

CASTLETON COMMODITIES INTERNATIONAL LLC
GENERAL TERMS AND CONDITIONS FOR THE SALE OF CRUDE OIL AND
PETROLEUM PRODUCTS
Effective June 2018

These General Terms and Conditions for the Sale of Crude Oil and Petroleum Products (“GTCs”), together with the special terms set forth in a Confirmation, form the Parties’ agreement as to a Transaction.

June 11, 2018

PART I – DEFINITIONS AND GENERAL

1. DEFINITIONS

“Affiliate” means, in relation to any Party, any entity controlled, directly or indirectly, by such Party, any entity that controls directly or indirectly, such Party, or any entity directly or indirectly under common control with such Party. For this purpose, “control” of any entity or Party means ownership of a majority of the issued shares or voting power or control in fact of the entity of Party. With respect to Castleton Commodities International LLC, “Affiliate” shall mean all direct and indirect subsidiaries of Castleton Commodities International LLC.

“Agreement” means these terms and conditions together with the Confirmation.

“All Fast” means that the Vessel is completely moored at the Cargo Transfer Point with gangway down and secured.

“ANSI” means the American National Standards Institute.

“API” means the American Petroleum Institute.

“Applicable Law” means (i) any law, statute, regulation, code, standard, rule, ordinance, license, order, writ, injunction, decision, directive, judgment, policy, decree, and/or compliance requirement, or any other judicial or administrative interpretations thereof, (ii) any agreement, concession or arrangement with any Governmental Authority and (iii) any license, permit or compliance requirement, including under any environmental law, in each case as may be applicable to either Party or either Party’s performance under any Transaction.

“ASTM” means the American Society of Testing Materials.

“Bankruptcy Code” means the United States Bankruptcy Code.

“Barrel” means 42 U.S. Gallons measured at a temperature of 60 degrees Fahrenheit (60°F) and an absolute pressure of 29.92 inches of mercury.

“Buyer” means the Party purchasing Product from the other Party.

“Cargo” means a shipment of Product that is the subject of a Transaction and that is to be transported by Vessel.

“Cargo Transfer Point” means the place designated in a Confirmation for delivery of the Cargo by one Party to the other Party.

“Confirmation” means a written communication confirming the economic and other terms of a Transaction, as may be amended by the Parties’ mutual written agreement.

“COW” means Crude Oil Washing.

“Close-out” means, with respect to an agreement, to accelerate, terminate or cancel (including, without limitation, by way of automatic early termination) such agreement.

“Credit Rating” means, with respect to a party or entity on any date of determination, the lower of: (A) the respective rating then assigned to its senior unsecured long-term indebtedness (not supported by third party credit enhancement) by S&P or Moody’s (or if rated by both, the lower of the two ratings) and (B) the issuer rating by S&P or Moody’s (or if rated by both, the lower of the two ratings).

“Credit Support Provider” A Party or its guarantor or other entity designated as a credit support provider.

“Delivery Location” means the location specified for delivery of Product in a Confirmation.

“Delivery Period” means the period specified for delivery of Product in a Confirmation.

“Exchange of Futures for Physicals” or “EFPP” means an exchange of futures contracts for, or in connection with, physical Product pursuant to which the buyer and the seller of the futures contracts are the Seller and Buyer of a quantity of the physical Product (or any derivative, by-product or related Product) approximately equivalent to the quantity covered by the relevant futures contracts.

“FIP” shall mean the delivery of Product by the Seller to the Buyer in bulk at the loading terminal’s pipeline system designated by Buyer.

“Force Majeure” means any event, occurrence, or circumstance reasonably beyond the control of a Party, including fires, earthquakes, lightning, floods, explosions, storms, adverse weather, landslides and other acts of natural calamity or acts of God; navigational accidents or maritime peril; Vessel damage or loss; strikes, grievances, actions by or among workers or lock-outs (whether or not such labor difficulty could be settled by acceding to any demands of any such labor group of individuals); accidents at, closing of, or restrictions upon the use of mooring facilities, docks, ports, pipelines, harbors, railroads or other navigational or transportation mechanisms; disruption or breakdown of or explosions or accidents to wells, storage plants, refineries, terminals, machinery or other facilities; acts of war, hostilities (whether declared or undeclared), civil commotion, embargoes, blockades, terrorism, sabotage or acts of the public enemy; any act or omission of any Governmental Authority; good faith compliance with any order, request or directive of any Governmental Authority; curtailment, interference, failure or cessation of supplies reasonably beyond the control of a Party; or any other cause reasonably beyond the control of a Party, whether similar or dissimilar to those above and whether foreseeable or unforeseeable, which, by the exercise of due diligence, such Party could not have been able to avoid or overcome. The term “Force Majeure” expressly excludes (i) a failure of performance of any Person other than the Parties, (ii) the loss of Buyer’s market or any market conditions for any Product that are unfavorable for either Party, (iii) the loss of Seller’s supply of Product, the failure of Seller’s supplier of Product to perform or the depletion of Seller’s reserves of Product, (iv) any failure by a Party to apply for, obtain or maintain any permit, license, approval or right of way necessary under Applicable Law for the performance of any obligation under any Transaction, and (v) a Party’s inability to economically perform its obligations under any Transaction.

“Gallon” means a U.S. gallon of 231 cubic inches at 60 degrees Fahrenheit (60°F).

“Governmental Authority” means any foreign or U.S. federal, state, regional, local or municipal governmental body, agency, instrumentality, authority or entity established or controlled by a government or subdivision thereof, including any legislative, administrative or judicial body, or any Person purporting to act therefor.

“Incoterms” or “Incoterms 2010” means the 2010 edition of Incoterms as published by the International Chamber of Commerce (ICC) providing for ICC rules for the use of domestic and international trade terms with entry into force as of January 1, 2011.

“Independent Inspector” means a licensed internationally recognized independent inspector appointed by the mutual agreement of the Parties who performs sampling, quality analysis and quantity determination of the Product received or delivered pursuant to a Transaction.

“Interest Rate” means an annual rate (based on a 360-day year) equal to the lesser of (i) two percent (2%) over the prime rate as published under “Money Rates” in the *Wall Street Journal* in effect at the close of the New York Banking Day on which payment was due and (ii) the maximum rate permitted by Applicable Law.

“Laydays” means the period set out in a Confirmation that designates the time period during which a Cargo is scheduled to be loaded or discharged, as the case may be.

“Letter of Credit” means an irrevocable standby or documentary letter of credit, issued by a Qualified Institution in form and substance acceptable to Seller in its sole discretion.

“Letter of Credit Default” means the occurrence of any of the following events as to any outstanding Letter of Credit provided in connection with this Agreement: (i) the Qualified Institution no longer meets one or more of the criteria of an Qualified Institution; (ii) the Qualified Institution fails to comply with or perform its obligations under such Letter of Credit; (iii) the Qualified Institution disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit; (iv) the Letter of Credit expires or terminates, or fails or ceases to be in full force and effect at any time during the term of any outstanding agreement or during any period when the Requesting Party requires that the providing Party maintain the letter of credit; (v) the providing Party fails to cause a renewal or replacement Letter of Credit (or other form of Performance Assurance or other Collateral acceptable to the requesting Party) to be delivered to the requesting Party at least 30 days prior to the expiration of such Letter of Credit or by such other date required by the requesting Party; or (vi) any of the events or circumstances specified in Section 14.1(e) occurs in respect of the Qualified Institution.

“LPGs” means liquefied petroleum gases.

“Moody’s” means Moody’s Investors Service, Inc. or its successor.

“MPMS” means the API Manual of Petroleum Measurement Standards as amended from time to time.

“New York Banking Day” as defined herein shall mean a day in which commercial banks in New York, New York are open for business.

“NGLs” means natural gas liquids.

“NOR” means a notice of readiness that is valid and applicable.

“OBQ” means onboard quantity.

“Offsetting Transactions” means any two or more Transactions in respect of the same Product having the same or overlapping Delivery Period(s) (as specified in the Transaction), Delivery Location and payment date, where under one or more of such Transactions, one Party is Seller and under one or more of the other such Transactions the same Party is Buyer.

“Other Commodity Agreement” means an agreement (other than this Transaction) between the Parties to purchase, sell or exchange commodities, including any spot or forward contract, future, option, swap, swap option, cap, floor or collar or other derivative transaction on or with respect to a commodity or any combination of these transactions.

“Party” or “Parties” means Buyer and Seller individually or collectively, as the case may be, in connection with a Transaction.

“Performance Assurance” means a Letter of Credit, guaranty (in a form and from a guarantor

acceptable to Seller in its sole discretion), an advance payment in U.S. Dollars, cash margin in U.S. Dollars or any other payment or property transferred by or on behalf of a Party to this Agreement in support of such Party's obligations under this Agreement together with all proceeds, profits and products thereof.

“Person” means any individual, sole proprietorship, partnership, joint venture, limited liability company, trust, unincorporated organization, association, corporation, institution, entity, party, Governmental Authority, court or any other legal entity, whether acting in an individual, fiduciary or other capacity.

“Product” means a refined petroleum product, condensate, crude oil, NGLs, LPGs, ethanol, biodiesel or mixtures thereof and any other like commodity that is the subject of a Transaction.

“Qualified Institution” means (A) a major U.S. commercial bank organized under the laws of the United States or any state thereof, or (B) a major foreign bank having a branch office in New York City, which is not the Buyer (or a subsidiary or Affiliate of Buyer), with a Credit Rating of at least “A-” S&P or “A3” Moody's;

“RBOB” means reformulated blendstock for oxygenate blending.

“RINs” means renewable identification numbers that are unique numbers generated to represent a volume of renewable fuel pursuant to 40 CFR § 80.1125 and 40 CFR § 80.1126.

“ROB” means the quantity remaining on board.

“Seller” means the Party selling Product to the other Party.

“Settlement Amount” means, with respect to this Agreement, the losses and costs (or gains) at such time, expressed in U.S. Dollars, to the Non-Defaulting Party as a result of the termination of this Agreement including, without limitation (at the election of the Non-Defaulting Party but without duplication), all losses and costs (including without limitation, brokerage fees and commissions) as a result of the Non-Defaulting Party's obtaining, maintaining, terminating and/or re-establishing any hedge or related trading positions, in each case as determined by the Non-Defaulting Party in a commercially reasonable manner. The Settlement Amount shall be due to the Non-Defaulting Party if it reflects a loss and shall be due from the Non-Defaulting Party if it reflects a gain. In making this calculation, the Non-Defaulting Party (i) need not actually enter into any replacement contract, (ii) shall discount to present value in a commercially reasonable manner any amount which would be due at a later date and (iii) shall add interest (at a rate determined in the same manner) to any amount originally due prior to the date of calculation. To ascertain a Settlement Amount, the Non-Defaulting Party may consider, among other valuations, quotations from leading dealers in swap contracts or physical trading markets, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term, relevant due date or delivery dates, volume and differences in transportation costs.

“S&P” means Standard and Poor's Rating Services (a division of McGraw Hill, Inc.) or its successor.

“Taxes” means any and all foreign, federal, state and local taxes, duties, fees and charges of every description, including all motor fuel, excise, gasoline, aviation fuel, special fuel, diesel, environmental, spill, gross earnings or gross receipts and sales and use taxes, however designated, paid or incurred with respect to the purchase, storage, exchange, use, transportation, resale, importation or handling of the Product; provided, however, that “Taxes” does not include: (i) any tax imposed on or measured by net profits, gross or net income, or gross receipts (excluding, for the avoidance of doubt, any transaction taxes such as sales, use, gross earnings or gross receipts or similar taxes that are based upon gross receipts, gross earnings or gross revenues received only

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from the sale of petroleum products); (ii) any tax measured by capital value or net worth, whether denominated as franchise taxes, doing business taxes, capital stock taxes or the like; and (iii) business license or franchise taxes or registration fees.

“Terminal Operator” means the legal entity, which at the time of loading or discharging of Cargo, is the operator of the loading or discharging facilities at which the Product is loaded or discharged or is to be loaded or discharged.

“Trade Date” means the moment on a particular date when the Parties agree orally or otherwise upon the economic terms of a Transaction or, with respect to any Transaction that is amended, when the Parties agree upon the amendments.

“Transaction” means an agreement between the Parties to buy or sell Product.

“ULSD Regulations” means the EPA Ultra Low Sulfur Diesel regulations, 80 CFR § 500 *et seq.*

“VEF” means Vessel experience factor, always qualified and consistent with current API standards.

“Vessel” unless otherwise indicated, means a tanker or barge employed for the purpose of transporting Product.

2. GENERAL

- 2.1 Interpretation.** All headings in these GTCs are intended solely for convenience of reference and shall not affect the meaning or interpretation of these GTCs. Unless expressly provided otherwise, (i) all references to paragraphs, provisions and sections in these GTCs are to the paragraphs, provisions and sections of these GTCs, (ii) the word “including” shall be read to be followed by the words “without limitation,” (iii) the words “other” and “otherwise” shall not be construed as being limited by the context in which they appear or the words that precede them, (iv) references to “consent” mean the prior written consent of the relevant Party, which shall not be unreasonably withheld, delayed or conditioned, (v) when a Party’s response is required pursuant to these GTCs within a specific time period following receipt of notice or documentation, as applicable, the day of receipt thereof by such Party shall be considered day zero, (vi) each reference to a “day” or a “month” means a calendar day or a calendar month, respectively, (vii) all terms defined in the singular have the same meanings when used in the plural and *vice versa*, and (viii) all references to Applicable Law are as such Applicable Law may be enacted or amended from time to time.
- 2.2 Single Agreement.** The Parties may from time to time enter into Transactions to purchase or sell Product, which shall be governed by these GTCs. All Transactions shall be entered into in reliance on the fact that all Transactions form a single agreement.
- 2.3 Oral Agreements.** The Parties shall be deemed to have entered into a Transaction, and a Transaction shall become effective and binding upon the Parties, upon the applicable Trade Date.
- 2.4 Priority of Terms.** In the event of any inconsistency between the terms of a Confirmation and the terms of these GTCs, the Confirmation shall govern the relevant Transaction.
- 2.5 Recording.** Each Party consents to the other Party recording conversations between and among their trading and marketing personnel regarding any Transaction. Each Party shall have notified its trading and marketing personnel of such recording and shall have obtained their consent to such recording, if required by Applicable Law.

- 2.6 **Qualified Financial Contract.** Each Transaction and Confirmation is deemed to be a “qualified financial contract” within the meaning of New York General Obligations Law § 5-701b.

PART II – TERMS IN RESPECT OF FOB, FCA, FIP, TANK-TO-TANK, AND IN-TANK TRANSFER DELIVERIES

3. TITLE AND RISK OF LOSS

3.1 FOB.

- (a) For FOB Vessel Transactions, title to and risk of loss of the Product shall pass from Seller to Buyer as the Product passes the last permanent flange connection between the cargo intake manifold of the Vessel and the delivering hose at the loading terminal.
- (b) For FOB tank-to-tank transfers or pumpovers, title and risk of loss shall pass from Seller to Buyer as the Product passes the outlet flange of Seller’s storage tank.

- 3.2 **FCA.** For FCA truck and rail Transactions, delivery of the Product shall be made to Buyer at Seller’s designated truck or rail loading terminal. Title and risk of loss shall pass from Seller to Buyer as the Product passes the last discharge flange of Seller’s loading facility and into Buyer’s designated trucks and/or railcars.

- 3.3 **FIP.** For pipeline Transactions, title and risk of loss shall pass from Seller to Buyer as the Product passes the downstream flange of the meter measuring receipt of Product upon intake.

- 3.4 **Stock (In-Tank) Transfers.** When delivery of Product is by stock transfer (where physical inventory is transferred on the books and records of a terminal or pipeline operator from Seller to Buyer), title to and risk of loss of the Product shall pass from Seller to Buyer, unless otherwise agreed or indicated on the documentation issued by the Terminal Operator, at 00:01 on the effective date of transfer as mutually agreed between the Parties.

- 3.5 **Pipeline Tariff Recovery.** With respect to pipeline deliveries of Product, in the event that Buyer and Seller agree that Seller shall deliver Product from the relevant pipeline at a location other than the Delivery Location, then (i) in the event such delivery results in increased transportation costs for Seller, Buyer agrees to pay Seller, for the volume delivered, the pipeline tariff differential between the Delivery Location and the actual delivery point, based on the applicable pipeline tariff tables in effect for such pipeline on the date of delivery, or (ii) in the event such delivery results in reduced transportation costs for Seller, then Seller shall, for the volume delivered, reduce the amount due under the applicable invoice for such delivery by an amount equal to the pipeline tariff differential between the Delivery Location and the actual delivery point, based on the applicable pipeline tariff tables in effect for such pipeline on the date of delivery.

