

In consideration of the mutual undertakings in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions.

- (a) **Additional Event of Default** means an additional Event of Default specified in Section 8.1(i) of the Cover Sheet (if any).
- (b) **Affected Party** has the meaning specified in Section 19.1.
- (c) **Affected Transaction** has the meaning specified in Section 19.1.
- (d) **Affiliate** means, in relation to any person, an entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.
- (e) **Aggregate Delinquency Amount** means, with respect to a Party, the amount specified as the Aggregate Delinquency Amount for such Party in respect of Section 8.1(d) in the Cover Sheet.
- (f) **Agreement** has the meaning set out in the preamble to the Cover Sheet.
- (g) **Applicable Law** means any federal, national, state or local law, statute, regulation, code, ordinance, license, permit, compliance requirement, decision, order, writ, injunction, directive, judgment, policy, decree, including any judicial or administrative interpretations thereof, or any agreement, concession or arrangement with any Governmental Authority, applicable to either Party or either Party's performance under any Transaction, and any amendments or modifications to the foregoing.
- (h) **B-RIN** has the meaning in Section 80.1401 of the RFS Program.
- (i) **Bankrupt** means, with respect to a Party, that such Party: (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv)(A) institutes, or has instituted against it by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organization or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official, or (B) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and such proceeding or petition is instituted or presented by a person or entity not described in clause (A) above; (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (vii) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets; (viii) causes or is subject to any event with respect to it which, under the Applicable Law, has an analogous effect to any of the events specified in clauses (i) to (vii) (inclusive); or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.
- (j) **Bankruptcy Code** has the meaning specified in Section 9.7.
- (k) **Batch Number** is a serial number assigned to a batch of fuel under the RFS Program.
- (l) **Bookout** has the meaning specified in Section 5.3.

- (m) **Bookout Effective Date** has the meaning specified in Section 5.3.
- (n) **Buyer** means the Party obligated to purchase RINs under a Transaction.
- (o) **Confirmation** means (i) any electronic confirmation setting forth the trade details of a Transaction (and any Special Conditions) between the Parties and matched by the Parties on an electronic confirmation matching system and (ii) absent the ability to confirm a Transaction through an electronic confirmation matching system, any other written or electronic confirmation between the Parties that contains the relevant trade details (and any Special Conditions) of the Transaction based on those set forth in the sample form attached as Annex 1.
- (p) **Contract Price** means the price (expressed in U.S. Dollars) of a RIN as specified in a Confirmation.
- (q) **Contract Value** means the amount of the RINs remaining to be delivered or received under a Transaction multiplied by the Contract Price.
- (r) **Credit Support Document** means any and all agreements, written assurances, undertakings or guarantees documenting the terms of any Performance Assurance or other credit support provided in respect of this Agreement.
- (s) **Credit Support Provider** has the meaning specified in Section 8.1(g).
- (t) **D-Code** means the number designating the type of renewable fuel with which a given RIN is associated, as described in Section 80.1425(g) of the RFS Program.
- (u) **Defaulting Party** has the meaning specified in Section 9.1.
- (v) **Deficient Quantity** means the volume of Deficient RINs.
- (w) **Deficient RIN** has the meaning specified in Section 7.1.
- (x) **Designated Event** means, with respect to a Party for purposes of Section 8.1(f): (i) the consolidation or amalgamation of a Party with, the merger of a Party with or into, or the transfer of all or substantially all of a Party's assets to, another entity; (ii) the reorganization, reincorporation or reconstitution of a Party into or as another entity; (iii) the acquisition by any person directly or indirectly of the majority of the beneficial ownership of the Party such that such person may exercise control of the Party; or (iv) a substantial change in the capital structure of a Party by means of the issuance or guaranty of debt.
- (y) **Early Termination Date** has the meaning specified in Section 9.1.
- (z) **Eastern Prevailing Time** means the time prevailing on the East Coast of the U.S., taking into account daylight savings time if it is in effect.
- (aa) **EMTS** means the EPA Moderated Transaction System or any replacement or successor system designated by the EPA.
- (bb) **EPA** means the U.S. Environmental Protection Agency or any successor having responsibility at law for the implementation and administration of the RFS Program.
- (cc) **EPA Company ID** means the identification number issued to an entity under the RFS Program.
- (dd) **Event of Default** has the meaning specified in Section 8.1.
- (ee) **Facility** means a facility at which the batch of renewable fuel associated with the purchased RINs was produced or imported.
- (ff) **Force Majeure** has the meaning specified in Section 10.1.

- (gg) Generator means an entity that generates RINs under the RFS Program.
- (hh) Governmental Authority means any U.S. federal, state, regional, local or municipal governmental body, agency, instrumentality, authority or entity established or controlled by a government or subdivision thereof, including any legislative, administrative or judicial body, or any person acting on behalf thereof.
- (ii) Initiate means the submission of a sell transaction in EMTS by Seller; provided, however, that a Seller shall not be deemed to have submitted any RINs where Seller cancels such sell transaction in EMTS before Buyer accepts it in EMTS.
- (jj) Invoice has the meaning set forth in Section 4.1.
- (kk) K-Code means the number designating whether or not a RIN is separated or assigned to a volume of fuel under the RFS Program.
- (ll) LEAP means the organization called Leadership for Energy Automated Processing.
- (mm) LEAP RIN Agreement has the meaning specified in the Cover Sheet.
- (nn) Market Value means the amount of the RINs remaining to be delivered or received under a Transaction multiplied by the market price for an equivalent transaction for Qualified Replacement RINs as determined by the Performing Party in a commercially reasonable manner. To ascertain the Market Value, the Performing Party may consider, among other valuations, quotations from leading dealers in swap contracts or physical trading markets, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term, relevant Payment Due Dates, Transfer Dates, and Transaction Volume. A Party shall not be required to enter into a replacement transaction in order to determine the Market Value of a Transaction. For the avoidance of doubt, any option pursuant to which one Party has the right to extend the term of a Transaction shall be considered in determining Contract Value and Market Values.
- (oo) New York Banking Day means a day (other than a Saturday or Sunday or banking holiday) on which commercial banks are authorized to open for business in the State of New York.
- (pp) Offsetting Transactions means any two (2) or more Transactions having the same Transfer Dates (as specified in the Transaction) and payment dates, where under one or more of such Transactions, one Party is Seller and under one or more of the other such Transactions the same Party is Buyer.
- (qq) Original Index has the meaning specified in Section 19.2.
- (rr) Other Amounts has the meaning specified in Section 9.3.
- (ss) Other Trading Agreement has the meaning specified in Section 8.1(d).
- (tt) Party means Party A or Party B, individually, and Parties means Party A and Party B, collectively.
- (uu) Party A is the party designated as such in the introduction on page 1 of the Cover Sheet.
- (vv) Party B is the party designated as such in the introduction on page 1 of the Cover Sheet.
- (ww) Payment Due Date means the payment due date specified in the Confirmation (or otherwise agreed in writing by the Parties), provided that if the Payment Due Date is not so specified or agreed, then it shall be five (5) New York Banking Days after the later of (A) the Transfer Date or (B) the payer's receipt of the payee's Invoice.
- (xx) Pending RINs has the meaning specified in Section 7.3.
- (yy) Performance Assurance has the meaning specified in Section 6.
- (zz) Performing Party has the meaning specified in Section 9.1.

