

## **U.S. VENTURE, INC.'S GENERAL TERMS AND CONDITIONS FOR THE PURCHASE AND SALE OF PETROLEUM PRODUCTS AND LCFS CREDITS**

These General Terms & Conditions (the “General Terms”) shall be applicable to all transactions for purchases, sales or exchanges of bulk volumes of crude oil, other petroleum products, natural gas liquids and LCFS Credits (referred to herein as the “Products”) by U.S. Venture, Inc. and, with respect to transactions for purchases and sales of LCFS Credits under Annex A herein, by U.S. Venture, Inc., (each, a “Transaction”), the General Terms shall be deemed incorporated into each Transaction, whether or not the General Terms are explicitly incorporated into the applicable Confirmation (as defined below). The terms of Annex A to the General Terms shall be deemed incorporated into each Transaction in which delivery occurs in the State of California for LCFS Credits, Annex B to the General Terms shall be deemed incorporated into each Transaction in which title transfers in Canada. Annex C to the General Terms shall be deemed incorporated into each Transaction in which Product is delivered to or from marine Vessels, and Annex D to the General Terms shall be deemed incorporated into each Transaction in which delivery involves a natural gas liquid. The identity of the Buyer and Seller (each a “Party”, and collectively, the “Parties”), Product Description/Specification, Quantity/Tolerance, delivery (Location/Mode and Period), Price, Payment/Credit Terms, necessary documents and any other special provisions applicable to a Transaction will be agreed by the Parties at the time they enter into a Transaction and shall be collectively referred to by the Parties as the “Special Provisions” (the Special Provisions together with these General Terms, collectively referred to herein as the “Agreement”).

### **Section 1. DEFINITIONS**

**1.1** “Actually Placed” shall mean the placement of a railcar in an accessible position for loading or unloading at the Delivery Point or at a point designated by the consignor or consignee or Party loading or unloading the railcar.

**1.2** “Agreement” has the meaning specified in the introduction to these General Terms.

**1.3** “Applicable Law” shall mean any law, statute, regulation, code, ordinance, license, decision, order, writ, injunction, decision, directive, judgment, policy decree and any judicial or administrative interpretations thereof, any agreement, concession or arrangement with any governmental authority, any applicable license, permit or compliance requirement applicable to either Party or either Party’s performance under this Agreement, and any amendments or modification to the foregoing.

**1.4** “Bankruptcy Event” with respect to a Party shall mean such Party (i) makes an assignment for the benefit of creditors; (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors or has such a petition filed or proceeding commenced against it (including for greater certainty, the commencement of any proceeding to approve any plan of arrangement under any corporations statute where the corporation proposes or intends to propose an arrangement involving a compromise or conversion of liabilities with respect to any class of creditors of the corporation) and such involuntary proceeding is not dismissed within thirty (30) days of such filing; (iii) otherwise becomes bankrupt or insolvent (however evidenced); (iv)

becomes unable to pay its debts as they fall due; or (v) has a receiver, provisional liquidator, conservator, custodian, trustee or similar official appointed with respect to substantially all of its assets.

**1.5** “Barrel” shall mean forty-two (42) U.S. Gallons.

**1.6** “Business Day” shall mean a Day on which U.S. Venture, Inc. is open for business and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Prevailing Central Time.

**1.7** “Buyer” shall mean the Party that agrees to purchase Product as set forth in the Confirmation.

**1.8** “Carrier” shall mean any common carrier, person or entity retained by either Party, or any officer, agent, employee or independent contractor of any person or entity retained by either Party to load, unload, transport of ship Product at the respective terminal(s) indicated as the Delivery Point.

**1.9** “Confirmation” shall mean the written or electronic confirmation between the Parties that contains the Special Provisions for a Transaction.

**1.10** “Constructively Placed” shall mean the placement of a railcar where a railcar cannot be Actually Placed or delivered to the Delivery Point and where the railcar is held by the railroad awaiting disposition instructions, or released by rail switching provider, or cleared for release or uncoupled from the locomotive.

**1.11** “Contract Period” shall mean the term of any particular Transaction as set forth in the Confirmation.

**1.12** “Contract Quantity” shall mean the quantity of Product to be delivered and received in any particular Transaction as set forth in the Confirmation.

**1.13** “Cubic Meter” or “m<sup>3</sup>” means the volume of Product occupying one cubic meter which is equivalent to 6.29287 Barrels at fifteen (15) degrees Celsius except for heavy crude oil with a density greater than 904 kg/m<sup>3</sup> which shall be made at 6.2898105 barrels per cubic meter, unless otherwise specified.

**1.14** “Day” shall mean the twenty-four (24) hour period commencing immediately after 12:00 midnight on any calendar day and ending at 12:00 midnight the following calendar day.

**1.15** “Delivering Party” shall mean the Seller or in the case of an exchange Transaction, the Party delivering exchanged Product.

**1.16** “Delivery Point” shall mean the point for delivery and receipt of Product as set forth in the Confirmation.

**1.17** “Detention Charges” means the fees as set forth in the Confirmation, or, if not set forth in the Confirmation, as otherwise mutually agreed by the Parties.

**1.18** “Exchange Differential” shall mean, in exchange Transactions, the net difference in price per Gallon, Barrel or Cubic Meter, as applicable, between the Products exchanged by the Parties, as set forth in the Confirmation. The Confirmation shall specify the Party responsible for payment of the Exchange Differential.

**1.19** “Force Majeure” shall mean any event or occurrence beyond the reasonable control of a Party that such Party could not have remedied, avoided or overcome by the exercise of due diligence, and that prevents in whole or in part the performance by such Party of any obligation or condition under this Agreement, including, but not limited to acts of God; strikes; lockouts; disruption or breakdown of production or transportation facilities, equipment, labor or materials; closing or restrictions on the use of harbors, railroads or pipelines; acts of the public enemy; wars; blockades; insurrections; riots; epidemics; landslides; acts of terrorism; lightning; earthquakes; fires; explosions or other casualty; hurricanes; hurricane warnings; tropical storms; storms; floods; washouts; arrests and restraints of government (federal, state, local, civil or military) and of people; and civil disturbances of any kind whatsoever; in each case, to the extent that such event was beyond the reasonable control of a Party and could not have been remedied, avoided or overcome by the exercise of due diligence. Neither Party shall be entitled to the benefit of Force Majeure under any or all of the following circumstances: to the extent that the failure was caused by the sole or contributory negligence of the Party claiming suspension; to the extent that the Party claiming force majeure to remedy the condition and to resume the performance of the relevant obligations with reasonable dispatch; the ability of either Party to obtain a better price for Product; the loss of markets; the loss, interruption, or curtailment of interruptible transportation on any transporter necessary to effect receipt of delivery of Product hereunder unless caused by one of the enumerated events specified above; the loss or failure of Seller’s Product supply or depletion of reserves, unless, in either case, caused by one of the enumerated events specified above; or economic hardship.

**1.20** “Free Time” shall mean the amount of time for loading or unloading a tank truck or railcar as set forth in the Confirmation, or, if not set forth in the Confirmation, as otherwise mutually agreed by the Parties.

**1.21** “Gallon” shall mean a United States gallon containing two hundred thirty-one (231) cubic inches at sixty (60) degrees Fahrenheit.

**1.22** “General Terms” has the meaning specified in the introduction to these General Terms and Conditions.

**1.23** “Month” shall mean the period beginning immediately after 12:00 midnight on the first (1<sup>st</sup>) Day of a calendar Month and ending at 12:00 midnight of the last Day of the same calendar Month.

**1.24** “MSDS” shall mean material safety data sheets.

**1.25** “Party” or “Parties” has the meaning specified in the introduction to these General Terms.

**1.26** “Price” shall mean the amount expressed in U.S. dollars set forth in the Confirmation.

- 1.27** “Product” has the meaning set forth in the introduction to these General Terms.
- 1.28** “Receiving Party” shall mean the Buyer or in the case of an exchange Transaction, the Party receiving exchanged Product.
- 1.29** “Release Number” means a valid vehicle load number or activator card(s) issued by Delivering Party to Receiving Party which shall be given by Receiving Party or its Carrier to the operator of the terminal(s) indicated as the Delivery Point before Receiving Party or its Carrier may load Product.
- 1.30** “Replacement Price” shall mean the price at which Receiving Party, acting in a commercially reasonable manner, purchases for delivery at the Delivery Point a replacement for any quantity of Product specified for delivery under a Transaction between the Parties but not delivered by Delivering Party, plus (i) any costs reasonably incurred by Receiving Party in purchasing such substitute Product and (ii) additional transportation costs reasonably incurred by Receiving Party to the Delivery Point, or, at Receiving Party’s sole option, the market price at the Delivery Point for such quantity of Product as determined by Receiving Party in a commercially reasonable manner, in which case Receiving Party shall not be required to actually enter into a replacement transaction. In no event shall Receiving Party be required to utilize or change its use of its owned or controlled assets or market positions to minimize Delivering Party’s liability. The Replacement Price shall be a per Gallon, per Barrel or per Cubic Meter price, as applicable.
- 1.31** “Sales Price” shall mean the price at which Delivering Party, acting in a commercially reasonable manner, resells at the Delivery Point any quantity of Product specified for delivery under a Transaction between the Parties but not received by Receiving Party or its Carriers, deducting from such proceeds (i) any costs reasonably incurred by Delivering Party in reselling such Product and (ii) additional transportation costs reasonably incurred by Delivering Party in delivering such Product to third party purchasers or, at Delivering Party’s sole option, the market price at the Delivery Point for such quantity of Product, as determined by Delivering Party in a commercially reasonable manner, in which case Delivering Party shall not be required to actually enter into a replacement transaction. In no event shall Delivering Party be required to utilize or change its use of its owned or controlled assets or market positions to minimize Receiving Party’s liability. The Sales Price shall be a per Gallon, per Barrel or per Cubic Meter price, as applicable.
- 1.32** “Seller” shall mean the Party that agrees to sell Product as specified in the Confirmation.
- 1.33** “Special Provisions” has the meaning specified in the introduction to these General Terms.
- 1.34** “Tax” shall mean any and all federal, state, provincial and local taxes, duties, fees and charges of every description, including all aviation fuel, special fuel, diesel, excise, environmental, spill, gross earnings, gross receipts, and sales and use taxes, however designated, now or hereafter paid, incurred or imposed on the purchase, storage, exchange, use, transportation, resale, importation or handling of a Product or the transfer of title, possession or risk of loss of the Product from Seller to Buyer, or on Buyer's subsequent use or disposition of a Product; provided, however, that Taxes do not include: (i) any income withholding tax or tax imposed on or calculated based upon net profits, gross or net income, profit margin or gross receipts (excluding, for the avoidance

of doubt, any transaction taxes that are based upon gross receipts, gross earnings or gross revenues received specifically from the sale of Product), (ii) any tax measured by capital value or net worth, whether denominated as franchise taxes, doing business taxes, capital stock taxes or the like, (iii) business license or franchise taxes or registration fees, or (iv) any ad valorem or personal property taxes.

**1.35** “Transaction” has the meaning specified in the introduction to these General Terms.

**1.36** “Vessel” shall mean ocean-going tankers, barges, or inland barges.

## **Section 2. GENERAL OBLIGATIONS; EXCHANGE BALANCING**

**2.1 Delivery Obligations:** Subject to the other provisions of this Agreement, Delivering Party agrees to sell and deliver, and in the case of an exchange Transaction to exchange and deliver, and Receiving Party agrees to purchase and receive, and in the case of an exchange Transaction to exchange and receive, the Contract Quantity of the Product specified in the Confirmation.

**2.2 Delivery Point:** Nothing herein shall be interpreted to require Delivering Party to deliver Product or Receiving Party or its Carrier to receive Product at any point not agreed to as the Delivery Point or pursuant to delivery or transportation arrangements not specified in the Confirmation.

**2.3 Volume Balancing for Exchange Transactions:** If this Agreement involves an exchange Transaction, unless otherwise provided in the Confirmation, the quantities of Product delivered hereunder shall be kept in approximate balance throughout the term of the exchange Transaction; provided, however, small imbalances may be carried forward from Month to Month. Upon termination of this Agreement for any reason, the Party having received the smaller volume of Product shall continue to receive Product from the other Party until the deliveries of each Party to the other are as nearly equal in quantity as loading into pipelines, railcars, or tank trucks, as applicable, will permit. Any small balance then due either Party may be invoiced to the other Party at the then mutually agreed upon market price of the Product at the Delivery Point.

## **Section 3. PRICE**

**3.1 Price:** Unless otherwise provided in the Confirmation, the Price shall be exclusive of all royalties, currently effective transportation charges, Taxes, expenses and costs arising from or attributable to the Product prior to its delivery to the Delivery Point.

**3.2 Payments Under Exchange Transactions:** Except for the Exchange Differentials, Taxes, and/or other governmental or other fees or charges provided for in the Confirmation, exchanges under this Agreement shall be on a Gallon-for-Gallon (or Barrel-for-Barrel, or Cubic Meter-for-Cubic Meter) basis without the payment of any money by either Party to the other. Exchange Differentials based on pipeline tariffs shall be adjusted upward or downward in an amount equal to the change to the applicable pipeline tariff. No notification is necessary to change the Exchange Differential for a common carrier pipeline. Pipeline loss allowances stated in the tariff will be borne by Receiving Party for pipelines that charge for volumetric loss.

## **Section 4. DELIVERY TERMS: TERMINAL AND RAILCAR DELIVERIES**

**4.1 Terminal Deliveries:** Terminal deliveries shall be made at such times as may be required by Receiving Party or its Carrier within the delivering terminal's usual business hours, provided that reasonable advance notice of each delivery has been given by Receiving Party or its Carrier. If the Delivery Point is FOB point of origin, at the time of giving notice Delivering Party shall issue Receiving Party or its Carrier a valid vehicle load Release Number which shall be given by Receiving Party or its Carrier to the operator of the terminal(s) indicated as the Delivery Point before Receiving Party or its Carrier may load Product. If the Delivery Point is FOB point of destination, at the time of giving notice Receiving Party shall furnish to Delivering Party necessary shipping instructions. Delivering Party shall prepare and furnish Receiving Party with copies of bills of lading and other requested supporting documents including shipping papers.

**4.2 Railcar Demurrage:** Seller shall be responsible for demurrage charges to the extent it delays the loading and release of railcars if delivery is FOB point of origin, and Buyer shall be responsible for demurrage charges to the extent it delays the unloading and discharge of railcars if delivery is FOB point of destination. The demurrage charges shall be as per the applicable railroad tariff and will only be applicable if actually charged by the railroad.

**4.3 Railcar Detention:** For the purpose of determining Detention Charges under a Transaction if delivery is FOB point of destination, time shall start at the first midnight following Free Time when the railcars are Constructively Placed or Actually Placed, whichever is first, at the disposal of Buyer at the Delivery Point. Buyer shall be responsible for Detention Charges as indicated in the Confirmation or, if unspecified, as incurred from the carrier by the affected Party. For the purposes of detention, time shall end when all empty railcars are released and the bill of lading has been submitted to the railroad.

For the purpose of determining Detention Charges under a Transaction if delivery is FOB point of origin, time shall start at the first midnight following Free Time when the railcars are Constructively Placed or Actually Placed, whichever is first, at the disposal of Seller at the Delivery Point. Seller shall be responsible for Detention Charges as indicated in the Confirmation or, if unspecified, as incurred from the carrier by the affected Party. For the purposes of detention, time shall end when all loaded railcars are made available at the loading terminal for collection by, or on behalf of, Buyer.

**4.4 Payment of Demurrage and Detention Charges:** The Party owing a demurrage payment or Detention Charges to the other Party shall pay all such amounts within ten (10) days of the date of an invoice for the same from the owed Party. The fact that the owing Party has not collected demurrage or detention charges from a third Party shall not be an excuse or defense for a failure to make payment to the owed Party. All invoices pertaining to demurrage and/or storage fees (including all supporting documentation substantiating such demurrage claim) must be received by the owing Party within ninety (90) days of the applicable incident to be considered for payment by the owing Party hereunder.

**4.5 Railcar Diversion:** To the extent Seller's railcars contain the Product, Buyer will not, without obtaining prior express written consent from Seller, divert the Seller's railcars or consign

them to any other routing or to any other destination other than those set out in the bill of lading. Notwithstanding any such consent, any and 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 the account of Buyer.

**4.6 Safety Procedures, Product Classification:** Buyer and Seller agree that they will continue to maintain and implement, and cause their Carriers to maintain and implement, safety procedures that are in alignment and consistent with recognized good industry practices for the safe handling and transportation of Product, and these procedures shall at all times comply with all requirements of applicable Laws. Seller will provide the proper MSDS that is current, accurate and relevant and properly classifies the Product and such provision may be provided by a link or reference to internet website containing the proper MSDS. Product classification, sampling and testing shall be conducted by the Party responsible for conducting and documenting such activities under Applicable Law.

## **Section 5. MARINE TRANSACTIONS**

In the event that Product is to be delivered to or from marine Vessels in any Transaction, Annex C (the “Marine Terms”) is hereby incorporated into the Agreement.”). Any discrepancy between the General Terms and the Marine Terms shall be resolved in favor of the Marine Terms. Any discrepancy between the Confirmation and the Marine Terms shall be resolved in favor of the Confirmation. Allowed laytime and demurrage rates shall be in accordance with charter party terms and conditions. The Party receiving Products from Delivering Party’s Vessel or delivering Product to Receiving Party’s Vessel, as the case may be, shall not be responsible for demurrage unless actually incurred by the other Party.

## **Section 6. QUALITY; DISCLAIMER OF WARRANTIES; MEASUREMENT; TITLE**

**6.1 Quality; Disclaimer of Warranties:** All Product delivered under this Agreement shall meet the specification for that Product, if any, set forth in or attached to the Confirmation, and shall comply with Applicable Law. SUBJECT TO THE FOREGOING, AND UNLESS OTHERWISE EXPRESSLY STATED IN THE CONFIRMATION, SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY OR FITNESS OF THE PRODUCTS FOR ANY PARTICULAR PURPOSE, EVEN IF SUCH PURPOSE IS KNOWN TO SELLER.

**6.2 Measurement:** All measurement quantities shall be corrected to standard conditions of sixty (60) degrees Fahrenheit in accordance with American Society of Testing Materials (“ASTM”) D-1250. Measurements shall be performed in the manner customarily utilized at the Delivery Point in accordance with one of the following alternatives, and in all cases shall be in accordance with the latest standards or guidelines published by the American Petroleum Institute or ASTM:

(A) For all deliveries into/out of railcars, the quantity shall be determined by official railcar capacity tables, proven meters, or by weighing;

(B) For all deliveries into/out of tank truck equipment, quantities shall be determined by proven meters, static tank gauging, slip tube, rotary gauging device or by weighing;

(C) For all deliveries into/out of pipelines, quantities shall be determined based on the pipeline meter ticket;

(D) For all deliveries into/out of marine Vessels, quantities shall be determined by a mutually acceptable independent inspector based on hand gauge records of static shore tanks immediately before and after delivery of Product or, if unavailable, by vessel loaded or discharge figures as adjusted by the appropriate vessel experience factor. Each Party shall be responsible for one-half of the independent inspector's fees and charges.

