



## GENERAL TERMS AND CONDITIONS FOR SPOT BREAK BULK HANDLING (FAIRLESS HILLS TERMINAL)

These General Terms and Conditions for Spot Break Bulk Handling (Fairless Hills Terminal) (the “**General Terms and Conditions**”) are made by and between Customer and Kinder Morgan. Kinder Morgan and Customer may be referred to herein individually as a “**Party**” or collectively as the “**Parties**”.

**1. AGREEMENT.** The Handling Terms Confirmation incorporates by reference these General Terms and Conditions. The Handling Terms Confirmation, together with these General Terms and Conditions, shall constitute the Parties’ agreement for the services hereunder (the “**Agreement**”). Any conflict between the Handling Terms Confirmation and these General Terms and Conditions shall be resolved in favor of the Handling Terms Confirmation. Capitalized terms used in this Agreement shall have the meanings set forth in Section 28 of these General Terms and Conditions unless otherwise defined within this Agreement.

### **2. SERVICES, TERM, HOURS, AND DEFINED TERMS**

**2.1 Scope of Services.** Kinder Morgan agrees to perform the Services as set forth in this Agreement at the Terminal, with respect to the handling, loading, unloading, and storage of Customer’s Commodities for the charges set forth on the Handling Terms Confirmation and for the Term.

**2.2 Operating Hours.** The Terminal shall be operated by Kinder Morgan to perform its functions as specified herein during the Operating Hours, except as such hours may be changed from time to time in applicable bargaining agreements between Kinder Morgan and the collective bargaining representatives of Kinder Morgan’s employees or similar agreements. In addition, the Terminal, Kinder Morgan’s Operating Hours and the Services hereunder shall be subject to reasonable delays and closures as required by Applicable Law or by Kinder Morgan, where, in its sole opinion, it deems it is necessary or advisable to do so for repair, maintenance, in the event of adverse weather conditions, or to safeguard the property or personnel located at the Terminal. Required maintenance shall be scheduled in advance so as to minimize interference with the Operating Hours and Kinder Morgan shall provide Customer with a reasonable advance Notice of any such maintenance in order to allow Customer to take into account such maintenance, including without limitation, to allow for Customer to coordinate its scheduling of inbound or outbound deliveries of Commodities. Kinder Morgan shall provide prompt Notice of any delays and closures due to repairs, adverse weather conditions, or to safeguard the property or personnel located at the Terminal.

### **3. OPERATIONS**

**3.1 General.** Customer agrees that the Terminal storage area, as provided herein, shall be used only for the storage of the Commodities. Customer agrees to only deliver to the Terminal Commodities that meet the Commodity Specifications. In addition, Customer agrees not to deliver to the Terminal any Commodity that: (a) would in any way be injurious to the Terminal, (b) would render the Terminal unfit, after cleaning, for the proper storage of any other type of commodity products, or (c) may not lawfully be stored at the Terminal. Customer shall be liable for Claims caused by or resulting from Customer’s failure to meet its obligations in this Section. Kinder Morgan reserves the right to refuse any receipt at the Terminal if a Commodity does not meet the terms of this Section. Customer acknowledges that the Terminal storage area or warehouse designated for use and accepted by Customer is in a clean condition and suitable for the storage of the Commodities. Customer agrees that the storage area shall be returned at the end of the Term in the same clean condition as originally received, normal wear and tear excepted.

**3.2 Additional Storage Capacity.** Kinder Morgan shall not be required to make additional storage capacity available to Customer that is in excess of the Maximum Tonnage of Commodity to be stored. If Customer requests additional storage capacity, such additional storage shall be at Kinder Morgan’s sole discretion, and pursuant to such additional terms and conditions as mutually agreed.

**3.3 Removal of Waste.** At the expiration or termination of this Agreement, or if any Waste is present at the storage area after the removal of Commodities from the Terminal, Customer shall pay for all Waste Disposal Costs incurred by Kinder Morgan at the rates set forth for Additional Services. Kinder Morgan shall utilize Customer’s EPA hazardous waste generator ID number unique for the Terminal location (“**Customer EPA ID**”) to remove and dispose of such Waste in a manner and method at its sole discretion and shall restore the Terminal back to its original condition as originally provided to Customer, normal wear and tear excepted. In addition, if Waste is tendered from vessels or barges, Customer shall arrange, or authorize an agent or representative of the vessel or barge to arrange on Customer’s behalf, for disposal of all such Waste using the Customer EPA ID, and Customer shall pay for all Waste Disposal Costs. Third party Waste disposal services must be approved by Kinder Morgan. If Customer or its authorized representative refuses to arrange for the removal of such Waste, Kinder Morgan shall utilize the Customer EPA ID to arrange for the removal and disposal of such Waste, and Customer promptly shall reimburse Kinder Morgan for all such Waste Disposal Costs in accordance with the rates for Additional Services. **NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY CONTAINED HEREIN AND TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, CUSTOMER HEREBY INDEMNIFIES AND HOLDS HARMLESS KINDER MORGAN AND ITS INDEMNITEES FROM AND AGAINST ANY AND ALL CLAIMS ARISING FROM, RELATED TO, OR CAUSED BY, DIRECTLY OR INDIRECTLY, WASTE DISPOSAL WHETHER CONDUCTED BY OR ON BEHALF OF CUSTOMER, KINDER MORGAN, OR A THIRD PARTY, INCLUDING CLAIMS CAUSED BY THE NEGLIGENCE OF KINDER MORGAN OR A KINDER MORGAN INDEMNITEE.**

**3.4 Additional Equipment.** Upon the prior written approval of Kinder Morgan, any designated fixtures, equipment or appurtenances attached to the Terminal or otherwise placed in the Terminal by Customer or by Kinder Morgan at the request of Customer and paid for by Customer shall be considered Customer’s property during the Term of this Agreement (“**Customer Property**”). Unless otherwise agreed, taxes, insurance, maintenance, and operating costs related to the Customer Property shall be paid by Kinder Morgan and are excluded from the rates charged to Customer for Services. Title to Customer Property shall vest in Kinder Morgan upon expiration or termination of the Agreement unless Kinder Morgan agrees in writing that Customer may remove such Customer Property at that time. Customer agrees to pay for the removal of Customer Property and for all damage to the Terminal or other facilities caused by the removal of any such Customer Property.

**3.5 Damage or Destruction.** If all or any portion of the Terminal dedicated to Customer or utilized to provide Services to Customer is damaged or destroyed and Kinder Morgan’s ability to handle Customer’s Commodity is reduced, the applicable charges set forth in this Agreement, together with Kinder Morgan’s requirement to handle the volume of Commodity in consideration of such charges, shall be proportionately reduced by an amount equal to the capacity that such damaged or destroyed Terminal furnished hereunder constitutes compared to the total Terminal capacity furnished hereunder or as the Services may be otherwise affected, or in a manner otherwise specified herein. This abatement shall continue so long as such damaged or destroyed Terminal or portion thereof is not repaired and

ready for service, or so long as a substitute Terminal location or Services is not provided as permitted in the "Right to Relocate Commodity" paragraph hereof. This provision shall not apply to any damaged or destroyed portion of the Terminal caused by a Force Majeure Event or by Customer. Kinder Morgan may, but shall not be required, to repair or replace any such damaged or destroyed Terminal.

**3.6 Right to Relocate Commodity.** If, during the Term hereof, Kinder Morgan desires to provide a substitute storage location or warehouse at the Terminal, Kinder Morgan may do so provided the transfer of Commodities is at the expense of Kinder Morgan. In such event, Kinder Morgan shall provide reasonable advance notice to Customer of such relocation and Customer shall be entitled to inspect the new storage area or warehouse to determine that it is in a clean condition and suitable for the storage of the Commodities. Any such substitute storage location or warehouse at the Terminal while in use hereunder shall be considered the Terminal location referred to in this Agreement and the terms of this Agreement shall apply to such Terminal location.