- (aaa) Posting Party has the meaning specified in Section 6.
- (bbb) Product Transfer Document or PTD means such document(s) transferring title to the purchased RINs from Seller to Buyer as may be required pursuant to the RFS Program, 40 C.F.R. Part 80, Subpart M (sample form attached as Annex 2). Each Product Transfer Document shall include a corresponding Invoice Number.
- (ccc) Q-RIN has the meaning in Section 80.1401 of the RFS Program.
- (ddd) Qualified Replacement RIN means a valid RIN: (i) of the same D-Code as that specified in the relevant Confirmation; (ii) generated either in the same year specified in the relevant Confirmation, or if RINs generated in the year specified in the relevant Confirmation are not reasonably available in the market or have expired, the then current compliance year; (iii) if the RIN is a B-RIN or a Q-RIN, approved under the same Quality Assurance Plan as the Deficient RIN; and, in any event, (iv) acceptable to the Buyer. For example, if the Deficient RINs is a B-RIN, then the Qualified Replacement RIN must also be a B-RIN, in addition to meeting the other aforementioned requirements.
- (eee) Reference Price means a price that is determined by reference to a specified pricing source.
- (fff) Required Authorizations has the meaning set out in Section 3.1(a).
- (ggg) RFS Program means Renewable Fuel Standard Program under the Energy Policy Act of 2005 and the Energy Independence and Security Act of 2007 and implementing regulations, including without limitation, 40 C.F.R. Part 80, Subpart M.
- (hhh) RIN means a Renewable Identification Number as defined in the RFS Program.
- (iii) RIN Generation Year means the calendar year in which a RIN was generated under the RFS Program.
- (jjj) RIN Generator Company ID means the EPA Company ID of the Generator of the relevant RINs.
- (kkk) RIN Generator Facility ID means the EPA Facility registration ID of the Facility.
- (III) Secured Party has the meaning specified in Section 6.
- (mmm) Seller means the Party obligated to sell RINs under a Transaction.
- (nnn) Specified Affiliate means, with respect to a Party, the entity or entities specified as the Specified Affiliate(s) with respect to such Party in respect of Section 8.1(d) in the Cover Sheet.
- (ooo) Special Condition has the meaning specified in Section 18.3.
- (ppp) Specified RIN has the meaning specified in Section 2.4.
- (qqq) Specified RIN Transaction has the meaning specified in Section 2.4.
- (rrr) Termination Payment has the meaning specified in Section 9.2.
- (sss) Term Transaction means a Transaction contemplating multiple Transfers with a delivery period the duration of which is one (1) calendar month or more.
- (ttt) Threshold Amount has the meaning specified in the Cover Sheet in respect of Section 8.1(e).
- (uuu) Trade Date means the date a Transaction is entered into between the Parties.
- (vvv) Transaction has the meaning specified in Section 1.3.
- (www) Transaction Volume means each volume of RINs specified in a Confirmation.

- (xxx) "Transfer Date" means the date specified as such on the Product Transfer Document.
- (yyy) "Transfer Period" means, for a Transaction, the date range as specified in the Confirmation during which Seller must Initiate the Transaction Volume.
- (zzz) "U.S." means United States of America, and every reference to money, price, or Contract Price pertains to U.S. Dollars.
- (aaaa) "Verified RIN" has the meaning in Section 80.1401 of the RFS Program.

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

1.3 **Scope; Single Agreement.** This Agreement is intended to apply exclusively to transactions for the purchase and sale of RINs between Seller and Buyer, the details of which are set forth in a Confirmation (a "Transaction"). All Transactions are entered into in reliance on the fact that this Agreement and all Transactions hereunder form a single agreement between the Parties.

1.4 **Inconsistency.** In the event of any inconsistency between the provisions of any Confirmation and this Agreement, such Confirmation will prevail for the purposes of the relevant Transaction. In the event of any inconsistency between the provisions of the Cover Sheet and the main body of this Agreement, the Cover Sheet and any schedule referred to therein shall prevail. In the event of any inconsistency between the provisions of the schedule and the Cover Sheet, the schedule shall prevail.

2. SALE AND PURCHASE OF RINS

2.1 General Obligations.

- (a) Pursuant to each Transaction, Seller shall Initiate each Transaction Volume within its respective Transfer Period, or the Deficient Quantity of Qualified Replacement RINs, if applicable, within the period specified in Section 7.1.
- (b) Pursuant to each Transaction, Buyer shall accept or deny those RINs in EMTS no later than five (5) New York Banking Days after Initiation.
- (c) All rights, title and interest in and to each RIN identified in a Confirmation shall transfer from Seller to Buyer on the Transfer Date; *provided, however,* that if Buyer denies any RINs in EMTS pursuant to Section 2.3, such transfer shall be deemed void *ab initio* as to those denied RINs.
- (d) A failure by Buyer to accept or deny a RIN in EMTS by the fifth (5th) New York Banking Day after Initiation shall constitute a failure by Buyer to accept such RIN pursuant to Section 7.3, regardless of whether a basis existed for denial under Section 2.3.

2.2 In respect of each Transaction, Seller and Buyer shall adhere to the rules of the RFS Program and do all things necessary to Initiate and accept or deny RINs in EMTS within the time provided for in this Agreement. Seller and

Buyer shall comply with Applicable Law in the performance of their respective obligations under this Agreement and each Transaction.

2.3 Buyer's Right to Deny RINs. Except as limited by Section 2.4, Buyer shall have the right, at its reasonable discretion, to deny any RINs in EMTS within five (5) New York Banking Days of Initiation. For the avoidance of doubt, and without limitation, Buyer shall be conclusively deemed to have reasonably exercised its discretion to deny where:

- (a) Buyer has blocked the Generator or Facility that produced the RINs or Qualified Replacement RINs in EMTS;
- (b) The RINs are invalid under Section 80.1431(a) of the RFS Program;
- (c) There is a reasonable prospect that the RINs will be invalid under Section 80.1431 of the RFS Program; or
- (d) Except where a Transaction is a Specified RIN Transaction, Buyer does not have or has not analyzed information sufficient to verify that any of the RINs are not invalid and that there is no reasonable prospect of such RINs becoming invalid under Section 80.1431(a) of the RFS Program.

For the purposes of making its assessment it shall be reasonable for Buyer to disregard the benefit of any warranties given to it under this Agreement.

Without prejudice to the application of Section 10, it is not a reasonable exercise of discretion for Buyer to deny RINs solely on the basis of scarcity of supply of, and/or the market price of, RINs.

2.4 Specified RIN Transactions. Without prejudice to Buyer's rights to rely on the Seller's representation and warranties given under this Agreement, where a Transaction specifies a specific Generator, Facility or Batch Number (a "Specified RIN Transaction", and any RIN subject to such a Transaction, a "Specified RIN") and unless otherwise agreed by the Parties in writing, Seller shall Initiate such Specified RINs, and Buyer shall accept such Specified RINs; provided, however, that if the Specified RINs are invalid or there is a reasonable prospect that the RINs will be invalid under Section 80.1431(a) of the RFS Program before Buyer accepts them in EMTS, then Buyer shall have the right to deny such RINs in accordance with Section 2.3 above.

3. REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties by Both Parties.

Each Party represents and warrants to the other Party (which representations and warranties are deemed to be repeated by each Party on each Transfer Date) that:

- (a) It has the corporate and legal capacity, authority, and power, and all governmental and other licenses, authorizations, permits, consents, contracts and other approvals (if any), necessary to execute, deliver, and perform this Agreement ("Required Authorizations"), and has complied with any conditions to the Required Authorizations applicable to the execution, delivery and performance of this Agreement, and states that such Required Authorizations shall remain in full force and effect until its obligations under this Agreement have been fulfilled;
- (b) It is a registered user of EMTS and has completed any registration required by the RFS Program;
- (c) This Agreement and each Transaction, and such Party's performance of them, is in compliance with the RFS Program;
- (d) Its obligations pursuant to this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application regardless of whether enforcement is sought in a proceeding in equity or at law);

- (e) It is not relying upon any representations of the other Party other than those expressly set forth in this Agreement and, if applicable, each Credit Support Document and, with respect to any particular Transaction, in the applicable Confirmation;
- (f) It has entered into this Agreement and each Transaction as principal (and not as advisor, agent, broker or in any other capacity, fiduciary or otherwise), has a full understanding of the material terms and risks of this Agreement and each Transaction, has made its own independent decision to enter into this Agreement and each Transaction and as to whether this Agreement and each Transaction is appropriate or suitable for it based upon its own judgment and upon advice from such advisors as it has deemed necessary and it is capable of assuming those risks;
- (g) It has made its trading and investment decisions, including regarding the suitability thereof, based upon its own judgment and any advice from such advisors, as it has deemed necessary and not in reliance upon any view expressed by the other Party and is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice) this Agreement and each Transaction, understands and accepts the terms, conditions and risks of this Agreement and each Transaction, and is capable of assuming, and assumes, the risks of this Agreement and each Transaction;
- (h) In respect of this Agreement and any Transaction, each Party (i) is acting solely in the capacity of an arm's-length contractual counterparty, (ii) is not acting as a financial advisor or fiduciary or in any similar capacity for or on the other Party's behalf and (iii) has not given to the other Party any assurance or guarantee as to the expected performance or result of this Agreement or any Transaction; and
 - (i) The Parties intend that each Transaction shall be physically settled.

3.2 Representations and Warranties by Seller.

Seller represents and warrants to Buyer that on each Transfer Date:

- (a) Seller shall convey good title to all RINs it sells hereunder, free and clear of any liens, security interests, and encumbrances or any interest in or to them by any third party;
- (b) Each RIN Initiated or sold: (i) is valid under the RFS Program; (ii) is separated and unassigned; (iii) was generated from a Facility; (iv) has no basis for becoming invalid under Section 80.1431(a) of the RFS Program; and (v) shall not otherwise result in a violation of Section 80.1431(a)(2) of the RFS Program, nor shall the Seller engage in any future conduct that would result in such a violation; and
- (c) Each RIN Initiated or sold is of the D-Code, K-Code, and RIN Generation Year (other than where a later year is permitted in accordance with this Agreement) specified in the relevant Confirmation (if any) and has not been retired.

3.3 **OTHER THAN THE WARRANTIES SPECIFIED OR REFERRED TO IN SECTION 3 AND THE REQUIREMENT OF COMPLIANCE WITH APPLICABLE LAW CONTAINED IN SECTION 2.2, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, SELLER MAKES NO OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY THAT THE RINS WILL BE MERCHANTABLE OR FIT OR SUITABLE FOR A SPECIFIC PURPOSE, EVEN IF SUCH PURPOSE IS KNOWN TO SELLER, UNLESS OTHERWISE STATED IN THE CONFIRMATION FOR A PARTICULAR TRANSACTION. SELLER EXPRESSLY DISCLAIMS ANY WARRANTY AGAINST INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT AND IS NOT RESPONSIBLE FOR THEIR FUTURE USE OR MISUSE IN CONJUNCTION WITH COMPLIANCE WITH ANY OTHER GOVERNMENT REGULATIONS.**

4. PAYMENTS AND INVOICES

- 4.1 **Trade Documentation.** Payee (generally Seller) shall promptly send payer (generally Buyer) (a) a written invoice ("Invoice") showing sufficient detail from which to determine the Transaction(s) to which it relates, the amount due and how such amount was calculated, and the Payment Due Date as set forth in the sample forms attached as Annex 1 and Annex 3.

4.2 Making Payment. All payments shall be made in U.S. Dollars by the Payment Due Date via wire transfer in same day funds. Except as provided herein or as otherwise agreed by the Parties, payment shall be made without deduction, withholding or set-off.

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

4.4 Price Rounding. All U.S. dollar amounts shall be rounded to the nearest cent (and half cents shall be rounded upward).

4.5 Interest. Any amount payable hereunder, if not paid when due, and any amount payable as a refund as a result of an overpayment, shall bear interest from the Payment Due Date or the date of overpayment (as applicable) until the date payment is received at an annual rate (based upon the actual number of days in the relevant calendar year) equal to the rate of two (2) percentage points above the prime rate of interest effective for the Payment Due Date as published in the Wall Street Journal under "Money Rates". If there is no publication on the Payment Due Date, then the most recent preceding day's publication will be used. The interest rate shall not be more than the lawful maximum rate of interest. The relevant Party shall pay any interest due within three (3) New York Banking Days following receipt of the interest invoice.

4.6 Payment Dispute. If a Party, in good faith, disputes the accuracy of the amount due in respect of a Transaction, such Party will timely pay such amount as it believes to be correct and provide written notice stating the reasons why the remaining disputed amount is incorrect, along with supporting documentation acceptable in industry practice. Payment of the disputed amount shall not be required until the dispute is resolved. In the event the Parties are unable to resolve such dispute, either Party may pursue any remedy available at law or in equity to enforce its rights pursuant to this Agreement. In the event that it is determined that the Party that is disputing the amount due must pay the disputed amount, then such Party shall pay interest in accordance with Section 4.5 on such disputed amount from and including the originally scheduled Payment Due Date to, but excluding, the date paid.

5. CONCURRENT TRANSACTIONS – PAYMENT NETTING; TRANSACTION NETTING; AND BOOKOUTS

5.1 Payment Netting. If this Section 5.1 is specified as applicable in the Cover Sheet, the Parties agree to net amounts that are due to each other on the same Payment Due Date in respect of purchases and sales of RINs, and the Parties shall confirm at least two (2) New York Banking Days prior to the Payment Due Date, orally or in writing, the payment obligations owed in respect of purchases and sales of RINs and any and all amounts remaining due after net-out. Any remaining balance after net-out shall be paid by the Party owing such amount to the other Party on the applicable Payment Due Date. The owing Party's payment of a net amount shall satisfy each Party's payment obligations under the relevant Transactions in respect of the payment obligations in respect of purchases and sales of RINs included in the settlement on a Payment Due Date. The Parties understand and agree that such netting of payment obligations is expressly limited to amounts owed from purchases and sales of RINs between the Parties and that netting out any other amounts due in respect of any Transaction or any Other Trading Agreement or any other agreement, instrument or undertaking, for any reason whatsoever, including amounts due in respect of interest payments, is strictly prohibited unless otherwise agreed in writing.

5.2 Transaction Netting. If this Section 5.2 is specified as applicable in the Cover Sheet, and if the Parties enter into one or more Transactions, which in conjunction with one or more other outstanding Transactions, constitute Offsetting Transactions, then all such Offsetting Transactions may, by agreement of the Parties, be netted so that: (a) the Party obligated to deliver the greater amount of the RINs will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Transactions, and (b) the Party owing the greater aggregate payment will pay the net difference owed between the Parties. Each single Transaction resulting under this Section 5.2 shall be deemed part of the single agreement between the Parties referenced in Section 1.3, and once such resulting Transaction occurs, outstanding obligations under the Offsetting Transactions that are satisfied by such offset shall terminate.