### **6.3 Title:**

(a) Warranty. Delivering Party warrants that it has good title, free and clear, to all Product delivered by it hereunder, and further warrants that it has the rights to sell and transfer title to the same and that said Product is free and clear of all lawful security interests, liens, claims and encumbrances, including, but not limited to, previously incurred state and federal excise Taxes. Delivering Party further warrants that it has or will obtain, at its sole expense all necessary registrations, certificates, permits, licenses, and authorizations to deliver the Product pursuant to this Agreement. In the event of any adverse claim being asserted against the Product, Receiving Party may withhold payment without interest, of sums due hereunder up to the amount of the claim, and, in the case of exchanges, Receiving Party may suspend its corresponding delivery obligation, until such claim shall have been finally determined or until Delivering Party shall have furnished other adequate securities or indemnities.

(b) Title Transfer. Ownership, title and risk of loss to Product shall pass from Delivering Party to Receiving Party upon deemed completion of delivery to Receiving Party or its Carrier at the Delivery Point.

#### Pipeline, Railcar or Tank Truck

If the Delivery Point is FOB point of origin, delivery shall be deemed completed:

(1) in the case of delivery to a railcar, when the Product passes the outlet flange of the loading terminal's hose (in the case of top loading) or as the Product passes the inlet flange of the railcar (in the case of bottom loading);

(2) in the case of delivery into a pipeline, when the Product passes the downstream flange of the meter metering the Product for delivery; and

(3) in the case delivery to a tank truck, when the Product passes the outlet flange of the loading terminal's hose (in the case of top loading) or as the Product passes the inlet flange of the tank truck (in the case of bottom loading),

If the Delivery Point is FOB point of destination, delivery shall be deemed completed:



- (1) in the case of delivery from a railcar, when the railcars are Constructively Placed, or Actually Placed, whichever is first, at the receiving terminal;
- (2) in the case of delivery from a pipeline, when the Product passes the upstream flange of the meter metering the Product for delivery; and
- (3) in the case of delivery from a tank truck, when the Product passes the last flange of the tank truck's delivery equipment.

When the delivery is by an in-line Product transfer, delivery shall be deemed complete upon execution of the transfer order by the pipeline carrier.

#### Tank Transfer

When delivery is ex-tank, delivery shall be deemed complete when the Product passes the outlet flange of Seller's storage tank from which the Product is being delivered.

When delivery is into tank, delivery shall be deemed complete when the Product passes the inlet flange of Buyer's storage tank to which the Product is being delivered.

When delivery is an in-tank transfer, delivery shall be deemed complete at such time and day and in the tank specified in the Confirmation or as agreed between the Parties prior to such transfer being effected, provided that title shall not transfer prior to confirmation of the transfer by the owner/operator of the tank.

Marine Deliveries—See Annex C “Marine Terms”.

**6.4 Representatives and Inspectors:** Each Party shall be entitled to have its representatives present during all loadings, unloading, tests and measurements involving delivery of Product under this Agreement. Each Party may secure at its own expense outside inspectors to perform gauging, sampling, and testing.

**6.5 Claims:** Any quality and/or quantity claim by Receiving Party with respect to Product shall be submitted in writing, including full documentation, to Delivery Party no later than sixty (60) days after title to the Product is transferred to Receiving Party.

**6.6 EFP Balancing:** When applicable, the volumes sold and purchased by the Parties in connection with an EFP are intended to be equal. If the actual volume shipped differs from the number of contracts bought or sold under an EFP by an amount greater than 50% of the minimum trading unit of the relevant futures contract, then the Parties will balance the difference by registering with the relevant exchange an EFP referencing the current Month's futures contract in an amount that corresponds to the amount of the imbalance, which amount will be rounded to the nearest minimum trading unit of the relevant futures contract. If the current Month's futures contract has expired at the time that the balancing EFP is registered, the Parties will register an EFP referencing the then current Month's futures contract at the original EFP Price plus or minus a differential to be calculated by taking the average of the spread between the settlement price for the expired contract and the current contract on the first three (3) of the last four (4) trading days

of the Month of the expired contract. This Section 6.6 shall be subject to the rules of the relevant exchange. “EFPP” means an exchange of futures contracts for, or in connection with, physical product pursuant to which the buyer and seller of the futures contracts are the seller and buyer of a quantity of the physical product approximately equivalent to the quantity covered by the relevant futures contracts.

## **Section 7. INSURANCE REQUIREMENTS**

**7.1** Each Party represents and warrants that it shall procure and maintain or cause its agents, contractors and their subcontractors and representatives to procure and maintain throughout the entire term of this Agreement, if applicable, the greater of (1) insurance coverage as described in paragraphs (a) through (d) below, (2) insurance coverage in compliance with U.S. Department of Transportation Regulations and the requirements of the laws of the state(s) in which delivery of Product will occur, or (3) insurance required by the facility at which the delivery will occur with respect to the receipt of Product hereunder and/or any activities related thereto. The limits set forth below are minimum limits and shall not be construed to limit Receiving Party’s liability. All costs and deductible amounts will be for the sole account and at the sole expense of Receiving Party and/or its agents, contractors and subcontractors.

(a) Worker’s Compensation insurance complying with the laws of the state or states having jurisdiction over each employee, and Employer’s Liability insurance with limits of \$1,000,000 each accident, \$1,000,000 disease each employee, and \$1,000,000 disease policy limit.

(b) Commercial or Comprehensive General Liability insurance on an occurrence form with a combined single limit of \$5,000,000 each occurrence, and annual aggregates of \$5,000,000 for bodily injury and property damage, including coverage for blanket contractual liability, broad form property damage, personal injury liability, independent contractors, products/completed operations, sudden and accidental pollution liability and, if applicable, the explosion, collapse, and underground exclusion will be deleted.

(c) Automobile Liability insurance with a combined single limit of \$5,000,000, each occurrence for bodily injury and property damage to include coverage for all owned, non-owned, and hired vehicles.

**7.2** With respect to each of the above described policies, each Party agrees to waive any right of subrogation or recovery they may have against Delivering Party, its parent, subsidiary, or affiliated companies. Non-renewal or cancellation of policies described above will be effective only after written notice is received by Delivering Party from the insurance company at least thirty (30) days in advance of any such non-renewal or cancellation. Prior to delivering or receiving Product under this Agreement, either Party may request that the other Party provide to the requesting Party certificates of insurance evidencing the existence of the insurance coverage required above.

## Section 8. COMPLIANCE WITH LAW

**8.1 Regulations:** Each Party shall comply with and shall ensure that its agents, representatives, and employees comply in all respects with all Applicable Law, including but not limited to the *Hazardous Materials Transportation Act*, as set forth fully in 49 U.S.C. § 5101 *et seq.*, and its implementing regulations, as same may be revised and amended from time to time, and the regulations found in 40 CFR Part 80, as same may be revised or amended from time to time, which regulate reformulated gasoline and blendstocks (individually and jointly), conventional gasoline, detergent gasoline additive, gasoline volatility, and sulfur content. Furthermore, each Party shall ensure that its agents, representatives, employees, contractors and carriers comply with all applicable safety regulations of the other Party's facilities when such agents, representatives, employees, contractors and carriers are present at such facilities in connection with this Agreement, provided that such other Party will provide or make available to the Party a copy of its safety regulations and any other facility guidelines and procedures. Product sold hereunder shall be produced and delivered in full compliance with all Applicable Law, including any laws requiring product transfer documents. Both Parties shall maintain records that demonstrate compliance with the Applicable Law and other relevant standards for a period of two years from the date of the delivery under this Agreement (the "Audit Period"). Both Parties shall have the right to inspect and copy all such records of the other Party at any reasonable time during normal business hours during the Audit Period. Each Party shall immediately notify the other Party in writing of any violation or alleged violation of Applicable Law with respect to the Products sold under this Agreement.

**8.2 Importer/Exporter of Record:** The Party that is the Importer/Exporter of Record of the Products shall fulfill all requirements applicable to the Importer/Exporter of Record, including but not limited to those of the U.S. Customs and Border Protection ("CBP"). Such Party shall pay any applicable Requesting Party duty, any Tax collected by CBP in the way of duty, fees, and penalties, or any other applicable fees and fines, penalties or costs. The other Party shall provide in a timely manner all information necessary to process such importation/exportation.

**8.3 [Reserved]**

### **8.4 Anti-Corruption and Sanctions**

(a) Buyer and Seller each represent, warrant and undertake to the other that they shall not (a) directly or indirectly pay, offer, give or promise to pay or authorize the payment of, any monies or other things of value to (i) a government official or an officer or employee of a government or any department, agency or instrumentality of any government; (ii) an officer or employee of a public international organization; (iii) 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; (iv) any political party or official thereof; (v) any candidate for political office; or (vi) any other person, individual or entity, in each instance at the suggestion, request or direction or for the benefit of any of the above-described Persons and entities; or (b) engage in acts or transactions otherwise in violation of or inconsistent with the anti-bribery or anti-money laundering legislation of any government including the U.S. Foreign Corrupt Practices Act,

the U.K. Bribery Act 2010, the U.K. Anti-Terrorism, Crime and Security Act 2001 and the applicable country legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

(b) Notwithstanding anything to the contrary elsewhere in this Agreement, neither Party shall be obligated to perform any obligation otherwise required by this Agreement (including, without limitation, an obligation to (a) perform, deliver, accept, sell, purchase, pay or receive monies to, from, or through a person, or (b) engage in any other acts) if the Party would be in violation of, or exposed to punitive measures under, any laws, regulations, statutes, prohibitions or restrictions imposed by (including but not limited to) the United States of America, the United Nations, the European Union, the United Kingdom, Singapore, Canada, or Switzerland and/or applicable to either Party relating to the adoption, implementation and enforcement of economic sanctions, export controls, trade embargoes or other restrictive measures ("Sanctions").

Where any performance by a Party would be in violation of, or expose such Party to punitive measures under Sanctions, such Party (the "Affected Party") shall, as soon as reasonably practicable give written notice to the other Party of its inability to perform. Once such notice has been given the Affected Party shall be entitled:

- (i) to immediately suspend the affected obligation (whether payment, performance or other acts) until such time as the Affected Party may lawfully discharge such obligation; and/or
- (ii) in the event that a Vessel (including anyone who owns, controls or operates the Vessel) nominated by the other Party is subject to Sanctions, to require the other Party to re-nominate an acceptable substitute Vessel; and/or
- (iii) where the inability to discharge the obligation continues (or is reasonably expected to continue) until the end of the contractual time for discharge thereof, to a full release from the affected obligation, provided that where the relevant obligation relates to payment for Product which has already been delivered, the affected payment obligation shall remain suspended (without prejudice to the accrual of any interest on an outstanding payment amount) until such time as the Affected Party may lawfully resume payment;

in each case without any liability whatsoever (including but not limited to any damages for breach of contract, penalties, costs, fees and expenses).

**8.5 Material Safety Data Sheets:** Seller has provided or made available, or shall provide or make available, to Buyer upon Buyer's request with Seller's MSDS for the Product to be delivered under the Agreement. Nothing herein shall excuse Buyer from complying with all 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, and/or which 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.

## **Section 9. DRAWBACKS**

Delivering Party reserves the right to claim, receive and retain drawbacks on imported duty-paid merchandise or feedstocks used in manufacture of Products delivered hereunder. If Products purchased under this Agreement are exported, Receiving Party shall promptly notify Delivering Party and shall, on request, execute claim forms in favor of Delivering Party to enable it to establish its drawback rights under custom regulations.

## **Section 10. BILLING AND PAYMENTS**

**10.1 Payment:** Unless otherwise provided in the Confirmation, Buyer shall pay by wire transfer or electronic funds transfer in same day funds each invoice on the second Business Day following receipt of invoice and industry standard supporting documentation, except in the case of book, stock or inventory transfers, in which case payment will be due on the later of (i) the effective date of the transfer or (ii) receipt of Seller's invoice and supporting documentation. Invoice and documentation must be received by 12:00 noon Central Standard Time to be effectively received on a Business Day. Documents received after 12:00 noon Central Standard Time are deemed received the following Business Day. The effective receipt day equals day zero (0) when calculating the payment due date. If the payment date is a Saturday or a bank holiday other than a Monday, payment shall be due on the preceding Business Day. If the payment due date is a Sunday or Monday bank holiday, payment shall be due the following Business Day. All amounts payable under this Agreement shall be in U.S. dollars.

**10.2 Rounding:** Product pricing in Gallons shall be rounded to the nearest fourth decimal place. Product pricing in Barrels shall be rounded to the nearest third decimal place. All dollar amounts shall be rounded to the nearest cent (whereby half cents shall be rounded upward).

**10.3 Payment Dispute:** If a Party, in good faith, disputes the accuracy of the amount due under this Agreement where Product has been delivered by the other Party, such Party will timely pay such amount as it believes to be correct and provide written notice stating the reasons why the remaining disputed amount is incorrect, along with supporting documentation. Payment of the disputed amount shall not be required until the dispute is resolved. In the event that it is determined that the Party that is disputing the amount due must pay the disputed amount, then such Party shall pay interest in accordance with Section 10.6 on such disputed amount from and including the originally scheduled due date to but excluding the date paid.

**10.4 Payment of Exchange Differentials:** In the case of an exchange Transaction, each Party shall provide to the other Party, at the close of each Month, an exchange statement covering the Exchange Differentials, if any, payable in respect of deliveries during that Month. In the event of a conflict between the exchange statements, all sums attributable to the areas of agreement between the exchange statements shall be paid and the Parties will promptly reconcile all areas of disagreement.

**10.5 Audit:** Each Party shall have, at its own expense, upon reasonable notice and at reasonable times, the right to examine and to obtain copies of the relevant portions of the records of the other Party to the extent reasonably necessary to verify the accuracy of any invoices billed, quantities delivered or other computation under the Agreement; provided that no adjustment for any billing and payment shall be made after the lapse of two (2) years from the rendition thereof, and a Party shall not be permitted to conduct any such examination, audit or request for copies more than twice per calendar year. This right to examine, audit, and to obtain copies shall not be available with respect to proprietary records not directly relevant to the Agreement, nor to legally privileged records.

**10.6 Late Charges:** Any amounts due Delivering Party and not received in the time set forth above shall bear interest at the then effective Prime Rate of interest published under “Money Rates” by the Wall Street Journal, plus two percent (2%) per annum, from the date due until the date of payment, not to exceed the maximum rate allowed by law.

**10.7 Netting:** The Parties shall discharge payment obligations that are due to each other under Transactions on the same particular day (“Payment Date”) through netting. The Parties shall confer with each other by no later than the second Business Day prior to any Payment Date to verify invoice amounts due each other on such Payment Date and the amounts remaining after net-out (the “Net Payment Amount”). The Net Payment Amount shall be paid by the Party owing such amount to the other Party on the Payment Date. The Parties understand and agree that such netting is expressly limited to amounts owed in respect of purchases, sales and exchanges of Product, and that netting out any other amounts due each other under the Transactions, for any reason whatsoever, including but not limited to quality claims, is strictly prohibited unless expressly set forth in this Agreement or otherwise agreed in writing or via email by both Parties.

## **Section 11. TAXES AND CHARGES**

**11.1 Tax Obligations:** Delivering Party shall be liable for any and all Taxes with respect to Product delivered hereunder, the taxable incident of which occurs before the transfer of title to the Product to Receiving Party, and if Receiving Party is required by Applicable Law to pay any such Taxes, Delivering Party shall promptly reimburse Receiving Party for such items. Receiving Party shall be liable for (i) federal, state, provincial or local excise Taxes or fees or other charges now in effect or hereafter levied, assessed or imposed on gasoline, gasoline blend stocks, liquefied petroleum gas, natural gas liquids, additives, diesel fuel, aviation fuel, carbon content, carbon dioxide emissions and special motor fuels, and (ii) any and all Taxes with respect to the Product delivered hereunder, the taxable incident of which occurs at and after transfer of title to the Product to Receiving Party. To the extent any state or provincial law imposes Tax on Delivering Party on such reimbursements, and Delivering Party pays such Tax, then Receiving Party shall reimburse Delivering Party for the amount of such additional Tax, which additional Tax may be invoiced together with the Tax. Receiving Party shall furnish Delivering Party with satisfactory Tax exemption certificates where exemption is claimed. Nothing in this Section 11 is intended to prevent Delivering Party from passing through such Taxes to Receiving Party consistent with industry practice for the Product and locations concerned.



**11.2 Responsibility for Obtaining Licenses:** Each Party is responsible for obtaining the proper licenses in the states or provinces where the deliveries under this Agreement take place. Should any unexpected Taxes, fees, and other charges, including penalty or interest occur because of one Party's failure to obtain such licenses, the Party who failed to obtain the required licenses agrees to bear all the costs associated with this failure and shall indemnify the other Party from the additional costs.

**11.3 Reimbursement; Penalties and Interest; Ad Valorem Taxes and Tax Status:** When one Party makes payments to be reimbursed by the other Party, the paying Party shall use commercially reasonable efforts to verify the correctness of the charges and to pay only the minimum amount due. All Taxes shall include any related interest and penalties. There shall be no reimbursement for any penalty or interest that is incurred as the result of the paying Party's negligence. If any ad valorem or personal property Taxes are assessed against Product sold under this Agreement, the Party having title to the Product at the time such Tax liability is assessed shall be responsible for payment of such Taxes. To the extent reasonably requested by the other Party, a Party shall deliver certificates, documents or other evidence sufficient to confirm the applicable Tax status of such Party for each jurisdiction in which the purchase, sale and/or delivery of any Product takes place under this Agreement.

## **Section 12. INDEMNITY**

**12.1 General:** Each Party agrees to protect, defend, indemnify and hold the other Party harmless from and against any and all claims, demands, suits, losses, expenses (including reasonable costs of defense, attorneys' fees and interest), damages, fines, penalties, causes of action and liabilities of every type and character, including personal injury or death to any person (including employees of either Party) or loss or damage to any personal or real property, caused by, arising out of or resulting from (a) the negligence (whether by action or omission) or willful misconduct of such indemnifying Party, its officers or its employees with respect to the purchase and sale of Products under this Agreement or (b) a breach of its warranties under this Agreement or its failure to comply with Applicable Law in the performance of this Agreement. In the event the Parties are jointly or concurrently negligent, each Party shall indemnify the other Party to the extent of its negligent acts or omissions or willful misconduct.

