is in addition to the Natural Gas supply information to be supplied to Transporter pursuant to Section 4.5(a).

4.6 Initial Credit Requirement

Shipper confirms, as of the date of this Precedent Agreement, that the facts set out in Section 4.6(a) are true and correct in respect of Shipper or its Affiliated Guarantor, as applicable, or that it has complied with Section 4.6(b):

- (a) Shipper, or its Affiliated Guarantor, as applicable, has a credit rating for its unsecured, unsubordinated, non credit enhanced long term debt ("**Applicable Debt**") from a Rating Agency that meets the minimum threshold rating as specified for such Ratings Agency in Schedule D (the "**Minimum Ratings Requirement**"), provided that:

- (i) long term debt, as determined at any date, means the indebtedness of a Shipper or its Affiliated Guarantor, as applicable, which would be classified as such on its balance sheet in accordance with generally accepted accounting principles in Canada or, at the option of Shipper if Shipper or its Affiliated Guarantor, as applicable, 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
- (ii) if the Applicable Debt of a Shipper or its Affiliated Guarantor, as applicable, is rated by more than two Rating Agencies, at least two of such ratings, established by such Rating Agencies, must meet the Minimum Ratings Requirement for such Rating Agency;

provided that if Shipper or its Affiliated Guarantor, as applicable, does not have any Applicable Debt or its Applicable Debt has not been rated by any Rating Agency, then Shipper confirms that Shipper or its Affiliated Guarantor, as applicable, has obtained an Issuer Rating from at least one of the Rating Agencies meeting the Minimum Ratings Requirements of such Rating Agency; or

- (b) Shipper or its Affiliated Guarantor or other Performance Assurance Provider has provided Performance Assurances to Transporter, which are satisfactory to Transporter.

The monetary value of Shipper's obligations under this Precedent Agreement shall never be considered to be greater than an amount of \$285 for each GJ per day of Contract Demand Quantity.

4.7 Change in Circumstances

- (a) If, at any time during the term of this Precedent Agreement, Transporter has reasonable grounds for believing that:
 - (i) Shipper or its Affiliated Guarantor or other Performance Assurance Provider, as applicable, may be unable to meet its obligations under this Precedent Agreement or under any Performance Assurance, for which purposes the monetary value of Shipper's obligations under this Precedent Agreement shall never be considered to be greater than an amount of \$285 for each GJ per day of Contract Demand Quantity; or
 - (ii) the financial circumstances of Shipper or its Affiliated Guarantor or other Performance Assurance Provider, as applicable, have deteriorated since the date of this Precedent Agreement, and in the reasonable opinion of Transporter have reached an unacceptable level;

then Transporter may provide notice to Shipper, stating its reasonable grounds and requesting a new or replacement Performance Assurance. If Shipper, its Affiliated Guarantor or other Performance Assurance Provider is unable or

unwilling to provide a Performance Assurance which is satisfactory to Transporter within thirty (30) days of receipt of Transporter's notice, then Transporter shall have the right thereafter to terminate this Precedent Agreement with immediate effect by providing a termination notice to Shipper.

- (b) If, at any time during the term of this Precedent Agreement, Transporter has reasonable grounds for believing that:
 - (i) any guarantee provided by an Affiliated Guarantor may be void or unenforceable, in whole or in part, by Transporter against such Affiliated Guarantor as a result of any development or change in the common law of Canada or any legislation; or
 - (ii) any Performance Assurance provided by a Performance Assurance Provider may be void or unenforceable, in whole or in part, by Transporter against such Performance Assurance Provider as a result of any development or change in the common law of Canada or any legislation;

then Transporter may provide notice to Shipper, stating its reasonable grounds and requiring a replacement guarantee or a replacement Performance Assurance, as applicable. The replacement guarantee or replacement Performance Assurance shall be in a form which addresses the matter which gave rise to Transporter's belief that the previous guarantee or previous Performance Assurance may be void or unenforceable in whole or in part. If any Affiliated Guarantor or other Performance Assurance Provider is unable or unwilling to provide a replacement guarantee or a replacement Performance Assurance, as applicable, which addresses such matter to the satisfaction of Transporter, acting reasonably, within thirty (30) days of receipt of Transporter's notice, then Transporter shall have the right thereafter to terminate this Precedent Agreement with immediate effect by providing a termination notice to Shipper.

ARTICLE 5 ADJUSTMENT OF CONTRACT DEMAND QUANTITY

5.1 Adjustment of Contract Demand Quantity

Shipper may elect to adjust the Contract Demand Quantity then applicable under this Precedent Agreement, as follows, by providing notice to Transporter:

- (a) a single increase or reduction, on or before July 1, 2004, for any reason whatsoever, by any amount up to the lesser of 20% of the then current Contract Demand Quantity or 20,000 GJ per day; provided that if Shipper has entered into more than one precedent agreement with Transporter, the 20,000 GJ per day limitation shall apply to the aggregate of all increases or reductions under all such precedent agreements and shall not apply to each such precedent agreement individually and further provided that if Shipper has partially assigned its rights under this Precedent Agreement, the 20,000 GJ per day limitation shall be reduced and allocated between Shipper under this Precedent Agreement and

Shipper's assignee under such partial assignment on the basis of their respective Contract Demand Quantities existing after giving effect to such partial assignment;

- (b) a single increase or reduction, after July 1, 2004 and on or before July 1, 2005, for any reason whatsoever, by any amount up to the lesser of 10% of the then current Contract Demand Quantity or 10,000 GJ per day; provided that if Shipper has entered into more than one precedent agreement with Transporter, the 10,000 GJ per day limitation shall apply to the aggregate of all increases or reductions under all such precedent agreements and shall not apply to each such precedent agreement individually and further provided that if Shipper has partially assigned its rights under this Precedent Agreement, the 10,000 GJ per day limitation shall be reduced and allocated between Shipper under this Precedent Agreement and Shipper's assignee under such partial assignment on the basis of their respective Contract Demand Quantities existing after giving effect to such partial assignment; and
- (c) **[if Shipper's drilling activities during the winter of 2004-2005 in the ___ field, as described below, have not, in Shipper's sole opinion, been successful, then in addition to any reduction in the Contract Demand Quantity which Shipper has elected to make pursuant to Section 5.1(b), a further single reduction, on or before July 1, 2005, by any amount, up to the then current Contract Demand Quantity. The winter of 2004-2005 drilling activities consist of:**
 - (i) •;
 - (ii) •; and
 - (iii) •.

If Shipper elects to reduce the Contract Demand Quantity to zero pursuant to this Section 5.1(c) then Shipper will be deemed to have terminated this Precedent Agreement pursuant to Section 8.10.]

**ARTICLE 6
ACTIONS FOLLOWING NEB DECISION DATE**

6.1 NEB Decision Date

Prior to the close of the second Business Day immediately following the NEB Decision Date, Transporter shall provide a notice to Shipper setting out the NEB Decision Date.

6.2 Shipper's First Election to Not Proceed

Between the NEB Decision Date and the date that is thirty (30) days following the NEB Decision Date, Shipper may elect to terminate this Precedent Agreement by paying Transporter the Termination Fee. Shipper's election to terminate this Precedent Agreement pursuant to this

Section 6.2 shall be provided in a written notice to Transporter accompanied by payment to Transporter for the Termination Fee.

6.3 Shipper's Second Election to Not Proceed

If prospective shippers with whom Transporter has entered into precedent agreements have elected to terminate their precedent agreements with Transporter pursuant to provisions in their precedent agreements similar to Section 6.2 and if the sum of the contract demand quantities set out in all precedent agreements which prospective shippers have so elected to terminate, exceeds fifteen per cent (15%) of the total of the contract demand quantities which were in effect under all precedent agreements as of the NEB Decision Date, then Transporter shall provide notice to Shipper of such event on or before the date that is thirty five (35) days following the NEB Decision Date. Upon receipt of any such notice, if Shipper had not previously elected to terminate this Precedent Agreement pursuant to Section 6.2, then Shipper may, within ten (10) days of receipt of such notice from Transporter, elect to terminate this Precedent Agreement by paying Transporter the Termination Fee. Shipper's election to terminate this Precedent Agreement pursuant to this Section 6.3 shall be provided in a written notice to Transporter accompanied by payment to Transporter for the Termination Fee.

6.4 Termination Fee

The "**Termination Fee**" shall be equal to an amount of \$285 for each GJ of the then current Contract Demand Quantity. The parties hereby acknowledge that the Termination Fee provides compensation to Transporter in an amount which is reasonable for providing Shipper with an option to terminate the Precedent Agreement subsequent to the NEB Decision Date even though Transporter would have then incurred significant costs in pursuing Transporter's Authorizations based, in part, on this Precedent 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, modification or relief pursuant to the equitable discretion of any court.

6.5 Transporter's NEB Decision

Between the NEB Decision Date and the date that is seventy five (75) days following the NEB Decision Date, Transporter may either:

- (a) proceed with the issuance of firm service transportation agreements to Shipper and all other shippers which have precedent agreements with Transporter; or
- (b) determine that the NEB Decision is not acceptable to Transporter, acting reasonably, by electing to terminate this Precedent Agreement.

For the purposes of Section 6.5(b) Transporter may determine that the NEB Decision is unacceptable if the NEB Decision contains terms or conditions which are materially and adversely different from the terms and conditions which were sought by Transporter, including changes which materially and adversely affect the Pipeline Owner's financial return from the Mackenzie Valley Pipeline. Transporter's election to terminate this Precedent Agreement

pursuant to Section 6.5(b) shall be provided in a written notice to Shipper which includes Transporter's reasons for Transporter's determination that the NEB Decision was unacceptable.

6.6 Execution of Firm Service Transportation Agreement

If Transporter has elected to proceed with the issuance of firm service transportation agreements pursuant to Section 6.5(a), Transporter shall execute the Firm Service Transportation Agreement and deliver it to Shipper and execute and deliver similar firm service transportation agreements to all other shippers which then have precedent agreements with Transporter. Unless this Precedent Agreement has been previously terminated pursuant to any provision hereof, Shipper shall execute and deliver to Transporter the Firm Service Transportation Agreement provided to it by Transporter by the later of:

- (a) the date that is fifteen (15) Business Days from the date Transporter provided the Firm Service Transportation Agreement to Shipper; or
- (b) the date that is forty five (45) days following the NEB Decision Date.

ARTICLE 7 FIRM SERVICE TRANSPORTATION AGREEMENT

7.1 Firm Service Transportation Agreement

Effective as of the date of execution and delivery of the Firm Service Transportation Agreement by Shipper, this Precedent Agreement shall terminate from and after such date. Transporter's and Shipper's rights and obligations related to transportation of Natural Gas on the Mackenzie Valley Pipeline shall in all respects be subject to the terms and conditions of such Firm Service Transportation Agreement and the Tariff.

7.2 Toll Principles and Tariff Principles

The Parties agree that the tolls payable by Shipper for service under the Firm Service Transportation Agreement, at all times prior to the end of a twenty (20) year period commencing on the first day of the month next following the month in which the date of commencement thereunder occurred, will be determined and calculated in accordance with the Toll Principles; provided that nothing herein shall prevent Shipper from advancing any position before the NEB respecting the issues as to whether or not all predevelopment costs incurred by a Person which was a Pipeline Owner in connection with the Mackenzie Valley Pipeline, or whether or not actual expenditures of a capital nature associated with the Mackenzie Valley Pipeline had, in each case, been prudently incurred and should or should not be included in the rate base for the Mackenzie Valley Pipeline. Shipper shall be entitled to make a complaint to or file an application with the NEB to the extent that Shipper believes that Transporter has not established tolls in a manner which complies with the Toll Principles. The Parties agree that such tolls will be set forth in the list of tolls prepared by Transporter and as filed with or approved by the NEB from time to time. The Parties agree that the General Terms and Conditions to be filed with the NEB from time to time will reflect and incorporate the Tariff Principles.

7.3 Tariff

The Tariff will be subject to the provisions of the NEB Act and any rules, regulations, decisions and orders of the NEB.

ARTICLE 8 DEFAULT AND TERMINATION RIGHTS

8.1 Transporter Default

The occurrence and continuation of any of the following events, unless any such event occurs as a result of a breach by Shipper of its obligations under this Precedent Agreement, shall constitute a "**Transporter Default**":

- (a) a material breach by Transporter of any of its obligations under this Precedent Agreement; or
- (b) Transporter repudiating this Precedent Agreement or evidencing its intention not to perform its obligations under, or to be bound by this Precedent Agreement, except as permitted hereunder.

8.2 Shipper Default

The occurrence and continuation of any of the following events, unless any such event occurs as a result of a breach by Transporter of its obligations under this Precedent Agreement, shall constitute a "**Shipper Default**":

- (a) a material breach by Shipper of any of its obligations under this Precedent Agreement other than those referred to in Sections 4.7, 8.4 or 8.5; or
- (b) Shipper repudiating this Precedent Agreement or evidencing its intention not to perform its obligations under, or to be bound by this Precedent Agreement, except as permitted hereunder.

8.3 Termination for Default

Shipper may elect to terminate this Precedent Agreement in the event of a Transporter Default pursuant to Section 8.1. Transporter may elect to terminate this Precedent Agreement in the event of a Shipper Default pursuant to Section 8.2. The terminating Party must give the other Party thirty (30) days prior notice of its intent to terminate this Precedent Agreement pursuant to this Section 8.3. Unless the default is cured, within the required notice period, termination of this Precedent Agreement will be effective upon expiry of the thirty (30) day notice period except as permitted hereunder.

8.4 Additional Transporter Termination Rights

Transporter may elect to terminate this Precedent Agreement if:

- (a) Shipper fails to provide the information, financial statements, data or interpretations thereof, that are required to be provided by Shipper pursuant to any of the provisions of Section 4.5(a) through Section 4.5(f) by the end of the time period specified in the applicable section if such default is not cured within five (5) Business Days of the receipt of a notice from Transporter indicating that Shipper is in default of its obligations pursuant to any of Section 4.5(a) through Section 4.5(f);
- (b) Shipper fails to execute and deliver to Transporter a copy of the Firm Service Transportation Agreement within the time period set out in Section 6.6; or
- (c) Pipeline Owners have advised Transporter that they no longer wish to proceed with construction of the Mackenzie Valley Pipeline;

by providing thirty (30) days prior notice to Shipper of its intent to terminate this Precedent Agreement pursuant to this Section 8.4 and termination of this Precedent Agreement will be effective upon expiry of the thirty (30) day notice period.

8.5 Termination for Insolvency

A Party shall have the right to terminate this Precedent Agreement by giving notice, if the other Party, or the Controlling Party, or the Affiliated Guarantor or other Performance Assurance Provider of that other Party:

- (a) files a voluntary application in or for liquidation, receivership or bankruptcy;
- (b) is finally and validly declared and adjudged to be liquidated, bankrupt or insolvent;
- (c) is subject to a resolution passed by its members for the purposes of placing it in voluntary administration;
- (d) is subject to an order by any court of competent jurisdiction for its winding up;
- (e) is the subject of an appointment of a receiver or receiver and manager or like officer of the whole or any material part of its assets;
- (f) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets; and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within fifteen (15) Business Days thereafter;

- (g) is the subject of an appointment of an administrator, official manager or like officer in circumstances where such other Party, or the Controlling Party or the Affiliated Guarantor or other Performance Assurance Provider of that other Party is or is likely to become insolvent; or
- (h) enters into a scheme of arrangement with its creditors or any of them;

provided that the foregoing shall not include any voluntary proceeding for the purpose of amalgamation, reconstruction or reorganization not taken at the request of or to meet the requirements of such other Party's, Controlling Party's or Affiliated Guarantor's or other Performance Assurance Provider's creditors. Where the notice of termination relates to the other Party, or the Controlling Party or an Affiliated Guarantor or any other Performance Assurance Provider that is an Affiliate of that other Party, then the termination of this Precedent 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 that other Party, then the termination of this Precedent Agreement will be effective upon the expiry of a ten (10) Business Day period from the date of delivery of such termination notice, unless within such period, Shipper has provided Performance Assurances to Transporter which are satisfactory to Transporter.

