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General Terms and Conditions

1. **Definitions** – The terms set out in this Section 1 shall carry the following meanings throughout the Agreement unless specified otherwise:
- a) “**Affiliate**” means any entity which controls, is controlled by, or is under common control with another entity. An entity is deemed to control another if it owns directly or indirectly at least 50% of (i) the shares entitled to vote at a general election of directors of such other entity, or (ii) the voting interest in such other entity if such entity does not have either shares or directors.
 - b) “**Agreement**” means these General Terms and Conditions, the Confirmation, and any additional schedules attached to these General Terms and Conditions or the Confirmation;
 - c) “**Amounts**” has the meaning ascribed thereto in Section 7;
 - d) “**Business Day**” means every official workday of the week between and including Monday through Friday, and does not include public holidays and weekends;
 - e) “**Buyer**” means the Party receiving product, having obligation to receive Product or designated as such in a Confirmation;
 - f) “**CBSA**” means the Canadian Border Services Agency;
 - g) “**Claim**” shall mean any and all losses, liabilities, claims, demands, causes of action, damages, judgments, costs and expenses (including but not limited to reasonable legal fees and expenses);
 - h) “**Confirmation**” means the confirmation of agreement, or other document as described in Section 2, to which the General Terms and Conditions and any schedules are incorporated;
 - i) “**DAP**”, “**DAT**”, “**DDP**”, “**FCA**” and “**FOB**”, shall each be defined in accordance with the International Commercial Terms (Incoterms) 2010 as published or amended by the International Chamber of Commerce, except as modified under this Agreement;
 - j) “**Day**” means a period of 24 consecutive hours from midnight to midnight;
 - k) “**Delivery Point**” means the location specified in the Confirmation delivery of the Product by the Seller to the Buyer;
 - l) “**Delivery Ticket**” means a shipping/loading document or documents stating the type and quality of product delivered, the volume delivered and method of measurement, the corrected specific gravity, temperature, and S&W content;
 - m) “**Emission Allowances**” has the meaning ascribed thereto in Section 9;
 - n) “**Force Majeure**” means events that are beyond a Party’s reasonable control, including without limitation: acts of God, war, accident, fire, storm, flood, earthquake or explosion, acts of, or compliance with requests of any level of government or any agency thereof, strike, lock-out, disputes with workmen, transportation embargoes, failure or delays in normal source of supply for the Product, or delays in delivery of any inventory or material, including, without limitation, crude oil, natural gas, natural gasoline, supplies, raw materials and ingredients necessary in the production of the Product, or any other cause or causes whether or not similar to the foregoing events that are unforeseen or beyond such Party’s reasonable control, but for greater certainty, a shift in the market price for the Product, a lack of finances, or a loss or reduction of Buyer’s markets for the Product for any reason will be deemed not to be a Force Majeure event;
 - o) “**Imbalance Month**” has the meaning ascribed thereto in Section 13;

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- p) “**Imbalance Volume**” has the meaning ascribed thereto in Section 13;
 - q) “**Month**” or “**Monthly**” means a period of time commencing at the beginning of the first Day of a calendar month and ending at the beginning of the first Day of the next Month;
 - r) “**Party**” means either Buyer or Seller, and “**Parties**” means both of them;
 - s) “**Performance Assurance**” means security in the form, amount, and term specified by Seller, including, but not limited to, a standby irrevocable letter of credit, a prepayment, or a guarantee by an entity acceptable to Seller;
 - t) “**Price**” means the price for the Product sold and purchased as set forth in the Confirmation, which price shall be in the currency specified in the Confirmation, and except as stated in the Confirmation, is exclusive of any Amounts, freight charges or any other fees;
 - u) “**Product**” means the substance(s) bought and sold pursuant to this Agreement, as described in the Confirmation;
 - v) “**Seller**” means the party delivering Product, having an obligation to deliver Product or designated as such in a Confirmation;
 - w) “**Spot Price**” means the price for the Product listed in a publication agreed to by the parties applicable to the geographic location closest in proximity to the Delivery Point for the relevant day; provided, however, if there is no single price published for such geographic location for such day but a range of prices is published, then the Spot Price shall be the average of such high and low prices for the geographic location. If no price or range of prices is published for the period, then the Spot Price shall be the average of the following: (i) the price (determined as stated above) for the first day for which a price or range of prices is published that next precedes the relevant day; and (ii) the price (determined as stated above) for the first day for which a price or range of prices is published that next follows the relevant day;
 - x) “**Term**” means, as applicable:
 - i. the time between the start and end dates as specified in this Agreement; or
 - ii. the term specified in the Confirmation;
 - y) “**Title Transfer Point**” means the location specified in the Confirmation for transfer of title of the Product from Seller to Buyer;
 - z) “**Underdelivering Party**” has the meaning ascribed thereto in Section 13;
 - aa) “**Year**” means a period of twelve (12) consecutive Months.
2. **Elbow Entity.** As parties may contract under the Agreement with either Elbow River Marketing Ltd. or Elbow River Marketing (USA) Ltd. as Affiliates, this Agreement may be signed by one or both entities, severally and not jointly. For further clarity, the entity that retains any and all obligations under this Agreement shall be specified in each applicable Confirmation. If an entity is not specified on a Confirmation, said entity shall not incur any obligations, liabilities or entitlement under the Confirmation.
3. **Transaction Procedure:**
- a) Should the Parties come to an agreement regarding a transaction, the Seller or Buyer shall record that agreement on a Confirmation and communicate such Confirmation in accordance with Section 29 – Notice.

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- b) Seller will sell to Buyer and Buyer will purchase from Seller that quantity of Product set out in a Confirmation. Buyer shall pay to Seller the price of the Products in accordance with the terms and conditions of this Agreement.
 - c) A Confirmation will be evidence of acceptance of an offer and will legally bind Parties with respect to such transaction. Seller may re-issue a Confirmation to correct any manifest error promptly identified by Buyer, without invalidating a transaction.
 - d) A Confirmation may confirm more than one transaction.
 - e) The Parties acknowledge that their agreement will not be binding until the exchange and execution of the Confirmation, the passage of the Confirmation deadline without objection from the receiving Party, or upon Buyer taking delivery of Product from Seller.
 - f) If there is any conflict between the Confirmation and these General Terms and Conditions, the Confirmation will prevail.
4. **Term** – This agreement shall terminate at the conclusion of the Term. On termination of this Agreement for any reason, the accrued liabilities of the Parties shall continue, notwithstanding such termination. All terms of this Agreement which would, by their nature, persist after termination of this Agreement shall survive such termination. Unless otherwise specified in the Confirmation, delivery Months begin at 7:00 a.m. on the first day of the Month and end at 7:00 a.m. on the first day of the following Month.
5. **Delivery Point, Title & Risk** – Buyer agrees to purchase the Product from Seller, and Seller agrees to sell the Product to Buyer. Seller agrees to deliver the Product to Buyer at the Delivery Point.
- a) Product shall be delivered from the Seller to the Buyer DAP, DAT, DDP, FCA or otherwise, as set out in the Confirmation.
 - b) If the Confirmation specifies the same Delivery Point and Title Transfer Point, Delivery is complete and title to and risk of loss or damage to the Product passes to the Buyer at the Delivery Point as follows:
 - i. Tank Truck: Product is loaded into or unloaded from a tank truck.
 - A. DAT, DAP, FCA or FOB (Destination): at the discharge terminal as the Product passes the inlet flange of the terminal's receiving equipment; or
 - B. FCA or FOB (Origin): as the Product passes the inlet flange of the tank truck at the load terminal.
 - ii. Storage Tank: The Product is delivered by the Seller to the Buyer into a storage tank, or out of a storage tank.
 - A. DAT, DAP, DDP, FCA or FOB (Destination): as the Product passes the inlet flange of the Buyer's receiving storage tank; or
 - B. FCA or FOB (Origin): as the Product passes the outlet flange of the Seller's storage tank from which the Product is being delivered.
 - iii. Pipeline: Product delivered shall be transferred from the Seller to the Buyer:
 - A. DAT, DAP or DDP: when the Product passes the outlet flange of the relevant pipeline; or
 - B. FCA: when the Product passes into the entry flange of the relevant pipeline;
 - iv. Railcar: The Product is loaded into or unloaded from a railcar.

