

# Master Agreement for Purchase, Sale or Exchange of Liquid Hydrocarbons

The Effective Date of this Master Agreement is: April 1, 2017

The parties to this Master Agreement are the following:

PARTY A <b>NGL Supply Wholesale, LLC</b>	PARTY NAME	PARTY B <b>For Review – Not for Negotiations</b>
<b>6120 S Yale Ave, #805 Tulsa, OK 74136</b>	<i>ADDRESS</i>	
<b>www.nglsupplywholesale.com</b>	<i>BUSINESS WEBSITE</i>	
	<i>CONTRACT NUMBER</i>	
<b>36-273-0710</b>	<i>D-U-N-S® NUMBER</i>	
<b>27-3427920</b>	<i>FEDERAL TAX ID #</i>	
<b>Delaware</b>	<i>JURISDICTION OF ORGANIZATION</i>	
<input type="checkbox"/> Corporation <input checked="" type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____	<i>COMPANY TYPE</i>	<input type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____
	<i>GUARANTOR (IF APPLICABLE)</i>	

This Master Agreement incorporates by reference for all purposes the General Terms and Conditions for Purchase, Sale or Exchange of Liquid Hydrocarbons published by the North American Energy Standards Board. The parties hereby agree to the following provisions offered in said General Terms and Conditions. In the event the parties fail to check a box, the specified default provision shall apply. Select the appropriate box(es) from each section:

<b>Section 1.2</b> Transaction Procedure <input checked="" type="checkbox"/> Oral (default) OR <input type="checkbox"/> Written	<b>Section 10.2</b> Additional Events of Default <input checked="" type="checkbox"/> No Additional Events of Default (default) <input type="checkbox"/> Indebtedness Cross Default <input type="checkbox"/> Party A: _____ <input type="checkbox"/> Party B: _____ <input type="checkbox"/> Transactional Cross Default <u>Specified Transactions:</u> _____ _____ _____ _____
<b>Section 2.13</b> Confirm Deadline <input checked="" type="checkbox"/> 3 Business Days after receipt (default) OR <input type="checkbox"/> _____ Business Days after receipt	<b>Section 10.3.1</b> Early Termination Damages <input checked="" type="checkbox"/> Early Termination Damages Apply (default) OR <input type="checkbox"/> Early Termination Damages Do Not Apply
<b>Section 2.14</b> Confirming Party Purchase/Sale <input checked="" type="checkbox"/> Seller (default) OR <input type="checkbox"/> Buyer OR <input type="checkbox"/> _____	<b>Section 10.3.2</b> Other Agreement Setoffs <input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default) <input checked="" type="checkbox"/> Bilateral (default) <input type="checkbox"/> Triangular OR <input type="checkbox"/> Other Agreement Setoffs Do Not Apply
<b>Section 2.14</b> Confirming Party Exchange <input checked="" type="checkbox"/> Party A (default) OR <input type="checkbox"/> Party B OR <input type="checkbox"/> _____	<b>Section 16.5</b> Choice Of Law Oklahoma <b>Section 16.6</b> Waiver of Trial by Jury <input checked="" type="checkbox"/> Yes (default) OR <input type="checkbox"/> No
<b>Section 3.2</b> Performance Obligation <input checked="" type="checkbox"/> Cover Standard (default) OR <input type="checkbox"/> Spot Price Standard	<b>Section 16.11</b> Confidentiality <input checked="" type="checkbox"/> Confidentiality applies (default) OR <input type="checkbox"/> Confidentiality does not apply
<b>Section 7.3</b> Payment Date <input type="checkbox"/> 5 <sup>th</sup> Business Day after receipt of invoice (default) OR <input checked="" type="checkbox"/> Per Confirm	
<b>Section 7.3</b> Method of Payment <input type="checkbox"/> Wire transfer (default) <input type="checkbox"/> Electronic Funds Transfer <input type="checkbox"/> Automated Clearinghouse Credit (ACH) <input type="checkbox"/> Check <input checked="" type="checkbox"/> Per Confirm	
<b>Section 7.3</b> Netting <input checked="" type="checkbox"/> Netting applies (default) OR <input type="checkbox"/> Netting does not apply	
<input type="checkbox"/> <b>Special Provisions</b> Number of sheets attached: <u>  0  </u>	
<input type="checkbox"/> <b>Addendum(s):</b> _____	

# Master Agreement for Purchase, Sale or Exchange of Liquid Hydrocarbons

(Continued)

Party A		Party B
<b>CONTACT INFORMATION</b>		
<b>ADDR:</b> 6120 S Yale Ave, #805, Tulsa, OK 74136 <b>ATTN:</b> Marketing <b>TEL#:</b> 918-481-1119 <b>FAX#</b> 918-492-0990 <b>EMAIL:</b> Sales@nglep.com	<b>COMMERCIAL</b>	<b>ADDR:</b> _____ <b>ATTN:</b> _____ <b>TEL#:</b> _____ <b>FAX#</b> _____ <b>EMAIL:</b> _____
<b>ADDR:</b> 6120 S Yale Ave, #805, Tulsa, OK 74136 <b>ATTN:</b> Marketing <b>TEL#:</b> 918-481-1119 <b>FAX#</b> 918-492-0990 <b>EMAIL:</b> Sales@nglep.com	<b>SCHEDULING, NOMINATIONS AND DELIVERIES</b>	<b>ADDR:</b> _____ <b>ATTN:</b> _____ <b>TEL#:</b> _____ <b>FAX#</b> _____ <b>EMAIL:</b> _____
<b>ADDR:</b> 6120 S Yale Ave, #805, Tulsa, OK 74136 <b>ATTN:</b> Contract Administration <b>TEL#:</b> 918-481-1119 <b>FAX#</b> 918-935-2888 <b>EMAIL:</b> Confirms@nglep.com	<b>CONTRACT NOTICES</b>	<b>ADDR:</b> _____ <b>ATTN:</b> _____ <b>TEL#:</b> _____ <b>FAX#</b> _____ <b>EMAIL:</b> _____
<b>ADDR:</b> 3773 Cherry Creek N Dr, #1000, Denver, CO 80209 <b>ATTN:</b> Credit <b>TEL#:</b> 720-213-9125 <b>FAX#</b> 888-286-1190 <b>EMAIL:</b> NGLCredit@nglep.com	<b>CREDIT AND COLLECTIONS</b>	<b>ADDR:</b> _____ <b>ATTN:</b> _____ <b>TEL#:</b> _____ <b>FAX#</b> _____ <b>EMAIL:</b> _____
<b>ADDR:</b> 6120 S Yale Ave, #805, Tulsa, OK 74136 <b>ATTN:</b> Contract Administration <b>TEL#:</b> 918-481-1119 <b>FAX#</b> 918-935-2888 <b>EMAIL:</b> Confirms@nglep.com	<b>TRANSACTION CONFIRMATIONS</b>	<b>ADDR:</b> _____ <b>ATTN:</b> _____ <b>TEL#:</b> _____ <b>FAX#</b> _____ <b>EMAIL:</b> _____
<b>ADDR:</b> www.nglsupplywholesale.com <b>ATTN:</b> _____ <b>TEL#:</b> _____ <b>FAX#</b> _____ <b>EMAIL:</b> _____	<b>MATERIAL SAFETY DATA SHEETS (IF APPLICABLE)</b>	<b>ADDR:</b> _____ <b>ATTN:</b> _____ <b>TEL#:</b> _____ <b>FAX#</b> _____ <b>EMAIL:</b> _____
<b>ACCOUNTING INFORMATION</b>		
<b>ADDR:</b> See Invoice <b>ATTN:</b> _____ <b>TEL#:</b> _____ <b>FAX#</b> _____ <b>EMAIL:</b> _____	<b>INVOICES PAYMENTS SETTLEMENTS</b>	<b>ADDR:</b> _____ <b>ATTN:</b> _____ <b>TEL#:</b> _____ <b>FAX#</b> _____ <b>EMAIL:</b> _____
<b>BANK:</b> See Invoice <b>ABA:</b> _____ <b>ACCT:</b> _____ <b>OTHER DETAILS:</b> _____	<b>ELECTRONIC FUNDS or WIRE TRANSFER NUMBERS (IF APPLICABLE)</b>	<b>BANK:</b> _____ <b>ABA:</b> _____ <b>ACCT:</b> _____ <b>OTHER DETAILS:</b> _____
<b>BANK:</b> See Invoice <b>ABA:</b> _____ <b>ACCT:</b> _____ <b>OTHER DETAILS:</b> _____	<b>ACH NUMBERS (IF APPLICABLE)</b>	<b>BANK:</b> _____ <b>ABA:</b> _____ <b>ACCT:</b> _____ <b>OTHER DETAILS:</b> _____

IN WITNESS WHEREOF, the parties hereto have executed this Master Agreement in duplicate.

