

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:

VERTEX ENERGY, INC., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 24-90507 (CML)
)
) (Joint Administration Requested)
) (Emergency Hearing Requested)

**DEBTORS' EMERGENCY
MOTION FOR ENTRY OF INTERIM
AND FINAL ORDERS (I) AUTHORIZING
CONTINUATION OF THE INTERMEDIATION
CONTRACTS, AS AMENDED, (II) AUTHORIZING THE
DEBTORS TO ENTER INTO AND PERFORM POSTPETITION
INTERMEDIATION TRANSACTIONS AND POSTPETITION HEDGING
TRANSACTIONS, (III) PROVIDING SUPERPRIORITY ADMINISTRATIVE
EXPENSE STATUS AND LIENS IN RESPECT OF POSTPETITION
INTERMEDIATION TRANSACTIONS AND POSTPETITION HEDGING
TRANSACTIONS, (IV) GRANTING ADEQUATE PROTECTION TO THE
INTERMEDIATION PROVIDER, (V) PROVIDING SUPERPRIORITY
ADMINISTRATIVE EXPENSE STATUS IN RESPECT OF PURCHASER
SUPPORT AGREEMENTS, (VI) MODIFYING THE AUTOMATIC STAY,
(VII) SETTING A FINAL HEARING, AND (VIII) GRANTING RELATED RELIEF**

Emergency relief has been requested. Relief is requested not later than 12:30 p.m. (prevailing Central Time) on September 25, 2024.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on September 25, 2024, at 12:30 p.m. (prevailing Central Time) in Courtroom 401, 4th floor, 515 Rusk Street, Houston, Texas 77002. Participation at the hearing will only be permitted by an audio and video connection.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at (832) 917-1510. Once connected, you will be asked to enter the conference room number. Judge Lopez's conference room number is 590153. Video communication will be by use of the GoToMeeting platform. Connect via the free

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://www.veritaglobal.net/vertex>. The location of Debtor Vertex Energy, Inc.'s corporate headquarters and the Debtors' service address in these chapter 11 cases is 1331 Gemini Street, Suite 250, Houston, Texas 77058.



GoToMeeting application or click the link on Judge Lopez’s homepage. The meeting code is “JudgeLopez”. Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the “Electronic Appearance” link on Judge Lopez’s homepage. Select the case name, complete the required fields, and click “Submit” to complete your appearance.

The above-captioned debtors and debtors in possession (collectively, the “Debtors”), including Vertex Refining Alabama LLC (“Vertex Refining”), Vertex Renewables Alabama LLC (“Vertex Renewables”), and its direct or indirect parent, Vertex Energy, Inc., (“Vertex Energy” and, together with Vertex Refining and Vertex Renewables, the “Refining Debtors”), state as follows in support of this motion (this “Motion”):²

Preliminary Statement

1. The Debtors’ refinery in Mobile, Alabama (the “Mobile Refinery”) is the Debtors’ crown jewel asset. The Mobile Refinery has the capacity to process approximately 75,000 barrels per day of crude oil into refined products. The Debtors’ earnings, cash flows, and liquidity, like that of other owners and operators of refineries, depend primarily on the margin above operating expenses at which the Debtors are able to sell their refined products. The Debtors have historically sourced substantially all of their crude oil and other feedstock utilizing intermediation services provided through that certain Supply and Offtake Agreement (“Prepetition Intermediation Agreement”) between the Refining Debtors and Macquarie Energy North America Trading, Inc. (“Macquarie”), dated as of April 1, 2022, and certain related ancillary agreements (the “Ancillary

² A description of the Debtors, their businesses, and the facts and circumstances supporting this Motion and the Debtors’ chapter 11 cases, are set forth in greater detail in the *Declaration of R. Seth Bullock, Chief Restructuring Officer of Vertex Energy, Inc., in Support of the Debtors’ Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith and incorporated by reference herein. Capitalized terms used but not otherwise defined in this Motion shall have the meanings ascribed to them in the First Day Declaration, the *Joint Chapter 11 Plan of Vertex Energy, Inc., and Its Debtor Affiliates* (as modified, amended, or supplemented from time to time, the “Plan”), Intermediation Contracts (as defined herein), or the Intermediation Orders (as defined herein), as applicable.

Agreements,” and together with the SOA, the “Prepetition Intermediation Facility”) pursuant to which Macquarie intermediates purchases of crude oil and other feedstock, as well as certain sales of refined product to certain of Vertex Refining’s customers. The obligations of Vertex Refining under the Pre-Petition Intermediation Facility are guaranteed by Vertex Energy and Vertex Renewables. The viability and go-forward success of the Debtors’ businesses are substantially dependent on their ability to maintain intermediation arrangements in the ordinary course of business.

2. As described in detail in the First Day Declaration, in the face of significant compliance costs that specifically penalize independent refiners like the Debtors,³ adverse macroeconomic trends in the energy sector, and adverse government policy decisions—all of which have significantly impacted the Debtors—the Debtors request authority to continue prepetition intermediation agreements and enter into postpetition intermediation transactions with the support of Macquarie. Absent the critical relief requested in this Motion, the Debtors will be unable to continue operating the Mobile Refinery during these chapter 11 cases.

3. Specifically, the Refining Debtors seek authority to, among other things:

- (a) enter into and perform under the Prepetition Intermediation Facility, as amended and/or restated to give effect to the terms set forth herein, as set forth in **Schedule 1** (the “Intermediation Contracts”);
- (b) enter into and perform postpetition intermediation transactions (the “Postpetition Intermediation Transactions”) with, and provide senior liens and superpriority status (as detailed herein) to, Macquarie on account of the Refining Debtors’ obligations under the Intermediation Contracts;

³ Vertex Refining, the Debtor who owns the Mobile Refinery, must comply with the Clean Air Act’s renewable fuel standard program (42 U.S.C. § 7545(o), including regulations promulgated thereunder, the “RFS Program”), administered by the U.S. Environmental Protection Agency. The RFS Program requires refiners to blend “biofuels” such as ethanol and biodiesel into the gasoline and diesel fuels they produce and sell in the United States, or if they are unable to do so, to purchase compliance credits known as renewable identification numbers (“RINs”) instead of blending. The Debtors anticipate owing approximately \$72 million on account of RIN obligations by the end of Q1, 2025.

- (c) enter into and perform under the Shell Support Agreement (as defined herein) with and provide superpriority status to Shell (as defined herein) on account of the Debtors' responsibilities under the Shell Support Agreement; and
- (d) enter into and perform Postpetition Hedging Arrangements (as defined herein) with, and provide certain liens and superpriority status to, Macquarie Bank Limited (the "Hedge Provider") on account of Vertex Refining's obligations under the Hedging Arrangements (as defined herein).

4. The Intermediation Contracts contain mechanisms whereby Vertex Refining will continue (a) to enter into and perform Postpetition Intermediation Transactions with Macquarie, who agrees, pursuant to the terms of the Intermediation Contracts, to forbear on certain remedies under the Prepetition Intermediation Facility, and (b) to perform certain transactions with third parties unrelated to Macquarie, subject to the terms and conditions set forth therein.

5. The Intermediation Contracts provide the terms by which Vertex Refining will be able to perform Postpetition Intermediation Transactions with Macquarie and ensure the Refining Debtors' continued access to intermediation arrangements during the pendency of these chapter 11 cases.

6. Given the complex nature of the Debtors' operations, the operational intensity involved in implementing the intermediation arrangements, and the terms of the Pre-Petition Loan Agreement (as defined in the DIP Order), it would be improbable, if not impossible, to replace Macquarie prior to the commencement of these chapter 11 cases. Accordingly, once it became clear that the Debtors would need to effectuate a value-maximizing transaction through a chapter 11 process, the Debtors actively engaged with Macquarie and their secured lenders on the terms of a postpetition facility because of the forward contract nature of the Prepetition Intermediation Facility. After weeks of hard-fought, arm's-length negotiations with Macquarie and the DIP Lenders (as defined in the DIP Order), the Debtors reached an agreement in principle

on the terms of the Assurance Agreement (as defined in the Interim Order), including amendments to the Prepetition Intermediation Facility (as so amended, the “Post-Petition Intermediation Agreement”), subject to Court approval. The Intermediation Contracts provide, among other things: (a) commitment from Macquarie to the terms and conditions of the Post-Petition Intermediation Transactions, subject to the terms therein; (b) waiver of remedies of default under the Prepetition Intermediation Facility and the Ancillary Agreements arising in connection with the commencement of these chapter 11 cases; (c) covenant relief; and (d) enhanced crude oil sourcing flexibility. In exchange, subject to Court approval, the Refining Debtors have agreed to provide: (a) pursuant to section 364(c)(1) of the Bankruptcy Code, superpriority administrative expense status to all of the Refining Debtors’ obligations under the Intermediation Contracts (whether arising prepetition or postpetition, the “Intermediation Superpriority Claims”), subject to the priorities set forth in Exhibit 3 to the Interim Order; (b) pursuant to section 364(d)(1) of the Bankruptcy Code, valid, enforceable, non-avoidable, automatically and fully perfected first priority senior priming liens on, and security interests in, the Intermediation Facility Priority Collateral (as defined in the Interim Order) of the Refining Debtors subject to the priorities set forth in Exhibit 2 of the Interim Order; and (c) pursuant to section 364(c)(3) of the Bankruptcy Code, valid, enforceable, non-avoidable, automatically and fully perfected junior liens on, and security interests in, all DIP Collateral (as defined in the DIP Credit Agreement) to the extent owned by the Debtors.

7. Put simply, the Debtors believe that the Postpetition Intermediation Transactions are on the most favorable terms available under the circumstances, present the best option for the Debtors to reorganize their business as a going concern, were negotiated in good faith and at arm’s

length, and will allow the Debtors to maximize the value of their estates for the benefit of all parties in interest.⁴

Relief Requested

8. The Debtors seek entry of interim and final orders, substantially in the forms attached hereto (respectively, the “Interim Order” and “Final Order,” and together, the “Intermediation Orders”):⁵

- (a) authorizing the Refining Debtors to enter into and perform under, or continue to perform under if already entered, the Intermediation Contracts attached hereto as **Schedule 1**;
- (b) authorizing the Refining Debtors to enter into and perform Postpetition Intermediation Transactions;
- (c) providing Intermediation Superpriority Claims subject to the priorities set forth in Exhibit 3 of the Interim Order;
- (d) providing valid, enforceable, nonavoidable and fully perfected (and first-priority solely with respect to the Intermediation Priority Collateral) security interests and liens and back-up liens (including liens pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code and consensual priming liens pursuant to section 364(d) of the Bankruptcy Code on all Shared Collateral (as defined in Exhibit 3 to the Interim Order) to Macquarie to secure all obligations of the Refining Debtors under the Intermediation Contracts (the “SOA Liens”) subject to the priorities set forth in Exhibit 2 of the Interim Order;
- (e) providing, subject to the Carve Out (as defined in the DIP Order), superpriority administrative expense claims (the “Hedging Super-Priority Claims”) in favor of the Hedge Provider against each of the Vertex Refining and each of the other Participating Hedging Debtors’ (as defined in the Interim Order) estates on account of their obligations arising out of the Hedge Facility (as defined in the Interim Order) (whether arising prepetition or postpetition) (the “Hedging Obligations”) to the extent set forth in the DIP Orders and the Interim Order and subject to the lien priorities in Exhibit 3 of the Interim Order;

⁴ See First Day Declaration ¶ 46.

⁵ Any liens described within this paragraph shall be subject and subordinate to the payment of the Carve Out.

- (f) providing, pursuant to section 364(c)(1) of the Bankruptcy Code, superpriority administrative expense status with respect to all of the Debtors' obligations under the Shell Support Agreement, which is attached to the Interim Order as **Exhibit 5** subject to the priorities set forth in the Shell Support Agreement;
- (g) modifying the automatic stay, as necessary;
- (h) setting the final hearing to consider approval of this Motion on a final basis; and
- (i) granting related relief.

Jurisdiction and Venue

9. The United States Bankruptcy Court for the Southern District of Texas (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Order of Reference to Bankruptcy Judges*, dated May 24, 2012, from the United States District Court for the Southern District of Texas. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The Debtors confirm their consent to the Court's entry of a final order in connection with this Motion.

10. Venue is proper pursuant to 28 U.S.C. § 1408.

11. The bases for the relief requested herein are sections 362, 363, and 364 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), rules 4001, 6003, and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), rules 1075-1, 4001-1 and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the "Bankruptcy Local Rules"), and the *Procedures for Complex Cases in the Southern District of Texas* (the "Complex Case Procedures").

Background

12. On the date hereof (the "Petition Date"), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors have filed a motion requesting joint

administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases and no official committees have been appointed or designated.

Concise Statements Pursuant to Bankruptcy Rule 4001(b)⁶

I. Concise Statement Regarding the Post-Petition Intermediation Agreement and other Intermediation Contracts.

13. The chart below contains a summary of the material terms related to the Post-Petition Intermediation Agreement and other Intermediation Contracts, together with references to the applicable sections of the relevant source documents, as required by Bankruptcy Rules 4001(b)(1)(B) and 4001(c)(1)(B).

Bankruptcy Code	Intermediation Contract
Company / Grantor(s) Bankruptcy Rule 4001(c)(1)(B)	Vertex Refining Alabama LLC <i>See Post-Petition Intermediation Agreement, Preamble.</i>
Guarantor(s) Bankruptcy Rule 4001(c)(1)(B)	Vertex Energy, Inc., Vertex Renewables Alabama LLC <i>See Post-Petition Intermediation Agreement, Recital (F).</i>
Entities with Interests in Cash Collateral Bankruptcy Rule 4001(c)(1)(B)(i)	Macquarie Energy North America Trading, Inc. <i>See Post-Petition Intermediation Agreement, Preamble.</i>
Term Bankruptcy Rule 4001(c)(1)(B)	The “ <u>Expiration Date</u> ” shall be the earlier of: (i) the date falling: (A) 4 months after the Petition Date; or (B) if Macquarie so consents following a request made by the Vertex Refining in writing at least ten (10) calendar days' prior to the expiration of the then current Term, 5 months or 6 months after the Petition Date; and (ii) the effective date of a confirmed plan of reorganization or the closing date of a sale under Section 363 of the Bankruptcy Code.

⁶ The summaries contained in this Motion are qualified in their entirety by the provisions of the Post-Petition Intermediation Agreement, other Intermediation Contracts, and the Interim Order. To the extent anything in this Motion is inconsistent with such documents, the terms of the applicable documents shall control. Capitalized terms used in this summary chart but not otherwise defined have the meanings ascribed to them in the Post-Petition Intermediation Agreement, the Intermediation Contracts, or the Interim Order, as applicable.

Bankruptcy Code	Intermediation Contract
	Vertex Refining may request, subject to certain conditions and fees, a 90-day Transitional Support Period to facilitate an orderly transition to an alternate intermediation provider or other alternate source of working capital support. <i>See</i> Post-Petition Intermediation Agreement, § 3.1.
Waiver/Modification of the Automatic Stay Bankruptcy Rule 4001(c)(1)(B)(iv)	Pursuant to the Interim Order, the automatic stay provisions of section 362 of the Bankruptcy Code shall be modified to the extent necessary to implement and effectuate the terms of the Interim Order. <i>See</i> Interim Order, ¶¶ 32, 34, 35, .
506(c) Waiver; Section 552(b) Waiver Bankruptcy Rule 4001(c)(1)(B)(vii) 4001(c)(1)(B)(x)	Subject to entry of the Final Order, the waiver of the Debtors’ and their estates’ rights to surcharge the collateral of Macquarie or the Hedge Provider pursuant to section 506(c) of the Bankruptcy Code and any right of the Debtors under the “equities of the case” exception in section 552(b) of the Bankruptcy Code. Subject to entry of the Final Order, neither Macquarie nor the Hedge Provider shall be subject to the equitable doctrine of marshaling or any similar doctrine with respect to SOA Collateral or the Hedging Participants’ Collateral, respectively, except solely with respect to Macquarie as set forth in the definition of “Business Insurance Percentage” in <u>Exhibit 4</u> to the Order. <i>See</i> Interim Order ¶ 37.
Commitment Requirements Bankruptcy Rule 4001(c)(1)(B)	Macquarie’s commitment to enter into purchase and sale transactions under and in connection with Intermediation Contracts is subject to certain conditions customary for transactions of this type, including maintenance of minimum levels of liquidity and the existence of no outstanding defaults or events of default. <i>See</i> Post-Petition Intermediation Agreement, § 1.1 (“Commitment Requirements”).
Carve Out Bankruptcy Rule 4001(c)(1)(B)	The Interim Order provides a “Carve Out” of certain statutory fees and allowed professional fees of the Debtors pursuant to section 1103 of the Bankruptcy Code. <i>See</i> Interim Order, ¶ 37, <u>Exhibit 4</u>, referring to Interim DIP Order ¶ 17.
Challenge Period Bankruptcy Rule 4001(c)(1)(B)	The Interim Order provides that the Committee shall have until sixty (60) calendar days from the date of formation of the Committee and all other non-Debtor parties-in-interest (including a trustee, if appointed or elected prior to the Investigation Termination Date) shall have sixty (60) calendar days from entry of the Interim Order (each, as applicable, the “<u>Investigation Termination Date</u>”) to investigate the validity, extent, priority, perfection and enforceability of: the SOA Prepetition Liens and (in addition to obtaining the requisite standing) to assert any other claims or causes of action against each of the Pre-Petition Term Loan Secured Parties. <i>See</i> Interim Order, ¶ 41.
Reporting	The Debtors shall provide Macquarie and the Hedge Provider with the financial and other reporting as described in the DIP Loan Agreement and DIP Orders; <i>provided, however</i>, Macquarie’s and the Hedge Provider’s approval rights with respect to any Cashflow Forecast shall be limited to its evaluation of the Debtors’ compliance with the Debtors’ minimum liquidity covenant and payments to be made to Macquarie and the Hedge Provider (as applicable) during the relevant budget period. <i>See</i> Interim Order, ¶ 18.
Stipulations Bankruptcy Rule 4001(c)(1)(B)(iii)	Subject to the provisions of paragraph 41 of the Interim Order, the Interim Order contains customary stipulations as to, among other things, the valid and binding nature of the obligations owed and liens granted under the Prepetition Intermediation Facility, Macquarie’s ownership interest in inventory and other property acquired under the

Bankruptcy Code	Intermediation Contract
	Intermediation Contracts, the “safe harbored” status of Macquarie, the Intermediation Contracts and the transactions entered into thereunder under the Bankruptcy Code and the amount and priority of the obligations and liens granted under the Prepetition Intermediation Facility. <i>See Interim Order, ¶ 41.</i>
Superpriority Claims, including Adequate Protection Claims Bankruptcy Rule 4001(c)(1)(B)(ii)	<u>Superpriority Hedging Claims:</u> The Hedge Provider is granted an allowed Superpriority Hedging Claim against each Participating Hedging Debtor, on a joint and several basis, with priority in payment over any and all administrative expenses at any time existing or arising, of any kind or nature whatsoever, for the obligations, liabilities and indebtedness of such Participating Hedging Debtors arising post-petition under or related to Hedge Facility, subject to the claim priority set forth in <u>Exhibit 3</u> to the Proposed Order. <u>Intermediation Superpriority Claims:</u> Macquarie is granted an allowed superpriority expense claim in accordance with Bankruptcy Code section 364(c)(1) against Vertex Refining and the other Refining Debtors, as applicable, with priority in payment over any and all administrative expenses at any time existing or arising, of any kind or nature whatsoever for the obligations, liabilities and indebtedness arising post-petition under or related to Intermediation Contracts, including any indemnification claims of Macquarie, in its capacity as intermediary, for losses and costs incurred in connection with the liquidation of collateral, which shall be paid and calculated under the terms set forth in the Intermediation Contracts, subject to the claim priority set forth in Shell Support Agreement. <u>Pre-Petition Intermediation Facility Adequate Protection Claims:</u> Macquarie is granted an allowed superpriority administrative expense claim as provided for in section 507(b) of the Bankruptcy Code against Vertex Refining and Vertex Energy with, except as set forth in this Interim Order and the Interim DIP Order, priority in payment over any and all administrative expenses of the kind specified or ordered pursuant to any other provision of the Bankruptcy Code, subject to the claim priority set forth in <u>Exhibit 3</u> to the Proposed Order. <u>Shell Superpriority Claims:</u> Shell shall be entitled to superpriority administrative claim status pursuant to section 364(c)(1) of the Bankruptcy Code for amounts owed by Vertex Refining and Vertex Energy to Shell on the account of postpetition transactions under the Shell Agreements, subject to the claim priority set forth in the Shell Support Agreement and the Proposed Order. <i>See Interim Order ¶¶ 8, 11, 14, 17.</i>
Fees Bankruptcy Rule 4001(c)(1)(B)	The Intermediation Contracts include the following principal fees, each as set forth in more detail in the Post-Petition Fee Letter or the other Intermediation Contracts: <u>Inventory Management Fee:</u> Vertex Refining shall pay to Macquarie each month an amount charged on the aggregate value of the Inventory Notional Value (as defined in the Post-Petition Fee Letter). <u>Restructuring Upfront Fee:</u> Vertex Refining shall pay to Macquarie an upfront fee upon the occurrence of the Restructuring Effective Date (as defined in the Post-Petition Intermediation Agreement). <u>Transitional Extension Fee:</u> If a Transitional Support Period (as defined in the Post-Petition Intermediation Agreement) occurs, Vertex Refining shall pay to Macquarie a fee on the first Business Day of the Transitional Support Period.

Bankruptcy Code	Intermediation Contract
	<u>Lien Inventory Fee</u>: Vertex Refining shall pay to Macquarie each month an amount charged on the Lien Inventory Value (as defined in the Post-Petition Fee Letter). <u>Crude Monthly Handling Fee</u>: Vertex Refining shall pay to Macquarie each month a fee based on the volume Raw Materials sold by Macquarie to Vertex Refining during the preceding month in connection with the Intermediation Contracts. <u>Monthly Crude Intermediation Fee</u>: Vertex Refining shall pay to Macquarie each month a fee based on the volume of Crude Oil purchased by Macquarie from suppliers during the preceding month in connection with Vertex Refining's sourcing activities. <u>Monthly Product Intermediation Fee</u>: Vertex Refining shall pay to Macquarie each month a fee based on the volume of Products Macquarie purchased from or sold to third parties during the preceding month in connection with the Intermediation Contracts. <u>Monthly Services Fees; Monthly Facilities Fees</u>: Vertex Refining shall pay to Macquarie certain amounts on a monthly basis in connection with the use of Included Storage Locations (as defined in the Post-Petition Intermediation Agreement). <u>OET Fee</u>: Vertex Refining shall pay Macquarie a fee if it elects to exercise its early termination rights under the Post-Petition Intermediation Agreement. See Post-Petition Fee Letter, § 2.
Liens and Priorities, including Adequate Protection Liens Bankruptcy Rule 4001(c)(1)(B)(i) 4001(c)(1)(B)(ii)	<u>Intermediation Facility Liens</u>: Macquarie is granted valid, enforceable, binding and fully perfected security interests in and liens upon ("<u>SOA Post-Petition Liens</u>" and, together with the SOA Prepetition Liens, the "<u>Intermediation Facility Liens</u>") all present and after-acquired property constituting Intermediation Facility Priority Collateral,⁷ including the Intermediation Title Property, and all present and after-acquired property constituting Shared Collateral⁸ that is DIP Priority Collateral⁹ (collectively, the "<u>SOA Post-Petition Collateral</u>" and, together with SOA Pre-Petition Collateral, the "<u>SOA Collateral</u>"), subject to the payment of the Carve Out, which Intermediation Facility

⁷ "Intermediation Facility Priority Collateral" means all of the following assets of Vertex Refining (or Parent, solely with respect to business interruption insurance policies held by the Parent subject, clause (c)) with respect to which a Lien is granted as security for the Intermediation Obligations in each case whether tangible or intangible: (a) all Inventory subject to or intended to be sold as Intermediation Title Property under the Intermediation Contracts; (b) all Inventory constituting Hydrocarbon Credit Support; (c) the Intermediator's Business Interruption Insurance Percentage of the proceeds of business interruption insurance policies; and (d) all Proceeds of (including other proceeds of insurance with respect to the foregoing), and Supporting Obligations (including Letter of Credit Rights) with respect to, any of the foregoing.

⁸ "Shared Collateral" means all assets and interests in assets and proceeds thereof now owned or hereafter acquired by Vertex Refining and Parent (solely with respect to business interruption insurance policies maintained by Parent) thereby or arising and wherever located, including all accessions thereto and products and proceeds thereof (other than Excluded Property) in or upon which a Lien is granted by a Debtor with the priorities as set forth in Exhibit 3. For the avoidance of doubt and notwithstanding anything to the contrary herein, Shared Collateral constituting Intermediation Facility Priority Collateral shall not include Intermediation Excluded Property.

⁹ "DIP Priority Collateral" means Shared Collateral other than the Intermediation Facility Priority Collateral including the DIP Secured Parties' Business Interruption Insurance Percentage.

