

**OPERATING AGREEMENT FOR HYDROCARBON STORAGE**

**STATE OF LOUISIANA**

**PARISH OF EAST BATON ROUGE**

THIS Operating Agreement (this “**Agreement**”), is entered into on the \_\_\_\_ day of \_\_\_\_\_, 2020 (“**Agreement Date**”), by and between:

- (1) The State of Louisiana (“**State**”) acting through its authorized agent, the Louisiana State Mineral and Energy Board (“**Board**”), represented and undersigned by \_\_\_\_\_ duly authorized and whose mailing address is Post Office Box 2827, Baton Rouge, Louisiana 70821-2827; and
- (2) Gulf South Pipeline Company, LLC (formally known as “Gulf South Pipeline Company, LP”; herein referred to as “**Gulf South**” or “**Operator**”; and further defined below), represented herein by \_\_\_\_\_, duly authorized and whose mailing address is 9 Greenway Plaza, Suite 2800, Houston, Texas 77046.

In this Agreement, the State and Gulf South may be referred to collectively as the “**Parties**” and individually as a “**Party**.”

**WITNESSETH:**

**WHEREAS**, the State is the owner of the entirety of the surface, storage, and mineral rights in, on, and under the tract of land or water bottoms located in Bossier and Bienville parishes, Louisiana, more fully described below and in Exhibit “B” attached hereto as a part hereof; and

**WHEREAS**, Gulf South operates certain underground natural gas storage and transportation facilities, together with other appurtenant facilities relative thereto, located in Bossier and Bienville parishes, Louisiana; and

**WHEREAS**, on or about April 13, 1966, and June 7, 1966, Ellen Bryan Moore, Register of the State Land Office of the State of Louisiana, acting under authority of Chapter 10 of Title 41 of the Louisiana Revised Statutes of 1950, as amended, and other applicable laws, and acting for and on behalf of the State of Louisiana as Lessor, executed the Underground Storage Lease No. 470, recorded in Conveyance Book 406, Entry No. 188296, of the records of Bossier Parish and recorded in Conveyance Book 278, Entry No. S-4259, of the records of Bienville Parish and the Underground Storage Lease No. 471, recorded in Conveyance Book 285, Page 104, Entry No. S-6750, of the records of Bienville Parish (“**State Leases**”), to United Gas Pipe Line Company (“**United Gas**”) for a term of twenty five (25) years, with a right and option to extend for a period not to exceed twenty five (25) years; and

**WHEREAS**, the State Leases were granted for the purpose of introducing or injecting natural gas or other gases or vapors into that certain geological stratum or formation, generally known or referred to as the Pettit Formation, occurring between a depth of 5,030 feet and a depth of 5,430

feet beneath the surface in the general vicinity of Property A and Property B (“**Storage Reservoir**”); and

**WHEREAS**, Gulf South succeeded United Gas’s right, title, and interest in and to the State Leases and the wells, Improvements & Equipment thereon; and

**WHEREAS**, the State Leases expired by their own terms and were released by Gulf South; and

**WHEREAS**, the Operator, plans to continue storage operations of the Gulf South Facility (defined below) utilizing the Storage Reservoir underlying Property A and Property B; and

**WHEREAS**, pursuant to La. R.S. 30:209, the State has the authority, upon a two-thirds vote of the members of the Board and after a public hearing conducted in the affected parish pursuant to La. R.S. 30:6, to enter into operating agreements whereby the State receives a share of revenues from the storage of hydrocarbons in whole or in part, as may be agreed upon by the Parties, in those situations where the Board determines it is in the best interest of the State either in equity or in the promotion of conservation to do so. The Board’s authority expressly extends to, but is not limited to, establishing a contractual agreement on unleased acreage to promote utilization of the State’s resources for storage. Further, pursuant to La. R.S. 30:209, the Board may do all other things that may appear to be necessary or desirable; and

**WHEREAS**, pursuant to La. R.S. 30:135, the Department of Natural Resources (“**DNR**”), through the Office of Mineral Resources (“**OMR**”) shall provide the necessary staff functions to assist the board in its leasing, supervisory, and other activities; and

**WHEREAS**, in consideration for this Agreement, Gulf South agrees to pay the State storage arrearages covering the time period between expiration of the State Leases until the Effective Date (defined below) of this Agreement, as well as, additional payments as set forth and agreed upon herein; and,

**WHEREAS**, the Parties now enter into this Agreement to effect its terms and intent for the Injection, Storage, transportation, shipment, and Withdrawal of Storage Substances and for all other purposes necessary or incidental thereto;

**NOW, THEREFORE**, the Parties, in consideration of the premises and the mutual benefits to be derived respectively by the State and Gulf South, and the covenants and conditions set forth below, together with good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged and confessed by both Parties hereto, the State and Gulf South do hereby agree and stipulate as follows:

The properties subject to this Agreement are situated in the parish(es) of Bossier and Bienville, State of Louisiana, and are more particularly described as follows:

“**Property A**” includes a tract, title to which is in the State in its public trust domain and includes all of the lands now or formerly constituting the beds and bottoms of all water bodies of every nature and description and all islands and other lands formed by accretion or reliction, except tax lands, owned by the State of Louisiana, situated in Bossier and Bienville parishes, Louisiana, within the following described boundaries:

