

**Energy Transfer GC NGLs LLC**  
**General Terms and Conditions**  
**for the Sale, Purchase and Exchange of Petroleum Products**

These General Terms and Conditions for the Sale, Purchase and Exchange of Petroleum Products (“**General Terms**”) shall be deemed to be incorporated in any agreements (“**Transactions**”) to purchase, sell or exchange NGLs, petrochemical and refined petroleum products (collectively referred to as “**Products**”) between Energy Transfer GC NGLs LLC or any of its subsidiaries (for the each such Transaction the applicable entity is: (i) referred to herein as “**ET**”; and (ii) is the party to the Transaction) and another party (the “**Counterparty**”) (each a “**Party**” and collectively, “**Parties**”) where the Confirmation expressly references either these General Terms or another written agreement between the Parties which, in turn, incorporates these General Terms by reference. All capitalized terms used in these General Terms are defined where they first appear or in Article 23. With regard to any Transaction entered into by a subsidiary of Energy Transfer GC NGLs LLC, it is understood that neither Energy Transfer GC NGLs LLC nor any of its other subsidiaries is: (i) a guarantor of such other subsidiary’s obligations under that Transaction; or (ii) a party under that Transaction, in each case due merely by virtue of a reference to these General Terms.

**1. AGREEMENT AND TRANSACTION PROCEDURES**

1.1. Agreement Formation. A Transaction shall be entered into, effective and binding upon the Parties from the moment on a particular date (the “**Trade Date**”) when the Parties agree to the Economic Terms of the Transaction.

1.2. Confirmation Procedures. Within three Business Days after a Transaction’s Trade Date, ET shall send Counterparty a document confirming the terms of the Transaction, including the Economic Terms (a “**Confirmation**”). If ET does not send its Confirmation to Counterparty within the applicable period, Counterparty may send a Confirmation to ET (in each case, the Party sending a Confirmation, the “**Sending Party**”, and the Party receiving a Confirmation, the “**Receiving Party**”). After its receipt of the same, the Receiving Party shall have three Business Days to confirm its acceptance and agreement to the terms of the Transaction as set forth in the Confirmation. The failure to send a Confirmation shall not invalidate any agreed to Transaction. Absent manifest error, the terms of the Transaction contained in the Sending Party’s Confirmation shall be deemed correct and binding on the Parties upon the earlier to occur of either (i) Receiving Party’s failure to object to the contents of the Confirmation within three Business Days after its receipt; or (ii) Receiving Party’s receipt of the applicable Products without objecting to the Confirmation, provided that the Confirmation was received prior to the receipt of Products. In the event of manifest error or an objection to the Confirmation, the Parties shall cooperate in good faith to reach mutual agreement as to any such error or objection and, if agreement is reached, the Sending Party shall promptly send the Receiving Party a corrected Confirmation. With respect to the sending, acceptance or objection to any Confirmation, the Parties may communicate with each other by facsimile, electronic mail or other written means.

1.3. Special Terms and Conditions. The special terms and conditions of a particular Transaction, including the applicable Economic Terms, as evidenced by a Confirmation or other sufficient evidence of the Parties’ agreement (the (“**Special Terms**”), and these General Terms together constitute the Parties’ entire agreement as to such Transaction and shall be read and construed together.

1.4. Priority of Terms. In the event of any inconsistency between these General Terms and the Special Terms of a Transaction, the Special Terms of the Transaction shall govern to the extent of such inconsistency. In the event of any inconsistency of terms among the various means that evidence a Transaction, the following priority shall govern to the extent of such inconsistency: (i) a Confirmation executed by the Receiving Party; (ii) a Confirmation not responded to by the Receiving Party within the time frame specified in Section 1.2; and (iii) retrievals of computer or electronic messages and other writings exchanged by the Parties.

1.5. Waiver of Certain Defenses. Neither Party shall contest or assert any defense to (i) the validity or enforceability of Transactions entered into in accordance with this Article 1 under laws relating to whether certain agreements are to be in writing or signed by the Party to be bound by such Transactions or (ii) the authority of any employee or representative of such Party to enter into a Transaction. In respect of facsimile or electronic transmissions, acceptance of delivery of Products by the Buyer or oral agreement, the parties agree that the provisions of Section 2.201 (Formal Requirements of the Statute of Frauds) of the Texas Business and Commerce Code (Uniform Commercial Code) shall not apply; and when printed or maintained electronically, such electronic transmissions shall be deemed to be a “**writing**” or “**in writing**,” and, when maintained in the ordinary course of business, shall constitute an original. In addition, a Transaction entered into orally shall be binding and enforceable.

**2. DELIVERY**

2.1. Delivery Method. The Confirmation may specify the delivery method (pipeline, rail car, tank truck or book, stock or inventory transfer) and whether delivery is to be made by Seller’s transportation, Buyer’s transportation or common carrier arranged by Seller or Buyer and the delivery location. In the event that the Confirmation does not specify a delivery method or states that the delivery method is at Seller’s option, then in either such case the delivery method will be at Seller’s option. When appropriate, the Parties may also specify the applicable Incoterm that shall govern transportation of the Products and the Parties’ allocation of their respective duties, costs and risks. When an Incoterm is specified in these General Terms or in a Confirmation, the use of such Incoterm shall incorporate the latest version of Incoterms as published by the International Chamber of Commerce. In the event of any inconsistency between the meaning of an Incoterm and any similar term under the Texas Uniform Commercial Code (“**UCC**”), the meaning of the Incoterm shall govern to the extent of such inconsistency.

2.2. Nomination and Scheduling. The delivery period shall be specified in the Confirmation. When delivery is by tank truck, the Party furnishing the trucks shall provide the other Party with one Business Day’s notice of the delivery date, the estimated number of trucks to receive or discharge Products and the total quantity to be available for loading or delivery. When delivery is to be made by Seller via rail car, Seller shall provide Buyer with three Business Days’ notice of the delivery date, the estimated number of tank cars to receive or discharge Products and the total quantity to be available for loading or delivery.

2.3. Adherence to Terminal Regulations. All deliveries shall be made during a terminal’s customary business hours, provided that Buyer has given Seller reasonable advance notice and the necessary shipping instructions. If Seller is responsible for arranging transport, it shall provide Buyer with bills of lading and other customary shipping documents. Any Party accepting delivery via truck at the other Party’s facility or a third party facility via its own (owned, leased or operated) trucks shall execute any terminal access agreement as may be required by the facility operator prior to loading any such trucks and, likewise, if accepting delivery via contracted carriers, shall require such carriers to execute any terminal access agreement

as may be required by the facility operator prior to loading of its carrier trucks for such Party's account; and in all such instances, such Party and its agents, contractors and employees shall comply with all applicable safety regulations and procedures when on the terminal premises.

2.4. **Title and Risk of Loss.** Title to and risk of loss of the Products shall pass from Seller to Buyer as appropriate for the delivery method as follows. Upon transfer of title, Buyer shall assume all responsibility for all losses, contamination and damages attributable to handling, transportation, resale and use of the Products.

(a) When delivery is into or out of a pipeline, when the Products pass the downstream flange of the meter measuring the Products upon intake, or the upstream flange of the meter measuring the Products upon discharge.

(b) When delivery is into or out of any storage tank facility, as the Products enter or leave the tank.

(c) In the case of delivery by rail car, when the Products enter the receiving equipment of a rail car furnished by Buyer, or, if Seller furnishes the rail car, when the carrier delivers the rail car furnished by Seller to the Buyer's destination.

(d) In the case of delivery by tank truck, when the Products enter the receiving equipment of the tank truck furnished by Buyer, or when the Products pass the tank truck's delivery equipment if furnished by Seller.

(e) When delivery is to or from a common carrier, when the common carrier accepts the Products for shipment or surrenders the Products to the receiver.

(f) When delivery is to or from a ship or barge, when the Products enter the vessel's loading flange.

(g) When delivery is by in-well, in-tank or in-line transfer, when the terminal or pipeline executes the transfer order.

(h) When delivery is by book, stock or inventory transfer, upon the effective date of transfer as mutually agreed between the Parties.

2.5. **Return of Seller's Rail Cars.** When delivery is via Seller's rail cars, Buyer shall unload Seller's rail cars promptly upon arrival and return them to the railroad within a 48-hour period, commencing at 0700 local time on the day following Seller's tender of notice of arrival at the delivery location. Buyer shall reimburse Seller for any railway demurrage at the carrier's contract rate. Seller's rail cars shall not be diverted except with the written consent of Seller.

### 3. QUANTITY AND QUALITY DETERMINATION AND CLAIMS

3.1. **Specifications.** The Products sold in a Transaction shall conform to the specifications identified in the Confirmation, if any, taking into account any stated tolerances. If no Products specifications are set forth, all Products delivered under this Agreement shall meet: (i) the latest Gas Processors Association specifications for such Products that are NGLs, if any; and (ii) for Products that are refined products, the current applicable Colonial Pipeline specifications for such Products as utilized by the Energy Transfer Mont Belvieu NGLs LP storage facility in Mont Belvieu, TX, and in each case shall contain no deleterious substances or concentrations of any contaminants that may make it or its components commercially unacceptable in general industry practice.

