



**Philadelphia Energy Solutions Refining and Marketing LLC  
General Terms & Conditions  
For the Sale and Purchase of Renewable Identification Numbers**

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## **1. Interpretation**

These General Terms and Conditions for the Sale and Purchase of RINs (these “**General Terms and Conditions**”) shall apply to every RINs sale entered into by Seller and Buyer. The Agreement (“**Agreement**”) is comprised of these General Terms and Conditions and the Confirmation. In the event of a conflict between these General Terms and Conditions and the Confirmation, the Confirmation shall prevail.

In the absence of a Confirmation, the first of the following acts constitutes an acceptance of Seller’s offer and not a counteroffer and Buyer shall be deemed to have irrevocably accepted these General Terms and Conditions: (i) Buyer’s issuance of a purchase order document against Seller’s offer; (ii) acceptance of Transferred RINs in EMTS; or (iii) payment for any amount due for Transferred RINs.

## **2. Definitions**

**Affiliate** – A company or legal entity which directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with a party. For this purpose, “control” means the direct or indirect ownership of 50% or more of the voting rights attached to the issued equity of such company or other legal entity.

**Agreement** – See “Interpretation,” above.

**Anti-Boycott Laws** - has the meaning set forth in Section 18 of these General Terms and Conditions.

**Business Days** – Calendar Days excluding Saturdays, Sundays, and U.S. federally scheduled holidays.

**Buyer** - means the Party obligated to purchase Transferred RINs under the Agreement.

**Calendar Days** – U.S. calendar days including Saturdays, Sundays, and U.S. federally scheduled holidays.

**Confidential Information** – means the terms and conditions of the Agreement and the documents (including, without limitation, documents and templates in electronic format) to be provided pursuant to the Agreement.

**Confirming Party** – has the meaning set forth in Section 12 of these General Terms and Conditions.

**Confirmation** – The negotiated terms of a Transaction such as Contract Price, Purchase Price, D-Code, Facility, Generator, RIN Generator Facility ID, RIN Generator Company ID, Payment Due Date, RIN Generation Year, Trade Date, Transaction Volume, Transfer Period, or any other negotiated terms including any other conditions.

**Contract Price** - means the price (expressed in U.S. Dollars) of a Transferred RIN as specified in a Confirmation.

**D-Code** - means the number designating the type of renewable fuel with which a given Transferred RIN is associated, as described in §80.1425(g) of the RFS Program.

**Defective RIN** - has the meaning set forth in Section 7 of these General Terms and Conditions.

**Discovery Request** - has the meaning set forth in Section 22 of these General Terms and Conditions.

**EMTS** - means the EPA Moderated Transaction System or any replacement or successor system designated by the EPA.

**EMTS Transaction Date** - has the meaning set forth in Section 5 of these General Terms and Conditions.

**EPA** - means the U.S. Environmental Protection Agency or any successor having responsibility at law for the implementation and administration of the RFS Program.

**EPA Company ID** - means the identification number issued to an entity under the RFS Program.

**Exporter of Renewable Fuel** – has the meaning set forth in Section 3 of these General Terms and Conditions.

**Facility** - means a facility at which the batch of renewable fuel associated with the Transferred RINs was produced or imported.

**General Terms and Conditions** – See “Interpretation,” above.

**Generator** - means an entity that generates the Transferred RINs under the RFS Program.

**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.

**Invoice** - a written 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.

**LIBOR** – The one month London Interbank Offered Rate for U.S. dollars determined at 11:00 am London time on the first Calendar Day of the month (or if the first Calendar Day of the month is not a London Banking Day (a day on which the London Interbank Market is transacting in dealings on deposits in U.S. dollars), then the immediately preceding London Banking Day) in which the date of determination occurs for any determination date offered by the National Westminster Bank or any of its successors.