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- A. DAT, DAP, FCA or FOB (Destination): at the discharge terminal as the Product passes the outlet flange of the railcar;
 - B. DDP: upon the constructive placement of the railcar by the railroad, or upon the actual placement of the railcar for unloading if the railcar has not been previously constructively placed; or
 - C. FCA or FOB (Origin): at the discharge terminal as the Product passes the inlet flange of the railcar.
- v. In-line delivery or Inventory Transfer: the transfer of Product is entered on the books of the facility, when deliveries are made within a terminal or by in-line transfer.
- A. The effective date of the transfer;
 - B. In accordance with the terminal's operating procedures, or as agreed in writing by the Parties; or
 - C. Upon execution of the order or book entry by the pipeline carrier and or storage operator.
- c) If the Confirmation specifies a Title Transfer Point that is different from the Delivery Point, then title to and risk of loss or damage to the Product passes to the Buyer at the Title Transfer Point according to 4b) above.
- d) Except as otherwise specifically provided in this Agreement, Seller will not be responsible for any aspect of transportation, handling or use of the Product.
- e) If Seller acts as shipper of the Product after the passage of title and risk to the Buyer, Seller will be in control of the Product for the sole purpose of delivering the Product to Buyer as Seller's consignee.
- f) Buyer hereby grants to Seller and Seller hereby retains a security interest in all Product sold hereunder and all proceeds from the sale or other disposition of such Product, until such Product is paid for in full by Buyer. Buyer hereby authorizes Seller and its agents to file any financing statements and other documents necessary to create, perfect, and maintain the perfection of the security interest granted hereunder.
6. **Product Specifications** – All Product delivered under this Agreement will comply with specifications in the following order (with (a) having the highest priority and (c) the lowest):
- a) the specifications described in the Confirmation, if any;
 - b) the specifications described in the attached Specifications schedule, if any; and
 - c) the specifications that were previously delivered to the Buyer by the Seller, if any.
- For greater certainty, in the event of a conflict, the specifications described in the Confirmation shall govern. If no specifications have been provided, then all Product delivered under this Agreement will comply with standard industry specifications that apply to such Product, as such standards exist from time to time.
7. **Measurement of Product Quantity** – The quantity of Product delivered will be measured at the location where the Product is loaded into the transportation equipment, using standard industry practice at the time of measurement,
- a) in the case of delivery into railcars, by means of the railcar's gauging device and applicable outage tables;
 - b) in the case of delivery into tank trucks, by means of a weigh scale or metering device at Seller's option; and
 - c) in the case of delivery into pipelines or storage facilities, by meter or other mutually accepted method or device.

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Unless otherwise specified in the Confirmation or unless otherwise required by legislation at the receipt or delivery location (as applicable), all volumetric measurements contemplated herein will be corrected for temperature to:

- (i) 60°F when measured in Imperial or United States units; and
- (ii) 15°C when measured in metric or Système Internationale units.

8. **Taxes, Assessments, and Duties** – With the exception of income taxes or any other taxes imposed on Seller’s profits, any tax, duty, charge, royalty, contribution, fee, or other amount (collectively referred to as the “**Amounts**”), now or hereafter imposed or collected by or for the benefit of any governmental or public body or agency with regard to, in connection with or as a result of the supply or sale of Products shall be paid by Buyer or, at the discretion of Seller, Seller may impose a surcharge on each unit of Product delivered or sold hereunder to offset, ratably among Seller’s customers, any such amounts, and Buyer shall pay the said surcharge to Seller, in addition to any amounts otherwise payable by Buyer hereunder.

Notwithstanding any other provision in this Agreement, in the United States, Buyer shall not utilise non-taxable product for taxable use. Buyer shall be liable for penalty imposed by a governmental authority for utilising non-taxable product for taxable use

9. **Export/Import Compliance** – Notwithstanding Section 7 hereof,
- a) if Product is imported from the United States to Canada, the Party that is the importer of record of the Product (as indicated on the Confirmation) shall fulfill all applicable import/export requirements, including but not limited to those of any province, state, the CBSA, and United States Customs;
 - b) if Product is exported from Canada to the United States, the Party that is the exporter of record of the Product (as indicated on the Confirmation) shall fulfill all applicable import/export requirements, including but not limited to those of any province, state, the CBSA, and United States Customs. Such Party shall pay any applicable import duty, “green credit” charge, any tax collected by the CBSA or United States Customs in the way of duty, fees, and penalties, or any other applicable fees, fines, penalties, or costs; and
 - c) if Product is imported from the United States to Mexico, the Party that is the importer of record of the Product (as indicated on the Confirmation) shall fulfill all applicable import/export requirements, including but not limited to those of any state, the Mexico Customs (ADMINISTRACIÓN GENERAL DE ADUANAS DE MÉXICO), and United States Customs;
 - d) Both Parties shall exercise commercially reasonable efforts to provide supporting documentation. If the Buyer purports to rely on an exemption from such requirements, then Buyer shall provide evidence in support of such reliance. If Buyer does not provide satisfactory evidence thereof, Buyer shall indemnify Seller in respect of any amounts Seller pays as a consequence of such requirements;
10. **Emission Allowances** – where applicable, the Parties acknowledge that some Provinces or States in the United States and Canada have created cap-and-trade systems pursuant to which Seller may need to acquire greenhouse gas emission allowances (the “**Emission Allowances**”) to cover the greenhouse gas emissions attributable to the Products sold hereunder, and the Parties acknowledge that other Provinces or States may, from time to time, create similar systems.
- a) At such time as the cost of the Emission Allowances is known to Seller, Seller will invoice to Buyer and Buyer will pay to Seller, in addition to the price of Products sold hereunder, an amount equivalent to the value of Emission Allowances, where the Product sold is subject to such Emission Allowances and as determined by Seller from time to time, necessary to cover the emissions reasonably attributable to the volume of Products sold to Buyer hereunder, unless such value has otherwise been included in the price of the Products.

