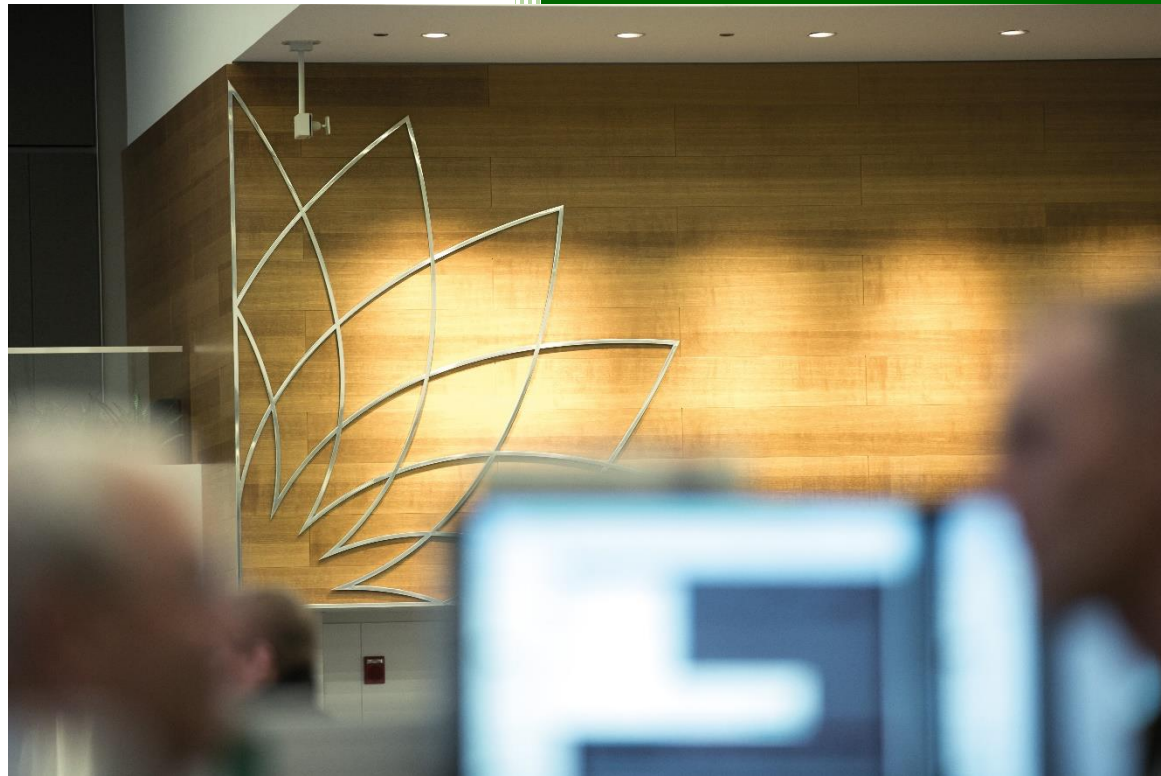




**BP Global Oil Americas General Terms and Conditions for
Purchases and Sales of Crude Oil, Refined Petroleum and
Related Products**



2020 Edition version 1.1

**BP Global Oil Americas
General Terms and Conditions for
Purchases and Sales of Crude Oil, Refined Petroleum,
and Related Products**

2020 Edition

Version 1.1

This version cancels and supersedes the first edition BP Global Oil Americas General Terms and Conditions for Purchases and Sales of Crude Oil, Refined Petroleum, and Related Products 2020 Edition (the “First Edition GTCs”). Please disregard the First Edition GTCs. Any reference in the Special Provisions to BP GTCs 2020 Edition shall be a reference to this Version 1.1.

INDEX

| | | | |
|------------|---|---|---------|
| Section 1 | - | Definitions and Interpretation | Page 1 |
| Section 2 | - | Representations and Warranties | Page 4 |
| Section 3 | - | Quality and Claims In Respect of Quality/Quantity | Page 4 |
| Section 4 | - | Destination | Page 5 |
| Section 5 | - | Taxes | Page 5 |
| Section 6 | - | Payment | Page 7 |
| Section 7 | - | Financial Responsibility | Page 11 |
| Section 8 | - | Force Majeure | Page 11 |
| Section 9 | - | Limitation of Liability and Indemnity | Page 13 |
| Section 10 | - | Time Bar | Page 14 |
| Section 11 | - | Default and Liquidation; Setoff | Page 14 |
| Section 12 | - | Compliance with Applicable Law | Page 16 |
| Section 13 | - | General Savings Clause | Page 17 |
| Section 14 | - | Assignment | Page 17 |
| Section 15 | - | Notices | Page 18 |
| Section 16 | - | Severability, Rules and Regulations | Page 18 |
| Section 17 | - | Survivability | Page 18 |
| Section 18 | - | Consents | Page 19 |
| Section 19 | - | Conflicts and Interpretation | Page 19 |
| Section 20 | - | Amendment | Page 19 |
| Section 21 | - | Waiver | Page 19 |
| Section 22 | - | Telephone Recordings | Page 19 |
| Section 23 | - | Entire Agreement | Page 19 |
| Section 24 | - | Trademarks | Page 19 |
| Section 25 | - | Counterparts | Page 19 |
| Section 26 | - | Governing Law | Page 19 |
| Section 27 | - | Arbitration | Page 20 |
| Section 28 | - | Sovereign Immunity | Page 20 |
| Section 29 | - | Business and Human Rights | Page 20 |
| Appendix A | - | Supplement for Electronic Documents | Page 21 |
| Appendix B | - | Documentary Letter of Credit | Page 23 |
| Appendix C | - | Standby Letter of Credit | Page 26 |
| Appendix D | - | Parent Company Guaranty | Page 28 |

**BP Global Oil Americas
General Terms and Conditions for
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and Related Products (2020 Edition)**

Section 1. Definitions and Interpretation

1.1 In addition to terms defined elsewhere in the Agreement, the following terms shall have the meanings specified below when capitalized throughout the Agreement:

“Affiliate” means, with respect to any entity, any other entity that, directly or indirectly controls, or is controlled by, or is under common control with, such entity. For this purpose, **“control”** means the power, directly or indirectly, to cause the direction of the management and/or policies of an entity, whether through the ownership of voting securities, by contract, or otherwise.

“Agreement” means the Special Provisions, any applicable Appendices, and these GTCs.

“Applicable Law” means any international, federal, state, regional, provincial 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, and/or coast guard, port authority or Terminal regulation, in each case applicable to either Party or either Party’s performance under any transaction, and any amendments or modifications to the foregoing.

“Approved Industry Practice” means the measurement, sampling and analysis activities and methods of a standard no less than those published by the American Petroleum Institute (**“API”**) in the Manual of Petroleum Measurement Standards (**“MPMS”**) or as published by ASTM International, formerly known as the American Society for Testing and Materials (**“ASTM”**), in each case in effect at the time of the relevant measurement, sampling, or analysis.

“Business Day” means a day other than a Saturday or Sunday when federal banks are open for business in New York, New York.

“CFR”, **“CIF”**, **“DAP”**, **“DDP”**, **“FCA”**, and **“DPU”** shall each have the meaning given to it in Incoterms® 2020, except as modified by the Agreement.

“DAT” shall have the meaning given to it in Incoterms® 2010, except as modified by the Agreement.

“Delivery Period” means the period set out in the Special Provisions during which the Seller shall make the Goods available to the Buyer.

“DES” shall have the meaning given to it in Incoterms® 2000, except as modified the Agreement.

“Environmental Attributes” means any quality or characteristics of the Goods, the environmental impact associated with the source materials, production, transportation and/or use of the Goods, or the capture or recycling or reuse of any emissions, byproducts, waste or residues therefrom, that: (i) is eligible, alone or in combination with other items to generate any emissions, renewable energy credits, benefits, offsets and allowances, emission reduction credits or words of similar import or regulatory effect in accordance with any emissions trading, voluntary, compliance, or other similar programs established by any governmental or non-governmental entities, or (ii) is subject to compliance obligations under law or regulations established by any Governmental Authority.

“Ex Tank”, **“Into Tank”** and **“In Situ”** shall have the meaning given to it in BP Global Oil Americas Pipeline and Tank Provisions (2020 Edition).

“FOB” shall: (i) for Goods transported by Vessel, have the meaning given to it in Incoterms® 2020, except as modified by BP Global Oil Americas Marine Provisions (2020 Edition); and (ii) for Goods transported by pipeline, rail, or truck, have the meaning given to it in Article 2 of the Uniform Commercial Code, except as modified by these GTCs.

“Force Majeure Event” shall have the meaning given to it in Section 8 of these GTCs.

“Goods” means those goods, whether crude oil, refinery feedstock, refined petroleum products, ethanol, RINs, or otherwise that are the subject of a transaction to which these GTCs are made applicable, as more fully set out in the relevant Special Provisions.

“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.

“GTCs” means these BP Global Oil Americas General Terms and Conditions for Purchases and Sales of Crude Oil, Refined Petroleum, and Related Products (2020 Edition).

“Indirect Taxes” includes, but is not limited to, federal, state or local excise taxes, sales and use taxes, ad valorem taxes, motor fuel taxes, gross receipts taxes, franchise taxes, environmental taxes and also includes types of indirect taxes assessed in any foreign country.

“Inland Barge” means any combination of boats and barges with the ability to function as a flotilla or as single units which are certified to operate only within the U.S. inland waterways.

“Inspector’s Report” means any licensed inspector’s report, certificate of quantity and quality, or other equivalent document with respect to the Goods issued by an inspector in accordance with Approved Industry Practice.

“Laydays” shall have the meaning given to it in the BP Global Oil Americas Marine Provisions (2020 Edition).

“Measurement” means the measurement of the quantities of the Goods and the taking of and analysis of samples for the purposes of determining the compliance of the Goods with the quality and quantity provisions of the Special Provisions.

“MSDS” means a material safety data sheet, as defined under Applicable Law.

“NOR” means the notice of readiness submitted by the Vessel’s master or its agent when the Vessel arrives at the Terminal, confirming that: (i) the Vessel has arrived at the Terminal, (ii) has completed all formalities, including any required coastguard inspections; and (iii) is in all ways ready, legally and operationally, to proceed to the berth and commence cargo operations. The Vessel will be considered to have arrived at the Terminal when it is at the customary berth, anchorage or fleeting area. If these conditions are not met, the NOR shall be considered invalid and the Vessel must re-tender NOR when the conditions for validity are met.