4. QUANTITY, QUALITY AND INSPECTION

- 4.1 **Inspection.** The quantity and quality of the Product sold under a Transaction shall be determined by an Independent Inspector, whose determinations shall be conclusive and binding upon both Parties, absent fraud or manifest error. The cost of the Independent Inspector’s services shall be shared equally between the Parties. Seller may have a representative present at the time of title transfer and Buyer shall always provide Seller with free access to ship and shore facilities. The Parties shall instruct the Independent

Inspector to obtain and retain appropriate samples of the Product for a period of 90 days from the date of measurement.

- (a) **FOB Vessel Deliveries.** The quantity of Product supplied shall be based on static shore tank measurements taken prior to and after loading of Buyer's Vessel according to the latest API standards. The quality of Product shall be based on analysis performed using shore tank composite samples taken prior to loading. If shore tanks are active at loading, quantity shall be determined by Vessel figures (*i.e.*, closing ullages less OBQ adjusted by VEF). Such VEF shall be determined in accordance with the latest API standards. Any circumstance relating to quantity shall be governed by current API standards. Any circumstance relating to quality shall be governed by current API/ASTM standards.
- (b) **Pipeline Transactions.** The quality of Product shall be in accordance with the specifications set forth by the relevant pipeline. Quantities shall be determined by pipeline meter tickets based on calibrated pipeline meters or if such meters are unavailable, by calibration tables, or based on book, stock or inventory transfer.
- (c) **FCA Truck and Rail Transactions.** The quality of Product shall be based on shore tank composite samples taken prior to loading as evidenced by the Independent Inspector's report according to ASTM/API industry standards. The quantity of Product shall be determined using terminal tank gauges or weigh scales and evidenced by bill of lading(s) or based on book, stock or inventory transfer.
- (d) **FOB tank-to-tank transfers or pumpovers.** The quantity of Product supplied shall be based on Seller's static storage tank measurements taken prior to and after the tank transfer according to the latest API standards. The quality of Product shall be based on analysis performed using Seller's storage tank composite samples taken prior to transfer.
- (e) **Stock (In-Tank) Transfers.** The quantity of Product shall be as indicated in the Confirmation and as confirmed on the documentation issued by the Terminal Operator.

4.2 Railcar Demurrage and Detention.

- (a) For the purpose of detention, time shall start at the first 00:01 after the railcars are constructively placed at the disposal of Seller. For the purpose of detention, time shall end when all loaded railcars are made available at the loading terminal for collection by, or on behalf of, Buyer. Seller shall be responsible for demurrage and detention charges (as applicable) to the extent it delays loading of the railcars.
- (b) Detention charges shall not apply to the first five days of delay. The demurrage charges shall be as per the applicable railroad tariff and the detention charges shall be as per the railcar lease rate.

4.3 Odorant. NGLs sold under any Transaction are intended for further processing and no further odorization is required unless Buyer notifies Seller otherwise. Buyer shall indemnify Seller for any liabilities that result from the NGLs not being odorized when Buyer has failed to notify Seller that odorants should be added.

4.4 Claims. Any claim regarding the quality or quantity of Product delivered shall be deemed waived unless submitted to Seller in writing, together with supporting documentation and reasonable details of the facts on which the claim is based, within 30 days from the title transfer date of such Product.

5. NOMINATIONS, LAYDAYS, LAYTIME AND DEMURRAGE

5.1 Nominations.

(a) **Pipeline Nomination.** Buyer shall nominate Product grades and quantities to Seller in accordance with the standard operating procedures of the relevant pipeline/storage company.

(b) **FCA Truck and Rail Nominations.** Buyer shall nominate Product grades, quantities, and lifting dates to Seller to be lifted by Buyer's nominated truck(s) and/or railcar(s) subject to Seller's and the Terminal Operator's acceptance, which shall not be unreasonably withheld.

(c) **Vessel Nomination.** Not less than seven days before a tanker's arrival or four days before a barge's arrival at the Cargo Transfer Point, Buyer shall nominate for Seller's acceptance the Vessel that will load the Cargo. Buyer shall at the same time provide all Vessel data necessary to evaluate acceptability of the Vessel, including Vessel particulars, construction, dimensions, equipment, licenses, classification and all other information as may be required by Seller and such other data or documents as Seller may from time to time require.

5.2 Vessel Acceptance. At the time Seller is first notified of the Vessel nomination, Seller shall have the right to reject that Vessel if, in Seller's sole opinion, such Vessel is unacceptable or if the Vessel does not comply with loading terminal's requirements. Notice of acceptance or rejection of the nominated Vessel shall be communicated to Buyer as soon as possible but always within 48 hours, excluding Saturdays, Sundays and holidays, after Seller's receipt of the nomination and all required data. Acceptance of any Vessel shall not constitute a continuing acceptance of such Vessel for any subsequent loading, or in the event of changed or incorrect information. Each Cargo loading requires separate Vessel approval. If the Cargo Transfer Point is a marine terminal with smaller berths for barges, Seller may reject a barge nomination if the nominated barge does not comply with the size requirements of the barge berths.

5.3 Vessel Substitution. If a Vessel nomination is rejected by Seller, Buyer is obligated to nominate another, suitable Vessel for Seller's acceptance as provided in these GTCs. If a Vessel nomination is accepted by Seller, Buyer may substitute another Vessel by nominating it for Seller's acceptance. Nomination of a substitute Vessel shall be made no later than four days before the Vessel's arrival at the Cargo Transfer Point. A Vessel nomination that has been accepted by Seller is not superseded until a substitute Vessel nomination has been accepted by Seller.

5.4 Vessel ETAs. Buyer shall notify Seller in writing by facsimile, letter or other writing of the Vessel's estimated time of arrival ("ETA") at the Cargo Transfer Point. Such notice must be received by Seller at least seven days in advance of such arrival by a tanker or four days in advance of such arrival by barge, or within 24 hours after the Vessel has sailed from the last port before arriving at the Cargo Transfer Point, whichever date is earlier. Buyer also shall provide the Vessel's ETA in writing 72, 48, 24 and six hours before the Vessel's expected arrival at the Cargo Transfer Point. Buyer promptly shall notify Seller in writing if the ETA changes by more than two hours following the 24-hour notice.

5.5 Additional Vessel Pre-Arrival Information. Buyer shall have a continuing obligation to provide immediate notice to Seller in the event of any change in the data or information provided with the Vessel nomination. The foregoing shall not relieve Buyer of its obligation to provide Seller with all additional data and information not specifically requested by Seller concerning the Vessel's Cargo-worthiness, seaworthiness, safety, suitability for the intended loading or carriage, or with respect to

the Vessel's compliance with applicable environmental or safety requirements. Buyer promptly shall update Seller upon discovery of any Vessel problems or deficiencies that may adversely impact operations at the Cargo Transfer Point.

- 5.6 Adherence to Terminal Regulations.** Buyer's nominated transport, including Vessel, truck and railcar, must comply at all times with the applicable terminal regulations. Seller shall provide or cause to provide copies of such regulations on request.

All deliveries shall be made during a terminal's customary business hours, provided that Buyer has given Seller reasonable advance notice and the necessary shipping instructions in accordance with the nomination requirements. Buyer shall execute any terminal access agreement as may be required by the facility prior to loading any of its owned or designated trucks and/or railcars, and shall instruct their agents and employees to comply with the applicable safety regulations and procedures when on the terminal premises.

Buyer's nominated transport, including Vessel, truck and railcar, presented by Buyer for loading shall be safe, fit, and in all respects ready to load the Product within the loading period as required by the Terminal Operator. Seller, acting in a commercially reasonable manner, has the right to refuse Buyer's nominated transport if it is not fit for loading or the Terminal Operator may reject due to noncompliance with tariff and/or Terminal Operator's rules and regulations.

- 5.7 Laydays.** The Laydays in the relevant Confirmation constitute a window for arrival of the Vessel at the Cargo Transfer Point. If the Vessel arrives within the Laydays, it is anticipated that loading of the Cargo may not be completed before the Laydays expire.

5.8 Dock Clauses for Vessels.

- (a) Arriving Vessels. Arriving Vessels shall be placed in a queue and berthed on a first come-first served basis. Seller generally shall take Vessels into berth at the Cargo Transfer Point in the same chronological order as Seller's receipt of NORs, provided, however, that if the Cargo Transfer Point has special barge berths, barges shall use barge berths rather than ocean tanker dock berths. Seller reserves the right, in its sole discretion, to take one or more later arriving Vessels out of sequence, in which event all delay thereby caused in berthing the Vessel shall count as laytime or time on demurrage.
- (b) Tardy Arrival. Time is of the essence in each Transaction. Anything to the contrary notwithstanding, Seller may, at its sole option, and without prejudice to its other rights and remedies, reject any Vessel which arrives at the Cargo Transfer Point after Laydays have expired.
- (c) Tardy Vessel Berthing. A Vessel which fails to arrive within four hours after the time designated by Seller for its berthing, as assigned within an immediately preceding 24-hour period, shall lose its place in the queue and shall be re-assigned a new time for berthing at Seller's sole discretion, with all expenses and time during the ensuing delay to be for Buyer's account.
- (d) Public Dock. Notwithstanding the laytime and demurrage provisions set forth above in this Agreement, the Parties hereto agree and acknowledge that, *if* delivery pursuant to this Agreement is made at a public terminal, where the terminal meets the criteria listed on the Leadership for Energy Automated Processing ('LEAP') website under public dock criteria at <http://www.energyleap.org/publicdockclause/> and *if* at a terminal which is on the "Public Dock List" as available on the LEAP website at <http://www.energyleap.org/publicdockclause/public-dock-list/> in cases in which delays are directly attributable to berth congestion, and demurrage would otherwise be payable, laytime shall not be considered to commence until Vessel is

All Fast at the dock.

5.9 Vessels: Notice of Readiness, Lightering and Calculation of Laytime.

- (a) Notice of Readiness. After the Vessel has arrived at the customary anchorage for the Cargo Transfer Point, and is in all respects ready to proceed with loading the Cargo, Buyer shall give NOR to Seller by facsimile, letter, telegraph, wireless, radio telephone, telephone, or e-mail, berth or no berth. If NOR is given orally, confirmation in writing shall be made promptly.
- (b) Laytime. Total laytime shall consist of the allowed time day or night as set forth below for loading, including Saturdays, Sundays and holidays.
 - (i) All Vessels (Other Than Barges). Allowed laytime shall be, in order of the precedence, (a) the allowed laytime as agreed by the Parties at the time of Vessel acceptance, (b) voyage chartered – where the single voyage Vessel charter party agreement specifies a laytime allowance per hour or specific laytime allowance for loading, then such allowed laytime shall apply, pro rata for part cargo, otherwise the laytime allowance shall be one-half (1/2) of the total laytime allowance as provided in the single voyage charter party, pro rata for part cargo or, if neither (a) or (b) apply, (c) the market rate current on the date the loading commences for a Vessel of the size and type appropriate to the Vessel's cargo for a single voyage charter from the load port to the Buyer's discharge port.
 - (1) If the Vessel arrives, is in all respects ready to load, and tenders written NOR by the master or owner's agents within the agreed loading date range, laytime shall commence six (6) hours after NOR is tendered or when the Vessel is secured All Fast at the specified loading berth, whichever occurs first.
 - (2) If the Vessel arrives in the port or the waiting area before the agreed loading date range, and the Vessel is in all respects ready to load, and tenders written NOR by the master or owner's agents, laytime shall commence at 00:01 hours local time on the first day of the loading date range or when the Vessel is secured All Fast at the specified loading berth, whichever occurs first.
 - (3) If the Vessel arrives in the port or the waiting place after the agreed loading date range, and Buyer's Vessel is not rejected by Seller and is otherwise in all respects ready to load, laytime shall commence when the Vessel is All Fast to the specified loading berth.

Laytime will recommence two (2) hours after disconnection of hoses if the Vessel is delayed in its departure due to Seller's or Seller's supplier's not providing any and/or all of the necessary documents and/or clearances to allow the Vessel to depart. Used Laytime shall continue until such documents and/or clearances have been provided to the Vessel by Seller or Seller's supplier(s).

- (ii) Inland and Ocean-going Barges. Allowed laytime shall be, in order of the precedence, (a) the allowed laytime as agreed by the Parties at the time of barge acceptance, (b) voyage chartered: where the single voyage charter party specifies a laytime allowance per hour or a specific laytime allowance for load, then such laytime allowance shall apply, pro rata for part cargo, otherwise the laytime allowance shall be one-half (1/2) of the total laytime allowance as provided in the single voyage charter party, pro rata for part cargo or, if neither (a) or (b) apply, (c) the market rate current on the date the loading commences for a Vessel of the size and type appropriate to the Vessel's cargo for a single voyage charter from the load port to the Buyer's discharge port.
 - (1) If the barge arrives, is in all respects ready to load, and tenders written NOR by the master or owner's agents within the agreed loading date range, laytime

shall commence at the time NOR is tendered or when the barge is secured All Fast at the specified loading berth, whichever occurs first.

- (2) If the barge arrives in the port or the waiting area before the agreed loading date range, and the barge is in all respects ready to load, and tenders written NOR by the master or owner's agents, laytime shall commence at 00:01 hours local time on the first day of the loading date range or when the barge is secured All Fast at the specified loading berth, whichever occurs first.
 - (3) If the barge arrives in the port or the waiting place after the agreed loading date range, and Buyer's barge is not rejected by Seller as is otherwise in all respects ready to load, laytime shall commence when the Vessel is All Fast to the specified loading berth.
- (c) Lightering and Topping-Off. In the event lightering part of the Cargo or topping-off is ordered by Seller, whether the relevant Vessel is anchored, adrift, or underway, and whether it is in or near a port or at a customary lightering position or anchorage for a port, or otherwise on an approach to or departure from and within 100 miles of a port where a Cargo Transfer Point is located, the place of lightering and topping-off shall not count as a separate port or separate berth, regardless of the origin or destination of the lighters. Laytime for the lightering/topping-off location shall commence upon receipt of NOR and continue until hoses are disconnected.
- (d) Part Cargo Apportionment. If the Vessel is loading any part cargo for other parties at the same berth, then any time used by the Vessel waiting at or for such berth and in loading which would otherwise count as used laytime, and after applying any laytime exclusions allowed by the governing terms, shall be pro-rated.

The proration will be determined by the Seller's loaded Cargo volume divided by the total cargo volume loaded by the Vessel at the berth.

If supporting documentation, such as time sheets, statements of facts or inspection reports, allows the Parties to identify each and every counterparty's parcel, then the following will apply:

- (1) Any used laytime that occurs from the commencement of loading to the completion of loading solely for another party's cargo shall not count in calculating used laytime for the Seller.
- (2) Any used laytime from the commencement of loading to the completion of loading solely for the Buyer's cargo shall exclusively count (100%) to the Buyer's used laytime.

It is understood used laytime is continuous from start to end. All used laytime not specifically excluded above is to be prorated to each counterparty.

For the avoidance of doubt, if any time used prior to commencement of loading can be clearly determined to be the fault of specific party(ies), then such time is to be for the account of the responsible party(ies).

- (e) Shared Delays. Whether or not already on demurrage, laytime and time on demurrage shall accrue at one-half rate in the event and during the term of a "Force Majeure" event as described in these GTCs.
- (f) Laytime Exclusions. Time shall not count as laytime or time on demurrage if lost:

- (i) due to inability of the Vessel to safely discharge or receive Cargo within the time allowed;
- (ii) due to the Vessel requiring separate and/or additional shore tank gauges for any reason or the Vessel's failure to comply with terminal regulations, or interruption of transfer operations as a result of Buyer's requests for line fill checks by comparing intermediate ship and shore gauges;
- (iii) due to prohibition of Cargo transfer at any time by the Vessel, Buyer, the owner or operator of the Vessel or by port authorities, unless such prohibition is caused by Seller's failure to comply with Applicable Law;
- (iv) due to Buyer's failure to have required documentation;
- (v) while awaiting customs and immigration clearance;
- (vi) due to strike, lockout, stoppage or restraint of labor of the master, officers and crew of the Vessel or towboat or pilots;
- (vii) during any delay for which Buyer, the Vessel, her master or crew is responsible, including any delays caused by any failure of the Vessel to meet the requirements of these GTCs or a Transaction;
- (viii) during bunkering unless concurrent with operations;
- (ix) in reaching a berth due to conditions not reasonably within Seller's control, including weather delays, fog, channel blockage, or awaiting daylight, pilots, tugs and tide;
- (x) on an inward passage from a lightering or waiting area to the customary anchorage or berth, and in shifting from the customary anchorage to the berth;
- (xi) as a result of a boycott arising in connection with the business of the Vessel or Buyer, the terms or conditions of employment of the Vessel's crew or agents, employment, trades, or cargoes of the Vessel;
- (xii) due to restraint or interference in the Vessel's operation by any Governmental Authority in connection with the ownership, registration, or obligations of Buyer or the Vessel, or in connection with stowaways or with smuggling or other prohibited activities of the Vessel's crew or agents;
- (xiii) due to Cargo contamination or damage caused by unseaworthiness of the Vessel or negligence of the Vessel or the Vessel's crew or agents; or
- (xiv) due to Vessel's unclean tanks, or inability to maintain heating or pumping warranties, or the need for Vessel repairs.