<b>NGL Supply Wholesale, LLC</b>	<b>PARTY NAME</b>	<b>[INSERT COUNTERPARTY LEGAL ENTITY NAME]</b>
By: _____ Date: _____	<b>SIGNATURE</b>	By: _____ Date: _____
Jeff Pinter	<b>PRINTED NAME</b>	[Insert Name]
Executive Vice President - NGL Liquids	<b>TITLE</b>	[Insert Title]

# General Terms and Conditions Master Agreement for Purchase, Sale or Exchange of Liquid Hydrocarbons

## SECTION 1. PURPOSE AND PROCEDURES

1.1. These General Terms and Conditions are intended to facilitate Transactions.

**The parties have selected either the “Oral Transaction Procedure” or the “Written Transaction Procedure” as indicated on the Master Agreement.**

### **Oral Transaction Procedure:**

1.2. Any Transaction may be effectuated in Conversations, with the offer and acceptance constituting the agreement of the parties. The parties shall be legally bound from the time they so agree to Transaction terms and may each rely thereon. Any such Transaction shall be considered a “writing” and to have been “signed.” Notwithstanding the foregoing sentence, the parties agree that the Confirming Party shall, and the other party may, confirm any Oral Transaction by sending the other party a Confirmation by facsimile or other mutually agreeable electronic means within three Business Days of a Transaction covered by this Section 1.2 (Oral Transaction Procedure), provided that the failure to send a Confirmation shall not invalidate the oral agreement of the parties. The Confirming Party adopts its letterhead, or the like, as its signature on any Confirmation as the identification and authentication of the Confirming Party. If the Confirmation contains any provisions other than those relating to the commercial terms of the Transaction (i.e., Price, Contract Quantity, quality specifications, Performance Obligation, delivery obligation, transaction type, origin, destination, Delivery Location, Carrier(s), Delivery Period, Delivery Month and/or transportation conditions), that modify or supplement the Master Agreement (e.g., arbitration or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 1.3 but must be expressly agreed to by both parties, provided that the foregoing shall not invalidate any Transaction agreed to by the parties.

### **Written Transaction Procedure:**

1.2. If the parties reach an agreement regarding a Transaction for a particular Delivery Period, the Confirming Party shall, and the other party may, record that agreement on a Confirmation and communicate such Confirmation by facsimile or other mutually agreeable electronic means to the other party by the close of the Business Day following the date of agreement. The parties acknowledge that their agreement will not be binding until the exchange of non-conflicting Confirmations or the passage of the Confirm Deadline without objection from the other party, as provided in Section 1.3.

1.3. If a sending party's Confirmation is materially different from the receiving party's understanding of the agreement referred to in Section 1.2, such receiving party shall notify the sending party of the material difference(s) via facsimile or other mutually agreeable electronic means by the Confirm Deadline, unless such receiving party has previously sent a Confirmation to the sending party. The failure of the receiving party to so notify the sending party in writing by the Confirm Deadline constitutes such receiving party's agreement to the terms of the Transaction described in the sending party's Confirmation. If there are any material differences between timely sent Confirmations governing the same Transaction, then neither Confirmation shall be binding until or unless such differences are resolved, including the use of any evidence that clearly resolves the differences in the Confirmations. In the event of a conflict among the terms of (i) a binding Confirmation pursuant to Section 1.2, (ii) the agreement of the parties as evidenced by Conversations, but only if the parties have selected the Oral Transaction Procedure of the Master Agreement, (iii) the Master Agreement and (iv) these General Terms and Conditions, the terms of the documents shall govern in the priority listed in this sentence.

1.4. The parties agree that each party may record all Conversations with respect to this Contract between their respective employees, without any special or further notice to the other party. Each party shall obtain any necessary consent of its agents and employees to record such Conversations, if required by Applicable Law. If the parties have selected the Oral Transaction Procedure in Section 1.2 of the Master Agreement, the parties agree not to contest the validity or enforceability of recordings entered into in accordance with the requirements of this Master Agreement; provided, however, the party responsible for obtaining the consent of its agents and employees to such recordings shall indemnify, defend and hold the other party harmless from any and all Claims arising from or out of such party's failure to obtain the consent of its agents and employees to such recordings.

1.5. Each party agrees not to contest, or assert any defense to, the validity or enforceability of a Transaction based on lack of authority of the party or any lack of authority of any employee of the party to enter into a Contract.

## SECTION 2. DEFINITIONS

The terms set forth below shall have the meaning ascribed to them below. Other terms are also defined elsewhere in the Contract and shall have the meanings ascribed to them therein.

2.1. “Additional Event of Default” shall mean Transactional Cross Default or Indebtedness Cross Default, each as and if selected by the parties pursuant to the Master Agreement.

2.2. “Adequate Assurance of Performance” shall mean sufficient security in the form, amount, for a term and from an issuer, all as reasonably acceptable to the party demanding the same, including, but not limited to, cash, an irrevocable standby letter of credit issued by a Qualified Institution, a prepayment, a Guaranty or a security interest in an asset.

- 2.3. "Affiliate" shall mean, in relation to any party, any entity or person directly or indirectly controlled by the party, any entity or person that directly or indirectly controls the party, or any entity or person directly or indirectly under common control with the party. For this purpose, "control" of any party, entity or person means ownership of at least fifty percent (50%) of the voting power of the party, entity or person.
- 2.4. "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.
- 2.5. "Any" shall mean the Contract Quantity that will be delivered and received or exchanged by (i) the last Day of such Delivery Month or (ii) the specific Day(s) as set forth in the Confirmation.
- 2.6. "Applicable Law" shall mean any and all applicable acts, laws, statutes, ordinances, orders, rules, permits, regulations, rulings, decrees, directives, judgments or policies (to the extent mandatory) or any similar form of decision, determination or any interpretation, construction or administration of any of the foregoing, having the effect of law and/or official governmental actions, whether of a federal, state, local or tribal nature, promulgated by a Governmental Authority having jurisdiction.
- 2.7. "Barrel" shall mean forty-two U.S. Gallons.
- 2.8. "Business Day" shall mean any Day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant party's principal place of business.
- 2.9. "Buyer" shall mean the party purchasing Product under a Transaction, meaning the buyer in the case of a purchase/sale Transaction and the party receiving exchanged Product in the case of an Exchange Transaction.
- 2.10. "Carrier(s)" shall mean all Product gathering, storage, railroad or pipeline companies, or entities owning barges, facilities, rail cars or tank trucks or any other party delivering or receiving the Product for Seller or Buyer upstream or downstream, respectively, of the Delivery Location pursuant to a particular Transaction.
- 2.11. "Claims" shall mean any and all losses, liabilities, claims, demands, causes of action, damages, judgments, costs and expenses (including but not limited to reasonable attorneys' fees and costs of court).
- 2.12. "Confirmation" shall mean a written document setting forth the terms of a Transaction formed pursuant to Section 1 for a particular Delivery Period or Delivery Month.
- 2.13. "Confirm Deadline" shall mean 5:00 p.m. in the receiving party's time zone on the third Business Day following the Day a Confirmation is received or, if applicable, on the Business Day agreed to by the parties in the Master Agreement; provided, however, if the Confirmation is time stamped after 5:00 p.m. in the receiving party's time zone, it shall be deemed received at the opening of the next Business Day.
- 2.14. "Confirming Party" shall mean the party designated in the Master Agreement to prepare and forward Confirmations to the other party.
- 2.15. "Contract" shall include (i) the Master Agreement, (ii) any and all binding Confirmations and (iii) if the parties have selected the Oral Transaction Procedure in Section 1.2 of the Master Agreement, any and all Transactions that the parties have entered into through Conversations but that have not been confirmed in a binding Confirmation, all of which shall form a single integrated agreement between the parties.
- 2.16. "Contract Quantity" shall mean the quantity of Product to be delivered and received or exchanged, as agreed to by the parties in a Transaction.
- 2.17. "Conversations" shall mean telephonic conversation, or other mutually agreeable electronic means, which may include instant messaging (IM) or emails.
- 2.18. "Cover Standard," as referred to in Section 3.2, shall mean that if there is an unexcused failure to deliver or receive any Contract Quantity pursuant to this Contract, the performing party shall use commercially reasonable efforts to obtain Product or sell Product, as applicable, in either case, at a price reasonable for the Delivery Location consistent with (i) the amount of Notice provided by the non-performing party, (ii) the immediacy of the performing party's Product consumption needs or Product sales requirements, as applicable, (iii) the quantities involved and (iv) the anticipated length of failure by the non-performing party.
- 2.19. "Credit Support Obligation(s)" shall mean any obligation(s) to provide or establish credit support for, or on behalf of, a party to this Contract such as cash, an irrevocable standby letter of credit, a margin agreement, a prepayment, a security interest in an asset, a Guaranty or other good and sufficient security of a continuing nature.
- 2.20. "Day" shall mean the twenty-four hour period commencing immediately after 12:00 midnight on any Day and ending at 12:00 midnight twenty-four hours thereafter; provided, however, if Day is relevant to the services performed by a Carrier, it shall have the meaning set forth in the Carrier's applicable tariff or governing documents.
- 2.21. "Delivery Month" shall mean the specific Month nominated for deliveries to be made as agreed to by the parties in a Transaction.
- 2.22. "Delivery Period" shall mean the total period of time during which deliveries are to be made as agreed to by the parties in a Transaction.
- 2.23. "Delivery Location" shall mean the location specified for delivery of the Product as agreed to by the parties in a Transaction.



