

**PURCHASE AND SALE AGREEMENT**

**BY AND BETWEEN**

**WHITING OIL AND GAS CORPORATION**

**AND**

**NEXEN PIPELINE USA INC.**

**DATED AS OF**

**FEBRUARY 1, 2010**

## TABLE OF CONTENTS

ARTICLE 1 - DEFINITIONS .....	4
1.1 Certain Defined Terms.....	4
ARTICLE 2 - SALE AND PURCHASE OF THE ASSETS .....	4
2.1 Sale and Purchase of the Assets.....	4
2.2 Purchase Price.....	4
2.3 Closing.....	4
ARTICLE 3 - REPRESENTATIONS AND WARRANTIES .....	5
3.1 Representations and Warranties of Seller.....	5
3.2 Representations and Warranties of Buyer.....	7
ARTICLE 4 - ACCESS TO INFORMATION; ENVIRONMENTAL MATTERS .....	8
4.1 Access .....	8
ARTICLE 5 - TITLE .....	8
5.1 Buyer's Title Review .....	8
ARTICLE 6 - COVENANTS OF SELLER AND BUYER .....	8
6.1 Conduct of Business Pending Closing.....	8
6.2 Public Announcements .....	9
6.3 Actions by Parties .....	9
6.4 Further Assurances.....	9
6.6 Required Consents .....	9
ARTICLE 7 - CLOSING CONDITIONS.....	10
7.1 Seller's Closing Conditions .....	10
7.2 Buyer's Closing Conditions.....	11
ARTICLE 8 - CLOSING .....	11
8.1 Closing.....	11
8.2 Seller's Closing Obligations .....	11
8.3 Buyer's Closing Obligations.....	12
ARTICLE 9 - LIMITATIONS.....	13
9.1 Disclaimer of Warranties .....	13
9.2 Damages.....	13
ARTICLE 10 - TAXES .....	13
10.1 Taxes.....	13
ARTICLE 11 - INDEMNITY .....	15
11.1 Obligation of Parties to Indemnify .....	15
11.2 Indemnification Procedures - Third Party Claims .....	15
11.3 Direct Claims .....	16
11.4 Survival of Representations and Warranties and Covenants .....	17
ARTICLE 12 - TERMINATION; REMEDIES .....	17
12.1 Termination.....	17
12.2 Remedies.....	18
ARTICLE 13 - MISCELLANEOUS .....	18
13.1 Counterparts .....	18
13.2 Governing Law; Jurisdiction; Process .....	18
13.3 Entire Agreement.....	18
13.4 Expenses .....	19

13.5	Notices .....	19
13.6	Successors and Assigns.....	20
13.7	Amendments and Waivers .....	20
13.8	Severability .....	20
13.9	Time of Essence.....	20
13.10	Confidentiality .....	20
13.11	No Third Party Beneficiaries .....	21
13.12	Disputes.....	21

**APPENDIX**

Definitions

**LIST OF EXHIBITS**

Exhibit A-1	Pipeline Description
Exhibit A-2	Pipeline Map
Exhibit A-3	Related Facilities
Exhibit B-1	Easements
Exhibit B-2	Permits
Exhibit B-3	Records
Exhibit C	Assignment and Bill of Sale
Exhibit D	License
Exhibit E	Facilities Lease
Exhibit F	Robinson Lake Crude Oil Marketing Agreement

## PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (this "*Agreement*"), dated as of February 1, 2010, is by and between WHITING OIL AND GAS CORPORATION, a Delaware corporation ("*Seller*"), and NEXEN PIPELINE USA INC., a Wyoming corporation ("*Buyer*"). Buyer and Seller are referred to herein individually as a "*Party*" and collectively as the "*Parties*."

### Recitals

- A. Seller has constructed a 20-mile crude oil pipeline located in Mountrail County, North Dakota together with related equipment, facilities, rights of way, permits and other agreements, in connection with the construction, operation and use of such pipeline, all of which is defined herein as the "*Assets*."
- B. Seller desires to sell and Buyer desires to purchase the Assets, subject to the terms and conditions set forth in this Agreement.

### Agreement

NOW, THEREFORE, in consideration of the mutual promises and the representations, warranties and covenants herein made, the Parties agree as follows:

### Article 1 Definitions

1.1 Certain Defined Terms. Defined terms used in this Agreement shall have the meanings set forth herein or in the Appendix attached hereto.

### Article 2 Sale and Purchase of the Assets

2.1 Sale and Purchase of the Assets. Subject to the terms and conditions of this Agreement, Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, the Assets.

2.2 Purchase Price. The purchase price for the purchase and sale of the Assets (the "*Purchase Price*") shall be \$5,722,002.00.

2.3 Closing. The consummation of the transactions contemplated by this Agreement (the "*Closing*") shall occur pursuant to Article 8 hereof on a date set by the Parties within three (3) Business Days following the date that Buyer provides written

notice to Seller that the Buyer's Facilities and Third Party Facilities are Operational (the "Closing Date").

**Article 3**  
**Representations and Warranties**

**3.1 Representations and Warranties of Seller.** Seller represents and warrants to Buyer, as of the date hereof and as of Closing, as follows:

(a) **Organization and Qualification.** Seller is a corporation, duly organized, validly existing and in good standing under the laws of the State of Delaware and is qualified and in good standing to carry on its business in the State of North Dakota.

(b) **Authority.** Seller has the power and authority to enter into and perform this Agreement and to carry out the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation by Seller of the transactions contemplated hereby have been duly and validly authorized by all necessary action on the part of Seller.

(c) **Enforceability.** This Agreement constitutes the valid and binding agreement of Seller, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium, and similar laws affecting creditors' rights generally; and (ii) equitable principles which may limit the availability of certain equitable remedies (such as specific performance) in certain instances.

(d) **No Conflict or Violation.** The execution and delivery of this Agreement and the consummation of the transactions and performance of the terms and conditions contemplated hereby by Seller will not (i) conflict with or result in a violation or breach of any provision of the Organizational Documents of Seller, or of any material agreement, indenture or other instrument under which Seller is bound or to which the Assets are subject; or (ii) violate or conflict with any law applicable to Seller or the Assets.

(e) **Title to, Condition of, and Sufficiency of the Assets.** Subject to Permitted Encumbrances, Seller has Marketable Title to the Assets. As of the Closing, construction of the Pipeline will have been completed in a good and workmanlike manner, and in accordance with applicable laws and regulations and the Assets will be Operational. The Assets constitute all of the assets, tangible and intangible, of any nature whatsoever, necessary for Buyer to operate the Pipeline. The Easements are contiguous and the Pipeline is located within the Easements.

(f) **Easements.** Exhibit B-1 sets forth a complete list of the Easements to which the Seller is a party and which are reasonably required to own and operate the Assets. With respect to each of such Easement: (A) the Easement is legal, valid, binding,

enforceable, and in full force and effect, (B) the Easement will continue to be legal, valid, binding, enforceable, and in full force and effect on identical terms following the Closing, (C) Seller is not in material breach or default, and is not aware of any person claiming there is a breach or default, and no event has occurred of which Seller is aware that with notice or lapse of time would constitute a breach or default, or permit termination, modification, or acceleration, under any Easement, and (D) no party has repudiated any provision of any Easement.

(g) Compliance With Laws. Seller is not in material violation of any federal, state, or other applicable law, rule or regulation or any other requirement of any Governmental Authority applicable to Seller or the construction, of the Pipeline and/or the Related Facilities; and all Permits and approvals of any federal, state or local Government Authority that are necessary for construction of the Pipeline are in full force and effect, and no proceeding is pending or threatened to revoke or limit any Permit, and no Permit will be affected by the transactions contemplated by this Agreement.

(h) Litigation and Claims. There are no governmental or other legal actions, judgments, liens or other proceedings, outstanding, pending or, to Seller's Knowledge, threatened, to which Seller or an Affiliate is or would be a party and which relate to the Assets.

(i) Permits and Required Consents. Except for the Permits and Required Consents, no consent, approval, registration, qualification, or filing with, any Governmental Authority on the part of Seller is required in connection with the Transactions contemplated by this Agreement.

(j) Advisors' and Brokers' Fees. Seller has not incurred any obligation or liability, contingent or otherwise, for brokers' or finders' fees or agents' commissions or other similar payments in connection with the transactions contemplated by this Agreement.

(k) No Foreign Person. Seller is not a "foreign person" within the meaning of Section 1445 of the Code.

(l) Environmental Matters:

(i) To Seller's Knowledge, none of the Assets is in violation of Environmental Laws;

(ii) Seller has in force and effect all Permits necessary under Environmental Laws in connection with the construction of the Pipeline and Related Facilities;

(iii) To Seller's Knowledge, there are no Hazardous Materials present on or in the environment at the Assets, including, without limitation, Hazardous Materials contained in barrels, above or underground storage tanks, landfills, equipment or other containers; and

(iv) There are no existing or pending Environmental Claims with respect to the Assets and, to Seller's Knowledge, none are threatened, and no event has occurred or condition exists which can reasonably be expected to give rise to any Environmental Claims.

**3.2 Representations and Warranties of Buyer.** Buyer represents and warrants to Seller, as of the date hereof and as of Closing, as follows:

(a) **Organization and Qualification.** Buyer is a corporation, duly organized, validly existing and in good standing under the laws of the State of Wyoming, and is qualified and in good standing to carry on its business in the State of North Dakota.

(b) **Authority.** Buyer has the power and authority to enter into and perform this Agreement and to carry out the transactions contemplated thereby. The execution, delivery and performance of this Agreement and the consummation by the Buyer of the transactions contemplated hereby have been duly and validly authorized by all necessary action on the part of Buyer.

(c) **Enforceability.** This Agreement constitutes the valid and binding agreement of Buyer, enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium, and similar laws affecting creditors' rights generally, and (ii) equitable principles which may limit the availability of certain equitable remedies (such as specific performance) in certain instances.

(d) **No Conflict or Violation.** The execution and delivery of this Agreement and the consummation of the transactions and performance of the terms and conditions contemplated hereby by Buyer will not (i) conflict with or result in a violation or breach of any provision of the Organizational Documents of Buyer or any material agreement, indenture or other instrument under which Buyer is bound, or (ii) violate or conflict with any law applicable to Buyer or the properties or assets of Buyer.

(e) **Permits and Required Consents.** Except for the Permits and the Required Consents, no consent, approval, registration, qualification, or filing with, any Governmental Authority on the part of Buyer is required in connection with the consummation of the transactions contemplated by this Agreement.

(f) **Advisors' and Brokers' Fees.** Buyer has not incurred any obligation or liability, contingent or otherwise, for brokers' or finders' fees or agents' commissions or other similar payments in connection with the transactions contemplated by this Agreement.

(g) **Independent Evaluation.** Buyer represents that it is sophisticated in the evaluation, purchase, operation and ownership of crude oil pipelines and related properties. In making its decision to enter into this Agreement and to consummate

the transaction contemplated herein, Buyer represents that it has relied solely on its own independent investigation and evaluation of the Assets together with the express representations and warranties of Seller set forth in this Agreement. Buyer has satisfied itself as to the physical condition and the environmental condition of the Assets.

**Article 4**  
**Access to Information; Environmental Matters**

**4.1 Buyer's Acknowledgement and Waiver.**

(a) Prior to the execution of this Agreement, Seller has provided Buyer and its representatives access to the records and to Seller's employees related to the Assets and to the Assets. Buyer has conducted such inspections, reviews and assessments that it desired to conduct with respect to the environmental condition of the Assets.

(b) All Environmental Conditions not raised by Buyer prior to the execution of this Agreement shall be waived by Buyer for all purposes, and Buyer shall have no right to seek an adjustment to the Purchase Price, make a claim against Seller or seek indemnification from Seller associated with the same.

**Article 5**  
**Title**

**5.1 Buyer's Title Review.**

(a) Buyer's Acknowledgment and Waiver. Prior to the execution of this Agreement, Buyer acknowledges that it has had opportunity to conduct all examinations of title concerning the Assets that Buyer desired to conduct.

(b) Except for claims Buyer asserts under Seller's special warranty of title, all objections as to Title Defects not raised by Buyer prior to the execution of this Agreement shall be waived by Buyer for all purposes, and Buyer shall have no right to seek an adjustment to the Purchase Price, make a claim against Seller or seek indemnification from Seller associated with the same.

**Article 6**  
**Covenants of Seller and Buyer**

**6.1 Conduct of Business Pending Closing.** From the date hereof through the Closing, except as consented to or approved by Buyer, Seller covenants and agrees that:

(a) Changes Related to the Assets. Seller shall not:

- (i) make any material change in its operations related to the Assets;
- (ii) enter into, modify, assign, terminate or amend, in any material respect, any of the Easements; or
- (iii) sell, lease or otherwise dispose of any of the Assets.

(b) **Operation of Assets.** Seller shall:

(i) cause the Assets to be maintained and operated in the ordinary course of business in accordance with Seller's current and past practices (including the repair or replacement of damaged, destroyed, obsolete, depreciated, non-working or non-economical items of equipment or other personal property), and pay or cause to be paid all costs and expenses in connection therewith promptly when due; and

(ii) cause the Assets to be maintained and operated in compliance with all applicable laws.

**6.2 Public Announcements.** The Parties agree that prior to making any public announcement or statement with respect to this Agreement or the transactions contemplated herein, the Party desiring to make such public announcement or statement shall provide the other Party with a copy of the proposed announcement or statement prior to the intended release date of such announcement. The other Party shall thereafter consult with the Party desiring to make the release, and the Parties shall exercise their reasonable best efforts to (i) agree upon the text of a joint public announcement or statement to be made by both such Parties or (ii) in the case of a statement to be made solely by one Party, obtain approval of the other Party to the text of a public announcement or statement. Nothing contained in this Section 6.2 shall be construed to require either Party to obtain approval of the other Party to disclose information with respect to this Agreement or the transaction contemplated herein to any state or federal Governmental Authority to the extent required by applicable law or necessary to comply with disclosure requirements of the Securities and Exchange Commission, New York Stock Exchange or any other regulated stock exchange.

**6.3 Actions by Parties.** The Parties agree to use reasonable diligence to satisfy the conditions to Closing set forth in Article 7 and to refrain from taking any action within their control which would cause a breach by such Party of a representation or warranty set forth herein.

**6.4 Further Assurances.** Following Closing, Seller, on request by Buyer, will execute, acknowledge and deliver to Buyer such additional instruments of conveyance and transfer and will take such other actions as Buyer may reasonably require in order to vest effectively in Buyer, or to put Buyer fully in possession of, the Assets. From and after the Closing Date, Seller will promptly refer all inquiries with respect to ownership of the Assets to Buyer.

**6.5 Required Consents.** Seller shall be responsible, at its sole cost, for obtaining all Required Consents prior to Closing. Consents of Governmental Authorities

that are ordinarily obtained by the buyer after closing shall not constitute Required Consents.

**6.6 Transfer of Assets.** Following Closing, and subject to Section 6.7, below, Buyer may not transfer or assign the Assets unless the assignee, or the assignee together with an Affiliate of the assignee of the Assets, at the same time, receives an assignment of the Nexen Facilities, the Robinson Lake Station and the Stanley Receiving Station (as such terms are defined in the Marketing Agreement), and such assignee or its Affiliate shall also be assigned and assume the Facilities Lease Agreement and the Marketing Agreement. The foregoing shall be a covenant running until the earlier of i) 20 years from the Closing, or ii) the effective date of a termination of the Marketing Agreement in accordance with the terms of that agreement, and shall bind all assignees of Buyer, and their subsequent assignees, and Buyer shall be obligated to cause any direct assignee to assume and be bound by such covenant.

**6.7 Right of First Refusal.** Following Closing, if Buyer ever decides to sell all or any portion of the Assets, then upon Buyer obtaining a bona fide offer for the purchase of all or a portion of the Assets, Buyer shall provide Seller written notice thereof, which shall include the identity of the purchaser, a copy of such offer and describing any terms and conditions not shown in the offer ("*Buyer's Notice*"). Seller shall have 30 days following receipt of Buyer's Notice in which to elect whether or not to purchase such portion of the Assets from Buyer on the same terms and conditions as stated in Buyer's Notice. If Seller elects not to purchase, or fails to respond in the 30-day period, Buyer shall be free to sell such Assets to the purchaser identified in Buyer's Notice on the terms and conditions set forth in Buyer's Notice. If Seller elects not to match such terms, then any subsequent sales or transfers of all or any portion of the Assets shall remain subject to the terms of this Section 6.7, and Buyer shall cause any direct assignee to assume and be bound by the foregoing. The foregoing right of first refusal shall not apply with respect to:

- (i) any sale or transfer by Buyer to an Affiliate of Buyer; or
- (ii). to any sale or transfer of the Assets by Buyer, or any subsequent buyer or assignees, provided such sale or transfer is part of a transaction in which all or substantially all of the assets of the Buyer, assignee or subsequent buyer are sold or assigned and;

provided that the result of such sales or transfers described in subsections (i) or (ii) above are in compliance with Section 6.6.

## **Article 7** **Closing Conditions**

**7.1 Seller's Closing Conditions.** The obligation of Seller to proceed with the Closing contemplated hereby is subject, at the option of Seller, to the satisfaction on or prior to the Closing Date of all of the following conditions:

(a) **Representations, Warranties and Covenants.** The (i) representations and warranties of Buyer contained in this Agreement shall be true and correct in all respects when made and shall be true and correct in all material respects on and as of the Closing Date; and (ii) the covenants and agreements of Buyer to be performed on or before the Closing Date in accordance with this Agreement shall have been duly performed in all material respects.

(b) **No Action.** On the Closing Date, no suit, action or other proceeding (excluding any such matter initiated by a Seller) shall be pending or threatened before any court or governmental agency or body of competent jurisdiction seeking to enjoin or restrain the consummation of the Closing or recover damages from Seller resulting therefrom.

(c) **Delivery of Documents.** Seller shall have received the Purchase Price and documents referred to in Section 8.3.

**7.2 Buyer's Closing Conditions.** The obligations of Buyer to proceed with the Closing contemplated hereby is subject, at the option of Buyer, to the satisfaction on or prior to the Closing Date of all of the following conditions:

(a) **Representations, Warranties and Covenants.** (i) The representations and warranties of Seller contained in this Agreement shall be true and correct in all respects when made and shall be true and correct in all material respects as of the Closing Date as though made as of the Closing Date; and (ii) the covenants and agreements of Seller to be performed on or before the Closing Date in accordance with this Agreement shall have been duly performed in all material respects.

(b) **No Action.** On the Closing Date, no suit, action or other proceeding (excluding any such matter initiated by Buyer) shall be pending or threatened before any court or governmental agency or body of competent jurisdiction seeking to enjoin or restrain the consummation of the Closing or recover damages from Buyer resulting therefrom.

(c) **Delivery of Documents.** Buyer shall have received the documents referred to in Section 8.2.

## **Article 8**

### **Closing**

**8.1 Closing.** The Closing shall be held on the Closing Date at 10:00 a.m., Mountain Time, at the offices of Seller in Denver, Colorado, or at such other time or place as Seller and Buyer may otherwise agree in writing.

**8.2 Seller's Closing Obligations.** At or before Closing, Seller shall execute and deliver, or cause to be executed and delivered, to Buyer the following:

(a) an Assignment and Bill of Sale from Seller to Buyer in substantially the form attached hereto as Exhibit C (the "*Assignment and Bill of Sale*");

(b) a License to Use Easements from Seller to Buyer in substantially the form attached hereto as Exhibit D (the "*License*");

(c) a certificate of non-foreign status in the form and manner which complies with the requirements of Section 1445 of the Code and the Treasury Regulations promulgated thereunder, and information sufficient to complete an IRS Form 1099 and any other required tax filings;

(d) a Lease between Seller and Buyer in substantially the form attached hereto as Exhibit E (the "*Facilities Lease*").

(e) a Robinson Lake Crude Oil Marketing Agreement between Seller and Buyer in substantially the form attached hereto as Exhibit F (the "*Marketing Agreement*");

(f) the Department of Transportation permits and documents set forth on Exhibit B-3; and

(g) all other documents, instruments and writings required to be delivered by Buyer at or prior to the Closing Date pursuant to this Agreement.

**8.3 Buyer's Closing Obligations.** At or before Closing, Buyer shall execute and deliver, or cause to be executed and delivered, to Seller the following:

(a) an amount equal to the Purchase Price, paid in immediately available funds to Seller's designated bank account;

(b) the Assignment and Bill of Sale;

(c) the License;

(d) the Facilities Lease;

(e) the Marketing Agreement; and

(f) all other documents, instruments and writings required to be delivered by Buyer at or prior to the Closing Date pursuant to this Agreement.

## **Article 9** **Limitations**

**9.1 Disclaimer of Warranties.** Notwithstanding anything contained in any other provision of this Agreement to the contrary, it is the explicit intent of each Party hereto that Seller is not making any representation or warranty whatsoever, express, implied, statutory or otherwise, except for those representations or warranties expressly given in this Agreement, and it is understood that, subject to such express representations and warranties and subject to the obligations of Seller hereunder, Buyer takes the Assets "AS IS" and "WHERE IS." Without limiting the generality of the immediately preceding sentence, but subject to the representations or warranties expressly given herein and the agreements and covenants contained herein, Seller hereby (i) expressly disclaims and negates any representation or warranty, express or implied, at common law, by statute or otherwise, relating to the condition of the Assets (including, without limitation, any implied or express warranty of merchantability or fitness for a particular purpose, or of conformity to models or samples of material, or any infringement by Seller of any patent or proprietary right of any third party) and (ii) negates any rights of Buyer under statutes to claim diminution of consideration, it being the intention of Seller and Buyer that, subject to the representations and warranties, covenants and agreements expressly given in this Agreement, the Assets are to be accepted by Buyer in their present condition and state of repair.