If as a result of such causes and events the Vessel loses its turn to berth, laytime and demurrage shall be suspended until it reberths All Fast. If such causes or events occur while the Vessel is in berth, extra expenses thereby incurred by Seller in connection with the Vessel remaining at the berth shall be for Buyer's account, and Seller also shall have the option to order the Vessel out of berth, so as to avoid delay to other vessels waiting to use the berth, with the cost of unberthing and reberthing for this purpose to be for Buyer's account. Time lost between berthings shall not count as laytime or time on demurrage.

- (g) Laytime Ends. For tankers, laytime shall cease upon disconnection of hoses after all Cargo has been loaded, or one hour after all Cargo has been loaded, whichever occurs first. Seller shall be allowed two hours of free time to deliver Cargo documents to the Vessel. For all Vessels other than tankers, laytime shall cease

when the barge is released by the terminal or the Cargo inspector, as the case may be, or, absent such release, upon disconnection of hoses after all Cargo has been loaded, whichever occurs last.

5.10 Demurrage.

- (a) The Seller shall pay demurrage in U.S. Dollars at the rate specified below for each running hour and pro rata for each part of an hour, for all time that running laytime exceeds the allowed laytime. Should the Vessel be loaded for the account of two (2) or more parties at a single berth, the Seller shall be liable only for its pro rata share of demurrage incurred at the berth or terminal based on the part cargo volume loaded for the Seller's account as a percentage of total gross volume of cargo loaded at that berth or terminal. However, the Seller shall not be liable for any portion of demurrage incurred solely attributable to the other Party(ies). Under no circumstances shall the Seller be required to pay demurrage in excess of that paid by Buyer to the Vessel owner.
- (b) Rate.
 - (i) For tankers, the demurrage rate shall be, in order of precedence, (a) the rate agreed between the Parties in the nomination process (b) the demurrage rate or overtime rate, if applicable, specified in the voyage (aka spot) charter party or, if neither (a) nor (b) apply, (c) the market rate current on the date the delivery commences for a Vessel of the size and type appropriate to the Vessel's cargo for a single voyage charter from the load port to the Buyer's discharge port.
 - (ii) For a barge, the demurrage rate shall be, in order of precedence, (a) the rate agreed between the Parties in the nomination process (b) the rate per hour rate payable to the barge owner specified in the voyage charter party, or, if neither (a) or (b) apply, (c) the market rate for same size barge on the date of loading as determined by three (3) brokers agreeable to both Parties.
- (c) Documentation and Filing of Demurrage Claims. Prior to the sailing of the Vessel, Seller shall be provided with a copy of the Vessel's time log. Any demurrage claim against the Seller must be made by written notice delivered to the Seller within ninety (90) days of the bill of lading date, and accompanied by evidence substantiating each and every constituent part of the claim. Any claim submitted after the ninety (90) days is deemed waived. Fully documented demurrage claims shall be accompanied by supporting documentation, including a copy of the Vessel's statement of facts, or Vessel agent's time sheet, a copy of the charter party or the charter party recap, NOR document, laytime statement, discharge pumping logs, and any notices of protest that may have been issued with respect to delays. In addition, any demurrage claim for a barge shall be accompanied by a copy of the barge owner's demurrage invoice and laytime statement, or the Vessel party's time charter invoice and time calculation. If the supporting documentation is not actually received within the ninety (90) days of the bill of lading date, the claim shall be deemed to be waived. If the Buyer fails to submit documents within the ninety (90) days of the bill of lading date, which are later discovered and which would change the amount recoverable under the demurrage claim, the additional amount shall be considered to be a new claim which is time barred. Upon receiving that untimely claim, the Seller may, at its sole discretion, waive the time bar and consider an untimely claim on its merits. No such waiver by the Buyer shall be construed as a waiver of the time bar on any subsequent claims.

5.11 Insurance. Each Party shall obtain its own insurance in accordance with the Incoterms. The mere purchase and existence of insurance does not reduce or release either Party from

any liability incurred or assumed under any Transaction.

5.12 Other Marine Terms Applying to FOB Sales.

- (a) Non-Compliance with Terminal Regulations. The Terminal Operator may order the Vessel to vacate its berth if the Vessel fails to comply with the terminal's regulations. All expenses and time until the Vessel has re-berthed shall be for Buyer's account.
- (b) Breakdown of Vessel Safety or Environmental Systems. The Terminal Operator may order the Vessel to vacate its berth if there is a deficiency or failure in the Vessel's safety or environmental systems. All expenses and time until the Vessel has re-berthed shall be for Buyer's account.
- (c) Regulatory Compliance. Buyer warrants that, throughout the Cargo transfer operation, the Vessel shall fully comply, or hold authorized waivers for non-compliance, with all applicable flag state regulations, including U.S. Coast Guard regulations, in effect as of the date that the Vessel berths. All expenses and time lost as result of a breach of this warranty shall be for Buyer's account.
- (d) Environmental Compliance.
 - (i) Buyer warrants that each Vessel shall comply with all Applicable Law, including all environmental laws, while at each Cargo Transfer Point or while in the vicinity of each Cargo Transfer Point. If any Vessel fails to comply with Applicable Law, the Vessel may be prohibited from berthing or may be required to vacate its berth and proceed from port. All expenses and time lost until such Vessel re-berths shall be for Buyer's account.
 - (ii) Buyer is responsible for providing safety equipment to the crew of the Vessel when the Cargo is high in sulfur content (ten parts per million or more) or is otherwise dangerous to health.
 - (iii) Buyer warrants that in the event that the Vessel is equipped with a vapor recovery system, the entire vapor system including piping and Cargo compartments shall be free of rust scale and particulate matter. Any delays and costs associated with collection of particulate matter in the terminal's vapor control system shall be for Buyer's account. Seller may reject any Vessel that is not free of particulate matter in the vapor system.
- (e) Oil Pollution Responsibility Certificate. Buyer warrants that the Vessel shall comply with the U.S. Water Pollution Control Act and the U.S. Oil Pollution Act of 1990 (OPA 1990), and regulations issued pursuant thereto, and shall have secured and carry onboard a current U.S. Coast Guard Certificate of Financial Responsibility (Water Pollution). Vessels shall also have onboard any other federal or state Proof of Financial Responsibility Certificate that may be required at the Cargo Transfer Point. All expenses and time lost as a result of a breach of this warranty shall be for Buyer's account.
- (f) Pollution Prevention and Responsibility. In the event any spill, escape or discharge of Cargo or bunkers occurs or is threatened from the Vessel and causes or threatens to cause pollution damage, the Vessel shall promptly notify Seller and all appropriate Governmental Authorities and shall take all necessary measures to prevent or mitigate such damage, keeping Seller and all appropriate Governmental Authorities apprised of all such measures, whether already taken or contemplated, as promptly as possible. Buyer hereby authorizes Seller, upon notice to Buyer, to undertake such measures as Seller deems reasonably necessary to prevent or mitigate

the pollution damage. Seller shall keep Buyer advised of the nature and results of any such measures taken, and if time permits, the nature of the measures intended to be taken. Any of the aforementioned measures shall be at Buyer's time and expense, provided, however, that if Seller caused or contributed to such spill, escape or discharge, the expense of the aforementioned measures shall be borne by Seller in proportion to its negligence in causing or contributing to the spill, escape or discharge. In the event that Buyer wants such measures discontinued, Buyer shall so notify Seller and thereafter Seller shall have no right to continue said measures at Buyer's expense. **THIS "POLLUTION PREVENTION AND RESPONSIBILITY" PROVISION IS NOT INTENDED TO, AND DOES NOT, EXPAND THE RIGHTS AND OBLIGATIONS OF EITHER PARTY UNDER APPLICABLE LAW AGAINST OR TO THE OTHER PARTY IN CONNECTION WITH LIABILITY FOR COSTS, DAMAGES, FINES, AND PENALTIES ARISING FROM OR IN CONNECTION WITH ENVIRONMENTAL POLLUTION.**

(g) P&I Insurance.

- (i) ITOPF. Buyer warrants that each Vessel nominated to carry Cargo is owned or demise chartered by a member of the International Tanker Owners Pollution Federation Limited (ITOPF).
- (ii) Tankers. Buyer warrants that throughout the term of each tanker's service under a Transaction, such tanker shall have full and valid Protection and Indemnity Insurance ("P&I Insurance"), including valid pollution liability insurance ("Pollution Cover"), from a P&I Club that is a member of the International Group of P&I Clubs. The cost of P&I Insurance and Pollution Cover shall be for Buyer's account. The P&I Insurance must include the maximum cover available from the International Group of P&I Clubs against liability for pollution (presently one billion U.S. dollars), unless some other amount is specifically agreed to in a Confirmation.
- (iii) Other Vessels. Buyer warrants that throughout the term of service of any Vessel (other than a tanker) under a Transaction, such Vessel shall maintain full and valid P&I Insurance, including valid Pollution Cover, from a P&I Club that is a member of the International Group of P&I Clubs, or, if such Vessel is not entered with a P&I Club, full and valid commercial insurance covering the same classes of risks as would be covered by customary P&I Insurance and Pollution Cover ("Commercial Insurance") on such Vessel. Such P&I Insurance, Pollution Cover or Commercial Insurance shall be for Buyer's account, free of cost and expense to Seller.

If requested to do so at any time during the term of a Transaction, Buyer shall promptly furnish to Seller reasonable evidence of the foregoing required P&I Insurance, Pollution Cover or Commercial Insurance. Buyer shall notify Seller immediately of any change or threatened change in the aforesaid P&I Insurance, Pollution Cover or Commercial Insurance. The foregoing obligations of Buyer are an essential part of a Transaction. The obligations of Seller under a Transaction are conditioned on such insurance obligations. Any breach of such insurance obligations shall entitle Seller to terminate the relevant Transaction without limiting its right to recover damages.

- (h) Drug and Alcohol Policy. Buyer warrants that any Vessel (not otherwise subject to U.S. Department of Transportation drug and alcohol regulations) that is nominated

to Seller shall be operating under a drug and alcohol policy that meets or exceeds the standards in the Oil Companies International Marine Forum (OCIMF) guidelines in effect as of the date of such nomination.

- (i) Inert Gas System. All Vessels fitted with an Inert Gas System (“IGS”) shall not be permitted to berth for loading or discharge of any Cargo unless the IGS is fully operational and all cargo tanks are inerted with an oxygen level at or below eight percent (8%). For Vessels intending to handle Cargo that could be adversely affected by inert gas, and for Cargo that does not require inert gas blanketing, Buyer may request from Seller an exemption from this paragraph at least three New York Banking Days prior to the Vessel’s arrival at the Cargo Transfer Point. For Vessels engaged in crude oil trade operations, positive inert gas pressure at or below eight percent (8%) oxygen content shall be maintained on all cargo tanks and slop tanks throughout the transfer and any COW operation. If Seller consents, manual gauging/sampling of OBQ or ROB may be accomplished per API MPMS Chapter 17.2 or any similar provision. Should the IGS fail after the Vessel has berthed, the Cargo transfer operation shall be terminated immediately and the Vessel may be ordered to vacate the berth until the IGS is fully operational and tanks are inerted to the requisite pre-arrival condition. Temporary or substitute equipment or procedures to correct IGS malfunctions may not be used without Seller’s approval. All expenses and time lost in connection with IGS failure and between berthings are for Buyer’s account.
- (j) Vessel Connection Construction. Buyer warrants that all piping, valves, spools, reducers and other fittings comprising that portion of the Vessel’s manifold system outboard of the last fixed rigid support to the Vessel’s deck and used in the transfer of Cargo, bunkers or ballast, will be made of steel or nodular iron. The fixed rigid support for the manifold system must be designed to prevent both lateral and vertical movement of the manifold. Buyer further warrants that no more than one reducer or spool piece (each ANSI standard) will be used between the Vessel’s manifold valve and the terminal hose or loading arm connection.
- (k) Carrier Alpha Code. Buyer warrants that the bill of lading issuer shall have and use a standard carrier alpha code required by U.S. Customs and Border Protection regulations.
- (l) U.S. Customs Compliance. Buyer warrants that the Vessel shall fully comply, or hold waivers for noncompliance, with all applicable U.S. Customs and Border Protection regulations in effect as of the date Vessel berths. Buyer shall provide all required customs information to Seller at least three New York Banking Days prior to Vessel arrival.
- (m) Terminal-Related Conditions.
 - (i) Safe Berth Availability and Charges.
 - (A) The Terminal Operator shall exercise due diligence to provide a safe berth to which the Vessel may proceed to or depart from, and where the Vessel can always lie safely afloat. However, if the Vessel cannot, in the Terminal Operator’s sole opinion, maintain its mooring safely at the dock, then the Terminal Operator may, in its sole discretion, order hold-in tugs, and the cost of such tugs shall be for Buyer’s account. The Terminal Operator shall provide a safe berth for the Vessel free of wharfage fees for normal Cargo transfer. The Vessel shall vacate the berth promptly after hoses are disconnected. A wharfage fee may be charged to Buyer for discharge extended beyond 36 hours or if the Vessel remains at the berth after hoses are disconnected. Dockage and

service fees, including mooring, booming, fresh water, steam and oily slops receipts will be charged to Buyer. In addition, all duties and other charges on the Vessel, including those incurred for tugs, pilots, and other port costs shall be for Buyer's account.

- (B) Notwithstanding anything contained in this "Safe Berth Availability and Charges" provision, Seller shall not warrant the safety nor draft of public channels, fairways, approaches thereto, anchorages or other publicly-maintained areas either inside or outside the port area where the Vessel may be directed.
- (ii) Vacating of Berth. Seller may order the Vessel to vacate its berth if it appears that the Vessel will not, because of the Vessel's disability, be able to complete loading of Cargo within 36 hours (or such shorter period as may be provided in a Confirmation) of Vessel's arrival in berth. Seller retains the right to order the Vessel to vacate its berth in order to prevent damage to the Vessel or Seller's berth due to weather related events, or any event or circumstance that Seller, in its sole opinion, determines to be a safety or environmental hazard. All expenses and time between disconnection of the hoses until reconnection of hoses shall be for Buyer's account.
- (iii) Shifting of Vessels. All expenses and time lost during any shifting of the Vessel within a port shall be for Buyer's account, unless such shifting is done at Seller's option. In addition to Seller's remedies elsewhere in these GTCs, Seller may, at its option, shift the Vessel within a berth or between berths, as well as to and from the anchorage. Expenses and time during such optional shifting or anchoring of the Vessel shall be for Seller's account, unless such shifting is performed due to Buyer's negligence or unless otherwise set forth in a Confirmation or these GTCs.
- (iv) Ballasting and Cargo Slops. If the Cargo Transfer Point has ballast water and/or slops facilities, the Vessel may discharge ballast water and/or Cargo slops up to the maximum capacity available. All time used during ballasting, deballasting or offloading slop, and any charges for such services, shall be for Buyer's account. Any time lost by delay in furnishing such facilities shall be for Buyer's account. All time consumed by the Vessel in shifting to and/or from such facilities, as well as the shifting expenses such as costs for tugs, mooring and pilots, shall be for Buyer's account.
- (v) Special Provisions for Foreign Cargo Slops. Seller shall be notified at least three New York Banking Days in advance of discharge when a Vessel desires to discharge foreign Cargo slops. Such notification shall include the following information regarding the foreign Cargo slops: identity, description or chemical properties of components, country of origin, estimated value and estimated quantity. All expenses, including customs fees, expenses associated with the clearing of foreign Cargo slops through U.S. Customs and Border Protection, the testing of the Cargo slops, and the removal and proper disposal of the Cargo slops shall be for Buyer's account.
- (vi) Vessel-Generated Waste. In the event there is Vessel-generated waste, fees associated with the testing, removal or reception of Vessel-generated waste, including fuel and lube oil sludge and oil bilge water, shall be for Buyer's account. Any delay in furnishing reception facilities at a terminal for Vessel-generated waste shall be for Buyer's account. If the Vessel must shift to and/or from such facilities, all time consumed by the Vessel shifting, as well as shifting expenses such as for tugs, mooring and pilots, shall be for Buyer's

account. Buyer shall retain title to the waste material until it is tested and commingled with terminal waste or, alternatively, delivered to a waste disposal company possessing a valid permit.