**Non-Confirming Party** - has the meaning set forth in Section 12 of these General Terms and Conditions.

**Objection** - has the meaning set forth in Section 22 of these General Terms and Conditions.

**Obligated Party** - has the meaning set forth in Section 3 of these General Terms and Conditions.

**Party** – either the Buyer or the Seller, and collectively, the “Parties”.

**Payment Due Date** - means the payment due date specified in a 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) Business Days after the later of (A) the EMTS Transaction Date or (B) the payer’s receipt of the payee’s Invoice.

**Pending RINs** - has the meaning set forth in Section 7 of these General Terms and Conditions.

**Person** – means any individual, sole proprietorship, partnership, joint venture, limited liability company, trust, unincorporated organization, association, corporation, institution, entity, party, governmental authority, court or any other legal entity, whether acting in an individual, fiduciary or other capacity.

**Product Transfer Document** or **PTD** - means such document(s) transferring title to the Transferred RINs from Seller to Buyer as may be required pursuant to the RFS Program. Seller will endeavor to cause each Product Transfer Document to include a corresponding Invoice number.

**Purchase Price** - has the meaning set forth in Section 5 of these General Terms and Conditions.

**QAP** – means a Quality Assurance Plan as described in the RFS Program, specifically §80.1469 through §80.1474.

**Renewable Volume Obligation** - has the meaning set forth in Section 3 of these General Terms and Conditions.

**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.

**RIN** - means a Renewable Identification Number as defined in the RFS Program.

**RIN Generation Year** - means the calendar year in which a Transferred RIN was generated under the RFS Program.

**RIN Generator Company ID** - means the EPA Company ID of the Generator of the Transferred RINs.

**RIN Generator Facility ID** - means the EPA Facility registration identification of the Facility.

**Replacement RINs** - has the meaning set forth in Section 7 of these General Terms and Conditions.

**Required Authorizations** - has the meaning set forth in Section 11.1 of these General Terms and Conditions.

**Sanctions Laws** - has the meaning set forth in Section 18 of these General Terms and Conditions.

**Seller** - means the Party obligated to sell Transferred RINs under the Agreement.

**Taxes** – includes, without limitation, any and all federal, state and local taxes, duties, excises, fees and other charges imposed by any governmental or regulatory authority or agency however designated, paid or incurred with respect to the purchase, exchange, use, resale, importation or handling of the Transferred RINs; provided, however that Taxes shall not include Seller's federal and state income taxes, capital stock or franchise tax obligations, or any mercantile or business privilege taxes that are Seller's responsibility owing to the fact that it is conducting a business in the jurisdiction, by whatever name given to such tax.

**Trade Date** - means the date a Transaction is agreed to between the Parties.

**Transaction** – means the purchase or sale of Transferred RINs pursuant to the Agreement which may be evidenced by a Confirmation and shall be governed by these General Terms and Conditions.

**Transaction Volume** - means each volume of Transferred RINs specified in a Confirmation.

**Transfer Period** - means, for a Transaction, the date range as specified in a Confirmation during which Seller must Initiate the Transaction Volume.

**Transferred RINs** - has the meaning set forth in Section 4 of these General Terms and Conditions.

### **3. Background**

Under the RFS Program, Buyer from time to time desires to purchase and/or receive RINs (with a D-Code as specified in the Confirmation) that have been entered into EMTS in accordance with §80.1452(c); and

Seller has generated or taken ownership of RINs, separated or unassigned them as necessary, pursuant to §80.1429 of the RFS Program and desires to sell and/or transfer ownership of such unassigned RINs to Buyer which were, or will be, generated, within the RIN Generation Year, by an EPA-registered renewable fuel producer and/or importer, in accordance with §80.1426 of the RFS Program, and which have not been, or will not be, used by an “**Obligated Party**”, (as defined in §80.1406 of the RFS Program) or an “**Exporter of Renewable Fuel**” (as defined in §80.1401 of the RFS Program), to meet a “**Renewable Volume Obligation**” (as defined in §80.1407 or §80.1430 of the RFS Program).

