

GENERAL PROVISIONS TO PRODUCTS CONTRACTS

1. **PURPOSE / DEFINITIONS:** These General Provisions are incorporated into and a part of one or more agreements (each, a “*Contract*”) between one or more of Par Hawaii Refining, LLC, Par Montana, LLC, Wyoming Refining Company and U.S. Oil and Refining Co. (collectively or individually, as applicable, the “*Refiner*”), individually or as agent for affiliated companies, and other parties relating to the purchase, sale, or exchange of refined petroleum products (“*Products*”), for delivery at locations specified in an applicable Contract. A Contract will consist of any writing evidencing the transaction, which may be sent by facsimile or any other mutually acceptable electronic means, including, but not limited to, any Special Provisions, these General Provisions, attached Exhibits, and any addenda or other terms that may be specifically incorporated by reference. No Contract shall be effective until the portion setting forth the Special Provisions has been delivered or acknowledged in writing by an authorized representative of the Refiner. The Parties expressly recognize and acknowledge that no Contract or performance thereunder shall create any sole source supply or purchase arrangement, general supplier-purchaser relationship, or any franchise or distributor relationship. As used herein, the term “*Party*” or “*Parties*” shall mean Buyer and Seller, individually or collectively as the context may require. “*Buyer*” shall mean any Party receiving Products under a Contract, and the term “*Seller*” shall mean any Party delivering Products under a Contract. With respect to Exchange Contracts, the Refiner and the designated Exchange Partner shall each be a Buyer with respect to the volumes delivered to such Party and a Seller with respect to the volumes delivered by such Party. The “*Purchase Price*” shall be the total price set forth in the Special Provisions. A “*Business Day*” shall mean any calendar day on which an applicable reference price is published.
2. **QUALITY:** Products shall be of the kind, type, grade and quality specified in the Special Provisions (including any attached Schedules) of a Contract, and where not so specified, the Products shall comply with the latest established API/ASTM (as defined below) standards for the method of delivery (except as modified, in the event Products are specified to be delivered by pipeline, to the extent necessary to meet any minimum or maximum specification of the relevant pipeline to allow for the contemplated delivery) and be commercially free of concentrations of water and biological or other contaminants or impurities that may make the Products either commercially unacceptable in general industry application or, where relevant, render it a lower grade. If available, the quality of Product shall be determined by an automatic, volumetric in-line sampler that has been certified and proven for the applicable Product per API standards. Upon reasonable request of Buyer, Seller agrees to provide Buyer with representative samples of Products. Each Party shall also provide the other Party with such information and reports as may be reasonably requested or required by law, to enable each Party to timely file all reports required by regulatory and tax authorities.
3. **REPRESENTATIONS AND WARRANTIES:**
 - (a) At the time specified for title in the Products to transfer to Buyer, Seller warrants marketable title, free and clear of all liens and encumbrances, to Products sold and delivered hereunder. As of such time, Seller further warrants that the Products sold and delivered hereunder will be marketable Products of the type, grade and quality specified in the above Quality paragraph. **TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NOTWITHSTANDING ANY COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE (OR LACK THEREOF), EXCEPT AS SPECIFICALLY PROVIDED ABOVE, SELLER MAKES NO WARRANTY WHATSOEVER, WHETHER EXPRESS OR IMPLIED, AS TO THE QUALITY, FITNESS, SUITABILITY FOR ANY PARTICULAR PURPOSE, CONFORMITY OR MERCHANTABILITY OF THE PRODUCTS. SELLER MAKES NO OTHER AND EXPRESSLY DISCLAIMS ANY AND ALL**

OTHER REPRESENTATIONS, GUARANTEES, ASSURANCES, CONDITIONS AND/OR WARRANTIES, EXPRESS OR IMPLIED INCONSISTENT HERewith, AND ALL SUCH WARRANTIES ARE EXPRESSLY EXCLUDED.

- (b) Each Party represents and warrants to the other Party that:
- (i) 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;
 - (ii) it has the power to execute each Contract and any other documentation relating to such Contract to which it is a party, to deliver each Contract and any other documentation relating to such Contract that is required hereby to deliver and to perform its obligations under such Contract and has taken all necessary actions to authorize such execution, delivery, and performance;
 - (iii) such execution, delivery, and performance 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 other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
 - (iv) its obligations under each Contract 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; and
 - (v) unless otherwise specified in the Special Provisions, such Party is acting under a Contract as a principal and not as an agent.

For the avoidance of doubt, in the event Seller is granted a small exemption waiver or similar waiver there shall be no reimbursement of renewable identification numbers (RINs) or similar credits, or of the cash value of such RINs or similar credits, any and all of which shall be for Seller's account.

4. QUANTITY:

- (a) The quantities to be sold and delivered at each point of delivery specified in the applicable Special Provisions (the "***Point of Delivery***") during each month or other specified delivery period shall conform to those set forth in the Special Provisions of the applicable Contract. If the Special Provisions set forth a range of quantities, then the deliveries shall be within the minimum and maximum volumes within such range. Quantities made available by Seller but not purchased by Buyer may not be carried forward without Seller's written consent. Except as may be required by law, Seller has no obligation whatsoever to sell or deliver to Buyer any quantities in excess of the monthly quantity specifically set forth in a Contract, regardless of whether quantities in excess of such quantities may have been sold and delivered in any preceding month or months. At any time during the term of a Contract, Seller and Buyer may mutually elect to sell and purchase additional quantities in accordance with and subject to the terms and conditions contained in the Contract, by supplementing the Contract as to such quantities.
- (b) Seller may impose allocation of any Products where Seller determines, in good faith and at its sole election, that such allocation is required by applicable law, regulation, governmental authority, or due to a Force Majeure Event. Seller shall provide Buyer prior written notice prior to any such allocation. Seller shall have no obligation to make up any shortage resulting from an allocation hereunder. Furthermore, this Contract shall not be

construed in any way to require Seller to purchase Product or transfer Product from another refinery to supply any or all of the contract volume hereunder.

- (c) If Seller plans to cease producing or processing Product at Seller's facility(ies) supplying the Contract, then Seller may, with ninety (90) days prior notice to Buyer, without liability, cease supplying such Product under the Contract to the extent Seller is unable to supply such Product, for any reason, as a result of such cessation, and Seller may terminate the Contract; provided, however, that during such ninety (90) day period Seller shall use commercially reasonable efforts to procure all Product volumes previously nominated by Buyer, in accordance with terms of this agreement, including pricing and points of delivery.
- (d) Buyer expressly agrees and accepts that in case of a reduction in the total supply of Product available to the Seller directly or indirectly due to Force Majeure or acts of any governmental authority or by a group of oil producing nations or by the effect of any Applicable Laws, Seller may first satisfy its needs and those of its affiliates before allocating any remaining available supply of Product. Under no circumstances whatsoever, shall Seller be required to purchase additional quantities of Product to fulfill contractual requirements hereunder. Should Seller so purchase additional Product from other sources, it shall not be required to allocate such Product to Buyer.

