

RED GIANT OIL COMPANY LLC

Purchase Order General Terms and Conditions

The purchase order (the “*Purchase Order*”) to which these General Terms and Conditions (the “*Terms and Conditions*”) are attached or into which these Terms and Conditions are incorporated by reference, together with all exhibits, attachments and appendices thereto and/or drawings, specifications or other documents referred or incorporated therein, and these Terms and Conditions are collectively referred to in these Terms and Conditions as the “*Agreement*.”

1. **AGREEMENT.** Seller’s signature and delivery of the Purchase Order to the buyer named in the Purchase Order (the “*Buyer*”) or delivery of the Products and/or performance of Services pursuant to the same shall constitute Seller’s acceptance and execution of said Purchase Order for all purposes. “*Seller*” means the seller of Products named in the Purchase Order. “*Products*” means the goods, equipment, materials or products to be sold and delivered by Seller as described in the Purchase Order and “*Services*” means any services to be performed by Seller as described in the Purchase Order. **These Terms and Conditions and the Purchase Order to which they are attached or into which they are incorporated by reference constitute an offer to purchase the Products and/or Services described upon the terms and conditions set forth herein and therein and Seller may only accept such offer upon such terms and conditions. Unless agreed to in writing by Buyer in an amended Purchase Order proposed by Seller, any and all additional or different terms proposed by Seller in response to this Agreement shall be considered material alterations of Buyer’s offer and are hereby rejected and objected to by Buyer whether inserted by Seller into a previously executed Purchase Order or included or referred to in a shipping release, order acceptance letter or confirmation or other preprinted forms, or elsewhere, and no such terms shall in any event be considered part of this Agreement or applicable to sales hereunder. Any references to a quote or proposal submitted or prepared by Seller by number or otherwise in the Purchase Order shall not incorporate any general terms and conditions attached to such quote or proposal or referred to therein and the same shall not be part of the Purchase Order or these Terms and Conditions.**
 - (b) Unless otherwise expressly stated in the Purchase Order, all works of expression and all copyrights in such works, and any other intellectual property created, developed, written or conceived by Seller as a result of any work performed in connection with the design or creation of the Products for Buyer or the manufacture of the Products to Buyer’s specifications pursuant to the Purchase Order, or as a result of Services performed by Seller under this Agreement, shall be the sole property of Buyer. Seller will (i) disclose, deliver and assign to Buyer all such patentable inventions, discoveries and improvements, trade secrets and all works subject to copyright, if any, (ii) execute all documents and patent applications and make all other arrangements necessary to further document such ownership and/or assignment, and (iii) take whatever other steps may be needed to give Buyer the full benefit of such rights. Seller shall further indemnify and defend Buyer in the event that any copyright, patent, or similar claim is brought against Buyer by a third party. Seller specifically agrees that all copyrighted materials generated or developed as a result of any work performed by Seller in connection with the design or creation of the Products for Buyer or the manufacture of the Products to Buyer’s specifications pursuant to the Purchase Order, or as a result of Seller’s performance of Services under this Agreement, including but not limited to, computer programs and documentation, shall be considered works made for hire under the copyright laws of the United States and that they shall, upon creation, be owned exclusively by Buyer. Notwithstanding the foregoing, any intellectual property of Seller in existence prior to the parties’ execution of this Purchase Order or developed by Seller wholly independent of any work performed pursuant to this or other Purchase Orders with Buyer shall be and remain Seller’s sole property. Buyer shall own and have the right to use all studies, designs, drawings, plans, specifications, test results, reports, computer software (including data produced by computer or other electronic means and stored on disc, tape or any other form) and other data in any form and in whatever state of completion prepared by Seller as part of the Services provided pursuant to the Purchase Order for any purpose whatsoever without right on the part of Seller to receive, or obligation on the part of Buyer to pay, any additional compensation therefor.
2. **TERMINATION OF PURCHASE ORDERS:** In addition to its rights under Section 11 below, Buyer may terminate this Agreement at any time without cause by written notice to Seller. Upon receipt thereof, Seller shall, to the extent directed by Buyer, terminate the delivery of Products and/or the performance of Services thereunder and any outstanding subcontracts provided for under this Agreement and take action regarding property in Seller’s possession in which Buyer has or may acquire an interest. Buyer shall have the right to take delivery of any portion of the Products or Services in process for which Buyer shall make written request and pay Seller for any Products or completed Services so requested and delivered in accordance with the terms of this Agreement. Other than payment for Products accepted, the only liability of Buyer for termination of this Agreement pursuant to this Section, in whole or in part, with respect to Products is reimbursement to Seller for all reasonable and verifiable costs incurred by Seller as a result of Buyer’s termination less the greater of either any amounts received by Seller on resale of the affected Products in process or the reasonable value of such Products in process. With respect to Services, upon a termination of this Agreement by Seller pursuant to this Section, Buyer shall pay an amount equal to the portion of the compensation payable under the Purchase Order attributable to the portion of the Services properly performed prior to the effective date of termination. Such payment by Buyer shall in no event exceed the original price specified in the Purchase Order and shall be in full satisfaction of all claims that Seller may have against the Buyer under this Agreement in connection with Buyer’s termination of this Agreement pursuant to this Section. Seller waives all consequential damages as a result of Buyer’s termination of this Agreement.
3. **TITLE, RISK OF LOSS.**
 - (a) Unless otherwise expressly indicated in the Purchase Order, all Products are sold to Buyer DDP (Delivered Duty Paid per the Incoterms 2010 rules created and published by the International Chamber of Commerce) Buyer’s facility at the location designated in the Purchase Order (“*Buyer’s Facility*”). Notwithstanding any agreement to pay freight, transportation charges, or to make payment or advances on account, unless otherwise stated in the Purchase Order, title and risk of loss or damage shall be on Seller until Products are delivered and unloaded at Buyer’s Facility.
4. **DELIVERY, INSPECTION AND ACCEPTANCE.** Unless otherwise specified, all deliveries (including completion of any Services) shall be in strict accordance with this Agreement. If delivery dates set forth in the Purchase Order cannot be met, Seller shall promptly inform Buyer in writing of any anticipated or actual delay, the reasons for the delay and the actions being taken to overcome or to minimize the delay. If Buyer does not approve alternate delivery dates, Buyer shall have the right to cancel the Purchase Order without further liability, purchase elsewhere, and hold Seller accountable for all direct damages resulting from Seller’s failure to meet the original delivery dates. All deliveries shall be packed and preserved for outdoor shipping and storage, unless otherwise directed by Buyer in writing. Upon delivery to Buyer, Seller shall convey clear title to the Products, free of any lien, encumbrance or security interest. Seller shall suitably pack, mark and ship in accordance with its normal procedure and the requirements of each common carrier or any written instructions from Buyer. Seller shall secure the lowest cost transportation available consistent with the service required unless otherwise instructed by Buyer. Delivery of any Products shall not be deemed to be complete until actually received and accepted by Buyer. Items delivered in error shall be returned to Seller at Seller’s sole expense. All Products shall be subject to inspection by Buyer upon

delivery to Buyer's Facility. Inspection and approval by Buyer at Seller's place of business does not preclude rejection for defect upon discovery by subsequent inspection. Any Products properly rejected by Buyer shall be promptly repaired or replaced at Seller's expense (including, without limitation, shipping costs incurred to complete such repair or replacement). With respect to Services, when all Services to be provided pursuant to the Purchase Order have been completed, Seller shall notify Buyer and Buyer shall have the right to a final review of the Services performed including, without limitation, any and all records and reports maintained by Buyer in connection therewith. Following such review, Buyer shall either notify Seller of its acceptance of the Services or issue to Seller a listing of additional items required in order for the Services to conform to the terms, conditions and specifications of the Agreement. Additionally, when any system or component installed, repaired or otherwise worked on by Seller as part of the Services is completed, Seller shall so notify Buyer, and Buyer, at its option, may witness any tests to be performed. In the event any of such Services fails to meet any specified tests or is otherwise judged by Buyer to fail to comply with the Agreement in Buyer's reasonable discretion, Seller shall remedy any defect and repeat such tests until specified tests are met and such work complies with the Agreement in Buyer's reasonable discretion. Time is of critical importance in Seller's performance of the Services and/or delivery of Products required by the Purchase Order and all Services and Products shall be completed and delivered in accordance with the schedule and/or by the deadlines set forth in the Purchase Order. Any changes to the Services or Products to be provided under the Purchase Order must be set forth in a mutually agreed upon and executed change order in order to be binding upon Buyer.