8.6 Cumulative Remedies

Upon the occurrence and continuation of a Transporter Default or a Shipper Default or Shipper's failure to meet its obligations referred to in Section 8.4, then in addition to the right to terminate this Precedent Agreement under Section 8.3 or Section 8.4, as the case may be, the non-defaulting Party shall, at its option, also have the right to specific performance of this Precedent Agreement or to receive damages as would be available under law.

8.7 Effect of Termination

- (a) Subject to Section 8.7(b), no termination of this Precedent 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.
- (b) Any termination of this Precedent Agreement by Shipper pursuant to Sections 8.8 [, 8.10] or 8.9 shall, as of the date of any such termination, render this Precedent Agreement void and of no effect and Shipper shall not be subject to any obligation, liability, penalty or termination fee of any kind or have any obligation to pay the Termination Fee.

8.8 Pipeline Owners' Decision to Downsize

If, at any time prior to the execution of the Firm Service Transportation Agreement, Transporter has notified Shipper pursuant to Section 4.1 that the Pipeline Owners are proposing to downsize the mainline pipeline to a diameter of less than NPS thirty (30) then Shipper may elect to terminate this Precedent Agreement by providing notice to Transporter within ten (10) days of the receipt of such notice from Transporter pursuant to Section 4.1.

8.9 NEB Application Not Filed

If Transporter does not have an application filed with the NEB pursuant to Part III and Part IV of the NEB Act, as referred to in Section 4.1(a), on December 15, 2004 then Shipper may elect to immediately terminate this Precedent Agreement by providing notice to Transporter on or before January 10, 2005.

8.10 [2005 Shipper Termination Right]

[If Shipper's drilling activities during the winter of 2004-2005 in the ___ field, as described In Section 5.1(c), have not, in Shipper's sole opinion, been successful, then Shipper may elect to immediately terminate this Precedent Agreement by providing notice to Transporter on or before July 1, 2005.]

Note: Transporter is prepared to negotiate specific provisions with a Shipper which would allow Shipper's 2004-2005 drilling activities which are to be listed in Section 5.1(c) to be subject to the approval by Shipper's management on or before September 1, 2004. If Transporter has not been notified of such management approval by September 15, 2004 then Shipper will not have any termination right pursuant to this Section 8.10.]

ARTICLE 9 ASSIGNMENT

9.1 By Shipper

Shipper shall have the right to assign all of its rights and obligations, or a portion thereof, under this Precedent Agreement subject to:

- (a) (i) the assignee, or its Affiliated Guarantor, as applicable, having a credit rating for its Applicable Debt from a Rating Agency that meets the Minimum Ratings Requirement, provided that:
 - (A) in assessing such Applicable Debt the long term debt, as determined at any date, means the indebtedness of the assignee or its Affiliated Guarantor, as applicable, 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 assignee if the assignee or its Affiliated Guarantor, as applicable, 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 Applicable Debt of the assignee, or its Affiliated Guarantor, as applicable, is rated by more than two Rating Agencies, at least two of such ratings, established by such Rating Agencies, must meet the Minimum Ratings Requirement for each such Rating Agency;

provided that if the assignee or its Affiliated Guarantor, as applicable, does not have any Applicable Debt or its Applicable Debt has not been rated by any Rating Agency, then the assignee must provide evidence which confirms that the assignee or its Affiliated Guarantor, as applicable, has obtained an Issuer Rating from at least one of the Rating Agencies meeting the Minimum Ratings Requirements of such Ratings Agency; and

- (ii) Transporter providing its prior written approval, which shall not be unreasonably withheld; provided that Transporter shall not be allowed to withhold such approval on the basis of the financial condition of the assignee or its Affiliated Guarantor, as applicable; or
- (b) (i) the assignee or its Affiliated Guarantor or other Performance Assurance Provider having provided Performance Assurances to Transporter which are satisfactory to Transporter; and
- (ii) Transporter providing its prior written approval, which shall not be unreasonably withheld;

and, in either case, subject to the assignee or an Affiliate of the assignee owning Natural Gas resources located upstream of the Mackenzie Valley Pipeline from which Natural Gas will be produced and transported on the Mackenzie Valley Pipeline under the Firm Service Transportation Agreement.

9.2 By Transporter

Transporter, without obtaining any approval from Shipper, may assign all of its rights and obligations under this Precedent Agreement to:

- (a) any Affiliate of Transporter;
- (b) to any Person designated by the Pipeline Owners from time to time to be the operator of the Mackenzie Valley Pipeline; or
- (c) to any Person which the Pipeline Owners have advised Transporter, will be developing the Mackenzie Valley Pipeline in the place of the Pipeline Owners;

Transporter may also assign all of its rights and obligations or a portion thereof under this Precedent Agreement to any other Person with the prior written approval of Shipper, which shall not be unreasonably withheld.

9.3 Succession

Any Person which shall succeed by purchase of all or substantially all of the assets and assumption of all or substantially all of the liabilities of, or merger or consolidation with either Transporter or Shipper, as the case may be and which signs and delivers a counterpart of this Precedent Agreement to the other Party, shall be entitled to the rights and shall be subject to the obligations of its predecessor under this Precedent Agreement.

9.4 Pledging

The provisions of this Article 9 shall not in any way prevent Transporter or the Pipeline Owners from pledging or mortgaging Transporter's rights hereunder or under the Firm Service Transportation Agreement, as security for their indebtedness. Shipper shall execute all consents to assignment and acknowledgements as reasonably requested by Transporter or the Lenders of any security interests granted by Transporter or any Pipeline Owner in relation to the Mackenzie Valley Pipeline, this Precedent Agreement or the Firm Service Transportation Agreement.

9.5 Partial Assignment

If Shipper partially assigns its rights under this Precedent Agreement to an Affiliate, its remaining rights under this Precedent Agreement and any rights assigned to its Affiliate must be exercised collectively by Shipper and its Affiliate unless otherwise agreed to by Transporter. Any non-Affiliate partial assignee of this Precedent Agreement may exercise any elections or termination rights under this Precedent Agreement in respect of its share of the Contract Demand Quantity so assigned independently of the assignor or any other assignee.

ARTICLE 10 AUTHORITIES

10.1 Authorities

Performance of this Precedent 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 either Party, by force of any such law, order, decision, rule or regulation, at any time during the term of this Precedent 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 Precedent 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 10.1 shall alter, modify or otherwise affect the respective rights of the Parties to terminate this Precedent Agreement under the terms and conditions hereof.

ARTICLE 11 CHOICE OF LAW AND ATTORNMENT

11.1 Choice of Law and Attornment

This Precedent Agreement, shall be construed and applied in accordance with and be subject in all respects to the laws of the Province of Alberta, and the laws of Canada having application therein, without recourse to any laws governing conflict of laws. Neither Party shall institute any action, suit or other proceeding with respect to any matter arising under or out of this Precedent Agreement other than in the Alberta Court of Queen's Bench in the Judicial District of Calgary; provided that a Party may institute an action in another jurisdiction in order to enforce any judgement or award of the Alberta Court of Queen's Bench. In that regard, each Party hereby irrevocably attorns to the jurisdiction of such Court in the event of any such action, suit or other proceeding by the other Party.

ARTICLE 12 MISCELLANEOUS

12.1 Force Majeure

If either Transporter or Shipper fails to perform any obligation under this Precedent Agreement due to an event of Force Majeure then, subject to the provisions of this Precedent 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 Precedent 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 Precedent 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 Precedent 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 this Precedent Agreement.

12.2 Supercedes Other Agreements

This Precedent Agreement reflects the whole and entire agreement between Transporter and Shipper with respect to the Requested Service and supercedes all prior agreements and understandings between Transporter and Shipper with respect to such subject matter.

12.3 Amendment

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

12.4 Notices

Except as otherwise specifically provided, all notices authorized or required between the Parties by any of the provisions of this Precedent 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 Precedent 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 Precedent 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 12.4 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.

Transporter:

Imperial Oil Resources Ventures Limited
237 Fourth Avenue S.W.
Calgary, Alberta
T2P 0H6
Attention: Heather Marreck
Telecopy: (403) 237-2102
Telephone: (403) 237-4022

Shipper:

Attention: _____
Telecopy: _____
Telephone: _____

12.5 Severability

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

12.6 Waiver

Either 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 Precedent Agreement by the other Party if such waiver is confirmed in writing. The failure of either Party to insist upon the strict performance of any of the provisions of this Precedent 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 either Party of any breach or non-performance of any of the obligations to be performed by the other Party shall not take effect or be binding upon the first Party unless the waiver is expressed in writing by that 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.

12.7 GST

Notwithstanding any other provision of this Precedent Agreement, in the event that any amount becomes payable to a Party as a result of a breach, modification or termination of this Precedent 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.

12.8 Precedent Agreement Modifications

Transporter covenants that it will not, prior to the date that Transporter files its application to the NEB pursuant to Part III of the NEB Act seeking approval for the construction and operation of the Mackenzie Valley Pipeline, enter into any precedent agreement or other agreement with a prospective shipper for transportation service on the Mackenzie Valley Pipeline which provides to such prospective shipper terms and conditions with respect to adjustments of Contract Demand Quantities (other than shipper specific reduction rights relating to specific drilling activities as set out in Section 5.1(c)), termination rights [**(other than any shipper specific termination right relating to specific drilling activities as set out in Section 8.10)**], tolls or tariff provisions that are more favourable to the prospective shipper, or a length of term of any firm service transportation agreement attached thereto that is shorter than fifteen (15) years unless Transporter offers the same terms and conditions or length of term to Shipper by way of an amendment to this Precedent Agreement.

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

**IMPERIAL OIL RESOURCES
VENTURES LIMITED**

Per: _____

Per: _____

[SHIPPER]

Per: _____

Per: _____

SCHEDULE A

FIRM SERVICE TRANSPORTATION AGREEMENT

This Schedule A forms part of the Precedent Agreement for Firm Transportation dated the • day of •, 2004 and shall be deemed to be attached thereto.

**FIRM SERVICE TRANSPORTATION AGREEMENT
MACKENZIE VALLEY PIPELINE**

Between:

IMPERIAL OIL RESOURCES VENTURES LIMITED

- and -

[SHIPPER]

_____, 200__

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FIRM SERVICE TRANSPORTATION AGREEMENT

MACKENZIE VALLEY PIPELINE

This Firm Service Transportation Agreement is made as of the _____ day of _____, 200__ between:

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

- and -

[Shipper], a **[•]**, with an office in the City of **[•]**, in the Province of **[•]** ("**Shipper**").

RECITALS:

WHEREAS, Imperial Oil Resources Ventures Limited, the Mackenzie Valley Aboriginal Pipeline Limited Partnership ("**MVAPLP**"), ConocoPhillips Canada (North) Limited, Shell Canada Limited and ExxonMobil Canada Properties are currently proposing to develop a new natural gas pipeline system (the "**Mackenzie Valley Pipeline**") which is currently proposed to be a single phase NPS • (•) mainline pipeline with an initial design capacity of approximately • 10⁶ m³ (• Bcf) per day, at a design pressure of • MPa (• psi) originating near the outlet of a processing facility to be located near Inuvik and terminating at the point of interconnection with the facilities of NOVA Gas Transmission Ltd. located in northwestern Alberta near the Northwest Territories-Alberta border, with an anticipated in service date of •;

AND WHEREAS, Transporter proposes to construct and operate the Transportation System for and on behalf of the Pipeline Owners and will be designated by the Pipeline Owners to be the operator of the Transportation System;

AND WHEREAS, Transporter and Shipper were parties to a Precedent Agreement dated the • day of •, 2004 (the "**Precedent Agreement**") which will be superceded by this Firm Service Transportation Agreement;

AND WHEREAS, subject to the terms and conditions of this Firm Service Transportation Agreement, Transporter will apply for all remaining governmental and other Authorizations which are or may be required to enable Transporter to construct and operate the Mackenzie Valley Pipeline;

AND WHEREAS, Shipper has requested that Transporter transport and Transporter has agreed to transport quantities of Natural Gas that are delivered by Shipper to Transporter at the Receipt Point to the Delivery Point, as specified in the Schedule of Service, all in accordance with and subject to the terms and conditions of this Firm Service Transportation Agreement.

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

ARTICLE 1 INTERPRETATION

1.1 Definitions

Except as specifically provided herein, all words and phrases used herein and defined in the Tariff shall have the same meanings as ascribed to them in the General Terms and Conditions. In this Firm Service Transportation Agreement, including the Recitals and Schedules, the following words and phrases have the following meanings:

"**Affiliate**" means a corporation, partnership or trust that is affiliated with the Party 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 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), a partnership is directly controlled by another partnership, corporation or trust if that partnership, corporation or trust beneficially owns more than a 50% 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 general partner, by any Person that controls a general partner or general partners having more than a 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 or more other corporations, partnerships or trusts; and

- (b) where two 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;

"**Affiliated Guarantor**" means either: (a) an Affiliate of Shipper which meets the requirements of Section 4.7(a) or 5.7(a), at the relevant time, and which Affiliate has provided to Transporter a guarantee, which will be in a form acceptable to Transporter at the time of the execution of such guarantee, guaranteeing all of the obligations of Shipper pursuant to this Firm Service Transportation Agreement, which guarantee shall not require the Affiliate to guarantee anything in excess of Shipper's obligations under this Firm Service Transportation Agreement; or (b) an Affiliate of an assignee which meets the requirements of Section 10.1(a) and which Affiliate has provided to Transporter, a guarantee, which will be in a form acceptable to Transporter at the time of the execution of such guarantee, guaranteeing all of the obligations of such assignee pursuant to this Firm Service Transportation Agreement, which guarantee shall not require the Affiliate to guarantee anything in excess of Shipper's obligations under this Firm Service Transportation Agreement;

"**Alternate Pipeline**" has the meaning ascribed thereto in Section 4.5;

"**APG Equity Investors**" means those investors which provide equity or subordinate debt to the MVAPLP for the Transportation System;

"**APG Senior Lenders**" means those banks, financial institutions or other senior investors which provide senior credit facilities to the MVAPLP for the Transportation System;

"**Applicable Debt**" has the meaning ascribed to it in Section 4.7(a);

"**Authorities**" means all governmental and regulatory authorities and other bodies, to the extent, having valid jurisdiction or authority over or in respect of: (a) the Transportation System, including the NEB and the MVLWB; and (b) any Shipper's Authorization;

"**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;

"**Authorized Overrun Service**" or "**AOS**" means the Service to be provided pursuant to Article 7;

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

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

"**Commissioned**" means that those facilities which are required to provide the Service described in the Firm Service Transportation Agreement have been completed, tested and are available to provide service and that leave to open such facilities has been granted by the NEB and "**Commission**" and derivatives thereof have corresponding meanings;

"Commodity Charge" means the Commodity Charge, if any, described in the Tariff;

"Contract Demand Quantity" means the quantity of Natural Gas, expressed in GJ per day, as set out on the Schedule of Service, contracted for by Shipper hereunder for Firm Service and for which Shipper has agreed to pay the Demand Charge and Commodity Charges in accordance with the provisions of this Firm Service Transportation Agreement and the General Terms and Conditions;

"Controlling Party" means in respect of Shipper, any corporation, partnership or trust which exercises direct or indirect control over Shipper and for the purpose of determining whether a corporation, partnership or trust directly or indirectly controls Shipper it will be deemed that:

- (a) if Shipper is a corporation, then it is directly controlled by any other corporation, partnership or trust if shares of Shipper to which are attached more than 50% of the votes that may be cast to elect directors of Shipper 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 Shipper;
- (b) subject to (c), if Shipper is a partnership, then it is directly controlled by another partnership, corporation or trust if that other partnership, corporation or trust beneficially owns more than a 50% interest in the partnership;
- (c) if Shipper is a limited partnership, then it is directly controlled by the Person that controls the general partner of such limited partnership or, if there is more than one general partner, by any Person that controls a general partner or general partners having more than a 50% aggregate voting interest in the limited partnership;
- (d) if Shipper is a trust, then it is directly controlled by the Person who is entitled to elect or appoint the majority of the trustees of the trust; and
- (e) Shipper is indirectly controlled by another corporation, partnership or trust if control as defined in (a) through (d) above, as the case may be, is exercised over Shipper through one or more other corporations, partnerships or trusts;

"CPCN" means a certificate of public convenience and necessity issued by the NEB pursuant to Part III of the NEB Act, in respect of the Mackenzie Valley Pipeline, after the issuance of same has been approved by the Governor in Council;

"Date of Commencement" means the date referred to in Section 5.2;

"day" means any calendar day;

"Delivery Point" means the point of interconnection between the Transportation System and the facilities of NOVA located in northwest Alberta near the Northwest Territories-Alberta border or any upstream point of interconnection between the Transportation System and any downstream pipeline facilities, as set out in the Schedule of Service;

"Demand Charge" means the FS-15 Demand Charge, the FS-20 Demand Charge, the FSSH-15 Demand Charge or the FSSH-20 Demand Charge, as applicable, as described in the Tariff;

"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;

"Fifteen Year FSTA's" means those firm service transportation agreements executed by Transporter and shippers within one hundred and twenty (120) days of the NEB Decision Date which have a Primary Term extending for a fifteen (15) year period commencing on the first day of the month next following the month in which the date of commencement of service thereunder occurred, including those firm service transportation agreements pursuant to which short-haul transportation is being provided;

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

"General Terms and Conditions" means the general terms and conditions relating to the Transportation System as set out in the Tariff;

"Independent Resources Evaluator" means the third party reservoir engineering consulting firm retained by the APG Senior Lenders and the APC Equity Investors, for the sole purpose of preparing a Lending and Investment Report in accordance with Section 4.6(f) or Section 5.9(e);

"Issuer Rating" means the opinion of a particular Rating Agency of the ability of a shipper or its Affiliated Guarantor to honor 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 a shipper or its Affiliated Guarantor to meet its financial commitments as they come due;

"Lenders" means any banks, financial institutions or investors, including any Pipeline Owner or an Affiliate of a Pipeline Owner, which, in any case, provides either construction or long term debt financing to a Pipeline Owner in respect of the Transportation System;

"Lending and Investment Report" means a consolidated resources report, commissioned by the APG Senior Lenders and the APG Equity Investors, prepared by an Independent Resources Evaluator, of resources and supplies of Natural Gas proposed to supply the Natural Gas being transported by all shippers on the Mackenzie Valley Pipeline or the Transportation System, as the case may be. The consolidated resources report shall reflect and contain identifiable field resources assessments as reasonably required by the APG Senior Lenders and the APG Equity Investors;

"Letter of Credit" means an irrevocable letter of credit issued in favour of Transporter by a bank, trust company or other financial institution which has a combined capital surplus of at least one billion dollars and whose unsecured, unsubordinated, non credit enhanced long term debt is rated, in each case, no lower than: A2 by Moody's Investor Service, A by Standard and Poor's and A by Dominion Bond Rating Service or the then equivalent rating used by any such Rating Agency in substitution or replacement for such rating. The Letter of Credit shall: (a) on the date it is issued, be in a sum equal to the amount which Shipper will be obligated to pay Transporter

under this Firm Service Transportation Agreement during the next twelve (12) month period; (b) be issued for an initial period that is no less than the lesser of twelve (12) months from the initial date of issue or one hundred and twenty (120) days beyond the expiry of the Primary Term of this Firm Service Transportation Agreement; (c) unless waived by Transporter and the Lenders, be renewed or replaced no less than ninety (90) days before its expiry date, for a period that is no less than the lesser of twelve (12) months from the date of expiry of the initial, renewal or replacement Letter of Credit or one hundred and twenty (120) days beyond the expiry of the Primary Term of this Firm Service Transportation Agreement and for an amount no less than that stipulated in (a) above in this definition of "Letter of Credit"; (d) be transferable to any Lender; (e) provide that Transporter shall have the right to draw upon the same in the event of Shipper's failure to pay amounts due Transporter under this Firm Service Transportation Agreement or renew the Letter of Credit when required hereunder; (f) be immediately reinstated to the full amount set forth in (a) following a valid draw by Transporter; (g) be payable upon the execution and presentation by an officer of Transporter of a sight draft to the issuer of such Letter of Credit supported by a signed statement of Transporter that Shipper failed to pay amounts due Transporter under this Firm Service Transportation Agreement or renew the Letter of Credit when required hereunder; and (h) be in a form and substance reasonably acceptable to Transporter;

"Minimum Ratings Requirement" means, for a particular Rating Agency, the minimum rating set out for such Rating Agency in Schedule C or the then equivalent rating used by any such Rating Agency in substitution or replacement for such minimum rating;

"MVLWB" means the Mackenzie Valley Land and Water Board established pursuant to the MVRMA or any replacement or successor regulatory or governmental authority or authorities having jurisdiction to approve the use of land and water in the Mackenzie Valley;

"MVRMA" means the *Mackenzie Valley Resource Management Act* (Canada), as amended from time to time and includes any legislation enacted in replacement thereof;

"Natural Gas" means any hydrocarbons or mixture of hydrocarbons and other gases, consisting primarily of methane, which at a temperature of fifteen (15) degrees Celsius and an absolute pressure of 101.325 kPa, is in the gaseous state;

"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 over the approval, licencing, construction, operation, tolls or tariff of interprovincial pipelines in Natural Gas service under the NEB Act or 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" means the decision or decisions of the NEB, including any reasons for decision, in connection with the application of Transporter for a CPCN pursuant to Part III of the NEB Act and in respect of the Toll Principles and the Tariff Principles pursuant to Part IV of the NEB Act;

"**NEB Decision Date**" means the date on which the NEB releases the NEB Decision; provided that if the NEB does not release the NEB Decision on all matters on a single date then the date on which the last of the reasons for decision respecting each of such matters shall be considered to be the "**NEB Decision Date**";

"**NOVA**" means NOVA Gas Transmission Ltd. and its successors and assignees;

"**NPS XX**" means the nominal pipe size where XX is the nominal outside diameter of the pipe, expressed in inches. NPS 30 is a nominal thirty (30) inch diameter pipe;

"**Party**" means a party to this Firm Service Transportation Agreement and "**Parties**" means both parties to this Firm Service Transportation Agreement;

"**Performance Assurance**" means any assurance of performance of Shipper's obligations under this Firm Service Transportation Agreement which may be provided in cash, by a letter of credit or other form of security or other assurance, in an amount and a form acceptable to Transporter, acting reasonably, from time to time by a Performance Assurance Provider in favour of Transporter;

"**Performance Assurance Provider**" means Shipper, its Affiliated Guarantor or any third party which is providing a Performance Assurance for or on behalf of such Shipper;

"**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 and the heirs, executors, administrators or other legal representatives of an individual;

"**Pipeline Owners**" means those Person which are owners of the Transportation System at a particular time, or are parties to the agreement to develop the Mackenzie Valley Pipeline if the Mackenzie Valley Pipeline does not yet exist at such time and, as of the date hereof are •, •, • and •;

"**Primary Term**" is the period of time commencing on the Date of Commencement and extending through either a twenty (20) or fifteen (15) year period, as specified in the Schedule of Service, with the start of such period being at the commencement of the first day of the month next following the month in which the Date of Commencement occurred;

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

"**Receipt Point**" means the point of interconnection between an upstream gathering pipeline, compression station or processing facility and the Transportation System, as set out in the Schedule of Service;

"**Schedule of Service**" means Schedule D;

"**Shipper's Authorizations**" means those Authorizations listed in the most recent notice, which Shipper has provided to Transporter in accordance with Section 4.3 and "**Shipper's Authorization**" means any one of them;

"**Shipper Default**" has the meaning ascribed to it in Section 9.2;

"**Tariff**" means the tolls, terms and conditions, as filed with and approved by the NEB, under which Transporter will transport Natural Gas on the Transportation System including the General Terms and Conditions;

"**Tariff Principles**" has the meaning ascribed to it in Schedule B;

"**Toll Principles**" has the meaning ascribed to it in Schedule A;

"**Transporter's Authorizations**" means any remaining Authorizations which Transporter determines are necessary as set out in Section 4.2 and a "**Transporter's Authorization**" means any one of them;

"**Transporter Default**" has the meaning ascribed to it in Section 9.1;

"**Transporter's Start-up Notice**" means the notice referred to in Section 4.9;

"**Transportation System**" means the Mackenzie Valley Pipeline, any replacement thereof or expansion thereto and includes all facilities installed from time to time to provide service under any firm service transportation agreement; and

"**Twenty Year FSTA's**" means those firm service transportation agreements executed by Transporter and shippers within one hundred and twenty (120) days of the NEB Decision Date which have a Primary Term extending for a twenty (20) year period commencing on the first day of the month next following the month in which the date of commencement of service thereunder occurred, including those firm service transportation agreements pursuant to which short-haul transportation is being provided.

1.2 Schedules

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

Schedule A - TOLL PRINCIPLES

Schedule B – TARIFF PRINCIPLES

Schedule C – RATING AGENCIES AND MINIMUM RATINGS REQUIREMENT

Schedule D – SCHEDULE OF SERVICE.

1.3 Interpretation and References

Whenever the singular or masculine or neuter is used in this Firm Service Transportation 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 Firm Service Transportation Agreement. Words such as "hereunder", "hereto" and "herein" and similar expressions refer to the whole of this Firm Service Transportation Agreement and not to

any particular Section, or Schedule hereof. The word "including" shall mean including without limitation.

1.4 Transporter's Actions

In all situations under this Firm Service Transportation Agreement, excluding Section 10.1(a)(ii), where Transporter is required or entitled to provide its consent or approval in respect of any matter or is permitted to exercise its discretion in any way, Transporter shall be entitled to take any action or exercise its discretion in the manner which takes into account, the views of, the requirements of or the recommendations of any Lender. In acting upon any such views, requirements or recommendations including views, requirements or recommendations to withhold any consent or approval, Transporter shall not be considered to have acted unreasonably hereunder.

ARTICLE 2 TERM

2.1 Term

Subject to Section 4.1 and Section 5.1, this Firm Service Transportation Agreement shall become effective as of the date hereof and shall continue in effect until the end of the Primary Term or the final day of any extension effected pursuant to Section 2.3, unless this Firm Service Transportation Agreement is terminated earlier pursuant to any provision hereof.

2.2 Decision to Proceed with Project

The Pipeline Owners will notify Transporter as to whether or not the Pipeline Owners are electing to proceed with the construction of the Mackenzie Valley Pipeline. If the Pipeline Owners advise Transporter that the Pipeline Owners will not be proceeding with the construction of the Mackenzie Valley Pipeline for any reason whatsoever, then Transporter may elect to terminate this Firm Service Transportation Agreement upon providing notice to Shipper and all other shippers which have firm service transportation agreements with Transporter with such termination being effective ten (10) Business Days after the date such termination notice was sent by Transporter; provided that Transporter shall only be entitled to terminate this Firm Service Transportation Agreement pursuant to this Section 2.2 if such termination notice is sent on or before the later of: (a) the date that is one year from the NEB Decision Date; or (b) the date that is ninety (90) days after the date that all legal proceedings, which may have been initiated by any Person in respect of any Transporter's Authorization, have been concluded and all appeal periods relating thereto have expired.

2.3 Renewal Right

Shipper shall have the right to extend the term of this Firm Service Transportation Agreement beyond the Primary Term for further annual periods of a minimum of one (1) year by providing written notice to Transporter to that effect not less than three (3) years prior to the expiration of the Primary Term or any extended term, as the case may be; provided that Shipper shall not have the right to extend the term of this Firm Service Transportation Agreement for any period of time which is beyond the twenty (20) year period commencing on the first day of the month next

following the month in which the Date of Commencement occurred, unless Transporter is and plans to continue to operate the Transportation System during the entire requested extension period in a manner which is substantially similar to the manner in which Transporter was operating the Transportation System at the end of such twenty (20) year period. Any such extension may be for all or any portion of the then current Contract Demand Quantity.

2.4 Termination for Failure to Commence Service

If Transporter has not provided Transporter's Start-up Notice pursuant to Section 4.9 by November 1, 2012, or such later date as may be agreed to by the Parties, then either Party may elect to terminate this Firm Service Transportation Agreement by providing notice to the other Party. This Firm Service Transportation Agreement shall terminate on the sixtieth (60th) day after the date that such notice was provided unless on or before such date Transporter has provided Transporter's Start-Up Notice pursuant to Section 4.9.

2.5 NEB Leave to Abandon Application

Transporter shall provide Shipper with a copy of any application made by Transporter pursuant to Section 74(1)(d) of the NEB Act requesting leave of the NEB to abandon the operation of Transportation System.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of Transporter

Transporter represents and warrants that:

- (a) it is duly organized and validly existing under the laws of Canada and has all requisite legal power and authority to execute this Firm Service Transportation Agreement and carry out the terms, conditions and provisions hereof;
- (b) this Firm Service Transportation Agreement constitutes a valid, legal and binding obligation of Transporter, 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;
- (c) there are no actions, suits or proceedings pending or, to Transporter's knowledge, threatened against or affecting Transporter before any court or Authority that might materially and adversely affect the ability of Transporter to meet and carry out its obligations under this Firm Service Transportation Agreement;
- (d) the execution and delivery by Transporter of this Firm Service Transportation Agreement has been duly authorized by all requisite corporate actions and all requisite actions of the Pipeline Owners; and

- (e) it has or will have, at the relevant time, all requisite authority from the Pipeline Owners to take or to refrain from taking any action that Transporter may be entitled to take hereunder.

3.2 Representations and Warranties of Shipper

Shipper represents and warrants that:

- (a) it is duly organized and validly existing under the laws of _____ and has all requisite legal power and authority to execute this Firm Service Transportation Agreement and carry out the terms, conditions and provisions hereof;
- (b) this Firm Service Transportation Agreement constitutes a valid, legal and binding obligation of Shipper, 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;
- (c) there are no actions, suits or proceedings pending or, to Shipper's knowledge, threatened against or affecting Shipper before any court or Authority that might materially and adversely affect the ability of Shipper to meet and carry out its obligations under this Firm Service Transportation Agreement; and
- (d) the execution and delivery by Shipper of this Firm Service Transportation Agreement has been duly authorized by all requisite [**corporate, partnership or trust**] action.

ARTICLE 4

PRE DATE OF COMMENCEMENT OBLIGATIONS OF PARTIES

4.1 Applicability to Pre Date of Commencement Period

The provisions set out in Article 4 of this Firm Service Transportation Agreement shall only apply until the Date of Commencement.