The Southeast Quarter of the Southeast Quarter (SE $\frac{1}{4}$  of SE $\frac{1}{4}$ ), the West Half of the Southeast Quarter and the Southwest Quarter (W $\frac{1}{2}$  of the SE $\frac{1}{4}$  and SW $\frac{1}{4}$ ) of Section 2; the South Half (S $\frac{1}{2}$ ), the Northwest Quarter (NW $\frac{1}{4}$ ), and the Southwest Quarter of the Northeast Quarter (SW $\frac{1}{4}$  of the NE $\frac{1}{4}$ ) of Section 3; the South Half (S $\frac{1}{2}$ ), the Northeast Quarter (NE $\frac{1}{4}$ ), and the South Half of the Northwest Quarter (S $\frac{1}{2}$  of the NW $\frac{1}{4}$ ) of Section 4; the South Half (S $\frac{1}{2}$ ) and South Half of North Half (S $\frac{1}{2}$  of N $\frac{1}{2}$ ) of Section 5; the East Half of the East Half (E $\frac{1}{2}$  of the E $\frac{1}{2}$ ) of Section 7; all of Section 8; all of Section 9; all of Section 10; all of Section 11; the Northwest Quarter (NW $\frac{1}{4}$ ), the South Half of the Northeast Quarter and the South Half (S $\frac{1}{2}$  of NE $\frac{1}{4}$  and S $\frac{1}{2}$ ) of Section 12; all of Section 15; all of Section 16; the East Half (E $\frac{1}{2}$ ) and Northwest Quarter (NW $\frac{1}{4}$ ) of Section 17; the Northeast Quarter (NE $\frac{1}{4}$ ) of Section 20; the North Half (N $\frac{1}{2}$ ) of Section 21 and the Northwest Quarter (NW $\frac{1}{4}$ ) of Section 22; all in Township 16 North, Range 10 West, Bossier and Bienville Parishes, Louisiana; however, there is specifically excluded from this description those waters or lands in Lake Bistineau which lie West of the West traverse of the former Dorcheat Bayou and Southwest of the Southwest traverse of the former Snell Slough as shown on a survey made by W. E. Martin, C. E., dated September 27, 1913, and attached to that certain Process Verbal of Boundary Agreement dated April 16, 1955, and filed for record in the State Land Office, Baton Rouge, Louisiana, estimated to contain approximately 2,663 acres, all more fully shown outlined in red on a plat on file in the State Land Office.

“**Property B**” also covered by this Agreement, includes the tract, title to which is in the State in its public trust domain as a sixteenth (16<sup>th</sup>) section land and is situated in Bossier and Bienville parishes, Louisiana, within the following described boundaries:

Lots 1, 2 and 3, Section 16, Township 16 North, Range 10 West, said township situated in Bienville and Bossier parishes, Louisiana, constituting the landed portion of said section and excluding any lands beneath navigable water, all more fully shown outlined in red on a plat on file in the State Land Office.

The Parties agree and acknowledge that for the purpose of calculating the Condensate Recovery Payment required hereunder, Property A and Property B shall be treated as comprising twenty two and one half percent (22.5%)<sup>1</sup> of the Storage Reservoir for the Gulf South Facility.

The Parties agree and acknowledge that this Agreement allows Gulf South to store hydrocarbons beneath Property A and Property B only in the Storage Reservoir and for all other purposes necessary or incidental thereto and to create a limited relationship between the Parties whereby the State (i) will receive a share of customer revenues from the storage of natural gas, as reflected in this Agreement, and (ii) will assume a portion of the risk of the cost of such activities and the operation of the Gulf South Facility as reflected in this Agreement as the Board has

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<sup>1</sup> In the event either Party reasonably anticipates that the Storage Reservoir or State-owned lands will increase or decrease in size at any time in the future, the Parties agree to provide the other Party with reasonable advance notice, whether by way of the FERC process or by the notice provision in Article 14.5, so that the State’s proportional ownership and corresponding 22.5% percentage used in this Agreement can be updated in order to accurately reflect the percentage of State-owned property comprising the Storage Reservoir.

determined that it is in the best interest of the State in equity and in the promotion of conservation to do so.