- 2.24. "Exchange Differential" shall mean, in Exchange Transactions, the net difference in price per unit of Contract Quantity between the Products exchanged by the parties, as agreed to in a Transaction. The Transaction shall indicate the party responsible for payment of the Exchange Differential.
- 2.25. "Exchange Transaction" shall mean a single Transaction wherein (i) the first party is obligated to deliver and the other party is obligated to receive Product at the Delivery Location and (ii) the other party is obligated to deliver and the first party is obligated to receive Product at the Delivery Location. An Exchange Transaction may involve the same or different (a) Products, (b) Delivery Locations and/or (c) Delivery Periods. Exchange Transactions may include buy/sell transactions under a single Transaction.
- 2.26. "Effective Date" shall mean the date specified in the Master Agreement coinciding with it becoming a legally binding and valid agreement between the parties.
- 2.27. "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 Contract; provided, however, that during Force Majeure interruptions, the party invoking Force Majeure may be responsible for any Imbalance Charges as set forth in Section 4.3 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.
- 2.28. "Gallon" shall mean a U.S. Gallon of 231 cubic inches of liquid corrected for temperature to sixty degrees Fahrenheit (60° F) and at the equilibrium vapor pressure of the liquid.
- 2.29. "GPA" shall mean the Gas Processors Association or its successor-in-interest.
- 2.30. "Governmental Authority" shall mean any national, regional, state, local or municipal government or any political subdivision, agency, commission or authority thereof (including maritime authorities, port authority or any quasi-governmental agency) acting within its legal authority and having jurisdiction over a party, the Delivery Location or any of the activities contemplated by this Contract.
- 2.31. "Guarantor" shall mean any entity that has provided a Guaranty of the obligations of a party hereunder.
- 2.32. "Guaranty" shall mean a guarantee provided on behalf of a party to secure all payment obligations of such party to the other party.
- 2.33. "Imbalance Charges" shall mean any fees, penalties, costs or charges (in cash or in kind) assessed by a Carrier for failure to satisfy the Carrier's balancing, nominating and/or scheduling requirements, excluding Railroad Charges.
- 2.34. "Indebtedness Cross Default" shall mean, if selected on the Master Agreement by the parties with respect to a party, that it or its Guarantor, if any, experiences a default, or similar condition or event however therein defined, under one or more agreements or instruments, individually or collectively, relating to indebtedness (such indebtedness to include any obligation whether present, future, contingent or otherwise, as principal or surety or otherwise) for the payment or repayment of borrowed money in an aggregate amount greater than the threshold specified in the Master Agreement with respect to such party or its Guarantor, if any, that results in such indebtedness becoming immediately due and payable.
- 2.35. "In-Tank Transfer" shall mean the transfer of physical inventory of Product on the books and records of a terminal or storage operator where the transferor and transferee are both customers.
- 2.36. "Interest Rate" shall mean the then effective U.S. prime rate of interest published under "Money Rates" by the Wall Street Journal, plus two percent (2%) per annum, not to exceed the maximum rate allowed by law.
- 2.37. "Master Agreement" shall mean a contract executed by the parties that (i) incorporates these General Terms and Conditions by reference, (ii) specifies the agreed selections of provisions contained herein, and (iii) sets forth other information required herein and any Special Provisions and addendum(s) as identified in the Master Agreement.
- 2.38. "Month" shall mean the period beginning on the first Day of the calendar month and ending immediately prior to the commencement of the first Day of the next calendar month.
- 2.39. "Moody's" shall mean Moody's Investors Service, Inc., or its successor-in-interest.
- 2.40. "Notice(s)" shall have the meaning ascribed to it in Sections 9.1 and 9.2.
- 2.41. "Off-spec Product" shall mean the Product that fails to meet the applicable quality specifications as required in Section 5.1.
- 2.42. "Payment Date" shall mean the date selected by the parties on the Master Agreement.
- 2.43. "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.
- 2.44. "Price" shall mean the price of a Product as specified in a Confirmation inclusive of all royalties, currently effective transportation charges, Taxes, expenses and costs arising from or attributable to the Product prior to its delivery at the Delivery Location(s). For Exchange Transactions, Price shall include Exchange Differentials, Taxes and other applicable fees or charges.
- 2.45. "Product" shall mean the liquid hydrocarbons described in the applicable Confirmation.

- 2.46. "Qualified Institution" shall mean a financial institution with a U.S. branch that has assets of at least \$10,000,000,000 and a credit rating of at least A- by S&P or A3 by Moody's.
- 2.47. "Railroad Charges" shall mean demurrage, storage or switching fees or charges assessed by a railroad or rail terminal operator.
- 2.48. "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.
- 2.49. "S&P" shall mean Standard & Poor's Financial Services LLC, a subsidiary of the McGraw-Hill Companies, Inc., or its successor-in-interest.
- 2.50. "Scheduled Product" shall mean the quantity of Product confirmed by the parties or Carrier, as applicable, for movement, transportation or management.
- 2.51. "Seller" shall mean the party providing Product under a Transaction, meaning the seller in the case of a purchase/sale Transaction and the party providing exchanged Product in the case of an Exchange Transaction.
- 2.52. "Special Provisions" shall mean an attachment to the Master Agreement that modifies these General Terms and Conditions.
- 2.53. "Specified Transaction(s)" shall mean any other transaction or agreement between the parties for the purchase, sale or exchange of Product and any other transaction or agreement identified as a Specified Transaction under the Master Agreement.
- 2.54. "Spot Price," as referred to in Section 3.2, shall mean the price for the Product listed in the Oil Price Information Service (OPIS) unless a different publication is agreed to by the parties on a Confirmation under the listing applicable to the geographic location closest in proximity to the Delivery Location(s) for the relevant Day; provided, however, if there is no single price published for such location for such Day but a range of prices is published, then the Spot Price shall be the average of such high and low prices. If no price or range of prices is published for such Day, then the Spot Price shall be the average of the following: (i) the price (determined as stated above) for the first Day for which a price or range of prices is published that next precedes the relevant Day; and (ii) the price (determined as stated above) for the first Day for which a price or range of prices is published that next follows the relevant Day.
- 2.55. "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.
- 2.56. "Supply Shortage" shall mean that a Seller does not have sufficient quantities of Product available at the Delivery Location 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 Location 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 Location at higher or more advantageous prices.
- 2.57. "Tank-to-Tank Transfer" shall mean a physical transfer of a position of inventory of Product, where, in the case of an ex-tank transfer, the Seller is a terminal customer, and, in the case of an into-tank transfer, the Buyer is a terminal customer.
- 2.58. "Taxes" shall mean any and all taxes, fees, levies, penalties, licenses or charges imposed by any Governmental Authority.
- 2.59. "Transaction" shall mean a purchase, sale or exchange of a Product for physical delivery to the Buyer, or its designated agent, pursuant to the terms and provisions contained in the Master Agreement.
- 2.60. "Transactional Cross Default" shall mean, if selected on the Master Agreement by the parties with respect to a party, that such party shall be in default, however therein defined, under any Specified Transaction.
- 2.61. "Wet" shall mean the Contract Quantity that will be delivered and received, or exchanged, on (i) the next Day following the date the Transaction was entered into or (ii) the specific Day as set forth in the Confirmation.

### **SECTION 3. PERFORMANCE OBLIGATION**

3.1. Seller agrees to sell or exchange and deliver and Buyer agrees to purchase or exchange and receive the Contract Quantity for a particular Transaction in accordance with the terms of the Contract. The delivery and acceptance of Product under a Transaction shall be as described in a Confirmation. The Parties agree that for Standard Performance Obligation, Seller shall not be obligated to provide Notice to Buyer of any reason excusing its performance; provided, however, Seller shall provide Buyer with prompt oral or electronic notice of the event excusing performance. Such notice(s) shall be made to the Commercial and Contract addresses specified in the Master Agreement, as such addresses may be changed upon Notice to the other party from time to time.

The parties have selected either the "Cover Standard" or the "Spot Price Standard" as indicated on the Master Agreement.

**Cover Standard:**

3.2. The sole and exclusive remedy of the parties in the event of a breach of an obligation to deliver or receive Product shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the positive difference, if any, between the purchase price paid by Buyer utilizing the Cover Standard and the Price, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Location(s), multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller for such Day(s) excluding any quantity for which no replacement is available; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in the amount equal to the positive difference, if any, between the Price and the price received by Seller utilizing the Cover Standard for the resale of such Product, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Locations(s), multiplied by the difference between the Contract Quantity and the quantity actually received by Buyer for such Day(s) excluding any quantity for which no sale is available; and (iii) in the event that Buyer has used commercially reasonable efforts to replace the Product or Seller has used commercially reasonable efforts to sell the Product to a third party, and no such replacement or sale is available for all or any portion of the Contract Quantity of Product, then in addition to (i) or (ii) above, as applicable, the sole and exclusive remedy of the performing party with respect to the Product not replaced or sold shall be an amount equal to any unfavorable difference between the Price and the Spot Price, adjusted for such transportation to the applicable Delivery Location, multiplied by the quantity of such Product not replaced or sold. Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable within five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

**Spot Price Standard:**

3.2. The sole and exclusive remedy of the parties in the event of a breach of an obligation to deliver or receive Product shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the Price from the Spot Price; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the applicable Spot Price from the Price. Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable within five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

3.3. With respect to Exchange Transactions, the parties agree that if one party fails to perform its delivery obligations under the Transaction except during an event of Force Majeure, unless otherwise indicated on the Confirmation, the other party is required to perform its delivery obligations under the Transaction and shall be entitled to damages for the deficient volumes calculated in accordance with Section 3.2.

3.4. In the event that more than one Transaction with the same Delivery Location exists between the Parties for any particular Delivery Period, all Firm Transactions shall be deemed delivered and received before any Standard Transactions.

3.5. Seller shall only accept a claim of the Buyer for Product shortages on rail car or tank truck shipments when (i) the Product shortage for the relevant Month is in excess of one percent (1%) of the total loaded quantity recorded on the bill(s) of lading for such Month, (ii) the Buyer promptly notifies the Seller by telephone (followed by prompt written confirmation) of the Product shortage, (iii) the Buyer provides the Seller with a summary for the relevant Month of all loaded quantities, and (iv) the Buyer obtains a sworn affidavit attesting to the Product shortages from the destination railroad agent or delivering Carrier and submits said affidavit to the Seller with the Buyer's claim of Product shortage. All Claims by Buyer for Product shortages shall be made to Seller within the greater of five Business Days of Product Delivery or the time period required by Applicable Law or shall be conclusively deemed waived by Buyer, and Seller shall have no liability with respect thereto.

3.6. In the event of a Supply Shortage for all of its Standard Transactions at a Delivery Location, Seller shall (i) reduce its deliveries at the Delivery Location 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 Location nor provide an alternative mode of transportation or alternate Delivery Location. No delay, failure or omission by Seller in the performance of any Standard obligation shall be deemed a breach of this Contract nor shall it create any liability for any damages whatsoever if such delay, failure or omission arises from any Supply Shortage.

