

**Plains Midstream Canada ULC General Terms and Conditions for  
Purchase of Crude Oil  
Dated June 1, 2021**

An underlying contract, which contains the Agreement date, Products, terms, prices, locations, quantities, payment terms and /or any other terms and conditions, will be furnished in writing, by email or other agreed upon means upon finalization of a transaction under this Agreement, and will be referred to as the "**Specific Provisions**." The Specific Provisions shall incorporate by reference these General Terms and Conditions for Purchase of Crude Oil (the "**GTCs**"). The Specific Provisions, together with these GTCs will constitute the agreement between the Parties (the "**Agreement**"). In the event of a conflict between these GTCs and such Specific Provisions to which these GTCs are referenced and incorporated, the terms of the Specific Provisions shall take precedence over these GTCs.

**1.0 DEFINED TERMS**

Capitalized terms used herein have the meanings attributed to them in the Specific Provisions unless otherwise defined herein. When used in this Agreement, the following terms shall have the following meanings:

"**API**" means the American Petroleum Institute.

"**ASTM**" means ASTM International.

"**Affiliate**" means in respect of any person (including, without limitation, a partnership), a person (including, without limitation, a partnership) which directly or indirectly, controls, is controlled by, or is under common control with such person. For the purpose of this definition "control" means control in fact, whether by ownership of sufficient voting securities to elect a majority of the directors of a corporation, by owning a 50% or more partnership interest in an ordinary partnership, by being the general partner of a limited partnership, by contract or otherwise.

"**Business Day**" means any day other than a Saturday, Sunday or a statutory holiday in Calgary, Alberta.

"**Buyer**" means the buyer of Product as specified in the Specific Provisions.

"**Deficiency Fee**" shall have the meaning specified in the Specific Provisions.

"**Delivery Point**" shall have the meaning specified in the Specific Provisions.

"**Effective Date**" shall have the meaning specified in the Specific Provisions.

"**Force Majeure**" shall have the meaning specified in Section 10 of these GTCs.

"**Laws and Regulations**" means all laws, rules, regulations, statutes, codes, ordinances, orders, decrees, and/or other requirements applicable to the Parties or Product that are promulgated from time to time, and are being enforced, by any judicial, legislative, administrative, regulatory or other authority, ministry, department, commission, or agency, having jurisdiction over the subject matter in question, including any amendments and/or substitutions that may come into effect during the term of this Agreement.

"**Losses**" means any losses, costs, charges, assessments, damages, liabilities and expenses (including reasonable legal fees) incurred by a Party hereto.

"**Party**" shall refer to Buyer or Seller, as applicable, and "**Parties**" shall refer to Buyer and Seller collectively.

"**Product**" shall have the meaning as specified in the Specific Provisions.

"**SDS**" means a safety data sheet for Product, being a document containing chemical hazard and safe handling information prepared in accordance with the requirements of the Occupational Safety and Health Administration or Health Canada under the Workplace Hazardous Materials Information System or any successor entities or other equivalent U.S. or Canadian government agencies serving the same function.

"**Seller**" means the seller of Product as specified in the Specific Provisions.

## 2.0 DELIVERY

- 2.1** Unless otherwise specified in the Specific Provisions, delivery shall be deemed to have occurred in accordance with the following:
- 2.1.1** Where the Delivery Point is where Product is being loaded onto a ship or barge, delivery shall occur when Product has passed the vessel's loading flange;
  - 2.1.2** Where the Delivery Point is where Product is being unloaded from a ship or barge, delivery shall occur when Product has passed the vessel's discharge flange;
  - 2.1.3** Where the Delivery Point is where Product is loaded onto a rail tank car, delivery shall occur when the carrier accepts the same for shipment;
  - 2.1.4** Where the Delivery Point is where Product is unloaded from a rail tank car, delivery shall occur when the carrier delivers same at the destination;
  - 2.1.5** Where the Delivery Point is where Product is being delivered by a pipeline, delivery shall occur when Product has passed the flange of the meter measuring Product for delivery as set forth in the Specific Provisions;
  - 2.1.6** Where the Delivery Point is where Product is being loaded onto a tank truck, delivery shall occur when Product enters the tank truck's loading equipment; and
  - 2.1.7** Where the Delivery Point is where Product is being unloaded from a tank truck, delivery shall occur when Product exits the tank truck's delivery equipment.
- 2.2** When an in-line Product transfer occurs, delivery shall be deemed to have been completed upon execution of the order by the pipeline carrier and/or storage operator.
- 2.3** Title to Product and risk of loss shall pass to Buyer upon delivery at the Delivery Point. After completion of delivery of Product by Seller, the handling, care or use of Product shall be at Buyer's sole risk and expense, and Seller shall not be liable to Buyer for reductions in quantity or degradation of quality of such Product.
- 2.4** The Parties shall comply with all applicable requirements and procedures of any terminal or other facility at which Product is delivered under the Agreement. In the event of a conflict between this Agreement and the requirements and procedures of any facility, the facility requirements shall apply.
- 2.5** Rail Car Demurrage: If Seller's railway tank cars are used by Buyer for transportation, Seller will allow Buyer a period of five (5) days (one day equals twenty four (24) hours), including Saturdays, Sundays and statutory holidays) for off-loading the tank cars commencing at (a) 7:00 a.m. at the unloading location, of the first morning following notification to Buyer (or Buyer's consignee) by the delivering railroad that a tank car is available for placement; or (b) if notification is not given by the delivering railroad, such time as the tank car is delivered to Buyer's (or Buyer's consignee's) off-loading facilities. Upon the expiration of such five (5) day period, Buyer will pay Seller a detention charge until such time as the tank car has been returned to the delivering railroad or otherwise placed in accordance with written instructions for Seller. The detention charge for each day (or part of a day) after the five (5) day period in this Section shall be \$150.00 per tank car. Any claim by Buyer for a reduction of such detention charges must be supported by certified railway arrival and release documents. All diversion charges, additional freight charges and any other costs or expenses incurred, sustained or paid by Seller resulting from such diversion shall be for the account of Buyer. Unless otherwise provided, Buyer shall be responsible for all switching, freight, demurrage, special handling, storage, detention, and additional charges associated with each tank car. All Plains Midstream Canada ULC operated facilities will charge a storage fee of \$400 per day for all third party cars that arrive at such facility and do not have orders placed against them.
- 2.6** Miscellaneous:
- 2.6.1** Equipment: Equipment supplied by either Party for the transportation of Product shall be in a safe, clean, suitable condition for loading and unloading. Such equipment and the shipment of Product shall be in compliance with all applicable Laws and Regulations. Where either Party provides tank trucks for transportation of Product, that Party's carrier and drivers must be acceptable to the operator of the loading facility, acting reasonably, and must comply with such operator's loading and safety procedures. The operator of the loading facility, acting reasonably, may deny access to any driver or carrier that disregards applicable loading and safety procedures.
  - 2.6.2** Pipelines: When deliveries are made on pipelines, the Party having title to Product will be responsible for all transportation, loss allowance, physical loss, component balancing losses, movement and scheduling charges and any other fees as invoiced by or through the pipeline.