- (vii) Pollution Control Representative. Seller may, at its option, place Pollution Control Representatives (“PCRs”) on board the Vessel to observe loading of Cargo and related operations during the period that the Vessel is at a Cargo Transfer Point. In addition, either Party may, at its option, place a PCR on any Vessel involved in a lightering, topping-off, or other ship-to-ship loading operations. PCRs will advise each Vessel master or mooring master about avoidance of pollution, unsafe acts or violations of terminal regulations. However, the PCRs are not authorized to and shall not, under any circumstances, order or direct the undertaking of any particular action or interfere in any way with the master’s exercise of authority. The responsibility and liability for any pollution, unsafe act or violation of terminal regulations remains solely with Buyer, the Vessel, and its master.
- (viii) Hoses, Simultaneous Discharge, and Discharge Rate.
 - (A) Hoses between the tanker and the shore flanges shall be furnished by the Terminal Operator. Flanges for hose connections should be at or near the Vessel’s dockside rail. Crossover hoses between barges, or hoses at crossover offshore manifolds of Vessels (*i.e.*, “jumpers”), shall be furnished and connected by the Vessel at the sole risk and expense of Buyer.
 - (B) The Vessel’s Cargo hoses, including marine vapor recovery and offshore manifold crossover hoses (or jumpers), must be tested annually and shall have been in service for less than five years. Documentation of annual testing and service age must be on board the Vessel and must be made available to Seller on request. Any time lost due to verification of compliance shall be for Buyer’s account.
 - (C) If requested by Seller, the Vessel shall simultaneously load more than one grade of Product if Vessel is technically capable of doing so.
- (ix) Damage to Seller or Terminal Property or Personal Injury or Death. Buyer assumes full responsibility and liability for any damage sustained by wharves, berths, docks, tugs, or vessels owned or maintained by Seller, or for which Seller is responsible, and for personal injury or death, arising out of the negligent or improper operation of the Vessel or any other waterborne craft ordered by, or being operated for Buyer’s account. Buyer shall fully and completely defend and indemnify Seller in respect of any and all such property damages or personal injury or wrongful death claims.
- (x) Crude Oil Washing. If Vessel is equipped to crude oil wash, Buyer warrants that the Vessel complies with all international, national and local requirements applicable to COW. The Vessel must inform Seller of its intention to COW at least 48 hours prior to berthing. The number of tanks to be crude oil washed shall be limited to the minimum required by Applicable Law, unless Seller agrees or orders otherwise. In the event COW operations occur at Seller’s request, the maximum warranted pumping time shall be increased by six hours if all cargo tanks are crude oil washed, or by the prorated portion thereof if fewer than all cargo tanks are crude oil washed.

- (xi) Shore Lines. If requested by Buyer at least three New York Banking Days prior to the Vessel's arrival, Seller shall exercise reasonable efforts to perform a line press or line displacement prior to loading to determine the status of shorelines and ensure full accuracy of Cargo measurement.
- (xii) Stowaways. Buyer assumes full responsibility and liability for any and all costs or damages incurred due to a stowaway entering the United States aboard its Vessel. Buyer shall be responsible for all costs associated with security of the terminal due to a stowaway, as well as the costs to apprehend, detain, and deport any stowaway.

PART III - TERMS IN RESPECT OF CIF, CFR, DAP, DAT, DDP AND DELIVERED DELIVERIES

6. TITLE AND RISK OF LOSS

6.1 CIF/CFR.

- (a) For CIF/CFR Vessel Transactions, title to and risk of loss of the Product shall pass from Seller to Buyer as the Product passes the last permanent flange connection between the cargo intake manifold of the Vessel and the delivering hose at the loading terminal.
- (b) In respect of any CIF Vessel Transaction, Seller shall procure marine cargo insurance on the minimum coverage, but no less than 110% of the CIF value of the Cargo for the benefit of Seller and Buyer, as their respective interests may appear, which shall cover the period of time when risk of loss passes to Buyer until delivery of the Product at the discharge port when the Product passes the flange connection between the Vessel's discharge manifold and the receiving hose.

6.2 DAP/DAT/DDP/Delivered.

- (a) For DAP/DAT/DDP and Delivered Vessel Transactions, title to and risk of loss of the Product shall pass from Seller to Buyer as the Product passes the last permanent flange connection between the cargo discharge manifold of the Vessel and the receiving hose at the discharge terminal.
- (b) For delivered pipeline Transactions, title and risk of loss shall pass from Seller to Buyer as the Product passes the flange of the meter measuring discharge of Product from the pipeline.
- (c) For delivered rail Transactions, title and risk of loss shall pass from Seller to Buyer as the Product passes the outlet flange of the railcar.
- (d) For delivered truck Transactions, title and risk of loss shall pass from Seller to Buyer as the Product passes the outlet flange of the truck.
- (e) For delivered tank-to-tank transfers or pumpovers, title and risk of loss shall pass from Seller to Buyer as the Product passes the inlet flange of Buyer's storage tank.

- 6.4 Pipeline Tariff Recovery.** With respect to pipeline deliveries of Product, in the event that Buyer and Seller agree that Seller shall deliver Product from the relevant pipeline at a location other than the Delivery Location, then (i) in the event such delivery results in increased transportation costs for Seller, Buyer agrees to pay Seller, for the volume delivered, the pipeline tariff differential between the Delivery Location and the actual delivery point, based on the applicable pipeline tariff tables in effect for such pipeline on the date of delivery, or (ii) in the event such delivery results in reduced transportation costs for Seller, Seller shall, for the volume delivered, reduce the amount due under the applicable invoice for such delivery by an amount equal to the pipeline

tariff differential between the Delivery Location and the actual delivery point, based on the applicable pipeline tariff tables in effect for such pipeline on the date of delivery.

7. QUANTITY, QUALITY AND INSPECTION

7.1 Inspection. The quantity and quality of the Product sold under a Transaction shall be determined by an Independent Inspector, whose determinations shall be conclusive and binding upon both Parties, absent fraud or manifest error. The cost of the Independent Inspector's services shall be shared equally between the Parties. Seller may have a representative present at the time of title transfer and Buyer shall always provide Seller with free access to ship and shore facilities. The Parties shall instruct the Independent Inspector to obtain and retain appropriate samples of the Product for a period of 90 days from the date of measurement.

- (a) **CIF, CFR Vessel Deliveries.** The quantity of Product supplied shall be based on static shore tank measurements taken prior to and after loading of Seller's Vessel according to latest API standards. The quality of Product shall be based on analysis performed using shore tank composite samples taken prior to loading. If shore tanks are active at loading, quantity shall be determined by Vessel figures (*i.e.*, closing ullages less OBQ adjusted by VEF). Such VEF shall be determined in accordance with the latest standards of API. Any circumstance relating to quantity shall be governed by current API standards. Any circumstance relating to quality shall be governed by current API/ASTM standards.
- (b) **DAP/DAT/DDP/Delivered Vessel Deliveries.** The quantity of Product sold shall be based on static shore tank measurements taken prior to and after discharge of Seller's Vessel according to latest API specifications. The quality of Product shall be based on Vessel composite samples taken prior to discharge. Temperature corrections shall be made in accordance with the latest ASTM/API tables and samples shall be tested using methods listed in ASTM/API standards. If automatic sampling is used, such samples must be taken by equipment meeting the requirements of the latest API standards. The quantity of Product shall be adjusted for any voids in the delivery system between the Vessel and shore tanks. The quantity of Product shall not be determined by shore tank measurements when: tanks are active, the Product in the tank is non-liquid, or other factors as stated in the API standards impact the accuracy of tank measurements. In such cases, the quantity of Product shall be determined by Vessel figures (*i.e.*, arrival quantity less remaining OBQ adjusted by VEF), which shall be determined in accordance with the latest API standards. Lighterage, if required, shall be for Buyer's account. In the event that a part Cargo is lightered from Seller's Vessel, that quantity of Product shall be determined from the Independent Inspector's gauging of the lightering (receiving) Vessel's tanks adjusted by its VEF. Any circumstance relating to quantity shall be governed by the latest API standards. Any circumstance relating to quality shall be governed by the latest API/ASTM standards.
- (c) **CFR/CIF Outturn Quantity and Quality.** In the event of a CFR/CIF outturn delivery, the quantity shall be measured based on the procedures set forth in the preceding "DAP/DAT/DDP/Delivered Deliveries" provision.
- (d) **Pipeline Transactions.** The quality of Product shall be in accordance with the specifications set forth by the relevant pipeline. Quantities shall be determined by pipeline meter tickets based on calibrated pipeline meters or if such meters are unavailable, by calibration tables, or based on book, stock or inventory transfer.
- (e) **Truck and Rail Transactions.** The quality of Product shall be based on shore tank composite samples taken prior to loading as evidenced by the Independent

Inspector's report according to ASTM/API industry standards. The quantity of Product shall be determined using terminal tank gauges or weigh scales and evidenced by bill of lading(s) or based on book, stock or inventory transfer.

- (f) Delivered Tank-to-Tank Transfers or Pumpovers. The quantity of Product supplied shall be based on Buyer's static storage tank measurements taken prior to and after the tank transfer according to the latest API standards. The quality of Product shall be based on analysis performed using Seller's storage tank composite samples taken prior to transfer.

7.2 Railcar Demurrage and Detention.

- (a) If delivery of any Product is made by rail, Buyer may use the railcars only for the transfer and discharge of the Product at the Delivery Location. For the purpose of detention, time shall start at the first 00:01 after the railcars are constructively placed at the disposal of Buyer. For the purpose of detention, time shall end when all empty railcars are made available at the receiving terminal for collection by, or on behalf of, Seller. Buyer shall be responsible for demurrage and detention charges (as applicable) to the extent it delays discharge of the railcars. Buyer also shall pay Seller, upon receipt of Seller's invoice, for any demurrage or storage charges levied by any third-party transportation company as a result of Buyer not returning railcars to the railroad within the allowed freetime. Buyer will not divert Seller's railcars or consign them to any other routing or to any other destination than that set out in the bill of lading instructions without obtaining prior written consent of Seller. All diversion charges, additional freight charges and any other costs or expenses incurred, sustained or paid by Seller resulting from such diversion shall be for Buyer's account.
- (b) The demurrage charges shall be as per the applicable railroad tariff and the detention charges shall be as per the railcar lease rate. Detention charges shall not apply to the first five days of delay.

7.3 Odorant. NGLs sold under any Transaction are intended for further processing and no further odorization is required unless Buyer notifies Seller otherwise. Buyer shall indemnify Seller for any liabilities that result from the NGLs not being odorized when Buyer has failed to notify Seller that odorants should be added. Seller shall indemnify Buyer for any liabilities that result from the NGLs not being odorized when Buyer has notified Seller that odorants should be added and Seller fails to do so.

7.4 Claims. Any claim regarding the quality or quantity of Product delivered shall be deemed waived unless submitted to Seller in writing, together with supporting documentation and reasonable details of the facts on which the claim is based, within 30 days from the title transfer date of such Product.

8. NOMINATIONS, LAYDAYS, LAYTIME AND DEMURRAGE

8.1 Nominations.

- (a) Pipeline Nomination. Buyer shall nominate Product grades and quantities to Seller in accordance with the standard operating procedures of the relevant pipeline/storage company.
- (b) Delivered Truck and Rail Nominations. Buyer shall nominate Product grades and quantities to Seller subject to Seller's and the Terminal Operator's acceptance, which shall not be unreasonably withheld.

- (c) **Vessel Nomination.** Not less than seven days before a tanker's arrival or four days before a barge's arrival at the Cargo Transfer Point, Seller shall nominate for Buyer's acceptance the Vessel that will discharge the Cargo. Seller shall provide all Vessel data necessary to evaluate acceptability of the Vessel, including Vessel particulars, construction, dimensions, equipment, licenses, classification and all other information as may be required by Buyer.
- 8.2 **Vessel Acceptance.** Notice of acceptance or rejection of the nominated Vessel shall be communicated to Seller as soon as possible but always within 48 hours, excluding Saturdays, Sundays and holidays, after Buyer's receipt of nomination and all required data.
- 8.3 **Vessel Substitution.** If a Vessel nomination is rejected by Buyer, Seller shall nominate another, suitable Vessel for Buyer's acceptance as provided in these GTCs. If a Vessel nomination is accepted by Buyer, Seller may substitute another Vessel by nominating it for Buyer's acceptance. Nomination of a substitute Vessel shall be made no later than four days before the Vessel's arrival at the Cargo Transfer Point.
- 8.4 **Vessel ETAs.** Seller or Seller's designated representative shall notify Buyer in writing by facsimile, letter or other writing of the Vessel's ETA at the Cargo Transfer Point. Such notice must be received by Buyer at least seven days in advance of such arrival by a tanker or four days in advance of such arrival by barge, or within 24 hours after the Vessel has sailed from the last port before arriving at the Cargo Transfer Point, whichever date is earlier. Seller also shall provide Vessel ETA in writing 72, 48, 24 and six hours before the Vessel's expected arrival at the Cargo Transfer Point. Seller promptly shall notify Buyer in writing if the ETA changes by more than two hours following the 24-hour notice.
- 8.5 **Arrival Date Range.** The Delivery Period in the relevant Confirmation represents a window for arrival of the Vessel at the Cargo Transfer Point.
- 8.6 **Laytime.**
- (a) **All Vessels (Other Than Barges).** Allowed laytime shall be, in order of the precedence, (a) the allowed laytime as agreed by the Parties at the time of Vessel acceptance, (b) voyage chartered – where the single voyage Vessel charter party agreement specifies a laytime allowance per hour or specific laytime allowance for loading, then such allowed laytime shall apply, or, if neither (a) or (b) apply, (c) the market rate current on the date the loading commences for a Vessel of the size and type appropriate to the Vessel's cargo for a single voyage charter from the load port to the Buyer's discharge port.
- (i) If the Vessel arrives, is in all respects ready to discharge, and tenders written NOR by the master or owner's agents *within* the agreed delivery date range, laytime shall commence six (6) hours after NOR is tendered or when the Vessel is secured All Fast at the specified discharge berth, whichever occurs first and end upon hose disconnection.
- (ii) If the Vessel arrives in the port or the waiting area *before* the agreed delivery date range, and the Vessel is in all respects ready to discharge, and tenders written NOR by the master or owner's agents, laytime shall commence at 00:01 hours local time on the first day of the delivery date range or when the Vessel is secured All Fast at the specified discharge berth, whichever occurs first and end upon hose disconnection.
- (iii) If the Vessel arrives in the port or the waiting place *after* the agreed delivery date range, and is otherwise in all respects ready to discharge, laytime shall commence when the Vessel is All Fast to the specified discharge berth, and end upon hose disconnection.

- (iv) Laytime will recommence two (2) hours after disconnection of hoses if the Vessel is delayed in its departure due to Buyer's or Buyer's receiver's not providing any and/or all of the necessary documents and/or clearances to allow the Vessel to depart. Used laytime shall continue until such documents and/or clearances have been provided to the Vessel by Buyer or Buyer's receiver(s).

- (b) For inland and ocean-going barges. Allowed laytime shall be, in order of the precedence, (a) the allowed laytime as agreed by the Parties at the time of barge acceptance, (b) voyage chartered – where the single voyage charter party specifies a laytime allowance per hour or a specific laytime allowance for discharge, then such laytime allowance shall apply, pro rata for part cargo, otherwise the laytime allowance shall be one-half (1/2) of the total laytime allowance as provided in the single voyage charter party, pro rata for part cargo or, if neither (a) or (b) apply, (c) the market rate current on the date the discharging commences for a Vessel of the size and type appropriate to the Vessel's cargo for a single voyage charter from the load port to the Buyer's discharge port.
 - (i) If the barge arrives, is in all respects ready to discharge, and tenders written NOR by the master or owner's agents *within* the agreed delivery date range, laytime shall commence at the time NOR is tendered or when the barge is secured All Fast at the specified discharge berth, whichever occurs first and end upon hose disconnection or barge release, whichever occurs last.
 - (ii) If the barge arrives in the port or the waiting area *before* the agreed delivery date range, and the barge is in all respects ready to discharge, and tenders written NOR by the master or owner's agents, laytime shall commence at 00:01 hours local time on the first day of the delivery date range or when the barge is secured All Fast at the specified discharge berth, whichever occurs first and end upon hose disconnection or barge release, whichever occurs last.
 - (iii) If the barge arrives in the port or the waiting place *after* the agreed delivery date range, and is otherwise in all respects ready to discharge, laytime shall commence when the Vessel is All Fast to the specified discharge berth, and end upon hose disconnection or barge release, whichever occurs last.

8.7 Demurrage.

- (a) The Buyer shall pay demurrage in U.S. Dollars at the rate specified below for each running hour and pro rata for each part of an hour, for all time that running laytime exceeds the allowed laytime. Should the Vessel be discharged for the account of two (2) or more parties at a single berth, the Buyer shall be liable only for its pro rata share of demurrage incurred at the berth or terminal based on the part cargo volume discharged for the Buyer's account as a percentage of total gross volume of cargo discharged at that berth or terminal. However, the Buyer shall not be liable for any portion of demurrage incurred solely attributable to the other Party(ies).

