

**LEAP
MASTER AGREEMENT
FOR PURCHASING AND SELLING
REFINED PETROLEUM PRODUCTS AND CRUDE OIL
Version 2.1**

Dated as of _____

COVER SHEET

This *Master Agreement for Purchasing and Selling Refined Petroleum Products and Crude Oil Version 2.1*, together with all exhibits, schedules and written supplements hereto, any designated collateral, credit support or margin agreement or similar arrangement between the Parties in respect hereof and all Confirmations (as defined herein) shall be referred to collectively as the "Agreement". The Parties to this Agreement are as follows:

[NAME] ("_____ " or "Party A")

[NAME] ("_____ " or "Party B")

All Notices: _____

All Notices: _____

Street: _____

Street: _____

City: _____ Zip: _____

City: _____ Zip: _____

Attn: Contract Administration

Attn: Contract Administration

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Duns: _____

Duns: _____

Federal Tax ID Number: _____

Federal Tax ID Number: _____

Invoices:

Invoices:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Scheduling and Nominations:

Scheduling and Nominations:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Payments:

Payments:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Wire Transfer:

Wire Transfer:

BNK: _____

BNK: _____

ABA: _____

ABA: _____

ACCT: _____

ACCT: _____

Credit and Collections:

Attn: _____
Phone: _____
Facsimile: _____

Credit and Collections:

Attn: _____
Phone: _____
Facsimile: _____

Material Safety Data Sheets:

Attn: _____
Phone: _____
Facsimile: _____

Material Safety Data Sheets:

Attn: _____
Phone: _____
Facsimile: _____

With Additional Notices of an Event of Default to:

Attn: _____
Phone: _____
Facsimile: _____

With Additional Notices of an Event of Default to:

Attn: _____
Phone: _____
Facsimile: _____

The Parties hereby agree that the standard terms and conditions of the *LEAP Master Agreement for Purchasing and Selling Refined Petroleum Products and Crude Oil* are incorporated herein subject to the following elections and modifications:

Section 5 – Credit

5.1 Credit/Collateral Requirements for Transactions [Specify if applicable]

5.2 Obligation to Post Performance Assurance Limitation on Obligation to Post Performance Assurance. The Posting Party's obligation to post Performance Assurance under Section 5.2 shall be limited to [to be specified by the Parties, if applicable]. If not checked, inapplicable.

5.3 No Grounds for Insecurity with Prepaid Transactions Applicable. If not checked, inapplicable.

UCC Waiver: Notwithstanding any provisions of law relating to adequate assurance of performance, including without limitation Article 2-609 of the Uniform Commercial Code, a Party shall only be entitled to request additional collateral or other forms of credit support from the other Party as specifically provided in this Agreement and any other collateral or margining agreement between the parties that applies to Transactions under this Agreement. The preceding sentence shall not limit, however, a Party's right, if any, to request adequate assurance of due performance to the extent reasonable grounds for insecurity arise that are not related to the creditworthiness of the other Party. For purposes of the foregoing, "Uniform Commercial Code" refers to the code as adopted by the jurisdiction governing the Parties and the Transactions. Section references refer to the Model Uniform Commercial Code and are intended to correspond to the same substantive provisions contained in the specific codes adopted in the controlling jurisdictions, to the extent that section references differ. If not checked,

inapplicable.

Section 6 – Payment Netting and Bookouts

6.1 Payment Netting Applicable. If not checked, inapplicable.

6.3 Bookouts Applicable. If not checked, inapplicable.

Section 7 – Events of Default

THE FOLLOWING EVENTS OF DEFAULT ARE APPLICABLE UNDER THIS AGREEMENT (CHECK ALL PROVISIONS THAT ARE APPLICABLE):

7.1(a) Failure to Pay Applicable. If not checked, inapplicable.

7.1(b) Failure to Provide Performance Assurance Applicable. If not checked, inapplicable.

7.1(c) Breach of Agreement Applicable. If not checked, inapplicable.

7.1(d) Default Under Other Trading Agreements Applicable. If not checked, inapplicable.

“Aggregate Delinquency Amount” means for purposes of Section 7.1(d) (if applicable):

With respect to Party A and Party A’s Credit Support Provider: _____

With respect to Party B and Party B’s Credit Support Provider: _____

“Specified Affiliate” means for purposes of Section 7.1(d) (if applicable):

With respect to Party A: _____

With respect to Party B: _____

7.1(e) Cross Default Applicable. If not checked, inapplicable.

Cross Acceleration. If Section 7.1(e) is applicable, the words “, or becoming capable at such time of being declared,” in Section 7.1(e) shall be deleted. If not checked, these words shall not be deleted.

“Threshold Amount” means for purposes of Section 7.1(e) (if applicable):

With respect to Party A:

With respect to Party B:

7.1(f) Designated Event Applicable. If not checked, inapplicable.

7.1(g) Credit Support Failure Applicable. If not checked, inapplicable.

7.1(h) Bankruptcy Applicable. If not checked, inapplicable.

Grace Period for Involuntary Proceedings Applies. If checked, the following amendments are made to the definition of “Bankrupt” in Section 1.1(j):

Clause (iv)(B) is amended by adding the following at the end of such clause: “and either (1) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (2) is not dismissed, discharged, stayed or restrained, in each case within thirty (30) days of the institution or presentation thereof”; and

Clause (vii) is amended by adding the following at the end of such clause: “and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within thirty (30) days thereafter”.

7.1(i) Additional Event of Default Applicable. If not checked, inapplicable.

If applicable, “Additional Event of Default” means: *[specify if applicable]*

7.2 Failure to Deliver or Take Delivery:

Negotiation Period For purposes of Section 7.2, the “Negotiation Period”, if any, will be as specified here: _____. If nothing is specified, there shall be no Negotiation Period.

Remedy for Failure to Deliver or Take Delivery (select one):

Option A (Cover Damages) is applicable. (Applicable if no other election is made.)

Option B (Damages Under Applicable Law) is applicable.

Option C (Alternative Remedy) is applicable. If applicable,

specify remedy: _____.

Accelerated Payment of Damages Applicable. If not checked, inapplicable.

Section 8 – Termination and Liquidation

8.3 Export of Default Applicable. If not checked, inapplicable.

8.4 Closeout Setoff For purposes of Section 8.4, the Parties agree that (select one):

Option A (Bilateral Setoff) is applicable. (Applicable if no other election is made.)

Option B. (Triangular Setoff) is applicable.

Option C (No Setoff) is applicable.

Section 10 – Force Majeure

10.5 Force Majeure Termination Payment Applicable. If not checked, inapplicable.

If applicable, the following provisions will apply:

Notwithstanding anything to the contrary in Section 10, a Termination Payment will be payable in respect of Term Transactions that are terminated due to Force Majeure pursuant to Section 10.5 within two (2) New York Banking Days of termination. The Termination Payment and the Party that owes such Termination Payment will be calculated and determined pursuant to the methodology set forth in Section 8.2 by the Party that is not claiming Force Majeure (which Party will be deemed the “Performing Party” for purposes of applying the terms of Section 8.2 for purposes of this provision), except that only the Transactions being terminated pursuant to Section 10.5 will be taken into account in determining the amount of such payment and all other Transactions will remain outstanding and unaffected by such termination.

If both Parties are claiming Force Majeure, then both Parties will calculate a Termination Payment, and the amount payable will equal one-half of the difference between the Termination Payment of the Party with the higher Termination Payment (“X”) and the Termination Payment of the Party with the lower Termination Payment (“Y”). If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of that amount to Y.

Section 17 – New or Changed Regulations

17.1 Material Adverse Effect Applicable. If not checked, inapplicable.

Section 19 - Assignment

19.1 Assignment

Assignment of Receivables Without Consent. Notwithstanding anything to the contrary in Section 19.1, either Party may, without the other Party's consent, transfer, sell, pledge, encumber or assign the accounts, revenues, or proceeds of this Agreement in connection with any financing or other financial arrangement. For the avoidance of doubt, all payment obligations under this Agreement will be satisfied if the relevant payment is made to the account of the other Party and the foregoing sentence shall not require a Party to make payments to any third party, unless otherwise agreed in writing. If not checked, inapplicable.]

Section 23 – Written Confirmations

Confirming Party

For purchase or sale Transactions, the Parties agree the Confirming Party will be (select one):

- Seller (Applicable if no other election is made.)
- Buyer
- Party A
- Party B

For buy/sell Transactions, the Parties agree that the Confirming Party will be (select one):

- Both Parties, with each Party confirming its respective leg of the Transaction (Applicable if no other election is made.)
- Party A
- Party B

**Other Modifications to the
Master Agreement**

Specify, if any:

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first above written.

[PARTY A NAME]

[PARTY B NAME]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

DISCLAIMER: This *Master Agreement for Purchasing and Selling Refined Petroleum Products and Crude Oil* was prepared by a committee of representatives of Leadership for Energy Automated Processing (“**LEAP**”) to facilitate orderly trading in and development of wholesale refined petroleum product and crude oil markets. None of LEAP, any member company or any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement, LEAP does not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

**LEAP
MASTER AGREEMENT
FOR PURCHASING AND SELLING
REFINED PETROLEUM PRODUCTS AND CRUDE OIL**

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions.