**12.2** Without limiting or detracting from the indemnity provisions above or elsewhere in this Agreement, each Party shall comply with all applicable federal, state or local laws, statutes, regulations, orders relating to the environment, natural resources, or the use handling, dispensing, removal, storage transportation release or threatened release of any hazardous, toxic, or regulated substance; shall procure and maintain all permits and licenses required thereunder; and shall defend, indemnify, and hold harmless the other Party from and against any and all penalties, interest, court costs, expenses (including, without limitation, costs of investigation, cleanup, or waste disposal, whether performed by either Party), claims, judgments, and orders with respect to such laws, ordinances, rules, orders, and regulations, except those determined to have been caused by the gross negligence or willful misconduct of the other Party.

**12.3 Terminal Activity:** Receiving Party shall be responsible for and indemnify Delivering Party for any loss, injury, or damage that may be caused by Receiving Party or its Carrier at any

terminal, including the use of activator card(s) issued by Delivering Party or the terminal which control the terminal's entry and exit gates, truck loading racks, and automated accounting equipment. In the event of theft, loss or misplacement of any such activator card(s), Receiving Party or its Carrier shall notify in writing Delivering Party and the terminal as promptly as possible of such theft, loss or misplacement and of the full circumstances surrounding same. Receiving Party shall be responsible for all costs, charges, and expenses, including the value of any Product lost, stolen, or unaccounted for at the terminal and charged or obtained, at any time, by means of misappropriation, or unauthorized use or duplication of activator card(s) issued to Receiving Party or its Carrier, resulting from the theft, loss or misplacement of activator card(s).

### **Section 13. DEFAULT AND REMEDIES**

**13.1 Receiving Party's Failure to Receive:** If Receiving Party fails to accept tender of delivery of the Contract Quantity, and such failure is not excused by the terms of the Agreement or by Delivering Party's failure to perform, Receiving Party shall pay Delivering Party an amount equal to the product of (i) the difference between the amount of Product actually accepted by Receiving Party and the Contract Quantity, and (ii) the positive difference, if any, obtained by subtracting the Sales Price from the Price. Any payments due Delivering Party by Receiving Party under this paragraph shall be made within five (5) days of receipt of Delivering Party's invoice for such difference, provided, however, Delivering Party first provides Receiving Party with information and documentation supporting Delivering Party's claim for reimbursement.

**13.2 Delivering Party's Failure to Deliver:** If Delivering Party fails to tender delivery of the Contract Quantity and such failure is not excused by the terms of the Agreement or by Receiving Party's failure to perform, Delivering Party shall pay Receiving Party an amount equal to the product of (i) the difference between the amount actually delivered by Delivering Party and the Contract Quantity and (ii) the positive difference, if any, obtained by subtracting the Price from the Replacement Price. Any payments due Receiving Party by Delivering Party under this paragraph shall be made within five (5) days receipt of Receiving Party's invoice for such difference; provided, however, Receiving Party first provides Delivering Party with information and documentation supporting Receiving Party's claim for reimbursement.

**13.3 Liquidation:** An "Event of Default" shall mean the occurrence of any one of the following events with respect to a Party (the "Defaulting Party"): (1) a Bankruptcy Event; (2) a failure to pay any amount due under this Agreement; (3) the failure to perform any material covenant or obligation under this Agreement (except to the extent a remedy is provided under Section 13.1 or 13.2 above) and such failure is not remedied within fifteen (15) days after written notice of such failure from the other Party; or (4) the failure to provide Adequate Assurance in accordance with Section 14 and such failure is not remedied within one (1) Business Day after written notice of such failure from the Requesting Party. Upon the occurrence of an Event of Default, the other Party (the "Non-Defaulting Party") shall have the right to (i) terminate all Transactions between the Parties; (ii) withhold any payments due the other Party under any Transactions; and/or (iii) suspend performance under any Transaction between the Parties for up to ten (10) Business Days pending its determination as to whether to terminate in accordance with (i) above. If the Non-Defaulting Party elects to terminate all Transactions between the Parties (the "Terminated Transactions"), the Non-Defaulting Party shall provide notice to the Defaulting Party in writing of



the applicable termination date (which date may not be prior to the first day on which such notice is effective or more than twenty (20) days after such date) (the “Termination Date”). The Non-Defaulting Party shall determine the Close-Out Amount (as defined herein) as of the Termination Date for each Terminated Transaction, and such amounts shall be netted together and offset against any margin or other collateral held by either Party to create a single aggregate termination payment (the “Termination Payment”) owing to or from the Non-Defaulting Party. The Non-Defaulting Party shall promptly deliver notice of the Termination Payment amount and information supporting the Non-Defaulting Party’s calculation to the Defaulting Party, and the Termination Payment amount shall be payable within two (2) Business Days of delivery of the notice of Termination Payment. “Close-Out Amount” means, with respect to each Terminated Transaction, an amount equal to the present value of the economic loss, if any, (including any costs and minus the present value of the economic gain, if any) deemed to have been suffered by the Non-Defaulting Party as a result of the early termination, which amount shall be determined by the Non-Defaulting Party by: (1) calculating the difference between (a) the value of the Terminated Transaction had it not been terminated based on the remaining term, the remaining quantity or Product to be delivered, the Price and any accrued and unpaid amounts under the Terminated Transaction, and (b) the value of a replacement transaction for the same Product with an equivalent term and quantity to the remaining term and quantity under (a), and at current market prices, all as determined by the Non-Defaulting Party in a commercially reasonable manner (it being understood that if (b) exceeds (a), the difference in value shall be due from Seller to Buyer, and in the event that (a) exceeds (b), the difference in value shall be due from Buyer to Seller); or (2) if the foregoing cannot be determined in the reasonable judgment of Non-Defaulting Party, determining the market value of the loss or gain to the Non-Defaulting Party in another commercially reasonable manner, and (3) without duplication, adding to such amount in (1) or (2), as applicable, the amount of any other damages, costs or expenses incurred by the Non-Defaulting Party as a result of the early termination of such Transaction. For the avoidance of doubt, the Non-Defaulting Party shall not be required to enter into any replacement transaction in connection with making its determination under (1) above. If not paid timely, interest on the outstanding Termination Amount shall accrue in accordance with Section 10.6.

**13.4 Delivery of Non-Conforming Product:** Receiving Party’s remedies with respect to any Product furnished by Delivering Party hereunder that is found not to conform in quality to the specifications under the Confirmation shall be limited exclusively to the right to replacement thereof if Delivering Party so elects, or if Delivering Party does not elect to replace the Product, to a refund equal to the quantity of such non-conforming Product multiplied by the Replacement Price in the event the Receiving Party has already made payment under Section 10 or if payment has not yet been made, an amount equal to the Replacement Price minus the Price, such remedy to be chosen by the Delivering Party at its option; provided, however, that the Delivering Party must make this election in a commercially reasonable amount of time in accordance with industry practice to ensure that Receiving Party receives its Product or damages as soon as possible or the Receiving Party shall be entitled to make the election.

**13.5 Set Off:** Notwithstanding anything to the contrary in this Agreement or any other agreement between the Parties, the Non-Defaulting Party shall have the right, without prior notice to the other Party, to reduce any amount payable by it to such other Party (whether or not arising

under this Agreement, mature or contingent and irrespective of the currency or place of payment) by the Non-Defaulting Party's setoff against any other amounts ("Other Amounts") payable by the other Party to the Non-Defaulting Party (whether or not arising under this Agreement, mature or contingent and irrespective of the currency or place of payment). To the extent that any Other Amounts are so set off, those Other Amounts will be discharged promptly and in all respects. The Non-Defaulting Party will give the other Party notice of any setoff affected under this section. If an obligation is unascertained, the Non-Defaulting Party may in good faith estimate that obligation and set off in respect of that estimate, subject to the relevant Party accounting to the other when the obligation is ascertained. This section will be without prejudice and in addition to any right of setoff, offset, combination or accounts, lien, right of retention or withholding or similar right or requirement to which any Party is at any time otherwise entitled or subject (whether by operation of law, contract or otherwise).

**13.6 Sole Remedy:** THE REMEDIES SET FORTH HEREIN AND IN THE CONFIRMATION SHALL CONSTITUTE THE PARTIES SOLE AND EXCLUSIVE REMEDIES UNDER THIS AGREEMENT.

**13.7 Bankruptcy Acknowledgments:** The Parties intend that each Agreement shall constitute a "forward contract" and "swap agreement," that these General Terms shall constitute a "master netting agreement," and that each Party shall be a "forward contract merchant," "swap participant" and "master netting agreement participant," as such terms are defined in Title 11 of the United States Code, as amended from time to time (the "Bankruptcy Code"), and as such, that the Non-Defaulting Party shall have the rights granted in the Bankruptcy Code, including Sections 362, 546, 556, 560, 561 and 562, to terminate, liquidate, accelerate, net out, and offset in connection with the Agreement. This Agreement is entered into in reliance on the fact that this Agreement and all Transactions between the Parties form a single agreement between the Parties.

## **Section 14. FINANCIAL RESPONSIBILITY**

**14.1 Credit:** Upon entering into the Agreement, Receiving Party shall establish and maintain credit with respect to the Agreement satisfactory to Delivering Party. If Receiving Party fails to maintain credit satisfactory to Delivering Party in its discretion, Delivering Party (for purposes of this Section 14.1, the "Requesting Party") may demand in writing Adequate Assurance from Receiving Party (for purposes of this Section 14.1, the "Posting Party").

**14.2 Insecurity:** When reasonable grounds for insecurity of payment or other performance arise, either Party (for purposes of this Section 14.2, the "Requesting Party") may demand in writing Adequate Assurance from the other Party (for purposes of this Section 14.2, the "Posting Party").

**14.3 Adequate Assurance:** "Adequate Assurance" shall mean, at the Requesting Party's option: (a) a prepayment, (b) cash collateral in an amount acceptable to the Requesting Party, or (c) an irrevocable standby letter of credit in Requesting Party's favor in an amount acceptable to Requesting Party and in a form and substance specified by Requesting Party and issued or confirmed by a bank acceptable to Requesting Party (an "L/C"). The Posting Party grants to the Requesting Party a continuing first priority security interest in, lien on and right of setoff against

all Adequate Assurance in the form of cash. All bank charges attendant to an L/C shall be for the account of Posting Party. Delivery of the L/C shall be made within two Business Days of demand by Requesting Party, but all other Adequate Assurances shall be provided by the close of business on the Business Day following demand.

**14.4 Financial Information:** Either Party shall have the right to request the other Party to provide current financial information of the type reasonably required by those offering credit to counterparties in similar transactions.

## **Section 15. FORCE MAJEURE**

Except with regard to a Party's obligation to make payments as they become due hereunder, if either Party is rendered unable, wholly or in part, by Force Majeure to perform or comply with any obligation or condition of this Agreement, such obligation or condition shall be suspended during the period and to the extent of the inability so caused and such Party shall be excused from its performance obligations during such period and to such extent, relieved of liability and shall suffer no prejudice for failure to perform the same during such period and to such extent; provided, however, the Party claiming the occurrence of an event of Force Majeure shall promptly advise the other Party in writing of that Force Majeure event, and the cause of suspension (other than strikes or lockouts) shall be remedied so far as reasonably possible and with reasonable dispatch and resume performance. The settlement of strikes or lockouts shall be entirely within the discretion of the Party experiencing such. Should Delivering Party's supply of Product for exchange under this Agreement be dependent in whole or in part upon production from a plant that is damaged or destroyed, Delivering Party shall not be obligated to repair or rebuild such plant in order to fulfill this Agreement. In the case of exchanges or buy/sell Transactions, if a Force Majeure occurs and thereby prevents one Party from delivering or taking delivery of Product required by this Agreement for more than five (5) days, and if the Party claiming Force Majeure has already delivered or taken delivery to/from the other Party, then the Party not claiming Force Majeure may, at its option, after five (5) and within forty-five (45) Days from the original delivery date, enter into a replacement transaction with a third party with respect to the Product that was to have been delivered or received, and recover from the Party claiming Force Majeure any losses due to the difference between the market price at the Delivery Point on the Day of delivery under the replacement transaction, and the market price at the Delivering Point on the Day the Product should have been delivered or received. In any event, the Party claiming Force Majeure as an excuse for performance shall provide the other Party with a good faith estimate of the duration of the Force Majeure so that the other Party may make alternate arrangements. Notwithstanding anything to the contrary herein, if the Force Majeure continues for thirty (30) consecutive days, the Party not claiming Force Majeure may, at its option, terminate this Agreement on three (3) Business Days' written notice.

## **Section 16. CONFIRMATIONS**

Not later than three (3) Business Days after entering into a Transaction, either Party may confirm such Transaction by forwarding to the other Party a Confirmation by facsimile or any other means of electronic messaging for which a written record can be retrieved. Either Party may then object to any terms of such Confirmation by written notification to the other Party of such objection

before 5:00 p.m. prevailing central time of the third (3<sup>rd</sup>) Business Day of receipt thereof, failing which, the Parties shall be deemed to have accepted the terms as sent. If both Parties timely send a Confirmation, and the terms of one Confirmation conflict with the terms of the other, then each Confirmation shall be deemed to be an objection to the other Confirmation with respect to any conflicting terms in such Confirmation, except with respect to any Confirmation provision incorporating these General Terms. Any Transaction agreed to by the Parties shall not be invalidated by the failure of either Party to send a Confirmation or return an executed Confirmation.

#### **Section 17. REGULATORY AUTHORITY**

This Agreement and each provision hereof shall be subject to all valid Applicable Law.

#### **Section 18. EQUAL OPPORTUNITY**

This Agreement hereby incorporates by reference to the same extent and with the same force and effect as if set forth herein in full, the provisions of, as amended, (i) Section 202 of Executive Order 11246 and title 41 CFR Section 60-1.4, prohibiting discrimination against any employee or applicant on the basis of race, color, religion, sex or national origin; (ii) 29 U.S.C. Section 701 and 41 CFR Section 60-741.5, requiring contractors to take affirmative action in the employment and advancement of qualified handicapped individuals; (iii) 38 U.S.C Section 2021 and 41 CFR Section 60-250.4, requiring contractors to take affirmative action in the employment and advancement of qualified disabled veterans and veterans of the Vietnam era; and (iv) Executive Order 11625, providing for the participation of minority business enterprises in governmental procurement at both the prime and subcontract level. Delivering Party also certifies that it does not and will not maintain any facilities provided for employees in a segregated manner, or permit employees to perform their services at any location under the Delivering Party's control where segregated facilities are maintained.

#### **Section 19. SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties hereto, provided that this Agreement shall not be transferred or assigned, by operation of law or otherwise, by either Party without the other Party's prior written consent, which consent shall not be unreasonably withheld. Either Party, however, may assign its rights and obligations hereunder to any parent or affiliate which succeeds by assignment, purchase, merger, consolidation or otherwise to all or substantially all of the assets of the assigning Party upon written notice to the other Party, provided that the creditworthiness of such affiliate is not materially weaker than the creditworthiness of the assignor. Nothing in this clause in any way prevents either Party from pledging or mortgaging all or any part of such Party's property as security.

#### **Section 20. NOTICES**

All notices required hereunder shall be in writing and may be sent by facsimile or mutually acceptable electronic means, a nationally recognized overnight courier service, first class mail or hand delivered, except that notices under Section 13 shall only be sent by facsimile, nationally

recognized overnight courier service or by hand delivery. Such notice shall be deemed to have been given on the date of the delivery thereof to the Party receiving such notice. Any Party may change its address upon notice to the other Party.

## **Section 21. MISCELLANEOUS**

**21.1 Confidentiality of Terms:** The terms of this Agreement and the results of any audit conducted hereunder shall not be disclosed to any non-Party except when the disclosure is (i) required by Applicable Law or an accounting disclosure rule or standard; (ii) to a Party's Carrier, or other affiliates, partners, directors, officers, employees, agents, consultants, auditors, banks, attorneys, or advisors who are required to keep the information in confidence; (iii) required pursuant to a loan agreement (provided that the recipient is required to keep the information in confidence); (iv) required to be disclosed in connection with the prosecution or defense of any litigation; or (v) otherwise agreed to in writing to be disclosed; or when the information has already become generally available to the public or has been obtained from a non-confidential source that disclosed such information in a manner that did not violate its obligations to the non-disclosing Party.

Notwithstanding the foregoing, a Party may disclose any one or more of the commercial terms of this Agreement to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index, provided that such information does not include the identity of the other Party.

This obligation shall survive for a period of two (2) years following the expiration or termination of this Agreement.

**21.2 Amendments:** No amendment or modification of the terms and provisions of this Agreement shall be or become effective except by written agreement executed by the Parties.

**21.3 Intent to Physically Deliver.** The Parties enter into the Transaction with the intent to physically deliver. However, after entering into the Transaction, the Parties may mutually agree in writing to bookout all or a portion of the Transaction and replace the physical delivery required under the Transaction by a cash settlement.

**21.4 Conduct of Parties' Business:** Each Party in the performance of this Agreement is engaged in an independent business and nothing herein contained shall be construed as giving either Party any right to control the other Party in any way in the performance of the other Party's business. Neither Party shall have any right to exercise control over any of the other Party's employees, representatives, agents or contractors of any level except to the extent of any safety requirements for delivery of Product under this Agreement. All employees, representatives, agents or contractors of any level of a Party shall be entirely under the control and direction of that Party, which shall be solely responsible for their actions and omissions.

**21.5 No Third Party Beneficiary:** Nothing in this Agreement shall entitle any person other than the Parties, or their successors or assigns, to any claim, cause of action, remedy or right of any kind relating to the Transaction.

**21.6 Waivers:** No waiver by either Party of its right or of any default by the other Party under this Agreement shall operate or be construed as a continuing waiver of such rights or as a waiver of any future default, whether of a like or different character. Any change, modification, amendment, or alteration of this Agreement shall be in writing and signed by the Parties hereto and no course of dealing between the Parties prior or subsequent to the date of this Agreement shall be construed to change, modify, amend, alter, or waive the terms hereof.

**21.7 Severability:** The invalidity of any one or more covenants or provisions of this Agreement shall not affect the validity of any other provisions hereof, and in case of any such invalidity, this Agreement shall be construed to the maximum extent possible as if such invalid provisions had not been included herein.

**21.8 Integration:** The Parties agree that the General Terms and the Confirmation constitute the entire agreement of the Parties with respect to the Agreement and the matters addressed herein and in the Confirmation, and supersede all negotiations, proposals, inquires, commitments, and agreements, whether written or oral.