- (b) For tankers, the demurrage rate shall be, in order of precedence, (a) the rate agreed between the Parties in the nomination process (b) the demurrage rate or overtime rate, if applicable, specified in the voyage (aka spot) charter party or, if neither (a) nor (b) apply, (c) the market rate current on the date the delivery commences for a Vessel of the size and type appropriate to the Vessel's cargo for a single voyage charter from the load port to the Buyer's discharge port.

- (c) For a barge, the demurrage rate shall be, in order of precedence, (a) the rate agreed between the Parties in the nomination process (b) the rate per hour rate payable to the barge owner specified in the voyage charter party, or, if neither (a) or (b) apply, (c) the market rate for same size barge on the date of discharging as determined by three (3) brokers agreeable to both Parties.

- (d) Any demurrage claim against the Buyer must be made by written notice delivered to the Buyer. Demurrage claims shall be accompanied by supporting documentation, including a copy of the vessel's statement of facts or vessel agent's time sheet, NOR document, laytime statement, a copy of the charter party or the charter party recap (if voyage chartered), and any notices of protest that may have been issued with respect to delays. The Buyer shall promptly notify the Seller of any objections to any demurrage claim under this Agreement. Unless the Seller has received such notification within ninety (90) days after the Buyer's receipt of the claim, the Buyer shall be deemed to have waived objection to the claim which shall be deemed accepted by the Buyer as presented. The Buyer shall pay any undisputed demurrage upon receipt of Seller's invoice, but in any event not later than ninety (90) days after the Buyer's receipt of the demurrage claim. If payment is not received within two New York Banking Days of Seller's invoice, interest shall accrue as provided in the Payment clause above.

8.8 Part Cargo Apportionment. If the Vessel discharging any part cargo for other parties at the same berth, then any time used by the Vessel waiting at or for such berth and in discharging which would otherwise count as used laytime, and after applying any laytime exclusions allowed by the governing terms, shall be pro-rated. The proration will be determined by the Seller's discharged cargo volume divided by the total cargo volume discharged by the Vessel at the berth.

If supporting documentation, such as time sheets, statements of facts or inspection reports, allows the Parties to identify each and every counterparty's parcel, then the following will apply:

- (1) Any used laytime that occurs from the commencement of discharging to the completion of discharging solely for another party's cargo shall not count in calculating used laytime for the Buyer.
- (2) Any used laytime from the commencement of discharging to the completion of discharging solely for the Seller's cargo shall exclusively count (100%) to the Seller's used laytime.

It is understood used laytime is continuous from start to end. All used laytime not specifically excluded above is to be prorated to each counterparty.

For the avoidance of doubt, if any time used after completion of discharge can be clearly determined to be the fault of specific party(ies), then such time is to be for the account of the responsible party(ies).

8.9 In-Harbor Lightering. In-harbor lightering shall not be permitted without Seller's prior approval. In-harbor lightering shall be performed at Buyer's sole expense, time and risk. Buyer shall indemnify and hold Seller harmless for any loss or liability resulting from in-harbor lightering.

PART IV – TERMS IN RESPECT OF ALL DELIVERIES

9. PAYMENT

9.1 Payment Due Date. The payment due date and required documentation for payment shall be as established in the relevant Confirmation. Notwithstanding the foregoing, if transfer of Product is made by book, stock or inventory transfer, payment shall be due on

the effective date of such transfer. All payments shall be made in lawful U.S. Dollars, free and clear (unless otherwise expressly permitted pursuant to this Agreement) of any withholding, liens, claims, charges, right of setoff or recoupment by wire transfer of immediately available funds to Seller at such account as Seller may designate in writing. If Seller's invoice is received by Buyer prior to 10:00 am Pacific Prevailing Time/12:00 pm Central Prevailing Time /1:00 pm Eastern Prevailing Time, such invoice shall be deemed to have been received by Buyer on the New York Banking Day of receipt, but if Seller's invoice is received by Buyer after 10:00 am Pacific Prevailing Time/12:00 pm Central Prevailing Time /1:00 pm Eastern Prevailing Time, such invoice shall be deemed to have been received by Buyer on the following New York Banking Day.

9.2 Required Documentation. Supporting documentation shall be as follows:

(a) FOB – Foreign Vessels

- (i) Invoice (facsimile acceptable).
- (ii) Copy(ies) of Independent Inspector's report of loaded quantity and quality (may be presented as two separate documents) (facsimile acceptable).
- (iii) Full set of original bills of lading properly issued or endorsed to Buyer without restriction or qualification of any kind or 2/3 original bills of lading and master's or owner's or agent's receipt for 1/3 bill of lading and other usual shipping documents.
- (iv) In the event that the original bills of lading or other usual shipping documents as described above are not available by the payment due date, Buyer shall pay Seller against presentation of documents (i) and (ii) and Seller's letter of indemnity in the format stipulated in Exhibit A.

(b) FOB – U.S. Vessels and All Barges

- (i) Invoice (facsimile acceptable).
- (ii) Copy(ies) of Independent Inspector's report of loaded quantity and quality (may be presented as two separate documents) (facsimile acceptable).

(c) FOB & Delivered Pipeline

- (i) Invoice.
- (ii) Pipeline meter ticket.

(d) FCA & Delivered Truck

- (i) Invoice (facsimile acceptable).
- (ii) Truck bill of lading (upon Buyer's request).

(e) FCA & Delivered Rail

- (i) Invoice (facsimile acceptable).
- (ii) Tank car bill of lading.

(f) CIF & CFR – Foreign Vessels

- (i) Invoice (facsimile acceptable).
- (ii) Copy(ies) of Independent Inspector's report of loaded quantity and quality (may be presented as two separate documents) (facsimile acceptable).
- (iii) Full set of original bills of lading properly issued or endorsed to Buyer without restriction or qualification of any kind or 2/3 original bills of lading and master's or owner's or agent's receipt for 1/3 bill of lading and other usual shipping documents.
- (iv) In the event that the original bills of lading or other usual shipping

documents as described above are not available by the payment due date, Buyer shall pay Seller against presentation of documents (i) and (ii) and Seller's letter of indemnity in the format stipulated in Exhibit A.

(g) CIF & CFR – U.S. Vessels and All Barges

- (i) Invoice (facsimile acceptable).
- (ii) Copy(ies) of Independent Inspector's report of loaded quantity and quality (may be presented as two separate documents) (facsimile acceptable).

(h) DAP/DAT/DDP /Delivered Vessels

- (i) Invoice (facsimile acceptable).
- (ii) Certificate of quality and/or Independent Inspector's quality report at discharge port (facsimile acceptable).
- (iii) Certificate of quantity and/or Independent Inspector's quantity report at discharge port (facsimile acceptable).

(i) Tank-to-Tank Transfer

- (i) Invoice (facsimile acceptable).
- (ii) Transfer documentation from Independent Inspector or in the absence of an Independent Inspector, from the terminal.

(j) Stock (In-Tank) Transfer

- (i) Invoice (facsimile acceptable).
- (ii) Transfer documentation from Seller or the terminal.

9.3 Split Weekend Clause. If the payment due date falls on a Sunday, or on a Monday that is not a New York Banking Day in the place where payment is to be made, payment shall be made in immediately available funds to Seller on the next New York Banking Day after such payment due date. If the payment due date falls on a Saturday, or on a non-New York Banking Day other than a Monday in the place where payment is to be made, payment shall be made in immediately available funds to Seller on the last New York Banking Day prior to such payment due date.

9.4 Interest. Any amount payable by a Party to another Party pursuant to a Transaction shall, if not paid when due, bear interest from the payment due date until, but excluding, the date payment is received by the owed Party, at the Interest Rate.

9.5 Rounding. Rounding conventions shall be as follows: Product pricing in Gallons shall be rounded to the nearest fourth decimal place. If the fifth decimal place is five (5) or greater, the fourth decimal place shall be rounded up to the next numerical digit. If the fifth decimal place is less than five (5), the fourth decimal place shall remain unchanged. Product pricing in Barrels shall be rounded to the nearest third decimal place. If the fourth decimal place is five (5) or greater, the third decimal place shall be rounded up to the next numerical digit. If the fourth decimal place is less than five (5), the third decimal place shall remain unchanged. All dollar amounts shall be rounded to the nearest cent.

9.6 Disputed Invoices. If an invoiced Party, in good faith, disputes the accuracy of the amount invoiced for Product delivered by the other Party, the invoiced Party shall pay such amount as it in good faith believes to be correct and provide written notice stating the reasons why the remaining disputed amount is incorrect, along with supporting documentation acceptable in industry practice. In the event the Parties are unable to resolve such dispute, either Party may pursue any remedy available at law or in equity to enforce its rights under any Transaction. In the event that it is determined or agreed that the Party that is disputing an invoice must or will pay the disputed amount, then such

Party shall pay interest from and including the original payment due date until, but excluding, the date the disputed amount is received by the owed Party, at the Interest Rate.

9.7 Netting of Invoices. In the event the Parties agree to net invoices for Product amounts that are due each other on the same payment due date, the Parties shall confirm at least two New York Banking Days prior to the payment due date, orally or in writing, the invoice amounts and any amounts remaining, if any, after net-out. Any remaining balance after net-out shall be paid by the Party owing such amount to the other Party on the applicable payment due date. The owing Party's payment of a net amount shall satisfy each Party's payment obligations under the relevant Transactions in respect of the invoices included in the settlement on a payment due date. The Parties understand and agree that such netting of invoices is expressly limited to amounts owed from purchases and sales of Product between the Parties and that netting out any other amounts due in respect of any Transaction, for any reason whatsoever, including quality claims and demurrage, is strictly prohibited unless otherwise agreed in writing.

9.8 Transaction Netting: Bookouts.

- (a) Transaction Netting. If the Parties enter into one or more Transactions that, in conjunction with one or more other outstanding Transactions, constitute Offsetting Transactions, then all such Offsetting Transactions may, by mutual agreement of the Parties, be netted into a single Transaction so that: (i) the Party obligated to deliver the greater amount of the Product will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it by the other Party under the Offsetting Transactions, and (ii) the Party owing the greater aggregate payment will pay the net difference owed between the Parties. Each single Transaction resulting under this "Transaction Netting" provision shall be deemed part of the single agreement between the Parties referenced in the "Single Agreement" provision, and once the Parties' obligations under such resulting single Transaction are satisfied, outstanding obligations under the Offsetting Transactions that are satisfied by such offset shall terminate.
- (b) Bookouts. If, for scheduling convenience purposes, the Parties agree verbally or in writing, either bilaterally or as part of a multiparty arrangement, to a cancellation or modification of future physical delivery obligations in respect of a Transaction (in each case, a "Bookout"), then effective upon the relevant future delivery date (the "Bookout Date"): (i) the delivery obligations under the relevant Transaction will be extinguished or modified (whether in whole or in part) as agreed, and (ii) any agreed payment will be due as follows, unless otherwise agreed: (A) with respect to Product that is a refined petroleum product, on the Bookout Date, (B) with respect to Product delivered that is crude oil, on the 20th day of the month following the month of the Bookout Date, or (C) with respect to Product that are LPGs or NGLs, within five New York Banking Days following the Bookout Date. At any time prior to the relevant Bookout Date, either Party may elect, at its option and upon notice to the other Party, to cancel the Bookout and thereby restore all original contract terms, including delivery and payment, all without liability to the other Party. This "Bookouts" provision shall apply notwithstanding that either Party may fail to (i) send out a writing confirming the Bookout Transaction or (ii) make changes on its books as a result of any such Bookout Transaction.

9.9 Provisional Invoice. In the event all relevant price assessments or quotations are not available or the final contractual quantity is not known when Seller's invoice is prepared

and delivered, the Buyer shall pay Seller's provisional invoice within two (2) New York Banking Days after receipt of invoice. Seller's provisional invoice shall be calculated using all then available relevant price assessments or quotations and, in the case, where contractual quantity is determined by the quantity determined at the discharge location, the quantity in the provisional invoice shall be determined by taking 99.5% of the bill of lading or other shipment document quantity at the load port. In the event Seller's initial invoice was a provisional invoice, as and when all relevant price assessments or quotations are available and/or the final delivered outturn quantity at the discharge location is known, Seller will deliver its final invoice to Buyer, such final invoice will reflect the difference between provisional payment received and final payment value. The owing party shall remit the difference to the owed party within two (2) New York Banking Days from final invoice delivery.

10. CREDIT

10.1 Security. If Seller's financial exposure to Buyer exceeds an amount determined by Seller in its sole discretion at the time of the delivery or settlement, Seller may require the Buyer to provide at least two (2) New York Banking Days prior to delivery: (a) an irrevocable Letter of Credit in form and substance acceptable to Seller in its sole discretion with an expiry date forty-five (45) calendar days after the last day of final settlement, or (b) wire payment in immediately available funds upon Seller's presentation of a prepayment invoice.

10.2 Performance Assurance. In addition to 10.1, if Seller shall have reasonable grounds for insecurity at any time as to the ability of Buyer to perform its obligations under this Agreement, Seller may require Buyer to provide Performance Assurance in a form and in an amount determined by Seller in its sole discretion, and Seller may suspend any payment or performance obligation under this Agreement pending receipt of such Performance Assurance. Any Performance Assurance, collateral, margin, or other credit support, including cash margin or any other payment or property transferred by one Party to the other Party as security, together with all proceeds, profits and products thereof, shall be referred to herein as "Collateral." Failure to provide the required Performance Assurance within two (2) New York Banking Days after such request has been made shall constitute a material breach of this Agreement entitling Seller to declare an Event of Default (as described in this Agreement), as well as to cancel its delivery or payment obligations and to offset any payments or deliveries due to Buyer under this Agreement or other agreements between the Parties. All costs in connection with providing such Performance Assurance shall be for the account of Buyer. Buyer hereby pledges and grants to Seller a first priority continuing security interest in, lien on, and right of setoff against, all Collateral (other than Collateral in the form of a Letter of Credit or a guaranty where a first priority security interest and lien cannot be granted) transferred to the Seller from time to time hereunder and all proceeds thereof. Collateral in the form of U.S. Dollars shall be transferred to such account or accounts of Seller as Seller may designate from time to time. Seller shall have the right to pledge, hypothecate or otherwise use or dispose of any Collateral subject to this Agreement until settlement in full of any and all transaction and other obligations of any kind arising by operation of this Agreement and/or any other transactions between Buyer and Seller. In addition to any other rights that may be available to Seller under this Agreement, any other transaction, any other agreement, Applicable Law or otherwise, if at any time an Event of Default shall have occurred with respect to Buyer, then Seller may exercise all rights and remedies available to a secured party under Applicable Law with respect to any Collateral subject to this Agreement.

11. DISCLAIMER OF WARRANTIES

OTHER THAN SELLER'S WARRANTIES OF TITLE SET FORTH IN THESE GTCS AND CONFORMANCE OF THE PRODUCTS TO THEIR SPECIFICATIONS UNDER ANY TRANSACTION,

OR UNLESS OTHERWISE STATED IN A CONFIRMATION, SELLER MAKES NO OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATION OR WARRANTY REGARDING MERCHANTABILITY, FITNESS OR SUITABILITY OF THE PRODUCT FOR ANY PARTICULAR PURPOSE, EVEN IF SUCH PURPOSE IS KNOWN TO SELLER UNLESS OTHERWISE STATED IN THE CONFIRMATION FOR A PARTICULAR TRANSACTION. SELLER EXPRESSLY DISCLAIMS ANY WARRANTY AGAINST INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT.

12. IMPORTER DUTIES, DRAWBACK AND TAXES

- 12.1** With respect to Cargoes imported into the United States or a foreign jurisdiction, the importer of record set forth in the Confirmation shall be responsible for all import arrangements and customs requirements, including all duties, fees and related costs in respect of importing and unloading the Cargo at the discharge port. The importer of record indicated in the Confirmation shall be responsible for all Taxes arising from or imposed upon importation of the Cargo. Unless otherwise agreed, the importer of record shall be entitled to any duty drawback rights.
- 12.2** Buyer represents that it is registered with the Internal Revenue Service (“IRS”) and the state of importation to engage in tax-free Transactions with respect to taxable fuels. Prior to the scheduled delivery date or book, stock or inventory transfer date, Buyer shall provide Seller with proper notification, exemption or resale certificates or direct pay permits as may be required or permitted by Applicable Law. If Buyer does not furnish such certificates or the Transaction is subject to tax under Applicable Law, Buyer shall reimburse and indemnify Seller for all Taxes paid or incurred by Seller, together with all penalties and interest thereon.
- 12.3** Each Party shall provide to the other Party a properly executed IRS Form W-9, W-8BEN or W-8ECI (or successor form), as appropriate, upon the execution of a Confirmation and subsequently if the information in such form becomes materially inaccurate or such form expires or becomes obsolete. Each Party further agrees to promptly deliver to the other Party any other tax form or certificate reasonably requested by such other Party.