- (a) “Additional Event of Default” means an additional Event of Default specified in the Cover Sheet (if any).
- (b) “Affected Party” has the meaning specified in Section 17.1.
- (c) “Affected Transaction” has the meaning specified in Section 17.1.
- (d) “Affiliate” means, in relation to any person, an entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, “control” of any entity or person means ownership of a majority of the voting power of the entity or person.
- (e) “Agreement” has the meaning set forth in the Cover Sheet.
- (f) “Aggregate Delinquency Amount” means, with respect to a Party, the amount specified as the Aggregate Delinquency Amount for such Party in respect of Section 7.1(d) in the Cover Sheet.
- (g) “API” means the American Petroleum Institute.
- (h) “Applicable Law” means any federal, state or local law, statute, regulation, code, ordinance, license, permit, compliance requirement, decision, order, writ, injunction, directive, judgment, policy, decree, including any judicial or administrative interpretations thereof, or any agreement, concession or arrangement with any Governmental Authority, applicable to either Party or either Party’s performance under any Transaction, and any amendments or modifications to the foregoing.
- (i) “ASTM” means the American Society of Testing Materials.
- (j) “Bankrupt” means, with respect to a Party, that such Party: (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv)(A) institutes, or has instituted against it by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organization or the jurisdiction of its head or home office, a proceeding

seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official, or (B) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and such proceeding or petition is instituted or presented by a person or entity not described in clause (A) above; (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (vii) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets; (viii) causes or is subject to any event with respect to it which, under Applicable Law, has an analogous effect to any of the events specified in clauses (i) to (vii) (inclusive); or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

- (k) “Bankruptcy Code” has the meaning specified in Section 9.
- (l) “Barrel” means forty-two (42) U.S. gallons measured at a temperature of sixty degrees Fahrenheit (60 °F) and an absolute pressure of 29.92 inches of mercury.
- (m) “Bookout” has the meaning specified in Section 6.3.
- (n) “Buyer” means the Party obligated to purchase Products under a Transaction.
- (o) “Confirmation” means (i) any electronic confirmation setting forth the trade details of a Transaction between the Parties and matched by the Parties on an electronic confirmation matching system and (ii) absent the ability to confirm a Transaction through an electronic confirmation matching system, any other written or electronic confirmation between the Parties that contains the relevant trade details of the Transaction based on those set forth in the sample form attached as Exhibit A or B.
- (p) “Confirming Party” has the meaning specified in the Cover Sheet.
- (q) “Contract Value” has the meaning specified in Section 8.2.
- (r) “Credit Support Provider” has the meaning specified in Section 7.1(g).
- (s) “Defaulting Party” has the meaning specified in Section 8.1.
- (t) “Defect” has the meaning specified in Section 3.1.

- (u) “Delivery Location” means the location specified for delivery of the Product in a Confirmation. If an In-Tank Transfer is made, the Delivery Location is the location of the Product at the time of the transfer.
- (v) “Delivery Period” means the period specified for delivery of the Product in a Confirmation.
- (w) “Designated Event” means, with respect to a Party for purposes of Section 7.1(f), (i) the consolidation or amalgamation of a Party with, the merger of a Party with or into, or the transfer of all or substantially all of a Party’s assets to, another entity; (ii) the reorganization, reincorporation or reconstitution of a Party into or as another entity; (iii) the acquisition by any person directly or indirectly of the majority of the beneficial ownership of the Party such that such person may exercise control of the Party; or (iv) a substantial change in the capital structure of a Party by means of the issuance or guaranty of debt.
- (x) “Dollar” means the lawful currency of the U.S.
- (y) “Early Termination Date” has the meaning specified in Section 8.1.
- (z) “Eastern Prevailing Time” means the time prevailing on the East Coast of the U.S., taking into account daylight savings time if it is in effect.
- (aa) “Event of Default” has the meaning specified in Section 7.1.
- (bb) “Exchange of Futures for Physicals” (“EFP”) means an exchange of futures contracts for, or in connection with, physical Product pursuant to which the buyer and seller of the futures contracts are the seller and buyer of a quantity of the physical Product approximately equivalent to the quantity covered by the relevant futures contracts.
- (cc) “Failing Party” has the meaning specified in Section 7.2.
- (dd) “Force Majeure” has the meaning specified in Section 10.1.
- (ee) “Governmental Authority” means any foreign or U.S. federal, state, regional, local or municipal governmental body, agency, instrumentality, authority or entity established or controlled by a government or subdivision thereof, including any legislative, administrative or judicial body, or any person acting on behalf thereof.
- (ff) “Independent Inspector” means a duly licensed person or firm, appointed as agreed by Buyer and Seller, that performs a quantity or quality determination with respect to the Product received or delivered pursuant to a Transaction.
- (gg) “In-Tank Transfer” means the transfer of physical inventory of Product on the books and records of a terminal operator where the transferor and transferee are both terminal customers.

- (hh) “Minor Volume Imbalance” means a Volume Imbalance of less than 500 Barrels.
- (ii) “Market Value” has the meaning specified in Section 8.2.
- (jj) “MSDS” has the meaning specified in Section 13.
- (kk) “Negotiation Period” has the meaning specified in Section 7.2.
- (ll) “New York Banking Day” means a day (other than a Saturday or Sunday) on which commercial banks are authorized to open for business in the State of New York.
- (mm) “Offsetting Transactions” means any two (2) or more Transactions in respect of the same Product having the same or overlapping Delivery Period(s) (as specified in the Transaction), Delivery Location and payment date, where under one or more of such Transactions, one Party is Seller and under one or more of the other such Transactions the same Party is Buyer.
- (nn) “Original Index” has the meaning specified in Section 17.2.
- (oo) “Other Amounts” has the meaning specified in Section 8.4.
- (pp) “Other Trading Agreement” has the meaning specified in Section 7.1(d).
- (qq) “Party” means Party A or Party B, individually, and “Parties” means Party A and Party B, collectively.
- (rr) “Performance Assurance” has the meaning specified in Section 5.2.
- (ss) “Performing Party” has the meaning specified in Section 8.1.
- (tt) “Posting Party” has the meaning specified in Section 5.2.
- (uu) “Price” means the price of a Product as specified in a Confirmation.
- (vv) “Product” means the grades of refined petroleum products, crude oil, liquefied petroleum gas or natural gas liquids that are the subject matter of a Transaction, as specified in a Confirmation.
- (ww) “PTO” (or “Product Transfer Order”) means a pipeline or storage facility authorization or other similar document produced by a third party bailee authorizing the transfer of title to a specified Quantity of the Product at a specific Delivery Location from one Party to another and shall include, without limitation, documentation effectuating pipeline transfers, In-Tank Transfers or Tank-to-Tank Transfers.
- (xx) “Quantity” means the quantity of a Product specified in a Confirmation.
- (yy) “RBOB” has the meaning specified in Section 16.3.

- (zz) “Reference Price” means a Price that is determined by reference to a specified pricing source.
- (aaa) “Replacement Price” has the meaning specified in Section 7.2.
- (bbb) “Sales Price” has the meaning specified in Section 7.2.
- (ccc) “Scheduled Payment Date” has the meaning specified in Section 7.2.
- (ddd) “Secured Party” has the meaning specified in Section 5.2.
- (eee) “Seller” means the Party obligated to sell Products under a Transaction.
- (fff) “Specified Affiliate” means, with respect to a Party, the entity or entities specified as the Specified Affiliate(s) with respect to such Party in respect of Section 7.1(d) in the Cover Sheet.
- (ggg) “Tank-to-Tank Transfer” means a transfer of a position of physical 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.
- (hhh) “Taxes” means any and all federal, state and local taxes, duties, fees and charges of every description, including all aviation fuel, special fuel, diesel, excise, environmental, spill, gross earnings, gross receipts, and sales and use taxes, however designated, now or hereafter paid, incurred or imposed on the purchase, storage, exchange, use, transportation, resale, importation or handling of a Product or the transfer of title, possession or risk of loss of the Product from Seller to Buyer, or on Buyer’s subsequent use or disposition of a Product; provided, however, that “Taxes” do not include:
 - (i) any income withholding tax or tax imposed on or calculated based upon net profits, gross or net income, profit margin or gross receipts (excluding, for the avoidance of doubt, any transaction taxes that are based upon gross receipts, gross earnings or gross revenues received specifically from the sale of Products);
 - (ii) any tax measured by capital value or net worth, whether denominated as franchise taxes, doing business taxes, capital stock taxes or the like;
 - (iii) business license or franchise taxes or registration fees; or
 - (iv) any ad valorem or personal property taxes.
- (iii) “Termination Payment” has the meaning specified in Section 8.2.
- (jjj) “Term Transaction” means a Transaction contemplating multiple deliveries with a Delivery Period the duration of which is one (1) calendar month or more.

- (kkk) “Threshold Amount” has the meaning specified in the Cover Sheet in respect of Section 7.1(e).
- (lll) “Transaction” has the meaning provided in Section 1.3.
- (mmm) “U.S.” means United States of America, and every reference to money or Price pertains to U.S. Dollars.
- (nnn) “Volume Imbalance” means an imbalance in the volume of Product actually delivered from one Party to the other relative to the Quantity specified to be delivered pursuant to a Transaction, as evidenced by the applicable pipeline meter ticket, report of the Independent Inspector or terminal operator documentation, as the case may be. Notwithstanding the foregoing definition, a “Volume Imbalance” shall not include failures to deliver or take delivery of all of the Quantity of the Product as required in a particular Transaction (which failures shall be governed by Section 7.2).

1.2 Interpretation. Unless otherwise specified, all section references in this Agreement are to the Sections of this Agreement. All headings in this Agreement are intended solely for convenience of reference and shall not affect the meaning or interpretation of this Agreement. Unless expressly provided otherwise, the word “including” as used herein does not limit the preceding words or terms and shall be read to be followed by the words “without limitation” or words having similar import and the words “other” and “otherwise” shall not be construed as being limited by the context in which they appear or the words that precede them. Unless expressly provided otherwise, references to “consent” mean the prior written consent of the Party at issue. Unless provided otherwise, when a Party’s response is required hereunder within a specific time period following receipt of notice or documentation, as applicable, the day of receipt thereof by such Party shall be considered day zero. The Parties acknowledge that they and their counsel have reviewed and revised this Agreement and that no presumption of contract interpretation or construction shall apply to the advantage or disadvantage of the drafter of this Agreement. Any specific references to laws, statutes, or regulations will include any amendments, replacements, or modifications thereto.

1.3 Scope; Single Agreement. This Agreement is intended to apply exclusively to transactions involving Products delivered via U.S. domestic pipelines to Delivery Locations in the U.S., as well as In-Tank Transfers and Tank-to-Tank Transfers of physical Products involving U.S. domestic storage facilities (collectively, “Transactions”). This Agreement shall not apply to any transaction where Products may be delivered via a vessel, barge, railcar, truck or any means other than via U.S. domestic pipeline delivery, In-Tank Transfers or Tank-to-Tank Transfers involving U.S. domestic storage facilities. All Transactions are entered into in reliance on the fact that this Agreement and all Transactions hereunder form a single agreement between the Parties.

1.4 Inconsistency. In the event of any inconsistency between the provisions of any Confirmation and this Agreement, such Confirmation will prevail for the purposes of the relevant Transaction.

2. TITLE AND RISK OF LOSS

2.1 Seller's Warranty of Title. As of the date of each Transaction, Seller warrants and covenants that, at the time title to any Product to be delivered under such Transaction passes to Buyer, Seller shall convey to Buyer good title to such Product free and clear of any liens or encumbrances and Seller shall have full right and authority to transfer such title and effect delivery of such Product to Buyer.