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- b) Upon receipt of the first invoice including said value of Emission Allowances, Buyer shall have ten (10) Days to express its disagreement with the value determined by Seller, in which case Buyer shall be entitled to immediately terminate this Agreement by written notice to Seller, subject to the obligation of Buyer to pay the value of Emission Allowances attributable to the sales of Products made before said termination.
 - c) Notwithstanding the above, Buyer shall comply with all applicable laws, regulations, rules and orders applicable to Emission Allowances, and shall within thirty (30) Days of Seller's written request, provide evidence of compliance which is satisfactory to ERM, acting reasonably.
11. **Deliveries and Underlifting** – On a commercially reasonable efforts basis, all deliveries will be made in accordance with the Monthly schedule indicated in the Confirmation at rateable quantities per day (unless otherwise specified in the Confirmation) during each Day of the Month and during loading hours agreeable to Seller. Quantities scheduled to be taken in any Month which are not taken in such Month will not be made available for delivery in any subsequent Month, unless the Seller's consent has been obtained prior to the Month in which the quantities were originally scheduled to be delivered. Where Buyer's liftings are below the scheduled volume in any Month, Seller shall have the right to make arrangements to mitigate its losses and this shall include, but not be limited to, selling the underlifted volume to other parties (at Seller's sole discretion, using commercially reasonable efforts to secure a market rate) and Buyer shall compensate Seller for loss of revenue and all costs of mitigation incurred by Seller, acting reasonably, during any mitigation period.
12. **Rejection and Notice of Defects** – Buyer has seventy-two (72) hours after receipt of the Product to inspect, at its sole cost, and either accept or reject the Product (which may be rejected only if it contains defects or non-conformities). If Buyer retains the Product in its possession for a period of seventy-two (72) hours after receipt without rejecting it, this will be regarded as Buyer's irrevocable acceptance of the Product. If the Product is rejected, Notice must be given to Seller so that the Notice will arrive no later than five (5) Business Days after discovery of the defect or nonconformity in the Product, fully specifying all claimed defects and nonconformities. Seller will have the right to independently test any rejected Product before the transport equipment (e.g. railcar or truck) is offloaded, at which time the Seller may redirect the transport equipment.
13. **Product Shortages** – Unless otherwise specified in the Confirmation, Seller agrees to reimburse Buyer for any substantiated shortage on shipment in excess of 2% of the scheduled volume, provided that authority to unload railcars or other transport equipment with excessive shortage is granted by Seller before unloading and a signed document by a person accepted by Seller attesting to the shortage is sent by Buyer to Seller within thirty (30) Days from the date the railcar or other transport equipment was inspected.
- a) **Apportionment** – If a Party's ability to deliver Product volume is reduced, and for reasons other than Force Majeure, due to a shortage of supply, breakdown of facilities or equipment, breakdown of production or transportation facilities, unavailability of pipeline, rail or truck transport common carrier for receiving, storing or delivering the product tendered, government order, or by any other cause, whether similar or not, reasonably beyond the control of such Party, the quantity of Product required to be delivered or received under this Agreement, will be reduced and apportioned proportionately. Any such apportionment shall be based on the ratio of the quantity obligation under this Agreement to the contracted quantity obligations with all other third parties. The apportioned volume shall be deemed to be delivered or accepted under the terms of this Agreement.
14. **Buy/Sell and Exchange Balancing** – The terms of this Section 13 shall only apply to this Agreement if substantially similar volumes are intended to be bought and sold or exchanged under this Agreement:
- a) Each Party shall be responsible for maintaining the volumes bought and sold or exchanged in balance on a Month-to-Month basis, as near as reasonably possible.
 - b) If, for any reason (including events of Force Majeure), a Party complies with the requirements of Section 13a) above but fails to deliver or accept delivery of the contractually specified volume during any Month (an "**Imbalance Month**"), then the Party that delivered the lesser volume during the Imbalance Month (the

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“Underdelivering Party”) shall deliver to the other Party a volume of Product equal to the difference between

- i. the volume delivered by the Underdelivering Party during the Imbalance Month, and
 - ii. the volume delivered by the other Party during the Imbalance Month (such difference being the “**Imbalance Volume**”). The Imbalance Volume shall be delivered as soon after the Imbalance Month as is reasonably practicable it being understood that the Parties shall endeavor to cause the Imbalance Volumes confirmed by the 20th day of the Imbalance Month to be delivered during the second calendar Month after the Imbalance Month, except to the extent prevented by a new or continued event of Force Majeure.
- c) When a Party fails to deliver or accept delivery of the contractually specified volume during an Imbalance Month due to an event of Force Majeure, if the Imbalance Volume has not been delivered before the end of the second calendar Month after the Imbalance Month, and if no other resolution of the Imbalance Volumes has been agreed between the Parties, during the third Month after the Imbalance Month, the Underdelivering Party shall deliver, and the other Party shall take, an amount of Product equal to the Imbalance Volume, and such delivery shall be of the same type of Product, at the same location and (except as provided in Section 13d) below) at the same price as the Product received by the Underdelivering Party during the Imbalance Month.
- d) To the extent that an Imbalance Volume is delivered after the Imbalance Month, and except as provided in the Confirmation:
- i. if the price specified in this Agreement is a fixed price or formula price based on the price of Product on a date or during a specified range of dates (e.g. “April 12, 2016,” or “April 12 – 19, 2016”), the price of the Imbalance Volumes shall be equal to such price without regard to the Month of actual delivery; and
 - ii. if the price specified in the Agreement is a formula price based on the price of Product on a date or during a range of dates that is not tied to a specific date or range of dates (e.g. “bill of lading date”, “Month of delivery”, “NYMEX trade Month” or “calendar Month average”), the price for the Imbalance Volumes will be calculated according to such formula for the actual Month the Imbalance is delivered.
- e) The foregoing notwithstanding, the obligation of either Party to deliver or take an Imbalance Volume less than 1000 barrels (or equivalent) at the end of this Agreement shall be excused.
15. **Equal Daily Deliveries** – For pricing purposes only, unless otherwise specified in the Confirmation, all Product delivered hereunder during any Month shall be considered to have been delivered in equal daily quantities during such Month.
16. **Terms of Payment** – Buyer agrees to make payment against Seller’s invoice for the Product purchased and other fees, charges and taxes as applicable, to Seller in the currency specified in the Confirmation in immediately available funds.
- a) Payment is due on or before the date specified in the Confirmation. If payment due date is on a Saturday or bank holiday other than Monday, payment shall be due on the preceding Business Day. If payment due date is on a Sunday or a Monday bank holiday, payment shall be due on the succeeding Business Day. Payment shall be deemed to be made on the date good funds are credited to Seller’s account at Seller’s designated bank. In addition:
 - b) If Buyer fails to pay all or any part of the invoiced amount when due, interest shall accrue Monthly and be payable on the unpaid amount (except for any portion thereof which is subsequently determined to be overstated) at the lower of
 - i. the prime rate at Seller’s bank plus 2% per annum and

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- ii. the maximum amount allowable by applicable law.

Any interest which remains unpaid shall be added to the principal amount then outstanding.

- c) If Buyer fails to pay when due any amount owing as set forth in an invoice rendered by Seller, other than such portion thereof as it in good faith disputes in writing, and such failure continues for five (5) Days following delivery by Seller of written notice of such default, Seller may suspend deliveries hereunder. If such failure to pay continues for ten (10) additional Days, Seller may terminate this Agreement. Such suspension or termination shall be without prejudice to Seller's right to claim for damages for loss of profit which it would have obtained during the period of suspension or to the end of the original Term if the Agreement is terminated early as above provided.
- d) If Seller has not received notice of a dispute in respect of an invoice within ninety (90) Days of the date it was rendered, then such invoice shall be deemed for all purposes to be correct.
- e) In the event either Party fails to make timely payment of any monies due to the other Party hereunder, the other Party may offset such unpaid amount against monies owed to such Party under this Agreement or any other agreement between the Parties.
- f) Seller hereby retains a lien on the Product and all proceeds from sale of any Product, until payment is fully made.

The exercise by either Party of any right under this paragraph shall be without prejudice to any claim for damages or any other right under a contract or applicable laws.

17. **Financial Information and Performance Assurance** – Buyer will deliver to Seller such financial statements and other information as Seller may reasonably request from time to time with respect to Buyer's credit. All costs relating to Performance Assurance will be for the account of the Buyer. All purchases and sales pursuant to this Agreement are, and shall remain, subject to the approval of the Seller's credit department. If

- a) sufficient credit for the transactions contemplated by this Agreement is not approved by Seller's credit department by five (5) Days before the first delivery date of Product hereunder;
- b) subsequent to such approval, Buyer exceeds the credit limit granted by Seller; or
- c) Seller has reasonable grounds for insecurity as to Buyer's creditworthiness or performance hereunder, Seller may in its sole discretion demand Performance Assurance from Buyer prior to delivering Product as contemplated hereunder.

18. **Audit** – At any time up to twelve Months following a Month in which payment was due hereunder, either Party shall have the right, at its sole cost and expense, upon not less than fifteen (15) Days' written notice, to have a third party auditor (to be approved by both Parties, acting reasonably) audit the relevant books, accounts, and records directly related to an invoice of the other Party to verify the accuracy of such invoice. All information that an auditor acquires shall be kept strictly confidential. An auditor may be required to enter into a confidentiality agreement if it is deemed necessary by the Party being audited.

19. **Force Majeure** – No delay, failure or omission by either Party in the performance of any obligation of this Agreement will be deemed a breach of this Agreement, nor create any liability for damages if such delay, failure or omissions arises from any Force Majeure event.