- 2.6.3** Partial Shipments: When deliveries are made into railway tank cars or truck tanks, neither Party is obligated to load or ship partially filled tanks or tank cars.
- 2.6.4** Diversion: The Parties will not divert the other Party's tank cars or consign them to any other routing or to any other destination than that set out in the return billing instructions without obtaining the prior written consent of the other Party, provided however that where Buyer's railway tank cars are to be used for transportation of product loaded at Seller operated facilities, Seller may require that orders be placed no less than seventy-two (72) hours prior to car arrival. If orders are not provided seventy-two (72) hours in advance, Seller reserves the right to request cars be diverted. In the event cars cannot be diverted and are delivered to a Seller facility where orders cannot be provided, Seller may rebill cars either to a destination of Buyer's choosing or return them to origin at the sole cost of the Buyer. This cost may include, without limitation, freight, switching, administration, storage, tax and fuel surcharges.
- 2.6.5** Geographic Area: Any shipments in the other Party's tank cars to destinations outside of Canada and the United States will first require the other Party's consent; any shipments in the other Party's tank cars to Hawaii or Alaska require other Party's written prior approval and the other Party may withhold consent for any reason.
- 2.6.6** Return of Tank Cars: Both Parties shall agree that the other Party's railway tank cars are returned to their point of origin or other mutually agreed location, empty of liquid, in a safe condition, and in the same repair in which received, ordinary wear and tear excepted. It is agreed that the tank cars will not be used for any other purpose after offloading and before being returned and it is specifically understood that at such time, in no event will the tank cars be filled with any quality and specification of Product other than those specified in this Agreement. Subject to any applicable tank cars leases and/or subleases, Seller shall be solely responsible for all charges incurred by Buyer resulting from damage and/or contamination, including but not limited to cleaning, restoring, and repairing such tank cars to safe condition, unless the charges have been incurred because of Buyer's negligence or wilful misconduct.
- 2.6.7** Tank Car Nomination: Where shipments are in rail cars from Seller's facility, the other Party shall provide shipment nominations to Seller on or before the applicable day of the month prior to intended shipment as set forth in the Crude Oil Logistics Committee calendar, or in the absence of such date, the fifteenth (15<sup>th</sup>) day of the month prior, so Seller can ensure effective railcar placement. Seller may accept changes to nominations made after the nomination deadline in its sole discretion.

### **3.0 APPORTIONMENT**

- 3.1** Apportionment Not Due to Force Majeure: Should any carrier at any time during the term of this Agreement be required to apportion its facilities for delivery or acceptance of Product and such apportionment affects the ability of the Parties to fulfil their obligations hereunder, the quantity of Product required to be delivered or accepted under this Agreement may be reduced by the same proportion as the carrier apportionment, and such reduction shall be deemed accepted by both Parties. The Parties shall use commercially reasonable efforts to mitigate the effect of the apportionment or curtailment. Nothing contained herein shall require the parties to obtain Product from any source or deliver or receive Product at any other location during any period of apportionment, or to make up any quantity of Product they would otherwise have been obligated to sell and purchase during any period of apportionment.