5. **MEASUREMENT:** Quantities, quality and gravities of Products delivered under a Contract shall be determined as specified in the Special Provisions and in accordance with generally accepted industry practices in effect at the time and place of delivery, using the latest American Society for Testing and Materials ("**ASTM**") or American Petroleum Institute ("**API**") test methods. One barrel is defined to be forty-two (42) U.S. standard gallons, and each gallon shall contain two hundred thirty-one (231) cubic inches at sixty (60) degrees Fahrenheit. All measured volumes shall be adjusted to those conditions in accordance with the latest ASTM test methods and the latest edition of API volume correction tables. Each Party shall be given reasonable prior notice of any measurement or testing to be made hereunder by a Party or its representative, and such notice need not be in writing. Both Parties may have a representative present to witness all measurements and testings by a Party or its representative, but in the absence of one Party's representative, the measurements and testings as made by the other Party's representative shall be accepted and considered as correct. If measurement is to be performed by a common carrier, marine transporter or by a third party terminal or pipeline facility owner, the bill of lading or delivery ticket prepared by such third party shall establish the quantity and quality of the Products delivered hereunder. Measurement of Products delivered by truck & trailer ("**TT**") or pipeline ("**PL**") shall be determined by proven and certified meter readings at the time of delivery at or near each Point of Delivery. Measurement of Products delivered by railcar ("**RT**") shall be determined by proven and certified meter readings taken at the time of delivery by the rail carrier or, if none, by the bill of lading delivered by the rail carrier (provided that such figures are determined after a minimum settling period of four (4) hours after delivery and prior to gauging the tank). Measurement of Products delivered by book transfer ("**BT**") shall be established by the book transfer memo issued by the operator of the facility where the transfer is made. Measurement of in-tank ("**IT**") deliveries shall be established by the in-tank memo or delivery ticket issued by the operator of the facility where the transfer is made. Measurements of Products delivered by tank-to-tank transfers ("**TTT**") shall be determined by the relevant proven and certified meter readings taken at the time of delivery at the storage facility where transfer of title occurs. Measurements of Products delivered by barge or tanker vessel ("**BG**") shall be established as specified in the Special Provisions and/or the Marine Provisions.

6. DELIVERIES:

- (a) Deliveries of Products at all locations, other than by railcar, shall be deemed to have been delivered on the date recorded on each bill of lading or delivery ticket issued by the designated carrier, transporter or storage facility. Delivery by railcar shall be defined as occurring when the delivering railroad notifies the receiving facility that the railcar is available to be switched into the receiving facility (constructive placement), or when such railcar is actually switched into such facility (actual placement), whichever is earlier. Unless otherwise specified in the Special Provisions of a Contract, all deliveries shall be FOB at the Point of Delivery. If a Contract provides for a time window for the Scheduled Delivery Time, then any deliveries occurring within that time window shall be considered to be deliveries at the Scheduled Delivery Time. If a Contract provides for multiple deliveries, Buyer shall make reasonable efforts to take ratable deliveries of the volumes set forth in the Contract at regular intervals during the delivery period. As used herein, the term “**FOB**” shall (i) for waterborne deliveries and subject to the Marine Provisions, have the meaning given to it in Incoterms® 2010, except as may be modified herein and (ii) for deliveries by pipeline, truck, or railcar, have the meaning given to it in Article 2 of the Uniform Commercial Code as adopted by the State of New York, except as may be modified herein.
- (b) For Products specified to be delivered by pipeline, into, out of, or in-tank, Seller or Buyer, as applicable, shall make nominations in accordance with the standard operating procedures of the relevant pipeline operating company or storage company. If delivery is made to or from a pipeline or storage company and a Party (“**X**”) fails to make or take delivery as required by the Contract or otherwise conform to a pipeline tariff, the damages recoverable by the other Party (“**Y**”) shall include any demurrage, penalties, or fees assessed for such failure by the pipeline operating company or storage company. Any such damages shall be paid by X to Y in accordance with Section 9 following the delivery of a notice containing a pipeline or storage company charge statement to X reflecting such damages.
- (c) Buyer shall nominate a carrier to receive the Products at each Point of Delivery and arrange for all transportation of Products from Seller’s Point of Delivery location to Buyer’s locations. All carriers nominated by Buyer must comply with the requirements of the terminal where the Point of Delivery is located and must be pre-approved by the terminal operator to enter the Point of Delivery location. Buyer agrees that the carriers’ contracts between Buyer and carrier for petroleum transport shall include provisions requiring compliance with requirements of Seller and the terminal operator for entry to the Point of Delivery locations listed in the Contract, including insurance requirements. Buyer’s receipt of Products shall be made within the normal business hours of the Point of Delivery.

7. MARITIME PROVISIONS: If maritime shipment is involved in delivery, an Exhibit incorporated into the Contract shall reflect the applicable maritime provisions. If no such Exhibit is specifically incorporated, then in addition to these General Provisions, the latest version of the “Valero Marketing & Supply Company Marine Provisions” for all maritime matters not otherwise addressed herein or in the Special Provisions.

8. TITLE AND RISK OF LOSS: Title to, possession of and risk of loss of Products shall pass to Buyer at the effective time and/or the effective place specified in the Special Provisions, or if no such effective time or effective place is specified, upon delivery of such Products in accordance with this Section 8. Unless otherwise specified in the Special Provisions, for deliveries made FOB into a vessel, title shall pass as the Products pass into the inlet flange of the vessel; for Products to be delivered out of a vessel into facilities provided by Buyer, title shall pass as the Products pass

into the inlet flange of the pipeline or storage facilities provided by Buyer; for Products delivered by transfer in a pipeline or a storage tank, title shall pass as the Products pass into the inlet flange of the pipeline or storage tank, as applicable; for Products delivered by truck, title shall pass as the Products pass into the inlet flange of the tank truck at the load terminal; for Products delivered by railcar, title shall pass as the Products pass into the inlet flange of the rail tank car at the load terminal; and for an in-tank transfer, title shall pass from Seller to Buyer at the time of the transfer, as specified in the operative transfer documentation.