- a) A Party will not be entitled to rely on this provision unless as soon as practicable after the Force Majeure is discovered by the Party required to give notice, such notice is given to the other Party specifying the cause of the delay or non-performance and unless that Party attempts to rectify as soon as possible such cause, except that

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- i. the settlement of labour disputes or strikes will be at the discretion of the Party so affected;
 - ii. Seller will not be obligated to purchase alternate replacement Product to supply to Buyer; and
 - iii. neither Party will be required to mitigate by agreeing to an alternative mode of transportation or alternative Delivery Point.
 - b) The Term of this Agreement will not be extended because of the Force Majeure event.
 - c) Quantities of the Product deliverable during the Force Majeure period may be cancelled at the Seller's option.
 - d) Seller will allocate available Product among all its customers and itself in a fair and equitable manner. Currency fluctuations, changes in interest rates or banking charges or practices affecting a Party will not excuse that Party from performance of its obligations under this Agreement. This provision will not excuse the Buyer from its obligation to pay for Product that has been delivered under this Agreement.
20. **Safety Data Sheet** – By taking delivery of Product under the terms of this Agreement, Buyer acknowledges receipt of Seller's current safety data sheet(s) (“SDS”) concerning the properties of and safe handling procedures of the Product. Buyer acknowledges that the Product may be hazardous material and represents and warrants that it is familiar with the properties of and safe handling procedures for the storage, handling, transportation and use of the Product. Buyer will inform its customers of those safe handling procedures of the Product. SDS must be kept up-to-date or updated within ninety (90) Days of Seller being aware of new information.
21. **New or Changed Regulations** – In the event that at any time and from time to time during the Term of the Agreement any Regulations are changed or new Regulations become effective, whether by law, decree, or regulation or by response to the insistence or request of any governmental or public authority or any person purporting to act therefore, and the material effect of such changed or new Regulation
- (a) is not covered by any other provision of the Agreement, and
 - (b) has a material adverse economic effect upon either Party, the affected Party shall have the option to request renegotiation of the pertinent terms in the Agreement. The said option may be exercised by the affected Party at any time after such changed or new Regulation is promulgated, by written notice of desire to renegotiate, such notice to contain the new terms desired by the affected Party. The notification given by the affected Party, will not entitle such Party to suspend its obligations hereunder. If the Parties do not agree upon new terms within thirty (30) Days after the affected Party gives such notice, the affected Party shall have the right to terminate the Agreement at the end of the said thirty-day period. Any Product lifted during such thirty-day period shall be sold and purchased under the terms applying hereunder without any adjustment in respect of the new or changed Regulations concerned.
22. **Event of Default** – An event of default will be deemed to occur if a Party to this Agreement should:
- a) become the subject of bankruptcy or other insolvency proceedings, or proceedings for the appointment of a receiver, trustee, or similar official,
 - b) become generally unable to pay its debts as they become due,
 - c) propose or make a general assignment for the benefit of its creditors, or
 - d) fail to provide adequate assurance of its ability to perform all of its obligations under this Agreement or any other agreement between the Parties within forty-eight (48) hours of a reasonable request therefore from the other Party, when a Party has reasonable grounds with respect to such Party's performance.

23. Remedies

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- a) If an event of default occurs, the other Party to this agreement may withhold shipments or pickups without notice. At any time after an event of default, the other Party to the Agreement shall have the right, at its sole discretion, to terminate this Agreement immediately. Upon termination, the Parties shall have no further rights or obligations with respect to this Agreement, except for the payment of accrued liabilities.
- b) If Buyer becomes the subject of an event of default under this Agreement whilst title in the Product is with the Seller, then without limitation of or prejudice to Seller's other rights under this Agreement or otherwise:
 - i. Buyer's right to resell the Product or use it in the ordinary course of its business ceases immediately and Buyer shall keep the Product segregated from all other product, marked as the property of Seller; and
 - ii. Seller may at any time require Buyer to deliver up all the Product in its possession which has not been resold or irrevocably incorporated into another product and, if the Buyer fails to do so promptly, enter any premises of Buyer or of any third party where the Product is stored in order to recover it.

24. **Representations and Warranties** – Each Party represents and warrants to the other Party as follows and confirms that the other Party is relying upon the accuracy of each such representation and warranty as a basis for entering into this Agreement.

- a) Each Party:
 - i. is a duly formed and validly existing corporation under the laws of the jurisdiction of its incorporation,
 - ii. has the requisite power and authority to own its assets and conduct its business as it is now being conducted,
 - iii. is acting under this Agreement as a principal and not as an agent,
 - iv. has full corporate power, and absolute authority to enter into this Agreement and carry out and perform its obligations under and pursuant to this Agreement,
 - v. shall comply with all applicable laws, regulations, rules and orders applicable to the observance or performance of its obligations under this Agreement, and shall notify the other Party in writing promptly upon discovery of any failure to comply,
 - vi. holds or shall obtain all requisite licenses, permits, registrations, qualifications, agreements, assurances and consents necessary to enable it to comply with its obligations under this Agreement and its business as it is now being conducted, all of which are in full force and effect and not in default in any regard, and shall remain in full force and effect until its obligations under this Agreement have been fulfilled,
 - vii. agrees that it is its intent that each transaction completed pursuant to this Agreement:
 - A. be an “eligible financial contract” for the purpose of the *Companies Creditors Arrangement Act*, RSC 1985, c C-36, as amended, the *Winding-Up and Restructuring Act*, RSC 1985, c W-11, as amended, and the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended; and
 - B. if organized in the United States, be a “Forward Contract” as defined in the US bankruptcy code (11 USC Sec 101(25)),
 - viii. agrees that all reports and documents rendered to the other Party under this Agreement shall properly reflect the facts of all activities and transactions handled and may be relied upon as being complete and accurate by the other Party for any purpose, and

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- ix. has taken all necessary actions, procedures, steps, and other proceedings to validly and effectively approve and authorize the entering into, and the execution, delivery, and performance of this Agreement.
 - b) The Seller warrants that all Product sold shall meet all product specifications agreed to by the Parties and good title to all Product delivered hereunder and warrants that such Product shall be free from all royalties, liens, and encumbrances.
 - i. Seller's sole liability and Buyer's exclusive remedy for a breach of warranty is expressly limited, at Buyer's option, to
 - A. replacement of the non-conforming Product, or
 - B. payment not to exceed the purchase price of such Product.
 - ii. EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PARTIES AGREE THAT ALL WARRANTIES IN RESPECT OF QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY OF THE PRODUCT, WHETHER EXPRESS OR IMPLIED (INCLUDING WARRANTIES IMPOSED BY STATUTE), ARE HEREBY EXCLUDED AND DISCLAIMED BY SELLER.
25. **Mutual Indemnification** – To the extent permitted by law, the Parties agree as follows:
- a) **Indemnification of Buyer** – Except insofar as Buyer is in breach of a representation or warranty set forth herein or in a Confirmation, Seller shall defend, indemnify and hold harmless Buyer, its respective Affiliates and related companies, and the partners, officers, directors, members, employees and representatives of any of the foregoing from and against any and all Claims, of whatever kind or nature and to the extent arising out of, in connection with or resulting from (i) any breach of this Agreement or the performance of its obligations under this Agreement by Seller, (ii) the negligence of Seller, or (iii) the willful misconduct of Seller.
 - b) **Indemnification of Seller** – Except insofar as Seller is in breach of a representation or warranty set forth herein or in a Confirmation, Buyer shall defend, indemnify and hold harmless Seller, its respective Affiliates and related companies, and the partners, officers, directors, members, employees and representatives of any of the foregoing from and against any and all Claims, of whatever kind or nature and to the extent arising out of, in connection with or resulting from (i) any breach of this Agreement or the performance of its obligations under this Agreement by Buyer, (ii) the negligence of Buyer, or (iii) the willful misconduct of Buyer.
26. **Performance Obligation** – The sole and exclusive remedy of the Parties in the event of a breach of an obligation to deliver or receive Product shall be recovery of the following:
- a) in the event of a breach by Seller on any day, payment by Seller to Buyer in an amount equal to the difference between the contracted quantity and the actual quantity delivered by Seller and received by Buyer for such days, multiplied by the positive difference, if any, obtained by subtracting the Price from the Spot Price; or
 - b) in the event of a breach by Buyer on any day, payment by Buyer to Seller in an amount equal to the difference between the contracted quantity and the actual quantity delivered by Seller and received by Buyer for such days, multiplied by the positive difference, if any, obtained by subtracting the applicable Spot Price from the Price.
- The amount of such unfavorable difference shall be payable within five (5) Business Days after presentation of the performing Party's invoice, which shall set forth the basis upon which such amount was calculated.
27. **Limitation of Liability** – Notwithstanding any other provision in this Agreement, neither Party nor any of its officers, directors, shareholders, partners, Affiliates, or employees will be liable to the other Party (or its officers, directors, shareholders, partners, Affiliates, or employees) for the amount of any Claim exceeding the