2.2 Transfer of Title and Risk of Loss. Title to and risk of loss of Products shall pass from Seller to Buyer as designated in the applicable Confirmation or, absent such a designation (a) in the case of pipeline delivery, as the Products pass the Delivery Location along the pipeline; (b) in the case of an In-Tank Transfer, at the time of the transfer, as specified in the PTO (or other operative transfer documentation) or on the books and records of the terminal operator, as applicable; or (c) in the case of a Tank-to-Tank Transfer: (i) in the case of an ex-tank transfer, as the Products pass the outlet flange of Seller's storage tank from which the Products are being delivered, or (ii) in the case of an into-tank transfer, as the Products pass the inlet flange of Buyer's storage tank to which the Products are being delivered, each as evidenced by the PTO (or other operative transfer documentation) or the books and records of the terminal operator, as applicable.

3. OBLIGATIONS; DISCLAIMER OF WARRANTY; MEASUREMENT; NOTICE OF CLAIM; BALANCING; EXCESS COSTS; INDEPENDENT INSPECTOR

3.1 Obligations. With respect to each Transaction, Seller shall sell and deliver, or cause to be delivered, the Quantity of the Product at the Delivery Location over the term of the Delivery Period as specified in the relevant Confirmation. All Product delivered or caused to be delivered by Seller shall conform to the Product specifications referenced in the relevant Confirmation and Applicable Law. Any failure by the Seller to deliver, or cause to be delivered, the requisite Quantity and/or any failure of the Product delivered or caused to be delivered by Seller to conform to such specifications (in each case, any such failure, a "Defect") will be subject to a notice of claim pursuant to Section 3.4. Buyer shall purchase and accept, or cause to be accepted, the Quantity of the Product at the Delivery Location over the term of the Delivery Period as specified in the relevant Confirmation, and Buyer shall pay Seller for the Product at the Price specified (or by reference to the Reference Price, if so specified) as provided in Section 4. Nominations or other transfer instructions shall be made in accordance with the standard operating procedures of the relevant facility or pipeline company.

3.2 Disclaimer of Warranty. **OTHER THAN THE WARRANTY OF TITLE SPECIFIED IN SECTION 2.1 AND THE REQUIREMENTS OF CONFORMITY AND COMPLIANCE WITH LAW CONTAINED IN SECTION 3.1 AND SECTION 16, RESPECTIVELY, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, SELLER MAKES NO OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY THAT THE PRODUCTS WILL BE MERCHANTABLE OR FIT OR SUITABLE FOR A SPECIFIC PURPOSE, EVEN IF SUCH PURPOSE IS KNOWN TO SELLER, UNLESS OTHERWISE STATED IN THE CONFIRMATION FOR A PARTICULAR TRANSACTION. SELLER EXPRESSLY DISCLAIMS ANY**

WARRANTY AGAINST INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT.

3.3 Measurement. In the case of pipeline delivery, the quantity of Products delivered shall be determined by the relevant pipeline's meter readings at the time of delivery at or near the Delivery Location designated in the applicable Confirmation, such meter readings to be final and binding, absent fraud or manifest error. When permitted by the pipeline or terminal operator, each of Buyer or Seller may, at its own expense, appoint a representative to witness and review quality and quantity determinations. For In-Tank Transfers, the quantity of Product delivered shall be determined by an Independent Inspector or such other method as is mutually agreed and such determinations shall be deemed final and binding, absent fraud or manifest error. For Tank-to-Tank Transfers, the quantity of Product delivered shall be determined by the relevant meter readings taken at the time of delivery at the storage facility where transfer of title occurs pursuant to Section 2.2 above as specified in the applicable Confirmation, such meter readings to be final and binding absent fraud or manifest error. If the applicable measurement method described above is not available, the Parties shall establish another mutually acceptable method for determining the quantity of Products delivered. All quantities of delivered Products shall be corrected for temperature to sixty degrees Fahrenheit (60 °F) in accordance with ASTM D-1250, Table 6A or 6B, as applicable (in each case, as revised at the time of measurement). All measurements and tests shall be made in accordance with the standards or guidelines published by the API or ASTM at the time of such measurement or test, as applicable.

3.4 Notice of Claim. Notice of claim as to a Defect with respect to any delivery of Products shall be made by one Party in writing to the other Party promptly after such apparent Defect is discovered. Any such notice of claim shall be followed promptly by a written claim with all documentation and information reasonably necessary to properly process such claim. **IF NO SUCH NOTICE OF CLAIM IS DELIVERED WITH RESPECT TO AN APPARENT DEFECT WITHIN SIXTY (60) DAYS AFTER DELIVERY OF THE PRODUCT TO BUYER, ANY CLAIM WITH RESPECT TO SUCH DEFECT SHALL BE DEEMED TO HAVE BEEN WAIVED.**

3.5 Balancing.

(a) Physical Balancing – Minor Volume Imbalances. When applicable, upon termination of a Transaction under this Agreement, any Minor Volume Imbalance will be cash settled as follows:

(i) If more Product is delivered than specified in a Transaction, then, if payment for such excess Product is requested by Seller, Buyer shall pay to Seller, on the date payment would otherwise be due in respect of the month in which such Transaction terminates, an amount for each gallon or Barrel (as applicable) of such excess equal to the lesser of: (1) the market price at which Buyer, acting in a commercially reasonable manner, is or would be able to purchase or otherwise take delivery of comparable quantities of the excess Product of comparable quality at the Delivery Location as determined by Buyer in a commercially reasonable manner and (2) the Price agreed to for the specific Transaction; in either case, minus any storage, transportation or other costs reasonably incurred by Buyer in reselling the excess Product.

(ii) If less Product is delivered than specified in a Transaction, the deficiency shall be treated as either (1) a Seller failure to deliver under Section 7.2(a)(i) if Seller caused the Volume Imbalance and Buyer requests payment in respect thereof or (2) a Buyer failure to accept delivery under Section 7.2(a)(ii) if Buyer caused the Volume Imbalance and Seller requests payment in respect thereof, as applicable.

(b) Physical Balancing – Material Volume Imbalances. When applicable, upon termination of a Transaction under this Agreement, any Volume Imbalance that exceeds a Minor Volume Imbalance will be addressed as follows:

(i) If more Product is delivered than specified in a Transaction, then, if payment for such excess Product is requested by Seller, Buyer shall determine at its sole option to settle the excess either by redelivery of the Volume Imbalance to Seller at Seller's expense as provided in Section 3.5(c) below or by cash settlement in accordance with Section 3.5(a)(i) above, unless mutually agreed otherwise.

(ii) If less Product is delivered than specified in a Transaction, then:

(1) if Seller caused the Volume Imbalance, Buyer may at its sole option require Seller to settle the shortfall either by requiring Seller to make delivery of the Volume Imbalance in accordance with the delivery provisions of the Transaction and Section 3.5(c) below or by requiring cash settlement by Seller in accordance with Section 3.5(a)(ii) above, unless mutually agreed otherwise; or

(2) if Buyer caused the Volume Imbalance, Seller may at its sole option require Buyer to settle the shortfall either by requiring Buyer to take delivery of the Volume Imbalance in accordance with the delivery provisions of the Transaction and Section 3.5(c) below or by requiring cash settlement by Buyer in accordance with Section 3.5(a)(ii) above.

(c) Physical Settlement of Material Volume Imbalances. If a Volume Imbalance is to be settled in whole or in part by physical delivery, then:

(i) With respect to Product that is a refined petroleum product, delivery of the relevant Volume Imbalance shall be made during the calendar month of delivery if commercially practicable, and if not, during the following calendar month.

(ii) With respect to Product that is crude oil, the Parties will arrange to schedule and deliver Volume Imbalances within ninety (90) days of the end of the month in which the Volume Imbalance occurred. If delivery is not scheduled to occur within the month in which the Volume Imbalance occurred, Volume Imbalances identified by the 20th of a month shall be delivered during the following calendar month, and

Volume Imbalances identified after the 20th of a month shall be delivered during the second following calendar month.

(iii) With respect to Product that is liquefied petroleum gas or natural gas liquids, delivery of such Volume Imbalance shall be made during the calendar month of delivery if commercially practicable, and if not, during the first five (5) New York Banking Days of the following calendar month.

- (d) EFP Balancing. When applicable, the volumes sold and purchased by the Parties in connection with an Exchange of Futures for Physical (an “EFP”) involving a Transaction under this Agreement are intended to be equal. Volume Imbalances that arise in respect of the physical leg of an EFP will be settled pursuant to the foregoing subsections (a) through (c); provided, however, if the actual volume shipped differs from the volume sold or bought under an EFP by an amount greater than 50% of the minimum trading unit of the relevant futures contract, then the Parties will balance the difference in respect of the futures leg of the EFP by registering with the relevant exchange an EFP referencing the then current month’s futures contract in an amount that corresponds to the amount of the imbalance, which amount will be rounded to the nearest minimum trading unit of the relevant futures contract. If the futures contract referenced in the Parties’ original EFP has expired at the time that the balancing EFP is registered, the Parties will, with respect to Product that is crude oil, refined petroleum product or liquefied petroleum gas, register an EFP referencing the then current month’s futures contract at the original EFP price plus or minus a differential to be calculated by taking the average of the spread between the settlement price for the expired contract and the current contract on the first three (3) of the last four (4) trading days of the month of the expired contract. This subsection (d) shall be subject to the rules of the relevant exchange.

3.6 Excess Costs. Any costs incurred on a pipeline by one Party (“X”) due to failure by the other Party (“Y”) to conform to a pipeline tariff shall be paid by Y to X in accordance with Section 4 following the delivery of a notice containing a pipeline charge statement to Y reflecting such costs.

3.7 Independent Inspector. In the event the Parties utilize an Independent Inspector pursuant to Section 3.3, such Independent Inspector’s determinations will be conclusive and binding upon both Parties, absent fraud or manifest error. The cost of the Independent Inspector’s services shall be shared equally between the Parties. A Party may have a representative present at the time of gauging and measurement and any associated costs shall be for such Party’s own account.

4. PAYMENT

4.1 Payment. Except as provided in Section 6, Section 8 or otherwise agreed by the Parties, Buyer shall remit payment via wire transfer in same day funds (without setoff, counterclaim or deduction) for the Product pursuant to subsections (a) (b), or (c) below, as applicable.