### **4.0 QUANTITY MEASUREMENT**

- 4.1** Quantity: The quantity of Product to be delivered under this Agreement is set forth in the Specific Provisions.
- 4.2** Measurement: Seller shall cause Product to be gauged or metered using accurate measurement equipment and procedures that are recommended industry practices or regulatory standard in the industry at the time of measurement. Metering equipment shall be verified and calibrated according to the latest applicable API or ASTM standards or regulatory standards. Measurement calibration accuracy shall be verified not less frequently than once every three (3) months. Buyer shall be entitled to observe any verification or calibration at its own cost and expense. The quantity of Product delivered under this Agreement shall be measured at the location where the Product is loaded into the transportation equipment as follows:

- 4.2.1 in the case of delivery into tank car, by means of a magnetic gauge rod (or if not available, a slip tube gauging device) and applicable outage tables;
- 4.2.2 in the case of delivery into tank trucks, by means of a weight scale or metering device; and
- 4.2.3 in the case of delivery into pipelines, storage facilities or truck terminals by meter or other mutually accepted method or device.

- 4.3 Witnesses: Measurement of Product may be witnessed by representatives of Buyer and Seller, each for the account of the Party requesting same. If Buyer has no witness present, measurements conducted by Seller or at Seller's direction shall be deemed to be correct, absent manifest fraud or gross negligence.
- 4.4 Adjustments and Corrections: Adjustments and corrections shall be made to volume and density to correspond to standard conditions of sixty (60) degrees Fahrenheit or fifteen (15) degrees Celsius and account for any basic sediment and water present.
- 4.5 Accuracy: The signature of Seller's and Buyer's representatives on the delivery ticket evidencing the measurements shall be considered by all Parties as conclusively establishing the accuracy of such measurements absent manifest fraud, a material calculation error, or the detection of a material API or ASTM procedural problem.
- 4.6 Claims: Any claims relating to quantity and/or quality shall be made by notice to the other Party immediately after the date when the facts were discovered or should have been discovered but no later than ninety (90) calendar days after delivery.

## 5.0 TAXES

- 5.1 Obligations: Seller shall pay or cause to be paid any and all taxes, assessments, charges and other similar amounts imposed by Laws and Regulations in relation to Product prior to its delivery to Buyer. Buyer shall pay or cause to be paid any and all taxes, assessments, charges and other similar amounts imposed under Laws and Regulations in relation to Product upon and after its delivery to Buyer. In the event Seller is legally obligated to collect taxes, assessments or charges from Buyer, Seller shall have full authority to collect from Buyer.
- 5.2 Prices Exclusive: Buyer acknowledges that the prices contained in this Agreement are exclusive of all taxes, assessments and charges imposed under Laws and Regulations.
- 5.3 Exemption: If Buyer is exempt from any taxes, assessments or charges imposed under Laws and Regulations, Buyer shall furnish Seller with a valid and properly completed resale or exemption certificate in the form prescribed by the appropriate taxing authority. Pursuant to the foregoing sentence, Buyer shall indemnify Seller for any liability or expenses which Seller may incur for payment of taxes, assessments and charges related thereto, including as a result of Buyer's failure to:
  - 5.3.1 timely provide Seller with an exemption or resale certificate; or
  - 5.3.2 provide a valid and properly complete resale or exemption certificate in the form prescribed by the appropriate taxing authority.
- 5.4 Business Number, Federal Employer Identification Number and/or Provincial or State Registration Numbers: Buyer represents that it holds all applicable tax registrations to purchase, exchange, use, resale, transport or handle the Product. Buyer shall furnish Seller with the appropriate registration numbers for all applicable jurisdictions in which business is conducted. Buyer shall promptly notify Seller of any change in registration status in applicable jurisdictions where business is conducted. Further, Buyer shall furnish its federal employer identification number to Seller upon request. The notifications required by this Section 5.4 must be received by Seller within fifteen (15) days of execution of the Specific Provisions otherwise Seller will invoice Buyer for any applicable taxes.
- 5.5 Value Added Type Tax: If any additional sum of money becomes payable by either Party as a result of a breach, forfeiture, modification or termination of this Agreement, the amount payable shall be increased by any applicable value added tax, sales tax or other similar tax which is required to be remitted by the recipient in respect of that payment and shall be paid to the recipient within fifteen (15) days of receipt of notice of such amount.
- 5.6 Indemnities: Seller shall indemnify Buyer against any liability and expense in excess of the amount of any tax due that is incurred by Buyer by reason of Seller's failure to properly remit the tax to the proper government agency. If Seller recovers a refund or credit of any taxes paid to Seller by Buyer with respect to the sale of the Products herein described or of any taxes measured by the price of goods or services or the gross receipts from the sale, then Seller shall refund to Buyer the full amount of the refund or credit.

Buyer shall indemnify Seller against any liability and expense that is incurred by Seller by reason of Buyer's failure to properly pay any taxes owing hereunder.