### **Article 1 – Definitions**

- 1.1 **“Affiliate”** shall mean any business concern, organization, or individual that controls, is controlled by or is under common control with Gulf South. The power to control is the key factor in affiliation with another business concern, whether exercised or not.
- (1) Control may consist of:
- (a) Shared management or ownership; and/or
  - (b) Common use of facilities, equipment, and employees.
- (2) Indicators of Gulf South’s affiliates may include:
- (a) Common ownership; and/or
  - (b) Common management and identity of interest.
- (3) Power to control exists when a person or entity has 50% or more ownership. It may also exist with considerably less than 50% ownership by contractual arrangement or when a person or entity owns a large share compared to other parties.
- 1.2 **“Annual Payment(s)”** mean the annual payments required by Articles 4.1 and 4.3 combined.
- 1.3 **“Applicable Law(s)”** means any applicable, valid, final, and non-appealable federal or state statute, law, rule, regulation, or order, or any judicial decision, as may now be in effect or which may be enacted, adopted, or made effective at a future date. Applicable Laws include, without limitation, all statutes, laws, rules, regulations, orders, Applicable Procedures, and judicial decisions that pertain to the Gulf South Facility, and any future amendments thereof, including, without limiting the generality of the foregoing, all such matters that pertain to protection of the environment, environmental matters, pollutants, minimum water quality standards, dredging, filing, local navigation, and/or health and safety matters.
- 1.4 **“Applicable Procedure(s)”** means the valid, final, and non-appealable standards, public processes, procedures, and rules applicable to the regulation of the Gulf South Facility, to the extent applicable, by the Federal Energy Regulatory Commission (“**FERC**”), the Pipeline and Hazardous Materials Safety Administration (“**PHMSA**”), the Louisiana Office of Conservation (“**OC**”), the DNR, and the Louisiana Department of Environmental Quality (“**DEQ**”), as well as any other state or federal regulatory bodies having jurisdiction.
- 1.5 **“Associated Substances”** means water, vapor, and other vaporous or gaseous substances associated with, contained in or produced as an incident of Storage of hydrocarbons.
- 1.6 **“Contract Year”** means the calendar year beginning on the Effective Date of this Agreement and ending on the first anniversary of the date this Agreement is effective and for every year thereafter from anniversary date to anniversary date.
- 1.7 **“Cushion”** or **“Pad Gas”** means a volume of gas used to maintain pressure and deliverability in the Storage Reservoir.

- 1.8 **“Condensate Recovery Rate”** means twenty two and one half percent (22.5%)<sup>2</sup> of the annual Net Sales Price received for condensate sold from the Gulf South Facility.
- 1.9 **“Customer Natural Gas”** mean the gas injected or withdrawn from the Storage Reservoir at the commercial request of one or more of Gulf South’s customers. Customer Natural Gas does not include Cushion Gas, Pad Gas, or any other natural gas injected into the Storage Reservoir for Gulf South’s operational, maintenance, or testing reasons.
- 1.10 **“Drill” or “Drilling”** means the act of boring a hole to reach a proposed location under the Property.
- 1.11 The term **“Gulf South” or “Operator”** as used throughout this Agreement, means and includes Gulf South Pipeline Company, LLC, and its directors, members, partners (general and limited), officers, agents, employees, contractors, subcontractors (of any tier), other representatives, and insurers, and each of its subsidiaries and affiliates, successors and assigns and their directors, members, partners (general and limited), officers, agents, employees, contractors, subcontractors, other representatives, and insurers, and each of them.
- 1.12 **“Gulf South Facility”** means the underground storage facility and all related Improvements and Equipment associated with underground hydrocarbon storage in the Pettit formation underlying Property A and/or Property B and the surrounding area.
- 1.13 **“Improvements and Equipment”** means all fixtures, equipment, machinery, and tools, including all pipelines, pipe, pipe casing, compression, measurement, monitoring or testing devices or equipment, and any other structures or downhole equipment, and all materials, parts, and components thereof, made, placed, installed or used, in or under Property A and/or Property B by Gulf South.
- 1.14 **“Injection” or “Injected”** means the deposit of Storage Substances into the Gulf South Facility.
- 1.15 **“Non-Affiliate”** shall mean a person, company, firm or other business unit that is not an Affiliate.
- 1.16 **“Storage”** means the activity of Injection, subsurface containment, and/or Withdrawal of Storage Substances into or from the Gulf South Facility, together with related transportation, and all other operations conducted on or within the Gulf South Facility and treatment necessary or incidental thereto.
- 1.17 **“Storage Substances”** means hydrocarbons and Associated Substances, excluding Cushion Gas, Pad Gas, or any other natural gas injected into the Storage Reservoir for Gulf

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<sup>2</sup> In the event either Party reasonably anticipates that the Storage Reservoir or State-owned lands will increase or decrease in size at any time in the future, the Parties agree to provide the other Party with reasonable advance notice, whether by way of the FERC process or by the notice provision in Article 14.5, so that the State’s proportional ownership and corresponding 22.5% percentage used in this Agreement can be updated in order to accurately reflect the percentage of State-owned property comprising the Storage Reservoir.

South's operational, maintenance, testing, or any other reason apart from a customer's commercial request.

1.18 **“Withdrawal”** means the removal of Storage Substances from the Gulf South Facility.

## Article 2 – Approval Process

2.1 Advertisement and Public Hearing. The Board, through OMR, shall cause this Agreement to be advertised in compliance with Applicable Law, and shall conduct a public hearing pursuant to and in accordance with La. R.S. 30:6, as required by La. R.S. 30:209 (the **“Public Hearing”**).

2.2 Approval or Disapproval. Following the Public Hearing, the Board shall render its determination regarding approval or disapproval of this Agreement at a Board meeting. If the Board approves this Agreement by a two-thirds vote of its members, as required by La. R.S. 30:209, this Agreement shall be effective as stated in Article 2.3.

2.3 Effective Date. The Effective Date of this Agreement shall be beginning on the 1st day of the month after the Board renders its determination as contemplated in Article 2.2.

## Article 3 – Term

3.1 The term of this Agreement shall commence on the Effective Date stated in Article 2.3 and shall continue for a period of twenty-five (25) years (**“Initial Term”**), with an option to extend for an additional twenty-five (25) years in accordance with Article 3.2. Unless extended in accordance with Article 3.2, this Agreement shall expire at the end of the Initial Term without the necessity of notice or action by the State.