**9.2 Damages.** Notwithstanding anything contained in any other provision of this Agreement to the contrary, Seller and Buyer agree that the recovery of any damages suffered or incurred as a result of any breach by any Party of any of its representations, warranties or obligations under this Agreement shall be limited to the actual damages suffered or incurred (which shall include any indirect, consequential, special, exemplary or punitive damages awarded against, or paid to any third party by, the non-breaching Party) as a result of the breach by the breaching Party of its representations, warranties or obligations hereunder and in no event shall the breaching Party be liable to the non-breaching Party for any indirect, consequential, special, exemplary or punitive damages (including, without limitation, any damages on account of lost profits or opportunities) suffered or incurred by the non-breaching Party as a result of the breach by the breaching Party of any of its representations, warranties or obligations hereunder.

## **Article 10** **Taxes**

### **10.1 Taxes.**

(a) **Apportionment of Property Taxes.** Any ad valorem and property taxes assessed against or pertaining to the Assets for the Tax period which includes the Closing Date ("*Closing Period*") shall be prorated between Buyer and Seller as of the Closing Date in accordance with this Section 10.1(a). The amount of ad valorem and Property

Taxes with respect to the Assets to be for the account of and allocated to Seller ("**Pre-Closing Property Taxes**") shall be the product of (i) such Taxes for the Closing Period, multiplied by (ii) a fraction, the numerator of which is the number of days in such Closing Period up to and including to the Closing Date, and the denominator of which is the total number of days in the Closing Period, and the balance of such Taxes shall be for the account of and allocated to Buyer. The amount of Pre-Closing Property Taxes shall be estimated based on the immediately preceding Tax period assessment. Buyer shall be responsible for the payment to the appropriate Governmental Authority of any and all ad valorem and Property Taxes for the Closing Period when such Taxes become due and owing; provided that the estimate of Seller's liability for such Pre-Closing Property Taxes shall be an adjustment to the Purchase Price to be paid at Closing. When the actual amount of ad valorem and Property Taxes estimated under this Section 10.1(a) is known, Buyer shall advise Seller of the proportionate share of actual ad valorem and Property Taxes which constitute the Pre-Closing Property Taxes and furnish Seller with reasonably supporting documents evidencing the actual amount of such Taxes. If the estimate of Pre-Closing Property Taxes made pursuant to this Section 10.1(a) was less than the actual Property Taxes, Seller shall pay in cash to Buyer such deficiency within thirty (30) days of receipt of such notice and reasonably supporting documents, and if such estimate was more than the actual Pre-Closing Property Taxes, Buyer shall, at the time such notice is given (which shall be no later than thirty (30) days from Buyer's receipt of documentation evidencing the actual amount of ad valorem and Property Taxes for the Closing Period), refund such excess in cash to Seller.

(b) Tax Proceedings. In the event Buyer receives notice of any examination, claim, adjustment or other proceeding relating to the liability for Taxes of or with respect to the Assets for any period prior to the Closing Date, Buyer shall notify Seller in writing as soon as possible but in no event later than thirty (30) days of receiving notice thereof. As to any such Taxes for which Seller is or may be liable, Seller shall at Seller's expense control or settle the contest of such examination, claim, adjustment or other proceeding. In the event Seller receives notice of any examination, claim, adjustment or other proceeding relating to the liability for Taxes of or with respect to the Assets that may have any effect for any period after the Closing Date, Seller shall notify Buyer in writing as soon as possible but in no event later than thirty (30) days after receiving notice thereof. As to any such Taxes for which Buyer is or may be liable, Buyer shall at Buyer's expense control or settle the contest of such examination, claim, adjustment or other proceeding. The Parties shall cooperate with each other and with their respective Affiliates in the negotiations and settlement of any proceeding described in this Section 10.1(b).

**Article 11**  
**Indemnity**

**11.1 Obligation of Parties to Indemnify.**

(a) If Closing occurs, Seller hereby agrees to indemnify, defend and hold harmless Buyer, its Affiliates and their respective directors, officers, employees and agents from and against any and all Losses arising out of or resulting from any of the following:

(i) the breach by Seller of the covenants of Seller set forth in this Agreement and the representations and warranties of Seller set forth in Section 3.1 to the extent, and only for the period of time, such covenants and representations and warranties survive the Closing pursuant to Section 11.4; and

(ii) the construction, ownership, management, operation or use by Seller of the Pipeline and the Related Facilities prior to the Closing to the extent that notice of such a claim for indemnification pursuant to this Section 11.1(a)(ii) is given prior to the expiration of six months following the Closing Date.

(b) If Closing occurs, Buyer hereby agrees to indemnify, defend and hold harmless Seller, its Affiliates and their respective directors, officers, employees, agents and successors and assigns, from and against any and all Losses arising out of or resulting from any of the following:

(i) the breach by Buyer of the covenants of Buyer set forth in this Agreement and the representations and warranties of Buyer set forth in Section 3.2; and

(ii) the ownership, management, operation or use by Buyer (or any Affiliate thereof) of the Pipeline and the Related Facilities following the Closing.

**11.2 Indemnification Procedures - Third Party Claims.**

(a) If either Party (the "*Indemnified Party*") receives written notice of the commencement of any action or proceeding or the assertion of any claim by a third party or the imposition of any penalty or assessment for which indemnity may be sought under this Article 11 (a "*Third Party Claim*"), and such Indemnified Party intends to seek indemnity pursuant to this Article 11, the Indemnified Party shall promptly provide the other Party (the "*Indemnifying Party*") with notice of such Third Party Claim. The Indemnifying Party shall be entitled to participate in or, at its option, assume the defense, appeal or settlement of such Third Party Claim. Such defense or settlement shall be conducted through counsel selected by the Indemnifying Party and approved by the Indemnified Party, which approval shall not be unreasonably withheld or delayed, and the Indemnified Party shall fully cooperate with the Indemnifying Party in connection therewith. In the event that the Indemnifying Party fails to assume the defense or settlement of any Third Party Claim within ten (10) Business Days after receipt of notice

thereof from the Indemnified Party, the Indemnified Party shall have the right to undertake the defense, appeal or settlement of such Third Party Claim at the expense and for the account of the Indemnifying Party.

(b) The Indemnified Party shall be entitled, at its own expense, to participate in the defense of such Third Party Claim (provided, however, that the Indemnifying Party shall pay the attorneys' fees of the Indemnified Party if the employment of separate counsel shall have been authorized in writing by any such Indemnifying Party in connection with the defense of such Third Party Claim, the Indemnifying Party shall not have employed counsel reasonably satisfactory to the Indemnified Party to have charge of such Third Party Claim, the Indemnified Party shall have reasonably concluded that there may be defenses available to such Indemnified Party that are different from or additional to those available to the Indemnifying Party, or the Indemnified Party's counsel shall have advised the Indemnified Party in writing, with a copy delivered to the Indemnifying Party, that there is a conflict of interest that could make it inappropriate under applicable standards of professional conduct to have common counsel).

(c) The Indemnifying Party shall obtain the prior written approval of the Indemnified Party (which approval shall not be unreasonably withheld) before entering into or making any settlement, compromise, admission, or acknowledgment of the validity of any Third Party Claim or any liability in respect thereof if, pursuant to or as a result of such settlement, compromise, admission, or acknowledgment, injunctive or other equitable relief would be imposed against the Indemnified Party or if, in the opinion of the Indemnified Party, such settlement, compromise, admission, or acknowledgment could have an adverse effect on its business, operations, assets, or financial condition.

(d) No Indemnifying Party shall consent to the entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by each claimant or plaintiff to each Indemnified Party of a release from all liability in respect of such Third Party Claim.

(e) Notwithstanding Section 11.2(a), the Indemnifying Party shall not be entitled to control (but shall be entitled to participate at its own expense in the defense of), and the Indemnified Party shall be entitled to have sole control over, the defense or settlement, compromise, admission, or acknowledgment of any Third Party Claim as to which the Indemnifying Party fails to assume the defense within ten (10) Business Days after receipt of notice thereof from the Indemnified Party or to the extent the Third Party Claim seeks an order, injunction, or other equitable relief against the Indemnified Party which, if successful, would materially adversely affect the business, operations, assets, or financial condition of the Indemnified Party; provided, however, that the Indemnified Party shall make no settlement, compromise, admission, or acknowledgment that would give rise to liability on the part of any Indemnifying Party without the prior written consent of such Indemnifying Party.

**11.3 Direct Claims.** In any case in which an Indemnified Party seeks indemnification hereunder which is not subject to Section 11.2 because no Third Party

Claim is involved, the Indemnified Party shall notify the Indemnifying Party in writing of any Losses which such Indemnified Party claims are subject to indemnification under the terms hereof. Subject to the limitations otherwise set forth in this Article 11, the failure of the Indemnified Party to exercise promptness in such notification shall not amount to a waiver of such claim unless and only to the extent the resulting delay materially prejudices the position of the Indemnifying Party with respect to such claim.

**11.4 Survival of Representations and Warranties and Covenants.** The representations and warranties made by Seller in Sections 3.1(a), 3.1(b), 3.1(c), 3.1(j) and 3.1(k) shall survive indefinitely. The representations and warranties made by Seller in Sections 3.1(f), 3.1(g), 3.1(h), and 3.1(i) shall survive for a period of six (6) months following the Closing Date. The representations and warranties made by Seller in Sections 3.1(e) and 3.1(l) shall not survive Closing. The covenants of Seller set forth in Sections 6.1 and 6.5 shall terminate at Closing. The covenants set forth in Sections 6.2, 6.4 and 6.6 shall survive indefinitely. Representations and warranties of Seller under this Agreement shall be of no further force or effect after the expiration date specified above; provided, however, that there shall be no such termination of any representation and warranty with respect to a bona fide claim asserted with respect thereto in writing by Buyer with reasonable specificity prior to such date in accordance with this Article 11. All representations and warranties, covenants and indemnities of Buyer shall survive indefinitely.

## **Article 12** **Termination; Remedies**

### **12.1 Termination.**

(a) **Termination of Agreement.** This Agreement and the transactions contemplated hereby may be terminated at any time at or prior to the Closing:

- (i) by mutual written consent of Seller and Buyer;
- (ii) by Seller if any condition specified in Section 7.1 has not been satisfied on or before Closing and shall not have been waived by Seller; or
- (iii) by Buyer if any condition specified in Section 7.2 has not been satisfied on or before Closing and shall not have been waived by Buyer.

(b) **Effect of Termination.** In the event of termination of this Agreement by Seller, on the one hand, or Buyer, on the other hand, pursuant to Section 12.1(a), written notice thereof shall forthwith be given by the terminating Party to the other Party, and this Agreement shall thereupon terminate; provided, however, that following such termination Buyer will continue to be bound by its obligations set forth in Section 4.2 and the provisions of Section 12.2 shall apply. If this Agreement is terminated as provided herein, all filings, applications and other submissions made to any Governmental Authority shall, to the extent practicable, be withdrawn from the Governmental Authority

to which they were made.

## **12.2 Remedies.**

(a) **Seller's Remedies.** Upon the failure by Buyer to satisfy the conditions to Closing or the Closing obligations, as the case may be, on account of breaches of any of the representations and warranties made by Buyer in this Agreement, or the failure by Buyer to comply with the covenants or other obligations of Buyer set forth herein, Seller may seek to enforce specific performance of this Agreement or it may submit the matter to arbitration pursuant to Section 13.12.

(b) **Buyer's Remedies.** Upon the failure by Seller to satisfy the conditions to Closing or the Closing obligations, as the case may be, on account of breaches of any of the representations and warranties made by Seller in this Agreement, or the failure by Seller to comply with the covenants or other obligations of Seller set forth herein, Buyer may seek to enforce specific performance of this Agreement or it may submit the matter to arbitration pursuant to Section 13.12.

## **Article 13 Miscellaneous**

**13.1 Counterparts.** This Agreement and any document or other instrument delivered hereunder may be executed in counterparts, each of which shall be deemed an original instrument, but which together shall constitute but one and the same instrument. Any counterpart of this Agreement or any document or other instrument delivered hereunder may be delivered by facsimile, which shall be deemed an original. However, the Parties agree that they will provide original copies of the Agreement to the other Party as soon as reasonably practicable.

## **13.2 Governing Law; Jurisdiction; Process.**

(a) This Agreement and the transaction contemplated hereby shall be governed by and interpreted in accordance with the laws of the State of Colorado without giving effect to principles thereof relating to conflicts of law rules that would direct the application of the laws of another jurisdiction.

(b) Subject to the arbitration agreement set forth in Section 13.11, the Parties hereby irrevocably consent to the exclusive jurisdiction of the federal and state courts situated in the State of Colorado; and the Parties hereby irrevocably and unconditionally waive, to the fullest extent they may legally and effectively do so, any objection which they may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby in the Colorado federal or state courts.

**13.3 Entire Agreement.** This Agreement and the Exhibits and Schedules hereto constitute the entire agreement between the Parties or their Affiliates with respect

to the subject matter hereof and there are no agreements, understandings, representations or warranties between the Parties concerning such subject matter other than those set forth or referred to herein.

**13.4 Expenses.** Except as otherwise specifically provided, all costs and expenses incurred by each Party hereto in connection with all things required to be done by it hereunder, including attorneys' fees, accountant fees and the expense of environmental and title examination, shall be borne by the Party incurring same.

**13.5 Notices.** All notices hereunder shall be sufficiently given for all purposes hereunder if in writing and delivered personally, sent by documented overnight delivery service or, to the extent receipt is confirmed, by United States mail, telecopy, telefax or other electronic transmission service to the appropriate address or number as set forth below.

**To Seller:**

Whiting Oil and Gas Corporation  
1700 Broadway  
Suite 2300  
Denver, CO 80202  
Attn: Rick Ross  
Phone: (303) 837-4236  
Facsimile: \_\_\_\_\_  
Email: [RickR@whiting.com](mailto:RickR@whiting.com)

**With Copy to:**

Vice President and General Counsel  
Whiting Oil and Gas Corporation  
1700 Broadway  
Suite 2300  
Denver, CO 80202

**To Buyer:**

Nexen Pipeline USA Inc.  
5660 Greenwood Plaza Blvd.  
Suite 230  
Greenwood Village, CO 80111  
Attn: Barry Garvin  
Phone: (303) 850-4283  
Facsimile: (303) 221-4542  
Email: [barry\\_garvin@nexeninc.com](mailto:barry_garvin@nexeninc.com)

With Copy to:

Senior Counsel  
Nexen Marketing  
801 – 7<sup>th</sup> Avenue SW  
Calgary AB  
Canada T2P 3P7

Or at such other address and to the attention of such other person as a Party may designate by written notice to the other Party.

**13.6 Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. This Agreement may be assigned by either Party in whole or in part to an Affiliate upon written notice to the other Party; provided, however, that such assignment shall not release the assigning Party of its obligations hereunder (including any indemnification obligations). No other assignment shall be permitted by either Party except with the prior written consent of the other Party. Any prohibited assignment shall be void and have no force or effect.

**13.7 Amendments and Waivers.** This Agreement may not be modified or amended except by an instrument or instruments in writing signed by the Parties. Either Party may, only by an instrument in writing, waive compliance by the other Party with any term or provision of this Agreement on the part of such other Party to be performed or complied with. The waiver by a Party of a breach of any term or provision of this Agreement shall not be construed as a waiver of any subsequent breach.

**13.8 Severability.** If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any adverse manner to either Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

**13.9 Time of Essence.** Time is of the essence in this Agreement. If the date specified in this Agreement for giving any notice or taking any action is not a Business Day, then the date for giving such notice or taking such action shall be the next day, which is a Business Day.

**13.10 Confidentiality.** Each Party agrees that it shall maintain all terms and conditions of this Agreement in strictest confidence, and that it shall not cause or permit disclosure of this Agreement or any provisions contained herein without the express written consent of the other Party save and except for any disclosure required by

applicable securities or other laws or regulations or the applicable rules of any stock exchange having jurisdiction over such Party or its Affiliates or the need to disclose its existence to obtain a Required Consent.

**13.11 No Third Party Beneficiaries.** Nothing in this Agreement shall provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind, it being the intent of the Parties that this Agreement shall otherwise not be construed as a third party beneficiary contract.


**13.12 Disputes.** Except for an action against a Party to enforce specific performance of this Agreement, the Parties agree to resolve any dispute, controversy or claim (a "*Dispute*") arising out of or in connection with this Agreement pursuant to the provision of this Section 13.12. The Parties agree to submit all Disputes to binding arbitration in Denver, Colorado, such arbitration to be conducted as follows: The arbitration proceeding shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"), and, if a Dispute is reasonably estimated to be less than \$500,000, it shall be conducted before a single arbitrator agreed to by the Parties, or, in the absence of such agreement, appointed by the American Arbitration Association (singly, the "*Arbitrator*" and collectively, the "*Arbitrators*"). If the Dispute is reasonably estimated to be equal to or greater than \$500,000, it shall be conducted before a panel of three (3) Arbitrators with one (1) Arbitrator selected by each Party and the two (2) selected Arbitrators further selecting the third Arbitrator. Each of the Arbitrators shall be an attorney with no less than fifteen (15) years experience in the matter that is to be arbitrated. The Arbitrator(s) shall conduct a hearing no later than thirty (30) days after submission of the matter to arbitration, and the Arbitrator(s) shall render a written decision within thirty (30) days of the hearing. Adherence to formal rules of evidence shall not be required, but the Arbitrator(s) shall consider any evidence and testimony that he or she determines to be relevant, in accordance with procedures that the Arbitrator(s) determine to be appropriate. Any award entered in the arbitration shall be made by a written opinion stating the reasons and basis for the award made and any payment due pursuant to the arbitration shall be made within fifteen (15) days of the Arbitrator(s)' decision. The final decision may be filed in a court of competent jurisdiction and may be enforced by either Party as a final judgment of such court. Each Party shall pay the fees and expenses of the Arbitrator it selects, if there are three Arbitrators, but the Parties shall share equally the fees and expenses of the third Arbitrator or of the single Arbitrator, as the case may be. The prevailing Party shall be awarded all of its other fees and expenses related to the arbitration, including experts' fees and attorneys' fees.

***[Signature Page Follows]***

IN WITNESS WHEREOF, this Agreement has been signed by or on behalf of each of the Parties as of the day first above written.

SELLER:

WHITING OIL AND GAS CORPORATION

By:   
James T. Brown  
Senior Vice President

BUYER:

NEXEN PIPELINE USA INC.

By: 

Name: RODNEY RICE

Title: V.P. Crude Oil & Liquids

IN WITNESS WHEREOF, this Agreement has been signed by or on behalf of each of the Parties as of the day first above written.

SELLER:

**WHITING OIL AND GAS CORPORATION**

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

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

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

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

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

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

BUYER:

**NEXEN PIPELINE U.S.A. INC.**

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

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

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

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

Name: **Kenneth S. Heywood**  
**Assistant Secretary** \_\_\_\_\_

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

## **APPENDIX**

### **DEFINITIONS**

**“AAA”** shall be as defined in Section 13.12.

**“Affiliate”** shall mean, as to the Party specified, any entity controlling, controlled by or under common control with such specified Party. Control, controlling or controlled as used herein means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of another, whether through the ownership of voting securities, by contract or otherwise.

**“Agreement”** shall be as defined in the Preamble.

**“Assets”** shall mean:

(a) the approximately 20-mile crude oil pipeline located in Mountrail County, North Dakota described by size and location on Exhibit A-1 attached to the Agreement and depicted on the map attached to the Agreement as Exhibit A-2 (collectively, the **“Pipeline”**);

(b) the equipment, pipes, valves, pumps, and other personal property, fixtures and improvements used or held primarily for use in connection with the operation of the Pipeline, including those items described on Exhibit A-3 to the Agreement (collectively, the **“Related Facilities”**);

(c) the License to Use Easements covering the surface leases (and other rights to use the surface), easements, rights-of-way, servitudes and similar instruments, and other rights and interests in and to real property and appurtenances thereto owned by Seller described on Exhibit B-1 to the Agreement (collectively, the **“Easements”**);

(d) the rights of Seller under licenses, permits, registrations, approvals and franchises issued by any Governmental Authority and used in connection with any of the Assets described on Exhibit B-2 to the Agreement (collectively, the **“Permits”**);

(e) all specifications, qualifications, certifications, records related to compliance with or which are required to be maintained in accordance with any laws or regulations which relate to the Assets including those items described in Exhibit B-3 to the Agreement (the **“Records”**); and

(f) all rights under all covenants and warranties relating to the Assets, express or implied (including title warranties and manufacturers’, suppliers’ and contractors’ warranties), that have heretofore been made by any third party manufacturers, suppliers and contractors.