4.2 Application for Remaining Transporter's Authorizations

Transporter will proceed with due diligence to apply for and obtain from all Authorities such remaining Transporter's Authorizations which Transporter determines are necessary:

- (a) for the construction and operation of the Mackenzie Valley Pipeline and to render the Service as contemplated in this Firm Service Transportation Agreement and other firm service transportation agreements entered into with other shippers, including the issuance by the NEB of a CPCN; and
- (b) to perform Transporter's obligations as contemplated in this Firm Service Transportation Agreement;

Transporter reserves the right to file and prosecute any and all applications for such remaining Authorizations, any supplements and amendments thereto, and, if necessary, any court review, in such manner as it deems to be in the Pipeline Owners' best interest. Transporter shall advise all Shippers on an ongoing basis, in a timely fashion and in any event not less frequently than every six (6) months, of the status of such applications. Upon the request of Shipper, Transporter will also provide Shipper, in a timely fashion, with a copy of any application made by Transporter for any significant remaining Transporter's Authorization and a copy of each significant remaining Transporter's Authorization upon receipt of same.

4.3 Listing of Shipper's Authorizations

Within thirty (30) days of the date hereof Shipper will provide a notice to Transporter specifically listing the Authorizations which Shipper or an Affiliate of Shipper will be seeking 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 pipeline gathering facilities to connect such gas field to the Receipt Point;

in relation to the Natural Gas which is to be shipped by Shipper under this Firm Service Transportation Agreement. From time to time thereafter, and no less frequently than once every six (6) months, Shipper shall provide a notice to Transporter which sets out a current listing of Shipper's Authorizations and identifies any additions, changes or deletions to the immediately preceding listing of Shipper's Authorizations.

4.4 Application for Shipper's Authorizations

Shipper may file and prosecute any and all applications for Shipper'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; provided that Shipper shall not take any action which would obstruct, interfere with or delay the receipt by Transporter of the authorizations or exemptions and supplements and amendments thereto contemplated hereunder or otherwise jeopardize implementation of the Mackenzie Valley Pipeline. Shipper shall advise Transporter on an ongoing basis, in a timely fashion and in any event not less frequently than every six (6) months, of the status of such applications. Shipper will notify Transporter when an application for a Shipper's Authorization has been filed with an Authority. Upon the request of Transporter, Shipper will also provide Transporter, in a timely fashion, with a copy of any application made by Shipper for any Shipper's Authorization and a copy of each Shipper's Authorization upon receipt of same; provided that Shipper shall not be required to provide Transporter with any information in connection with any application for a Shipper's Authorization which was filed and accepted by an Authority, on a confidential basis.

4.5 Support for Transporter

Shipper will and will cause its Affiliates to actively support any application to be made by Transporter for any remaining Transporter's Authorization where Transporter reasonably

believes that Shipper's support would be of assistance in obtaining approval from any Authority in respect of such Transporter's Authorization. Shipper will not take and will not cause any of its Affiliates, to take or omit to take any action where such action or omission would be inconsistent with the performance by Shipper of the terms of this Firm Service Transportation Agreement. The Parties acknowledge that during the period prior to the Commencement Date, proposals may be made by a third party for the construction of a pipeline or pipelines from the Mackenzie Delta or through the Mackenzie Valley (an "**Alternate Pipeline**") other than the Mackenzie Valley Pipeline. From the date hereof until January 1, 2011, and provided that construction of the Mackenzie Valley Pipeline has commenced by January 1, 2011, from January 1, 2011 until the Date of Commencement, Shipper will not make, or agree to make, and will not cause any of its Affiliates to make, or agree to make with any Person involved with an Alternate Pipeline:

- (a) any commitment for the transportation, on such Alternate Pipeline, of any Natural Gas which is to be shipped by Shipper utilizing the transportation service to be provided under this Firm Service Transportation Agreement; or
- (b) any commitment for the transportation, on such Alternate Pipeline, of any other Natural Gas produced in Canada, unless Shipper or such of its Affiliates has first afforded Transporter a reasonable opportunity to enter into an arrangement to provide transportation service for such Natural Gas.

Nothing in this Section 4.5 shall preclude Shipper or any of its Affiliates from making any commitment for the transportation of Natural Gas produced in Canada on any pipeline located wholly upstream of the Mackenzie Valley Pipeline which interconnects with the Mackenzie Valley Pipeline. Nothing in this Section 4.5 shall be interpreted as a dedication of any particular Natural Gas resources of Shipper to this Firm Service Transportation Agreement.

4.6 Information

- (a) Within ten (10) Business Days of Transporter's request, Shipper will provide Transporter with any information available to Shipper and required by Transporter in connection with any application to be made by Transporter for a remaining Transporter's Authorization, including information relating to Shipper's resources and supply of Natural Gas which is to be shipped by Shipper utilizing the transportation service to be provided under this Firm Service Transportation Agreement, the deliverability of such Natural Gas, upstream and downstream transportation arrangements and market arrangements; provided that Shipper will not be required to supply any information other than that which may be necessary for Transporter to comply with the requirements of the particular Authority which will be reviewing such Transporter Authorization. Shipper further agrees to provide witnesses, respond to any requests for further information and to prepare any necessary evidence as may be reasonably required to assist Transporter in obtaining any Transporter's Authorization; provided that Shipper shall not be obligated to participate in or incur any costs associated with any judicial review relating to any such application.

- (b) Subject to Section 4.6(d), Shipper shall make available to Transporter, upon Transporter's request, the audited consolidated financial statements of Shipper and its Affiliated Guarantor or other Performance Assurance Provider, if any, setting forth in comparative form the corresponding figures of the preceding fiscal year together with an auditors report thereon, prepared in accordance with Shipper's, its Affiliated Guarantor's or other Performance Assurance Provider's usual practice for such financial statements. Such financial statements shall be provided within one hundred and twenty (120) days after the end of each fiscal year of Shipper, its Affiliated Guarantor or other Performance Assurance Provider, as applicable. Transporter may, at its sole discretion, accept unaudited consolidated financial statements.
- (c) Subject to Section 4.6(d), Shipper shall make available to Transporter, upon Transporter's request, the unaudited consolidated financial statements of Shipper and its Affiliate Guarantor or other Performance Assurance Provider, if any, prepared on a basis consistent with the corresponding period of the preceding fiscal year. Such financial statements shall be provided within sixty (60) days after the end of the third fiscal quarter of each fiscal year of Shipper, its Affiliated Guarantor or other Performance Assurance Provider, as applicable.
- (d) If a Shipper does not have audited financial statements or unaudited financial statements or if such statements are not generally publicly disclosed by such Shipper then such Shipper will be relieved of its obligations pursuant to Section 4.6(b) and Section 4.6(c); provided that such Shipper has an Affiliated Guarantor or other Performance Assurance Provider and such Affiliated Guarantor or other Performance Assurance Provider has provided the financial statements referred to in Section 4.6(b) within the one hundred and twenty (120) day period referred to in Section 4.6(b) and the financial statements referred to in Section 4.6(c) within the sixty (60) day period referred to in Section 4.6(c) in respect of such Affiliated Guarantor or other Performance Assurance Provider in lieu of such Shipper providing its financial statements.
- (e) Shipper shall make available and shall cause any Affiliated Guarantor or other Performance Assurance Provider to make available to Transporter any additional information regarding the business affairs, operations, assets and financial condition of Shipper or any Affiliated Guarantor or other Performance Assurance Provider as Transporter may reasonably request from time to time in order to assess the creditworthiness of Shipper or any Affiliated Guarantor or other Performance Assurance Provider. Shipper shall provide and shall cause any Affiliated Guarantor or other Performance Assurance Provide to provide the requested information within ten (10) Business Days of Transporter's request.
- (f) If, at any time the MVAPLP is seeking to finance an ownership interest in the Mackenzie Valley Pipeline, the MVAPLP requires a Lending and Investment Report to be prepared, the MVAPLP will so advise Transporter. Upon being so notified, Transporter shall provide a notice to Shipper that a Lending and Investment Report is to be prepared. Within five (5) Business Days of the receipt

of such notice from Transporter, Shipper will advise the MVAPLP as to which one (1) of the following three (3) types of information that Shipper elects to provide access to the Independent Resources Evaluator, for the sole purpose of preparing a Lending and Investment Report:

- (i) all relevant, available non-public resource and supply data in Shipper's possession, which is reasonably required by the Independent Resources Evaluator;
- (ii) interpretations of all relevant, available public and non-public resource and supply data that have been prepared by Shipper; provided that the Independent Resources Evaluator shall have the right to audit such interpretations and shall have access to such non-public resource or supply data that it reasonably requires for the purpose of preparing a Lending and Investment Report; or
- (iii) interpretations of all relevant, available public and non-public resource and supply data that have been prepared for Shipper by an independent third party consulting reservoir engineering firm; provided that the Independent Resources Evaluator shall have the right to audit such interpretations and shall have access to such non-public resource or supply data that it reasonably requires for the purpose of preparing a Lending and Investment Report;

in order that the Independent Resources Evaluator may provide an assessment of the economically recoverable resources and the deliverability associated therewith, which relate to the resources and supply of Natural Gas from commercial discoveries and Significant Discovery Licences and any other resources and supply, that, in the expectation and judgment of Shipper, acting reasonably, is to be transported by Shipper on the Mackenzie Valley Pipeline under this Firm Service Transportation Agreement. Shipper shall also, to the extent reasonably required by the Independent Resources Evaluator, arrange for any of Shipper's Affiliates to provide access to the Independent Resources Evaluator, to any such relevant available data, or interpretations thereof, as the case may be, in accordance with Shipper's election as to the type of information that it will provide access to the Independent Resources Evaluator, in respect of such resources and supply of Natural Gas that is not in Shipper's possession but that is in the possession of such Affiliate. Within thirty (30) days of Shipper's receipt of a notice from Transporter that a Lending and Investment Report is to be prepared, Shipper shall provide access to the Independent Resources Evaluator in accordance with Shipper's election which it made to the MVAPLP. Nothing in this Section 4.6(f) shall require Shipper or any of Shipper's Affiliates to provide access to the Independent Resources Evaluator to:

- (i) any interpretations of such data which have been prepared by Shipper or any of Shipper's Affiliates unless Shipper has elected to do so;

- (ii) any such data, or interpretations thereof, which Shipper or any of Shipper's Affiliates is precluded from disclosing because of third party confidentiality restrictions; or
- (iii) any such data, or interpretations thereof, more frequently than once in any one (1) year period.

While Shipper will endeavour to provide resource and supply data, or interpretations thereof, that are accurate, such data, or interpretations thereof, are provided with no representations or warranties as to their accuracy or completeness. Such resource and supply data, or interpretations thereof, will only be required to be provided if the Independent Resources Evaluator has first entered into a confidentiality agreement with Shipper and such Affiliates of Shipper, on terms and conditions which are satisfactory to Shipper and such Affiliates of Shipper, acting reasonably, agreeing to: maintain all such data, or interpretations thereof, confidential; not disclose to any other Person including any APG Senior Lender or any APG Equity Investor any such data, or interpretations thereof which have been provided by Shipper to the Independent Resources Evaluator; and only use such data, or interpretations thereof, for the purpose of assessing the quantities of Natural Gas which would be available for transportation on the Mackenzie Valley Pipeline in connection with the preparation of a Lending and Investment Report. The Independent Resources Evaluator will be entitled to provide a Lending and Investment Report to those APG Senior Lenders and APG Equity Investors which have also entered into a confidentiality agreement with Shipper and such Affiliates of Shipper, which has been executed by an officer of the APG Senior Lender or the APG Equity Investor, as the case may be, on terms and conditions which are satisfactory to Shipper and such Affiliates of Shipper, acting reasonably, agreeing to maintain all such information contained in such Lending and Investment Report confidential and to only use such report for the purpose of assessing the quantities of Natural Gas which would be available for transportation on the Mackenzie Valley Pipeline; provided that the Independent Resources Evaluator shall not provide a Lending and Investment Report to any APG Equity Investor which is an active participant in the oil and gas exploration or production sector or to any APG Equity Investor, other than a financial institution, which has an Affiliate which is an active participant in the oil and gas exploration or production sector, unless Shipper and such Affiliates of Shipper provide their prior consent, such consent to not be unreasonably withheld. Transporter shall consult with Shipper and all other shippers which have firm service transportation agreements with Transporter in an attempt to ascertain the names of those third party consulting reservoir engineering firms which would be acceptable to such shippers as an Independent Resources Evaluator. Transporter shall provide the names of such third party consulting reservoir engineering firms to the MVAPLP for subsequent referral by the MVAPLP to the APG Senior Lenders and the APG Equity Investors. Any information to be supplied pursuant to this Section 4.6(f) is in addition to the Natural Gas supply information to be supplied to Transporter pursuant to Section 4.6(a).

4.7 Credit Requirement at Firm Service Transportation Agreement Execution Date

Shipper shall either confirm, as of the date of this Firm Service Transportation Agreement, that the facts set out in Section 4.7(a) are true and correct in respect of Shipper or its Affiliated Guarantor, as applicable, or that it has complied with Section 4.7(b).

- (a) Shipper, or its Affiliated Guarantor, as applicable, has a credit rating for its unsecured, unsubordinated, non credit enhanced long term debt ("**Applicable Debt**") from a Rating Agency that meets the minimum threshold rating as specified for such Ratings Agency in Schedule C (the "**Minimum Ratings Requirement**"), provided that:
 - (i) long term debt, as determined at any date, means the indebtedness of a Shipper or its Affiliated Guarantor, as applicable, which would be classified as such on its balance sheet in accordance with generally accepted accounting principles in Canada or, at the option of Shipper if Shipper or its Affiliated Guarantor, as applicable, 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
 - (ii) if the Applicable Debt of a Shipper or its Affiliated Guarantor, as applicable, is rated by more than two Rating Agencies, at least two of such ratings, established by such Rating Agencies, must meet the Minimum Ratings Requirement for such Rating Agency;

provided that if Shipper or its Affiliated Guarantor, as applicable, does not have any Applicable Debt or its Applicable Debt has not been rated by any Rating Agency, then Shipper confirms that Shipper, or its Affiliated Guarantor, as applicable has obtained an Issuer Rating from at least one of the Rating Agencies meeting the Minimum Ratings Requirements of such Ratings Agency.

- (b) Shipper or its Affiliated Guarantor or other Performance Assurance Provider has provided Performance Assurances to Transporter, which are satisfactory to Transporter, provided that the monetary value of Shipper's obligations under this Firm Service Transportation Agreement during the period prior to the Date of Commencement shall never be considered to be less than an amount of \$625 for each GJ per day of the Contract Demand Quantity.

If Shipper, its Affiliated Guarantor or other Performance Assurance Provider is unable to comply with Section 4.7(a) or Section 4.7(b), then Transporter shall have the right at any time from and after the date hereof, until the Date of Commencement, to terminate this Firm Service Transportation Agreement with immediate effect by providing a termination notice to Shipper.

4.8 Change in Circumstances Prior to the Date of Commencement

- (a) If, at any time prior to the Date of Commencement, Transporter has reasonable grounds for believing that:

- (i) Shipper or its Affiliated Guarantor or other Performance Assurance Provider, as applicable, may be unable to meet its obligations under this Firm Service Transportation Agreement or under any Performance Assurance, for which purposes the monetary value of Shipper's obligations under this Firm Service Transportation Agreement prior to the Date of Commencement shall never be considered to be less than an amount of \$625 for each GJ per day of Contract Demand Quantity; or
- (ii) the financial circumstances of Shipper or its Affiliated Guarantor or other Performance Assurance Provider, as applicable, have deteriorated since the date of this Firm Service Transportation Agreement, and in the reasonable opinion of Transporter have reached an unacceptable level;

then Transporter may provide notice to Shipper, stating its reasonable grounds and requesting a new or replacement Performance Assurance. If Shipper, its Affiliated Guarantor or other Performance Assurance Provider is unable or unwilling to provide a Performance Assurance which is satisfactory to Transporter within thirty (30) days of receipt of Transporter's notice, then Transporter shall have the right thereafter to terminate this Firm Service Transportation Agreement with immediate effect by providing a termination notice to Shipper.