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Price paid to Seller by Buyer during the one Year preceding the events that gave rise to such Claim, except to the extent such Claim is based upon damages suffered by a third party that is not an Affiliate of either Party.

Waiver of Consequential Damages. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER PARTY, NOR ITS OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, AFFILIATES OR EMPLOYEES, WILL BE LIABLE TO THE OTHER PARTY (OR ITS OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, AFFILIATES OR EMPLOYEES) FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, TREBLE OR INDIRECT LOSS OR DAMAGE, OR FOR ANY LOSS OF PROFITS OR LOSS OF USE OF CAPITAL OR REVENUE UNDER ANY CIRCUMSTANCE (EVEN IF THAT PARTY HAS BEEN ADVISED OF OR HAS FORESEEN THE POSSIBILITY OF SUCH DAMAGES), WHETHER THE CLAIM ARISES IN TORT, CONTRACT, OR OTHERWISE IN CONNECTION WITH PERFORMANCE OR NONPERFORMANCE UNDER THIS AGREEMENT EXCEPT TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PARTY, ITS AFFILIATES, ITS EMPLOYEES, CONTRACTORS OR AGENTS. THE FOREGOING LIMITATION IS NOT TO BE CONSTRUED TO LIMIT RECOVERY OF DAMAGES SUFFERED BY A THIRD PARTY (I.E., PERSONS WHICH ARE NOT AFFILIATES OF EITHER PARTY) UNDER A TORT CLAIM FOR WHICH EITHER PARTY IS RESPONSIBLE.

28. **Subrogation** – To the extent payment is made by an indemnifying Party at any time pursuant to this Agreement, such indemnifying Party shall be subrogated to the indemnified Party's rights and may receive an assignment of rights of recovery for a loss or cost.
29. **Duty Drawback** – Either Party may claim duty drawback on its imports. The non-claiming Party shall on request, produce any documentation required to enable the claiming Party to satisfy the claim.
30. **Necessary Documents** – Upon request, each Party agrees to furnish all substantiating documents incident to the transactions contemplated in this Agreement, including a Delivery Ticket for each volume delivered and an invoice for any Month in which sums are due.
31. **Notice** – Any notice required or permitted to be given under this Agreement will be validly given if in writing and delivered, sent by electronic facsimile transmission or other means of electronic communication capable of producing a printed copy (including electronic mail (“email”)) or sent by prepaid registered mail, addressed to the applicable Party at its address indicated on the Confirmation or to such other address as any Party may specify by notice in writing to the other. Any notice delivered on a Business Day will be deemed conclusively to have been effectively given on the date notice was delivered and any notice given by facsimile or other electronic communication method will be deemed conclusively to have been given on the date of such transmission. Any notice sent by prepaid registered mail will be deemed conclusively to have been effectively given when actually received.
32. **Change of Banking Information** – If, at any time, either Party sends notice of changed banking information or an invoice or net statement containing banking information different from that currently in the other Party's records, prior to making any payment then due, the paying Party shall require that the other Party provide confirmation of the new banking information via email or fax using company letterhead. The paying Party will request, and other Party will provide such confirmation in a timely manner, and the payment shall not be due until the confirmation is provided. The paying Party shall update its records in a timely manner upon receipt of the confirmation in order to avoid unnecessary further requests for confirmation.
33. **Government Regulations** – The terms, provisions, and activities undertaken pursuant to this Agreement shall be subject to all applicable laws, orders and regulations of all governmental authorities.
34. **Conflict of Interest** – No director, officer, employee or agent of either Party, its respective Affiliates, related companies, or subcontractors shall give or receive from any director, officer, employee or agent of the other Party or Affiliate, any commission, fee, rebate, gift or entertainment of significant cost or value in connection with this Agreement. Either Party may audit the applicable records of the previous three (3) Years of the other Party for the sole purpose of determining whether there has been compliance with this Section.

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35. **Governing Law** – This Agreement will be interpreted and governed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein (excluding any conflicts of law rule or principle that would otherwise refer construction or interpretation of the Agreement to the substantive law of another jurisdiction), and the Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Alberta. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.
36. **Confidentiality** – Neither Party shall reveal or disclose this Agreement in whole or in part, to any third party and the Parties shall only disclose such information to their Affiliates, employees, representatives and professional advisors on a "need-to-know" basis and only after advising such parties of these confidentiality obligations and such parties agreeing to keep such information confidential on substantially similar terms as set out herein, unless such disclosure is required by law, is necessary to obtain regulatory approval or reporting, or for obtaining any necessary financing.
37. **Trademarks and Brand Names** – Neither Party shall use or display the trademarks or the brand names of the other Party in relation to the Product or this Agreement, unless specifically agreed to by the parties in writing.
38. **Assignment and Successors** – The Seller, at its own discretion, may assign this Agreement in the event that the Buyer is in default of any payment required under this Agreement, or any other material term of this Agreement. In all other cases, neither Party may assign this Agreement, any money due hereunder, nor any Claim arising in connection herewith, without prior written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, either Party may transfer or assign its rights and obligations hereunder in whole or in part
- a) to an Affiliate, provided such entity shall be bound by the terms hereof,
 - b) pursuant to any merger, consolidation or to the contrary by operation of law, and
 - c) to the successors and assigns of all or substantially all of the assets and/or facilities which primarily benefit from Confirmations issued hereunder, provided such entity shall be bound by the terms hereof.
- This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns.
39. **Severability** – If any provision of this Agreement is held illegal, invalid or unenforceable for any reason whatsoever, the legality, validity or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.
40. **Survivability** – If for any reason the Agreement shall be terminated then such termination shall be without prejudice to any rights, obligations or liabilities of either Party which have accrued at the date of termination but have not been performed or discharged, and any parts of the Agreement having any relevance thereto or any bearing thereon shall, notwithstanding the termination of the Agreement for any reason, continue in force and effect.
41. **Independent Contractor** – Each Party is an independent entity for all purposes set forth in this Agreement. Except as may be provided for herein or expressly agreed in writing, neither Party may enter into agreements, make commitments or incur liabilities or obligations on behalf of the other Party. Nothing in this Agreement will be deemed to create an agency relationship, partnership or joint venture between the Parties, each of which is expressly denied. Each Party will have full and complete control of its activities and operations, and those of any subcontractors, under this Agreement.
42. **Headings** – Headings used in this Agreement are used for convenience of reference only and do not form a part of this Agreement.
43. **Currency** – unless specifically provided, any reference to dollars or \$ shall be in United States Dollars.