**21.9 Interpretation:** As used in these General Terms, "include" or "including" mean include or including without limiting the generality of any description or word preceding such term; "shall" and "will" are imperative in meaning and intent; and "may" is permissive in meaning and intent. Any singular word or term defined in these Terms will include the plural form of such word or term, regardless of whether these Terms specifically defines the plural form of such word or term; and any plural word or term defined in these Terms will include the singular form of such word or term, regardless of whether these Terms specifically defines the plural form of such word or term.

**21.10 Construction:** The Parties acknowledge and agree that the terms and conditions of this Agreement were freely negotiated and drafted jointly by the Parties, and any ambiguity shall not be construed for or against either Party on the basis that such Party did or did not author the same.

**21.11 Industry Practice:** Any matter arising in connection with this Agreement not specifically addressed in this Agreement shall be handled in accordance with the established customs and practices of the industry.

**21.12 Conflicting or Inconsistent Terms:** If any conflict or inconsistency exists between the General Terms and the Special Terms, the Special Terms shall control. If any conflict or inconsistency exists between the General Terms and Annex A, Annex B and Annex C, the applicable annex shall control.

**21.13 Headings:** The headings of the Articles, Sections and Paragraphs of this Agreement are for convenience of reference only and shall not constitute part, nor modify, define or limit any of the terms or provisions, hereof.

**21.14** [Reserved]

**21.15 CHOICE OF LAW:** This Agreement and any disputes arising out of, or relating to, this Agreement shall be governed by, and construed in accordance with, the substantive and

procedural laws of the State of New York without regard to any principles of choice of laws in New York or in any other state. Each Party submits to the non-exclusive jurisdiction of the United States District Court located in the Borough of Manhattan, New York, New York, but in the event that such court refuses to exercise jurisdiction or venue over the Parties or any claims made pursuant to this Agreement then the Parties agree to submit to the non-exclusive jurisdiction of the New York State Courts located in the Borough of Manhattan, New York. 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 SUIT, ACTION OR PROCEEDING RELATING TO THIS AGREEMENT.

**21.16 LIMITATION OF LIABILITY:** NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR SIMILAR DAMAGES RELATED TO OR ARISING UNDER THIS AGREEMENT (REGARDLESS OF NEGLIGENCE), WHETHER BASED IN CONTRACT OR TORT, EXCEPT TO THE EXTENT NECESSARY TO INDEMNIFY A PARTY FOR LIABILITY TO A THIRD PARTY.

## ANNEX A

### TRANSACTIONS IN CALIFORNIA

The following terms shall apply to all Transactions where Product is sold, supplied or offered for sale in California and involves a transportation fuel as identified in 17 CCR §95480.1(a)(1)-(12), and shall be deemed to supplement and amend the specified section of the General Terms, but unless explicitly stated, shall not delete or disapply the provisions of the General Terms, subject to Section 21.12 of the General Terms.

#### Section 1 Definitions

“Accepted” or “Acceptance” has the meaning specified in Section 2.4.2 of this Annex A.

“ARB” means the California Air Resources Board or successor agency.

“Credit Transfer Form” means the Credit Transfer Form that is incorporated by reference into the LCFS Regulations in 17 CCR §95487(c) (1) (B), properly completed and executed by LCFS Seller in accordance with the LCFS Regulations.

“Deficient LCFS Credit” has the meaning specified in Section 13.8.1 of this Annex A.

“Executive Officer” has the meaning specified in the LCFS Regulations.

“Initiate” means the submission of a sell transaction in the LRT-CBTS by LCFS Seller; provided, however, that a LCFS Seller shall not be deemed to have submitted any LCFS Credits where LCFS Seller cancels such sell transaction in the LRT-CBTS before LCFS Buyer accepts it in the LRT-CBTS.

“LCFS Account” means the account of a Party showing the LCFS Credits and LCFS Deficits generated by the Party or transferred, purchased or acquired by the Party, as established with ARB or another governmental authority pursuant to the LCFS Regulations.

“LCFS Buyer” means the Party obligated to purchase or acquire LCFS Credits under a Transaction.

“LCFS Credit” means a Credit as defined in the LCFS Regulations.

“LCFS Deficit” means a deficit as defined in the LCFS Regulations.

“LCFS Regulations” means the regulations, orders, decrees and standards issued by a governmental authority implementing or otherwise applicable to the California Low Carbon Fuel Standard as set forth in 17 CCR § 95480 et seq. and each successor regulation, as may be subsequently amended, modified, restated from time to time.

“LCFS Seller” means the Party obligated to sell or transfer LCFS Credits under a Transaction.



“LRT-CBTS” means “LCFS Reporting Tool and Credit Bank and Transfer System”.

“LRT Transfer Notification” has the meaning specified in Section 2.4.1 of this Annex A.

“Pending Credits” has the meaning specified in Section 13.8.3 of this Annex A.

“Physical Pathway Code” has the meaning specified in the LCFS Regulations in 17 CCR §95481(a) (40).

“Quantity” means, with respect to a Transfer Date, the number of LCFS Credits to be purchased and sold pursuant to a Transaction.

“Term Transaction” means a Transaction contemplating multiple Transfers with a delivery period the duration of which is one (1) calendar month or more.

“Transfer” or “Transferred” has the meaning specified in Section 2.4.3 of this Annex A.

“Transfer Date” has the meaning specified in Section 2.4.3 of this Annex A.

“Transfer Obligations” has the meaning specified in Section 2.4.1 of this Annex A.

“Transfer Period” means, for a Transaction, the date range as specified in the Confirmation during which LCFS Seller must Initiate the Quantity of LCFS Credits specified in the Confirmation, all in accordance with the LCFS Seller’s obligations under the LCFS Regulations, and any subsequent guidance from ARB.

## New **Section 2.4 LCFS:**

### **Purchase**

Pursuant to each Transaction, and subject to the terms and conditions of this Agreement and the Confirmation governing such Transaction, LCFS Seller agrees to sell and Initiate to LCFS Buyer the Quantity of LCFS Credits at the Price during the Transfer Period, all as specified in the Confirmation, and LCFS Buyer agrees to purchase and Accept the LCFS Credits from LCFS Seller, subject to its rights under Section 2.4.4, within the specified number of days required by the LCFS Regulations and subject to the terms hereof.

#### **2.4.1 Initiation**

Each Party shall take all actions required by the LCFS Regulations to effect a Transfer of the LCFS Credits from LCFS Seller to LCFS Buyer during the Transfer Period (the “Transfer Obligations”). The LCFS Credits shall be deemed initiated (“Initiated”) by LCFS Seller to LCFS Buyer upon: (i) LCFS Buyer’s receipt from LCFS Seller of a Credit Transfer Form or a notification of an electronic transfer of LCFS Credits via the LRT-CBTS (each such notification, a “LRT Transfer Notification”) and (ii) LCFS Seller’s satisfaction of all other Transfer Obligations applicable to LCFS Seller, if any. LCFS Seller shall Initiate LCFS Credits on or before the end of the Transfer Period as indicated on the Confirmation.

#### 2.4.2 **Acceptance**

LCFS Credits that are Initiated by LCFS Seller shall be deemed accepted (“Accepted”) by LCFS Buyer upon (i) either LCFS Buyer’s submission of the Credit Transfer Form to the Executive Officer in accordance with the LCFS Regulations or LCFS Buyer’s acceptance, via the LRT-CBTS, of a LRT Transfer Notification and (ii) LCFS Buyer’s satisfaction of all other Transfer Obligations applicable to LCFS Buyer, if any; and LCFS Buyer’s submission of the Credit Transfer Form or LCFS Buyer’s acceptance of a LRT Transfer Notification, together with the satisfaction of all other LCFS Buyer Transfer Obligations, if any, shall constitute the acceptance (the “Acceptance”) by LCFS Buyer of the LCFS Credits.

#### 2.4.3 **Title Transfer**

Title to the LCFS Credits shall be deemed to transfer from LCFS Seller to LCFS Buyer after (i) Initiation and Acceptance of the LCFS Credits; and (ii) upon the recordation of the addition of the LCFS Credits to the LCFS Account balance of LCFS Buyer and the subtraction of the LCFS Credits from the LCFS Account balance of LCFS Seller by the Executive Officer (the title transfer of LCFS Credits as set forth above hereafter referred to as the “Transfer” of the LCFS Credits and the date on which the Transfer occurs is the “Transfer Date”).

#### 2.4.4 **LCFS Buyer Right to Reject**

LCFS Buyer shall have the right, at its reasonable discretion, to reject any LCFS Credits Initiated by LCFS Seller upon notice to LCFS Seller within the specified number of days required by the LCFS Regulations. For the avoidance of doubt, and without limitation, LCFS Buyer shall be conclusively deemed to have reasonably exercised its discretion to reject where:

- (i) LCFS Buyer reasonably believes that the Credit Transfer Form or the information in a LRT Transfer Notification does not reflect the terms of the Transaction;
- (ii) the LCFS Credits are invalid under the LCFS Regulations or are subject to a proceeding by a governmental authority or are otherwise encumbered;
- (iii) there is a reasonable prospect that the LCFS Credits will be invalid under the LCFS Regulations; or
- (iv) LCFS Buyer does not have information sufficient to verify: (i) that any of the LCFS Credits are valid, and (ii) that there is no reasonable prospect of such LCFS Credits becoming invalid under the LCFS Regulations.

For purposes of making its assessment it shall be reasonable for LCFS Buyer to disregard the benefit of any warranties given to it under this Agreement; provided, however, it is not a reasonable exercise of discretion for LCFS Buyer to reject LCFS Credits principally on the basis of market conditions and/or the market price of, LCFS Credits.

#### 2.4.5 **Recordation by the Executive Officer**

Upon notification from the Executive Officer that any transfer of all or a portion of the LCFS

Credits will not be recorded, the Parties shall promptly confer and shall cooperate in taking all reasonable actions necessary to cure any defects in the proposed transfer, so that the Transfer of such LCFS Credits can be recorded. Each Party shall notify the other Party and the Executive Officer of any errors in the Credit Transfer Form within five (5) business days of the discovery of such an error.

Add new Section **13.8 Remedies for Failure to Initiate or Accept LCFS Credits:**

**13.8.1** In the event that, in relation to a Transaction:

- a) LCFS Seller fails to Initiate all or a part of the LCFS Credits by the end of the Transfer Period;
- b) LCFS Buyer exercises its right to reject all or part of a Quantity of LCFS Credits pursuant to Section 2.4.4 that LCFS Seller Initiated;
- c) LCFS Seller breaches any of its representations or warranties in the General Terms (including those within this Annex A) or any representation or warranty specified as subject to this Section 13.8.1 in the applicable Confirmation;
- d) LCFS Credits that have been Accepted by LCFS Buyer are or become invalid for purposes of the LCFS Regulations; or
- e) the Executive Officer invalidates a Transfer of LCFS Credits from LCFS Seller to LCFS Buyer, for any reason, and LCFS Buyer and LCFS Seller, cooperating in good faith, are unable to remedy the invalidated Transfer.

(each such affected LCFS Credit, a “Deficient LCFS Credit”), then, LCFS Seller shall, at LCFS Seller’s sole cost and expense, Initiate a quantity of qualified replacement LCFS Credits equal to the quantity of Deficient LCFS Credits that satisfy the requirements under the applicable Transaction within (i) in the case of Sections 13.8.1(a) or (b), three (3) Business Days after LCFS Seller receives notice from LCFS Buyer that the circumstances in Section 13.8.1(a) or (b) apply, or (ii) in the case of Sections 13.8.1(c), (d) or (e), ten (10) Business Days after the earlier of (A) LCFS Seller’s receipt of notice from LCFS Buyer that the circumstances in Sections 13.8.1(c), (d) or (e) apply and (B) LCFS Seller’s becoming aware that the circumstances in Sections 13.8.1(c), (d) or (e) apply.

**13.8.2** Except where Section 13.8.3 applies, if LCFS Seller fails to timely or fully comply with its Initiation obligation in Section 13.8.1, then LCFS Seller shall, at LCFS Buyer’s election by notice either (i) Initiate replacement LCFS Credits equal to the quantity of Deficient LCFS Credits that satisfy the requirements under the applicable Transaction in accordance with Section 13.8.1 above, or (ii) pay to LCFS Buyer, within five (5) Business Days of receipt of LCFS Buyer’s invoice, unless otherwise mutually agreed between the Parties, the positive difference, if any, between (1) the market value of the qualified replacement LCFS Credits and (2) the product of the quantity of Deficient LCFS Credits and the Contract Price specified in the Confirmation for the applicable LCFS Credits, with such sum increased by any amount already paid by LCFS Buyer to LCFS Seller on account of the Deficient LCFS Credits. LCFS Seller shall also reimburse LCFS Buyer for all reasonable broker costs associated with LCFS Buyer obtaining such replacement LCFS Credits in a quantity equal to the Deficient LCFS Credits.

**13.8.3** In the event that LCFS Buyer fails to Accept, or provide notice of its rejection of, all or part of a Quantity of LCFS Credits Delivered by LCFS Seller under Section 2.4 or any replacement LCFS Credits as contemplated under Section 13.8.1, LCFS Seller shall provide written notice of such failure to LCFS Buyer. If LCFS Buyer fails to Accept or reject any portion of those LCFS Credits (the “Pending Credits”) within two (2) Business Days of receiving such notice, then LCFS Seller’s obligation to sell and Initiate and LCFS Buyer’s obligation to purchase and Accept shall be reduced to the extent of such Pending Credits, and LCFS Buyer shall pay LCFS Seller an amount equal to the positive difference, if any, between (i) the product of the quantity of Pending Credits and the Contract Price specified in the Confirmation for the applicable LCFS Credits and (ii) the market value of the Pending Credits. The Transaction in respect of the Pending Credits shall be deemed to be cancelled and the related Credit Transfer Form or LRT Transfer Notification, as applicable, shall be deemed ineffective. For purposes of this Section 13.8.3, Market Value shall be determined by LCFS Seller in a commercially reasonable manner with the date of determination as of the date of cancellation.

**13.8.4** In the event the provisions of this Section 13.8 are invoked, LCFS Seller and LCFS Buyer agree to work together in good faith to pursue an efficient, commercial and practical resolution consistent with the foregoing options (or any combination thereof) in order to cure any breach of transfer obligations resulting in Deficient LCFS Credits or Pending Credits, provided, however, any replacement LCFS Credits must satisfy all of the requirements that the Parties originally agreed to for the applicable Transaction unless otherwise mutually agreed.

**13.8.5** LCFS Seller shall deliver to LCFS Buyer a Credit Transfer Form or LRT Transfer Notification accurately describing any qualified replacement LCFS Credits. LCFS Buyer and LCFS Seller shall otherwise be subject to the general obligations set forth in Section 2.

**13.8.6** Section 13.8.1(b), (c), (d), and (e) and, for the avoidance of doubt, Section 2.4 shall apply equally to any qualified replacement LCFS Credits.

Add new Section **21.14 Representations and Warranties by LCFS Seller**

LCFS Seller represents and warrants to LCFS Buyer that on each Transfer Date:

- a) LCFS Seller conveys good title to all LCFS Credits it sells hereunder, free and clear of any liens, security interests, and encumbrances or any interest in or to them by any third party;
- b) each LCFS Credit transferred to LCFS Buyer hereunder is valid as contemplated by the LCFS Regulations and is, indefeasibly, a “Credit” as defined by the LCFS Regulations;
- c) each LCFS Credit was deposited into LCFS Seller’s LCFS Account, or otherwise transferred and recorded by the Executive Officer in LCFS Seller’s LCFS Account, prior to Initiation hereunder and LCFS Seller has good title to each LCFS Credit prior to Initiation hereunder;
- d) the Quantity of LCFS Credits Initiated does not exceed the number of total LCFS Credits in the LCFS Seller’s LCFS Account as determined in accordance with §95487(c)(1)(A) of the LCFS Regulations;
- e) upon Transfer and recordation of the LCFS Credits in LCFS Buyer’s LCFS Account, the LCFS Credits shall be available for LCFS Buyer’s use for retirement, transfer to a third party or otherwise;

- f) LCFS Seller has not sold, transferred or encumbered (nor become legally obligated to do the same) any rights, title, or interest in the LCFS Credits to any person other than LCFS Buyer; and
- g) neither the LCFS Seller, nor any of its associated or parent organizations or affiliates or its customers or the party that owns the project(s) producing the fuel that is the basis for the generation of the LCFS Credits, has claimed (or will be entitled to claim) directly or indirectly, including on any voluntary or mandatory greenhouse gas registry program, any of the LCFS Credits as anything other than sold to LCFS Buyer.

**OTHER THAN THE WARRANTIES AND REPRESENTATIONS EXPRESSLY SET FORTH IN THIS AGREEMENT, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, LCFS SELLER MAKES NO OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.**

Replace **Section 21.15 Choice of Law** with the following:

This Agreement and any disputes arising out of, or relating to, this Agreement shall be governed by, and construed in accordance with, the substantive and procedural laws of the State of California without regard to any principles of choice of laws in California or in any other state. Each Party submits to the non-exclusive jurisdiction of the United States District Court located in Los Angeles, California, but in the event that such court refuses to exercise jurisdiction or venue over the Parties or any claims made pursuant to this Agreement then the Parties agree to submit to the non-exclusive jurisdiction of the California State Courts located in Los Angeles, California. 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 SUIT, ACTION OR PROCEEDING RELATING TO THIS AGREEMENT.

## ANNEX B

### TRANSACTIONS IN CANADA

The following terms shall apply to all Transactions where title transfers in Canada, and shall be deemed to supplement and amend the specified section of the General Terms, but unless explicitly stated, shall not delete or disapply the provisions of the General Terms, subject to Section 21.12 of the General Terms.

#### Section 1 Definitions

(a) The following additional defined terms shall be added in the appropriate alphabetical location in Section 1.

“Apportionment” means a curtailment in the Quantity of Product that a Party is able to transport on a specific transportation system that is applied by such specific transportation system due to a shortage of transportation capacity which affects the performance by such Party of its obligations under a Transaction.

“Canadian Business Day” means a day (other than a Saturday or Sunday) on which commercial banks are authorized to open for business in Calgary, Alberta, Canada.

“Canadian Dollar” means the lawful currency of Canada.

“Canadian Environmental Protection Act” or “CEPA” means the Canadian Environmental Protection Act, R.S.C. 1999, c. 33.

“Canadian Interest Rate” means the lower of (i) the per annum rate of interest identified from time to time by the Toronto Dominion Bank, Main Branch, Calgary, Alberta, Canada as the prime lending rate charged to its most creditworthy customers for Canadian currency commercial loans, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

“Canadian Exchange Rate” means the Bank of Canada average noon day rate for the applicable Month of delivery, expressed to five (5) decimal places, unless otherwise specified.

“Equalization” means the methods and calculations for Product quality adjustments as published by the Equalization Steering Committee of the Canadian Association of Petroleum Producers or as otherwise utilized by the applicable pipeline or facility operator.