5. **PRODUCT WARRANTIES.** (a) With respect to all Products purchased by Buyer from Seller pursuant to the Purchase Order, Seller warrants to Buyer that: (i) the Products are free from all defects in design, workmanship and materials, (ii) the Products are new, unless specified otherwise in the Purchase Order, (iii) the Products are fit for use for their ordinary intended purpose as well as any special purpose specified in this Agreement, (iv) sale or use of the Products for their ordinary intended purpose as well as any special purpose specified in this Agreement will not constitute infringement or contributory infringement of any patent, or infringement of any copyright or trademark, or violation of any trade secret, (v) the Products are in strict conformance with this Agreement, conform to the drawings and/or specifications set forth or referenced to in the Purchase Order and shall at all times be subject to Buyer's inspection, and (vi) Seller has good title to the Products sold to Buyer pursuant to this Agreement and the same are free of any liens, security interests or encumbrances. If the Products fail to conform to the foregoing warranties or are otherwise defective (excluding wear and tear from normal use) within twelve (12) months after start-up or first use or eighteen (18) months after Buyer's receipt and acceptance thereof, Seller shall, at Buyer's sole option, promptly repair or replace them at Seller's expense.

(b) Neither Buyer's inspection nor failure to inspect shall relieve Seller of any warranty obligation hereunder, whether related to Products or Services. To the extent not prohibited by the manufacturer of the Products, Seller hereby authorizes Buyer, at Buyer's expense, to assert for Seller's account, all rights and powers of Seller under any manufacturer's and/or contractor's warranties with respect to the Products or Services. Seller also warrants that it shall obtain and assign or otherwise provide to Buyer the benefits of warranties provided with the Products sold under this Agreement by manufacturers or suppliers.

6. **TAXES.** Charges specified in the Purchase Order, and any invoices sent by Seller shall, include all applicable federal, state and local taxes, duties and other governmental charges and fees imposed on the sale, use, production, transportation or handling of the Products or the performance of Services under this Agreement. Taxes shall be stated separately on the Purchase Order and/or all invoices. Seller will not charge or collect sales and use taxes if Buyer and the sale of Products or taxable Services are exempt; provided that exempt Products shall be identified as exempt on the Purchase Order and Buyer shall provide Seller with an exemption certificate for the applicable jurisdiction. If

Seller incurs any additional taxes or penalties from a taxing authority due to incorrect taxing information furnished by Buyer, Buyer will be responsible for all such additional taxes, penalties, and any legal expenses incurred by Seller. Seller shall be liable for all taxes applicable to income or profits received by Seller in relation to the Products or Services.

7. **PAYMENT.** Payment is contingent upon receipt of Products at Buyer's Facility. All undisputed invoices, less any amounts properly withheld by Buyer under this Agreement, shall be due and payable sixty (60) days after Buyer receives the invoice (the "**Receipt Date**"); provided that with respect to invoices which include amounts due for any Products, the Receipt Date shall be the later to occur of (i) the date Buyer receives the invoice or (ii) receipt of shipped Products at Buyer's Facility. If Buyer pays the relevant invoice no later than ten (10) days after the Receipt Date, Seller authorizes Buyer to apply a two percent (2%) discount to the invoice amount and agrees that payment of the net amount after such discount shall constitute payment in full of such invoice. To the extent the Purchase Order for Products or Services requires the submission of invoices for progress payments or upon completion and within the time period set forth therein, Seller shall submit an invoice together with any supporting documentation and lien waivers and releases in form and substance acceptable to Buyer, for itself and any subcontractors or suppliers who provided labor during the payment period, setting forth amounts owed to Seller for the Products provided or Services performed during such month or other specified time period. To the extent compensation payable under the Purchase Order for Services is set forth on a time and materials, or reimbursable basis, Seller shall send invoices monthly or in accordance with such other time interval described in the Purchase Order with documentation satisfactory to Buyer setting forth hours worked and/or reimbursable expenses incurred during the applicable period and any other supporting documentation required by Buyer as described in the preceding sentence. Unless otherwise restricted by law, by submitting an invoice, Seller thereby represents and warrants that (i) the Services and/or Products provided to date have been provided in accordance with the Agreement; (ii) Seller is entitled to payment of the amount invoiced; (iii) all Subcontractors of any tier have been fully paid for all amounts due and owing through the date of Seller's immediately prior invoice, and (iv) no Products covered by the invoice were acquired by Seller, or any other person, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by Seller or such person. Seller shall promptly pay out of any amounts received under the Agreement all Subcontractor fees and charges and all other charges incurred for Services and Products used or procured in the performance of the Services or delivery of Products. Partial or complete payment to Seller shall not operate as an approval or acceptance by Buyer or any of its authorized representatives of Products and/or Services furnished pursuant to the Purchase Order. If Seller fails to timely submit invoices within ninety (90) days of completion of Services or delivery of Products, Seller shall be deemed to have waived its right to compensation for the same. Errors, omissions or delays in receiving invoices shall be considered just cause for withholding payment without loss of cash discount privilege. Except as expressly provided for in the Purchase Order, the total price set forth in the Purchase Order for Products and/or Services purchased thereunder shall be deemed to include all compensation due to Seller as a result of the sale including, without limitation, the cost of all Products, taxes, duties, import fees, costs for shipping, expediting Services, all labor with burdens, mark-ups, profit, travel and living costs. Buyer shall have the right to set off and apply any amounts owed by Buyer to Seller or Seller's successors or assigns against any amounts owed by Seller or Seller's successors or assigns to Buyer. If upon reasonable belief, Buyer suspects that Seller has not made required payments to any Subcontractor or Supplier for Services or labor performed, Buyer shall have the right, but not the responsibility, to make payments directly to Subcontractor or Supplier and deduct such payments from the amount owed to Seller. However, neither this section, any payments made pursuant to such, or anything else contained in this Agreement, shall be construed to establish a third-

party beneficiary relationship between Buyer and Subcontractor or Supplier.