- (a) With respect to Product that is a refined petroleum product, such payment shall be made within two (2) New York Banking Days after Buyer receives notice of the amount due based on delivery effected and the relevant Transaction terms, along with supporting documentation acceptable in industry practice. If such Product is delivered by means of an In-Tank Transfer or a Tank-to-Tank Transfer, payments shall be made on the effective date of such transfer.
- (b) With respect to Product that is crude oil, such payment shall be made as agreed and no later than the 20th day of the month following the month of delivery, subject to Buyer's receipt of notice of the amount due based on delivery effected and the relevant Transaction terms, along with supporting documentation acceptable in industry practice, at least two (2) New York Banking Days prior to such 20th day, failing which payment shall be made no later than the 20th day of the following month. If the payment due date falls on a Saturday or a day that is neither a New York Banking Day nor a Monday, payment shall be made on the preceding New York Banking Day. If the payment due date falls on a Sunday or a Monday that is not a New York Banking Day, payment shall be made on the following New York Banking Day.
- (c) With respect to Product that is liquefied petroleum gas or natural gas liquids, such payment shall be made within five (5) New York Banking Days after Buyer receives notice of the amount due based on delivery effected and the relevant Transaction terms, along with supporting documentation acceptable in industry practice.

4.2 Timing of Notices. All notices under this Section 4 must be received by Buyer by 12:00 noon Eastern Prevailing Time on a New York Banking Day in order to be considered received by Buyer on such New York Banking Day, otherwise such notice shall be considered received on the following New York Banking Day.

4.3 Price Rounding. Rounding conventions shall be as follows: Product pricing in gallons shall be rounded to the nearest fourth decimal place (whereby, if the fifth decimal number is five or greater, then the fourth decimal number shall be increased by one, and if the fifth decimal number is less than five, then the fourth decimal number shall remain unchanged); Product pricing in Barrels shall be rounded to the nearest third decimal place (whereby, 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); and all Dollar amounts shall be rounded to the nearest cent (whereby half cents shall be rounded upward).

4.4 Interest. Any amount payable for any delivery of Products or otherwise payable by Buyer to Seller hereunder, if not paid when due, and any amount payable as a refund as a result of an overpayment, shall bear interest from the due date or the date of overpayment (as applicable) until the date payment is received at an annual rate (based upon the actual number of days in the relevant calendar year) equal to the rate of two (2) percentage points above the prime rate of interest effective for the payment due date as published in the *Wall Street Journal* under "Money Rates". If there is no publication on the payment due date, then the most recent preceding day's publication will be used. The interest rate shall not be more than the lawful maximum rate of interest. The relevant

Party shall pay any interest due within three (3) New York Banking Days following notice from a Party to the other Party that such interest is due.

- 4.5 Payment Dispute. If a Party, in good faith, disputes the accuracy of the amount due in respect of a Transaction where Product has been delivered by the other Party, such Party will timely pay such amount as it believes to be correct and provide written notice stating the reasons why the remaining disputed amount is incorrect, along with supporting documentation acceptable in industry practice. Subject to a Party's right to designate an Early Termination Date under Section 8.1 with respect to the occurrence of any other event that would constitute an Event of Default, payment of the disputed amount shall not be required until the dispute is resolved. 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 Agreement. In the event that it is determined that the Party that is disputing the amount due must pay the disputed amount, then such Party shall pay interest in accordance with Section 4.4 on such disputed amount from and including the originally scheduled due date to but excluding the date paid.

5. CREDIT

- 5.1 All Transactions executed pursuant to this Agreement are subject to the credit and collateral requirements (if any) that are mutually agreed between the Parties and set forth in the Cover Sheet to this Agreement or otherwise in writing.

- 5.2 In addition to the requirements that may be applicable pursuant to Section 5.1, if a Party (the "Secured Party") has a commercially reasonable grounds for insecurity with respect to the other Party's (the "Posting Party") creditworthiness or performance under this Agreement, the Secured Party shall provide the Posting Party with written notice requesting an amount of Performance Assurance determined by the Secured Party in a commercially reasonable manner. "Performance Assurance" may be posted in one of the following forms: cash, an irrevocable standby letter of credit issued or confirmed by a bank and in a form and for a term acceptable to the Secured Party or another form of assurance mutually agreed by the Parties. The Posting Party shall deliver the amount of Performance Assurance requested under this Section 5.2 to the Secured Party no later than two (2) New York Banking Days after Secured Party's request for the same.

- 5.3 If this Section 5.3 is specified as applicable in the Cover Sheet, notwithstanding anything to the contrary under this Agreement, the Secured Party shall not have reasonable grounds for insecurity as to the Posting Party's creditworthiness or performance with respect to a particular Transaction if the Posting Party is obligated, pursuant to the terms of such Transaction, to prepay the Secured Party by wire transfer in immediately available funds prior to the scheduled delivery date(s) under such Transaction.

6. CONCURRENT TRANSACTIONS - PAYMENT NETTING; TRANSACTION NETTING; AND BOOKOUTS

- 6.1 Payment Netting. If this Section 6.1 is specified as applicable in the Cover Sheet, the Parties agree to net amounts that are due to each other on the same payment date in respect of purchases and sales of Products, and the Parties shall confirm at least two (2) New York Banking Days prior to the payment date, orally or in writing, the payment

obligations owed in respect of purchases and sales of Products and any and all amounts remaining due after net-out. Any remaining balance after net-out shall be paid by the Party owing such amount to the other Party on the applicable payment date. The owing Party's payment of a net amount shall satisfy each Party's payment obligations under the relevant Transactions in respect of the payment obligations in respect of purchases and sales of Products included in the settlement on a payment date. The Parties understand and agree that such netting of payment obligations is expressly limited to amounts owed from purchases and sales of Products between the Parties and that netting out any other amounts due in respect of any Transaction, for any reason whatsoever, including amounts due in respect of quality claims and interest payments, is strictly prohibited unless otherwise agreed in writing.

6.2 Transaction Netting. If the Parties enter into one or more Transactions, which in conjunction with one or more other outstanding Transactions, constitute Offsetting Transactions, then all such Offsetting Transactions may, by agreement of the Parties, be netted so that: (a) the Party obligated to deliver the greater amount of the Product will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Transactions, and (b) the Party owing the greater aggregate payment will pay the net difference owed between the Parties. Each single Transaction resulting under this Section 6.2 shall be deemed part of the single agreement between the Parties referenced in Section 1.3, and once such resulting Transaction occurs, outstanding obligations under the Offsetting Transactions that are satisfied by such offset shall terminate.

6.3 Bookouts. If specified as applicable in the Cover Sheet, then the following provisions of this Section 6.3 shall apply. To the extent that the Parties agree orally or in writing, either bilaterally or as part of a multiparty arrangement, to a bookout or other cancellation or modification of physical delivery obligations in respect of a Transaction (in each case, a "Bookout"), (a) the delivery obligations under the relevant Transaction will be extinguished or modified (whether in whole or in part), and (b) any agreed payment will be due as follows, unless otherwise agreed: (i) with respect to Product that is a refined petroleum product, on the same day as the effective date of the Bookout, (ii) with respect to Product delivered that is crude oil, on the 20th day of the month following the month of the effective date of the Bookout or (iii) with respect to Product that is liquefied petroleum gas or natural gas liquids, within five (5) New York Banking Days following the effective date of the Bookout. At any time prior to the agreed effective date of the Bookout, either Party may elect, at its option and upon notice to the other Party, to break the Bookout and thereby restore all original contract terms, including delivery and payment, all without liability to the other Party.

7. EVENTS OF DEFAULT

7.1 An "Event of Default" shall mean the occurrence with respect to a Party of one of the following events to the extent the event is specified as applicable in the Cover Sheet:

- (a) Failure to Pay. A Party fails to make payment of any amount due when required under this Agreement or any Transaction, within two (2) New York Banking Days following receipt of a written notice of such failure from the other Party.

- (b) Failure to Provide Performance Assurance. A Party (i) fails to satisfy the credit and collateral requirements agreed between the Parties pursuant to Section 5.1 if such failure is not remedied within one (1) New York Banking Day after written notice of such failure is given to the Party; or (ii) fails to provide acceptable Performance Assurance support as requested by the Secured Party pursuant to Section 5.2.
- (c) Breach of Agreement. A Party fails to perform or repudiates any material obligation to the other Party under this Agreement (other than (i) a failure to deliver or accept the Product, the exclusive remedies for which are specified in Section 3.5 and Section 7.2 or (ii) an Event of Default described in Section 7.1(a) or Section 7.1(b)) or breaches any representation, covenant or warranty in any material respect under this Agreement and, in each case, if capable of being cured, is not cured to the satisfaction of the other Party in its sole discretion, within two (2) New York Banking Days following receipt of written notice to such Party that corrective action is needed.
- (d) Default Under Other Trading Agreements. A Party, any Credit Support Provider of such Party, or any applicable Specified Affiliate of such Party:

(i) fails to make payment when due under any trading agreement (that is not a Transaction under this Agreement) with the other Party, any Credit Support Provider of such other Party or any Specified Affiliate of such other Party, including any agreement to purchase, sell, or exchange commodities or any agreement in respect of an interest rate transaction, equity transaction, bond transaction, foreign exchange transaction, credit protection transaction, repurchase transaction, buy/sell-back transaction, securities lending transaction, forward transaction, any transaction similar to the foregoing, any swap, forward, future, option or other derivative transaction with respect to the foregoing or any combination of these transactions (each, an “Other Trading Agreement”) within the cure period for payment defaults specified therein, or if no period is provided, within two (2) New York Banking Days following receipt of a demand for payment by the other Party; or

(ii) commits an event of default, fails to perform or repudiates any obligation to the other Party, any Credit Support Provider of such other Party or any Specified Affiliate of such other Party under any Other Trading Agreement, or breaches any representation, covenant or warranty in any material respect under any Other Trading Agreement;

and, in the case of either of subclauses (i) or (ii) above, (1) such failure, breach or default results in a liquidation of, an acceleration of obligations under, or an early termination of, all transactions outstanding under the documentation applicable to such Other Trading Agreement; and (2) the aggregate amount owed by the defaulting Party in respect of the liquidation of, acceleration of obligations under or early termination of all transactions outstanding under the documentation applicable to such Other Trading Agreement(s) is not less than the Aggregate Delinquency Amount applicable to such Party (it being agreed that the failure to make

a payment or delivery the value of which exceeds the Aggregate Delinquency Amount on the last payment or delivery date of an Other Trading Agreement transaction where that transaction is the only transaction outstanding under the applicable documentation will satisfy conditions (1) and (2).