9. **PAYMENT:** Payment shall be made in accordance with the Special Provisions by wire transfer of same day available funds or Automated Clearing House credit in U.S. dollars. Subject to the Marine Provisions (if applicable), the “*Payment Date*” shall be the date set forth for such payment in the Special Provisions, or if not specified in the Special Provisions, three (3) Business Days after Buyer’s receipt of Seller’s invoice and any supporting documents required to be delivered in accordance with this Section 9 and the Special Provisions, if applicable. Payments due on Saturdays or U.S. bank holidays (other than Mondays) shall be made on the preceding business day; payments due on Sundays or Monday bank holidays shall be made on the following business day; if payment is to be made under a letter of credit, payment shall be made upon delivery and acceptance of the supporting documentation by the issuer of the letter of credit. Unless otherwise specified in the Special Provisions, all payments shall be supported by invoice from the Seller, setting forth the volume, price, kind and quality of the Products delivered for which payment is being made, and any applicable delivery tickets, transfer statements, bills of lading or other documentation establishing the legal transfer of title from Seller to Buyer. If any of such items are to be determined by Buyer, Buyer shall provide Seller with sufficient information to allow Seller to timely provide such an invoice. Where the applicable pricing mechanism or the availability of discharge quantities does not allow for the preparation of a final invoice prior to the applicable Payment Date, the Seller may issue and the Buyer shall make payment against a provisional invoice. Such provisional invoice shall, unless otherwise agreed to by the Parties, be based upon (a) the pricing information available to Seller at the time it issues such provisional invoice and (b) the mean of any maximum or minimum quantity specified in the Special Provisions. Payment of any balance due by either Party to the other shall be made within three (3) Business Days of receipt of Seller’s final invoice which shall be prepared as soon as practicable after all relevant pricing and/or quantity information becomes available to Seller. Any amount payable by Buyer to Seller hereunder shall, if not paid when due, bear interest from the due date until the date payment is received by Seller at an annual rate (based on a 360-Day year) equal to the rate of two percentage points above the prime rate of interest effective for the payment due date as published in The Wall Street Journal, but not more than the maximum rate of interest permitted under applicable law. Buyer shall pay such interest within five (5) Business Days following receipt of Seller’s invoice for such interest. If Buyer, in good faith, disputes the accuracy of the amount due in respect of a Contract, Buyer will timely pay the undisputed amount and provide a written explanation of the nature of the dispute along with supporting documentation acceptable in industry practice. If it is determined that Buyer owes the disputed amount, then Buyer shall pay interest in accordance with this Section on such disputed amount from and including the originally scheduled due date to but excluding the date paid.

10. **CREDIT AND FINANCIAL RESPONSIBILITY:**

- (a) Seller shall have the right from time to time to request pertinent financial information from the Buyer to assure Seller of the Buyer’s creditworthiness. If Buyer fails to pay Seller all amounts owed when due, or if Seller, in its sole discretion, at any time and for any reason, should deem the credit or financial responsibility of Buyer to be impaired, unsatisfactory or unacceptable, Seller, at its option may do any or all of the following: (a) require Buyer to pay for Products by cashier’s check, money order, electronic funds transfer or bank wire

transfer prior to any deliveries of Products, (b) require that Buyer post an irrevocable letter of credit issued by a bank satisfactory to Seller, (c) require of Buyer other security acceptable to Seller, and (d) suspend all deliveries of Products until such time as Seller may deem reasonable and appropriate (“*Performance Assurance*”). Any demurrage resulting from delays to a vessel pending receipt by Seller of Performance Assurance shall be for account of Buyer. Buyer acknowledges that the credit line may be a negative amount and Seller may require Performance Assurance to be in an amount that is sufficient to cover the anticipated exposure. If (a) any Performance Assurance is not received within the time reasonably specified by Seller, or, (b) Buyer fails to provide Seller such other adequate assurance of future performance reasonably requested by Seller, or (c) any past due indebtedness is not paid in full within five (5) days of a written default notice to Buyer, then Seller shall have the right to (1) immediately terminate any and all Contracts (regardless of anything to the contrary stated or implied elsewhere in these General Provisions), (2) offset and recoup any amounts owing thereunder against any payments or deliveries due Buyer under any Contract between the Parties, pursuant to the Section titled “Remedies”, and (3) exercise any other remedies allowed under any Contract, applicable law or equity. If Seller extends credit to Buyer, Seller may withdraw it at any time without notice for any reason.

- (b) In addition to the foregoing, Seller shall have the right at any time to require Buyer to deliver a parent company guaranty in the form and substance satisfactory to Seller. Such guaranty shall be of the prompt payment, when due, of any and all present or future indebtedness of the Buyer, including any amounts owed for damages resulting from a failure of Buyer to perform its obligations hereunder or otherwise.
- (c) Without limiting any other rights hereunder, Seller may require that Buyer enter into a separate agreement pertaining to the margining and collateralization of exposure related to the transaction or any other transaction between the Parties.

11. TAXES:

- (a) Payment Responsibility: Unless otherwise specified in the Special Provisions, Seller shall be liable for any and all Taxes with respect to the Product delivered hereunder, the taxable incident of which occurs before the transfer of title to the Product to Buyer. Buyer shall pay all applicable federal, state and local taxes, duties, imposts, tariffs, fees, dues, and other charges of every description, including but not limited to all motor fuel, gasoline, aviation fuel, special fuel, diesel, excise, environmental, spill, gross earnings, gross receipts, superfund, and sales and use taxes, however designated, (collectively, “*Taxes*”) that may, directly or indirectly, be now or hereafter levied or assessed or otherwise applied or imposed by any government or instrumentality or subdivision thereof, on the sale, purchase, import, export, ownership, exchange, use, resale, transportation, delivery, inspection, or handling of Product or the transfer of title, possession or risk of loss of the Product from Seller to Buyer, or on Buyer’s subsequent use or disposition of a Product, or proportionally on the feedstock from which the Product is derived, other than Taxes based on Seller’s net income, in all cases in respect of any time at and after title and risk in such Products has passed to Buyer. In the event that Seller is required by law to pay any of said Taxes, Buyer shall reimburse Seller for all such payments. Any new Tax, license, compliance credit, inspection or other fee (other than income Tax) levied after the date of a Contract by any government authority upon the transactions provided for in a Contract or otherwise, including but not limited to any VAT, carbon Tax, border-adjustment Tax, low carbon fuel standard credit, or carbon allowance credit, shall be borne by Buyer, whether paid directly to the government authority or by reimbursement to Seller. Seller’s right to require reimbursement of Taxes is limited only by the relevant statute of

limitations. If any ad valorem or personal property taxes are assessed against Products sold hereunder, the Party having title to the Products at the time such tax liability is assessed shall be responsible for payment of such taxes.