8. INDEMNITY.

- (a) For purposes of this Section, references to (i) **“Indemnitees”** shall mean Buyer and its Affiliates and their respective directors, officers, employees, agents and contractors, (ii) **“Seller Party”** shall mean Seller and/or its Affiliates and their respective directors, officers, employees, agents, representatives, contractors, subcontractors, licensees and Invitees, (iii) **“Affiliates”** shall mean any person or entity controlling, controlled by, or under common control with Buyer or Seller, as applicable, with “control” meaning the power to direct the management or policies of such entity, whether through the ownership of fifty percent (50%) or more of the voting securities or equity interests, by contract, or otherwise, and (iv) **“Invitees”** shall mean any person whom Seller invites on or otherwise causes to be on the site.
- (b) Seller, on behalf of itself and all Seller Parties, agrees to protect, defend, indemnify and hold the Indemnitees harmless from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, punitive or exemplary damages, liabilities, fines, penalties, losses, costs and expenses (including, without limitation, costs of defense and attorneys’ fees (each a “Claim,” or collectively “Claims”) arising out of or resulting from any breach of this Agreement, any acts or omissions of Seller or a Seller Party, or in any way related to the performance of this Agreement, including, without limitation, acts or omissions or Product defects resulting in any personal injury, death, or damage to property; provided, however, that Seller’s indemnification obligations under this Section 8(b) shall not extend to the proportionate amount of any such Claim caused by the negligence or willful misconduct of an Indemnitee.
- (c) Seller, on behalf of itself and all Seller Parties, agrees to indemnify, defend and hold harmless all Indemnitees from and against any and all Claims based upon, in connection with, relating to or arising out of infringement of patents or the improper use of other proprietary or intellectual property rights by any of the Seller Parties or other person directly or indirectly employed by them resulting from or arising as a result of the sale of Products or Services to Buyer or Buyer’s use of Products or Services purchased hereunder for their ordinary intended purpose or a special purpose specified in this Agreement; provided, however, that Seller’s indemnification obligations under this Section 8(c) shall not extend to the proportionate amount of any such Claim caused by the negligence or willful misconduct of an Indemnitee.
- (d) Buyer shall notify Seller of any Claim that is subject to Seller’s indemnification obligations under this Section 8 after being made aware of the same. At Buyer’s sole discretion and option, exercisable at any time, Buyer may itself undertake the defense, litigation, settlement or satisfaction of any such Claim, reserving its right to seek indemnification against Seller until after the Claim is resolved, or Buyer may direct Seller to contest, defend, litigate, settle or satisfy any Claim made against Buyer, provided that Seller shall not settle any Claim without Buyer’s prior written consent.
- (e) In the event that this provision is found to be in conflict with any applicable law or governmental regulation, then to the extent necessary to resolve such conflict and only to such extent, such provision is to be deemed amended so as to be in compliance with any such law or governmental regulation.

9. **INSURANCE.** Without limiting any warranty or indemnity contained elsewhere in this Agreement, Seller shall, as a separate obligation, carry, maintain and pay for insurance of the types and in the minimum amounts as follows, until all Products have been fully delivered and accepted, all Services, if any, fully performed, and all warranty periods under this Agreement have expired:

- (a) Commercial General Liability – with limits of not less than \$2,000,000 each occurrence and \$4,000,000 in the aggregate. This insurance must be on an “occurrence” basis and not a “claims-made” basis.
- (b) Automobile Liability – with limits of not less than \$1,000,000 each and every occurrence. Coverage must include owned, hired and non-owned vehicles.
- (c) Worker’s Compensation – Workers’ compensation insurance shall be provided covering all employees of Seller directly or indirectly engaged in any on-site and off-site activities in connection with this Agreement in accordance with all laws applicable to such employee-employer relationship. Such insurance shall be written for the amounts required by law and be endorsed to include voluntary compensation and all states coverage. Alternate forms of coverage such as Employer’s Contractual Liability Insurance is not acceptable.
- (d) Employer’s Liability, including occupational disease coverage – with limits of not less than \$1,000,000 Each Accident, Disease-Each Employee, Disease-Policy Limit.
- (e) Excess Liability Insurance – The liability policies provided for in this Section 9 may have policy limits lower than indicated above if the excess liability insurance policy limits provided by Seller, when combined with the corresponding underlying policy limits, total at least the sum of all required minimum policy limits required by this Section 9.

Seller agrees to provide Buyer at least thirty (30) days advance written notice of the cancellation of and/or any material modifications in the above listed coverage. Seller agrees that all of Seller’s above insurance is primary coverage and not excess of any insurance issued to Buyer. Seller shall cause its insurers under the above policies to waive for the benefit of Buyer (i) any right of recovery which the insurer may have or acquire against Buyer or any of its Affiliates, or its or their employees, officers or directors for payments made or to be made under such policies and (ii) any lien or right of subrogation which the insurer may have or acquire for payments made or to be made to any person or entity who asserts a claim against Buyer or any of its Affiliates, or its or their employees, officers or directors. Seller agrees to add Buyer and its Affiliates as additional insureds with Seller’s insurance, for insurance required in Sections 9(a), (b) and (d) above. Seller shall deliver Certificates of Insurance confirming the above listed minimum insurance requirements. Seller agrees that, upon Buyer’s reasonable request, Seller will provide certified copies of its required insurance policies as listed above, including any and all endorsements. Deductible levels for all required insurance will be commercially reasonable and subject to Buyer’s reasonable approval. Buyer’s costs and expenses of defense provided by Seller to the extent of Seller’s indemnification obligations pursuant to Section 8 shall be in addition to, and not limited by, the coverages provided herein. Seller’s defense obligation shall continue until final judgment and exhaustion of all appeal rights or satisfaction of all terms of a settlement agreement.

10. COMPLIANCE WITH LAW.

- (a) **General.** This Agreement is subject to all federal or state laws, municipal ordinances, or any orders or regulations of any regulatory body having, or purporting to have, jurisdiction or control of any of the matters involved herein. Seller shall comply with all federal, state or local laws, ordinances, rules and regulations applicable to performance under this Agreement including, without limitation, all wage and hour laws, and upon request, shall furnish evidence satisfactory to Buyer of such compliance. Seller, if a subcontractor under U.S. Government contracts, hereby certifies and confirms that Seller is and shall remain in compliance with all Executive Orders applicable to performance under this Agreement.
- (b) **Equal Employment Opportunity and Rights under NLRA.** Without limiting in any manner the generality of any other provision in this

Agreement, Seller acknowledges and agrees that (i) Seller shall not discriminate against any employee because of race, color, creed, or national origin as outlined in the Equal Opportunity Clause of the Regulations of Executive Order 10925 of March 6, 1961 as amended by Executive Order 11114 of June 22, 1963; (ii) Seller shall fully comply with the requirements of (A) the Equal Employment Opportunity Clauses and other requirements contained in (x) Part II of Executive Order 11246 (1965), including, without limitation, Section 202 thereof prohibiting discrimination because of race, color, religion, sex, sexual orientation, gender identity, or national origin or because they have discussed, disclosed, or inquired about compensation, and as contained in and required by 41 CFR 60-1.4 (Equal Opportunity Obligations of Contractors and Subcontractors), and 41 CFR 60-4.3 (Construction Contractor Affirmative Action Requirements), (y) 41 CFR 60-741.5 (Equal Opportunity for Workers with Disabilities) and (z) 41 CFR 60-300.5 (Equal Opportunity for Disabled Veterans, Recently Separated Veterans, Active Duty Wartime or Campaign Badge Veterans, and Armed Forces Service Medal Veterans); (B) Section 402 of the Vietnam Era Veterans Readjustment Act of 1974; (C) Section 503 of the Rehabilitation Act of 1973, EEO Duties of Government Contractors and 60 CFR 741.5(a) (Public Contracts and Property Management, Equal Opportunity Clauses) in all instances where such requirements are applicable; and (D) Executive Order 13496 (2009) as contained in 29 CFR Part 471, Appendix A to Subpart A (Text of Employee Notice Clause) concerning employee rights under the NLRA; (iii) all above referenced executive orders and the respective regulations are made a part of this Agreement by reference and (iv) Seller shall fully comply with all wage-hour and equal opportunity regulations and shall take vigorous affirmative action, including the submittal of a written affirmative action program, to employ minority or veteran employees whenever so required and is encouraged to do so in the absence of such requirements. The foregoing list of statutes is not intended to be exclusive and shall be deemed to include similar statutes and updates of statutes which may be enacted from time to time. Reference is made to the equal opportunity clauses contained in 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) which clauses are incorporated herein by reference. **Buyer and Seller shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) in all instances where such requirements are applicable. These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.**