### **4. Sale and/or Purchase and/or Transfer of RINs**

Seller agrees to sell and transfer ownership to Buyer and Buyer agrees to take ownership from Seller, of the Transaction Volume, which must be identified in EMTS (and on Seller’s Product Transfer Document in accordance with §§80.1452 and 80.1453 sent to Buyer). Seller shall Initiate each Transaction Volume within its respective Transfer Period. RINs so transmitted shall be identified to Buyer in a format that includes the information specified in §80.1453 of the RFS Program or any format that fully complies with §80.1453 of the RFS Program. These RINs shall be referred to collectively as the “**Transferred RINs**”.

Buyer shall accept or deny the Transferred RINs (or Replacement RINs, if applicable) in EMTS no later than five (5) Business Days after Seller Initiates such RINs. Buyer shall have the right, at its reasonable discretion, to deny any Transferred RINs (or Replacement RINs, if applicable) in EMTS. For the avoidance of doubt, and without limitation, Buyer shall be conclusively deemed to have reasonably exercised its discretion to deny where:

- 1) Buyer has blocked the Generator or Facility that produced the Transferred RINs (or Replacement RINs, if applicable) in EMTS;
- 2) the Transferred RINs (or Replacement RINs, if applicable) are invalid under §80.1431(a) of the RFS Program;
- 3) there is a reasonable prospect that the Transferred RINs (or Replacement RINs, if applicable) will be invalid under §80.1431 of the RFS Program; or
- 4) Buyer does not have or has not analyzed information sufficient to verify that any of the Transferred RINs (or Replacement RINs, if applicable) are not invalid.

For the purposes of making its assessment it shall be reasonable for Buyer to disregard the benefit of any representations and warranties given to it under the Agreement. It is not a reasonable exercise of discretion for Buyer to deny Transferred RINs (or Replacement RINs, if applicable) solely on the basis of scarcity of supply of, and/or the market price of, RINs. A failure by Buyer to accept or deny Transferred RINs (or Replacement RINs, if applicable) in EMTS by the fifth (5th) Business Day after Seller Initiates such RINs shall constitute a failure by Buyer to accept such Transferred RINs (or Replacement RINs, if applicable) pursuant to Section 7, regardless of whether a basis existed for denial under this Section 4.

## 5. Price

In consideration for the transactions contemplated by the Agreement, Buyer agrees to pay Seller the total purchase price in US dollars as specified in the Confirmation (the “**Purchase Price**”), which is the sum of the product of the Transaction Volume and Contract Price which shall be payable by wire transfer pursuant to the instructions included on Seller’s Invoice on or before the Payment Due Date.

Seller shall submit an Invoice for the Transferred RINs to Buyer reasonably promptly after the entry of the Transaction into EMTS. The date Seller Initiates the Transferred RINs (or Replacement RINs, if applicable) shall be deemed the date on which such RINs are transferred (each, a “**EMTS Transaction Date**”), as reflected on Seller’s and Buyer’s RFS2 RIN Transaction Reports.

Buyer shall, in addition to the Purchase Price, pay all Taxes, if any. Any delay in effecting any payment by the Payment Due Date shall entitle Seller to receive payment of interest for each day of delay calculated at a rate of LIBOR plus two (2) percentage points per annum, such interest being in no circumstances to be construed as an agreement by Seller to provide extended credit, and which shall be in addition to, and not in substitution for, any other rights and remedies that Seller under the Agreement or by law.

## 6. Title

Legal and equitable title to the Transferred RINs (or Replacement RINs, if applicable) will be deemed to have been transferred to Buyer at 00:01 hours Eastern Time on the EMTS Transaction Date; provided, however that if Buyer denies any such RINs pursuant to Section 4, such transfer shall be deemed void *ab initio* as to such denied RINs.