**“Assignment and Bill of Sale”** shall be as defined in Section 8.2(a).

**“Business Day”** shall mean any day the banks are open for business in Denver, Colorado.

**“Buyer”** shall be as defined in the Preamble.

**“Buyer’s Facilities”** means certain pipes, valves, meters, pumps, pipeline tankage, equipment, permits and licenses, vehicles, monitoring and telecommunication devices, computers, easements, rights of way and any other purchased or leased lands and all other facilities, items, structures and equipment appurtenant thereto necessary for Buyer to receive crude oil and to deliver crude oil to and from the Pipeline.

**“Closing”** shall be the consummation of the transaction contemplated by the Agreement.

**“Closing Date”** shall mean the date established by the Parties pursuant to Section 2.3.

**“Closing Period”** shall be as defined in Section 10.1(a).

**“Code”** shall mean the Internal Revenue Code of 1986, as amended.

**“Dispute”** shall be as defined in Section 13.12.

**“Easements”** shall be as defined in the definition of “Assets.”

**“Encumbrances”** shall mean any lien, mortgage, deed of trust, claim, pledge, charge, security interest, right of first refusal, option, judgment, or similar encumbrance.

**“Environmental Claim”** shall mean any claim, action, suit, investigation, inquiry, proceeding or clean-up obligation by any Governmental Authority or third party against Seller relating to or arising under or out of any Environmental Laws, or any allegation of any Governmental Authority or third party alleging potential liability (including without limitation STRICT LIABILITY) of Seller, arising out of or resulting from any actual or alleged violation of, or liability (including without limitation STRICT LIABILITY) under, or any remedial obligation under, any Environmental Law as a result of an Environmental Condition with respect to the Assets.

**“Environmental Condition”** shall mean a condition or circumstance existing on or prior to the date on which the Pipeline is Operational with respect to the air, soil, subsurface, surface waters, groundwaters, and/or sediments that causes (i) an Asset or Seller not to be in compliance with any Environmental Law, including any Permits issued thereunder, in all material respects, or (ii) an Asset to be required to be remediated (or other corrective action taken with respect to such Asset) under any Environmental Law.

**“Environmental Laws”** shall mean all federal, state, and local laws, statutes, rules, regulations, ordinances, orders, consent agreements or orders, or administrative guidance or interpretations relating to (a) the control of any potential pollutant, or protection of the air, water, land, wetlands, natural resources, wildlife and endangered species, (b) solid,

gaseous or liquid waste generation, handling, treatment, storage, disposal or transportation, (c) exposure to, releases, emissions, or discharges of, or remediation of hazardous, toxic, radioactive or other substances alleged to be harmful, or (d) pipeline safety. Environmental Laws shall include, but are not limited to, the Clean Air Act, the Clean Water Act, the Resource Conservation Recovery Act, the Comprehensive Environmental Response, Compensation, and Liability Act (“*CERCLA*”), the Superfund Amendments and Reauthorization Act, the Toxic Substances Control Act, and the Safe Drinking Water Act, 49 U.S.C. Chapter 601, the regulations of the U.S. Department of Transportation Office of Pipeline Safety at 49 C.F.R. Part 186-199, and the regulations of the Colorado Public Utilities Commission at 4 Code of Colorado Regulations 723 Parts 1 and 4, and shall also include, without limitation, all state, local and municipal laws dealing with the subject matter of the above listed federal statutes or promulgated by any governmental or quasigovernmental agency thereunder in order to carry out the purposes of any federal, state, local or municipal law.

“*Environmental Liabilities*” shall mean any and all liabilities (including without limitation STRICT LIABILITY), costs (including costs of investigation and/or remediation), damages, settlements, expenses, penalties, fines, taxes, prejudgment and post-judgment interest, court costs and attorneys’ fees, arising out of or attributable to any violation of any Environmental Law or the presence or release of Hazardous Materials, including without limitation as may be incurred or imposed (i) pursuant to any order, notice of responsibility, directive (including requirements embodied in Environmental Laws), injunction, judgment or similar act (including settlements) by any Governmental Authority to the extent arising out of or under Environmental Laws, or (ii) pursuant to any claim or cause of action by a Governmental Authority or third party for personal injury, property damage, damage to natural resources, remediation or response costs.

“*Facilities Lease*” shall be as defined in Section 8.2(c).

“*Governmental Authority*” shall mean any national, federal, regional, state, provincial, county, municipal or local government or court, arbitrator, tribunal or commission, whether U.S. or foreign, or the government of any political subdivision of any of the foregoing, or any entity authority, agency, ministry or other similar body exercising executive, legislative, judicial, taxing, regulatory or administrative authority or functions of or pertaining to government, including any authority or other quasi-governmental entity established to perform such functions.

“*Hazardous Materials*” shall mean any explosives, radioactive materials, asbestos material, urea formaldehyde, hydrocarbon contaminants, underground tanks, pollutants, contaminants, hazardous, corrosive or toxic substances, special waste or waste of any kind, including compounds known as chlorobiophenyls and any material or substance the storage, manufacture, disposal, treatment, generation, use, transport, mediation or release into the environment of which is prohibited, controlled, regulated or licensed under Environmental Laws, including, but not limited to, (i) all “hazardous substances” as that term is defined in Section 101(14) of CERCLA, and (ii) petroleum and petroleum products.

**"Indemnified Party"** shall be as defined in Section 11.2(a).

**"Indemnifying Party"** shall be as defined in Section 11.2(a).

**"Losses"** shall mean any and all debts, damages, costs, losses, liabilities, duties, obligations, commitments, claims (including, without limitation, those arising out of any demand, cause of action, assessment, settlement, judgment or compromise relating to any actual or threatened action), taxes, costs and expenses (including, without limitation, any attorneys' fees and any and all expenses whatsoever incurred in investigating, preparing or defending any action), matured or unmeasured, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, known or unknown, including, without limitation, any Environmental Liabilities (except as may be otherwise provided in the Agreement).

**"Marketable Title"** shall mean such title that is free and clear of all Encumbrances.

**"Marketing Agreement"** shall be as defined in Section 8.2(e).

**"Operational"** shall mean, with respect to any particular facilities, that the construction and installation of the facilities have been substantially completed, the facilities have been commissioned and the facilities are ready to operate in the manner intended.

**"Organizational Documents"** shall mean any articles or certificate of formation, incorporation or organization (or the equivalent organizational documents), bylaws or limited liability company agreement or regulations (or the equivalent governing documents) of the referenced entity.

**"Party"** or **"Parties"** shall be as defined in the Preamble.

**"Permits"** shall be as defined in the definition of "Assets."

**"Permitted Encumbrances"** shall mean:

(a) All rights to consent by, required notices to, filings with, or other actions by all Governmental Authorities in connection with the transfer of the Assets from Seller to Buyer, if the same are ministerial in nature and customarily obtained either prior to or subsequent to the transfer of title;

(b) All rights to consent, required notices, filings, or other actions set forth in or required by the documents listed on Exhibits B-1 and B-2 (provided that deeming such matters to be a "Permitted Encumbrance" shall not relieve Seller of its responsibility or liability for such matters);

(c) Rights reserved to or vested in any Governmental Authority having appropriate jurisdiction to control or regulate the Assets in any manner whatsoever, and all laws now or hereafter imposed by any such Governmental Authority;

(d) Easements, rights-of-way, servitudes, surface leases, sub-surface leases, grazing rights, logging rights, canals, ditches, reservoirs, pipelines, utility lines, telephone lines, power lines, railways, streets, roads, alleys, highways and structures on, over and through the Assets, to the extent such rights, interests or structures do not, individually or in the aggregate, materially interfere with the operation of the Pipeline or the Related Facilities;

(e) The terms and conditions of the leases, agreements, permits, instruments and other items identified in Exhibit B-1 and Exhibit B-2;

(f) Liens for taxes or assessments not yet due or not yet delinquent or, if delinquent, that are being contested by Seller in good faith in the normal course of business (provided that deeming such matters to be a "Permitted Encumbrance" shall not relieve Seller of its responsibility or liability for such matters);

(g) Liens relating to obligations incurred in the ordinary course of business and not yet due or not yet delinquent or, if delinquent, that are being contested by Seller in good faith in the normal course of business (provided that deeming such matters to be a "Permitted Encumbrance" shall not relieve Seller of its liability for such matters); and

(h) Any other defects which do not materially detract from the ability to own and operate the Pipeline or Related Facilities.

***"Pre-Closing Property Taxes"*** shall be as defined in Section 10.1(a).

***"Purchase Price"*** shall be as defined in Section 2.2.

***"Records"*** shall be as defined in the definition of "Assets."

***"Related Facilities"*** shall be as defined in the definition of "Assets."

***"Required Consents"*** shall mean those consents from third parties or Governmental Authorities that are required to consummate the transactions contemplated by the Agreement.

***"Seller"*** shall be as defined in the Preamble.

***"Seller Indemnified Parties"*** shall be as defined in Section 11.1.

***"Seller's Knowledge"*** shall mean the actual knowledge of Seller's officers or of the supervisory personnel directly responsible for the Assets.

***"Tax"*** or ***"Taxes"*** shall mean any federal, state, local or foreign income, gross receipts, license, payroll, parking, employment, excise, severance, stamp, occupation, premium, environmental (including taxes under Code Section 59A), customs duties, capital stock,

franchise, profits, withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated tax or other tax of any kind whatsoever, including any interest, fines, penalty or other like assessment or addition thereto, whether disputed or not, including such item for which a liability arises as a transferee or successor-in-interest.

***“Third Party Claim”*** shall be as defined in Section 11.2(a).

***“Third Party Facilities”*** means the truck unloading racks, meter runs, crude storage tanks and associated facilities to be owned and operated by a third party immediately upstream and immediately downstream of the Pipeline that are necessary for the receipt, transportation and delivery of crude oil through the Pipeline.

***“Title Defect”*** shall mean (i) a defect that causes the Seller’s title to the Assets or a portion thereof to be less than Marketable Title, (ii) the failure to have Marketable Title to an Asset necessary for the operation of the Pipeline or any of the Related Facilities, or (iii) the failure of a portion of the Pipeline to be located in a right-of-way, easement, surface lease or similar instrument included in the Assets; provided, however, that none of the Permitted Encumbrances shall constitute a Title Defect.

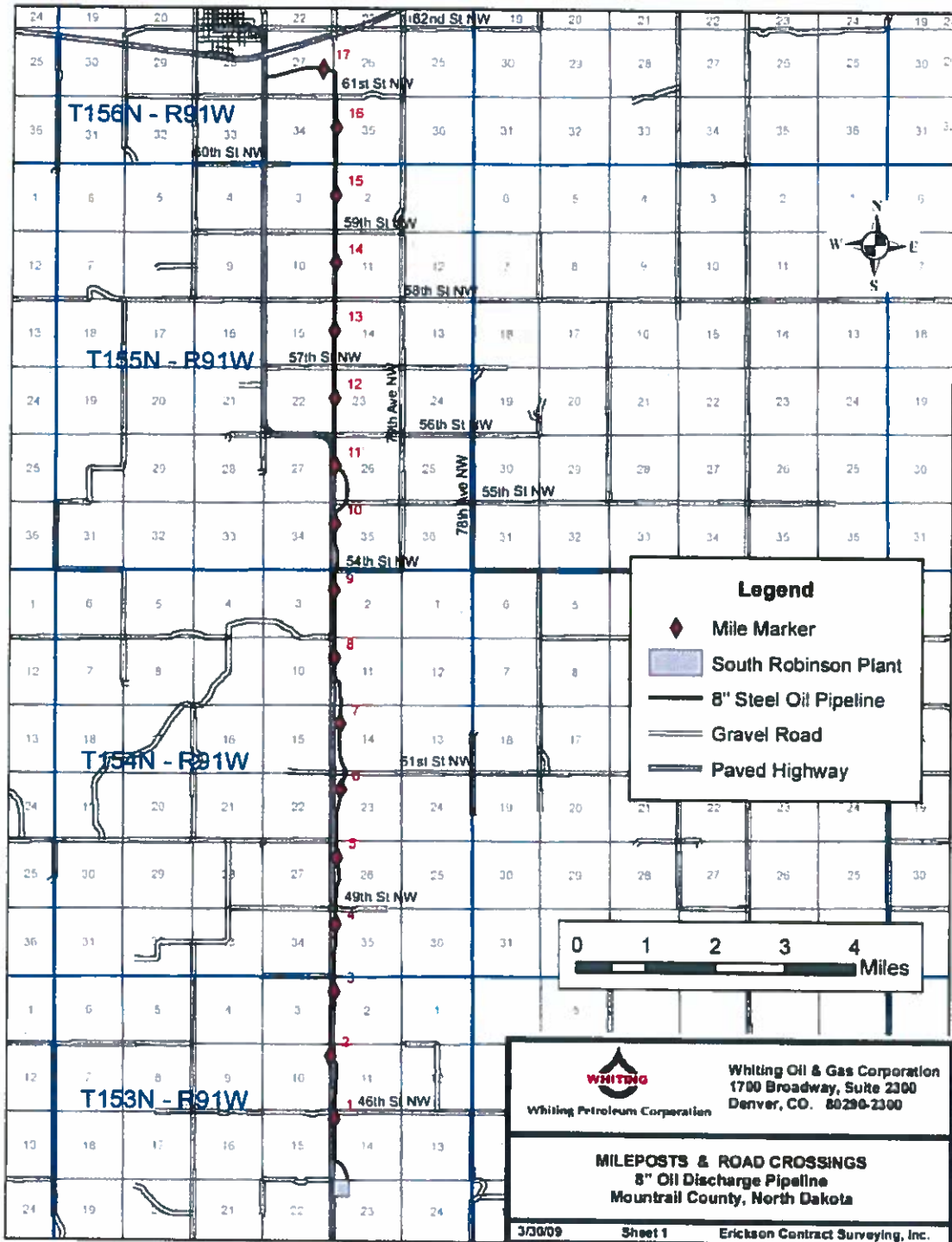
**EXHIBIT A-1**  
**To that certain Purchase and Sale Agreement**  
**by and between Whiting Oil and Gas Corporation, as Seller**  
**and Nexen Pipeline USA Inc., as Buyer**

**Pipeline Description**

A 20 mile crude oil pipeline commencing at the Robinson Lake Gas Processing Plant in Mountrail County, North Dakota and ending at the Enbridge Stanley Station comprised of 8-inch normal size diameter pipe with 0.250-inch wall thickness and a grade of X-52/X42.

**EXHIBIT A-3**

**To that certain Purchase and Sale Agreement by and between  
Whiting Oil and Gas Corporation, as Seller and Nexen Pipeline USA Inc., as Buyer  
Pipeline Map**



**EXHIBIT A-2**  
**To that certain Purchase and Sale Agreement**  
**by and between Whiting Oil and Gas Corporation, as Seller**  
**and Nexen Pipeline USA Inc., as Buyer**

**Related Facilities**

There are three (3) related facilities involved in the construction of this pipeline. A pipeline termination at the entrance of the pipeline located near the Robinson Lake Plant, a pipeline termination at the north end of the line near Stanley, ND and the Enbridge Tank Facility, and a block valve located at the south end of the Little Knife River crossing. Each of these related facilities contain 8-inch nominal diameter pipe/fittings with both 0.250-inch wall thickness API 5L X52/X42 grade and Sch 80 0.500-inch wall thickness API 5L X52 and/or X42 transition pieces as well as ASTM A333 "Cold Temperature" Sch 80 0.500-inch wall thickness pipe and equivalent valves and fittings constructed per Rooney/Nexen drawings and/or written instruction.

**EXHIBIT B-1**  
**To that certain Purchase and Sale Agreement**  
**by and between Whiting Oil and Gas Corporation, as Seller**  
**and Nexen Pipeline USA Inc., as Buyer**

**Easements**

Grantor: Kenneth V. Littlefield and Joan A. Littlefield, individually  
and as husband and wife  
Grantee: Whiting Oil and Gas Corporation  
Date: November 30, 2007  
Recorded: Document 349700  
Description: Township 153 North, Range 91 West  
Section 14: SWSW, E/2SW, NWSW

Grantor: Daryl Locken and Pam Locken, husband and wife  
Grantee: Whiting Oil and Gas Corporation  
Date: August 29, 2007  
Recorded: Document 349701  
Description: Township 153 North, Range 91 West  
Section 11: SW  
Section 14: NW

Township 154 North, Range 91 West  
Section 35: SW

Grantor: Lyle Locken aka Lloyd L. Locken and Ramona Locken,  
husband and wife  
Grantee: Whiting Oil and Gas Corporation  
Date: August 20, 2007  
Recorded: Document 349702  
Description: Township 153 North, Range 91 West  
Section 2: Lot 4, S/2NW  
Section 11: S/2NW

Grantor: Daryl Locken and Pam Locken, individually and as  
husband and wife  
Grantee: Whiting Oil and Gas Corporation  
Date: February 4, 2008  
Recorded: Document 349703  
Description: Township 153 North, Range 91 West  
Section 10: NENE

Grantor: Robert Patten and Lavonne Patten, individually and as husband and wife  
Grantee: Whiting Oil and Gas Corporation  
Date: August 29, 2007  
Recorded: Document 349704  
Description: Township 153 North, Range 91 West  
Section 3: SE

Grantor: Myron Arndt, as Attorney-in-Fact for Diana Arndt, a widow  
Grantee: Whiting Oil and Gas Corporation  
Date: August 22, 2007  
Recorded: Document 349706  
Description: Township 154 North, Range 91 West  
Section 35: NW

Grantor: Elroy S. Jorgensen, a married man dealing in his sole and separate property, and Emojean S. Jorgensen, a single woman, as Joint Tenants  
Grantee: Whiting Oil and Gas Corporation  
Date: August 22, 2007  
Recorded: Document 349707  
Description: Township 154 North, Range 91 West  
Section 11: N/2SW  
Section 23: NW

Grantor: John W. Niemitalo, Jr., a single man, and Vaughn Niemitalo, a single man  
Grantee: Whiting Oil and Gas Corporation  
Date: August 22, 2008  
Recorded: Document 349708  
Description: Township 154 North, Range 91 West  
Section 23: SW

Grantor: Douglas K. Kinnon, a single man  
Grantee: Whiting Oil and Gas Corporation  
Date: August 22, 2007  
Recorded: Document 349709  
Description: Township 154 North, Range 91 West  
Section 14: SWSW, N/2SW, NW

Grantor: John W. Niemitalo, Jr., a single man  
Grantee: Whiting Oil and Gas Corporation  
Date: August 22, 2008  
Recorded: Document 349710  
Description: Township 154 North, Range 91 West  
Section 11: NW, S/2SW

Grantor: Evelyn R. Schmitz aka Evelyn R. Schmidt, a married woman dealing in her sole and separate property, individually and as Attorney-in-Fact for Louis H. Schaefer, a married man dealing in his sole and separate property  
Grantee: Whiting Oil and Gas Corporation  
Date: September 5, 2007  
Recorded: Document 349719  
Description: Township 155 North, Range 91 West  
Section 2: NESW, W/2SW  
Section 11: SWSW

Grantor: Michael Littlefield, a married man dealing in his sole and separate property and Steven Littlefield, a married man dealing in his sole and separate property  
Grantee: Whiting Oil and Gas Corporation  
Date: May 13, 2008  
Recorded: Document 349705  
Description: Township 153 North, Range 91 West  
Section 3: E/2NE  
Section 15: E/2E  
  
Township 154 North, Range 91 West  
Section 34: SESE

Grantor: James Carkuff and RaeAnn Carkuff, husband and wife  
Grantee: Whiting Oil and Gas Corporation  
Date: August 24, 2008  
Recorded: Document 349711  
Description: Township 154 North, Range 91 West  
Section 2: SW

Grantor: Edward A. Moen and Dianne Moen, husband and wife  
Grantee: Whiting Oil and Gas Corporation  
Date: August 20, 2007  
Recorded: Document 349712  
Description: Township 154 North, Range 91 West  
Section 2: Lots 3, 4, S/2NW

Township 155 North, Range 91 West  
Section 26: SWSW  
Section 35: NWNW

Grantor: Marshall Craft  
Grantee: Whiting Oil and Gas Corporation  
Date: August 20, 2007  
Recorded: Document 349725  
Description: Township 155 North, Range 91 West  
Section 35: W/2SW

Grantor: Brian G. Gunderson and Holly Gunderson,  
husband and wife  
Grantee: Whiting Oil and Gas Corporation  
Date: August 30, 2008  
Recorded: Document 349713  
Description: Township 155 North, Range 91 West  
Section 35: SWNW

Grantor: Michael Craft and Shelly Craft, individually and as  
husband and wife  
Grantee: Whiting Oil and Gas Corporation  
Date: December 1, 2007  
Recorded: Document 349714  
Description: Township 155 North, Range 91 West  
Section 26: NWSW, SWNW

Grantor: Sydney M. Craft and Carol A. Craft, husband and wife  
Grantee: Whiting Oil and Gas Corporation  
Date: August 20, 2007  
Recorded: Document 349715  
Description: Township 155 North, Range 91 West  
Section 26: N/2NW, SENW

Grantor: Warren D. Craft, a married man dealing in his sole and separate property  
Grantee: Whiting Oil and Gas Corporation  
Date: August 20, 2007  
Recorded: Document 349716  
Description: Township 155 North, Range 91 West  
Section 23: W/2