13. FORCE MAJEURE

- 13.1** Neither Party shall be liable to the other Party if it is rendered unable by an event of Force Majeure to perform in whole or in part any obligation or condition of a Transaction, for so long as the event of Force Majeure exists and to the extent that performance is hindered by the event of Force Majeure, provided, however, that the Party unable to perform shall use commercially reasonable efforts to avoid or remove the event of Force Majeure. During the period that a Party’s performance of its obligations under any Transaction has been suspended in whole or part by reason of an event of Force Majeure, the other Party likewise may suspend the performance of all or part of its obligations related to such affected Transaction to the extent that such suspension is commercially reasonable, except for any payment and indemnification obligations arising prior to the occurrence of such Force Majeure event.
- 13.2** If either Party is rendered unable by Force Majeure to perform or comply fully or in part with any obligation or condition of a Transaction, the affected Party shall give written notice to the other Party of such Force Majeure event within 24 hours after receiving notice of the occurrence of the Force Majeure event relied upon, including, to the extent feasible, the details and the expected duration of the Force Majeure event and the volume of Product affected. Promptly thereafter, the Party rendered unable to perform shall confirm such information in writing. Such Party also shall promptly notify the other Party when the Force Majeure event is terminated.

13.3 In the event that the period of suspension due to a Force Majeure event as to an affected Transaction shall continue in excess of 30 days from the date that notice of such event is given, and so long as such event is continuing, either Party, in its sole discretion, may terminate such affected Transaction by written notice to the other Party, and neither Party shall have any further liability to the other Party in respect of such Transaction except for the rights and remedies previously accrued.

14. MATERIAL SAFETY DATA SHEETS

Seller has provided or shall provide Buyer upon Buyer's request with Seller's Material Safety Data Sheets ("MSDS") for the Product delivered in any Transaction. Nothing in these GTCs shall excuse Buyer from complying with Applicable Law that may require Buyer to provide its employees, agents, contractors, users and customers who may come into contact with the Product with a copy of the MSDS and any other safety information provided to it by Seller, or that may require Buyer to ensure that the recommendations relating to the handling of the Product are followed. Compliance with any recommendation contained in the MSDS or other safety information shall not excuse Buyer from complying with all Applicable Law.

15. COMPLIANCE WITH LAW

15.1 Fuels Regulations. Product sold under a Transaction shall be produced and delivered in full compliance with all Applicable Law, including environmental fuels regulations for (i) gasoline and alcohol blends, (ii) ultra low sulfur diesel, (iii) reformulated gasoline and RBOB, (iv) gasoline additives and (v) aviation fuel. The failure of Product to conform to the requirements of Applicable Law shall excuse Buyer from further performance under the relevant Transaction and shall entitle Buyer to return the Product to Seller or take such other steps as are reasonably necessary to comply with Applicable Law. RINs sold pursuant to any Transaction shall be transferred in full compliance with all Applicable Law.

15.2 Recordkeeping. Seller and Buyer shall maintain appropriate records that demonstrate compliance with Applicable Law and industry standards. Each Party also shall immediately notify the other Party in writing of any violation or alleged violation with respect to the Product and RINs (if any) sold in a Transaction.

15.3 Gasoline and Alcohol Blends. For each delivery of gasoline and alcohol blends, Seller agrees to provide Buyer a certificate of analysis, a bill of lading, a delivery ticket or a loading ticket that represents the Product to be in compliance at the time of title transfer and correctly stating the maximum Reid Vapor Pressure at the time of title transfer.

15.4 Ultra Low Sulfur Diesel. Seller represents that the Ultra Low Sulfur Diesel shall be produced and delivered in accordance with the ULSD Regulations. Upon any transfer of custody or title by Seller with respect to the Product, Seller or its designee shall provide Buyer or Buyer's transferee with product transfer documents meeting the requirements of the ULSD Regulations and shall comply with all recordkeeping and reporting requirements.

15.5 Conventional Gasoline. If the Product sold in any Transaction is conventional gasoline, Buyer acknowledges that such Product does not meet the requirements for reformulated gasoline and may not be used in any reformulated gasoline-covered areas. Seller agrees to provide Buyer with all product transfer documents required by Applicable Law.

15.6 RBOB. Seller and Buyer shall comply with all Applicable Law for reformulated gasoline and blendstocks, including regulations found at 40 CFR § 80.65 through to

80.89. Buyer agrees that pursuant to 40 CFR § 80.69(a)(5), the Product title may be transferred only to an oxygenate blender who is registered with the U.S. Environmental Protection Agency (“EPA”) as such, or to an intermediate owner with the restriction that the Product shall only be transferred to a registered oxygenate blender. Pursuant to 40 CFR § 80.69(a)(6), Buyer hereby agrees to have a contract with the oxygenate blender, or a contract with an intermediate owner, that requires the intermediate owner to require the oxygenate blender to (or, if the oxygenate blender is Buyer, Buyer shall):

- (a) blend Seller’s RBOB with oxygenate in accordance with Seller’s written instructions regarding the proper oxygenate type and amount of oxygenate;
- (b) conduct quality assurance, sampling and testing as required in 40 CFR Part 80;
- (c) stop selling any gasoline found to not comply with the standards under which the RBOB was produced or imported; and
- (d) allow Seller to obtain samples of reformulated gasoline produced from Seller’s RBOB subsequent to the addition of oxygenate and prior to combining the resulting gasoline with any other gasoline in accordance with 40 CFR Part 80.

15.7 Ethanol. In the event that the Product is ethanol and is imported into the United States, Buyer warrants and covenants that all ethanol purchased hereunder will be discharged from the Vessel into a permitted distilled spirits plant (“DSP”) or an alcohol fuel plant (“AFP”), whether directly or via a U.S. Customs and Border Protection bonded warehouse. Upon discharge from the Vessel, the ethanol will not be taken to any other location other than a U.S. Customs and Border Protection bonded warehouse, DSP or AFP. If discharged into a U.S. Customs and Border Protection bonded warehouse, Buyer warrants that when the ethanol leaves such warehouse, it will be transferred from customs bond directly to a DSP or AFP. Buyer also warrants and covenants that it will comply with all Applicable Law administered by the U.S. Department of Treasury and Alcohol Tobacco Tax and Trade Bureau in connection with the handling, importation and discharge of the Cargo. If the ethanol is not discharged from the Vessel in accordance with this “Ethanol” provision or Buyer breaches this warranty and covenant in any manner, Buyer shall indemnify, defend and hold Seller harmless from and against any and all losses, liabilities, claims, demands, damages, costs, expenses (including reasonable attorneys’ fees), penalties, fines, fees and Taxes (including any interest or penalties imposed thereon), as a result of Buyer’s failure or breach.

15.8 Sale or Transfer of RINs. Unless otherwise agreed, Seller shall separate and retain RINs from the Product to be supplied pursuant to the Confirmation, to the extent required or otherwise permitted by Applicable Law. However, if RINs are sold or transferred, the following provisions apply:

- (a) Each Party shall comply with the Renewable Fuel Standard Program as set forth in 40 CFR Part 80, and specifically Subpart M. (the “Renewable Fuel Standard Regulations”). Seller and Buyer confirm that each has registered with EPA pursuant to the Renewable Fuel Standard Regulations, and in particular pursuant to 40 CFR § 80.1450, and has received an EPA-issued company identification number. Further, Seller and Buyer acknowledge that registration under this regulation and the subsequent issuance of an EPA company identification number is required and necessary prior to engaging in any Transaction involving RINs. Buyer acknowledges that if it is not registered with EPA and does not have an EPA-issued company identification number, Seller will be unable to transfer any RINs under the relevant Transaction.
- (b) Upon Seller’s receipt of payment for RINs, Seller shall transfer to Buyer legal and equitable title to the RINs free and clear of any liens and encumbrances, and Buyer

shall thereafter retain such title, right and interest in and to the RINs. Seller shall provide Buyer with a certificate or other documentation evidencing the transfer of RINs.

- (c) In addition to the rights and remedies specified in these GTCs, if Seller fails to transfer RINs to Buyer after Buyer has paid the full amount of the purchase price in accordance with the Transaction, Seller shall pay Buyer termination damages equal to (and not in excess of) the product of (i) the number of RINs that Seller was otherwise obligated to transfer to Buyer and (ii) the purchase price. Alternatively, Seller, at its sole election, may timely deliver RINs of equal value and vintage year to cover the shortfall and shall transfer such RINs to Buyer pursuant to the terms hereunder. If Buyer fails to pay Seller for the RINs in accordance with the Transaction and Seller elects to terminate the Transaction, Buyer shall pay Seller termination damages equal to (and not in excess of) the product of (i) the number of RINs that Buyer failed to pay for and (ii) the greater of (x) the purchase price and (y) the market price for one RIN (equivalent with respect to vintage year and delivery dates), determined by Seller in a reasonable manner, as of the early termination date declared by Seller.

15.9 Remedies for Invalid RINs.

- (a) A RIN shall be deemed invalid if it meets the invalid RIN criteria described in 40 CFR Part 80 Subpart M (“RFS”) or if the EPA has provided notice to a party regulated under the RFS or otherwise had made its determination public that the RIN is invalid (“Invalid RIN”).
- (b) In the event that Seller transfers Invalid RINs, Seller shall, at Seller’s sole expense, transfer to Buyer qualified replacement RINs in an amount equal to the amount of Invalid RINs within ninety days of the later of (i) the issuance of the notice of violation (“NOV”) by the EPA or (ii) Buyer’s demand for replacement. For the purpose of this section “qualified replacement RINs” must be separated RINs, but must be the same D code and must be the same vintage year, if available; otherwise, the next unexpired vintage year.

15.10 Octane Certification. In accordance with the Federal Trade Commission’s requirements for octane certification under the Petroleum Marketing Practices Act, Seller certifies the accuracy of the octane rating of any automotive gasoline described in any Confirmation.

15.11 California Export. For deliveries out of the State of California, Seller must retain documentation to support the delivery of fuel at an out-of-state location for all exemptions or credits. Documentation may include contracts, bills of lading, delivery tickets, meter tickets or meter readings. Buyer has the burden and shall provide Seller with the proper substantiation and documentation to support the exemption or credit. Delivery tickets shall be furnished by Buyer to Seller’s tax department within seven days after the end of the month in which the Product was purchased showing receipt in a location outside of the State of California.

15.12 Oregon Clean Fuels Program Regulations:

- (a) To the extent the Product sold hereunder is a transportation fuel identified in OCFP Regulations § 340-253-0200(2) (as defined below), the Parties agree that, unless otherwise agreed and stated in the Confirmation, Buyer (i) is the regulated party under the OCFP Regulations, for the total volume of fuel transferred to Buyer hereunder; (ii) must comply with the registration, recordkeeping and reporting

requirements under OCFP Regulations §§ 340-253-0500, 340-253-0600, 340-253-0620, 340-253-0630 and 340-253-0650, for the fuel transferred hereunder; and (iii) is responsible for compliance with the clean fuel standard for such fuel under OCFP Regulations § 340-253-0100(6) of the OCFP Regulations. In addition, unless otherwise agreed in the Confirmation, Seller shall provide Buyer with a PTD that prominently states that Buyer is now the regulated party for the entire volume of Product transferred hereunder.

- (b) To the extent the Parties have agreed that Seller shall remain the regulated party under the OCFP Regulations, and such agreement is specifically stated in the Confirmation, Seller (i) agrees to remain the regulated party for the volume of fuel transferred hereunder; and (ii) shall provide Buyer with a PTD that prominently states that Seller remains the regulated party and is responsible for meeting all applicable requirements of the Oregon Clean Fuels Program for the Product.
- (c) For purposes of this Agreement, “OCFP Regulations” means the regulations, orders, decrees and standards issued by a Governmental Authority implementing or otherwise applicable to the Oregon Clean Fuels Program as set forth in the Oregon Administrative Rules §§ 340-253-0000 *et. seq.*, and each successor regulation, as may be subsequently amended, modified, restated from time to time.

15.13 Every Transaction incorporates by reference the equal opportunity clause set forth in 41 C.F.R. §60-1.4(a) and the equal opportunity clauses for special disabled veterans and veterans of the Vietnam era and for workers with disabilities set forth in 41 C.F.R. § 60-250.5(a) and 60-741.5(a).

16. ISPS COMPLIANCE

- 16.1 FOB Basis Transactions.** For FOB sales, Buyer warrants that the Vessel complies with the requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (the “ISPS Code”) and the U.S. Maritime Transportation Security Act of 2002 (“MTSA”). Seller warrants that the loading port and loading terminal are in compliance with the ISPS Code and the MTSA.
- 16.2 CIF/CFR/DAP/DAT/DDP and Delivered Basis Transactions.** For CIF/CFR/DAP/DAT and DDP sales, Seller warrants that the Vessel complies with the requirements of the ISPS Code and the MTSA. Buyer warrants that the discharge port and discharge terminal are in compliance with the ISPS Code and the MTSA.
- 16.3 Generally.** In all cases, a Party that breaches any warranty set forth in this “ISPS Compliance” section shall indemnify the other Party against any resulting delays, demurrage, expenses, fines, penalties or other costs (excluding any consequential or indirect damages).

17. NEW OR CHANGED REGULATIONS: ALTERNATIVE PRICE INDEX

- 17.1** If at any time after a Transaction is entered into new Applicable Laws are enacted or existing Applicable Laws are amended, which individually or collectively could reasonably be expected to have a material adverse effect upon the rights and obligations of a Party (the “Affected Party”) as a whole under a particular Transaction (an “Affected Transaction”) and which do not constitute a Force Majeure event, then the Affected Party may notify the other Party that it desires in good faith to renegotiate the price or other material terms or conditions so affected in order to appropriately pass through or otherwise address the effects of the new or changed Applicable Laws. Such

notice shall state the new or changed Applicable Law upon which the Party's renegotiation request is based and the terms upon which it is willing to continue to perform the Transaction with respect to any Product not yet delivered. The Parties shall negotiate in good faith any price adjustments that may be warranted to account for any incremental costs involved in complying with a Governmental Authority's change in required Product specifications subsequent to the date of a nomination and prior to the commencement of the scheduled Delivery Period.

- 17.2** If the price of a Transaction is based on an industry reference index (the "Original Index") that ceases to be published or is not published for any period applicable to calculation of the price of the Transaction (in which case such Transaction will be deemed an Affected Transaction), the Parties shall in good faith (i) select an alternative index that reflects as nearly as possible the same information as published in the Original Index; or (ii) negotiate an interim price for the Transaction until the Original Index recommences publishing or an alternative index can be identified to replace the Original Index.
- 17.3** If the Parties do not agree upon new prices or terms satisfactory to both within 30 days of (i) a Party's request to initiate negotiations between the Parties pursuant to the first paragraph of this "New or Changed Regulations; Alternative Price Index" section or (ii) the failure of an Original Index to publish as described in the second paragraph of this "New or Changed Regulations; Alternative Price Index" section, as applicable, either Party shall have the right to terminate all Affected Transactions that may legally be terminated at the end of the 30-day period, in which case each Party shall determine the Termination Payment that would be payable with respect to Affected Transactions as though it were the Performing Party in accordance with the "Termination and Liquidation" section. The Termination Payment payable with respect to Affected Transactions will be an amount equal to the sum of (i) one-half of the difference between the Termination Payments calculated by the two Parties, and (ii) the lesser of such two Termination Payments. Any Product delivered during the 30-day period shall be sold and purchased at the price and on the terms set forth in the Confirmation without any price adjustment in respect of the new or changed Applicable Law concerned.
- 17.4 EPA/RVO CHANGE IN LAW:** If, from the Transaction's Trade Date to the last day of the Laydays, the Delivery Period as defined in the Confirmation, the date of Product transfer, (as applicable), existing laws, regulations or binding agency guidance related to the U.S. Environmental Protection Agency's ("EPA") point of obligation for the EPA's Renewable Volume Obligation ("RVO") is materially changed or any new laws, regulations or binding agency guidance related to the RVO point of obligation are enacted or promulgated which have an adverse economic impact on a Party ("Regulatory Change"), then either Party, acting in good faith, shall have the option to request renegotiation of the agreed-upon pricing provision and suspend performance hereunder from implementation date of such Regulatory Change. The Parties shall meet and use good faith negotiations to amend such pricing provision. If the Parties are unable to mutually agree on a modified pricing provision within 10 days, then either Party shall have the right to terminate this agreement upon 30 days written notice without further liability, excepting any obligations accrued up until the point of such early termination. If the Parties do agree on a new pricing provision, they will document such change in a written amendment to this Agreement, and such change will be effective only as stated in such amendment.