- (b) If, at any time prior to the Date of Commencement, Transporter has reasonable grounds for believing that:
 - (i) any guarantee provided by an Affiliated Guarantor may be void or unenforceable, in whole or in part, by Transporter against such Affiliated Guarantor as a result of any development or change in the common law of Canada or any legislation; or
 - (ii) any Performance Assurance provided by a Performance Assurance Provider may be void or unenforceable, in whole or in part, by Transporter against such Performance Assurance Provider as a result of any development or change in the common law of Canada or any legislation;

then Transporter may provide notice to Shipper, stating its reasonable grounds and requiring a replacement guarantee or a replacement Performance Assurance, as applicable. The replacement guarantee or replacement Performance Assurance shall be in a form which addresses the matter which gave rise to Transporter's belief that the previous guarantee or previous Performance Assurance may be void or unenforceable in whole or in part. If any Affiliated Guarantor or other Performance Assurance Provider is unable or unwilling to provide a replacement guarantee or a replacement Performance Assurance, as applicable, which addresses such matter to the satisfaction of Transporter, acting reasonably, within thirty (30) days of receipt of Transporter's notice, then Transporter shall have the right thereafter to terminate this Firm Service Transportation Agreement with immediate effect by providing a termination notice to Shipper.

4.9 Transporter's Start-up Notice

Transporter shall advise Shipper, from time to time, and at least once every three (3) months as to the date when Transporter estimates that Service will be available under this Firm Service Transportation Agreement. Transporter may give Shipper notice of the actual date of availability of Service under this Firm Service Transportation Agreement ("**Transporter's Start-up Notice**"), at any time after the date that is the later of:

- (a) the date that Commissioning has occurred; or
- (b) the date that NOVA has facilities in place at the point of interconnection with the Mackenzie Valley Pipeline in northwestern Alberta near the Northwest Territories – Alberta border, which could be utilized by NOVA to provide receipt point transportation service from such point on NOVA's system to any shipper.

ARTICLE 5 POST DATE OF COMMENCEMENT OBLIGATIONS OF PARTIES

5.1 Applicability to Post Date of Commencement Period

The provisions set out in Article 5 of this Firm Service Transportation Agreement, other than Section 5.3, shall only apply from and after the Date of Commencement.

5.2 Commencement of Service

The date of commencement of Service under this Firm Service Transportation Agreement (the "**Date of Commencement**") shall be the earlier of:

- (a) the first day for which Shipper makes a nomination and for which Transporter authorizes Service hereunder; or
- (b) the tenth (10th) day following the day on which Shipper received Transporter's Start-up Notice.

5.3 First Month's Nominations

At least five (5) Business Days prior to the Date of Commencement, Shipper shall provide Transporter with its best estimate of its Shipper's nominations for each of the days in the thirty (30) consecutive day period beginning on the Date of Commencement.

5.4 Demand Charge

Shipper shall pay the applicable Demand Charge based on the Contract Demand Quantity from the Date of Commencement in accordance with the General Terms and Conditions. For greater certainty, this obligation of Shipper to pay the Demand Charge shall continue whether or not Natural Gas is actually transported, and is not subject to abatement under any circumstances, except as specifically provided for in the General Terms and Conditions.

5.5 Commodity Charge

Shipper shall pay the Commodity Charge, if any, for all of Shipper's actual deliveries of Natural Gas from the Date of Commencement in accordance with the General Terms and Conditions.

5.6 Natural Gas to be Transported

Subject to the provisions of this Firm Service Transportation Agreement and the Tariff:

- (a) Transporter shall provide daily transportation service hereunder for Shipper, for quantities of Natural Gas delivered by Shipper up to the Contract Demand Quantity, from the Receipt Point identified in Shipper's nomination for Firm Service to the Delivery Point identified in Shipper's nomination for Firm Service; and
- (b) Transporter may provide daily transportation service hereunder for Shipper, for quantities of Natural Gas delivered by Shipper, from the Receipt Point identified in Shipper's nomination for AOS to the Delivery Point identified in Shipper's nomination for AOS, in respect of Authorized Overrun Service determined in accordance with Article 7.

5.7 Credit Requirement at Date of Commencement

Shipper shall either confirm, as of the Date of Commencement, that the facts set out in Section 5.7(a) are true and correct in respect of Shipper or its Affiliated Guarantor, as applicable, or that it has complied with Section 5.7(b).

- (a) Shipper, or its Affiliated Guarantor, as applicable, has a credit rating for its Applicable Debt from a Rating Agency that meets the Minimum Ratings Requirement for such Ratings Agency, provided that:
 - (i) long term debt, as determined at any date, means the indebtedness of a Shipper or its Affiliated Guarantor, as applicable, which would be classified as such on its balance sheet in accordance with generally accepted accounting principles in Canada or, at the option of Shipper if Shipper or its Affiliated Guarantor, as applicable, 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
 - (ii) if the Applicable Debt of a Shipper or its Affiliated Guarantor, as applicable, is rated by more than two Rating Agencies, at least two of such ratings, established by such Rating Agencies, must meet the Minimum Ratings Requirement for such Rating Agency;

provided that if Shipper or its Affiliated Guarantor, as applicable, does not have any Applicable Debt or its Applicable Debt has not been rated by any Rating Agency, then Shipper confirms that Shipper, or its Affiliated Guarantor, as

applicable has obtained an Issuer Rating from at least one of the Rating Agencies meeting the Minimum Ratings Requirements of such Ratings Agency.

- (b) Shipper or its Affiliated Guarantor or other Performance Assurance Provider has provided Performance Assurances to Transporter, which are satisfactory to Transporter, provided that Shipper shall be deemed to have satisfied its obligations under this Section 5.7(b) if it or its Affiliated Guarantor or other Performance Assurance Provider as applicable, provides and maintains a Letter of Credit in favour of Transporter in an amount equal to the total amount which Shipper will be obligated to pay Transporter under this Firm Service Transportation Agreement for the next twelve (12) month period and such amount shall be adjusted annually to reflect any change in the estimated total amount payable hereunder for the next succeeding twelve (12) months.

If Shipper, its Affiliated Guarantor or other Performance Assurance Provider is unable to comply with Section 5.7(a) or Section 5.7(b), then Transporter shall have the right at any time from and after the Date of Commencement to terminate this Firm Service Transportation Agreement with immediate effect by providing a termination notice to Shipper.

5.8 Change in Circumstances after the Date of Commencement

- (a) If, at any time after the Date of Commencement, Transporter has reasonable grounds for believing that:
 - (i) Shipper or its Affiliated Guarantor or other Performance Assurance Provider, as applicable, may be unable to meet its obligations under this Firm Service Transportation Agreement or under any Performance Assurance; or
 - (ii) the financial circumstances of Shipper or its Affiliated Guarantor or other Performance Assurance Provider, as applicable, have deteriorated since the date of this Firm Service Transportation Agreement, and in the reasonable opinion of Transporter have reached an unacceptable level;

then Transporter may provide notice to Shipper, stating its reasonable grounds and requesting a new or replacement Performance Assurance. Shipper may satisfy Transporter's request for a new or replacement Performance Assurance by it, its Affiliated Guarantor or other Performance Assurance Provider providing and maintaining a Letter of Credit in favour of Transporter in an amount equal to the total amount which Shipper will be obligated to pay Transporter under this Firm Service Transportation Agreement for the next twelve (12) month period and such amount shall be adjusted annually to reflect any change in the estimated amount payable hereunder for the next succeeding twelve (12) months. If Shipper, its Affiliated Guarantor or other Performance Assurance Provider is unable or unwilling to provide such Performance Assurance or another Performance Assurance which is satisfactory to Transporter within thirty (30) days of receipt of Transporter's notice, then Transporter shall have the right

thereafter to terminate this Firm Service Transportation Agreement with immediate effect by providing a termination notice to Shipper.

- (b) If, at any time after the Date of Commencement, Transporter has reasonable grounds for believing that:
 - (i) any guarantee provided by an Affiliated Guarantor may be void or unenforceable, in whole or in part, by Transporter against such Affiliated Guarantor as a result of any development or change in the common law of Canada or any legislation; or
 - (ii) any Performance Assurance provided by a Performance Assurance Provider may be void or unenforceable, in whole or in part, by Transporter against such Performance Assurance Provider as a result of any development or change in the common law of Canada or any legislation;

then Transporter may provide notice to Shipper, stating its reasonable grounds and requiring a replacement guarantee or a replacement Performance Assurance, as applicable. The replacement guarantee or replacement Performance Assurance shall be in a form which addresses the matter which gave rise to Transporter's belief that the previous guarantee or previous Performance Assurance may be void or unenforceable in whole or in part. If any Affiliated Guarantor or other Performance Assurance Provider is unable or unwilling to provide a replacement guarantee or a replacement Performance Assurance, as applicable, which addresses such matter to the satisfaction of Transporter, acting reasonably, within thirty (30) days of receipt of Transporter's notice, then Transporter shall have the right thereafter to terminate this Firm Service Transportation Agreement with immediate effect by providing a termination notice to Shipper.

5.9 Information

- (a) Subject to Section 5.9(c), Shipper shall make available to Transporter, upon Transporter's request, the audited consolidated financial statements of Shipper and its Affiliated Guarantor or other Performance Assurance Provider, if any, setting forth in comparative form the corresponding figures of the preceding fiscal year together with an auditors report thereon, prepared in accordance with Shipper's, its Affiliated Guarantor's or other Performance Assurance Provider's usual practice for such financial statements. Such financial statements shall be provided within one hundred and twenty (120) days after the end of each fiscal year of Shipper, its Affiliated Guarantor or other Performance Assurance Provider, as applicable. Transporter may, at its sole discretion, accept unaudited consolidated financial statements.
- (b) Subject to Section 5.9(c), Shipper shall make available to Transporter, upon Transporter's request, the unaudited consolidated financial statements of Shipper and its Affiliated Guarantor or other Performance Assurance Provider, if any, prepared on a basis consistent with the corresponding period of the preceding fiscal year. Such financial statements shall be provided within sixty (60) days

after the end of the third fiscal quarter of each fiscal year of Shipper, its Affiliated Guarantor or other Performance Assurance Provider, as applicable.

- (c) If a Shipper does not have audited financial statements or unaudited financial statements or if such statements are not generally publicly disclosed by such Shipper then such Shipper will be relieved of its obligations pursuant to Section 5.9(a) and Section 5.9(b); provided that such Shipper has an Affiliated Guarantor or other Performance Assurance Provider and such Affiliated Guarantor or other Performance Assurance Provider has provided the financial statements referred to in Section 5.9(a) within the one hundred and twenty (120) day period referred to in Section 5.9(a) and the financial statements referred to in Section 5.9(b) within the sixty (60) day period referred to in Section 5.9(b) in respect of such Affiliated Guarantor or other Performance Assurance Provider in lieu of such Shipper providing its financial statements.
- (d) Shipper shall make available and shall cause any Affiliated Guarantor or other Performance Assurance Provider to make available to Transporter any additional information regarding the business affairs, operations, assets and financial condition of Shipper or any Affiliated Guarantor or other Performance Assurance Provider as Transporter may reasonably request from time to time in order to assess the creditworthiness of Shipper or any Affiliated Guarantor or other Performance Assurance Provider. Shipper shall provide and shall cause any Affiliated Guarantor or other Performance Assurance Provider to provide the requested information within ten (10) Business Days of Transporter's request.
- (e) If, at any time during the ten (10) year period commencing on the Date of Commencement that the MVAPLP is seeking to finance an ownership interest in the Transportation System, and on or about the date that is the fifth (5th) anniversary of the initial Date of Commencement, and on or about the date that is the tenth (10th) anniversary of the initial Date of Commencement, the MVAPLP requires a Lending and Investment Report to be prepared, the MVAPLP will so advise Transporter. Upon being so notified, Transporter shall provide a notice to Shipper that a Lending and Investment Report is to be prepared. Within five (5) Business Days of the receipt of such notice from Transporter, Shipper will advise the MVAPLP as to which one (1) of the following three (3) types of information that Shipper elects to provide access to the Independent Resources Evaluator, for the sole purpose of preparing a Lending and Investment Report:
 - (i) all relevant, available non-public resource and supply data in Shipper's possession, which is reasonably required by the Independent Resources Evaluator;
 - (ii) interpretations of all relevant, available public and non-public resource and supply data that have been prepared by Shipper; provided that the Independent Resources Evaluator shall have the right to audit such interpretations and shall have access to such non-public resource or supply

data that it reasonably requires for the purpose of preparing a Lending and Investment Report; or

- (iii) interpretations of all relevant, available public and non-public resource and supply data that have been prepared for Shipper by an independent third party consulting reservoir engineering firm; provided that the Independent Resources Evaluator shall have the right to audit such interpretations and shall have access to such non-public resources or supply data that it reasonably requires for the purpose of preparing a Lending and Investment Report;

in order that the Independent Resources Evaluator may provide an assessment of the economically recoverable resources and the deliverability associated therewith, which relate to the resources and supply of Natural Gas from commercial discoveries and Significant Discovery Licences and any other resources and supply, that, in the expectation and judgment of Shipper, acting reasonable, is to be transported by Shipper on the Transportation System under this Firm Service Transportation Agreement. Shipper shall also, to the extent reasonably required by the Independent Resources Evaluator, either arrange to obtain from any Person which is then supplying the Natural Gas being transported by Shipper on the Transportation System (a "**Supplier**") and arrange to provide the Independent Resources Evaluator with access to, or arrange for Shipper's Suppliers to provide access to, any such relevant available data, or interpretations thereof, as the case may be, in accordance with Shipper's election as to the type of information that it will provide access to the Independent Resources Evaluator in respect of such resources and supply of Natural Gas that is not in Shipper's possession but that is in the possession of such Supplier. Within thirty (30) days of Shipper's receipt of a notice from Transporter that a Lending and Investment Report is to be prepared, Shipper shall provide access to the Independent Resources Evaluator in accordance with the election which it made to the MVAPLP. Nothing in this Section 5.9(e) shall require Shipper or any of Shipper's Suppliers to provide access to the Independent Resources Evaluator to:

- (i) any interpretations of such data which have been prepared by Shipper or any of Shipper's Suppliers unless Shipper has elected to do so;
- (ii) any such data, or interpretations thereof, which Shipper or any of Shipper's Suppliers is precluded from disclosing because of third party confidentiality restrictions; or
- (iii) any such data, or interpretations thereof, more frequently than once in any one (1) year period.

While Shipper will endeavour to provide resource and supply data, or interpretations thereof, that are accurate, such data or interpretations thereof, are provided with no representations or warranties as to their accuracy or completeness. Such resource and supply data, or interpretations thereof, will only

be required to be provided if the Independent Resources Evaluator has first entered into a confidentiality agreement with Shipper and such Shipper's Suppliers, on terms and conditions which are satisfactory to Shipper and such Shipper's Suppliers, acting reasonably, agreeing to: maintain all such data, or interpretations thereof, confidential; not disclose to any other Person including any APG Senior Lender or any APG Equity Investor any such data, or interpretations thereof which have been provided by Shipper to the Independent Resources Evaluator; and only use such data, or interpretations thereof, for the purpose of assessing the quantities of Natural Gas which would be available for transportation on the Transportation System in connection with the preparation of a Lending and Investment Report. The Independent Resources Evaluator will be entitled to provide a Lending and Investment Report to those APG Senior Lenders and APG Equity Investors which have also entered into a confidentiality agreement with Shipper, which has been executed by an officer of the APG Lender or the APG Equity Investor, as the case may be, and such Shipper's Suppliers, on terms and conditions which are satisfactory to Shipper and such Shipper's Suppliers, acting reasonably, agreeing to maintain all such information contained in such Lending and Investment Report confidential and to only use such report for the purpose of assessing the quantities of Natural Gas which would be available to Shipper for transportation on the Transportation System; provided that the Independent Resources Evaluator shall not provide a Lending and Investment Report to any APG Equity Investor which is an active participant in the oil and gas exploration or production sector or to any APG Equity Investor, other than a financial institution, which has an Affiliate which is an active participant in the oil and gas exploration or production sector, unless Shipper and such Shipper's Suppliers provide their prior consent, such consent to not be unreasonably withheld. Transporter shall consult with Shipper and all other shippers which have firm service transportation agreements with Transporter in an attempt to ascertain the names of those third party consulting reservoir engineering firms which would be acceptable to such shippers as an Independent Resources Evaluator. Transporter shall provide the names of such third party consulting reservoir engineering firms to the MVAPLP for subsequent referral by the MVAPLP to the APG Senior Lenders and the APG Equity Investors.