5.3 Bookouts. If specified as applicable in the Cover Sheet, then the following provisions of this Section 5.3 shall apply. To the extent that the Parties subsequently agree orally or in writing, either bilaterally or as part of a multiparty arrangement, to a bookout or other cancellation or modification of physical delivery obligations in respect of a Transaction (in each case, a "Bookout") to take effect on a date (the "Bookout Effective Date"), (a) the delivery obligations under the relevant Transaction will be extinguished or modified (whether in whole or in part), and (b) any

agreed payment will be due on the same day as the effective date of the Bookout. At any time prior to the agreed effective date of the Bookout, either Party may elect, at its option and upon notice to the other Party, to break the Bookout and thereby restore all original contract terms, including delivery and payment, all without liability to the other Party. Any such Bookout shall be a subsequent and independent transaction from the Transaction that is subject to the Bookout.

6. CREDIT

6.1 If a Party (the "Secured Party") has commercially reasonable grounds for insecurity with respect to the other Party's (the "Posting Party") creditworthiness or performance under this Agreement, the Secured Party may provide the Posting Party with written notice requesting an amount of Performance Assurance determined by the Secured Party in a commercially reasonable manner, and, upon such written notice, the Posting Party shall provide such Performance Assurance in accordance with this Section 6.1. "Performance Assurance" means:

- (a) prepayment, received by the Secured Party no later than two (2) New York Banking Days after such notice, and in any event prior to commencing the Delivery Period; or
- (b) an irrevocable standby letter of credit in a form and term acceptable to the Secured Party and opened by a Qualified Institution no later than two (2) New York Banking Days after such notice. "Qualified Institution" means either:
 - (i) a commercial bank, unaffiliated with either Party, organized in a jurisdiction reasonably acceptable to the Secured Party, that has:
 - (A) at least an A- Long Term Rating Issued by Standard & Poor's Ratings Group and at least an A3 Deposit Rating issued by Moody's Investor Services, Inc.;
 - (B) total equity of at least ten billion U.S. dollars (\$10,000,000,000); and
 - (C) not exceeded any of Secured Party's internal credit limits in place at the time of the establishment of the letter of credit; or
 - (ii) a bank acceptable to the Secured Party in its sole discretion; or
- (c) other credit support acceptable to the Secured Party in its sole discretion.

If a letter of credit is provided pursuant to Section 6.1(b) above, it shall be established at the Posting Party's cost.

6.2 It is the Parties' intent that the right to request Performance Assurance set forth in Section 6.1 shall be a Party's exclusive right to request Performance Assurance in respect of a Transaction, and that any similar right available under the UCC or at law shall not be available.

7. REMEDIES FOR FAILURE TO INITIATE OR ACCEPT RINS, AND DEFICIENT RINS

7.1 In the event that, in relation to a Transaction:

- (a) Seller fails to Initiate all or part of a Transaction Volume during the applicable Transfer Period;
- (b) Buyer exercises its right to deny all or part of a Transaction Volume pursuant to Section 2.3;
- (c) Seller breaches any of the warranties contained in Section 3.1(b) or (c), Section 3.2, or any warranty specified as subject to this Section 7.1(c) in the applicable Confirmation; or
- (d) Initiated RINs accepted by Buyer are or become invalid for purposes of the RFS Program,

(each such affected RIN a "Deficient RIN"), then, Seller shall, at Seller's sole cost and expense, Initiate Qualified Replacement RINs in a volume equal to the Deficient Quantity within (i) in the case of Sections 7.1(a) or (b), three (3) New York Banking Days after Seller receives notice from Buyer that the circumstances in Sections 7.1(a) or (b) apply, or (ii) in the case of Sections 7.1(c) or (d), fifteen (15) calendar days after Seller receives notice from Buyer

that the circumstances in Sections 7(c) or (d) apply; provided, however, that if such day is not a New York Banking Day, then the deadline shall be the immediately preceding New York Banking Day.

For the avoidance of doubt, if Deficient RINs are Q-RINs or B-RINs, notwithstanding the Buyer's limited exemption under Section 80.1474 (e) or (f) of the RFS Program, the Seller shall Initiate Qualified Replacement RINs in a volume equal to the Deficient Quantity.

Notwithstanding the foregoing, if Seller transfers Deficient RINs to Buyer, then to the extent such Deficient RINs are not invalid RINs under the RFS Program, but deficient for other reasons, Buyer shall be required to transfer such Deficient RINs back to Seller within three (3) business days of having received the Qualified Replacement RINs from Seller.

7.2 Except where Section 7.3 applies, if:

- (a) Seller fails to timely or fully comply with its obligation to Initiate contained in Section 7.1; or
- (b) at the time the circumstances in Sections 7.1(b), (c), or (d) occur and less than ten (10) New York Banking Days remain before the annual RFS compliance deadline given in 40 CFR §80.1451 of the year that is two (2) calendar years after the year the originally Initiated RINs were generated,

then Seller shall, at Buyer's election by notice either (i) Initiate Qualified Replacement RINs in a volume equal to the Deficient Quantity in accordance with Section 7.1 above, or (ii) pay Buyer within five (5) New York Banking Days of receipt of Buyer's Invoice, unless otherwise mutually agreed between the Parties, the positive difference, if any, between (a) Market Value and (b) Contract Value, with such sum increased by any amount already paid by Buyer to Seller on account of the Deficient RINs.

For purposes of Section 7.2, (i) the phrase "the amount of the RINs remaining to be delivered or received under a Transaction" as used in the defined terms "Market Value" and "Contract Value" shall refer to and mean the Deficient Quantity; and (ii) the Market Value shall be calculated on the New York Banking Day notified by Buyer that falls (i) where Section 7.2 (a) applies, no sooner than the last day for performance of Seller's obligations under Section 7.1 applies and, (ii) where Section 7.2(a) or 7.2(b) applies, no later than three (3) New York Banking Days after the date Buyer gives notice of its election.

7.3 In the event that Buyer fails to accept or deny all or part of a Transaction Volume or Qualified Replacement RINs in EMTS, as contemplated under Section 2, Seller shall provide written notice of such failure to Buyer. If Buyer fails to accept any portion of those RINs (the "Pending RINs") in EMTS within one (1) New York Banking Day of receiving such notice, then (a) Seller may cancel one or more of the Pending RINs in EMTS, and Seller's obligation to sell and deliver and Buyer's obligation to purchase and receive shall be reduced to the extent Seller cancels such Pending RINs or such Pending RINs expire in EMTS, and (b), regardless of whether Seller cancels, Buyer shall pay Seller the sum of (i) the positive difference, if any, between the Contract Price less the market price, multiplied by the volume of all Pending RINs (on all such RINs whether or not ultimately accepted), and (ii) the purchase price for any of such RINs ultimately accepted by Buyer. For purposes of this Section 7.3, market price shall be determined by Seller in a commercially reasonable manner with the date of determination as follows: (x) in the case of cancellation, as of the date of cancellation; (y) in the case of expiration, as of the date of expiration; and (z) in the case of acceptance, as of the date of acceptance.