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44. **Waiver** – No waiver by either Party with respect to any breach of or any right under this Agreement, and no course of dealing or performance, will be deemed to constitute a continuing waiver of any other breach or of any right, unless such waivers are expressed in writing executed by authorized representatives of the Parties hereto.
45. **Entire Agreement** – This Agreement constitutes the entire and exclusive agreement between the Parties with respect to this transaction and all representations, offers and undertakings of the Parties made prior to the effective date of this Agreement, whether oral or in writing are merged in it. Unless expressly provided otherwise in this Agreement, each Party objects to and will not be bound by any past or future terms or conditions or representations not set forth in this Agreement, including any additional or inconsistent terms shown on the other Party's confirmation, shipping documents or invoices, and any additions to the provisions of this Agreement included in those documents are null and void.
46. **Amendments** – Any amendment of this Agreement must be in writing executed by the authorized representatives of the Parties hereto.
47. **Recording and Retention of Communications** – The Parties agree that each Party may electronically record and retain all communications (including but not limited to telephone conversations and email), with respect to this Agreement between their respective employees, without any special or further notice to the other Party. Each Party shall obtain any necessary consent of its agents and employees to such recording.
48. **Counterparts** – This Agreement may be executed in one or more counterparts, each of which so executed shall constitute an original and all of which together shall constitute one and the same agreement. This Agreement may be executed by electronic means and an electronic copy of this document shall constitute sufficient evidence of the execution of this Agreement.
49. **Time of the Essence** – Time is of the essence in this Agreement.
50. **Compliance Units** – **This Section 47 is applicable only if the Products contemplated in this Agreement are renewable fuels.** The Buyer shall either:
- a) transfer to the Seller (by providing appropriate transfer documentation and meeting any other transfer requirements) sufficient compliance units commensurate with the volume of Product purchased and sold pursuant to this Agreement to meet the requirements of the Federal Renewable Fuels Regulations pursuant to the *Canadian Environmental Protection Act, 1999* or of any similar legislation; or
 - b) fully reimburse the Seller upon the Seller's purchase of such compliance units.

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IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be executed and delivered effective as of [] [], 20 [].

[^^^]

ELBOW RIVER MARKETING LTD.

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

ELBOW RIVER MARKETING (USA) LTD.

Per: _____
Name: _____
Title: _____

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SCHEDULE A **RAILCAR PROVISIONS**

1. Demurrage and Diversions

- a) Buyer will not divert Seller's railcars or consign them to any other routing or to any other destination than that set out in the bill of lading instructions without obtaining prior written or faxed consent of an authorized representative of the Seller. All diversion charges, additional freight charges and any other costs or expenses incurred, sustained or paid by Seller resulting from such diversion shall be for the account of Buyer.
- b) Unless otherwise specified in the Confirmation, Seller will allow Buyer a period of seventy-two (72) hours for offloading railcars and returning them to the railroad, commencing at:
 - i. the unloading location, following notification to the Buyer (or the Buyer's consignee) by the delivering railroad that a railcar is available for placement, or
 - ii. if notification is not given by the delivering railroad, such time as the railcar is delivered to the Buyer's (or the Buyer's consignee's) off-loading facilities.

Unless specified in the Confirmation, upon expiration of such seventy-two-(72) hour period, the Buyer will pay the Seller the detention charge of US\$125 per full or partial day that the railcar is detained until such time as the railcar has been returned to the delivering railroad or otherwise placed in accordance with written instructions of the Seller.

- c) Without limiting any of the other provisions of this Agreement, Buyer shall:
 - i. be liable to Seller for all loss, costs, and damages whatsoever which Seller may sustain, pay or incur, including without limitation, railcar rental costs payable to the railcar owner during the period a railcar is under repair or other charges payable to the railcar owner in the event of irreparable damage by Buyer to a railcar; and
 - ii. defend, indemnify, and hold harmless Seller from and against all manner of Claims, or other proceedings (including inquiries), losses, costs, fines, penalties and expenses (including legal fees), on account of injury or death of persons (including without limitation employees of Buyer and Seller) and/or damage to property, including without limitation, the railcars, which may be brought against Seller or which Seller may sustain, pay or incur,

arising prior to the redelivery of the railcar to Seller, except to the extent that such Claim, injury, death, fine, penalty or expense results from the negligence or willful misconduct of Seller, its employees, contractors or agents.

2. Railcar Deliveries

- a) Railcars provided by Seller for loading shall be subject to the following:
 - i. Buyer shall provide Seller on or before the Month prior to shipping notification of intent to use Seller's railcars for loading.
 - ii. Buyer shall provide Seller the number of railcars required for loading.
 - iii. Seller shall comply with all applicable laws and railroad tariffs for loading of Product in railcars.
 - iv. Seller shall be responsible for all railroad charges, including but not limited to demurrage, storage or switching fees, or charges assessed by a railroad or rail terminal operator ("**Railroad Charges**") caused

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- by Seller at the origin for the loading of railcars. Buyer shall be responsible for all Railroad Charges caused by Buyer at the origin for the loading of railcars.
- v. Buyer shall be responsible for all Railroad Charges at destination for the unloading of railcars.
 - vi. Unless specified in the Confirmation, once the Seller's railcars arrive at the destination and the loaded railcars are considered Placed by delivering railroad, the Buyer will pay Seller a "use" or "detention" charge for railcars provided by Seller at a cost of US\$125 per railcar per day after seventy-two (72) hours after railcars are Placed by the delivering railroad. The payment of a "use" or "detention" charge to Seller will end once the loaded car has been returned to the delivering railroad as an "empty". The Buyer shall not be liable to Seller to the extent the delay in unloading and/or returning the tank cars was caused by Seller. "Placed" shall mean notification by the railcar carrier that the railcar
 - 1. is available for placement or that the railcar has arrived at the final railroad-controlled facility and is available for delivery to the final destination,
 - 2. has arrived at its rail destination, or
 - 3. has been placed at the consignee.
 - vii. If railcars are diverted by Buyer on route to a new destination ("**Diversion**"), Buyer shall be responsible for all railroad line haul freight charges and fuel surcharges from origin to destination and for all Diversion charges. "Diversion" includes but not limited to a change or other modification to the route of a shipment or to the destination or consignee of a freight movement from that specified in the Shipping Documentation.
- b) Railcars provided by Buyer for loading shall be subject to the following:
- i. Seller shall provide Buyer the number of railcar spots available for loading and an estimated date of when the loading can be accomplished.
 - ii. Buyer shall provide Seller a list of railcars sent to Seller's loading facility at least five (5) Days in advance of arrival at origin.
 - iii. Each Party shall be responsible for all Railroad Charges caused by the Party at the origin for the loading of railcars.
 - iv. Buyer shall be responsible for all Railroad Charges at origin for the loading of railcars due to improper scheduling of Buyer controlled railcars or Buyer's failure to ship the Product quantity. Buyer shall not be responsible for the Railroad Charges described herein due to Force Majeure or Seller's failure to sell or deliver any volume of Product up to the Product quantity.
 - v. Seller shall be responsible for all Railroad Charges at origin for the loading of railcars due to improper scheduling of Seller controlled railcars or Seller's failure to ship the Product quantity. Seller shall not be responsible for the Railroad Charges described herein due to Force Majeure or Buyer's failure to buy or receive any volume of Product up to the Product quantity.
 - vi. Buyer shall be responsible for all Railroad Charges at destination for the unloading of railcars.
 - vii. Buyer shall be responsible for all railroad line haul freight charges and fuel surcharges from origin to destination and for all Diversion charges.
 - viii. Seller shall use commercially reasonable efforts to deliver the Product quantity for a Month in accordance with the shipping dates requested by Buyer for such Month. Seller shall have no liability to Buyer for failing to meet such requested shipping dates, except for Railroad Charges under (vi).