3.2 At the conclusion of the Initial Term, Gulf South shall have the option to extend this Agreement for up to an additional twenty-five (25) years (**“Elective Term”**). In order for Gulf South to exercise this option, it shall notify the State at least six months prior to the expiration of the Initial Term and the extension shall be conducted in accordance with the procedural requirements in place at that time. If extended, then this Agreement shall expire at the end of the Elective Term without the necessity of notice or action of the State.

## Article 4 – Payments

As adequate and total consideration for the rights granted hereunder, Gulf South shall make the following payments to the State as of the Effective Date:

4.1 Gulf South agrees and acknowledges that for each Contract Year, it shall pay the State a fee (the **“Annual Injection Fee”**) for each thousand cubic feet (**“mcf”**) of Customer Natural Gas injected into the Gulf South Facility under this Agreement in an amount equal to \_\_\_\_\_ per twenty two and one half percent (22.5%)<sup>3</sup> of each mcf of Customer Natural Gas injected, which represents the State's proportional ownership of the surface above the Storage Reservoir. Notwithstanding, Gulf South agrees and acknowledges that for each Contract Year, a Minimum Guarantee Annual Payment (**“MGAP”**) of \_\_\_\_\_ shall be paid to the State in the event the Annual Injection Fee does not exceed \_\_\_\_\_; and which shall be in lieu of, and not in addition to, the Annual

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<sup>3</sup> In the event the Storage Reservoir increases or decreases in size in the future, the 22.5% percentage used in this Agreement will be updated in order to accurately reflect the percentage of State-owned property comprising the Storage Reservoir.

Injection Fee. Within forty-five (45) days after the close of each Contract Year, Gulf South shall furnish the State a detailed statement, which shall include information reasonably required by OMR, detailing the amount of natural gas Injected into the Gulf South Facility. The information required herein shall be submitted to OMR in accordance with their format specifications. Gulf South shall pay the Annual Injection Fee due to the State for such Contract Year as required herein.

4.2 The Parties agree that in the event that the Annual Injection Fee payment for each Contract Year required in Article 4.1 is less than the MGAP (a “**Shortfall**”), Gulf South shall have the right to offset a Shortfall only from the Annual Injection Fee payments due for the next five sequential Contract Years in which the MGAP is exceeded. As stated in Article 4.1, Gulf South shall pay the State for each Contract Year an amount not less than the MGAP. Gulf South shall furnish the State a detailed accounting statement verifying the offset payment for each Contract Year as required in Article 4.8. Gulf South does hereby waive, release and fully and forever discharge all cause of action or liability, right of recovery, claim, damages or losses against the State relating to or arising from Gulf South’s inability to recover a sufficient amount to compensate the Shortfall pursuant to the terms of this Article during the Initial Term or the Elective Term of this Agreement. If Gulf South makes an Annual Payment in which it fails to offset a Shortfall that it was otherwise entitled to at the time, Gulf South does hereby waive, release and fully and forever discharge all cause of action or liability, right of recovery, recoupment, claim, damages, or losses against the State relating to or arising from Gulf South’s failure to offset a Shortfall prior to making an Annual Payment.

4.3 In addition to the payment stated in Article 4.1, Gulf South shall pay for each Contract Year an annual fee based on the Condensate Recovery Rate received from the condensate withdrawn and sold from the Gulf South Facility in an arm’s length contract with a Non-Affiliate which was prudently negotiated under the facts and circumstances existing at the time of execution. If the condensate sold by Gulf South is to an Affiliate purchaser or if the contract is not an arms’ length contract, but the contract would have been considered prudently negotiated under the facts and circumstances existing at the time of its execution, then the Net Sales Price of the condensate shall be the price received by Gulf South under the contract. If the condensate is sold under a contract that would not have been considered prudently negotiated at the time of its execution, or if the condensate are not sold under any contract, the Net Sale Price of the condensate, including all premiums and consideration in whatever form, shall be calculated on the basis of Oil Price Information Service (OPIS) at Mont Belvieu, Texas, on the date sold. If at a future date, an industry recognized and accepted index posting changes to something other than OPIS at Mont Belvieu, Texas, a new standard may be agreed to by the Parties. Notwithstanding the aforementioned, for purposes of this Section, the Net Sales Price received from the condensate withdrawn and sold from the Gulf South Facility shall be the actual net sales price paid to Gulf South. Operator shall submit monthly detailed information on the amount of condensate withdrawn and sold from the Gulf South Facility on the State Royalty 1 report (“SR-1”).

4.4 Operator shall pay the State the Annual Payments required herein within sixty (60) days at the end of each Contract Year of this Agreement. If Gulf South hereto shall fail to perform the payments obligation under this Agreement, then in such event the State shall cause a written notice

to be served on Gulf South, which notice shall declare it to be the intention of the State to terminate this Agreement if the default is not cured. Gulf South shall have thirty (30) days after receipt of the aforesaid notice in which to remedy the nonpayment, and, if within such thirty-day period, Gulf South does so remedy by paying the State the Annual Payment required herein, then such termination notice shall be withdrawn and this Agreement shall continue in full force and effect. In the event that Gulf South fails to remedy the nonpayment within such thirty-day period, this Agreement shall be terminated and of no further force or effect from and after the expiration of such thirty-day period.