## SECTION 4. TRANSPORTATION, NOMINATIONS AND IMBALANCES

4.1. Unless otherwise set forth in the Confirmation, Seller shall be responsible for all arrangements necessary to deliver Product hereunder to the Delivery Location(s) and Buyer shall be responsible for all arrangements necessary to receive Product at the Delivery Location(s). Nothing herein shall be interpreted to require Seller to deliver Product or Buyer to receive Product at any location(s) not agreed to as the Delivery Location(s).



4.2. The parties shall coordinate their transportation activities, giving sufficient time to meet the deadlines of the affected Carrier(s). Each party shall give the other party timely prior Notice of the quantities of Product to be delivered and received, sufficient to meet the requirements of their respective Carrier(s) involved in the Transaction. Each party shall promptly notify the other party if such party becomes aware that actual deliveries at the Delivery Location(s) are greater or lesser than the Scheduled Product.

4.3. The parties shall use commercially reasonable efforts to avoid imposition of any Imbalance Charges. If Buyer or Seller receives an invoice from a Carrier that includes Imbalance Charges, the parties shall determine the validity as well as the cause of such Imbalance Charges. If the Imbalance Charges were incurred as a result of Buyer's timely receipt of quantities of Product greater than or less than the Scheduled Product, then Buyer shall pay for such Imbalance Charges or reimburse Seller for such Imbalance Charges paid by Seller. If the Imbalance Charges were incurred as a result of Seller's timely delivery of quantities of Product greater than or less than the Scheduled Product, then Seller shall pay for such Imbalance Charges or reimburse Buyer for such Imbalance Charges paid by Buyer. The party invoking Force Majeure may be responsible for any Imbalance Charges related to its interruption after scheduling is made to the Carrier and until the change in deliveries and or receipts is confirmed by such Carrier.

4.4. If rail cars are to be used for the transportation of Product, the following shall apply:

- (i) Rail cars provided by Seller for loading shall be subject to the following:
  - a. Buyer shall provide Seller on or before the 25<sup>th</sup> Day of each Month notification of intent to use Seller's rail cars for loading.
  - b. Buyer shall provide Seller the number of rail cars required for loading.
  - c. Buyer shall provide Seller shipping dates or number of rail loading spots required for the following Month.
  - d. Buyer shall provide Seller complete shipping instructions and/or shipping (export) documentation for shipments destined to points in or outside of the United States (Shipping Documentation) no later than five Days prior to shipping. If Buyer fails to provide Shipping Documentation within the five Days or makes changes to the Shipping Documentation after such date, Seller's obligation to deliver the Contract Quantity for such month shall be on a commercially reasonable efforts basis only.
  - e. Seller shall provide shipping instructions (bill of lading) to the origin railroad.
  - f. Seller shall comply with all Applicable Laws and railroad tariffs for loading of Product in rail cars.
  - g. Seller shall be responsible for all Railroad Charges caused by Seller at the origin for the loading of rail cars. Buyer shall be responsible for all Railroad Charges caused by Buyer at the origin for the loading of rail cars.
  - h. Buyer shall be responsible for all Railroad Charges at destination for the unloading of rail cars.
  - i. Once the Seller's rail cars arrive at the destination and the loaded rail cars are considered Placed by delivering railroad, the Buyer will pay Seller a "use" or "detention" charge for rail cars provided by Seller at a cost of \$50 per rail car per Day after five Business Days after rail cars are Placed by the delivering railroad. The payment of a "use" or "detention" charge to Seller will end once the loaded car has been returned to the delivering railroad as an "empty". The Buyer shall not be liable to Seller to the extent the delay in unloading and/or returning the tank cars was caused by Seller. "Placed" shall mean notification by the rail car Carrier that the rail car (1) is available for placement or that the rail car has arrived at the final railroad controlled facility and is available for delivery to the final destination, (2) has arrived at its rail destination, or (3) has been placed at the consignee.
  - j. If rail cars are diverted by Buyer on route to a new destination (Diversion), Buyer shall be responsible for all railroad line haul freight charges and fuel surcharges from origin to destination and for all Diversion charges. "Diversion" means a change or other modification to the route of a shipment or to the destination or consignee of a freight movement from that specified in the Shipping Documentation.
- (ii) Rail cars provided by Buyer for loading shall be subject to the following:
  - a. Seller shall provide Buyer the number of rail car spots available for loading and an estimated date of when the loading can be accomplished.
  - b. Buyer shall provide Seller a list of rail cars sent to Seller's loading facility at least five Days in advance of arrival at origin.
  - c. Buyer shall provide Seller complete shipping instructions and/or shipping (export) documentation for shipments destined to points in and outside of the United States (Shipping Documentation) no later than five Days prior to shipping. If Buyer fails to provide Shipping Documentation within the five Days or makes changes to the Shipping Documentation after such date, Seller's obligation to deliver the Contract Quantity for such month shall be on a commercially reasonable efforts basis only.
  - d. Seller shall provide shipping instructions (bill of lading) to the origin railroad.
  - e. Seller shall comply with all Applicable Laws and railroad tariffs for loading of Product in rail cars.
  - f. Seller shall be responsible for all Railroad Charges caused by Seller at the origin for the loading of rail cars. Buyer shall be responsible for all Railroad Charges caused by Buyer at the origin for the loading of rail cars.



g. Buyer shall be responsible for all Railroad Charges at origin for the loading of rail cars due to improper scheduling of Buyer's controlled rail cars or Buyer's failure to ship the Contract Quantity. Buyer shall not be responsible for the Railroad Charges described herein due to Force Majeure or Seller's failure to sell or deliver any volume of Product up to the Contract Quantity.

h. Buyer shall be responsible for all Railroad Charges at destination for the unloading of rail cars.

i. Buyer shall be responsible for all railroad line haul freight charges and fuel surcharges from origin to destination and for all Diversion charges.

j. Seller shall use commercially reasonable efforts to deliver the Contract Quantity of Product for a Month in accordance with the shipping dates requested by Buyer for such Month. Seller shall have no liability to Buyer for failing to meet such requested shipping dates, except for Railroad Charges under (f).

4.5 If delivery of any Product is to be accomplished by waterborne, tank truck or rail transport via any facility owned or operated by a party or an Affiliate of such party, the other party may be required by the terminal operator to be a party to a written agreement regarding access to and operations at the applicable terminal.

4.6 Either party, acting in a commercially reasonable manner, may (i) reject any rail cars, tank trucks, barges, vessels, or containers presented for loading or unloading by the other party or the other party's Carrier that would present an unsafe or potentially unsafe situation and/or (ii) refuse to load/unload, transfer, or handle any Product under any conditions it deems unsafe that are caused by drivers, personnel, equipment and/or procedures. The rejecting party shall be entitled to claim an event of Force Majeure based upon such actions; provided, however, the other party shall be entitled to dispute the legitimacy of the claimed event of Force Majeure.

## SECTION 5. QUALITY AND MEASUREMENT

5.1. All Product delivered under this Contract shall meet the specification for that Product, if any, set forth in the applicable Confirmation or the Product specification attached thereto. If no Product specification is set forth, all Product delivered under this Contract 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.

5.2. All Product delivered shall be measured in the manner customarily utilized and available at the Delivery Location in accordance with one of the alternatives appropriate for the type of transportation as listed below (in order of preference). All measurements and calibrations shall be made in accordance with industry standards.

(i) For deliveries via rail cars, the quantity shall be determined by (a) custody meters, (b) gauging of the rail cars and calculations using official rail car capacity tables, or (c) weighing.

(ii) For deliveries via tank truck, the quantity shall be determined by (a) custody meters, (b) weighing, or (c) slip tube or rotary gauging device and calculations using applicable tank capacity tables.

(iii) For deliveries via pipelines or storage facilities, the quantity shall be determined by calibrated custody transfer meter(s) in accordance with the Carrier's applicable tariff or governing documents.

(iv) For deliveries via ships or barges, the quantity shall be determined by (a) custody meters, (b) gauging of static shore tanks and calculations using official tank capacity tables, or (c) hand gauging of ships or barges and calculations using official capacity tables by a mutually acceptable independent inspector. Each party shall pay one-half of the independent inspector's fees and charges.

(v) For deliveries via Tank-to-Tank Transfers, the quantity shall be determined by (a) custody meter readings taken at the time of delivery at the storage facility where transfer of title occurs pursuant to Section 8.1 or (b) hand gauging of static tanks and calculations using official capacity tables by a mutually acceptable independent inspector. Each party shall pay one-half of the independent inspector's fees and charges.

The parties agree that if metering systems are used for quantity determinations, they will not allow vapor return or will compensate for any vapor return. All quantities and equilibrium vapor pressure shall be corrected to sixty degrees Fahrenheit (60° F), and all measurements will be performed in accordance with industry standards.

5.3. Excluding deliveries via pipelines, Buyer may, prior to unloading of the Product and in no case greater than five Business Days after the Product's arrival at the agreed upon destination, obtain samples of the Product 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 Product, the Buyer will (i) be responsible for arranging for analysis of such samples, by a qualified laboratory or testing organization, all at the Buyer's expense and (ii) provide reasonable Notice to the Seller of the time of the sample collecting. Each party shall be entitled to have its representatives present during all loadings, unloadings, tests and measurements involving delivery of Product. 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 five 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 Product, and the Product 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 Contract. If the Buyer timely rejects Product pursuant to the procedure set forth above, the Buyer shall retain possession of such Product without unloading the Product until the Seller has had the opportunity to inspect and test the Product; provided,

however, the Buyer shall not be obligated to retain such Product beyond ten Days following the Product Rejection Notice. If the rejected Product is unloaded by the Buyer prior to the expiration of the ten Day period, then Seller shall have no liability for any defect in the quality of Product, and the Product will be deemed accepted. If the Seller does not take possession of the rejected Product within the referenced ten Day period, the Buyer will be entitled to dispose of the Product at the Seller's cost and expense (provided such costs and expenses are reasonably incurred). If it is established that the delivered Product met the applicable quality specifications, Buyer shall be responsible for damages resulting from its wrongful rejection.