Bankruptcy Code	Intermediation Contract
	Liens shall have the priorities set forth in Exhibit 2 to the Proposed Order and shall consist of: • Pursuant to section 364(c)(3) of the Bankruptcy Code, a junior priority, perfected lien and security interest upon all of Vertex Refining's and Vertex Energy's right, title and interest in, to and under all Shared Collateral that is DIP Priority Collateral, whether now existing or hereafter acquired. • Pursuant to section 364(d)(1) of the Bankruptcy Code, valid, enforceable, binding, continuing, fully perfected, first priority senior priming liens upon and security interest in all of Vertex Refining' and Vertex Energy's right, title and interest in, to and under all Intermediation Facility Priority Collateral that is subject to the SOA Prepetition Liens; provided, however, that the liens granted by this subsection shall in each case be subject and subordinate to liens on the Pre-Petition Collateral (other than the SOA Prepetition Liens and the Pre-Petition Liens) that (i) are valid, perfected, enforceable and nonavoidable as of the Petition Date or validly perfected subsequent to the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code, (b) under applicable law, are senior to, and have not been subordinated to, the SOA Prepetition Liens or the Pre-Petition Liens, and (c) are not subject to avoidance, reduction, disgorgement, counterclaim, surcharge, or subordination pursuant to the Bankruptcy Code applicable non-bankruptcy law (each, a "<u>Permitted Priority Lien</u>"), including Permitted Priority Liens on DIP Priority Collateral. Intermediation Facility Adequate Protection Liens: Macquarie is granted valid, enforceable, unavoidable and fully perfected liens, replacement liens and security interests in all SOA Collateral (the "<u>Intermediation Facility Adequate Protection Liens</u>") to the extent of any diminution in SOA Prepetition Collateral value, which shall be subject to the Carve Out and the lien priorities set forth in Exhibit 2 to the Proposed Order. Hedging Liens: As security for the Hedge Obligations, the Hedge Provider is granted valid, enforceable, binding, and fully perfected Hedging Liens upon all present and after-acquired property of the Participating Hedging Debtors of any nature whatsoever (including without limitation "<u>Collateral</u>"), and all cash and cash equivalents contained in any account maintained by any of the Debtors, and, subject to entry of a Final Order, all Avoidance Actions Proceeds of the Participating Hedging Debtors or their estates (collectively with all rents, issues, products, offspring, proceeds and profits of any or all of the foregoing, but excluding "Excluded Property" as defined in the DIP Loan Agreement, the "<u>Hedging Participants' Collateral</u>"), subject only to the payment of the Carve Out, which Hedging Liens shall have the priorities set forth in Exhibit 3 to the Proposed Order and shall consist of: • Pursuant to section 364(c)(2) of the Bankruptcy Code, a continuing, enforceable, first priority, fully-perfected lien and security interest upon all of the Participating Hedging Debtors' right, title and interest in, to, and under all Hedging Participants' Collateral that was not encumbered by a validly perfected, enforceable, and nonavoidable security interest or lien as of the Petition Date or a valid security interest perfected subsequent to the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code (collectively, the "<u>Unencumbered Property</u>"). Subject only to and effective upon entry of the Final Order, Unencumbered Property shall also include the Avoidance Actions Proceeds. • Pursuant to section 364(c)(3) of the Bankruptcy Code, a junior priority, perfected lien and security interest upon all of the Participating Hedging Debtors' right, title and interest in, to and under all Hedging Participants'

Bankruptcy Code	Intermediation Contract
	Collateral (other than the Hedging Participants' Collateral described herein, as to which the liens and security interests in favor of the Hedge Provider will be as described), whether now existing or hereafter acquired, that is subject to any (1) Permitted Priority Lien and (2) solely with respect to the Intermediation Facility Priority Collateral (other than the Business Interruption Insurance Proceeds), the Intermediation Facility Liens, in each case, that was validly perfected prior to the Petition Date, or is validly perfected subsequent to the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code, and is not subject to section 552(a) of the Bankruptcy Code. Pursuant to section 364(d)(1) of the Bankruptcy Code, valid, enforceable, binding, continuing, enforceable, fully perfected, first priority senior priming liens upon and security interest in all of the Participating Hedging Debtors' right, title and interest in, to, and under all Hedging Participants' Collateral that is subject to the Pre-Petition Liens (as defined in the DIP Order); <u>provided, however</u>, that the liens granted by this subsection shall in each case be subject and subordinate to liens Permitted Priority Liens. The Relative Priorities of the Collateral, including the Shared Collateral and the DIP Exclusive Collateral, are set forth on <u>Exhibit 2</u> to the Interim Order. See Interim Order, ¶¶ 12, 15, 17, <u>Exhibit 2</u>.
Independent Amount	The Intermediation Contracts contemplate that, from time to time, Macquarie may require that Vertex Refining transfer cash collateral to Macquarie's control as Independent Amount. See Interim Order, ¶ F, 29.
Events of Default Bankruptcy Rule 4001(c)(1)(B)	The Post-Petition Intermediation Agreement contains events of default that are usual and customary for like facilities in a debtor-in-possession context, including without limitation the failure to comply with relevant court orders and a chapter 7 conversion. See Interim Order ¶ 32, 34, 35, Post-Petition Intermediation Agreement, Article 20.
Indemnification Bankruptcy Rule 4001(c)(1)(B)(ix)	The Intermediation Facility contains indemnification provisions ordinary and customary for intermediation facilities. See Post-Petition Intermediation Agreement, §§ 16, 22.2.
Releases of Claims Bankruptcy Rule 4001(c)(1)(B)(viii)	Upon entry of the Final Order, except as otherwise provided in the Intermediation Contracts, the Assurance Agreement, the Hedge Facility Documents or this Interim Order, each of the Debtors and the Debtors' estates, on their own behalf and on behalf of each of their predecessors, their successors, and assigns shall, to the maximum extent permitted by applicable law, unconditionally, irrevocably and fully forever release, waive and discharge each of Macquarie and the Hedge Provider, and each of their former, current, or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, predecessors and predecessors in interest, each in their capacities as such, of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened including all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract, of every nature and description that exist on the date hereof arising out of, relating to, or in connection with (a) any of the Intermediation Contracts (including the Assurance Agreement) or the transactions contemplated thereunder or any of the Hedge Facility Documents or the

Bankruptcy Code	Intermediation Contract
	transactions contemplated thereunder or (b) this Interim Order, including: (i) any so-called “lender liability” or equitable subordination claims or defenses, (ii) any and all claims to recharacterize purchases and sales entered into with respect to Intermediation Title Property under the Intermediation Contracts as secured loans, (iii) any and all claims and causes of action arising under the Bankruptcy Code, and (iv) any and all claims and causes of action regarding the validity, priority, perfection, or avoidability of the liens of Macquarie or the Hedge Provider, subject to a Challenge Proceeding during the Challenge Period (as defined in the Interim DIP Order). <i>See Interim Order ¶ 40.</i>
Liens on Avoidance Actions Bankruptcy Rule 4001(c)(1)(B)(xi)	The Hedging Liens include, subject to entry of a Final Order, liens on Avoidance Action Proceeds. <i>See Interim Order ¶ 15.</i>

The Interim Order contains certain of the provisions (the “Significant Provisions”) identified in paragraph 8 of the Complex Case Procedures as set forth below:

- ***Sale or Plan Confirmation Milestones.*** The ISDA Master Agreement is amended to provide for milestone related events of default, including: (a) if the Interim DIP Order and Final DIP Order are not entered by the Bankruptcy Court by the dates falling 3 and 30 days after the Petition Date, respectively; (b) if the Post-Petition Financing Agreement has not been funded in the amount of at least US\$39,390,204.38 by September 27, 2024, and thereafter in accordance with the agreed budget; (c) if the Final Order, in form and substance reasonably acceptable to Macquarie and the Debtors is not entered within 30 days after the Petition Date; and (d) if no chapter 11 plan or Asset Sale reasonably acceptable to the Hedge Provider has been confirmed and has become effective or has closed within 115 days of the Petition Date. *See Interim Order ¶ 34.*
- ***Liens on Avoidance Actions.*** The Hedging Liens include, subject to entry of a Final Order, liens on Avoidance Action Proceeds. *See Interim Order ¶ 15.*
- ***Default Provisions and Remedies.*** The Interim Order provides for a Remedies Notice Period (as defined in the Interim Order) of five business days for all Events of Default, other than certain Immediate Exercise Rights and Remedies, including Macquarie’s rights to suspend performance, terminate commitments, terminate, liquidate and/or accelerate transactions, offset or net termination values or payment amounts and/or apply any cash collateral (including cash collateral in the form of an Independent Amount) in its possession or control. The Debtors may contest whether an Event of Default has occurred at an emergency hearing before the Bankruptcy Court prior to the expiration of the Remedies Notice Period. *See Interim Order ¶¶ 32, 34, 35.*
- ***Releases of Claims.*** Upon entry of the Final Order and subject to paragraph 40 of the Interim Order, the Debtors will provide customary releases to the Macquarie and the Hedge Provider with respect to (a) any of the Intermediation Contracts (including the

Assurance Agreement) or the transactions contemplated thereunder or any of the Hedge Facility Documents or the transactions contemplated thereunder or (b) the Interim Order. *See* Interim Order ¶ 40.

The inclusion of each of the applicable Significant Provisions in the Interim Order is appropriate and necessary to permit the Debtors' continued operations. The terms and conditions of each of the Significant Provisions included in the Interim Order are the result of arm's length and hard-fought negotiations between the Debtors and, as applicable, Macquarie and the Hedge Provider, who are unwilling to continue to perform under the Post-Petition Intermediation Facility absent the inclusion of these provisions. As set forth herein, in the First Day Declaration, and in the McGovern Declaration, granting the relief requested pursuant to the Interim Order is critical to the continued operation of the Debtors' businesses and will permit the Debtors to smoothly transition into these chapter 11 cases and maximize the value of the Debtors' estates for the benefit of all interested parties. Accordingly, the Debtors submit that the Significant Provisions in the Interim Order are appropriate and necessary under the facts and circumstances of these chapter 11 cases and should be approved.

The Intermediation Contracts

II. Background

14. The Intermediation Contracts are an integrated suite of agreements that are critical to the operations of the Debtors' business with respect to the Mobile Refinery. They have the effect of reducing the working capital investment required to operate the Debtors' refining business, facilitating the Debtors' sourcing activities, and mitigating the Debtors' exposure to commodity price volatility.

15. Vertex Refining purchases substantially all of its supplies of crude oil and non-crude feedstock requirements (the "Raw Materials") for the Mobile Refinery from Macquarie, under the Prepetition Intermediation Facility. Macquarie, in turn, purchases these Raw Materials Shell Trading (US) Company ("STUSCO") or from other third parties identified by the Refining Debtors from time to time. The Raw Materials are stored in tanks at the Mobile Refinery and at other locations which are owned (or leased) by Vertex Refining and leased (or subleased) to Macquarie. Vertex Refining then purchases Raw Materials from Macquarie as-needed on a daily basis for processing at the Mobile Refinery. The Prepetition Intermediation Facility also provides

for the intermediation of the Refining Debtors' wholesale product inventory, including intermediates, jet fuel, gasoline, distillate products, and other refined products. Accordingly, Macquarie purchases substantially all of the refined products produced by the Mobile Refinery. Under the terms of the Prepetition Intermediation Facility, Macquarie holds title to the inventory and has broad rights with respect thereto.

16. The Refining Debtors entered into a term supply agreement with STUSCO, which is the principal supplier of Raw Materials to Macquarie in connection with the Prepetition Intermediation Facility. On a monthly rolling basis and subject to the terms of the Prepetition Intermediation Facility, the Refining Debtors are able to assign their commitments for that month to Macquarie. This monthly assignment mechanism is documented in a tripartite agreement among STUSCO, Macquarie and Vertex Refining. Under the term supply agreement, STUSCO and the Refining Debtors negotiate the amount of Raw Materials to be supplied each month through an iterative process. Once agreed between STUSCO and the Refining Debtors, Macquarie elects (subject to the terms of the Prepetition Intermediation Facility) to take assignments of the relevant month's volumes agreed to by the Refining Debtors at the rates set by STUSCO. STUSCO then delivers the relevant volumes to Macquarie, who stores the received Raw Materials in storage tanks leased (or subleased) from the Refining Debtors. Macquarie is the sole owner of the Raw Materials stored in the relevant tanks. The Refining Debtors, in turn, purchase Raw Materials from the Macquarie tanks, as-needed, during the ordinary course of their operations. Raw Material inventory volumes are measured daily, and the Refining Debtors pay for the volume drawn from inventory based on a pricing model in the Prepetition Intermediation Facility.

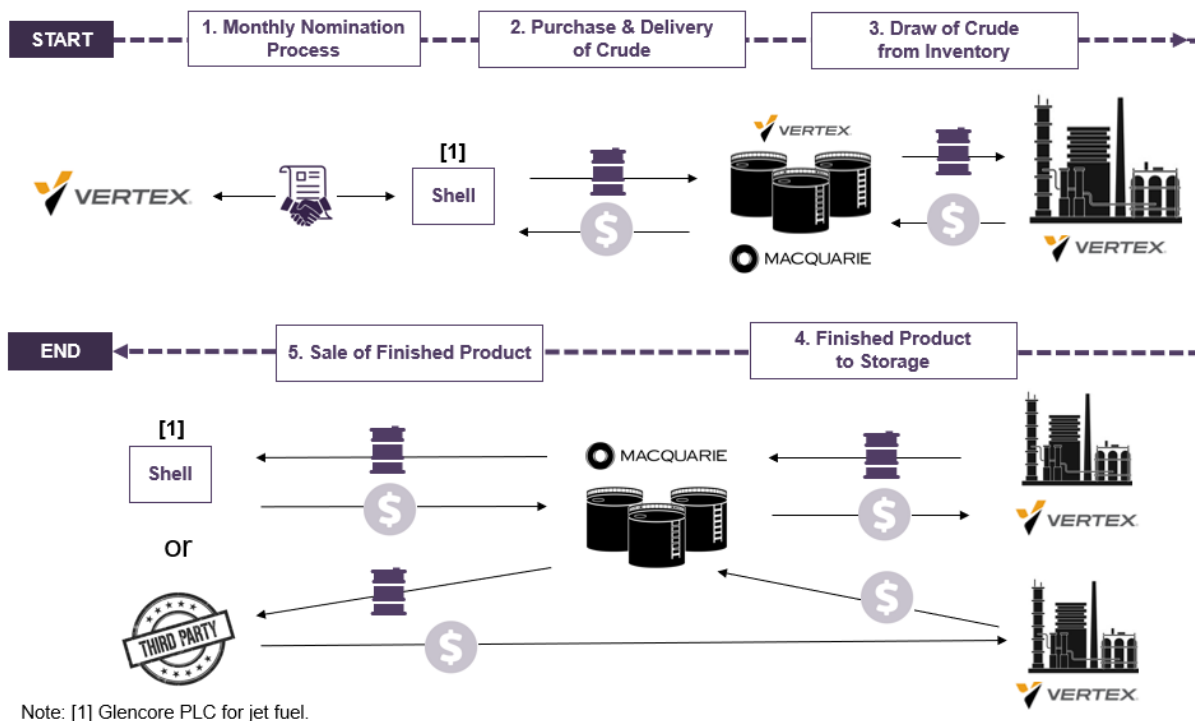
17. Through the month end true-up process, the Refining Debtors and Macquarie calculate the difference between the interim daily crude pricing and the settled purchase price of

the crude acquired by Macquarie from STUSCO. The Refining Debtors then either receive or pay the delta resulting from this true-up process.

18. As refined products are produced by the Mobile Refinery, they are purchased by Macquarie based on the interim daily product pricing outlined in the Prepetition Intermediation Facility and stored by Macquarie in tanks leased (or subleased) from the Refining Debtors. Through the month end true-up process, the Refining Debtors and Macquarie calculate the delta between the interim daily product pricing and the market value of product sold by Macquarie to Shell, and the Refining Debtors either receives or pays the difference. Equilon Enterprises LLC d/b/a Shell Oil Products US (“SOPUS” and together with STUSCO, “Shell”) is the single largest purchaser of gasoline, jet fuel, and diesel from Macquarie in connection with the Prepetition Intermediation Facility, representing approximately 65% of the sale value. The Refining Debtors are then responsible for the sale of any products not sold to Shell through the Prepetition Intermediation Facility. These volumes are sold by Macquarie back to the Refining Debtors for resale to other third parties.¹⁰

¹⁰ Diagram presents a stylized and simplified representation of relevant arrangements, and is qualified in its entirety by the provisions of the Post-Petition Intermediation Agreement, other Intermediation Contracts, and the Interim Order.

Prepetition Intermediation Facility Flow Diagram



III. The Continued Benefit of the Prepetition Intermediation Facility.

19. The Prepetition Intermediation Facility enables the Refining Debtors to acquire crude oil on credit terms that are more favorable than those that they could otherwise receive from suppliers by allowing the Refining Debtors to utilize the superior creditworthiness of Macquarie for the acquisition of Raw Materials from third parties. The Prepetition Intermediation Facility eases the administrative and financial pressures on the Refining Debtors by transferring ownership of working inventory, that Vertex Refining would otherwise have to own, to Macquarie at market prices. This arrangement effectively funds a significant portion of the Refining Debtors' refining operation by limiting the amount of working capital the Refining Debtors are required to deploy to run their business.

20. The Prepetition Intermediation Facility also allows the Refining Debtors to price Raw Materials at the time of processing, as opposed to the origination point, and to price finished

products as soon as they are produced, as opposed to when they are actually sold to third parties, each of which reduces the risk associated with volatile commodity prices by shortening the commodity conversion cycle time—*i.e.*, the time elapsed between raw material acquisition and the sale of finished products.

21. In connection with these activities, the parties effectuate certain transactions under the Prepetition Intermediation Facility, including: (a) the Refining Debtors' payment of a fixed fee per barrel of Raw Material that Macquarie sells to the Refining Debtors, (b) the Refining Debtors' payment of a fixed fee per barrel Macquarie purchases from supplier, (c) the Refining Debtors' payment of a separate fixed fee for each barrel of refined product that Macquarie sells through the Prepetition Intermediation Facility, (d) fees in respect of Macquarie's deployment of capital, and (e) the Refining Debtors' payment of certain other amounts related to the services provided by Macquarie, and payments related to pricing differential adjustments.

22. Due to the integral nature of the Intermediation Contracts to the Debtors' businesses and the necessity to perform the Postpetition Intermediation Transactions in order for the Debtors to continue as a going concern, any disruption to the Intermediation Contracts would result in a substantial loss of value to the Debtors' estates. The fully secured and committed Intermediation Contracts will provide the Debtors and their stakeholders and creditors with the necessary stability to progress swiftly through these chapter 11 cases.

IV. The Hedging Arrangements

23. Pursuant to that certain ISDA Master Agreement, dated as of March 31, 2022, Vertex Refining and the Hedge Provider agreed to perform certain hedging arrangements (the "Prepetition Hedging Arrangements") related to the Prepetition Intermediation Facility. The Debtors are seeking authority to enter into and perform under postpetition hedging arrangements

(the “Postpetition Hedging Arrangements” and together with the Prepetition Hedging Arrangements, the “Hedging Arrangements”).

24. Historically, the Debtors, like many other complex refinery businesses, have from time to time used the Prepetition Hedging Arrangements to hedge their exposure resulting from the difference between the price of the crude oil consumed by the Mobile Refinery and the value of the refined products produced by the Mobile Refinery. In connection with the commencement of these chapter 11 cases, the Debtors and the Hedge Provider have agreed to resume and expand these hedging transactions. The Hedging Arrangements will require Vertex Refining to enter into calendar month crack spread hedges over approximately one-third of its expected Crude Oil throughput.

25. This will mitigate the Debtors’ exposure to adverse movements in the relative prices of crude oil and refined products, thereby reducing the Debtors’ working capital requirements and better enable them to manage their liquidity during the pendency of these chapter 11 cases. Vertex Refining’s compliance with this hedging mandate is critical to both to the sizing of the DIP Facility and Macquarie’s willingness to continue intermediation activities under the Intermediation Contracts after the Petition Date in light of the Debtors’ projected cash needs. Accordingly, the entry into these hedging arrangements, and the resulting beneficial effects on the Debtors’ postpetition risk profile, were a material component of negotiations regarding the Intermediation Contracts and DIP Facility.

V. The Shell Support Agreement

26. As described above, Shell is a key supplier to and purchaser from the Mobile Refinery. As a result, the Debtors and Shell have negotiated in good faith, at arm’s-length on the terms of that certain Support Agreement entered into as of September 24, 2024, by and among the

Refining Debtors and Shell (the “Shell Support Agreement”). Importantly, the Shell Agreements are forward contracts, so Shell would have the right to terminate absent the Support Agreement.

27. The Refining Debtors intend to continue performing their obligations under the prepetition contracts with Shell (as defined in the Shell Support Agreement, the “Shell Agreements”), including the Tripartite Agreements,¹¹ as set forth in the Intermediation Orders or as otherwise agreed to by the Refining Debtors, Shell, and Macquarie.

28. Continued performance by Shell under the Shell Agreements will help maximize the value of the Debtors’ estates by providing a stable buyer for Macquarie to sell the Refining Debtors’ refined products.

29. Appreciating the nature of the agreement and the need to minimize disruption to the Debtors’ businesses upon a chapter 11 filing, and to ensure Shell continues performing under their prepetition agreements during these chapter 11 cases, the Debtors engaged directly with Shell regarding their willingness to enter into and perform under the Shell Support Agreement.

30. After good faith, arm’s-length negotiations, the terms of which are embodied in the Shell Support Agreement, the parties have agreed that, among other things:

- (a) Shell shall not exercise Termination Rights (as defined in the Shell Support Agreement) under the Shell Agreements, so long as no Event of Default (as defined in the Shell Support Agreement) has occurred;
- (b) Shell shall not impose more restrictive conditions beyond what the Debtors have provided or posted pursuant to the Shell Agreements, so long as the Debtors comply with the terms of the Shell Support Agreement;

¹¹ “Tripartite Agreements” means, collectively, (a) the Agreement in Relation to the Crude Oil & Hydrocarbon Feedstock Supply Agreement, dated April 1, 2022, by and between Vertex Refining, STUSCO, and Macquarie, (b) the Agreement in Relation to the Jet Fuel Rack Offtake Agreement, dated as of April 1, 2022, by and between Vertex Refining Alabama LLC, STUSCO, and Macquarie, and (c) the Agreement in Relation to the Gasoline & ULSD Offtake Agreement, dated as of April 1, 2022, by and between Vertex Refining Alabama LLC, Equilon Enterprises LLC, dba Shell Oil Products US, and Macquarie; and (d) the Convenience Exchange Agreement Dated 1 April 2022, dated as of April 1, 2022, by and between Vertex Refining Alabama LLC, Equilon Enterprises LLC, dba Shell Oil Products US, and Macquarie.

- (c) the Debtors shall make all payments when due and in the ordinary course (other than termination payments for which Shell may file any necessary claims, as appropriate) as may be required under the Shell Agreements and the Tripartite Agreements (unless expressly amended pursuant to the Shell Support Agreement or otherwise agreed to in writing by Shell and the Debtors);
- (d) the Debtors shall perform and pay all postpetition obligations under the Shell Agreements in accordance with the same terms, conditions, elections and options applicable as of Petition Date and paid at the prices specified in the Shell Agreements;
- (e) the Debtors shall provide superpriority administrative claim status pursuant to section 364(c)(1) for amounts owed by the Debtors to Shell on account of postpetition transactions under the Shell Agreements and the Tripartite Agreements (including, if applicable and subject to the terms thereof, any actual reasonable and documented costs incurred postpetition by Shell for any accepted postpetition mandates or postpetition changes in prepetition elections under the Shell Agreements by the Debtors subject to Shell's duty to mitigate any such costs) subject only to superpriority administrative claims granted in respect of the DIP Facility (such term for purposes hereof having the meaning set forth in the DIP Order), continuation of the Prepetition Intermediation Facility on a postpetition basis, and to any carve-outs specified in connection therewith, including, for the avoidance of doubt, the professional fee carve-out;
- (f) to the extent the minimum liquidity compliance requirement under the DIP Loan Agreement (as defined in the DIP Order) is changed, the Debtors shall provide Shell with notice of such change within twenty-four (24) hours of such change being approved by the lenders under the DIP Loan Agreement;
- (g) the Debtors shall comply with the following milestones:
 - (i) no later than three (3) days after the Petition Date, subject to Court availability, the Court shall have entered the Interim Order;
 - (ii) no later than thirty (30) days after the Petition Date, subject to Court availability, the Court shall have entered the Final Order; and
 - (iii) no later than one hundred and fifteen (115) days after the Petition Date, the Debtors shall have consummated a sale under section 363 of the Bankruptcy Code or confirmed a chapter 11 plan, subject to extension or waiver by Macquarie; *provided* that the Debtors shall use reasonable best efforts to provide Shell with two (2) days' written notice of any request to consent to such extension or waiver; and

- (h) pay the reasonable and documented fees and out-of-pocket expenses of Shell’s primary legal counsel incurred in connection with or enforcement of the Shell Support Agreement in these chapter 11 cases.

31. Without the concessions and consideration detailed in the Shell Support Agreement, the operation of the Mobile Refinery could be significantly adversely impacted to the detriment of the Debtors’ estates, shareholders, and creditors.

Basis for Relief

I. Section 363(c) of the Bankruptcy Code Authorizes the Refining Debtors to Continue the Intermediation Contracts and Enter into Postpetition Intermediation Transactions.

32. Section 363(c)(1) of the Bankruptcy Code provides that a debtor in possession “may enter into transactions . . . in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.” The ordinary course of business standard embodied in this provision is intended to allow a debtor in possession the flexibility to run its business during its chapter 11 proceedings. *See Moore v. Brewer (In re HMM Motor Servs., Inc.)*, 259 B.R. 440, 448–49 (Bankr. S.D. Ga. 2000).

33. The Bankruptcy Code does not define “ordinary course of business.” *In re Com. Mortg. & Fin. Co.*, 414 B.R. 389, 393 (Bankr. N.D. Ill. 2009). However, courts have clarified that the standard is meant “to embrace the reasonable expectations of interested parties of the nature of transactions that the debtor would likely enter in the course of its normal, daily business.” *Med. Malpractice Ins. Assoc. v. Hirsch (In re Lavigne)*, 114 F.3d 379, 384 (2d Cir. 1997) (quoting *In re Watford*, 159 B.R. 597, 599 (M.D. Ga. 1993, *aff’d without opinion*, 61 F.3d 30 (11th Cir.1995))); *see also, e.g., In re Roth Am., Inc.*, 975 F.2d 949, 952 (3d Cir. 1992) (stating that section 363 of the Bankruptcy Code is designed to allow a debtor in possession “the flexibility to engage in ordinary transactions without unnecessary . . . oversight”). The two tests ordinarily applied by the courts to determine the ordinary course of business are the “horizontal test” and the “vertical test.”

Denton Cnty. Elec. Co-Op., Inc. v. Eldorado Ranch, Ltd. (In re Denton Cnty. Elec. Coop., Inc.), 281 B.R. 876, 882 n.12 (Bankr. N.D. Tex. 2002); *In re Springfield Contracting Corp.*, 154 B.R. 214, 225–26 (Bankr. E.D.V.A. 1993). “The ‘horizontal test’ focuses on the way businesses operate within a given industry. The ‘vertical test’ focuses on the expectations of creditors.” *Denton Cnty.*, 281 B.R. at 882 n.12. Continuation of the Intermediation Contracts and entry into Postpetition Intermediation Transactions satisfies both tests.