ARTICLE 6 TOLLS AND TARIFF

6.1 Toll Principles and Tariff Principles

The Parties agree that the tolls payable by Shipper for Service under the Firm Service Transportation Agreement, at all times prior to the end of a twenty (20) year period commencing on the first day of the month next following the month in which the Date of Commencement occurred, will be determined and calculated in accordance with the Toll Principles; provided that nothing herein shall prevent Shipper from advancing any position before the NEB respecting the issues as to whether or not all predevelopment costs incurred by any Person which was a Pipeline Owner in connection with the Mackenzie Valley Pipeline, or whether or not actual expenditures of a capital nature associated with the Mackenzie Valley Pipeline had, in each case, been

prudently incurred and should or should not be included in the Rate Base for the Mackenzie Valley Pipeline. Shipper shall be entitled to make a complaint to or file an application with the NEB to the extent that Shipper believes that Transporter has not established tolls in a manner which complies with the Toll Principles. The Parties agree that such tolls will be set forth in the list of tolls prepared by Transporter and as filed with or approved by the NEB from time to time. The tolls payable by Shipper for transportation service under the Firm Service Transportation Agreement at all times after the end of such twenty (20) year period, will be set forth in the list of tolls prepared by Transporter and as filed with or approved by the NEB from time to time. The Parties agree that the General Terms and Conditions to be filed with or approved by the NEB from time to time will reflect and incorporate the Tariff Principles.

6.2 Tariff

The Tariff will be subject to the provisions of the NEB Act and any rules, regulations, decisions and orders of the NEB.

ARTICLE 7 AUTHORIZED OVERRUN SERVICE

7.1 Forecast of AOS Capacity

Transporter shall determine and advise Shipper and other Firm Shippers on a periodic basis as to the anticipated amount of capacity available for AOS. Actual capacity available for AOS will depend upon all shippers' nominations for Firm Service and the capability of the Transportation System to provide Service.

7.2 Allocation of AOS Capacity

Shipper and other Firm Shippers may nominate for AOS in accordance with the General Terms and Conditions. AOS will be allocated daily by Transporter to each Firm Shipper in a quantity equal to the lesser of:

- (a) a pro rata portion of available AOS capacity according to the ratio that the portion of each such Firm Shipper's Contract Demand Quantity that has not been released to another Person bears to the aggregate of all Firm Shippers' Contract Demand Quantities;
- (b) ten percent (10%) of the portion of such Firm Shipper's Contract Demand Quantity that has not been released to another Person; or
- (c) the AOS nominated by such Firm Shipper.

7.3 AOS to Track Firm Service

No shipper shall be entitled to AOS unless that shipper also holds the Firm Service capacity. If Shipper has released all or part of its Firm Service capacity to another shipper, then that shipper shall be the sole shipper which will be entitled to exercise the right to any AOS capacity associated with such released Firm Service capacity.

7.4 Commodity Charge for AOS

Shipper shall pay the Commodity Charge, if any, for all of Shipper's actual deliveries of Natural Gas under AOS Service from the Date of Commencement in accordance with the General Terms and Conditions.

ARTICLE 8 TERMINATION OF PRECEDENT AGREEMENT

8.1 Termination of Precedent Agreement

The Precedent Agreement is hereby terminated as of the date hereof.

ARTICLE 9 DEFAULT AND TERMINATION RIGHTS

9.1 Transporter Default

The occurrence and continuation of any of the following events, unless any such event occurs as a result of a breach by Shipper of its obligations under this Firm Service Transportation Agreement, shall constitute a "**Transporter Default**":

- (a) a material breach by Transporter of any of its obligations under this Firm Service Transportation Agreement; or
- (b) Transporter repudiating this Firm Service Transportation Agreement or evidencing its intention not to perform its obligations under, or to be bound by this Firm Service Transportation Agreement, except as permitted hereunder.

9.2 Shipper Default

The occurrence and continuation of any of the following events, unless any such event occurs as a result of a breach by Transporter of its obligations under this Firm Service Transportation Agreement, shall constitute a "**Shipper Default**":

- (a) a material breach by Shipper of any of its obligations under this Firm Service Transportation Agreement other than those referred to in Sections 4.7, 4.8, 5.7 or 5.8 and other than any breach by Shipper of any of its obligations set out in the Tariff for which a specific termination right has been provided in the Tariff; or
- (b) Shipper repudiating this Firm Service Transportation Agreement or evidencing its intention not to perform its obligations under, or to be bound by this Firm Service Transportation Agreement, except as permitted hereunder.

9.3 Termination for Default

Shipper may elect to terminate this Firm Service Transportation Agreement in the event of a Transporter Default pursuant to Section 9.1. Transporter may elect to terminate this Firm

Service Transportation Agreement in the event of a Shipper Default pursuant to Section 9.2. The terminating Party must give the other Party one hundred and twenty (120) days prior notice of its intent to terminate this Firm Service Transportation Agreement pursuant to this Section 9.3. Unless the default is cured, within the required notice period, termination of this Firm Service Transportation Agreement will be effective upon expiry of the one hundred and twenty (120) day notice period.

9.4 Termination for Insolvency

A Party shall have the right to terminate this Firm Service Transportation Agreement by giving notice, if the other Party, or the Controlling Party, or the Affiliated Guarantor or other Performance Assurance Provider of that other Party:

- (a) files a voluntary application in or for liquidation, receivership or bankruptcy;
- (b) is finally and validly declared and adjudged to be liquidated, bankrupt or insolvent;
- (c) is subject to a resolution passed by its members for the purposes of placing it in voluntary administration;
- (d) is subject to an order by any court of competent jurisdiction for its winding up;
- (e) is the subject of an appointment of a receiver or receiver and manager or like officer of the whole or any material part of its assets;
- (f) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets; and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within fifteen (15) Business Days thereafter;
- (g) is the subject of an appointment of an administrator, official manager or like officer in circumstances where such other Party, or the Controlling Party or the Affiliated Guarantor or the other Performance Assurance Provider of that other Party is or is likely to become insolvent; or
- (h) enters into a scheme of arrangement with its creditors or any of them;

provided that the foregoing shall not include any voluntary proceeding for the purpose of amalgamation, reconstruction or reorganization not taken at the request of or to meet the requirements of such other Party's, Controlling Party's, Affiliated Guarantor's or Performance Assurance Provider's creditors. Where the notice of termination relates to the other Party, or the Controlling Party or an Affiliated Guarantor or any other Performance Assurance Provider that is an Affiliate of that other Party, then the termination of this Firm Service Transportation 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 that other Party, then the termination of this Firm Service Transportation Agreement will be effective upon the expiry of a

ten (10) Business Day period from the date of delivery of such termination notice, unless within such period, Shipper has provided Performance Assurances to Transporter which are satisfactory to Transporter.

9.5 Cumulative Remedies

Upon the occurrence and continuation of a Transporter Default or a Shipper Default, then in addition to the right to terminate this Firm Service Transportation Agreement under Section 9.3, the non-defaulting Party shall, at its option, also have the right to specific performance of this Firm Service Transportation Agreement or to receive damages as would be available under law.

9.6 Accrued Rights Unaffected

No termination of this Firm Service Transportation 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.

9.7 Pipeline Owners' Decision to Downsize

Transporter shall advise Shipper, by notice, of any decision made by the Pipeline Owners after the date hereof to downsize the mainline pipeline of the Mackenzie Valley Pipeline to a diameter of less than NPS thirty (30) within ten (10) days of such decision being made. If Transporter has notified Shipper of such decision to downsize, then Shipper may elect to terminate this Firm Service Transportation Agreement by providing notice to Transporter within ten (10) days of the receipt of such notice from Transporter.

ARTICLE 10 ASSIGNMENT

10.1 By Shipper

Shipper shall have the right to assign its rights and obligations, or parts thereof, under this Firm Service Transportation Agreement subject to:

- (a) (i) the assignee, or its Affiliated Guarantor, as applicable, having a credit rating for its Applicable Debt from a Rating Agency that meets the Minimum Ratings Requirement, provided that:
 - (A) in assessing such Applicable Debt the long term debt, as determined at any date, means the indebtedness of the assignee or its Affiliated Guarantor, as applicable, 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 assignee if the assignee or its Affiliated Guarantor, as applicable, 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 Applicable Debt of the assignee, or its Affiliated Guarantor, as applicable, is rated by more than two Rating Agencies, at least two of such ratings, established by such Rating Agencies, must meet the Minimum Ratings Requirement for each such Rating Agency;

provided that if the assignee or its Affiliated Guarantor, as applicable, does not have any Applicable Debt or its Applicable Debt has not been rated by any Rating Agency, then the assignee must provide evidence which confirms that the assignee or its Affiliated Guarantor, as applicable, has obtained an Issuer Rating from at least one of the Rating Agencies meeting the Minimum Ratings Requirements of such Ratings Agency; and

- (ii) Transporter providing its prior written approval, which shall not be unreasonably withheld; provided that Transporter shall not be allowed to withhold such approval on the basis of the financial condition of the assignee or its Affiliated Guarantor, as applicable; or
- (b)
 - (i) the assignee or its Affiliated Guarantor or other Performance Assurance Provider having provided Performance Assurances to Transporter which are satisfactory to Transporter; and
 - (ii) Transporter providing its prior written approval, which shall not be unreasonably withheld;

and, in either case, if the effective date of the assignment is prior to the Date of Commencement, the assignee or an Affiliate of the assignee owning Natural Gas resources located upstream of the Mackenzie Valley Pipeline from which Natural Gas will be produced and transported on the Mackenzie Valley Pipeline under this Firm Service Transportation Agreement.

10.2 By Transporter

Transporter, without obtaining any approval from Shipper, may assign all of its rights and obligations under this Firm Service Transportation Agreement to:

- (a) any Affiliate of Transporter;
- (b) to any Person designated by the Pipeline Owners from time to time to be the operator of the Transportation System; or
- (c) to any Person which the Pipeline Owners have advised Transporter, will be developing or operating the Transportation System in the place of the Pipeline Owners;

Transporter may also assign all of its rights and obligations or a portion thereof under this Firm Service Transportation Agreement to any other Person with the prior written approval of Shipper, which shall not be unreasonably withheld.

10.3 Succession

Any Person which shall succeed by purchase of all or substantially all of the assets and assumption of all or substantially all of the liabilities of, or merger or consolidation with either Transporter or Shipper, as the case may be and which signs and delivers a counterpart of this Firm Service Transportation Agreement to the other Party, shall be entitled to the rights and shall be subject to the obligations of its predecessor under this Firm Service Transportation Agreement.

10.4 Pledging

The provisions of this Article 10 shall not in any way prevent Transporter or the Pipeline Owners from pledging or mortgaging Transporter's rights under this Firm Service Transportation Agreement, as security for their indebtedness. Shipper shall execute all consents to assignment and acknowledgements as reasonably requested by Transporter or the Lenders of any security interests granted by Transporter or any Pipeline Owner in relation to the Mackenzie Valley Pipeline or this Firm Service Transportation Agreement.

ARTICLE 11 AUTHORITIES

11.1 Authorities

Performance of this Firm Service Transportation 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 either Party, by force of any such law, order, decision, rule or regulation, at any time during the term of this Firm Service Transportation 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 Firm Service Transportation 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 11.1 shall alter, modify or otherwise affect the respective rights of the Parties to terminate this Firm Service Transportation Agreement under the terms and conditions hereof.

ARTICLE 12 CHOICE OF LAW AND ATTORNMENT

12.1 Choice of Law and Attornment

This Firm Service Transportation Agreement and the Tariff, shall be construed and applied in accordance with and be subject in all respects to the laws of the Province of Alberta, and the laws of Canada having application therein, without recourse to any laws governing conflict of laws. Neither Party shall institute any action, suit or other proceeding with respect to any matter

arising under or out of this Firm Service Transportation Agreement other than in the Alberta Court of Queen's Bench in the Judicial District of Calgary; provided that a Party may institute an action in another jurisdiction in order to enforce any judgement or award of the Alberta Court of Queen's Bench. In that regard, each Party hereby irrevocably attorns to the jurisdiction of such Court in the event of any such action, suit or other proceeding by the other Party.

ARTICLE 13 MISCELLANEOUS

13.1 Other Documents Incorporated

The General Terms and Conditions are all by reference made a part of this Firm Service Transportation Agreement and Service hereunder shall be subject to the provisions thereof. Transporter shall notify Shipper at any time that Transporter files with the NEB proposed revisions to the Tariff and shall provide Shipper with a copy of such revisions.

13.2 Headings for Reference

The headings used throughout this Firm Service Transportation Agreement and the General Terms and Conditions are inserted for convenience of reference only and are not to be considered or taken into account in construing the terms of provisions thereof nor to be deemed in any way to qualify, modify or explain the effect of any such provisions or terms.

13.3 Supercedes Other Agreements

This Firm Service Transportation Agreement reflects the whole and entire agreement between Transporter and Shipper with respect to the Schedule of Service and supercedes all prior agreements and understandings between Transporter and Shipper with respect to such subject matter.

13.4 Amendment

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

13.5 Notices

Except as otherwise specifically provided, all notices authorized or required between the Parties by any of the provisions of this Firm Service Transportation 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 Firm Service Transportation 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 Firm Service Transportation 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 13.5 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.

Transporter:

Imperial Oil Resources Ventures Limited
237 Fourth Avenue S.W.
Calgary, Alberta
T2P 0H6
Attention: •
Telecopy: •
Telephone: •

Shipper:

•
•
•
•
Attention: •
Telecopy: •
Telephone: •

13.6 Severability

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

13.7 Waiver

Either 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 Firm Service Transportation Agreement by the other Party if such waiver is confirmed in writing. The failure of either Party to insist upon the strict performance of any of the provisions of this Firm Service Transportation 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 either Party of any breach or non-performance of any of the obligations to be

performed by the other Party shall not take effect or be binding upon the first Party unless the waiver is expressed in writing by that 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.

13.8 GST

Notwithstanding any other provision of this Firm Service Transportation Agreement, in the event that any amount becomes payable to a Party as a result of a breach, modification or termination of this Firm Service Transportation 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.

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

**IMPERIAL OIL RESOURCES
VENTURES LIMITED**

Per: _____

Per: _____

[SHIPPER]

Per: _____

Per: _____

SCHEDULE A

This Schedule A forms part of the Firm Service Transportation Agreement dated the • day of •, 200• and shall be deemed to be attached thereto.

TOLL PRINCIPLES

PLEASE REFER TO PRECEDENT AGREEMENT SCHEDULE B

SCHEDULE B

This Schedule B forms part of the Firm Service Transportation Agreement dated the ____ day of _____, 200__ and shall be deemed to be attached thereto.