5.4. For Product delivered via pipeline, the Product shall meet the quality specifications of the receiving Carrier. If the Product does not meet such specifications, Buyer may suspend performance of its obligations to purchase and receive Product delivered by the Seller until such time as the Product meets such specifications; provided, however, if the pipeline notifies the Buyer about the shipment of Off-spec Product, the Buyer shall provide Notice to the Seller within five Business Days after the Buyer obtains actual or constructive notice of the Off-spec Product from the subject Carrier. If Buyer fails to provide Notice to the Seller that fully specifies all claimed defects along with any supporting information and documentation, the Seller shall have no liability for any defect in the quality of Product, and the Product will be deemed accepted. Upon receipt of the Buyer's Off-spec Product notice under this section, Seller shall immediately undertake and diligently pursue such acts as may be necessary to correct such alleged failure so as to deliver Product that conforms with the applicable Product specification. If the Buyer has complied with its obligations under this Section 5.4, Buyer may, at any time and from time to time, reject any alleged Off-spec Product and refuse or suspend receipt of such alleged Off-spec Product; provided, however, if it is established that the delivered Product met the applicable quality specifications, Buyer shall be responsible for damages resulting from its wrongful rejection.

5.5 Subject to Sections 5.3, 5.4 and the limitation of damages set forth in Section 13, (i) Seller shall be responsible for and must pay all penalties, fines, charges, costs or other amounts assessed by a Carrier in respect of any Off-spec Product and (ii), with respect to deliveries made via a pipeline, Seller shall also be responsible for all costs associated with the return and/or disposal of Off-spec Product as well as any costs reasonably incurred by Buyer in taking steps to mitigate the effects caused by Seller's delivery of Off-spec Product, including special costs of handling, treating, refractionating or processing of any products contaminated by any Off-spec Product. In addition to the Buyer's remedies in Section 5, Buyer and Seller may agree to an adjustment of the Price, and, in such event, Buyer shall be deemed to have accepted the Off-spec Product.

5.6 Each party agrees that its agents and employees shall comply with all safety regulations of the other when such agents and employees are upon the premises of the other in connection with the performance of the Contract.

## SECTION 6. TAXES

6.1. Seller shall pay or cause to be paid all Taxes on or with respect to the Product prior to the Delivery Location(s) where title is transferred pursuant to Section 8.1. Buyer shall pay or cause to be paid all Taxes on or with respect to the Product at the Delivery Location(s) where title is transferred pursuant to Section 8.1 and all Taxes after such Delivery Location(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall promptly furnish the other party a certificate of exemption or other reasonably satisfactory evidence of exemption for any Taxes.

**6.2. SELLER SHALL INDEMNIFY, DEFEND AND HOLD BUYER HARMLESS FROM AND AGAINST ANY CLAIMS WITH RESPECT TO TAXES FOR WHICH SELLER IS LIABLE, AND BUYER SHALL INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS FROM AND AGAINST ANY CLAIMS WITH RESPECT TO TAXES FOR WHICH BUYER IS LIABLE.**

## SECTION 7. BILLING, PAYMENT AND AUDIT

7.1. Unless otherwise agreed in a Confirmation, Seller shall invoice Buyer for Product delivered and received and for any other applicable charges, providing supporting documentation acceptable in industry practice to support the amount charged. If the actual quantity delivered is not known by the billing date, billing will be prepared based on the quantity of Scheduled Product. The invoiced quantity will then be adjusted to the actual quantity as soon thereafter as actual delivery information is available.

7.2. For Exchange Transactions, each party shall provide to the other party, at the close of each Month, an exchange statement-invoice covering the Exchange Differentials, if any, payable during that Month. In the event of a conflict between the exchange statements-invoices, all sums agreed to between the exchange statements-invoices shall be paid, and the parties shall promptly reconcile all areas of disagreement.

7.3. Payments shall be due on the Payment Date. In the event that Buyer and Seller are each required to pay an amount under Transactions on the same Payment Date, then such amounts with respect to each party may be aggregated and the parties shall discharge their obligations to pay through netting, as indicated by the election of the parties on page 1 of the Master Agreement, in which case the party, if any, owing the greater amount shall pay to the other party the difference between the amounts owed.

7.4. Exchange Transactions under this Contract shall be on a unit-for-unit basis (Gallons or Barrels). Unless otherwise provided in the applicable 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 agreement by the parties. Upon termination of this Contract 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 via the designated transportation mode pursuant to the relevant Transaction 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 Location(s).

7.5. If the invoiced party, in good faith, disputes the amount of any such invoice or part thereof, such invoiced party will pay such amount as it concedes to be correct; provided, however, if the invoiced party disputes the amount due, it must provide supporting documentation acceptable in industry practice to support the amount paid or disputed. In the event the parties are unable to resolve such dispute, either party may pursue any remedy available at law or in equity to enforce its rights pursuant to this Section 7.5.

7.6. Any amounts due to a party hereunder and not received in the time period set forth above shall bear interest at the Interest Rate from the Payment Date until the date payment is made.

7.7. A party shall have the right, at its own expense, upon reasonable Notice and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records and telephone recordings of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment or computation made under this Contract. This right to examine, audit and obtain copies shall not be available with respect to proprietary information not directly relevant to Transactions under this Contract. All statements, invoices, and billings shall be conclusively presumed final and accurate, and all associated Claims for under- or overpayments shall be deemed waived unless such statements, invoices or billings are objected to in writing, with adequate explanation and/or documentation, within two years from the date the statements-invoices, invoices or billings forming the underlying basis of the claim were rendered. All retroactive adjustments under this Section 7 shall be paid in full by the party owing payment within thirty Days of Notice and substantiation of such inaccuracy.

7.8. Each party shall maintain such complete, accurate and up-to-date records and accounts as may be necessary to the performance of its respective duties and obligations under this Contract and as appropriate in accordance with good business practices. Each party shall retain all such books and records for two years after creation thereof.

7.9. Each party's exercise of any rights reserved under this Section shall be without prejudice to any claim for damages or other rights or remedies available to it under this Contract or Applicable Law.

## SECTION 8. TITLE, WARRANTY AND INDEMNITY

8.1. Title to the Product and risk of loss associated with the Product shall pass to the Buyer upon delivery at the specified Delivery Location(s), when completed as follows:

- (i) When the Delivery Location is point of origin:
  - a. To ships or barges, when the Product has passed the vessel's loading flange;
  - b. To rail cars, when the Product has passed the rail car's loading connection;
  - c. To pipelines, when the Product has passed the outlet flange of the meter measuring the Product for delivery; and
  - d. To tank trucks, when the Product has passed the Seller's loading equipment for open hatch deliveries and when the Product enters the tank truck's loading equipment for all other deliveries.
- (ii) When the Delivery Location is point of destination:
  - a. From ships or barges, when the Product has passed the vessel's discharge flange;
  - b. From rail cars, when Carrier delivers the rail car containing the Product to the destination;
  - c. From pipelines, when the Product has passed the upstream flange of the meter measuring the Product for delivery; and
  - d. From tank trucks, when the Product has passed the tank truck's delivery equipment.
- (iii) For a Tank-to-Tank Transfer,
  - a. In the case of an ex-tank transfer, as the Product passes the outlet flange of Seller's storage tank from which the Product is being delivered, or
  - b. In the case of an into-tank transfer, as the Product passes the inlet flange of Buyer's storage tank to which the Product is being delivered, each as evidenced by the operative transfer documentation or the books and records of the terminal operator.
- (iv) For an In-Tank Transfer, as specified in the pipeline or storage facility authorization or other similar Product transfer documentation that authorizes the transfer of title for a specified quantity of the Product at the Delivery Location, or, in the absence of such documentation, upon the date of transfer shown in the title transfer documentation provided to such operator.

Notwithstanding the foregoing, title to and risk of loss associated with Off-spec Product shall remain with Seller until it is either accepted or deemed to be accepted by Buyer.

8.2. Seller represents and warrants that (i) it has good title to all Product delivered by it hereunder, (ii) it has the right to sell and transfer title to the same and (iii) said Product is free and clear of all liens, Claims and encumbrances. **SELLER AGREES TO INDEMNIFY, DEFEND AND HOLD BUYER HARMLESS FROM AND AGAINST ANY LOSS, CLAIM OR DEMAND BY REASON OF ANY FAILURE OF SUCH TITLE OR BREACH OF THIS WARRANTY.**



8.3. Buyer acknowledges that it has been adequately warned by Seller of the risks associated with handling, using, transporting, storing and disposing of the Product, including without limitation those set forth in Seller's Material Safety Data Sheets (MSDS) for the Product, and Buyer acknowledges that it has received and understands the contents thereof. Buyer acknowledges that it is familiar with the Product and further acknowledges its separate and independent knowledge of risks associated with the Product. Seller and Buyer will maintain compliance with all safety and health related governmental requirements concerning the Product and will take steps as are reasonable and practicable to inform their respective employees, agents, contractors, transporters and customers of any hazards or risks associated with the Product, including, but not limited to, dissemination of pertinent information contained in the MSDS, as appropriate.