34. The Intermediation Contracts and the Postpetition Intermediation Transactions satisfy the horizontal test because they are typical arrangements that are ubiquitous among companies in the Debtors’ industry. Accordingly, the Debtors believe continuation of the Intermediation Contracts and entry into the Postpetition Intermediation Transactions and incurrence and payment of the obligations thereunder fall within the standard, ordinary course practice of companies in the Debtors’ industry.

35. The Intermediation Contracts and the Postpetition Intermediation Transactions satisfy the vertical test because a creditor’s reasonable expectations of a debtor’s “ordinary course of business” are based on the debtor’s specific prepetition business practices and norms and the expectation that the debtor will conform to those practices and norms while operating as a debtor in possession. *In re Garofalo’s Finer Foods, Inc.*, 186 B.R. 414, 425 (N.D. Ill. 1995). Thus, a fundamental characteristic of an “ordinary” postpetition business transaction is its similarity to a prepetition business practice. *Marshack v. Orange Com. Credit (In re Nat’l Lumber & Supply, Inc.)*, 184 B.R. 74, 79 (9th Cir. B.A.P. 1995); *In re James A. Phillips, Inc.*, 29 B.R. 391, 394 (S.D.N.Y. 1983). The size, nature, and type of business and the size and nature of the transactions in question are all relevant to determining whether the transactions at issue are ordinary. *U.S. ex rel. Harrison v. Estate of Deutscher (In re H&S Transp. Co., Inc.)*, 115 B.R. 592, 598 (M.D. Tenn.

1990); *In re Johns-Manville Corp.*, 60 B.R. 612, 617 (Bankr. S.D.N.Y. 1986). “Accordingly, a postpetition transaction undertaken by the debtor that is similar in size and nature to prepetition transactions undertaken by the debtor would be within the ordinary course of business.” *Garofalo’s*, 186 B.R. at 426. Here, the Refining Debtors will be operating consistent with the Refining Debtors’ prepetition practices.

II. The Refining Debtors Should Be Authorized to Continue the Intermediation Contracts and Enter into Postpetition Intermediation Transactions.

A. Continuation of the Intermediation Contracts and Entry into Postpetition Intermediation Transactions Is an Exercise of the Refining Debtors’ Sound Business Judgment.

36. To the extent that continuation of the Intermediation Contracts and/or entry into the Postpetition Intermediation Transactions implicate section 363(b) of the Bankruptcy Code, the Debtors submit that continuation of such arrangements constitutes a proper exercise of the Debtors’ business judgment. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that debtors “after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” Under section 363(b) of the Bankruptcy Code, courts require only that the debtor “show that a sound business purpose justifies such actions.” *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (internal citations omitted); *see also, e.g., In re Elpida Memory, Inc.*, No. 12-10947 (CSS), 2012 WL 6090194, at *5 (Bankr. D. Del. Nov. 20, 2012) (noting that it is “well-settled” that a debtor may use its assets outside the ordinary course where such use “represents the sound exercise of business judgment”); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (stating that judicial approval under section 363 of the Bankruptcy Code requires a showing that the proposed action is fair and equitable, in good faith, and supported by a good business reason). Moreover, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or

capriciously), courts will generally not entertain objections to the debtor's conduct." *Johns-Manville*, 60 B.R. at 616 (citation omitted); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) ("Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.").

37. There is no question that a sound business purpose exists for the Refining Debtors to continue the Intermediation Contracts and enter into the Postpetition Intermediation Transactions, which provide a low-risk means to reduce the impact of volatility on the Refining Debtors' cash-flow and help the Refining Debtors limit working capital requirements, therefore, enhancing the value of the Debtors' estates for the benefit of all their stakeholders. This continuation preserves the Debtors' ability to purchase crude oil in the short-term. This access is necessary to the Debtors' continued operations of their businesses during these chapter 11 cases.

B. The Refining Debtors Should Be Authorized to Grant Liens on Account of the Intermediation Contracts and Superpriority Claims on Account of Obligations under the Intermediation Contracts.

38. Section 364 of the Bankruptcy Code authorizes a debtor to obtain "credit" on a superpriority or senior secured basis when obtaining such credit on other terms is unavailable. 11 U.S.C. §§ 364(c), (d). Courts generally afford debtors considerable deference to determine, in their business judgment, the terms under which they obtain postpetition secured credit. *See, e.g., In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011); *In re Curlew Valley Assocs.*, 14 B.R. 506, 513-14 (Bankr. D. Utah 1981).

39. To provide the necessary comfort to Macquarie that the Refining Debtors will be able to honor their obligations pursuant to the Intermediation Contracts as administrative expense claims subject to the priorities set forth in Exhibit 3 to the Interim Order, the Refining Debtors request explicit authority to incur obligations under the Postpetition Intermediation Transactions secured by liens and security interests with the priorities set forth in Exhibit 2 attached to the

Interim Order, including first priority senior priming liens on and security interests in all SOA Collateral (as defined in the Order) that also constitutes SOA Pre-Petition Collateral (as defined in the Interim Order), subject to the Carve Out.

40. Courts in this district and in other jurisdictions have approved similar relief. *See, e.g., In re PES Holdings, LLC*, Case No. 18-10122 (KG) (Bankr. D. Del. Feb. 27, 2018) (authorizing the debtors to continue prepetition intermediation agreements after the petition date); *In re SandRidge Energy, Inc.*, Case No. 16-32488 (DRJ) (Bankr. S.D. Tex. June 30, 2016) (authorizing the debtors to continue prepetition hedging arrangements after the petition date); *In re Linn Energy, LLC, et al.*, No. 16-60040 (DRJ) (Bankr. S.D. Tex. May 17, 2016) (same); *In re Energy Future Holdings Corp.*, No. 14-10979 (CSS) (Bankr. D. Del. June 30, 2014) (same); *In re Penn Va. Corp., et al.*, No. 16-32395 (KLP) (Bankr. E.D. Va. May 13, 2016) (authorizing the debtors to enter into new lender party swap agreements after the petition date).

41. Granting liens and superpriority administrative expense claims is not unduly burdensome on the Debtors, and the Debtors believe these grants are necessary to enter into the Postpetition Intermediation Transactions, which are essential both to the stability of the Debtors' businesses and the success of the Debtors' restructuring.¹²

42. In light of the foregoing, and as set forth in the Interim Order, the Refining Debtors propose to provide Macquarie with liens on and security interests in the SOA Collateral, in order to ensure access to Postpetition Intermediation Transactions and to preserve the value of the Debtors' estates, including, subject to the Carve Out:

- (a) providing valid, enforceable, nonavoidable and fully perfected security interests and liens and back-up liens (including liens pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code and consensual priming liens pursuant to section 364(d) of the Bankruptcy Code on all SOA

¹² See First Day Declaration, ¶ 49.

Collateral subject to the priorities set forth in Exhibit 2 of the Interim Order; and

- (b) pursuant to section 364(c)(3) of the Bankruptcy Code, valid, enforceable, non-avoidable automatically and fully perfected junior liens on and security interests in all SOA Collateral (other than as set forth in clause (a) of this paragraph), subject to the priorities set forth in Exhibit 2 to the Interim Order.

43. The Debtors believe that authorizing the Refining Debtors to provide valid, enforceable SOA Liens and Intermediation Superpriority Claims on account of the obligations under the Postpetition Intermediation Transactions is essential to preserve and maximize the value of the Debtors' estates and is, therefore, appropriate and in the best interests of the Debtors, their estates, and all parties in interest in these chapter 11 cases and should be permitted.¹³

III. The Debtors Should Be Authorized to Grant Superpriority Administrative Expense Status on Account of the Hedging Obligations Pursuant to Section 364 of the Bankruptcy Code.

44. Section 364 of the Bankruptcy Code authorizes a debtor to obtain "credit" on a superpriority or senior secured basis when obtaining such credit on other terms is unavailable. 11 U.S.C. §§ 364(c), (d). Courts generally afford debtors considerable deference to determine, in their business judgment, the terms under which they obtain postpetition secured credit. *See, e.g., In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011); *In re Curlew Valley Assocs.*, 14 B.R. 506, 513-14 (Bankr. D. Utah 1981).

45. To provide the necessary comfort to the Hedge Provider that the Participating Hedging Debtors will be able to honor the obligations under Hedging Arrangements (the "Hedging Obligations"), the Debtors are seeking authority to provide superpriority administrative expense status on account of the Hedging Obligations. Courts in this jurisdiction have approved similar

¹³ *See id.*

relief. *See, e.g., In re Oasis Petroleum North America LLC*, No. 20-34771 (Bankr. S.D. Tex. Sept. 30, 2020) (granting superpriority administrative-expense claim status to counterparties); *In re Denbury Resources Inc.*, No. 20-33801 (Bankr. S.D. Tex. Aug 31, 2020) (same); *In re Bruin E&P Partners, LLC*, No. 20-33605 (Bankr. S.D. Tex. Aug. 4, 2020) (same); *In re Chesapeake Energy Corp.*, No. 20-33233 (Bankr. S.D. Tex. June 29, 2020) (same); *In re Ultra Petroleum Corp.*, No. 20-32631 (Bankr. S.D. Tex. June 8, 2020) (same).

46. Granting the Superpriority Hedging Claims (as defined in the Interim Order) superpriority administrative expense status on account of the obligations under the Hedging Arrangements is not unduly burdensome on the Debtors, and the Debtors believe these grants are necessary to continue to perform under and enter into the Hedging Transactions, which are essential both to the stability of the Debtors' businesses and the success of the Debtors' restructuring. In light of the foregoing, the Debtors believe that authorizing the Debtors to provide the superpriority administrative expense status on account of the obligations under the Hedging Arrangements will preserve the value of the Debtors' estates and is, therefore, appropriate and in the best interests of the Debtors, their estates, and all parties in interest in these chapter 11 cases and should be permitted.

IV. The Debtors Should Be Authorized to Grant Superpriority Administrative Expense Status Under the Shell Support Agreement Pursuant to Section 364 of the Bankruptcy Code.

47. Due to the critical importance of the relationship among the Debtors, Macquarie, and Shell, entry into the Shell Support Agreement, and providing for the superpriority claim status therein, is imperative to preserving the value of the Debtors' estates. Courts in this jurisdiction have approved similar relief. *See, e.g., In re Oasis Petroleum North America LLC*, No. 20-34771 (Bankr. S.D. Tex. Sept. 30, 2020) (granting superpriority administrative-expense claim status to counterparties); *In re Denbury Resources Inc.*, No. 20-33801 (Bankr. S.D. Tex. Aug. 31, 2020)

(same); *In re Bruin E&P Partners, LLC*, No. 20-33605 (Bankr. S.D. Tex. Aug. 4, 2020) (same); *In re Chesapeake Energy Corp.*, No. 20-33233 (Bankr. S.D. Tex. June 29, 2020) (same); *In re Ultra Petroleum Corp.*, No. 20-32631 (Bankr. S.D. Tex. June 8, 2020) (same).

48. Entry into the Shell Support Agreement, in the Debtors' business judgment, is reasonable and fair under the circumstances of these chapter 11 cases.¹⁴ Accordingly, the Court should allow the Debtors to enter into and perform under the Shell Support Agreement and provide superpriority status to Shell on account of the Debtors' responsibilities under the Shell Support Agreement.

V. The Automatic Stay, to the Extent Applicable, Should Be Modified on a Limited Basis.

49. The proposed Interim Order and Final Order modify the automatic stay provisions of section 362 of the Bankruptcy Code to the extent necessary to allow Macquarie to net amounts and obligations under Intermediation Contracts against amounts and obligations under other Intermediation Contracts and Postpetition Intermediation Transactions with the Refining Debtors and vice versa.

50. The stay modification, in the Debtors' business judgment, is reasonable and fair under the circumstances of these chapter 11 cases. Accordingly, the Court should modify the automatic stay to the extent contemplated by the Interim Order and the Final Order.

Emergency Consideration

51. The Debtors request emergency consideration of this Motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first twenty-one (21) days after the commencement of a chapter 11 case "to the extent that relief is necessary to avoid

¹⁴ See *id.*, ¶ 89.

immediate and irreparable harm.” An immediate and orderly transition into chapter 11 is critical to the viability of their operations and any delay in granting the relief requested could hinder the Debtors’ operations and cause irreparable harm. Failure to receive the requested relief in this Motion during the first twenty-one (21) days of these chapter 11 cases would severely disrupt the Debtors’ operations at this critical juncture. The Debtors have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 and request that the Court approve the relief requested in this Motion on an emergency basis.

Waiver of Bankruptcy Rules 6004(a) and 6004(h)

52. The Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the fourteen (14)-day stay period under Bankruptcy Rule 6004(h).

Reservation of Rights

53. Nothing contained herein or any actions taken pursuant to the relief requested or granted (including any payment made in accordance with any such order) is intended as or shall be construed as: (a) an admission as to the amount of, basis for, priority for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors’ or any other party in interest’s right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other

encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute such claim.

Notice

54. The Debtors will provide notice of this Motion to the following parties or their respective counsel: (a) the Office of the United States Trustee for the Southern District of Texas; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) Sidley Austin LLP ("Sidley"), as counsel to the DIP Lenders and the Pre-Petition Lenders (each as defined in the DIP Order), (d) Cantor, as DIP Agent and Pre-Petition Agent (each as defined in the DIP Order); (e) Shipman & Goodwin LLP, as counsel to the DIP Agent and Pre-Petition Agent (each as defined in the DIP Order), (f) the Hedge Provider, (g) Macquarie, (h) Reed Smith LLP, as counsel to Macquarie and the Hedge Provider, (i) Latham & Watkins LLP, as counsel to JS Lender (as defined in the DIP Loan Agreement and Pre-Petition Loan Agreement), (j) the United States Attorney's Office for the Southern District of Texas; (k) the Internal Revenue Service; (l) the United States Securities and Exchange Commission; (m) the state attorneys general for states in which the Debtors conduct business; (n) Shell; and (o) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, no other or further notice need be given.

The Debtors request that the Court enter the Interim Order and the Final Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Houston, Texas
September 25, 2024

/s/ Jason G. Cohen

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*Proposed Co-Counsel to the Debtors
and Debtors in Possession*

*Proposed Co-Counsel to the Debtors
and Debtors in Possession*

Certificate of Accuracy

I certify that the foregoing statements are true and accurate to the best of my knowledge.
This statement is being made pursuant to Bankruptcy Local Rule 9013-1(i).

/s/ Jason G. Cohen

Jason G. Cohen

Certificate of Service

I certify that on September 25, 2024, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Jason G. Cohen

Jason G. Cohen

Schedule 1

Intermediation Contracts

Core

1. Assurance and Amendment Restatement Agreement, dated as of September 25, 2024 (the “**Assurance Agreement**”), by and among Macquarie Energy North America Trading Inc., Vertex Refining Alabama LLC, Vertex Renewables Alabama LLC and Vertex Energy, Inc.
2. Amended and Restated Supply and Offtake Agreement, as amended and restated by the Assurance Agreement;
3. Amended and Restated Storage Facilities Agreement, as amended and restated by the Assurance Agreement;
4. Amended and Restated Fee Letter, as amended and restated by the Assurance Agreement;
5. Conformed copy of the Independent Amount Letter, as amended by the Assurance Agreement;
6. Amendment Letter in Relation to the Crude Oil and Hydrocarbon Feedstock Supply Agreement, dated as of September [], 2024, by and between Vertex Refining Alabama LLC, Macquarie Energy North America Trading Inc., and Shell Trading (US) Company;
7. Amendment Agreement to the ISDA 2022 Master Agreement deemed entered into as of March 31, 2022, dated as of September [], 2024, by and between Macquarie Bank Limited (ABN 46 008 583 542) and Vertex Refining Alabama;
8. Master Crude Oil and Products Agreement, dated as of April 1, 2022, by and between Macquarie Energy North America Trading Inc., and Vertex Refining Alabama LLC;
9. Guaranty, dated as of April 1, 2022, by and between Vertex Energy, Inc. and Macquarie Energy North America Trading Inc.;
10. Guaranty, dated as of May 26, 2023, by and between Vertex Renewables Alabama LLC and Macquarie Energy North America Trading Inc.;
11. Pledge and Security Agreement, dated as of April 1, 2022, by and between Vertex Alabama Refining LLC and Macquarie Energy North America Trading Inc.;
12. Second Amended and Restated Intercreditor Agreement, dated as of June 3, 2024, by and among Cantor Fitzgerald Securities as Term Loan Agent, Macquarie Energy North America Trading Inc., as the Intermediation Facility Secured Party, Vertex Refining Alabama LLC, as the Company, and other acknowledging affiliates from time to time party thereto;

13. Support Agreement, dated as of September [], 2024, by and among Vertex Refining Alabama, LLC, Shell Trading (US) Company, and Equilon Enterprises LLC d/b/a Shell Oil Products US; and

Infrastructure

A. BWC Blakeley Island

1. Terminalling Service Agreement, dated as of May 24, 2022, by and between BWC Terminals LLC (as successor in interest to Zenith Energy Terminals Holdings LLC), and Vertex Refining Alabama, LLC (as amended, restated, amended and restated, supplemented or otherwise modified from time to time);
2. Terminalling Service Agreement, dated as of September 13, 2022, by and between BWC Alabama LLC (as successor in interest to Zenith Energy Terminals Holdings LLC), and Vertex Refining Alabama, LLC (as amended, restated, amended and restated, supplemented or otherwise modified from time to time);
3. BWC Storage Rights Agreement, dated as of September 1, 2023, by and among Vertex Refining Alabama LLC, and Macquarie Energy North America Trading Inc.; and
4. Consent to Storage and Usage Agreement, dated as of September 1, 2023, by and among BWC Terminals LLC and BWC Alabama LLC, Vertex Refining Alabama LLC, and Macquarie Energy North America Trading Inc.

B. BWC Chickasaw

1. Terminalling Service Agreement, dated as of November 18, 2022, by and between Vertex Refining Alabama LLC and BWC Terminals LLC (as successor in interest to Zenith Energy Terminals Holdings LLC) (as amended, restated, amended and restated, supplemented or otherwise modified from time to time);
2. Terminalling Service Agreement, dated as of October 21, 2020, by and between Vertex Refining Alabama LLC (as successor in interest to Vertex Energy, Inc.) and BWC Terminals LLC (as successor in interest to Zenith Energy Terminals Holdings LLC) (as amended, restated, amended and restated, supplemented or otherwise modified from time to time); and
3. Terminalling Service Agreement, dated as of January 26, 2021, by and between Vertex Refining Alabama LLC (as successor in interest to Vertex Energy, Inc.) and BWC Alabama LLC and/or BWC Terminals LLC (each, as successor in interest to Zenith Energy Terminals Holdings, LLC) (as amended, restated, amended and restated, supplemented or otherwise modified from time to time).

C. Center Point Blakeley

1. Center Point Blakeley Service Agreement, dated as of January 30, 2023, by and between Center Point Terminal Blakeley Island, LLC and Vertex Refining Alabama LLC; and

2. Center Point Blakeley Connection Agreement, dated as of January 30, 2023, by and between Vertex Refining Alabama LLC, and Center Point Terminal Blakeley Island, LLC.

D. Center Point Chickasaw

1. Service Agreement, dated as of January 10, 2023, by and between Center Point Terminal Chickasaw, LLC and Vertex Refining Alabama LLC (as amended, restated, amended and restated, supplemented or otherwise modified from time to time);
2. Center Point Storage Rights Agreement, dated as of December 8, 2023, by and between Vertex Refining Alabama LLC, and Macquarie Energy North America Trading Inc.; and
3. Consent to Storage and Usage Agreement, dated as of December 8, 2023, by and among Center Point Terminal Chickasaw, LLC, Vertex Refining Alabama LLC, and Macquarie Energy North America Trading Inc.

E. Plains Mobile

1. Terminal Services Agreement (Agreement No. 5716-15-02-0121), dated as of March 1, 2015, by and between Vertex Refining Alabama LLC (as successor in interest to Shell Chemical LP) and Plains Marketing, L.P. (as amended, restated, amended and restated, supplemented or otherwise modified from time to time);
2. Storage Rights Agreement, dated as of April 1, 2022, by and between Vertex Refining Alabama LLC, and Macquarie Energy North America Trading Inc.; and
3. Consent to Storage and Usage Agreement, dated as of April 1, 2022, by and among Plains Marketing, L.P., Vertex Refining Alabama LLC, and Macquarie Energy North America Trading Inc.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

VERTEX ENERGY, INC., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 24-90507 (CML)
)
) (Joint Administration Requested)
)

**INTERIM ORDER (I) AUTHORIZING
CONTINUATION OF THE INTERMEDIATION
CONTRACTS, AS AMENDED, (II) AUTHORIZING THE
DEBTORS TO ENTER INTO AND PERFORM POSTPETITION
INTERMEDIATION TRANSACTIONS AND POSTPETITION HEDGING
TRANSACTIONS, (III) PROVIDING SUPERPRIORITY ADMINISTRATIVE
EXPENSE STATUS AND LIENS IN RESPECT OF POSTPETITION
INTERMEDIATION TRANSACTIONS AND POST PETITION HEDGING
TRANSACTIONS, (IV) GRANTING ADEQUATE PROTECTION TO THE
INTERMEDIATION PROVIDER, (V) PROVIDING SUPERPRIORITY
ADMINISTRATIVE EXPENSE STATUS IN RESPECT OF PURCHASER
SUPPORT AGREEMENTS, (VI) MODIFYING THE AUTOMATIC STAY,
(VII) SETTING A FINAL HEARING, AND (VIII) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of Vertex Refining Alabama, LLC (“Vertex Refining”), Vertex Renewables Alabama, LLC (“Vertex Renewables”) and its direct or indirect parent, Vertex Energy, Inc., (“Vertex Energy” and, together with Vertex Refining and Vertex Renewables, the “Refining Debtors” and, together with the other debtors and debtors in possession in the above-captioned chapter 11 cases, collectively, the “Debtors”) for entry of an interim order (this “Interim Order”) and a final order (the “Final Order”) (a) authorizing the continuation of prepetition intermediation transactions in accordance with the prepetition intermediation

¹ A complete list of each of the Debtors in these chapter 11 cases (the “Chapter 11 Cases”) may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://www.veritaglobal.net/vertex>. The location of Debtor Vertex Energy, Inc.’s corporate headquarters and the Debtors’ service address in these chapter 11 cases is 1331 Gemini Street, Suite 250, Houston, Texas 77058.

² All defined terms shall have the meaning ascribed to them in the Motion, the Assurance Agreement (as defined below), or in **Exhibit 4** of this Interim Order unless otherwise defined herein.

agreements, as supplemented, modified and amended and restated by the agreements and instruments becoming effective on the date hereof, including this Interim Order (such agreements and instruments, the “Post-Petition Intermediation Agreements” and, together with the prepetition intermediation agreements, the “Intermediation Contracts”),³ (b) authorizing the Refining Debtors to enter into the Post-Petition Intermediation Agreements and pay reasonable and documented fees and reimburse expenses thereunder as and in the amounts described therein, (c) authorizing Vertex Refining to obtain a priming, senior secured, superpriority, debtor-in-possession postpetition hedge facility (the “Hedge Facility”), and for each of the other Debtors that is an “eligible contract participant” (the “Participating Hedging Debtors”) to unconditionally guarantee Vertex Refining’s obligations under an Amendment to an ISDA Master Agreement (the “Swap Agreement”) between Macquarie Bank Limited (the “Hedge Provider”) and Vertex Refining and any related documents and instruments delivered pursuant to or in connection therewith (collectively, and together with the Swap Agreement, the “Hedge Facility Documents”) and to enter into and perform post-petition hedging transaction thereunder (the “Hedging Transactions”), (d) authorizing the Refining Debtors to enter into and perform post-petition intermediation transactions, including, consistent with the prepetition intermediation transactions, transferring all right, title and interest in and to the crude oil and refined products that are subject to the intermediation transactions in accordance with the terms of the Intermediation Contracts, (e) providing superpriority administrative expense claims to Macquarie in respect of the intermediation transactions subject to the claim priority set forth in **Exhibit 3** of this Interim Order; (f) providing valid, enforceable, nonavoidable and fully perfected security interests and liens and back-up liens (including liens pursuant to sections 364(c)(2) and

³ A schedule of the Intermediation Contracts (including, if applicable, as amended or amended and restated pursuant to the Assurance Agreement (as defined below)) is attached to the Motion as Schedule 1.