**3.7 Terminal Policies.** Customer agrees that it shall comply with all operating policies and procedures that are issued from time to time by Kinder Morgan. Kinder Morgan shall provide Customer with written notification or copies of such policies and procedures at Customer's request.

**3.8 Security/Customs.** Customer shall ensure that all vessels docking at the Terminal are in compliance with all Applicable Laws, including without limitation, the Maritime Transportation Safety Act-ISPS regulations. Customer shall arrange customs clearance of Commodities and shall instruct the customs broker to provide written proof of clearance to Kinder Morgan.

**3.9 Measurement.** The quantity of Commodity handled by Kinder Morgan at the Terminal shall be deemed to be the amount delivered by Customer to the Terminal by the applicable vessel, barge, railcar and/or truck and shall be determined by the respective bill or bills of lading and cargo manifest.

**4. DELIVERY OF COMMODITY.** Customer shall ensure that any Commodity that is delivered to the Terminal shall meet all of the delivery conditions required by the Terminal, including without limitation, the condition that the Commodity is: (a) properly stabilized with appropriate and infestation free dunnage, (b) properly and suitably stowed in an applicable vessel, barge, railcar or truck, (c) substantially free from foreign materials, fines, moisture, metal, trash, debris and other contamination, (d) not a safety hazard, (e) not of a condition that might otherwise damage or slowdown the Terminal's equipment or increase normal and customary handling and storage costs, and (f) otherwise meets the other terms and conditions of this Agreement (the "Required Delivery Conditions"). Kinder Morgan reserves the right to inspect all Commodities in the vessel, barge, railcar, or truck, as applicable, upon arrival and prior to delivery at the Terminal and reserves the right to reject receipt of those Commodities that, in Kinder Morgan's sole and exclusive judgment, do not meet the Required Delivery Conditions. In lieu of rejecting Commodities that do not meet the Required Delivery Conditions, Kinder Morgan may accept receipt such Commodities and assess additional charges for handling and unloading such Commodities at the rates set forth on the Handling Terms Confirmation or as may be otherwise mutually agreed in writing between Customer and Kinder Morgan. Notwithstanding the foregoing or anything to the contrary in this Agreement, Kinder Morgan shall have no responsibility for any inspection, or for any failure to inspect, Commodities or any applicable vessel, barge, railcar or truck, and Customer bears the sole and exclusive responsibility for any and all additional charges, costs or liabilities of any nature related to Kinder Morgan's acceptance, receipt or rejection of Commodities that do not meet the Required Delivery Conditions.

#### **5. SCHEDULING, SPECIAL MARINE PROVISIONS, DEMURRAGE, AND THIRD PARTY ACCESS**

**5.1 Scheduling.** Unless otherwise agreed, Customer shall promptly notify Kinder Morgan in writing, but in no event less than twenty-four (24) hours in advance, of the anticipated arrival of any vessel, barge, railcar or truck, as applicable, for any deliveries and/or receipts of Commodities. Except as otherwise provided herein, all vessels, barges, railcars and trucks shall be discharged and loaded in the order of their arrival in accordance with a "first come, first served" principle, except where changes to this principle are required due to: (a) Applicable Law, (b) an emergency safety situation (or to prevent an emergency safety situation), (c) a slot booking system or other local practice to the contrary that exists at the Terminal, or (d) where reasonably required for the efficient operation of the Terminal or as otherwise determined by Kinder Morgan at its sole discretion. Prior to the delivery by Customer of Commodity to the Terminal, Customer shall provide Kinder Morgan information regarding the amount Tons of Commodity to be delivered, the estimated date of delivery, and any other information reasonably requested by Kinder Morgan and as provided herein.

**5.1.1 Vessel/Barge Scheduling.** Notwithstanding the foregoing scheduling provisions, Customer shall be responsible for scheduling all vessels and barges delivering Commodity to or transporting Commodity from the Terminal. For vessels and barges calling the Terminal: (a) to load Commodity, Customer shall provide Kinder Morgan with a forward shipping schedule and shall advise Kinder Morgan in writing of vessel/barge nominations requesting acceptance, subject to any additional nominating procedures as may be provided in this Agreement or otherwise be required by Kinder Morgan at the applicable Terminal, and (b) to unload Commodity, Customer shall provide a copy of each vessel or barge's manifest to Kinder Morgan at least five (5) days in advance of the arrival of any vessel or barge, or if such voyage is less than five (5) days, Customer shall notify Kinder Morgan in writing upon sailing of the vessel or barge from the load port, setting forth the Commodity quantity loaded thereon. For all vessels and barges calling into the Terminal for whatever purpose, Customer shall provide estimated time of arrival notices ("ETA Notices") in accordance with the Handling Terms Confirmation. Any failure of proper or timely submission of ETA Notices to the Terminal may impact such vessel or barge's loading or unloading priorities and berthing rotation. Notwithstanding any ETA Notice, vessels or barges shall be handled on a first come-first served basis, unless otherwise dictated by local Terminal practice; provided, however, that vessels may, at Kinder Morgan's sole discretion, have preference over barges prior to berthing where the facility is common to both. Berthing of a vessel or barge at the Terminal dock constitutes Customer's declaration that the vessel or barge has declared itself ready to receive or deliver the Commodity. If any vessel or barge fails to vacate any Kinder Morgan Terminal dock upon completion of loading or unloading of Commodities or when otherwise ordered to do so by Kinder Morgan, in its sole discretion, then Customer shall be responsible for all costs incurred by any other vessels or barges which otherwise would be occupying such Terminal dock but for failure of such vessel or barge handling Commodities to timely vacate such dock. Customers utilizing a Terminal dock which handles ocean vessels and that require the use of vessel agents shall nominate and appoint vessel agents who are listed on the most recent Kinder Morgan Approved Agent List, as provided by Kinder Morgan.

**5.2 Special Marine Provisions.** Kinder Morgan does not warrant the safety of any port, channel, fairway, anchorage, Terminal, berth, or dock, or any approach to any Kinder Morgan Terminal, berth or dock, and any and all such warranties, express or implied, are hereby expressly disclaimed. Kinder Morgan shall exercise due diligence to provide a safe berth(s) at which vessels or barges may load, unload and lie safely afloat at the Terminal. Kinder Morgan shall not be deemed to warrant the safety of any berth(s) and shall be under no liability in respect thereof except for loss or damage caused by Kinder Morgan's failure to exercise due diligence as aforesaid. Customer shall be responsible for obtaining port/berth restrictions on vessel draft, length over all, beam and other clearance criteria applicable to the particular port/berth. Customer shall bear all liability in the event the vessel or barge does not comply with port/berth restrictions. In no case shall Kinder Morgan be liable for any damage or loss caused by submerged objects in any port, channel, fairway, or anchorage or for any

damage or loss caused by submerged objects in any approach to a Kinder Morgan berth.