**BUYER AGREES TO INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS FROM AND AGAINST ANY CLAIMS, LIABILITIES, DAMAGES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) BROUGHT AGAINST OR SUFFERED OR INCURRED BY SELLER, ITS EMPLOYEES, AGENTS, CONTRACTORS OR OTHER THIRD PARTIES, TO THE EXTENT SUCH CLAIMS ARISE OUT OF THE FAILURE OF BUYER TO PASS ON TO ITS EMPLOYEES, AGENTS, CONTRACTORS, OR OTHER THIRD PARTIES THE NECESSARY WARNINGS WITH REGARD TO THE PRODUCT.**

8.4 **UNLESS OTHERWISE EXPRESSLY STATED IN THE CONTRACT, NEITHER PARTY MAKES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, EVEN IF SUCH PURPOSE IS KNOWN TO THE SELLER.**

8.5 The parties agree, to the fullest extent permitted by law and regardless of the presence or absence of insurance, as follows:

(i) **SELLER SHALL HAVE RESPONSIBILITY FOR AND ASSUME ANY LIABILITY WITH RESPECT TO THE PRODUCT PRIOR TO ITS DELIVERY TO BUYER AT THE DELIVERY LOCATION(S). SELLER SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD BUYER AND ITS AFFILIATES, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, MEMBERS, EMPLOYEES AND AGENTS, HARMLESS FROM ANY AND ALL CLAIMS OR ANY LIABILITY ARISING FROM OR ON ACCOUNT OF CLAIMS OF TITLE, PERSONAL INJURY, DEATH OR PROPERTY DAMAGE (A) THAT ARISE FROM FACTS OR CIRCUMSTANCES THAT OCCUR BEFORE DELIVERY OF PRODUCT TO BUYER UNDER THIS CONTRACT OR (B) THAT ARISE OUT OF THE DELIVERY BY SELLER OF ANY OFF-SPEC PRODUCT TO BUYER, UNLESS THE BUYER ACCEPTS OR IS DEEMED TO HAVE ACCEPTED ANY OFF-SPEC PRODUCT.**

(ii) **BUYER SHALL HAVE RESPONSIBILITY FOR AND ASSUME ANY LIABILITY WITH RESPECT TO THE PRODUCT UPON AND AFTER ITS DELIVERY TO BUYER AT THE DELIVERY LOCATION(S). BUYER SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD SELLER AND ITS AFFILIATES, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, MEMBERS, EMPLOYEES AND AGENTS, HARMLESS FROM ANY AND ALL CLAIMS OR ANY LIABILITY ARISING FROM OR ON ACCOUNT OF CLAIMS OF TITLE, PERSONAL INJURY, DEATH OR PROPERTY DAMAGE THAT ARISE FROM FACTS OR CIRCUMSTANCES THAT OCCUR AT OR AFTER DELIVERY OF PRODUCT TO BUYER UNDER THIS CONTRACT, EXCEPT WITH RESPECT TO CLAIMS THAT ARISE OUT OF THE DELIVERY BY SELLER OF OFF-SPEC PRODUCT TO BUYER OR ITS AGENTS, UNLESS THE BUYER ACCEPTS OR IS DEEMED TO HAVE ACCEPTED ANY OFF-SPEC PRODUCT.**

(iii) **NOTWITHSTANDING THE ABOVE, THE PARTIES AGREE THAT A PARTY SHALL NOT BE OBLIGATED TO INDEMNIFY THE OTHER PARTY UNDER THIS SECTION 8 TO THE EXTENT THE CLAIMS ARISE FROM OR ARE CAUSED BY THE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE OTHER PARTY, OR ITS AFFILIATES AND THEIR RESPECTIVE DIRECTORS, OFFICERS, MEMBERS, EMPLOYEES AND AGENTS.**

## **SECTION 9. NOTICES**

9.1. All Confirmations, statements, invoices, payment instructions and other communications made pursuant to the Contract ("Notices") shall be made to the addresses specified on page 2 of the Master Agreement, as such addresses may be changed upon Notice to the other party from time to time.

9.2. 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 delivery.

9.3. Notice shall be considered given when received on a Business Day by the addressee. In the absence of proof of the actual receipt date, the following presumptions will apply. Notices sent by facsimile shall be deemed to have been received upon the sending party's receipt of its facsimile machine's confirmation of successful transmission. If the Day on which such facsimile is received is not a Business Day or is after 5:00 p.m. on a Business Day, then such facsimile shall be deemed to have been received on the next following Business Day. Notice by overnight mail or courier shall be deemed to have been received on the next Business Day after it was sent or such earlier time as is confirmed by the receiving party. Notice via first class mail shall be considered delivered five Business Days after the postmark date.



9.4. The party receiving a Notice of change in payment instructions or other payment information shall not be obligateded to implement such change until ten Business Days after receipt of such Notice.

## SECTION 10. CREDIT, FINANCIAL RESPONSIBILITY AND EVENTS OF DEFAULT

10.1. If either party ("X") has reasonable grounds for insecurity regarding the performance of any obligation under this Contract (whether or not then due) by the other party ("Y") (including, without limitation, as a result of the occurrence of a material change in the creditworthiness or financial condition of Y or its Guarantor, if applicable), X may demand Adequate Assurance of Performance. Y hereby grants to X a continuing first priority security interest in, lien on and right of setoff against all Adequate Assurance of Performance in the form of cash transferred by Y to X pursuant to this Section 10.1. Upon the return by X to Y of such Adequate Assurance of Performance, the security interest and lien granted hereunder on that Adequate Assurance of Performance shall be released automatically and, to the extent possible, without any further action by either party.

10.2. In the event (each an "Event of Default") either party (the "Defaulting Party") or its Guarantor, as applicable, shall: (i) make an assignment or any general arrangement for the benefit of creditors; (ii) file a petition or otherwise commence, authorize or acquiesce in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iii) otherwise become bankrupt or insolvent (however evidenced); (iv) be unable to pay its debts as they fall due; (v) have a receiver, provisional liquidator, conservator, custodian, trustee or other similar official appointed with respect to it or substantially all of its assets; (vi) fail to perform any obligation to the other party with respect to any Credit Support Obligations relating to the Contract; (vii) fail to give Adequate Assurance of Performance under Section 10.1 within two Business Days of Notice by the other party; (viii) not have paid any amount due the other party hereunder on or before the second Business Day following Notice that such payment is due; (ix) be the affected party with respect to any Additional Event of Default, (x) fail to comply with any material representation or warranty under this Contract if such failure is not remedied within five Business Days after Notice, (xi) fail to deliver Product in the case of a Seller, or fail to receive Product in the case of a Buyer, under a Transaction other than by reason of Force Majeure, for two consecutive Delivery Months or three cumulative Delivery Months in any twelve Month period; or (xii) fail to perform or breach any other material obligation under this Contract (except to the extent such failure constitutes a separate Event of Default and except for such party's obligations to deliver or receive Product (the exclusive remedies which are provided for in Sections 3 or 10)), if such failure is not remedied within three Business Days after receipt of Notice; then the other party (the "Non-Defaulting Party") shall have the right, at its sole election, to immediately withhold and/or suspend deliveries of Product, offset all or any portion of the unpaid balance against monies owed by the Defaulting Party, withhold or suspend payments upon Notice and/or to terminate and liquidate the Transactions under the Contract, in the manner provided in Section 10.3, in addition to any and all other remedies available hereunder; provided that no suspension of performance shall continue for more than ten Business Days unless an early termination date has been declared in accordance with Section 10.3.

10.3. If an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right, by Notice to the Defaulting Party, to designate a Day, no earlier than the Day such Notice is given and no later than twenty Days after such Notice is given, as an early termination date (the "Early Termination Date") for the liquidation and termination pursuant to Section 10.3.1 of all Transactions under the Contract, each a "Terminated Transaction". On the Early Termination Date, all Transactions will terminate, other than those Transactions, if any, that may not be liquidated and terminated under Applicable Law ("Excluded Transactions"), which Excluded Transactions must be liquidated and terminated as soon thereafter as is legally permissible, and upon termination shall be a Terminated Transaction and be valued consistent with Section 10.3.1 below. With respect to each Excluded Transaction, its actual termination date shall be the Early Termination Date for purposes of Section 10.3.1.

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, (i) the amount owed (whether or not then due) by each party with respect to all Product delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2) for which payment has not yet been made by the party that owes such payment under this Contract and (ii) the Market Value, as defined below, of each Terminated Transaction. The Non-Defaulting Party shall (x) liquidate and accelerate each Terminated Transaction at its Market Value, so that each amount equal to the difference between such Market Value and the Contract Value, as defined below, of such Terminated Transaction(s) shall be due to the Buyer under the Terminated Transaction(s) if such Market Value exceeds the Contract Value and to the Seller if the opposite is the case; and (y) where appropriate, discount each amount then due under clause (x) above to present value in a commercially reasonable manner as of the Early Termination Date (to take account of the period between the date of liquidation and the date on which such amount would have otherwise been due pursuant to the relevant Terminated Transactions).

For purposes of this Section 10.3.1, "Contract Value" means the amount of Product remaining to be delivered or purchased under a Transaction multiplied by the Price, and "Market Value" means the amount of Product remaining to be delivered or purchased under a Transaction multiplied by the market price for a similar Transaction at the Delivery Location(s) determined by the Non-Defaulting Party in a commercially reasonable manner. To ascertain the Market Value, the Non-Defaulting Party may consider (i) any or all of the settlement prices of Product futures contracts, quotations from leading dealers in energy swap contracts or physical trading markets for the Product, where such leading dealers are not the parties or their Affiliates, similar sales or purchases and any other bona fide third-party offers, any other third party information, including, without limitation, quotations (either firm or indicative) of relevant prices, yields, yield curves, volatilities, spreads or other market data for the relevant markets, and (ii) in the absence of external sources under (i), any internal sources of information, all adjusted for the length of the term and differences in transportation costs. A party shall not be required to enter into a replacement Transaction(s) in order to determine the Market Value. Any extension(s) of the term of a Transaction to which parties are not bound as of the Early Termination Date (including but not limited to "evergreen provisions") shall not be considered in determining Contract Values and Market Values. For

the avoidance of doubt, any option pursuant to which one party has the right to extend the term of a Transaction shall be considered in determining Contract Values and Market Values. The rate of interest used in calculating net present value shall be determined by the Non-Defaulting Party in a commercially reasonable manner.