11. DEFAULT. Upon a breach of this Agreement by a party, the non-defaulting party shall notify the defaulting party in writing of such breach. If the defaulting party does not cure such breach within fifteen (15) days after its receipt of such notice, such breach shall be deemed an "Event of Default" under this Agreement. Upon an Event of Default by a party, the non-defaulting party may (i) terminate this Agreement effective immediately and without any liability as a result of such termination upon giving written notice to the defaulting party, and/or (ii) may pursue and/or exercise any and all other rights and remedies available under applicable law. The following events shall be deemed to be Events of Default under this Section: either party becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition in bankruptcy or an involuntary petition in bankruptcy is filed against such party which is not dismissed within sixty (60) days after the date such petition is filed, or suffers or permits the appointment of a receiver for its business, or its assets become subject to any proceeding under a bankruptcy or insolvency law, domestic or foreign, or has liquidated its business. Any and all of a party's rights and remedies provided for or referred to in this Agreement as a result of the other party's breach or otherwise are cumulative and not exclusive, and the non-defaulting party shall be entitled to pursue one, some or all of such rights and/or remedies at its sole option. Without limiting the foregoing,

in the event this Agreement is terminated due to an Event of Default by Seller, Buyer may offset, recoup or otherwise recover from Seller all costs and expenses incurred by Buyer caused by such default.

12. SERVICES.

(a) General; Services. In the event the Purchase Order describes Services to be performed by Seller, the terms of this Agreement and specifically, this Section 12 shall apply to Seller's performance of such Services. Seller agrees that it: shall perform all Services diligently, carefully, in conformance with this Agreement, and in a good and workmanlike manner, using the highest standard of care and skill generally exercised by other similar members of Seller's profession performing similar work and services under similar circumstances, and in accordance with all terms, conditions and specifications set forth in the Agreement; shall furnish all trained and qualified labor, supervision, equipment (including fuel), materials and supplies necessary therefor; shall obtain and maintain all permits and licenses required by public authorities to be in Seller's name; shall not permit any liens or charges to attach to the Services or the Buyer's Facility or Buyer's Products, but, if any does so attach shall promptly procure their release; shall perform all Services in its own name and as an independent contractor, and not in the name of, or as agent for Buyer; and, shall be responsible for all Services performed by its subcontractors. Seller shall perform the Services promptly, diligently and in accordance with any schedule or deadline set forth in the Purchase Order. If at any time during the performance of the Services, or following acceptance of the Services by Buyer, Buyer discovers that the Services do not conform to the terms and conditions of this Agreement, Seller shall, at no cost to Buyer, promptly perform or arrange for the performance of any remedial work required to make the Services conform to such terms and conditions. All risk of loss and damage to the Services, including warranty work, shall remain with Seller until such Services are completed. Seller shall comply with, and shall cause its employees and contractors to comply with, all safety, security or other policies, procedures, rules and regulations promulgated by Buyer with regard to Buyer's Facility with respect to any access to and presence at Buyer's Facility (collectively, "**Policies and Procedures**"). Such Policies and Procedures are available to Seller and its employees or contractors during normal operating hours. Such Policies and Procedures may be changed, amended or modified at any time and from time to time. All such changes, amendments and modifications of Policies and Procedures shall become binding on Seller and its employees and contractors as soon as they are conspicuously posted at Buyer's Facility or otherwise provided to Seller. No person under 18 years of age shall be engaged by Seller in performing the Services. All Services shall be performed in such a manner as to cause a minimum of interference with Buyer's operations and the operation of other contractors at Buyer's Facility. Seller shall at all times keep Buyer's Facility clean and free from accumulation of water, waste materials and rubbish. Upon completion of the Services, Seller shall remove all tools, equipment, materials and rubbish from the Buyer's Facility. Seller assumes full responsibility for loss or theft of or damage to its material, machinery, equipment, tools or property while performing the Services. **Buyer may (but without obligation to do so) refuse access to Buyer's Facility Seller or its employees or contractors at any time if Buyer determines, in its sole discretion, that Seller or its employees or contractors have failed or may fail to follow the Policies and Procedures or that they present or may present a safety risk to Buyer's Facility or operations and/or its employees including, without limitation, when due to any employee or contractor personnel appearing to be, in Seller's reasonable opinion, under the influence of drugs, alcohol or other similar substances. Notwithstanding anything to the contrary contained in the Policies and Procedures and without limiting the same, Buyer may, from time to time, authorize random drug and alcohol testing on any or all employees or personnel of contractor or contractor's**

subcontractors entering Buyer's Facility. Seller hereby authorizes Seller to remove from Buyer's Facility any personnel who are unable to pass (or comply with) such drug and alcohol testing and notify Seller of the situation.