Grantor: Marie Harstad, Trustee of The Marie Harstad Living Trust  
Grantee: Whiting Oil and Gas Corporation  
Date: August 22, 2007  
Recorded: Document 349717  
Description: Township 155 North, Range 91 West  
Section 14: SW

Grantor: John D. Sauber and Kathryn Sauber, husband and wife  
Grantee: Whiting Oil and Gas Corporation  
Date: August 25, 2007  
Recorded: Document 349718  
Description: That portion of the Whiting 8" oil line in  
Township 155 North, Range 91 West  
Section 11: W/2NW, NWSW  
Section 14: NW

Grantor: David J. Reiste and Susan Reiste, husband and wife  
Grantee: Whiting Oil and Gas Corporation  
Date: September 12, 2007  
Recorded: Document 349721  
Description: Township 155 North, Range 91 West  
Section 2: Lots 3, 4, S/2NW

Grantor: Adah Lattin, a widow  
Grantee: Whiting Oil and Gas Corporation  
Date: August 29, 2007  
Recorded: Document 349720  
Description: Township 155 North, Range 91 West  
Section 2: Lots 3, 4, S/2NW

Grantor: Jean M. Nelson, individually and as Sole Trustee of  
The M & J Nelson Trust  
Grantee: Whiting Oil and Gas Corporation  
Date: August 22, 2007  
Recorded: Document 349722  
Description: Township 156 North, Range 91 West  
Section 26: SW  
Section 35: S/2SW, W/2NW

Grantor: Curtis A. Hemstad and Nancy L. Hemstad,  
husband and wife  
Grantee: Whiting Oil and Gas Corporation  
Date: August 23, 2007  
Recorded: Document 351721  
Description: Township 156 North, Range 91 West  
Section 35: NWSW

Grantor: Jean M. Nelson, a single woman, dealing individually and  
as Sole Trustee of The M & J Nelson Trust  
Grantee: Whiting Oil and Gas Corporation  
Date: October 14, 2008  
Recorded: Document 349722  
Description: Township 156 North, Range 91 West  
Section 26: SW

Grantor: David J. Reiste, a married man dealing in his sole and  
separate property, and Lois Ann Rosenberg, a married  
woman dealing in her sole and separate property, and  
Jean Meredith Lattin, a single woman dealing in her  
sole and separate property  
Grantee: Whiting Oil and Gas Corporation  
Date: October 7, 2008  
Recorded: Documents 356592, 356593, 356594  
Description: Township 156 North, Range 91 West  
Section 27: E/2SE

Grantor: Marie Harstad, a single woman and Kevin Harstad, a married man acting as Trustees of The Jerald Harstad Residuary Trust  
Grantee: Whiting Oil and Gas Corporation  
Date: October 14, 2008  
Recorded: Document 357093  
Description: Township 156 North, Range 91 West  
Section 27: W/2SE less Outlot 1

Grantor: Michael Hynek, Mayor for the City of Stanley  
Grantee: Whiting Oil and Gas Corporation  
Date: October 15, 2008  
Recorded: Pending  
Description: Township 156 North, Range 91 West  
Section 27: E/2SW

**End of Exhibit B-1**

**EXHIBIT B-2**  
**To that certain Purchase and Sale Agreement**  
**by and between Whiting Oil and Gas Corporation, as Seller**  
**and Nexen Pipeline USA Inc., as Buyer**

**Permits**

North Dakota Public Service Commission

- o Certificate of Corridor Compatibility Number 109
- o Route Permit Number 119

**EXHIBIT B-3**  
**To that certain Purchase and Sale Agreement**  
**by and between Whiting Oil and Gas Corporation, as Seller**  
**and Nexen Pipeline USA Inc., as Buyer**

**DOT Records**

- 1.) Construction Specifications
- 2.) Weld Procedures
- 3.) Welder Qualifications / Certifications
  - certifications / qualifications / test reports for every welder
- 4.) Weld Inspector Qualifications / Certifications
  - resume' ok and any other certifications
  - if the pipeline ties in to any other operating (under pressure) system, the inspector needs to be OQ'ed from that company
- 5.) NDT Procedures
- 6.) NDT Technician Qualifications / Certifications
  - certifications / qualifications for each technician
- 7.) NDT Records
  - test records on all passed and rejected welds
  - x-ray film to be brought to audit
  - have a Level III inspector on standby for film reviews
  - \* Repair information
    - how rejected welds were repaired
    - re-X-ray test report with passed / approved status noted
- 8.) Hydrotest Records
  - hydrotest plan
  - hydrotest procedures
  - test equipment calibration certificates
  - chart recordings properly annotated and signed
  - dead weight reading log
- 9.) MTR's
  - for all pipe and equipment (valves, etc..)
- 10.) As-built Records (drawings if possible)
  - records of all piping and equipment

- must include ALL heat numbers and joint numbers
- \* can be a weld map
- as-built maps must be complete with all pipeline / utility crossings noted

**EXHIBIT C**  
**To that certain Purchase and Sale Agreement**  
**by and between Whiting Oil and Gas Corporation, as Seller**  
**and Nexen Pipeline USA Inc., as Buyer**

**ASSIGNMENT AND BILL OF SALE**

This Assignment and Bill of Sale is by and between **Whiting Oil and Gas Corporation**, having an address at 1700 Broadway, Suite 2300, Denver, Colorado 80290 ("**Assignor**"), and **Nexen Pipeline USA Inc.**, having an address at 5660 Greenwood Plaza Boulevard, Suite 230, Greenwood Village, Colorado 80111 ("**Assignee**").

In consideration of Ten Dollars and other good and valuable consideration, the receipt of which is hereby acknowledged, Assignor does hereby ASSIGN, CONVEY and TRANSFER to Assignee, all of Assignor's interest in and to all of Assignor's right, title and interest in and to the following (collectively, the "**Assets**"):

(a) the 20-mile crude oil pipeline located in Mountrail County, North Dakota described by size and location on Exhibit A-1 attached to the Agreement and depicted on the map attached to the Agreement as Exhibit A-2 (collectively, the "**Pipeline**");

(b) the equipment, pipes, valves, pumps, and other personal property, fixtures and improvements used or held primarily for use in connection with the operation of the Pipeline, including those items described on Exhibit A-3 to the Agreement (collectively, the "**Related Facilities**");

(c) the rights of Assignor under licenses, permits, registrations, approvals and franchises issued by any Governmental Authority and used in connection with any of the Assets described on Exhibit B-2 to the Agreement (collectively, the "**Permits**");

(d) all specifications, qualifications, certifications, records related to compliance with or which are required to be maintained in accordance with any laws or regulations which relate to the Assets including those items described in Exhibit B-3 to the Agreement (the "**Records**"); and

(e) all rights under all covenants and warranties relating to the Assets, express or implied (including title warranties and manufacturers', suppliers' and contractors' warranties), that have heretofore been made by any third party manufacturers, suppliers and contractors.

TO HAVE AND TO HOLD the Assets unto Assignee forever, subject to the following:

Assignor hereby binds itself and its successors and assigns to warrant and forever defend the title to the Assets unto Assignee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through or under Assignor, but not otherwise.

Assignee accepts this Assignment and Bill of Sale and the Assets conveyed hereby and assumes and agrees to perform all of Assignor's obligations thereunder from and after the date hereof. Further, this Assignment and Bill of Sale is executed and delivered pursuant to the terms of that certain Purchase and Sale Agreement between Assignor and Assignee, dated February 1, 2010, and Assignee expressly agrees that all of the Assets conveyed hereby are subject to the terms and provisions of that Agreement as though repeated verbatim herein.

EXCEPT FOR THE SPECIAL WARRANTY OF TITLE CONTAINED HEREIN, ASSIGNOR HEREBY (A) EXPRESSLY DISCLAIMS AND NEGATES ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESSED OR IMPLIED AT COMMON LAW, BY STATUTE, OR OTHERWISE, RELATING TO THE CONDITION (INCLUDING ENVIRONMENTAL CONDITION) OF THE ASSETS (INCLUDING ANY IMPLIED OR EXPRESSED WARRANTY OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS), AND (B) NEGATES ANY RIGHTS OF ASSIGNEE UNDER STATUTES TO CLAIM DIMINUTION OF CONSIDERATION AND ANY CLAIMS BY ASSIGNEE FOR DAMAGES BECAUSE OF DEFECTS, WHETHER KNOWN OR UNKNOWN, IT BEING THE INTENTION OF ASSIGNOR AND ASSIGNEE THAT THE ASSETS SHALL BE CONVEYED "AS IS, WHERE IS" IN THEIR PRESENT CONDITION AND STATE OF REPAIR. It is provided, however, that to the extent assignable the Assignor shall assign to the Assignee all of the warranties provided to Assignor by the manufacturers, vendors or suppliers of the Assets.

This Assignment, Conveyance and Bill of Sale shall be binding upon Assignee, its successors and assigns and shall run with the real property interests included in the Assets. All references herein to Assignor and Assignee shall include their respective successors and assigns.

Assignor agrees to execute and deliver to Assignee all such other additional instruments, notices, transfer orders and other documents and to do all such other and further acts and things as may be necessary to more fully and effectively assign, convey and transfer to Assignee all of Assignor's right, title and interest in the Assets.

This Assignment may be executed in any number of counterparts and each of such counterparts shall together constitute but one and the same Assignment.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Conveyance, Assignment and Bill of Sale effective as of \_\_\_\_\_, 2010.

**ASSIGNOR:**

**Whiting Oil and Gas Corporation**

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

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

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

**ASSIGNEE:**

**Nexen Pipeline USA Inc.**

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

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

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

STATE OF COLORADO )  
 ) ss.  
CITY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_ as \_\_\_\_\_ of Whiting Oil and Gas Corporation.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

STATE OF COLORADO )  
 ) ss.  
CITY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_ as \_\_\_\_\_ of Nexen Pipeline USA Inc.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**EXHIBIT D**  
**To that certain Purchase and Sale Agreement**  
**by and between Whiting Oil and Gas Corporation, as Seller**  
**and Nexen Pipeline USA Inc., as Buyer**

**LICENSE TO USE EASEMENTS**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that **Whiting Oil and Gas Corporation**, hereinafter referred to as "**Licensor**", for and in consideration of the sum of **TEN AND NO/100 DOLLARS (\$10.00)**, the receipt and adequacy of which is hereby acknowledged and full acquittance granted therefor, has granted, conveyed and delivered and does hereby grant, convey and deliver unto **Nexen Pipeline USA Inc.**, whose address is **5660 Greenwood Plaza Boulevard, Suite 230, Greenwood Village, Colorado 80111**, hereinafter referred to as "**Licensee**", a perpetual license to use Licensor's right, title and interest in the following properties (real, personal or mixed) and rights (contractual or otherwise), the following being referred to herein collectively as the **Easements ("License")**. Such License shall grant Licensee the exclusive use of the **Easements** except for any and all concurrent uses by Licensor, whether now or in the future existing:

- (a) The easements, rights-of-way, licenses, surface leases and similar real property rights described on Exhibit "A", attached hereto, ("**Easements**") and being the rights to the use and occupancy of the lands covered by the **Easements** for the uses granted by the **Easements**.

TO HAVE AND TO HOLD the License, together with all and singular the rights and appurtenances thereunto in anywise belonging, unto Licensee, its successors and assigns, forever, subject to the following terms and conditions:

1. Special Warranty Of Title. Licensor represents and warrants that, subject to the **Permitted Encumbrances** as defined in the **Purchase and Sale Agreement** (referenced below), the **Easements** are free and clear of all liens, encumbrances, security interests or other adverse claims arising by, through or under Licensor. Subject to the **Permitted Encumbrances**, Licensor shall warrant and defend the title to the **Easements** against every person whomsoever lawfully claims the **Easements** or any part thereof by, through, or under Licensor, but not otherwise.

2. Purchase and Sale Agreement. This License is granted in accordance with and is subject to the terms, covenants and conditions contained in that certain **PURCHASE AND SALE AGREEMENT** dated February 1, 2010, by and between Licensor and Licensee ("**Purchase and Sale Agreement**"), all of which shall remain in

full force and effect in accordance with their terms as set forth therein and shall not be deemed to have been merged with this License. If there is a conflict between the provisions of the Purchase and Sale Agreement and this License, the provisions of the Purchase and Sale Agreement shall control the rights and obligations of the parties. Capitalized terms not otherwise defined herein shall have the meanings provided in the Purchase and Sale Agreement.

3. **Rights Granted and Rights Reserved.** It is expressly agreed and understood that this License assigns to Licensee only partial use of the Easements for the express purpose of locating, installing, constructing, replacing, operating, maintaining and removing Licensee's crude oil pipeline. Licensee understands and agrees that Licensor maintains ownership of the Easements and use thereof for Licensor's presently existing or subsequently installed residue gas and other pipelines and Licensor expressly reserves and retains all such rights for itself and its successors and assigns. In connection with the shared nature of the Easements, Licensor and Licensee agree as follows:

- a. From and after the date hereof, Licensor shall continue to pay all rental or other periodic payments due for the entire Easements (an "Easement Payment") and shall invoice Licensee for fifty (50%) percent of the amount of such Easement Payment. Licensee shall pay the amount within thirty (30) days of receiving Licensor's invoice therefore. Notwithstanding anything contained herein to the contrary, if any fine or penalty is assessed in relation to the late payment of any Easement Payment, Licensor shall not be liable therefore, and further, Licensor shall have no liability for any loss of any Easement due to any inadvertent failure to make any required payments.
- b. Each party shall give the other party at least 7 days advance written notice prior to the commencement of any operations on the Easements that involve heavy machinery or which will involve the excavation or trenching on the Easements.
- c. Each party shall at all times comply with all terms and conditions contained in the Easements relating to its use thereof or activities on the lands covered by the Easements.
- d. Each party shall exercise its right of ingress and egress to and access upon the Easements in a manner so as to not unreasonably interfere with the other party's use of the Easements.
- e. Each party ("Indemnifying Party") shall release the other party from and shall fully protect, indemnify and defend such other party, its officers, agents, employees and affiliates ("Indemnified Parties") and hold them harmless from and against any and all claims, demands, suits, causes of action, losses, damages, liabilities, fines, penalties and costs, including reasonable attorneys' fees and costs of litigation, ("Losses") relating to, arising out of, or connected, directly or indirectly, with Indemnifying Party's operations, facilities or occupancy or use of the Easements, or any part

thereof, no matter when asserted; including without limitation, Losses relating to (a) injury or death of any person or persons whomsoever, (b) damages to or loss of any property or resources, (c) common law causes of action such as negligence, gross negligence, strict liability, nuisance or trespass, (d) fault imposed by statute, rule, regulation or otherwise, or (e) violations of environmental laws, rules or regulations.

4. Restricted Properties. This License shall not be effective as to any of the Easements which require consent to assign such use and License to Licensee and for which such consent has not yet been obtained until such required consent is obtained or waived by the party having the right to give or withhold such consent.

5. Further Assurances. Licensor and Licensee agree to take all such further actions and to execute, acknowledge and deliver all such further documents that are necessary or useful in carrying out the purpose of this License.

6. Successors and Assigns. The terms, covenants and conditions contained in this License shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, and such terms, covenants and conditions shall be covenants running with the land and with each subsequent transfer or assignment of the Properties, or any part thereof.

7. Counterparts. This License is being executed in multiple counterparts each of which shall for all purposes be deemed to be an original.

8. Subject to Laws. All the terms and provisions of this License are hereby expressly made subject to all federal, state, and local laws and to all orders, rules, regulations and standards issued thereunder by all duly constituted political subdivisions and agencies having jurisdiction.

All of the terms, provisions, covenants and agreements herein contained shall constitute covenants running with the land, and shall extend to and be binding upon the parties hereto, their respective successors and assigns.

Executed on the date set forth below in the acknowledgment, but effective for all purposes as of \_\_\_\_\_, 2010.

LICENSOR:

**WHITING OIL AND GAS CORPORATION**

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

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

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

LICENSEE:

**NEXEN PIPELINE USA INC.**

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

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

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

THE STATE OF COLORADO )  
 )  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_, the \_\_\_\_\_ of and on behalf of Whiting Oil and Gas Corporation, on behalf of said company.

Witness my Hand and Official Seal.

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

THE STATE OF COLORADO )  
 )  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_, the \_\_\_\_\_ of and on behalf of Nexen Pipeline USA, Inc., on behalf of said company.

Witness my Hand and Official Seal.

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**Exhibit A**  
**To that certain License to Use Easements**  
**by and between Whiting Oil and Gas Corporation, as Licensor**  
**and Nexen Pipeline USA Inc., as Licensee**

**Easements**

Grantor: Kenneth V. Littlefield and Joan A. Littlefield, individually  
and as husband and wife  
Grantee: Whiting Oil and Gas Corporation  
Date: November 30, 2007  
Recorded: Document 349700  
Description: Township 153 North, Range 91 West  
Section 14: SWSW, E/2SW, NWSW

Grantor: Daryl Locken and Pam Locken, husband and wife  
Grantee: Whiting Oil and Gas Corporation  
Date: August 29, 2007  
Recorded: Document 349701  
Description: Township 153 North, Range 91 West  
Section 11: SW  
Section 14: NW

Township 154 North, Range 91 West  
Section 35: SW

Grantor: Lyle Locken aka Lloyd L. Locken and Ramona Locken,  
husband and wife  
Grantee: Whiting Oil and Gas Corporation  
Date: August 20, 2007  
Recorded: Document 349702  
Description: Township 153 North, Range 91 West  
Section 2: Lot 4, S/2NW  
Section 11: S/2NW

Grantor: Daryl Locken and Pam Locken, individually and as  
husband and wife  
Grantee: Whiting Oil and Gas Corporation  
Date: February 4, 2008  
Recorded: Document 349703  
Description: Township 153 North, Range 91 West  
Section 10: NENE

Grantor: Robert Patten and Lavonne Patten, individually and as husband and wife  
Grantee: Whiting Oil and Gas Corporation  
Date: August 29, 2007  
Recorded: Document 349704  
Description: Township 153 North, Range 91 West  
Section 3: SE

Grantor: Myron Arndt, as Attorney-in-Fact for Diana Arndt, a widow  
Grantee: Whiting Oil and Gas Corporation  
Date: August 22, 2007  
Recorded: Document 349706  
Description: Township 154 North, Range 91 West  
Section 35: NW

Grantor: Elroy S. Jorgensen, a married man dealing in his sole and separate property, and Emojean S. Jorgensen, a single woman, as Joint Tenants  
Grantee: Whiting Oil and Gas Corporation  
Date: August 22, 2007  
Recorded: Document 349707  
Description: Township 154 North, Range 91 West  
Section 11: N/2SW  
Section 23: NW

Grantor: John W. Niemitalo, Jr., a single man, and Vaughn Niemitalo, a single man  
Grantee: Whiting Oil and Gas Corporation  
Date: August 22, 2008  
Recorded: Document 349708  
Description: Township 154 North, Range 91 West  
Section 23: SW

Grantor: Douglas K. Kinnon, a single man  
Grantee: Whiting Oil and Gas Corporation  
Date: August 22, 2007  
Recorded: Document 349709  
Description: Township 154 North, Range 91 West  
Section 14: SWSW, N/2SW, NW

Grantor: John W. Niemitalo, Jr., a single man  
Grantee: Whiting Oil and Gas Corporation  
Date: August 22, 2008  
Recorded: Document 349710  
Description: Township 154 North, Range 91 West  
Section 11: NW, S/2SW

Grantor: Evelyn R. Schmitz aka Evelyn R. Schmidt, a married woman dealing in her sole and separate property, individually and as Attorney-in-Fact for Louis H. Schaefer, a married man dealing in his sole and separate property  
Grantee: Whiting Oil and Gas Corporation  
Date: September 5, 2007  
Recorded: Document 349719  
Description: Township 155 North, Range 91 West  
Section 2: NESW, W/2SW  
Section 11: SWSW

Grantor: Michael Littlefield, a married man dealing in his sole and separate property and Steven Littlefield, a married man dealing in his sole and separate property  
Grantee: Whiting Oil and Gas Corporation  
Date: May 13, 2008  
Recorded: Document 349705  
Description: Township 153 North, Range 91 West  
Section 3: E/2NE  
Section 15: E/2E  
  
Township 154 North, Range 91 West  
Section 34: SESE

Grantor: James Carkuff and RaeAnn Carkuff, husband and wife  
Grantee: Whiting Oil and Gas Corporation  
Date: August 24, 2008  
Recorded: Document 349711  
Description: Township 154 North, Range 91 West  
Section 2: SW

Grantor: Edward A. Moen and Dianne Moen, husband and wife  
Grantee: Whiting Oil and Gas Corporation  
Date: August 20, 2007  
Recorded: Document 349712  
Description: Township 154 North, Range 91 West  
Section 2: Lots 3, 4, S/2NW

Township 155 North, Range 91 West  
Section 26: SWSW  
Section 35: NWNW

Grantor: Marshall Craft  
Grantee: Whiting Oil and Gas Corporation  
Date: August 20, 2007  
Recorded: Document 349725  
Description: Township 155 North, Range 91 West  
Section 35: W/2SW

Grantor: Brian G. Gunderson and Holly Gunderson,  
husband and wife  
Grantee: Whiting Oil and Gas Corporation  
Date: August 30, 2008  
Recorded: Document 349713  
Description: Township 155 North, Range 91 West  
Section 35: SWNW