“Ocean-Going Barge” means an ocean-going barge that is a nonself-propelled vessel of at least 100 gross tons making voyages beyond the Boundary Line (as defined in 46 CFR Part 7).

“Party” means either the Seller or the Buyer to the Agreement and, collectively, the Seller and the Buyer shall be referred to as the **“Parties”**.

“Payment Date” means the date payment under this Agreement is due.

“Public Official” shall include (i) any minister, civil servant, director, officer or employee or other official of any government or any department, agency or body, and/or of any government-owned or controlled company, any company or enterprise in which a government owns an interest of more than thirty percent, and/or of any public international organization; (ii) any person acting in any official, legislative, administrative or judicial capacity for or on behalf of any government department, agency, body, or public international organization, including without limitation any judges or other court officials, military personnel and customs, police, national security or other law enforcement personnel; and (iii) any close family member of any of the foregoing.

“Qualified Institution” means either: (i) a commercial bank or trust company organized under the laws of the U.S. or a political subdivision thereof, that has: (1) at least an A- Long Term Rating Issued by Standard & Poor’s Ratings Group and an A3 Deposit Rating issued by Moody’s Investor Services, Inc.; (2) total equity of at least ten billion US Dollars (\$10,000,000,000); and (3) not exceeded any of Secured Party’s internal credit limits in place at the time of the establishment of the letter of credit; or (ii) a first class international bank reasonably acceptable to the Secured Party.

“Receiving Party” means the customers, carriers, or other designees of the Buyer which receive the Goods delivered by the Seller to the Buyer under this Agreement.

“Restricted Jurisdiction” means any country, state, territory or region against which there are sanctions imposed by the United States, United Kingdom, United Nations or any other sanctions specified in the Special Provisions which prohibit, restrict, or condition the shipment through or thereto of the Goods.

“Setoff” as used herein means setoff, offset, combination of accounts, right of retention or withholding, or any similar right or requirement to which the Liquidating Party is entitled or subject to (whether arising under this Agreement, another contract, Applicable Law or otherwise) that is exercised by, or imposed on, the Liquidating Party.

“Special Provisions” means the commercial terms and/or any other terms and conditions of the Parties’ agreement.

“Tanker” means any self-propelled tanker which is certified for ocean service.

“Terminal” means any refinery or terminal facility, single point mooring, single buoy mooring, or Vessel delivering Goods to or receiving Goods from a Vessel.

“Trading Hub” means a point at which there is a regular market for the purchase and sale of goods of the same kind as the Goods, with multiple buyers and sellers, including: (a) major common carrier pipelines; and (b) public Terminals with water or common carrier pipeline access.

“USMCA” means the U.S.-Mexico-Canada Agreement, which is the trade agreement entered into between Canada, Mexico and the United States of America, as may be amended from time to time and shall include any successor trade agreement executed between such countries.

“Vessel” means Tankers, Inland Barges and Ocean-Going Barges.

“Worldscale” means the international freight index applying to the carriage of oil and oil products in bulk by tanker as promulgated by Worldscale Association (London) Limited and Worldscale Association (NYC) Inc. or any successor thereto, in effect as of the date of the Agreement.

1.2 In construing this Agreement, and except where the context otherwise requires, the following principles shall be followed:

1.2.1 words denoting the singular include the plural and vice versa; words denoting any gender include all genders; and words denoting persons include firms and corporations and vice versa; and

1.2.2 the words “include” and “including” shall mean “include” or “including without limiting the generality thereof”, and are used in an illustrative sense and not a limiting sense; and

1.2.3 reference to a Section shall mean a section of these GTCs, and reference to a particular Applicable Law, form, or contract, shall be construed to refer to such Applicable Law, form, or contract as the same shall be amended, supplemented, restated, or superseded.

Section 2. Representations and Warranties

2.1 At the time specified for title in the Goods to transfer to the Buyer, the Seller hereby represents and warrants that the Buyer receives marketable title in the Goods, free and clear of any liens or encumbrances, and that the Seller has full right and authority to transfer such title and effect delivery of such Goods to the Buyer.

2.2 Each Party represents and warrants to the other that unless otherwise stipulated in the Special Provisions, each Party is acting under this Agreement as a principal and not as an agent.

Section 3. Quality and Claims In Respect of Quality/Quantity

3.1 Quality:

3.1.1 The sole quality specifications for the Goods shall be those contained in the Special Provisions (but modified in the case of a transaction governed by BP Global Oil Americas Pipeline and Tank Provisions, to the extent necessary to meet any minimum or maximum specification of the relevant pipeline to allow for the contemplated delivery), provided that where there are no quality provisions in the Special Provisions, the quality of the Goods shall, in the case of:

(a) crude oil delivered by or to a Vessel, meet the usual production grades at the time of sale;

or

(b) Goods other than crude oil, meet the latest industry specifications,

provided however, that in no circumstance shall the Goods contain any deleterious substances or concentrations of any contaminants that may make the Goods either commercially unacceptable in general industry application or, where relevant, render it a lower grade.

3.1.2 EXCEPT AS MAY BE EXPRESSLY PROVIDED ELSEWHERE IN THE AGREEMENT, THERE ARE NO REPRESENTATIONS, GUARANTEES OR WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS, OR SUITABILITY OF THE GOODS FOR ANY PARTICULAR PURPOSE, OR OTHERWISE, WHICH EXTEND BEYOND THE FOREGOING.

3.2 Claims In Respect of Quality/Quantity:

3.2.1 Except as set forth in Section 3.2.3, any complaint of deficiency of quantity or non-conformity of nonenvironmental quality of the Goods (subject to BP Global Oil Americas Marine Provisions (2020 Edition) Section 2.3) under or relating to the Agreement, must be delivered in writing: (a) by the complaining Party to the other Party within ninety (90) days of the date of title transfer; and (b) must be accompanied by supporting documentation and reasonable details of the facts on which the claim is based. Any claim submitted that does not satisfy the requirements specified in the preceding sentence shall be deemed waived.

3.2.2 For waterborne Goods, no claim shall be admitted in respect of any deficiency of quantity where the difference between the loaded and discharged quantity is 0.3 (zero point three) percent of the loaded quantity or less.

- 3.2.3 For the avoidance of doubt, the time period in which to submit a claim as set forth in Section 3.2.1 shall not apply to any claims of deficiency, errors or omissions, whether or not intentional, with respect to the Environmental Attributes of the Goods, if any, and any certificates, mandatory or voluntary reporting to any Governmental Authority, documentation, evidence, path tracing or other documentation used to establish or create them. The requirement to provide supporting documentation in support of a claim shall not require the complaining Party to supply documents which the Party against which the claim is made was supposed to have created or provided.

Section 4. Destination

- 4.1 It is a condition of the Agreement that the Goods shall not be imported (by the Buyer or others), directly or indirectly and irrespective of means, to any destination which is at the time of such import prohibited under Applicable Law. The Buyer shall keep itself informed as to such Applicable Law.
- 4.2 The Buyer acknowledges that, as of each trade date and any subsequent delivery date, it is informed of all such Applicable Laws.
- 4.3 The Buyer undertakes that the Goods deliverable hereunder shall not:
- 4.3.1 be exported to any Restricted Jurisdiction;
 - 4.3.2 be sold or supplied to any natural or legal person in any Restricted Jurisdiction; or
 - 4.3.3 be sold or supplied to any natural or legal person for the purposes of any commercial activity carried out in or from any such Restricted Jurisdiction.
- 4.4 For waterborne Goods, to enable the Seller to comply with Applicable Law, the Buyer, on request from the Seller, shall provide the Seller with the legally necessary documentation so required by the Seller. Such documentation shall be provided within thirty (30) days of the date of request or within such lesser period as required by Applicable Law. The obligations of the Buyer to comply with such requirement shall not be affected by any sale or disposal of the Goods in question by the Buyer.
- 4.5 In the event of any failure to comply with such undertakings, or if the Seller has reasonable grounds for believing that such undertakings will not be complied with and will subject the Seller to regulatory, customs, governmental or other action as a result, the Seller may (without prejudice to its other rights), upon notice to the Buyer, suspend performance and demand adequate assurance pursuant to its rights under the Uniform Commercial Code, or decline to commence or complete loading.

Section 5. Taxes

- 5.1 The Buyer's responsibilities:
- 5.1.1 The Buyer shall be responsible for and indemnify the Seller for:
- (a) any Indirect Taxes, duties, imposts, fees, charges and dues of every description imposed or levied by any governmental, local or Terminal authority on the Goods supplied hereunder, or on its export, purchase, delivery, transportation, ownership, sale or use, in respect of any time after title and risk in such Goods has passed to the Buyer;
 - (b) the New York Motor Fuel Excise Tax, the Tennessee Fuel tax, or any similar motor fuel and sales/use taxes that have been prepaid by the Seller but are to be passed on to the Buyer in accordance with industry practice; and
 - (c) any Quebec Motor Fuel Tax incurred on Goods delivered into Quebec regardless as to:
 - (i) which Party arranges for the carriage of the Goods; (ii) where title and risk of loss

passes; or (iii) whether the Seller passes title and risk of loss for such Goods to the Buyer.

5.1.2 In respect of any:

- (a) waterborne FOB transaction, any taxes, dues and imposts of every description incurred in respect of the Vessel at the load Terminal, shall be for the account of the Buyer; and
- (b) any CIF/CFR transaction, any taxes, dues and imposts of every description incurred in respect of the Vessel at the discharge Terminal (except for any specified in Worldscale as being for the Vessel owner's account), shall be for the account of the Buyer;

and the Seller's right to require reimbursement of these amounts is limited only by the relevant statute of limitations.

5.1.3 Where Applicable Law or regulation imposes upon the Seller the obligation to collect any Indirect Taxes, the Buyer shall promptly reimburse the Seller for the amount of such Indirect Taxes, less any applicable allowances, unless the Buyer, in advance, has provided the Seller with documentation of applicable licenses or exemption certificates. The Buyer must reimburse the Seller for any Indirect Taxes that the Seller must pay due to subsequent discovery of taxability or under audit by any taxing authority, including any interest, penalties and costs in respect thereto. The Seller's right to require reimbursement of Indirect Taxes is limited only by the relevant statute of limitations.

5.2 The Seller's responsibilities:

5.2.1 Subject always to Section 5.1, the Seller shall be responsible for and indemnify the Buyer for:

- (a) any Indirect Taxes, duties, imposts, fees, charges and dues of every description imposed or levied by any governmental, local or Terminal authority on the Goods supplied hereunder, in respect of any time prior to title and risk in such Goods passing to the Buyer; and
- (b) any income, franchise or other type of direct tax that may inure to the Seller as a result of this transaction including the "Business and Occupation Tax" levied by the State of Washington or any political subdivision of the State of Washington.