“GST/HST” means the goods and services tax / harmonized sales tax imposed under Part IX of the Excise Tax Act (Canada) R.S.C. 1985, c.E-15, as may be amended from time to time.

“International Border” means the international boundary of Canada.

“NAFTA” means the North American Free Trade Agreement, as amended or replaced from time to time.

“NOS Quantity” means the quantity of a Product that has been scheduled or nominated for a Transaction as accepted by both Parties.

“PST” means a provincial sales tax on the consumption, use, Requesting Part or purchase of goods and services.

“Quantity” means the quantity of Product specified for delivery in the Confirmation, as amended by the NOS Quantity.

(b) The following amendments shall be made to Section 1:

The definition of “Business Day” is amended by, after the words “U.S. Venture, Inc. is open for business”, adding the following: “but not including days that are not a Canadian Business Day.”

The definition of “Force Majeure” is amended by adding the word “Apportionment;” after the words “and of people”.

## **Section 6.2 Measurement:**

All quantities of delivered Products shall be corrected for temperature to sixty (60) degrees Fahrenheit (60°F) in the United States, or fifteen (15) degrees Celsius (15°C) in Canada, in accordance with ASTM D-1250, Table 6A or 6B (as revised at the time of measurement).

## **Section 8.1 Regulations:**

The first sentence of Section 8.1 shall be deleted in its entirety and replaced with the following:

“Each Party shall comply with and shall ensure that its agents, representatives, and employees comply with all Applicable Law, which shall include without limitation, for reformulated gasoline and blendstocks, the regulations found under CEPA as may be revised or amended from time to time. The Buyer and Seller acknowledge that, in connection with the gasoline purchased and sold pursuant to this Canadian Annex and placed in the Ontario market, as defined in the Ethanol in Gasoline Regulation (Ontario Regulation 525/05), as between the Parties, the Buyer is the “fuel supplier” for the purposes of the Ethanol in Gasoline Regulation (Ontario Regulation 525/05). For the purposes of Product exported to the United States, Seller agrees to provide Buyer with a TSCA Certificate that certifies that all of the chemical substances contained in all shipments of Product made pursuant to this Agreement are in compliance with all applicable requirements or orders under the Toxic Substances Control Act (U.S.).”

## **Section 8.2 Importer/Exporter of Record:**

If applicable, the Buyer and Seller will specify at the time of the Transaction if the Product is to be exported out of Canada or imported into Canada and, unless otherwise specified, the Buyer or Seller will be designated to export or import the Product. The Party designated as importer undertakes to determine under Applicable Law any license requirements from such import, to obtain any license or other official authorization, including authorization from the National Energy Board (Canada), and to carry out any Canadian customs formalities, including the obligation to file customs declarations and pay any duties, taxes, Goods and Services Tax and fees as a result of the importation of Product into Canada. The Party designated as exporter undertakes to determine under Applicable Law any export license requirements, obtain any export license or other official authorization, including authorization from the National Energy Board (Canada), and carry out any customs formalities for the export of Product out of Canada.

If Product exported out of the United States and imported into Canada under the terms of this Agreement is for consumption or use in Canada per Section 754.2(b) of the [EAR], no re-export is authorized without prior authorization by the U.S. Government.

If a Party is not designated as the importer and/or exporter of Product and the Product crosses the International Border, or if title to Product is transferred at the International Border, the Party who has title to the Product on the applicable side of the International Border shall be responsible for any Requesting Party and export requirements under Applicable Law.

## **New Section 8.3 NAFTA:**

If Product is to be exported from the United States or Canada, Seller shall specify, at the time a Transaction is entered into, whether Product sold hereunder is eligible for NAFTA preferential duty treatment, otherwise, Product will be deemed to be ineligible.

If Seller specifies that the Product is eligible for NAFTA preferential duty treatment, it shall provide Buyer with a duly completed NAFTA Certificate of Origin before export of the Product from the United States or Canada and thereafter, with all documentation necessary to substantiate to a Governmental Authority that the Product sold hereunder is eligible for NAFTA preferential duty treatment. If the Product sold hereunder is certified as eligible and is subsequently found ineligible for NAFTA preferential duty treatment, Seller shall reimburse Buyer for any customs duties, taxes, interest, fees and penalties incurred by Buyer as a result of the Product being found to be ineligible for NAFTA preferential duty treatment. In the event Seller disagrees with the assessment of ineligibility for NAFTA preferential duty treatment, Buyer will cooperate with any objection process, but Seller shall be responsible for its own costs associated with same.

## **Section 10.2 Price Rounding:**

Product shall be priced in Cubic Meters and rounded to the fourth (4th) decimal place



(whereby, if the fifth (5th) decimal number is five (5) or greater, then the fourth (4th) decimal number shall be increased by one (1), and if the fifth (5th) decimal number is less than five (5), then the fourth (4th) decimal number shall remain unchanged), and all Canadian Dollar amounts shall be rounded to the nearest cent (whereby half cents shall be rounded upward). Currency conversion from U.S. dollars to Canadian Dollars, or to U.S. dollars from Canadian Dollars, shall be at the Canadian Exchange Rate for the applicable Month.

#### **Section 10.6 Late Charges:**

Section 10.6 shall be amended by deleting the words “then effective Prime Rate of interest published under “Money Rates” by the Wall Street Journal, plus two percent (2%) per annum” and replacing them with the words “Canadian Interest Rate”.

#### **New Section 11.4 Goods and Services Tax and Provincial Taxes:**

The Price (as such term is defined in the relevant Confirmation) to be paid for any goods and services supplied by this Agreement as determined in accordance with this Agreement is exclusive of GST/HST, PST and other applicable Taxes. Each Party shall be liable for and shall pay all GST, HST, PST, and applicable Taxes payable upon and in connection with any amounts payable by such Party in accordance with Excise Tax Act (Canada) and Applicable Law. When Seller is required to collect GST/HST, PST and/or any other Tax from Buyer, Seller's invoice shall include all information required by Applicable Law, including the requirements prescribed by the Input Tax Credit Information Regulations under the Excise Tax Act (Canada).

Notwithstanding any other provision of this Agreement, if any amount becomes payable (the “Payment Amount”) by either the Buyer or Seller as a result of a breach, modification, settlement or termination of this Agreement and GST/HST or PST is deemed by Section 182 of the Excise Tax Act (Canada), Section 318 of the Quebec Sales Tax Act or similar legislation to be included, then the amount payable by the payer shall be increased so that the Payment Amount retained by the payee is net of such Taxes.

#### **Section 13.3 Liquidation:**

In the event that certain Terminated Transactions may not be terminated under Applicable Law on the Termination Date, all other Transactions shall be terminated on the Termination Date and the Termination Payment determined and paid in accordance with this Section 13.3 in respect of those other Transactions, and the non-terminated Transactions shall be terminated and the Termination Payment determined and paid in accordance with this Section 13.3 as soon thereafter as may be permitted by Applicable Law.

#### **Section 13.7 Safe Harbor:**

The Parties intend, subject to Applicable Law, that (i) the Agreement, the Confirmations, all Transactions and any related guarantee or other credit support

arrangement each and together constitute an “eligible financial contract” and (ii) all Adequate Assurance provided under this Agreement constitutes “financial collateral”, in each case as such term is defined in the Bankruptcy and Insolvency Act (Canada), the Companies Creditor’s Arrangement Act (Canada) and the Winding-Up and Restructuring Act (Canada), as the same may be amended, restated or re-enacted from time to time and will be similarly treated under and in all proceedings related to bankruptcy or insolvency of a Party.

### **Section 14.3 Adequate Assurance:**

The following is added at the end of Section 14.2:

“Notwithstanding the above, with respect to Adequate Assurance in the form of cash, the relationship between the Posting Party and the Requesting Party is a relationship of creditor and debtor, respectively, and all right, title and interest in such Adequate Assurance is transferred absolutely by the Posting Party to the Requesting Party. For greater certainty, no security interest in Adequate Assurance in the form of cash is intended to be created by the Agreement. The Posting Party is entitled to payment of the amount of any such Adequate Assurance only as provided in the Agreement. Although no security interest is created in the Adequate Assurance in the form of cash, each Party (i) grants to the other Party first priority continuing security interest in and lien on and right of setoff against the obligations of the Requesting Party to pay the amount of the Adequate Assurances in the form of cash in accordance with the Agreement; provided that the Requesting Party’s payment obligations shall not be included in determining the value of Adequate Assurances, and (ii) acknowledges that the Requesting Party may file any precautionary financing statement or other similar lien document as it deems advisable in respect of such Adequate Assurance.”

### **New Section 21.14 Representations:**

Each Party represents that it is a “Qualified Party” within the meaning of Paragraph 9.1 of the Alberta Securities Commission Order 91-503 or other similar Applicable Law and an “accredited counterparty” within the meaning of the Derivatives Act (Quebec) and the regulations thereunder, as applied by the Autorité des marchés financiers, or other similar Applicable Law, in each case, as each such definition may be amended from time to time, and each Party undertakes to provide such information as may be reasonably requested by the other Party from time to time to verify such status.

### **Section 21.15 Choice of Law:**

This Agreement shall be governed by, construed and enforced in accordance with the Applicable Laws of the Province of Alberta and the federal laws of Canada applicable therein, excluding however, any conflict of laws rule that would apply the law of another jurisdiction, and each Party agrees to surrender irrevocably and attorn to the non-exclusive jurisdiction of the Courts of Alberta for the resolution of any disputes arising under or in connection with this Agreement. 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.

**New Section 21.17 Language:**

This Agreement and all documents, correspondence, discussions, negotiations and the settlement of any disputes relating thereto shall be in English only. La présente convention, de même que tout document, correspondance ou discussion et le règlement de tout différent y afférant, seront uniquement dans la langue anglaise.

If one of the Parties is in Quebec and one is outside of Quebec, the Parties recognize and agree that this Agreement and all agreements entered into thereunder shall be effective when executed by the Party outside of Quebec, and accordingly is entered into between the Parties outside of Quebec.

## ANNEX C MARINE PROVISIONS

### PART A – In respect of FOB Marine deliveries

#### 1. Safe Berth

1.1. Seller shall provide or shall cause to be provided, free of charge, a berth which the nominated Vessel accepted by Seller can safely reach and leave and at which she can lie and load always safely afloat. All duties and other charges, including, without limitation, those incurred for tugs, pilots, mooring masters, and other port costs, due in respect of the Vessel at the Load Port, shall be paid by Buyer.

1.2. Seller shall not be deemed to warrant the safety of any channel, fairway, anchorage, or other waterway used in approaching or departing from the Load Port designated by Seller. Seller shall not be liable for:

1.2.1. Any loss, damage, injury, or delay to the Vessel resulting from the use of such waterways; or

1.2.2. Any damage to Vessels caused by other Vessels passing in the waterway.

1.3. Berth Shifting - When berth shifting is required for the convenience of Seller, Seller will pay all pilot, tug, and port expenses incurred in shifting the Vessel and time shall count as used Laytime. When shifting is required due to Buyer, the Vessel or its equipment, Buyer will pay all expenses incurred in shifting the Vessel.

#### 2. Quantity and Quality

2.1. Quantity measurement and quality sampling and testing shall be conducted in accordance with the most current API or ASTM standards, as applicable.

2.2. The quantity shall be based on proven meters (if available) at the Load Port. If proven meters are unavailable, shoretank(s) downgauge measurements at the Load Port shall be used except when shoretank(s) (i) are active, or (ii) are in the critical zone, or (iii) the roof is not in floatation, or (iv) are unable to be measured manually, in which case measurement shall be conducted according to the following procedures:

2.2.1. Tankers, Ocean-Going and Great Lakes-Going Barges: Quantity shall be based on the Vessel's loaded figure with a valid load VEF (if available) applied.

2.2.2. Inland Barges: Quantity shall be based on static shoretank(s) upgauge measurements at the Discharge Port, adjusted for on board quality (OBQ) and remaining on board (ROB).

2.3. Quality determination shall be in accordance with the test results run on a volumetrically correct composite of samples drawn from shoretank(s) at the Load Port, or to the extent not available, a volumetrically correct Vessel compartment composite sample obtained at the Load Port.

2.4. With respect to quantity and quality at the Load Port an independent inspection shall be carried out at the Load Port by an independent inspector who is

mutually acceptable to both Seller and Buyer. Seller and Buyer shall jointly appoint the independent inspector, and both Parties shall share all inspection charges equally. The independent inspector's report shall be made available to both Parties. Where no inspection takes place, quantity and quality determination(s) shall be made by the Load Port.

2.5. Results of the measurements set forth in this Section shall be issued in the form of the certificates of quantity and quality with respect to the Product loaded.

2.6. Except in cases of manifest error or fraud, the certificates of quantity and quality issued pursuant to this Section shall be conclusive and binding on both Parties for invoicing purposes, and Buyer shall be obliged to make payment in full in accordance with this Agreement, but shall be without prejudice to the rights of either Party to file a claim for quantity and/or quality.

2.7. In addition to the independent inspector appointed pursuant to this Section, either Party may, at its own expense, appoint a representative, acceptable to the Load Port, to witness the loading of each cargo. Any delays resulting in demurrage at the Load Port due to either Party's appointed representative shall be for the account of the Party appointing said representative causing the delay.

2.8. Quantity Claims – The claiming Party may not submit, and no claim shall be allowed, for any shortfall in quantity or other deficiency of quantity where the difference between the loaded and discharged quantity is less than 0.2%.

### **3. Nomination**

3.1. Buyer shall nominate Vessel acceptable to Seller, such acceptance shall not be unreasonably withheld. For the avoidance of doubt, Seller shall be entitled to reject Buyer's nominated Vessel if it does not pass Seller's internal safety vetting procedure or that of any of Seller's Suppliers.

3.2. Where practicable under a Confirmation, Buyer shall nominate a Vessel at least three (3) days before the first day of the agreed Loading Date Range.

3.3. If the Parties enter into a Transaction later than any of the applicable dates for notification then Buyer shall nominate a Vessel as soon as practicable following the Agreement date.

3.4. All nominations shall be in writing (e-mail acceptable) and Buyer shall include, to the extent known:

3.4.1. Contract Reference

3.4.2. Vessel Name

3.4.3. Load Port

3.4.4. Product Grade

3.4.5. Quantity

3.4.6. Agreed Loading Date Range

3.4.7. Vessel Estimate Time of Arrival (“ETA”) at the Load Port

- 3.4.8. Independent inspector
- 3.4.9. Comments / Instructions (as applicable)

3.5. Seller shall communicate its acceptance or rejection of any Vessel nomination within one (1) Banking Day after receipt of such nomination.

3.6. Vessel Substitution - Buyer may, or if necessary to perform its obligations hereunder must, with Seller's prior agreement, substitute, in accordance with the nomination procedures in this Section, any Vessel, with another Vessel acceptable to Seller, which is similar in all material respects to the Vessel so replaced. Said nomination shall not alter any existing terms under this Agreement beyond the Vessel used to fulfill the obligations of said Agreement. Buyer may also, with Seller's prior agreement and by giving Seller reasonable notice, amend in other respects any Vessel nomination or series of nominations.

3.7. Despite any prior acceptance, Seller shall have the right to revoke its acceptance of Buyer's Vessel nomination at any time after Seller's initial acceptance (but prior to passing of risk and title hereunder) on any reasonable ground, including but not limited to, if such Vessel is involved in any incident or if more recent information regarding such Vessel becomes available to Seller at any time after such prior acceptance.

3.8. In case of rejection, Buyer shall promptly nominate a Vessel acceptable to Seller and Buyer shall not be relieved of its responsibility to perform the agreed loading.

3.9. Buyer shall narrow (wholly within the original Loading Date Range) the agreed Loading Date Range to a three (3) day Loading Date Range by providing Seller written notice (e-mail acceptable) five (5) days before the first day of the narrowed Loading Date Range.

3.10. Regulations at the Load Port - All applicable governmental, local and port authority rules and regulations, and terminal rules and regulations in force at the Load Port shall apply to Buyer's Vessel. Notwithstanding anything to the contrary contained in this Section, if any Vessel nominated by Buyer does not comply with the foregoing provisions or any of them, Seller or Seller's Supplier(s) may refuse to berth, load, or continue to load the Vessel in question.

#### **4. Risk and Title**

For Transactions in which U.S. Venture, Inc. is the Seller and delivery is FOB-Load Port, title to and risk of loss or damage to any Product delivered under this Agreement shall be transferred from Seller to Buyer at the Load Port immediately prior to the Product passing the outboard/seaside of the last Vessel supplied reducer, fitting or hose at the Load Port.

For Transactions in which U.S. Venture, Inc. is the Buyer and delivery is FOB-Load Port, title to and risk of loss or damage to any Product delivered under this Agreement shall be transferred from Seller to Buyer at the Load Port as the Product passes through the outboard/seaside of the last Vessel supplied reducer, fitting or hose at the Load Port.

For Transactions in which U.S. Venture, Inc. is the Seller and delivery is FOB-Delivery Port, title to and risk of loss or damage to any Product delivered under this Agreement shall be transferred from Seller to Buyer at the Delivery Port immediately prior to the Product passing through the outboard/seaside of the last Vessel supplied reducer, fitting or hose at the Delivery Port.

For Transactions in which U.S. Venture, Inc. is the Buyer and delivery is FOB-Delivery Port, title to and risk of loss or damage to any Product delivered under this Agreement shall be transferred from Seller to Buyer at the Delivery Port as the Product passes through the outboard/seaside of the last Vessel supplied reducer, fitting or hose at the Delivery Port.

## **5. ETA Notice**

5.1. Buyer shall arrange for its Vessel to notify the terminal operator at Load Port via telex, letter, telegram, e-mail, or telecopy/fax of the Vessel's ETA pursuant to the following schedule:

5.1.1. Tankers, Ocean-Going and Great Lakes-Going Barges: Where practicable, no later than 72 hours prior to the Vessel's arrival at the Load Port. The terminal operator at Load Port shall be further notified 48, 24, and 6 hours in advance of the Vessel's arrival at the Load Port.

5.1.2. Inland Barges: Where practicable, no later than 48 hours prior to the Vessel's arrival at the Load Port. The terminal operator Load Port shall be further notified 24 and 6 hours in advance of the Vessel's arrival at the Load Port. After the 6-hour notice, when a scheduled arrival time changes by more than 2 hours, all reasonable efforts shall be made to notify the terminal operator at the Load Port of such change.

5.2. Any delays arising from the failure to adhere to these ETA notices shall not count as used Laytime or demurrage if the Vessel is on demurrage.