TARIFF PRINCIPLES

PLEASE REFER TO PRECEDENT AGREEMENT SCHEDULE C

SCHEDULE C

This Schedule C forms part of the Firm Service Transportation Agreement dated the • day of •, 200• and shall be deemed to be attached thereto.

RATING AGENCIES AND MINIMUM RATINGS REQUIREMENTS

PLEASE REFER TO PRECEDENT AGREEMENT SCHEDULE D

SCHEDULE D

SCHEDULE OF SERVICE

This Schedule D forms part of the Firm Service Transportation Agreement dated the • day of •, 200• and shall be deemed to be attached thereto.

Shipper: _____

Primary Term: _____ Years

Receipt Point: _____

Delivery Point: _____

Contract Demand Quantity: _____ GJ per day

Initials

Transporter _____

Shipper _____

Revision No. _____

SCHEDULE B

This Schedule B forms part of the Precedent Agreement for Firm Transportation dated the _____ day of _____, 2004 and shall be deemed to be attached thereto.

TOLL PRINCIPLES**1. GENERAL**

- 1.1 All tolls will be established based on a forward toll year cost of service basis.
- 1.2 The First Toll Year will commence on the date that service is first provided on the Transportation System and will end on the immediately following December 31, if such period of time is greater than six months and if such period is less than six months, the First Toll Year will end on the second following December 31.
- 1.3 All toll years, subsequent to the First Toll Year, will be the calendar year commencing immediately after the end of the previous toll year.
- 1.4 Appropriate adjustments will be made in the calculation of all tolls for the First Toll Year to reflect the fact that its duration will not be twelve months.
- 1.5 Tolls for each toll year will be established based on the bona fide estimates of Transporter with all differences between Transporter's estimates and the actual amounts for such toll year to be recorded in deferral accounts. Carrying charges on the average monthly deferral account balances will be calculated at the current Rate of Return.
- 1.6 The net balance of the deferral accounts for any toll year will be applied to the Annual Revenue Requirement for the immediately subsequent toll year.
- 1.7 Tolls will be established for Fifteen Year FSTA's (FS-15), Twenty Year FSTA's (FS-20), Authorized Overrun Service (AOS) and Interruptible Transportation (IT).
- 1.8 Should there be a demand for service from a Receipt Point located at or downstream of Little Chicago, Northwest Territories, located at approximately KP 226, to a Delivery Point located at or upstream of the interconnection with NOVA located in northwest Alberta near the Northwest Territories-Alberta border, Transporter will establish reduced tolls which would apply to such short-haul transportation. Tolls will be established to apply to Fifteen Year FSTA's pursuant to which short-haul transportation is being provided (FSSH-15), Twenty Year FSTA's pursuant to which short-haul transportation is being provided (FSSH-20) and Interruptible Transportation pursuant to which short-haul transportation is being provided (ITSH). The FSSH-20 Demand Charge will be 80% of the FS-20 Demand Charge.
- 1.9 It is currently contemplated that all of Transporter's costs of providing service, both capital and operating, will be recovered through a fixed Demand Charge, although Transporter reserves the right to also charge a Commodity Charge should there be a significant cost or tax which is primarily dependent on throughput quantities.

- 1.10 The FS-15 Demand Charge will be the sum of the FS-20 Demand Charge and the FS-15 Toll Premium. The FSSH-15 Demand Charge will be the sum of the FSSH-20 Demand Charge and the FSSH-15 Toll Premium.
- 1.11 The FS-15 Toll Premium will be \$0.15 for each GJ per day of the Contract Demand Quantity. The FSSH-15 Toll Premium will be \$0.12 for each GJ per day of the Contract Demand Quantity.
- 1.12 The FS-15 Demand Charge, inclusive of the FS-15 Toll Premium, will apply to all Natural Gas transported under a Fifteen Year FSTA both during the Primary Term of such Fifteen Year FSTA and during any renewal period of such Fifteen Year FSTA which is prior to the end of the Primary Term of the Twenty Year FSTA's. The FSSH-15 Demand Charge, inclusive of the FSSH-15 Toll Premium, will apply to all Natural Gas transported under a Fifteen Year FSTA pursuant to which short-haul transportation is being provided both during the Primary Term of such Fifteen Year FSTA and during any renewal period of such Fifteen Year FSTA which is prior to the end of the Primary Term of the Twenty Year FSTA's.
- 1.13 AOS will not incur any Demand Charge.
- 1.14 The IT toll will be equal to 110% of the FS-15 Demand Charge. The ITSH toll will be equal to 110% of the FSSH-15 Demand Charge.
- 1.15 All revenues from IT and ITSH will be credited to the Annual Revenue Requirement.
- 1.16 The Demand Charge Determinants which will be utilized to establish the tolls for any Toll Year will be determined:
 - utilizing Transporter's estimate of the Contract Demand Quantities which will be in effect during such Toll Year under those firm service transportation agreements where the shipper is not in default in respect of any payment obligation thereunder;
 - with appropriate adjustments to reflect the reduced tolls associated with Fifteen Year FSTA's pursuant to which short-haul transportation is being provided and Twenty Year FSTA's pursuant to which short-haul transportation is being provided; and
 - with appropriate adjustments to reflect the fact that any particular firm service transportation agreement may not be in effect throughout such Toll Year or that Transporter estimates that any particular shipper may be in default in respect of any payment obligation under a firm service transportation agreement for only a portion of the Toll Year.
- 1.17 All tolls will be determined in accordance with these Toll Principles until the end of the Primary Term of the Twenty Year FSTA's.

2. RATE BASE

2.1 The Rate Base for the Transportation System will include, but not be limited to:

- all expenditures of a capital nature associated with the Mackenzie Valley Pipeline which have been approved by the NEB for inclusion by Transporter in the Rate Base for the Mackenzie Valley Pipeline;
- overhead amounts related to capital expenditures;
- all predevelopment costs incurred by any Person which was a Pipeline Owner in connection with the Mackenzie Valley Pipeline, which have been approved by the NEB for inclusion by Transporter in the initial Rate Base for the Mackenzie Valley Pipeline, less any Termination Fees paid by shippers in accordance with Section 6.2 or Section 6.3 of any precedent agreement;
- all payments made by Transporter to NOVA as a contribution to NOVA for constructing any NOVA facilities to be located adjacent to that Delivery Point located at the point of interconnection between the Transportation System and the facilities of NOVA located in northwest Alberta near the Northwest Territories-Alberta border, which facilities may be required by NOVA in order for it to receive Natural Gas off of the Transportation System;
- working capital including cash, net GST, materials and supplies, transmission linepack and prepayments and deposits;
- an allowance for funds utilized during construction (AFUDC) calculated until the Date of Commencement at the Rate of Return which would have applied during the years that such funds were expended;
- the actual financing expenses associated with the debt financing to be provided by the APG Senior Lenders and the equity financing to be provided by the APG Equity Investors;
- the actual regulatory fees associated with the Transportation System including any levy associated with the National Energy Board issuing a Certificate; and
- the actual costs of providing any bonds, letters of credit or other guarantees to any government or regulatory agency in connection with the Transportation System.

2.2 The Rate Base will be reduced by the amount of accumulated depreciation.

2.3 The Rate Base to be utilized for establishing the tolls for any particular Toll Year will be the average of the estimated Rate Base for each month of such Toll Year.

3. RETURN ON RATE BASE

3.1 A deemed capital structure of 70% debt and 30% equity will apply.

3.2 The average cost of debt for each year, expressed as a percentage, will be the weighted average interest rate during such year, of the project debt financing provided by the APG Senior Lenders to the MVAPLP in connection with the Transportation System.

3.3 "NEB Multi-Pipeline ROE" means the annual rate of return on common equity, expressed as a percentage, published by the National Energy Board in respect of a particular year, as determined in accordance with the procedure set out in the National Energy Board's Multi-Pipeline Cost of Capital Decision (RH-2-94), as that procedure may be modified from time to time; provided that any such modification still results in the determination of a uniform rate of return on common equity which would be applicable to multiple pipelines without any adjustment to such uniform rate to account for the specific circumstances of any such pipeline.

3.4 The Return on Equity for the Transportation System for any year prior to the end of the Tenth Toll Year will be the NEB Multi-Pipeline ROE plus 2.21%.

Example:	NEB Multi-Pipeline ROE for 2004	9.56%
		plus <u>2.21%</u>
	Transportation System Return on Equity for 2004 would be	11.77%

3.5 If the National Energy Board does not publish a NEB Multi-Pipeline ROE for any year prior to the end of the tenth toll year then the Return on Equity for such year will be determined in a manner which preserves the principle that the Return on Equity for the Transportation System will reflect a 2.21% premium over the National Energy Board prescribed rates of return for other Group 1 National Energy Board pipelines to which a NEB Multi-Pipeline ROE had been applied immediately prior to the National Energy Board ceasing to publish a NEB Multi-Pipeline ROE. The determination of the Return on Equity will be done through either a negotiated settlement between Transporter and the firm shippers or as a result of an application by Transporter to the National Energy Board.

3.6 The Return on Equity subsequent to the end of the tenth toll year will be determined during the tenth toll year. Such return or the method of establishing such return and the duration that it will be established for will be determined through either a negotiated settlement between Transporter and the firm shippers or as a result of an application by Transporter to the National Energy Board.

3.7 The Rate of Return for any year will be the sum of 70% of the average cost of debt for such year determined in accordance with Toll Principle 3.2 and 30% of the Return on Equity for such year determined in accordance with Toll Principle 3.4, 3.5 or 3.6, as applicable.

3.8 The Return on Rate Base for each toll year will be determined by multiplying the Rate of Return for such toll year by the Rate Base for such toll year.

4. DEPRECIATION EXPENSE

4.1 A Depreciation Expense for each toll year will be based on the average gas plant in service associated with the Transportation System during such toll year.

4.2 The average gas plant in service to be utilized for establishing the tolls for any particular toll year will be the average of the estimated gas plant in service for each month of such toll year.

- 4.3 In determining the Depreciation Expense, Transporter may include an allowance for negative net salvage or reclamation costs if Transporter believes that these costs could be significant and the method for determining the amount of such allowance is specifically approved by the NEB.
- 4.4 A composite depreciation rate, expressed as a percentage, will be used for the entire gas plant in service.
- 4.5 The specific annual depreciation rate, for all Mackenzie Valley Pipeline facilities which are placed in service as of the Date of Commencement (the Original Facilities), for the First Toll Year through the fifteenth toll year, will be calculated in accordance with the following formula:

$$\begin{array}{l} \text{Annual Depreciation Rate} \\ \text{Toll Year 1 – 15} \\ \text{on Original Facilities} \end{array} = \left(\frac{A}{A + B} \times 4\% \right) + \left(\frac{B}{A + B} \times 5\% \right)$$

- where: A = the sum of the Contract Demand Quantities under the Twenty Year FSTA's; and
- B = the sum of the Contract Demand Quantities under the Fifteen Year FSTA's.

- 4.6 The specific annual depreciation rate, for the Original Facilities, for the sixteenth toll year through to the end of the Primary Term of the Twenty Year FSTA's, will be calculated in accordance with the following formula:

$$\begin{array}{l} \text{Annual Depreciation Rate} \\ \text{Toll Year 16 – 20} \\ \text{on Original Facilities} \end{array} = \frac{80\% - (A \times B)}{C}$$

- where: A = the specific annual depreciation rate for the First Toll Year through the fifteenth toll year, expressed as a percentage;
- B = the number of years, including partial years from the commencement of the First Toll Year to the end of the fifteenth toll year; and
- C = the number of years, including partial years from the commencement of the fifteenth toll year to the end of the Primary Term of the Twenty Year FSTA's.

- 4.7 The specific annual depreciation rate, for each capital asset which is placed in service at any time subsequent to the Date of Commencement, for each toll year, will be determined based on the shorter of such asset's economic life or the weighted average of the remaining number of years in the primary terms of all firm service transportation agreements, where the shipper is not in default in respect of any payment obligation thereunder, with such weighting to be done on the basis of the Contract Demand Quantities under such firm service transportation agreements.

5. INCOME TAX EXPENSE

- 5.1 An Income Tax Expense will be determined as if Transporter was a stand alone pipeline transmission company, only carrying on business in the Northwest Territories and paying taxes on a flow through basis.
- 5.2 All large corporation taxes or other capital taxes which would apply if Transporter was a stand alone pipeline transmission company will also be included in determination of the Income Tax Expense.

6. OTHER TAXES

- 6.1 All property, municipal, business occupancy and any other taxes, royalties or charges (Other Taxes) relating to the Transportation System will be recorded in the toll year in which they accrue.

7. OPERATING, MAINTENANCE AND ADMINISTRATION COSTS

- 7.1 Operating, Maintenance and Administration Costs will include all other actual costs and expenses associated with the Transportation System for a toll year which are not capital in nature including:
- National Energy Board cost recovery charges;
 - regulatory costs;
 - operating expenses, maintenance expenses, administrative and general expenses and other overhead expenses; and
 - the portion of the actual debt financing expenses associated with the debt financing to be provided by the APG Senior Lenders which are to be amortized during such toll year.

8. NWT CORE MARKET DELIVERY REBATE EXPENSE

- 8.1 Transporter will provide a rebate to each Shipper which makes deliveries of Natural Gas to any Delivery Point located in the Northwest Territories for use by a NWT Core Market Consumer. A "NWT Core Market Consumer" is: (i) a person who uses or consumes Natural Gas in the Northwest Territories other than a person who uses or consumes Natural Gas primarily as a raw material or as a fuel, whether for space heating, water heating or otherwise, in an industrial or manufacturing operation; or (ii) a person who uses or consumes Natural Gas in the Northwest Territories as fuel in order to produce electricity but only to the extent that such electricity is supplied by such person to residential, commercial or institutional consumers of such electricity which are located within the Northwest Territories. The amount of rebate for any delivery month to be paid by Transporter to each such Shipper will be an amount equal to the product of 50% of the FS-20 Demand Charge for such delivery month and the quantity of Natural Gas, expressed in GJ, which was delivered by such Shipper during such delivery month at a Delivery Point located in the Northwest Territories for use by a NWT Core Market

Consumer. The anticipated amount of the NWT Core Market Delivery Rebate Expense for a toll year will be included in the Annual Revenue Requirement for such toll year.

9. ANNUAL REVENUE REQUIREMENT

9.1 The Annual Revenue Requirement for each toll year will consist of the sum of:

- Return on Rate Base;
- Depreciation Expense;
- Income Tax Expense;
- Other Taxes;
- Operating, Maintenance and Administration Costs; and
- NWT Core Market Delivery Rebate Expense;

relating to such toll year less the estimated revenues which will be received by Transporter during such toll year in relation to Interruptible Transportation and Interruptible Transportation Short-haul and adjusted for the net balance in the deferral accounts relating to the immediately preceding toll year.

10. FS-20 DEMAND CHARGE CALCULATION

10.1 The FS-20 Demand Charge for a toll year will be determined by subtracting the amount expected to be received by Transporter during such toll year in connection with the FS-15 Toll Premium and the FSSH-15 Toll Premium from the Annual Revenue Requirement for such toll year and dividing such amount by the total number of Demand Charge Determinants for such toll year determined in accordance with the Toll Principle 1.16.

SCHEDULE C**TARIFF PRINCIPLES**

This Schedule C forms part of the Precedent Agreement for Firm Transportation dated the _____ day of _____, 2004 and shall be deemed to be attached thereto.

1. TYPES OF SERVICE

1.1 Firm Service Transportation Agreement:

- firm service; and
- Authorized Overrun Service.

1.2 Interruptible Service Transportation Agreement:

- interruptible service.

2. RECEIPT AND DELIVERY POINT PRESSURES

2.1 Shipper will make Natural Gas available at a Receipt Point at a pressure which is sufficient to enable Natural Gas to enter the Transportation System; provided that such pressure shall not exceed the maximum receipt pressure nor be less than the minimum receipt pressure established from time to time for such Receipt Point unless otherwise agreed to by Transporter.