- (b) Exemptions: In the event Buyer intends to claim any applicable exemption for any Taxes, Buyer shall, prior to or upon delivery of the Product, furnish to Seller exemption certificates for such Taxes, to the extent such certificates are required or permitted by law. Unless Buyer timely delivers such exemption certificates to Seller, Buyer shall remain liable for the payment of such Taxes and shall reimburse Seller for any such Taxes paid by Seller. Buyer's obligation to reimburse Seller includes any Taxes that Seller is assessed due to subsequent discovery of taxability or under audit by any taxing authority until expiration of the relevant statute of limitations. By providing such exemption certificates to Seller, Buyer represents and warrants that it is legally entitled to all such exemptions, and Buyer shall indemnify, defend and hold Seller harmless from all liabilities for Taxes, penalties and interest, if Buyer is not entitled to an exemption.
- (c) Documentation: Upon Seller's request or upon any change in registration or exemption status in any taxing jurisdiction where Buyer conducts business, Buyer shall deliver to Seller the appropriate state registration number, Buyer's federal employer identification number and/or amended exemption certificates. Buyer shall deliver such notifications to Seller within thirty (30) days of such request or change in registration or exemption status or Seller will invoice Buyer for applicable Taxes and Buyer shall be responsible for and indemnify Seller for any costs, penalties, or additional Taxes that result from Buyer's failure to comply with this Section 11(c).

12. **PURCHASE ORDER**: Either Party may require a Purchase Order to cover any individual purchase, sale, or exchange of Products sold under a Contract, in order to process payment for such a sale, and the Purchase Order may contain other incidental provisions covering such sale and payment; provided, however, that to the extent that any Purchase Order contains new contract terms, or any contractual terms that are in conflict with or inconsistent with the terms of a Contract, then the original terms of the Contract shall prevail over those in the Purchase Order. Any such additional, inconsistent, or conflicting terms contained in the Purchase Order shall be regarded as a proposal to modify the Contract, and shall be deemed to have been rejected unless formally accepted in a separate writing signed by an authorized representative of the Party receiving such proposed modification.

13. **PRICE ADJUSTMENTS**:

- (a) Pass-Through Adjustments: Unless otherwise specified in the Special Provisions, the Purchase Prices set forth therein shall be adjusted upward or downward by the same amounts and at the same times as any applicable increases or decreases in storage terminal fees, transportation tariffs, transportation fuel surcharges or similar third party costs incurred by Seller in making delivery hereunder. For any Products delivered by railcar, Buyer shall be responsible for any accessorial charges from a delivering railroad including, but not limited to, demurrage, switching, storage, or no bill of lading fees, and Buyer shall reimburse Seller for any such fees or charges paid by Seller. If a Party subsequently receives a refund of any part of a tax, tariff, storage fee, delivery fee or similar cost that is expressly referenced as a factor in determining the purchase price, then such refund shall be passed through to the Party who initially bore the economic effect of such charge under the Contract, and the Parties shall then make such payments and/or credits required to accordingly adjust the price paid for delivered Products.
- (b) Reference Price Disruptions: If any Purchase Price is established through reference to another price, such as an index or marker price, and if during the term hereof, such

reference price ceases to be published, becomes unavailable, or ceases to be determined in substantially the same manner as before, then the Parties shall negotiate in good faith to identify one or more substitute reference prices that will place the Parties in substantially the same economic position as was achieved through using the reference price when the Contract was negotiated, and the Purchase Price shall be adjusted to utilize the substitute reference price(s). If the Parties are unable to agree in good faith upon substitute reference prices to be used in such circumstances, then upon ten (10) days written notice, either Party may terminate the Contract, and for any deliveries made between the date of termination and the date the original reference price became unavailable or unsuitable, the Purchase Price shall be a price that will place the Parties in closest economic position to the one achieved through using the reference price at the time when the Contract was negotiated.

14. **AUDIT:** Each Party and its duly authorized representatives shall have access to the accounting records and other documents maintained by the other Party which relate to a Contract, and shall have the right to audit, at the requesting Party's expense, such records at any reasonable time or times during the term of the Contract or within three (3) years after termination of the Contract. The Parties shall promptly make any payments, refunds or deliveries required to cure any discrepancies revealed by an audit or other evaluation.
15. **EXCHANGES AND BUY/SELL AGREEMENTS:** If a Contract relates to the exchange of Products, or for a matching purchase and sale of Products by both Parties (an "**Exchange Contract**"), each Party shall be obligated to deliver the volume of Products specified under the Exchange Contract and the other Party shall be obligated to receive the volume of Products specified under the Exchange Contract. The Party delivering a quantity of Products shall be designated the "Seller" and the Party receiving such quantity of Products shall be designated the "Buyer". Exchanges of Products under an Exchange Contract shall be on a barrel-for-barrel basis, except for differentials and other adjustments set forth in the applicable Special Provisions. If one Party is unable to make delivery to the other within the time frame specified in the Exchange Contract, the Parties will agree in good faith upon the type, grade, dates, and place of a substitute delivery of Products, and price and/or volume differentials, if any, with such deliveries to be made at the earliest reasonable date so as to cause the economic effect to the Parties to be as close as practicable to the Intended Economic Effect. The Parties shall use their best efforts to keep all Exchange Contract delivery arrangements in balance on a monthly basis or such shorter period as may be agreed to in the applicable Special Provisions. Monthly imbalances will be resolved by the Parties on a mutually agreeable basis, but in accordance with the terms of the Exchange Contract and generally accepted industry practices and in recognition of the reasonable rights of the Parties, so as to cause the economic effects to the Parties to be as close as practicable to Intended Economic Effect. Any Products imbalance(s) existing upon termination of an Exchange Contract will be settled in accordance with the terms of the Exchange Contract or by a mutually agreeable procedure that will take into account the reasonable rights of the Parties with respect to volumes, quality, and the time and place of delivery set forth in the Exchange Contract, so as to cause the economic effect to the Parties to be as close as practicable to the Intended Economic Effect. As used herein, the "**Intended Economic Effect**" means the economic effect that would have occurred had the deliveries occurred on the date(s), at the places, and under the terms specified in the Exchange Contract
16. **ULTRA-LOW SULFUR DIESEL:** With respect to any ultra-low sulfur diesel sold under a Contract, Buyer shall take care to ensure that such Product is not commingled or contaminated in any truck, pipeline, railcar, tank, or vessel with any other diesel, fuel, or other Product, and Buyer will take steps to ensure that the Product is not handled in any fashion such as to cause the sulfur concentration of the Product to exceed any governmental requirements. Buyer shall be solely responsible for ensuring that all carriers, transporters, and storage facilities loading and handling

the Products after the delivery to Buyer take adequate measures to prevent any contamination of any Product being sold under the Contract. Buyer shall also take such measures as necessary to ensure that any ultra-low sulfur diesel sold or dispensed by Buyer is properly labeled in compliance with all applicable regulations. Seller shall have no liability to Buyer, or to any carrier, agent, affiliate, contractor, or customer of Buyer, for any claims, damages, losses, injury, or harm of any kind should the loading, handling, storage, or transportation of any ultra-low sulfur diesel by Buyer or its carriers, agents, affiliates, contractors, or customers cause or result in any Product's sulfur concentration to exceed the EPA's, or other governmental authority's, requirements, and Buyer hereby waives and releases, and agrees to fully defend and indemnify Seller from, all such claims, damages, losses, injury, or harm.