5.2.2 In respect of any deliveries by Vessel, any taxes, dues and imposts of every description incurred in respect of the Vessel at the discharge Terminal shall be for the Seller's account and the Buyer's right to require reimbursement of these amounts is limited only by the relevant statute of limitations.

5.3 If gasoline, diesel, or kerosene (including aviation fuel) is sold or purchased hereunder, each Party represents that it is appropriately registered with the Internal Revenue Service for the purpose of the federal manufacturers excise tax. Each Party also represents that it holds the applicable state tax registrations to purchase, use, resale, transport or handle the Goods.

5.4 Upon the Seller's request or upon any change in registration or exemption status in any taxing jurisdiction where the Buyer conducts business, the Buyer shall deliver to the Seller the appropriate state registration number, the Buyer's federal employer identification number and/or amended exemption certificates. The Buyer shall deliver such notifications to the Seller within thirty (30) days of such request or change in registration or exemption status or the Seller will invoice the Buyer for applicable taxes and the Buyer shall be responsible for and indemnify the Seller for any costs, penalties or additional taxes that result from the Buyer's failure to comply with its obligations pursuant to this Section 5.4.

5.5 When one Party makes payments to be reimbursed by the other Party, the paying Party shall use its best efforts to verify the correctness of the charges and to pay only the minimum amount due. There shall be

no reimbursement for penalties or interest incurred as the result of the paying Party's negligence. If applicable, federal oil spill tax may be billed as a separate line item on the invoice.

- 5.6 Save as otherwise specifically set out in the Special Provisions or for any sales DDP, the Seller shall in no instance be the importer of record but shall be responsible for ensuring that the Buyer is provided with all necessary documentation required to comply with customs and excise entry procedures at the discharge Terminal and all duties and taxes that arise in respect of such customs and excise entry shall be for the Buyer's account.
- 5.7 For all transactions of Goods at either the Mexican/USA or Canadian/USA borders (as the case may be), unless otherwise stipulated in the Special Provisions, the Goods are deemed not eligible for USMCA preferential tariff treatment, except where the Seller (a) has provided, prior to or at the time the trade is entered into, appropriate documentation necessary to substantiate that such Goods are eligible for USMCA preferential tariff treatment, or (b) warrants that such Goods qualify as "2710: Petroleum oils and oils obtained from bituminous minerals, other than crude" under the US Harmonized Tariff Schedule.

Where the Special Provisions stipulate that the Goods qualified for USMCA preferential tariff treatment and the Goods are subsequently found to be ineligible for USMCA preferential tariff treatment, the Seller shall reimburse the Buyer for any customs duties, taxes, fees, interest and penalties incurred by the Buyer as a result of such Goods being found to be ineligible for USMCA preferential tariff treatment provided that:

- 5.7.1 the Buyer provided timely notice to the Seller that the relevant customs authority ("Customs") was challenging the Buyer's claim for USMCA preferential tariff treatment so that the Seller could respond to Customs' challenge adequately and in a timely fashion;
- 5.7.2 whether at the Seller's request or otherwise, the Buyer filed an adequate and timely response to Customs' challenge;
- 5.7.3 the Buyer permitted the Seller to assume control and direction of a part or all, as determined by the Seller, of the handling and response to Customs' challenge including audit enquiries, appeals, litigation and any other proceedings in connection therewith and provided all reasonable cooperation requested by the Seller of the Buyer; and
- 5.7.4 the Buyer made no act or omission to prejudice or otherwise adversely affect the eligibility of the Goods, or the claim, for USMCA preferential tariff treatment.

Section 6. Payment

- 6.1 Payment for the Goods shall be made against presentation to the Buyer of the Seller's Invoice. Except as expressly provided elsewhere in the Agreement, payment shall be made by the Buyer to the Seller without any discount, deduction, withholding, offset or counterclaim by wire transfer of same day funds on or before the Payment Date. Where any Applicable Law requires a deduction or withholding in respect of tax to be made, the Buyer shall inform the Seller of that requirement and shall pay such additional amount to the Seller as will ensure that the net amount received by the Seller is equal to the full amount that the Seller would have received had the deduction or withholding not been required.
- 6.2 Payment Documents:
- 6.2.1 Payment for the Goods shall be made against presentation to the Buyer of the invoice referred to in Section 6.3 and, subject to Section 6.2.2 below:
- (a) For all pipeline deliveries, a copy of the pipeline ticket containing the information identifying the transaction, the net volume transferred and the quality of the Goods, as issued by the relevant Terminal or pipeline operating company.

- (b) For DAP, DPU, DAT, FOB and FCA truck or rail deliveries, bill of lading, weight ticket/meter ticket or a copy of the monthly statement issued by ExTex (or any successor or substitute company), or other equivalent documents as applicable detailing the amounts due on the Goods.
- (c) For Ex Tank, Into Tank, In Situ deliveries, a copy of the certificate of quantity and quality (or equivalent documents) for the Goods issued at the relevant Terminal/pipeline facility.
- (d) For all marine deliveries, pursuant to Section 11 of BP Global Oil Americas Marine Provisions (2020 Edition).

6.2.2 Where the Parties have agreed in the Special Provisions that electronic documents shall be used, the provisions of Appendix A shall also apply.

6.3 The Seller's Invoice:

6.3.1 The Seller's invoice shall be prepared, unless otherwise agreed, on the basis of:

- (a) for all deliveries other than those set out in Section 6.3.1(b), the certificate of quantity and, where applicable, quality (or equivalent document in respect of the Goods issued at the load Terminal); or
- (b) in the case of delivery by Vessel, the Inspector's Report at the discharge Terminal.

6.3.2 Where the applicable pricing mechanism or the availability of discharge quantities does not allow for the preparation of a final invoice prior to the Payment Date, the Seller may issue and the Buyer shall make payment against a provisional invoice. The provisional invoice shall, unless otherwise agreed between the Parties, be based upon:

- (a) the pricing information available to the Seller at the time it issues such provisional invoice; and
- (b) the mean of any maximum or minimum quantity specified in the Special Provisions.

Payment of any balance due by either Party to the other shall be made within three (3) Business Days of receipt of the Seller's final invoice which shall be prepared as soon as practicable after all relevant pricing and/or quantity information becomes available to the Seller.

6.3.3 Unless otherwise agreed, the Buyer shall remain liable for any other costs, expenses and charges which arise under the terms of the Agreement and the Buyer's payment shall be due for immediate settlement to the Seller pursuant to the terms of this Section 6.

6.4 Payment Date:

6.4.1 The Payment Date shall be as stated in the Special Provisions, or, if not stated in the Special Provisions, the Payment Date shall be three (3) Business Days following the Buyer's receipt of the invoice and supporting documents.

6.4.2 Subject to Section 6.4.3, if the Payment Date is based on the date on which a Vessel tenders a valid NOR and such NOR is tendered prior to the commencement of any agreed Laydays established in the Special Provisions, then the official NOR date for pricing and payment purposes shall be the first day of such agreed Laydays. If a Vessel tenders NOR after such agreed Laydays, then the official NOR date for payment purposes shall be the last day of such agreed Laydays.

6.4.3 For CIF/CFR deliveries where the payment due date in the Special Provisions is based either on the date on which a Vessel tenders NOR at the discharge Terminal or on the completion of discharge date, then providing title in the Goods has passed to the Buyer, if the Vessel for any reason either:

- (a) does not tender NOR at the discharge Terminal; or
- (b) does not complete discharge;

in both instances, within thirty (30) days after the bill of lading date, then payment shall be due thirty (30) days after the bill of lading date.

6.4.4 In the event an entire amount on an invoice is disputed in good faith and cannot be timely verified, confirmed and agreed, such amount shall not be paid under this Agreement until the dispute is resolved. Where a Party disputes only a portion of an amount on an invoice, the undisputed amount shall be paid. By way of example, and not limitation, if the Parties disagree: (a) on the price, the amount due using the lower price shall be paid, or (b) on the volume delivered, the amount due using the lower estimated volume shall be paid, and, in each case, only the remaining amount shall be settled later. The Parties shall make every reasonable effort to achieve mutual agreement on such unresolved amount prior to the applicable Payment Date, and in any case, as soon as reasonably possible.

6.5 Payments Due on Weekends or non-Business Days:

If the Payment Date falls on a Saturday or non-Business Day other than a Monday, payment shall be made on the preceding Business Day. If the Payment Date falls on a Sunday or a Monday non-Business Day, payment shall be made on the succeeding Business Day. If this Agreement includes an exchange for related position (“EFRP”), payment shall be made on the later of the date indicated above or one (1) Business Day after the posting of the EFRP.

6.6 Interest:

For each day on which a Party owes a past-due balance, such balance shall accrue simple interest (basis three hundred and sixty (360) days per year) at a rate equal to the Prime Rate as listed in the Wall Street Journal on the Payment Date plus two percent (2%). If a Party accepts payment from the other Party after the Payment Date, such action shall not waive the Party’s right to receive interest and in no circumstances will be considered as an agreement to provide extended credit. In the event of a disputed amount pursuant to Section 6.4.4, upon a determination that a disputed amount is in fact due and payable, interest shall accrue from the original Payment Date.

The provisions of this Section 6.6 shall not be construed as an indication of any willingness on the part of the Party receiving payment to provide extended credit as a matter of course and shall be without prejudice to any rights and remedies which the Party receiving payment may have under the Agreement or otherwise. Any expenses incurred by the Party receiving payment, including reasonable legal fees, court costs and collection agency fees, caused by delayed or non-payment by the paying Party of the amount due shall be for the account of the paying Party and payable upon demand with supporting documentation.

6.7 Payment Account:

Payment shall be made to the Seller’s bank, account name and account number as specified in the Special Provisions or, subject to Section 6.10, as otherwise notified by the Seller in writing.

6.8 Netting of Invoices:

If the Parties agree prior to the Payment Date, they may net invoices for amounts that are due to each other on the same date. In that case, prior to the due date, the Parties shall confirm, by telephone or otherwise, the invoice amounts and the amount remaining, if any, after net out. Any remaining balance shall be paid by the Party owing such amount to the other Party on the date the gross amounts were due. The gross amounts owed between the Parties will be extinguished upon receipt of the balance due after net out to the Party owed the balance. Notwithstanding the above, payments for any claims including demurrage, quantity, quality or any indemnity shall not be included in such netting of invoices.