7.4 In the event the provisions of this Section 7 are invoked, Seller and Buyer agree to work together in good faith to pursue an efficient, commercial and practical resolution consistent with the foregoing options (or any combination thereof) in order to cure any default with respect to any Deficient RINs, provided, however, the replacement RINs must be Qualified Replacement RINs unless otherwise mutually agreed.

7.5 Seller shall issue a PTD accurately describing the Qualified Replacement RIN. Buyer and Seller shall otherwise be subject to the general obligations set forth in Section 2.1.

7.6 Section 7.1(b), (c), and (d), and, for the avoidance of doubt, Section 2.3 shall apply equally to any Qualified Replacement RINs.

7.7 Except in respect of a failure to pay any amount due under Section 7.2 or Section 7.3, the remedies set out in this Section 7 are exclusive remedies for the occurrence of the events described in Section 7.

8. EVENTS OF DEFAULT

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

- (a) Failure to Pay. A Party fails to make payment of any amount due when required under this Agreement or any Transaction, within two (2) New York Banking Days following receipt of a written notice of such failure from the other Party.
- (b) Failure to Provide Performance Assurance. A Party fails to provide acceptable Performance Assurance support as requested by the Secured Party pursuant to Section 6 and in accordance with the period for performance specified in Section 6.
- (c) Breach of Agreement. Except for any breach or event described in Section 7.1(a) through (d) (the exclusive remedies for which are specified in Section 7.2) or Section 7.3, and except for any event described in Section 8.1(a) and (b) above, a Party fails to perform or repudiates any material obligation to the other Party under this Agreement or breaches any representation, covenant or warranty in any material respect under this Agreement and, in each case, if capable of being cured, is not cured to the satisfaction of the other Party in its sole discretion, within two (2) New York Banking Days following receipt of written notice to such Party that corrective action is needed.
- (d) Default Under Other Trading Agreements. A Party, any Credit Support Provider of such Party, or any applicable Specified Affiliate of such Party:
 - (i) fails to make payment when due under any trading agreement (that is not a Transaction under this Agreement) with the other Party, any Credit Support Provider of such other Party or any Specified Affiliate of such other Party, including any agreement to purchase, sell or exchange RINs or any other commodities or any agreement in respect of an interest rate transaction, equity transaction, bond transaction, foreign exchange transaction, credit protection transaction, repurchase transaction, buy/sell-back transaction, securities lending transaction, forward transaction, any transaction similar to the foregoing, any swap, forward, future, option or other derivative transaction with respect to the foregoing or any combination of these transactions (each, an "Other Trading Agreement") within the cure period for payment defaults specified therein, or if no period is provided, within two (2) New York Banking Days following receipt of a demand for payment by the other Party; or
 - (ii) commits or suffers an event of default or other similar event or condition, fails to perform or repudiates any obligation to the other Party, any Credit Support Provider of such other Party or any Specified Affiliate of such other Party under any Other Trading Agreement, or breaches any representation, covenant or warranty in any material respect under any Other Trading Agreement;

and, in the case of either of subclauses (i) or (ii) above, (1) such failure, breach or default results in a liquidation of, an acceleration of obligations under, or an early termination of, all transactions outstanding under the documentation applicable to such Other Trading Agreement; and (2) the aggregate amount owed by the defaulting Party in respect of the liquidation of, acceleration of obligations under or early termination of all transactions outstanding under the documentation applicable to such Other Trading Agreement(s) is not less than the Aggregate Delinquency Amount applicable to such Party (it being agreed that the failure to make a payment or delivery the value of which exceeds the Aggregate Delinquency Amount on the last payment or delivery date of an Other Trading Agreement transaction where that transaction is the only transaction outstanding under the applicable documentation will satisfy conditions (1) and (2)).

- (e) Cross Default. (i) A default, event of default or other similar condition or event occurs and is continuing in respect of a Party or its Credit Support Provider (if any) under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the Threshold Amount applicable to such Party and which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable; or (ii) a Party or its Credit Support Provider (if any) fails to make on the due date thereof one or more payments, individually or collectively, in an aggregate amount of not less than the Threshold Amount applicable to such Party.

- (f) Designated Event. A Designated Event occurs with respect to a Party or its Credit Support Provider (if any), and the creditworthiness of the Party or its Credit Support Provider or, if applicable, the successor, surviving or transferee entity of the Party or its Credit Support Provider (as applicable) is materially weaker than that of the Party or its Credit Support Provider immediately prior to such Designated Event.
- (g) Credit Support Failure. A Party's guarantor or other provider of credit support for such Party, in addition to any entity specified as such on the Cover Sheet, (a "Credit Support Provider" with respect to the Party), if any, (i) fails to satisfy, perform or comply with any agreement or obligation to be complied with or performed by it in accordance with the Credit Support Document and such failure continues after any applicable grace or notice period, (ii) makes any representation or warranty that proves to be incorrect or misleading in any material respect when made in connection with such Performance Assurance and/or Credit Support Document, or (iii) repudiates, disclaims, disaffirms or rejects, in whole or part, any obligation under, or challenges the validity of, its Performance Assurance and/or Credit Support Document.
- (h) Bankruptcy. A Party or its Credit Support Provider, if any, is or becomes Bankrupt.
- (i) Additional Events of Default. An Additional Event of Default occurs with respect to a Party.

9. TERMINATION AND LIQUIDATION

- 9.1 Notwithstanding any other provision of this Agreement or the existence of any Performance Assurance, if at any time an Event of Default has occurred and is continuing with respect to a Party (such Party, the "Defaulting Party"), the other Party (the "Performing Party") may, in its sole discretion, designate a date (not earlier than the date of such notice and not later than twenty (20) days after the date of such notice (an "Early Termination Date")) on which to terminate, liquidate and accelerate all outstanding Transactions and calculate a Termination Payment (as defined below) in the manner set forth in Section 9.2 and Section 9.3. To the extent that, in the reasonable opinion of the Performing Party, certain Transactions may not be liquidated and terminated under Applicable Law on the Early Termination Date, such Transactions shall be terminated as soon thereafter as is reasonably practicable, in which case the actual termination date for such Transactions will be the Early Termination Date in respect thereof for purposes of Section 9.2. Notwithstanding the foregoing, if the Defaulting Party is governed by a system of law that does not permit termination to take place after the occurrence of an Event of Default described in Section 8.1(h), then no prior notice shall be required upon the occurrence of such Event of Default, in which case the Early Termination Date shall be deemed designated immediately preceding the occurrence of such event.
- 9.2 On or as soon as reasonably practicable following the Early Termination Date, the Performing Party shall determine the final amount payable between the Parties under this Agreement as provided in this Section 9.2 (the "Termination Payment") and shall provide notice of the Termination Payment to the Defaulting Party. The Performing Party shall calculate the Termination Payment by (a) valuing each Transaction at its Market Value as reasonably determined by the Performing Party as of the Early Termination Date and then determining the amount by which such then prevailing Market Value differs from the Contract Value (it being understood that (i) in the event the prevailing Market Value of a Transaction exceeds the Contract Value, the difference in value shall be due from Seller to Buyer, and (ii) in the event that the prevailing Market Value of a Transaction is less than the Contract Value, the difference in value shall be due from Buyer to Seller), (b) determining any other damages, costs or expenses incurred by the Performing Party as a result of the early termination of such Transactions including those contemplated by Section 9.4 (without duplication and subject always to Section 13.1), (c) determining any other amounts payable from one Party to the other Party under this Agreement (including amounts due in respect of RINs Initiated and accepted hereunder) and (d) netting or aggregating the foregoing amounts into a single liquidated amount. If the Defaulting Party owes the Termination Payment to the Performing Party, then, within one (1) New York Banking Day of the date upon which the Performing Party's notice of the Termination Payment is effective, the Defaulting Party shall pay the Termination Payment, less the value of any Performance Assurance or other collateral or credit support held by the Performing Party with respect to which the Performing Party has notified the Defaulting Party in writing of its election to exercise its setoff rights under Section 9.3. If the Performing Party owes the Termination Payment to the Defaulting Party, then, within one (1) New York Banking Day of the date upon which the Performing Party's notice of the Termination Payment is effective, the Performing Party shall pay the Termination Payment, less the value of any Performance Assurance or other collateral or credit support held and not returned by the Defaulting Party.