17. **FORCE MAJEURE:** Neither Party shall be liable to the other for failure or delay in making or accepting delivery under a Contract to the extent that such failure or delay is caused by a Force Majeure Event. A "*Force Majeure Event*" shall include compliance with acts, orders, regulations or requests of any national, federal, state or local civilian or military authority or any other persons purporting to act therefor; restriction or cessation of production of Product due to the imposition of conditions or requirements by any government or any person purporting to act under the color or claim of any governmental authority which makes it necessary to cease or to reduce the production of the Product; war (whether or not declared), terrorist or similar acts, embargo, civil insurrection, riots; strikes, lockouts or other labor difficulties; pandemics, epidemics, or quarantines;; actions of the elements; natural disasters, fire, explosion, mechanical breakdowns, or any other causes reasonably beyond the control of such Party, whether similar or not. Neither Party shall be obligated to make up any deliveries omitted as a result of any Force Majeure Event, except to the extent that Seller and Buyer are reconciling or balancing deliveries under an Exchange Contract, and in such case, any delivery imbalance that a Party is prevented from making up due to a Force Majeure Event shall be resolved as soon as reasonably possible following cessation of the Force Majeure Event or the effects thereof. In the event either Party must invoke the provisions of this Section 17, such Party shall use its best efforts to provide in writing to the other Party as much advance notice as is possible, stating the underlying circumstances giving rise to a Force Majeure Event and the expected duration thereof. Each Party shall use commercially reasonable efforts to cure or correct any condition giving rise to a Force Majeure Event or the effects thereof affecting performance by such Party; provided, however, that neither Party shall be obligated to settle any strikes, lockouts, or other labor disputes. No Force Majeure Event shall relieve Buyer of any obligation to make payments with regard to Products that have been delivered under a Contract. If a Party notifies another Party of a Force Majeure Event that would excuse the delivery of volumes of Products under an Exchange Contract, the Party who is to receive such deliveries may, at its option, suspend deliveries of any equivalent volumes to be exchanged or sold under such Exchange Contract.
18. **REMEDIES:** Except as may otherwise be expressly provided for under a Contract, the following shall constitute the sole and exclusive remedies available to a Party for any and all losses or damages occurring under a Contract, including, but not limited to, any allegations of breach of warranty, breach of contract, negligence, or strict liability by or of any Party:
- (a) Failure to Deliver or Receive Products:
- (i) If Seller fails to deliver all or any portion of the specified volumes of Products required under a Contract and such failure is not excused under the terms of the Contract, then Seller shall pay to Buyer an amount equal to (1) the positive difference, if any, obtained by subtracting the Purchase Price specified under the Contract for such undelivered Products from the market price for such Products, as determined by Buyer in a commercially reasonable manner, multiplied by the quantity of Products not delivered; plus (2) all reasonable third party fees and legal

costs incurred by Buyer in enforcement and protection of its rights under the Contract. In no event shall the foregoing relieve Buyer of its obligation to pay to Seller amounts due and payable for any Products delivered to Buyer for which Seller has not been paid. All determinations must be made in a commercially reasonable manner and Buyer is not required to enter into an actual replacement transaction in order to determine the market price. For the avoidance of doubt, if Buyer determines in a commercially reasonable manner that the market price for the Products does not exceed the Purchase Price, the amount added in clause (1) above shall be deemed to be zero (0).

- (ii) If Buyer fails to take delivery of all or any portion of the nominated volumes of Products required under a Contract that are made available by Seller up to the Maximum Volumes (or such additional volumes previously agreed by the Parties) and such failure is not excused under the terms of the Contract, then Buyer shall pay to Seller an amount equal to (1) all amounts due and payable for any Products delivered to Buyer for which Seller has not been paid, plus (2) the positive difference, if any, obtained by subtracting the market price for such Products, as determined by Seller in a commercially reasonable manner, from the Purchase Price of the Products specified under the Contract for which Buyer failed to receive, multiplied by the quantity of Products not received, plus (3) all reasonable third party fees and legal costs incurred by Seller in enforcement and protection of its rights under the Contract. All determinations must be made in a commercially reasonable manner and Seller is not required to enter into an actual replacement transaction in order to determine the market price. For the avoidance of doubt, if Seller determines in a commercially reasonable manner that the Purchase Price does not exceed the market price for the Products, the amount added in clause (2) above shall be deemed to be zero (0).
- (b) Off-Specification Deliveries. If Seller delivers Products that are not in conformance with Contract requirements and specifications, Buyer may elect to either (i) refuse to accept such delivery or (ii) accept such delivery, and in either case the Party's obligations related thereto shall be modified in accordance with this Section 18(b). If Buyer elects to accept delivery of such non-conforming Products, it shall be entitled to invoice Seller for the monetary difference between the Purchase Price paid under a Contract and the market price for the Products in the condition actually delivered at the time and place of delivery, as determined by Buyer in a commercially reasonable manner, together with any increased storage, handling, or treatment costs actually incurred by Buyer in good faith as a result of such defects. Seller shall further indemnify and defend Buyer against all third party claims, suits, damages, costs, penalties, or other liabilities proximately caused by a breach of Seller's warranty for any Products delivered under a Contract. If Buyer elects to refuse such delivery, Seller's delivery of non-conforming Products shall be deemed a failure to deliver by Seller and Buyer's sole and exclusive remedy is as set forth in Section 18(a)(i).
- (c) Other Remedies: If a Default occurs on the part of either Party and is continuing, the non-defaulting Party may, subject to the otherwise exclusive remedies set forth herein, exercise any or all of the following remedies: (a) upon not less than five (5) Business Days' written notice to the defaulting Party, terminate all Contracts and liquidate all forward positions directly related thereto (calculating damages for such terminated forward positions, if any, based on the then-applicable market price of such positions as determined by the non-defaulting Party in a commercially reasonable manner); (b) withhold any payments and performance due in respect of any Contract; (c) offset and recoup any amounts owing under such Contracts against any payments or deliveries due under any Contract between the

Parties; and (d) exercise such other remedies available at law or in equity. Notwithstanding the foregoing clause (b), the non-defaulting Party shall not have the right to suspend payments and performance under an Exchange Contract to the extent such obligations relate to resolving physical imbalances in deliveries thereunder.