4.5 Except as otherwise approved by OMR in writing, Gulf South shall make each Annual Payment owed to the State under this Agreement by electronic fund transfer using the Automated Clearing House (ACH) Network service pursuant to the institution transfer instructions or by wire transfer. The electronic-fund transfer shall be from a banking institution in the United States in U.S. Dollars payable to the “Office of Mineral Resources” into the account identified by OMR, or to any other account as OMR may from time to time designate to Gulf South. In the event Gulf South is not able to transfer the fund via ACH, it may obtain approval from OMR to use a different method of payment.

4.6 The Injection Fee and MGAP will remain firm for a period of 10 Contract Years. Thereafter, the State may request a price adjustment in the Injection Fee and the MGAP as provided herein. The first adjustment for this Agreement will be based on a comparison of the percentage change between the August 1, 2020 and August 1, 2030 Index report. Thereafter, for the life of this Agreement, a comparison for the period encompassing every 10 Contract Years shall be made. The adjustment of the Injection Fee and MGAP paid to the State can only be adjusted based on the percentage change in the United States Bureau of Labor Statistics, Producer Price Index (PPI)/Commercial natural gas, West South Central, Series ID WPU055221017 (the “Index”). Only final Index data will be used to adjust the Injection Fee and MGAP. The State shall request a price adjustment forty-five (45) days prior to the adjustment dates stated herein.

4.7 In the event the Index ceases to be published, the Parties will attempt to agree on a suitable published replacement index. If the Parties are unable to do so within thirty (30) days following cessation of production of the Index, the replacement published index shall be determined by arbitration in accordance with the rules of the American Arbitration Association, and each Party shall bear one-half of the costs of such arbitration. Once a replacement published index is agreed upon or determined, the term “Index” shall refer to such replacement published index.

4.8 Together with every Annual Payment made to the State, Gulf South shall provide the State a detailed accounting statement along with any other records and information reasonably required by OMR, to verify the correctness of their Annual Payment. The information required herein shall be submitted to OMR in accordance with their format specifications.

#### **Article 5 – Storage Arrearages**

5.1 Gulf South agrees and acknowledges to pay the State \_\_\_\_\_ in one lump sum within thirty (30) days of the Effective Date of this Agreement, representing storage arrearages for the



continued use by Gulf South of the Storage Reservoir for the time period between the expiration of the State Leases until the Effective Date of this Agreement.

5.2 The State agrees that the storage arrearages payment pursuant to this Article shall constitute full and complete compensation for the continued use by Gulf South of the Storage Reservoir for the time period between the expiration of the State Leases until the Effective Date of this Agreement.

### **Article 6 – Rights**

The State, pursuant to the authority of La. RS. 30:209 and other Applicable Law, does herein grant and retain certain rights, subject to the conditions herein set forth and immediately as of the Effective Date the following exclusive rights:

#### **Gulf South Rights**

6.1 Surface Use. Gulf South shall have the sole and exclusive right to use and occupy the surface and Storage Reservoir of Property A and/or Property B for the purposes set forth in this Agreement subject to prohibitions on surface operations within the Lake Bistineau Game and Fish Preserve.

6.2 Limitation. The rights granted to Gulf South pursuant to this Agreement shall be enjoyed in accordance with Applicable Laws and shall apply solely to the Storage Reservoir located underneath Property A and Property B.

#### **State's Rights**

6.3 Exploration of Oil and Gas. The Parties acknowledge and agree that the State shall have the right to carry on, in and upon Property A and/or Property B, such operations necessary for and in connection with the discovery, extraction, preparation, utilization, removal and sale of any and all minerals above and below the Storage Reservoir. However, the State's rights are to be exercised so as not to unreasonably interfere with the operations to be carried on by Gulf South in accordance with this Agreement.

6.4 Drill-Through Rights. Gulf South agrees and acknowledges that the lessee or operator of a state lease or operating agreement granted for the development and production of minerals, oil, or gas on Property A or Property B shall have the right to drill through the Storage Reservoir. However, the lessee or operator of a state lease or operating agreement must exercise their right in accordance with Article 6.5 below.

#### **Correlative Rights.**

6.5 The Parties, their successors and assigns, agree to exercise their respective rights granted herein with reasonable regard for the rights of the other and shall use only so much of Property A and/or Property B, including its surface, as is reasonably necessary to conduct their operations. The exercise of the rights granted herein shall be subject to the provisions of Articles 11 and 22 of the Louisiana Mineral Code (La R.S. 31.1 *et seq.*).

## Article 7 – Operations

7.1 Operational Rights. Gulf South shall have full, sole control and discretion over all aspects of the Gulf South Facility operations and business, operational, contractual, financial, marketing, sales, legal, and related activities and decisions, including whether and when to cease operating the Gulf South Facility, in whole or in part. Furthermore, Gulf South shall control the construction, preparation, installation, maintenance, operation, expansion, enlargement, modification and disposition of the Gulf South Facility, including the installation and removal of Improvements and Equipment, and the Injection, Storage, transportation, shipment, handling, transmission, Withdrawal, sale or other disposition of Storage Substances stored, or to be stored from time to time, in the Gulf South Facility (collectively, without limitation, the “**Permitted Purposes**”), subject to Applicable Laws.