9.3 Closeout Setoff.

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

If the Performing Party elects to designate an Early Termination Date under Section 9.1, and the Termination Payment is payable to the Defaulting Party, the Performing Party shall be entitled, at its option and in its discretion (and without prior notice to the Defaulting Party), to setoff against such Termination Payment any amounts ("Other Amounts") payable by the Defaulting Party to the Performing Party under any other agreements, instruments or undertakings between the Defaulting Party and the Performing Party (whether or not arising under this Agreement, matured or contingent and irrespective of the currency, place of payment or place of booking of the obligation). To the extent that any Other Amounts are so setoff, those Other Amounts will be discharged promptly and in all respects. The Performing Party will give notice to the other Party of any setoff effected under this Section 9.3. For this purpose, either the Termination Payment or the Other Amounts (or the relevant portion of such amounts) may be converted by the Performing Party into the currency in which the other is denominated at the rate of exchange at which the Performing Party would be able, in good faith and using commercially reasonable procedures, to purchase the relevant amount of such currency.

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

If the Performing Party elects to designate an Early Termination Date under Section 9.1, and the Termination Payment is payable to the Defaulting Party, the Performing Party shall be entitled, at its option and in its discretion (and without prior notice to the Defaulting Party), to setoff against such Termination Payment any amounts ("Other Amounts") payable by the Defaulting Party to the Performing Party or any of the Performing Party's Affiliates under any other agreements, instruments or undertakings between the Defaulting Party and the Performing Party or any of its Affiliates (whether or not arising under this Agreement, matured or contingent and irrespective of the currency, place of payment or place of booking of the obligation). To the extent that any Other Amounts are so setoff, those Other Amounts will be discharged promptly and in all respects. The Performing Party will give notice to the other Party of any setoff effected under this Section 9.3. For this purpose, either the Termination Payment or the Other Amounts (or the relevant portion of such amounts) may be converted by the Performing Party into the currency in which the other is denominated at the rate of exchange at which the Performing Party would be able, in good faith and using commercially reasonable procedures, to purchase the relevant amount of such currency.

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

9.4 The Performing Party's rights under this Section 9 shall be in addition to, and not in limitation or exclusion of, any other rights of setoff, recoupment, combination of accounts, lien or other right which it may have, whether by agreement, operation of law or otherwise. No delay or failure on the part of a Performing Party to exercise any right or remedy shall constitute an abandonment of such right or remedy, and the Performing Party shall be entitled to exercise such right or remedy at any time after an Event of Default has occurred, so long as such Event of Default is continuing. The Defaulting Party shall indemnify and hold harmless the Performing Party for and against any and all reasonable out-of-pocket expenses incurred by the Performing Party by reason of the enforcement of and protection of its rights under this Agreement or as a result of the early termination of any Transactions, including reasonable attorney's fees and costs of collection.

9.5 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance in the form of cash or other collateral (excluding, for the avoidance of doubt, a letter of credit or a guaranty) hereunder, the Posting Party hereby grants to the Secured Party a present and continuing security interest in, and lien on (and right of setoff against), and collateral assignment of, all such Performance Assurance or other collateral or security transferred pursuant to this Agreement and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action promptly as the other Party reasonably requires in order to perfect fully the Secured Party's first-priority security interest in, and lien on (and right of setoff against), such Performance Assurance or other collateral or security and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the designation or deemed designation of an Early Termination Date, the Performing Party may from time to time do any one or more of the following: (a) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance or other collateral or security posted by the

Defaulting Party, including any such rights and remedies under law then in effect; (b) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Performing Party or its agent; (c) draw on any outstanding letter of credit issued for the Performing Party's benefit on behalf of the Defaulting Party; and (d) liquidate all Performance Assurance, collateral or other security posted by the Defaulting Party and then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds realized upon the exercise of any such rights or remedies to reduce the Posting Party's obligations under this Agreement (the Posting Party remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full. Upon or at any time after the designation or deemed designation of an Early Termination Date, the Defaulting Party must return all Performance Assurance transferred to it pursuant to this Agreement and all proceeds resulting therefrom or the liquidation thereof. To the extent that Performance Assurance is not so returned, the Performing Party may: (a) exercise any of the rights and remedies available to a pledgor under Applicable Law with respect to Performance Assurance, collateral or other security posted by the Defaulting Party and held by the Secured Party; (b) exercise any other rights and remedies available under the terms (if any) of the applicable Performance Assurance, collateral or other security; (c) exercise its rights of setoff against the Termination Payment; and (d) to the extent that the Performing Party does not setoff under (c) above, withhold payment of any remaining amounts payable by the Performing Party under this Agreement, up to the value of any remaining Performance Assurance, collateral or other security held by the Defaulting Party, until that Performance Assurance is returned to the Performing Party.

9.6 **Suspension of Performance.** Notwithstanding any other provision of this Agreement, if (a) an Event of Default or (b) an event that, with the lapse of time or the giving of notice or both, would constitute an Event of Default shall have occurred and be continuing, the Performing Party, upon written notice to the Defaulting Party, shall have the right: (i) to suspend performance under any or all Transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) New York Banking Days with respect to any single Transaction, unless an Early Termination Date shall have been declared and notice thereof given pursuant to Section 9.1, and (ii) to the extent an Event of Default shall have occurred and be continuing, to exercise any remedy available at law or in equity.

9.7 **Bankruptcy Acknowledgements.** The Parties intend that each Transaction shall constitute a "forward contract" under § 101(25) and a swap agreement under § 101(53b) of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq., as amended from time to time (the "Bankruptcy Code"), and that this Agreement constitutes a "master netting agreement" under § 101(38a) of the Bankruptcy Code, and that the rights of the Performing Party in Section 9 include the rights referred to in § 561(a) of the Bankruptcy Code. Further, the Parties intend that each Party shall be a "forward contract merchant" under § 101(26) and a "master netting agreement participant" under § 101(38B), for purposes of the Bankruptcy Code.

10. **FORCE MAJEURE**

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

- (a) Compliance with Applicable Law; provided however, that Seller shall not be excused from performance where the RINs it Initiates or intends to Initiate are invalid for purposes of the RFS Program;
- (b) Hostilities of war (declared or undeclared), embargoes, blockades, civil unrest, riots or disorders, acts of terrorism, or sabotage;
- (c) Fires, explosions, lightning, maritime peril, collisions, storms, landslides, earthquakes, floods, and other acts of nature;
- (d) Strikes, lockouts, or other labor difficulties (whether or not involving employees of Seller or Buyer); provided, however, that the decision to settle a strike or other labor difficulties shall be wholly within the discretion of the Party facing such difficulty; or

(e) Disruption or breakdown of production or transportation facilities, equipment, labor or materials, including, without limitation, the closing of harbors, railroads or pipelines.