- (d) **Invoices:** All amounts payable under this Section 18 shall be set forth in an invoice prepared by the payee of such amounts and are due and payable within two (2) Business Days of the delivery of such invoice. For purposes of this Section 18, if a Contract specifies that deliveries of Products should be made within a stated time window, and if a specified Purchase Price should float or change within such time window, then the Party preparing the invoice shall have the option to calculate the Purchase Price that would have been paid if such volumes had been properly and timely delivered as either (i) the arithmetic mean of the daily Purchase Prices during such time window or (ii) the Purchase Price applicable on the last day of the time window.
 - (e) **Interest:** Any past due amounts owed by either Buyer or Seller shall bear interest at the rate of 2% per month prorated for partial months, but not to exceed the maximum rate allowed by law.
 - (f) **Limitations and Waiver:** Except as expressly set forth in this Section 18, neither Party shall be liable for any special, consequential, incidental or indirect losses, or damages arising under a Contract or for any punitive, exemplary, statutory or multiple damages, all of which damages are expressly excluded and limited under this Contract. Any claim concerning the quantity or quality of any Product delivered shall be irrevocably waived unless made by written notice delivered promptly upon discovery of such dispute, but in no event no later than ninety (90) days after the delivery of Product in issue.
 - (g) **Caveat:** Nothing stated in this Section 18 shall limit a Party's liability for damages caused by its fraud, gross negligence, or willful misconduct.
19. **DEFAULT:** The occurrence of any of the following events shall constitute a “*Default*” under a Contract: (i) a Party's failure to make, when due, any payment required pursuant to the Contract; (ii) wrongful failure by a Party to fully perform all of its material obligations under the Contract; (iii)(1) a Party becoming or being adjudicated insolvent or bankrupt, or (2) an administrator, provisional liquidator, conservator, receiver, trustee, custodian, or other similar official is appointed for a Party or for all or substantially all of its assets, or (3) judicial approval of a petition for reorganization or arrangement under any bankruptcy or insolvency law, or (4) a Party making an assignment for the benefit of its creditors, or (5) a Party filing a voluntary petition in bankruptcy or consenting to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian, or other similar official; (iv) any fraud or criminal misconduct by a Party relevant to such Party's marketing operations involving Products; (v) Buyer fails to deliver to Seller any requested security or otherwise provide Seller with such other adequate assurance of future performance reasonably requested by Seller in accordance with Section 10, (vi) a Party's failure to materially comply with federal, state or local laws or regulations relevant to such Party's purchase, sale, transportation, storage or other handling of Products; or (vi) a Party otherwise ceasing to function as an ongoing business.
20. **SAFETY:** Buyer acknowledges that it and its carriers are fully informed concerning the nature and existence of risks posed by transporting, storing, using, handling and being exposed to gasoline, diesel, jet fuel and other refined petroleum products. Buyer will inform its employees, agents, retail outlets, contractors and customers of such risks. Carriers entering the terminals where Seller's Products are distributed shall comply with all terminal rules and requirements and all regulations relating to the handling, storage, transportation, and distribution of gasoline, diesel, and other

refined petroleum products and shall advise and instruct employees relating to the hazards associated with gasoline, diesel, and other refined petroleum products and the safe and proper methods of handling Products. Seller shall furnish to Buyer Material Safety Data Sheets concerning the health and safety aspects of Products purchased by Buyer, including safety and health warnings required by applicable law. Buyer acknowledges that the information presented by such Material Safety Data Sheets may not be a complete presentation of all potential health and safety risks associated with the Products delivered, and Buyer agrees that it is not relying upon such information to completely and accurately describe such risks.

21. CONFIDENTIAL INFORMATION:

- (a) Each Party shall maintain in strict confidence and protect the other Party's Confidential Information and, subject to Sections 21(b) and 21(c), shall not disclose such Confidential Information to any third party without the prior written consent of the other Party. "**Confidential Information**" means the existence and the terms and conditions of a Contract, and all material, either verbal or reduced to a material form, including, without limitation, technical, business or other commercial information, which is regarded as proprietary and confidential by the Party providing it.
- (b) Notwithstanding Section 21(a), each Party shall be entitled to:
 - (i) use Confidential Information for all lawful purposes relating to fulfilment of its obligations under a Contract (including, other than pricing-related terms, as reasonably necessary to carriers and operators of pipelines and terminals) and disclose such Confidential Information to its shareholders, officers, directors, employees, affiliates and professional advisers;
 - (ii) disclose the Confidential Information to the extent required by any applicable law to any government body, authority, or court or tribunal;
 - (iii) disclose the Confidential Information in response to a request from a governmental authority with jurisdiction over such Party;
 - (iv) disclose the Confidential Information to a good faith prospective purchaser of all or substantially all of such Party's equity interests or the assets related to such party's performance of a Contract; and/or
 - (v) disclose the Confidential Information where the disclosure has been approved in writing by the disclosing Party.
- (c) The provisions contained in Section 21(a) do not apply to information which (i) was already in the lawful possession of a Party, (ii) is or becomes part of the public domain through no fault of the receiving Party, (iii) is disclosed to a Party by a third party with no duty to maintain its confidentiality, or (iv) is independently developed by the receiving Party without the use of any Confidential Information.
- (d) This Section 21 will continue to bind the Parties with respect to an applicable Contract after the date of expiry or termination of such Contract for a period of one (1) year (or such other period agreed between the Parties in writing).

22. LAWS AND REGULATIONS:

- (a) Compliance: Buyer and Seller shall enter into each Contract in reliance upon and shall fully comply with all applicable federal, state, and local laws, rules, regulations, decrees, and/or permits (collectively "**Regulations**"), which directly or indirectly affect the Products sold, delivered, transported, handled, or stored thereunder. Each Party shall be solely responsible for compliance with all Regulations associated with the operation of such

Party's facilities. Neither Party shall cause or allow Products to be blended, contaminated, or changed in any manner that would violate any applicable Regulations. In the event any Contract, or any action or obligation imposed upon a Party thereby, shall at any time be in conflict with any requirement of a Regulation, then the Contract, action, or obligation so adversely affected shall immediately be modified to the extent necessary to comply with the requirements of such Regulation, and all other provisions of the Contract shall remain effective.