7.2 Incidental Rights. Without limiting the foregoing, and for the avoidance of doubt, Gulf South also shall have the sole and exclusive right to control, conduct or perform all activities as may be necessary or incidental to the Permitted Purposes, including, but not limited to: (a) installing, maintaining, replacing, removing, monitoring, inspecting, testing, and/or operating the equipment necessary or incidental to maintaining, operating or testing the Storage Reservoir or surrounding reservoirs; (b) performing mechanical integrity tests or other tests as may be desirable to determine Storage Reservoir’s capacity, limits, safety and/or integrity, or to comply with Applicable Laws; (c) injecting hydrocarbons for pressure maintenance in operations, mechanical integrity activities or other lawful purposes; and (d) transporting, selling or disposing of Storage Substances. These rights do not include the right to withdraw water from State owned water-bottoms on the Property.

7.3 In exercising its sole operational control and discretion, Gulf South shall conduct all operations in or under the Property A and/or Property B as a reasonably prudent operator, in a good and workmanlike manner, and in compliance with all Applicable Laws.

7.4 Without limiting the foregoing, Gulf South shall be responsible for obtaining all necessary permits regarding the Gulf South Facility. Once obtained, such permits shall be deemed to be Applicable Laws with which Gulf South will be responsible to comply.

7.5 All wells, compressors pipelines, tank batteries, and Improvements and Equipment placed in or on Property A and/or Property B, or on lands pooled therewith, prior to and after the date hereof, and used in connection with operations hereunder, shall be owned and controlled by the Operator and the State shall have no interest (ownership, controlling or otherwise) therein whatsoever. However, nothing herein stated shall deprive the State of the right to file a lien for unpaid cost or damages nor any other agency from levying any other costs of damages or enforcing any other rights commensurate with authority granted by the State.

7.6 All costs and expenses incurred in connection with Storage operations in, on or under Property A or Property B or associated with the Gulf South Facility shall be borne solely by the Operator. The State shall be held free and harmless from liability or responsibility for any and all costs and expenses so incurred under the terms of this Agreement; provided, however, the State is assuming a portion of the risk of the cost of the Gulf South Facility as reflected in Article 4 of this

Agreement, concerning the manner in which the compensation has been calculated, which inherently incorporates costs and risk of cost changes.

7.7 Nothing in this Section shall prohibit the State, acting in its capacity as a regulatory authority (through the Louisiana Office of Conservation, Louisiana Department of Environmental Quality, or other regulatory authority), from enforcing all Applicable Laws, specifically including any applicable environmental or underground injection/storage laws and regulations.

### **Article 8 – Insurance**

8.1 **Coverage Required.** Within thirty (30) days of the Agreement Date, Gulf South shall pay all costs and/or premiums, for policies of insurance, providing coverage as of the Effective Date of this Agreement, against third party claims relating to the Gulf South Facility, including Property A and Property B. The policies of insurance shall be maintained in full force until the termination or expiration of this Agreement and continuing until all obligations are fulfilled. Such commercial general liability policies shall name the State as an additional insured. Such policies of insurance shall be subject to the terms and conditions of the policies and shall have the following limits:

- A. For bodily injury, One Million Dollars (\$1,000,000) per occurrence, with a Two Million Dollars (\$2,000,000) aggregate.
- B. For property damage which is not considered to be environmental damage, One Million Dollars (\$1,000,000) per occurrence, with a Two Million Dollars (\$2,000,000) Dollars aggregate
- C. For sudden and accidental environmental damage, Ten Million Dollars (\$10,000,000) for each occurrence.

8.2 **Proof of Insurance.** Gulf South shall provide the State with current certificates of insurance, demonstrating compliance with the requirements of Article 8.1 above (a) within forty-five (45) days of the Effective Date; (b) within fifteen (15) days following annual policy renewals during the Term of this Agreement; and (c) within fifteen (15) days of each reasonable request therefor by the State. Such certificates of insurance shall contain the requirements that the insurance companies providing commercial general liability insurance waive any right of subrogation in favor of the State limited to the extent of obligations and liabilities assumed by Gulf South under this Agreement. Gulf South shall provide thirty (30) days' prior written notice of any cancellation or termination of the insurance policies addressed in 8.1.

8.3 **Failure to Comply.** In the event notice of cancellation is given and another certificate of insurance evidencing the issuance of a policy meeting all terms and conditions hereof is not furnished by the Operator and received by State prior to cancellation, the rights granted to Gulf South under this Agreement shall automatically and without further notice to Gulf South, be forfeited and the Operator shall immediately discontinue operations hereunder, except for operations necessary to maintain the viability of the Storage Reservoir for the purposes hereof and as necessary for health, safety, and/or environmental concerns. However, the reinstatement of the insurance coverage provided herein and the furnishing of a certificate of such insurance coverage to the State within ninety (90) days of the end of the thirty (30) day period for re-establishing

insurance coverage after written notice of cancellation is given shall entitle the Operator to immediate reinstatement of this Agreement.