- (b) Additional Provisions Applicable to Off-Site Repair Services. With respect to Seller's performance of Services consisting of the repair of Products to be performed by Seller at Seller's place of business ("Off-site Repair Services") described in the Purchase Order, the terms of this Section 12(b) shall apply in addition to the terms in Section 12(a) and elsewhere in this Agreement where applicable. Any Product to be repaired by Seller pursuant to the Purchase Order shall be shipped at Buyer's cost from Buyer to Seller's service location specified in the Purchase Order. Seller shall perform the required Off-site Repair Services in accordance with the terms of the Purchase Order and then return the Product to Buyer at Buyer's address specified in the Purchase Order. Shipping costs for such return shall be paid by Buyer. Any shipping costs paid by Seller shall be invoiced without markup. Seller's invoices for Services shall be paid in accordance with Section 7 above or as otherwise specified in the Purchase Order. After completion of Off-site Repair Services, all repaired Products shall be returned to Buyer and shall, without limitation, be subject to the delivery, inspection and acceptance terms and conditions set forth in Section 4. The term "Products" as used in Section 4 and elsewhere in this Agreement shall refer to Products that are the subject of Off-site Repair Services as appropriate and applicable. Buyer shall have the right to reject redelivered Products after repairs in the event any of the terms and conditions set forth in this Section 12 are breached. Title to Products sent to Seller for repairs hereunder shall remain in Buyer at all times and Seller shall keep the same free from any liens or encumbrances; provided that Seller shall be responsible for any loss or damage to the same while in Seller's possession.
- (c) Personnel and Subcontractors. For all purposes under the Agreement, in no event shall any employee, agent or Subcontractor of Seller be considered a borrowed servant, unless and only to the extent that the Purchase Order expressly provides that one or more of Seller's employees, agents or Subcontractors is being supplied to Buyer without supervision by Seller and who will be under the exclusive direction and control of Buyer. In all other cases, all employees, agents or Subcontractors of Seller performing Services or work in connection with the Agreement shall be considered employees of an independent contractor. Notwithstanding the foregoing or any other provision in the Agreement to the contrary, Seller's duties to defend, indemnify, protect and hold harmless Buyer under the terms of the Agreement shall apply and continue regardless of the characterization of an employee, agent or Subcontractor as a borrowed servant or the employee of an independent contractor. Buyer reserves the right to approve any subcontractor which is retained by Seller for the purposes of subcontracting any portion of the Services (each a "Subcontractor") in its sole discretion and, without limitation, can require the replacement of a Subcontractor for cause (in which case Seller will pay all costs associated with such replacement) or without cause (in which case Buyer will pay all costs associated with such replacement). Such Subcontractors shall not be changed without Buyer's prior consent. Seller acknowledges and agrees that the fees for any Subcontractors are included in Seller's compensation as provided in the Purchase Order.
- (d) Procurement Covenants. To the extent Seller procures Products as part of the Services performed pursuant to the Purchase Order, Seller, for the benefit of Buyer, shall obtain from vendors and manufacturers such warranties in Buyer's name covering defects in workmanship and materials as are reasonably obtainable on such Products. Seller shall assist Buyer to the extent requested by Buyer in the enforcement of such warranties obtained from such vendors and manufacturers. To the extent any such warranties are assignable, Seller will assign such warranties to Buyer upon request.
- (e) No Liens. To the extent permitted by law, and in consideration of the entry into the Purchase Order by the parties thereto and the compensation to be paid to Seller pursuant thereto: (i) to the extent Buyer has paid for the Products or Services (or properly withheld payment) in accordance with the Agreement, Seller specifically waives any and all rights it may have, now or in the future, to assert or file liens or claims of liens against the Buyer's Facility or any other property of Buyer, Seller's recourse for claims other than nonpayment being to Buyer and not to Buyer's property and (ii) to the extent Buyer has paid for the Products or Services (or properly withheld payment) in accordance with the Agreement, Seller shall cause all of its Subcontractors to similarly waive their lien rights prior to performing any Services. Seller shall have the affirmative duty to keep the Buyer's Facility and other property of Buyer free from mechanics and materialmen's liens of any person or entity supplying labor, equipment or material for the Products or Services and shall not permit any lien to be filed or maintained in connection therewith. Buyer shall have the right to offset or retain out of any payments due or to become due to Seller, an amount sufficient to fully protect Buyer from any such lien or claim of lien until the situation has been resolved by Seller to Buyer's satisfaction. Buyer shall have the further right to contact Subcontractors directly to verify that they have been paid by Seller and to make payments directly to any Subcontractor(s) of Seller in an amount sufficient to fully protect Buyer from any such lien or claim of lien until the situation has been resolved by Seller to Buyer's satisfaction.
- (f) Emergency Conditions. Should unusual or emergency conditions exist at Buyer's Facility, Buyer may, without incurring liability to Seller, direct Seller to temporarily alter its work schedule for the duration of the unusual or emergency conditions. Within twenty-four (24) hours of its occurrence, Seller shall notify Buyer in writing of any incident, injury, or illness experienced by an employee of Seller or its Subcontractors in their performance of any Services or while on any part of Buyer's Facility and shall provide copies of OSHA 101 and OSHA 200 or 300 log entries for such incident, injury or illness.
- (g) Prosecution of Services; OSHA. Seller agrees that prior to commencement of Services at Buyer's Facility, it shall have made sufficient examination and tests to determine the difficulties and hazards incident to doing the Services, whether arising from the location of the Services, conditions of the Buyer's Facility, proximity of the Services to adjacent facilities, equipment, tanks, buildings, and other structures, or otherwise, and shall have determined to Seller's satisfaction the nature and extent of all such difficulties and hazards. Without limiting the generality of the foregoing, Seller acknowledges that the Occupational Safety and Health Act, as amended and in effect from time to time, and regulatory standards or state plan equivalents (collectively, "OSHA Standards") require that Seller's and its Subcontractors' employees be trained in various health, safety and occupational subjects including, without limitation, hazards of and standards applicable to the Services such as lockout/tagout, process safety management, confined space entry and asbestos, and Seller warrants that such employees have been trained in accordance with such OSHA Standards where applicable to the Services being performed. If, as part of the Services, it is necessary for Seller to cut, weld, burn, open or break into, or unflange pipes or lines, a written permit must first be obtained from Buyer, and sufficient notice shall be given by Seller prior to such activity so that such lines may be cleared. If Seller is required to enter into any vessel or tank, a written permit must first be obtained from Buyer and Seller shall follow all requirements set forth in such permit.
- (h) Form I-9 Compliance Certification. By entering into the Purchase Order, Seller thereby certifies, represents and warrants that Seller

and its Subcontractors (a) are in compliance with all immigration laws, statutes, rules, codes, order and regulations, including without limitation, the Immigration Reform and Control Act of 1986, as amended, the Immigration and Nationality Act, as amended, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, and any successor statutes, laws, rules, and regulations thereto (collectively, the “**Immigration Laws**”), (b) have complied with the relevant employment eligibility and identification requirements under the Immigration Laws for their respective employees working on all projects for Buyer or any of Buyer’s Affiliates, including all Form I-9 requirements, (c) have required, and in the future will require, all of their respective employees to correctly complete the relevant sections of Form I-9, (d) have correctly completed and will correctly complete for future employees the relevant sections of the Form I-9s required to be completed by an employer; (e) to the extent that any violations of any Immigration Laws have been discovered, such violations have been corrected, and (f) to the extent that any violations of Immigration Laws are discovered in the future, such violations will be promptly corrected.

- (i) **ACA Compliance.** (a) To the extent any employee of Seller will perform Services at the Buyer’s Facility that is (i) on average, 30 hours per week or more and (ii) for a period of six months or more (an “**Onsite Employee**”), Seller, by entering into the Purchase Order, thereby represents and warrants to Buyer that it will satisfy all legal obligations imposed by the Affordable Care Act, including without limitation, the provisions of Internal Revenue Code Section 4980H (collectively, the “**ACA**”) with respect to Seller’s Onsite Employees at all times during any month during which Seller performs any Services at the Buyer’s Facility. Seller’s obligations include, but are not limited to, (A) determining which employees are Onsite Employees; (B) offering such employees minimum essential, affordable coverage with minimum value, as defined under the ACA (“**Minimum Essential Coverage**”); (C) offering Onsite Employees dependent coverage as required by the ACA; and (D) providing Onsite Employees notice of their right to enroll in or waive Minimum Essential Coverage; (b) In the event Seller receives notice of any Internal Revenue Code Section 4980H or Fair Labor Standards Act, Section 218C-related tax, assessment, penalty, claim, cause of action, judgment or assessment (an “**ACA Action**”) with regard to any of Seller’s employees performing Services at the Buyer’s Facility, Seller shall provide written notice to Buyer within ten (10) calendar days of its receipt of notice of any ACA Action; (c) Seller and Buyer agree that any fee paid to Seller for any Services includes, and is sufficient to cover the cost of, Minimum Essential Coverage for Seller’s Onsite Employees as required under the ACA and to avoid penalties or other liability for any ACA Action. Seller and Buyer further agree that the fee charged to Buyer for the Services would be less if Seller’s Onsite Employees did not enroll in Minimum Essential Coverage. Accordingly, Seller agrees that within sixty (60) days of the end of each calendar year it shall refund to Buyer an amount equal to the fee Buyer Paid Seller for Minimum Essential Coverage with respect to each Onsite Employee that did not enroll in the Minimum Essential Coverage with respect to each month such employee qualified as an Onsite Employee (an “**MEC Refund**”). Seller shall keep full and detailed books, records and accounts as may be necessary to verify its compliance with its obligations under this Section for a period of six (6) years after the end of each calendar year in which Seller performs any Services. Buyer shall (by itself or through a representative) have the right to audit Seller records to confirm Seller’s calculation and payment of the MEC Refund and in the event of any ACA Action against Buyer; and (d) Buyer and Seller agree that the provisions of this Section are to ensure Seller’s compliance with the requirements of the ACA and that all employees of Seller shall be considered employees of Seller in all cases and not employees of Buyer and that nothing in this Section shall be deemed to alter that relationship.