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3. Any Railroad Charges or additional costs incurred by a Party, shall be the responsibility of that Party.
4. All railcars used under this Agreement must comply with all applicable safety regulations and laws for the product and the jurisdictions where the railcars will be used.
5. Parties must comply with the Association of American Railroads Circular for Rules Governing Assignment of Reporting Marks, Mechanical Designations and Application for the Use of Private Equipment (“**Loading Authority OT-57**”) or any similar or replacement Association of American Railroads Circular (“**AAR Circular**”).
 - a) The railcar owner or lessee must obtain Loading Authority OT-57 and or AAR Circular before the railcar is permitted on a rail network in North America.
 - b) All Loading Authority OT-57 and or AAR Circular must be kept valid and current as long as the relevant railcar is in use.
 - c) Where a penalty is imposed for breach of the Loading Authority OT-57 and or AAR Circular, the non-defaulting retains the right to recover the penalty from the defaulting Party.

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SCHEDULE B PROPANE

(Applicable to pipeline terminal or odorized product)

1. Loading, Inspection and Certification

- a) Odorization and Inspection. Unless otherwise mutually agreed by the Parties in writing, all Propane delivered hereunder shall be stenching by Seller during the loading of Propane onto each equipment utilizing ethyl mercaptan or other appropriate malodorants (the “**Odorant**”). Propane delivered pursuant to this Agreement shall meet the minimum standards applicable on the date of delivery as stated in both the Department of Transportation (“**DOT**”) Code of Federal Regulations, 49 CFR §173.315(b)(1), or any successor or related regulations, and the state and local requirements of the state where the stenching is performed.
 - b) **BUYER OR ITS CARRIER, ON BEHALF OF BUYER, AS APPLICABLE, WILL INSPECT THE PROPANE FOR ODORANT AND DETERMINE IF IT IS PROPERLY ODORIZED BY AN INDUSTRY ACCEPTED TEST UTILIZING INDUSTRY ACCEPTED STANDARDS PRIOR TO EXITING THE TERMINAL. BUYER WILL NOT, AND WILL CAUSE ITS CARRIERS TO NOT TAKE ANY PROPANE WHICH IT OR ITS CARRIER DETERMINES, OR SHOULD HAVE DETERMINED, OR HAS REASON TO BELIEVE, IS NOT ODORIZED OR NOT SUFFICIENTLY ODORIZED. AS BETWEEN BUYER AND SELLER, IN THE EVENT BUYER OR ITS CARRIER, AS APPLICABLE, FAILS TO INSPECT OR PROPERLY INSPECT FOR ODORANT OR FAILS TO IDENTIFY THAT THE PROPANE HAS NOT BE PROPERLY ODORIZED, THEN THE PROPANE SHALL BE DEEMED TO BE PROPERLY ODORIZED FOR ALL INSTANCES IN THIS AGREEMENT OR ANY OTHER LEGAL REQUIREMENTS. SELLER HAS NO RESPONSIBILITY TO MONITOR THE PROPANE OR TAKE ANY ACTION AFTER DELIVERY TO BUYER OR ITS CARRIER TO ENSURE THAT THE PROPANE REMAINS PROPERLY ODORIZED.**
 - c) Certification. Prior to transporting any Propane from a terminal, Buyer or its carrier, on behalf of Buyer, as applicable, will certify on the loading documents that
 - i. the listed materials are properly classified, described, packaged, marked and labeled and in proper condition for transportation according to the applicable DOT regulations as well as the applicable state and local laws, rules or regulations;
 - ii. the equipment utilized for shipment is a proper transportation container, according to the applicable DOT regulations as well as any applicable state and local laws, rules or regulation and
 - iii. the delivered Propane meets the applicable Environmental Protection Agency and the American Society for Testing and Materials standards for the time and place of loading.
2. **Propane Education and Research Council (PERC)** – The Buyer shall be responsible for the payment of all applicable federal and state propane education fees, including without limitation Propane Education and Research Council (PERC) assessment fees on shipments of odorized propane into the United States and any applicable state fees for imports among states. Unless the Parties agree otherwise in writing:
- a) if the Buyer is the importer of record, the Buyer shall pay such fees directly to the PERC Council and/or to the state authorities and shall provide evidence of such payment to the Seller upon request; or
 - b) if the Seller is the importer of record, the Buyer shall pay such fees to the Seller.

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SCHEDULE C **INSURANCE**

1. For the purposes of this Schedule C, all references to dollar shall be in Canadian dollars.
2. Both Parties shall carry and maintain insurance coverage from companies licensed to provide insurance services in the province or state where the services are to be performed and with an A.M. Best's Insurance, or equivalent, Rating of A- or better, or as otherwise accepted in writing by the other Party, and with minimum limits and terms and conditions as set forth in the following:
 - a) employers' liability insurance covering each employee of the Party engaged in providing services in an amount of not less than \$5,000,000 for each such employee that is not covered by applicable workers' compensation disability benefits or unemployment or employment compensation law or similar law;
 - b) commercial general liability insurance (excluding aircraft and watercraft) for an inclusive limit of not less than \$10,000,000 (this limit may be satisfied through the use of a combination of Commercial General Liability Insurance and various layers of full follow form Umbrella and Excess Liability Insurance) per occurrence, for bodily injury to persons including death, or damage to or destruction of property (including loss of use);
 - c) automobile liability insurance covering all owned and non-owned and/or leased automobiles operated or used by the Operator in connection with the services providing minimum coverage of \$2,000,000 for injury, death, and property damage for each accident (if applicable);
 - d) sudden and accidental pollution liability insurance covering third party bodily injury or property damage caused by a spill, discharge, emission, dispersal, seepage, leakage, migration, release, or escape of pollutants resulting from the services, on a claims made basis for a limit of not less than \$5,000,000 per each loss and in the aggregate for the policy period.
3. The insurance provided by both Parties pursuant to Section 1 hereof shall be provided in accordance with the following terms and conditions:
 - a) all policies of insurance, where permissible by law, shall include the other Party as an additional insured party under the terms of this Agreement;
 - b) all policies shall provide that the insurer shall provide thirty (30) Days written notice to the other Party prior to the cancellation or non-renewal of any such policies;
 - i. all deductibles contained in the policies of insurance carried by the insured (or its Service Provider, as the case may be) shall be for the sole account of the insured (or its Service Provider, as the case may be); and
 - ii. the policies of insurance referred to in Section 1 hereof relating to liability shall specifically by their wording or by endorsement, provide a waiver of subrogation in favour of the other Party.
 - iii. Each Party shall provide the other Party with evidence of such insurance having been obtained in the form of a certificate of insurance, listing the other Party as additional insured, and that the insurer shall endeavor to provide thirty (30) Days written notice to that Party prior to the cancellation of any such policy.
4. Either Party shall upon request provide proof to the satisfaction of the other Party that adequate insurance is in place.
5. Both Parties acknowledge and agree that neither Party is insuring the Product or property of the other Party.

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6. Buyer agrees to procure and maintain and cause its carriers to procure and maintain insurance coverage
 - (a) in compliance with the requirements of the laws and regulations of the jurisdiction(s) in which delivery of the Product will occur with respect to the receipt of Product hereunder and/or any activities related thereto and
 - (b) in compliance with the requirements of any loading facilities at which delivery of the Product will occur.
7. Either Party shall have the right to self-insure the risks covered in this Schedule C to the extent allowed by applicable laws. If a Party elects to self-insure, it shall: 1) provide the other Party with written notice of its intent to self-insure accompanied with written details of its self-insurance program; 2) maintain a tangible net worth (as shown by its most recent financial statements audited in accordance with generally accepted accounting principles) of not less than One Hundred Million Dollars (\$100,000,000.00), and 3) maintain an “Investment Grade” financial rating by Moody’s or S&P or an equivalent rating service.

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SCHEDULE D TERMINAL ACCESS PROCEDURE

(Applicable to Buyer provided tank trucks)

1. This Schedule may amend specific provisions in the General Terms and Conditions. If there is any conflict between this Schedule D and the General Terms and Conditions, this Schedule D will prevail.
2. This Schedule D is relevant to all loading done at any terminal specified in the Confirmation (“**Terminal**”).