364(c)(3) of the Bankruptcy Code and consensual priming liens pursuant to section 364(d) of the Bankruptcy Code on all Shared Collateral (as defined in **Exhibit 4** of this Interim Order) to Macquarie to secure all obligations of Vertex Refining (and Vertex Energy with respect to Shared Collateral) under the Intermediation Contracts, which liens shall be subject to the priorities set forth in **Exhibit 2** of this Interim Order; (g) providing consensual priming liens pursuant to section 364(d) of the Bankruptcy Code on all DIP Collateral (as defined in the Interim DIP Order) (the “Hedging Liens”) of the Participating Hedging Debtors and, pursuant to section 364(c)(1) of the Bankruptcy Code, superpriority administrative expense status (the “Superpriority Hedging Claims”) subject to the claim priority set forth in **Exhibit 3** with respect to Vertex Refining’s and the other Participating Hedging Debtors’ obligations (the “Hedge Obligations”) under the Hedge Facility in respect of the Hedging Transactions; (h) providing, pursuant to section 364(c)(1) of the Bankruptcy Code, superpriority administrative expense status (the “Shell Superpriority Claims”) with respect to Vertex Refining’s and Vertex Energy’s obligations under the Shell Support Agreement (as defined below), which is attached hereto as **Exhibit 5**, subject only to superpriority administrative claims granted in respect of any debtor in possession financing facility, including the DIP Facility, continuation of the Prepetition Intermediation Facility on a postpetition basis and to the Carve Out (i) modifying the automatic stay; (j) setting a Final Hearing (as defined below); and (k) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. § 1408; and this Court having found that the relief requested in the Motion is in the best interests of the Refining Debtors’ estates, their creditors, and other parties in interest;

and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Interim Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Interim Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, THE COURT HEREBY FINDS THAT:

A. Prior to the Petition Date, Vertex Refining entered into the Supply and Offtake Agreement, dated as of April 1, 2022, by and among Vertex Refining and Macquarie Energy North America Trading, Inc. ("Macquarie") (as amended and restated, and together with the related ancillary agreements, the "Prepetition Intermediation Agreement") and intermediation transactions pursuant thereto. Prior to the Petition Date, pursuant to the Prepetition Intermediation Agreement, Vertex Refining sold to Macquarie its right, title and interest in and to volumes of Crude Oil and Products, and Macquarie from time to time purchased all right, title and interest in and to volumes of Crude Oil from the Permitted Supplier (as defined in the Prepetition Intermediation Agreement) or other third party suppliers, in each case stored at the Crude Storage Tanks and Included Storage Locations (each as defined in the Prepetition Intermediation Agreement), as applicable (the "Intermediation Title Property"), with Macquarie retaining the option, each month, in its sole discretion, to reject purchasing the forecasted supply of Crude Oil from third parties. Moreover, pursuant to the Prepetition Intermediation Agreement, the Lien Documents and the Independent Amount Letter (each as defined in Prepetition Intermediation Agreement, and, collectively, the "Prepetition SOA Security Agreements"), Vertex Refining

granted liens and security interests in certain collateral, including back-up liens over the Intermediation Title Property and provided cash collateral to Macquarie on a title transfer basis (such collateral, the “SOA Prepetition Collateral” and such liens, the “SOA Prepetition Liens”) to secure Vertex Refining’s obligations to Macquarie under the Prepetition Intermediation Agreement. Continuing intermediation activities, and the conducting of business pursuant to the terms of the Intermediation Contracts, is necessary to the Refining Debtors’ ability to engage in regular business operations.

B. The Refining Debtors intend to enter into the Assurance and Amendment and Restatement Agreement (a substantially final form of which is annexed as **Exhibit 1** to this Interim Order) (the “Assurance Agreement”) with, among other parties, Vertex Refining, Vertex Renewables, Vertex Energy, and Macquarie, for the purpose of, among other things, obtaining Macquarie’s agreement to continue intermediation activities under the Intermediation Contracts after the Petition Date in a manner that affords the Refining Debtors, in each case subject to the terms and conditions set forth in the Intermediation Contracts, a committed source of intermediation during the term of the Post-Petition Intermediation Agreements and additional optionality regarding potential sources of third party Crude Oil and other feedstocks supply, in exchange for the fees and additional credit enhancements and protections set forth therein and in this Interim Order. The conditions to the effectiveness of the amendments and restatements to the Intermediation Contracts made by the Assurance Agreement include the entry of this Interim Order. Pursuant to the terms of the Assurance Agreement and subject to satisfaction or waiver of the conditions to the effectiveness of such amendment and restatement, each of the Intermediation Agreement, the Storage Facilities Agreement, the Fee Letter and the Independent Amount Letter will be amended and restated on the terms set out in the Assurance Agreement (and so amended

and restated, respectively, the “Post-Petition Intermediation Agreement,” the “Post-Petition Storage Facilities Agreement,” the “Post-Petition Fee Letter” and the “Post-Petition Independent Amount Letter” and, collectively, together with the Assurance Agreement, the “Post-Petition Documents”).

C. The Assurance Agreement provides, among other things, the parameters under which Macquarie will agree to continue its relationships with the Refining Debtors under the Intermediation Contracts following the Petition Date for the period and on the terms described therein. The Assurance Agreement further indicates the Refining Debtors’ desire and intent to conduct post-petition intermediation activities in the ordinary course of business and grant appropriate credit support to Macquarie, including, without limitation, the affirmation of guarantees given by Vertex Refining and Vertex Energy in respect of certain guaranteed obligations of Vertex Renewables.

D. The Refining Debtors are willing to enter into the Assurance Agreement and grant certain protections to Macquarie because the Intermediation Contracts are integral to the on-going and future success of the Refining Debtors’ operations and maintaining the value of the Refining Debtors’ estates.

E. Absent immediate entry of this Interim Order, Macquarie would assert and exercise its contractual rights to liquidate or terminate the Prepetition Intermediation Agreement pursuant to sections 556, 560 and/or 561 of the Bankruptcy Code, as the case may be.

F. Cash collateral provided by Vertex Refining to Macquarie prior to the Petition Date to secure obligations owing to Macquarie in connection with the Intermediation Contracts: (x) represent the then current Independent Amount (as defined in the Independent Amount Letter) transferred to Macquarie by Vertex Refining in accordance with the terms of the Independent

Amount Letter, or (y) are identifiable and constitute traceable proceeds of Intermediation Facility Priority Collateral (as defined in **Exhibit 4**), including the Intermediation Title Property (including the cash proceeds provided under Section 2.01(a)(ii) of the Prepetition SOA Security Agreements) and which continues to constitute Intermediation Facility Priority Collateral.

G. Macquarie will not agree to maintain existing positions, continue intermediation activities, or engage in new intermediation activities solely on the basis of an unsecured debt allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense pursuant to section 364(a) or (b) of the Bankruptcy Code.

H. As a result, each of Vertex Refining, Vertex Energy and Vertex Renewables, as applicable, seeks to provide to Macquarie: (1) superpriority administrative expense status pursuant to section 364(c)(1) of the Bankruptcy Code with respect to all of its obligations under Intermediation Contracts (whether arising prepetition or post-petition); and (2) the property interests, security interests and liens described therein and herein consistent with **Exhibit 2**, to secure the prompt and complete payment of all amounts due or that may become due by it, and the performance of all covenants and obligations to be performed by it, under the Intermediation Contracts and all outstanding transactions thereunder (collectively, the “Intermediation Obligations”), whether arising prepetition or post-petition, to protect Macquarie from the risk of nonperformance.

I. The Hedge Facility requires Vertex Refining to enter into calendar month crack spread hedges over approximately one-third of its expected Crude Oil throughput. Vertex Refining’s compliance with this hedging mandate is critical to enable the Participating Hedging Debtors to manage their liquidity during the pendency of the Chapter 11 Cases given the funding available under the DIP Facility and, in turn, to Macquarie’s willingness to continue intermediation

activities under the Intermediation Contracts after the Petition Date. Without protection from fluctuations in the price spread between crude oil and refined products afforded by the Hedge Facility, the Debtors' business and estates would suffer immediate and irreparable harm, including, without limitation, a cessation of the intermediation activities and, potentially, substantially all of their operations. The financial accommodation provided to the Participating Hedging Debtors under the Hedge Facility is necessary and vital to the preservation and maintenance of the going concern values of the Debtors and to a successful reorganization of the Debtors.

J. Based upon the pleadings and proceedings of record in the Chapter 11 Cases, the Debtors are unable to obtain crack spread hedging other than from the Hedge Provider on terms more favorable than under the Hedge Facility and the Hedge Facility Documents and are not able to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code. The Debtors are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code to support hedging activities without the Participating Hedging Debtors' granting to the Hedge Provider, subject to the Carve Out, (a) the Superpriority Hedging Claims (as defined below) and (b) the Hedging Liens (as defined below) in the Hedging Participants' Collateral (as defined below), in each case under the terms and conditions set forth in this Interim Order and the Hedge Facility Documents.

K. Each of the Participating Hedging Debtors (which include Vertex Refining and each of the Debtors that is a "Qualified ECP Guarantor" as defined in the Pre-Petition Loan Facility) seek to provide to the Hedge Provider: (1) superpriority administrative expense status pursuant to section 364(c)(1) of the Bankruptcy Code with respect to the Hedge Obligations; and (2) the security interests and liens described in the Hedge Facility Documents consistent with

Exhibit 2, to secure the Hedge Obligations under the Hedge Facility and to protect the Hedge Provider from the risk of the Participating Hedging Debtors' nonperformance.

L. Each of the DIP Lenders and the Pre-Petition Term Loan Secured Parties have consented, or are deemed to have consented, pursuant to the Prepetition Intercreditor Agreements, as applicable, to the hedging arrangements contemplated by this Interim Order and the Hedge Facility Documents, including with respect to the claim and lien priority afforded therein and by this Interim Order, and such consent is binding on all of the DIP Lenders and the Pre-Petition Term Loan Secured Parties.

M. The Hedge Provider has indicated a willingness to provide financial accommodation in the form of the hedging arrangements to the Debtors, but solely on the terms and conditions set forth in this Interim Order and the Hedge Facility Documents. After considering all of their alternatives, the Debtors have concluded, in an exercise of their sound business judgment, that the Hedge Facility to be provided by the Hedge Provider represents the best hedging program presently available to the Debtors.

N. The transactions contemplated by the Intermediation Contracts (as amended and/or amended and restated by the Assurance Agreement and the other Post-Petition Documents) and the Hedge Facility are necessary to preserve and maximize the value of the Refining Debtors' estates.

O. The terms of each of the Intermediation Contracts, including the Assurance Agreement, and each of the Post-Petition Documents, and of the Hedge Facility Documents, are fair, reasonable, and adequate given that the Refining Debtors are in chapter 11 and their current financial condition.

P. The relief requested in the Motion is necessary, essential and appropriate for the continuation of the Refining Debtors' operations.

Q. The Assurance Agreement and the other Post-Petition Documents were negotiated in good faith and at arm's length between the Refining Debtors and Macquarie, and any credit extended pursuant to the Assurance Agreement or in connection with intermediation transactions by Macquarie is deemed to have been extended or made in good faith within the meaning of section 364(c) of the Bankruptcy Code.

R. The Hedge Facility was negotiated in good faith and at arm's length between the Participating Hedging Debtors and the Hedge Provider, and any credit extended pursuant to the Hedge Facility or in connection with Hedging Transactions by the Hedge Provider is deemed to have been extended or made in good faith within the meaning of section 364(e) of the Bankruptcy Code.

S. Vertex Refining and Shell (as defined below) have negotiated in good faith, at arm's-length on the terms of that certain Support Agreement, attached hereto as **Exhibit 5** (the "Shell Support Agreement") entered into as of September 24, 2024, by and between Vertex Refining and Shell Trading (US) Company ("STUSCO") and Equilon Enterprises LLC d/b/a Shell Oil Products US (together with STUSCO, "Shell").

T. Absent immediate entry of this Interim Order, Shell has indicated that it would assert and exercise its contractual rights to liquidate or terminate the Shell Agreements (as defined herein) pursuant to sections 556, 560 and/or 561 of the Bankruptcy Code, as the case may be.

U. Vertex Refining intends to continue performing its obligations under the Shell Agreements as set forth herein or as otherwise agreed to by Vertex Refining and Shell.

V. The relief granted by this Court pursuant to this Interim Order is necessary to avoid immediate and irreparable harm and injury to the Refining Debtors' estates and creditors.

W. At or before the Interim Hearing to grant the interim relief requested herein, each of the parties set forth below received notice of the Motion whether by telephone, email, telecopy, overnight delivery or by hand delivery: to (i) the Office of the United States Trustee for Southern District of Texas (the "U.S. Trustee"), (ii) the holders of the thirty (30) largest unsecured claims against the Debtors on a consolidated basis, (iii) counsel to the DIP Agent, (iv) counsel to the DIP Lenders, (v) counsel to the Term Loan Agent,⁴ (vi) counsel to the Consenting Term Loan Lenders, (vii) Latham & Watkins LLP, as special counsel to the JS Lender under the DIP Loan Agreement and Prepetition Loan Agreement (each as defined in the Interim DIP Order), (viii) counsel to Macquarie, (ix) counsel to the Hedge Provider, (x) Shell and its counsel, if any; (xi) the Internal Revenue Service, (xii) all parties known by the Debtors to hold or assert a lien on any asset of any Debtor, (xiii) all relevant state taxing authorities and (xiv) all of the Debtors' landlords, and owners and/or operators of premises at which any of the Debtors' inventory and/or equipment is located, and owners and/or operators of premises at which any of the Debtors' inventory and/or equipment is located, and it appearing that no other or further notice need be provided; and the Court having found that it may enter a final order consistent with Article III of the United States Constitution; and the Court having reviewed the Motion; and the Interim Hearing having been held by the Court on September 25, 2024; and the relief requested in the Motion being in the best interests of the Debtors, their creditors, and their estates and all other parties in interest in the Chapter 11 Cases; and the Court having determined that the relief requested in the Motion is necessary to avoid

⁴ The "Term Loan Agent" is Cantor Fitzgerald Securities, as term loan agent to that certain Loan and Security Agreement, dated as of April 1, 2022, among the Parent, Vertex Refining, the other guarantors party thereto, the lenders party thereto (collectively, the "Term Loan Lenders") and the Term Loan Agent, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

immediate and irreparable harm; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon the record made by the Debtors in the Motion, and at the Interim Hearing and after due deliberation and sufficient cause appearing therefor;

It is now therefore FOUND, DETERMINED, ORDERED AND ADJUDGED THAT:

1. Such notice is adequate and proper under the circumstances of this case.
2. Good, adequate, and sufficient cause has been shown to justify the granting of the interim relief herein, and the immediate entry of this Interim Order.
3. The Assurance Agreement, including those terms relating to (i) Macquarie's agreement to delay the exercise of remedies and (ii) amendments to or restatements of the Prepetition Intermediation Agreement, is hereby approved, and the Refining Debtors are authorized to enter into the Assurance Agreement and perform their obligations thereunder and under the Intermediation Contracts and the Post-Petition Documents.
4. The Hedge Facility is hereby approved, and the Participating Hedging Debtors are authorized to enter into the Hedge Facility Documents and the Hedging Transactions and perform their obligations thereunder.
5. The Shell Support Agreement is hereby approved, and Vertex Refining and Vertex Energy are authorized to enter into the Shell Support Agreement and perform their obligations thereunder.
6. Each of Vertex Refining and Vertex Energy intends to, and is hereby authorized to, perform under those certain agreements as specified in Annex 1 to the Shell Support Agreement regarding, among other things, the purchase and sale of crude oil and refined products (collectively, the "Shell Agreements") and the Tripartite Agreements (as defined in the Shell

Support Agreement) as set forth in the Shell Support Agreement and, without further order of the Court, shall be permitted to, among other things described in the Shell Support Agreement, (a) make all payments when due and in the ordinary course (other than termination payments, for which Shell may file any necessary claims, as appropriate) as may be required under the Shell Agreements and the Tripartite Agreements (unless expressly amended pursuant to this Agreement or otherwise agreed in writing by Vertex Refining and Shell), (b) perform and pay all postpetition obligations under the Shell Agreements and the Tripartite Agreements in accordance with the same terms, conditions, elections and options applicable as of the Petition Date, and paid at the prices specified in the Shell Agreements, (c) provide Shell, to the extent the minimum liquidity compliance requirement under the DIP Loan Agreement is changed, with notice of such change to be provided to Shell within twenty-four (24) hours of the change being approved by the DIP Lenders, and (d) pay the reasonable and documented fees and out-of-pocket expenses of Shell's primary legal counsel incurred in connection with enforcement of the Shell Support Agreement in the Chapter 11 Cases.

7. Shell agrees to continue performing under the Shell Agreements and the Tripartite Agreements and to refrain from exercising any Termination Rights (as defined in the Shell Support Agreement) so long as no Event of Default (as defined in the Shell Support Agreement) has occurred.

8. Shell shall be entitled to the Shell Superpriority Claims pursuant to section 364(c)(1) of the Bankruptcy Code for amounts owed by Vertex Refining and Vertex Energy, respectively, to Shell on account of postpetition transactions under the Shell Agreements and the Tripartite Agreements (including, if applicable and subject to the terms thereof, any actual reasonable and documented costs incurred postpetition by Shell for any accepted postpetition

mandates or postpetition changes in prepetition elections under the Shell Agreements or the Tripartite Agreements by Vertex Refining and Vertex Energy, as applicable, subject to Shell's duty to mitigate any such costs) subject and subordinate only to superpriority administrative claims granted in respect of any debtor in possession financing facility, such as the DIP Facility, continuation of the Prepetition Intermediation Facility on a postpetition basis, and to the Carve Out.

9. Vertex Refining and the other Refining Debtors, as applicable, are hereby authorized (and Macquarie shall be entitled to rely upon such authorization) *nunc pro tunc* from the Petition Date to engage in intermediation activities without further order of the Court pursuant to the terms of the Intermediation Contracts as amended by the Assurance Agreement and the other Post-Petition Documents, both in connection with existing transactions and by entering into new transactions, including any and all terms relating to collateral, offsetting, netting and/or cross-netting (other than any such offsetting, netting, and/or cross-netting would violate the priorities set forth in **Exhibit 2**).

10. Vertex Refining and the other Refining Debtors, as applicable, shall be authorized to perform all obligations arising under Intermediation Contracts (as amended by the Post-Petition Documents) whether arising prepetition or post-petition, including (i) the making of all payments when due, including payments in relation to prepetition deliveries (including the purchase price thereof, any Ancillary Costs (as defined in the Intermediation Contracts) and related indemnity amounts), the monthly true-up payment relating to intermediation activities occurring before and after the Petition Date during the month of September, post-petition deliveries on account of existing positions, post-petition deliveries on account of post-petition intermediation activities, financial product payments, liquidated damages for failure to make or receive delivery and/or

payments, and payment of fees (including working capital fees) and expenses (including professional fees), (ii) providing collateral in connection with existing positions, including with respect to prepetition or post-petition market movements, and (iii) providing collateral in connection with intermediation activities (whether prepetition or post-petition). The Intermediation Contracts shall not be rejected pursuant to section 365 of the Bankruptcy Code or otherwise.

11. Subject to the Carve Out, Macquarie is hereby granted an allowed superpriority administrative expense claim in accordance with Bankruptcy Code section 364(c)(1) (the “Intermediation Superpriority Claims”) against Vertex Refining and the other Refining Debtors, as applicable, with priority in payment over any and all administrative expenses at any time existing or arising, of any kind or nature whatsoever, subject to the claim priority set forth in **Exhibit 3** for the obligations, liabilities and indebtedness arising post-petition under or related to Intermediation Contracts, including any indemnification claims of Macquarie, in its capacity as intermediary, for losses and costs incurred in connection with the liquidation of collateral, which shall be paid and calculated under the terms set forth in the Intermediation Contracts subject to the priorities set forth in **Exhibit 3** of this Interim Order.

12. Notwithstanding Macquarie’s right, title and interest in and to the Intermediation Title Property under the Intermediation Contracts, as security for the Intermediation Obligations, Macquarie is hereby granted (effective upon the date of this Interim Order, without any further action by Vertex Refining and Vertex Energy, including the execution by it or the filing or recordation of security agreement, lockbox or control agreements, financing statements or any other instruments or otherwise), valid, enforceable, binding and fully perfected security interests in and liens upon (“SOA Post-Petition Liens” and, together with the SOA Prepetition Liens, the

“Intermediation Facility Liens”) all present and after-acquired property constituting Intermediation Facility Priority Collateral (as defined in **Exhibit 4**), including the Intermediation Title Property, and all present and after-acquired property constituting Shared Collateral (as defined in **Exhibit 4**) that is DIP Priority Collateral (as defined in **Exhibit 4**) (collectively, the “SOA Post-Petition Collateral” and, together with SOA Prepetition Collateral, the “SOA Collateral”), subject to the payment of the Carve Out, which Intermediation Facility Liens shall have the priorities set forth in **Exhibit 2** of this Interim Order and shall consist of:

- (a) Pursuant to section 364(c)(3) of the Bankruptcy Code, a junior priority, perfected lien and security interest upon all of Vertex Refining’s and Vertex Energy’s right, title and interest in, to and under all Shared Collateral that is DIP Priority Collateral, whether now existing or hereafter acquired.
- (b) Pursuant to section 364(d)(1) of the Bankruptcy Code, valid, enforceable, binding, continuing, fully perfected, first priority senior priming liens upon and security interest in all of Vertex Refining’ and Vertex Energy’s right, title and interest in, to and under all Intermediation Facility Priority Collateral that is subject to the SOA Prepetition Liens; provided, however, that the liens granted by this subparagraph shall in each case be subject and subordinate to liens on the Pre-Petition Collateral (as defined in the Interim DIP Order) (other than the SOA Prepetition Liens and the Pre-Petition Liens) that (i) are valid, perfected, enforceable and nonavoidable as of the Petition Date or validly perfected subsequent to the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code, (b) under applicable law, are senior to, and have not been subordinated to, the SOA Prepetition Liens or the Pre-Petition Liens, and (c) are not subject to avoidance, reduction, disgorgement,

counterclaim, surcharge, or subordination pursuant to the Bankruptcy Code applicable non-bankruptcy law (each, a “Permitted Priority Lien”),⁵ including Permitted Priority Liens on DIP Priority Collateral. The Intermediation Facility Liens shall not be subject or subordinate to (i) subject to and effective upon entry of the Final Order, any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code, (ii) any liens arising after the Petition Date, including without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit, commission, board, or court for any liability of the Debtors, or (iii) any intercompany or affiliate liens of the Debtors.

13. Each of the Participating Hedging Debtors is hereby authorized to enter into the Hedge Facility with the Hedge Provider to assist the Debtors in managing their liquidity while these Chapter 11 Cases are pending. The obligations owing to the Hedge Provider from time to time under the Hedge Facility shall be secured by the relative priority of the Hedging Liens granted by the Participating Hedging Debtors to the Hedge Provider pursuant to this Interim Order shall be as set forth in **Exhibit 2** attached to this Interim Order; *provided*, for the avoidance of doubt, that each such Hedging Lien shall be subject and subordinate to the payment of the Carve Out (as defined in the Interim DIP Order) in all respects.

14. Subject to the claim priority set forth in **Exhibit 3**, the Hedge Provider is hereby granted an allowed Superpriority Hedging Claim against each Participating Hedging Debtor, on a joint and several basis, with priority in payment over any and all administrative expenses at any

⁵ Nothing shall prejudice the rights of any party-in-interest including, but not limited to, the Debtors and Macquarie to challenge the validity, priority, enforceability, seniority, avoidability, perfection or extent of any such Permitted Priority Liens and/or similar security interests.

time existing or arising, of any kind or nature whatsoever, for the obligations, liabilities and indebtedness of such Participating Hedging Debtors arising post-petition under or related to Hedge Facility.

15. As security for the Hedge Obligations, the Hedge Provider, is hereby granted (effective upon the date of this Interim Order, without any further action by the Hedge Provider, including the execution by the Debtors or the filing or recordation of security agreements, lockbox or control agreements, financing statements, or any other instruments or otherwise) valid, enforceable, binding, and fully perfected Hedging Liens upon all present and after-acquired property of the Participating Hedging Debtors of any nature whatsoever (including without limitation “Collateral”), and all cash and cash equivalents contained in any account maintained by any of the Debtors, and, subject to entry of a Final Order, all Avoidance Actions Proceeds (as defined in the Interim DIP Order) of the Participating Hedging Debtors or their estates (collectively with all rents, issues, products, offspring, proceeds and profits of any or all of the foregoing, but excluding “Excluded Property” as defined in the DIP Loan Agreement, the “Hedging Participants’ Collateral”), subject only to the payment of the Carve Out, which Hedging Liens shall have the priorities set forth in **Exhibit 3** and shall consist of:

(a) Pursuant to section 364(c)(2) of the Bankruptcy Code, a continuing, enforceable, first priority, fully-perfected lien and security interest upon all of the Participating Hedging Debtors’ right, title and interest in, to, and under all Hedging Participants’ Collateral that was not encumbered by a validly perfected, enforceable, and nonavoidable security interest or lien as of the Petition Date or a valid security interest perfected subsequent to the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code (collectively, the “Unencumbered Property”). Subject only to and

effective upon entry of the Final Order, Unencumbered Property shall also include the Avoidance Actions Proceeds.

(b) Pursuant to section 364(c)(3) of the Bankruptcy Code, a junior priority, perfected lien and security interest upon all of the Participating Hedging Debtors' right, title and interest in, to and under all Hedging Participants' Collateral (other than the Hedging Participants' Collateral described in Subparagraphs (a) or (c) of this Paragraph 13, as to which the liens and security interests in favor of the Hedge Provider will be as described in such Subparagraphs), whether now existing or hereafter acquired, that is subject to any (1) Permitted Priority Lien and (2) solely with respect to the Intermediation Facility Priority Collateral (other than the Business Interruption Insurance Proceeds), the Intermediation Facility Liens, in each case, that was validly perfected prior to the Petition Date, or is validly perfected subsequent to the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code, and is not subject to section 552(a) of the Bankruptcy Code.

(c) Pursuant to section 364(d)(1) of the Bankruptcy Code, valid, enforceable, binding, continuing, enforceable, fully perfected, first priority senior priming liens upon and security interest in all of the Participating Hedging Debtors' right, title and interest in, to, and under all Hedging Participants' Collateral that is subject to the Pre-Petition Liens (as defined in the DIP Order); provided, however, that the liens granted by this subparagraph shall in each case be subject and subordinate to liens Permitted Priority Liens.

(d) The Hedging Liens shall not be subject or subordinate to (i) subject to entry of the Final Order, any lien or security interest that is avoided and preserved for the benefit

of the Debtors and their estates under section 551 of the Bankruptcy Code, (ii) any liens arising after the Petition Date, including without limitation any liens or security interests granted in favor of any federal, state, municipal or other governmental unit, commission, board, or court for any liability of the Debtors, or (iii) any intercompany or affiliate liens of the Debtors.

(e) The relative priority of the Hedging Liens granted to the Hedge Provider shall be as set forth in **Exhibit 2** attached to this Interim Order, *provided, however*, that the Hedge Provider may only seek to recover from the Avoidance Action Proceeds (as defined in the DIP Order) in satisfaction of any outstanding Hedge Obligations solely to the extent that the Superpriority Hedging Claims have not been indefeasibly paid in full and all other sources of recovery with respect to such Superpriority Hedging Claims have been fully exhausted.