3.2. **Measurement.** The quality and quantity of the Products shall be determined in accordance with the latest established API/ASTM standards for the method of delivery or a reasonable alternative. All volumes shall be temperature corrected to 60°F in accordance with the latest supplement or amendment. If the delivery quantity is expressed in terms of weight, the quantity shall be stated in mass pounds. Mass and volumetric measurement in accordance with the latest API and GPA standards, or a reasonable alternative, shall apply for all NGLs. Metering systems used for quantity determinations will not allow vapor return or will compensate for any vapor return through acceptable measurement practices. Products delivered will be measured in the manner customarily utilized at the delivery location, and to the extent applicable in accordance with the alternatives listed below:

(a) Deliveries via tank cars, the quantity will be determined (in the following order of preference and based on equipment available at the delivery location by: (i) weighing; (ii) meters; or (iii) gauging of the tank cars and use of official tank car capacity tables.

(b) Deliveries via tank truck equipment, quantities will be determined (in the following order of preference and based on equipment available at the delivery location) by: (i) weighing; (ii) meters; or (iii) slip tube or rotary gauging device and applicable tank capacity tables.

(c) Deliveries via pipelines, quantity will be determined by turbine, Coriolis, or positive displacement pipeline meter(s) in accordance with API Manual of Petroleum Measurement Standards.

(d) Deliveries via ships or barges, quantity will be determined (in the following order of preference and based on equipment available at the point of delivery) by: (i) gauging and official tank capacity tables, (ii) if expressly specified in the Confirmation, by shore meter or shore tank measurements, or (iii) if expressly specified in the Confirmation, by a mutually acceptable independent inspector based on hand gauge records of static shore tanks immediately before and after delivery of Products -- each party to pay one-half of the independent inspector's fees and charges.

#### 3.3. **ODORANT. IF BUYER DESIRES ANY NGLS TO BE DELIVERED HEREUNDER INTO TANK TRUCKS OR RAIL TANK CARS TO BE UNODORIZED, BUYER MUST FURNISH AN UNSTENCHED PRODUCTS REQUEST TO SELLER ON A FORM ACCEPTABLE TO THE SELLER.**

(a) Except as provided for immediately above, all NGL's delivered hereunder into truck transports or rail cars will be odorized using ethyl mercaptan to a level meeting the minimum odor standards applicable on the date of loading as stated in both the Department of Transportation Code of Federal Regulations, 49 CFR § 173.315(b)(1) or any successor regulations, and any applicable State of Texas and local ordinances where the odorization is performed (currently one pound per ten thousand Gallons).

(b) Buyer agrees to use its best efforts to inform its customers of the key properties of odorized NGL's. Buyer represents that its instruction regarding the use or nonuse of odorant will comply with any and all legal requirements applicable to Buyer's use, storage, handling or transportation of NGL's. Seller will have no further responsibility to monitor the NGL's or take any further action after delivery thereof to Buyer or its agent to ensure that the NGL's remains properly odorized after delivery to Buyer.

(c) Prior to transporting any NGL's received hereunder via truck transport, Buyer's driver or its agent's driver shall ensure and determine if the NGL is odorized utilizing an industry accepted test performed in accordance with industry accepted standards. Buyer's driver or its agent's driver shall not take any NGL's which it discovers or has reason to believe are not odorized or sufficiently odorized.

(d) Buyer agrees that it will be responsible for reporting and paying any and all fees, taxes, and charges of any nature ("**Odorization Fees**") relating to the delivery, odorization and/or loading of odorized Products including but not limited to the fees required under Chapter 113 of the Texas Natural Resources Code (V.T.C.A., Natural Resources Code §113 et. seq.) and the rules and regulations promulgated thereunder (16 TAC § 15 et. seq.)

and any applicable PERC (Petroleum Education & Research Council) fees. Furthermore, Buyer agrees to hold Seller harmless from and against any and all claims, damages, suits, penalties, fines, losses and expenses arising out of or resulting in whole or in part from Buyer's failure to pay any such Odorization Fees.

(e) **As to all unodorized NGLs, Buyer hereby certifies and represents to Seller, pursuant to 49 CFR § 173.315(b)(1), that odorization of the Product will be harmful in its use or further processing and/or odorization will serve no useful purpose as a warning agent in such use or further processing; and, as such, Buyer is directing Seller to not odorize any such deliveries.** In reliance on such representation by Buyer, Products will not be odorized by Seller. To the extent Buyer's certification in this Section is incorrect or inaccurate and the Product so delivered was required by the cited regulation to be odorized, Buyer shall defend and indemnify Seller from and against any and all claims and Liabilities arising from such inaccuracy in the above representation.

3.4. **Inspection.** Excluding deliveries via pipelines, Buyer may obtain, prior to unloading the Products, samples of the Products from an appropriate location on the tank cars, tank truck, barge or ship, as applicable, and/or the loading/unloading facilities connected to such means of transport; at an appropriate time and on a frequency established by the Buyer in a manner which obtains representative samples of the Products being delivered. If Buyer elects to obtain such samples of the Products, Buyer will be responsible for arranging for analysis of such samples, by a qualified laboratory or testing organization, all at the Buyer's expense. Each Party will be entitled to have its representatives present during all loadings, unloadings, tests and measurements involving delivery of Products. If Buyer fails to obtain samples and provide notice that fully specifies all claimed defects and non-conformities and provides supporting information and documentation acceptable to Seller prior to unloading or retain samples for the period set forth in this Section, Seller shall have no liability to Buyer for any defect in quality of Products and the Products will be deemed accepted. Certificates of quality and quantity countersigned by an independent inspector shall be final and binding on both Parties absent manifest error or fraud. The Parties shall instruct the independent inspector to obtain and retain appropriate samples of the Products for a period of ninety days from the date of measurement. Representative samples customarily shall be taken from the storage tanks from which delivery is made or by an in-line sampler. Unless otherwise agreed, inspection and measurement of Products delivered hereunder into marine vessels shall be made by a mutually agreeable independent petroleum inspector at the designated point of custody and title transfer (immediately before and after delivery), the cost of which shall be borne equally by Buyer and Seller. Measurement, sampling and analysis will be conducted in accordance with the GPA Standards applicable to the sampling methodology used; including GPA Standards 8182, 8173, 2177 and all other appropriate GPA, API and ASTM standards. All such standards are incorporated herein for all purposes, including all revisions of those standards adopted and in effect during the term of this Agreement.

3.5. **Non-Conforming Products.** Buyer may reject Products that do not conform to the specifications set forth in the Confirmation ("**Non-Conforming Products**"). Buyer may elect at its sole discretion to return the Non-Conforming Products to Seller and either purchase replacement Products or have the Seller replace the Non-Conforming Products. If Buyer accepts the Non-Conforming Products, the Parties shall agree in advance on a reduced price that reflects the market value and quality of the Non-Conforming Products.

3.6. **Quality Claims.** Any claim regarding the quality or quantity of any Products delivered shall be waived unless submitted to Seller in writing, together with supporting documentation and reasonable details of the facts on which the claim is based, within fifteen days from the date of delivery. The delivery date shall be determined by the bill of lading or other shipping document as appropriate for the delivery method.

#### 4. EXCHANGES

4.1. **Exchange Transactions.** The Parties may enter into Transactions where each Party sells and delivers to the other Party equal volumes of like Products at different locations or over different time periods ("**Exchange Transactions**"). The Confirmation for an Exchange Transaction shall identify the Products, exchange locations, differentials, exchange period and method for reconciliation of imbalances. Unless otherwise provided, the provisions of this Article 4 also shall apply.

4.2. **Unit for Unit Basis.** Except for quality, transportation and other applicable differentials, Taxes, governmental fees or other charges specified in a Confirmation, Exchange Transactions shall be on a unit for unit basis without the payment of money by one Party to the other Party.

4.3. **Imbalances.** The volumes of Products delivered or exchanged by each Party shall be kept in approximate balance during the term of the Exchange Transaction. Small imbalances may be carried forward from month to month. If the Exchange Transaction becomes substantially out of balance, then the Party that has overdelivered Products may cease delivering Products until such time as an approximate balance is restored. Within thirty days of termination of an Exchange Transaction, the Parties shall agree whether to liquidate any remaining imbalances by the underdelivering Party continuing to make deliveries or by cash payment. If not cash-settled, the Parties shall schedule deliveries until the total exchange volumes are as near to equal as the mode of delivery specified in the Exchange Transaction permits and any remaining imbalances shall be book transferred or paid for by the underdelivering Party to the overdelivering Party in cash within three (3) Business Days of receipt of an exchange statement from the overdelivering Party. Notwithstanding the foregoing, any imbalances less than 5,000 barrels shall be settled by book transfer or cash. Unless otherwise mutually agreed in good faith, cash settlements of imbalances shall be computed as follows: (i) for over-deliveries by reference to the average low estimated market price; and (ii) for under-deliveries by reference to the average high estimated market price, in each case over the month in which the Exchange Transaction was terminated or expired for the delivery location where the volume owed was due to be delivered, as published by Platt's Oilgram Price Service, for non-NGL Products, or by the Oil Price Information Service Division of United Communications Group ("**OPIS**") in the "**OPIS LP Gas Price Report**" for NGLs.