- (e) Cross Default. (i) A default, event of default or other similar condition or event occurs and is continuing in respect of a Party or its Credit Support Provider (if any) under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the Threshold Amount applicable to such Party and which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable; or (ii) a Party or its Credit Support Provider (if any) fails to make on the due date thereof one or more payments, individually or collectively, in an aggregate amount of not less than the Threshold Amount applicable to such Party.
- (f) Designated Event. A Designated Event occurs with respect to a Party or its Credit Support Provider (if any), and the creditworthiness of the Party or its Credit Support Provider or, if applicable, the successor, surviving or transferee entity of the Party or its Credit Support Provider (as applicable) is materially weaker than that of the Party or its Credit Support Provider immediately prior to such Designated Event.
- (g) Credit Support Failure. A Party's guarantor or other person providing credit support for such Party (a "Credit Support Provider" with respect to the Party), if any, (i) fails to satisfy, perform or comply with any obligation in accordance with the guaranty or credit support document issued in favor of the other Party and such failure continues after any applicable grace or notice period, (ii) makes any representation or warranty that proves to be incorrect or misleading in any material respect when made in connection with this Agreement or any credit support arrangement related hereto, or (iii) repudiates, disclaims, disaffirms or rejects, in whole or part, any obligation under its guaranty or challenges the validity of such guaranty.
- (h) Bankruptcy. A Party or its Credit Support Provider, if any, is or becomes Bankrupt.
- (i) Additional Events of Default. An Additional Event of Default occurs with respect to a Party.

7.2 Failure to Deliver or Take Delivery. Unless excused by Force Majeure or the other Party's failure to perform, if a Party fails to deliver or take delivery of all of the Quantity of the Product as required in a particular Transaction (or as required pursuant to Section 3.5(b)) during the applicable Delivery Period (the "Failing Party"), the Parties will negotiate in good faith to promptly agree to a resolution for such failure within the number of New York Banking Days specified in the Cover Sheet as the "Negotiation Period", if any. If the Parties fail to agree to a resolution for such failure during the Negotiation Period, if any, then the remedy option selected by the Parties from the options below will apply, which remedy shall be a Party's exclusive remedy for the other

Party's failure to deliver or take delivery of the Product as set forth in a Confirmation absent the Parties' agreement to a different remedy.

(a) Option A (Cover Damages). If Option A is specified as applicable in the Cover Sheet, then the following provision shall apply if the Parties fail to agree to a resolution during the Negotiation Period, if any, as provided above:

(i) Seller Failure to Deliver. If Seller is the Failing Party, Seller shall pay Buyer, on the date payment would otherwise be due (the "Scheduled Payment Date") in respect of the month in which the failure occurred (unless "Accelerated Payment of Damages" is specified as applicable in the Cover Sheet, in which case Seller shall pay Buyer within five (5) New York Banking Days of receipt of notice of the amount due or, if earlier, on the Scheduled Payment Date to the extent that such notice is received by Seller at least two (2) New York Banking Days prior to the Scheduled Payment Date), an amount for each gallon or Barrel (as applicable) of the Product of such deficiency equal to (1) the market price at which Buyer, acting in a commercially reasonable manner, is able, or absent an actual purchase, would be able to purchase or otherwise take delivery of Product in a quantity and quality comparable to the deficiency at the Delivery Location as determined by Buyer in a commercially reasonable manner plus (A) costs reasonably incurred by Buyer in purchasing such substitute Product and (B) additional transportation charges, if any, reasonably incurred by Buyer as a result of taking delivery of substitute Product at a location other than the Delivery Location ("Replacement Price") minus (2) the Price agreed to for the specific Transaction; except that if such difference is zero or negative, then neither Party shall have any obligation to make any deficiency payment to the other.

(ii) Buyer Failure to Take Delivery. If Buyer is the Failing Party, Buyer shall pay to Seller, on the Scheduled Payment Date in respect of the month in which the failure occurred (unless "Accelerated Payment of Damages" is specified as applicable in the Cover Sheet, in which case Buyer shall pay Seller within five (5) New York Banking Days of the receipt of notice of the amount due or, if earlier, on the Scheduled Payment Date to the extent that such notice is received by Buyer at least two (2) New York Banking Days prior to the Scheduled Payment Date), an amount for each gallon or Barrel (as applicable) of the Product of such deficiency equal to (1) the Price agreed to for the specific Transaction plus any storage, transportation or other costs reasonably incurred by Seller in reselling the Product minus (2) the market price at which Seller, acting in a commercially reasonable manner, is able, or absent an actual sale, would be able to sell or otherwise dispose of the Product at the Delivery Location, as determined by Seller in a commercially reasonable manner ("Sales Price"); except that if such difference is zero or negative, then neither Party shall have any obligation to make any deficiency payment to the other.

Failure to pay any amount due pursuant to this Option A will be deemed an Event of Default under Section 7.1(a) if such failure is not cured within two (2) New York Banking Days following receipt of written notice of such failure from the other Party.

- (b) Option B (Damages Under Applicable Law). If Option B is specified as applicable in the Cover Sheet, and the Parties fail to agree to a resolution during the Negotiation Period, if any, then the Party that is not the Failing Party shall be entitled to pursue the remedies available at law with respect to the Failing Party's failure to deliver or accept the Product in accordance with the terms of the relevant Transaction (but only in respect of that Transaction).
- (c) Option C (Alternative Remedy). If Option C is specified as applicable in the Cover Sheet, then the remedy specified by the Parties in the Cover Sheet will apply if the Parties fail to agree to a resolution during the Negotiation Period as provided above.

8. TERMINATION AND LIQUIDATION

8.1 Notwithstanding any other provision of this Agreement or any Performance Assurance, if at any time an Event of Default has occurred and is continuing with respect to a Party or its Credit Support Provider (such Party, the "Defaulting Party"), the other Party (the "Performing Party") may, in its sole discretion, designate a date (not earlier than the date of such notice and not later than twenty (20) days after the date of such notice (an "Early Termination Date") on which to terminate, liquidate and accelerate all outstanding Transactions and calculate a Termination Payment (as defined below) in the manner set forth in Section 8.2. To the extent that, in the reasonable opinion of the Performing Party, certain Transactions may not be liquidated and terminated under Applicable Law on the Early Termination Date, such Transactions shall be terminated as soon thereafter as is reasonably practicable, in which case the actual termination date for such Transactions will be the Early Termination Date in respect thereof for purposes of Section 8.2. Notwithstanding the foregoing, if the Defaulting Party is governed by a system of law that does not permit termination to take place after the occurrence of an Event of Default described in Section 7.1(h), then no prior notice shall be required upon the occurrence of such Event of Default, in which case the Early Termination Date shall be deemed designated immediately preceding the occurrence of such event.

8.2 On or as soon as reasonably practicable following the Early Termination Date, the Performing Party shall determine the final amount payable between the Parties under this Agreement as provided in this Section 8.2 (the "Termination Payment") and shall provide notice of the Termination Payment to the Defaulting Party. The Performing Party shall calculate the Termination Payment by (a) valuing each Transaction at its Market Value as reasonably determined by the Performing Party as of the Early Termination Date and then determining the amount by which such then prevailing Market Value differs from the Contract Value (it being understood that (i) in the event the prevailing Market Value of a Transaction exceeds the Contract Value, the difference in value shall be due from Seller to Buyer, and (ii) in the event that the prevailing Market Value of a Transaction is less than the Contract Value, the difference in value shall be due from Buyer to Seller), (b) determining any other damages, costs or expenses incurred by the Performing Party as a result of the early termination of such Transactions (without

duplication) (including any damages, losses and expenses incurred in connection with the liquidation of hedges related to Transactions hereunder), (c) determining any other amounts payable from one Party to the other Party under this Agreement (including amounts due in respect of Products delivered and accepted hereunder) and (d) netting or aggregating the foregoing amounts into a single liquidated amount. If the Defaulting Party owes the Termination Payment to the Performing Party, then, within one (1) New York Banking Day of the date upon which the Performing Party's notice of the Termination Payment is effective, the Defaulting Party shall pay the Termination Payment, less the value of any Performance Assurance or other collateral or credit support held by the Performing Party with respect to which the Performing Party has notified the Defaulting Party in writing of its election to exercise its setoff rights under Section 8.6. If the Performing Party owes the Termination Payment to the Defaulting Party, then, within one (1) New York Banking Day of the date upon which the Performing Party's notice of the Termination Payment is effective, the Performing Party shall pay the Termination Payment, less the value of any Performance Assurance or other collateral or credit support held and not returned by the Defaulting Party. For purposes of this Section 8.2, "Contract Value" and "Market Value" have the meanings specified below:

(i) "Contract Value" means the amount of the Product remaining to be delivered or purchased under a Transaction multiplied by the Price specified in the Confirmation for the Transaction.

(ii) "Market Value" means the amount of the Product remaining to be delivered or purchased under a Transaction multiplied by the market price for an equivalent transaction at the Delivery Location as determined by the Performing Party in a commercially reasonable manner. To ascertain the Market Value, the Performing Party may consider, among other valuations, quotations from leading dealers in swap contracts or physical trading markets, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term, relevant due date or delivery dates, volume and differences in transportation costs. A Party shall not be required to enter into a replacement transaction in order to determine the Market Value of a Transaction. 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.

8.3 Export of Default. If the Parties specify that this provision is applicable in the Cover Sheet, the occurrence of an Early Termination Date under this Agreement shall constitute a material breach and an event of default, howsoever described, under all Other Trading Agreements.

8.4 Closeout Setoff.

Option A (Bilateral Setoff). If Option A is specified as applicable in the Cover Sheet, then the following provision shall apply:

If the Performing Party elects to designate an Early Termination Date under Section 8.1, and the Termination Payment is payable to the Defaulting Party, the Performing Party shall be entitled, at its option and

in its discretion (and without prior notice to the Defaulting Party), to setoff against such Termination Payment any amounts (“Other Amounts”) payable by the Defaulting Party to the Performing Party under any other agreements, instruments or undertakings between the Defaulting Party and the Performing Party (whether or not arising under this Agreement, matured or contingent and irrespective of the currency, place of payment or place of booking of the obligation). To the extent that any Other Amounts are so setoff, those Other Amounts will be discharged promptly and in all respects. The Performing Party will give notice to the other Party of any setoff effected under this Section 8.4. For this purpose, either the Termination Payment or the Other Amounts (or the relevant portion of such amounts) may be converted by the Performing Party into the currency in which the other is denominated at the rate of exchange at which the Performing Party would be able, in good faith and using commercially reasonable procedures, to purchase the relevant amount of such currency.