Product Loading

3. Buyer shall execute an access agreement with the Terminal owner, complete a site orientation, and perform any other requirements from the Terminal owner, prior to entering any Terminal.
4. Buyer may not store or commingle any other product, substances, or their substitutes, other than Product.
5. Buyer shall ensure that the receipt of Product will be in accordance with Terminal Owner’s operating procedures in effect on the relevant date of such delivery.

Certification

6. Prior to transporting any Product from a Terminal, Buyer shall certify on the loading documents created by Terminal owner at the time Product is loaded onto tank trucks (“**Loading Documents**”) and shall ensure:
 - a) all materials are properly classified, described, packaged, marked and labeled and in proper condition for transportation according to the applicable DOT regulations as well as the applicable state and local laws, rules or regulations;
 - b) the tank trucks utilized for loading are proper transportation containers, according to the applicable DOT regulations as well as any applicable state and local laws, rules or regulation; and
 - c) the Product meets the applicable Environmental Protection Agency and the American Society for Testing and Materials standards for the time and place of loading.
7. Receipt of Loading Documents by Buyer, shall be construed as certification and acceptance of its contents.
8. Buyer shall pay for and furnish to Terminal Owner all information, safety data sheets, certificates of analysis, documents, labels, placards, containers and other materials and data which may be required by applicable law of any public authority relating to the describing, packaging, receiving, storing, handling, blending, or shipping of Products.

Acknowledgement of Risks

9. BUYER ACKNOWLEDGES THAT THE PRODUCT STORED AND DISPENSED AT THE TERMINALS IS VOLATILE AND THAT ITS VAPORS MAY BE FLAMMABLE, COMBUSTIBLE AND EXPLOSIVE. BUYER FURTHER REPRESENTS, WARRANTS AND ACKNOWLEDGES THAT IT IS FAMILIAR WITH THE (I) PROPERTIES OF PRODUCT AND OR ODORIZED PROPANE AND THE CHEMICAL STENCH ETHYL MERCAPTAN; (II) METHODS FOR SAFELY USING AND HANDLING PRODUCT AND OR ODORIZED PROPANE; (III) ALLEGED PROBLEMS ASSOCIATED WITH ODORANTS AND ODORIZATIONS; (IV) ABILITY OF ODORANT TO FADE OVER A PERIOD OF TIME OR FADE IF SUBJECTED TO CERTAIN METALS OR CONDITIONS OF METALS THEREBY RENDERING THE ODORANT UNDETECTABLE; AND (V) INABILITY OF PEOPLE WITH NASAL PERCEPTION PROBLEMS TO BE ABLE TO SMELL THE ODORANT; AND (VI) ABILITY OF OTHER ODORS TO MASK OR HIDE THE ODORANT OR OTHERWISE MAKE IT UNDETECTABLE (THE “**ASSUMED RISKS**”).

General Terms and Conditions

Representations and Covenants

10. For the purposes of this Agreement, Buyer represents and covenants that it and its carriers:
 - a) are duly organized and subsisting under the laws of the jurisdiction of their incorporation or existence and has full power and authority to enter into this Agreement;
 - b) the execution and performance of this Agreement does not and will not violate or interfere with any other agreement by which Buyer is bound, which violation or interference would have a material adverse effect on this Agreement and that Buyer will not enter into any agreement, the execution or performance of which would violate or interfere with this Agreement so as to have a material adverse effect on Seller;
 - c) have the resources, skills and ability to perform the services in accordance with this Agreement and applicable industry standards;
 - d) all tanks, hoses, valves and other appurtenant equipment that will come in contact with Products shall be free of all contaminants and non-Products, and if requested by Seller, Buyer shall forthwith provide to Seller with proof of such certification;
 - e) each driver shall be required to undergo orientation at any Terminals at which any activities such as loading, unloading, or transloading are performed;
 - f) each driver is properly trained and certified to the regulatory requirements of the jurisdiction in which it operates;
 - g) carrier is legally licensed to haul in the jurisdictions in which it provides the services and holds a carrier Safety Fitness Certificate with a minimum rating of "SATISFACTORY", and Buyer shall provide a copy of each carrier's certificate prior to the commencement of the Term and from time to time during the Term upon request;
 - h) are aware of and familiar with the Assumed Risks;
 - i) will comply with the Terminal owner and rules, requirements and procedures issued by Terminal owner with respect to the Terminals and the terms, precautions, procedures, requirements and recommendations of the driver's instruction manual issued by Terminal owner for each Terminal;
 - j) will utilize only tank trucks and drivers that fully comply with all laws, rules, orders, regulations, ordinances, codes, and other similar authority, enacted, adopted or applied by any federal, state, or local governmental or quasi-governmental authority, body, department, agency, or court having or alleging jurisdiction;
 - k) will load, transport and otherwise operate and maintain all tank trucks in full compliance with all applicable laws;
 - l) will immediately report all incidents, damage, and accidents to the Terminal Owner;
 - m) will maintain copies of current DOT inspection reports on all utilized tank trucks and all other records, documents and proof of compliance required under any applicable law. Buyer shall provide copies of the documents referenced above when requested by Seller or Terminal owner.

Card Issuance

11. Where required, Terminal owner will furnish Buyer and its carriers with of keys and/or cards (the "Cards") or other entry methods or (ii) or a personalized identification number (a "PIN") to activate a system controlling the Terminal's gates, loading racks, and automated accounting equipment.
12. All Cards will remain Terminal owner's exclusive property.
13. Buyer accepts full responsibility for
 - a) the custody, control and use of all issued Cards and PINs and
 - b) its carriers' actions and inactions and their full compliance with this Agreement.
14. Buyer represents and covenants that it will
 - a) not duplicate any Card;

General Terms and Conditions

- b) issue Cards and PINs to only those employees, representatives and carriers properly instructed in characteristics and safe handling and transportation methods associated with the Product;
 - c) notify Terminal owner of any designated carriers prior to the transfer or granting of a Card or PIN to such carrier; and
 - d) return all Cards to Terminal owner, upon the termination of this Agreement.
15. Upon discovery that a Card or PIN has been lost or stolen, Buyer will (within one (1) hour during a Business Day) notify the person designated for the applicable Terminal by telephone at the specified number, and confirm said notification by letter, sent certified mail, return receipt requested, to the specified address within forty-eight (48) hours.

Insurance

16. During the term of this Agreement Buyer shall, at its sole cost and expense, maintain policies of insurance with limits not less than those indicated for the respective items as follows:
- a) Commercial General Liability (by any combination of primary and excess or umbrella policies), which shall include bodily injury (including death) and property damage, independent contractors, products/completed operations, contractual liability and sudden and accidental pollution, with limits of \$10,000,000 per occurrence;
 - b) Except as noted in 17. below, Commercial Automobile Liability, which complies with all DOT regulations and other applicable laws and regulations, covering all owned, hired and non-owned motor vehicles licensed for highway use and employed in the performance of this Agreement, with limits of \$5,000,000;
 - c) Workers' Compensation or Employers' Liability Insurance, shall apply to all employees, including borrowed servants, in accordance with the benefits afforded by the statutory Workers' Compensation Acts applicable to the State, Territory or District of hire, supervision or place of accident. Policy Limits shall be:

Workers' Compensation:	\$1,000,000
Employers' Liability:	\$1,000,000, each accident
	\$500,000, Disease, policy limit
	\$500,000, Disease, each employee;
17. In the event Buyer does not maintain Commercial Automobile Liability as described above, Buyer and its carriers shall not enter any Terminal or load at any Terminal other than through its carriers that maintain all required policies of insurance. No exceptions to this coverage shall be provided to carriers.
18. All policies shall be written by insurance companies reasonably acceptable to Terminal owner;
19. Buyer shall, upon Seller's request, deliver to Seller certificates of insurance evidencing the required coverages for itself and its carriers.

Buyer shall require each of its carriers to provide the foregoing coverages as well as any other coverage that Buyer may consider necessary, and any deficiency in the coverages, policy limits or endorsements of said carriers will be the sole responsibility of Buyer.