- (j) **Compliance with Economic Sanctions Laws.** Without limiting in any manner the generality of **Section 10(a)** above, Seller shall comply with all Laws administered by the United States Department of the Treasury’s Office of Foreign Assets Control (“**OFAC**”) or any other Governmental Authority imposing economic sanctions and trade embargoes (“**Economic Sanctions Laws**”). Seller represents that neither Seller nor any of its Affiliates or, to its knowledge, any director, officer, or employee of Seller or any of its Affiliates is a Person who (a) is the target of any Economic Sanctions Laws (“**Embargoed Target**”) or (b) is located, organized, or resident in a country or territory that is, or whose government is, the target of sanctions imposed by OFAC or any other Governmental Authority (“**Embargoed Countries**”). Without limiting the generality of the foregoing, Seller shall not with respect to its relationship with Buyer (i) directly or indirectly export, re-export, transship or otherwise deliver goods, services or technology or any portion of goods, services or technology to an Embargoed Target or an Embargoed Country or (ii) broker, finance or otherwise facilitate any transaction in violation of Economic Sanctions Laws. Seller shall promptly notify Buyer if it or any of its Affiliates, or any of its or any of its Affiliates’ directors, officers, employees, or agents becomes the target of any Economic Sanctions Laws, or the country or territory where any of them is located, organized, or resident becomes the target of sanctions imposed by OFAC or any other Governmental Authority.
- (k) **Forced Labor/Human Rights.** Without limiting in any manner the generality of **Section 10(a)** above or HollyFrontier’s Supplier Code of Business Conduct and Ethics or other Policies and Procedures described or set forth in Section 13(b) below and/or the websites described therein, Seller shall not, and shall ensure that its suppliers, Subcontractors, and other business partners involved in the production, manufacture or performance of the Products or Services do not, use any form of forced labor including, without limitation, forced or indentured child labor or labor of North Korean citizens or nationals and does not engage in human trafficking or human rights violations or otherwise violate applicable Laws related to these human rights at any stage of the production or manufacturing process or performance of the Products or Services or any of its components (all such described forced labor, human trafficking, human rights violations or violations of applicable Laws collectively, “**Forced Labor**”). Upon Buyer’s request, Seller agrees to provide a certificate signed by Seller’s duly authorized representative, certifying that Forced Labor was not used at any stage of the production or manufacturing process or other performance of the Products or Services or any of its components. Upon Buyer’s request, Seller shall also obtain such certificates from its suppliers, Subcontractors, and other above-described business partners and provide a copy of such certificates to Buyer. All such certificates shall be in a form reasonably acceptable to Buyer and Buyer may make additional certification requirements in its reasonable discretion. Without impacting Seller’s obligation to comply with this Section, Seller shall maintain in effect a program of monitoring and auditing its suppliers, Subcontractors or other business partners as described above to ensure that they do not use Forced Labor in the manufacture, production or other performance of the Products or Services at any time including in the production of raw materials or component parts for the Products or Services. Seller shall conduct regular inspections of its suppliers, Subcontractor and other above-described business partners to ensure compliance with the requirements of this Section. If Buyer determines that Seller is in violation of the terms of this Section, in addition to any other rights and remedies Buyer may have under this Agreement or at law or in equity, Buyer shall have the right to: (a) immediately cancel the affected purchases and terminate this Agreement without any liability or further obligation to Seller; or (b) require Seller to implement corrective measures in accordance with a corrective action plan within the time set forth in the corrective action plan. Buyer shall have the right to suspend or

cancel purchases or this Agreement while Seller implements corrective measures. If Seller does not implement corrective measures in accordance with the corrective action plan within the required time period, then Buyer may immediately cancel the affected purchases and/or this Agreement and terminate the same without any liability or further obligation to Seller.

- (l) **Compliance with US Anti-Boycott Laws.** Without limiting in any manner the generality of Section 10(a) above, Seller shall: (a) comply with all United States anti-boycott laws and regulations, including, but not limited to, the US Export Administration Regulations (collectively, “**Anti-boycott Laws**”); (b) not take any action that violates the Anti-boycott Laws; and (c) not, in connection with or relating in any way to this Agreement and without limiting the generality of the foregoing: (i) refuse, or agree to refuse, to do business with Israel or any other nation or company subject to a boycott not endorsed by the United States; (ii) discriminate against, or agree to discriminate against, any person on the basis of race, religion, sex, national origin, or nationality; (iii) furnish, or agree to furnish, information about the race, religion, sex, national origin, or nationality of another person; (iv) furnish, or agree to furnish, information about business relationships with or in Israel or any other nation or company subject to a boycott not endorsed by the United States; (v) implement letters of credit containing terms or conditions prohibited by the Anti-boycott Laws; or (vi) otherwise comply with any boycott not endorsed by the United States or request based upon any such boycott.
- (m) **Compliance with Data Privacy Laws.** Without limiting in any manner the generality of Section 10(a) above, Seller shall: (a) comply with all applicable Laws relating to data privacy in its collection of personal information, including requirements related to providing proper notice and obtaining consent for the collection of personal information; (b) keep records evidencing its compliance; (c) upon Buyer’s reasonable request, provide these records of compliance to Buyer; and notify Buyer if it becomes aware of any non-compliance in connection with this section.

13. PROVISIONS REGARDING ANTI-CORRUPTION AND OTHER BUYER POLICIES.

- (a) **Compliance with Anti-Bribery Laws.** Seller warrants and agrees that in performing its obligations pursuant to this Agreement, it and its employees, subcontractors, agents or other third parties who provide or perform Seller’s obligations under this Agreement or any part thereof on behalf of Seller (“**Seller Personnel**”) will, in connection with this Agreement, comply with all applicable anti-bribery laws, rules, codes, orders, regulations, decrees, conventions and/or government orders of any relevant jurisdiction (“**Anti-Bribery Laws**”), specifically including the Foreign Corrupt Practices Act of the United States of America (“**FCPA**”). If Seller is a Government Official or Government Entity, has close connection with a Government Official or Government Entity that may have oversight of Seller’s business or is owned or controlled by a Governmental Official or Government Entity, Seller agrees to perform its obligations under this Agreement solely in its personal or private capacity and shall not (a) use the authority, influence, or prestige of any Government Official to perform or provide the Products or Services, or (b) influence a Government Official concerning Buyer’s business. Seller shall ensure that all Seller Personnel comply with this Section and do so on the basis of a written contract which imposes on and secures from the Seller Personnel terms equivalent in effect to those terms set forth and referred to in this Section. Seller shall be responsible for the observance and performance by the Seller Personnel of the terms of this Section, and shall be directly liable to Buyer for any breach by any Seller Personnel of the terms hereof.
- (b) **Compliance with Buyer Policies.** Seller acknowledges, agrees and warrants that it has obtained, has read, understands, and will

comply with the policies enacted by Buyer copies of which are posted on the following website:

<http://www.hollyfrontier.com/suppliers/>

as well as the policies, including but not limited to the policy entitled “Anti-Corruption and FCPA Compliance Policy”, copies of which are posted under the heading “Other Documents; Policy” on the following website:

<https://portal.hollyfrontier.com/safety>

USERNAME “SafetyDocs” and password “IMS@f3ty”

Seller agrees that at the request and discretion of Buyer, Seller will certify compliance with such policies by itself and all Seller Personnel. Upon Buyer’s request, Seller shall also obtain such certificates from Seller Personnel and provide a copy of such certificates to Buyer. Seller further agrees that it will seek clarification and/or training from Buyer to the extent that it has questions regarding Seller’s obligations under such policies and to participate and/or require Seller Personnel to participate in anti-bribery compliance training if so requested by Buyer. Seller shall have and maintain throughout the term of this Agreement adequate policies, procedures, and controls to ensure compliance with this Section including, at a minimum, policies and procedures relating to prevention of bribery, accounting for financial transactions, due diligence on third parties, and training of personnel, and will enforce them where appropriate. Seller shall immediately report to Buyer in writing any violation of the terms of this Section by it or any Seller Personnel and/or any request or demand for any undue or suspicious payment or other advantage of any kind received by Seller or any Seller Personnel in connection with the performance or provision of Products or Services under this Agreement. Seller shall also immediately notify Buyer in writing if Seller or any of its Seller Personnel (i) employs any Government Official or a Close Family Member of any Government Official; or (ii) forms a personal, business, or other relationship or association with any Government Official or Close Family Member of any Government Official who may have responsibility for or oversight of any business activities of Seller.

- (c) **Accuracy of Documents.** Seller agrees that all invoices, reports, statements, books and other records which it submits will be true and accurate in all respects, will fully and accurately describe services rendered and the nature and recipient of expenditures and or payments made and will not fail to reveal any material information which Buyer may require in order to accurately prepare its own books and records.
- (d) **Reliance on Information Questionnaire.** Seller agrees that if asked by Buyer to complete a Prospective Business Associate Questionnaire that it will promptly comply. Seller warrants that the information Seller will provide on the Prospective Business Associate Questionnaire will be true, accurate and complete in all material respects. Seller further warrants and agrees to provide notice to Buyer if it learns of facts that make the information Seller provided in the Prospective Business Associate Questionnaire no longer accurate in all material respects.
- (e) **Prohibition Against Gifts.** Neither Seller nor any Seller Personnel shall make, directly or indirectly, in connection with this Agreement or in connection with any other business transaction related to Buyer, a payment or gift of, or an offer, promise, or authorization to give money or anything of value to any: (a) Government Official; or (b) other person or entity while knowing or having reason to believe that some portion or all of the payment or thing of value will be offered, given, or promised, directly or indirectly, to a Government Official or another person or entity for the purpose of:
 - (i) influencing any act or decision of such Government Official or such person or entity in his, her, or its official capacity,

including a decision to do or omit to do any act in violation of his, her, or its lawful duties or proper performance of functions; or

- (ii) inducing such Government Official or such person or entity to use his, her, or its influence or position with any Government Entity or other person or entity to influence any act or decision; or
 - (iii) in order to obtain or retain business for, direct business to, or secure an improper advantage for Buyer or Seller.
- (f) **Remedies for Default.** If Buyer reasonably determines, at any time, that there is credible evidence that Seller or any of the Seller Personnel has violated any Anti-Bribery Laws or the terms of this Section, Buyer shall have the right to immediately suspend all payments due under this Agreement while it investigates such evidence. Upon request by Buyer, Seller shall cooperate with Buyer's investigation to determine if such a violation has occurred. In addition to any rights that Buyer may have under this Agreement, including without limitation Buyer's right to indemnification under Section 8 of this Agreement, Buyer shall have the right to terminate this Agreement for cause upon any Seller violation of the provisions of this Section 13 with immediate effect notwithstanding the cure period described in Section 11 above
- (g) **Definitions.** For purposes of this Agreement:
- (i) **"Close Family Member"** means (i) the individual's spouse; (ii) the individual's and the spouse's grandparents, parents, siblings, children, nieces, nephews, aunts, uncles, and first cousins; (iii) the spouse of any persons listed in subcategory (ii); and (iv) any other person who shares the same household with the individual.
 - (ii) **"Government Entity"** means (i) any national, state, regional, or local government (including, in each case, any agency, department, or subdivision of such government), and any government agency or department; (ii) any political party; (iii) any entity or business that is owned or controlled by any of those bodies listed in subcategory (i) or (ii); or (iv) any international organization, such as the United Nations or the World Bank.
 - (iii) **"Government Official"** means any foreign or domestic person who is: (i) an officer or employee of a government or a governmental department, agency or instrumentality; (ii) a political party official, or candidate for political office; (iii) an officer or employee of a government-owned or controlled entity or company; (iv) a member of the military; (v) an officer or employee of a public international organization (such as the United Nations or the World Bank); or (vi) any person acting in an official capacity for or on behalf of any of the foregoing. A person does not cease to be a government official by claiming to act in a private capacity or by the fact that he/she serves without compensation.

14. MISCELLANEOUS PROVISIONS.

- (a) **Entire Agreement.** This Agreement (including the attachments and documents referenced herein or therein) constitutes the entire agreement and understanding between the parties hereto with respect to the Products and/or Services purchased hereunder and supersedes and/or merges all prior agreements, understandings, representations, or conditions between Seller and Buyer regarding the subject matter hereof, whether written, oral, or implied; provided, however, that this Agreement shall not supersede any existing contracts entered into prior to the date Seller accepts the Purchase Order pursuant to Section 1 above between Seller and Buyer relating to the purchase and sale of other products or services. This Agreement may be amended only by written instrument signed by both Seller and Buyer.