Option B (Triangular Setoff). If Option B is specified as applicable in the Cover Sheet, then the following provision shall apply:

If the Performing Party elects to designate an Early Termination Date under Section 8.1, and the Termination Payment is payable to the Defaulting Party, the Performing Party shall be entitled, at its option and in its discretion (and without prior notice to the Defaulting Party), to setoff against such Termination Payment any amounts (“Other Amounts”) payable by the Defaulting Party to the Performing Party or any of the Performing Party’s Affiliates under any other agreements, instruments or undertakings between the Defaulting Party and the Performing Party or any of its Affiliates (whether or not arising under this Agreement, matured or contingent and irrespective of the currency, place of payment or place of booking of the obligation). To the extent that any Other Amounts are so setoff, those Other Amounts will be discharged promptly and in all respects. The Performing Party will give notice to the other Party of any setoff effected under this Section 8.4. For this purpose, either the Termination Payment or the Other Amounts (or the relevant portion of such amounts) may be converted by the Performing Party into the currency in which the other is denominated at the rate of exchange at which the Performing Party would be able, in good faith and using commercially reasonable procedures, to purchase the relevant amount of such currency.

Option C (No Setoff). If Option C is specified as applicable in the Cover Sheet, then neither Option A nor Option B shall apply.

- 8.5 The Performing Party’s rights under this Section 8 shall be in addition to, and not in limitation or exclusion of, any other rights of setoff, recoupment, combination of accounts, lien or other right which it may have, whether by agreement, operation of law or otherwise. No delay or failure on the part of a Performing Party to exercise any right or remedy shall constitute an abandonment of such right or remedy, and the Performing Party shall be entitled to exercise such right or remedy at any time after an Event of Default has occurred, so long as such Event of Default is continuing. The Defaulting

Party shall indemnify and hold harmless the Performing Party for and against any and all reasonable out-of-pocket expenses incurred by the Performing Party by reason of the enforcement of and protection of its rights under this Agreement or as a result of the early termination of any Transactions, including reasonable attorney's fees and costs of collection.

8.6 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance in the form of cash or other collateral (excluding, for the avoidance of doubt, a letter of credit or a guaranty) hereunder, the Posting Party hereby grants to the Secured Party a present and continuing security interest in, and lien on (and right of setoff against), and collateral assignment of, all such Performance Assurance or other collateral or security transferred pursuant to this Agreement and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party's first-priority security interest in, and lien on (and right of setoff against), such Performance Assurance or other collateral or security and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the designation or deemed designation of an Early Termination Date, the Performing Party may do any one or more of the following: (a) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance or other collateral or security posted by the Defaulting Party, including any such rights and remedies under law then in effect; (b) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Performing Party or its agent; (c) draw on any outstanding letter of credit issued for the Performing Party's benefit on behalf of the Defaulting Party; and (d) liquidate all Performance Assurance, collateral or other security posted by the Defaulting Party and then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds realized upon the exercise of any such rights or remedies to reduce the Posting Party's obligations under this Agreement (the Posting Party remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full. Upon or at any time after the designation or deemed designation of an Early Termination Date, the Defaulting Party must return all Performance Assurance transferred to it pursuant to this Agreement and all proceeds resulting therefrom or the liquidation thereof. To the extent that Performance Assurance is not so returned, the Performing Party may: (a) exercise any of the rights and remedies available to a pledgor under Applicable Law with respect to Performance Assurance, collateral or other security posted by the Defaulting Party and held by the Secured Party; (b) exercise any other rights and remedies available under the terms (if any) of the applicable Performance Assurance, collateral or other security; (c) exercise its rights of setoff against the Termination Payment; and (d) to the extent that the Performing Party does not setoff under (c) above, withhold payment of any remaining amounts payable by the Performing Party under this Agreement, up to the value of any remaining Performance Assurance, collateral or other security held by the Defaulting Party, until that Performance Assurance is returned to the Performing Party.

8.7 Suspension of Performance. Notwithstanding any other provision of this Agreement, if (a) an Event of Default or (b) an event that, with the lapse of time or the giving of notice or both, would constitute an Event of Default shall have occurred and be

continuing, the Performing Party, upon written notice to the Defaulting Party, shall have the right: (i) to suspend performance under any or all Transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) New York Banking Days with respect to any single Transaction, unless an Early Termination Date shall have been declared and notice thereof given pursuant to Section 8.1, and (ii) to the extent an Event of Default shall have occurred and be continuing, to exercise any remedy available at law or in equity.

9. BANKRUPTCY ACKNOWLEDGEMENTS

The Parties intend that each Transaction shall constitute a “forward contract” under § 101(25) and a swap agreement under § 101(53b) of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as amended from time to time (the “Bankruptcy Code”), and that this Agreement constitutes a “master netting agreement” under § 101(38a) of the Bankruptcy Code, and that the rights of the Performing Party in Section 8 include the rights referred to in § 561(a) of the Bankruptcy Code. Further, the Parties intend that each Party shall be a “forward contract merchant” under § 101(26) and a “master netting agreement participant” under § 101(38B), for purposes of the Bankruptcy Code.

10. FORCE MAJEURE

10.1 Subject to Section 10.2, a Party shall be excused from the performance of its obligations with respect to a Transaction to the extent its performance of such obligations is prevented, in whole or in part, due to the occurrence of any event or circumstance, whether foreseeable or unforeseeable, that is reasonably beyond the control of such Party and which, by the exercise of due diligence, such Party could not have remedied, avoided or overcome (any such event, a “Force Majeure”), which may include, without limitation, any of the following events:

- (a) Compliance with Applicable Law;
- (b) Hostilities of war (declared or undeclared), embargoes, blockades, civil unrest, riots or disorders, acts of terrorism, or sabotage;
- (c) Fires, explosions, lightning, maritime peril, collisions, storms, landslides, earthquakes, floods, and other acts of nature;
- (d) Strikes, lockouts, or other labor difficulties (whether or not involving employees of Seller or Buyer); provided, however, that the decision to settle a strike or other labor difficulties shall be wholly within the discretion of the Party facing such difficulty; or
- (e) Disruption or breakdown of production or transportation facilities, equipment, labor or materials, including, without limitation, the closing of harbors, railroads or pipelines.

For purposes of this Agreement, the term “Force Majeure” expressly excludes (i) a failure of performance of any person other than the Parties, except to the extent that such failure was caused by an event that would otherwise satisfy the definition of a Force Majeure event as set forth in this Section 10, (ii) the loss of Buyer’s market or any market conditions for any Product that are unfavorable for

Buyer or Seller, (iii) the loss of Seller's intended supply of Product, (iv) the failure of Seller's intended supplier of Product to perform, (v) the depletion of Seller's reserves of Product, (vi) any failure by a Party to apply for, obtain or maintain any permit, license, approval or right of way necessary under Applicable Law for the performance of any obligation hereunder, and (vii) a Party's inability to economically perform its obligations under this Agreement.

- 10.2 Notwithstanding the provisions of Section 10.1, nothing contained in this Agreement shall relieve a Party of its obligation to make payments when due with respect to performance prior to the occurrence of a Force Majeure event, including Buyer's obligation to pay in full the purchase price or any other amounts due for the Products actually delivered and accepted hereunder.
- 10.3 No curtailment or suspension of deliveries or acceptance of deliveries pursuant to this Section 10 shall operate to extend the Delivery Period or the term of any Transaction.
- 10.4 In the event that a Party believes a Force Majeure event has occurred that will require it to invoke the provisions in this Section 10, such Party shall use commercially reasonable efforts to give prompt verbal notice to the other Party followed by written notice within two (2) New York Banking Days following the occurrence of such event, of the underlying circumstances of the particular causes of Force Majeure, the expected duration thereof and the volume of the Products affected. The Party claiming Force Majeure shall also use commercially reasonable efforts to give the other Party notice of cessation of the Force Majeure event and the date when performance is expected to resume (subject to Section 10.3 above).
- 10.5 If sales and deliveries in respect of a Term Transaction are suspended pursuant to this Section 10 and said suspension continues for a period of thirty (30) days or more, such Term Transaction may be terminated at the option of (a) either Party, if the "Force Majeure Termination Payment" provision is specified as applicable in the Cover Sheet, or (b) the Party that is not claiming Force Majeure, if the "Force Majeure Termination Payment" provision is not specified as applicable in the Cover Sheet, in either case, by giving written notice to the other Party. If a Party terminates a Term Transaction pursuant to this Section 10.5, neither Party shall have any further liability to the other Party hereunder with respect to such Term Transaction except for (a) any payment or indemnification obligations arising in respect of the performance of such Term Transaction prior to the date of termination and (b) if the "Force Majeure Termination Payment" provision is specified as applicable in the Cover Sheet, the obligation to make a Termination Payment, if any, pursuant to such provision.
- 10.6 Notwithstanding anything to the contrary in this Agreement, (a) if an event or circumstance which would otherwise constitute or give rise to a Force Majeure event under this Section 10 also constitutes an Event of Default other than an Event of Default under Section 7.1(h), it will be treated as a Force Majeure event and not as an Event of Default; and (b) if an event or circumstance which would otherwise constitute or give rise to a Force Majeure event under this Section 10 also constitutes an Event of Default under Section 7.1(h), it will be treated as an Event of Default and not as a Force Majeure event.