4.4. **Monthly Statements.** Within five days after the end of each month, each Party shall provide the other Party with an exchange statement and invoice indicating the exchange differentials, Taxes, government fees and other charges for that month. The Parties also shall prepare and agree upon an exchange balance reconciliation for that month. In the event of a conflict between the exchange statements, the owing Party shall pay all undisputed amounts upon receipt of the invoice and the Parties promptly shall reconcile all areas of disagreement.

4.5. **Other Notices.** Each Party shall notify the other Party promptly of any cancellation of its agents' terminal lifting privileges. Each Party shall be responsible for any unauthorized liftings of Products by its agents or former agents until six hours after the other Party's receipt of the notice of cancellation of such agents' terminal lifting privileges.

#### 5. REPRESENTATIONS & WARRANTIES

5.1. Seller represents and warrants to Buyer that:

(a) At the time of delivery, Seller has title to Products delivered by it hereunder and the right to deliver such Products, and Seller agrees to indemnify, defend and hold Buyer harmless from and against any loss, claim or demand by reason of any failure of such title or breach of this warranty;

- (b) Products delivered pursuant to any Transaction shall meet the applicable specifications; and
- (c) Products delivered pursuant to any Transaction shall be delivered in compliance with all applicable Laws and Regulations which may be applicable thereto.

5.2. Buyer represents and warrants to Seller that:

(a) **BUYER IS KNOWLEDGEABLE AND AWARE THAT PRODUCTS DELIVERED HEREUNDER ARE HAZARDOUS MATERIALS AND THAT BUYER IS SOPHISTICATED AND KNOWLEDGEABLE OF (I) THE HAZARDS AND RISKS ASSOCIATED WITH SUCH PRODUCTS, AND (II) THE HANDLING, RECEIPT, TRANSPORTATION, STORAGE AND USE OF SUCH PRODUCTS.**

(b) Products received hereunder shall be received in full compliance with all applicable Laws and Regulations applicable thereto; and

(c) **BUYER IS KNOWLEDGEABLE AND AWARE THAT ODORANT LOSS, DEGRADATION OR ABSORPTION MAY OCCUR DURING THE TRANSPORTATION AND STORAGE OF NGLS AND THE RESULTING POTENTIAL FOR LACK OF WARNING OF THE PRESENCE OF NGLS.**

5.3. **OTHER THAN THE WARRANTIES SET FORTH IN THESE GENERAL TERMS, SELLER MAKES NO OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY WAIVED. SELLER EXPRESSLY DISCLAIMS ANY WARRANTY AGAINST INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT.**

## 6. BILLING, NETTING AND PAYMENTS

6.1. Invoices and Payment. Promptly after delivery, Seller shall transmit to Buyer an invoice (facsimile or electronic copies acceptable) for the purchase price of the Products and any other amounts due Seller under the Transaction, together with any supporting documents specified in the Confirmation as required for payment. Except as provided in Article 15 or in a separate netting agreement between the Parties, Buyer shall remit payment without offset, counterclaim or deduction of any kind via wire transfer of immediately available (same day) federal funds in U.S. dollars.

6.2. Payment Due Date. If not specified in the Confirmation, Buyer shall make payments to Seller within five Business Days after the date of receipt of invoice (the date of receipt is day zero). If payment should fall due on a non-Business Day, payment shall be made on the following Business Day. Invoices received after 1:00 pm Buyer's local time shall be considered to be received on the next Business Day.

6.3. Interest. Interest shall accrue on late payments at the Interest Rate from the date that payment is due until the date that payment is actually received by Seller. The payment of interest shall not be construed as an agreement to extend credit to the other Party or to extend the payment due date.

6.4. Disputed Invoices. If Buyer in good faith reasonably disputes the amount of Seller's invoice, it shall pay the undisputed portion of the invoice by the due date, provide Seller a written explanation, with reasonable support, of the basis for the dispute, and promptly provide Seller with any additional information reasonably requested by Seller. The Parties shall cooperate in resolving the dispute expeditiously. If the Parties agree that Buyer owes some or all of the disputed amount, Buyer shall pay such amount, together with interest at the Interest Rate from the original due date, within two Business Days from the date of their agreement.

6.5. Bookouts. If the Parties enter into two or more Transactions whereby each Party has agreed to sell to the other Party the same Products at the same delivery location during the same delivery period, they may expressly agree in writing to bookout and cancel all or a portion of such Transactions and replace the physical delivery required in such Transactions with a cash settlement ("**Bookout**"). The Bookout shall be set forth in a Confirmation that indicates the details of the Transactions being terminated, the settlement amount and the payor. The settlement amount shall be the excess of the larger aggregate amount owed by one Party minus the smaller aggregate amount owed by the other Party. The identified Transactions shall be terminated to the extent specified in the Bookout and each Party shall be released from all liabilities, claims and demands arising from those Transactions to the extent they are terminated, except for the obligation to pay the settlement amount. This Section shall apply notwithstanding that either Party may fail to (i) send out a Confirmation in respect of such novation or (ii) make changes on its books as a result of any such novation.

6.6. Alternate Price Index. If any portion of the purchase price of a Transaction or Exchange Transaction, including the value of an exchange imbalance, is based on an industry reference index that ceases to be published or is not published for any period applicable to calculation of the purchase price ("**Original Index**"), the Parties shall cooperate in good faith to select an alternative publication or other reference source that reflects as nearly as possible the same information as published in the original reference index. If the Parties cannot agree upon an alternative publication or other reference source within five Business Days from the date that the Original Index ceased to be published, then the Parties shall determine the purchase price for the affected Transaction ("**Relevant Price**") as provided in Section 6.7.

6.7. Dealer Prices. Within seven Business Days from the date that the Original Index ceased to be published, each Party shall choose an independent and non-Affiliated leading Dealer in the principal trading market for the affected Products selected in good faith from among Dealers of the highest credit standing that satisfy all the criteria that the Parties apply generally at the time in deciding whether to offer or to make an extension of credit or to enter into a transaction comparable to the affected Transaction. The two Dealers jointly and expeditiously shall choose a third Dealer satisfying the same criteria. Each of the three Dealers shall make its determination of the Relevant Price (the "**Dealer Price**"), taking into consideration the latest available quotation for the affected Products and any other information that in good faith the Dealer deems to be relevant. The Relevant Price shall be the arithmetic mean of the three Dealer Prices and shall be binding and conclusive on the Parties absent manifest error. Until a Relevant Price is established pursuant to Section 6.6 or this Section 6.7, the Parties shall in good faith negotiate an interim Transaction purchase price that reasonably reflects the value of the Products. Failing such agreement, the interim Transaction purchase price shall be the average of the purchase prices for the same Transaction in effect, or that would have been in effect during the twelve months preceding the month in which the Original Index ceased to be published. Upon the determination of the Relevant Price, the Transaction purchase price shall be adjusted retroactively to the date on which the Original Index ceased to be published.

## 7. FINANCIAL RESPONSIBILITY

7.1. Provision of Financial Information. Either Party (the "**Requesting Party**") may request that the other Party or its Guarantor (in either case, the "**Providing Party**") provide it with audited financial statements in the English language to enable the Requesting Party to ascertain the Providing Party's current financial condition and for the Requesting Party to assure itself of the Providing Party's ability to perform their obligations under any Transaction or Guaranty, respectively. Such evaluation will include a review of the Party's or its Guarantor's Credit Rating if applicable. The Providing Party shall provide its financial statements within three (3) Business Days of the Requesting Party's request, if said information is not publicly available. If the audited financial statements are provided by a Guarantor on its financial condition, such Guarantor shall also provide a

Guaranty, acceptable as to form and substance to the Requesting Party in its sole reasonable discretion, which provides for the full and prompt satisfaction of the payment obligations under this Agreement. Additionally, financial statements shall be deemed to be delivered by the Providing Party on the date the same are posted on the Securities and Exchange Commission website ([www.sec.gov](http://www.sec.gov)) or on the Providing Party's corporate website provided the same are in the English language. The Requesting Party shall agree to abide by any confidentiality obligations that the Providing Party or its Guarantor may reasonably impose.

#### 7.2. Adequate Assurance of Performance.

(a) If either Party ("the **"Demanding Party"**") has reasonable grounds for insecurity regarding the performance of any payment obligation under any Transactions (whether or not then due) by the other Party (the **"Non-Demanding Party"**) (including, without limitation, the occurrence of a material change in the creditworthiness of the Non-Demanding Party or its Guarantor, if applicable), the Demanding Party may, in its sole discretion and upon notice to Non-Demanding Party or its Guarantor, require that the Non-Demanding Party or its Guarantor provide the Demanding Party with **"Adequate Assurance of Performance"** of the Non-Demanding Party's ability to perform any of the payment obligations of the Non-Demanding Party under any Transaction or with respect to the Guaranty, the Guarantor's ability to perform. For the avoidance of doubt, a downgrade of the Credit Rating for a Party or its Guarantor, if applicable, will be considered an occurrence of material change in creditworthiness.