For purposes of this Agreement, the term "Force Majeure" expressly excludes (i) a failure of performance of any person other than the Parties, except to the extent that such failure was caused by an event that would otherwise satisfy the definition of a Force Majeure event as set forth in this Section 10, (ii) the loss of Buyer's market or any market conditions for any RINs that are unfavorable for Buyer or Seller, (iii) the loss of Seller's intended supply of RINs, (iv) the failure of Seller's intended supplier of RINs to perform, (v) any failure by a Party to apply for, obtain or maintain any permit, license, approval or right of way necessary under Applicable Law for the performance of any obligation hereunder, and (vi) a Party's inability to economically perform its obligations under this Agreement.

EMTS Unavailability. In the event that EMTS is disrupted or unavailable, the affected obligations of the Parties will be suspended (but not discharged) until EMTS is not disrupted and is available.

10.2 Notwithstanding the provisions of Section 10.1, nothing contained in this Agreement shall relieve a Party of its obligation to make payments when due with respect to performance prior to the occurrence of a Force Majeure event, including Buyer's obligation to pay in full the purchase price or any other amounts due for the RINs actually Initiated and accepted hereunder.

10.3 In the event that a Party believes a Force Majeure event has occurred that will require it to invoke the provisions in this Section 10, such Party shall use commercially reasonable efforts to give prompt oral notice to the other Party followed by written notice within two (2) New York Banking Days following the occurrence of such event, of the underlying circumstances of the particular causes of Force Majeure, the expected duration thereof and the volume of the RINs affected. The Party claiming Force Majeure shall also use commercially reasonable efforts to give the other Party such notice of cessation of the Force Majeure event and the date when performance is expected to resume.

10.4 Notwithstanding anything to the contrary in this Agreement, (a) if an event or circumstance which would otherwise constitute or give rise to a Force Majeure event under this Section 10 also constitutes an Event of Default other than an Event of Default under Section 8.1(h), it will be treated as a Force Majeure event and not as an Event of Default; and (b) if an event or circumstance which would otherwise constitute or give rise to a Force Majeure event under this Section 10 also constitutes an Event of Default under Section 8.1(h), it will be treated as an Event of Default and not as a Force Majeure event.

10.5 **If deliveries and acceptances in respect of a Term Transaction are suspended pursuant to this Section 10 and said suspension continues for a period of thirty (30) days or more, such Term Transaction may be terminated at the option of (a) either Party, if the "Force Majeure Termination Payment" provision is specified as applicable in the Cover Sheet, or (b) the Party that is not claiming Force Majeure, if the "Force Majeure Termination Payment" provision is not specified as applicable in the Cover Sheet, in either case, by giving written notice to the other Party. If a Party terminates a Term Transaction pursuant to this Section 10.5, neither Party shall have any further liability to the other Party hereunder with respect to such Term Transaction except for (a) any payment or indemnification obligations arising in respect of the performance of such Term Transaction prior to the date of termination and (b) if the "Force Majeure Termination Payment" provision is specified as applicable in the Cover Sheet, the obligation to make a Termination Payment, if any, pursuant to such provision.**

11. GOVERNING LAW AND SETTLEMENT OF DISPUTES

11.1 This Agreement shall be governed by and construed in accordance with the laws of the State of New York without reference to its choice of law doctrine, but without prejudice to the provisions of § 5-1401 of the General Obligations Law of the State of New York. The Parties hereby submit to the exclusive jurisdiction of any federal court of competent jurisdiction, or, if any federal court declines to exercise or does not have jurisdiction, in any New York state court situated in New York City, Borough of Manhattan, and to service of process by certified mail delivered to the Party at its last designated address. Each Party waives, to the fullest extent permitted by Applicable Law, any right it may have to a trial by jury in respect of any proceedings relating to this Agreement.

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

12. TAXES

12.1 Tax Obligations Generally. Each Party shall be responsible for any taxes that may be imposed on it arising from the sale or purchase, respectively, of RINs pursuant to any Transaction.

13. LIMITATION OF LIABILITY

13.1 NO PARTY SHALL BE REQUIRED TO PAY OR BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES OR FOR LOST PROFITS OR ANY FINES OR PENALTIES ASSESSED BY ANY GOVERNMENTAL AUTHORITY INCLUDING, BUT NOT LIMITED TO, RFS PROGRAM FINES OR PENALTIES (WHETHER OR NOT ARISING FROM ITS NEGLIGENCE) TO ANY OTHER PARTY EXCEPT TO THE EXTENT THAT THE PAYMENTS REQUIRED TO BE MADE PURSUANT TO THIS AGREEMENT (INCLUDING PAYMENTS REQUIRED TO BE MADE PURSUANT TO SECTIONS 7, 9 AND 19) ARE DEEMED TO BE SUCH DAMAGES. IF AND TO THE EXTENT ANY PAYMENT REQUIRED TO BE MADE PURSUANT TO THIS AGREEMENT IS DEEMED TO CONSTITUTE LIQUIDATED DAMAGES, THE PARTIES ACKNOWLEDGE AND AGREE THAT SUCH DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE AND THAT SUCH PAYMENT IS INTENDED TO BE A REASONABLE APPROXIMATION OF THE AMOUNT OF SUCH DAMAGES AND NOT A PENALTY. EACH PARTY SHALL TAKE REASONABLE STEPS TO MITIGATE DAMAGES FROM ANY BREACH HEREOF.

14. ASSIGNMENT

14.1 This Agreement shall not be assigned, in whole or in part, by either Party without the prior written consent of the other Party, such consent not to be unreasonably withheld. Any assignment in violation of this provision shall be void and of no legal effect. Subject to this Section 14, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

15. NON-WAIVER

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

16. ENTIRE AGREEMENT; AMENDMENTS

16.1 No statement or agreement, oral or written, made prior to the signing of this Agreement, shall vary or modify the written terms hereof. Neither Party shall claim any amendment to, modification of, or release from any provisions of this Agreement, whether set out in an annex, schedule, supplement or (subject to Section 18.3) Confirmation or otherwise, unless such amendment, modification or release is in writing, is signed by the Parties and specifically states that it is an amendment to, modification of, or release from this Agreement or one or more Transactions.

17. NOTICES

17.1 Subject to Section 4.3, all notices and other communications under this Agreement shall be deemed given on the date of the addressee's receipt thereof and shall be given only in writing by letter, facsimile or electronic data transmission. Provided that if transmitted by facsimile or electronic data transmission and it is received after close of business on a New York Banking Day, it shall be deemed to have been received on the following New York Banking Day.

18. WRITTEN CONFIRMATIONS

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

18.2 Absent the availability of an electronic confirmation matching service, Seller shall confirm a Transaction by forwarding a written Confirmation to Buyer (via facsimile or other means agreed between the Parties) within five (5)

New York Banking Days after the Trade Date. If Buyer objects to any term(s) of such written Confirmation, it shall notify Seller in writing of such objection within five (5) New York Banking Days of Buyer's receipt thereof, failing which Buyer shall be deemed to have accepted such terms.