## **6.0 PAYMENT**

- 6.1 Invoice and Payment:** Unless otherwise provided in the Specific Provisions or these GTCs, Seller will invoice Buyer after the end of each delivery month for all Product delivered during such month, and payment for Product shall be made by Buyer on the twenty fifth (25<sup>th</sup>) day of the month following the month of delivery, and will be made via electronic funds transfer unless otherwise directed. If the payment date falls on a Saturday or a non-Monday bank holiday, payment will be due on the preceding Business Day. If the payment date falls on a Sunday or a Monday bank holiday, payment will be due on the next Business Day. Payment shall be deemed to be made on the date good funds are credited to Seller's account at Seller's designated bank.
- 6.2 Currency:** Unless otherwise specified, all monetary amounts under the Agreement shall be in United States dollars.
- 6.3 Interest:** If Buyer fails to make any payment when due, Seller shall have the right to charge interest on the amount overdue at a per annum rate compiled from the due date to the date of payment at an annual rate equal to the lesser of (a) four percentage points above the annual rate of interest published by Bank of Nova Scotia from time to time as its prime rate of interest, and (b) the maximum rate of interest allowed by Laws and Regulations.
- 6.4 Disputed Amounts:** If on any invoice or statement provided by a Party, the other Party reasonably and in good faith disputes any item, then within ten (10) Business Days of the date of such invoice or statement, the disputing Party shall notify the other Party of the item in dispute. All such billing disputes shall be resolved pursuant to the terms and conditions, if any, of the Specific Provisions or otherwise the Parties shall work together in good faith to resolve the dispute. All undisputed amounts shall be paid without delay and amounts not paid at or before the time provided in these GTCs will be subject to interest as provided for herein.
- 6.5 Offset:** If in respect of any month amounts are due and owing, or past due and owing, under this Agreement or under any other agreements or transactions with respect to any petroleum products or by-products, or any transportation, storage or processing services, or other similar agreements or transactions, the Parties shall net all such amounts such that the Party owing the greater amount shall make a single payment of the net amount to the other Party in accordance with Section 6.1. In the event that the Parties have executed a separate netting agreement, the terms and conditions therein shall prevail. No Party shall refuse to participate in the netting process, if applicable, because of a disputed invoice, however if any amount is being disputed, then such disputed amount will not be used for purposes of computing the net balance.
- 6.6 Financial Assurances:** At any time during the term of this Agreement, where such information is not publicly available, a Party may request that the other Party provide such information as the requesting Party may reasonably require to evaluate the financial security of the other Party, in respect of that Party's financial obligations hereunder. Such information may include, without limitation, audited annual financial statements, unaudited quarterly financial statements, liquidity position updates and an organizational chart for the Party and its Affiliates. Such information shall be provided to the requesting Party within ten (10) Business Days of receipt of the request.

If at any time during the term of this Agreement, a Party has reasonable grounds for insecurity regarding the payment, performance or enforceability of any obligation of the other Party under this Agreement, the requesting Party may demand and the other Party shall provide and maintain, at its sole cost, security in a form, substance and amount acceptable to the requesting Party, acting reasonably, which may include, without limitation, a standby irrevocable letter of credit, prepayment or parental guarantee. Maintaining security shall include, without limitation, provision of further security as reasonably required by the requesting Party, and replacing existing security prior to its expiry, or where such security has been disclaimed, repudiated, withdrawn or rejected by the issuer of such security, or where the validity or enforceability of such security has been challenged. Security shall be provided to the requesting Party within five (5) Business Days of receipt of the demand for security. If the financial assurance provided is in the

form of a letter of credit, the letter of credit shall be renewed or replaced no later than five (5) Business Days prior to its expiry.

## **7.0 WARRANTIES, INDEMNIFICATION AND LIABILITY LIMITATION**

**7.1** Seller Warranties: Seller represents and warrants to Buyer that:

**7.1.1** Seller has full right and authority to sell and deliver Product to Buyer hereunder, and to receive payment therefor;

**7.1.2** Product will be acquired by Buyer free and clear of all royalties, liens, charges, encumbrances and adverse claims; and

**7.1.3** Product has been handled and transported to the Delivery Point hereunder in accordance with the Laws and Regulations, and complies with specifications as agreed to between the Parties.

Seller shall indemnify and save harmless Buyer from and against any and all Losses arising out of any breach of the representations and warranties made in this Section 7.1 (including third party claims or actions to which Buyer is made a party). In the event Product is transported from the Delivery Point by pipeline, Seller shall be responsible for complying with the rules and regulations and other requirements of the downstream pipeline as if it were the shipper, and shall indemnify Buyer from any charges or other liabilities imposed upon Buyer by the pipeline as a result of Seller's failure to comply with such requirements.

**7.2** Refusal to Accept Delivery: In addition to Buyer's other remedies hereunder or at law, Buyer may refuse to accept delivery of any Product tendered in breach of this Section. Subject to confirmation that Seller furnished nonconforming Product accepted by Buyer, Seller will, upon written proof thereof, and provided that such written proof is received within ten (10) calendar days of delivery, replace the nonconforming Product or, at Seller's option, refund the purchase price. Seller shall be responsible for any and all costs incurred by Buyer as a result of delivery of non-conforming Product.

**7.3** Warranty Disclaimer: EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT, BUYER AND SELLER AGREE THAT ALL WARRANTIES IN RESPECT OF QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY OF THE PRODUCT, WHETHER EXPRESS OR IMPLIED (INCLUDING WARRANTIES IMPOSED BY STATUTE) ARE HEREBY EXCLUDED AND DISCLAIMED BY SELLER.

**7.4** Seller Indemnification: Seller shall indemnify and save harmless Buyer, its Affiliates, and each of their its directors, officers, employees, contractors, consultants, agents and advisors from and against any and all Losses on account of injury or death of persons and/or damage to property directly caused by or attributable to Product or to its transportation, carriage, handling, care, storage, resale, consumption or use prior to delivery hereunder at the Delivery Point, other than Losses caused by the negligence or wilful misconduct of Buyer or its Affiliates; provided that where such Loss is the result of the joint negligence or misconduct of the Parties, or their respective Affiliates, the Parties expressly agree to indemnify each other in the proportion to their respective share of such joint negligence or misconduct.