**5.2 Demurrage.** Customer shall not identify Kinder Morgan on any agreement, waybill, bill of lading, receipt, weigh ticket, or other document of title or document accompanying or affecting the carriage or shipment of Commodities as a consignor, consignee, or shipper. Customer shall enter into an agreement with each carrier transporting Commodities to or from the Terminal which provides that (a) Customer shall be solely responsible for any Demurrage Charges, and (b) all Demurrage Charges shall be billed solely and directly to Customer. Notwithstanding anything in this Agreement to the contrary, Kinder Morgan shall not be responsible for any Demurrage Charges. In the event that Kinder Morgan receives an invoice from Customer's carrier, Kinder Morgan shall forward to Customer all invoices received by it from any party delivering or removing Commodities from the Terminal on behalf of Customer and Customer shall promptly pay such invoices. In addition, in the event that Kinder Morgan receives an invoice from a carrier that does not identify the party(ies) which precipitated such charges and Kinder Morgan determines that certain of the charges relate to Customer's carrier, Kinder Morgan may assess an administrative charge equal to twenty percent (20%) of the total charges on such invoice.

**5.3 Customer and Third Party Access.** Kinder Morgan reserves the right, at its sole discretion, to refuse to admit and/or to remove Customer, any of its employees, or any of Customer Third Parties that Kinder Morgan considers to be a risk to the safety or security of the Terminal. Further, Customer agrees that access to the Terminal by any of Customer's Third Party vessels, barges, trucks and railcars or any Third Party sent to the Terminal by Customer to provide services on behalf of Customer is conditioned on Kinder Morgan's approval, in its sole discretion, and such approved Customer Third Parties shall be required to execute Kinder Morgan's Carrier Access Agreement or Kinder Morgan's Facility Access Agreement, as applicable, between Kinder Morgan and the Customer Third Party. Customer agrees: (a) to assist Kinder Morgan in obtaining execution of such access agreements from its Customer Third Parties, and (b) to ensure that such Customer Third Parties maintain insurance at levels similar to those maintained by similar responsible companies in similar industries. **NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY CONTAINED HEREIN AND TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, CUSTOMER HEREBY INDEMNIFIES AND HOLDS HARMLESS KINDER MORGAN AND ITS INDEMNITEES FROM AND AGAINST ANY AND ALL CLAIMS ARISING FROM, RELATED TO, OR CAUSED BY, DIRECTLY OR INDIRECTLY, ACTS OR OMISSIONS OF CUSTOMER THIRD PARTY, INCLUDING CLAIMS CAUSED BY THE NEGLIGENCE OF KINDER MORGAN OR A KINDER MORGAN INDEMNITEE.**

**6. RECEIPTS AND DELIVERIES, CUSTODY TRANSFER AND INVENTORY RECONCILIATION.** For the charges specified in this Agreement, Kinder Morgan agrees to handle the Commodities into and out of the Terminal and to provide facilities necessary to perform such handling and provide storage in accordance with this Agreement. All receipts and deliveries of Commodities shall be arranged by Customer, and Kinder Morgan shall be responsible only to receive or discharge the Commodities at its designated Terminal facilities from or to those vessels, barges, railcars, or trucks which Kinder Morgan determines to be compatible with Kinder Morgan's handling facilities. In particular, all receipts of any Commodities from any vessel, barge, railcar, or truck shall be arranged for and provided by Customer. In receiving Commodity from a vessel, barge, railcar, or truck, Customer shall be responsible for Commodity until it is offloaded from such vessel, barge, railcar, or truck. In delivering Commodity to a vessel, barge, railcar, or truck, Customer shall be responsible for the Commodity as soon as it is loaded onto such vessel, barge, railcar, or truck. In no event shall Kinder Morgan be responsible for any loss or damage of any kind to Commodity before the Commodity is offloaded from or after it is loaded onto the transporting vessel, barge, railcar, or truck, as the case may be. Customer shall be solely responsible to inspect or survey each vessel, barge, railcar and truck to be used in the shipment of the Commodities to or from the Terminal, as applicable, for cleanliness and suitability and to determine the suitability of such vessel, barge, railcar or truck, as applicable, for transporting Commodity. Kinder Morgan shall have no responsibility or duty to determine the suitability or cleanliness of any vessel, barge, railcar or truck which transports Commodities. Customer shall ensure that on arrival at the Terminal the Commodity is in a condition that it is able to be discharged immediately without delay or restriction. Kinder Morgan retains the right to stop or pause the discharging or loading of Commodities from any vessel, barge, railcar, or truck for safety or emergency reasons or otherwise to comply with Applicable Law. With respect to Commodities that are discharged or loaded onto a vessel or barge, Customer shall ensure that, as soon as the vessel or barge has moored alongside a berth designated by Kinder Morgan and Kinder Morgan has declared itself ready to receive or deliver the Commodity, the discharging or loading of the vessel or barge shall commence. Unless otherwise agreed, Kinder Morgan agrees to furnish only inbound and outbound reports upon receipt or delivery and reports as to the quantity received, handled and in storage on Kinder Morgan's reporting forms.

**7. PAYMENTS.** For all charges for storage of Customer's Commodities, as set forth on the Handling Terms Confirmation, Customer shall pay Kinder Morgan all such charges according to the Payment Terms. Customer shall pay Kinder Morgan for all other fees, expenses, and charges specified in this Agreement within fifteen (15) Days of the date of invoice from Kinder Morgan detailing such charges. Kinder Morgan may send invoices for fees, expenses, and other charges as soon as it receives Commodities at the Terminal. All Kinder Morgan invoices shall be sent to Customer at the address specified as Customer Billing Information. If any payment required under this Agreement is not paid when due, it shall bear interest at the rate of one and one-half percent (1.5%) per Month for each Month or portion of a Month thereafter during which such overdue amount remains unpaid. Unless otherwise agreed in writing, all payments shall be made to Kinder Morgan via wire transfer to a designated Kinder Morgan account as provided to Customer by Kinder Morgan. Customer shall identify by number the Kinder Morgan invoices being paid in the wire transfer comments. Customer shall be responsible to pay any bank charges incurred by Customer when remitting funds via wire transfer. Acceptance by Kinder Morgan of any payment from Customer for any charge or service at any time shall not be deemed a renewal of this Agreement or waiver by Kinder Morgan of any Event of Default by Customer hereunder. Customer agrees that Kinder Morgan shall not be obligated to provide any Services under this Agreement when Customer fails to pay invoices when due. In the event Customer in good faith disputes any portion of an invoice, Customer shall promptly notify Kinder Morgan in writing of the disputed portion and pay the undisputed portion according to the terms of this [Section 7](#). The Parties agree to use commercially reasonable efforts to promptly resolve any disputed invoices. Customer shall not withhold or offset any invoice amounts in dispute related to claims for lost or damaged Commodities.

**8. TAXES AND ASSESSMENTS.** Customer agrees to pay all taxes and assessments that may be assessed by any Governmental Authority against any Commodity, including Waste, on property of Customer or against Kinder Morgan (except for income, franchise and real estate taxes) with respect to the receiving, storing, handling, shipping or disposing of any Commodity, Waste or property of Customer. Customer further agrees to pay any existing or newly created or undisclosed tax in the form of a so-called "value added" tax, sales tax, rent tax, excise tax, service charge or similar tax assessment. In addition, Customer shall pay its direct costs or pro rata share of any inventory or use tax or so-called spill tax, pollution control tax or emission fee which may be assessed against the Terminal, any Commodity, any Waste, the charges hereunder or against the service to be performed by Kinder Morgan hereunder. Furthermore, Customer shall reimburse Kinder Morgan for any taxes or charges Kinder Morgan may be required to pay in regard to the Commodity, Waste or property of Customer.

**9. INSURANCE.** Kinder Morgan does not and shall not insure Commodity or property, nor property of others. Insurance shall be carried by Customer or its contractors at their own expense. Customer's insurance carrier shall endorse the policies to waive subrogation against Kinder Morgan. Copies of such endorsements shall be furnished to Kinder Morgan upon request.