**The parties have selected either “Other Agreement Setoffs Apply” or “Other Agreement Setoffs Do Not Apply” as indicated on the Master Agreement.**

**Other Agreement Setoffs Apply:**

**Bilateral Setoff Option:**

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the “Net Settlement Amount”). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party is hereby authorized to setoff any Net Settlement Amount against (i) any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract and (ii) any amount(s) (including any excess cash margin or excess cash collateral) owed or held by the party that is entitled to the Net Settlement Amount under any other agreement or arrangement between the parties.

**Triangular Setoff Option:**

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the “Net Settlement Amount”). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party is hereby authorized to setoff (i) any Net Settlement Amount against any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract, (ii) any Net Settlement Amount against any amount(s) (including any excess cash margin or excess cash collateral) owed by or to a party under any other agreement or arrangement between the parties, (iii) any Net Settlement Amount owed to the Non-Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Non-Defaulting Party or its Affiliates to the Defaulting Party under any other agreement or arrangement, (iv) any Net Settlement Amount owed to the Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Defaulting Party to the Non-Defaulting Party or its Affiliates under any other agreement or arrangement, and/or (v) any Net Settlement Amount owed to the Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Defaulting Party or its Affiliates to the Non-Defaulting Party under any other agreement or arrangement.

**Other Agreement Setoffs Do Not Apply:**

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the “Net Settlement Amount”). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party may setoff any Net Settlement Amount against any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract.

10.3.3 If any obligation that is to be included in any netting, aggregation or setoff pursuant to Section 10.3.2 is unascertained, the Non-Defaulting Party may in good faith estimate that obligation and net, aggregate or setoff, as applicable, in respect of the estimate, subject to the Non-Defaulting Party accounting to the Defaulting Party when the obligation is ascertained. Any amount not then due that is included in any netting, aggregation or setoff pursuant to Section 10.3.2 shall be discounted to net present value in a commercially reasonable manner determined by the Non-Defaulting Party.

10.4 As soon as practicable after a liquidation, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the Net Settlement Amount and whether the Net Settlement Amount is due to or due from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of the Net Settlement Amount, provided that failure to give such Notice shall not affect the validity or enforceability of the liquidation or give rise to any claim by the Defaulting Party against the Non-Defaulting Party. The Net Settlement Amount, as well as any setoffs applied against such amount pursuant to Section 10.3.2, shall be paid by the close of business on the second Business Day following such Notice, which date shall not be earlier than the Early Termination Date. Interest on any unpaid portion of the Net Settlement Amount, as adjusted by setoffs, shall accrue from the date due until the date of payment at a rate equal to the Interest Rate.

10.5. The parties agree that the transactions hereunder constitute a “forward contract” within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each “forward contract merchants” within the meaning of the United States Bankruptcy Code.

10.6. The Non-Defaulting Party’s remedies under this Section 10 are the sole and exclusive remedies of the Non-Defaulting Party with respect to the occurrence of any Early Termination Date. Each party reserves to itself all other rights, setoffs, counterclaims and other defenses that it is or may be entitled to arising from the Contract.

10.7. With respect to this Section 10, if the parties have executed a separate netting agreement with close-out netting provisions, the terms and conditions therein shall prevail to the extent inconsistent herewith.

## SECTION 11. FORCE MAJEURE

11.1. Except with regard to a party's obligation to make payment(s) due under Section 7, Section 10.4, and Imbalance Charges under Section 4, neither party shall be liable to the other for failure to perform its obligations to the extent such failure was caused by Force Majeure. The term "Force Majeure" as employed herein means any cause not reasonably within the control of the party claiming suspension, as further defined in Section 11.2.

11.2. Force Majeure shall include, but not be limited to, the following: (i) physical events such as acts of God, including but not limited to lightning, earthquakes, fires, explosions, tornadoes, hurricanes, storm warnings, landslides, or other weather events that cause disruption, breakage or damage to, or necessitate the precautionary shut-down or operating reduction of, wells, plants, pipelines, gathering systems, loading facilities, refineries, terminals, ports or any portion thereof, or other related facilities; (ii) brine handling constraints; (iii) weather related events affecting an entire geographic region or causing the evacuation thereof, such as low temperatures that cause freezing or failure of wells, lines of pipe, or processing facilities; (iv) interruption, Allocation, and/or curtailment of Carrier services, including maritime perils, collisions and other similar events; (v) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars, or acts of terror; and (vi) governmental actions such as necessary for compliance with any court order, law, statute, ordinance, regulation or policy having the effect of law promulgated by a Governmental Authority having jurisdiction. Seller and Buyer shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance. The Parties agree that with respect to a Firm Transaction, Allocation shall not constitute an event of Force Majeure if the Seller has materially changed its conduct during the applicable time period set forth in the relevant Carrier's tariff or if the practices and policies for determining a user's rights at the applicable facility have been revised.

11.3. Neither party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the party claiming excuse failed to remedy the condition and to resume the performance of such obligations with reasonable dispatch; (ii) Seller's ability to sell Product at a higher or more advantageous price than the Price, Buyer's ability to purchase Product at a lower or more advantageous price than the Price, or a regulatory agency disallowing, in whole or in part, the pass through of costs resulting from this Contract; (iii) the loss of Buyer's market(s) or Buyer's inability to use or resell Product purchased hereunder, except, in either case, as provided in Section 11.2; or (iv) the loss or failure of Seller's Product supply or depletion of reserves, except, in either case, as provided in Section 11.2. The party claiming Force Majeure shall not be excused from its responsibility for Imbalance Charges.

11.4. Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the party experiencing such disturbance.

11.5. The party whose performance is prevented by Force Majeure must provide prompt Notice to the other party. Initial notice may be given orally; however, Notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing Notice of Force Majeure to the other party, the affected party will be relieved of its obligation, from the onset of the Force Majeure event, to make or accept delivery of Product, as applicable, to the extent and for the duration of Force Majeure, and neither party shall be deemed to have failed in such obligations to the other during such occurrence or event. The Delivery Period under a Transaction will not be extended because of an event of Force Majeure, unless mutually agreed by the parties.

11.6. Notwithstanding Sections 11.2 and 11.3, the parties may agree to alternative Force Majeure provisions in a Confirmation executed in writing by both parties.

11.7. This Section shall only apply to Exchange Transactions under this Contract.

(i) Each party shall be responsible for maintaining the volumes bought and sold or exchanged in balance, as near as reasonably possible on a Month-to-Month basis.

(ii) If, because of an event of Force Majeure, the affected party is unable to deliver or receive, as applicable, part or all of the quantity of Product that it is obligated to deliver or receive, as applicable, under such Transaction, the non-affected party shall perform its deliveries or receipts of Product, as applicable, under such Transaction, unless otherwise elected on the Confirmation.

(iii) If, because of an event of Force Majeure, a party fails to deliver or accept delivery of the contractually specified volume during any Month (an "Imbalance Month") and the non-affected party performs its obligations to deliver or receive specified volumes, then the party that delivered the lesser volume during the Imbalance Month (the "Under-delivering party") shall deliver to the other party a volume of Product equal to the positive difference between (a) the volume delivered by the Under-delivering party during the Imbalance Month and (b) the Contract Quantity for such Imbalance Month (such difference being the "Imbalance Volume"). The Imbalance Volume shall be delivered as soon after the Imbalance Month as is reasonably practicable, it being understood that the parties shall endeavor to cause the Imbalance Volumes confirmed by the twentieth Day of the Imbalance Month to be delivered during the immediately following Month and the Imbalance Volumes confirmed after the twentieth Day of the Imbalance Month to be delivered during the second Month after the Imbalance Month, except to the extent prevented by a new or continued event of Force Majeure.

(iv) When a party fails to deliver or accept delivery of the contractually specified volume during an Imbalance Month due to an event of Force Majeure, if the Imbalance Volume has not been delivered before the end of the second Month after the Imbalance Month and if no other resolution of the Imbalance Volumes has been agreed between the parties, during the third Month after the Imbalance Month, the Under-delivering party shall deliver, and the other party shall receive, an amount of Product equal to the Imbalance Volume, and such delivery shall be of the same Product, at the same Delivery Location and (except as provided in Section 11.7 (v)) at the same Price as applicable to the Product during the Imbalance Month.



(v) To the extent that an Imbalance Volume is delivered after the Imbalance Month, and except as provided under this Section 11.7 of this Contract, (a) if the Price specified in this Contract is a fixed price or a formula price based on the price of Product on a date or during a specified range of dates (e.g., "April 12, 2012," or "April 12-19, 2012"), the price of the Imbalance Volumes shall be equal to such Price without regard to the Month of actual delivery, and (b) if the Price in the relevant Transaction is a formula price based on the price of Product on a date or during a range of dates that is not tied to a specific date or range of dates (e.g., "bill of lading date," "Month of delivery," "NYMEX trade month" or "calendar month average"), the price for the Imbalance Volumes will be calculated according to such formula for the actual Month the Imbalance Volume is delivered.