16. Automatically upon entry of this Interim Order, the Hedging Liens shall be deemed to be valid, perfected, enforceable, non-avoidable and effective by operation of law, and not subject to challenge as of the Petition Date, without the need for (x) filing any UCC-1 financing statements, security agreements, vehicle lien applications, filings with the U.S. Patent and Trademark Office, the United States Copyright Office, or the Library of Congress, state or federal notice, or any other similar instrument or document in any state or public record or office, (y) taking possession or control of any collateral, or (z) further action of any kind (including execution of any security agreements, mortgages, financing statements, collateral agreements, collateral trust agreements, deposit account control agreements, blocked account control agreements, securities account control agreements, or other collateral documents and agreements). If the Hedge Provider hereafter reasonably requests that the Participating Hedging Debtors execute and deliver to it

financing statements, security agreements, collateral assignments, or other instruments and documents considered by it to be reasonably necessary or desirable to further evidence the perfection of the Hedging Liens, the Participating Hedging Debtors are hereby authorized to execute and deliver such financing statements, security agreements, collateral assignments, instruments, and documents, and the Hedge Provider is hereby authorized to file or record such documents in its discretion without seeking modification of the automatic stay under section 362 of the Bankruptcy Code, in which event all such documents shall be deemed to have been filed or recorded at the time and on the date of entry of this Interim Order.

17. As adequate protection and as security and assurance of Vertex Refining's and the other Refining Debtors', as applicable, obligations arising under the Intermediation Contracts, immediately upon, and effective as of entry of this Interim Order, Macquarie is granted valid, enforceable, unavoidable and fully perfected liens, replacement liens and security interests in all SOA Collateral (the "Intermediation Facility Adequate Protection Liens") to the extent of any diminution in SOA Prepetition Collateral value, which shall be subject to the Carve Out and the lien priorities set forth in Exhibit 2. The Intermediation Facility Adequate Protection Liens shall be deemed to be legal, valid, binding, enforceable, perfected liens, not subject to subordination or avoidance, for all purposes in the Chapter 11 Cases. The Intermediation Facility Adequate Protection Liens shall be deemed to be perfected automatically upon the entry of this Interim Order, without the need for (x) filing any UCC-1 financing statement, state or federal notice, or other similar instrument or document in any state or public record or office, (y) taking possession or control of any collateral, or (z) further action of any kind (including entry into any security agreements, deposit account control agreements, blocked account control agreements, securities account control agreements, or similar agreements). Macquarie is hereby granted, subject to the

claim priorities set forth in **Exhibit 3**, an allowed superpriority administrative expense claim (the “Pre-Petition Intermediation Facility Adequate Protection Claims”) as provided for in section 507(b) of the Bankruptcy Code against Vertex Refining and Vertex Energy with, except as set forth in this Interim Order and the Interim DIP Order, priority in payment over any and all administrative expenses of the kind specified or ordered pursuant to any other provision of the Bankruptcy Code.

18. The Debtors shall provide Macquarie and the Hedge Provider with the financial and other reporting as described in the DIP Loan Agreement and DIP Orders, including, without limitation, (w) the Initial Approved Budget (as defined in the Interim DIP Order), (x) each fourth Thursday after the Petition Date, the Cashflow Forecast (as defined in the Post-Petition Intermediation Agreement; *provided, however*, Macquarie’s and the Hedge Provider’s approval rights with respect to any Cashflow Forecast shall be limited to its evaluation of the Debtors’ compliance with the Debtors’ minimum liquidity covenant and payments to be made to Macquarie and the Hedge Provider (as applicable) during the relevant budget period, (y) weekly variance reports and (z) end of day cash balances by no later than 10:00 a.m. (prevailing Central Time) on the following day.

19. Under the circumstances and given that the adequate protection described in this Interim Order is consistent with the Bankruptcy Code, including section 506(b) thereof, the Court finds that the adequate protection provided herein is reasonable and sufficient to protect the interests of Macquarie; *provided*, that Macquarie upon a material change in circumstances, may request further or different adequate protection, and the Refining Debtors or any other party may contest any such request and all rights with respect thereto are expressly reserved and preserved in all respects.

20. The Liens granted to the Hedge Provider and Macquarie hereby at all times, (w) as between the DIP Agent and Macquarie or the Hedge Provider, shall be subject to the priorities as set forth in Exhibit 2, (x) as between Macquarie and the Hedge Provider, shall be subject to the priorities set forth in Exhibit 2, (y) as between the Hedge Provider and Term Loan Agent, shall be subject to the priorities as set forth in Exhibit 2, and (z) as between Macquarie and the Term Loan Agent, shall be subject to the priorities as set forth in Exhibit 2 and, to the extent not inconsistent with such Exhibit 2, the terms of the Second Amended and Restated Intercreditor Agreement dated as of June 3, 2024, by and among Cantor Fitzgerald Securities (“Cantor”), in its capacity as Term Loan Agent, Macquarie, in its capacity as Intermediation Facility Secured Party, Vertex Refining, in its individual capacity as a Grantor and the other acknowledging affiliates party thereto (the “Prepetition Intercreditor Agreement”). The Intermediation Obligations shall be deemed to be “Secured Obligations” for all purposes under the Prepetition Intercreditor Agreement, subject to the other terms and provisions of this Interim Order. No provision of this Interim Order will be deemed to waive, abridge or otherwise adversely modify the rights of the “Secured Parties” (as defined in the Prepetition Intercreditor Agreement as in effect on the Petition Date) under the Prepetition Intercreditor Agreement.

21. Upon entry of the Final Order, without any further action by the Debtors or any other party and as a condition to the continuation of the Intermediation Contracts: (1) all of Vertex Refining’s and the other Refining Debtors’, as applicable, prepetition obligations under the Intermediation Contracts shall be converted into Intermediation Superpriority Claims and (2) all of the Intermediation Obligations under the Intermediation Contracts shall be secured by the Intermediation Facility Lien in the Shared Collateral.

22. Except with respect to payment of the Carve Out or as expressly set forth in **Exhibit 2** with respect to the Intermediation Facility Liens or as expressly set forth in **Exhibit 3** with respect to the Intermediation Superpriority Claims, the Intermediation Facility Liens and Intermediation Superpriority Claims: (i) shall not be made subject to or *pari passu* with (A) any lien, security interest or claim heretofore or hereinafter granted in these Chapter 11 Cases, or any successor cases, and shall be valid and enforceable against the Refining Debtors, their estates, any trustee or any other estate representative appointed or elected in these Chapter 11 Cases or any successor cases and/or upon the dismissal of any of these Chapter 11 Cases or any successor cases, (B) any lien that is avoided and preserved for the benefit of the Refining Debtors and their estates under section 551 of the Bankruptcy Code or otherwise, and (C) any intercompany or affiliate lien or claim; and (ii) shall not be subject to sections 506(c) (subject to entry of the Final Order), 510, 549, 550, or 551 of the Bankruptcy Code.

23. Except with respect to payment of the Carve Out or as expressly set forth in **Exhibit 2** with respect to the Hedging Liens or as expressly set forth in **Exhibit 3** with respect to the Superpriority Hedging Claims, the Hedging Liens and the Superpriority Hedging Claims: (i) shall not be made subject to or *pari passu* with (A) any lien, security interest or claim heretofore or hereinafter granted in these Chapter 11 Cases, or any successor cases, and shall be valid and enforceable against the Refining Debtors, their estates, any trustee or any other estate representative appointed or elected in these Chapter 11 Cases or any successor cases and/or upon the dismissal of any of these Chapter 11 Cases or any successor cases, (B) any lien that is avoided and preserved for the benefit of the Refining Debtors and their estates under section 551 of the Bankruptcy Code or otherwise, and (C) any intercompany or affiliate lien or claim; and (ii) shall

not be subject to sections 506(c) (subject to entry of the Final Order), 510, 549, 550 or 551 of the Bankruptcy Code.

24. Macquarie may net amounts and obligations under Intermediation Contracts against amounts and obligations with the Refining Debtors and vice versa; *provided* that any such offsetting, netting and/or cross-netting shall not violate the priorities set forth in **Exhibit 2**. In this regard, there shall be no distinction between transactions entered into prepetition and post-petition. To the extent necessary, the automatic stay of section 362 of the Bankruptcy Code is hereby modified to permit the exercise by Macquarie of all such netting rights; *provided* that any such offsetting, netting and/or cross-netting shall not violate the priorities set forth in **Exhibit 2**.

25. The Hedge Provider may net amounts and obligations under Hedge Facility Documents against amounts and obligations with the Participating Hedging Debtors and vice versa; *provided* that any such offsetting, netting and/or cross-netting shall not violate the priorities set forth in **Exhibit 2**. To the extent necessary, the automatic stay of section 362 of the Bankruptcy Code is hereby modified to permit the exercise by the Hedge Provider of all such netting rights; *provided* that any such offsetting, netting and/or cross-netting shall not violate the priorities set forth in **Exhibit 2**.

26. Pursuant to the Assurance Agreement, Macquarie has agreed to forbear enforcement of its “safe harbor” rights under sections 556, 560, and/or 561 of the Bankruptcy Code. Macquarie shall not be deemed to have waived or improperly delayed in exercising such “safe harbor” rights in the event any of the conditions to waiver set forth in the Assurance Agreement (including that a Final Order, in form and substance reasonably acceptable to Macquarie and the Debtors, shall have been entered no later than 30 days after the Petition Date) are not met, and such rights are preserved and may be enforced by Macquarie in such event.

27. If any or all of the provisions of this Interim Order are stayed, modified in a manner adverse to Macquarie or vacated, or this Interim Order otherwise terminates, such stay, modification, vacation or termination will not affect (a) the validity or priority of any indebtedness, obligation or liability incurred by the Refining Debtors to Macquarie before the receipt of written notice by Macquarie of the effective date of such stay, modification or vacation, (b) the validity, priority or enforceability of the security interests and netting and termination rights authorized or created hereby or pursuant to the Intermediation Contracts or any related documents, and (c) the rights of Macquarie to exercise remedies as set forth in the Intermediation Contracts or the Assurance Agreement as the case may be, and Macquarie shall be entitled to the benefits of the provisions of section 364(e) of the Bankruptcy Code.

28. If any or all of the provisions of this Interim Order are stayed, modified in a manner adverse to the Hedge Provider or vacated, or this Interim Order otherwise terminates, such stay, modification, vacation or termination will not affect (a) the validity or priority of any indebtedness, obligation or liability incurred by the Participating Hedging Debtors to the Hedge Provider before the receipt of written notice by the Hedge Provider of the effective date of such stay, modification or vacation, (b) the validity, priority or enforceability of the security interests and netting and termination rights authorized or created hereby or pursuant to the Hedge Facility or the Hedge Facility Documents, and (c) the rights of the Hedge Provider to exercise remedies as set forth in the Hedge Facility as the case may be, and the Hedge Provider shall be entitled to the benefits of the provisions of section 364(e) of the Bankruptcy Code.

29. To the extent that the value of SOA Collateral sold and/or pledged to or for the benefit of Macquarie exceeds the aggregate amount of obligations owing by Vertex Refining or the other Refining Debtors, as applicable, to Macquarie on account of existing positions (including

amounts owing on account of market movements), such excess value shall secure all obligations owing by Vertex Refining to Macquarie on account of the its intermediation activities pursuant to the terms of the Intermediation Contracts. To the extent that any SOA Collateral is insufficient to secure Vertex Refining's or the other Refining Debtors' obligations to Macquarie under the Intermediation Contracts, and/or Vertex Refining is required to post collateral under an Intermediation Contract, Vertex Refining and the other Refining Debtors, as applicable, individually and/or collectively are authorized to provide additional collateral to secure such obligations to Macquarie without further order of the Court; *provided*, that Vertex Refining and the other Refining Debtors shall not provide any such additional collateral (other than any Intermediation Facility Priority Collateral including an Independent Amount Adjustment (as defined in the Post-Petition Independent Amount Letter) required to be transferred to Macquarie in accordance with the terms of the Post-Petition Independent Amount Letter) without the consent of the DIP Lenders. The consent of the DIP Lenders shall not be required for the payment of any Independent Amount Adjustment on the terms set out in the Post-Petition Independent Amount Letter, but the consent of the DIP Lenders shall be required to make any change in methodology for calculating the Independent Amount effected after this Interim Order is granted that is not contemplated by the terms of the Post-Petition Independent Amount Letter, and the Refining Debtors shall notify the DIP Lenders of any increase in the amount of the Independent Amount by more than twenty percent (20 %).

30. Notwithstanding anything to the contrary in section 562 of the Bankruptcy Code, the determination of any damages, settlement payments, or termination payments owing under any Intermediation Contract or Hedge Facility Document (including the timing of measurement or

calculation of any such damages, settlement payments or termination payments) shall be made pursuant to the terms of such Intermediation Contract or Hedge Facility Document, as applicable.

31. All of the Intermediation Contracts (which for the avoidance of doubt do not include the Hedge Facility regardless of how documented for purposes of lien or claim priority hereinafter) collectively between Vertex Refining and the other Refining Debtors, as applicable, and Macquarie shall constitute a single unified contract and integrated agreement.

32. Solely with respect to Macquarie, to the extent applicable, the automatic stay provisions of section 362 of the Bankruptcy Code are hereby vacated and modified to the extent necessary to allow enforcement of rights and remedies by Macquarie under the Intermediation Contracts (as amended by the Assurance Agreement), including suspension of performance, termination, liquidation, acceleration, setoff, netting, giving of any notices necessary or appropriate pursuant to the Intermediation Contracts, giving instruction to owners or operators of third party infrastructure facilities regarding Macquarie's property, collateral, realization (including sale) of such property upon termination, and, without limitation of the foregoing, to enable the Refining Debtors to comply with Sections 20.5 to 20.9 of the Post-Petition Intermediation Agreement setting forth procedures for the orderly arrangement for the processing, sale, transfer and/or evacuation of all Intermediation Title Property and the enforcement and realizing of Macquarie's lien on SOA Collateral, and Macquarie's rights thereunder shall not be modified, stayed, avoided or otherwise limited by order of the Bankruptcy Court or any court proceeding under the Bankruptcy Code. Without limiting the foregoing, the relief provided in this paragraph shall apply to, among other things:

- Any rights ("Termination Rights") of Macquarie to terminate or liquidate any or all Intermediation Contracts or any or all transactions, property and/or collateral transferred or posted thereunder, including any right to terminate or liquidate if: (i) the Interim DIP Order or a final order that approves the Post-Petition Financing Agreement and, in each case,

that is in form and substance reasonably acceptable to Macquarie, the Consenting Term Loan Lenders, and the Debtors (the “Final DIP Order”), is not entered by the Bankruptcy Court by the dates falling 3 and 30 days after the Petition Date, respectively, provided that the form of the proposed Interim DIP Order filed on the docket is deemed to be in form and substance reasonably acceptable to Macquarie; (ii) the Post-Petition Financing Agreement has not been funded in the aggregate amount of at least US\$39,390,204.38 by September 27, 2024, and thereafter in accordance with the Approved Budget (as defined in the Post-Petition Financing Agreement); (iii) the Final Order, in form and substance reasonably acceptable to Macquarie and the Debtors is not entered by the date falling 30 days after the Petition Date; (iv) no chapter 11 plan or Asset Sale reasonably acceptable to Macquarie has been confirmed and has become effective or has closed by the Expiration Date (as defined in the Intermediation Contracts); provided, that a sale or plan of reorganization will be deemed to be acceptable to Macquarie if (1) it provides for (a) purchase from Macquarie of all inventories owned by it in Included Storage Locations, at a price consistent with the then applicable Current Month Pricing Benchmark (as defined in the Post-Petition Intermediation Agreement) under the Intermediation Contract, (b) payment in full of all other Transaction Obligations (as defined in the Intermediation Contract) or cash collateralization of all actual or contingent obligations owed to Macquarie that may arise on or after the Expiration Date, from such sale proceeds or otherwise, and (c) with respect to a chapter 11 plan, releases in favor of Macquarie similar in all material respects to such releases contemplated in the RSA; provided that any delay in effecting the foregoing matters set out in this sub-paragraph (1) after the effective date of a plan of reorganization or sale under section 363 of the bankruptcy code as a result of an extension to the Term by a period in length equal to a Transitional Support Period (as defined in the Intermediation Contract) (if any), that Macquarie has agreed to provide in accordance with the requirements of Section 3.1(c) of the Intermediation Contract shall be acceptable to Macquarie; and (2) would not require Macquarie to breach Applicable Law (as defined in the Intermediation Contracts) (including as relates to Sanctions Law) or Macquarie’s Policies and Procedures (including, without limitation, those policies and procedures relating to “know your customer” requirements), (v) the Refining Debtors fail to satisfy any of their material obligations (including credit support obligations and any exclusivity requirement) under the Intermediation Contracts (other than an Intermediation Contract that is a Third Party Supply/Offtake Agreement (as defined in the Post-Petition Intermediation Agreement) unless the relevant failure to comply relates to a breach of any exclusivity requirement set out therein), the Assurance Agreement, this Interim Order or, following its entry, the Final Order, (vi) (1) the Refining Debtors move to reject an Intermediation Contract or such Intermediation Contract is rejected under section 365(a) of the Bankruptcy Code; or (2) a Refining Debtor moves to reject a Third Party Supply/Offtake Agreement (as defined in the Post-Petition Intermediation Agreement) other than in compliance with the consultation requirements set out in the Intermediation Contract; (vii) any Debtor declares itself to be, or is found by the Bankruptcy Court to be, administratively insolvent, or any Debtor declares that it does not intend to pay allowed administrative expense claims in full; (viii) the Debtors move or support a motion seeking to convert any Debtor’s bankruptcy case to a case under Chapter 7 of the Bankruptcy Code or dismissing any Debtor’s bankruptcy case; (ix) the Bankruptcy Court enters an order converting any Debtor’s bankruptcy case to a case under Chapter 7 of the Bankruptcy Code or dismissing any Debtor’s bankruptcy case; (x) the Bankruptcy Court enters an order, or

any Debtor files or supports an application, motion or request for an order, directing the appointment under section 1104 of the Bankruptcy Code of (1) a trustee or (2) an examiner or any other person with enlarged powers relating to the operation of the business of any Debtor (i.e., powers beyond those set forth in in section 1106(a)(3) and (4) of the Bankruptcy Code; (xi) any debtor-in-possession financing facility under which any Debtor is obligated to perform is accelerated by the lender or the lender's agent or otherwise matures and remains unpaid; (xii) any Debtor has a receiver, custodian, trustee or liquidator appointed over all or a substantial portion of its assets or is subject to such an appointment or to any similar proceeding under the laws of any jurisdiction; (xiii) any Debtor files or supports a motion, proposes a plan or other pleading, or any order is entered by the Bankruptcy Court, that in any material way affects, impairs, or limits (including the imposition of any stay or injunction) Macquarie's rights or the Refining Debtors' obligations under the Intermediation Contracts, the Assurance Agreement, this Interim Order or the Final Order or the validity, priority or enforceability of any security interests or claims afforded to Macquarie pursuant to this Interim Order, the Interim DIP Order, the Final DIP Order or the Final Order; (xiv) this Interim Order or, following its entry, the Final Order, shall cease to be in full force and effect, in each case as determined by Macquarie in its commercially reasonable discretion; (xv) the Interim Order, or, following its entry, the Final Order, (A) shall have been directly or indirectly affected, impaired, limited reversed, stayed, vacated or subjected to a stay pending appeal or otherwise modified in any way materially adverse to the protections afforded to Macquarie under the Interim Order or, when entered into, the Final Order, in either case, without the prior written consent of Macquarie, or (B) are modified or amended in any way that affects any Termination Rights (as defined in the Interim Order) under the Hedge Facility, or that is otherwise materially adverse to the protections afford to the Hedge Provider under the Interim Order and/or the Final Order, without the prior written consent of Macquarie; (xvi) an order is entered by the Bankruptcy Court requiring the avoidance of any payment received by Macquarie under any Intermediation Contract or any Refining Debtor moves for the avoidance of any payment received by Macquarie under any Intermediation Contract, whether such payment is received prior to, on or after the Petition Date; (xvii) any Intermediation Contract shall be assigned by any Refining Debtor to any third party without Macquarie's prior written consent, (xviii) any motion or other pleading is filed by a Refining Debtor proposing a transaction (other than the transactions expressly contemplated by the Plan) in relation to the sale of the Refinery that would not result in the Refining Debtors' obligations under the Intermediation Facility being performed in full, other than an Acceptable Plan or Sale (xix) the Bankruptcy Court enters an order or orders granting relief from the automatic stay under section 362 of the Bankruptcy Code with regard to any assets of the Refining Debtors and such relief would have or could reasonably be expected to have a material adverse effect; (xx) noncompliance by any Refining Debtor with any of the material terms of the Interim Order or the Final Order; and (xxi) other applicable termination rights set forth in the Prepetition Intermediation Agreement.

- No Termination Right will arise under any Intermediation Contract unless Macquarie gives the Debtors, and counsel thereto, five (5) days' prior written notice by email to cure any condition that, after the giving of such notice and the lapse of such cure period (unless a longer grace period or cure period is specified in the Intermediation Contracts, in which

case, such longer cure period shall apply), will give rise to a Termination Right, *provided*, that in the case of the Termination Rights described in subsections (iii), (iv), (ix), (xi), (xvii), (xvi), and (xviii) above, no notice requirement or opportunity to cure shall apply.

- Subject to the satisfaction of any applicable notice requirement and/or the lapse of any applicable cure period, on and after the time when a Termination Right arises under any Intermediation Contract, Macquarie shall be entitled to immediately exercise rights and remedies to suspend performance, terminate commitments, terminate, liquidate and/or accelerate transactions, offset or net termination values or payment amounts and/or apply any cash collateral (including cash collateral in the form of an Independent Amount) in its possession or control (collectively, the “Immediate Exercise Rights and Remedies”), each in accordance with the terms of the applicable contract; provided, however, that the exercise of such Immediate Exercise Rights and Remedies shall in no way limit the Debtors’ ability to contest whether any such event has occurred or seek recourse against Macquarie for any wrongful exercise of such rights; provided, further, that for the avoidance of doubt, such Immediate Exercise Rights and Remedies shall not apply to any SOA Collateral in the Debtors’ possession.
- With respect to all rights and remedies other than the Immediate Exercise Rights and Remedies, provided for in the Intermediation Contracts and under applicable law (the “Rights and Remedies”), unless the Bankruptcy Court orders otherwise during the Remedies Notice Period (as defined below), upon the occurrence of any default, event of default, additional event of default, termination event or additional termination event (including any Termination Right) under any Intermediation Contract and the giving of five (5) days’ prior written notice (which shall run concurrently with any notice required to be provided under the applicable Intermediation Contract or otherwise in this Interim Order) (the “Remedies Notice Period”) via email to the Debtors, and counsel thereto (and, upon receipt, the Debtors shall promptly provide a copy of such notice to lead counsel for the Committee, if any, and the U.S. Trustee), Macquarie may exercise such rights and remedies.
- In any hearing regarding any exercise of any rights or remedies under the Intermediation Contracts, the only issues that may be raised by any party in opposition thereto shall be (i) whether, in fact, the relevant default, event of default, additional event of default, termination event or additional termination event has occurred and (ii) whether the proposed exercise of such right or remedy is in accordance with the terms of the Intermediation Contracts.
- Any rights of Macquarie under the Intermediation Contracts to dispose of their property consisting of Hydrocarbon Inventories and the liquidation of such collateral by Macquarie in accordance with the terms of the Intermediation Contracts and notwithstanding any applicable law (including the Uniform Commercial Code) that is inconsistent with the collateral disposition provisions of the Intermediation Contracts.

33. Following the occurrence of the Expiration Date or the delivery of an Unwind Notice, the Refining Debtors shall use reasonable best efforts to cooperate with the liquidation of

Macquarie's collateral at the direction of Macquarie, as applicable, including the agreement to refine Crude Oil Inventory into refined Products. The provisions of the Intermediation Contracts (as amended by the Assurance Agreement) relating to liquidation of collateral are hereby approved, including those relating to: (i) the process for proposing a plan for inventory dispositions, and the notification, comment period and Bankruptcy Court dispute resolution procedures relating to such plans and (ii) reporting by Macquarie, as applicable regarding the progress of such collateral dispositions.