- (b) **Governing Law, Jurisdiction.** The validity, interpretation, and performance of this Agreement, including any breach thereof, shall be governed by and construed under the laws of the State of Iowa, without regard to the conflicts or choice of law principles thereof; provided, however, that the parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement. Unless otherwise required by applicable laws, (a) Seller hereby consents to the personal jurisdiction of the state and federal courts in such state for any dispute involving this Agreement, and (b) any action arising out of this Agreement shall be commenced and maintained exclusively in the state or federal courts located in Council Bluffs, Iowa and the parties waive any objection to the forum on the grounds of venue, forum non-conveniens, or any similar ground. **THE PARTIES HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF OR RELATING TO THIS AGREEMENT.**
- (c) **Assignment.** Neither this Agreement nor any claim against Buyer arising directly or indirectly out of or in connection with this Agreement shall be assigned by operation of law, or otherwise by Seller without Buyer's prior written consent. For purposes of this Agreement a change of control of Seller shall be deemed an assignment requiring written consent.
- (d) **Third Party Rights.** Except for Indemnitees, nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either Seller or Buyer. Furthermore, this Agreement is not intended and shall not be construed to create any rights in any parties other than Seller, the Indemnitees and Buyer and no other person shall assert any rights as a third party beneficiary hereunder.
- (e) **Non-Waiver.** No waiver by either party of any breach by the other party of any of the covenants or conditions of this Agreement shall be construed as a waiver of any succeeding breach of the same or of any other covenant or condition hereof.
- (f) **Independent Contractors.** The parties hereto are independent contractors. Nothing in this Agreement shall be deemed to constitute the parties hereto as partners or joint venturers with respect to the subject matter hereof, or any part thereof. Nothing in this Agreement shall be deemed to confer upon either party any property, lien or security interest in the facilities owned by the other party.
- (g) **Force Majeure.** Neither Buyer nor Seller shall be liable for any delay or failure in the keeping or performance of its obligations under the Agreement during the time and to the extent that any such failure arises by reason of Force Majeure. Upon the occurrence of an event of Force Majeure the party affected thereby shall promptly give written notice (setting forth full particulars) to the other party, shall make commercially reasonable efforts to avoid, minimize or overcome the effects of the Force Majeure event and shall resume the keeping and performance of the affected obligation after the cause of Force Majeure has come to an end. If an event of Force Majeure occurs and continues for a period of fifteen (15) calendar days from the date of occurrence of such Force Majeure event, the parties shall meet and make reasonable efforts to resolve the problem. Each party shall bear its own costs incurred as a result of an event of Force Majeure. If the Force Majeure event continues for a period in excess of thirty (30) calendar days from the date of occurrence of such event, either party may terminate this Agreement. **"Force Majeure"** means any of the following causes to the extent such cause was neither foreseen nor reasonably foreseeable and is beyond the reasonable control of the party affected thereby: acts of war or the public enemy, whether war be declared or not, including terrorism; public disorder, insurrection, rebellion, sabotage, riots or violent demonstrations; earthquakes, hurricanes, tornadoes, hail storms, torrents, floods, unusually severe weather or other natural calamities, disasters or acts of God; fire or explosion; strikes,

lockouts or other industrial action by workers or employees of Buyer or of third parties not under the contractual control and supervision of Seller; acts of the government of the United States, the individual states, county or local governments and regulatory agencies, or acts of any foreign country.

- (g) **Confidentiality.** In consideration of this Agreement, and intending to be legally bound by this provision, except as provided below, each party agrees not to disclose to any other party or individual the substance or contents of this Agreement without mutual written permission, or under subpoena or other court order. In the event that such a subpoena or court order is issued requiring disclosure of confidential information, the party receiving the order shall notify the other immediately. That party may then direct the receiving party to take such legal actions as appropriate under the circumstances to limit the extent of such disclosure, or to prevent it entirely. All information, drawings, documents and knowledge of Buyer's operations, business, employees, processes or equipment acquired or handled by Seller in connection with this Agreement shall be considered to be confidential information, and shall not be disclosed without the prior written consent of Buyer. If either party must make any disclosure of this Agreement or, with respect to Seller, the above-described Buyer confidential information to employees, agents, contractors, distributors, attorneys or auditors whose knowledge may be necessary to perform or deliver under this Agreement (collectively, "**Representatives**"), any such persons must acknowledge in writing their awareness of the duty of confidentiality and their agreement to be bound by its terms. Each party shall be responsible for any breach of this Section by any of its Representatives, which shall be considered a breach by such party. This provision shall survive the expiration or termination of this Agreement or any part thereof. Neither Seller nor any of its employees, agents or contractors may take photos or videos at the Buyer's Facility or other facilities of Buyer or its Affiliates without Buyer's prior consent.
- (h) **Written Notice.** All notices, claims, demands, and other communications of similar import to be given to a party pursuant to this Agreement shall be in writing, and shall be given by personal delivery, electronic mail (but only if the intended recipient confirms in writing receipt of such electronic mail), receipted overnight delivery service or by registered or certified mail, first class postage prepaid, return receipt requested, to the address(es) of the parties set forth in the Purchase Order. In the case of Buyer, a copy of any notice sent to Buyer pursuant to the preceding sentence shall be sent to Red Giant Oil Company LLC, Attention: General Counsel, 2828 North Harwood, Suite 1300, Dallas, Texas 75201, Phone: (214) 871-3555, E-mail: generalcounsel@hollyfrontier.com. The specified addresses may be changed by giving written notice of such change to the other party. All notices or communications shall be deemed given when actually received or refused at the intended address.
- (i) **Cumulative Remedies.** Buyer's rights and remedies hereunder are in addition to, and not in lieu of, Buyer's other rights and remedies.
- (j) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same document. In the event that any signature to this Agreement is delivered by facsimile transmission or by e-mail as an attached, scanned document, such signature shall create a valid and binding obligation of the party executing the same with the same force and effect as if such e-mailed or facsimile signature page were an original thereof.

15. REPRESENTATIONS AND WARRANTIES.

- (a) **By Seller:** Seller represents and warrants to Buyer that: (i) Seller has the full right, power and authority to enter into this Agreement, to grant the rights granted herein, and to perform fully all of its obligations in this Agreement; (ii) if Seller is not an individual, the execution of this Agreement by its representative whose signature

is set forth herein has been duly authorized by all necessary corporate action; (iii) Seller entering into this Agreement with Buyer does not and will not conflict with or result in any breach or default under any other agreement to which Seller is subject; and (iv) if Seller is not an individual, Seller is an entity duly organized, validly existing, and in good standing under the laws of its state of organization, has corporate power to carry on its business as it is now being conducted, and is qualified to do business in every jurisdiction in which the character and location of the assets owned by it or the nature of the business transacted by it requires qualification or in which failure to so qualify would have a material adverse impact on it. No proceeding is pending, or to the knowledge of Seller, threatened, involving the Seller, in which it is alleged that the nature of its business makes qualification necessary in any additional jurisdiction.

- (b) **By Buyer:** Buyer hereby represents and warrants to Seller that: (i) it has the full right, power and authority to enter into this Agreement and to perform its obligations hereunder; and (ii) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action.

16. **RETENTION OF SELLER'S RECORDS; AUDIT.** During the term of this Agreement and for a period of three (3) years after expiration or termination hereof, Buyer reserves the right to audit Seller's and/or its third party suppliers' or contractors' records for the purpose of determining compliance with the terms and conditions of this Agreement. Seller shall fully cooperate and exercise commercially reasonable efforts including, without limitation, exercising its contractual rights in order to allow Buyer to audit the records of Seller's third party suppliers or contractors pursuant to the preceding sentence. Seller shall keep accurate books and records of the transaction in which Products are sold to Buyer and/or in which Services are provided including, without limitation, invoices, receipts, cost information, proof of insurance, and any other supporting documentation deemed by Buyer as reasonably necessary to substantiate and readily disclose the basis for any charges or credits billed to Buyer by Seller or due from Buyer to Seller for any Products or Services provided which are compensated on a time and materials, hourly and/or reimbursable basis, and payments made to or benefits conferred by Seller on third parties in the course of Seller's performance of Services or other obligations pursuant to this Agreement. Such records shall be maintained by the Seller and/or third party suppliers/contractors for a period of no less than three (3) years after expiration or termination of this Agreement. Seller shall make such books and records available for examination, audit, and reproduction by Buyer for purposes of determining compliance with the terms of this Agreement within five (5) business days after Buyer provides written notice to Seller unless otherwise agreed to by Buyer. After commencement of an audit in accordance with and subject to the foregoing, Seller will make its best efforts to provide the necessary access to allow the third party auditor to complete the audit within sixty (60) days. In any event, Seller's right to recover any alleged underpayment is hereby waived, unless Seller provides to Buyer a claim in writing with full supporting documents within ninety (90) days after the end of the year in which the sales transaction occurred.

END OF GENERAL TERMS AND CONDITIONS

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