**7.5** Buyer Indemnification: Buyer shall indemnify and save harmless Seller, its Affiliates, and each of their directors, officers, employees, contractors, consultants, agents and advisors from and against any Losses on account of injury or death of persons and/or damage to property directly caused by or attributable to Product or to its transportation, carriage, handling, care, storage, resale, consumption or use at and after delivery hereunder at the Delivery Point, other than Losses caused by the negligence or wilful misconduct of Seller or its Affiliates; provided that where such Loss is the result of the joint negligence or misconduct of the Parties or their respective Affiliates, the Parties expressly agree to indemnify each other in the proportion to their respective share of such joint negligence or misconduct.

**7.6** LIMITATION OF LIABILITY: **NOTWITHSTANDING ANYTHING ELSE IN THESE GTCS AND EXCEPT FOR THIRD PARTY CLAIMS, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY ACTUAL OR PROSPECTIVE LOSS OF PROFIT, REVENUE, OR BUSINESS, WHETHER DIRECT, INDIRECT OR CONSEQUENTIAL, OR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECULATIVE, CONSEQUENTIAL OR OTHER SIMILAR LOSSES, HOWEVER SAME MAY BE CAUSED.**

**7.7** Subrogation: To the extent payment is made by an indemnifying party at any time pursuant to this Agreement, an indemnifying party shall be subrogated to the indemnified party's rights and may receive an assignment of rights of recovery for a loss or cost.

## **8.0 COMPLIANCE WITH LAWS, RULES, REGULATIONS AND ORDERS**

**8.1** Applicability: This Agreement shall be subject to all Laws and Regulations.

**8.2** Compliance, Generally: The Parties agree to comply with all Laws and Regulations.

**8.3** New or Changed Laws and Regulations: The Parties enter into the Agreement relying upon: (i) the Laws and Regulations; (ii) tariffs and other charges of transporters' pipelines; and (iii) the agreements, arrangements and concessions entered into with the government, government agencies or other governmental entities in effect on the date the Specific Provisions were agreed upon, as the case may be (collectively referred to as "Regulations"). If at any time during the term of the Agreement, there is a change in any Regulations or in the enforcement of any Regulations and the change has an adverse economic effect on Seller or any of its suppliers or Buyer or any of its customers, and such change is not addressed by any other provision of the Agreement, then either Party at its option may provide written notice to the other Party of adjusted Agreement terms to reflect the change(s) and listing the reason(s) for such change(s). If the Parties fail to agree to new terms within thirty (30) days of the notice, either Party may terminate the Agreement without liability. Any deliveries made during the thirty (30) day period shall be at the originally agreed terms and price.

**8.4** Export Compliance: The exporter of record is responsible for complying with all U.S./Canadian export requirements, fulfilling all licensing requirements, filing through the Automated Export System ("AES") and complying with the export requirements of other participating agencies. If required, Seller shall supply necessary information to Buyer to enable Buyer or its authorized agent to complete all necessary export documentation, including AES, commercial invoice and pro forma invoice documentation and packing lists. Buyer will not export, re-export, transship, divert or resell Product under this Agreement in violation of U.S./Canadian export Laws and Regulations. The Parties acknowledge that any willful or negligent conduct resulting in a violation of U.S./Canadian export Laws and Regulations may be sanctionable under applicable criminal and civil laws.

**8.5** Import Compliance: The importer of record shall be responsible for compliance with all Laws and Regulations. Both Parties shall exercise commercially reasonable efforts to provide supporting documentation.

**8.6** Free Trade Agreement: Except where Seller provides a certificate of origin or a written representation from an eligible party, as applicable: (a) Seller makes no representation or warranties for favorable treatment under any free trade agreement; and (b) if Buyer faces additional duties as a result of Product not being considered eligible for the free trade agreement preferential duty treatment such costs shall be for Buyer's account. Where Seller claimed Product sold hereunder qualified for preferential duty treatment and such Product is subsequently found to be ineligible, Seller shall reimburse Buyer for any customs duties, taxes, fees, interest and penalties incurred by Buyer as a result of such Product being found to be ineligible for preferential duty treatment.

## **9.0 SAFE HANDLING**

**9.1** Acknowledgement of Buyer: Buyer acknowledges and agrees that Seller has provided to Buyer its current SDS and Buyer is aware that Product is a hazardous material and warrants that it is familiar with the properties of and safe handling procedures for the storage, handling, transportation and use of the Product.

**9.2** Compliance: Both Parties shall comply with all safety and health related Laws and Regulations concerning Product.

## **10.0 FORCE MAJEURE**

**10.1** Force Majeure Events: "Force Majeure" means an event, whether foreseeable or unforeseeable, and beyond the reasonable control of a Party hereto and which, by the exercise of due diligence, could not have been prevented or overcome by that Party, and shall include without limitation:

**10.1.1** lightning, earthquakes, fires, storms, floods, landslides, washouts, perils of the sea, pandemics, and other acts of God;

**10.1.2** strikes, lockouts, picketing, differences with workers, and other industrial disturbances;

**10.1.3** acts of public enemies, acts of terrorism, sabotage, arrests and restraints, war, riot, insurrections, blockades, interferences of civil and military authority, or other civil disturbances;