6.9 Pricing:

Pricing shall be as specified in the Special Provisions. For pricing days, if not provided for in the Special Provisions, the effective pricing day for weekends and holidays shall be the following: (a) if the pricing day falls on a Saturday, the first preceding day on which the price is published; (b) if the pricing day falls on a Sunday, the first succeeding day on which the price is published; or (c) if the pricing day falls on any day other than a Saturday or Sunday on which there is no price posted, the first succeeding day on which the price is published. If the pricing period is five (5) days or more, the price will be calculated only with reference to the posted days within the relevant period (*i.e.*, for weekly or monthly price periods all non-posting days shall be ignored).

6.10 Change of Banking Information:

If at any time either Party sends notice of changed banking information or an invoice containing banking information different from that currently in the other Party's records, the paying Party may, prior to making any payment then due, require that the other Party provide, from a verified employee of the other Party, email, telephone or fax confirmation of the new banking information as well as the paying Party's usual account opening information. The other Party shall provide such information in a timely manner and payment shall not be due until one (1) Business Day after the paying Party has completed its account opening process (including any "know your customer" verification). The paying Party shall update its records in a timely manner upon receipt of the confirmation so as to avoid unnecessary further requests for confirmation. In the event the paying Party does not obtain such confirmation from a verified employee of the other Party, any payment made by the paying Party shall be at the paying Party's risk.

6.11 Bookouts:

In the course of arranging delivery of Goods in connection with a transaction subject to this Agreement, the Parties, or other market participants, may identify multiple offsetting delivery obligations that require redundant delivery. In such event, the Parties may agree in writing or orally (subject to subsequent written or electronic confirmation), either bilaterally or as part of a multiparty arrangement, to cancel and eliminate some or all of the delivery obligations under such transactions and settle those obligations by physically delivering the net difference, or some portion of the net difference between the quantities of the Goods due between the Parties and/or by making financial payment (in each case, a "Bookout"); provided such Bookout is effectuated through a subsequent, separately negotiated agreement. To the extent the Parties agree to a Bookout, any agreed payment will be due as follows, unless otherwise agreed: (i) with respect to Goods that is a refined petroleum product, on the same day as the effective date of the Bookout, (ii) with respect to Goods 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 Goods 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.

Section 7. Financial Responsibility

If at any time the reliability or financial responsibility of a Party (the “**Posting Party**”) under any transaction governed by this Agreement should, in the reasonable opinion of the other Party (the “**Secured Party**”), be or become impaired or unsatisfactory, the Secured Party shall have the right upon written notice (which shall refer to the transaction) to require the Posting Party to provide financial assurance of the Secured Party’s choosing in the form of any of:

- 7.1 prepayment, received by the Secured Party no later than two (2) Business Days after such demand, and in any event prior to commencing the Delivery Period;
- 7.2 establishing, at the Posting Party’s cost, by 1300 hours (New York, NY time) on the second Business Day following such request (and in any event prior to commencing the Delivery Period), either an irrevocable standby or a documentary letter of credit, in a form substantially as set out in Appendix B or C (whichever is applicable), and in all respects acceptable to the Secured Party, opened by a Qualified Institution; or
- 7.3 a guaranty in a form substantially as set out in Appendix D, and in all respects acceptable to the Secured Party, and from a parent or Affiliate of the Posting Party acceptable to the Secured Party, received by the Secured Party no later than two (2) Business Days after such demand, and in any event prior to commencing Delivery Period;

in each case, in an amount equal to, or greater than, the Secured Party’s good faith estimate of its financial exposure to the Posting Party for transactions subject to this Agreement. The Secured Party may determine its financial exposure in any reasonable manner. Failure by the Posting Party to provide financial assurance, as required, shall be a material breach and shall give the Secured Party the right to terminate the affected transaction. Notwithstanding any agreed Delivery Period, during the period following notice and prior to the establishment of said financial assurance, the Secured Party shall have no obligation to deliver Goods to the Posting Party under any affected transaction or to extend to the Posting Party any credit whatsoever.

If at any time financial assurance previously provided is considered insufficient by the Secured Party, (whether due to a subsequent increase in financial exposure or otherwise), or ceases to meet the requirements of this Section, then the Secured Party may require the posting of additional or substitute financial assurance on the second Business Day after request.

Section 8. Force Majeure

- 8.1 A Party will not be liable for any failure to perform its obligations under the Agreement to the extent that such performance is rendered impossible or commercially impracticable due to any cause, whether foreseeable or unforeseeable, that is reasonably beyond the control of the Party declaring force majeure, and, which such Party could not have reasonably mitigated or overcome (each such event, a “**Force Majeure Event**”), including, so long as such event meets the aforesaid standards, any of the following events:
 - 8.1.1 compliance with Applicable Law or any guidelines, requests, or the like, of any Governmental Authority or of international organizations of which the United States is a member, including the International Energy Agency;
 - 8.1.2 restriction or cessation of production of Goods due to the imposition of conditions or requirements by any Government Authority that makes it necessary to cease or to reduce the manufacture of the Goods;
 - 8.1.3 hostilities of war (declared or undeclared), embargoes, blockades, civil unrest, riots or disorders, piracy, acts of public enemy, terrorism, or sabotage;
 - 8.1.4 fires, explosions, lightning, maritime peril, collisions, storms, landslides, earthquakes, floods, and other acts of God;

- 8.1.5 strikes, lockouts, or other labor difficulties (whether or not involving employees of the Seller or the Buyer); provided, however, that settlement of strikes and other labor difficulties shall be wholly within the discretion of the Party having difficulty;
 - 8.1.6 disruption or breakdown of production or transportation facilities, equipment, labor or materials, including the closing of harbors, pipelines or other transportation routes; or
 - 8.1.7 a cyber security event that consists of an attack on one or more computer systems or networks with the intention of gaining unauthorized access, stealing, monitoring, changing, or destroying data (“**Cyber Event**”). A Cyber Event shall be independently verifiable, whether through media coverage, investigation at the request of the non-affected Party by a neutral third party under duties of confidentiality, or otherwise. A Cyber Event shall only include events affecting the information technology system or operational system required to perform the obligations under this Agreement. A Party may not excuse performance unless it has followed prudent industry practices to prevent and mitigate cyber events (including the claimed Cyber Event), including, without limitation, each of the following: (i) having appropriate business continuity plans in place to allow recovery of or minimizing the impact on normal business operations after a Cyber Event; (ii) ensuring all networks and information technology systems it uses are continuously monitored against a Cyber Event; (iii) providing appropriate internal training to employees and contractors to use computer systems and networks in a manner to minimize risks of a Cyber Event; and (iv) and having such other security controls as are customary in its industry.
- 8.2 For purposes of this Agreement, the term Force Majeure Event expressly excludes:
- 8.2.1 any lack of a market or unfavorable market conditions for any Goods;
 - 8.2.2 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,
 - 8.2.3 a Party’s inability to economically perform its obligations under this Agreement; or
 - 8.2.4 any delay, hindrance, interference with, curtailment or prevention of a Party’s accrued obligation to make payment under the Agreement whether in respect of price, despatch, demurrage or any other financial obligation whatsoever where the impediment is solely caused by lack of funds of such Party.
- 8.3 Except where the context of the transaction clearly demonstrates that the Parties intended otherwise, the inability:
- 8.3.1 of the Seller to supply Goods from its originally intended source shall not relieve the Seller of the obligation to supply Goods, even if the cost of such alternate supply is greater than the cost of the original source; and
 - 8.3.2 of the Buyer to use the Goods for its originally intended purpose or to resell the Goods to its originally intended purchaser shall not relieve the Buyer of the obligation to take and pay for delivery.
- For the avoidance of doubt, if delivery was to occur at or from a Trading Hub, the parties are conclusively presumed to have intended for Sections 8.3.1 and 8.3.2 above to be applicable.
- 8.4 Without prejudice to the provisions of BP Global Oil Americas Pipeline and Tank Provisions (2020 Edition) Part One Section 5 and BP Global Oil Americas Marine Provisions (2020 Edition) Section 7.3.6, in the event that either Party (the “**Relying Party**”) believes a Force Majeure Event has occurred that will require it to invoke the provisions in this Section 8, the Relying Party shall use commercially reasonable efforts to give

prompt verbal notice to the other Party followed by written notice within two (2) Business Days following the occurrence of such event, of the underlying circumstances of the particular causes of the Force Majeure Event, the expected duration thereof and the volume of Goods affected. The Relying Party shall also use commercially reasonable efforts to mitigate and overcome the effects of the Force Majeure Event and to give the other Party notice of the cessation of the Force Majeure Event and the date when performance is expected to resume. If the Force Majeure Event prevents the Relying Party from making payment by the Payment Date, the Relying Party shall make payment as soon as reasonably practicable but in no event later than thirty (30) days after the occurrence of the Force Majeure Event. Nothing in this clause shall be construed to relieve the Relying Party of its obligation to pay interest pursuant to Section 6.6, which shall accrue from the Payment Date (as was in effect immediately prior to the Force Majeure Event) until the date payment is actually received. In the event the Relying Party delays or fails to comply with the notice provisions of this Section, the Relying Party shall be liable to the other Party for any loss such other Party reasonably could have avoided had it received prompt notice. Such other Party's calculation is prima facie evidence of the amount of its loss that could have reasonably been avoided.

8.5 Without prejudice to the provisions of BP Global Oil Americas Pipeline and Tank Provisions (2020 Edition) Part One Section 5 and BP Global Oil Americas Marine Provisions (2020 Edition) Section 7.3.6, the appropriate relief under this Section for a Force Majeure Event shall be as follows:

8.5.1 in respect of a Force Majeure Event that renders impossible the Relying Party's performance of its obligations, immediate termination of the affected delivery obligation(s) without liability for damages, penalties and other contractual remedies;

8.5.2 in respect of a Force Majeure Event that delays, hinders, reduces or interferes with the performance of the delivery obligation(s), immediate postponement of those obligations without liability for damages, penalties and other contractual remedies for a period until midnight local time on the last date of the agreed Delivery Period applicable to the affected delivery obligation(s) as set out in the Special Provisions, or until such time the Force Majeure Event is removed, whichever is earlier. Further, should the Force Majeure Event continue beyond midnight local time on the last day of the agreed Delivery Period applicable to the affected delivery obligation(s), then either party may terminate the such affected delivery obligation(s) without liability for damages, penalties and other contractual remedies by providing written notice to the other party (other than any obligation(s) arising pursuant to the Agreement prior to the occurrence of such Force Majeure Event).