18. DEFAULT

- 18.1 EVENTS OF DEFAULT.** Notwithstanding any other provision of this Agreement or any provision of any Other Commodity Agreement, guaranty or other credit support document,

the occurrence at any time with respect to any Party or its guarantor or other entity designated as a credit support provider (each such entity, a “Credit Support Provider”) of any of the following events constitutes an event of default (an “Event of Default”) with respect to such Party (the “Defaulting Party”):

- (a) Such Party fails to make payment when due under this Agreement (excluding any payment that is the subject of a good faith dispute but only to the extent of such disputed amount) within one New York Banking Day following receipt of a demand for payment by the other Party.
- (b) Such Party fails to satisfy the credit and Collateral requirements agreed to between the Parties pursuant to this Agreement if such failure is not remedied within the specified grace period, or if none is specified, within two New York Banking Days following receipt of notice of such failure from the other Party, or any Performance Assurance or other Collateral provided by a Party pursuant to this Agreement expires, terminates or no longer is in full force and effect.
- (c) Such Party (i) disaffirms, disclaims, repudiates, or rejects any material obligation to the other Party under this Agreement; (ii) fails to perform any material obligation to the other Party under this Agreement (other than an Event of Default described in Section 18.1(a) or Section 18.1(b)) within two New York Banking Days following receipt of notice from the other Party that corrective action is needed; or (iii) breaches any representation, covenant or warranty in any material respect under this Agreement, that, if capable of being cured, is not cured to the satisfaction of the other Party in its reasonable discretion within five New York Banking Days following receipt of notice from the other Party that corrective action is needed and in all cases, such breach is continuing at the time at which the other Party seeks to enforce its remedies on account of such breach.
- (d) Such Party (i) defaults under an Other Commodity Agreement and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of that Other Commodity Agreement, or if no such provisions are provided for in the Other Commodity Agreement, the occurrence of an event similar to an Event of Default set forth in this Agreement has occurred and is continuing, (ii) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery or exchange date of, or any payment on early termination of, an Other Commodity Agreement (or such default continues for at least one New York Banking Day if there is no applicable notice or grace period) or (iii) disaffirms, disclaims, repudiates, or rejects in whole or part, an Other Commodity Agreement (or such action is taken by any Person or entity appointed or empowered to operate it or act on its behalf).
- (e) Such Party or its Credit Support Provider (i) is dissolved, other than pursuant to a consolidation, amalgamation or merger; (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor’s rights, or a petition is presented for its winding-up or liquidation; (v) has a resolution passed for its winding-up, official management or liquidation, other than pursuant to a consolidation, amalgamation or merger; (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (viii) causes or is subject to

any event with respect to it which, under Applicable Law, has an analogous effect to any of the events specified in clauses (i) through (vii) above, inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in any of the foregoing acts.

- (f) Such Party or its Credit Support Provider (i) fails to satisfy, perform or comply with any agreement, obligation or covenant to be satisfied, complied with or performed by it in accordance with any credit support document or other agreement relating to the provision of any Performance Assurance or other Collateral provided by a Party pursuant to this Agreement (collectively, a “Credit Support Agreement”) if such failure is not cured within the specified grace period, or if none is specified, within two New York Banking Days following receipt of notice of such failure from the other Party; (ii) makes any representation or warranty that proves to be incorrect or misleading in any material respect when made in connection with any Credit Support Document and such breach, if capable of being cured, is not cured to the satisfaction of the other Party in its reasonable discretion within the cure period for such default specified therein, or if no period is provided, within five New York Banking Days following receipt of notice from the other Party that corrective action is needed; or (iii) repudiates, disclaims, disaffirms or rejects, in whole or part, any obligation under any Credit Support Document.
- (g) A Party or its Credit Support Provider consolidates or amalgamates with, or merges into, or transfers all or substantially all its assets to, or reorganizes, reincorporates or reconstitutes into or as, another entity and, at the time of such consolidation, amalgamation, merger, transfer, reorganization or reconstitution: (i) the resulting, surviving, or transferee entity fails to assume all of the obligations of such Party or its Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party in connection with this Agreement; or (ii) the benefits of any Credit Support Document provided in connection with this Agreement fail to extend to the other Party (without the consent of the other Party); or (iii) the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of such Party or Credit Support Provider immediately prior to such action.
- (h) A Letter of Credit Default occurs with respect to an outstanding Letter of Credit provided by such Party under this Agreement and such Party fails to deliver substitute Performance Assurance or other Collateral acceptable to the Non-Defaulting Party, in its reasonable discretion, within one New York Banking Day following the date of receipt of notice by the other Party that a Letter of Credit Default has occurred.

18.2 Failure to Deliver or Accept Under Pipeline Transactions. Unless excused by an event of Force Majeure or the other Party’s failure to perform, if a Party fails to deliver or accept all or part of the quantity of the Product as required in a particular pipeline Transaction during the applicable Delivery Period (the “Failing Party”), the Parties will negotiate in good faith to agree promptly to a resolution for such failure within two New York Banking Days. If the Parties fail to agree to a resolution for the failure during the two- New York Banking Day period, then the remedies described below in paragraph (a) and paragraph (b) will apply, which remedies shall be a Party’s exclusive remedies for the other Party’s failure to deliver or accept the Product as set forth in a Confirmation absent the Parties’ agreement to different remedies.

- (a) Seller Failure to Deliver. If Seller is the Failing Party, Seller shall pay to Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred, an amount for each Gallon/Barrel (as applicable) of the Product of such deficiency equal to (i) the market price at which Buyer, acting in a commercially reasonable manner, is able, or absent an actual purchase, would be able (FOB

Delivery Location) to purchase or otherwise accept comparable supplies of the Product of comparable quality as determined by Buyer in a commercially reasonable manner, plus (1) costs reasonably incurred by Buyer in purchasing such substitute Product and (2) additional transportation charges, if any, reasonably incurred by Buyer as a result of taking delivery of substitute Product at a location other than the FOB Delivery Location, minus (ii) the price agreed to for the specific Transaction; except that if such difference is zero or negative, then neither Party shall have any obligation to make any deficiency payment to the other.

- (b) Buyer Failure to Accept Delivery. If Buyer is the Failing Party, Buyer shall pay to Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred, an amount for each Gallon/Barrel (as applicable) of the Product of such deficiency equal to (i) the price agreed to for the specific Transaction plus any storage, transportation or other costs reasonably incurred by Seller in reselling the Product minus (ii) the market price at which Seller, acting in a commercially reasonable manner, is able, or absent an actual sale, would be able (FOB Delivery Location), to sell or otherwise dispose of the Product as determined by Seller in a commercially reasonable manner; except that if such difference is zero or negative, then neither Party shall have any obligation to make any deficiency payment to the other.

Failure to pay any amount due pursuant to paragraph (a) and paragraph (b) above will be deemed an Event of Default under this “Default” section if such failure is not cured within two New York Banking Days following receipt of written notice of such failure from the other Party.

19. TERMINATION, LIQUIDATION AND CLOSE-OUT NETTING

19.1 Effect of Event of Default. For so long as an Event of Default has occurred and is continuing, the party other than the Defaulting Party (the “Non-Defaulting Party”) shall have the right to take any or all of the following actions: (i) withhold any payments due to the Defaulting Party under this Agreement, (ii) suspend performance under this Agreement, (iii) proceed against the Defaulting Party for damages or any other available remedies occasioned by the occurrence and continuance of the Event of Default and/or (iv) Close-out this Agreement, such Close-out to be effective (X) in the case of an Event of Default specified in Section 18.1(e) without notice immediately upon such election by the Non-Defaulting Party, or (Y) in any other case, on the date so designated by the Non-Defaulting Party which date shall be not earlier than the date such notice is effective and not later than 20 days after the date such notice is effective (an “Early Termination Date”) or, if in the reasonable opinion of the Non-Defaulting Party, this Agreement is commercially impracticable or unlawful to terminate, as soon thereafter as reasonably practicable or permissible and, notwithstanding the foregoing, if the Defaulting Party is governed by a system of law that does not permit termination to take place after the occurrence of an Event of Default, then no prior notice shall be required upon the occurrence of such Event of Default, in which case the Early Termination Date shall be deemed designated immediately preceding the occurrence of such Event of Default, by:

- (a) terminating this Agreement and calculating a Settlement Amount for this Agreement; and
- (b) setting off (A) all Settlement Amounts which the Non-Defaulting Party owes to the Defaulting Party as a result of such termination, plus any or all Collateral then held by the Non-Defaulting Party and/or any or all other obligations which the Non-Defaulting Party owes the Defaulting Party under this Agreement (whether or not then due, but in the latter case using the net present value), against (B) all Settlement

Amounts which the Defaulting Party owes to the Non-Defaulting Party as a result of such termination, plus any or all Collateral then held by the Defaulting Party and/or any or all other obligations which the Defaulting Party owes the Non-Defaulting Party under this Agreement (whether or not then due, but in the latter case using the net present value), so that all such amounts and obligations are netted to a single liquidated amount payable by one party to the other party (such amount, the “**Termination Payment**”). The Termination Payment shall include any other amounts one Party owes the other Party under this Agreement (which unpaid amounts shall be deemed to be held by a Party as margin to secure the other Party’s obligations from time to time incurred), whereupon all such amounts shall be aggregated or netted to a single liquidated amount and included in the Termination Payment. Subject to any Set-off, the Termination Payment, if payable by the Defaulting Party, shall be paid by the close of business on the next New York Banking Day after a notice, which states the amount of the Termination Payment, is effective, and, if payable by the Non-Defaulting Party, shall be paid by the second New York Banking Day after the Non-Defaulting Party has delivered written notice to the Defaulting Party that all disputes between the Parties have been fully and finally resolved as reasonably determined by the Non-Defaulting Party. The Non-Defaulting Party may immediately, without notice to the Defaulting Party, realize against any Performance Assurance, credit support or other Collateral (including any cash deposit) provided by or on behalf of the Defaulting Party under any Other Commodity Agreement and apply the amount of any such Performance Assurance, credit support or Collateral realized against in its calculation of the Termination Payment.

19.2 Export of Defaults to Other Commodity Agreements. The occurrence of an Early Termination Date under this Agreement shall constitute a material breach and an event of default, howsoever described, under all Other Commodity Agreements, and the Non-Defaulting Party may, by giving a notice to the Defaulting Party, designate an early termination date for all Other Commodity Agreements and, upon such designation, terminate, liquidate, accelerate, and otherwise Close-out all Other Commodity Agreements that lawfully may be closed out and terminated or, to the extent that in the reasonable opinion of the Performing Party certain of such Other Commodity Agreements may not be liquidated and terminated under Applicable Law or are commercially impracticable to terminate on such early termination date, then in either case, as soon thereafter as is reasonably practicable, in which case the actual termination date for such Other Commodity Agreements will be the early termination date in respect thereof for purposes of close out. In such event, the Non-Defaulting Party shall calculate the payments due upon early termination of such Other Commodity Agreements in accordance with the terms set forth in such Other Commodity Agreements, which shall be aggregated or netted to a single liquidated amount (the “**Other Termination Payment**”) and paid pursuant to the terms of such Other Commodity Agreements, or if no payment date is specified, on the payment date specified in Section 19.1. If a particular Other Commodity Agreement does not provide a method for determining what is owed upon early termination, then the amount due upon early termination shall be determined in the manner set forth in Section 19.1. In determining the Other Termination Payment, the Non-Defaulting Party may foreclose upon and apply any Performance Assurance, credit support or Collateral provided by or on behalf of the Defaulting Party under any Other Commodity Agreement.

19.3 Set-Off Rights. Upon the occurrence of an Early Termination Date, the Non-Defaulting Party will have the right (but not the obligation) without prior notice to the Defaulting Party or any other person to set-off or apply any obligation of the Defaulting Party owed to the Non-Defaulting Party (or any Affiliate of the Non-Defaulting Party) against any

obligation of the Non-Defaulting Party (or any Affiliate of the Non-Defaulting Party) owed to the Defaulting Party (in either case, whether or not such obligation is matured (and, if not matured, using the net present value of such obligation), contingent, or arises under this Agreement or any other agreement, and regardless of the currency (the Non-Defaulting Party will determine the currency conversion rate in a commercially reasonable manner as of the effective date of Close-out), place of payment or booking office, and in the case of any obligation the amount of which is unascertained, in an amount estimated by the Non-Defaulting Party in good faith, subject to true-up when the amount is ascertained) (any such set-off or application, a “Set-off”). The Non-Defaulting Party will give notice to the Defaulting Party of any Set-off effected under this Section 19.3, provided that any failure to give such notice shall not invalidate the relevant Set-off.

19.4 Cumulative Remedies. The Events of Default set forth in this Agreement and the Non-Defaulting Party’s rights and remedies under this Section 19 shall be in addition to, and not in limitation or exclusion of, and without prejudice to, any other rights which the Non-Defaulting Party may have (whether by agreement, operation of law, in equity or otherwise), including, without limitation, any right of set-off, combination of accounts, lien or other right to which any Party is at any time otherwise entitled. The Non-Defaulting Party may enforce any of its remedies under this Agreement successively or concurrently at its option. No delay or failure on the part of a Non-Defaulting Party to exercise any right or remedy to which it may become entitled on account of an Event of Default shall constitute an abandonment of any such right and the Non-Defaulting Party shall be entitled to exercise such right or remedy at any time during the continuance of an Event of Default.

19.5 Costs and Expenses. Following an Event of Default, the Defaulting Party shall be responsible for all reasonable attorneys’ fees and disbursements, including without limitation court costs, collection costs, and interest charges, related to the termination and Close-Out under this Section 19 and the enforcement of the Non-Defaulting Party’s rights related thereto. Such costs and expenses shall be due within ten (10) days after receipt of an invoice and supporting documentation by the Defaulting Party.

19.6 Cross-Collateral. The Parties hereto agree that any property in which a Party has been or will be granted a security interest (or comparable interest) to secure obligations owed to it by the other party (the “**Other Party**”) under this Agreement or an Other Commodity Agreement shall also secure the Other Party’s obligation to make payments under this Agreement and/or the Other Commodity Agreement, including without limitation, the payment of the Termination Payment and/or the Other Termination Payment. Each Other Commodity Agreement and any credit support document related thereto are hereby amended as set forth in this Section 19.6.

19.7 Bankruptcy Acknowledgements. The Parties intend and agree that (i) this Agreement and each Other Commodity Agreement shall constitute a “forward contract” under section 101(25) and a “swap agreement” under section 101(53B) of the Bankruptcy Code, protected by, *inter alia*, section 556 and section 560 of the Bankruptcy Code, (ii) this Agreement constitutes a master netting agreement under section 101(38A) of the Bankruptcy Code, and (iii) the rights of the Parties set forth in Section 19 include the rights referred to in section 561(a) of the Bankruptcy Code.

20. EFP

20.1 EFP. If a Transaction is part of an EFP transaction conducted in accordance with the rules of the New York Mercantile Exchange (“NYMEX”), Buyer shall sell and Seller shall buy a number of futures contracts for the specified Product and month provided in the terms of the Transaction equal to the volume to be delivered pursuant to the

Transaction on a date to be mutually agreed by Buyer and Seller.

20.2 Product Balancing. The volumes sold and purchased by the Parties pursuant to the Transaction are intended to be equal. The Parties intend to post an EFP within 24 hours of receipt of notice of actual volume delivered. If the actual volume shipped differs from the number of NYMEX contracts sold/bought under an EFP by an amount greater than 500 Barrels, then the Parties shall balance the difference to the nearest 1,000 Barrels by posting (within the current month's NYMEX contract) an additional EFP for the amount. If the current month's NYMEX contract has expired at the time that the differing delivery occurs, the Parties shall post an additional EFP in the then current NYMEX month's contract plus or minus a differential to be calculated by taking the average of the spread between the expired month and the current month for the first three of the last four trading days of the expired month.

20.3 Crude Balancing. The volumes sold and purchased by the Parties pursuant to a Transaction are intended to be equal. If the actual volume shipped differs from the number of NYMEX contracts sold/bought under an EFP by an amount greater than 1,000 Barrels, then the Parties will balance the difference to the nearest 500 Barrels by posting (within the current month's NYMEX contract) an additional EFP for the amount. If the current month's NYMEX contract has expired at the time that the differing delivery occurs, the Parties will post the additional EFP within the next nearby month's NYMEX contract and the spread shall be a fixed number based on the difference between the first month's settlement price and second month's settlement price on the date of Transaction or as specifically agreed to by both Parties in the pricing provision of the Confirmation.