34. Solely with respect to the Hedge Provider, to the extent applicable, the automatic stay provisions of section 362 of the Bankruptcy Code are hereby vacated and modified to the extent necessary to allow enforcement of rights and remedies by the Hedge Provider under the Hedge Facility Documents, including suspension of performance, termination, liquidation, acceleration, setoff, netting, giving of any notices necessary or appropriate pursuant to the Hedge Facility Documents, and the Hedge Provider's rights thereunder shall not be modified, stayed, avoided or otherwise limited by order of the Bankruptcy Court or any court proceeding under the Bankruptcy Code. Without limiting the foregoing, the relief provided in this paragraph shall apply to, among other things, the termination rights in the Hedge Facility Documents, which include, in addition to standard events of default (other than Section 5(a)(vii) (*Bankruptcy*) of the 2002 ISDA Master Agreement and termination events in the 2002 ISDA Master Agreement (the "Hedge Termination Rights"):

- an amendment is made to Section 5(a)(vii) (Bankruptcy) of the 2002 Event of Default as it applies to Vertex Refining such that Hedge Provider has the right to terminate the Hedge Facility Documents and all related transactions entered into thereunder if: (i) the Interim DIP Order and the Final DIP Order, each in form and substance reasonably acceptable to Hedge Provider, are not entered by the Bankruptcy Court by the dates falling 3 and 30 days after the Petition Date, respectively, provided that the form of the proposed Interim DIP Order filed on the docket is deemed to be in form and substance reasonably acceptable to Hedge Provider; (ii) the Post-Petition Financing Agreement has not been funded in the

aggregate amount of at least US\$39,390,204.38 (before taking into account any holdbacks or funding date payments) by September 27, 2024, and thereafter in accordance with the Approved Budget (as defined in the Post-Petition Financing Agreement); (iii) the Final Order, in form and substance reasonably acceptable to the Hedge Provider and the Debtors is not entered by the date falling 30 days after the Petition Date; (iv) failure to consummate or confirm, as applicable, an Acceptable Plan or Sale (as defined in the ISDA Amendment Agreement) by the Expiration Date (as defined in the ISDA Amendment Agreement), (v) the Debtors fail to satisfy any of their material obligations (including credit support obligations) under the Hedge Facility Documents, the ISDA Amendment Agreement (as defined in the Assurance Agreement), this Interim Order or, following its entry, the Final Order, (vi) the Debtors move to reject Hedge Facility Document or such Hedge Facility Document is rejected under section 365(a) of the Bankruptcy Code; (vii) any Debtor declares itself to be, or is found by the Bankruptcy Court to be, administratively insolvent, or any Debtor declares that it does not intend to pay allowed administrative expense claims in full; (viii) the Debtors move or support a motion seeking to convert any Debtor's bankruptcy case to a case under chapter 7 of the Bankruptcy Code or dismissing any Debtor's bankruptcy case; (ix) the Bankruptcy Court enters an order converting any Debtor's bankruptcy case to a case under chapter 7 of the Bankruptcy Code or dismissing any Debtor's bankruptcy case; (x) the Bankruptcy Court enters an order, or any Debtor files or supports an application, motion or request for an order, directing the appointment under section 1104 of the Bankruptcy Code of (1) a trustee or (2) an examiner or any other person with enlarged powers relating to the operation of the business of any Debtor (i.e., powers beyond those set forth in in section 1106(a)(3) and (4) of the Bankruptcy Code; (xi) any debtor-in-possession financing facility under which any Debtor is obligated to perform is accelerated by the lender or the lender's agent or otherwise matures and remains unpaid; (xii) any Debtor has a receiver, custodian, trustee or liquidator appointed over all or a substantial portion of its assets or is subject to such an appointment or to any similar proceeding under the laws of any jurisdiction; (xiii) any Debtor files or supports a motion, proposes a plan or other pleading, or any order is entered by the Bankruptcy Court, that in any material way affects, impairs, or limits (including the imposition of any stay or injunction) the Hedge Provider's rights or the Debtors' obligations under Hedge Facility Documents, the ISDA Amendment Agreement (as defined in the Assurance Agreement), this Interim Order or the Final Order or the validity, priority or enforceability of any security interests or claims granted to the Hedge Provider pursuant to this Interim Order, the Interim DIP Order, the Final DIP Order or the Final Order; (xiv) this Interim Order or, following its entry, the Final Order, shall cease to be in full force and effect, in each case as determined by Hedge Provider in its commercially reasonable discretion; (xv) the Interim Order, or, following its entry, the Final Order, (A) shall have been directly affected, impaired, limited reversed, stayed, vacated or subjected to a stay pending appeal or otherwise modified in any way materially adverse to the protections afforded to the Hedge Provider under the Interim Order or, when entered into, the Final Order, in either case, without the prior written consent of the Hedge Provider, or (B) are modified or amended in any way that affects any Hedge Termination Rights (as defined in the Interim Order) under the Hedge Facility, or that is otherwise materially adverse to the protections afforded to the Hedge Provider under the Interim Order and/or the Final Order, without the prior written consent of the Hedge Provider; (xvi) an order is entered by the Bankruptcy Court

requiring the avoidance of any payment received by the Hedge Provider under the Hedge Facility Documents or any Debtor moves for the avoidance of any payment received by the Hedge Provider under any Hedge Facility Documents, whether such payment is received prior to, on or after the Petition Date; (xvii) any Hedge Facility Document or Hedging Transaction entered into thereunder shall be assigned by any Debtor to any third party without the Hedge Provider's prior written consent, (xviii) any motion or other pleading is filed by a Debtor proposing a transaction (other than the transactions expressly contemplated by the Plan) in relation to the sale of the refinery that would not result in the Refining Debtors' obligations under the Hedge Facility being performed in full, (xix) the Bankruptcy Court enters an order or orders granting relief from the automatic stay under section 362 of the Bankruptcy Code with regard to any assets of the Debtors and such relief would have or could reasonably be expected to have a material adverse effect; and (xx) noncompliance by any Debtor with any of the material terms of the Interim Order or the Final Order;

- an additional termination event shall arise upon (i) if at any time the Participating Hedging Debtor's obligations under the Hedge Facility Documents fail or cease to be secured with the ranking and order of priority of security specified in **Exhibit 2** and **Exhibit 3** to this Order; or (ii) the occurrence of the effective date of a plan of reorganization or sale under section 363 of the Bankruptcy Code if the parties have not wound-down any then outstanding Transactions or otherwise provided for the novation or transfer of such outstanding Transactions pursuant to the provisions of the Hedge Facility Documents by such date;
- No Hedge Termination Right will arise under any Hedge Facility Documents unless the Hedge Provider gives the Debtors, and counsel thereto, five (5) days' prior written notice by email to cure any condition that, after the giving of such notice and the lapse of such cure period (unless a longer grace period or cure period is specified in the Hedge Facility Documents, in which case, such longer cure period shall apply), will give rise to a Hedge Termination Right, provided, that in the case of the Hedge Termination Rights described in subsections (iii), (iv), (ix), (xi), (xvi), (xvii), and (xviii) above, no notice requirement or opportunity to cure shall apply;
- Subject to the satisfaction of any applicable notice requirement and/or the lapse of any applicable cure period, on and after the time when a Hedge Termination Right arises under any Hedge Facility Document, the Hedge Provider shall be entitled to immediately exercise the Immediate Exercise Rights and Remedies, each in accordance with the terms of the applicable contract; *provided*, however, that the exercise of such Immediate Exercise Rights and Remedies shall in no way limit the Debtors' ability to contest whether any such event has occurred or seek recourse against the Hedge Provider for any wrongful exercise of such rights;
- With respect to other Rights and Remedies other than the Immediate Exercise Rights and Remedies, unless the Bankruptcy Court orders otherwise during the Remedies Notice Period, upon the occurrence of any default, event of default, additional event of default, termination event or additional termination event and the giving of five (5) days' prior written notice (which shall run concurrently with any notice required to be provided under

the applicable Hedge Facility Document or otherwise in this Interim Order via email to the Debtors, and counsel thereto (and, upon receipt, the Debtors shall promptly provide a copy of such notice to lead counsel for the Committee, if any, and the U.S. Trustee), the Hedge Provider may exercise such rights and remedies; and

- In any hearing regarding any exercise of any rights or remedies under the Hedge Facility Documents, the only issues that may be raised by any party in opposition thereto shall be (i) whether, in fact, the relevant default, event of default, additional event of default, termination event or additional termination event has occurred and (ii) whether the proposed exercise of such right or remedy is in accordance with the terms of the Hedge Facility Documents.

35. With respect to all rights and remedies provided for in the Tripartite Agreements and Shell Agreements and under applicable law (the “Shell Rights and Remedies”), unless the Bankruptcy Court orders otherwise, upon the occurrence of any Event of Default (as defined in the Shell Support Agreement) under the applicable Shell Agreement or Tripartite Agreement, and the giving of five (5) days’ prior written notice (which shall run concurrently with any notice required to be provided under the applicable Shell Agreement or Tripartite Agreement or otherwise in this Interim Order) (the “Shell Remedies Notice Period”) via email to the Debtors, and counsel thereto (and, upon receipt, the Debtors shall promptly provide a copy of such notice to lead counsel for the Committee, if any, and the U.S. Trustee), Shell may exercise such rights and remedies upon entry of an order of the Bankruptcy Court finding that an Event of Default has occurred (as defined in the Shell Support Agreement); *provided* that after the expiration of such notice and cure period, and pending entry of an order by the Bankruptcy Court finding that an Event of Default (as defined in the Shell Support Agreement) has occurred, the provisions of section 362 of the Bankruptcy Code are hereby vacated and modified to the extent and if necessary to allow enforcement of rights and remedies by Shell as set forth in the Shell Support Agreement.

36. Upon entry of the Final Order: (i) the Debtors waive the right and shall not seek relief, including under section 105(a) of the Bankruptcy Code, to the extent that any such relief would in any way restrict or impair the rights of (x) Macquarie under the Intermediation Contracts

(as amended by the Assurance Agreement) or this Interim Order or (y) the Hedge Provider under the Hedge Facility Documents; provided, that such waiver shall not preclude the Debtors from contesting whether a default has occurred under any Intermediation Contract or Hedge Facility Document, (ii) neither Macquarie nor the Hedge Provider shall be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the SOA Collateral or the Hedging Participants’ Collateral, respectively, except, with respect to Macquarie, as set forth in the definition of “Business Interruption Insurance Percentage” in **Exhibit 4**, and (iii) in no event shall the “equities of the case” exception in section 552(b) of the Bankruptcy Code apply to the any claims of Macquarie or the Hedge Provider.

37. Upon entry of the Final Order, no costs or expenses of preserving or disposing of any collateral of Macquarie or of the Hedge Provider (in each case, including any fees and expenses described in paragraph 39 below) shall be imposed on Macquarie or the Hedge Provider, as applicable, or recoverable from any collateral of Macquarie or the Hedge Provider, as applicable, pursuant to section 506(c) of the Bankruptcy Code or otherwise without the prior written consent of Macquarie or the Hedge Provider, as applicable, and no such consent shall be implied from any action, inaction or acquiescence by Macquarie or the Hedge Provider. Neither Macquarie nor the Hedge Provider shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person (as defined in the Interim DIP Order) incurred in connection with the Chapter 11 Cases or any successor cases under any chapter of the Bankruptcy Code. Nothing in this Interim Order or otherwise shall be construed to obligate Macquarie or the Hedge Provider, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

38. Without limiting any other provision of this Interim Order, any claims arising from the termination of Intermediation Contracts or the Hedge Facility Documents shall be determined in accordance with the terms of such Intermediation Contracts or such Hedge Facility Documents, as applicable.

39. All rights, liens, and claims requested, approved, or otherwise referenced herein, are subject to the Carve Out, which is incorporated herein by reference. For the avoidance of doubt, Macquarie and the Hedge Provider, or counsel thereto, shall be entitled to deliver a Carve Out Trigger Notice (as defined in the Interim DIP Order) pursuant to the terms of the Carve Out.

40. Upon entry of the Final Order, except as otherwise provided in the Intermediation Contracts, the Assurance Agreement, the Hedge Facility Documents or this Interim Order, each of the Debtors and the Debtors' estates, on their own behalf and on behalf of each of their predecessors, their successors, and assigns shall, to the maximum extent permitted by applicable law, unconditionally, irrevocably and fully forever release, waive and discharge each of Macquarie and the Hedge Provider, and each of their former, current, or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, predecessors and predecessors in interest, each in their capacities as such, of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened including all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract, of every nature and description that exist on the date hereof arising out

of, relating to, or in connection with (a) any of the Intermediation Contracts (including the Assurance Agreement) or the transactions contemplated thereunder or any of the Hedge Facility Documents or the transactions contemplated thereunder or (b) this Interim Order, including: (i) any so-called “lender liability” or equitable subordination claims or defenses, (ii) any and all claims to recharacterize purchases and sales entered into with respect to Intermediation Title Property under the Intermediation Contracts as secured loans, (iii) any and all claims and causes of action arising under the Bankruptcy Code, and (iv) any and all claims and causes of action regarding the validity, priority, perfection, or avoidability of the liens of Macquarie or the Hedge Provider, subject to a Challenge Proceeding during the Challenge Period (each as defined in the Interim DIP Order).

41. Without prejudice to the rights of any other party in interest (subject to the limitations thereon contained in the proviso to this paragraph below), the Debtors and, solely with respect to clauses (e), below, the DIP Agent and Term Loan Agent on behalf of the DIP Lenders and the Term Loan Lenders, admit, stipulate and agree, subject to the Challenge Period, (the “Stipulations”) that:

(a) (i) as of the Petition Date, (A) the Refining Debtors were justly and lawfully indebted and liable to Macquarie, without defense, counterclaim or offset of any kind, for all Intermediation Obligations pursuant to, and in accordance with the terms of, the Intermediation Contracts, including accrued and unpaid interest thereon together with amounts due and owing in connection with transactions thereunder and fees, expenses (including any attorneys’, accountants’, appraisers’ and financial advisors’ fees, in each case, that are chargeable or reimbursable under the Intermediation Contracts), charges, indemnities and other obligations incurred in connection therewith (whether arising before or after the Petition Date) as provided in the Intermediation

Contacts, (ii) the Intermediation Obligations constitute the legal, valid and binding obligations of the Refining Debtors, enforceable in accordance with their terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), and (iii) no portion of the Intermediation Obligations or any payments made to Macquarie or applied to or paid on account of the obligations owing under the Intermediation Contracts prior to the Petition Date is subject to any contest, attack, rejection, recovery, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance, or other claim, cause of action or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law;

(b) The intermediation transactions constitute “true sales” of the Intermediation Title Property by Vertex Refining to Macquarie and by Macquarie to Vertex Refining such that Macquarie has legal and beneficial title to the Intermediation Title Property, and such Intermediation Title Property does not constitute property of any of the Debtors’ estates under section 541 of the Bankruptcy Code;

(c) the Intermediation Facility Liens are (i) valid, binding, perfected, enforceable, first-priority liens and security interests in the SOA Collateral, not subject to avoidance, recharacterization, subordination, recovery, attack, effect, counterclaim, defense or claim under the Bankruptcy Code or applicable non-bankruptcy law and (ii) as of the Petition Date, subject to the lien priorities set forth in **Exhibit 2**;

(d) Neither Macquarie nor the Hedge Provider controls the Debtors or their properties or operations, have authority to determine the manner in which any Debtor’s operations are conducted or are control persons or insiders of the Debtors by virtue of any of the actions taken with respect to, in connection with, related to or arising from the Intermediation Contracts or the Hedge Facility, respectively;

(e) Without limitation to the agreements with respect to Intermediation Title Property set forth in the Prepetition Intercreditor Agreement, which remain in full force and effect, neither the Debtors, nor the DIP Agent and Term Loan Agent on behalf of the DIP Lenders and the Term Loan Lenders shall contest, protest or object to, or support any other person in contesting, protesting or objecting to, in any proceeding or action, Macquarie's title to or ownership of, or other rights in, all or any part of the Intermediation Title Property;

(f) Macquarie could not be compelled to continue to perform under the Intermediation Contracts following the Petition Date. In this regard, the Debtors acknowledge, and upon entry of the Final Order this Court finds, that: (i) Macquarie is a "forward contract merchant," "swap participant" and/or a "master netting agreement participant" as such terms are used in sections 556, 560, and/or 561 and defined in section 101 of the Bankruptcy Code; (ii) the Intermediation Contracts by and between the Debtors and Macquarie are "forward contracts," "swap agreements" and/or "master netting agreements" as the case may be, as such terms are defined in section 101 of the Bankruptcy Code and, as such, are therefore "safe harbor" contracts under the applicable provisions of the Bankruptcy Code. As safe harbor contracts, the right of Macquarie to cause the liquidation and/or termination of the Intermediation Contracts because of a condition of the kind specified in section 365(e)(1) of the Bankruptcy Code is not and cannot be stayed, avoided or otherwise limited by operation of any provision of the Bankruptcy Code or order of this Court; and (iii) the Intermediation Contracts constitute a "contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor" within the meaning of Sections 365(c)(2) and 365(e)(2)(B) of the Bankruptcy Code; and

(g) Macquarie is oversecured as of the Petition Date, and accordingly, pursuant to Section 506(b) of the Bankruptcy Code, Macquarie is entitled to interest and any reasonable fees,

costs and expenses provided by the Intermediation Contracts or applicable law; provided, the official committee of creditors holding unsecured claims appointed in these Chapter 11 Cases, if any, pursuant to section 1102 of the Bankruptcy Code (the “Committee”) shall have until sixty (60) calendar days from the date of formation of the Committee and all other non-Debtor parties-in-interest (including a trustee, if appointed or elected prior to the Investigation Termination Date, as defined below) shall have sixty (60) calendar days from entry of this Interim Order (each, as applicable, the “Investigation Termination Date”) to investigate the validity, extent, priority, perfection and enforceability of: the SOA Prepetition Liens and (in addition to obtaining the requisite standing) to assert any other claims or causes of action against each of the Pre-Petition Term Loan Secured Parties (as defined in the Interim DIP Order). If (1) any Committee or any non-Debtor party-in-interest determines that there may be a challenge to the SOA Prepetition Liens and is granted authority and standing by this Court by the Investigation Termination Date, then such Committee or other non-Debtor party-in-interest, as applicable, shall be permitted to file and prosecute an objection or claim related thereto (each, a “Challenge”), and shall have only until the applicable Investigation Termination Date to file such objection or claim (or otherwise initiate an appropriate action on behalf of the Debtors’ estates) setting forth the basis of any such challenge, claim or cause of action; provided, however, that nothing contained in the Intermediation Documents or this Interim Order shall be deemed to confer standing on any Committee or any other non-Debtor party-in-interest to commence a Challenge, and such Committee or other non-Debtor party-in-interest shall be required to move for standing and satisfy the applicable standard for obtaining standing to pursue estate causes of action. If a Challenge is not filed on or before the Investigation Termination Date, then, without further action by any party or any further order of this Court: (a) the agreements, acknowledgements, stipulations and releases

contained in this Paragraph 41 and its subparagraphs, shall be deemed to be immediately and irrevocably binding on the Debtors, and the Debtors' estates, the Committee, and all parties-in-interest and any and all successors-in-interest thereto shall thereafter be forever barred from bringing any Challenge; (b) the liens and security interests of Macquarie shall be deemed to constitute valid, binding, enforceable and perfected liens and security interests not subject to avoidance or disallowance pursuant to the Bankruptcy Code or applicable non-bankruptcy law; and (c) each of the obligations under the Intermediation Contracts shall be deemed to be finally allowed claims for all purposes in the Chapter 11 Cases and any subsequent chapter 7 cases, in the amounts set forth in this Paragraph 41 and its subparagraphs and shall not be subject to challenge by any party-in-interest as to validity, priority or otherwise. Macquarie shall cooperate in all reasonable requests for information in order to assist the Committee in its investigation under this Paragraph 41 and its subparagraphs. Upon a successful Challenge, the Court may fashion any appropriate remedy. Notwithstanding anything to the contrary herein: (a) if any such Challenge is timely commenced, the stipulations contained in this Paragraph 41 and its subparagraphs shall nonetheless remain binding on all parties-in-interest and preclusive except with respect to the party asserting the Challenge and to the extent that such stipulations are expressly and successfully challenged in such Challenge; and (b) Macquarie reserves all of its rights to contest on any grounds any Challenge. For the avoidance of doubt, any trustee appointed or elected in these cases shall, until the Investigation Termination Date (and thereafter, if a Challenge is commenced on or prior to the Investigation Termination Date) and for the duration of any adversary proceeding or contested matter commenced pursuant to this paragraph with respect to a Challenge (whether commenced by such trustee or commenced by any other non-Debtor party-in-interest on behalf of the Debtors' estates), be deemed to be a party other than the Debtors and shall not, for purposes of

such adversary proceeding or contested matter, be bound by the acknowledgments, admissions, confirmations and stipulations of the Debtors in this Interim Order.

42. The Assurance Agreement and the provisions of this Interim Order shall be binding upon the Debtors, Macquarie and their respective successors and assigns (including any trustees appointed for the Debtors' estates) and inure to the benefit of Macquarie and Debtors (including any trustees hereafter appointed for the Debtors' estates in a proceeding under chapters 11 or 7 of the Bankruptcy Code) and their respective successors and assigns. The Hedge Facility and the provisions of this Interim Order shall be binding upon the Debtors, the Hedge Provider and their respective successors and assigns (including any trustees appointed for the Debtors' estates) and inure to the benefit of the Hedge Provider and Debtors (including any trustees hereafter appointed for the Debtors' estates in a proceeding under chapters 11 or 7 of the Bankruptcy Code) and their respective successors and assigns.

43. If the Chapter 11 Cases are dismissed, converted or substantively consolidated, then neither the entry of this Interim Order nor the dismissal, conversion or substantive consolidation of these Chapter 11 Cases shall affect (x) the rights of Macquarie under the Intermediation Contracts or (y) the rights of the Hedge Provider under the Hedge Facility, and all of the rights and remedies thereunder of each of Macquarie and the Hedge Provider, as applicable, shall remain in full force and effect as if the Chapter 11 Cases had not been dismissed, converted, or substantively consolidated. If an order dismissing any of the Chapter 11 Cases is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that (a) the Intermediation Facility Liens and Intermediation Superpriority Claims granted to and conferred upon Macquarie and the protections afforded to Macquarie pursuant to this Interim Order and the Intermediation Contracts shall continue in full force and effect and shall maintain their priorities

as provided in this Interim Order until all Intermediation Obligations shall have been paid and satisfied in full (and that such Intermediation Facility Liens, Intermediation Superpriority Claims, and other protections shall, notwithstanding such dismissal, remain binding on all interested parties); (b) the Hedging Liens and the Superpriority Hedging Claims granted to and conferred upon the Hedge Provider and the protections afforded to the Hedge Provider pursuant to this Interim Order and the Hedge Facility shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until all Hedge Obligations shall have been paid and satisfied in full (and that such Hedging Liens and Superpriority Hedging Claims, and other protections shall, notwithstanding such dismissal, remain binding on all interested parties); and (c) to the greatest extent permitted by applicable law, this Court shall retain jurisdiction, notwithstanding such dismissal, for the purpose of enforcing the Intermediation Facility Liens, the Intermediation Superpriority Claims, the Hedging Liens and the Superpriority Hedging Claims referred to herein.

44. If the Chapter 11 Cases are dismissed, converted or substantively consolidated, then neither the entry of this Interim Order nor the dismissal, conversion or substantive consolidation of the Chapter 11 Cases shall affect the rights of Shell under the Shell Agreements, and all of the rights and remedies thereunder of Shell shall remain in full force and effect as if the Chapter 11 Cases had not been dismissed, converted, or substantively consolidated. If an order dismissing any of the Chapter 11 Cases is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that the Super-Priority Claims granted to Shell and the protections afforded to Shell pursuant to this Interim Order and the Shell Support Agreement shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order.

45. Notwithstanding any other provisions in this Interim Order, the benefits and protections of this Interim Order shall be extended to all existing positions and future intermediation activities, regardless of whether the transaction arose prior or subsequent to the Petition Date or matures after the expiration of this Interim Order or termination or liquidation of any Intermediation Contract.

46. This Interim Order constitutes, where applicable, findings of fact and conclusions of law and shall take effect and be fully enforceable immediately upon the execution thereof.

47. This Court shall have exclusive jurisdiction with respect to any and all disputes or matters under, or arising out of or in connection with, either the Intermediation Contracts or the transactions entered into thereunder.

48. This Interim Order shall be immediately effective and enforceable, and shall not be subject to any stay under Bankruptcy Rule 6004(h) or otherwise.

49. The Debtors shall, as soon as reasonably practicable following the entry of this Interim Order, mail copies of this Interim Order and a notice of the Final Hearing on the Motion, to: (a) counsel to the DIP Lenders, (b) counsel to the DIP Agent, (c) counsel to the Term Loan Agent, (d) counsel to the Term Loan Lenders, (e) Latham & Watkins LLP, as special counsel to the JS Lender under the DIP Loan Agreement and Prepetition Loan Agreement, (f) counsel to Macquarie (g) counsel to the Hedge Provider, (h) Shell and its counsel, if any, (i) the Internal Revenue Service, (j) the U.S. Trustee for the Southern District of Texas, (k) any other party that has filed a request for notices with the Court, in each case to allow actual receipt by the foregoing no later than [●], 2024 at [●] p.m. (prevailing Central Time), and (l) any other party that has filed a request for notices with the Court.

50. The Court has scheduled a final hearing on [●], at [●] [●].m. (prevailing Central Time), to consider the entry of a Final Order authorizing the relief requested in the Motion (the “Final Hearing”).

51. Any party in interest objecting to the relief sought at the Final Hearing shall file and serve written objections, which objections shall be served upon (a) proposed co-counsels to the Debtors, (b) counsel to the DIP Lenders, (c) counsel to the DIP Agent, (d) counsel to the Term Loan Agent, (e) counsel to the Term Loan Lenders, (f) counsel to Macquarie, (g) counsel to the Hedge Provider, (h) Latham & Watkins LLP, as special counsel to the JS Lender under the DIP Loan Agreement and Prepetition Loan Agreement, (i) Shell and its counsel, if any, (j) the Internal Revenue Service, (k) the U.S. Trustee, (l) any other party that has filed a request for notices with the Court, in each case to allow actual receipt by the foregoing no later than [●], 2024 at [●] p.m. (prevailing Central Time).

52. The Debtors shall promptly serve copies of this Interim Order (which shall constitute adequate notice of the Final Hearing, including notice that the Debtors will seek approval at the Final Hearing of a waiver of rights under sections 506(c) and 552(b) of the Bankruptcy Code) to the parties having been given notice of the Interim Hearing, to any party that has filed a request for notices with the Court and to the Committee after the same has been appointed, or such Committee’s counsel, if the same shall have been appointed.

Dated: _____, 2024

UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Assurance Agreement (in substantially final form)

DATED

SEPTEMBER , 2024

- (1) MACQUARIE ENERGY NORTH AMERICA TRADING
INC.
- (2) VERTEX REFINING ALABAMA LLC
- (3) VERTEX RENEWABLES ALABAMA LLC
- (4) VERTEX ENERGY, INC.

ASSURANCE AND AMENDMENT AND RESTATEMENT AGREEMENT

IN RESPECT OF A SUPPLY AND OFFTAKE AGREEMENT DATED APRIL 1, 2022
AND CERTAIN OTHER TRANSACTION DOCUMENTS



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THIS ASSURANCE AND AMENDMENT AND RESTATEMENT AGREEMENT (this "**Agreement**") is dated September ____, 2024

BETWEEN:

- (1) **MACQUARIE ENERGY NORTH AMERICA TRADING INC.**, a Delaware corporation, located at 500 Dallas Street, Suite 3300 Houston, Texas 77002 ("**Macquarie**");
- (2) **VERTEX REFINING ALABAMA LLC**, a Delaware limited liability company, located at 1331 Gemini Street, Suite 250, Houston, Texas, TX 77058-2764 United States (the "**Company**");
- (3) **VERTEX RENEWABLES ALABAMA LLC**, a Delaware limited liability company, located at 1331 Gemini Street, Suite 250, Houston, Texas, TX 77058-2764 United States ("**Vertex Renewables**"); and
- (4) **VERTEX ENERGY, INC.**, a Nevada corporation, located at 1331 Gemini Street, Suite 250, Houston, Texas, TX 77058-2764 United States (the "**Parent**" and together with Vertex Renewables and the Company, each individually a "**Vertex Party**" and collectively the "**Vertex Parties**"),

each referred to individually as a "**Party**" and collectively as the "**Parties**".