8.5.3 in respect of a Force Majeure Event that delays, hinders, reduces or interferes with the performance of an obligation other than the delivery obligation(s), immediate postponement of such obligation without liability for damages, penalties and other contractual remedies until such time as the Force Majeure Event no longer excuses performance.

8.6 Without prejudice to the foregoing provisions, where there is (a) curtailment or interference with the Seller's availability of the Goods of the quality deliverable hereunder where such Goods are for delivery at or from a point other than a Trading Hub, or (b) allocation by the relevant pipeline, the obligation of the Seller to supply Goods from other sources shall be determined in accordance with Section 2-615 of the Uniform Commercial Code, and the obligation of the Buyer to take delivery shall be determined by comparable standards.

Section 9. Limitation of Liability and Indemnity

9.1 EXCEPT TO THE EXTENT EXPRESSLY PROVIDED UNDER THIS AGREEMENT, NEITHER PARTY SHALL BE REQUIRED TO PAY, OR BE LIABLE TO, THE OTHER PARTY FOR SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, OR INDIRECT DAMAGES UNDER OR IN CONNECTION WITH THE AGREEMENT OR ANY OTHER THEORY OF LAW (WHETHER IN CONTRACT, TORT OR OTHERWISE) INCLUDING, IF AND TO THE EXTENT THAT THEY MIGHT OTHERWISE NOT CONSTITUTE SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, OR INDIRECT DAMAGES, PLANT SHUT-DOWN OR REDUCED PRODUCTION, LOSS OF POWER GENERATION, BLACKOUTS OR ELECTRICAL SHUT-DOWN OR REDUCTION, GOODWILL, USE, MARKET REPUTATION, BUSINESS RECEIPTS OR CONTRACTS OR COMMERCIAL OPPORTUNITIES, WHETHER OR NOT FORESEEABLE.

- 9.2 EACH PARTY TO THE AGREEMENT SHALL INDEMNIFY, DEFEND, AND HOLD THE OTHER HARMLESS FROM CLAIMS, DEMANDS, AND CAUSES OF ACTION ASSERTED AGAINST THE OTHER BY ANY OTHER PERSON (INCLUDING EMPLOYEES OF EITHER PARTY) FOR PERSONAL INJURY, FOR LOSS OF OR DAMAGE TO PROPERTY, OR FOR VIOLATIONS OF LAW RESULTING FROM THE WILLFUL MISCONDUCT OR NEGLIGENT ACTS OR OMISSIONS OF THE INDEMNIFYING PARTY. WHERE PERSONAL INJURY, DEATH, OR LOSS OF OR DAMAGE TO PROPERTY IS THE RESULT OF THE JOINT NEGLIGENCE OR MISCONDUCT OF THE PARTIES HERETO, THE PARTIES EXPRESSLY AGREE TO INDEMNIFY EACH OTHER IN PROPORTION TO THEIR RESPECTIVE SHARE OF SUCH JOINT NEGLIGENCE OR MISCONDUCT.

Section 10. Time Bar

All claims arising under the Agreement shall be delivered in writing to the other Party with reasonable details of the facts on which each of the claims is based upon no later than one (1) year after the date on which the basis for the claims arose, failing which the claim shall be time barred and any liability or alleged liability of the other Party shall be finally extinguished. However, this provision shall not apply to such claims with specific time limits set out elsewhere in this Agreement requiring compliance within a given period, any claims for indemnity, any claims with regard to intellectual property rights or infringement, or claims for payment of taxes.

Section 11. Default and Liquidation; Setoff

- 11.1 For the purposes of this Section 11:
- 11.1.1 **“Forward Contract”** shall mean either a forward contract or a master netting agreement as defined in the Bankruptcy Code (11 U.S.C. Sec. 101(25) and (38A)).
 - 11.1.2 **“Trading Forward Contracts”** shall mean all Forward Contracts between the Parties other than “Specified Forward Contracts.”
 - 11.1.3 **“Specified Forward Contracts”** shall mean Forward Contracts between the Parties where the BP Party is the downstream refining and marketing business or Air BP divisions of BP Products North America Inc.
- 11.2 The Parties acknowledge that this Agreement is a Forward Contract, unless the maturity date is not more than two (2) days after the date this Agreement was entered into.
- 11.3 If one Party (the **“Defaulting Party”**):
- 11.3.1 becomes the subject of bankruptcy or other insolvency proceedings for the appointment of a receiver, trustee, or similar official;
 - 11.3.2 becomes insolvent or generally unable to pay its debts as they become due;
 - 11.3.3 proposes to make or makes a general assignment for the benefit of creditors;
 - 11.3.4 is dissolved;
 - 11.3.5 transfers, merges, or consolidates with any other person where the entity existing after the transfer, merger or consolidation does not assume the obligations of the Party, by operation of law or otherwise,
 - 11.3.6 failure by the Defaulting Party to make, when due, any payment (in excess of US \$5,000,000.00) under the Agreement required to be made by it if such failure is not remedied on or before the third Business Day in the case of such payment after notice of such failure is given to the Defaulting Party;

- 11.3.7 failure to provide financial responsibility in accordance with Section 7;
- 11.3.8 failure by the Defaulting Party or its credit support provider to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any credit support document if such failure is continuing after any applicable grace period has elapsed;
- 11.3.9 the expiration or termination of a credit support document or the failing or ceasing of a credit support document, or any security interest granted by the Defaulting Party or credit support provider to the other Party pursuant to any credit support document, to be in full force and effect for the purpose of this Agreement (in each case other than in accordance with its terms) prior to the satisfaction of all obligations of the Defaulting Party under each transaction to which such credit support document relates without the written consent of the other Party;
- 11.3.10 the Defaulting Party or its credit support provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such credit support document (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf); or
- 11.3.11 failure by the Party to comply with or perform any material agreement or obligation (other than an obligation to make a payment or delivery under this Agreement) to be complied with or performed by the Party in accordance with this Agreement if such failure is not remedied within 30 days after notice of such failure is given to the Party by the other Party,

then an “**Event of Default**” shall be deemed to have occurred.

11.4 When an Event of Default has occurred, the other Party (the “**Liquidating Party**”) may:

- 11.4.1 withhold additional deliveries without notice;
- 11.4.2 terminate this Agreement and either:
 - (a) where the Event of Default has occurred pursuant to Sections 11.3.1 through 11.3.4, all other Trading Forward Contracts and Specified Forward Contracts between the Parties, or
 - (b) where the Event of Default has occurred pursuant to Sections 11.3.5 through 11.3.11, all other Trading Forward Contracts, but not Specified Forward Contracts (other than pursuant to the terms thereof), between the Parties;
- 11.4.3 withhold payment of any amounts due and unpaid hereunder (the “**Unpaid Amounts**”);
- 11.4.4 close out and liquidate this and (i) where the Event of Default has occurred pursuant to Sections 11.3.1 through 11.3.4, all other Trading Forward Contracts and Specified Forward Contracts between the Parties, or (ii) where the Event of Default has occurred pursuant to Sections 11.3.5 through 11.3.11, all other Trading Forward Contracts, but not Specified Forward Contracts (other than pursuant to the terms thereof), between the Parties (each a “**Commodity Transaction**”) by calculating the Settlement Amount as determined below; and/or
- 11.4.5 setoff or aggregate, as appropriate, any or all indebtedness or obligation under this Agreement or any other agreement or obligation between the Parties, whether matured or un-matured, so that all such amounts are aggregated or netted to a single amount payable by one Party to the other, including netting the Unpaid Amounts payable by both Parties together with the Settlement Amounts for the terminated Commodity Transactions into a single amount payable by one party to the other (together, the “**Liquidation Amount**”); provided that the Liquidating Party shall have the right to setoff against any Liquidation Amount hereunder any amounts owed under other agreements or obligations by the Defaulting Party to the Liquidating Party and/or any of its Affiliates. For the avoidance of doubt, in its calculation of the Liquidation Amount, the Liquidating Party may setoff

or aggregate indebtedness or obligations under the Specified Forward Contracts whether or not terminated.

Notwithstanding the above, payments for any demurrage, quantity, quality or tax claims not yet determinable shall not be included in such netting and may be asserted later.

11.5 Upon termination under this Section, the **Settlement Amount** shall be determined as follows:

11.5.1 with respect to each Commodity Transaction the Settlement Amount is equal to:

- (a) for delivered quantities not already reflected within Unpaid Amounts, the sum of the quantity delivered multiplied by the purchase price specified in the Agreement; or
- (b) for undelivered quantities, such undelivered quantity multiplied by the difference between the purchase price specified in the Special Provisions and the Commodity Transaction market price on the date the Liquidating Party terminates the Agreement (“**Termination Date**”), with such amount expressed as a loss or gain based on the difference between the purchase price and the Commodity Transaction market price; and
- (c) any other amounts otherwise payable with respect to the Commodity Transaction and not otherwise captured within the definition of Unpaid Amount or Settlement Amount; and

11.5.2 for the avoidance of doubt, shall not include any amounts in respect of payments assigned pursuant to Section 14.2.

11.6 The components of any such Settlement Amount shall be discounted to present value as of the Termination Date by the Liquidating Party, using a rate of interest determined by that Party to be commercially reasonable, in order to preserve the economic equivalent of the obligations of the Parties under the affected Forward Contracts.

11.7 The Liquidating Party is entitled to recover reasonable costs incurred in the collection of any amounts owed under this Agreement, including external attorneys’ fees and amounts incurred in connection with any legal proceedings.

11.8 The Liquidating Party may, at its option, include in the calculation of the Settlement Amount any amounts owed by the Defaulting Party to any parent or Affiliate of the Liquidating Party.

11.9 Payment of the Settlement Amount shall not relieve either Party from the obligations to settle any valid and timely submitted quality, quantity, tax or demurrage claims not reflected in the calculation of the Liquidation Amount.

11.10 The Liquidation Amount shall be due upon the Termination Date and must be paid in immediately available funds within two (2) Business Days after the Termination Date. If no Termination Date has been set, the Liquidation Amount shall be due within a reasonable time.

11.11 The rights under this Section shall be without prejudice to any right of Setoff to which a Party is at any time otherwise entitled whether by operation of law, contract, or otherwise. A Party’s failure to exercise its rights under this paragraph shall not be construed as a waiver of such rights.