(b) **"Adequate Assurance of Performance"** means security in an amount and format and from an entity acceptable to the Demanding Party, each as determined in the Demanding Party's sole discretion, in any of the following forms, as may be acceptable to the Demanding Party in its sole discretion: prepayment, an irrevocable non-transferable standby letter of credit issued or confirmed by a Qualified Financial Institution acceptable to the Demanding Party and in a format acceptable to the Demanding Party, a Guaranty, a security interest or other collateral acceptable to the Demanding Party. Any Guaranty provided on behalf of the Non-Demanding Party to the Demanding Party shall be acceptable for only as long as the credit of the Guarantor continues to be acceptable to the Non-Demanding Party, after which time Adequate Assurance of Performance in another form acceptable to the Demanding Party must be provided. Unless the Demanding Party specifies another time period, the Non-Demanding Party or its Guarantor shall furnish the required Adequate Assurance of Performance within two Business Days of receipt of the Demanding Party's written demand. In all events, such Adequate Assurance of Performance must be provided at least three Business Days prior to the next scheduled delivery or Bookout date, and Seller may suspend performance without liability to Buyer in the event that Buyer has not furnished the required Adequate Assurance of Performance.

(c) All bank charges relating to any letter of credit and any other fees, commissions, costs and expenses incurred with respect to furnishing Adequate Assurance of Performance shall be paid by the Non-Demanding Party or its Guarantor.

(d) If the Non-Demanding Party or its Guarantor fails to provide Adequate Assurance of Performance pursuant to this Section 7.2 within the time frame specified, in addition to all other remedies available to the Demanding Party and without incurring any liability, whether to the Non-Demanding Party, its Guarantor or to third parties, for demurrage or any other costs arising from delay or otherwise, the Demanding Party may do any one or more of the following: (i) withhold or suspend its obligations under these General Terms and any Transaction, (ii) terminate any outstanding Transaction, (iii) proceed against the Non-Demanding Party or its Guarantor or both for damages occasioned by the Non-Demanding Party's or Guarantor's failure to perform or (iv) exercise its rights under Article 15.

7.3. The Parties' rights under Section 7.2 shall be in addition to, and not superseded by, any requirements to deliver collateral as may be provided in any collateral annex or netting agreement (**"Collateral Annex"**) entered into between the Parties.

### 8. TAXES

8.1. Each Party represents that it is registered under federal and state excise, sales, transfer or similar tax Laws and Regulations and, to the extent permissible by such Laws and Regulations, may engage in tax-free transactions. Prior to the scheduled delivery or book, stock or inventory transfer date, Buyer shall provide Seller with appropriate notification, exemption or resale certificates. Upon receipt of Seller's invoice, Buyer shall reimburse Seller for all Taxes, together with all penalties and interest thereon, paid or incurred by Seller directly or indirectly with respect to the purchase, storage, exchange, use, transportation, resale, importation or handling of the Products sold to Buyer, and Buyer shall indemnify Seller for any such tax liability.

8.2. Seller may refuse to transfer title to Products in-tank to Buyer if Buyer is not a registered **"position holder"** in the same **"approved terminal"** (such terms as defined in Treas. Reg. § 48.4081-1) unless Buyer demonstrates to Seller's satisfaction that the terminal will transfer the inventory position to such Products to a subsequent position holder.

8.3. If any personal property taxes are assessed against Products sold in a Transaction by any Governmental Authority, the Party having title to the Products at the time such tax liability accrues shall be responsible for payment of such taxes.

8.4. Notwithstanding anything to the contrary in the Transaction or Confirmation, (i) neither Party shall be responsible for the other Party's ad valorem, net income, gross receipts, excess profits, business license, occupation, margin based, corporate franchise, and similar Taxes required for the maintenance of business existence, and (ii) neither Party shall be obligated to indemnify or hold harmless the other Party for any Taxes levied or imposed by any Governmental Authority in any country and payable by such other Party (A) that does not directly relate to the performance of such other Party of its obligations under the Transaction or (B) resulting from the creation of a permanent establishment, trade or business or presence by such other Party or any Affiliates thereof.

### 9. INSURANCE

Each Party shall obtain and maintain such insurance coverages as may be required by applicable Law and Regulations for the lawful performance of its obligations under the Transaction.

### 10. COMPLIANCE WITH LAWS

10.1. Duty to Comply. In the performance of its duties under or in connection with these General Terms and any Transaction, each Party (i) shall comply in all material respects with all applicable Laws and Regulations, including all applicable Environmental Laws and Regulations applicable to that Party; and (ii) shall not commit any violation of the Foreign Corrupt Practices Act (§ 15 U.S.C. 78, et seq.), any applicable local anti-corruption law or regulation or any other anti-corruption law or regulation, relating to either Party, the Transaction, or any transaction hereunder (**"Anti-corruption Laws"**). Each Party shall maintain the records required to be maintained by the applicable Environmental Laws and Regulations and shall make the relevant portion(s) of such records available to the other Party upon such Party's reasonable request. To the extent permitted by applicable Laws and Regulations, each Party also shall, promptly upon becoming aware of the same, notify the other Party in writing of any violation or alleged violation

with respect to the Products sold under the Transaction and, upon request, provide the other Party with all relevant portion(s) of evidence of environmental inspections or any other audits by any Governmental Authority with respect to such Products. Without limiting the other remedies in the Transaction or Confirmation, in the event a Party violates any Anti-corruption Laws in connection with this Agreement, then the non-violating Party shall have the right to: (i) suspend its performance under the Transaction or Confirmation; and/or (ii) terminate the Transaction or Confirmation, without liability, by providing the other Party with prior written notice of the same.

10.2. Mobile Sources Compliance. To the extent applicable to the Products purchased and sold under the Transaction, each Party shall comply with all applicable Laws and Regulations relating to or regarding the quality, integrity, testing, distribution and marketing of blendstocks and any other motor fuel or fuel product that may be subject to such regulations, including the provisions and requirements of 40 C.F.R. Parts 70 through 80, as they may be revised or amended from time to time.

10.3. Pollution Prevention and Responsibility. Upon the occurrence of any spill or discharge reportable under applicable Laws and Regulations or other environmental pollution in connection with any transfer, delivery, transportation or receipt of Products, the Parties shall take or shall arrange by contract for a third party to take any action required of that Party under applicable Laws and Regulations, including actions to prevent or mitigate resulting pollution damage. Even if not required by applicable Laws and Regulations, a Party may take such actions to prevent or mitigate pollution damage as it deems appropriate or is required by any Governmental Authority, in which case such Party shall notify the other Party immediately of any such actions, and shall take such actions in accordance with the National Contingency Plan and any other applicable Laws or Regulations, or as may be directed by the U.S. Coast Guard or any other Governmental Authority. If either Party incurs costs to clean up or contain a spill or discharge or to prevent or mitigate resulting pollution damage, such Party reserves any rights provided by law to recover such costs from the other Party or from any third party. If a third party is legally liable for such costs and expenses, each Party shall cooperate with the other Party for the purpose of obtaining reimbursement from such third party. Each Party also shall cooperate with the other Party for the purpose of obtaining reimbursement from any other applicable entity or source under federal or state law. Each Party acknowledges that (i) no provision under these General Terms is intended to imply that a Party assumes any pollution liability not otherwise applicable to that Party or for the benefit of or on behalf of the other Party and (ii) a Party shall not be liable to indemnify the other Party for any Liabilities in connection therewith, except as may be otherwise imposed under federal or state law on an owner of oil or voyage charterer.

10.4. Compliance and Health and Safety. Seller warrants that the Products delivered to Buyer will be produced, handled and transported in compliance with all applicable Laws and Regulations. Seller reserves the right to approve Buyer's transportation and require that Buyer provide Seller with evidence of Buyer's or its transporter's insurance acceptable to Seller. Seller may decline to load or permit loading of any Buyer's tank trucks or rail cars that it in good faith believes may be contaminated, not suitable for carrying the Products or is not in compliance with applicable Laws and Regulations, and Buyer shall be responsible for any resulting costs. Buyer warrants that it may lawfully receive, sell, use and transport the Products purchased under a Transaction in interstate and intrastate commerce. Buyer is aware of known hazards or risks in, and assumes all risk and responsibility for, handling the Products purchased in a Transaction or using them in further manufacture or other processes, including in combination with other substances. The Parties shall comply with all applicable health and safety Laws and Regulations and inform their employees, agents, contractors and customers of any hazards or risks associated with the use and handling of the relevant Products as appropriate. To the extent required by applicable Laws and Regulations, Seller shall provide Buyer with Seller's Safety Data Sheets ("SDS") for the Products to be delivered hereunder. Nothing herein shall excuse Buyer from complying with applicable Laws and Regulations that may require Buyer to provide its employees, agents, contractors, users and customers who may come into contact with the Products with a copy of the SDS and any other safety information provided to it by Seller or that require Buyer to ensure that the recommendations relating to the handling of the Products are followed. Compliance with any recommendation contained in the SDS or other safety information shall not excuse Buyer from complying with all applicable Laws and Regulations.

10.5. Books and Records. All reports or documents rendered by either Party to the other Party shall, to the best of its knowledge and belief, accurately and completely reflect the facts about the activities and transactions to which they relate. Each Party promptly shall notify the other Party if at any time it has reason to believe that the records or documents previously furnished are no longer accurate or complete.