## SECTION 12. TERM

This Contract may be terminated on thirty Days' Notice, but shall remain in effect until the expiration of the latest Delivery Period of any Transaction(s); provided however, Sections 1, 2, 3, 5, 6, 7, 8, 9, 10, 13, 14, 16 and this Section 12, shall survive termination or expiration of this Contract and any Transaction, in addition to any provisions that by their nature should, or by their express terms do, survive or extend beyond termination or expiration of this Contract.

## SECTION 13. LIMITATION OF LIABILITY

**FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY. A PARTY'S LIABILITY HEREUNDER SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, A PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY OF ITS AFFILIATES FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.**

## SECTION 14. 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 Location 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 Location, 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 Location as required by Applicable Law.
- (ii) Buyer may test any odorized propane delivered by the Seller at the Delivery Location(s). The Buyer may elect not to accept delivery of such propane at the Delivery Location(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 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 Contract. 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 Days following the Product Rejection Notice. If the rejected odorized propane is unloaded by the Buyer prior to the expiration of the ten 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 LOCATION 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 LOCATION, 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.

## **SECTION 15. MARKET DISRUPTION**

If a Market Disruption Event has occurred, then the parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or on a method for determining a replacement price for the Floating Price) for the affected Day, and if the parties have not so agreed on or before the second Business Day following the affected Day, then the replacement price for the Floating Price shall be determined within the next two following Business Days with each party obtaining, in good faith and from non-affiliated market participants in the relevant market, up to two quotes for prices of Product for the affected Day of a similar quality and quantity in the geographical location closest in proximity to the Delivery Location and averaging the quotes received. If either party fails to provide up to two quotes, then the average of all quotes obtained shall determine the replacement price for the Floating Price. "Floating Price" means the price or a factor of the price agreed to in the Transaction as being based upon a specified index. "Market Disruption Event" means, with respect to an index specified for a Transaction, any of the following events: (a) the failure of the index to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading on the exchange or market acting as the index; (c) the temporary or permanent discontinuance or unavailability of the index; (d) the temporary or permanent closing of any exchange acting as the index; or (e) both parties agree that a material change in the formula for or the method of determining the Floating Price has occurred. For the purposes of the calculation of a replacement price for the Floating Price, all numbers shall be rounded to three decimal places. If the fourth decimal number is five or greater, then the third decimal number shall be increased by one, and if the fourth decimal number is less than five, then the third decimal number shall remain unchanged.

## **SECTION 16. MISCELLANEOUS**

16.1. This Contract shall be binding upon and inure to the benefit of the successors, assigns, personal representatives and heirs of the respective parties hereto, and the covenants, conditions, rights and obligations of this Contract shall run for the full term of this Contract. No assignment of this Contract, in whole or in part, will be made without the prior written consent of the non-assigning party, which consent will not be unreasonably withheld or delayed; provided, absent an Event of Default with respect to

such party, a party may (i) transfer, sell, pledge, encumber or assign this Contract or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements or (ii) transfer its interest to any parent or Affiliate or successor of its business by assignment, merger or otherwise without the prior approval of the other party. Upon any such assignment, transfer or assumption, under (i) or (ii) above, the transferor shall remain principally liable for and shall not be relieved of or discharged from any obligations hereunder. Any attempted assignment in violation of this section shall be void and of no force and effect.

16.2. If any provision in this Contract is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void or make unenforceable any other provision, agreement or covenant of this Contract.

16.3. No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach.

16.4. This Contract sets forth all understandings between the parties respecting each Transaction subject hereto, and any prior contracts, understandings and representations, whether oral or written, relating to such Transactions are merged into and superseded by this Contract and any Transaction(s). The Master Agreement may be amended only by a writing executed by both parties.

16.5. The interpretation and performance of this Contract shall be governed by the laws of the jurisdiction as indicated on the Master Agreement, excluding, however, any conflict of laws rule that would apply the law of another jurisdiction.

**16.6. UNLESS THE PARTIES HAVE ELECTED ON THE MASTER AGREEMENT NOT TO MAKE THIS SECTION 16.6 APPLICABLE TO THIS CONTRACT, THE PARTIES MAY WAIVE TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING RELATING TO THIS CONTRACT.**

16.7. This Contract and all provisions herein shall be subject to all applicable and valid statutes, rules, orders and regulations of any Governmental Authority having jurisdiction over the parties, their facilities, Product supply or this Contract.

16.8. There is no third party beneficiary to this Contract. Each party to this Contract represents and warrants that it has full and complete authority to enter into and to perform this Contract. Each person who executes this Contract on behalf of either party represents and warrants that it has full and complete authority to do so and that such party will be bound thereby.

16.9. Neither party shall have any right to exercise control over any of the other party's employees, representatives or contractors of any level except to the extent of any safety requirements pertaining to the delivery of Product under this Contract at a party's facility or property.

16.10. The headings and subheadings contained in this Contract are used solely for convenience and do not constitute a part of this Contract between the parties and shall not be used to construe or interpret the provisions of this Contract.

16.11. Unless the parties have elected on the Master Agreement not to make this Section 16.11 applicable to this Contract, neither party shall disclose directly or indirectly without the prior written consent of the other party the terms of any Transaction to a third party (other than the employees, lenders, production interest owners, counsel, accountants and other agents of the party, or prospective purchasers of all or substantially all of a party's assets or of any rights under this Contract, provided such persons shall have agreed in writing to keep such terms confidential) except (i) in order to comply with any Applicable Law, (ii) to the extent necessary for the enforcement of this Contract, (iii) to the extent necessary to implement any Transaction, (iv) to the extent necessary to comply with a Governmental Authority's reporting requirements; or (v) to the extent such information is delivered to such third party for the sole purpose of calculating a published index. Each party shall notify the other party of any proceeding of which it is aware that may result in the disclosure of the terms of any Transaction (other than as permitted hereunder) and use reasonable efforts to prevent or limit the disclosure as reasonably practicable under the circumstances. The existence of this Contract is not subject to this confidentiality obligation. Subject to Section 13, the parties shall be entitled to all remedies available at law or in equity to enforce or seek relief in connection with this confidentiality obligation. The terms of any Transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of or termination of any Transaction.

In the event that disclosure is required by Applicable Law, the party subject to such requirement may disclose the material terms of this Contract to the extent so required, but shall promptly notify the other party, if reasonably practicable and permissible prior to disclosure, and shall reasonably cooperate (consistent with the disclosing party's legal obligations) with the other party's efforts to obtain protective orders or similar restraints with respect to such disclosure at the expense of the other party.

16.12. The parties may agree to dispute resolution procedures in Special Provisions attached to the Master Agreement or in a Confirmation executed in writing by both parties.

16.13. Any original executed Master Agreement, Confirmation or other related document may be digitally copied, photocopied, or stored on computer tapes and disks (the "Imaged Agreement"). The Imaged Agreement, if introduced as evidence on paper, the Confirmation (if introduced as evidence in automated facsimile form), the recording (if introduced as evidence in its original form), and all computer records of the foregoing (if introduced as evidence in printed format) in any judicial, arbitration, mediation or administrative proceedings will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall object to the admissibility of the recording, the Confirmation, or the Imaged Agreement on the basis that such were not originated or maintained in documentary form. However, nothing herein shall be construed as a waiver of any other objection to the admissibility of such evidence.

16.14. To the extent required by Applicable Law, Seller shall provide Buyer with Seller's MSDS for the Products to be delivered hereunder. Nothing herein shall excuse Buyer from complying with Applicable Law that may require Buyer to provide its employees, agents, contractors, users and customers who may come into contact with the Products with a copy of the MSDS and any other safety information provided to it by Seller or that require Buyer to ensure that the recommendations relating to the handling of the Products are followed. Compliance with any recommendation contained in the MSDS or other safety information shall not excuse Buyer from complying with all Applicable Law.

16.15. In the absence of any other agreement governing insurance requirements for access to a property or facilities for loading or unloading a Product, this provision shall apply. In the event a party ("C") enters onto the property of the other party ("D") to either deliver or receive Product, then, unless C is self-insured and has provided D evidence of such self-insurance as requested and reasonably acceptable to D, C agrees to procure and maintain or cause its accessing agents, contractors and their subcontractors and representatives to procure and maintain, insurance coverage. Such insurance shall be in compliance with the requirements of the Applicable Law of the Delivery Location. C acknowledges and agrees that D shall not insure C's Products, employees, contractors and/or property nor the Product(s), property and/or employees, contractors of others in connection with this Contract. Insurance required by the above provision, if any, and deductibles associated therewith shall be carried and paid, as applicable, by C at its own expense.

16.16. In the event delivery of Product(s) hereunder is to be accomplished by waterborne transportation, the applicable "marine provisions" shall be attached to or made a part of the Master Agreement or the applicable Confirmation.

16.17. Unless otherwise specifically agreed to by the parties in writing, Buyer shall not represent, or authorize or permit any other person to represent, that Product delivered hereunder is the Product of Seller. All Product delivered hereunder shall be used or sold under Buyer's brand names or the brand names of its purchasers, it being understood and agreed that nothing herein shall be construed to permit Buyer or its purchasers to use Seller's name or any brand name it may have in connection with the sale of any Product purchased hereunder.

**DISCLAIMER:** The purposes of this Contract are to facilitate trade, avoid misunderstandings and make more definite the terms of contracts of purchase and sale of natural gas. Further, NAESB does not mandate the use of this Contract by any party. **NAESB DISCLAIMS AND EXCLUDES, AND ANY USER OF THIS CONTRACT ACKNOWLEDGES AND AGREES TO NAESB'S DISCLAIMER OF, ANY AND ALL WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THIS CONTRACT OR ANY PART THEREOF, INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT NAESB KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. EACH USER OF THIS CONTRACT ALSO AGREES THAT UNDER NO CIRCUMSTANCES WILL NAESB BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY USE OF THIS CONTRACT.**

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