Section 12. Compliance with Applicable Law

The Seller and the Buyer shall comply with Applicable Law (which, for the purpose of this Section 12 shall be deemed to include the laws of the United States and the United Kingdom), in the performance of their respective obligations under this Agreement and each transaction, including:

12.1 that all Goods sold and/or purchased under this Agreement and, where relevant, the chartering and use of any

transportation method in respect of any Goods shall be in full compliance with all Applicable Laws. Each Party shall immediately notify the other Party in writing of any violation or alleged violation with respect to the Goods sold in a transaction and/or where relevant, any Vessel or any other arriving means of transport used in a transaction and, upon reasonable request, shall provide the other with evidence of inspections or audits by any governmental entity or agency with respect to such Goods and/or, where relevant, the Vessel or other arriving means of transport;

- 12.2 those Applicable Laws relating to sanctioned individuals or organizations, anti-bribery or anti-money laundering (“**Compliance Obligation**”). In particular, each Party shall ensure that (i) it and its directors, officers, employees and service providers (including but not limited to its subcontractors, agents and other intermediaries) will not, offer, give, promise to give or authorize the giving to any person, including any Public Official, or solicit, accept or agree to accept from any person, including any Public Official, either directly or indirectly, anything of value including gifts or entertainment or facilitation payments in order to obtain, influence, induce or reward any improper advantage in connection with this Agreement, and (ii) it shall take no action which would subject the other to fines or penalties under the Compliance Obligation. Either Party may terminate the Agreement forthwith upon written notice to the other Party at any time if, in its reasonable judgment, the other Party is in breach of the provisions of this Section 12.2;
- 12.3 the Seller shall furnish the Buyer with a MSDS that provides warnings and safety and health information concerning the Goods. The Buyer shall be responsible for further distribution of such MSDS as necessary;
- 12.4 if the Goods sold under this Agreement are a transportation fuel as identified in Title 17 of California Code of Regulations §§ 95480 *et seq.* (“**LCFS Regulation**”) in the State of California, the Parties agree that, unless otherwise agreed and stated in the Special Provisions, Seller shall transfer to Buyer the compliance obligations under the LCFS Regulation as the regulated party pursuant to the LCFS Regulation for the total volume of transportation fuel transferred to Buyer. Buyer accepts the transfer of the LCFS Regulation compliance obligations as the regulated party. Seller shall provide Buyer with a Product Transfer Document as defined under 17 CCR § 95481(a)(115) which shall include all the information specified in 17 CCR § 95491.1(b)(1).
- 12.5 nothing in this Agreement shall relieve either Party of its duties in relation to the safe and proper evaluation, storage, use, transport, and disposal of the Goods sold hereunder.

Section 13. General Savings Clause

Notwithstanding anything to the contrary herein, nothing in the Agreement is intended, and nothing herein should be interpreted or construed, to induce, require or request either Party hereto to act or agree to act in any manner (including failing to take any actions in connection with a transaction) that is inconsistent with, penalized or prohibited, or which could trigger any reporting obligations, under any laws of the United States of America or the United Kingdom, regulations or other official United States of America or United Kingdom government rules or requirements applicable to such Party that relate to international boycotts of any type.

Section 14. Assignment

- 14.1 Neither Party shall assign the Agreement or any rights or obligations hereunder without the prior consent in writing of the other Party, which consent shall not be unreasonably withheld or delayed. In the event of an assignment in accordance with the terms of this Section, the assignor shall nevertheless remain responsible for the proper performance of the Agreement. Any assignment not made in accordance with the terms of this Section shall be void.
- 14.2 Notwithstanding Section 14.1, once the risk and title to the Goods under the Agreement has passed to the Buyer, the Seller may, without the Buyer’s consent, assign all or a portion of its right to receive payment under the Agreement in connection with any finance, securitization or bank funding arrangements, always providing such assignment does not contravene any Applicable Law binding upon the Buyer or the Buyer’s then current account opening procedures. For the purposes of such assignment and notwithstanding any other

provision of this Agreement, the Seller may disclose the Agreement and information in relation to it to a potential assignee without the Buyer's consent. Any payment made by the Buyer to the payee specified in the Seller's invoice shall discharge the Buyer to the same extent as if such payment was made directly to the Seller under the Agreement. Such right to assign payment shall mean the right to assign payment after any netting provisions under Sections 6.8 and 11.4.5 have been applied. Further, if the Seller and the Buyer have entered into domestic crude pipeline agreements in a given month and the payments for such deliveries will be due the following month on the 20th day, then, if the Seller expects to receive a net amount from the Buyer and such expected net amount is based on pipeline nominations, the Seller cannot assign an amount greater than such expected net amount without the Buyer's consent. The parties acknowledge that attempting to assign an amount in excess of the expected net amount would likely result in the Seller attempting to assign more than the amount it will actually receive from the Buyer. If the Seller does purport to assign more than the net amount it actually receives from the Buyer, then such attempted excess assignment shall be void. Any assignment under this Section 14.2 will not detract from the Seller's obligations under the Agreement.

Section 15. Notices

- 15.1 Unless otherwise provided in the Agreement, any communication by either Party to the other Party must be sent by express or priority U.S. mail or international recognized courier, by facsimile transmission, or by email to the address of the other Party specified for this purpose in the Special Provisions and shall, unless otherwise provided herein, be deemed to have been received as follows:
- 15.1.1 in the case of a communication by facsimile transmission: if it is transmitted on a Business Day before 4:00 p.m., then on that day; in any other case, it will be treated as being received on the next Business Day; or
 - 15.1.2 in the case of a communication by express or priority U.S. mail or courier: if delivered on a Business Day before 4:00 p.m., then on that day; in any other case, it will be treated as being received on the next Business Day.
- 15.2 Except for notices under Sections 11 and 14, the Parties may exchange messages with respect to the performance of the Agreement by email. Any message sent by email shall be sent to the address of the other Party specified for this purpose in the Special Provisions or communicated in writing. Email messages are only valid if and when actually received and the sender bears the risk of a failure in transmission.

Section 16. Severability, Rules and Regulations

- 16.1 If any provision of the Agreement is declared to be illegal, invalid or otherwise unenforceable by a court of competent jurisdiction or either Party's compliance with any ruling or resolution of the United Nations has a like or similar effect, the remainder of the Agreement (and of such provision) shall not be affected except to the extent necessary to delete such illegal, invalid or unenforceable provision (or part thereof).
- 16.2 To the extent applicable, the clauses with respect to government contracts set forth at 48 C.F.R. 52.222-26 (Equal Opportunity), 48 C.F.R. 52.222-21 (Prohibition of Segregated Facilities), 48 C.F.R. 222-35 (Equal Opportunity for Special Disabled Veterans of the Vietnam Era, and Other Eligible Veterans), 48 C.F.R. 52.222-37 (Employment Reports on Special Disabled Veterans of the Vietnam Era, and Other Eligible Veterans), 48 C.F.R. 52.222-36 (Affirmative Action for Workers with Disabilities) are incorporated by reference and shall have the same binding effect, as if reproduced herein in their entirety.

Section 17. Survivability

If for any reason the Agreement shall be terminated, then such termination shall be without prejudice to any rights, obligations or liabilities of either Party which have accrued at the date of termination but have not been performed or discharged and any provisions which expressly or implicitly survive termination, and any parts of the Agreement

having any relevance thereto or any bearing thereon shall, notwithstanding the termination of the Agreement for any reason, continue in force and effect.

Section 18. Consents

Each Party shall be responsible for obtaining all consents, authorizations, approvals and assurances of whatsoever nature necessary to enable it to comply with its obligations under the Agreement.

Section 19. Conflicts and Interpretation

Where there is conflict between the Special Provisions and these GTCs, the Special Provisions shall govern. Where there is any conflict between Incoterms® and the Agreement, the Agreement shall prevail.

Section 20. Amendment

An amendment, modification or waiver in respect of the Agreement will only be effective if in writing (including a writing evidenced by an email or facsimile transmission) that is executed by each of the Parties.

Section 21. Waiver

A failure or delay in exercising all or any portion of any right, power or privilege in respect of the Agreement will not be presumed to operate as a waiver of that or any other right, power or privilege.

Section 22. Telephone Recordings

Each Party: (a) consents to the recording of telephone conversations between the trading, marketing and other personnel of the parties in connection with the Agreement or any potential transaction; (b) agrees to obtain any necessary consent of, and give any necessary notice of such recording to, its relevant personnel; and (c) agrees, to the extent permitted by Applicable Law, that recordings may be submitted in evidence in any proceedings relating to the Agreement.

Section 23. Entire Agreement

This Agreement contains the entire agreement between the Parties with respect to the matters set forth in the Agreement and supersedes all prior agreements, whether oral or written, in connection therewith.

Section 24. Trademarks

Nothing contained in the Agreement, shall be deemed to confer any right upon the Buyer to apply any trademark owned by the Seller or any of its Affiliates to any Goods supplied under the Agreement nor to use such trademarks in relation to such Goods.

Section 25. Counterparts

The Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission and by email), each of which will be deemed an original.

Section 26. Governing Law

The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including disputes or claims arising under other theories of law other than contract, including tort, and strict liability) shall be governed by the internal laws of the State of New York, without giving effect to its provisions relating to conflicts of law. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

Section 27. Arbitration and Waiver of Jury Trial

- 27.1 Any unresolved dispute arising out of or relating to this Agreement, or the breach, termination or validity thereof, shall be finally settled in accordance with the American Arbitration Association (“AAA”) rules for commercial arbitration in effect on the date of this Agreement. The arbitrators shall be independent and selected by AAA. If the total amount in dispute is less than One Million US Dollars (\$1,000,000) there shall be a single (1) arbitrator. If the total amount in dispute is One Million US Dollars (\$1,000,000) or greater, there shall be three (3) arbitrators. The award of the arbitrators shall be accompanied by a reasoned opinion. The United States Arbitration Act shall govern the interpretation, enforcement, and proceedings pursuant to the arbitration clause in this Agreement. Judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The place of arbitration shall be New York, New York, and the language of the arbitration shall be English. Except to the extent expressly provided herein, the arbitrators are not empowered to award consequential, indirect, special, punitive or exemplary damages, and each Party hereby irrevocably waives any damages in excess of actual damages. Either Party may apply to the arbitrators seeking injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either Party also may, without waiving any remedy under this Agreement, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that Party, pending the establishment of the arbitral tribunal (or pending the arbitral tribunal’s determination of the merits of the controversy). The courts of the State of New York shall have jurisdiction to hear any action to compel arbitration or any other judicial proceedings with respect to this Agreement.
- 27.2 In the event that this arbitration provision is determined by a court with appropriate jurisdiction, each Party hereby waives any right it may have to a trial by jury of any claim that would have been subject to arbitration under this Agreement.