- 10.1.4 government, regulatory, administrative, or judicial actions, restraints, decisions and orders or changes in Laws and Regulations that directly affect this Agreement;
- 10.1.5 interruption, shut-downs, breakage or accident to machinery or lines of pipe or process units, breakdown of transportation facilities, pipeline rupture, stoppage or pro-rationing of transportation service by third party transporters only in the event such transporter is claiming an event of Force Majeure;
- 10.1.6 fires, explosions, obstructions of, freezing, breakage of or accidents to Product production, gathering or processing facilities.
- 10.2 Exceptions to Force Majeure: Notwithstanding Section 10.1, Force Majeure shall not include:
  - 10.2.1 any events caused by lack of finances of the Party claiming the event of Force Majeure;
  - 10.2.2 any events caused by the gross negligence of the Party claiming Force Majeure;
  - 10.2.3 the availability of a more attractive market;
  - 10.2.4 failure to meet quality specifications where Product was produced by the Party claiming Force Majeure;
  - 10.2.5 currency fluctuations, changes in interest rates or banking charges;
  - 10.2.6 a loss of Seller's supply of Product, except as provided in Section 10.1; and
  - 10.2.7 lack of economically recoverable reserves or voluntary changes in drilling or development plans.
- 10.3 Effect of Force Majeure:
  - 10.3.1 A Party shall not be required to perform its obligations hereunder for so long as and to the extent, such Party is hindered in or prevented from performance by an event of Force Majeure. Nothing contained herein shall require the parties to make up any quantity of Product they would otherwise have been obligated to sell and purchase during any period when an event of Force Majeure was validly claimed.
  - 10.3.2 A Party will not be entitled to rely on these Force Majeure provisions unless prompt notice is given to the other Party specifying the cause of the delay or non-performance and unless that Party attempts to rectify such cause as soon as possible, provided that the terms of settlement of any strikes, lockouts, picketing, differences with workers, and other industrial disturbances shall be in the discretion of the affected Party.
  - 10.3.3 Notwithstanding the foregoing, nothing contained herein shall relieve Buyer of any of its obligations to make payments to Seller under the Agreement by the applicable due date for such payment.
  - 10.3.4 If applicable, Buyer or Seller as appropriate shall apply to the delivering pipeline or any other entity for relief from any penalties charged by the pipeline or other entity resulting from such event of Force Majeure.
- 11.0 **DEFAULT, SUSPENSION AND TERMINATION**
- 11.1 Event of Default: The occurrence of any of the following with respect to a Party (the Party in respect of which the event occurs being the "**Defaulting Party**") shall constitute an event of default ("**Event of Default**") hereunder:
  - 11.1.1 A Party fails to deliver or take delivery of Product, as applicable, in accordance with the provisions of this Agreement and such failure is not excused by any other provision of this Agreement;
  - 11.1.2 A Party fails to pay when due any amount payable hereunder;
  - 11.1.3 A Party defaults in the performance of any of its other material obligations under this Agreement, including but not limited to providing financial assurances or financial information in accordance with Section 6.6;
  - 11.1.4 A petition is filed with a court having jurisdiction or an order is made or an effective resolution is passed for the dissolution, liquidation or winding up of a Party or its parent entity;
  - 11.1.5 A Party or its parent entity becomes insolvent or is adjudged bankrupt or makes an assignment for the benefit of its creditors or does not pay or is, in the other Party's reasonable opinion, expected to be unable or unwilling to pay its debts as the same become due;
  - 11.1.6 A receiver is appointed or an encumbrancer takes possession of the whole or a significant part of the assets or undertaking of a Party or its parent entity;



- 11.1.7** A Party or its parent entity ceases or threatens to cease to carry on its business or a major part thereof, or a distress, execution or other process is levied or enforced or sued out upon or against any significant part of the property of Buyer or its parent entity; or
- 11.1.8** A Party institutes or has instituted against it, a proceeding under any bankruptcy or insolvency law or other similar law affecting creditors' rights, including without limitation, the *Bankruptcy and Insolvency Act* (Canada), the *United States Bankruptcy Code* and the *Companies' Creditors Arrangement Act* (Canada);

**11.2** Default: If an Event of Default occurs under Sections 11.1.1, 11.1.2 or 11.1.3, the non-Defaulting Party shall as soon as reasonably possible after discovery of the Event of Default, and before pursuing any remedy, give notice of the Event of Default to the Defaulting Party at the address set forth in the Specific Provisions (the "**Default Notice**"). The Default Notice shall include with specificity the Event of Default and a manner in which the Defaulting Party may cure the Event of Default.

**11.2.1** Right to Cure/Remedy: In the event of any failure to pay any amount when due, or the failure to provide or maintain financial assurances or provide financial information in accordance with Section 6.6, the Defaulting Party shall have five (5) Business Days after receiving the Default Notice to remit payment to the other Party or correct any deficiencies with respect to the financial assurances. In the event of any other Event of Default described in Section 11.1.1 or 11.1.3, the Defaulting Party shall have twenty (20) Business Days after receiving the Default Notice to cure/remedy the specified breach.

**11.2.2** Failure to Cure/Remedy: If the specified breach is not remedied or if substantive action has not been commenced to remedy such Event of Default (which action is not thereafter diligently pursued until remedied) within the time period specified in Section 11.2.1 above, the non-Defaulting Party may, in addition to any other remedies available hereunder or at law, proceed with one or more of the following options (i) immediately suspend delivery/receipt of the Product and the performance of its other obligations hereunder; (ii) apply the proceeds from or otherwise realize upon any financial assurances provided by the Defaulting Party; (iii) withhold any payments or deliveries due to the Defaulting Party under this Agreement or any other transaction between the Parties; and (iv) on at least 1 but no more than 20 days written notice to the Defaulting Party terminate the Agreement and designate a day to be the "Early Termination Date". If Seller is the non-Defaulting Party, and pursuant to the provisions of this Section 11.2, Seller withholds, reduces or suspends deliveries of Product, then Seller shall be under no obligation to make up any quantity of Product that would have been delivered to Buyer without such withholding, reduction or suspension.