## 7. Default

In the event that (a) Seller fails to Initiate any Transferred RINs during the applicable Transfer Period; (b) Buyer exercises its right to deny any Transferred RINs pursuant to Section 4; (c) Seller fails or is unable to transfer title to any Transferred RINs to Buyer; (d) Seller breaches any of the representations or warranties contained in Section 11.2 of these General Terms and Conditions; or (e) any Transferred RINs are later found to be invalid per the RFS Program (each such affected Transferred RIN hereinafter referred to as a “**Defective RIN**”), Seller shall be required to do one or more of the following, each at Seller’s sole cost and expense:

- (1) If the Defective RINs are included in a QAP, the Defective RINs will be replaced per the RFS Program;
- (2) Initiate a quantity of valid unassigned RINs generated in the RIN Generation Year as specified in the Confirmation or the then current compliance year from Seller’s EMTS account equal to the quantity and D-Code of the Defective RINs (less the quantity of any valid RINs obtained pursuant to clauses (1) and (3) of this Section) within thirty (30) Calendar Days of discovery of the Defective RINs; and/or
- (3) Arrange for the transfer a quantity of valid unassigned RINs generated in the RIN Generation Year as specified in the Confirmation or the then current compliance year from one or more third parties equal to the quantity and D-Code of the Defective RINs (less the quantity of any valid RINs obtained pursuant to clauses (1) and (2) of this Section), directly from the third party(ies), to Buyer within thirty (30) Calendar Days of discovery of the Defective RINs (any such RIN

replaced or transferred in accordance with clauses (1), (2) and/or (3), a **“Replacement RIN”**).

In the event Seller is unable to locate any or a sufficient quantity of Replacement RINs, Seller shall reimburse Buyer for its reasonable costs and expenses incurred in connection with obtaining and transferring a quantity of valid RINs generated in the RIN Generation Year as specified in the Confirmation or later equal to the quantity and D-Code of Defective RINs (less the quantity of any valid RINs obtained pursuant to clauses (1), (2) and (3) of this Section) within ten (10) Calendar Days of Seller’s receipt of Buyer’s invoice, including, without limitation, (i) the positive difference between the cost of the replacement RINs purchased by Buyer (provided such purchase price was negotiated in good faith as part of an arm’s-length transaction) and the Contract Price multiplied by the number of such replacement RINs purchased by Buyer, and (ii) Buyer’s expenses including reasonable consultant and attorneys’ fees incurred in connection with obtaining such replacement RINs and determining the status of the Defective RINs. In the event Buyer is unable to locate any or a sufficient quantity of replacement RINs, reimburse Buyer in an amount equal to the Contract Price of each Defective RIN which was not replaced plus expenses including reasonable consultant and attorneys’ fees incurred in connection with seeking replacement RINs and determining the status of the Defective RINs. Notwithstanding the foregoing, if Seller transfers Defective RINs to Buyer, then to the extent such Defective RINs are not invalid (or potentially invalid) RINs under the RFS Program, Buyer shall be required to transfer such Defective RINs back to Seller within three (3) Business Days of having received Replacement RINs (or receiving any payment with respect to such Defective RIN in accordance with this paragraph).

In the event that Buyer fails to accept or deny any Transferred RINs (or Replacement RINs, if applicable) in EMTS as contemplated under Section 4, Seller shall provide written notice of such failure to Buyer within three (3) Business Days. If Buyer fails to accept any portion of those RINs (the **“Pending RINs”**) in EMTS within one (1) Business 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 (A) the Contract Price less (B) the market price multiplied by the volume of all Pending RINs (on all such RINs whether or not ultimately accepted), and (ii) the Contract Price for any of such RINs ultimately accepted by Buyer. For purposes of this Section 7, 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.

In the event the provisions of clause (2) of this Section are implemented, Seller shall be deemed to provide Buyer the same representations and warranties, covenants and indemnification provided by Seller under the Agreement with respect to the transfer of such Replacement RINs effective as of the date of such transfer to Buyer.