**10. GOVERNMENTAL RESTRAINT.** If, while this Agreement is in effect, Kinder Morgan's use of all or part of the Terminal for the storage and handling of any Commodity shall be restrained or enjoined by judicial process, terminated by any Governmental Authority, by right of eminent domain or by the owner of leased land, Kinder Morgan, upon being notified of such restraint, enjoiner or termination, shall notify Customer and Kinder Morgan may terminate this Agreement as to the affected Services or Terminal on the effective date of said restraint, enjoiner, or termination. Upon such termination, Customer shall be obligated to pay all charges arising from such termination as if this Agreement had expired by its own terms.

**11. COMMODITY INFORMATION, SAFETY DATA SHEETS, AND DOCUMENTATION.** Customer agrees to execute in its name, pay for and furnish to Kinder Morgan at the Terminal all information, SDS, COA, documents, labels, placards, containers and other materials and data which may be required by any Applicable Laws relating to the describing, packaging, receiving, storing, handling, combining, shipping or disposing of any Commodities or Waste, to or from the Terminal, together with detailed written instructions as to their use and disposition. Customer agrees to notify Kinder Morgan of any changes in any of the information or materials identified above and to supply revised information and materials. Customer agrees that Kinder Morgan may report any information to any Governmental Authority as required by Applicable Laws, with regard to Commodities and Waste and activities of Customer, and Customer agrees to provide such information to Kinder Morgan as necessary, in Kinder Morgan's opinion, to comply with all Applicable Laws. Kinder Morgan may have an obligation to furnish Commodity name as well as constituents of Commodities to Governmental Authorities and employees or others handling or exposed to the Commodities in connection with Right to Know laws or worker exposure laws and other Applicable Laws. Kinder Morgan may also have an obligation under Applicable Laws to furnish this information to the general public. Customer agrees to furnish the common or chemical name of all Commodities and constituents of Commodities to Kinder Morgan prior to Commodity entering the Terminal so that Kinder Morgan can comply with such Applicable Laws. Customer shall have the responsibility for filing and pursuing any exemption from disclosure pursuant to such Applicable Laws which Customer may desire.

**12. PUBLIC USE.** This Agreement is made as an accommodation to Customer and in no event shall Kinder Morgan's Services hereunder be deemed to be those of a public utility or common carrier. If for any reason the Terminal or any of Kinder Morgan's pipelines becomes a public utility or common carrier, then, and in that event, at the option of Kinder Morgan and upon Customer's receipt of Kinder Morgan's Notice, Kinder Morgan may: (a) restructure and restate this Agreement, or (b) terminate this Agreement on the effective date of such action as to the affected Services or Terminal.

**13. FORCE MAJEURE.** Any event, not within the control of a Party, whether now or hereafter existing and whether foreseeable or not, that prevents the affected Party, in whole or in part, from being able to perform its obligations under this Agreement is a "**Force Majeure Event**", and includes, but is not limited to, the following: (a) any act of God, fire, explosion, storm, tornado, lightning, hurricane, landslide, washout, earthquake, flood, flood waters, low water conditions, high winds, freezes or other adverse weather conditions or warning thereof; (b) any war (whether declared or not), revolution, act of civil or military authority, acts of a public enemy, riot, blockade, embargo, trade sanction, boycott, terrorism, sabotage, or civil disturbance; (c) any epidemic, pandemic, or quarantine restriction; (d) any labor trouble, strike, lockout, or labor or industrial dispute from whatever cause; (e) any act that would cause a Party to violate or be penalized under Applicable Law; (f) any congestion, closure, or legal intervention; (g) any interruption, failure, malfunction, cyber-attack, loss or outage of utilities, internet, communications or technology (computer hardware or software); or (h) any unexpected breakdown or non-availability of machinery or supplies, or failure or delay of manufacturers or suppliers to deliver same. Loss of markets or contracts, economic or financial distress of the economy, the industry, Customer or Kinder Morgan shall not constitute a Force Majeure Event. A Party shall not be liable for any failure to perform or delay in performing under this Agreement, or for any contamination, loss of, damage to or destruction of any Commodities or property, to the extent caused by a Force Majeure Event. If either Party's ability to perform its obligations under this Agreement is affected by a Force Majeure Event, the Party claiming such inability shall within a reasonable time after it learns of the Force Majeure Event provide Notice to the other Party of such Force Majeure Event and its cause. Customer shall be responsible to pay all charges arising from this Agreement when due regardless of any Force Majeure Event. The Party affected by a Force Majeure Event shall exercise commercially reasonable efforts to eliminate the disabling effects of such Force Majeure Event as soon as and to the extent reasonably practicable (except that such Party shall have the sole discretion to settle any of its own labor disputes, strikes, or to terminate any of its own lockouts).

#### **14. ENVIRONMENTAL POLLUTION**

**14.1 Customer Caused.** In the event any Commodity spill or other environmentally polluting discharge or fugitive emissions is caused solely by Customer, its employees, or its Third Parties at the Terminal, Kinder Morgan shall commence containment and/or clean-up operations, as deemed necessary or appropriate in Kinder Morgan's sole judgment, or as required by any Governmental Authorities or Applicable Laws. Kinder Morgan shall promptly notify Customer of such operations. If Customer elects and Kinder Morgan approves in its sole discretion, Customer shall assume the containment and/or clean-up operation, under direction of Kinder Morgan, or if Customer does not elect or Kinder Morgan does not approve of Customer's election, Kinder Morgan shall complete such operations. In either event, Kinder Morgan shall, at its option, have the right to participate in all containment and/or clean-up operations. All costs of containment and/or clean-up for such spill or discharge and the cleanup of same, including, but not limited to emergency response activities, sampling, excavation, investigation, disposal, required carbon filter change-outs, and costs, fines or penalties associated with the spill or discharge shall be the sole responsibility of Customer. Any resulting liability for such spills or discharges shall be the sole responsibility of Customer. Customer EPA ID shall be used for all operations associated with containment and/or cleanup for which such identification number is required by law. Official notification of appropriate agencies, as required by law, shall be Customer's responsibility. Customer shall promptly give Kinder Morgan notice of all agencies notified, upon completion of notification. Kinder Morgan, at its sole discretion, may complete such notifications on behalf of Customer if Customer fails to complete such notifications and, in such a case, Kinder Morgan shall promptly inform Customer of all agencies so notified. Customer agrees that Customer shall be fully liable as provided in this [Section 14](#) for the acts or omissions of its employees while on the Terminal property.

**14.2 Kinder Morgan Caused.** In the event of any Commodity spill or other environmentally polluting discharge that is solely caused by Kinder Morgan's operation of the Terminal facilities, or solely by the failure of Kinder Morgan's equipment, containment and/or clean-up and/or any resulting liability for such spills or discharges shall be the responsibility of Kinder Morgan; provided, however, Kinder Morgan shall provide Notice to Customer within a reasonable time if any reportable spill at the Terminal involves Commodity.

**14.3 Jointly Caused.** In the event that a spill or discharge results from the joint negligence of (a) Kinder Morgan, its employees, or its contractors, and (b) Customer or its employees, the costs of containment and/or clean-up and/or any resulting liability shall be borne jointly

by Kinder Morgan and Customer in proportion to the negligence of (i) Kinder Morgan, its employees, or its contractors, and (ii) Customer or its employees, as provided herein. In the event of a jointly caused spill, containment and clean-up shall be performed as directed by Kinder Morgan. Official notification of appropriate agencies, as required by Applicable Law, for jointly caused events shall be Kinder Morgan's responsibility and Kinder Morgan shall promptly inform Customer of all such notifications.