## **11. NEW OR CHANGED LAWS AND REGULATIONS**

If at any time after a Transaction is entered into new Laws and Regulations come into effect or existing Laws and Regulations are amended, which individually or collectively have a material adverse economic effect upon Seller, then Seller may notify Buyer in writing that it desires in good faith to renegotiate the price or other material terms or conditions of such Transaction, stating the new or changed Laws and Regulations upon which its renegotiation request is based and the terms upon which it is willing to continue to perform with respect to deliveries of Products not yet made. If the Parties are unable to agree on a reasonable amendment or other modification to the Agreement, as reasonably determined by Seller, for the same within ninety Days after receipt of a renegotiation request, then Seller shall have the option to terminate the Transaction upon thirty Days written notice thereof to Buyer.

## **12. FORCE MAJEURE**

12.1. Neither Party shall be liable to the other Party if it is rendered unable by an event of Force Majeure to perform in whole or in part any obligation or condition of a Transaction, other than payment or indemnity obligations, for so long as the event of Force Majeure exists and to the extent that performance is hindered by the event of Force Majeure, provided, however, that the Party unable to perform shall use commercially reasonable efforts to avoid or remove the event of Force Majeure. During the period that a Party's performance of its obligations has been suspended in whole or part by reason of an event of Force Majeure, the other Party likewise may suspend the performance of all or part of its obligations to the extent that such suspension is commercially reasonable, except for any payment and indemnification obligations.

12.2. The Party rendered unable to perform shall notify the other Party within three Days after learning of the occurrence of a Force Majeure event, including, to the extent feasible, the details and the expected duration of the Force Majeure event and the volume of Products affected. Such Party also shall promptly notify the other Party when the Force Majeure event is terminated.

12.3. If a Party's performance of a Transaction is suspended due to an event of Force Majeure in excess of 180 consecutive days from the date that notice of such event is given, and so long as such event is continuing, either Party, in its sole discretion, may terminate the Transaction by written notice to the other Party, and neither Party shall have any further liability to the other Party in respect of such Transaction except for the rights and remedies previously accrued.

### 13. INDEMNIFICATION

13.1. Subject to Sections 3.4, 3.5, 3.6, and 13.2, Article 21 and all limitations of liability in these General Terms or the Confirmation, each Party (the “**Indemnifying Party**”) shall indemnify and hold the other Party, its Affiliates, and their respective employees, directors, officers, representatives, agents and contractors (collectively, the “**Indemnified Party**”) harmless from and against any and all Liabilities to the extent directly or indirectly arising from the Indemnifying Party’s (i) negligence or willful misconduct in the performance of or related to a Transaction, (ii) failure to comply with applicable Laws and Regulations, including Anti-Corruption Laws, with respect to the sale, transportation, storage, handling or disposal of the Products or (iii) representations, covenants or warranties made under these General Terms which prove to be materially incorrect or misleading when made.

13.2. **AS TO ANY PRODUCTS DELIVERED PURSUANT TO A TRANSACTION THAT ARE ODORIZED NGLS, NOTWITHSTANDING ANYTHING IN THESE GENERAL TERMS TO THE CONTRARY, UPON RECEIPT FROM SELLER OF DOCUMENTATION OF THE REQUIRED ODORIZATION, BUYER’S INDEMNIFICATION OBLIGATIONS UNDER ANY TRANSACTION SHALL INCLUDE, AMONG ANY OTHER LIABILITIES, THOSE ARISING FROM, BASED UPON OR ASSERTING LACK OF OR INADEQUATE WARNING MATERIALS, IMPROPER AMOUNTS, USE OR TYPE OF ODORANT, “ODORANT FADING,” LACK OF WARNING ON SUPPLEMENTAL WARNING SYSTEMS (SUCH AS GAS DETECTORS) AND IMPROPER TRAINING OR MONITORING OF BUYER’S WARNING OR TRAINING PROGRAMS RESPECTING ODORIZATION.**

13.3. The Parties’ obligations to defend, indemnify and hold each other harmless under these General Terms shall not vest any rights in any third party, whether a Governmental Authority or private entity, nor shall they be considered an admission of liability or responsibility for any purposes other than those enumerated in these General Terms.

13.4. The Indemnified Party shall notify the Indemnifying Party as soon as practicable after receiving notice of any proceeding (“**Proceeding**”) brought against it which may give rise to the Indemnifying Party’s obligations under these General Terms, shall furnish to the Indemnifying Party the complete details within its knowledge and shall render all reasonable assistance requested by the Indemnifying Party in the defense. The Indemnified Party may participate, at its own expense and with counsel of its own selection, in the defense and settlement of the Proceeding without relieving the Indemnifying Party of its obligations under these General Terms. Notwithstanding the foregoing, and without limiting its obligation to indemnify the Indemnified Party, an Indemnifying Party shall not be entitled to assume responsibility for or control of any Proceeding if an Event of Default has occurred and is continuing with respect to the Indemnifying Party.

### 14. AUDIT RIGHTS

Each Party and its duly authorized representatives, upon reasonable notice and during normal working hours, shall have access to the accounting records and other documents maintained by the other Party that relate to any Transaction. The right to inspect or audit such records shall exist for a period of eighteen months or, for any period required by relevant applicable law, rule, or regulation, whichever is longer, following the date of delivery of the relevant Products under the Transaction, whether or not an audit previously was undertaken. Except as provided in Section 3.6, any claims or disputes relating to accounting, invoices or payments shall be made within two years of the date of delivery of the relevant Products under the Transaction or shall be deemed waived and barred without recourse to litigation or arbitration.

### 15. DEFAULT AND LIQUIDATION

15.1. Notwithstanding any other provision of these General Terms or any Transaction, an Event of Default shall be deemed to occur when:

(e) Either Party fails to make payment when due under and in accordance with any Transaction within two Business Days of a demand for payment by the other Party.

(f) Either Party fails to provide Adequate Assurance of Performance to secure its obligations in accordance with Article 7 or fails to deliver collateral under any Collateral Annex within two Business Days of a demand therefor, or such other period as may be specified in the Transaction or Collateral Annex.

(g) Either Party fails to perform or repudiates any material obligation to the other Party under any Transaction, other than an Event of Default described in clauses (a) and (b) above, or breaches any representation, covenant or warranty in any material respect under any Transaction, that, if capable of being cured, is not cured to the reasonable satisfaction of the other Party in its sole discretion, within five Business Days from notice to such Party that corrective action is needed.

(h) A Guarantor (i) fails to satisfy, perform or comply with any obligation in accordance with any Guaranty if such failure continues after any applicable grace or notice period, (ii) breaches any representation, covenant or warranty or any representation proves to have been incorrect or misleading in any material respect under a Guaranty, which is not cured to the satisfaction of the other Party, in its sole discretion, within any applicable grace or notice period or (iii) repudiates, disclaims, disaffirms or rejects, in whole or part, any obligation under a Guaranty or challenges the validity of such Guaranty.

(i) Either Party or its Guarantor becomes Bankrupt.

(j) Either Party or its Guarantor (in either case, the “**Affected Party**”) consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, (i) the resulting, surviving or transferee entity fails to assume all of the obligations of the Affected Party under any Transaction or under any Guaranty made pursuant to any Transaction, either by operation of law or by agreement satisfactory to the other Party (“**Non-Affected Party**”) or otherwise or, (ii) in the reasonable opinion of the Non-Affected Party, the creditworthiness of the successor, surviving or transferee entity, taking into account any Guaranty, is materially weaker than immediately prior to the consolidation, amalgamation, merger or transfer; provided, however, it shall not constitute an Event of Default if the Affected Party provides Adequate Assurance of Performance to the Non-Affected Party in accordance with Article 7 Financial Responsibility.

15.2. Notwithstanding any other provision of these General Terms, any Transaction or Guaranty, upon the occurrence of an Event of Default with respect to either Party or its Guarantor (the “**Defaulting Party**”), the other Party (the “**Non-Defaulting Party**”) may, in its sole discretion and upon one Business Day’s prior written notice to the Defaulting Party, immediately suspend its performance under the Transaction and/or terminate and liquidate all Transactions between the Parties by calculating Termination Payments in the manner set forth in Section 15.4.

15.3. When an Event of Default has occurred and is continuing, the Non-Defaulting Party may, by notice given to the Defaulting Party, designate a date not earlier than the date of such notice (“**Early Termination Date**”) on which all Transactions shall terminate and the Non-Defaulting

Party shall then determine the Liquidation Amount as of the Termination Determination Date. The Non-Defaulting Party shall notify the Defaulting Party of the Liquidation Amount due from or due to the Defaulting Party, after taking into account any collateral or margin held by either Party (“**Termination Payment**”), to be paid as provided in Section 15.4.

15.4. On the Early Termination Date or as soon as reasonably practicable thereafter, the Non-Defaulting Party shall provide the Defaulting Party with a statement showing, in reasonable detail, the calculation of the Liquidation Amount and the Termination Payment, each as determined under Section 15.3. Any Termination Payment due to the Defaulting Party shall be paid concurrently with the delivery of statement contemplated by this Section. If the Defaulting Party owes the Termination Payment to the Non-Defaulting Party, the Defaulting Party shall pay the Termination Payment on the fifth Business Day after it receives the statement.