In the event the provisions of clause (3) of this Section are implemented, Seller shall exercise commercially reasonable efforts to cause the transferring third party(ies) to provide to Buyer substantially similar representations and warranties, covenants and indemnification provided by Seller under the Agreement with respect to the transfer of such Replacement RINs effective as of the date of such transfer to Buyer.



In the event the provisions of this Section are invoked, the Parties agree to work together in good faith to pursue the most efficient and practical of the foregoing options (or any combination thereof) in order to cure any default with respect to any Defective RINs, provided, however, that the type of any Replacement RINs and the date of their transfer directly to Buyer pursuant to this Section must be reasonably acceptable to Buyer prior to any such transfer. Buyer shall otherwise be subject to the obligations set forth in Section 4.

The Parties' duties, rights and remedies described in this Section are in addition to, and not in limitation or exclusion of, any other rights and remedies which the Parties may have hereunder, by operation of law or otherwise, for any default or breach of the Agreement.

## **8. Indemnity**

Subject to Section 9, each Party shall indemnify and hold the other Party harmless against any losses, damages, liabilities, fines, penalties, claims, costs, and expenses (including without limitation reasonable attorneys' and court fees) of any kind whatsoever to the extent incurred by such Party or its Affiliates, or their respective officers, managers, directors, or employees resulting from the other Party's material breach of the Agreement and/or its negligence or willful misconduct.

## **9. Limitation of Liability**

EXCEPT FOR DAMAGES AS EXPRESSLY PROVIDED IN SECTION 7, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, LOSS OF PRODUCTION, LOSS OF REVENUE, OR BUSINESS INTERRUPTION, OR FOR EXEMPLARY OR PUNITIVE DAMAGES, IN ANY AMOUNT IN CONNECTION WITH THE AGREEMENT, REGARDLESS OF THE FORM OF ACTION ALLEGED, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, UNLESS THE SAME ARISES FROM THE GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD OF SUCH PARTY.

## **10. Covenants**

Buyer covenants and agrees that it will use, transfer, retire or expire the Transferred RINs (or Replacement RINs, if applicable) in compliance with the RFS Program and all other applicable laws and regulations.

Seller covenants and agrees that it shall not engage in any future conduct that would result in the Transferred RINs (or Replacement RINs, if applicable) becoming invalid under §80.1431(a) of the RFS Program.

For Transactions for which Philadelphia Energy Solutions Refining and Marketing LLC is the Buyer, unless otherwise agreed in writing, Seller covenants and agrees that the Transferred RINs (or Replacement RINs, if applicable) will originate from sources on Buyer's List of Approved RIN Generators, as amended from time to time. Buyer's List of Approved RIN Generators may be accessed at <http://pes-companies.com/products-services/termsconditions/>. In the event Buyer determines in good faith that an approved source should be removed from the List of Approved RIN Generators while the Agreement is in effect, Buyer will provide prior written notice to Seller.

## **11. Representations and Warranties**

11.1 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 EMTS Transaction 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 the Agreement (“**Required Authorizations**”), and has complied with any conditions to the Required Authorizations applicable to the execution, delivery and performance of the Agreement, and states that such Required Authorizations shall remain in full force and effect until its obligations under the Agreement have been fulfilled;
- (b) It is a registered user of EMTS and has completed any registration required by the RFS Program; and
- (c) Its obligations pursuant to the 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).