Notwithstanding the foregoing, upon the occurrence of an Event of Default described in Sections 11.1.4, 11.1.5, 11.1.6, 11.1.7, or 11.1.8, all transactions under this Agreement or any other transactions between the Parties using these GTCs shall automatically terminate, the date of such occurrence shall be deemed to be the designated Early Termination Date, all transactions shall be liquidated and the non-defaulting Party shall be entitled to exercise any or all of the rights described in this Section 11.2.

Upon termination of the Agreement under this Section 11.2.2, and on the Early Termination Date, all delivery obligations of the Parties hereunder shall terminate, and the non-Defaulting Party shall in good faith and in a commercially reasonable manner calculate: (i) any amounts that are owed to or by the Parties under all transactions (whether or not then due or invoiced) for all Products delivered and received between the Parties under this Agreement or any other transaction between the Parties that utilize these GTCs, up to the Early Termination Date for which payment has not already been received by the applicable Party (collectively the "Unpaid Amounts"); and (ii) the "Close-out Value" of all transactions completed under this Agreement and provide notice thereof to the Defaulting Party. Unless otherwise agreed to, all calculations performed in this regard shall be in United States Dollars.

"Close-out Value" means the difference between the Market Value and the Contract Value of the affected transactions as at the Early Termination Date, adjusted for any costs or expenses incurred by the non-Defaulting Party in entering into replacement transactions. The "Market Value" of any affected transaction is the present value of the remaining delivery obligations under a transaction as of the Early Termination Date based on then current market prices calculated as the amount or volume of Products remaining to be delivered under a transaction, multiplied by the relevant market price per unit determined by the non-Defaulting Party using the arithmetic average of two price quotes from separate arm's length third parties for the supply or purchase, as applicable, of the relevant Products under a replacement transaction on substantially the same terms and conditions and for the same remaining term of the transaction, calculated as of the Early Termination Date. The "Contract Value" of any affected transaction is the present value of the remaining delivery obligations calculated as the amount or volume of Products remaining to be delivered under a transaction as of the Early Termination Date multiplied by the price for such Product. If the Close-out Value for a transaction is positive, the Party that is the Seller under such transaction shall be obligated to pay the other Party the Close-out Value (net of any amounts owing by the other Party as at the Early Termination Date) of such transaction. If the Close-out Value for a transaction is negative, the Party that is the Buyer under such transaction shall be obligated to pay the other Party the Close-out Value (net of any amounts owing by the other Party as at the Early Termination Date). For the purposes of calculating the present value of the Close-out Values for all affected transactions, such Close-out Values shall be discounted using a commercially reasonable discount rate determined by the non-Defaulting Party.

The Parties shall net all of the: (i) Unpaid Amounts; and (ii) the Close-out Values of all transactions under this Agreement into a single payment obligation (the "Final Close-out Value"). The Party owing the Final Close-out Value shall be obligated to pay such amount to the other Party on or before the third (3<sup>rd</sup>) Business Day following the receipt by the Defaulting Party of the amount of the Final Close-out Value. The non-Defaulting Party shall be entitled to recover reasonable costs incurred in the collection of any amounts due under this Agreement, including reasonable legal fees and other amounts incurred in connection with any legal proceedings.

The Parties agree that each Agreement entered into under these GTCS, any Specific Provisions, all other transaction documents, and any financial assurances provided with respect thereto shall together constitute: (i) an "eligible financial contract" within the meaning of the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada), and the *Winding up and Restructuring Act* (Canada), as the same may be amended, restated, replaced or re-enacted from time to time; and (ii) a "forward contract" within the meaning of the United States Bankruptcy Code and that the Parties are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.

**11.3** Miscellaneous: Any termination of this Agreement shall be without prejudice to the rights and obligations of each Party as accrued at the date of termination.

## **12.0 ASSIGNMENT**

Neither Party shall assign this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, both Parties may assign this Agreement without the prior written consent of the other Party if such assignment is to an Affiliate of such Party provided that, the assigning Party shall not be relieved of its obligations hereunder until such Party has given notice of such assignment to the other Party. Subject thereto, this Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns.

## **13.0 GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta without regard to any conflict of laws provisions, and the Parties irrevocably and unconditionally consents

to submit to the exclusive jurisdiction of the courts located in Calgary, Alberta, for any actions, suits or proceedings arising out of or relating to this Agreement. Each party irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in such court has been brought in an inconvenient forum.

#### **14.0 ENTIRE AGREEMENT; AMENDMENT; WAIVER**

The Parties agree that this Agreement and all annexes, exhibits, and schedules hereto shall constitute the entire agreement between the Parties with respect to the transactions contemplated hereby. Any and all previous agreements and understandings between the Parties regarding the transactions contemplated hereby, whether written or oral, are superseded by this Agreement. Any waiver of any provisions of this Agreement must be in writing and signed by an officer or authorized representative of the waiving party in order to be effective and enforceable; no purported oral waiver or amendment of any requirements and/or provisions of this Agreement shall be effective or enforceable; and no waiver or amendment of any requirements and/or provisions of this Agreement based on course of conduct, course of dealing, or course of performance shall be effective or enforceable. Any amendment of any provision of this Agreement must be in writing and signed by an authorized representative of each of the parties in order to be effective. This Agreement constitutes the entire agreement and understanding of the Parties with respect to the specific subject matter and term hereof.