## **15. INDEMNIFICATION**

**15.1 Indemnification by Kinder Morgan.** Except as provided in Section 16, Kinder Morgan shall indemnify and hold Customer and its Indemnitees harmless from and against all Claims that result in or arise from any personal injury, death or property damage whether such Claims are threatened or incurred, but only to the extent that such Claims are caused by or result from: (a) negligence or willful misconduct on the part of Kinder Morgan, its employees, or its contractors in the performance of this Agreement, or (b) any breach of this Agreement by Kinder Morgan.

**15.2 Indemnification by Customer.** Customer shall indemnify and hold Kinder Morgan and its Indemnitees harmless from and against all Claims that result in or arise from any personal injury, death or property damage whether such Claims are threatened or incurred, but only to the extent that such Claims are caused by or result from: (a) negligence or willful misconduct on the part of Customer or its employees, in the performance of this Agreement, (b) any breach of this Agreement by Customer, or (c) any exposure to the physical or chemical characteristics of the Commodity, to the extent not caused by the negligence or willful misconduct of Kinder Morgan, its employees, or its contractors.

Notwithstanding anything contained herein to the contrary, to the extent that Customer's Commodities include Commodities owned by Customer's Affiliates or customers of Customer or its Affiliates, Customer shall indemnify and hold Kinder Morgan and its Indemnitees harmless from and against all Claims by Customer's Affiliates or customers of Customer or its Affiliates to the extent that such Claims or any recovery in connection with such Claims would not have been available to Customer hereunder had Customer owned the relevant Commodities.

**15.3 Concurrent Negligence or Willful Misconduct.** In the event that any Claim covered by this Section 15 is caused in whole or in part by the concurrent negligence or willful misconduct of Kinder Morgan, its employees, or its contractors on the one hand, and Customer, or its employees, on the other hand, or by Customer and a third party or Kinder Morgan and a third party, then the obligations to indemnify herein shall be comparative and each Party shall indemnify the other and its Indemnitees only to the extent that such Party's negligence or willful misconduct were the cause of such Claim. Kinder Morgan shall not be liable for Claims arising from loss of or damage to any Commodity or property of Customer except when and to the extent caused by the negligence or willful misconduct of Kinder Morgan, its employees, or its contractors; provided, however, that Kinder Morgan shall not be liable for any such loss or damage to the extent that such Claim is covered by Customer's insurance.

**15.4 Exclusive Remedy.** Customer agrees that the remedies provided in this Agreement shall be, subject to the limitations set forth in Section 16, its sole and exclusive remedy for Claims related to the activities undertaken in connection with this Agreement, and Customer hereby waives any rights it may have to bring any additional causes of action or seek any remedy other than those expressed herein against Kinder Morgan.

## **16. LIMITATION OF LIABILITY**

**16.1 Commodity Loss.** Kinder Morgan shall not be liable for any deterioration, or discoloration of Commodity, including without limitation, any Commodity loss resulting from the transfers to or from storage in the course of handling the Commodity, in connection with the operations of the Terminal as conducted by Kinder Morgan. In consideration of the charges set forth on the Handling Terms Confirmation (it being recognized that higher charges would be made but for the limitation of liability set forth in this Section 16), it is understood and agreed that in the event of loss or damage to Commodities for which Kinder Morgan is liable in accordance with this Agreement, Kinder Morgan shall not be liable to Customer for more than the Actual Cost to Customer of any lost or damaged Commodities, less salvage value. Kinder Morgan shall have no liability to Customer unless a written claim is delivered to Kinder Morgan by Customer within sixty (60) days after Kinder Morgan reports the alleged loss to Customer or Customer discovers the alleged loss, whichever is earlier. Customer shall make no deductions or offsets from any invoice presented by Kinder Morgan pending the resolution of any claim for loss or damage to Commodity.

**16.2 Vehicle and other Damages.** Kinder Morgan shall be responsible for loss or damage to a vessel, barge, railcar or truck owned or leased by Customer, or their respective equipment or cargo only to the extent such loss or damage: (a) results from the negligence or willful misconduct of Kinder Morgan or its employees or agents, (b) occurs during the performance of the Services, and (c) Kinder Morgan is notified in writing of the occurrence of such loss or damage prior to such carrier's departure from the Terminal. To the extent that Kinder Morgan can cure such loss or damage without cost to Customer and in a reasonable time period, it shall have the right to do so without additional liability to Customer.

**16.3 NO CONSEQUENTIAL DAMAGES.** NEITHER PARTY SHALL BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, SUCH DAMAGES AS LOST PROFITS, LOST BUSINESS OR ANY BUSINESS INTERRUPTION AND NO MATTER HOW LOSS OR DAMAGE SHALL HAVE OCCURRED INCLUDING, BUT NOT LIMITED TO, LOSS OR DAMAGE CAUSED BY A PARTY'S NEGLIGENCE IN ANY DEGREE AND EVEN IF A PARTY HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGE OR SUCH DAMAGE SHOULD HAVE BEEN WITHIN THE REASONABLE CONTEMPLATION OF A PARTY. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THERE ARE NO GUARANTEES OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER ARISING BY OPERATION OF LAW OR OTHERWISE.

**16.4 LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, KINDER MORGAN'S TOTAL LIABILITY FOR ALL CLAIMS AND ACTIVITIES IN CONNECTION WITH THIS AGREEMENT DURING THE TERM, WHETHER SUCH LIABILITIES ARISE UNDER CONTRACT, INDEMNITY, TORT, STATUTE OR ANY OTHER LEGAL THEORY, SHALL IN NO EVENT EXCEED THE "LIABILITY CAP," AS DEFINED HEREIN. THIS LIMIT IS A TOTAL LIMIT ON ALL LIABILITIES THAT ARISE DURING THE TERM, REGARDLESS OF THE NUMBER OF CLAIMS MADE. THE LIABILITY CAP BASED ON THE FIRST CLAIM MADE SHALL OPERATE AS KINDER MORGAN'S TOTAL CAP FOR ALL LIABILITIES THAT ARISE DURING THE TERM REGARDLESS OF WHEN A CLAIM IS MADE.

**17. DEFAULT.** If an Event of Default occurs, then the non-defaulting Party may terminate this Agreement and pursue any remedies available to it under this Agreement. To the extent permitted by law, and in the Event of Default by Customer, Kinder Morgan may terminate the Agreement and require that Customer immediately pay to Kinder Morgan: (a) all unpaid charges previously invoiced or otherwise due

as of the date of termination, and (b) the net present value of all charges and amounts that would have become due and payable under this Agreement for the remainder of the Term. The net present value shall be calculated at a discount rate that is the lesser of: (i) the maximum rate allowed by law, or (ii) the rate commonly called the prime or base rate as published by the Wall Street Journal, or any successor newspaper. The Parties agree that in the event Kinder Morgan terminates this Agreement due to an Event of Default by Customer that: (x) the measure of damages for the Event of Default and termination is uncertain and difficult to estimate, and (y) the recovery of the damages amount stated in this paragraph is a reasonable forecast of just compensation due Kinder Morgan upon the termination of the Agreement resulting from an Event of Default by Customer.

## **18. LIENS**

**18.1 General.** Title to the Commodities shall at all times remain with Customer or its assignees, subject to any lien asserted by Kinder Morgan. At all times to the extent permitted by Applicable Law, Kinder Morgan shall have all applicable statutory, common law and contractual liens, including the contractual lien that is granted hereby, upon all commodities deposited with Kinder Morgan or any Affiliate of Kinder Morgan at any of Kinder Morgan's or its Affiliates' facilities for all charges set forth herein, including without limitation, charges for storage, shortfall payments, deficiency payments, handling, processing, transportation and/or labor, plus any interest thereon, whether such charges are incidental to Commodities then in or on the Terminal or otherwise and in connection with any and all other agreements between Kinder Morgan and Customer. Additionally, Kinder Morgan may assert as part of its liens, reasonable administrative and legal fees and charges incurred to enforce and administer the liens, not to exceed twenty percent (20%) of the amount of the total value of the liens. Customer hereby authorizes Kinder Morgan to file any financing statement or other document reasonably necessary to perfect or enforce the liens granted herein. To the extent that a warehouse receipt is required for the securing and enforcing of any of the liens granted herein, this Agreement shall serve as a warehouse receipt. Prior to disposing of the Commodity, Kinder Morgan must issue Customer a Notice stating its intention and allow Customer twenty (20) Days to pay any undisputed amounts due.