11.2 Representations and Warranties by Seller. Seller represents and warrants that as of the EMTS Transaction Date:

- (a) The Transferred RINs are valid and were entered into EMTS between January 1 of the RIN Generation Year and the EMTS Transaction Date under the requirements of the RFS Program, and Seller has the right to transfer such Transferred RINs pursuant to the RFS Program;
- (b) The Transferred RINs were properly separated, as needed, pursuant to §80.1429 of the RFS Program, from certain volumes of renewable fuel prior to their transfer hereunder;
- (c) The Transferred RINs have no basis for becoming invalid under § 80.1431(a) of the RFS Program;
- (d) Seller has good and marketable title to the Transferred RINs, and such Transferred RINs are free and clear of any claims, liens, charges, encumbrances, pledges or security interests against Seller;
- (e) The Transferred RINs have not been previously used for compliance purposes by an Obligated Party or a renewable fuels exporter;
- (f) Seller has complied with all applicable requirements of the RFS Program and EMTS with regard to registration and the transfer of the Transferred RINs; and
- (g) For Transactions for which Philadelphia Energy Solutions Refining and Marketing LLC is the Buyer, unless otherwise agreed to in writing, the Transferred RINs were originally obtained from sources identified on Philadelphia Energy Solutions Refining and Marketing LLC’s List of Approved RIN Generators as of the date of the EMTS Transaction Date.

EXCEPT FOR THE FOREGOING EXPRESS WARRANTIES AND EXCEPT AS MAY BE SET FORTH IN THE CONFIRMATION, SELLER MAKES NO OTHER

REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE TRANSFERRED RINS OR THE AGREEMENT, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EVEN IF SUCH PURPOSE IS KNOWN TO TRANSFEROR.

## **12. Confirmations**

A Confirmation may be executed and delivered in two or more counterparts (including by facsimile transmission or by other means agreed between the Parties), which will be sufficient for all purposes to evidence a binding agreement.

The Confirming Party shall confirm a Transaction by forwarding a written Confirmation to the other Party (the “**Non-Confirming Party**”) (via facsimile or other means agreed between the Parties) within five (5) Business Days after the Trade Date. If the Non-Confirming Party objects to any term(s) of such written Confirmation, it shall notify the Confirming Party in writing of such objection within ten (10) Business Days of the Non-Confirming Party’s receipt thereof, failing which the Non-Confirming Party shall be deemed to have accepted such terms.

If the Confirming Party fails to send a written Confirmation within five (5) Business Days after the Trade Date, a written Confirmation may be forwarded by the Non-Confirming Party to the Confirming Party. If the Confirming Party objects to any term(s) of such written Confirmation, it shall notify the Non-Confirming Party of such objection within ten (10) Business Days of the Confirming Party’s receipt thereof, failing which the Confirming Party shall be deemed to have accepted such terms.

If each of the Parties sends a written Confirmation and neither Party objects to the other Party’s written Confirmation within ten (10) Business Days of receipt of such written Confirmation, the Confirming Party’s written Confirmation shall be deemed to be accepted and shall be the controlling written Confirmation, unless (i) the Confirming Party’s written Confirmation was sent more than five (5) Business Days after the Trade Date and (ii) the Non-Confirming Party written Confirmation was sent prior to the Confirming Party’s written Confirmation, in which case the Non-Confirming Party’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.

For all Transactions, the Parties agree the “**Confirming Party**” will be Philadelphia Energy Solutions Refining and Marketing LLC.

## **13. Arbitration and Governing Law**

The Agreement shall be governed by and construed in accordance with the laws of the State of New York.

Any claim or controversy between the Parties arising out of or relating to the Agreement or the breach thereof shall be settled by arbitration in the City of New York, New York in accordance with the U.S. Arbitration Act or failing federal jurisdiction, the laws of the State of New York before three arbitrators, with one appointed by each Party and the third mutually appointed by the two Party-appointed arbitrators, or failing their agreement, appointed by any court of competent jurisdiction. The arbitration shall be conducted in accordance with the commercial arbitration rules (but not the administration) of the American Arbitration Association.

The arbitration determination shall be final and binding and may include costs, including reasonable attorneys' fees. Judgment upon any award may be entered in any court of competent jurisdiction.

#### **14. Assignment**

Neither Party may assign, sell or otherwise transfer the Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Any assignment in violation of this Section shall be null and void and of no force or effect.