2.2 Transporter will make Natural Gas available at a Delivery Point at a pressure which is sufficient to enable Natural Gas to enter into the downstream pipeline facilities at such Delivery Point; provided that such pressure shall not exceed the maximum delivery pressure nor be less than the minimum delivery pressure established from time to time for such Delivery Point unless otherwise agreed to by Transporter.

2.3 The maximum receipt pressure and the minimum receipt pressure for each Receipt Point and the maximum delivery pressure and the minimum delivery pressure for each Delivery Point, from time to time will be set out in the Tariff.

3. TAXES AND ROYALTIES

3.1 Shipper will be responsible for any taxes, royalties, fees or charges levied or assessed upstream of a Receipt Point or downstream of a Delivery Point in respect of Shipper exploring for, recovering, producing, processing, transporting, storing, supplying or selling Natural Gas.

3.2 Shipper will be responsible for any taxes, fees or charges levied or assessed against Shipper, or those for which the incidence is intended to be borne by Shipper, in respect of the transportation of Natural Gas on the Transportation System.

4. SHIPPER'S TITLE WARRANTY

- 4.1 Shipper warrants to Transporter that it owns or controls or has the right to deliver or have delivered for its own account, the Natural Gas that is to be received by Transporter from Shipper under any service agreement.
- 4.2 Title or other ownership rights relating to the Natural Gas delivered by Shipper and received by Transporter shall remain with Shipper.
- 4.3 Shipper shall indemnify Transporter and save it harmless from all claims, actions, or damages arising from any adverse claims by any third party relating to the Natural Gas delivered by Shipper.

5. POSSESSION OF GAS AND RESPONSIBILITY

- 5.1 Transporter shall have exclusive possession and control of all Natural Gas from the time it is received by Transporter from Shipper at a Receipt Point until the Natural Gas is delivered by Transporter to Shipper at a Delivery Point.
- 5.2 Shipper will have no responsibility with respect to the Natural Gas while such Natural Gas is in Transporter's possession other than Shipper's obligation to provide System Use Gas and Shipper's potential liability arising from Shipper delivering Natural Gas that fails to meet any Quality Specification.

6. SYSTEM USE GAS

- 6.1 Shipper shall, at no cost to Transporter, provide its proportionate share of System Use Gas, on a daily basis, in the amount requested by Transporter from time to time.
- 6.2 A Shipper's proportionate share of System Use Gas will be based on the deliveries of Natural Gas by such Shipper at all Receipt Points and the total deliveries of Natural Gas by all Shippers at all Receipt Points.
- 6.3 System Use Gas is comprised of the quantities of Natural Gas necessary for the normal day to day operation and maintenance of the Transportation System including the quantities of Natural Gas used as fuel for compressors, heaters or other equipment and the quantities of Natural Gas otherwise lost or unaccounted for in connection with the operation and maintenance of the Transportation System including measurement variance or Natural Gas lost due to leakage, venting or rupture.
- 6.4 Transporter shall be responsible for transportation of System Use Gas to its point of consumption (e.g., a compressor station downstream of a Receipt Point) and the expected quantities of System Use Gas to be supplied by a Shipper shall not be included in Shipper's Contract Demand Quantity.
- 6.5 System Use Gas will be specified as a fixed percentage of throughput and balanced with actual quantities on a periodic basis.

7. QUALITY

- 7.1 Shipper will deliver Natural Gas which meets each of the Quality Specifications at a Receipt Point unless otherwise agreed to by Transporter.
- 7.2 Transporter may refuse to accept any Natural Gas which fails to meet any of the Quality Specifications and Shipper will be liable for and indemnify Transporter for any damage caused by the delivery of Natural Gas which fails to meet any of the Quality Specifications.
- 7.3 The Quality Specifications at each Receipt Point are expected to be that the Natural Gas:
- (a) shall be free, at the pipeline operating pressure and temperature at the Receipt Point, from sand, dust, gums, crude oil, contaminants, impurities, or other objectionable substances which will render the Natural Gas unmerchantable, cause injury, cause damage or interfere with the operation of the Transportation System;
 - (b) shall have a maximum temperature at which two (2) phases can exist at any pressure (a Cricondentherm) of minus ten (-10) degrees Celsius; provided that this Cricondentherm specification shall be revised to reflect NOVA's specification for receiving high pressure gas at the Delivery Point located at the point of interconnection between the Mackenzie Valley Pipeline and the facilities of NOVA located in northwest Alberta near the Northwest Territories-Alberta border;
 - (c) shall not contain more than three (3) milligrams of hydrogen sulphide per one (1) cubic metre;
 - (d) shall not contain more than one hundred and fifteen (115) milligrams of total sulphur per one (1) cubic metre;
 - (e) shall not contain more than two (2) percent by volume of carbon dioxide;
 - (f) shall not contain more than six (6) milligrams of water vapour per one (1) cubic metre;
 - (g) shall not be less than the minimum inlet temperature nor exceed the maximum inlet temperature for such Receipt Point, each as specified by Transporter from time to time;
 - (h) shall be as free of oxygen as practicable and shall not in any event contain more than four-tenths of one (0.4) percent by volume of oxygen;
 - (i) shall have a gross heating value of not less than thirty-six (36) megaJoules per cubic metre; and

- (j) shall not contain any component or mix of components that may cause the presence of any liquid anywhere in the Transportation System under pipeline operating conditions.

7.4 Transporter will be commingling Shipper's Natural Gas with other Natural Gas in the Transportation System.

7.5 The quality of Natural Gas at any Delivery Point will be the quality that results from Natural Gas having been transported and commingled in the Transportation System.

8. LINEPACK

8.1 Transporter will provide the quantity of Natural Gas required to fill the Transportation System to its operating pressure.

9. MAINTENANCE

9.1 Transporter will carry out planned and unplanned maintenance to ensure the integrity of the Transportation System and its availability to Shippers.

9.2 Transporter shall provide as much notice as is reasonably possible in connection with planned maintenance activities on the Transportation System.

10. SHIPPER'S NOMINATIONS

10.1 A nomination procedure involving structured and timely communication of the Transportation System capabilities and the transportation requirements of all Shippers will be developed in order to promote the effective and efficient operation of the Transportation System.

10.2 The nomination process to be established by Transporter will be complementary with any nomination processes of the Persons operating the interconnecting downstream pipeline facilities at a Delivery Point and the interconnecting upstream facilities at a Receipt Point.

11. SCHEDULING & CURTAILMENTS

11.1 Transporter will create a daily schedule of receipts and deliveries on the Transportation System that will reflect all Shippers' nominations and the available capacity on the Transportation System.

11.2 If nominations exceed available pipeline capacity, Transporter will allocate capacity and schedule receipts and deliveries according to an established priority order.

11.3 Nominations will be scheduled in the following priority order; first to nominations for firm service under Firm Service Transportation Agreements; second to nominations for AOS Service under Firm Service Transportation Agreements; and third to nominations for interruptible service under Interruptible Service Transportation Agreements.

11.4 If, after nominations have been scheduled, Transporter must curtail scheduled receipts or deliveries it will do so in reverse priority order to the nomination priority order.

12. DEMAND CHARGE CREDITS

12.1 A credit to the Demand Charge payable under a Firm Service Transportation Agreement (Demand Charge Credit) will be provided by Transporter to Shipper if Transporter has failed to accept for transportation an amount of Natural Gas which was properly nominated by Shipper for firm service, was available for delivery at the Receipt Point and which satisfied all quality specifications and all other obligations of Shipper under the Tariff.

12.2 No Demand Charge Credit will be provided if Transporter's failure to accept Natural Gas was a result of:

- (a) any scheduled or unscheduled maintenance on the Transportation System or an Event of Force Majeure claimed by Transporter, during the first twelve (12) months of any such event;
- (b) an Event of Force Majeure claimed by Shipper;
- (c) Shipper's inability or failure to deliver Natural Gas at the Receipt Point; or
- (d) capacity constraints on the Transportation System arising from the ambient temperature being higher than the design ambient temperature utilized in the design of the Transportation System.

12.3 The provision of Demand Charge Credits will be Transporter's sole obligation and will be Shipper's sole remedy for any failure of Transporter to provide firm service to Shipper.

12.4 Demand Charge Credits relating to any month will be applied against the Demand Charges payable in respect of such month.

13. GAS BALANCING AND TOLERANCES

13.1 Shipper will have an obligation to balance its Natural Gas receipts and Natural Gas deliveries on a daily basis within certain tolerance levels and if Shipper fails to do so Transporter may curtail the receipt or the delivery of Shipper's Natural Gas.

13.2 Charges for imbalances may be imposed by Transporter and will be set at an amount which is intended to minimize imbalances and prevent system abuse by any Shipper.

13.3 Transporter is responsible for ensuring the required physical balance of Natural Gas receipts and Natural Gas deliveries in order to maintain the operational integrity of the Transportation System.

14. MEASUREMENT

- 14.1 Transporter will measure or arrange for the measurement of all Natural Gas quantities and qualities at each Receipt Point and each Delivery Point.
- 14.2 Measurement will take place at each Receipt Point and each Delivery Point or at any upstream, downstream or other point along the Transportation System, at which Transporter determines that an accurate determination of the quantities and quality of Natural Gas delivered at any Receipt Point or any Delivery Point may be made.
- 14.3 Transporter will provide Shipper with a reasonable opportunity to inspect, test, and verify equipment, readings, and records.

15. BILLING AND PAYMENT

- 15.1 Transporter will submit an invoice to Shipper for all Demand Charges, Commodity Charges and other charges incurred during the previous month.
- 15.2 If payment is not made by Shipper within certain defined time periods following receipt of an invoice then Shipper will be subject to the payment of interest, a potential suspension of Service and a possible termination of its service agreement.

16. FORCE MAJEURE

- 16.1 Shipper's or Transporter's performance under a service agreement is excused upon the occurrence of any event or condition, foreseen or unforeseen, which is beyond the reasonable control of such Party to the extent that the non-performance is caused by such event (an Event of Force Majeure).
- 16.2 Any Event of Force Majeure, whether claimed by Shipper or Transporter shall not relieve Shipper of its obligations to pay Demand Charges or Shipper's obligation to meet each Quality Specification with respect to Natural Gas delivered to Transporter at a Receipt Point.
- 16.3 Specific events which do not qualify as an Event of Force Majeure include:
 - financial hardship, including lack of funds;
 - loss of market or market demand; and
 - insufficient Natural Gas supply.
- 16.4 Specific events which do qualify as an Event of Force Majeure include:
 - insufficient total Natural Gas supplies being delivered by all Shippers such that Transporter cannot operate the Transportation System.

- 16.5 A Party shall have the right to terminate a Service Agreement if the other Party's substantial or total performance impairment caused by a single Event of Force Majeure has been claimed by such other Party for a period of 24 consecutive months or more.

17. CONFIDENTIALITY

- 17.1 The Parties shall treat all information exchanged between them in accordance with a "Pipeline Code of Conduct" to be developed for the operating phase of the Transportation System.

18. CAPACITY ALLOCATION OR RELEASE

- 18.1 Shipper may allocate or release to another shipper its firm service transportation entitlement for its Contract Demand Quantity or any portion thereof and the AOS related thereto, by providing advance notice to Transporter; provided that any such allocation or release for any period in excess of three hundred and sixty five (365) days shall be subject to the prior written consent of Transporter, not to be unreasonably withheld.
- 18.2 Shipper shall be entitled to make consecutive allocations or releases of any portion of its firm service transportation entitlement to the same shipper.
- 18.3 Notwithstanding any allocation or release by Shipper to another shipper, Shipper will remain responsible for all of Shipper's obligations under the Firm Service Transportation Agreement and the Tariff in respect of its entire Contract Demand Quantity.

19. NOTICES

- 19.1 Procedures for the delivery of notices shall be set out in the General Terms and Conditions.

20. POLICY WITH RESPECT TO EXPANSIONS OF THE TRANSPORTATION SYSTEM

- 20.1 After the Original Facilities have been constructed it is anticipated that additional capacity can be made available through the installation of additional compressor stations along the mainline pipeline. The purpose of this policy is to describe Transporter's anticipated procedures for consideration of requests for service which will require the construction of additional facilities.
- 20.2 In all matters dealing with expansions, Transporter will follow the requirements set out in the NEB Act including Section 62 "Tolls to be just and reasonable", Section 67 "No unjust discrimination", Section 71(3) "Extension of facilities" and Section 72 "Extension of services of gas pipeline companies".
- 20.3 Transporter will administer requests for new Service in a manner which ensures fair and equitable treatment to all Shippers and prospective shippers. It is currently contemplated that Transporter's procedure for handling requests for new Service will include:

- the submission of a request for service by a prospective shipper on a standard form;
- the submission by a prospective shipper of all supporting information required by such form;
- when Transporter has received sufficient requests for service, Transporter will conduct an open season for the purpose of evaluating additional market interest in an expansion;
- if Transporter determines that there is sufficient interest for an expansion expressed as a result of the open season, it will prepare precedent firm service transportation agreements relating to such expansion;
- such precedent firm service transportation agreements must be executed by prospective shippers;
- prospective shippers must meet all requirements under such precedent firm service transportation agreements including those dealing with creditworthiness and gas supply information;
- the length of the term of the firm service transportation agreement resulting from such precedent agreements is expected to be 15 years or 20 years, with service beyond the date that is twenty years after the commencement of deliveries on the Mackenzie Valley Pipeline being contingent on Transporter continuing to operate the Transportation System during such period in a manner substantially similar to the manner in which Transporter was operating the Transportation System at the end of such twenty year period;
- if sufficient precedent agreements are entered into and the Pipeline Owners are prepared to proceed, Transporter will make the necessary regulatory applications subject to the terms of such precedent agreements; and
- prior to Transporter's preparation of any regulatory application relating to an expansion, Transporter will canvas all shippers to determine if any shipper has an interest in assigning its contracted capacity to one (1) or more prospective shippers.

20.4 As all foreseeable expansions are expected to reduce existing tolls, it is currently contemplated that the tolls for an expansion would be determined on a rolled-in basis and the provisions set out in the Toll Principles would be applicable to determine the tolls for such expansion service. Toll for an expansion would also be established on the principle that tolls for service under any Firm Service Transportation Agreement which has a shorter term will be higher than tolls for service under a Firm Service Transportation Agreement with a longer term. It is expected that the premium for shorter term Firm Service Transportation Agreements would always be equal to or greater than the amount of the FS-15 Toll Premium.

- 20.5 Nothing in this statement of policy in respect of expansions shall require Transporter to file an application under Part III of the NEB Act nor prevent Transporter from contesting an application for the provision of facilities filed pursuant to Section 71(3) of the NEB Act or a request to compel the rendition of service pursuant to Section 71(2) of the NEB Act. Transporter reserves the right to seek a waiver from the NEB in respect of any matter addressed in the policy set forth in this Tariff Principle 20 for good cause shown during any proceeding before the NEB.

SCHEDULE D**RATING AGENCIES AND MINIMUM RATINGS REQUIREMENTS**

This Schedule D forms part of the Precedent Agreement for Firm Transportation dated the _____ day of _____, 2004 and shall be deemed to be attached thereto.

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

SCHEDULE E
REQUESTED SERVICE

This Schedule E forms part of the Precedent Agreement for Firm Transportation dated the _____ day of _____, 2004 and shall be deemed to be attached thereto.

Shipper: _____

Primary Term: _____ Years

Receipt Point: _____

Delivery Point: _____

Contract Demand Quantity: _____ GJ per day

Initials

Transporter _____

Shipper _____

Revision No. _____