11. GOVERNING LAW AND SETTLEMENT OF DISPUTES

11.1 This Agreement shall be governed by and construed in accordance with the laws of the State of New York without reference to its choice of law doctrine, but without prejudice to the provisions of § 5-1401 of the General Obligations Law of the State of New York. The Parties hereby submit to the exclusive jurisdiction of any federal court of competent jurisdiction, or, if any federal court declines to exercise or does not have jurisdiction, in any New York state court situated in New York City, Borough of Manhattan, and to service of process by certified mail delivered to the Party at its last designated address. **EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDINGS RELATING TO THIS AGREEMENT.**

11.2 The Parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

12. TAXES

12.1 Buyer Representation as to Exemption from Certain Taxes. Buyer represents that, on each date that Buyer (or Buyer's designee) takes delivery of Products under a Transaction, Buyer (or Buyer's designee, as applicable) will be registered with the appropriate federal and state governmental authorities to the extent that registration is necessary in order to engage in such Transactions exempt from excise and other Taxes (other than sales and use taxes), unless Buyer notifies Seller otherwise in writing prior to the transfer of title in respect of the relevant Products to Buyer; provided, however, that it shall not constitute an Event of Default if Buyer fails to comply with the foregoing representations and notification requirements. Should any Taxes, including penalties or interest, be imposed due to Buyer's failure (or the failure of a Buyer's designee) to obtain the foregoing registrations, whether or not it has so notified Seller, Buyer agrees to bear all of the costs associated with such failure and shall be responsible for and hold Seller harmless from such Taxes.

12.2 Evidence of Sales and Use Tax Status of Buyer. Unless Buyer delivers certificates, documents or other evidence sufficient to confirm the exempt sales and use tax status of Buyer (or Buyer's designee) or any Transaction involving Buyer for each jurisdiction in which the purchase, sale and/or delivery of any Product takes place under this Agreement, so as to enable Seller, to the extent Buyer (or Buyer's designee) or any Transaction involving Buyer is exempt from sales and use tax, to reduce or eliminate Seller's obligation for charging, collecting or remitting sales and use tax to any local, municipal, state or federal taxing authority or agency in relation to such purchase, sale or delivery, then Buyer shall be responsible for and hold Seller harmless from Taxes that arise as a result of Buyer's failure to provide such certificates, documents or other evidence.

12.3 Tax Obligations of Seller Generally. Subject to Section 12.5, Seller shall be liable for any and all Taxes with respect to the Products delivered hereunder, the taxable incident of which occurs before the transfer of title to the Products to Buyer. Nothing in this Section 12 is intended to prevent Seller from passing through such Taxes to Buyer consistent with industry practice for the Product and locations concerned.

- 12.4 Tax Obligations of Buyer Generally. Subject to Section 12.5, Buyer shall be liable for any and all Taxes with respect to the Products delivered hereunder, the taxable incident of which occurs after transfer of title to the Products to Buyer.
- 12.5 Allocation of Tax Obligations Arising Upon Transfer of Title. Any and all Taxes the taxable incident of which is the transfer of title, regardless of the character, method of calculation or measure of the levy or assessment, shall be paid by the Party upon which the Tax is imposed by the applicable taxing authority.
- 12.6 Reimbursement of Taxes. To the extent a Party (“X”) is required by Applicable Law to pay or remit certain Taxes on behalf of the other Party (“Y”) or X otherwise pays Taxes for which Y is liable, Y shall reimburse X to the extent X paid such Taxes. Y’s reimbursements of Taxes to X shall be grossed up as necessary to return to X, after payment of any taxes thereon, the amount actually paid by X.
- 12.7 Penalties and Interest. A Party will not be responsible for any penalties or interest related to the obligations of the other Party in respect of Taxes to the extent such penalties or interest accrue based on the actions or inactions of such other Party.
- 12.8 Ad Valorem Taxes. If any ad valorem or personal property taxes are assessed against Products sold under a Transaction, the Party having title to the Products at the time such tax liability is assessed shall be responsible for payment of such taxes.
- 12.9 To the extent reasonably requested by the other Party, a Party shall deliver certificates, documents or other evidence sufficient to confirm the applicable tax status of such Party for each jurisdiction in which the purchase, sale and/or delivery of any Product takes place under this Agreement.
13. MATERIAL SAFETY DATA SHEETS
- 13.1 To the extent required by Applicable Law, Seller shall provide Buyer with Seller’s Material Safety Data Sheets (“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.
14. NECESSARY LICENSES, REGISTRATIONS
- 14.1 Each Party is responsible for obtaining (or ensuring that its designee has obtained) the licenses and registrations necessary for it to perform its obligations hereunder in the jurisdictions in which the Transactions under this Agreement take place. Should any fees or other charges, including penalties or interest, be imposed due to a Party’s failure (or the failure of a Party’s designee) to obtain the foregoing licenses or registrations, the Party who fails to obtain the required licenses or registrations agrees to bear all of the costs associated with this failure and shall indemnify and hold harmless the other Party from such additional costs.

15. LIMITATION OF LIABILITY

15.1 NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY IN THIS AGREEMENT, NO PARTY SHALL BE REQUIRED TO PAY OR BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES OR FOR LOST PROFITS (WHETHER OR NOT ARISING FROM ITS NEGLIGENCE) TO ANY OTHER PARTY EXCEPT TO THE EXTENT THAT THE PAYMENTS REQUIRED TO BE MADE PURSUANT TO THIS AGREEMENT (INCLUDING PAYMENTS REQUIRED TO BE MADE PURSUANT TO SECTION 8) ARE DEEMED TO BE SUCH DAMAGES. IF AND TO THE EXTENT ANY PAYMENT REQUIRED TO BE MADE PURSUANT TO THIS AGREEMENT IS DEEMED TO CONSTITUTE LIQUIDATED DAMAGES, THE PARTIES ACKNOWLEDGE AND AGREE THAT SUCH DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE AND THAT SUCH PAYMENT IS INTENDED TO BE A REASONABLE APPROXIMATION OF THE AMOUNT OF SUCH DAMAGES AND NOT A PENALTY.

16. COMPLIANCE WITH LAW

16.1 Products delivered hereunder shall be in full compliance with all Applicable Law. The failure of the Product to conform to the requirements of Applicable Law shall excuse Buyer from further performance under the relevant Transaction and shall entitle Buyer to return the Product to Seller or take such other steps as are reasonably necessary to comply with Applicable Law.

16.2 Seller and Buyer shall comply with Applicable Law in the performance of their respective obligations under this Agreement and each Transaction. Each Party also shall immediately notify the other Party in writing of any violation or alleged violation with respect to the Product sold in a Transaction and, upon reasonable request, shall provide the other with evidence of environmental inspections or audits by any governmental agency with respect to such Product.

16.3 RBOB. Seller and Buyer shall comply with all federal, state and local regulations for reformulated gasoline blendstock for oxygenate blending ("RBOB") in respect of any Transaction involving delivery of RBOB, including but not limited to regulations found at 40 C.F.R. §§ 80.65 through to 80.89 as may be revised or amended from time to time. Buyer agrees that pursuant to 40 C.F.R. § 80.69(a)(5), title to a Product that is RBOB may be transferred only to an oxygenate blender who is registered with the U.S. EPA as such, or to an intermediate owner with the restriction that the Product shall only be transferred to a registered oxygenate blender. Pursuant to 40 C.F.R. § 80.69(a)(6), Buyer hereby agrees to have a contract with the oxygenate blender, or a contract with an intermediate owner, that requires the intermediate owner to require the oxygenate blender to (or, if Buyer is the oxygenate blender, Buyer shall):

(a) Blend Seller's RBOB with oxygenate in accordance with Seller's written instructions regarding blending procedures that are calculated to assure blending with the proper oxygenate type and amount of oxygenate;

(b) Allow Seller (or the refiner or importer of the relevant Product) to conduct quality assurance, sampling and testing as required in 40 C.F.R. § 80.69(a);

(c) Stop selling any gasoline found to not comply with the standards under which the RBOB was produced or imported; and

(d) Allow Seller to obtain samples of reformulated gasoline produced from Seller's RBOB subsequent to the addition of oxygenate and prior to combining the resulting gasoline with any other gasoline in accordance with 40 C.F.R. § 80.

17. NEW OR CHANGED REGULATIONS

17.1 Material Adverse Effect. If this Section 17.1 is specified as applicable in the Cover Sheet, then the following provision shall apply to Transactions under this Agreement:

If at any time after a Transaction is entered into new Applicable Laws are enacted or existing Applicable Laws are amended, which individually or collectively could reasonably be expected to have a material adverse effect upon the rights and obligations of a Party (the "Affected Party") as a whole under a particular Transaction (an "Affected Transaction") and which do not constitute a Force Majeure event, then the Affected Party may notify the other Party that it desires in good faith to renegotiate the Price or other material terms or conditions so affected in order to appropriately pass through or otherwise address the effects of the new or changed Applicable Laws. Such notice shall state the new or changed Applicable Law upon which the Party's renegotiation request is based and the terms upon which it is willing to continue to perform the Transaction with respect to any Products not yet delivered. The Parties shall negotiate in good faith any price adjustments that may be warranted to account for any incremental costs involved in complying with a Governmental Authority's change in required Product specifications subsequent to the date of a nomination and prior to the commencement of the scheduled Delivery Period.

17.2 If the price of a Transaction is based on an industry reference index (the "Original Index") that ceases to be published or is not published for any period applicable to calculation of the Reference Price of the Transaction (in which case such Transaction will be deemed an Affected Transaction), the Parties shall in good faith (a) select an alternative index that reflects as nearly as possible the same information as published in the Original Index; or (b) negotiate an interim Reference Price for the Transaction until the Original Index recommences publishing or an alternative index can be identified to replace the Original Index.

17.3 If the Parties do not agree upon new prices or terms satisfactory to both within thirty (30) days of (a) a Party's request to initiate negotiations between the Parties pursuant to Section 17.1 or (b) the failure of an Original Index to publish as described in Section 17.2, as applicable, either Party shall have the right to terminate all Affected Transactions that may legally be terminated at the end of the thirty (30) day period, in

which case each Party shall determine the Termination Payment that would be payable with respect to Affected Transactions as though it were the Performing Party in accordance with Section 8 above. The Termination Payment payable with respect to Affected Transactions will be an amount equal to the sum of (i) one-half of the difference between the Termination Payments calculated by the two Parties, and (ii) the lesser of such two Termination Payments. Any Products delivered during the thirty (30) day period shall be sold and purchased at the price and on the terms set forth in the Confirmation without any price adjustment in respect of the new or changed Applicable Law concerned.