#### **Article 9 – Bankruptcy and Security**

9.1 The Operator agrees to acknowledge and verify in any appropriate manner to any bankruptcy court or to any other authority, and hereby also acknowledges and verifies, that the Annual Payments required in Article 4 are not a part of the Gulf South's estate, and that the estate has no claim or interest therein. Gulf South further acknowledges that all legal and equitable title to any portion of the payments owed to the State is vested in the State and that Gulf South relinquishes all dominion, control, and title to the same. Gulf South and the State agree that so long as this Agreement remains in effect, this Agreement is an executory contract and unexpired within the meaning of Section 365 of the United States Bankruptcy Code.

9.2 In the event the Board reasonably anticipates Operator's inability to make the required payments hereunder, the Board may request, by Resolution, the Operator furnish a bond or other security which in all respects is acceptable to the Board with the Louisiana State Mineral and Energy Board through the Office of Mineral Resources as payee, in the full amount necessary to cover the Operator's obligation for closure and post closure activity, including plugging and abandoning related wells, as set forth in Article 12, below.

#### **Article 10 – Indemnification**

10.1 The Operator unconditionally agrees that it will respond to, investigate, provide defense for, protect against, save, indemnify, and hold free and harmless the State, the Board, DNR and OMR, the Board members, DNR and OMR's employees, or other representatives of, from, and against any and all demands, claims, causes of action, damages, judgments, costs, fees, expenses, and attorney's fees of whatsoever kind or nature, including, but not limited to damages to persons or property, THAT MAY ARISE OUT OF, OR BY REASON OF, THE PERFORMANCE OF ALL SERVICES, ACTIVITIES, OBLIGATIONS, DUTIES AND OPERATIONS UNDER THIS AGREEMENT BY GULF SOUTH, THE OPERATOR, OR ANY OF ITS EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS, OR OTHER REPRESENTATIVES, due to their negligence, commission or omission, and of and from any and all costs and expenses relating to the defense of any such claims, including reasonable attorney' fees incident thereto.

#### **Article 11 – Inspection, Records and Audit Rights**

11.1 The State, or any person or entity acting as agent, representative or under the authority of the State, shall have the right, at all reasonable times and upon reasonable notice, to examine, audit or inspect all books, records, accounts, statements, sales, invoices, and other such documents pertaining or used to calculate the payments under Article 4 from the Effective Date of this Agreement, including any documents utilized in determining what qualifies as Customer Natural Gas, provided, that such audits must be completed within thirty-six (36) months following the end of the Contract Year that is subject to the audit and that such audits may be conducted no more than once per Contract Year.

11.2 Gulf South shall preserve all books and records used to calculate and pertaining to the payments required under Article 4 for as long as required by Applicable law. Gulf South shall reasonably cooperate with the State in any such audit and the State shall conduct said audit as not to unreasonably interfere with Gulf South's operations, subject to the provisions identified in 11.1.

11.3 The Operator shall provide accurate records concerning Gulf South's operation of the Gulf South Facility, including but not limited to all accounts hereunder showing the amounts of natural gas that have been Injected, are in Storage, or have been Withdrawn. The State and its agents shall have the right, upon reasonable prior notice to Gulf South and during normal business hours, to review such records as well as all other records created and maintained by Gulf South concerning the design, construction, maintenance, modification, and physical operation of the Gulf South Facility to the extent same relate to the amounts of natural gas that have been Injected, are in Storage, or have been Withdrawn. Gulf South shall reasonably cooperate with the State in any such review, and any such review shall be at the sole cost of the State and shall be done so as not to unreasonably interfere with Gulf South's operations and shall be subject to the provisions identified in 11.1. To the extent that such information is received or acquired by the Operator from or in connection with operations hereunder subsequent to the date hereof, the Operator agrees, upon written request by the State, to furnish timely to the State any and all well data associated with the Gulf South Facility.

#### **Article 12 – Closure and Post Closure Activities**

12.1 Upon the termination of this Agreement, at its sole cost and expense, Gulf South, shall close the Gulf South Facility in conformity with any and all Applicable Laws regarding closure and post closure, including receiving authority from FERC to abandon the Gulf South Facility. The closure of Gulf South's Facility contemplates but is not limited to the removal of its improvements and equipment and the proper plugging and abandoning of all associated wells, as permitted or required by the Applicable Laws.

12.2 Gulf South shall cause to remain in full force and effect the insurance coverage required by Article 8 above until such time as the action contemplated by this Article shall be completed.

#### **Article 13 – Warranty of Title and Use**

13.1 Warranty of Title. Notwithstanding any provision herein to the contrary, this Agreement is granted and accepted without any warranty of title and without any recourse against the State whatsoever, either express or implied. As such, the Parties acknowledge and agree that the State shall not be required to return any payments received pursuant to this Agreement, even notwithstanding any subsequent litigation or judicial decrees, orders, or rulings regarding title to all or any part of Property A or Property B or otherwise be responsible to Gulf South therefor. Gulf South represents that it has investigated the title or is satisfied with such title as the State may have. The State hereby disclaims any covenant of quiet enjoyment or peaceful possession of either Property A or Property B.

13.2 Warranty of Use. The State makes no warranties as to the condition of the Storage Reservoir and Gulf States accepts the Storage Reservoir "AS IS". The State has no obligation to make any repairs, additions or improvements to the Storage Reservoir, and the State does not

warrant the suitability of the Storage Reservoir for any purposes intended by Gulf South or contemplated by this Agreement.