- (b) Anti-Bribery and Anti-Money Laundering Laws: Buyer and Seller shall comply with all applicable law related to sanctioned individuals or organizations, anti-bribery, or anti-money laundering (collectively, "**ABL Obligations**"). Each Party shall ensure that (i) it and its directors, officers, employees, and service providers (including but not limited to its subcontractors, agents, and other intermediaries) will not offer, provide to, give or authorize the giving to any person, including any Public Official, or solicit, accept, or agree to accept from any person, including any Public Official, either directly or indirectly, anything of value including gifts or entertainment or facilitation payments in order to obtain, influence, induce, or reward any improper advantage in connection with a Contract, and (ii) it shall take no action which would subject the other Party to fines or penalties under the ABL Obligations. Either Party may terminate any Contract immediately upon written notice to the other Party at any time if, in its reasonable judgment, the other Party is in breach of the provisions of this Section 22(b). As used herein, a "**Public Official**" shall include (x) any minister, civil servant, director, officer, or employee or other official of any government or any department, agency or body, and/or of any government-owned or controlled company, any company or enterprise in which a government owns an interest of more than thirty percent (30%), and/or of any public international organization, (y) any person acting in any official, legislative, administrative, or judicial capacity for or on behalf of any government department, agency, body, or public international organization, including without limitation any judges or other court officials, military personnel, and customs, police, national security, or other law enforcement personnel, and (z) any close family member of any of the foregoing.
- (c) Labor & Human Trafficking Laws: As of the effective date of each Contract, the Seller represents and warrants to the Buyer that Seller is, and at all relevant times for purposes of the Contract will be, in compliance with all labor laws, including laws against slave labor and human trafficking; and any materials incorporated into Products are manufactured in compliance with all such laws. Upon reasonable request, Buyer may (i) conduct audits at reasonable times to ensure compliance with the foregoing and (ii) request written certification from Seller as to the ongoing truthfulness and accuracy of the foregoing.
- (d) Permits and Reports. Each Party will be solely responsible for compliance with all Regulations associated with the operation of such Party's locations, including but not limited to, tax and environmental permits and reports, registration or reporting for underground storage tanks and leak detection. Buyer acknowledges and agrees that Seller does not have any liability or responsibility for product storage facilities located on premises of Buyer or Buyer's customers. Each Party shall provide the other Party with such information and reports as may be reasonably requested or required by law, to enable each Party to file all reports required by regulatory and tax authorities.
- (e) Renewable Identification Numbers. Unless otherwise agreed to in the Contract, Seller retains ownership of all Renewable Identification Numbers ("**RIN**") associated with this Contract, if any.

23. **GOVERNING LAW; VENUE; INTERPRETATION:**

- (a) Each Contract shall be interpreted and enforced in accordance with the laws of the State of New York without giving effect to laws and rules governing conflicts of laws; provided, however, that all provisions and issues governed by admiralty or maritime law shall be construed and governed under U.S. admiralty or maritime law. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to a Contract. Exclusive jurisdiction and venue for any controversy arising from or relating to a Contract (“*Proceedings*”) will be located in the New York State or Federal courts located in the Borough of Manhattan in New York City having jurisdiction over such action (the “*Forum Courts*”) (and each Party waives any right to object to venue in this regard). **EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING RELATING TO THIS AGREEMENT.** Nothing herein precludes either Party from bringing Proceedings in any other jurisdiction if (i) the Forum Courts lack jurisdiction over the Parties or the subject matter of the Proceedings or decline to accept the Proceedings on the grounds of lacking such jurisdiction; (ii) the Proceedings are commenced by a Party for the purpose of enforcing against the other Party’s property, assets, or estate any decision or judgment rendered by any court in which Proceedings may be brought as provided hereunder; (iii) the Proceedings are commenced to appeal any such court’s decision or judgment to any higher court with competent appellate jurisdiction over that court’s decisions or judgments if that higher court is located outside the State of New York or Manhattan, New York City, such as a federal court of appeals or the U.S. Supreme Court; or (iv) any suit, action or proceeding has been commenced in another jurisdiction by or against the other Party or against its property, assets, or estate and, in order to exercise or protect its rights, interests or remedies under a Contract, the Party (1) joins, files a claim, or takes any other action, in any such suit, action, or proceeding or (2) otherwise commences any Proceeding in that other jurisdiction as the result of that other suit, action, or proceeding having commenced in that other jurisdiction.
- (b) All provisions of a Contract shall be harmonized to the maximum extent possible, but in the event of any conflict between the Special Provisions, the Marine Provisions, and/or these General Provisions, the Special Provisions shall prevail over all other provisions, and the Marine Provisions shall prevail over these General Provisions. Where there is any conflict between the Incoterms® and a Contract, the Contract shall prevail. If any one or more provisions of a Contract should for any reason be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and the remainder of the Contract shall remain in full force and effect, and shall be construed to give effect to the intent of the Parties specified therein to the maximum extent legally possible. In the event of an ambiguity in any of the terms or conditions of a Contract, including any Schedules thereto, such ambiguity shall not be construed for or against any Party thereto on the basis that such Party did or did not author the same. The headings used throughout these General Provisions are for convenience only and shall be disregarded for the purposes of construing a Contract.
- (c) If a Party seeks to enforce its rights under a Contract in any arbitration proceeding, court action, litigation, or similar proceeding, the prevailing Party may recover from the non-prevailing Party all such court and arbitration costs, expenses, and experts’ and attorneys’ fees relating to such arbitration or court action, litigation, or proceeding.

24. **BANKRUPTCY CODE:** Without limiting the applicability if any, of any other provision of the U.S. Bankruptcy Code, as amended (the “*Bankruptcy Code*”) (including without limitation Sections 362, 546, 556, 560 and 561 thereof and the applicable definitions in Section 101 thereof), the parties acknowledge and agree that: (i) all transactions entered into under a Contract will

constitute “forward contracts” (unless the maturity date is not more than two (2) days after the date the Contract was entered into), “swap agreements”, and each Contract shall constitute a “master netting agreement” as defined in Section 101 of the Bankruptcy Code or “commodity contracts” as defined in Section 761 of the Bankruptcy Code; (ii) the parties are “forward contract merchants”, “swap participants”, “financial participants” or “financial institutions”, as applicable; (iii) the rights of the parties under each Contract will constitute “contractual rights” to cause the liquidation, termination, or acceleration of the transactions thereunder; (iv) any margin or collateral provided or transferred under any margin, collateral, security, pledge, or similar agreement related hereto will 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, Section 362, 546, 548, 555, 556, 560, and 561 of the Bankruptcy Code.