18. PIPELINE TARIFF RECOVERY

18.1 In the event that Buyer and Seller agree that Seller shall deliver the Product at a location other than the Delivery Location, then (a) if such delivery results in increased transportation costs for Seller, Buyer agrees to pay Seller, for the volume delivered, the pipeline tariff differential between the Delivery Location and the agreed delivery point, based on the applicable pipeline tariff tables in effect for such pipeline on the date of delivery, or (b) if such delivery results in reduced transportation costs for Seller, Seller shall, for the volume delivered, reduce the amount due for such delivery by an amount equal to the pipeline tariff differential between the Delivery Location and the agreed delivery point, based on the applicable pipeline tariff tables in effect for such pipeline on the date of delivery.

19. ASSIGNMENT

19.1 This Agreement shall not be assigned, in whole or in part, by either Party without the prior written consent of the other Party, such consent not to be unreasonably withheld. Any assignment in violation of this provision shall be void and of no legal effect. Subject to this Section 19.1, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

20. NON-WAIVER

20.1 No waiver by either Party of any breach by the other Party of any of the covenants or conditions of this Agreement shall be construed as a waiver of any succeeding breach of the same or of any other covenant or condition hereof.

21. ENTIRE AGREEMENT; AMENDMENTS

21.1 No statement or agreement, oral or written, made prior to the signing of this Agreement, shall vary or modify the written terms hereof. Neither Party shall claim any amendment to, modification of, or release from any provisions of this Agreement, unless such amendment, modification or release is in writing, is signed by the Parties and specifically states that it is an amendment to, modification of, or release from this Agreement or one or more Transactions.

22. NOTICE

22.1 All notices and other communications under this Agreement shall be deemed given on the date of the addressee's receipt thereof and shall be given only in writing by letter, facsimile or electronic data transmission.

23. WRITTEN CONFIRMATIONS

23.1 The Parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation may be generated electronically by an electronic confirmation matching service or be executed and delivered in counterparts (including by facsimile transmission or by other means agreed between the Parties), which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement.

23.2 Absent the availability of an electronic confirmation matching service, the Confirming Party shall confirm a Transaction by forwarding a written Confirmation to the other Party (via facsimile or other means agreed between the Parties) within three (3) New York Banking Days after the Transaction is entered into between the Parties. If the other Party objects to any term(s) of such written Confirmation, it shall notify the Confirming Party in writing of such objection within three (3) New York Banking Days of the other Party's receipt thereof, failing which the other Party shall be deemed to have accepted such terms.

(a) If the Confirming Party fails to send a written Confirmation within three (3) New York Banking Days after the Transaction is entered into between the Parties, a written Confirmation may be forwarded by the other Party to the Confirming Party. If the Confirming Party objects to any term(s) of such written Confirmation, it shall notify the other Party of such objection within three (3) New York Banking Days of the Confirming Party's receipt thereof, failing which the Confirming Party shall be deemed to have accepted such terms.

(b) If each of the Parties sends a written Confirmation and neither Party objects to the other Party's written Confirmation within three (3) New York Banking Days of receipt of such written Confirmation, the Confirming Party's written Confirmation shall be deemed to be accepted and shall be the controlling written Confirmation, unless (i) the Confirming Party's written Confirmation was sent more than three (3) New York Banking Days after the Transaction was entered into and (ii) the other Party's written Confirmation was sent prior to the Confirming Party's written Confirmation, in which case the other Party's written Confirmation shall be deemed to be accepted and shall be the controlling written Confirmation. Failure by either Party to send or return an executed, written Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

23.3 The Parties agree that, in the event any Party includes non-economic terms in any Confirmation, such terms shall not be deemed to be accepted pursuant to this Section 23 unless the other Party agreed to such terms in writing.

24. REPRESENTATIONS

24.1 Each Party represents and warrants to the other Party, as of the date of this Agreement and as of the date of each Transaction, that:

- (a) It is an “eligible commercial entity” and an “eligible contract participant” as defined in §§ 1a(11) and 1a(12) of the Commodity Exchange Act, as amended.
- (b) It has the corporate, governmental or other legal capacity, authority and power to execute, deliver and perform this Agreement and each Transaction, and has taken all necessary action to duly authorize the foregoing.
- (c) Its obligations pursuant to this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors’ rights generally and subject, as to enforceability, to equitable principles of general application regardless of whether enforcement is sought in a proceeding in equity or at law).
- (d) It is not relying upon any representations of the other Party other than those expressly set forth in this Agreement or, with respect to a particular Transaction, in the applicable Confirmation.
- (e) It has entered into this Agreement and each Transaction as principal (and not as advisor, agent, broker or in any other capacity, fiduciary or otherwise) and with a full understanding of the material terms and risks of this Agreement and each Transaction, and has made its own independent decision to enter into this Agreement and each Transaction and as to whether this Agreement and each Transaction is appropriate or suitable for it based upon its own judgment and upon advice from such advisors as it has deemed necessary and it is capable of assuming those risks.
- (f) It has made its trading and investment decisions, including regarding the suitability thereof, based upon its own judgment and any advice from such advisors, as it has deemed necessary and not in reliance upon any view expressed by the other Party and is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice) this Agreement and each Transaction, understands and accepts the terms, conditions and risks of this Agreement and each Transaction, and is capable of assuming, and assumes, the risks of this Agreement and each Transaction.
- (g) In respect of this Agreement and any Transaction, the other Party (i) is acting solely in the capacity of an arm’s-length contractual counterparty, (ii) is not acting as a financial advisor or fiduciary or in any similar capacity for or on its behalf and (iii) has not given to it any assurance or guarantee as to the expected performance or result of this Agreement or any Transaction.

25. INDEMNITY

25.1 Each Party agrees to protect, defend, indemnify and hold the other Party harmless from and against any and all claims, demands, suits, losses, expenses (including reasonable costs of defense, attorneys’ fees and interest), damages, fines, penalties,

causes of action and liabilities of every type and character, including personal injury or death to any person (including employees of either Party) or loss or damage to any personal or real property, caused by, arising out of or resulting from (a) the negligence (whether by action or omission) or willful misconduct of such indemnifying Party, its officers or employees with respect to the purchase and sale of Products hereunder or (b) a breach of its warranties under any Transaction or its failure to comply with Applicable Laws. In the event the Parties are jointly or concurrently negligent, each Party shall indemnify the other Party to the extent of its negligent acts or omissions or willful misconduct.

26. MISCELLANEOUS

26.1 Severability. If any Governmental Authority of competent jurisdiction declares any provision of this Agreement unlawful, void or unenforceable, such provision will not invalidate, void or make unenforceable any other provision of this Agreement. The remaining terms and conditions shall remain in full force and effect, and the Parties will negotiate in good faith to reform this Agreement in order to give effect to the original intention of the Parties.

26.2 Recording of Conversations. Each Party (a) consents to the recording of telephone conversations between the trading, marketing and other relevant personnel of the Parties in connection with this Agreement or any Transaction, and (b) agrees to obtain any necessary consent of and give any necessary notice of such recording to its relevant personnel.

26.3 No Third Party Beneficiaries. Nothing expressed or implied in this Agreement is intended to create any rights, interests, obligations or benefits under this Agreement in any person other than the Parties and their respective successors and permitted assigns.

27. TERMINATION

27.1 If no Transactions are outstanding under this Agreement, this Agreement may be terminated by either Party upon thirty (30) days' prior written notice of a Party's decision to terminate.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[Letterhead of Sending Party]

Format of Confirmation for **[Purchase/Sale]** of **[Type of Product]**

FAX:

TO:

ATTN:

FROM:

SUBJ:

DATE:

CONTRACT NO:

TRADE DATE:

WITH:

[BROKER REF:]

This "Confirmation" evidences the terms of the binding agreement reached between Seller and Buyer (each a "Party" and collectively, the "Parties") as of the Trade Date specified above. This Confirmation, and the *LEAP Master Agreement for Purchasing and Selling Refined Petroleum Products and Crude Oil* (the "Agreement"), dated as of [●] between Seller and Buyer, which is incorporated herein, together constitute the Parties' entire agreement as to the Transaction contemplated hereunder and supersedes all prior communications between the Parties and any broker's confirmation. Capitalized terms used herein and not defined herein shall have the meaning given to such terms in the Agreement.

1. SELLER:
2. BUYER:
3. PRODUCT:
4. GRADE:
5. QUANTITY: [●] BARRELS.
6. DELIVERY LOCATION: [FOB][FIP] [INSERT NAME OF APPLICABLE PIPELINE] BASIS [SPECIFY PIPELINE DELIVERY POINT]/DELIVERED AT [EX-PIPE] [INSERT NAME OF POINT OF WITHDRAWAL]. [FOR BUCKEYE TRANSACTIONS: THE PARTIES AGREE THAT, WITH RESPECT TO THIS TRANSACTION, OIL PRODUCT SHALL NOT BE DELIVERABLE VIA BARGE.]
7. [TRANSFER OF TITLE AND RISK OF LOSS: [IF THE PARTIES WISH TO VARY THE PROVISIONS OF SECTION 2.2 OF THE AGREEMENT, INSERT REVISED LANGUAGE HERE.]]

8. DELIVERY PERIOD:

9. PRICE: [FIXED PRICE][INSERT REFERENCE PRICE]

[FIXED PRICE: [\$[●] PER [GALLON/BARREL]].]

[REFERENCE PRICE: [INSERT REFERENCE PRICE/PRICE SOURCE] [INSERT PRICING DATES] [INSERT AVERAGING METHOD]]

10. CYCLE/BATCH:

11. [DELIVERY METHOD: [PIPELINE][[BOOK/STOCK/INVENTORY] TRANSFER]]

12. [PTO: [IF NECESSARY, INSERT ANY SPECIFIC DOCUMENTATION REQUIREMENT THAT IS NOT CAPTURED BY THE DEFINITION OF "PTO" IN SECTION 1.1 OF THE AGREEMENT]]

13. [EFP PROVISIONS

FUTURES CONTRACT: [INSERT TICKER SYMBOL (E.G., "CL" OR "RB")]

FUTURES CONTRACT PRICE: [INSERT FIXED PRICE]

FUTURES CONTRACT DATE: [INSERT DATE]

DELIVERY DATE:]

14. ADDITIONAL TERMS:

Please confirm that this Confirmation correctly sets forth the terms of this Transaction by returning an executed copy by facsimile to **[Sending Party]** at [●].

Regards,

[INSERT NAME OF SENDING PARTY]

By: _____

Name: _____

Title: _____

Date: _____

CONFIRMED FOR ACCURACY:

[INSERT NAME OF RECEIVING PARTY]

By: _____

Name: _____

Title: _____

Date: _____