Section 28. Sovereign Immunity

Each Party warrants that it has entered into the Agreement in a commercial capacity and that with respect to the Agreement it is in all respects subject to civil and commercial law. Each Party hereby irrevocably and unconditionally and to the fullest extent permitted by Applicable Law waives any rights of sovereign immunity which it may have now or which it may subsequently acquire in respect of its position or any property and/or assets (present or subsequently acquired and wherever located) belonging to it, and agree to appear in dispute proceedings before the arbitration panel identified herein; and to submit to any proceeding required to enforce such panel’s decision.

Section 29. Business and Human Rights

The Parties each agree and undertake to the other that in connection with this Agreement they will each conduct business in a manner that respects the rights and dignity of all people and internationally recognized human rights, including without limitation: (a) not employing, engaging, or otherwise using forced labor, trafficked labor, or exploitative child labor; nor engaging in or condoning abusive or inhumane treatment of workers; (b) providing equal opportunities, avoiding discrimination and respecting freedom of association of workers, in each case within the relevant national legal framework; and (c) mitigating or avoiding adverse human rights impacts to communities arising from their activities to the extent practicable.

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| APPENDIX A – Supplement for Electronic Documents |
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In the event that the Parties agree in the Special Provisions for electronic documents to be used in the Agreement, the following shall apply.

1. Notwithstanding anything herein contained, any bill of lading, waybill, delivery order, certificate, receipt or other document issued pursuant to, or in connection with, the Agreement may be issued, stored and signed in electronic form and transmitted electronically using a secure system agreed by the parties (the “**eDoc System**”) in accordance with the terms and conditions of the eDoc System as amended from time to time in accordance with its terms (the “**Terms of Use**”) and the rights, obligations and interests contained in, represented by or evidenced by any such document (each, an “**eDoc**”) may be transferred, novated or otherwise dealt with (or the transfer, novation or other dealings with them may be evidenced) electronically in accordance with the terms of the Terms of Use.
2. Any requirement of this Agreement for presentation of one or more originals or copies of a document is satisfied by the presentation of one eDoc.
3. Any applicable requirement of law, contract, custom or practice that any bill of lading, waybill, delivery order, certificate, receipt or other document or communication issued pursuant to, or in connection with, this Agreement (including any negotiation or endorsement thereof) shall be made or evidenced in writing, signed or sealed may be satisfied in electronic form, by an eDoc or by its electronic transfer as appropriate. The Parties agree not to contend in any dispute arising out of or in connection with the Agreement that any legal formality requiring any such bill of lading, waybill, delivery order, certificate, receipt or other document or communication issued pursuant to, or in connection with, the Agreement (including any negotiation or endorsement thereof) to be made or evidenced in writing, signed or sealed, has not been met by reason only that the same has been made or performed in electronic form by an eDoc.
4. The Parties agree that eDocs which are converted to paper in accordance with the terms and conditions of the Terms of Use (“**Converted eDocs**”) and which are presented, issued or otherwise utilised pursuant to, or in connection with, this Agreement shall be given full force and effect according to their tenor and in accordance with the terms and conditions of the Terms of Use, and shall not be rejected on the grounds that they are electronic records which have been converted to paper originals, or that the documents have been produced in accordance with the Terms of Use.
5. Where under the Agreement the price is to be paid by means of an irrevocable documentary letter of credit, such documentary letter of credit shall, if so required by the Seller, be opened and confirmed (if applicable) with a bank which participates in the eDocs System and is bound by the Terms of Use. The documentary letter of credit shall include the following provisions in addition to any other requirements set out in the Agreement:

"This documentary credit is subject to The Supplement to the Uniform Customs and Practice for Documentary Credits for Electronic Presentation (the “**eUCP**”) and is also subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision ICC Publication No. 600) to the extent applicable.

The following shall constitute electronic records (as defined by the eUCP) for the purposes of this documentary credit:

- (a) data created, generated, sent, communicated, received, stored or uploaded to the [*insert name of eDocs System*], signed electronically by the issuer and digitally signed by the [*insert name of eDocs System*] to authenticate the apparent identity of the sender, the apparent source of the data contained in it and that it has remained complete and unaltered; and

- (b) original paper documents which have been scanned and uploaded to the [*insert name of eDocs System*] and which have been certified by the party uploading them as a true copy of the original and digitally signed by the [*insert name of eDocs System*] for authentication purposes.

Any document which the beneficiary is required to present under this documentary credit may be presented either as a paper document or an electronic record.

Where any of the documents presented under this documentary credit is presented as an electronic record, in addition to the documents required to be presented by the beneficiary in accordance with the terms of this documentary credit, the beneficiary shall also provide a notice to the Bank to which presentation is made signifying when presentation is complete. Presentation is deemed not to have been made if the beneficiary's notice is not received.

Electronic records which are converted to paper in accordance with the provisions of the [*insert name of Terms of Use of the eDocs System*] and which are presented, issued or otherwise utilised pursuant to, or in connection with, this documentary credit shall be given full force and effect according to their tenor and in accordance with the said provisions, and shall not be rejected on the grounds that they are electronic records which have been converted to paper originals, or that the documents have been produced in accordance with the said provisions."

APPENDIX B – Documentary Letter of Credit

Please urgently advise [FULL NAME OF SELLER], [ADDRESS], that we [BANK] hereby issue our irrevocable documentary letter of credit number [L/C NUMBER], in their favour for account of [FULL NAME OF BUYER], [ADDRESS] for an amount of USD [US DOLLAR AMOUNT] (say [US DOLLAR AMOUNT IN WORDS]) +/-15% available at our counters [DAYS] days [FROM/AFTER] [PAYMENT TERMS] against presentation of the following documents in one original and [NUMBER OF] copies unless otherwise stated:

1. One or more signed commercial invoices.
- 2.* [in the case of FOB/CFR/CIF delivery] one or more full sets of 3/3 original clean on board ocean bills of lading issued or endorsed to the order of.....].

[in the case of In Tank Transfer/pipeline delivery] copy of the transfer certificate
3. One or more certificates of quality.
4. One or more certificates of quantity.
- 5.* [One or more certificates of origin].
6. [in the case of CIF delivery] insurance certificate covering 110% of the cargo value

*Amend as appropriate

Evidencing [SHIPMENT/DELIVERY] of [QUANTITY] [UNIT OF MEASURE] +/-15% of [PRODUCT] [INCOTERM] [LOAD/DISCHARGE PORT] between [DATE] and [DATE] (both dates inclusive).

PRICE CLAUSE [Here insert text of Price Clause as per the agreement]

This credit expires on [DATE]

[In the case of delivery FOB/CFR/CIF only] In the event that the above documents are unavailable at the time of presentation, payment will be made against document number one above (the Invoice) and a letter of indemnity issued by beneficiary in the following format:

Quote

To:

[here insert text of Letter of Indemnity]

Unquote

SPECIAL CONDITIONS

1. This letter of credit shall take effect in accordance with its terms but such terms shall not alter, add to or in any way affect the provisions of the agreement between [BUYER] and [SELLER] to which this letter of credit relates.
2. [In the case of delivery FOB/CFR/CIF only] charterparty bills of lading/vessel bills of lading and/or bills of lading and/or bills of lading signed by the master or agent and not indicating that they have been issued by a named carrier are acceptable.
3. Documents presented later than 21 days after the [BILL OF LADING/NOTICE OF READINESS] date but within the validity of this credit are acceptable.

4. Transshipment [ALLOWED/PROHIBITED].
5. Partial shipment [ALLOWED/PROHIBITED].
6. Photocopies in lieu of copy documents acceptable.
7. Swift/fax invoice and letter of indemnity acceptable.
8. All banking charges are for the account of the applicant.
9. The construction, validity and performance of this letter of credit shall be governed by and construed in accordance with [*] law. Any dispute or claim arising out of or in connection with this letter of credit shall be subject to the exclusive jurisdiction of the [*] courts.
10. Typographical and spelling errors shall not constitute a discrepancy unless with regard to quantity and amount.
11. The value of this letter of credit may escalate/de-escalate above or below the tolerances allowed without any amendment on our behalf.
12. Except as otherwise expressly stated herein, this letter of credit is subject to the Uniform Customs and Practice for Documentary Credits 2007 Revision, (ICC publication no. 600).
13. Multiple/partial drawings allowed.
14. Original documents stating grade name different to letter of credit acceptable.
15. Any discrepancy resulting from the invoiced quantity exceeding or falling below the quantity range allowed in this letter of credit is acceptable. Payment will be effected on the invoiced quantity in case the maximum quantity allowed in this letter of credit is not exceeded. In case the invoiced quantity exceeds the maximum quantity allowed in this letter of credit the bank will pay on the maximum quantity allowed in this letter of credit.
16. Beneficiary may discount this letter of credit at own cost and request.
17. Documents named as different but servicing the same purpose are acceptable.
18. Price clause and calculation not stated on the commercial invoice is acceptable.
19. [In event that payment due date falls on a Saturday or a New York bank holiday, except Monday, payment will be effected on the last banking day prior. If the payment due date falls on a Sunday or Monday bank holiday in New York payment will be made on the next business day].
20. [Beneficiary may draw under this letter of credit against provisional invoice based on price quotation on [NOR/BL] date. If no quotation is published on the date of [NOR/BL] date. If no quotation is published on the date of [NOR/BL], the provisional invoice to be based on the quotation published immediately preceding the date of [NOR/BL]. Balance payment to be effected under this L/C within 3 New York banking days against presentation of final invoice if the amount owed is in beneficiary's favour. If the balance of the payment is in the applicant's favour payment to be effected outside of the letter of credit].
21. [NOR date to count as delivery date and to appear on invoice only].
22. [Ports of discharge other than mentioned are acceptable].
23. [Presentation of a Tax invoice acceptable].
24. [In the case of delivery by Vessel only] In the event that the outturn quantity is not known at the time of presentation, beneficiary may draw under the letter of credit against a provisional invoice based on the mean

volume of the letter of credit quantity. In the event the actual outturn quantity is greater than mean volume of the letter of credit quantity beneficiary may present a final claim under this letter of credit. If the actual outturn quantity is less than mean volume of the letter of credit quantity then the difference is to be settled outside of the letter of credit.