**18.2 Acknowledgment.** To the extent that Customer has entered into a credit agreement or other similar document and Kinder Morgan is requested by either Customer or a secured party to acknowledge any of the following: (a) Kinder Morgan holds or shall hold possession of collateral or Commodity for the secured party's benefit; (b) a lien or security interest in Commodity exists for benefit of the secured party; (c) Kinder Morgan disclaims ownership rights and interest in Commodity; (d) Kinder Morgan shall only release Commodity upon direction of the secured party; or (e) any other request similar to the above mentioned, Customer agrees that Kinder Morgan, in its sole discretion, shall only be obligated to furnish Customer with Kinder Morgan's inventory acknowledgment form.

## **19. CHANGE OF COMMODITY OWNERSHIP AND NO SUB-USE**

**19.1 Change of Commodity Ownership.** If Customer intends to sell or otherwise transfer title to Commodity at the Terminal: (a) Customer shall obtain Kinder Morgan's consent, not to be unreasonably withheld, in writing prior to any change in title to Commodity, and (b) Customer and the third party Commodity owner shall adopt the terms and conditions of this Agreement for the third party's Commodity by executing Kinder Morgan's ownership change agreement. If any Commodity is sold, exchanged, or otherwise changes ownership while in the Terminal, Customer shall nonetheless be responsible for all charges and taxes, and shall continue to be bound by the terms and conditions of this Agreement, the same as if Commodity had not been sold, exchanged, or transferred by Customer.

**19.2 No Sub-Use.** Customer shall not allow the Commodity storage area hereunder to be used by any third party, including, but not limited to, any Customer Affiliate, unless otherwise agreed in writing by Kinder Morgan. If Kinder Morgan consents to such third party use, Customer and the third party shall execute Kinder Morgan's agreement to allow third party sub-use.

## **20. ANTI-CORRUPTION COMPLIANCE, NO GOVERNMENTAL SANCTION OR DEBARMENT, AND TRADE COMPLIANCE**

**20.1 Anti-Corruption Compliance.** Accepting or providing nominal business gifts and entertainment to build goodwill or express esteem or gratitude in connection with this Agreement is permissible subject to compliance with all Applicable Laws. No director, employee or agent of either Party shall give or receive from any director, employee or agent of the other Party or any Affiliate, any commission, fee, rebate, gift, or entertainment that is cash, expensive, elaborate, or that may otherwise violate any Applicable Law or give rise to a conflict of interest in connection with this Agreement. In addition, no director, employee or agent of either Party, or its subcontractors or vendors, shall enter into any business arrangement with any director, employee or agent of the other Party or any Affiliate who is not acting as a representative of such Party or its Affiliate without prior written notification thereof. Further, neither Party nor its Affiliates shall pay, give or provide any commission, fee, rebate, gift, or entertainment that is cash, expensive, elaborate, or that may otherwise violate any Applicable Law or give rise to a conflict of interest to any governmental official or employee in connection with this Agreement. This provision is not intended to supersede Kinder Morgan's Code of Conduct Policies that may apply to Kinder Morgan's directors, employees or agents. If there is a conflict between this provision and Kinder Morgan's Code of Conduct Policies, Kinder Morgan's Code of Conduct Policies shall govern Kinder Morgan's directors, employees and agents.

**20.2 No Governmental Sanction or Debarment.** Kinder Morgan and Customer each respectively certify to the other Party that: (a) the certifying Party is not a Restricted Party, nor prevented from engaging in the activities contemplated hereunder or fulfilling its obligations to the other by virtue of any Applicable Laws; and (b) none of its directors, officers, managers or Affiliates are a Restricted Party. The certifications herein shall be made as of the Effective Date and shall continue during the Term of this Agreement, and each Party agrees to notify the other Party in writing immediately if any of the foregoing certifications become untrue or inaccurate during the Term of this Agreement. The Parties further agree that any Party who is not capable of making the certifications herein shall be in breach of this [Section 20.2](#) and such event shall constitute a material breach of this Agreement not capable of being remedied and that the other Party shall have the right to immediately terminate the Agreement upon Notice, and/or to take such other actions as may be necessary or appropriate to ensure compliance with all Applicable Laws of any Governmental Authority.

**20.3 Trade Compliance.** The Parties agree to comply with all applicable export control and sanctions laws in connection with the performance of this Agreement including, but not limited to, the U.S. Export Administration Regulations and the sanctions administered by the Office of Foreign Assets Control. Further, neither Party shall involve any Restricted Party in any action or obligation performed pursuant to this Agreement.

**21. CONFIDENTIALITY.** Each Party agrees to hold in confidence, and not to disclose to third parties or use for any purpose other than performance of its obligations hereunder, all Confidential Information whether oral or written, and regardless of the manner in which it is furnished that is received or ascertained directly or indirectly, from the other Party or its representatives. Each Party shall ensure that its employees, subcontractors and suppliers who may be exposed to Confidential Information comply with the confidentiality requirements of this Agreement. Each Party to whom the Confidential Information is disclosed shall hold the Confidential Information in confidence, exercising a degree of care not less than the care used by the receiving Party to protect its own proprietary, trade secret or confidential business information that it does not wish to disclose. Nothing herein contained should preclude a Party from providing Confidential Information to any Governmental Authority to the extent such Party is required to do so by Applicable Laws. Neither Party shall have

confidentiality obligations with respect to Confidential Information that: (a) is or becomes generally available to the public through no wrongful act of the receiving Party; (b) is received from a third party, provided that such source is not, to the knowledge of the receiving Party, bound by a confidentiality agreement with the disclosing Party or its representatives; (c) is required to be disclosed pursuant (in legal counsel's opinion) to any Applicable Law or a Governmental Authority, stock exchange or court of competent jurisdiction or upon receipt of an information request by a governmental body of competent jurisdiction and reasonable Notice (unless such Notice is prohibited by Applicable Law) is given by the receiving Party to the disclosing Party of any such requirement or request to permit the disclosing Party, at its sole expense, to seek an appropriate protective order or exemption from such requirement or request; provided however that in the event that such protective order or other remedy is not obtained, or the disclosing Party declines to seek any order, the receiving Party or its representatives shall furnish only that portion of the Confidential Information which is legally required and, at the disclosing Party's sole expense, shall exercise commercially reasonable efforts to obtain reasonable assurance that confidential treatment shall be accorded the Confidential Information; (d) can be demonstrated as being previously known to the receiving Party prior to its disclosure by the disclosing Party or previously developed by the receiving Party independent of any Confidential Information furnished under this Agreement; or (e) is developed by or on behalf of the receiving Party or any of its representatives independent of any Confidential Information furnished under this Agreement.

**22. CHOICE OF LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflict of laws or choice of law rules that would require the application of a different state's laws. The Parties agree that any actions, proceedings or counterclaims brought by either Party against the other on any matters whatsoever arising out of or in any way connected with this Agreement shall be brought exclusively in the Eleventh Business Court Division of the State of Texas, Harris County, provided such court has jurisdiction and new case filings are being accepted, and if not, then exclusively in a federal or state court located in Harris County, Texas. A Party prevailing on any issue in court shall be entitled to recover its reasonable attorney's fees and costs incurred in prosecuting or defending the issue. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT.