15.5. The Non-Defaulting Party may enforce any of its remedies under these General Terms. The Non-Defaulting Party’s rights under this Article 15 shall be in addition to, and not in limitation or exclusion of, any other rights of setoff, recoupment, combination of accounts, lien or other right which it may have, whether by agreement, operation of law or otherwise, provided, however, that if the Non-Defaulting Party elects to exercise its rights under Section 15.2, it shall do so with respect to all Transactions in accordance with provisions of that Section 15.2. No delay or failure on the part of a Non-Defaulting Party to exercise any right or remedy shall constitute an abandonment of such right or remedy and the Non-Defaulting Party shall be entitled to exercise such right or remedy at any time after an Event of Default has occurred. Each Party shall reimburse the other Party for its costs and expenses, including reasonable attorneys’ fees, incurred in connection with the enforcement of, suing for or collecting any amounts payable by it under these General Terms or any Transaction but only to the extent the other Party prevails in the same.

15.6. Without limiting the applicability of any other provision of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq., as amended (the “**Bankruptcy Code**”) (including without limitation Sections 362, 546, 548, 553, 555, 556, 559, 560, 561 and 562 thereof and the applicable definitions in Section 101 thereof), the Parties acknowledge and agree that: (i) these General Terms and all Transactions entered into thereunder constitute “forward contracts” and/or “swap agreements” and these General Terms constitute a “**master netting agreement**” as defined in Section 101 of the Bankruptcy Code; (ii) each Party is a “**master netting agreement participant**,” a “**forward contract merchant**” and/or a “**swap participant**” as defined in the Bankruptcy Code; (iii) the rights of the Parties under Article 15 of these General Terms constitute “**contractual rights**” to liquidate, terminate or accelerate, as applicable, a Transaction and the transactions entered into thereunder; (iv) any margin or collateral (including any Adequate Assurance of Performance that has been posted) provided hereunder, or under any margin, collateral, security, or similar agreement related hereto and all payment obligations of any Party to the other hereunder constitute a “**margin payment**” or a “**settlement payment**” as defined in Section 101 of the Bankruptcy Code; and (v) the Parties are entitled to the rights under, and protections afforded by, Sections 362, 546, 548, 553, 555, 556, 559, 560, 561 and 562 of the Bankruptcy Code. For purposes of these General Terms or any Transactions, neither Party is a “utility” as such term is used in Section 366 of the Bankruptcy Code, and each Party agrees to waive and not to assert the applicability of the provisions of said Section 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further agrees to waive the right to assert that the other Party is a provider of last resort.

## 16. REPRESENTATIONS AND WARRANTIES

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

- (a) It is an “**Eligible Contract Participant**” as defined in Section 1a (12) of the Commodity Exchange Act, as amended.
- (b) It is a “**forward contract merchant**” in respect of each Transaction, and each Transaction is a forward contract for purposes of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, as amended from time to time.
- (c) It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing.
- (d) It has the corporate, governmental or other legal capacity, authority and power to execute, deliver and perform any Transaction, and has taken all necessary action to duly authorize the foregoing.
- (e) The execution, delivery and performance of any Transaction do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or governmental authority applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets.
- (f) All governmental and other authorizations, approvals, consents, notices and filings that are required to have been obtained or submitted by it with respect to any Transaction have been obtained or submitted and are in full force and effect and all conditions of any such authorizations, approvals, consents, notices and filings have been complied with.
- (g) Its obligations under any Transaction constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors’ rights generally and subject, as to enforceability, to equitable principles of general application regardless of whether enforcement is sought in a proceeding in equity or at law).
- (h) No Event of Default with respect to it or its Guarantor has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under any Transaction.
- (i) There is not pending or, to its knowledge, threatened against it or its Guarantor any action, suit or proceeding at law or in equity or before any court, tribunal, governmental authority, official or any arbitrator that is likely to affect the legality, validity or enforceability against it of any Transaction or its ability to perform its obligations under the same.
- (j) It is not relying upon any representations of the other Party other than those expressly set forth in these General Terms, in any Transaction or in any Guaranty of the obligations of such other Party.
- (k) It has entered into each Transaction as principal, and not as advisor, agent, broker or in any other capacity, fiduciary or otherwise, with a full understanding of the material terms and risks of the same, and it is capable of assuming those risks.
- (l) It has made its trading and investment decisions, including regarding the suitability thereof, based upon its own judgment and any advice from such advisors, as it has deemed necessary and not in reliance upon any view expressed by the other Party.

(m) In respect of any Transaction, the other Party (i) is acting solely in the capacity of an arm's-length contractual counterparty, (ii) is not acting as a financial advisor or fiduciary or in any similar capacity and (iii) has not given to it any assurance or guarantee as to the expected performance or result.

(n) It is a producer, processor, or commercial user of, or a merchant offering or entering into the Transaction solely for purposes related to its business as such.

(o) To the extent a Transaction contains volumetric optionality, both Parties hereby confirm to each other that the Transaction is intended to be physically settled so that, if exercised, the option would result in the sale of an exempt commodity for immediate or deferred delivery.

(p) To the extent a Transaction contains volumetric optionality, the Parties agree that such fluctuations are caused by the operation of, or the need to operate a Party's facility(ies) or assets, as the case may be, in a manner that causes such variable quantity fluctuations (the "**Volumetric Adjustment**"), and such Party represents to the other Party that such Volumetric Adjustment is solely based on physical or operational factors that are outside of that Party's control and are influencing demand for, or supply of, the physical commodity.

## 17. NOTICES AND COMMUNICATIONS

All notices, communications, or demands shall be in writing, whether or not so stated, and sent by facsimile or email, delivered by hand or by registered or certified mail, return receipt requested with all postage fully paid, or by overnight courier, in each case addressed to a Party at the address designated by such Party from time to time by giving written notice thereof in accordance with this Article 17. Except as provided in Section 6.2 as to invoices, a notice shall be deemed to have been received by a Party (i) if delivered by hand or sent by overnight courier, on the day of delivery if a Business Day, or if not a Business Day, on the immediately following Business Day, (ii) if sent by registered or certified mail, return receipt requested, on the date of receipt, and (iii) if transmitted by facsimile or email, at the time of transmission. Notices received after 5:00 p.m. local time shall be deemed to be received on the following Business Day. If delivery in accordance with subclause (i) herein is refused or avoided by a Party, notice will be deemed effective on the date of attempted delivery if and only if such notice has been substantially simultaneously delivered by the sending Party to the receiving Party by email, or the sending Party has otherwise notified the receiving Party, by email, of the provision of such notice.

## 18. ASSIGNMENT

18.1. Neither Party shall assign its rights or interests or delegate its obligations under a Transaction in whole or in part without the express written consent of the other Party, which shall not be unreasonably withheld, conditioned or delayed, provided, however, that no consent shall be required for transfer of an interest in any Transaction to an Affiliate by assignment, merger or otherwise. The transferor shall remain jointly and severally liable with the transferee for the full performance of the transferor's obligations under a Transaction unless the transferee (i) assumes in writing all of the obligations of the transferor and (ii) provides the non-assigning Party with evidence of financial responsibility acceptable to the non-assigning Party in accordance with Section 7.1 or, the transferee complies with providing Adequate Assurance of Performance pursuant to Article 7 if the evidence of financial responsibility is lacking or not otherwise acceptable to the non-assigning Party.

18.2. Any attempted assignment of a Transaction in violation of this Article 18 shall be null and void *ab initio* and the non-assigning Party may, without prejudice to any other rights or remedies it may have hereunder or otherwise, terminate such Transaction effective upon notice to the Party attempting such assignment.

## 19. CONFIDENTIALITY

19.1. During the term of the Transaction and for a period of two years thereafter, the terms and conditions of such Transaction shall be confidential and neither Party shall disclose them to any third party except (i) as may be required by court order, Laws and Regulations or a Governmental Authority, (ii) to such Party's or its Affiliates' employees, auditors, consultants, banks, financial advisors and legal advisors, or (iii) in connection with price reporting, provided that the identity of the counterparty is not disclosed.

19.2. In the case of disclosure covered by subclause (i) of Section 19.1, and if the receiving Party's counsel advises that it is permissible to do so, the receiving Party shall notify the other Party in writing of any proceeding of which it is aware which may result in disclosure of the disclosing Party's information, and use reasonable efforts to prevent or limit such disclosure. The Parties may exercise all remedies available at law or in equity to enforce or seek relief in connection with the confidentiality obligations contained in these General Terms.

## 20. GOVERNING LAW AND JURISDICTION

20.1. The existence, validity, interpretation and enforcement of any Transaction or Confirmation and any controversy or claim related to or arising under a Transaction or Confirmation shall be governed by, interpreted and construed in accordance with the laws of the State of Texas (without giving effect to its conflicts of laws principles).