#### **15.0 SEVERABILITY**

If any provision of this Agreement or the application of any such provision shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof or any subsequent application of such provision. In lieu of any such invalid, illegal or unenforceable provision, the Parties hereto intend that there shall be added, as part of this Agreement, a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible and valid, legal and enforceable.

#### **16.0 CONFIDENTIALITY**

Except as may be necessary to enforce their respective rights under this Agreement, as otherwise may be necessary to respond in any legal proceeding (including any deposition, interrogatory, subpoena, or civil investigative demand), or to comply with the Laws and Regulations of any governmental authority or similar administrative or regulatory authority, or as otherwise provided in this Agreement, neither Party will disclose to any third party, other than the Party's general partner, parents, and Affiliates or its and their respective officers, directors, employees, agents, lenders, auditors and legal advisors, or any prospective purchaser of a Party's interest in this Agreement or all or substantially all of its assets, the terms and conditions of this Agreement. The confidentiality obligations of the parties will survive the expiration or termination of this Agreement for a period of two (2) years.

#### **17.0 NOTICE**

**17.1** Notice: Except for Default Notices, any notice, consent or other communication required or permitted to be given hereunder shall be in writing and shall be given to such Party at its physical or email address set forth in the Specific Provisions, or such other physical or email address as such Party may hereafter specify for the purpose by notice to the other Party, and shall be deemed given when delivered personally or sent by email or overnight mail service, postage prepaid.

**17.2** Notice for Legal Proceedings to Plains: With respect to Plains, any Default Notices or notices required for legal proceedings, in addition to the correspondence as directed by this Section, shall also be given to the following:

Plains Midstream Canada ULC  
 1400 – 607 8 Avenue SW  
 Calgary, Alberta T2P 0A7  
 Attention: Legal Counsel  
 Email: [notices@plainsmidstream.com](mailto:notices@plainsmidstream.com)

**18.0 AUDIT**

At any time up to (but not after) twelve (12) months following a month in which payment was due hereunder, either Party shall have the one time right, at its sole cost and expense, upon forty-five (45) days prior written notice, to have a third party auditor (subject to both Parties' approval and acting in a commercially reasonable manner), audit on that Party's behalf the relevant non-proprietary and readily accessible books, accounts, and records directly related to any invoice or payment of the other Party in order to verify the accuracy of such invoice.

The auditor shall only be permitted to disclose the actual accurate amounts of any such invoice or payment and all other information that an auditor acquires shall be kept strictly confidential. An auditor may be required to enter into a confidentiality agreement if it is deemed necessary by the Party being audited. Under no circumstances may an auditor disclose third-party information, including, but not limited to third-party customer identities and third-party pricing information, to the Party exercising its right for an audit without the written permission of the Party being audited. The Party being audited will have sole discretion whether to permit such disclosure.

Within ninety (90) days of an audit commencing, audit findings, even if not finalized must be communicated in writing to the Party being audited. Within one-hundred and eighty (180) days of an audit commencing, all final audit findings must be presented to the Party being audited. If the auditor determines that the true amount of any invoice or payment being audited is different than the amount of the invoice delivered, or payment made, by a Party, such invoice or payment shall be adjusted to reflect the true amount. Notwithstanding the foregoing, any claim not filed with the appropriate court of law within twenty four (24) months of the date of the invoice or payment in question shall be waived.

**19.0 INTERNATIONAL SALE OF GOODS CONVENTION:**

The United Nations Convention on Contracts for the International Sale of Goods 1980, as amended, superseded or replaced, shall not in any way apply to or govern this Agreement.

**20.0 NO THIRD-PARTY BENEFICIARY**

The provisions of this Agreement are for the benefit of the Parties, their successors and assigns, and will not be construed as conferring any rights to any third party.

**21.0 INSURANCE**

Both Parties to this Agreement agree to procure and maintain or cause its agents, contractors and their subcontractors, including, without limitation, trucking agents, contractors and subcontractors, to procure and maintain insurance coverage in compliance with the requirements of the Laws and Regulations of the state or province in which delivery of the Product will occur with respect to the receipt of Product hereunder and/or any activities related thereto. Both Parties acknowledge and agree that neither Party is insuring the Product or property of the other Party; further any insurance procured, and deductibles associated therewith, shall be carried and paid, as applicable, by each Party as applicable and at its own expense.

**22.0 PROHIBITED GOVERNMENT LISTS**

The Parties declare that neither they nor any authorized agents, customers or other parties receiving benefit under this Agreement are on any denied entity, unverified, debarred, non-proliferation, specially designated nationals or other restricted lists of the governments of Canada or the United States, including but not limited to Global Affairs Canada, the Department of Justice Canada, Department of Commerce (Bureau of Industry and Security), State Department, Department of Treasury or other entity lists.

**23.0 FURTHER ASSURANCES**

Each Party shall do and perform all such acts and things and execute and deliver all such assurances as may be necessary to give full effect to this Agreement.