25. PDF copies acceptable.
26. Documents showing different density to invoice is acceptable.
27. Any discrepancy resulting from the invoice value exceeding or falling below the US dollar range allowed in this letter of credit is acceptable. In the event that the invoice amount does not exceed the letter of credit value, payment will be effected on the invoice amount. In the event that the invoice value exceeds the maximum value of the letter of credit, the bank will pay on the maximum value allowed under this letter of credit.

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| APPENDIX C – Standby Letter of Credit |
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APPLICANT:

[Name and Address]

BENEFICIARY:

At the request of the above applicant, and for its account, we [*name and address of bank*] hereby issue in your favor our irrevocable standby letter of credit no [XXX].

In consideration of you, the Beneficiary, having agreed to enter into a contract or contracts for the sale and/or purchase of [*] (referred to herein as the contracts”) from time to time with the Applicant, we hereby establish our irrevocable standby letter of credit (“this Letter of Credit”) in your favor for the principal amount of (XXX) United States Dollars (US\$ _____) plus or minus (+/-) ten percent (10%) effective immediately and payable upon our irrevocable undertaking as follows :

This Letter of Credit is available for payment at sight, but not prior to “*the Effective Date*” by presentation of the following documents:

1. A written statement certifying that the Applicant has defaulted in the performance of any of the terms and conditions, including but not limited to payment for any of the products, of any of the contract(s), as it or they may have been amended or varied; and
2. A copy of the Seller’s commercial invoice(s) marked unpaid; and
3. A written statement as to the amount to be paid in respect of the default may include, but shall not be limited to, the invoiced amount and/or demurrage, and/or any damages, losses, late payment interest, expenses or costs suffered or incurred by you as a result of such default, determined in accordance with the contract and applicable law.

Counterparty SBLC: This Letter of Credit covers all contracts for the sale and/or purchase of oil, refined petroleum products, ethanol and/or petrochemicals and/or allied products (referred to herein as the contracts) from time to time between [*] and [*Name of applicant*]

We hereby agree with you that presentation of the documents in compliance with the terms of this standby letter of credit will be duly honored on presentation to us no later than the Expiration Date of this credit. The expiration of this Letter of Credit is “*Expiration Date*”.

47A: Additional conditions

1. Partial and multiple drawings are permitted.
2. All banking charges are for the applicant’s account
3. Above documents presented in telex, fax or photocopy form are acceptable.
4. This Letter of Credit shall take effect in accordance with its terms but such terms shall not alter, add to or in any way affect the contract (s) between [*] and [*Name of Applicant*] to which this letter of credit relates.
5. Combined documents are acceptable
6. Documents received 21 days after the date of delivery, and prior to the date of expiry of this Letter of Credit are acceptable.
7. Typographical and spelling errors, with the exception of quantity and amount, are not to be considered as discrepancies as long as meaning is consistent with the other documents presented.

8. Except as otherwise expressly provided herein, this standby letter of credit is subject to the “Uniform Customs and Practices For Documentary Credits” (2007 Revision) International Chamber of Commerce Publication No. 600.

We hereby agree with you that presentation of the documents in compliance with the terms of this Letter of Credit will be duly honored on presentation to us no later than the expiration date of this Letter of Credit.

Name

Authorized Signatory

Issuing Bank

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| APPENDIX D – Parent Company Guaranty |
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This Guaranty is made and given the ___ day of _____, 20___, by [*] (hereinafter referred to as the "Guarantor"), in favor of _____ (hereinafter referred to as the "Beneficiary").

The Guarantor enters into this Guaranty in consideration of the Beneficiary having entered into or entering into [*] (hereinafter referred to as "Covered Transactions") with [*] (hereinafter referred to as the "Company"). The Guarantor acknowledges the benefit to it of the Covered Transactions between the Beneficiary and the Company.

1. The Guarantor hereby irrevocably and unconditionally guarantees to the Beneficiary the prompt payment when due (subject to written demand by Beneficiary upon Guarantor) of all amounts that now are or may hereafter become due and payable from the Company to the Beneficiary (the "Guaranteed Obligations") with respect to any Covered Transactions entered into prior to the termination of this Guaranty. This Guaranty shall continue to be effective or reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations are annulled, set aside, invalidated, declared to be fraudulent or preferential, rescinded, or most otherwise be returned, refunded or repaid by the Beneficiary as a result of or pursuant to the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Company or any other guarantor, or upon, or as a result of, the appointment of a receiver, intervener or conservator of, or trustee or similar officer for, the Company or any other guarantor or any substantial part of its property or otherwise, all as though such payment or payments had not been made.
2. In addition to the Guaranteed Obligations, the Guarantor agrees to pay on demand any and all costs, including reasonable legal fees and other expenses incurred by the Beneficiary in enforcing the Guarantor's payment obligations under this Guaranty; provided that the Guarantor shall not be liable for any expenses of the Beneficiary if no payment under this Guaranty is due.
3. Anything to the contrary notwithstanding, the aggregate of the Guarantor's obligations under this Guaranty, including without limitation liability with respect to the Guaranteed Obligations or liability with respect to costs, including reasonable legal fees and other expenses incurred by the Beneficiary in enforcing the Guarantor's payment obligations, shall not exceed [amount] million U.S. dollars (US \$_____).
4. This Guaranty shall remain in full force and effect until the earlier of (a) **[date]**, or (b) until thirty (30) days following the Guarantor's notice, in writing, to the Beneficiary of the Guarantor's termination of this Guaranty provided, however, the expiration or termination of this Guaranty shall not affect the Guarantor's obligations hereunder with respect to Covered Transactions entered into prior to such expiration or termination.
5. The Guarantor's payments hereunder shall be made to the Beneficiary at its address set forth in Section 10 below, within ten (10) business days after receiving written demand for payment from the Beneficiary.
6. The Guarantor hereby waives:
 - (a) Notice of acceptance of this Guaranty by the Beneficiary;
 - (b) Notice that the Beneficiary has entered into a Covered Transaction with the Company;
 - (c) The modification or amendment of any Covered Transaction between the Company and the Beneficiary, including renewal or extension of time for repayment and performance of Guaranteed Obligations or notice thereof; and
 - (d) Notice of presentment, default, dishonor, protest or notice of protest with respect to any notes, drafts or other instruments evidencing indebtedness, received from the Company or demand for payment on the Company.

7. The Guarantor agrees that the Beneficiary may, from time to time, extend the time of payment of the whole, or any part, of the indebtedness of the Company and may receive and accept notes, bills, checks, trade acceptances and other instruments for the payment of money made, accepted or delivered by the Company and any other person or persons, as well as extensions or renewals thereof, without in any way releasing or discharging the Guarantor from its obligations hereunder.
8. This Guaranty is a guaranty of payment and not of collection. The Beneficiary shall not be required to proceed first against the Company or any other person, firm or corporation, or against any property or security or any other guaranty before resorting to the Guarantor for payment under this Guaranty.
9. Demands on the Guarantor for payment under this Guaranty shall be in writing and delivered by mail or telecommunication to the following address:

If to the Guarantor:

With a mandatory copy to:

All demands for payment shall be effective when received by the Guarantor. The Guarantor may change the address to which demands for payment are to be sent upon written notice to the Beneficiary.

10. Notices under this Guaranty, or which either party desires to give to the other, shall be in writing or telecommunication and delivered as follows:

To the Guarantor:

With a copy to:

To the Beneficiary:

[beneficiary & contact name]

[address]

[fax]

All notices given shall be deemed to have been given at the earlier of: (a) the date the notice shall be delivered, (b) the date on which the delivery shall have been refused at the address herein provided, or (c) the date as of which the delivery service shall have indicated such notice to be undeliverable at the address herein provided. The Guarantor and the Beneficiary may change the persons and/or addresses to which notices are to be sent upon written notice to the other party.

11. This Guaranty and each of its provisions may be waived, varied, released, modified, terminated (except as provided elsewhere herein) or surrendered, in whole or in part, only by a written instrument signed by the Beneficiary and the Guarantor. No failure or delay by the Beneficiary in exercising its rights or remedies under this Guaranty, subject to statute of limitations, shall operate as a waiver thereof, nor shall any single or partial exercise by the Beneficiary of any right or remedy hereunder preclude any other or future exercise of any right or remedy hereunder.
12. The Beneficiary may, at any time, assign its rights to receive payment under this Guaranty to any party to whom it assigns its interest under any Covered Transaction. Except as provided in the previous sentence, neither the Guarantor nor the Beneficiary shall assign its rights or obligations under this Guaranty to any other person without the express written consent of the other Party.

13. This Guaranty shall be governed by and construed in accordance with the laws of the State of New York, without regard to principles of conflicts of laws. The Guarantor and the Beneficiary agree that any action or proceeding to enforce or arising out of this Guaranty shall be commenced in the Supreme Court of New York for the county of New York or in the United States District Court for the Southern District of New York (the "Forum Courts"), but nothing herein shall limit Beneficiary's right to initiate legal proceedings in any other court of competent jurisdiction to enforce a judgment of the Forum Courts. **The Guarantor and the Beneficiary hereby knowingly, voluntarily, and intentionally waive any right to trial by jury in connection with this Guaranty or the transactions related hereto.**

14. The Guarantor represents and warrants that (a) the execution, delivery, and performance of this Guaranty has been authorized by all necessary corporate action and does not contravene any provision of its constituent documents, and (b) upon proper execution and delivery thereof, this Guaranty will constitute the legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally and to equitable principles of general applicability.

Without limiting the Guarantor's own defenses and rights hereunder, the Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses that the Company may have to payment of all or any portion of the Guaranteed Obligations, except for defenses arising from bankruptcy, insolvency, dissolution or liquidation of the Company and other defenses expressly waived in this Guaranty.

The obligations of the Guarantor hereunder are severable from the Company or any other person, and are primary obligations concerning which the Guarantor is the principal obligor.

15. [This Guaranty supersedes and replaces in its entirety that certain Guaranty dated as of [] issued by Guarantor in favor of [*List Beneficiary or Beneficiaries name(s)*].]

16. [The Guarantor hereby irrevocably appoints [*insert name of NY process agent] to receive, for it and on its behalf, service of process in any proceedings. If for any reason [*insert name of NY process agent] is unable to act as such, the Guarantor will promptly notify the Beneficiary and within thirty (30) days, appoint a substitute process agent acceptable to the Beneficiary.]

Intending to be legally bound, the Guarantor has executed this Guaranty through its duly authorized representative.

[*]

By: _____

Name: _____

Title: _____