20.2. Any action arising out of or related to any Transaction may be brought only in the courts of the State of Texas, or the United States Federal Courts, in either case situated in Houston, Texas. **SHOULD EITHER PARTY INSTITUTE LITIGATION REGARDING ANY ASPECT OF ANY TRANSACTION, EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ALL RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO A TRANSACTION. EACH PARTY ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR EACH PARTY IN ENTERING INTO ANY TRANSACTION GOVERNED BY THESE GENERAL TERMS.**

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

20.4. In the event of a dispute under the Transaction, the Parties to the extent practicable will first use commercially reasonable efforts to resolve the dispute by negotiation between executives who have the authority to resolve the dispute. Without derogating from the specific time limits set out in Section 3.6 (complaint of deficiency of quantity or of variation in quality), and other provisions requiring compliance with a given period, all of which shall remain in full force and effect, any claim arising under the Transaction and any dispute under the Transaction shall be commenced within one year of the date on which the Product was delivered or, in the case of a total loss, of the date upon which the Product should have been delivered, failing which the claim shall be time barred and any liability or alleged liability of a Party shall be extinguished.

## 21. LIMITATION ON DAMAGES

**NEITHER PARTY WILL BE LIABLE TO THE OTHER UNDER ANY TRANSACTION FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES RESULTING FROM OR ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE, THE SUSPENSION OF PERFORMANCE, THE**

FAILURE TO PERFORM, OR THE TERMINATION OF A TRANSACTION (WHETHER ARISING IN CONTRACT, TORT, OR OTHER CAUSE OF ACTION), INCLUDING WITHOUT LIMITATION, LOSS OF USE, INCREASED COST OF OPERATIONS, LOSS OF PROFIT OR REVENUE, OR BUSINESS INTERRUPTIONS CAUSED BY THE OTHER PARTY'S NEGLIGENCE (AND REGARDLESS OF WHETHER SUCH NEGLIGENCE IS SOLE, JOINT, CONCURRENT, ACTIVE, PASSIVE OR GROSS), STRICT LIABILITY AND BREACH OF CONTRACT. IN ADDITION TO THE FOREGOING, IN RESPECT OF ANY CLAIMS RELATING TO SELLER'S FAILURE TO SUPPLY THE AGREED QUANTITY OF PRODUCT OR WITH RESPECT TO ANY DEFICIENCY OF QUANTITY OR VARIATION IN QUALITY, SELLER SHALL IN NO CIRCUMSTANCES BE LIABLE FOR MORE THAN THE POSITIVE DIFFERENCE, IF ANY, BETWEEN THE OPIS DAILY INDEX ON THE DELIVERY DATE AND THE PURCHASE PRICE FOR THE VOLUME OF PRODUCT GIVING RISE TO THE APPLICABLE CLAIM. IN NO EVENT SHALL SELLER'S LIABILITY FOR ANY CLAIM EXCEED THE PURCHASE PRICE FOR THE VOLUME OF PRODUCT GIVING RISE TO THE APPLICABLE CLAIM. THE PROVISIONS OF THIS ARTICLE 21 SHALL APPLY NOTWITHSTANDING ANYTHING IN THE TRANSACTION, CONFIRMATION OR GENERAL TERMS TO THE CONTRARY AND CONTINUE TO APPLY NOTWITHSTANDING THE TERMINATION OR EXPIRY OF THE TRANSACTION FOR ANY REASON WHATSOEVER.

## 22. MISCELLANEOUS

22.1. Nothing expressed or implied in these General Terms is intended to create any rights, obligations or benefits in any person other than the Parties and their successors and permitted assigns.

22.2. These General Terms and the Transaction into which they are incorporated constitute the entire agreement between the Parties as to such Transaction, and no representations or warranties shall be implied or provisions added in the absence of a written agreement to such effect between the Parties. These General Terms may not be amended or modified unless reduced to writing and executed by the Parties' duly authorized representatives.

22.3. The failure of a Party to assert a right or enforce an obligation of the other Party shall not be deemed a waiver of such right or obligation. The waiver by any Party of a breach of any provision of, or Event of Default under, any Transaction shall not operate or be construed as a waiver of any other breach of that provision or as a waiver of any breach of another provision of, or Event of Default under such Transaction, whether of a like kind or different nature. Each right granted to either Party under these General Terms, or allowed it by law or equity, shall be cumulative and may be exercised from time to time in accordance with these General Terms and applicable law.

22.4. The exporter of record shall be entitled to any United States Customs Service drawback credits for exports of eligible Products or other products derived from or containing the Products sold under a Transaction.

22.5. If any Article, Section or provision of these General Terms shall be determined to be null and void, voidable or invalid by a court of competent jurisdiction, then for such period that the same is void or invalid, it shall be deemed to be deleted and the remaining portions of these General Terms shall remain in full force and effect.

22.6. All audit rights, payment, confidentiality, limitations of liability, time-frames for the submission of claims and initiation of litigation/arbitration, and indemnification obligations as set forth in the as set forth in these General Terms or the Transaction shall survive the completion of delivery of Products under a Transaction as provided herein. A Party's payment obligation shall not be deemed fulfilled for so long as the payment has not been credited in full into the other Party's bank account.

22.7. Each Party shall exercise reasonable care and diligence to prevent any illegal or unethical actions or conditions that could result in a conflict with the other Party's best interests.

## 23. DEFINITIONS

23.1. For purposes of these General Terms and any Transaction, the following terms shall have the meanings indicated below:

**"Affiliate"** means, in relation to any Party, any entity controlled, directly or indirectly, by such Party, any entity that controls, directly or indirectly, such Party, or any entity directly or indirectly under common control with such Party. For the purpose of this definition, "control" of any entity or Party means (i) ownership of a majority of the issued shares or voting power of such entity or Party, or (ii) control in fact of such entity or Party.

**"API"** means the American Petroleum Institute.

**"ASTM"** means the American Society for Testing and Materials.

**"Bankrupt"** means that a Party or its Guarantor, if any, (i) is dissolved, other than pursuant to a consolidation, amalgamation or merger, (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due, (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors, (iv) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor's rights, or a petition is presented for its winding-up or liquidation, (v) has a resolution passed for its winding-up, official management or liquidation, other than pursuant to a consolidation, amalgamation or merger, (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for all or substantially all of its assets, (vii) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets, (viii) files an answer or other pleading admitting or failing to contest the allegations of a petition filed against it in any proceeding of the foregoing nature or (ix) takes any other action to authorize any of the actions set forth above.

**"Barrel"** means forty-two Gallons.

**"Breakage Costs"** means all out-of-pocket losses and expenses incurred by the Non-Defaulting Party as a result of termination and liquidation of Transactions pursuant to Article 15 (excluding any amounts included in Gain, Loss or Unpaid Amounts), including reasonable attorneys' fees, court costs, collection costs, interest charges and other disbursements and any damages, losses and expenses, including brokerage fees and commissions, incurred in obtaining, maintaining, replacing or liquidating commercially reasonable hedges or related trading positions relating to the Transactions that are being terminated and liquidated, all as determined in a commercially reasonable manner by the Non-Defaulting Party.

**"Business Day"** means a 24-hour period ending at 5:00 p.m. Central Prevailing Time on a weekday on which banks are open for general commercial business in Texas.

**"Buyer"** means the Party purchasing Products from the other Party or receiving Products in an Exchange Transaction.

**"Confirmation"** means the written documentation that memorializes the material terms of the Parties' oral agreement as to a particular Transaction.

**"Costs"** means brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred in terminating any specifically related arrangements which replace the terminated Transactions, transportation and storage service costs associated with terminated Transactions, and reasonable attorneys' fees, if any, incurred in connection with the Non-Defaulting Party enforcing its rights with regard to the terminated Transactions. The Non-Defaulting Party shall use reasonable efforts to mitigate or eliminate these Costs.

**"Credit Rating"** means with respect to an entity the respective rating assigned to its senior unsecured long-term indebtedness (not supported by third party credit enhancement) by S&P and Moody's. In the event of split Credit Ratings between S&P and Moody's, the lower Credit Rating shall be determinative.

**"Dealers"** means leading dealers, brokers or industry participants with substantial experience trading the Products, as reasonably selected by the applicable Party.

**"Default"** or an **"Event of Default"** means an occurrence of the events or circumstances described in Article 15.

**"Economic Terms"** means the description of the Products, volume, price, the applicable specifications, means of delivery, delivery terms and any other terms intended to vary the terms and conditions contained in these General Terms with regard to a particular transaction.

**"Environmental Laws and Regulations"** means any existing or past Laws and Regulations, policy, judicial or administrative interpretation thereof, or any legally binding requirement that governs or purports to govern the protection of persons, natural resources or the environment (including the protection of ambient air, surface water, groundwater, land surface or subsurface strata, endangered species or wetlands), occupational health and safety and the manufacture, processing, distribution, use, generation, handling, treatment, storage, disposal, transportation, release or management of solid waste, industrial waste or hazardous substances or materials.

**"Force Majeure"** means any cause or event reasonably beyond the control of a Party, including fires, earthquakes, lightning, floods, explosions, storms, adverse weather, landslides and other acts of natural calamity or acts of God or storms, or warnings of tornadoes, hurricanes, or other storm warnings which require the precautionary shutdown of a pipeline, gas processing plant, fractionator or other related facilities; navigational accidents or maritime peril; Vessel damage or loss; strikes, grievances, actions by or among workers or lock-outs, whether or not such labor difficulty could be settled by acceding to any demands of any such labor group of individuals; accidents at, closing of, or restrictions upon the use of mooring facilities, docks, ports, pipelines, harbors, railroads or other navigational or transportation mechanisms; allocation, disruption or breakdown of or explosions or accidents to wells, storage plants, fractionators, refineries, terminals, machinery or other facilities; acts of war, hostilities (whether declared or undeclared), civil commotion, embargoes, blockades, terrorism, sabotage or acts of the public enemy; any act or omission of any Governmental Authority; good faith compliance with any order, request or directive of any Governmental Authority; curtailment, interference, failure or cessation of supplies reasonably beyond the control of a Party; brine constraints; or any other cause reasonably beyond the control of a Party, whether similar or dissimilar to those above and whether foreseeable or unforeseeable, which, by the exercise of due diligence, such Party could not have been able to avoid or overcome. A Party's inability economically to perform its obligations under any Transaction does not constitute an event of Force Majeure.