#### **15. Notices**

Unless otherwise agreed between the Parties, notification to/from either Party to the other shall officially be deemed to be given/received:

- a.) immediately if in person which shall be confirmed in writing within three (3) Business Days;
- b.) for fax where confirmation of transmission is provided and can be verified, if the recipient's confirmation is received prior to 4:30 pm New York City time on a Business Day then that Business Day. If the confirmation is received later than that, on the next Business Day after the confirmation was received.
- c.) for courier, if delivered prior to 4:30 pm New York City time on a Business Day then that Business Day. If the confirmation is received later than that, on the next Business Day after the confirmation was received.

Email correspondence regarding the performance of the Agreement is acceptable except for notices of Defective RINs, assignment, termination, and legal or arbitration proceedings. Email messages shall be sent to the address specified for those purposes in the Agreement and are deemed to have been received on that Business Day if sent prior to 4:30 pm New York City time on a Business Day. If the confirmation is received later than that, on the next Business Day after the confirmation was received. Email messages are at the failure risk of the sender and are only valid if actually received.

Changes to the contacts and addresses specified in the Agreement shall be notified immediately by post or fax to the other Party. Instant messages or texts are not acceptable means of providing notice.

#### **16. Severability**

If any portion of the Agreement is declared illegal, invalid or unenforceable by a court of competent jurisdiction, then the remainder of the Agreement remains in effect and shall not be impacted by the removal of the invalid portion.

#### **17. Survivability**

Should the Agreement be terminated, then any rights or obligations which have accrued to that time remain in effect.

#### **18. Trade Controls and Anti-Boycott; Facilitation Payments and Anti-Corruption**

18.1 No language herein or in the Agreement is construed nor should be interpreted as requiring or inducing the other Party to commit any act, by action or inaction, in a manner that would be in violation of U.S. laws restricting participation in or compliance with certain foreign boycotts ("**Anti-Boycott Laws**"), directly or indirectly, including as contained in the U.S. Export Administration Act of 1979 and the U.S. Internal Revenue Code.

Notwithstanding anything to the contrary stated or implied in the Agreement, Buyer and Seller each hereby agree that performance under the Agreement will comply with the economic sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control, the United Nations Security Council, The European Union and Her Majesty's Treasury (collectively, the "**Sanctions Laws**"). The Parties further agree to cooperate pursuant to this Agreement in such a manner as to ensure that no Party, or any of its Affiliates, is placed in a position of non-compliance with the Sanctions Laws. For the avoidance of doubt, the Parties agree that the Transferred RINs (or Replacement RINs, if applicable) purchased and sold under the Agreement shall not, directly or indirectly, be acquired from, sold, transferred or delivered to or through any Person, country or territory that, at the time of such acquisition, sale, transfer or delivery, is the subject of any Sanctions Laws.

Each Party agrees to indemnify the other for any fines, penalties, claims, losses, damages, costs (including reasonable legal fees and costs), expenses and liabilities that may arise as a result of their breach of this Section 18.1.

18.2 Buyer and the Seller each agree and act accordingly in connection with the Agreement that they will respect and comply with all applicable laws, rules, regulations, decrees and orders of the government of the United States of America regarding anti-bribery and anti-money laundering.

Each of Buyer and Seller hereby agree that it will not directly or indirectly:

- a.) Pay, give or promise to provide, nor authorize the payment or provision of any monies or other things of value to:
  - 1. Government officials, officers or employees in any capacity;
  - 2. Officers or employees of public international or domestic institutions;
  - 3. Persons acting in an official capacity for or on behalf of any government, department, agency or public institution;
  - 4. Political officials or candidates; or
  - 5. Persons or entities at the suggestion, request or direction of any of the above mentioned Persons; or
- b.) Engage in other acts or transactions, in each case if this is a violation of or inconsistent with anti-bribery or anti-money laundering regulations of any government including the U.S. Foreign Corrupt Practices Act and the applicable country legislation implementing the OECD Convention for Combating Bribery of Foreign Public Officials in International Business Transactions.