RECITALS

- (A) **WHEREAS**, Macquarie and the Company entered into a supply and offtake agreement dated April 1, 2022 (as so amended, amended and restated, supplemented, refinanced or otherwise modified from time to time prior to the date hereof the "**Existing Supply and Offtake Agreement**") and certain other Transaction Documents (as defined in the Existing Supply and Offtake Agreement (the "**Existing Transaction Documents**");
- (B) **WHEREAS**, on or around September 24, 2024, the Vertex Parties and certain of their respective affiliates filed voluntary petitions for relief commencing cases under Chapter 11 of the Bankruptcy Code captioned *In re Vertex Energy, Inc. et al.* (the "**Chapter 11 Cases**") in the United States Bankruptcy Court for the Southern District of Texas, Houston division (such court, or another federal court exercising jurisdiction over the Chapter 11 Cases, the "**Bankruptcy Court**");
- (C) **WHEREAS**, in connection with the Chapter 11 Cases, Macquarie and the Company wish to amend and restate the Existing Supply and Offtake Agreement and certain other Existing Transaction Documents, in their entirety, upon the terms and conditions set forth in this Agreement, which amendment and restatement shall become effective on the Effective Date (as so amended and restated, the "**Supply and Offtake Agreement**" and "**Transaction Documents**" respectively);
- (D) **WHEREAS**, it is the intention of the Vertex Parties to confirm that all Transaction Obligations of the Vertex Parties under the Existing Transaction Documents, as amended, amended and restated, supplemented, refinanced, or otherwise modified hereby on or as of the date hereof shall continue in effect from and after the Effective Date, subject to the terms and conditions set forth in this Agreement, including the entry by the Bankruptcy Court of the Interim Intermediation Order and the Final Intermediation Order (as such terms are defined below) within the time periods set forth herein;
- (E) **WHEREAS**, the Parent and Macquarie entered into a guaranty agreement dated April 1, 2022 in favour of Macquarie (the "**Parent Guaranty**") and Vertex Renewables and Macquarie entered into a guaranty dated May 26, 2023 (the "**Vertex Renewables Guaranty**" and together with the Parent Guaranty, the "**Guaranties**" and each a "**Guaranty**"), in each case, with respect to the Company's obligations under the Supply and Offtake Agreement;
- (F) **WHEREAS**, in connection with the amendments to be made to the Supply and Offtake Agreement and certain other Transaction Documents following the commencement of the Chapter 11 Cases, the Parent and Vertex Renewables are a party to this Agreement solely for the purpose of confirming its obligations under the Guaranty to which it is a party, which will remain in full force and effect notwithstanding the amendments made to the Supply and Offtake Agreement and such other Transaction Documents; and
- (G) **NOW, THEREFORE**, in exchange for good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged and confirmed), the Parties hereto agree as follows.

1 **INTERPRETATION**

1.1 **Definitions**

In this Agreement:

"Bankruptcy Court" has the meaning given to that term in Recital (B).

"Chapter 11 Cases" has the meaning given to that term in Recital (B).

"Delayed Remedies" has the meaning given to those terms in Section 5.1.

"Documents" and **"Document"** have the meaning given to those terms in Section 3.1.

"Effective Date" means the date on which the Effective Time occurs.

"Effective Time" means the time at which Macquarie confirms satisfaction with and/or waiver of all the conditions precedent set out in Section 2 (*Conditions Precedent*).

"Existing Supply and Offtake Agreement" has the meaning given to that term in Recital (A).

"Existing Transaction Documents" has the meaning given to that term in Recital (A).

"Guaranties" and **"Guaranty"** have the meaning given to those terms in Recital (E).

"Interim DIP Order" has the meaning given to that term in the Supply and Offtake Agreement.

"Interim Intermediation Order" means an interim intermediation order substantially in the form annexed hereto as Schedule 6.

"Parent Guaranty" has the meaning given to that term in Recital (E).

"Supply and Offtake Agreement" has the meaning given to that term in Recital (C).

"Transaction Documents" has the meaning given to that term in Recital (C).

"Vertex Renewables Guaranty" has the meaning given to that term in Recital (E).

1.2 **Interpretation**

- (a) Unless a contrary indication appears, terms defined in or construed for the purposes of the Supply and Offtake Agreement, the Interim DIP Order and the Interim Intermediation Order have the same meanings when used in this Agreement.
- (b) The principles of construction as set out in section 1.2 (*Construction of Agreement*) of the Supply and Offtake Agreement shall have effect as though they were set out in full in this Agreement but so that each reference in that section to "this Agreement" shall be read as a reference to this Agreement.
- (c) In this Agreement any reference to an Article, Section or Schedule is, unless the context otherwise requires, a reference to an article, section or schedule of this Agreement.
- (d) The Parties acknowledge that they and their counsel have reviewed and revised this Agreement and that no presumption of contract interpretation or construction shall apply to the advantage or disadvantage of the drafter of this Agreement.

1.3 **Third party rights**

No Person other than the Parties shall have any rights hereunder or be entitled to rely on this Agreement and all third-party beneficiary rights are hereby expressly disclaimed.

1.4 Transaction Document

Macquarie and the Company agree that this Agreement shall be a "Transaction Document" for the purposes of the Supply and Offtake Agreement.

1.5 The Guarantors

Each of the Parent and Vertex Renewables is entering into this Agreement solely for the purposes set out in Section 4 (*Confirmation of Guaranty*) and Section 8.1(c) (*Representations*).

2 CONDITIONS PRECEDENT

2.1 The obligations of the Parties pursuant to this Agreement are subject to:

- (a) receipt by Macquarie (or confirmation that Macquarie has waived any such requirement) of all the documents and other items listed in Schedule 1 (*Conditions Precedent*), in each case in form and substance satisfactory to Macquarie;
- (b) evidence, in form and substance satisfactory to Macquarie, acting in its sole discretion (or confirmation that Macquarie has waived any such requirement) of the Interim Intermediation Order and the Interim DIP Order having been entered by the Bankruptcy Court no later than three (3) days after the date of commencement of the Chapter 11 Cases, in form and substance, with respect to the Interim Intermediation Order satisfactory to Macquarie, in its sole discretion, and, with respect to the Interim DIP Order, satisfactory to Macquarie in its reasonable discretion, and, in each case, not being subject to any stay of effectiveness;
- (c) no Event of Default having occurred and which is continuing prior to the Effective Date and no Event of Default resulting from entering into this Agreement (other than an Event of Default arising as a result of the commencement of the Chapter 11 Cases) has occurred; and
- (d) all the representations and warranties set out in Section 8 (*Representations*) being true and accurate in all material respects.

2.2 Macquarie shall, as soon as reasonably practicable following satisfaction or waiver of all conditions precedent, confirm to the Parties that the Effective Time has occurred. For the avoidance of doubt, if the Interim Intermediation Order is not entered within three (3) days following the Petition Date (or such other time period as may be agreed by Macquarie, in its sole discretion) (or any of the other conditions precedent set forth in Section 2.1 above are not satisfied or waived), then the amendment and restatement of the Documents shall not occur.

3 AMENDMENT OF THE TRANSACTION DOCUMENTS

3.1 Macquarie and the Company agree that, on and from the Effective Date:

- (a) the Supply and Offtake Agreement;
- (b) the Storage Facilities Agreement;
- (c) the Fee Letter; and
- (d) the Independent Amount Letter,

(together, the "**Documents**" and each a "**Document**") (other than the signature pages and, where omitted, Exhibits and Schedules thereto) are hereby amended and restated (i) to delete the red or green stricken text (indicated textually in the same manner as the following examples: ~~stricken text~~ and ~~stricken text~~) and (ii) to add the blue or green double-underlined text (indicated textually in the same manner as the following examples: double-underlined text and double-underlined text), in each case, as set forth in the marked copy of each Document attached as a Schedule hereto. The Parties hereto acknowledge and agree that each amendment to the Documents reflected in the applicable Schedule hereto is and shall be effective as if individually specified in this Agreement (the Parties further acknowledging that amending and restating the Documents by reference to the applicable

Schedule provides a convenience to the Parties to permit the amended and restated terms to be read in the context of each full Document).

- 3.2 On and from the Effective Date, the rights and obligations of the parties to a Document shall be governed and construed in accordance with the provisions of that Document as amended and restated by this Agreement, and all references in any of the Transaction Documents to any such Document (howsoever described) shall mean the Supply and Offtake Agreement, the Fee Letter, and the Independent Amount Letter as amended and restated hereby.

4 **CONDITIONS SUBSEQUENT**

Within thirty (30) days following the entry of:

- (a) the Interim Intermediation Order, the Company shall seek and obtain the entry of the Final Intermediation Order; and
- (b) the Interim DIP Order, the Company shall seek and obtain the entry of the Final DIP Order.

5 **DEFERRAL AND DELAY OF ENFORCEMENT; CERTAIN RIGHTS**

5.1 Delay and Deferral Period

- (a) For the period of time following the commencement of the Chapter 11 Cases through the entry of the Interim Intermediation Order (provided such Interim Intermediation Order is entered within three (3) days following the time of filing of the petition commencing the Chapter 11 Cases), and for the period of time that the Interim Intermediation Order is in full force and effect (but not to exceed thirty (30) days after the Petition Date (as defined in the Interim DIP Order)), the "**Delay and Deferral Period**", Macquarie expressly agrees to defer and delay (but do not waive) the utilization or enforcement of any contractual right to: liquidate, terminate or accelerate a commodity contract or forward contract as such terms are used in section 556 of the Bankruptcy Code; liquidate, terminate or accelerate a swap agreement as such terms are used in section 560 of the Bankruptcy Code; and/or terminate, liquidate, accelerate or offset under a master netting agreement as such terms are used in section 561 of the Bankruptcy Code; liquidate, terminate or accelerate any Transaction Document (or any transaction contemplated thereby); each because of a condition of the kind specified in section 365(e)(1) of the Bankruptcy Code (the "**Delayed Remedies**"). For the avoidance of doubt and without limitation, the Delayed Remedies shall apply to the following types of provisions: cross-default, cross acceleration, adequate assurance, ratings triggers, bankruptcy default, and no contemplation of bankruptcy representations.
- (b) If the Final Intermediation Order is entered within the Delay and Deferral Period, Macquarie expressly agrees to waive any further utilization and enforcement of the Delayed Remedies during the continuation of the Chapter 11 Cases. For the avoidance of doubt, this waiver shall apply only in connection with the Chapter 11 Cases and only with respect to rights and remedies that could otherwise have been exercised based on the commencement of the Chapter 11 Cases and shall not apply to any exercise of any such rights or remedies in, based on or with respect to any other or future bankruptcy case or any other event.
- (c) Nothing in Section 5.1(a) or (b) shall be construed to suggest that Macquarie shall suspend and/or temporarily waive its right to exercise any remedies arising from a Default or Event of Default (other than the commencement of the Chapter 11 Cases) occurring under the Transaction Documents after the commencement of the Chapter 11 Cases in accordance with the terms of the Transaction Documents, and the Interim and Final Intermediation Orders.

5.2 Deferred Payment

Notwithstanding anything to the contrary in the Supply and Offtake Agreement, any payments due from one Party to another Party (i) in respect of which an invoice was issued prior to the Petition Date but which is not yet paid or due and payable as of the Petition Date; or (ii) become due and payable during the period from (and including) the Petition Date to (and including) the date on which the Interim Intermediation Order is granted in accordance with the terms of the Supply and Offtake Agreement (including, without limitation, any such payments arising in connection with (a) a sale of Crude Oil by Macquarie to the Company pursuant to section 5.4 of the Supply and Offtake Agreement; (b) a purchase of Product by Macquarie from the Company pursuant to section 8.1(a) of the Supply and Offtake Agreement; or (c) a sale of Product by Macquarie to the Company pursuant to section 8.2(b) of the Supply and Offtake Agreement) shall be subject to payment netting in accordance with section 11.5 of the Supply and Offtake Agreement with the resulting net payment obligation being deferred until the date falling one (1) Business Day after the Effective Date. If the Interim Intermediation Order is not entered within three (3) days of the Petition Date (or such other time period as may be agreed by Macquarie, in its sole discretion), then any such deferred payments shall form part of the Termination Amount or Settlement Amount calculated in accordance with the Supply and Offtake Agreement.

6 **CONFIRMATION OF GUARANTY**

6.1 By executing this Agreement, each of the Parent and Vertex Renewables:

- (a) consents to the Company entering into this Agreement; and
- (b) confirms and restates that its obligations under the Guaranty to which it is a party shall continue in full force and effect as a continuing security for the payment and discharge of the Guaranteed Obligations (as defined in the Guaranty to which it is a party), including without limitation, all amounts owing by the Company to Macquarie in relation to the Transaction Documents and the Transaction Obligations.

6.2 Each of the Parent and the Company confirms and restates that its obligations under the Vertex Renewables SOA Guaranty to which it is a party shall continue in full force and effect as a continuing security for the payment and discharge of any actual or contingent Guaranteed Obligations (as defined in the Vertex Renewables SOA Guaranty to which it is a party), including without limitation, all amounts owing by the Company to Macquarie in relation to the Transaction Obligations to the extent that such Guaranteed Obligations relate to rights, remedies, obligations or liabilities that have accrued prior to May 23, 2024 or which are expressed to survive termination of any of the Transaction Documents.

7 **CONFIRMATION OF EXISTING SECURITY**

The Company confirms that each of the existing Lien Documents that it has executed in favour of Macquarie shall continue in full force and effect as a continuing security for the obligations of the Company pursuant to the Supply and Offtake Agreement and the other Transaction Documents.

8 **REPRESENTATIONS**

8.1 Without prejudice to the rights of Macquarie which have arisen on or before the Effective Date:

- (a) the Company and Macquarie each repeat the representations and warranties set out in section 19.1 (*Mutual Representations*) of the Supply and Offtake Agreement except that the Company shall not be required to repeat any representations that it is not able to give as a result of, or in connection with, the commencement of the Chapter 11 Cases;
- (b) the Company repeats the representations and warranties set out in section 19.2 (*Company's Representations*) of the Supply and Offtake Agreement other than any representations that it is not able to repeat as a result of, or in connection with, the commencement of the Chapter 11 Cases; and
- (c) the Parent and Vertex Renewables repeats the representations and warranties set out in section 5.1 (*Representations and Warranties*) of the Guaranty to which it is a party,

in each case on the date of this Agreement and the Effective Date and by reference to the facts and circumstances then existing.

9 CONTINUITY AND RATIFICATION

9.1 The provisions of the Transaction Documents shall, save as amended by this Agreement, continue in full force and effect.

9.2 The execution, delivery and effectiveness of this Agreement shall not operate as a waiver of any right, power or remedy of Macquarie or any of its assignees under the Supply and Offtake Agreement or any other Transaction Document, instrument, or agreement executed in connection therewith, nor constitute a waiver of any provision contained therein.

10 MISCELLANEOUS

10.1 Further assurance

The Company agrees to take all further actions and execute all further documents (and to procure the doing of all acts and things and the execution of all documents) as Macquarie may from time to time reasonably request to carry out the transactions contemplated by this Agreement and all other agreements executed and delivered in connection herewith.

10.2 Incorporation of Terms

The provisions of section 22.5 (*Indemnification; Expenses*), section 25 (*Confidentiality*) and sections 27 (*Assignment*) to 32 (*Miscellaneous*) (inclusive) of the Supply and Offtake Agreement shall apply to this Agreement as if set out in full in this Agreement and as if references in those sections to "this Agreement", "either Party" and "neither Party" are references to this Agreement, "each Party" and "no Party", respectively.

11 GOVERNING LAW AND JURISDICTION

11.1 THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED AND ENFORCED UNDER THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO ITS CONFLICT OF LAWS PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER STATE.

11.2 EACH OF THE PARTIES HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE BANKRUPTCY COURT, (WITHOUT RECOURSE TO ARBITRATION UNLESS BOTH PARTIES AGREE IN WRITING), AND TO SERVICE OF PROCESS BY CERTIFIED MAIL, DELIVERED TO THE PARTY AT THE ADDRESS INDICATED IN ARTICLE 28 OF THE SUPPLY AND OFFTAKE AGREEMENT. EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION TO PERSONAL JURISDICTION, WHETHER ON GROUNDS OF VENUE, RESIDENCE OR DOMICILE.

11.3 EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDINGS RELATING TO THIS AGREEMENT.

[Remainder of page intentionally left blank.]

SCHEDULE 1

CONDITIONS PRECEDENT

1 VERTEX PARTIES

- (a) A copy of the Organization Documents of each Vertex Party (which, to the extent filed with a Governmental Authority, shall be certified as of a recent date by such Governmental Authority).
- (b) A copy of a resolution of the manager or board of directors, as applicable, of each Vertex Party:
 - (i) approving the terms of, and the transactions contemplated by, the Agreement and the ISDA Amendment Agreement (as defined below);
 - (ii) authorizing a specified person or persons to execute the Agreement and the ISDA Amendment Agreement on its behalf; and
 - (iii) authorizing a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Agreement and the ISDA Amendment Agreement.
- (c) A good standing certificate for each Vertex Party from (A) the relevant state of formation and (B) from any state where it is, or is required to be, qualified to do business to the extent failure to so qualified could reasonably be expected to result in a Material Adverse Change.
- (d) A specimen of the signature of each person authorized by the resolution referred to in paragraph (a) above in relation to this Agreement.
- (e) A certificate addressed to Macquarie of an authorized signatory of each Vertex Party certifying that each copy document relating to it specified in this Schedule 1 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

2 DOCUMENTS

- (a) This Agreement duly executed by the Parties hereto.
- (b) An Amendment Agreement in respect of the ISDA 2002 Master Agreement (including the Schedule thereof) entered into between Macquarie Bank Limited and the Company as of April 1, 2022 (the "**ISDA Amendment Agreement**") duly executed by the parties thereto.

3 OTHER DOCUMENTS AND EVIDENCE

- (a) The debtor-in-possession financing facility in a form and substance reasonably satisfactory to Macquarie executed by the parties thereto (the "**DIP Credit Agreement**").
- (b) Evidence satisfactory to Macquarie in its sole discretion that either:
 - (i) none of (A) the Shell Crude Supply Agreement; (B) the Tripartite Crude Supply Agreement; or (C) any Tripartite Product Offtake Agreement have been terminated and each such agreement shall remain in full force and effect as of the Effective Date and all such amendments as may be required to be made to such agreements by the Permitted Crude Supplier or the relevant Third Party Product Offtake Agreement in connection with the Chapter 11 Cases have been made in form and substance satisfactory to Macquarie; and/or
 - (ii) if the Permitted Supplier elects to terminate the Shell Crude Supply Agreement on or prior to the Effective Date that there are alternative crude supply arrangements (whether spot or term arrangements) contemplated that are sufficient to meet the Crude Oil source requirements of the Refinery (including, without limitation, a list of Third Party Suppliers with whom the Company may request that Macquarie enter into a Macquarie Crude Procurement Contract).

- (c) Evidence satisfactory to Macquarie that the Uniform Commercial Code search results show only those liens as are reasonably acceptable to Macquarie.
- (d) Evidence satisfactory to Macquarie that all reasonable and documented out-of-pocket expenses incurred by Macquarie in connection with this Agreement have been or will be paid by the Company on or prior to the Effective Date.
- (e) Evidence satisfactory to Macquarie in its sole discretion that the Independent Amount Adjustment (if any) as of the Effective Date will be transferred in accordance with the requirements of the Independent Amount Letter.
- (f) The Company has delivered a cash flow forecast (in form and substance acceptable to Macquarie) showing maintenance and ongoing compliance with the Minimum Liquidity Requirement (which, for these purposes, shall be calculated in accordance with the methodology specified in the Supply and Offtake Agreement as if the Effective Date had occurred) throughout the period from (and including) the Effective Date until the last day of the Term.
- (g) The restructuring support agreement (in form and substance satisfactory to Macquarie in its reasonable discretion) duly executed by the parties thereto (including, without limitation, all term sheets attached thereto and commitment letters entered into in connection therewith, the **"Restructuring Support Agreement"**), is in full force and effect as of the date hereof.
- (h) Evidence satisfactory to Macquarie in its sole discretion that all relevant bankruptcy court confirmations, approvals and orders (including but not limited to the Interim DIP Order and the Interim Intermediation Order) required in order for Macquarie to make an extension of credit and a "financial accommodation" to or for the benefit of the Company under the Supply and Offtake Agreement within the meaning of Section 365(c)(2) and 365(e)(2) of the Bankruptcy Code or enter into transactions under the MBL Secured ISDA, in each case, after the Petition Date have been obtained and continue to be in full force and effect as of the Effective Date.
- (i) Macquarie shall have been granted a perfected junior lien on the Shared Collateral constituting DIP Priority Collateral (as defined in the Interim DIP Order) with the ranking and order of priority of security and claims set out in Exhibit 2 (*Relative Lien Priorities on Collateral*) and Exhibit 3 (*Relative Claim Priorities*) to the Interim Intermediation Order.
- (j) Macquarie Bank Limited (in its capacity as hedge provider) shall have been granted (x) a perfected senior lien on the Shared Collateral constituting DIP Priority Collateral and the DIP Exclusive Collateral (each, as defined in the Interim DIP Order); and (y) a lien on the Shared Collateral constituting Business Interruption Proceeds, in each case with the ranking and order of priority of security and claims set out in Exhibit 2 (*Relative Lien Priorities on Collateral*) and Exhibit 3 (*Relative Claim Priorities*) to the Interim Intermediation Order.

SCHEDULE 2

AMENDED AND RESTATED SUPPLY AND OFFTAKE AGREEMENT

EXECUTION PAGES

Executed by **MACQUARIE ENERGY NORTH AMERICA TRADING INC.** acting by:

and

Name: Brian Houstoun

Name: Travis McCullough

Title: Senior Managing Director

Title: Division Director

EXECUTION PAGES

Executed by **VERTEX REFINING ALABAMA LLC** acting by:

.....
Name:

Title:

Executed by **VERTEX RENEWABLES ALABAMA LLC** acting by:

.....
Name:

Title:

Executed by **VERTEX ENERGY, INC.** acting by:

.....
Name:

Title:

ORIGINALLY DATED APRIL 1, 2022 AS MOST RECENTLY
AMENDED ~~ON MAY 26, 2023~~ AND RESTATED WITH EFFECT FROM
(AND INCLUDING) THE RESTRUCTURING EFFECTIVE DATE

(1) MACQUARIE ENERGY NORTH AMERICA TRADING
INC.

(2) VERTEX REFINING ALABAMA LLC

AMENDED AND RESTATED SUPPLY AND OFFTAKE AGREEMENT

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THIS AMENDED AND RESTATED SUPPLY AND OFFTAKE AGREEMENT (this "Agreement") is dated April 1, 2022 (the "Effective Date") and is amended and restated with effect from (and including) the Restructuring Effective Date (as defined below),

BETWEEN:

- (1) **Macquarie Energy North America Trading Inc.** ("Macquarie"), a Delaware corporation, located at 500 Dallas Street, Suite 3300 Houston, Texas 77002; and
- (2) **Vertex Refining Alabama LLC** (the "Company"), a Delaware limited liability company, located at 1331 Gemini St Ste 250, Houston, Texas, TX 77058-2764 United States

each referred to individually as a "Party" or collectively as the "Parties".

RECITALS

(A) **WHEREAS**, the Company owns and operates a crude oil refinery located in Mobile, Alabama (the "Refinery") for the processing and refining of Crude Oil (as defined below) and other feedstocks and the recovery therefrom of refined products;

(B) **WHEREAS**, the Company desires Macquarie to sell Crude Oil to the Company for use at the Refinery and for Macquarie to purchase all Products (as defined below) upon and subject to the terms and conditions set forth below;

(C) **WHEREAS**, it is contemplated that, Macquarie shall (a) on the Commencement Date (as defined below), purchase from the Company all Crude Oil and Products then being stored at the Included Storage Locations (as defined below); (b) purchase from the Company certain Products produced by the Refinery during the term of this Agreement; (c) sell and deliver Crude Oil and Products to the Company and certain Customers of the Company pursuant to the terms of this Agreement; (d) provide certain other financial accommodations to the Company based on Crude Oil and Products being stored at Company Storage Locations (as defined below) from time to time and otherwise being purchased and sold pursuant to the terms of this Agreement.