**23. ASSIGNMENT.** This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of each of the Parties hereto; provided, however, Customer shall not transfer, subcontract or assign this Agreement, in whole or in part, without the prior written consent of Kinder Morgan, which consent shall not be unreasonably withheld, conditioned or delayed, and any attempted transfer, subcontract or assignment without such consent shall be null and void and, at the option of Kinder Morgan, shall constitute an Event of Default by Customer hereunder. If Kinder Morgan consents to such transfer, subcontract or assignment, such consent shall not operate to release Customer of its obligations under this Agreement. In the event Customer, in the opinion of Kinder Morgan, sells all or substantially all of its assets to another party without obtaining consent from Kinder Morgan, Kinder Morgan shall have the right, at its sole option and in addition to the right to exercise any or all other remedies at law and equity, to terminate this Agreement.

**24. NOTICES.** All notices, requests, demands, and other communications (each a "Notice") required or permitted to be given or made hereunder by any Party shall be in writing and shall be deemed to have been duly given or made if: (a) delivered personally, (b) transmitted by certified mail, postage prepaid, return receipt requested, (c) delivered by prepaid overnight courier service, or (d) delivered by email, to the Parties at the addresses (or at such other addresses as shall be specified by the Parties by similar Notice) set forth in the Handling Terms Confirmation. Notices shall be effective: (i) if delivered personally or sent by courier service, upon actual receipt by the intended recipient, (ii) if transmitted by certified mail, the date of delivery as shown by the return receipt therefor, or (iii) if sent by email transmission, upon the date sent by email (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient.

**25. NO BROKER'S FEES/CONFLICTS.** If a Party has retained any brokers, agents or finders, that Party hereby indemnifies and holds harmless the other Party from and against any Claims with respect to any commissions, finder's fees or other such remuneration due to any broker, agent or finder claiming by, through or under such Party.

**26. INDUSTRY PRACTICE.** Any matters not specifically covered in this Agreement shall be dealt with in accordance with the custom and practice in the industry.

## **27. GENERAL**

**27.1 Joint Drafting.** The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

**27.2 Entirety.** This Agreement is comprised of the General Terms and Conditions, the Handling Terms Confirmation, Exhibits, and any amendments thereto mutually agreed by the Parties, and constitutes the entire agreement between Kinder Morgan and Customer and supersedes any and all terms and conditions which may be contained in any purchase orders or other documents or writings issued by Customer prior or subsequent to this Agreement.

**27.3 Severability.** If any of the provisions, or portions thereof, of this Agreement are found to be void, invalid, or unenforceable, they are deemed to be omitted, but only to the extent of such unenforceability, and such holding shall not affect the remaining part or portions of the provision or any other provision.

**27.4 Amendments.** This Agreement may not be modified, amended, altered, or changed, including by course of conduct or dealing or course of performance, except by written agreement signed by all Parties hereto. The terms of this Agreement may not be orally waived or orally amended.

**27.5 Counterparts.** This Agreement and any amendment hereof may be signed in multiple counterparts each of which shall be considered an original and all of which together shall constitute a whole agreement. Signature of this Agreement may be transmitted by PDF file which shall be treated as an original signature, and any such signature, PDF file or copy of this signed Agreement shall be construed and treated as the original and shall be binding as if it were the original.

**27.6 Remedies.** Unless expressly provided otherwise, the remedies herein provided for shall not be exclusive, but shall be cumulative and shall be in addition to all other remedies available at law or in equity. The Parties intend that each representation, warranty, and covenant contained herein shall have independent significance. If any Party has breached any representation, warranty, or covenant contained herein in any respect, the fact that there exists another representation, warranty, or covenant relating to the same subject matter (regardless of the relative levels of specificity) which the Party has not breached shall not detract from or mitigate the fact that the Party is in breach of the first representation, warranty, or covenant.

**27.7 Waivers.** The waiver by either Party of any right of either Party hereunder, at any time, shall not serve to waive any other such right nor shall such waiver operate as a waiver of the right so waived at any future date in connection with another Event of Default or a subsequent recurrence of the same Event of Default.

**27.8 Effectiveness.** Customer and Kinder Morgan agree that the terms of this Agreement shall be binding and enforceable as of the Effective Date upon: (a) the Parties execution of the Handling Terms Confirmation, or (b) when Kinder Morgan receives Commodity for storage and handling at the Terminal. If both Parties have not executed the Handling Terms Confirmation and Kinder Morgan has received Commodity for storage and handling at the Terminal, Customer is deemed to have accepted and approved the original offer to contract in the form of the initial draft of this Agreement provided to Customer, without any alterations, deletions or additions Notwithstanding anything to the contrary contained herein, the Effective Date as provided herein shall remain unchanged.

**27.9 References.** Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, as amended or modified as well as any successor thereto, unless the context requires otherwise.

**27.10 Rules of Interpretation.** The word "including" shall mean including without limitation. The singular number shall include the plural and the plural the singular, and any gender shall be applicable to all genders. The use of the words "herein," "hereof," "hereunder" and other similar compounds of the word "here" shall refer to this entire Agreement and not to any particular section, paragraph or provision. All defined terms used in this Agreement, whether the first initial of the defined term is capitalized or the entire defined term is capitalized, shall be as defined herein.

**27.11 No Third Party Beneficiaries.** There are no third party beneficiaries to this Agreement and the provisions of this Agreement shall not impart any legal or equitable right, remedy or claim enforceable by any Person, other than the Parties hereto and their permitted successors and permitted assigns.

**27.12 Headings.** The headings of the paragraphs/sections/provisions of this Agreement have been inserted for convenience of reference only and are not to be considered part of this Agreement and shall in no way affect the interpretation of any of the provisions of this Agreement.

**27.13 Survival.** The provisions of this Agreement which by their nature are intended to survive the termination, cancellation, completion or expiration of this Agreement, including without limitation, any indemnity, limitation of liability, confidentiality, holdover, payment obligations, default, cleaning upon termination, and choice of law provisions, shall continue as valid and enforceable obligations of the Parties notwithstanding any such termination, cancellation, completion or expiration.

**27.14 Authorization and Execution.** The execution, delivery and performance of this Agreement has been duly authorized by all necessary action of each respective Party and shall constitute the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.

**27.15 Compliance with Applicable Law.** Each Party shall comply with all Applicable Laws in the performance of its obligations under this Agreement.

**27.16 Independent Contractor.** In performing its obligations under this Agreement, Kinder Morgan shall be an independent contractor in relation to Customer, and neither Party shall be deemed for any purpose to be an agent, servant, employee or representative of the other Party.

**27.17 No Partnership.** Nothing in this Agreement creates, or is intended to create, a partnership, joint venture, agency or other similar relationship between the Parties.

## 28. DEFINITIONS

**"Actual Cost"** shall mean the actual price paid by Customer, excluding transportation to the Terminal and other indirect costs, or if Customer is the manufacturer, the direct manufacturing cost.

**"Additional Services"** shall mean the rates specified in the Additional Services section of the Handling Terms Confirmation.

**"Affiliate"** shall mean with respect to a Party, any corporation, partnership or other entity or association that directly or indirectly through one or more intermediaries, controls, is controlled by, or under common control with that Party. The term **"control"** (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

**"Agreement"** shall have the meaning set forth in the first paragraph of this Agreement.

**"Applicable Laws"** shall mean all laws, statutes, treaties, ordinances, judgments, decrees, injunctions, writs, orders, rules, regulations, permits, and interpretations of any Governmental Authority having jurisdiction over the Parties, the Terminal, this Agreement, and any matters arising from this Agreement, as such Applicable Laws may be amended from time to time.