Grantor: Michael Craft and Shelly Craft, individually and as  
husband and wife  
Grantee: Whiting Oil and Gas Corporation  
Date: December 1, 2007  
Recorded: Document 349714  
Description: Township 155 North, Range 91 West  
Section 26: NWSW, SWNW

Grantor: Sydney M. Craft and Carol A. Craft, husband and wife  
Grantee: Whiting Oil and Gas Corporation  
Date: August 20, 2007  
Recorded: Document 349715  
Description: Township 155 North, Range 91 West  
Section 26: N/2NW, SENW

Grantor: Warren D. Craft, a married man dealing in his sole and separate property  
Grantee: Whiting Oil and Gas Corporation  
Date: August 20, 2007  
Recorded: Document 349716  
Description: Township 155 North, Range 91 West  
Section 23: W/2

Grantor: Marie Harstad, Trustee of The Marie Harstad Living Trust  
Grantee: Whiting Oil and Gas Corporation  
Date: August 22, 2007  
Recorded: Document 349717  
Description: Township 155 North, Range 91 West  
Section 14: SW

Grantor: John D. Sauber and Kathryn Sauber, husband and wife  
Grantee: Whiting Oil and Gas Corporation  
Date: August 25, 2007  
Recorded: Document 349718  
Description: That portion of the Whiting 8" oil line in Township 155 North, Range 91 West  
Section 11: W/2NW, NWSW  
Section 14: NW

Grantor: David J. Reiste and Susan Reiste, husband and wife  
Grantee: Whiting Oil and Gas Corporation  
Date: September 12, 2007  
Recorded: Document 349721  
Description: Township 155 North, Range 91 West  
Section 2: Lots 3, 4, S/2NW

Grantor: Adah Lattin, a widow  
Grantee: Whiting Oil and Gas Corporation  
Date: August 29, 2007  
Recorded: Document 349720  
Description: Township 155 North, Range 91 West  
Section 2: Lots 3, 4, S/2NW

**Grantor:** Jean M. Nelson, individually and as Sole Trustee of  
The M & J Nelson Trust  
**Grantee:** Whiting Oil and Gas Corporation  
**Date:** August 22, 2007  
**Recorded:** Document 349722  
**Description:** Township 156 North, Range 91 West  
Section 26: SW  
Section 35: S/2SW, W/2NW

**Grantor:** Curtis A. Hemstad and Nancy L. Hemstad,  
husband and wife  
**Grantee:** Whiting Oil and Gas Corporation  
**Date:** August 23, 2007  
**Recorded:** Document 351721  
**Description:** Township 156 North, Range 91 West  
Section 35: NWSW

**Grantor:** Jean M. Nelson, a single woman, dealing individually and  
as Sole Trustee of The M & J Nelson Trust  
**Grantee:** Whiting Oil and Gas Corporation  
**Date:** October 14, 2008  
**Recorded:** Document 349722  
**Description:** Township 156 North, Range 91 West  
Section 26: SW

**Grantor:** David J. Reiste, a married man dealing in his sole and  
separate property, and Lois Ann Rosenberg, a married  
woman dealing in her sole and separate property, and  
Jean Meredith Lattin, a single woman dealing in her  
sole and separate property  
**Grantee:** Whiting Oil and Gas Corporation  
**Date:** October 7, 2008  
**Recorded:** Documents 356592, 356593, 356594  
**Description:** Township 156 North, Range 91 West  
Section 27: E/2SE

Grantor: Marie Harstad, a single woman and Kevin Harstad, a married man acting as Trustees of The Jerald Harstad Residuary Trust  
Grantee: Whiting Oil and Gas Corporation  
Date: October 14, 2008  
Recorded: Document 357093  
Description: Township 156 North, Range 91 West  
Section 27: W/2SE less Outlot 1

Grantor: Michael Hynek, Mayor for the City of Stanley  
Grantee: Whiting Oil and Gas Corporation  
Date: October 15, 2008  
Recorded: Pending  
Description: Township 156 North, Range 91 West  
Section 27: E/2SW

**End of Exhibit A**

**EXHIBIT E**  
**To that certain Purchase and Sale Agreement**  
**by and between Whiting Oil and Gas Corporation, as Seller**  
**and Nexen Pipeline USA Inc., as Buyer**

**LEASE AGREEMENT**

**(Robinson Lake Facilities)**

THIS LEASE AGREEMENT (the "Lease"), made effective this 1<sup>st</sup> day of August, 2009, by and between Whiting Oil and Gas Corporation, with offices at 1700 Broadway, Suite 2300, Denver, Colorado 80290 ("Lessor") and Nexen Marketing U.S.A. Inc., with offices at 5660 Greenwood Plaza Boulevard, Suite 230, Greenwood Village, Colorado 80111 ("Lessee").

**WITNESSETH THAT:**

WHEREAS Lessor owns land located in the County of Mountrail, State of North Dakota, and

WHEREAS Lessor desires to lease a portion of such land to Lessee for the purpose of conducting a business of storing crude oil and delivering crude oil to a certain Robinson Lake to Stanley, North Dakota oil transmission pipeline (the "Pipeline") for further transportation, and

WHEREAS Lessee desires to erect storage tanks and other facilities on such portion of land for the receipt of crude oil from Lessor's oil gathering system, third-party pipeline, and/or by truck and to store same prior to delivery for transportation.

**NOW, THEREFORE:**

For and in consideration of the mutual promises of the parties hereto, it is agreed as follows:

**1. LEASED PREMISES**

1.1 Subject to the provisions hereof, Lessor hereby leases to Lessee and Lessee leases from Lessor the following property:

That portion of the land in the NW/4 of the NW/4 of Section 23, Township 153 North, Range 91 West, Mountrail County, North Dakota, containing approximately 5.52 acres and more particularly described in Exhibit A attached hereto, and is referred to herein as the "Leased Premises".

1.2 Lessee is leasing the Leased Premises as is, where is and with all faults.

## **2. PURPOSE**

2.1 The Leased Premises shall be used for the sole purpose to construct, maintain, operate, protect, repair and replace crude oil storage tanks, pipes, dikes and appurtenances for receiving, shipping and storing crude oil which shall be tendered for further transportation.

2.2 Lessee shall consult in advance with Lessor before placing or erecting any property or structure on the Leased Premises, and receive Lessor's prior written approval thereof; provided, however, that Lessor shall not unreasonably withhold such approval. Lessee shall install and maintain environmental protection and safety systems required by applicable governmental laws, rules and regulations.

2.3 In consideration of the Lessee paying the rent hereby reserved and performing all of the Lessee's covenants herein contained, the Lessee shall and may, subject to the provisions hereof, have the exclusive right to peaceably possess and enjoy the Leased Premises for the term without interruption or disturbance from the Lessor or any other person or persons lawfully claimed by, from or under him, except as permitted herein.

## **3. IMPROVEMENT AND MAINTENANCE OF ROADWAYS**

3.1 Lessor agrees, at Lessor's expense, to maintain in good condition, all access roads to the Leased Premises so that roadways shall be suitable for use by the trucks used by Lessee for its purpose; it being understood and agreed that said roadways shall be jointly used by Lessee and Lessor or others. Lessor reserves the right of ingress and egress on the access road through the Leased Premises.

3.2 Lessee agrees, at its risk and expense, to maintain the roads on the Leased Premises and its facilities in good condition and free from spilled oil or debris and any condition which is hazardous to the operation of the facilities, and to comply with Lessor's reasonable requirements in this regard. Lessee agrees to install safety signage, barriers and maintain a no smoking policy on the property.

## **4. TERM**

4.1 Subject to the further provisions of this Lease, the term of this Lease shall be for an initial term of one (1) year commencing August 1, 2009 and shall automatically renew for additional terms of one (1) year each, so long as Lessee pays to Lessor the rent due pursuant to Section 5.1 below and shall terminate at such time as Lessee fails to pay the rent due hereunder or provides Lessor with termination notice at least thirty (30) days prior to the expiration of the initial term or any additional term. Lessee shall have 180 days from the termination date to meet the requirements of Section 8.1 of this Lease.

However, in the event of inclement weather, Lessee shall have such additional time as is reasonable to comply with Section 8.1.

## **5. RENT**

5.1 Lessee shall pay Lessor as rent hereunder the sum of Five Thousand Dollars (\$5,000.00) per annum in advance, the rent for the first one-year term to be paid in full upon the execution hereof and the rent for each subsequent annual term shall be paid at or prior to the commencement hereof.

## **6. COMPLIANCE WITH GOVERNMENTAL AND ENVIRONMENTAL REQUIREMENTS**

6.1 All tanks, pipe, loading racks and equipment of Lessee and all of Lessee's operations on the Leased Premises shall be construed in accordance with and comply with all applicable federal, state and other governmental requirements, including but not limited to statutes, rules and regulations pertaining to safety, health and environmental protection. Lessee shall conduct and maintain a tank integrity monitoring program and make repairs as needed. Lessor shall give notice to Lessee in writing of the details of all complaints received from any governmental agency in respect of the Leased Premises and Lessee shall within thirty (30) days, or by such earlier time as is required by the applicable governmental agency, thereafter prepare a written plan (the "Corrective Plan") for remediation of the problems forming the basis of such complaint, all as required and in accordance with applicable laws, rules and regulations, and the requirements of the applicable governmental agency; and shall deliver the Corrective Plan to the Lessor. To the extent a failure to observe and comply with any directive or order from a governmental agency materially jeopardizes or curtails Lessor's operations, Lessor hereby reserves and shall have the right to terminate this Lease by giving thirty (30) days prior written notice to Lessee that it failed to timely submit the Corrective Plan, or thereafter materially failed to comply or fulfill the work or action required by the Corrective Plan. Lessee shall have thirty (30) days from receipt of such notice to submit the Corrective Plan, or to initiate action to comply or fulfill the work or action required by the Corrective Plan, in order to avoid termination, unless shorter times are required by applicable governmental agencies, in which case Lessee shall comply with such earlier time requirements. Notwithstanding such termination, any work or action under the Corrective Plan undertaken by Lessor shall be for the reasonable and necessary cost and expense of Lessee.

## **7. TAXES AND LIENS**

7.1 Lessor shall pay all real property taxes levied against the land covered by the Lease; provided, however, that Lessee shall reimburse Lessor for any such taxes or increased taxes that are the direct result of Lessee's use of and operations on the Leased Premises.

7.2 Lessee shall pay any sales, use or occupation tax, license or permit fee, that may be payable because of Lessee's use of or operations on the Leased Premises, and also any personal property taxes on personal property and fixtures placed on the Leased Premises by Lessee.

7.3 Lessee shall not permit any liens to attach to the Leased Premises or to any other property of Lessor arising from any acts or omissions on the part of Lessee; and, shall indemnify and defend Lessor against any such liens.

## **8. REMOVAL OF LESSEE'S PROPERTY**

8.1 All tanks, pipe, property, structures and fixtures placed upon the Leased Premises by Lessee shall be and remain the property of Lessee, and subject to further provisions hereof, Lessee shall have the right at any time before and the obligation promptly after termination of this Lease to remove same from the Leased Premises. Lessee shall restore and reclaim the Leased Premises to its prior condition at its sole cost, usual wear and tear and damage by the elements excepted, unless waived in writing by Lessor.

## **9. MAINTENANCE AND USE**

9.1 Lessee shall not permit litter or other unsightly accumulations on the Leased Premises, shall keep Leased Premises in a neat and orderly condition and shall keep weeds cut and grass trimmed.

9.2 Lessee shall comply with all governmental laws, ordinances and regulations applicable to the use of the Leased Premises and shall promptly comply with all governmental orders and directives for correction, prevention and abatement of nuisances or prohibited acts on the Leased Premises, or connected therewith, all at Lessee's expense.

9.3 Lessee shall be responsible for arranging for, obtaining and paying for all utilities necessary or desirable in connection with the operation of Lessee's facilities on the Leased Premises and shall hold Lessor harmless from any costs, charges or expenses in connection with the furnishing of those utilities.

## **10. RESTRICTION ON ASSIGNMENT**

10.1 Lessee shall not sublet the Leased Premises, or any part thereof, or assign this Lease, without the written consent of Lessor not to be unreasonably withheld; provided, however, that Lessor may withhold its consent in respect of an assignment (a) if the party to whom the Lease would be assigned is not financially responsible to perform the Lease, (b) if the party to whom the Lease would be assigned, or an affiliate of the party to whom the Lease would be assigned, will not also be assuming that certain Robinson Lake Crude Oil Marketing Agreement between Lessor and Lessee of even date herewith or such party is not fully capable financially to perform all obligations under

that agreement, or (c) if the party to whom the Lease would be assigned is not affiliated with the owner of the crude oil pipeline connected to the facilities on the Leased Premises.

## **11. DEFAULT**

11.1 If Lessee fails to pay the rental as herein provided, or if Lessee defaults in the performance or observance of any of the terms, covenants and stipulations hereof, and if such failure or default shall continue for thirty (30) days after written notice thereof by Lessor to Lessee, except as provided in Section 6.1 above, then and in such event Lessor may at its election terminate this Lease and all the rights of Lessee hereunder. No improvements may be removed from the Leased Premises at any time Lessee is in default with respect to the Lease.

## **12. SURRENDER OF PREMISES AT TERMINATION**

12.1 At the expiration or termination of this Lease, however brought about, Lessee shall surrender the Leased Premises to Lessor peaceable, in as good condition as when received by Lessee, usual wear and tear and damage by the elements excepted. Lessor may install ground water wells and conduct ground water studies at any time at its expense. Any environmental contamination arising from Lessee's operations on the Leased Premises shall be remediated by Lessee according to State or Federal Law and the Lessee's reasonable satisfaction.

12.2 The Lessor and Lessee shall agree upon and document the condition of the Leased Premises at the time of the receipt by Lessee. When Lessee surrenders the Leased Premises and after completion of any remedial actions under Section 12.1, Lessor shall execute and deliver to Lessee a hold harmless agreement and release for all damages related to Lessee's occupancy, in a form reasonably satisfactory to Lessee.

## **13. LESSOR'S RIGHT OF ENTRY**

13.1 Lessor reserves and shall have the right to enter the Leased Premises for the purpose of making inspections, repairs and improvements, the same, and for surveying any other reasonable purpose, so long as Lessor provides notice to Lessee prior to entrance, Lessee has the right to accompany Lessor and such activities do not interfere with the rights and privileges herein granted to Lessee.

13.2 Notwithstanding the provisions of Section 13.1, Lessor shall have the free right to utilize the existing roadway located partially on the Leased Premises in the normal course of its business for the purpose of ingress and egress in respect of lands adjacent to the Leased Premises.

## **14. INDEMNIFICATION**

14.1 Lessor shall not be liable to Lessee or Lessee's employees, agents or invitees, or to any other person whomsoever, for any death or injury to person or damage to property, including damage to the environment, on or about the Leased Premises when caused by Lessee's use and occupation thereof and activities thereon or by the activities of Lessee's employees, agents or invitees; and Lessee shall and hereby agrees to indemnify, save and hold harmless Lessor of and from any claim, demand, damages or causes of action of whatsoever kind, including attorneys' fees, caused by the use and occupation of and activities on the Leased Premises by Lessee or by its employees, agents or invitees, except to the extent caused by Lessor's negligence.

14.2 Lessee shall not be liable to Lessor or Lessor's employees, agents or invitees, or to any other person whomsoever, for the death or injury to person, damage or property, including damage to the environment, on or about the Leased Premises when caused by Lessor's use and occupation thereof and activities thereon before or after Lessee's occupation thereof, or by the activities of Lessor's employees, agents or invitees and Lessor shall and hereby agrees to indemnify, save and hold harmless, Lessee of and from any claim, demand, damages or causes of action of whatsoever kind, including attorneys' fees, caused by the use and occupation of and activities on the Leased Premises by Lessor or by its employees, agents or invitees, except to the extent caused by Lessee's negligence.

## **15. INSURANCE**

15.1 Lessee agrees to maintain commercial general liability insurance under which Lessor shall be named as an additional insured as to the liabilities assumed by Lessee under this Lease. Such insurance shall have a limit of not less than Five Million Dollars (\$5,000,000.00) per occurrence, cumulative, and One Million Dollars (\$1,000,000.00) for property damage. Lessee shall provide Lessor certificates of insurance evidencing such coverage.

## **16. SUCCESSORS**

16.1 The terms, conditions and covenants contained herein shall apply to, inure to the benefit of and be binding upon the parties hereto and their respective successors in interest and legal representatives.

## **17. GOVERNING LAW**

17.1 This agreement shall be governed by and construed in accordance with the laws of the State of Colorado and the federal laws applicable therein, and the parties hereto submit to the jurisdiction of the courts of the State of Colorado for the interpretation and enforcement hereof.

## **18. NOTICES**

18.1 All notices required or permitted to be given hereunder or in connection herewith shall be in writing and given by mailing in the United States mail, as certified or registered mail, postage prepaid and addressed to the respective parties as follows:

Lessor: Whiting Oil and Gas Corporation  
1700 Broadway, Suite 2300  
Denver, CO 80290  
Attn: Rick A. Ross, Vice President, Operations

Lessee: Nexen Marketing U.S.A. Inc.  
5660 Greenwood Plaza Boulevard, Suite 230  
Greenwood Village, CO 80111  
Attn: Manager of Operations/Engineering

or to such other address as the parties may hereafter designate by giving written notice as provided herein. Every notice mailed as aforesaid shall be conclusively deemed to have been received by the party to whom addressed on the third business day following the deposit thereof in the United States mail, regardless of when or whether such notice is actually received by the addressee.

IN WITNESS WHEREOF, this instrument has been executed by the parties hereto as of the day and year first mentioned herein above.

**WHITING OIL AND GAS CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**NEXEN MARKETING U.S.A. INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE STATE OF COLORADO        )  
  )  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_, the \_\_\_\_\_ of and on behalf of Whiting Oil and Gas Corporation, on behalf of said company.

Witness my Hand and Official Seal.

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

THE STATE OF COLORADO        )  
  )  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_, the \_\_\_\_\_ of and on behalf of Nexen Marketing U.S.A., Inc., on behalf of said company.

Witness my Hand and Official Seal.

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**NEXEN MARKETING USA INC.**

**- and -**

**WHITING OIL AND GAS CORPORATION**

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**ROBINSON LAKE CRUDE OIL MARKETING AGREEMENT**

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**February 1, 2010**

Execution Version

**EXHIBIT F**  
**To that certain Purchase and Sale Agreement**  
**by and between Whiting Oil and Gas Corporation, as Seller**  
**and Nexen Pipeline USA Inc., as Buyer**

**ROBINSON LAKE CRUDE OIL MARKETING AGREEMENT**

**THIS AGREEMENT** made effective as of the 1st day of February, 2010

**BETWEEN**

**NEXEN MARKETING USA INC.**, a Delaware corporation, having an office in the City of Denver, in the State of Colorado (hereinafter referred to as "Nexen")

-and-

**WHITING OIL AND GAS CORPORATION**, a Delaware corporation, having an office in the City of Denver, in the State of Colorado (hereinafter referred to as "Whiting")

**WHEREAS** Whiting has crude exploration and production operations in and around Robinson Lake, North Dakota;

and **WHEREAS** Nexen is a crude oil marketer in certain areas including North Dakota;

and **WHEREAS** Whiting has constructed the Pipeline to transport Crude Oil from Robinson Lake to Stanley, North Dakota;

and **WHEREAS** Nexen shall construct and operate the Nexen Robinson Lake Facilities immediately upstream of the Pipeline, to facilitate delivery of Crude Oil to the Pipeline;

and **WHEREAS** Nexen shall construct and operate the Nexen Stanley Facilities immediately downstream of the Pipeline to facilitate the delivery of Crude Oil in or out of the Nexen Stanley Facilities and to deliver Crude Oil from the Pipeline to the Enbridge Stanley Station in North Dakota;

and **WHEREAS** Whiting intends to sell the Pipeline to Nexen Pipeline USA, Inc., an Affiliate of Nexen, pursuant to the terms of the Purchase and Sale Agreement;

and **WHEREAS** Nexen and Whiting have entered this Agreement to provide for the transportation and marketing of Crude Oil on the Pipeline System and Nexen Facilities;

and **WHEREAS** Nexen shall receive certain rates from Whiting and Third Parties for the transportation or terminalling of Crude Oil on the Pipeline System which amounts shall be credited towards the Facilities Payout in accordance with the terms herein.