## **6. Notice of Readiness**

6.1. After the Vessel has arrived at the customary anchorage or other place of waiting, is otherwise in all respects ready to receive cargo, and has received all necessary and required clearances, including as applicable, but not limited to, from the United States Coast Guard, Port Authorities, and/or other authorized regulatory, governmental, or security agency or body as applicable (unless such procedures are customarily carried out only after the Vessel is All Fast alongside), the master or his agent shall give Seller or Seller's Supplier and/or other parties, where necessary, notice by letter, email, telegraph, telex, rapifax, wireless, radio telephone, or telephone that the Vessel is ready in all respects to load the cargo, berth or no berth. Any NOR issued without having satisfied the requirements of this Section shall be null and void.

6.2 By no later than 23:59 hours local time on the last day of the agreed Loading Date Range, the Vessel nominated by Buyer hereunder shall arrive at the Load Port

(or the usual waiting place), complete all formalities, in all respects be ready to commence loading the Product deliverable hereunder, and NOR shall be tendered.

**7. Laytime**

7.1. Laytime Allowance:

7.1.1. Unless specified in a Confirmation, the Laytime allowance shall be:

7.1.1.1. Tankers: Thirty six (36) hours, pro rata for part cargo.

7.1.1.2. Ocean-Going, Great Lakes-Going and Inland Barges:

7.1.1.2.1. Voyage Chartered: One-half (1/2) of the total Laytime allowance as provided in the single voyage charter Party, pro rata for part cargo.

7.1.1.2.2. Time Chartered, Demise Chartered, or Buyer Owned:

Vessel Type	Barrel Volume	Laytime Allowance
Barges	Up to 39,999	12 hours
	40,000 – 49,999	13 hours
	50,000 – 59,999	15 hours
	60,000 – 67,999	16 hours
	68,000 – 74,999	17 hours
	75,000 – 95,999	19 hours
	96,000 – 118,999	20 hours
	119,000 – 144,999	21 hours
	145,000 – 154,999	23 hours
	155,000 – 164,999	25 hours
	165,000 – 174,999	27 hours
	175,000 – 184,999	30 hours
	185,000 – 199,999	32 hours
	200,000 and above	36 hours

7.1.2. If the Vessel is loading or 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 loading which would otherwise count as used Laytime or demurrage if the Vessel is on demurrage, shall be pro-rated in the proportion that Seller's cargo bears to the total cargo worked by the Vessel at such berth. If however used Laytime or demurrage if the Vessel is on demurrage is solely attributable to the other Parties' cargo operations, then such time shall not count in calculating used Laytime or demurrage if the Vessel is on demurrage.

7.1.3. Laytime shall always be subject to a minimum of 12 hours.

7.2. Laytime Commencement:



7.2.1. Tankers, Ocean-Going and Great Lakes-Going Barges:

7.2.1.1. If the Vessel arrives before the agreed Loading Date Range, tenders a valid NOR, and is in all respects ready to load cargo, Laytime shall not commence until 02:01 hours on the first day of the agreed Loading Date Range, unless Seller elects to accept the Vessel earlier, in which case Laytime shall begin when the Vessel is All Fast.

7.2.1.2. If the Vessel arrives within the agreed Loading Date Range, tenders a valid NOR, and is in all respects ready to load cargo, Laytime shall commence 2 hours after the Vessel's NOR being tendered or when the Vessel is All Fast, whichever occurs first.

7.2.1.3. If the Vessel arrives after the last day of the agreed Loading Date Range, tenders a valid NOR, and is in all respects ready to load cargo, and is accepted by Seller in its sole and absolute discretion, then, without prejudice to any of Seller's other rights, Laytime shall commence when the Vessel is All Fast.

7.2.2. Inland Barges:

7.2.2.1. If the Vessel arrives before the agreed Loading Date Range, tenders a valid NOR, and is in all respects ready to load cargo, Laytime shall not commence until 00:01 hours on the first day of the agreed Loading Date Range, unless Seller elects to accept the Vessel earlier, in which case Laytime shall begin when the Vessel is All Fast.

7.2.2.2. If the Vessel arrives within the agreed Loading Date Range, tenders a valid NOR, and is in all respects ready to load cargo, Laytime shall commence upon the Vessel's NOR being tendered, berth or no berth, or when the Vessel is All Fast, whichever occurs first.

7.2.2.3. If the Vessel arrives after the last day of the agreed Loading Date Range, tenders a valid NOR, and is in all respects ready to load cargo, and is accepted by Seller in its sole and absolute discretion, then, without prejudice to any of Seller's other rights, Laytime shall commence when the Vessel is All Fast.

7.3. Time consumed due to any of the following shall not count as used Laytime or if the Vessel is on demurrage, for demurrage:

7.3.1. On an inward passage including, but not limited to, awaiting daylight, tide, tugs, or pilot, and moving from an anchorage or other waiting place until the Vessel is All Fast;

7.3.2. Any delay due to the Vessel's condition, breakdown, or any other causes attributable to the Vessel;

7.3.3. Any delay due to prohibition of loading at any time by the owner or

operator of the Vessel or by the port authorities, unless the prohibition is caused by Seller or Seller's Supplier's facility's failure to comply with applicable laws, rules, and regulations;

7.3.4. Any delay due to the Vessel bunkering, provisioning, discharging or shifting of slops, ballast, or contaminated cargo, unless this is carried out concurrent with loading or other normal cargo operations such that no loss of time is involved;

7.3.5. Any delay due to the Vessel's incompatibility with the configuration of the berthing or other port facilities, including time consumed in making up connections to remedy any incompatibility;

7.3.6. Any delay due to pollution or threat thereof caused by any defect in the Vessel or any act or omission to act by the master or crew of the Vessel;

7.3.7. Any delay due to the Vessel's violation of the operating or safety rules and/or regulations of the Load Port, noncompliance with: (i) federal or state laws, (ii) U.S. Coast Guard regulations, (iii) any other applicable regulations, (iv) or failure to obtain or maintain required certification;

7.3.8. Any delays caused by strike, lockout, stoppage or restraint of labor of master, officers or crew of the Vessel, or of tugboats or pilots;

7.3.9. Any delay awaiting customs or immigration clearance, other required governmental or port clearance, or free pratique, if applicable.

7.4 Any delay, not first caused by the negligence of Seller or Seller's Supplier(s), that is the result of fire, explosion, civil unrest, act of war, riot, strike, lockout, stoppage or restraint of labor, breakdown of machinery or equipment in or about the facilities of Seller or Seller's Supplier, adverse weather and/or sea conditions or Act of God, or other delays not reasonably within the control of either Party (and except as otherwise provided in this Agreement), shall be paid for at one-half (1/2) the rate otherwise provided for demurrage.

7.5. Laytime shall cease after all Product has been loaded and:

7.5.1. Tankers, Ocean-Going and Great Lakes-Going Barges: When the hoses have been disconnected from the Vessel. However, 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).

7.5.2. Inland Barges: When the hoses have been disconnected from the Vessel and the Vessel has been released by Seller or Seller's Supplier(s).

7.6. Where the Parties agree in the Confirmation that the public dock clause

applies, if loading occurs at a public terminal over which Seller has no control, Vessels are loaded on a first come first serve basis subject to dock availability. Laytime shall not commence until Vessel is All Fast at the dock. Seller will not be responsible for any delays or demurrage incurred while waiting for a berth. A declaration of Force Majeure shall not relieve the Seller from the obligation to pay demurrage under this Agreement.

## **8. Demurrage**

8.1. Demurrage Rate: For all time that used Laytime exceeds the Laytime allowance, Seller shall pay demurrage, at the rate specified in a Confirmation, or where no rate is specified in a Confirmation in accordance with the chart at Appendix A.

8.2. For demurrage purposes, all Inland Barges or tows operating as a unit shall be considered collectively as one unit.

8.2.1. In respect of tows, Seller will not be liable for tug demurrage during delays of berthing or loading where the Load Port has notified the Vessel's master that the tug would not be required at the port for that time period.

8.3. Demurrage Claims: Demurrage claims must be submitted in writing (e-mail acceptable) with full supporting documentation no later than ninety (90) calendar days after the completion of loading date. IF A DEMURRAGE CLAIM AND ITS SUPPORTING DOCUMENTATION IS PROVIDED LATER THAN NINETY (90) CALENDAR DAYS AFTER THE COMPLETION OF LOADING DATE, THE CLAIM WILL BE DEEMED TO HAVE BEEN WAIVED.

## **9. Pollution Cover**

9.1. Where delivery is to a Tanker, Buyer shall exercise reasonable efforts to ensure that:

9.1.1. Except in the case of delivery of LPG's each Tanker shall be owned by or demise chartered by a member of the International Tanker Owners Pollution Federation Limited ("ITOPF").

9.1.2. The Tanker shall carry on board certificate(s) as required pursuant to the 1992 Civil Liability Convention for Oil Pollution Damage or any Protocols thereto ("CLC") and the Oil Pollution Act 1990, as applicable; and;

9.1.3. The Tanker shall have in place insurance cover for oil pollution no less in scope and amounts than the highest available under the rules of P. & I. Clubs entered into the International Group of P. & I. Clubs.

9.1.4 The Vessel Owner is a member of or provides appropriate Oil Spill Response Organization coverage for any region in which the Vessel is operated

9.2. Where delivery is to an Ocean-Going Barge, Great Lakes-Going or Inland Barge, Buyer shall exercise reasonable efforts to ensure that the barge owner has in place for the applicable barge, marine insurance in an amount that meets or exceeds the minimum insurance requirements as required by applicable law or regulation or

industry standards for a barge of that size, transporting that Product.

9.3. If Buyer's Vessel does not meet any of the above requirements Seller or Seller's Suppliers may refuse to berth or load or continue loading such Vessel.

## **10. International Ship and Port Facility Security Code**

10.1. This Section shall apply:

10.1.1. to all Load Ports not located within the United States of America ("USA" or "U.S.") or a U.S. Territory, and

10.1.2. any other Load Port and/or Vessel used that is subject to the International Ship and Port Facility Security Code or the U.S. Maritime Transportation Security Act 2002 ("MTSA").

10.2. Buyer shall procure that the Vessel shall comply with the requirements of the International Ship and Port Facility Security Code and the relevant amendments to Chapter XI of SOLAS ("ISPS Code") and where the Load Port is within the USA and U.S. territories or waters, with the MTSA.

10.3. The Vessel shall when required submit a Declaration of Security to the appropriate authorities prior to arrival at the Load Port.

10.4. Notwithstanding any prior acceptance of the Vessel by Seller, if, at any time prior to the passing of risk and title the Vessel ceases to comply with the requirements of the ISPS Code or MTSA; then

10.4.1. Seller shall have the right not to berth such nominated Vessel at the Load Port and any demurrage resulting shall not be for the account of Seller; and

10.4.2. Buyer shall be obliged to substitute such nominated Vessel with a Vessel complying with the requirements of the ISPS Code and MTSA.

10.5. Seller shall procure that the Load Port/terminal/installation shall comply with the requirements of the ISPS Code and if located within the USA and U.S. territories or waters, with the MTSA.

10.6. Any costs or expenses in respect of the Vessel including demurrage or any additional charge, fee or duty levied on the Vessel at the Load Port and actually incurred by Buyer resulting directly from the failure of the Load Port/terminal/installation to comply with the ISPS Code and if located within the USA and U.S. territories or waters, with the MTSA, shall be for the account of Seller, including but not limited to the time required or costs incurred by the Vessel in taking any action or any special or additional security measures required by the ISPS Code or MTSA.

10.7. Save where the Vessel has failed to comply with the requirements of the ISPS Code and within the USA and U.S. territories or waters, with the MTSA, Seller shall be responsible for any demurrage actually incurred by Buyer arising from delay to the Vessel at the Load Port resulting directly from the Vessel being required by the

port facility or any relevant authority to take any action or any special or additional security measures or undergo additional inspections.

10.8. If the Load Port/terminal/installation is not operated by Seller or one of its affiliates, Seller's liability to Buyer under this Agreement for any demurrage, costs, losses or expenses incurred by the Vessel, the charterers or the Vessel owners resulting from the failure of the Load Port/terminal/installation to comply with the ISPS Code or MTSA shall be limited to the payment of demurrage and costs actually incurred by Buyer in accordance with the provisions of this Section.

## **11. General**

Buyer shall exercise reasonable efforts to ensure that while at the Terminal, the Vessel owner conducts Vessel operation in accordance with the applicable provisions of the latest edition of the International Safety Guide for oil Tankers & Terminals (“ISGOTT”).

## **12. Inert Gas System**

Vessels fitted with an Inert Gas System (IGS) are required to maintain their cargo tanks in the fully inerted condition while conducting cargo operations at the Terminal. The Vessel cargo tanks are to be inerted with inert gas having oxygen concentration of less than 8% by volume and pressurized as required by the SOLAS convention. The Vessel’s IGS shall be operated in accordance with the Vessel’s IGS Manual and ISGOTT requirements.

## **13. Specific Ports, Anchorages, and Locations**

### **13.1. Mississippi River Ports:**

13.1.1. Via Southwest Pass - Any Vessel which must make passage to any port along the Mississippi River shall announce to the Load Port the Vessel's arrival at Southwest Pass. The NOR given upon arrival at the Load Port's berth or, the nearest customary anchorage or waiting place for the Load Port to which it is destined if the berth is not available upon its arrival shall be used for Laytime and demurrage purposes.

13.1.2. Via other than Southwest Pass - The NOR or notice of arrival, as applicable, given upon arrival at the Load Port's berth or, the nearest customary anchorage or waiting place for the Load Port to which it is destined if the berth is not available upon its arrival shall be used for Laytime and demurrage purposes.

## ANNEX C MARINE PROVISIONS

### PART B – In respect of CFR, CIF and Delivered Marine Deliveries

#### 14. Safe Berth

14.1. Buyer shall provide or shall cause to be provided, free of charge, a berth which the nominated Vessel accepted by Buyer can safely reach and leave and at which she can lie and discharge always safely afloat. All duties and other charges, including, without limitation, those incurred for tugs, pilots, mooring masters, and other port costs, due in respect of the Vessel at the Discharge Port, shall be paid by Buyer.

14.2. Buyer shall not be deemed to warrant the safety of any channel, fairway, anchorage, or other waterway used in approaching or departing from the Discharge Port designated by Buyer. Buyer shall not be liable for:

14.2.1. Any loss, damage, injury, or delay to the Vessel resulting from the use of such waterways; or

14.2.2. Any damage to Vessels caused by other Vessels passing in the waterway.

14.3. Berth Shifting - When berth shifting is required for the convenience of Buyer, Buyer will pay all pilot, tug, and port expenses incurred in shifting the Vessel and time shall count as used Laytime. When shifting is required due to Seller, the Vessel or its equipment, Seller will pay all expenses incurred in shifting the Vessel.

#### 15. Quantity and Quality

15.1. Quantity measurement and quality sampling and testing shall be conducted in accordance with the most current API or ASTM standards, as applicable.

#### 15.2. CFR/CIF

15.2.1. The quantity shall be based on proven meters (if available) at the Load Port. If proven meters are unavailable, shoretank(s) downgauge measurements at the Load Port shall be used except when shoretank(s) (i) are active, or (ii) are in the critical zone, or (iii) the roof is not in floatation, or (iv) are unable to be measured manually, in which case measurement shall be conducted according to the following procedures:

15.2.1.1. Tankers, Ocean-Going and Great Lakes-Going Barges: Quantity shall be based on the Vessel's loaded figure with a valid load VEF (if available) applied.

15.2.1.2. Inland Barges: Quantity shall be based on static shoretank(s) upgauge measurements at the Discharge Port, adjusted for OBQ and ROB.

15.2.2. Quality determination shall be in accordance with the test results run on a volumetrically correct composite of samples drawn from shoretank(s) at the Load Port, or to the extent not available, a volumetrically correct Vessel compartment composite sample obtained at the Load Port.

15.2.3 With respect to quantity and quality at the Load Port an independent inspection shall be carried out at the Load Port by an independent inspector who is mutually acceptable to both Seller and Buyer. Seller and Buyer shall jointly appoint the independent inspector, and both Parties shall share all inspection charges equally. The independent inspection report shall be made available to both Parties. Where no inspection takes place, quantity and quality determination(s) shall be made by the Load Port.

15.2.4 Results of the measurements set forth in this Section shall be issued in the form of the certificates of quantity and quality with respect to the Product loaded. Where this Agreement is entered into after loading has completed and/or the Vessel has sailed, the certificates of quantity and quality issued at the Load Port shall apply.

15.2.5. Except in cases of manifest error or fraud, the certificates of quantity and quality issued pursuant to this Section shall be conclusive and binding on both Parties for invoicing purposes, and Buyer shall be obliged to make payment in full in accordance with this Agreement, but shall be without prejudice to the rights of either Party to file a claim for quantity and/or quality.

15.2.6. In addition to the independent inspector appointed pursuant to this Section, either Party may, at its own expense, appoint a representative, acceptable to the Discharge Port, to witness the discharging of each cargo. Any delays resulting in demurrage at the Discharge Port due to either Party's appointed representative shall be for the account of the Party appointing said representative causing the delay.

### 15.3 Delivered

15.3.1 The quantity shall be based on proven meters (if available) at the Discharge Port. If proven meters are unavailable, shoretank(s) upgauge measurements at the Discharge Port shall be used except when shoretank(s) (i) are active, or (ii) are in the critical zone, or (iii) the roof is not in floatation, or (iv) are unable to be measured manually, in which case measurement shall be conducted according to the following procedures:

15.3.1.1. Tankers, Ocean-Going and Great Lakes-Going Barges: Quantity shall be based on the Vessel's delivered figure with a valid discharge VEF (if available) applied.

15.3.1.2. Inland Barges: Quantity shall be based on static shoretank(s) downgauge measurements at the Load Port, adjusted for OBQ and ROB

15.3.2 Quality determination shall be in accordance with the test results run on a volumetrically correct composite of samples drawn from the Vessel's tanks at the Discharge Port.

15.3.3 .With respect to quantity and quality at the Discharge Port an independent inspection shall be carried out at the Discharge Port by an independent inspector who is mutually acceptable to both Seller and Buyer. Seller and Buyer shall jointly appoint the independent inspector, and both Parties shall share all

inspection charges equally. The independent inspection report shall be made available to both Parties. Where no inspection takes place, quantity and quality determination(s) shall be made by the Discharge Port.

15.3.4 Results of the measurements set forth in this Section shall be issued in the form of the certificates of quantity and quality with respect to the Product discharged. Where this Agreement is entered into after loading has completed and/or the Vessel has sailed, the certificates of quantity and quality issued at the Load Port shall apply.

15.3.5 Except in cases of manifest error or fraud, the certificates of quantity and quality issued pursuant to this Section shall be conclusive and binding on both parties for invoicing purposes, and Buyer shall be obliged to make payment in full in accordance with this Agreement, but shall be without prejudice to the rights of either Party to file a claim for quantity and/or quality.