**"Base Rate"** shall have the meaning set forth in the Handling Terms Confirmation.

**"Claims"** shall mean any and all claims, demands, liabilities, suits, costs, losses, fines, penalties, and expenses (including reasonable attorney's fees), including without limitation, claims for damage to the environment requiring investigation, monitoring or remediation.

**"COA"** shall mean certificates of analysis.

**"Code of Conduct Policies"** shall mean Kinder Morgan's Gifts, Entertainment and Gratuities Policy, Code of Business Conduct and Ethics, Anti-Corruption Compliance Policy or other related policies.

**"Commodity"** shall have the meaning set forth on the Handling Terms Confirmation.

**"Commodity Specifications"** shall mean the Commodity Description and Specifications as set forth in the Handling Terms Confirmation.

**"Confidential Information"** shall mean any information that is: (a) marked or designated by a Party as confidential; (b) is by its nature confidential; (c) includes information relating to (i) the financial position, internal management or structure of the Party, (ii) the personnel, strategies, customer lists, or business plans of the Party, or (iii) the location and type of work performed hereunder; or (d) the Handling Terms Confirmation.

**"Customer"** shall have the meaning set forth in the Handling Terms Confirmation.

**"Customer Billing Information"** shall have the meaning set forth in the Handling Terms Confirmation.

**"Customer EPA ID"** shall have the meaning set forth in Section 3.3 of this Agreement.

**"Customer Property"** shall have the meaning set forth in Section 3.4 of this Agreement.

**"Day"** or **"day"** shall mean one (1) twenty-four (24) hour period beginning at 12:00 a.m. Midnight and ending at 11:59 p.m. unless otherwise defined herein.

**"Demurrage Charges"** shall mean any demurrage, or any loss, damage, or expense in the nature of or in lieu of demurrage, due to any delay in loading or unloading of Commodities or any accessorial, ancillary or other charges imposed for loading or unloading of Commodities.

**"Effective Date"** shall be the date set forth on the Handling Terms Confirmation.

**"EPA"** shall mean the United States Environmental Protection Agency.

**"ETA Notices"** shall be the date set forth in the Handling Terms Confirmation.



**“Event of Default”** shall mean any of the following: (a) a Party fails to pay monies due hereunder; (b) except as set forth in the preceding subsection (a), a Party fails to comply with any material term or condition of this Agreement and such Party has failed to cure such noncompliance within thirty (30) Days after Notice thereof from the other Party, or where cure of such failure is not possible within such thirty (30) Day period, the Party fails to commence cure of such failure within thirty (30) Days after Notice of the breach and to diligently and in good faith pursue such cure; (c) a material breach of the Agreement not capable of being remedied; or (d) a Party suffers an Insolvency Event.

**“Force Majeure Event”** shall have the meaning set forth in Section 13 of this Agreement.

**“General Terms and Conditions”** shall have the meaning set forth in the introductory paragraph.

**“Governmental Authority”** shall mean any court, tribunal, arbitrator, authority, agency, commission, counsel, official or other instrumentality of the United States, any foreign country, or any domestic or foreign state, county, city, school district or other political subdivision, or any similar governing entity.

**“Handling Terms Confirmation”** shall mean the Handling Terms Confirmation (Spot Break Bulk) – Fairless Hills Terminal between Kinder Morgan and Customer and that references these General Terms and Conditions.

**“Indemnitees”** shall mean an applicable Party’s Affiliates, members, shareholders, partners, directors, officers, managers and employees.

**“Insolvency Event”** shall mean an event where a Party is unable to pay its debts or takes any of the following steps: (a) ceases to carry on its business; (b) becomes insolvent, is unable to pay its debts, or fails or admits in writing its inability generally to pay its debts as they become due; (c) has a receiver, administrative receiver, administrator or similar officer appointed over all or any part of its assets or undertakings who is not discharged within fifteen (15) days of such appointment; (d) makes an assignment for the benefit of, or a composition with, its creditors generally or another arrangement of similar import; (e) goes into liquidation or is the subject of a winding up order otherwise than for the purposes of a bona fide amalgamation or reconstruction; or (f) if any similar event occurs.

**“Kinder Morgan”** shall have the meaning set forth in the Handling Terms Confirmation.

**“Liability Cap”** shall mean the Liability Cap Percentage of the total amount of any charges collected from Customer by Kinder Morgan under this Agreement during the Term. If Kinder Morgan has collected less than all of the charges for the entire Term prior to when the liability arises, then the average monthly charges collected from Customer by Kinder Morgan shall be determined and multiplied by the number of months of the Term and of that total, the Liability Cap Percentage thereof shall apply as the Liability Cap.

**“Liability Cap Percentage”** shall mean the percentage designated as the “Liability Cap Percentage” set forth on the Handling Terms Confirmation.

**“Maximum Tonnage”** shall have the meaning set forth in the Handling Terms Confirmation.

**“Month”** or **“month”** shall mean a period extending from a date in one (1) calendar Month up to, but not including, the corresponding date in the following Month.

**“Notice”** shall have the meaning set forth in Section 24 of this Agreement.

**“Operating Hours”** shall have the meaning set forth on the Handling Terms Confirmation.

**“Overtime”** shall mean work performed outside the Operating Hours.

**“Party”** shall have the meaning set forth in the first paragraph of these General Terms and Conditions.

**“Payment Terms”** shall have the meaning set forth in the Handling Terms Confirmation.

**“PDF”** shall mean portable document format.

**“Person”** shall mean and be broadly interpreted to include, without limitation, any corporation, company, partnership, group, limited liability company, limited liability partnership or other entity or individual regardless of how organized or formed under the laws of any of the states of the United States or otherwise.

**“Quantity”** shall have the meaning set forth in the Handling Terms Confirmation.

**“Required Delivery Conditions”** shall have the meaning set forth in Section 4 of this Agreement.

**“Restricted Party”** shall mean any Person that is: (i) included on the U.S. Specially Designated Nationals and Blocked Persons List; (ii) owned, directly or indirectly, fifty percent (50%) or more in the aggregate by an individual or entity on the U.S. Specially Designated Nationals and Blocked Persons List; (iii) ordinarily resident, established, or registered in a country or region subject to comprehensive sanctions; or (iv) included on any other United States Federal Government denied parties or debarment list.

**“SDS”** shall mean safety data sheets.

**“Services”** shall mean the services by Kinder Morgan as described on the Handling Terms Confirmation.

**“Term”** shall be the term set forth on the Handling Terms Confirmation.

**“Terminal”** shall have the meaning set forth in the Handling Terms Confirmation.

**“Third Party”** or **“Third Parties”** shall mean an applicable Party’s contractors and agents, and, in the case of Customer, shall include without limitation, any carriers, third party truck drivers, or other Person transporting Commodities or other goods to or from the Terminal for Customer or its customers.

**“Ton”** shall have the meaning set forth in the Handling Terms Confirmation.

**“Waste”** shall mean vessel waste as defined by the MARPOL 73/78 regulations and the Annexes thereto, residual Commodity remaining at the Terminal, including without limitation, unrecoverable residue after removal of Commodities from the Terminal, including after cleaning and restoration of the Terminal.

**“Waste Disposal Costs”** shall mean any and all costs related to removal, cleaning, and disposal of Waste, including without limitation, the cost of any charges, taxes, disposal fees, regulatory authority charges, preparation of documents, or any other costs incurred in connection therewith.

## END OF GENERAL TERMS AND CONDITIONS