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the premises and the mutual covenants and agreements hereinafter set forth, the Parties have agreed as follows:

## **ARTICLE 1 INTERPRETATION**

### **1.1 Definitions**

In this Agreement, unless the subject-matter or context is inconsistent, the following terms shall have the following meanings:

- (a) **“Adjusted Volume”** has the meaning ascribed thereto in Section 4.5.
- (b) **“Affiliates”** means, in relation to any Party, any third party that controls that Party either directly or indirectly or that is controlled directly or indirectly by that Party, or that is directly or indirectly controlled by a company, entity or partnership that also directly or indirectly controls that Party, and for the purposes of this definition, control means, in relation to a corporation or like entity, the right to exercise more than 50% of the voting rights in the appointment of the directors of a corporation and the ability to determine or make material management policies or decisions for any other association or venture including a partnership.
- (c) **“Agreement”** means this crude oil marketing agreement including any schedules attached hereto.
- (d) **“Authorized Authority”** means, in relation to any Person, transaction or event, any:
  - (i) federal, state, municipal or local governmental body (whether administrative, legislative, executive or otherwise), both domestic and foreign;
  - (ii) agency, authority, commission, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government;
  - (iii) court, arbitrator, commission or body exercising judicial, quasi-judicial, administrative or similar functions;

- (iv) other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange; and
  - (v) in each case having jurisdiction over such Person, transaction or event.
- (e) **“Base Whiting Capacity”** means capacity that Nexen shall provide, or cause to be provided, to transport, or have transported for Whiting, or for the benefit of Whiting, Crude Oil on the Pipeline System including related capacity in the Nexen Facilities and all tanks and facilities appurtenant thereto of 45,000 Bpd, subject to normal pipeline variances. As of the In Service Date Nexen shall only be able to provide capacity to Whiting of approximately 18,000 Bpd and the full amount of the Base Whiting Capacity of 45,000 Bpd shall be made available pursuant to Section 5.2. Until the full amount of the Base Whiting Capacity is made available pursuant to Section 5.2, the portion of the Base Whiting Capacity that is, from time to time, available will be equal to the capacity of the Pipeline System including related capacity in the Nexen Facilities as it from time to time exists, not less than 18,000 bbl/day and not more than 45,000 bbl/day. The Base Whiting Capacity may be decreased in accordance with Section 4.5. Whiting shall have the exclusive right to all of the Base Whiting Capacity as it from time to time exists.
- (f) **“Base Nexen Capacity”** means capacity which Nexen has invested in to transport Crude Oil on the Pipeline System included related capacity in the Nexen Facilities and all tanks and facilities appurtenant thereto, and which, as of the In Service Date, shall be zero but may be increased from time to time in accordance with Sections 4.5 or 5.3.
- (g) **“Base Volume Commitment”** has the meaning ascribed thereto, in Section 3.1(a).
- (h) **“Base Volume Purchase Price”** has the meaning ascribed thereto, in Section 3.1(b);
- (i) **“Before Tax Internal Rate of Return”** or **“BTIRR”** means a 17.5% pre-tax internal rate of return on the Initial Capital until Facilities Payout.
- (j) **“Bpd”** means barrels per Day.
- (k) **“Business Day”** means a Day on which banks are generally open for the transaction of commercial business in Denver, Colorado but does not in any event include a Saturday, Sunday or a day that is a statutory holiday in Colorado under applicable law.

- (l) **“Capital Addition”** means a formal request by Whiting, by Nexen for itself, or by Nexen on behalf of a Third Party, to increase the capacity of Nexen’s Facilities or the Pipeline System or any part thereof.
- (m) **“Carrier”** means the entity owning and operating the Pipeline System as of the In Service Date, being Nexen Pipeline USA, Inc.
- (n) **“Combined Volumes”** means the Base Volume Commitment plus Expansion Volumes.
- (o) **“Crude Oil”** means a virgin, unblended crude oil with a maximum BS&W of 0.5%, of that no greater than 0.2% water and not less than 40 API, or condensate. A maximum sulphur limit of 0.2% at the Robinson Lake Terminal is permitted.
- (p) **“Day”** means a period of 24 hours beginning at 7:00 a.m. local time in Denver, Colorado; provided that, a reference to any Day herein shall be from the beginning of such Day.
- (q) **“Dispute”** means any disagreement, dispute, conflict or controversy arising under or related to this Agreement or its subject matter between Whiting, on the one hand, and Nexen, on the other hand; provided, however, that “Dispute” shall not include any matter or thing which this Agreement expressly provides is not to be subject to arbitration or the Dispute Resolution Procedure.
- (r) **“Dispute Resolution Procedure”** means the procedure set out in Article 13.
- (s) **“Disputing Parties”** has the meaning ascribed thereto, in Section 13.1.
- (t) **“EBTD”** means the sum of Whiting Revenue and Third Party Revenue less Total Operating Costs.
- (u) **“Economic Payout Model”** means the model developed to guarantee Nexen a pre tax return on investment of 17.5% as detailed in Schedule “A”.
- (v) **“Expansion Volumes”** has the meaning ascribed thereto, in Section 3.2(a).
- (w) **“Facilities Payout”** means the payout, of all monies paid by Nexen or Carrier as Initial Capital plus IDC, Line Fill for the Pipeline System and Nexen Facilities, through Whiting Revenue or Third Party Revenue over a term not more than four (4) years from the In Service Date and in accordance with the Economic Payout Model.

- (x) **“Fixed Operating Costs”** means all actual costs and expenses, incurred by Nexen and Carrier in respect to the overall operation of Nexen's Facilities and the Pipeline System (including costs in respect of the Federal Energy Regulatory Commission (“FERC”) required scheduling and accounting, testing, operation, repair, maintenance, insurance and property taxes thereof and in connection with the acquisition of permits or other authorizations for the emission of greenhouse gases) that are reasonable and necessary for the normal operation and maintenance of Nexen's Facilities and the Pipeline System, but excluding Variable Operating Costs and excluding any general and administrative expenses and any costs included in the Initial Capital and all costs and expenses attributable to any facilities upstream of the Nexen Robinson Lake Facilities or downstream of the Nexen Stanley Facilities, and, in the aggregate, marked up by 15% to cover general and administrative expenses.
- (y) **“Force Majeure”** means any event or circumstance not reasonably within the control of the Party claiming suspension and which by the exercise of due diligence such Party is unable to prevent or overcome, including, but by no means limited to, (i) lightening, storms, earthquakes, landslides, floods, washouts, and other acts of God; (ii) fires, explosions, ruptures, breakages of or accidents to the applicable Pipeline System, Nexen Facilities or any other equipment or facilities necessary to operate the Pipeline System or Nexen Facilities whatsoever (iii) freezing of pipelines, the Pipeline System, or Nexen Facilities or pumps or obstructions of pipelines or appurtenances thereto; (iv) shortages of necessary labour, strikes, lockouts or other industrial disturbances; (v) civil disturbances, sabotage, acts of public enemies, war, blockades, insurrections, vandalism, riots, epidemics or acts of terrorism; (vi) arrests and restraint of governments and people; (vii) the order of any court government body or regulatory body having jurisdiction with respect to the Pipeline System, Nexen Facilities or any part thereof; (viii) any planned or unplanned outage with respect to the Pipeline System, Nexen Facilities or any part thereof; (ix) inability to obtain or revocation or amendment of any permit, licence, certificate or authorization of any governmental or regulatory body having jurisdiction with respect to the Pipeline System, Nexen Facilities or any part thereof; and (x) any event set forth in (i) through (x) above in respect of any facilities upstream or downstream of the Pipeline System or Nexen Facilities that results in a Party being unable to perform its obligations under this Agreement.
- (z) **“IDC”** means simple interest on the Initial Capital determined by applying 6.0% per year calculated Monthly on the average of the Monthly opening and closing balances of such costs and expenses plus accumulated interest from the date such costs and expenses were first paid by Nexen and Carrier up to and including the In Service Date.

- (aa) **"In Service Date"** means the date on which Nexen's Facilities and the Pipeline System are capable of transporting and terminalling, on a sustained basis, a minimum initial throughput of 18,000 Bpd of Crude Oil and Carrier has acquired the Pipeline System.
- (bb) **"Information"** means any documents, written or verbal evidence, arguments or any other information disclosed by a Party for the purposes of the Dispute Resolution Procedure.
- (cc) **"Initial Capital"** means the total costs and expenses of Carrier, Whiting and Nexen for the engineering, construction procurement, legal, consulting and staff costs to complete the installation and commissioning of the Nexen Facilities and the Pipeline System, the estimates of which costs are set out in Section 2.1(a) herein.
- (dd) **"Initial Term"** means, unless this Agreement is terminated sooner in accordance with its terms, a period of four (4) years following the In Service Date.
- (ee) **"Investment Differential"** means a variable per barrel fee paid by Whiting to Nexen each Month of the Initial Term calculated in accordance with the Economic Payout Model.
- (ff) **"Line Fill"** means the volume of Crude Oil used to fill and keep filled the Nexen Facilities and Pipeline System. Line Fill will be purchased from Whiting by Nexen and actual acquisition costs included in the Initial Capital.
- (gg) **"Month"** means the period beginning from the first Day of a calendar month and ending on the beginning of the first Day of the immediately following calendar month.
- (hh) **"Nexen Facilities"** means the Nexen Robinson Lake Facilities and the Nexen Stanley Facilities.
- (ii) **"Nexen Robinson Lake Facilities"** or **"Nexen's Robinson Lake Facilities"** means the Nexen owned and operated truck unloading rack, meter run, 20,000 bbl crude storage tank and associated facilities immediately upstream of the Robinson Lake Station.
- (jj) **"Nexen Stanley Facilities"** or **"Nexen's Stanley Facilities"** means the Nexen owned and operated meter runs, 5,000 bbl crude oil storage tank, truck loading and unloading rack and associated tanks and facilities connected to the Stanley Receiving Station.
- (kk) **"Operating Agreement"** means an agreement between Whiting and Carrier whereby Whiting agrees to provide certain monitoring and

operating services with respect to the Nexen Facilities and the Pipeline System.

- (ll) **“Overdue Rate”** means, on any date, a per annum rate of interest equal to the lesser of:
  - (i) the Prime Rate plus 4%; or
  - (ii) the maximum rate of interest permitted under applicable law.
- (mm) **“Parties”** means the parties to this Agreement and **“Party”** means one of them.
- (nn) **“Person”** includes an individual, a partnership, a corporation, a trust, a joint venture, an unincorporated organization, a union, a government or any department or agency thereof and the heirs, executors, administrators or other legal representatives of an individual.
- (oo) **“Pipeline”** means the 8 inch pipeline approximately 20 miles long, extending from the Robinson Lake Station to the Stanley Receiving Station, including all pipes, valves, meters, pumps, pipeline tankage, equipment, permits and licences, vehicles, monitoring and telecommunication devices, computers, easements, rights of way and any other purchased or leased lands and all other facilities, items, structures and equipment appurtenant thereto purchased by Carrier from Whiting under the Purchase and Sale Agreement; and the additions, alterations or expansions made thereto, from time to time, after the In Service Date.
- (pp) **“Pipeline System”** means the Pipeline, Robinson Lake Station and Stanley Receiving Station, and all facilities and equipment used in connection therewith or appurtenant thereto, and any additions, alterations or expansions made thereto, after the In Service Date.
- (qq) **“Post Facilities Payout”** means any time during the term of this Agreement after Facilities Payout has occurred.
- (rr) **“Post Facilities Payout Pipeline Fee”** has the meaning ascribed thereto, in Section 3.4(c).
- (ss) **“Prime Rate”** means the variable annual rate of interest designated by the Bank of America from time to time as the “prime business rate”.
- (tt) **“Purchase and Sale Agreement”** means the agreement between Whiting and Carrier for purchase of the Pipeline System by Carrier from Whiting.
- (uu) **“Receipt Point”** means the interconnection, as may be established from time to time between Carrier and any other Person where Crude Oil is first accepted into the Pipeline System.

- (vv) **“Related Party”** means, in reference to a Party, the employees, consultants, agents, contractors or subcontractors of that Party or any of its Affiliates.
- (ww) **“Revenue Shortfall”** means the three (3) Month difference between the monies received by Nexen as Whiting Revenue and Third Party Revenue and the expected revenue Nexen was to receive according to the Economic Payout Model.
- (xx) **“Robinson Lake Lease Agreement”** means the agreement between Whiting and Nexen whereby Whiting agrees to lease Nexen the land necessary for Nexen to construct and operate the Robinson Lake Station and the Nexen Robinson Lake Facilities.
- (yy) **“Robinson Lake Station”** means; the Carrier’s originating terminal for the receipt of Crude Oil from Nexen or Third Parties located immediately downstream of the Nexen Robinson Lake Facilities, including certain pipes, valves, meters, pumps, pipeline tankage, equipment, permits and licences, vehicles, monitoring and telecommunication devices, computers, easements, rights of way and any other purchased or leased lands and all other facilities, items, structures and equipment appurtenant to the Robinson Lake Terminal; and any the additions, alterations or expansions made thereto, from time to time, after the In Service Date.
- (zz) **“Shipper”** means any person transporting Crude Oil on the Pipeline System.
- (aaa) **“Stanley”** means Stanley, North Dakota.
- (bbb) **“Stanley Receiving Station”** means the Carrier’s receipt terminal for accepting Crude Oil from the Pipeline for delivery into the Enbridge North Dakota System, located immediately upstream of the Nexen Stanley Facilities, including certain pipes, valves, meters, pumps, pipeline tankage, equipment, permits and licences, vehicles, monitoring and telecommunication devices, computers, easements, rights of way and any other purchased or leased lands and all other facilities, items, structures and equipment appurtenant to the Stanley Receiving Station; and any additions, alterations or expansions made thereto, from time to time, after the In Service Date.
- (ccc) **“Third Party or Third Parties”** means any unaffiliated producer or person; an operator, royalty owner, or working interest owner in a Whiting non-operated property; a Shipper or potential shipper other than Whiting or Nexen.
- (ddd) **“Third Party Pipeline Fee”** means the actual dollar per barrel fee, adjusted for loss allowance, that Nexen or other Third Parties pay Carrier to transport Crude Oil on the Pipeline System.

- (eee) **“Third Party Revenue”** means revenue received by Nexen or Carrier from a Third Party as Third Party Pipeline Fees or Third Party Terminal Fees. Third Party Revenue is applicable in Facilities Payout, Article 1.1(w), only when utilizing surplus Base Whiting Capacity.
- (fff) **“Third Party Terminal Fees”** means the actual dollar per barrel terminalling fees paid by Third Parties to Nexen for use of the Nexen Facilities.
- (ggg) **“Total Operating Costs”** means the sum of the Fixed Operating Costs and the Variable Operating Costs on an annual basis for the Nexen Facilities and the Pipeline System. The Total Operating Costs will be trued up quarterly and at year end with a thirteen month adjustment to all Shippers. Nexen will be responsible for obtaining the fixed and variable operating costs from the Carrier.
- (hhh) **“Total Pipeline Capacity”** means the sum of Base Whiting Capacity and Base Nexen Capacity at any given point in time.
- (iii) **“Variable Operating Costs”** means those actual operating costs incurred on Nexen’s Facilities or the Pipeline System which vary directly with, and in proportion to Shippers’ throughput, including energy and utility costs; provided that Variable Operating Costs shall not be marked up to cover any general and administrative expenses.
- (jjj) **“Whiting’s Pipeline Fee”** means the actual dollar per barrel fee, adjusted for loss allowance, that Nexen or Whiting pays Carrier to transport Whiting’s Crude Oil on the Pipeline System as determined in accordance with Section 2.2(a).
- (kkk) **“Whiting Revenue”** means Whiting’s Pipeline Fee plus Whiting’s Terminal Fees plus the Investment Differential generated on Whiting crude oil volumes from operated properties and/or non operated working interest properties.
- (lll) **“Whiting’s Terminal Fees”** means the actual dollar per barrel terminalling fees paid by Whiting to Nexen, separate from the Whiting’s Pipeline Fee and the Investment Differential for use of the Nexen Facilities as determined in accordance with Section 2.2(a).
- (mmm) **“\$”** means United States’ Dollars unless otherwise specified.
- (nnn) **“this Agreement”, “herein”, “hereto”, “hereof”** and similar expressions mean and refer to this Agreement;

## **1.2 References and Headings**

The references "hereunder", "herein" and "hereof" refer to the provisions of this Agreement, and references to Articles and sections herein refer to articles, sections, or subsections of this Agreement. Any reference to time shall refer to Mountain Standard Time or Mountain Daylight Saving Time during the respective intervals in which each is in force in the State of Colorado. The headings of the Articles, Sections, Schedules and any other headings, captions or indices herein are inserted for convenience of reference only and shall not be used in any way in construing or interpreting any provision hereof.

## **1.3 Singular/Plural; Derivatives**

Whenever the singular or masculine or neuter is used in this Agreement, it shall be interpreted as meaning the plural or feminine or body politic or corporate, and vice versa, as the context requires. Where a term is defined herein, a capitalized derivative of such term shall have a corresponding meaning unless the context otherwise requires.

## **1.4 Payment on Non-Business Day**

If the time required for payment by a Party for amounts owed under this Agreement falls on a Day that is not a Business Day, the time required for such payment shall extend to the next following Business Day. To the extent that interest is calculated for a period ending on a Day that is not a Business Day, the last Day of such period, for the purposes of calculating interest, shall extend to the next following Business Day.

## **1.5 Conflicts**

If there is any conflict or inconsistency between a provision of the body of this Agreement and that of a Schedule or any other document delivered pursuant to this Agreement, the provision of the body of this Agreement shall prevail.

## **1.6 Schedules**

The following Schedules are attached to, form part of and are incorporated in this Agreement:

Schedule "A" -	Economic Payout Model
Schedule "B" -	Crude Buy/Sell Form of Agreement
Schedule "C" -	Whiting Capital Addition Letter

## **ARTICLE 2 FACILITIES**

### **2.1 Determination of Initial Capital**

- (a) The total of the following costs and expenses shall constitute the Initial Capital:

- (i) Whiting's actual engineering, construction, procurement, legal, consulting and staff costs to complete installation and commissioning of the Pipeline and which amounts shall be paid by Carrier to Whiting pursuant to the Purchase and Sales Agreement. The current estimated cost is \$5.7 Million and includes a 10% mark up for Whiting staff time;
  - (ii) Nexen's actual engineering, construction, procurement, legal, consulting and staff costs to complete installation and commissioning of the Nexen Robinson Lake Facilities. The current estimated cost is \$5.0 Million;
  - (iii) Carrier's actual engineering, construction, procurement, legal, consulting and staff costs to complete installation and commissioning of the Robinson Lake Station. The current estimated cost is \$3.2 Million;
  - (iv) Nexen's actual engineering, construction, procurement, legal, consulting and staff costs to complete installation and commissioning of the Nexen Stanley Facilities. The current estimated cost is \$4.1 Million; and
  - (v) Carrier's actual engineering, construction, procurement, legal, consulting and staff costs to complete the installation and commissioning of the Stanley Receiving Station. The current estimated cost is \$3.0 Million.
- (b) The Initial Capital of \$21.0 Million plus IDC and Line Fill for the Pipeline System and Nexen Facilities, shall, in accordance with the Economic Payout Model, be used to calculate the rate(s) payable by Whiting for the first three (3) Months following the In Service Date. The Parties acknowledge that the final amount of Initial Capital will not be determined until after execution of this Agreement and such number may be significantly greater or less than the Parties' estimate of \$21.0 Million.
- (c) Upon the later of three (3) Months after the In-Service Date, or after final actual capital costs for the items set out in Section 2.1(a) are available, the Initial Capital will be finalized and the Economic Payout Model and corresponding rates payable by Whiting revised accordingly.

## **2.2 Facilities Payout**

- (a) The Economic Payout Model shall be used as a forecasting tool to determine Whiting's Pipeline Fee and Whiting's Terminal Fees herein based on the Parties' estimates of Total Operating Costs, volumes and Initial Capital necessary to achieve Facilities Payout within four (4) years from the In Service Date. The Economic Payout Model will be updated in

three (3) Month intervals based on actual Crude Oil throughput, Total Operating Costs, Whiting Revenue and Third Party Revenue. Facilities Payout shall be based on the BTIRR and may occur earlier than four (4) years should actual volumes transported and/or Third Party Revenue exceed initial projections. Facilities Payout shall be carried out in accordance with the following:

- (i) The BTIRR shall be based on the Initial Capital of \$21.0 Million plus IDC plus Line Fill for the Pipeline System and Nexen Facilities; and
  - (ii) The Economic Payout Model will use 18,000 Bpd each year as an initial estimate of Pipeline System throughputs and an estimate of Total Operating Costs based on Nexen's best engineering estimates prior to the In Service Date.
- (b) The Economic Payout Model shall incorporate the BTIRR to determine any Revenue Shortfall. Any Revenue Shortfall for a given Month will be paid by means of the Investment Differential to ensure that the BTIRR of 17.5% is maintained.
  - (c) If there is a Revenue Shortfall at the end of the fourth anniversary of the In Service Date Nexen will invoice Whiting for payment of the Revenue Shortfall which amount shall be paid through a thirteenth Month adjustment.
  - (d) Subject to Section 5.3, all Whiting Revenue and Third Party Revenue shall be used to achieve the Facilities Payout.

### **2.3 Investment Differential**

- (a) In the event of a Revenue Shortfall, Whiting shall pay Nexen the Investment Differential on each barrel of Crude Oil transported on the Pipeline System. The Investment Differential shall, at the commencement of this Agreement, be zero. Its application will be used on a go forward basis when actual volumes transported fall short of the initial estimate of Pipeline System throughputs contained in the Economic Payout Model. To the extent that a Revenue Shortfall occurs as a result of Nexen's gross negligence or wilful misconduct, then Whiting shall not be required to pay any Investment Differential for such portion of the Revenue Shortfall, but the Economic Payout Model shall nevertheless reflect that such Investment Differential was paid for the period in which such gross negligence or wilful misconduct occurred.
- (b) The Investment Differential shall be recalculated Monthly based on the settlement Month's actual average daily throughput of Crude Oil on the Pipeline System to ensure that Monthly revenues are not less than the projected revenues set out in the Economic Payout Model.