**"Gain"** means, for any Transaction as of the Termination Determination Date, the economic benefit (exclusive of Costs), if any, resulting from the termination of the terminated Transactions, determined in a commercially reasonable manner as calculated in accordance with Article 15 herein. The Gain shall be determined by comparing the value of the remaining term, transaction quantities, and transaction prices under each terminated Transaction had it not been terminated to the equivalent quantities and relevant market prices for the remaining term either quoted by a bona fide third-party offer or which are reasonably expected to be available in the market under a replacement contract for each terminated Transaction. To ascertain the market prices of a replacement contract, the Non-Defaulting Party may consider, among other valuations, quotations from dealers in energy contracts, any or all of the settlement prices of the relevant futures contracts (or relevant exchange-traded futures options contracts in the case of physically-settled options) and other bona fide third party offers, all adjusted for the length of the remaining term and differences in transmission. It is expressly agreed that the Non-Defaulting Party shall not be required to enter into replacement transactions in order to determine the Termination Payment. The Gain calculated shall be discounted to present value using the Present Value Rate as of the time of termination (to take account to the period between the time notice of termination was effective and when such amount would have otherwise been due pursuant to the relevant transaction). The **"Present Value Rate"** shall mean the sum of 0.50% plus the yield reported on page "USD" of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the United States government securities having a maturity that matches the average remaining term of the terminated Transactions.

**"Gallon"** means the unit of volume used for the purpose of measurement of liquid, being one (1) U.S. liquid Gallon containing 231 cubic inches when the liquid is at a temperature of 60° F and at the equilibrium vapor pressure of the liquid being measured.

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

**"Guarantor"** means any entity or person executing a Guaranty of any or all of a Party's obligations under any Transaction.

**"Guaranty"** means any guaranty executed in respect of any or all of a Party's obligations under any Transaction.

**"Interest Rate"** means the lesser of (i) two percent over the federal funds rate as published under "Money Rates" in the *Wall Street Journal* in effect at the close of the Business Day on which payment was due and (ii) the maximum rate permitted by law.

**"Laws and Regulations"** means any law, statute, regulation, code, ordinance, license, decision, order, writ, injunction, decision, directive, judgment, policy, decree and any judicial or administrative interpretations thereof, any agreement, concession or arrangement with any Governmental Authority, any applicable license, permit or compliance requirement applicable to either Party, and any amendments or modifications to the foregoing.

**"Liabilities"** means any and all losses, claims, charges, damages, deficiencies, assessments, interests, penalties, costs and expenses of any kind and any liability arising from or on account of injury, death or damage to person or property, including reasonable attorneys' fees and other fees, court costs and other disbursements, directly or indirectly arising out of or related to any suit, proceeding, judgment, settlement or judicial or administrative order commenced by any third party or Governmental Authority.

**"Liquidation Amount"** means the aggregate of the net Gain or Loss with respect to all terminated Transactions as of the Termination Determination Date, plus any Unpaid Amounts, any Breakage Costs and interest as provided in these General Terms. Interest shall accrue at the Interest Rate (i) in respect of any net Gain or Loss, from and including the Early Termination Date to, but excluding, the date of the Termination Payment and (ii) in

respect of any Unpaid Amounts, from and including the date on which such amounts were originally due and payable to the date of the Termination Payment. Interest shall accrue at the Interest Rate in the case of any Loss or Unpaid Amount owing to the Defaulting Party, and be expressed as a negative number. All Gains, Losses, Unpaid Amounts, Breakage Costs and interest shall be aggregated or netted to a single liquidated amount owing from or to the Defaulting Party.

“**Loss**” means, with respect to any Transaction as of the Termination Determination Date, the economic loss (exclusive of Costs), if any, resulting from the termination of the terminated Transactions, determined in a commercially reasonable manner as calculated in accordance with Article 15 herein. The Loss shall be determined by comparing the value of the remaining term, transaction quantities, and transaction prices under each terminated Transaction had it not been terminated to the equivalent quantities and relevant market prices for the remaining term either quoted by a bona fide third-party offer or which are reasonably expected to be available in the market under a replacement contract for each terminated Transaction. To ascertain the market prices of a replacement contract, the Non-Defaulting Party may consider, among other valuations, quotations from dealers in energy contracts, any or all of the settlement prices of the relevant futures contracts (or relevant exchange-traded futures options contracts in the case of physically-settled options) and other bona fide third party offers, all adjusted for the length of the remaining term and differences in transmission. It is expressly agreed that the Non-Defaulting Party shall not be required to enter into replacement transactions in order to determine the Termination Payment. The Loss calculated shall be discounted to present value using the Present Value Rate as of the time of termination (to take account to the period between the time notice of termination was effective and when such amount would have otherwise been due pursuant to the relevant transaction). The “**Present Value Rate**” shall mean the sum of 0.50% plus the yield reported on page “**USD**” of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the United States government securities having a maturity that matches the average remaining term of the terminated Transactions.

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

“**NGLs**” means natural gas liquids products, including, without limitation, ethane, propane, ethane/propane mix, iso-butane, normal butane and natural gasoline and any other natural gas liquids or combination or mixes thereof.

“**OPIS**” means Oil Price Information Service Division of United Communications Group.

“**OPIS Daily Index**” if not otherwise defined in the Commercial Terms, means the average of the daily high and low prices per Gallon for the applicable Product as reported in the OPIS, LPG Gas Report for “Any Current Month” under “Mont Belvieu Spot Gas Liquids Prices” using: the Purity Ethane price for ethane Product; the TET prices for propane, isobutane, isom normal butane, natural gasoline and normal butane Products for the Day in question.

“**Party**” or “**Parties**” means either or both of ET and Counterparty.

“**Product**” or “**Products**” means either (i) NGLs; (ii) refined petroleum products or (iii) petrochemical products, including without limitation, ethylene and propylene, capable of delivery and transport via pipeline, tank trucks or rail tank cars.

“**Qualified Financial Institution**” means a major U.S. commercial bank or the U.S. branch of a foreign bank, in either case, which is not affiliated with the Non-Demanding Party and which has assets of at least \$50 Billion U.S. Dollars and a Credit Rating of at least “A-“ by S&P, or “A3” by Moody’s.

“**Remaining Contract Obligations**” means, at any time, for a Transaction, the rights and obligations of each of the Parties that remain to be performed in respect of all periods after the Early Termination Date, provided, however, the Remaining Contract Obligations shall not include any payment obligation arising in connection with Products delivered or scheduled to be delivered prior to the Early Termination Date, which amounts shall be considered Unpaid Amounts.

“**S&P**” means Standard and Poor’s or its successor.

“**Seller**” means the Party selling Products to the other Party or delivering Products in an Exchange Transaction.

“**Taxes**” means any and all foreign, federal, state and local taxes (other than taxes on income), duties, fees and charges of every description on or applicable to the Products, including all motor fuel, special fuel, diesel, excise, gross receipts, ad valorem, oil company franchise, environmental, spill, and sales and use taxes, however designated, paid or incurred directly or indirectly with respect to the purchase, storage, exchange, use, transportation, resale, importation or handling of the Products.

“**Termination Determination Date**” means, for purposes of determining the Gain or Loss for any Transaction terminated pursuant to Article 15, the Early Termination Date or, if that is not reasonably practicable, the earliest date thereafter that is reasonably practicable.

“**Termination Payment**” has the meaning in Section 15.3.

“**Transaction**” means an agreement between the Parties to purchase, sell or exchange Products that are governed by these General Terms.

“**Unpaid Amounts**” means the net unpaid amount, whether or not then due, owed to the Non-Defaulting Party or the Defaulting Party (expressed as a negative number) under (i) any Transaction in respect of any period ending on or before the Early Termination Date, including Transactions for which delivery was made on or before the Early Termination Date but payment therefor has not been made prior to such Early Termination Date or (ii) any Transaction that required physical delivery to a Party on or prior to such Early Termination Date and that has not been delivered on or prior to such date (which amount shall equal the fair market value reasonably determined of the Products that were required to be delivered as of the originally scheduled delivery date).

23.2. Interpretation. Unless otherwise specified, all references herein are to the Articles, Sections of these General Terms. All headings are intended solely for convenience of reference and shall not affect the meaning or interpretation of the provisions hereof. Unless expressly provided otherwise, the word “**including**” as used herein does not limit the preceding words or terms. The Parties acknowledge that they and their counsel have reviewed these General Terms and that no presumption of contract interpretation or construction shall apply to the advantage or disadvantage of the drafter of these General Terms.