13.3 Termination for Lack of Title. Notwithstanding anything stated in this Agreement to the contrary, this Agreement shall terminate if it is determined by a court of competent jurisdiction (and any applicable appeal delays have run or have been exhausted) that the State does not have title to Property A and/or Property B.

#### **Article 14 – Miscellaneous Provisions**

14.1 It is understood and agreed that this Agreement shall not create the relationship of a partnership between the parties hereto and that no act done by any party pursuant to the provisions hereof shall operate to create such relationship nor shall the provisions of this Agreement be construed as creating such relationship.

14.2 It is expressly provided herein that neither this Agreement, nor anything herein contained, nor any of the data, maps, or exhibits considered in connection herewith, whether attached hereto or not, nor any course of conduct followed by any Party hereto pursuant to this Agreement, shall ever be considered to be or permitted to serve as a basis of estoppel against any Party hereto in question of title where title to the Operating Tract is in dispute, anything herein contained to the contrary notwithstanding.

14.3 Gulf South agrees that this Agreement is subject to the provisions of La. R.S. 30:127(G), and that access by the public to public waterways through the State-owned acreage covered by this Agreement shall be maintained and preserved for the public by the Operator.

14.4 This Agreement shall extend to and be binding upon the successors, assigns, and successive assigns of the Parties; however, it is understood and agreed that no future assignments of the rights granted hereunder shall be effective unless and until such assignment or assignments are first approved by the Board and same shall be subject to any conditions imposed by the Board in giving its approval.

14.5 Payments, notices, reports, statements, and any and all written documents herein required to be given or furnished by any of the Parties hereto shall be in writing and mailed or delivered to the following addresses of the Parties hereto, to-wit:

If to the State:

Department of Natural Resources  
Attn.: State Mineral and Energy Board  
Post Office Box 2827  
Baton Rouge, Louisiana 70821-2827

If to the Operator:

Gulf South Pipeline Company, LLC  
Attn.: Office of the General Counsel  
9 Greenway Plaza  
Suite 2800  
Houston, Texas 77046

14.6 As permitted by the Applicable Laws, the Operator agrees that it shall execute and record, within ninety (90) days after the expiration or termination of this Agreement covering all or any

portion of Property A and Property B, an appropriate and legally sufficient release evidencing such expiration or termination, and shall also supply State with a copy or copies thereof with recordation information properly certified by the recorder of each Parish in which Property A and Property B is located. In the event the Operator fails to comply therewith, it shall be liable for reasonable attorney's fees and court costs incurred in bringing suit for such cancellation and for all damages resulting therefrom. It is agreed, however, that storage arrearages to be paid by the Operator to the State shall be One Hundred Dollars (\$100) per day for each day of non-compliance after expiration of said ninety (90) day period, regardless of whether suit is filed for cancellation, and for such additional compensatory damages as State may prove.

14.7. This Agreement shall be interpreted and construed under the laws of the State of Louisiana. Should any provision, in whole or in part, of this Agreement be declared, found, or held invalid, illegal, or otherwise unenforceable, such declaration, finding or holding shall not invalidate or render unenforceable the remaining provisions, which shall be construed and enforced as though the invalidated or unenforceable provision, or portion thereof, was not contained herein, provided that such remaining provisions fulfill the primary purpose of this Agreement.

14.8 The venue for any suit, action, or proceeding instituted, arising out of or relating to this Agreement, shall only be in the Nineteenth (19<sup>th</sup>) Judicial District Court, East Baton Rouge Parish, Louisiana. Each Party irrevocably submits to the exclusive jurisdiction of said courts, waives any objection which it may have now or hereafter to such venue, and waives any other venue to which it may be entitled by virtue of domicile or otherwise.

14.9 This Agreement has been read and understood by each party. The parties to this Agreement have freely and voluntarily executed this Agreement for the consideration recited herein, that they have not relied on any representation or statement by any party other than those statements contained herein, but has relied solely and completely upon their own respective judgment and the advice of their own attorneys.

14.10 This Agreement is the result of arms-length negotiations between the parties and each has had the opportunity to review and revise it prior to execution. As a result, both parties agree that the rule of construing the terms and provisions of an instrument against the drafting party is not and shall not be applicable to this Agreement. This Agreement constitutes the entire agreement as between the parties and it shall not be modified or amended, nor shall any of its requirements be waived, except in a subsequent writing executed by all parties.

14.11 Each Party represents and warrants to each and every other Party that the individuals executing this Agreement, and the agreements contemplated by this Agreement, have been duly authorized by their respective corporate principals and that this Agreement and the other documents contemplated by this Agreement, shall be binding on the Parties hereto in accordance with the provisions of such documents.

14.12 This Agreement may be executed in counterparts and each executed counterpart shall have the same force and effect as the original instrument. If counterparts are executed, the signatures of the Parties to each counterpart maybe combined into and used as a single document.

14.13 The article and section headings in this Agreement are for convenience of reference only and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

**This Part Left Intentionally Blank**



THUS DONE AND SIGNED on the date or dates herein below written, in the presence of the undersigned competent witnesses.

WITNESSES:

**The Louisiana State Mineral and Energy Board**

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

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Gulf South Pipeline Company, LLC**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_