**ARTICLE 3  
CRUDE OIL MARKETING**

**3.1 Base Volume Commitment**

- (a) Commencing on the In Service Date, and for a period of not less than four (4) years thereafter, Whiting will sell and Nexen will purchase a minimum of 7,000 Bpd of Crude Oil from Whiting (the “**Base Volume Commitment**”) at the inlet meter of the Nexen Robinson Lake Facilities on a firm commitment basis.
- (b) The purchase price for the Base Volume Commitment, and as applicable, the Expansion Volumes, Pre Facilities Payout, (the “**Base Volume Purchase Price**”), will be:
  - (i) the daily settlement price of the NYMEX near month light sweet crude oil contract as it trades, excluding weekends and holidays, gravity deemed 40 degree API, EDQ, for the Month of delivery;
  - (ii) less the Clearbrook monthly negotiated differential;
  - (iii) less the Investment Differential, if applicable; and
  - (iv) less applicable terminalling, tariffs, other costs and loss allowance on the Enbridge North Dakota System, and loss allowance on the Nexen Facilities and Pipeline System, and less Whiting’s Pipeline Fee and Whiting’s Terminal Fees.
- (c) Any portion of the Base Volume Commitment that cannot be accepted by Enbridge at Stanley prior to either Enbridge’s Phase VI expansion or completion of Enbridge’s Stanley tankage project will, subject to other arrangements between the Parties, be transported by Nexen, via trucks from Nexen’s Stanley Facilities to the nearest Nexen LACT location for delivery into the Enbridge North Dakota pipeline system. All incremental costs beyond the costs in Section 3.1(b) will be borne by Whiting until such time as the Enbridge Stanley Station is able to accept the entire Base Volume Commitment. Upon completion of the Enbridge Phase VI expansion, pricing will revert to Section 3.1(b) above unless unforeseen circumstances at Stanley require trucking to continue.
- (d) Notwithstanding any firm commitments by Whiting to sell, and Nexen to buy, subject to the provisions of Section 3.1(e), the Parties intend for Whiting to deliver 100% of its Crude Oil equity barrels from the Sanish and surrounding fields to the Nexen Robinson Lake Facilities in accordance with the terms and conditions of this Agreement.
- (e) Nexen acknowledges that in some isolated instances, for volumes in excess of the Combined Volumes, there may be cases in which a more

economic transportation alternative is available to Whiting rather than delivery to Nexen's Robinson Lake Facilities. In such cases the Parties shall use reasonable commercial efforts to optimize the transportation of applicable volumes to a particular market. In those situations or other situations where Nexen has additional Enbridge capacity, the Parties will identify such volumes, Whiting will present the third parties bona fide purchase offer, Nexen shall have ten (10) business Days to formally respond to Whiting of its intention to exercise its right to match such offer to purchase the applicable volumes out of the Sanish and surrounding fields.

### **3.2 Phase VI Enbridge North Dakota Expansion Volumes**

- (a) If Nexen obtains additional capacity from the Phase VI Enbridge North Dakota expansion (the "Expansion Volumes") Whiting will have a one time option to increase its volume of Crude Oil purchased by Nexen under this Agreement up to the amount of the Expansion Volumes. To determine the quantity of the Expansion Volumes, Nexen will fix its Enbridge North Dakota existing capacity (the "Nexen Base Enbridge Capacity") at the highest Monthly capacity available to Nexen for the three (3) Months prior to the notification by Enbridge of Nexen being granted the Expansion Volumes. Enbridge has notified Nexen that the Phase VI Enbridge North Dakota expansion will take place over a two Month period of time, through December 2009 and January 2010. Over the period from September to November 2009 The Nexen Base Enbridge Capacity was 16,513 Bpd. The amount Expansion Volumes will be calculated over December 2009 and January 2010 and shall be the difference between Nexen's total allowable nominations post Phase VI expansion less the Nexen Base Enbridge Capacity. The actual quantity of Expansion Volumes will vary on a Month to Month basis due to prorating of the Enbridge North Dakota system.
- (b) At some future date, should Enbridge substantially increase its pipeline capacity, most like through a Phase VII capacity expansion, the Parties agree that the Expansion Volume will be fixed at the highest Monthly capacity available for the three (3) Months prior to the notification by Enbridge of Nexen being granted new capacity. Should the Parties mutually agree, Nexen and Whiting may enter into a new agreement providing for additional purchased volumes that will add to the Combined Volumes.
- (c) If the volume available to Nexen to transport Crude Oil on the Enbridge North Dakota system falls below 16,513 Bpd, the Parties agree that the Expansion Volume will be zero.

**3.3 Buy/Sell Agreement – For Volumes Greater Than The Combined Volume Pre Facilities Payout.**

- (a) To facilitate the movement of Whiting's Crude Oil in excess of the Combined Volumes, the Parties shall, at Whiting's option, enter into a separate buy/sell exchange agreement for transportation from Nexen's Robinson Lake Facilities to Nexen's Stanley Facilities in the form attached hereto as Schedule "B". The terms of the buy/sell exchange agreement shall include the applicable Whiting's Pipeline Fee, Whiting's Terminal Fees and the Investment Differential applicable to the volumes purchased. Nexen will deliver these volumes, less applicable loss allowance, to Whiting at Nexen's delivery meter at Nexen's Stanley Facilities for delivery to Enbridge North Dakota or onto Third Party trucks. Nexen will allocate these volumes to Enbridge by shipper account based on Whiting's nomination to Nexen.

**3.4 Crude Oil Purchase Price Post Facilities Payout**

- (a) Post Facilities Payout the Economic Payout Model will have no further application to this Agreement.
- (b) The purchase price for the Combined Volumes, as applicable, purchased by Nexen from Whiting, Post Facilities Payout, will be:
- (i) the daily settlement price of the NYMEX near month light sweet crude oil contract as it trades, excluding weekends and holidays, gravity deemed 40 degree API, EDQ, for the Month of delivery;
  - (ii) less the Clearbrook monthly negotiated differential;
  - (iii) less applicable terminalling, tariffs, other costs and loss allowance on the Enbridge North Dakota System, and less loss allowance on Nexen Facilities and Pipeline System; and
  - (iv) less the Post Facilities Payout Pipeline Fee.
- (c) Post Facilities Payout, Whiting will pay Nexen a per barrel fee ("Post Facilities Payout Pipeline Fee") of one hundred and fifty percent (150%) of the Nexen Facilities and Pipeline System's Total Operating Costs on the Combined Volumes. The Post Facilities Payout Pipeline Fee, as it is based on actual volumes transported, will be estimated quarterly and reconciled quarterly to account for any shortfall or over-payment. Reconciliation will be based on actual Total Operating Costs versus the estimated total expenses with the over/under charge to be included in the next quarter's estimate Total Operating Costs. The adjusted operating expense estimate in combination with the estimated volume for the forecast quarter will result in the forecast quarter's Post Facilities Payout

Pipeline Fee. Only Whiting operated or non operated working interest Crude Oil may be transported at the Post Facilities Payout Pipeline Fee and all other Crude Oil shall not be subject to this pricing formula. Whiting will provide ownership documentation on all non-operated working interest Crude Oil volumes if requested by Nexen.

**3.5 Buy/Sell Agreement – For Volumes Greater Than The Combined Volume Commitment, Post Facilities Payout.**

- (a) To facilitate the movement of Whiting's Crude Oil in excess of Combined Volumes the Parties shall, at Whiting's option, enter into a separate buy/sell exchange agreement for transportation from Nexen's Robinson Lake Facilities to Nexen's Stanley Facilities in the form attached hereto as Schedule "B". The terms of the buy/sell exchange agreement shall include Post Facilities Payout Pipeline Fee applicable to the volumes purchased. Nexen will deliver these volumes, less applicable loss allowance, to Whiting at Nexen's delivery meter at Nexen's Stanley Facilities for delivery to Enbridge North Dakota or onto Third Party trucks. Nexen will allocate these volumes to Enbridge by shipper account based on Whiting's nomination to Nexen.

**3.6 Title, Possession and Risk**

- (a) Should the Parties enter into buy/sell transportation agreements pursuant to Articles 3.3 or 3.5, title, possession and risk of the Crude Oil shall pass from Whiting to Nexen when the Crude Oil passes over the flange of the inlet meter at Nexen's Robinson Lake Facilities and title, possession and risk of such Crude Oil shall return to Whiting when the Crude Oil passes over the delivery meter at Nexen's Stanley Facilities.
- (b) Subject to Section 3.6(a), title, possession and risk of all Crude Oil purchased by Nexen from Whiting under this Agreement shall pass from Whiting to Nexen when the Crude Oil passes over the flange of the inlet meter at Nexen's Robinson Lake Facility.

**3.7 Under Delivering**

- (a) Whiting acknowledges that Enbridge charges penalties for any failure to deliver a minimum of 90% of the binding nomination put forward to Enbridge Pipeline North Dakota each Month. Should Whiting, at any time during the term of this Agreement, deliver less than 90% of a nominated volume (and such is not due to any failure or default on the part of Nexen or Carrier) and Nexen is charged a penalty by Enbridge in accordance with the applicable Enbridge North Dakota tariff, Whiting shall pay the amount of such penalty to Nexen and Whiting acknowledges that such failure to deliver may, at Nexen's sole discretion, reduce the quantity of Combined

Volumes that Whiting, or Nexen transporting on behalf of Whiting, may transport on the Enbridge North Dakota Pipeline in future Months.

### **3.8 Gathering**

- (a) Whiting shall be responsible for all gathering, transportation, liabilities, expenses and any other cost and expenses, including but limited to environmental and regulatory costs, liabilities and expenses, necessary to transport Crude Oil to the Nexen Robinson Lake Facilities.
- (b) The Parties agree that utilizing the Whiting gathering system to gather and transport Third Party volumes on the Pipeline System is in the mutual interest of all Parties. Subject to individual economic and regulatory considerations the Parties will cooperate and pursue Third Party Crude Oil gathering opportunities within the Sanish area surrounding producing fields.

### **3.9 Specifications**

- (a) All Crude Oil delivered by Whiting to Nexen pursuant to this Agreement shall meet, at a minimum, the specifications for Crude Oil contained in Article 1.1(o) of this Agreement.

## **ARTICLE 4 CAPACITY**

- 4.1** As of the In Service Date the portion of the Base Whiting Capacity that will be available to Whiting shall, subject to normal pipeline variances, be 18,000 Bpd and the Base Nexen Capacity shall be zero (0). The full amount of the Base Whiting Capacity will be made available to Whiting once the Pipeline System and Nexen Facilities' capacity has been increased to 45,000 Bpd pursuant to Section 5.2. Until the full amount of the Base Whiting Capacity is made available pursuant to Section 5.2, the portion of the Base Whiting Capacity that is, from time to time, available will be equal to the capacity of the Pipeline System including related capacity in the Nexen Facilities as it from time to time exists, not less than 18,000 bbl/day and not more than 45,000 bbl/day. Subject to the other provisions of this Agreement, Nexen shall at all times provide or cause to be provided to Whiting, or for the benefit of Whiting, capacity in the Pipeline System as requested by Whiting up to the Base Whiting Capacity and capacity in the Nexen Facilities sufficient to provide Whiting with the Base Whiting Capacity. With respect to the Nexen Facilities, Whiting shall have priority over any other Third Party as to the capacity in the Nexen Facilities up to the Base Whiting Capacity.
- 4.2** Subject to the other provisions of this Agreement, should Whiting be prohibited from transporting Crude Oil using the Base Whiting Capacity, but otherwise is ready, willing and able to transport said volume, Nexen shall provide alternate means for transporting those volumes and Whiting will only pay the maximum

equivalent transportation fees that would otherwise be payable if such volumes were transported on the Pipeline System and Nexen Facilities.

- 4.3 The Parties agree that should a situation arise whereby Nexen has invested in a Capital Addition pursuant to Section 5.3 and both Parties have resulting excess capacity, should a Third Party approach Nexen for transportation services the Nexen excess capacity shall be utilized before the Whiting excess capacity.
- 4.4 In order for Whiting to transport up the volume of Crude Oil allowed under this Agreement at any given point in time, through the Nexen Facilities and Pipeline System, Whiting must have, or arrange to have through Third Party purchasers or shippers, and equivalent takeaway capacity on the Enbridge North Dakota system otherwise Whiting will be responsible for any costs related to alternate transportation.
- 4.5 Three (3) years following the In Service Date, the Base Whiting Capacity will be reduced if the actual average daily volume of Crude Oil transported by Whiting, or for the benefit of Whiting, on the Pipeline System in the final three (3) Months of the third year of operation is less than 45,000 Bpd. In determining the average daily volume of Crude Oil, periods during which either Party, or Carrier, is incurring conditions of Force Majeure, or periods during which either Nexen or Carrier fails or is unable to receive, transport or deliver Crude Oil shall be excluded. The reduction will be 50% of the difference between 45,000 Bpd and actual average daily volume in the final three (3) Months of the third year (the "Adjusted Volume"). In subsequent years the same calculation will be applied on an annual basis to calculate the amount of Adjusted Volume going forward. Nexen shall have exclusive use of all Adjusted Volume for the remainder of the term of this Agreement.

4.6 **Proration of Pipeline System**

This Agreement and all obligations on Nexen to transport Crude Oil are subject to any proration or apportionment of the Enbridge's facilities or the Pipeline System done or carried out in accordance with the approved tariffs, rules, and regulations or orders from FERC or any Authorized Authority or any event of Force Majeure, normal system outages and planned and unplanned maintenance.

**ARTICLE 5  
CAPITAL ADDITIONS**

- 5.1 From time to time, Whiting may request a Capital Addition intended to more economically or efficiently utilize the Base Whiting Capacity. Any such request from Whiting shall be in writing and shall be accompanied with reasonable detail in respect of the proposed Capital Addition, including the location of same and any other detail reasonably requested by Nexen. The Parties shall meet to determine the costs of such Capital Addition and the effect on the Economic

Payout Model. Upon the agreement of the Parties, Nexen shall proceed with the Capital Addition.

- 5.2 Whiting has requested that Nexen initiate a Capital Addition to increase the capacity of the Pipeline System and Nexen Facilities to 45,000 Bpd, subject to normal pipeline variances. Attached hereto as Schedule "C" is a letter from Whiting to Nexen requesting such Capital Addition. Upon completion of this Capital Addition, which the Parties estimate shall occur by January 1, 2011 but may occur later, the amount of Base Whiting Capacity available to Whiting shall be increased to 45,000 Bpd. All incremental capital, IDC, Line Fill and operating costs associated with this Capital Addition shall be added to the Economic Payout Model at the time such costs are incurred and shall be paid out over a maximum four (4) year term at the same rates as prescribed in Section 2.2.
- 5.3 From time to time, Nexen may, by itself or on behalf of a Third Party, initiate a Capital Addition that will increase the capacity of the Pipeline System or Nexen Facilities by 15,000 Bpd and any costs associated with such Capital Addition shall be borne by Nexen or the applicable Third Party. The resulting capacity shall be considered Base Nexen Capacity and all Third Party Revenue generated from this Capital Addition will not be included in the Economic Payout Model.

## **ARTICLE 6 PAYMENT AND AUDIT PROCEDURES**

### **6.1 Invoice and Payment**

- (a) Not later than 15 Days following the end of any Month, Nexen shall prepare and deliver to Whiting a statement (the "**Monthly Statement**") detailing all amounts payable in respect of this Agreement with sufficient particulars including, but not limited to, revenues to be used towards Facilities Payout. Where all of the information required to render a Monthly Statement is not available at the time such Monthly Statement is to be delivered, Nexen will prepare such Monthly Statement using commercial reasonable estimates and shall thereafter make any necessary adjustments in the Monthly Statement following the date that actual information becomes available. The Monthly Statement shall detail all amounts due Whiting hereunder and all amounts due Nexen hereunder, with a net amount shown and showing the Party owing the net amount.
- (b) The net amount owing in respect of any Monthly Statement shall be due on the 20<sup>th</sup> Day of the Month following the Month to which such Monthly Statement relates.
- (c) In the event of any Dispute pertaining to any invoice, the invoiced Party shall remain obligated to pay its invoiced amount as set forth above; provided that Whiting shall be entitled to withhold payment on significant items or amounts which are in dispute upon obtaining Nexen's written

consent, which consent shall not be unreasonably withheld or denied. In the event such Dispute cannot be settled, such matter shall be submitted for resolution pursuant to the Dispute Resolution Procedure;

- (d) The Monthly Statement shall be payable in full for each Month of the Term whether or not Whiting actually nominates or delivers any Crude Oil for transportation on Nexen's Facilities or the Pipeline System during such Month;
- (e) The failure to include any charge associated with Nexen's Facilities or the Pipeline System in any invoice rendered for the period in which the same was incurred shall not preclude such charge from being brought forward and included in any subsequent invoice; provided that no such charge shall be brought forward later than 24 Months subsequent to the Month in which such charge was incurred; and
- (f) The Monthly Statement shall be prorated on a daily basis if the In Service Date does not occur at the beginning of a Month.

All amounts payable hereunder shall be made by wire transfer by the Party owing to the other Party.

If the net amount is owed to Nexen, Whiting shall make payment to following account of Nexen or to such other account as Nexen may from time to time designate by notice in writing pursuant to Article 15:

Financial Institution: Bank of America  
Address: 100 West 33<sup>rd</sup> Street NY, NY

Transit Number: 026009593  
Account Number: 1233907845

If the net amount is owed to Whiting, Nexen shall make payment to following account of Whiting or to such other account as Nexen may from time to time designate by notice in writing pursuant to Article 15:

Financial Institution: JP Morgan Chase Bank, National Association  
Address: 1125 17<sup>th</sup> Street Denver CO, 80202

Transit Number: 102001017  
Account Number: 192493417

## **6.2 Annual Reconciliation**

- (a) On or before the 15th Day of the third Month following each 12 Month period following the In Service Date, Nexen shall provide Whiting with an invoice or refund as the case may be equal to the Revenue Shortfall for the applicable year as calculated in accordance with the Economic Payout Model and the actual costs and revenue generated in subject year.
- (b) Post Facilities Payout Nexen will invoice or refund Whiting for the difference in the actual and estimated Post Facilities Payout Fee, if any, as calculated in accordance with Economic Payout Model.

## **6.3 Interest on Overdue Amounts**

If a Party fails to pay when due any amount payable by it under or in respect of this Agreement, the unpaid balance of said amount shall accrue interest at the Overdue Rate from the date payable until the date on which the unpaid amount is paid in full. The obligation to pay interest at the Overdue Rate is to apply until all amounts plus accrued interest have been paid before and after any judgment. In addition, a Party's obligation to pay interest pursuant to this Section 6.3 shall not be construed as limiting any other rights or remedies which the other Party may have, whether under this Agreement, at law, in equity or otherwise, as a result of a Party's failure to pay any amount when due.

## **6.4 Audit Procedure**

- (a) Either Party, upon reasonable notice to the other Party, shall have the right to audit the books, accounts and records maintained by such other Party regarding this Agreement and/or the calculation of Fees payable hereunder. Such audits shall not be conducted more frequently than once annually. The right to audit shall be subject to the obligations of confidentiality that the Party subject to the audit may have with third parties which may require the audit being performed by an independent auditor ("Third Party Auditor") who will confirm that the Party subject to the audit is in compliance with its obligations under this Agreement. The Third Party Auditor must agree not to disclose any details of the third party confidential information to the Party requesting the audit.
- (b) The Party being audited shall respond in writing to any claims by the auditing Party of non-compliance or discrepancies noted by such auditing Party in its audit of this Agreement or Fees, as applicable, and books, accounts and records within three (3) Months of receipt of such claims. Not later than the expiry of the three (3) Month period, the Parties shall forthwith commence to rectify any claims of non-compliance.

**ARTICLE 7  
LINE FILL**

**7.1 Provision of Line Fill**

Nexen and Carrier will provide the Line Fill by purchasing the Line Fill from Whiting under the Purchase and Sale Agreement. The capital costs of the Pipeline System Line Fill and Nexen Facilities Line Fill will be included in the Initial Capital used in the Economic Payout Model. Whiting acknowledges and agrees that Nexen or Carrier, as the case may be, shall own and have title to all Line Fill.

**ARTICLE 8  
LIABILITIES AND INDEMNIFICATION**

**8.1 Whiting Indemnity**

Whiting shall indemnify and save harmless Nexen from and against any and all liabilities, losses, costs, claims or damages of any nature (including, without limitation, legal costs on a solicitor and his own client basis) (collectively, the "Liabilities") suffered or incurred by Nexen, its Affiliates and Related Parties (whether directly or by virtue of a Third Party claim) arising:

- (a) out of or related to a failure of Whiting to deliver Crude Oil in accordance with the specifications set out in this Agreement; or
- (b) out of or related to Crude Oil prior to delivery of such Crude Oil to Nexen at the flange of the inlet meter of Nexen's Robinson Lake Facilities;

provided that the indemnification provided by Whiting to Nexen pursuant to this Section 8.1 shall not apply to, and Whiting shall have no liability in respect of, those Liabilities which arise from or relate to the gross negligence or wilful misconduct of Nexen.