21. REPRESENTATIONS AND WARRANTIES

21.1 Each Party represents and warrants to the other Party, as of each Trade Date, that:

- (a) it is (i) an "eligible commercial entity" and an "eligible contract participant" as defined in sections 1a(17) and 1a(18) of the Commodity Exchange Act, as amended, and (ii) a "forward contract merchant" under section 101(26) and "master netting agreement participant" under section 101(38B), for purposes of the Bankruptcy Code.
- (b) it has the corporate, governmental or other legal capacity, authority and power to execute, deliver and perform each Transaction, and has taken all necessary action to duly authorize the foregoing, and it has full and complete authority to enter into and perform this Agreement.
- (c) it is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing.
- (d) the execution, delivery and performance of this Agreement does not violate or conflict with any law or regulation applicable to it, any provision of its constitutional documents, any order or judgment of any court or Governmental Authority applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets.
- (e) all governmental and other authorizations, approvals, consents, notices and filings that are required to have been obtained or submitted by it with respect to this Agreement have been obtained or submitted and are in full force and effect and all conditions of any such authorizations, approvals, consents, notices and filings have been complied with.

- (f) its obligations under the relevant Transaction constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application regardless of whether enforcement is sought in a proceeding in equity or at law).
- (h) no Event of Default, or any Event of Default with which notice or the passage of time would constitute an Event of Default, with respect to it or its guarantor has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under any Transaction.
- (i) there is not pending or, to its knowledge, threatened against it or its guarantor any action, suit or proceeding at law or in equity or before any court, tribunal, Governmental Authority, official or any arbitrator that is likely to affect the legality, validity or enforceability against it of any Transaction or its ability to perform its obligations under the same.
- (j) it is not relying upon any representations of the other Party other than those expressly set forth in this Agreement, in any Transaction or in any guaranty of the obligations of such other Party.
- (k) it has entered into each Transaction as principal, (and not as advisor, agent, broker or in any other capacity, fiduciary or otherwise, with a full understanding of the material terms and risks of the same, and it is capable of assuming those risks.
- (l) it has made its trading and investment decisions, including regarding the suitability thereof, based upon its own judgment and any advice from such advisors, as it has deemed necessary and not in reliance upon any view expressed by the other Party.
- (m) in respect of any Transaction, the other Party (i) is acting solely in the capacity of an arm's-length contractual counterparty, (ii) is not acting as a financial advisor or fiduciary or in any similar capacity and (iii) has not given to it any assurance or guarantee as to the expected performance or result.

21.2 Seller represents and warrants to Buyer that, as of the date of delivery of Product under any Transaction, it has marketable title to the Product sold and delivered pursuant to such Transaction, free and clear of any liens or encumbrances, and that it has full right and authority to transfer such title and effect delivery of such Product to Buyer.

22. ASSIGNMENT

This Agreement shall be binding upon the respective successors and permitted assigns of Seller and Buyer. Without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, neither Party may assign its rights or obligations under this Agreement in full or in part, except (i) either Party may, without such consent, assign its rights or obligations under this Agreement to an Affiliate of such Party by providing written notice of such assignment to the other Party no later than ten (10) New York Banking Days prior to the effective date of such assignment, and (ii) either Party and its assigns may without such consent assign all or a portion of their rights under this Agreement in connection with securitization or other financing arrangements, always providing such assignment does not contravene any Applicable Law, regulation or decree binding upon the other Party. Any such assignment will not detract from an assignor's obligations under this Agreement.

23. SANCTIONS LAWS:

Notwithstanding anything to the contrary stated or implied in this Agreement, each Party agrees that its performance under this Agreement will comply with the economic sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control, the U.S. Department of Commerce, the U.S. Department of State, any other agency of the U.S. government, the United Nations Security Council, the United Kingdom, the European Union (collectively, the "Sanctions Laws"). The Parties further agree to cooperate pursuant to this Agreement in such a manner as to ensure that no Party, or any of its Affiliates, is placed in a position of non-compliance with the Sanctions Laws, provided that no party may refuse to perform where the other has reasonably demonstrated the non-performing party is not at risk of violating Sanctions Laws. Additionally, both parties represent that they do not have any dealings with Iranian entities or Iranian nationals.

24. ANTIBOYCOTT LAWS:

No aspect of this Agreement shall be interpreted or applied so as to require a Party or any of its Affiliates to take, or to refrain from taking, any action in connection with this Agreement that would be in violation of the U.S. laws restricting participation in or compliance with certain foreign boycotts, directly or indirectly, as contained in the U.S. Anti-boycott Act of 2018, as implemented in the Export Administration Regulations, and the U.S. Internal Revenue Code.

25. FACILITATION OF PAYMENTS AND ANTI-CORRUPTION:

The Buyer and the Seller each agree and undertake to the other that in connection with this Agreement, they will each respectively comply with all Applicable Laws, rules, regulations, decrees and/or official government orders of the United States of America or the United Kingdom relating to anti-bribery and anti-money laundering.

The Buyer and the Seller each represent, warrant and undertake to the other that they shall not in contravention of Applicable Law, directly or indirectly (with the intention to improperly influence):

- i. pay, offer, give or promise to pay or authorize the payment of, any monies or other things of value to:
 - (a) a government official or an officer or employee of a government or any department, agency or instrumentality of any government;
 - (b) an officer or employee of a public international organization;
 - (c) any person acting in an official capacity for or on behalf of any government or department, agency, or instrumentality of such government or of any public international organization;
 - (d) any political party or official thereof, or any candidate for political office;
 - (e) any director, officer, employee or agent/representative of an actual or prospective counterparty, supplier or customer of Buyer or Seller;
 - (f) or any other person, individual or entity at the suggestion, request or direction or for the benefit of any of the above-described persons and entities, or
- ii. engage in other acts or transactions, in each case if this is in violation of or inconsistent with the anti-bribery or anti-money laundering legislation of any government, including without limitation, the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act 2010, the U.K. Anti- Terrorism, Crime And Security Act 2001, the Money Laundering Regulation 2007 and the Proceeds Of Crime Act 2002 and the applicable country legislation implementing

the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

In particular, the Seller represents and warrants to the Buyer that it has not made any payments or given anything of value to officials, officers or employees of the government of the country in which the Product originated or any agency, department or instrumentality of such government in connection with the Product which is the subject of the Agreement which would be inconsistent with or contravene any of the above referenced legislation.

The Buyer or the Seller may terminate the Agreement forthwith upon written notice to the other at any time, if in their reasonable judgment the other is in breach of any of the above representations, warranties or undertakings.

26. SANCTIONS, ANTIBOYCOTT AND ANTI-CORRUPTION BRIBERY INDEMNITY:

In addition to any other remedies under this Agreement, a Party that fails to comply with any of the requirements set forth in Sanctions Laws, Antiboycott Laws, and Facilitation Of Payments And Anti-Corruption paragraphs of this Agreement shall indemnify the other Party from and against any and all losses, damages, fines or penalties of whatever nature arising out of or connected with such non-compliance. Provided, however, that no party shall be liable to the other for additional costs incurred, including otherwise applicable demurrage, in the event that uncommon or additional efforts are required to obtain routine government approvals while remaining in compliance with the Facilitation Of Payments And Anti-Corruption paragraph.

27. GOVERNING LAW AND JURISDICTION: SERVICE OF PROCESS

27.1 This Agreement shall be construed in accordance with, and governed by the laws of the State of New York, without giving effect to its conflicts of laws principles. Each Party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts located in New York City, Borough of Manhattan, for any action of proceeding relating to this Agreement. Each Party hereby irrevocably waives, to the fullest extent permitted by Applicable Law, any objection to the jurisdiction of any such court or to the venue therein or any claim of inconvenient forum of such court. Each Party waives, to the fullest extent permitted by Applicable Law, any right it may have to a trial by jury in respect of any proceedings relating to this Agreement. Each Party makes the agreements set forth in this section in full awareness of, and agreement to, the application of NY-General Obligation Law 5-1401 and 5-1402. In any action to enforce any of the rights provided in this Agreement, each Party agrees to accept, in lieu of personal service, service of process by postage prepaid registered or certified mail, return receipt requested or sent by internationally recognized delivery or courier service to such party at the address specified pursuant to the Notices provision of this Agreement.

27.2 The United Nations Convention on Contracts for the International Sale of Goods 1980 shall not in any way apply to or govern any Transaction.

28. LIMITATION OF LIABILITY

THE PARTIES' LIABILITY FOR DAMAGES UNDER ANY TRANSACTION IS LIMITED TO DIRECT, ACTUAL DAMAGES ONLY AND NEITHER PARTY SHALL BE LIABLE FOR SPECIFIC PERFORMANCE, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, LOSS OF USE OR SERVICE OR OF CAPITAL, OR CLAIMS OF CUSTOMERS OF THE OTHER PARTY, OR SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, IN TORT, CONTRACT OR OTHERWISE, OF ANY KIND, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE, THE SUSPENSION OF PERFORMANCE, THE FAILURE TO PERFORM OR THE TERMINATION OF A TRANSACTION. EACH PARTY ACKNOWLEDGES THE DUTY TO MITIGATE DAMAGES.

29. NOTICES

All notices, invoices and other communications under any Transaction shall be in writing and sent by e-mail or other electronic transmission, facsimile, overnight courier, hand, registered or certified mail, return receipt requested with all postage fully paid; provided, however, that notices issued pursuant to the “Default” section and the “Termination, Liquidation and Close Out Netting” section shall not be sent by e-mail or other electronic transmission. A Party may change its address or facsimile number by giving notice in accordance with this “Notices” section. Except as provided in the “Payment” section as to invoices, a notice shall be deemed to have been received by a Party (i) if delivered by hand or sent by overnight courier, on the day of delivery if a New York Banking Day, or if not a New York Banking Day, on the immediately following New York Banking Day, (ii) if sent by registered or certified mail, return receipt requested, on the date of receipt, and (iii) if transmitted by facsimile, at the time of transmission with answer back confirmation of receipt.

30. MISCELLANEOUS

30.1 Delivery Terms. FOB/CIF/CFR/DAP/DAT/DDP/FCA and CIF/CFR (outturn quality and quantity) shall have the meaning ascribed thereto in Incoterms 2010 except as modified by the Confirmation. If there is any inconsistency or conflict between the Incoterms and the Confirmation, the Confirmation shall prevail.

30.2 Entire Agreement. The special terms as set forth in a Confirmation and these GTCs form the Parties’ entire agreement as to a particular Transaction. A Confirmation or Transaction shall not be modified, amended or supplemented unless mutually agreed by the Parties, which agreement must be evidenced in writing. Nothing in these GTCs shall limit, impair or contravene the Parties’ or their Affiliates’ rights as set forth in any other agreement between the Parties or their Affiliates (whether entered into prior to, on or after the effective date of any Transaction) regarding the collection and determination of margin and Collateral, the exporting or importing of Events of Default or termination events, or the netting and setting off of amounts due.

30.3 MTBE Sales.

- (a) Buyer represents and warrants to Seller that it is purchasing the MTBE for the sole purpose of exporting it from the United States. Buyer agrees that it shall not (i) resell or otherwise transfer any portion of the MTBE sold under a Transaction to any destination in the District of Columbia or any state, territory or possession of the United States (collectively, the “United States”) in any manner whatsoever or (ii) use such MTBE to blend, refine or otherwise produce any product that it would use in, or transport to, the United States and agrees that Buyer shall not otherwise take any action of any kind to introduce such MTBE or any product containing such MTBE into commerce in the United States.
- (b) Buyer agrees to indemnify, defend and hold Seller and any of its officers, directors, managers, employees, consultants, agents and representatives (each, an “Indemnified Party”) harmless from and against any and all losses, liabilities, claims, demands, damages, costs, expenses (including reasonable attorneys’ fees) and money judgments incurred by or rendered against an Indemnified Party based upon or in connection with any breach by Buyer of its obligations under the preceding paragraph (a) of this “MTBE Sales” section.
- (c) The indemnity and other obligations set forth in the two immediately preceding paragraphs of this “MTBE Sales” section shall survive performance of the relevant Transaction.

- 30.4 GPA Standards.** Unless otherwise specified in a Confirmation, all LPGs and NGLs shall comply with the specifications of the Gas Processors Association of the United States (“GPA”) in effect at the time of delivery of Product. All measurement, sampling and analysis of LPGs and NGLs shall be conducted in accordance with all applicable GPA, API and ASTM standards then in effect.
- 30.5 No Third Party Beneficiaries.** Nothing expressed or implied in these GTCs is intended to create any rights, interests, obligations or benefits under any Transaction in any Person other than Buyer, Seller and their respective successors and permitted assigns.
- 30.6 Non-Waiver.** No waiver by either Party of any breach by the other Party of any of the covenants, conditions or other terms of any Transaction shall: (a) be construed as a waiver of any succeeding breach of the same or of any other covenant, condition or any other term of such Transaction or any other Transaction; and (b) release, discharge or prejudice the right of the waiving Party to require strict performance by the other Party of any other provisions of this Agreement.
- 30.7 Right to Audit.** Each Party and its duly authorized representatives shall accord the other the right to inspect the other Party’s terminal and transportation facilities under the other Party’s control, upon reasonable notice and during regular business hours and at the expense of the Party conducting the inspection, for the limited purpose of verifying the audited Party’s compliance with the terms of a Transaction, and in accordance with Applicable Law. Each Party and its authorized representative shall have reasonable access to the books and records of the other Party directly relating to the audited Party’s performance of the Transaction. Each Party shall have the right to audit those records at any reasonable time for a period of six months following the date of delivery of the relevant Products under the Transaction. The audited Party shall undertake reasonable efforts to cooperate with the auditing Party to accomplish the audit as expeditiously as possible. Either Party may retain outside auditors or inspectors whose costs and fees shall be borne by the Party employing the outside auditor or inspector. Each Party agrees to be bound and shall cause any independent auditors or inspectors to be bound by the confidentiality obligations contained herein. Either Party may witness any inspection at its own expense. Any claims or disputes relating to accounting, invoices or payments shall be made within two years of the date of delivery of the relevant Products under the Transaction or shall be deemed waived and barred without resource to litigation or arbitration.
- 30.8 Survival.** Cancellation, expiration or termination of any Transaction shall not relieve the Parties of any obligations that, by their very nature, must survive said cancellation, expiration or termination, including all payment and indemnification obligations arising under any Transaction and these GTCs prior to the date of cancellation, expiration or termination. A Party’s payment obligation shall not be deemed fulfilled until the payment has been credited in full into the other Party’s bank account.
- 30.9 Confidentiality**
- (a) For a period of two years after delivery of Products under a Transaction, the terms and conditions of such Transaction shall be confidential and neither Party shall disclose them to any third party except (i) as may be required by court order, Applicable Laws or a Governmental Authority or (ii) to such Party’s or its Affiliates’ employees, auditors, consultants, banks, financial advisors and legal advisors.
- (b) In the case of disclosure covered by subclause (i) of Section 30.9(a), and if the disclosing Party’s counsel advises that it is permissible to do so, the disclosing Party shall notify the other Party in writing of any proceeding of which it is aware which

may result in disclosure, and use reasonable efforts to prevent or limit such disclosure. The Parties may exercise all remedies available at law or in equity to enforce or seek relief in connection with the confidentiality obligations contained in these GTCs.

EXHIBIT A

Letter of Indemnity

We refer to our Agreement dated xxxx in respect of your purchase from us of xxxxx net U.S. barrels of xxxxx delivered on vessel xxxxx bill of lading dated xxxxx. Bill of lading volume U.S. barrels xxxxx.

In consideration of your making payment of USD xxxxx for xxxxx net U.S. barrels of the said xxxxx in accordance with the Agreement and having agreed to accept delivery of the cargo in question without having been provided with the full set(s) of 2/3 original, clean negotiable bills of lading issued or endorsed to the order of xxxxx /owner's receipt for 1/3 original, clean negotiable bills of lading /original certificate(s) of quantity and quality/original certificate(s) of origin and authenticity (the "documents") we hereby represent and warrant the existence and validity of the documents, that we are entitled to possession of the documents, we were entitled to possession of the xxxxx, we had good title to such xxxxx, and that title in the xxxxx has been passed as provided in the Agreement to you free of all liens, charges or encumbrances of whatever kind and you will have the benefit of the warranty as to enjoyment of quiet possession implied by law in the Agreement but without prejudice to any other warranty so implied.

Without prejudice to your rights under the Agreement we hereby agree to protect, indemnify and hold you harmless from and against any and all damages, losses, liabilities, costs, claims and reasonable expenses which you may suffer by reason of:

a) our failure to present to you in accordance with the Agreement the documents,

and/or

b) any action or proceeding brought or threatened against you in connection with questions of title to or the right to possession of the documents or the cargo or the proceeds of either, or any liens, charges or encumbrances asserted on the documents or the cargo or any other claims arising out of or in connection with the documents.

This Letter of Indemnity shall be governed by and construed in accordance with New York law, shall be subject to the exclusive jurisdiction of the New York courts and shall cease to have effect upon the documents being provided to you in good order except for any claim made against Buyer prior to presentation of documents.

Regards,