- (a) If Seller fails to send a written Confirmation within five (5) New York Banking Days after the Trade Date, a written Confirmation may be forwarded by Buyer to Seller. If Seller objects to any term(s) of such written Confirmation, it shall notify Buyer of such objection within five (5) New York Banking Days of Seller's receipt thereof, failing which Seller shall be deemed to have accepted such terms.
- (b) If each of the Parties sends a written Confirmation and neither Party objects to the other Party's written Confirmation within five (5) New York Banking Days of receipt of such written Confirmation, Seller's written Confirmation shall be deemed to be accepted and shall be the controlling written Confirmation, unless (i) Seller's written Confirmation was sent more than five (5) New York Banking Days after the Trade Date and (ii) Buyer's written Confirmation was sent prior to Seller's written Confirmation, in which case Buyer's written Confirmation shall be deemed to be accepted and shall be the controlling written Confirmation. Failure by either Party to send or return an executed, written Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

18.3 The sample Confirmation in Annex I includes a number of fields (indicated by "****") for trade details of each Transaction. Any other stipulation set out in the Confirmation shall be deemed to be a "Special Condition". Such Special Conditions shall not be deemed to be accepted pursuant to this Section 18 unless the other Party specifically agrees to such terms in writing, signed by it as contemplated by Section 16.1.

19. NEW OR CHANGED LAWS OR REGULATIONS

19.1 Material Adverse Effect. If this Section 19.1 is specified as applicable in the Cover Sheet, then the following provision shall apply to Transactions under this Agreement:

If at any time after a Transaction is entered into any new Applicable Laws are enacted or existing Applicable Laws are amended, which individually or collectively could reasonably be expected to have a material adverse effect upon the rights and obligations of a Party (the "Affected Party") as a whole under a particular Transaction (an "Affected Transaction") and which do not constitute a Force Majeure event, then the Affected Party may notify the other Party that it desires in good faith to renegotiate the Contract Price or other material terms or conditions so affected in order to appropriately pass through or otherwise address the effects of the new or changed Applicable Laws. Such notice shall state the new or changed Applicable Law upon which the Party's renegotiation request is based and the terms upon which it is willing to continue to perform the Transaction with respect to any RINs not yet Initiated or accepted. Without prejudice to the generality of the foregoing, the Parties shall negotiate in good faith any price adjustments that may be warranted to account for any incremental costs involved in complying with a Governmental Authority's change in required RINs specifications subsequent to the Trade Date of a Transaction and prior to the Transfer Date of such Transaction.

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

19.3 If the Parties do not agree upon new prices or terms satisfactory to both within thirty (30) days of (a) a Party's request to initiate negotiations between the Parties pursuant to Section 19.1 or (b) the failure of an Original Index to publish as described in Section 19.2, as applicable, either Party shall have the right to terminate all Affected Transactions that may legally be terminated at the end of the thirty (30) day period, in which case each Party shall determine the Termination Payment that would be payable with respect to Affected Transactions as though it were the Performing Party in accordance with Section 9 above. The Termination Payment payable with respect to Affected Transactions will be an amount equal to the sum of (i) one-half of the difference between the Termination Payments calculated by the two Parties, and (ii) the lesser of such two Termination Payments. Any RINs Initiated and accepted during the thirty (30) day period shall be sold and purchased at the Contract Price and on the terms set forth in the Confirmation without any price adjustment in respect of the new or changed Applicable Law concerned.

20. MISCELLANEOUS

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

20.2 Recording of Conversations. Each Party consents to the recording of telephone conversations between the trading, marketing and other relevant personnel of the Parties in connection with this Agreement or any Transaction as long as the party performing the recording is doing so in compliance with Applicable Law.

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

20.4 Counterparts. This Agreement (including any Confirmation) may be executed in any number of counterparts and by different Parties in separate counterparts, any of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement.

21. TERMINATION

21.1 This Agreement may be terminated by either Party upon thirty (30) days' prior written notice of a Party's decision to terminate; provided however, that this Agreement shall remain in effect with respect to any Transactions entered into prior to such termination.

ANNEX 1
SAMPLE FORM OF CONFIRMATION FOR RINS TRANSACTION

To: ***
Attention: ***
Phone Number: ***
Facsimile Number: ***
Email Address: ***
Date: ***
Reference: ***

This Confirmation evidences the terms of the binding agreement between Seller and Buyer named below regarding the Transaction.

This Confirmation supplements, forms a part of, and is subject to the *LEAP Master Agreement for the Purchase and Sale of Renewable Identification Numbers Version 2.0* dated as of _____, as amended and supplemented by agreement in writing from time to time (the “LEAP RIN Agreement”) between Seller and Buyer. All provisions of the Agreement shall govern this Confirmation, except as expressly modified below.

In the event of any inconsistency between this Confirmation and the LEAP RIN Agreement, this Confirmation will govern for purposes of the Transaction. Capitalized terms used in this Confirmation and not defined in this Confirmation shall have the respective meanings assigned in the LEAP RIN Agreement.

TRADE DATE: ***

SELLER: [Name and Address]

SELLER'S EPA COMPANY ID: ***

BUYER: [Name and Address]

BUYER'S EPA COMPANY ID: ***

TRANSACTION VOLUME: *** RINs.

RIN D-Code: ***

RIN GENERATION YEAR: ***

K-CODE: 2

TRANSFER PERIOD: ***

CONTRACT PRICE: US\$ ***/ RIN

CONTRACT AMOUNT: US\$ ***

PAYMENT DUE DATE: ***

SPECIAL CONDITIONS:

ANNEX 2
SAMPLE FORM OF PRODUCT TRANSFER DOCUMENT (“PTD”) FOR RINS TRANSACTION

To: ***

Attention: ***

Phone Number: ***

Facsimile Number: ***

Email Address: ***

Date: ***

Invoice Number: ***

Invoice Date: ***

TRADE DATE: ***

SELLER: [Name and Address]

SELLER'S EPA COMPANY ID: ***

BUYER: [Name and Address]

BUYER'S EPA COMPANY ID: ***

TRANSACTION VOLUME: *** RINS.

RIN D-Code: ***

RIN GENERATION YEAR: ***

K-CODE 2

TRANSFER DATE: ***

CONTRACT PRICE: ***

TRANSACTION REASON: *** (if not otherwise specified, Code 10)

The following three fields (RIN Generator Company ID, RIN Generator Facility ID, and Batch Number) should only be included in a transaction for the purchase and sale of specific RINs:

RIN GENERATOR COMPANY ID: ***

RIN GENERATOR FACILITY ID: ***

BATCH NUMBER: ***

ANNEX 3
SAMPLE FORM OF INVOICE FOR RINS TRANSACTION

To: ***

Attention: ***

Phone Number: ***

Facsimile Number: ***

Email Address: ***

Date: ***

Invoice Number ***

Invoice Date: ***

PTD Number: *** [Note, there shall be one PTD Number per sale/movement of RINs.]

TRADE DATE: ***

SELLER: [Name and Address]

SELLER'S EPA COMPANY ID: ***

BUYER: [Name and Address]

BUYER'S EPA COMPANY ID: ***

TRANSACTION VOLUME: *** RINs.

RIN D-Code: ***

RIN GENERATION YEAR: ***

K-CODE: 2

TRANSFER DATE: ***

CONTRACT PRICE: ***

CONTRACT AMOUNT: ***

SELLER BANKING DETAILS: ***

PAYMENT DUE DATE: ***