**8.2 Nexen Indemnity**

Nexen shall indemnify and save harmless Whiting from and against any and all Liabilities suffered or incurred by Whiting, its Affiliates and Related Parties (whether directly or by virtue of a Third Party claim) arising out of or related to Crude Oil after its delivery to Nexen at the flange of the inlet meter of Nexen's Robinson Lake Facilities provided that the indemnification provided by Nexen to Whiting pursuant to this Section 8.2 shall not apply to, and Nexen shall have no liability in respect of, those Liabilities which arise from or relate to the gross negligence or wilful misconduct of Whiting.

**ARTICLE 9  
FORCE MAJEURE**

- 9.1** In the event either Party is rendered unable, wholly or in part, by Force Majeure to carry out its obligations under this Agreement, upon such Party giving notice and full particulars of the event of Force Majeure in writing to the other Party, it is agreed that the obligations of the Party declaring Force Majeure shall be suspended during the event of Force Majeure, but for no longer period.
- 9.2** A Party that fails to perform any obligation under this Agreement where such failure is caused by an event of Force Majeure shall promptly remedy the cause of the Force Majeure insofar as it is reasonably able to do so; provided that, 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.
- 9.3** Notwithstanding Section 9.1, no event of Force Majeure shall relieve a Party from (i) any obligation pursuant to this Agreement unless it gives written notice with reasonable promptness of such event to the other; (ii) any obligation pursuant to this Agreement after the expiration of a reasonable period of time within which, by the use of its due diligence, it could have remedied or overcome the consequences of such event of Force Majeure; or (iii) its obligations under this Agreement to make payment to the other Party.

**ARTICLE 10  
TERM AND TERMINATION OF AGREEMENT**

**10.1 Term of Agreement**

- (a) This Agreement shall become effective on the In Service Date and shall continue in full force and effect for the Initial Term.
- (b) Whiting shall have an option to extend this Agreement for one additional four (4) year term (“**Renewal Term**”) on the same terms and conditions as contained in this Agreement.
- (c) Whiting may elect to extend the Renewal Term for subsequent one (1) year evergreening periods, on the same terms and conditions as contained in this Agreement (“**Extension Term**”).
- (d) The option to extend set forth in Sections 10.1(b) and 10.1(c) shall be deemed to have been exercised by Whiting unless notice not to renew has been given to Nexen at least 180 Days prior to the expiration of the last day of the Initial Term or any subsequent Renewal Term (the term so expiring being a “**Terminating Term**”).

- (e) This Agreement shall terminate pursuant to the terms hereof or on occurrence of the expiry of the Initial Term, Renewal Term, or Subsequent Renewal Terms as applicable.
- (f) Nexen may terminate this Agreement on sixty (60) Days' written notice to Whiting at any time after the Facilities Payout date if no Crude Oil has been transported on the Pipeline System by Whiting or a Third Party for a consecutive period of 120 Days.

## **10.2 Survival of Obligations**

Except as specifically provided herein, the termination or expiry of this Agreement shall not release any Party from any liability which arose or accrued hereunder prior to or on such termination or expiry. Notwithstanding the expiration or termination of this Agreement, the provisions of Articles 6, 8, 11 and 13 shall survive for such period as necessary to give effect thereto.

## **10.3 Post-Termination**

In the event of a termination of this Agreement pursuant to the provisions hereof, then, notwithstanding any term herein to the contrary, each Party shall pay all amounts due and accruing due by it to the other Party up to the date of termination or expiry, and the Parties shall take all steps as may be reasonably required to complete any final accounting between them and to provide, if applicable, for the completion of any other matter contemplated by this Agreement.

# **ARTICLE 11 CONFIDENTIALITY AND PRESS RELEASES**

## **11.1 Confidentiality**

Nexen and Whiting shall keep confidential all information records and documents disclosed to each other, their affiliates and agents relating to this Agreement, and the Agreement itself, throughout the term of this Agreement.

- (a) The provisions of Section 11.1 will not apply to disclosures of confidential information pursuant to securities reporting requirements imposed on a Party or one or more of its Affiliates pursuant to applicable law.
- (b) The provisions of this Article 11 shall survive for 2 years following the expiration or termination of this Agreement in its entirety.

## **11.2 Parties To Discuss Press Releases**

The Parties shall cooperate in relaying information concerning this Agreement and the transactions herein provided for, and shall furnish to, discuss with, and obtain written approval from the other Parties for drafts of all press and other releases prior to

publication, which approval may not be unreasonably withheld or delayed; provided that nothing contained herein shall prevent a Party, at any time, from furnishing any information to any Authorized Authority or to the public if required by applicable law.

## **ARTICLE 12 WARRANTIES AND REPRESENTATIONS**

### **12.1 Representations of the Parties**

Each Party represents and warrants to and in favour of the other Parties that as of the date of this Agreement:

- (a) **Standing:** It is a corporation or partnership, duly organized, validly existing under the laws of its jurisdiction of formation, and duly registered and authorized to carry on business in the state of Colorado.
- (b) **Requisite Authority:** It has the requisite corporate or other capacity, power and authority to execute this Agreement and the other agreements and documents required to be delivered hereby and to perform the obligations to which it thereby becomes subject.
- (c) **Execution and Enforceability:** It has taken all necessary corporate or other actions to authorize the execution, delivery and performance of this Agreement, including the transactions contemplated herein in accordance with the provisions of this Agreement.
- (d) **Litigation:** There are no actions, suits or proceedings pending or, to its knowledge, threatened against it or any of its Affiliates seeking relief which would prevent or materially hinder the consummation of the transactions contemplated by this Agreement.

### **12.2 Representations of Nexen**

Nexen represents and warrants to and in favour of Whiting that:

- (a) **Capacity:** Subject to Force Majeure the daily volumetric handling capability of Nexen's Facilities, the Pipeline, the Robinson Lake Station and the Stanley Receiving Station shall at all times be not less than the Total Pipeline Capacity of the Pipeline System.
- (b) **Operating Pressure:** The operating pressure of Nexen's Facilities shall, subject to Force Majeure, at all times during operations be sufficient to deliver minimum of the Base Whiting Capacity of Crude Oil to the Carrier or Enbridge Pipeline as of the In Service Date.

**ARTICLE 13**  
**DISPUTE RESOLUTION PROCEDURE**

**13.1 Purpose and Sequence of Dispute Resolution**

In the event of any Dispute arising, the Parties to the Dispute (the “Disputing Parties”) will undertake the following steps to promote resolution of such Dispute in the following order:

- (a) first, by negotiation; and
- (b) second, by arbitration.

**13.2 Confidentiality**

All Information disclosed by a Party for purposes of settlement, negotiation or arbitration shall be treated as confidential and neither the delivery nor disclosure thereof shall represent any waiver of privilege by a Party disclosing the same. Each Disputing Party agrees to not disclose Information provided by the other Party for purposes of this Article 13 to any other Person for any other purpose, and such Information cannot be used in any subsequent proceedings without the consent of the Party who has made disclosure of the same hereunder. The Disputing Parties agree that any negotiator or arbitrator appointed hereunder shall not be subpoenaed or otherwise compelled as a witness in any proceedings for any purpose whatsoever in relation to any matter that is a subject of this Agreement. Nothing in this Article shall cause or require a Disputing Party to disclose Information that is subject to confidentiality provisions with third Persons.

**13.3 Negotiation**

Upon the written request of a Disputing Party by giving notice thereof to the other Disputing Parties, any Dispute shall be immediately referred to representatives of the Disputing Parties for negotiation and resolution, each Disputing Party being represented by one individual who had no direct operational responsibility for the matters comprising the Dispute and who is authorized to settle the Dispute (the “Negotiating Representatives”). The Negotiating Representatives shall within 10 Business Days of receipt of such notice meet and attempt in good faith, to resolve the Dispute.

**13.4 Failed Negotiation**

If the Negotiating Representatives cannot resolve the Dispute within 10 Business Days after their first meeting, then the Dispute shall be referred to arbitration, to be conducted in accordance with the provisions of this Article 13.

**13.5 Arbitration Location and Rules**

Arbitrations shall take place in Denver, Colorado. Arbitrations shall be conducted in accordance with the American Arbitration Association Rules (the “Arbitration Rules”) of the ADR Institute of the USA, Inc.

### **13.6 Appointment of Arbitration Panel**

There shall be three arbitrators (the "Arbitration Panel") appointed in accordance with the Arbitration Rules.

Each member of the Arbitration Panel shall sign a declaration attesting as to his or her impartiality with respect to the Disputing Parties and to the Dispute.

Each member of the Arbitration Panel shall have training or experience in serving as an arbitrator, and shall have legal training if the Dispute involves legal issues and shall, in any event, be qualified by education and experience to rule on the matters raised by the Dispute.

### **13.7 Arbitration Procedure**

The Disputing Parties shall agree in advance as to the manner in which the Arbitration Panel shall promptly hear witnesses and arguments, review documents and otherwise conduct the arbitration procedure. Failing agreement between the Disputing Parties and within 5 Business Days from the date of appointment of the Arbitration Panel, the Arbitration Panel shall set the procedure and promptly commence and expeditiously conduct the arbitration proceedings.

Subject only to the express agreement by the Disputing Parties to amend the date for Decision, the Arbitration Panel shall be directed to issue a Decision in writing within 45 Days from the date of the appointment of the Arbitration Panel.

Nothing in this Section 13.7 shall prevent a Disputing Party from applying to the Court for equitable relief pending the Decision.

### **13.8 Arbitration Decision**

The decision (the "Decision") of the Arbitration Panel shall be given in writing, and shall be final and binding on the Disputing Parties and not subject to any appeal and shall deal with the question of costs of arbitration and all other related matters.

If an award forms a part of a Decision, then any award rendered may be entered in any court having jurisdiction, or application may be made to such court for a judicial recognition of the award or an order of enforcement thereof, as the case may be.

### **13.9 Costs**

Each Disputing Party shall bear its respective costs incurred in connection with the negotiation and arbitration procedures set out in this Article 13 and the fees and expenses of the Arbitration Panel, and the costs of the facilities required for the arbitration shall be awarded at the discretion of the Arbitration Panel.

### **13.10 Court Proceedings**

Notwithstanding Section 16.1, if the Dispute involves a matter that will have a financial effect of \$10,000,000 or more upon Whiting or Nexen, such matter may, at the election of either Whiting or Nexen, be brought before the federal or state courts located in Denver, Colorado, at first instance. Where a disagreement arises concerning whether a Dispute satisfies the \$10,000,000 threshold, such matter may, at the election of either the affected Shipper or Nexen referred to the Court for resolution.

## **ARTICLE 14 ASSIGNMENT**

### **14.1 Assignment to Affiliates**

Notwithstanding the remaining provisions of this Article 14, any Party may assign all or an undivided part of its interest in this Agreement to one of its Affiliates; provided that the assigning Party shall remain responsible to the other Parties for the performance of its obligations under this Agreement unless otherwise agreed.

### **14.2 Assignment by Nexen**

Nexen may assign the entirety of its interest in this Agreement to a Third Party (who is not an Affiliate) upon written consent from Whiting such consent not to be unreasonably withheld; provided, however, that the assignee of this Agreement or an Affiliate of the assignee of this Agreement must also, at the same time, receive an assignment of the Nexen Facilities, the Pipeline, the Robinson Lake Station and the Stanley Receiving Station, and such assignee or an Affiliate of the assignee shall also be assigned and assume the Robinson Lake Lease Agreement. Nexen may not sell or transfer all or any portion of the Nexen Facilities unless Nexen, at the same time, assigns a corresponding interest in this Agreement in accordance with the provisions set forth above. Nexen shall ensure that any such assignee of this Agreement shall enter into an enforceable assignment and novation agreement whereunder the assignee shall, from and after the effective date of the assignment, agree to assume and be bound by all of the obligations of Nexen hereunder. Further, any such assignment by Nexen can only be to a party that, in the reasonable opinion of Whiting, has the financial capability to carry out Nexen's obligations under this Agreement, or has provided Whiting with adequate financial performance assurance.

### **14.3 Assignments by Whiting**

Whiting may assign all or a part of its interest in this Agreement to a Third Party (who is not an Affiliate) upon written consent from Nexen, such consent not to be unreasonably withheld. Whiting shall ensure that any such assignee of this Agreement shall enter into an enforceable assignment and novation agreement with Nexen whereunder the assignee shall, from and after the effective date of the assignment, agree to assume and be bound by all of the obligations of Whiting hereunder to the extent of the assignment. Except as contemplated in Section 14.1 herein, any such assignment by Whiting can only be to a

party that, in the reasonable opinion of Nexen, has the financial capability to carry out Whiting's obligations under this Agreement, or has provided Nexen with adequate financial performance assurance.

#### **14.4 Deemed Consent**

Where, pursuant to any provision of this Article 14, prior written consent by a Party is required to an assignment; such Party shall be deemed to have consented to such assignment if such Party does not object to the assignment within 30 Days of receipt of notice thereof.

### **ARTICLE 15 SERVICE OF NOTICE**

#### **15.1 Notices**

Notwithstanding anything to the contrary contained herein, all notices required or permitted hereunder shall be in writing. Any notice to be given hereunder shall be deemed to be served properly if served in any of the following modes:

- (a) personally, by delivering the notice to the Party on which it is to be served at that Party's address for service. Personally served notices shall be deemed to be received by the addressee when actually delivered as aforesaid, provided that such delivery shall be during normal business hours on any Business Day. If a notice is not delivered on a Business Day or is delivered after the addressee's normal business hours, such notice shall be deemed to have been received by such Party at the commencement of the addressee's first Business Day next following the time of the delivery; or
- (b) by facsimile (or by any other like method by which a written message may be sent) directed to the Party on which it is to be served at that Party's address for service. A notice so served shall be deemed to be received by the addressee when actually received by it, if received within normal business hours on any Business Day or at the commencement of the next ensuing Business Day following transmission if such notice is not received during business hours.

#### **15.2 Addresses for Notices**

The address and facsimile number for service of notices hereunder of each of the Parties shall be as follows:

In the case of Nexen:

Attention: Barry Garvin, Suite 230, 5660 Greenwood Plaza Blvd.,  
Greenwood Village, Colorado, USA 80111

Facsimile: 1 (303) 850-2537

In the case of Whiting:

Attention: Chuck Lacouture, 1700 Broadway, Suite 2300  
Denver, CO 80202  
Facsimile: 1 (303) 860-7670

A Party may change its address and facsimile number for service by notice to the other Party, and such changed address for service thereafter shall be effective for all purposes of this Agreement.

## **ARTICLE 16 MISCELLANEOUS PROVISIONS**

### **16.1 Waiver of Breach of this Agreement**

With respect to a misrepresentation or breach of warranty made by a Party or the failure by a Party to perform or observe any of the covenants to be performed by such Party hereunder:

- (a) no waiver by a Party of any provision, or the breach of any provision, of this Agreement will be effective unless it is contained in a written instrument duly executed by the authorized officers or representatives of the Party hereto, and such written waiver will affect only the matter specifically identified in the instrument granting the waiver and will not extend to any other matter, provision or breach;
- (b) the failure of a Party to give notice to any other Party or to take any other steps in exercising any right, or in respect of the breach or non-fulfillment of any provision of this Agreement, will not operate as a waiver of that right, breach or provision nor will any single or partial exercise of any right preclude any other or future exercise of that right or the exercise of any other right, whether in law or in equity or otherwise; and
- (c) acceptance of payment by a Party after the breach or non-fulfillment of any provision of this Agreement by another Person will not constitute a waiver of the provisions of this Agreement, other than the breach cured by such payment.

### **16.2 No Amendment Except In Writing**

This Agreement may be amended only by written instrument executed by the Parties.

### **16.3 Costs and Expenses**

Except as specifically provided herein, each Party will bear the fees and disbursements of their respective lawyers, accountants and consultants engaged in connection with the preparation of this Agreement and any and all agreements, instruments, documents or other writings to be executed and delivered pursuant hereto and all other costs and expenses incurred in connection herewith and therewith.

### **16.4 Further Assurances**

From time to time, each Party will, at the reasonable request of the another Party, take all action, do all such acts and execute and deliver all agreements, instruments, documents or other writings desired or required by such other Party so as to fully perform or carry out the terms, intents or purposes of this Agreement.

### **16.5 Governing Law; Attornment; Etc.**

This Agreement shall be governed by, and construed and enforced in accordance with the laws of the state of Colorado, excluding any conflicts of law rules that would apply the laws of another jurisdiction.

The Parties irrevocably:

- (a) submit and attorn to the exclusive jurisdiction of the courts of the state of Colorado for all matters arising out of or relating to this Agreement, or any of the transactions contemplated hereby;
- (b) waive all right to object to jurisdiction of such courts in any legal action or proceeding relative to this Agreement or the transactions contemplated hereby or execution of any judgment, order or decree issued in or as a result of any such action, suit or proceeding which they may now or hereafter have by reason of domicile or otherwise;
- (c) waive any objection to the laying of venue in such courts of any of the aforesaid actions, suits or proceedings arising out of or in connection with this Agreement or the transactions contemplated hereby;
- (d) waive and agree not to plead or claim that any action, suit or proceeding in such courts has been
- (e) brought in an inconvenient forum; and
- (f) waive any right they may have to, or to apply for, trial by jury in connection with any matter, action, proceeding, claim or counterclaim arising out of or relating to this Agreement or any of the transactions contemplated hereby.

#### **16.6 Supersedes Earlier Agreements**

Except for the Pipeline Purchase and Sale Agreement, the Robinson Lake Lease Agreement and the Operating Agreement, this Agreement constitutes the whole and entire agreement among the Parties in connection with the transactions contemplated herein and cancels and supersedes any prior agreements, undertakings, declarations, commitments, representations, written or oral, in respect thereof, and there are no express or implied terms, conditions, agreements, undertakings, declarations, commitments, representations or warranties or other duties (legal, equitable, fiduciary or in tort) whatsoever among the Parties not expressly provided for in this Agreement.

#### **16.7 Successors and Assigns**

This Agreement will be binding upon and will enure to the benefit of the Parties hereto and their respective successors and permitted assigns.

#### **16.8 Counterpart Execution**

This Agreement and any document or instrument to be executed and delivered by the Parties hereunder or in connection herewith may be executed and delivered in separate counterparts and delivered by one Party to the other by facsimile, each of which when so executed and delivered shall be deemed an original and all such counterparts shall together constitute one and the same agreement.

#### **16.9 Condition Precedent**

It is a condition precedent to the commencement of the Parties' obligations hereunder that the Pipeline Purchase and Sale Agreement and Robinson Lake Lease Agreement be fully executed and delivered concurrently with the execution and delivery of this Agreement.

#### **16.10 Preparation of Document**

The language used in this Agreement is the product of all Parties' efforts and each Party waives the benefit of any rule of contract construction which construes a document against the drafter of that document.

#### **16.11 No Indirect Damages**

In no event shall either Party be liable to the other for an indirect, incidental, special or consequential damages (including, without limitation, loss of revenue or profit or loss of use of property) arising out of or in connection with this Agreement, howsoever caused, whether arising in contract, tort, strict liability or any other form of legal theory.

**16.12 Entire Agreement**

The provisions contained in any and all documents and agreements collateral hereto shall at all times be read subject to the provisions of this Agreement and, in the event of conflict, the provisions of the Agreement shall prevail. No amendments shall be made to this Agreement unless in writing, executed by the parties. This Agreement supersedes all other agreements, documents, writings and verbal understandings between the parties and expresses the entire agreement of the parties with respect to the subject matter hereof.

**16.13 Independent Contractors**

Nexen and Whiting are independent contracting parties and nothing in this Agreement shall be construed to consider the relationship between the parties as a joint venture or to make either Party the agent or legal representative of the other for any purpose whatsoever, nor shall it grant any authority to assume or to create any obligation on behalf of or in the name of the other.

**16.14 Time of Essence**

Time shall be of the essence in this Agreement. Without limiting the generality of the foregoing, each Whiting shall construct the Pipeline and Nexen shall construct the Nexen Facilities with reasonable dispatch.

**16.15 Invalidity of Provisions**

In case of the provisions of this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

**16.16 Confidentiality and Public Announcements**

The parties each acknowledge that during the course of the service relationship between Nexen and Whiting, each Party will have access to and become acquainted with certain information of the other that would reasonably be considered confidential information. The Parties each agree to treat as confidential all such information, and agree not to make any use or disclosure of any such confidential information to any Third Party either during or after termination of this Agreement, except as authorized in writing by the other Party. This clause shall survive the expiry or termination of this Agreement for a term of two (2) years. Nothing in this Agreement shall obligate a Party to disclose confidential information to the other Party. Nothing contained herein shall prevent a Party at any time from furnishing information (i) to any governmental agency or regulatory authority or to the public if required by applicable law or stock exchange, provided that the Parties shall advise each other in advance of any public statement which they propose to make; or (ii) to procure the consent of lenders. Further, nothing contained herein shall prevent a Party from disclosing a copy of this Agreement to any Third Party provided such disclosure is part of a sale of all or substantially all of that Party's business. Whiting acknowledges

that Nexen cannot release any information to Whiting regarding other Shipper's business on Nexen's or Carrier's facilities.

**IN WITNESS WHEREOF** the parties have executed this Agreement as of the day and year first above written.

**NEXEN MARKETING USA INC.**

**WHITING OIL AND GAS CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

Execution Version

**Schedule "A" Economic Payout Model**