25. **NOTICES:** Any notice, request, acknowledgment, or other communication required or permitted by or pertaining to a Contract shall be in writing and addressed to the other Party at the address listed in the Contract; provided, however, that communications concerning scheduling of deliveries may be made orally and promptly followed by written or electronic confirmation. Any such notice, request, or other communication shall either be (a) by prepaid mail or nationally recognized courier or messenger service with confirmed delivery or (b) by personal service upon an authorized owner, officer, or manager of the receiving Party. Notices concerning scheduling of deliveries or contractually permitted changes in the Purchase Price or other Contract terms may be made by fax, e-mail, or other electronic communication; provided that the sender of the notice is able to document actual receipt by the intended recipient. All notices shall be deemed effective upon receipt or, if delivery thereof is attempted but failed, on the business day following such attempted delivery.
26. **RECORDINGS:** Each Party (a) consents to the recording of telephone conversations between the trading, marketing, and other personnel of the Parties in connection with a Contract or any other transaction, (b) agrees to obtain any necessary consent of, and give any necessary notice of such recording to, its relevant personnel, and (c) agrees, to the extent permitted by applicable law, that recordings may be submitted in evidence in any Proceedings or arbitration relating to a Contract.
27. **ASSIGNMENT:** Neither Party may assign any Contract without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, that either Party may assign a Contract to an affiliate or to an entity that acquires (directly or indirectly) substantially all of the equity interests of such Party or the assets related to its performance of this Contract, or as a pledge or security to a financial institution providing capital or other financing to such Party, in either case without consent of the other Party. Any purported assignment in contravention of the foregoing shall be null and void. A Party making any assignment or affecting any transfer hereof shall promptly notify the other Party of such assignment, regardless of whether consent is required, and no assignment or other transfer of any Contract right, interest, or obligation shall be binding upon the other Party until after such Party has received notice of assignment, and each Party shall remain fully liable for all obligations incurred prior to such notice. Each Contract shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.
28. **IMAGED AGREEMENT:** Any original executed Contract or other related document may be photocopied or scanned and stored on computer tapes, disks, or other electronic media (the “*Imaged Agreement*”). The Imaged Agreement, if introduced as evidence on paper, a recording, if introduced as evidence in its original form and as transcribed onto paper, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of a recording or the Imaged Agreement (or

photocopies of the transcription of a recording or the Imaged Agreement) on the basis that such were not originated or maintained in documentary form under the hearsay rule, the best evidence rule, or other rule of evidence other than the rule of relevance.

29. **ENTIRETY OF AGREEMENT, MODIFICATION AND WAIVER:** A Contract shall constitute the entire understanding of the Parties relating to the sale of Products specified therein and shall supersede all prior written or oral proposals, negotiations, and representations, understandings, or agreements of the Parties regarding such sale. No amendment, modification, waiver, or alteration of any Contract shall be binding unless reflected either by a written instrument signed by the Parties or by an exchange of executed written or documented electronic correspondence between the Parties reciting full agreement on the changes and stating that the exchange of correspondence reflects a modification, waiver, or amendment of the Contract. Waiver by either Party of performance of any Contract rights or obligations or of any default by the other Party shall not operate as a waiver of any other right, obligation, or default or as a future waiver of the same right or obligation or a waiver of any future default. Nothing in the Contract, express or implied, is intended to confer upon any third party any third-party beneficiary rights, remedies, or benefits hereunder.

30. **INDEMNITIES:**

(a) SELLER AND BUYER MUTUALLY COVENANT TO PROTECT, DEFEND, INDEMNIFY AND HOLD EACH OTHER HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, SUITS, LOSSES, EXPENSES (INCLUDING WITHOUT LIMITATION, COSTS OF DEFENSE, ATTORNEY'S FEES AND INTEREST), DAMAGES, FINES, PENALTIES, CAUSES OF ACTION AND LIABILITIES OF EVERY TYPE AND CHARACTER, INCLUDING BUT NOT LIMITED TO PERSONAL INJURY OR DEATH TO ANY PERSON INCLUDING EMPLOYEES OF EITHER PARTY OR LOSS OR DAMAGE TO ANY PERSONAL OR REAL PROPERTY, CAUSED BY, ARISING OUT OF OR RESULTING FROM THE ACTS OR OMISSIONS OF NEGLIGENCE OR WILLFUL ACTS OF SUCH INDEMNIFYING PARTY, ITS OFFICERS, EMPLOYEES OR AGENTS WITH RESPECT TO THE PURCHASE AND SALE OF PRODUCT HEREUNDER. IN THE EVENT THE PARTIES ARE JOINTLY AND/OR CONCURRENTLY NEGLIGENT, EACH PARTY SHALL INDEMNIFY THE OTHER PARTY TO THE EXTENT OF ITS NEGLIGENT ACTS OR OMISSIONS OR WILLFUL ACTS.

(b) BUYER AGREES TO PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS THE SELLER, SELLER'S PARENT CORPORATION, SELLER'S AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS EMPLOYEES AND REPRESENTATIVES (the "**SELLER GROUP**") FROM AND AGAINST ALL CLAIMS, DEMANDS, DAMAGES, FINES, JUDGMENTS, PENALTIES, COSTS, LIABILITIES OR LOSSES (INCLUDING, WITHOUT LIMITATION, ANY AND ALL CLEANUP, REMOVAL AND OTHER REMEDIATION COSTS AND SERVICES PAID FOR THE SETTLEMENT OF CLAIMS, ATTORNEY FEES, CONSULTANT AND EXPERT FEES) ARISING IN CONNECTION WITH THE PRESENCE, OF ANY HAZARDOUS SUBSTANCE, ON, IN, UNDER, OR EMANATING FROM ANY OF BUYER'S PROPERTIES AND SITES. AS USED HEREIN, HAZARDOUS SUBSTANCE MEANS ANY SUBSTANCE WHICH IS TOXIC, IGNITABLE, REACTIVE, CORROSIVE, RADIOACTIVE, FLAMMABLE, EXPLOSIVE OR A HUMAN HEALTH AND SAFETY HAZARD, INCLUDING, BUT NOT LIMITED TO, ASBESTOS, PETROLEUM PRODUCTS, BY-PRODUCTS AND WASTE, POLYCHLORINATED BIPHENYL (PCB'S) AND SUBSTANCES REFERRED TO AS HAZARDOUS SUBSTANCES, HAZARDOUS MATERIALS, TOXIC SUBSTANCES

OR HAZARDOUS WASTE IN THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, 42 USC § 9601, *ET SEQ.*, THE SUPERFUND AMENDMENTS AND RE-AUTHORIZATION ACT OF 1986, THE RESOURCES CONSERVATION AND RECOVERY ACT, 42 USC § 6901, *ET SEQ.*, THE CLEAN WATER ACT, 33 USC § 1251, *ET SEQ.*, THE TOXIC SUBSTANCE CONTROL ACT, 15 USC § 2601, *ET SEQ.*, AND ALL REGULATIONS PROMULGATED PURSUANT THERETO, AND ANY AND ALL OTHER APPLICABLE STATUTES, LAWS, ORDINANCES, RULES AND REGULATIONS OF ANY STATE, FEDERAL, COUNTY OR MUNICIPALITY, OR QUASI-GOVERNMENTAL AUTHORITY OR BODY.