15.3.6 In addition to the independent inspector appointed pursuant to this Section, either Party may, at its own expense, appoint a representative, acceptable to the Discharge Port, to witness the discharging of each cargo. Any delays resulting in demurrage at the Discharge Port due to either Party's appointed representative shall be for the account of the Party appointing said representative causing the delay.

15.4 Quantity Claims – The claiming Party may not submit, and no claim shall be allowed, for any shortfall in quantity or other deficiency of quantity where the difference between the loaded and discharged quantity is less than 0.2%.

## **16. Nomination**

16.1. Seller shall nominate a Vessel which is acceptable to Buyer, such acceptance shall not be unreasonably withheld. For the avoidance of doubt, Buyer shall be entitled to reject Seller's nominated Vessel if it does not pass Buyer's internal safety vetting procedure or that of any of Buyer's Receivers.

16.2. Where practicable under a Confirmation, Seller shall nominate a Vessel at least three (3) days before the first day of the agreed Loading Date Range.

16.3. If the Parties enter into a Transaction later than any of the applicable dates for notification then Seller shall nominate a Vessel as soon as practicable following the Agreement date.

16.4. All nominations shall be in writing (e-mail acceptable) and Seller shall include, to the extent known:

16.4.1. Contract Reference

16.4.2. Vessel Name

16.4.3. Load Port / Discharge Port (as applicable)

16.4.4. Product Grade

16.4.5. Quantity

16.4.6. Agreed Loading Date Range / Arrival Date Range (as applicable)

16.4.7. Vessel ETA at Load Port / Discharge Port (as applicable)



- 16.4.8. Independent inspector
- 16.4.9. Product specifications (as applicable)
- 16.4.10. Comments / Instructions (as applicable)

16.5. Buyer shall communicate its acceptance or rejection of any Vessel nomination within one (1) Banking Day after receipt of such nomination.

16.6. Vessel Substitution - Seller may, or if necessary to perform its obligations hereunder must, with Buyer's prior agreement, substitute, in accordance with the nomination procedures in this Section, any Vessel, with another Vessel acceptable to Buyer, which is similar in all material respects to the Vessel so replaced. Said nomination shall not alter any existing terms under this Agreement beyond the Vessel used to fulfill the obligations of said Agreement. Seller may also, with Buyer's prior agreement and by giving Buyer reasonable notice, amend in other respects any Vessel nomination or series of nominations.

16.7. Despite any prior acceptance, Buyer shall have the right to revoke its acceptance of Seller's Vessel nomination at any time after Buyer's initial acceptance (but prior to passing of risk and title hereunder) on any reasonable ground, including but not limited to, if such Vessel is involved in any incident or if more recent information regarding such Vessel becomes available to Buyer at any time after such prior acceptance.

16.8. In case of rejection, Seller shall promptly nominate a Vessel acceptable to Buyer and Seller shall not be relieved of its responsibility to perform the agreed loading or discharging (as applicable).

16.9. Seller shall narrow (wholly within the original Loading / Arrival Date Range) the agreed Loading / Arrival Date Range (as applicable) to a three (3) day Loading / Arrival Date Range (as applicable) by providing Buyer written notice (e-mail acceptable) five (5) days before the first day of the narrowed Loading / Arrival Date Range (as applicable).

16.10. Regulations at the Discharge Port - All applicable governmental, local and port authority rules and regulations, and terminal rules and regulations in force at the Discharge Port shall apply to Seller's Vessel. Notwithstanding anything to the contrary contained in this Section, if any Vessel nominated by Seller does not comply with the foregoing provisions or any of them, Buyer or Buyer's Receiver(s) may refuse to berth, discharge, or continue to discharge the Vessel in question.

## **17. Insurance**

17.1. CFR - In respect of any CFR sale, the responsibility for procuring insurance shall rest with Buyer.

17.2. CIF - In respect of any CIF sale, Seller shall procure insurance for the benefit of Buyer which shall cover the period from the time when the risk passes in accordance with the terms of this Agreement until the Product passes through the outboard end/seaside of the last Vessel supplied reducer, fitting or hose at the Discharge Port and shall be covered by the same terms and conditions as a standard marine insurance policy MAR with Institute Cargo Clauses (A), Institute War Clauses (Cargo) and Institute Strike Clauses (Cargo) attached. Claims for leakage and/or shortfall shall be subject to a deductible of one half of one percent (0.5%) which figure shall be

deemed to include ordinary loss.

17.3 Delivered. In respect of any Delivered sale, Seller shall procure insurance for the benefit of Seller.

17.4. War Risk Insurance:

17.4.1. If and so long as voyages to any of the Load Ports or Discharge Ports for this Agreement, or any sea areas through which the Vessel has to travel in performance of this Agreement, incur any additional insurance or war risk insurance premiums for:

17.4.1.1. CFR - the Vessel's hull and machinery, then any and all costs of such additional insurance and/or additional premiums, as well as crew war bonuses or any other bonuses relating to the shipment of Product(s) will be paid by Buyer to Seller in addition to the price stipulated in this Agreement.

17.4.1.2. CIF / Delivered - either the Vessel's hull and machinery or cargo or both, then any and all costs of such additional insurance and/or additional premiums, as well as crew war bonuses or any other bonuses relating to the shipment of Product(s) will be paid by Buyer to Seller in addition to the price stipulated in this Agreement.

17.4.2. Seller reserves the right to refuse at any time to direct any Vessel to undertake or to complete such a voyage to the intended Discharge Port if such Vessel is required in performance of this Agreement:

17.4.2.1. To transit or to proceed to or to remain in waters so that the Vessel concerned would be involved in a breach of Institute Warranties or, in Seller's opinion, risk to its safety or risk of ice damage; or

17.4.2.2. To transit or to proceed to or to remain in waters where there is war (de facto or de jure) or threat thereof; or

17.4.2.3. Prior to the commencement of loading to direct any Vessel to undertake a voyage to the intended destination if such Vessel is required in performance of the terms of this Agreement to transit waters which, in Seller's reasonably held opinion, would involve abnormal delay.

17.4.3. If Seller agrees to direct a Vessel to undertake or to complete a voyage as referred to in this Section then Buyer undertakes to reimburse Seller in addition to the price for each supply of Product as provided in this Agreement for the costs to Seller of any additional insurance premiums (including those under this Section) and any other sums that Seller is required to pay to the Vessel owners including but not limited to any sums in respect of any amounts deductible under the Vessel owner's insurance and any other costs and/or expenses incurred by Seller.

## **18 Risk and Title**

18.1. CFR/CIF: For Transactions in which U.S. Venture, Inc. is the Seller, title to and risk of

loss or damage to any Product delivered under this Agreement shall be transferred from Seller to Buyer at the Load Port immediately prior to the Product passing through the outboard end/seaside of the last Vessel supplied reducer, fitting or hose at the Load Port.

For Transactions in which U.S. Venture, Inc. is the Buyer, title to and risk of loss or damage to any Product delivered under this Agreement shall be transferred from Seller to Buyer at the Load Port as the Product passes through the outboard/seaside of the last Vessel supplied reducer, fitting or hose at the Load Port.

18.2. Delivered: For Transactions in which U.S. Venture, Inc. is the Seller, title to and risk of loss or damage to any Product delivered under this Agreement shall be transferred from Seller to Buyer at the Delivery Port immediately prior to the Product passing through the outboard/seaside of the last Vessel supplied reducer, fitting or hose at the Delivery Port.

For Transactions in which U.S. Venture, Inc. is the Buyer, title to and risk of loss or damage to any Product delivered under this Agreement shall be transferred from Seller to Buyer at the Delivery Port as the Product passes through the outboard/seaside of the last Vessel supplied reducer, fitting or hose at the Delivery Port.

## **19. ETA Notice**

19.1. Seller shall arrange for its Vessel to notify the terminal operator at the Discharge Port via telex, letter, telegram, e-mail, or telecopy/fax of the Vessel's estimated time of arrival (ETA) pursuant to the following schedule:

### 19.1.1. Tankers, Ocean-Going and Great Lakes-Going Barges:

19.1.1.1. Where practicable, no later than 72 hours prior to the Vessel's arrival at the Discharge Port. The terminal operator at the Discharge Port shall be further notified 48, 24, and 6 hours in advance of the Vessel's arrival at the Discharge Port.

### 19.1.2. Inland Barges:

19.1.2.1. Where practicable, no later than 48 hours prior to the Vessel's arrival at the Discharge Port. The terminal operator at the Discharge Port shall be further notified 6 hours in advance of the Vessel's arrival at the Discharge Port. After the 6-hour notice, when a scheduled arrival time changes by more than 2 hours, all reasonable efforts shall be made to notify the terminal operator at the Discharge Port of such change.

19.2. Any delays arising from the failure to adhere to these ETA notices shall not count as used Laytime or demurrage if the Vessel is on demurrage.

19.3. CFR / CIF - As soon as practicable after loading has been completed, Seller shall notify Buyer of the actual quantity loaded and the latest ETA of the Vessel at the Discharge Port.

## **20. Notice of Readiness**

20.1 After the Vessel has arrived at the customary anchorage or other place of waiting, is otherwise in all respects ready to deliver cargo, and has received all necessary and required clearances, including as applicable, but not limited to, from the United States Coast Guard, Port Authorities, and/or other authorized regulatory, governmental, or security agency or body as applicable (unless such procedures are customarily carried out only after the Vessel is All Fast alongside), the master or his agent shall give Buyer or Buyer's Receiver and/or other parties, where necessary, notice by letter, email, telegraph, telex, rapifax, wireless, radio telephone, or telephone that the Vessel is ready in all respects to discharge the cargo, berth or no berth. Any NOR issued without having satisfied the requirements of this Section shall be null and void.

20.2. Except for CFR/CIF marine deliveries where an agreed Loading Date Range is provided or where an agreed Arrival Date Range is given for demurrage purposes only, by no later than 23:59 hours local time on the last day of the agreed Arrival Date Range, the Vessel nominated by Seller hereunder shall arrive at the Discharge Port (or the usual waiting place), complete all formalities, in all respects be ready to commence discharging the Product deliverable hereunder, and NOR shall be tendered.

**21. Laytime**

21.1. Laytime Allowance:

21.1.1. Unless specified in a Confirmation, the Laytime allowance shall be:

21.1.1.1. Tankers: Thirty-six (36) hours, pro rata for part cargo.

21.1.1.2. Barges:

20.1.1.2.1 Voyage Chartered: One-half (1/2) of the total Laytime allowance as provided in the single voyage charter Party, pro rata for part cargo.

21.1.1.2.2. Time Chartered, Demise Chartered, or Seller owned:

Vessel Type	Barrel Volume	Laytime Allowance
Barges	Up to 39,999	12 hours
	40,000 – 49,999	13 hours
	50,000 – 59,999	15 hours
	60,000 – 67,999	16 hours
	68,000 – 74,999	17 hours
	75,000 – 95,999	19 hours
	96,000 – 118,999	20 hours
	119,000 – 144,999	21 hours
	145,000 – 154,999	23 hours
	155,000 – 164,999	25 hours
	165,000 – 174,999	27 hours
	175,000 – 184,999	30 hours
	185,000 – 199,999	32 hours

	200,000 and above	36 hours
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21.1.2. If the Vessel is loading or 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 or demurrage if the Vessel is on demurrage, shall be pro-rated in the proportion that Buyer's cargo bears to the total cargo worked by the Vessel at such berth. If however used Laytime or demurrage if the Vessel is on demurrage is solely attributable to the other Parties' cargo operations, then such time shall not count in calculating used Laytime or demurrage if the Vessel is on demurrage.

21.1.3. Laytime allowance shall be no less than a minimum of 12 hours.

21.2. Laytime Commencement:

21.2.1. Tankers, Ocean-Going and Great Lakes-Going Barges:

21.2.1.1. If the Vessel arrives before the agreed Arrival Date Range and tenders NOR, and is in all respects ready to discharge its cargo, Laytime shall not commence until 02:01 hours on the first day of the agreed Arrival Date Range, unless Buyer elects to accept the Vessel earlier, in which case Laytime shall begin when the Vessel is All Fast.

21.2.1.2. If the Vessel arrives within the agreed Arrival Date Range, tenders NOR, and is in all respects ready to discharge its cargo, Laytime shall commence 2 hours after the Vessel's NOR being tendered or when the Vessel is All Fast, whichever occurs first.

21.2.1.3. If the Vessel arrives after the last day of the agreed Arrival Date Range, tenders NOR, and is in all respects ready to discharge its cargo, and is accepted by Buyer in its sole and absolute discretion, then, without prejudice to any of Buyer's other rights, Laytime shall commence when the Vessel is All Fast.

21.2.2. Inland Barges:

21.2.2.1. If the Vessel arrives before the agreed Arrival Date Range, tenders NOR, and is in all respects ready to discharge its cargo, Laytime shall not commence until 00:01 hours on the first day of the agreed Arrival Date Range, unless Buyer elects to accept the Vessel earlier, in which case Laytime shall begin when the Vessel is All Fast.

21.2.2.2. If the Vessel arrives within the agreed Arrival Date Range, tenders NOR, and is in all respects ready to discharge its cargo, Laytime shall commence upon the Vessel's NOR being tendered, berth or no berth, or when the Vessel is All Fast, whichever occurs first.

21.2.2.3. If the Vessel arrives after the last day of the agreed Arrival Date Range, tenders NOR, and is in all respects ready to discharge its cargo, and is accepted by Buyer in its sole and absolute discretion, then, without prejudice to any of Buyer's other rights, Laytime shall commence when the Vessel is All Fast.

21.3. Time consumed due to any of the following shall not count as used Laytime or if the Vessel is on demurrage, for demurrage:

21.3.1. On an inward passage including, but not limited to, awaiting daylight, tide, tugs, or pilot, and moving from an anchorage or other waiting place until the Vessel is All Fast;

21.3.2. Any delay due to the Vessel's condition, breakdown, or any other causes attributable to the Vessel;

21.3.3. Any delay due to prohibition of discharging at any time by the owner or operator of the Vessel or by the port authorities, unless the prohibition is caused by Buyer or Buyer's Receiver's facility's failure to comply with applicable laws, rules, and regulations;

21.3.4. Any delay due to the Vessel bunkering, provisioning, discharging or shifting of slops, ballast, or contaminated cargo, unless this is carried out concurrent with discharging or other normal cargo operations such that no loss of time is involved;

21.3.5. Any delay due to the Vessel's incompatibility with the configuration of the berthing or other port facilities, including time consumed in making up connections to remedy any incompatibility;

21.3.6. Any delay due to pollution or threat thereof caused by any defect in the Vessel or any act or omission to act by the master or crew of the Vessel;

21.3.7. Any delay due to the Vessel's violation of the operating or safety rules and/or regulations of the Discharge Port, noncompliance with: (i) federal or state laws, (ii) U.S. Coast Guard regulations, (iii) any other applicable regulations, (iv) or failure to obtain or maintain required certification;

21.3.8. Any delays caused by strike, lockout, stoppage or restraint of labor of master, officers or crew of the Vessel or of tugboats or pilots;

21.3.9. Any delay awaiting customs or immigration clearance, other required governmental or port clearances, or free pratique, if applicable.

21.4. Any delay, not first caused by the negligence of Buyer or Buyer's Receiver(s), that is the result of fire, explosion, civil unrest, act of war, riot, strike, lockout, stoppage or restraint of labor, breakdown of machinery or equipment in or about the facilities of Buyer or Buyer's Receiver, adverse weather and/or sea conditions Act of God, or other delays not reasonably within the control of either Party (and except as otherwise provided in this Agreement) shall be paid for at one-half (1/2) the rate otherwise provided for demurrage.

21.5. Laytime shall cease after all Product has been discharged and:

21.5.1. Tankers and Ocean-Going and Great Laeks-Going Barges: When the hoses have been disconnected from the Vessel. However, 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).

21.5.2. Inland Barges: When the hoses have been disconnected from the Vessel and the Vessel has been released by Buyer or Buyer's Receiver(s).

21.6. Where the Parties agree in the Confirmation that the public dock clause applies, if discharging occurs at a public terminal over which Buyer has no control, Vessels are discharged on a first come first serve basis subject to dock availability. Laytime shall not commence until Vessel is All Fast at the dock. Buyer will not be responsible for any delays or demurrage incurred while waiting for a berth. A declaration of Force Majeure shall not relieve the Buyer from the obligation to pay demurrage under this Agreement.

## **22. Demurrage**

22.1. Demurrage Rate: For all time that used Laytime exceeds the Laytime allowance, Buyer shall pay demurrage, at the rate specified in a Confirmation, or where no rate is specified in a Confirmation in accordance with the chart at Appendix A.

22.2. For demurrage purposes, all Inland Barges or tows operating as a unit shall be considered collectively as one unit.

22.2.1. In respect of tows, Buyer will not be liable for tug demurrage during delays of berthing or discharging where the Discharge Port has notified the Vessel's master that the tug would not be required at the port for that time period.

22.3. Demurrage Claims: Demurrage claims must be submitted *in* writing (e-mail acceptable) with full supporting documentation no later than ninety (90) calendar days after the completion of discharging date. IF A DEMURRAGE CLAIM AND ITS SUPPORTING DOCUMENTATION IS PROVIDED LATER THAN NINETY (90) CALENDAR DAYS AFTER THE COMPLETION OF DISCHARGING DATE, THE CLAIM WILL BE DEEMED TO HAVE BEEN WAIVED.

## **23. Pollution Cover**

23.1. Where delivery is by a Tanker Seller shall exercise reasonable efforts to ensure that:

23.1.1. Except in the case of delivery of LPG's each Tanker shall be owned by or demise chartered by a member of the International Tanker Owners Pollution Federation Limited ("ITOPF").

23.1.2. The Tanker shall carry on board certificate(s) as required pursuant to the 1992 Civil Liability Convention for Oil Pollution Damage or any Protocols thereto ("CLC") and the Oil Pollution Act 1990, as applicable; and;

23.1.3. The Tanker shall have in place insurance cover for oil pollution no less in scope and amounts than the highest available under the rules of P. & I. Clubs entered into the International Group of P. & I. Clubs.

23.1.4 The Vessel Owner is a member of or provides appropriate Oil Spill Response Organization coverage for any region in which the Vessel is operated.

23.2. Where delivery is by an Ocean-Going Barge or Inland Barge, Seller shall exercise reasonable efforts to ensure that the barge owner has in place for the applicable barge, marine insurance in an amount that meets or exceeds the minimum insurance requirements as required by applicable law or regulation or industry standards for a barge of that size, transporting that Product.

23.3. If Seller's Vessel does not meet any of the above requirements Buyer or Buyer's Receivers may refuse to berth or discharge or continue discharging such Vessel.