Either Party may terminate the Agreement upon written notice to the other Party at any time where in its reasonable opinion with supporting evidence that the other Party is in breach of any of this Section 18.2.

## **19. Modification**

The Agreement shall not be modified unless both Parties agree in writing. No modification of the Agreement shall be effected by the acknowledgement or acceptance of any other documents containing terms or conditions different from or in addition to those in the Agreement, all such different or additional terms being hereby objected to.

## **20. Waiver**

Either Party may waive compliance by the other with any of the agreements, covenants or conditions contained in the Agreement. Any such waiver shall only apply to the instance for which it was prescribed and not to any subsequent incidence. No failure or delay on the part of any Party in the exercise of any right hereunder shall impair such right or be construed to be a waiver of, or acquiescence in, any breach of any representation, warranty, covenant or agreement pursuant to the Agreement, nor shall any single or partial exercise of any such right preclude other or further exercise thereof or of any other right.

## **21. Entire Agreement**

The Agreement contains the entire agreement between the Parties with respect to the Transaction(s) and supersedes all prior agreements, whether oral or written, in connection with it.

## **22. Confidentiality**

Each Party agrees to maintain the Confidential Information in the strictest confidence, and shall not, without the written consent of the other Party or as required by law, disclose any of the Confidential Information. Notwithstanding the foregoing, either Party may disclose the Confidential Information: (a) as necessary to enter the Transaction(s) into EMTS and/or otherwise comply with the RFS Program and (b) to its employees and agents that: (i) need to know the Confidential Information, and (ii) have been instructed and agreed not to disclose the Confidential Information pursuant to the terms of the Agreement. Each Party shall be responsible for any breach of this Section by any of its employees and agents, and shall use its commercially reasonable efforts to restrain such persons from the unauthorized use or disclosure of the Confidential Information. The confidentiality obligations under this Section shall continue for a term of three (3) years from the date of the Agreement.

If a Party, its employees, or its agents are required by a legal proceeding discovery request, Freedom of Information Act (or state equivalent) request, investigative demand, subpoena, court or government order to disclose Confidential Information (collectively, a “**Discovery Request**”), such Party agrees that it will: (a) immediately provide the other Party, if permissible, notice of and a copy of any Discovery Request, (b) not produce any documents pursuant to the Discovery Request until, if permissible, it contacts the other Party and determines whether such other Party is going to object to the Discovery Request, file a motion for protective order, file a motion to quash the Discovery Request, or take other legal action to prevent disclosure of the Confidential Information prior to the production deadline stated in the Discovery Request (collectively, an “**Objection**”), and (c) if either Party timely makes or files an Objection, each Party agrees that it will not produce any documents until it receives an order from the relevant court or administrative body, or written consent from the other Party. Further, the Parties agree to cooperate with each other, if requested, in filing or obtaining an Objection to ensure confidential treatment of the Confidential Information. Each Party shall reply promptly to all communications from the other Party regarding a Discovery Request such that either Party’s interest shall not be prejudiced in any proceedings related to the Discovery Request. Notwithstanding Section 13 of these General Terms and Conditions, each Party shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this Section.

## **23. Third Party Rights**

Nothing in the Agreement is intended to or does provide benefit or remedy to a third party. Third Parties have no consent in modifications to or terminations of the Agreement. Except

as expressly set for in the Agreement, no Person who is not a Party to the Agreement may have or obtain rights in the Agreement.

**24. Miscellaneous**

Both Parties agree to report Transactions to the EPA in accordance with the requirements set forth in the RFS Program and the Transferred RINs (or Replacement RINs, if applicable) shall be included in Seller's and Buyer's RFS2 RIN Transaction Reports for the quarter and year in which the a Transaction is completed.

It is agreed that the date of record for the purpose of reporting the transfer of the Transferred RINs (or Replacement RINs, if applicable) to the EPA on each Party's RFS2 RIN Transaction Report shall be the EMTS Transaction Date.