#### **24. Automated Manifest System**

24.1. Where the Discharge Port is located within the U.S.A or U.S. Territories, Seller shall exercise reasonable efforts to ensure that the Vessel is aware of the requirements of the CBP ruling issued on December 5th 2003 under Federal Register Part II Department of Homeland Security, 19 CFR Parts 4 and 103, and will comply fully with these requirements for entering U.S. ports (including for avoidance of doubt, the requirements of the Automated Manifest System).

24.2. In the event the Discharge Port is changed at Buyer's request such that, despite Seller exercising all reasonable efforts pursuant to this Agreement, Seller's nominated Vessel is unable to comply with the notification period required by the CBP ruling issued on December 5th 2003 under Federal Register Part II Department of Homeland Security 19 CFR Parts 4 and 103, (including for avoidance of doubt the requirements of the Automated Manifest System):

24.2.1. Any delay directly resulting from such non-compliance shall be for Buyer's account.

24.2.2. Seller shall not be liable for failure of performance directly resulting from such non-compliance.

#### **25. Transshipment and Lightering**

25.1. Seller shall not Transship Product (excluding Lightering operations in U.S. waters) prior to delivering the Product into the U.S. without prior disclosure to Buyer; and

25.2. Should Seller decide to Transship the Product prior to delivering it into the U.S., Seller shall disclose its intent to Transship to Buyer at the time of this Agreement and must provide Buyer all documents as requested by the CBP to support the validation to Seller's certificate of origin. Failure to disclose this information or to provide the required documents in a timely manner for importation purposes, shall constitute a material breach of this Agreement entitling Buyer to immediately cancel this Agreement. In such event, Seller agrees to compensate Buyer for all costs associated with the cancellation of this Agreement including but not limited to replacement costs for a substituted cargo from another seller.



a. Any Lightering, Vessel-to-Vessel ("Transshipment") or barging operations at sea or inside port limits shall always be performed at a location considered safe and acceptable to the Vessel's owners and/or master. In addition, the Vessel procured by the Lightering Party shall be subject to the other Party's acceptance, which shall not be unreasonably withheld and the Vessel owner's prior acceptance. All Lightering/Transshipment shall conform to standards not less than those set out in the latest edition of the International Chamber of Shipping/Oil Companies International Marine Forum ship-to-ship transfer guide (Petroleum).

## **26. International Ship and Port Facility Security Code**

26.1. This Section shall apply:

26.1.1. to all Discharge Ports not located within the United States of America ("USA" or U.S.") or a U.S. Territory, and

26.1.2. any other Discharge Port and/or Vessel used that is subject to the International Ship and Port Facility Security Code or the U.S. Maritime Transportation Security Act 2002 ("MTSA").

26.2. Seller shall procure that the Vessel shall comply with the requirements of the International Ship and Port Facility Security Code and the relevant amendments to Chapter XI of SOLAS ("ISPS Code") and where the Discharge Port is within the USA and U.S. territories or waters, with the MTSA.

26.3. The Vessel shall when required submit a Declaration of Security to the appropriate authorities prior to arrival at the Discharge Port.

26.4. Notwithstanding any prior acceptance of the Vessel by Buyer, if, at any time prior to the arrival of the Vessel at the Discharge Port the Vessel ceases to comply with the requirements of the ISPS Code or MTSA; then

26.4.1. Buyer shall have the right not to berth such nominated Vessel at the Discharge Port and any demurrage resulting shall not be for the account of Buyer; and

26.4.2. Seller shall be obliged to substitute such nominated Vessel with a Vessel complying with the requirements of the ISPS Code and MTSA. If title and risk to the cargo on board the Vessel subsequently substituted has already passed to Buyer, such title and risk shall be deemed to have reverted to Seller.

26.5. Buyer shall procure that the Discharge Port/terminal/installation shall comply with the requirements of the ISPS Code and if located within the USA and U.S. territories or waters, with the MTSA.

26.6. Any costs or expenses in respect of the Vessel including demurrage or any additional charge, fee or duty levied on the Vessel at the Discharge Port and actually incurred by Seller resulting directly from the failure of the Discharge Port/terminal/installation to comply with the ISPS Code and if located within the USA and U.S. territories, with the MTSA shall be for the account of Buyer, including but not limited to the time required or costs incurred by the Vessel in taking any action or any special or additional security measures required by the ISPS

Code or MTSA.

26.7. Save where the Vessel has failed to comply with the requirements of the ISPS Code and within the USA and U.S. territories or waters, with the MTSA, Buyer shall be responsible for any demurrage actually incurred by Seller arising from delay to the Vessel at the Discharge Port resulting directly from the Vessel being required by the port facility or any relevant authority to take any action or any special or additional security measures or undergo additional inspections.

26.8. If the Discharge Port/terminal/installation is not operated by Buyer or an affiliate of Buyer, Buyer's liability to Seller under this Agreement for any costs, losses or expenses incurred by the Vessel, the charterers or the Vessel owners resulting from the failure of the Discharge Port/terminal/installation to comply with the ISPS Code or MTSA shall be limited to the payment of demurrage and costs actually incurred by Seller in accordance with the provisions of this Section.

## **27. General**

Seller shall exercise reasonable efforts to ensure that while at the Terminal, the Vessel owner conducts Vessel operation in accordance with the applicable provisions of the latest edition of the International Safety Guide for oil Tankers & Terminals ("ISGOTT").

## **28. Inert Gas System**

Vessels fitted with an Inert Gas System (IGS) are required to maintain their cargo tanks in the fully inerted condition while conducting cargo operations at the Terminal. The Vessel cargo tanks are to be inerted with inert gas having oxygen concentration of less than 8% by volume and pressurized as required by the SOLAS convention. The Vessel's IGS shall be operated in accordance with the Vessel's IGS Manual and ISGOTT requirements.

## **29. Specific Ports, Anchorages, and Locations**

### **29.1. Mississippi River Ports:**

29.1.1. Via Southwest Pass - Any Vessel which must make passage to any port along the Mississippi River shall announce to the Discharge Port the Vessel's arrival at Southwest Pass. The NOR given upon arrival at the Discharge Port's berth or, the nearest customary anchorage or waiting place for the Discharge Port to which it is destined if the berth is not available upon its arrival shall be used for Laytime and demurrage purposes.

29.1.2. Via other than Southwest Pass - The NOR or notice of arrival, as applicable, given upon arrival at the Discharge Port's berth or, the nearest customary anchorage or waiting place for the Discharge Port to which it is destined if the berth is not available upon its arrival shall be used for Laytime and demurrage purposes.

## APPENDIX A TO ANNEX C DEMURRAGE RATE SCHEDULE

Where the demurrage rate is not specified in Part One, for Seller/Buyer owned (as applicable), time chartered, or demise chartered Vessels, or where Seller/Buyer (as applicable) is unable to substantiate the single voyage demurrage rate, then the demurrage rate shall be as set out below:

Vessel Type	Barrel Volume	Demurrage Rate
<b>Inland Barges (Clean Oil)</b>	20,000	<b>\$312 per Hr</b>
	50,000	<b>\$354 per Hr</b>
	75,000	<b>\$524 per Hr</b>
<b>Inland Barges (Dirty Oil)</b>		
	N/A	<b>\$385 per Hr</b>
<b>Inland Barges (Lube Oil) Barge Only</b>	Up to 13,000	<b>\$40 per Hr</b>
	15,000 - 20,000	<b>\$60 per Hr</b>
	25,000 - 30,000	<b>\$80 per hr</b>
	50,000	<b>\$355 per Hr</b>
<b>Inland Barges (Lube Oil) Barge and Tug</b>	Up to 13,000	<b>\$7,500 per Day</b>
	15,000 - 20,000	<b>\$7,500 per Day</b>
	25,000 - 30,000	<b>\$8,500 per Day</b>
	50,000	<b>\$8,500 per Day</b>

<b>Vessel Type</b>	<b>Barrel</b>	<b>Demurrage Rate</b>
<b>Ocean-Going Barges</b>	Up to 39,999	<b>\$570 per Hr</b>
	40,000 - 49,999	<b>\$675 per Hr</b>
	50,000 - 59,999	<b>\$770 per Hr</b>
	60,000 - 67,999	<b>\$800 per Hr</b>
	68,000 - 74,999	<b>\$900 per Hr</b>
	75,000 - 95,999	<b>\$1,042 per Hr</b>
	96,000 - 118,999	<b>\$1,125 per Hr</b>
	119,000 - 144,999	<b>\$1,300 per Hr</b>
	145,000 - 154,999	<b>\$1,375 per Hr</b>
	155,000 - 164,999	<b>\$1,700 per Hr</b>
	165,000 - 174,999	<b>\$1,979 per Hr</b>
	175,000 - 184,999	<b>\$2,300 per Hr</b>
	185,000 or More	<b>\$2,437 per Hr</b>
<b>Jones Act Tankers</b>		
	<b>DWT</b>	<b>Demurrage Rate</b>
	25,000 - 29,999	<b>\$42,500 per Day</b>
	30,000 - 34,999	<b>\$45,000 per Day</b>
	35,000 - 39,999	<b>\$52,500 per day</b>
	40,000 - 44,999	<b>\$59,000 per Day</b>
	45,000 - 49,999	<b>\$65,000 per Day</b>
	50,000 - 54,999	<b>\$72,000 per Day</b>
	55,000 - 59,999	<b>\$77,500 per Day</b>

## ANNEX D

### TRANSACTIONS INVOLVING NATURAL GAS LIQUIDS

The following terms shall apply to all Transactions where Product sold, supplied, exchanged or offered for sale is ethane, propane, butane, isobutene, or pentane within the United States of America, and shall be deemed to supplement and amend the specified section of the General Terms, but unless explicitly stated, shall not delete or disapply the provisions of the General Terms, subject to Section 21.12 of the General Terms.

#### Section 1 Definitions

The following definitions shall be added:

“Allocation” shall mean, for Product being transported on a pipeline or through processing, storage or fractionation facilities, the application of allocation procedures set forth in the Carrier’s applicable tariff or the governing practices and policies of the applicable facilities to apportion the available capacity among users when constraints, interruptions, curtailments or other issues prevent the Carrier/facility from performing its obligations related to a user’s requested services for a Product.

“Any” shall mean (other than when the context clearly indicates otherwise) the Contract Quantity that will be delivered and received or exchanged by the last Day of such Delivery Month.

“Firm” shall mean that either Party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure or otherwise excused pursuant to an Event of Default of the other Party under this Transaction; provided, however, that during Force Majeure interruptions, the Party invoking Force Majeure may be responsible for any imbalance charges related to its interruption after the nomination is made to the Carrier and until the change in deliveries and/or receipts is confirmed by the Carrier.

“GPA” shall mean the Gas Processors Association or its successor-in-interest.

“Performance Obligation” shall mean the standard of performance of the Seller to deliver or exchange and of the Buyer to receive or exchange the Product as specified in a Confirmation under the following performance options: (a) Firm; or (b) Standard, and within those options, the delivery obligations of (i) Wet; (ii) Any; (iii) Ratable; or (iv) other. If no performance option or delivery obligation is selected by the parties on the Confirmation, then Firm and Any are the defaults, respectively.

“Ratable” shall mean the Contract Quantity that will be delivered and received, or exchanged, on a pro rata basis (i) on each Day during the delivery month or (ii) during the specific time period(s) as set forth in the Confirmation.

“Standard” shall mean that either party may interrupt its performance without liability only to the

extent that such performance is prevented by reasons of Force Majeure, otherwise excused pursuant to an Event of Default by the other party, or is excused by reason of a Supply Shortage.

“Supply Shortage” shall mean that a Seller does not have sufficient quantities of Product available at the Delivery Point to satisfy its aggregate sales commitments, due to the loss or failure of Product supplies or the depletion of reserves, or the inability to transport Product to the Delivery Point for any reason, including Allocation. Supply Shortage shall not include the unavailability of Product due to the Seller entering into transactions in the spot market at the Delivery Point at higher or more advantageous prices.

“Wet” shall mean (other than when the context clearly indicates otherwise) the Contract Quantity that will be delivered and received or exchanged by the specific Day(s) as set forth in the Confirmation.

## **Section 2      General Obligations, Exchange Balancing**

Section 2.1, Delivery Obligations, shall add the following sentence at the end thereof: “The Parties agree that for Standard Performance Obligation; provided, however, that Seller shall provide Buyer with prompt oral or electronic notice of the event excusing performance.”

**2.4      Supply Shortfall.** In the event of a Supply Shortage for all of its Standard obligation Transactions at a Delivery Point, Seller shall (i) reduce its deliveries at the Delivery Point on a pro rata basis, based on the Contract Quantities and (ii) have no obligation to purchase Product from other sources to supply Buyer at the Delivery Point nor provide an alternative mode of transportation or alternate Delivery Point. No delay, failure or omission by Seller in the performance of any Standard obligation shall be deemed a breach of the Transaction nor shall it create any liability for any damages whatsoever if such delay, failure or omission arises from any Supply Shortage.

## **Section 6      Quality; Disclaimer of Warranties, Measurement; Title**

Section 6.2, Measurement, shall have the following sentence inserted as the second sentence thereto: “If no Product specification is set forth in the applicable Confirmation or in an attachment thereto, all Product delivered under such Transaction shall meet the latest GPA specifications for that Product and contain no deleterious substances or concentrations of any contaminants that may make it or its components commercially unacceptable in general industry application.”

## **Section 21      Miscellaneous**

New **Section 21.17      Propane.** For Transactions where propane is the Product, the following provisions shall govern the Transactions, as applicable.

- (i) If the Product is sold as odorized propane, the Product shall be delivered by the Seller at the Delivery Point with odorant levels meeting at least the minimum standards under

- Applicable Law. Upon request, Seller shall provide documentation of test that confirms the odorized propane meets the minimum standards under Applicable Law, including testing as applicable. The Seller shall have no further responsibility to ensure that any odorized propane remains properly odorized after its delivery at the Delivery Point, except as may be provided in (iii) below, and the Buyer will monitor and maintain the odorant at or above proper levels after receipt at the Delivery Point as required by Applicable Law.
- (ii) Buyer may test any odorized propane delivered by the Seller at the Delivery Point(s). The Buyer may elect not to accept delivery of such propane at the Delivery Point(s) until such propane has been odorized pursuant to the specification in the Transaction or to Applicable Law if no specification is included in the Transaction.
  - (iii) Buyer may, prior to unloading of the odorized propane and in no case greater than five Business Days after the odorized propane's arrival at the agreed upon destination set forth in the Confirmation, obtain samples of the odorized propane from an appropriate location on the rail cars, tank truck, barge or ship, as applicable, and/or the loading/unloading facilities connected to such means of transport in a manner consistent with applicable industry testing and sampling standards. If the Buyer elects to obtain such samples of the odorized propane, the Buyer will (a) be responsible for arranging for analysis of such samples, by a qualified laboratory or testing organization, all at the Buyer's expense and (b) provide reasonable Notice to the Seller of the time of the sample collecting. Each party will be entitled to have its representatives present during all loadings, unloadings, tests and measurements involving delivery of odorized propane. If Buyer fails to (a) obtain samples, (b) provide Notice of the testing or (c) provide Notice of any alleged off-spec Product based on the sampling within the greater of the referenced five (5) Business Days or the minimum time period required by Applicable Law, along with supporting test results and information and documentation (collectively the "Product Rejection Notice"), the Seller shall have no liability for any defect in the quality of odorized propane, and the odorized propane will be deemed accepted. Measurement, sampling and analysis will be conducted in accordance with the industry standards applicable to the sampling methodology used. All such standards are incorporated herein for all purposes, including all revisions of those standards adopted and in effect during the term of this Transaction. If the Buyer timely rejects odorized propane pursuant to the procedure set forth above, the Buyer will retain possession of such odorized propane without unloading the odorized propane until the Seller has had the opportunity to inspect and test the odorized propane; provided, however, the Buyer will not be obligated to retain such odorized propane beyond ten (10) Days following the Product Rejection Notice. If the rejected odorized propane is unloaded by the Buyer prior to the expiration of the ten (10) Day period, then Seller shall have no liability for any defect in the quality of odorized propane, and the odorized

propane will be deemed accepted. If the Seller does not take possession of the rejected odorized propane within the referenced ten Day period, the Buyer will be entitled to dispose of the rejected odorized propane at the Seller's cost and expense (provided such costs and expenses are reasonably incurred). If it is established that the delivered odorized propane is properly odorized pursuant to the specification in the Transaction or Applicable Law if no specification is included in the Transaction, Buyer shall be responsible for damages resulting from its wrongful rejection.

- (iv) **IF PERMITTED BY APPLICABLE LAW AND IF REQUESTED IN WRITING BY BUYER, PROPANE SOLD AND DELIVERED HEREUNDER MAY BE UNODORIZED, OR (A) IF BUYER KNOWINGLY ACCEPTS UNDER-ODORIZED PROPANE AT THE DELIVERY POINT OR (B) FAILS TO INSPECT AND TEST ODORIZED PROPANE AND PROVIDE APPROPRIATE DOCUMENTATION TO SELLER UNDER (ii) AND (iii) ABOVE, UPON RECEIPT, BUYER SHALL ASSUME FULL RESPONSIBILITY AND LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF THE TRANSPORTATION, USE AND SALE OF SUCH PROPANE, AS WELL AS ANY LIABILITY ARISING FROM OR ON ACCOUNT OF CLAIMS OF PERSONAL INJURY, DEATH OR PROPERTY DAMAGE. Buyer represents and warrants to Seller that Buyer will not use such unodorized propane for fuel or resell it for fuel without adding an odorizing agent in conformance with applicable law.**
- (v) **If Buyer (A) fails to inspect and test any odorized propane in accordance with (ii) and (iii) above, (B) fails to maintain any and all documentation related to the inspecting and testing of odorized propane or (C) blends any odorized propane after its delivery at the Delivery Point, then Buyer shall indemnify, defend and hold Seller and its respective directors, officers, members, employees, Contractors and agents harmless from any and all Claims as well as ANY LIABILITY ARISING FROM OR ON ACCOUNT OF CLAIMS OF PERSONAL INJURY, DEATH OR PROPERTY DAMAGE involving lack of or inadequate warning materials, improper amounts, use or type of odorant, "odorant fading," lack of warning on supplemental warning systems (such as gas detectors) and improper training or monitoring of Buyer's warning or training programs respecting odorization that are incurred as a result of or arising from such propane, except to the extent the claims arose as a result of the gross negligence or intentional acts of Seller, its directors, officers, members, employees, contractors or agents; provided, however, if Seller fails to provide the documentation required under (i) above, to Buyer, buyer shall not have any indemnity obligations hereunder.**
- (vi) Buyer acknowledges that Seller does not have the ability to convey safety or warning information to Buyer's customers. Accordingly, Buyer will inform its customers of the



hazards of propane. Seller authorizes Buyer to copy any such information for distribution to its customers.