(D) **WHEREAS**, it is contemplated that during the Term of this Agreement, that (i) Macquarie will have title and risk of loss of Crude Oil and Products while they are located in Crude Storage Tanks and Included Storage Locations, respectively, and (ii) Company will have title and risk of loss of Crude Oil and Products while they are not in Crude Storage Tanks or Included Storage Locations;

(E) **WHEREAS**, it is contemplated that upon the termination of this Agreement, Macquarie shall transfer to the Company, through novations or reassignments, various contractual rights pursuant to the termination provisions provided herein, and is expected ~~(but is not required)~~ to sell to the Company all of Macquarie's Crude Oil and Products inventory held in Included Storage Locations, in accordance with the Step Out Inventory Sales Agreement (as defined below); ~~and~~

(F) **WHEREAS**, each of Vertex Renewables and the Parent (each, as defined below) shall derive substantial benefit from the transactions contemplated hereby and by the other Transaction Documents, and have each agreed to severally guarantee all obligations of the Company hereunder and under the other Transaction Documents pursuant to the Guaranty to which it is a party;

(G) **WHEREAS**, on or around September 24, 2024, each of the Vertex Parties filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (the "Chapter 11 Cases") with the United States Bankruptcy Court for the Southern District of Texas, Houston division (such court, or another federal court exercising jurisdiction over the Chapter 11 Cases, the "Bankruptcy Court"). The Vertex Parties are continuing in the possession of their assets and continuing to operate their respective businesses and manage their respective properties as debtors and debtors in possession under Section 1107(a) and 1108 of the Bankruptcy Code;

(H) **WHEREAS**, on the Petition Date, the Vertex Parties filed a Disclosure Statement (as defined below) and an Acceptable Plan of Reorganization (as defined below) with the Bankruptcy Court;

(I) **WHEREAS**, in connection with the Chapter 11 Cases, Macquarie and the Company wish to amend and restate this Agreement, in its entirety, upon the terms and conditions set forth in this Agreement, which amendment and restatement shall become effective as of the Restructuring Effective Date;

(J) WHEREAS, it is the intention of the Company to confirm that all Transaction Obligations of the Company to Macquarie under the Transaction Documents, as amended, amended and restated, supplemented, refinance or otherwise modified hereby on or as of the date hereof shall continue in effect from and after the Restructuring Effective Date; and

(K) ~~(G)~~ **NOW, THEREFORE**, in consideration of the premises and respective promises, conditions, terms and agreements contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties do agree as follows:

1 DEFINITIONS AND CONSTRUCTION

1.1 Definitions.

For purposes of this Agreement, including the foregoing recitals, the following terms shall have the meanings indicated below:

"Acceptable Plan or Sale" means a plan of reorganization or sale under Section 363 of the Bankruptcy Code reasonably acceptable to Macquarie; provided that a sale or plan of reorganization will be deemed to be acceptable to Macquarie if (1) it provides for (x) a sale of all Crude Oil and Product owned by Macquarie pursuant to the Transaction Documents at a price consistent with the then applicable Current Month Pricing Benchmark; (y) payment in full in cash of all amounts owed to Macquarie under the Transaction Documents or cash collateralization of all actual or contingent obligations (other than inchoate indemnity obligations) owed to Macquarie that may arise on or after the Early Termination Date; from such sale proceeds or otherwise; and (z) with respect to a plan of reorganization, such plan contains releases in favor of Macquarie similar in all material respects to such releases under the plan contemplated by the RSA (in the form approved by Macquarie, acting reasonably as of the Petition Date); provided that any delay in effecting the foregoing matters set out in this sub-paragraph (1) after the effective date of a plan of reorganization or sale under Section 363 of the Bankruptcy Code as a result of an extension to the Term by a period in length equal to a Transitional Support Period (if any) that Macquarie has agreed to provide in accordance with the requirements of Section 3.1(c) below shall be acceptable to Macquarie; and (2) would not require Macquarie to breach Applicable Law (including as relates to Sanctions Law) or Macquarie's Policies and Procedures (including, without limitation, those policies and procedures relating to "know your customer" requirements).

"Accepted Industry Practice" means those practices, methods, specifications and standards of safety and performance, as the same may be changed from time to time, as are commonly used in the operation and maintenance of refineries similar to the Refinery. The term "Accepted Industry Practice" contemplates the exercise of that degree of skill, care, diligence, prudence and foresight that would reasonably and ordinarily be expected under similar circumstances in the refining industry in the same type of undertaking under the same or similar circumstances but does not necessarily mean one particular practice, method, specification or standard in all cases and is instead intended to encompass a broad range of acceptable practices, methods and standards.

"Acknowledgment of Title" means, in respect of each Included Barge and the relevant Barge Operator and Barge Owner, an acknowledgment from such Barge Operator and such Barge Owner of Macquarie's title to any such Crude Oil or Product transported thereon, in each case, in form and substance satisfactory to Macquarie.

"Additional Financing Agreement" has the meaning specified in Section 19.3(k).

"Affected Obligations" has the meaning specified in Section 18.3.

"Affected Party" has the meaning specified in Section 18.1.

"Affiliate" means, in relation to any Person, any entity controlled, directly or indirectly, by such Person, any entity that controls, directly or indirectly, such Person, or any entity directly or indirectly under common control with such Person. For this purpose, "control" of any entity or Person means ownership of a majority of the issued shares or voting power or control in fact of the entity or Person.

"Aggregate Product Purchase Amounts" has the meaning specified in Section 8.9(b)(i).

"Aggregate Product Sale Amount" has the meaning specified in Section 8.9(a)(i).

"Agreement" has the meaning specified in the introductory paragraph of this Agreement.

"Amended Product Purchase Proposal" has the meaning specified in Section 8.1(b)(v)(B).

"Amended Transaction Supplement" has the meaning specified in Section 5.2(d)(vi)(B).

"Ancillary Costs" means, to the extent reasonably demonstrated by Macquarie by trade ticket, invoice or other supporting documentation and without duplication, (i) any amounts payable by Macquarie under the Third Party Storage Agreements, (ii) all transportation costs, liabilities, and risks associated with transportation to a Crude Intake Point (including, without limitation, pipeline, truck, or freight costs, port costs, terminaling costs, demurrage, bunkers, losses, inspections, liabilities and risks associated with operations at a third party terminal, extra tugs, pipeline scheduling issues or proration issues, vessel delays, and Force Majeure events) in each case pursuant to ~~the~~ a Tripartite Crude Supply Agreement, and (iii) all freight, pipeline, transportation, storage, tariffs and other out of pocket costs and expenses incurred as a result of the purchase, movement and storage of Crude Oil or Products undertaken in connection with or required for purposes of this Agreement (whether or not arising under Macquarie Crude Procurement Contracts and regardless of the point at which or terms upon which delivery is made under any such Macquarie Crude Procurement Contract), including, fees and expenses, any cost relating to insurance taken out by Macquarie, broker's and agent's fees, pipeline transportation costs, pipeline transfer and pumpover fees, pipeline throughput and scheduling charges (including any fees and charges resulting from changes in nominations undertaken to satisfy delivery requirements under this Agreement), pipeline and other common carrier tariffs, blending, tankage, linefill and throughput charges, pipeline demurrage, superfund and other comparable fees, processing fees (including fees for water or sediment removal or feedstock decontamination), merchandise processing costs and fees, any charges imposed by any Governmental Authority, user fees, fees and costs for any credit support provided to any third party with respect to any transactions contemplated by this Agreement and any pipeline compensation or reimbursement payments that are not timely paid by the pipeline to Macquarie. Ancillary Costs will also include, without duplication, out of pocket expenses associated with the cost of operation of transportation, storage or other facilities assigned hereunder to Macquarie by the Company, reasonable and documented third party out of pocket legal fees, tax advisory fees, and out of pocket expenses incurred by Macquarie in connection with any of the Transaction Documents and any amounts payable by Macquarie pursuant to any indemnity granted in favour of the Permitted Supplier, a Third Party Supplier in connection with a Macquarie Crude Procurement Contract or a third party product offtaker under and in accordance with the terms of ~~the~~ a Tripartite Crude Supply Agreement, the Convenience Exchange Agreement and/or an Intermediated Product Offtake Contract. Notwithstanding the foregoing, the following shall not be considered Ancillary Costs: (i) Macquarie's hedging costs in connection with this Agreement or any of the transactions contemplated by this Agreement (but such exclusion shall not change or be deemed to change the manner in which Related Hedges are addressed under Articles 20 and 21 below), (ii) any costs, fees, expenses, liabilities or risks, in each case, to the extent that Macquarie has otherwise been compensated therefor under this Agreement, any of the other Transaction Documents or any other agreement in any payment made hereunder or thereunder, including pursuant to any true-up, adjustment, or netting mechanism provided hereunder or thereunder, but only to the extent so compensated, or (iii) any costs, fees, expenses, liabilities or risks which Macquarie has agreed, in accordance with the express terms hereof or any other Transaction Document or agreement, shall be solely for Macquarie's own account. In no event shall "Ancillary Costs" include (i) any costs or expenses that are not paid or payable out of pocket by Macquarie to a third party, (ii) any overhead allocations or other internal costs or amounts which are not due to third parties, (iii) any taxes; and (iv) except as otherwise provided in Section 13.2, any costs of Macquarie's Inspector under or in respect of the Transaction Documents.

"Anti-Corruption Laws" means the United States Foreign Corrupt Practices Act of 1977, the U.K. Bribery Act of 2010, as amended, and all other Applicable Laws and regulations or ordinances concerning or relating to bribery, money laundering or corruption in any jurisdiction in which the Company, Vertex Renewables, the Parent or any of Subsidiary or Affiliate thereof is located or is doing business.

"Anti-Money Laundering Laws" means the Applicable Laws, statutes, regulations or rules in any jurisdiction in which the Company, Vertex Renewables, the Parent, any Affiliate or Subsidiary thereof is located or is doing business that relates to money laundering, any predicate crime to money laundering, or any financial record keeping and reporting requirements related thereto, including, but not limited to, the Bank Secrecy Act (31 U.S.C. § 5311 et seq.) and the USA Patriot Act.

"Applicable Law" means (i) any law, statute, regulation, code, ordinance, license, decision, order, writ, injunction, decision, directive, judgment, policy, decree and any judicial or administrative interpretations thereof, (ii) any agreement, concession or arrangement with any Governmental Authority and (iii) any license, permit or compliance requirement, including Environmental Law, in each case as may be applicable to either Party or the subject matter of this Agreement.

"Approved Bankruptcy Court Order" shall mean:

- (a) the Intermediation Orders, as each such order is amended and in effect from time to time in accordance with this Agreement; and
- (b) any other order entered by the Bankruptcy Court directly regarding, relating to or impacting:
 - (i) any rights or remedies of Macquarie;
 - (ii) the Transaction Documents (including Macquarie's obligations thereunder);
 - (iii) (A) the Credit Support, Independent Amount, Macquarie's Property or any Lien on the foregoing, or (B) any Intermediation Superpriority Claims (as defined in the Intermediation Orders), in each case, including, without limitation, any sale or other disposition of the foregoing or the priority of any such Liens or Intermediation Superpriority Claims (as defined in the Intermediation Orders);
 - (iv) use of cash collateral or Independent Amount;
 - (v) adequate protection or otherwise relating to this Agreement and the Transaction Documents;
 - (vi) an Acceptable Plan or Sale; or
 - (vii) the Orders (other than, the Intermediation Orders, which for the avoidance of doubt are addressed by clause (a) of this definition).

in each case, that (x) are in form and substance reasonably acceptable to Macquarie, (y) have not been vacated, reversed or stayed and (z) have not been amended or modified except in a manner reasonably acceptable to Macquarie.

"Assurance Agreement" means the Assurance and Amendment and Restatement Agreement entered into between Macquarie and the Vertex Parties on or around September 24, 2024.

"Authorization" means an authorization, consent, approval, resolution, license, exemption, filing, notarization, permit, permission or registration.

"Authorized Representatives" means the list of individuals authorized by each Party to agree amendments to an Operational Schedule by an exchange of e-mails, as such list may be amended, modified, updated or varied from time to time.

"Bank Holiday" means any day (other than a Saturday or Sunday) on which banks are authorized or required to close in the State of New York.

"Bankrupt" means a Person that (i) is dissolved, other than pursuant to a consolidation, amalgamation or merger, (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due, (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors as a group, (iv) institutes a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, (v) has a resolution passed for its winding-up or liquidation, other than pursuant to a consolidation, amalgamation or merger, (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for all or substantially all of its assets, (vii) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets, (viii) files an answer or other pleading admitting or failing to contest the allegations of a petition filed against it in any proceeding

of the foregoing nature, (ix) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy under any bankruptcy or insolvency law or other similar law affecting creditors' rights and such proceeding is not dismissed within sixty (60) days or (x) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing events.

"Bankruptcy Code" means Title 11, U.S. Code.

"Bankruptcy Court" has the meaning given to such term in the Recitals.

"Bankruptcy Law" means the Bankruptcy Code, as amended from time to time, or any similar federal or state law for the relief of debtors.

"Bareboat Charter" means, in respect of each Included Barge, the relevant bareboat charter entered into between Company and the relevant Barge Owner in respect of that Included Barge.

"Barge Inclusion Date" has the meaning specified in Section 2.5(d).

"Barge Operator" means, in respect of an Included Barge, each operator of such Included Barge, as specified in the relevant Sub-Bareboat Charter relating to that Included Barge.

"Barge Owner" means, in respect of an Included Barge, each owner of such Included Barge, as specified in the relevant Bareboat Charter relating to that Included Barge.

"Barrel" means forty-two (42) net U.S. gallons, measured at 60° F.

"Base Agreements" means (a) the BWC Agreements (but only from (and including) the relevant BWC Inclusion Date); (b) the Center Point Agreements (but only from (and including) the relevant Center Point Inclusion Date); (~~bc~~) the Plains Agreements; (~~ed~~) any agreements hereafter entered into between the Company and any third party pursuant to which the Company acquires any rights to use barges, storage tanks or pipelines that the Company elects to be treated as, or that are, Crude Storage Tanks, Included Crude Pipelines, Included Product Pipelines, Included Barges, the Included Product Tanks or Company Storage Locations, and (~~de~~) any agreement entered into by Company with Parent or any of Parent's Subsidiaries, relating to the Refinery and/or the operation or maintenance of the Refinery, including any related agreements related to Crude Oil and Products in connection with the Refinery, *provided, however,* that the Vertex Renewables SOA and the Vertex Renewables Transaction Documents entered into in connection therewith shall not constitute "Base Agreements" for the purposes of this Agreement.

"Beneficial Owner" has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular "person" (as that term is used in Section 13(d)(3) of the Exchange Act), such "person" shall be deemed to have beneficial ownership of all securities that such "person" has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition.

"Best Available Inventory Data" means the daily inventory reports produced by the Company or third parties in respect of the Crude Storage Tanks, Included Product Tanks, Included Crude Pipelines, Included Product Pipelines, Included Barges, and Company Storage Locations, in the form specified in Schedule F.

"Board of Directors" means: (1) with respect to a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board; (2) with respect to a partnership, the board of directors or board of managers of the general partner of the partnership or, if such general partner is itself a limited partnership, then the board of directors or board of managers of its general partner; (3) with respect to a limited liability company, the board of managers or directors, the managing member or members or any controlling committee of managing members thereof; and (4) with respect to any other Person, the board or committee of such Person serving a similar function.

"Business Day" means any day that is not a Saturday, Sunday, or Bank Holiday.

"BWC Agreements" means, with respect to each of the BWC Blakeley Island Terminal and the BWC Chickasaw Terminal, as applicable:

- (a) the relevant BWC Terminalling Agreement;
- (b) the relevant BWC Storage Rights Agreement; and
- (c) the relevant BWC Consent Letter.

"BWC Blakeley Island Terminal" means the crude oil and refined product storage and terminalling facilities owned and operated by BWC Alabama LLC and located at 1437 Cochrane Causeway, Mobile, Alabama, 36602.

"BWC Chickasaw Terminal" means the crude oil and refined product storage and terminalling facilities owned and operated by BWC Alabama LLC and located at 500 Viaduct Road, Chickasaw, Alabama, 36611.

"BWC Consent Letter" means, with respect to the BWC Blakeley Island Terminal or the BWC Chickasaw Terminal, as applicable, the "Consent to Storage and Usage Agreement" entered into between the relevant BWC Operator, Macquarie and the Company on or prior to the relevant BWC Inclusion Date.

"BWC Inclusion Date" means, with respect to the BWC Blakeley Island Terminal or the BWC Chickasaw Terminal, as applicable, the first date on which any tank located at the relevant BWC Storage Facilities is specified as an "Included Product Tank" in Schedule E.

"BWC Operator" means, with respect to the BWC Blakeley Island Terminal or the BWC Chickasaw Terminal, as applicable, BWC Terminals LLC, BWC Alabama LLC, or such other successor or assignee that operates the relevant BWC Storage Facilities.

"BWC Storage Facilities" has the meaning, with respect to the BWC Blakeley Island Terminal or the BWC Chickasaw Terminal, as applicable, given to such term in the relevant BWC Storage Rights Agreement.

"BWC Storage Rights Agreement" means (1) with respect to the BWC Blakeley Island Terminal, the BWC Storage Rights Agreement for the storage rights at the BWC Blakeley Island Terminal; and (2) with respect to the BWC Chickasaw Terminal, the BWC Storage Rights Agreement for the storage rights at BWC Chickasaw Terminal, in each case entered into between the Company and Macquarie on or prior to the relevant BWC Inclusion Date.

"BWC Terminalling Agreements" means, with respect to the BWC Blakeley Island Terminal or the BWC Chickasaw Terminal, as applicable, the "Terminalling Agreements" as such term is defined in the relevant BWC Storage Rights Agreement.

"Capital Stock" means: (1) in the case of a corporation, corporate stock; (2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock; (3) in the case of a partnership or limited liability company, partnership interests (whether general or limited) or membership interests; and (4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

"Carve Out" has the meaning given to that term in the Interim DIP Order.

"Cash Equivalents" means(a) securities issued or directly and guaranteed or insured by the United States or any agency or instrumentality thereof having maturities of not more than two (2) years from the date of acquisition; (b) securities issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof having maturities of not more than one (1) calendar year from the date of acquisition and having one of the two highest ratings from either Standard & Poor's, a division of The McGraw-Hill Companies, Inc., or Moody's Investors Service, Inc.; (c) certificates of deposit, denominated solely in U.S. Dollars, maturing within two years after the date of acquisition, issued by any commercial bank organized under the laws of the United States or any state thereof or the District of Columbia or that is a U.S. subsidiary of a foreign commercial bank; in each of the foregoing cases, solely to the extent that: (i) such commercial bank's

short-term commercial paper is rated at least A-1 or the equivalent by Standard & Poor's, a division of The McGraw-Hill Companies, Inc., or at least P-1 or the equivalent thereof by Moody's Investors Service, Inc. (any such commercial bank, an "Approved Bank"); or (ii) the par amount of all certificates of deposit acquired from such commercial bank are fully insured by the Federal Deposit Insurance Corporation; or (d) commercial paper issued by any Approved Bank (or by the parent company thereof), in each case maturing not more than twelve months after the date of the acquisition thereof.

"Cash Management Order" means that certain order in the Chapter 11 Cases relating to or authorizing, among other things, the continuation of certain cash management services to the Debtors on an emergency, interim or final basis pursuant to Section 364 of the Bankruptcy Code as may be issued or entered by the Bankruptcy Court in the Bankruptcy Cases.

"Cashflow Forecast" has the meaning specified in Section 14.2(i).

"CDA Swap Delivery Date" has the meaning specified in Section 20.6(a)(ii)(A).

"CDA Swap Pricing Date" has the meaning specified in Section 20.6(a)(ii)(B).

"Center Point Agreements" means, with respect to each of the Center Point Blakeley Island Terminal and the Center Point Chickasaw Terminal, as applicable:

- (a) the relevant Center Point Terminalling Agreement;
- (b) the relevant Center Point Storage Rights Agreement; and
- (c) the relevant Center Point Consent Letter.

"Center Point Blakeley Island Terminal" means the crude oil and refined product storage and terminalling facilities owned and operated by Center Point Terminal Blakeley Island LLC and located at 1257 Cochrane Causeway, Mobile, Alabama, 36610.

"Center Point Chickasaw Terminal" means the crude oil and refined product storage and terminalling facilities owned and operated by Center Point Terminal Chickasaw and located at 200 Viaduct Road North, Chickasaw, Alabama, 36611.

"Center Point Consent Letter" means, with respect to each of the Center Point Blakeley Island Terminal and the Center Point Chickasaw Terminal, as applicable, the "Consent to Storage and Usage Agreement" ~~(in form and substance satisfactory to Macquarie)~~ entered into between the Center Point Operator, Macquarie and the Company on or prior to the relevant Center Point Inclusion Date.

"Center Point Inclusion Date" means, with respect to each of the Center Point Blakeley Island Terminal and the Center Point Chickasaw Terminal, as applicable, the first date on which any tank located at the Center Point Storage Facilities is specified as an "Included Product Tank" in ~~Schedule E~~ Schedule E.

"Center Point Operator" means, with respect to each of the Center Point ~~Terminals~~ Blakeley Island Terminal and the Center Point Chickasaw Terminal, as applicable, Center Point Terminal Chickasaw, LLC, Center Point Blakeley Island, LLC, or ~~such~~ any other successor that operates the relevant Center Point Storage Facilities.

"Center Point Storage Facilities" has the meaning, with respect to each of the Center Point Blakeley Island Terminal and the Center Point Chickasaw Terminal, as applicable, given to that term in the relevant Center Point Storage Rights Agreement.

"Center Point Storage Rights Agreement" ~~means the sub-lease agreement~~ means (1) with respect to the Center Point Blakeley Island Terminal, the Center Point Storage Rights Agreement for the storage rights at Center Point Blakeley Island Terminal; and (2) with respect to the Center Point Chickasaw Terminal, the Center Point Storage Rights Agreement for the storage rights at Center Point Chickasaw Terminal, in each case entered into between the Company and Macquarie ~~in respect of tank 3 at the Center Point Storage Facilities on or prior to the Center Point Inclusion Date.~~

"Center Point Terminalling Agreement" means ~~the service agreement dated as of January 30, 2023 between, with respect to each of~~ the Center Point Blakeley Island ~~Operator and the Company, as amended on March 23, 2023 and as may be further amended from time to time.~~ Terminal and the Center Point Chickasaw Terminal, as applicable, the "Terminalling Agreements" as such term is defined in the relevant Center Point Storage Rights Agreement.

"Change in Law" means, with respect to a Party, an enactment of any new Applicable Law, a modification or change in the interpretation or application of any existing Applicable Law (in each case, which is generally settled or accepted), the imposition of a requirement for an Authorization and/or a change in the terms and conditions attached to an Authorization, in each case which:

- (a) was not reasonably foreseeable as of the date of this Agreement;
- (b) is not a response by a Governmental Authority with competent jurisdiction to such Party's breach, violation or other non-compliance with the terms of an Applicable Law or Authorization.

"Change of Control" means an event or series of events by which:

- (a) the Parent ceases to be the Beneficial Owner, directly or indirectly, of 100% of the Capital Stock of the Company;
- (b) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its Subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the Beneficial Owner, directly or indirectly, of 50% or more of the Capital Stock of the Company or the Parent, entitled to vote for members of the Board of Directors or equivalent governing body of the Company or the Parent on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right); or
- (c) during any period of 12 consecutive months, a majority of the members of the Board of Directors or other equivalent governing body of the Company or the Parent cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body~~:-~~.

provided that (and notwithstanding the foregoing or any other term or provision of this Agreement or any other Transaction Document), no event or series of events shall be deemed to be a "Change of Control" if such event(s) occurs either (i) in accordance with an Approved Bankruptcy Court Order; or (ii) otherwise with the consent of Macquarie.

"Chapter 11 Cases" has the meaning given to that term in Recital G.

"CL Affected Party" has the meaning given to it in Section 20.2(a)(i).

"Code" means the Internal Revenue Code of 1986, as amended.

"Commencement Date" has the meaning specified in Section 2.3(a).

"Commencement Date Crude Oil Volumes" means the total quantity of Crude Oil in the Crude Storage Tanks purchased by Macquarie on the Commencement Date, pursuant to the Inventory Sales Agreement.

"Commencement Date Products Volumes" means the total quantities of the Products in the Included Product Locations purchased by Macquarie on the Commencement Date, pursuant to the Inventory Sales Agreement.

"Commencement Date Purchase Value" means, with respect to the Commencement Date Volumes, initially the Estimated Commencement Date Value until the Definitive Commencement Date Value has been determined and thereafter the Definitive Commencement Date Value.

"Commencement Date Volumes" means, collectively, the Commencement Date Crude Oil Volumes and the Commencement Date Products Volumes.

"Commitment Requirements" means. [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- [REDACTED]

"Company" has the meaning specified in the introductory paragraph of this Agreement.

"Company Due Amount" has the meaning specified in Section 20.6(a)

"Company Interim Payment" has the meaning set forth in Section 11.1(b).

"Company Product Inventory" means, as of any day, Eligible Hydrocarbon Inventory consisting of Products that are then held at a Company Storage Location.

“Company Storage Location” means the storage tanks ~~and pipelines~~, pipelines and other locations where the Company owns Crude Oil, Products or Eligible Hydrocarbon Inventory and identified as such in Schedule A..

“Convenience Exchange Agreement” means the convenience exchange agreement between Macquarie, the Company and Equilon Enterprises LLC, dba Shell Oil Product US, dated on or about the date of this Agreement for the delivery of certain Products by SOPUS to Macquarie, and the redelivery of an equivalent quantity of Products by Macquarie to SOPUS, which contract arises in connection with the contract for the offtake of Regular CBOB, Premium CBOB and ULSD between the Company and Equilon Enterprises LLC, dba Shell Oil Product US, dated April 1, 2022 and the associated Tripartite Product Offtake Agreement.

“Costs” has the meaning set forth in the definition of “Liabilities”.

“Credit Agreement Documents” means, collectively, the Existing Financing Agreements, each Note, the Warrants, the Warrant Agreement, the Agent Fee Letter, the Fee Letter, any Joinder Agreement, each Notice of Borrowing, the Intellectual Property Security Agreement, the Control Agreement(s), the Collateral Access Agreements, the Collateral Pledge Agreement, any Subordination Agreement (each as defined in the relevant Existing Financing Agreements and all other documents, instruments and agreement executed or delivered at any time in connection therewith, including any intercreditor or joinder agreement among holders of Credit Agreement Obligations, to the extent such are effective at the relevant time).

“Credit Agreement Obligations” means (1) all Obligations (as defined in the Post-Petition Financing Agreement); and (2) all debt, principal, interest, fees, charges, Lender Expenses (as defined in the ExistingPre-Petition Financing Agreements) and other amounts owing by the Company and each Guarantor (as defined in the ExistingPre-Petition Financing Agreements) to Cantor Fitzgerald Securities, as agent to the lenders under the ExistingPre-Petition Financing Agreements, of any kind and description whether arising under or pursuant to or evidenced by the Credit Agreement Documents, and whether or not for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, including the principal and interest due with respect to the Term Loans (as defined in the ExistingPre-Petition Financing Agreements), and further including all Lender’s Expenses that the Company and each Guarantor is required to pay or reimburse by the Credit Agreement Documents, by law, or otherwise.

“Credit Support” means “Collateral” as defined in the Pledge and Security Agreement.

“Crude Cargo Rollover Barrels” means, as of any applicable day, the volumes of Crude Oil which Macquarie has contracted to purchase pursuant to Macquarie Crude Procurement Contracts which have completed pricing as of such day and for which Macquarie has not yet paid a Third Party Supplier Crude Purchase Amount pursuant to Section 6.4.

“Crude Delivery Point” means, in relation to a sale of Crude Oil from Macquarie to the Company for processing at the Refinery, the first inlet flange of the relevant Refinery processing unit, and, in relation to any other sale of Crude Oil by Macquarie from an Included Storage Location, the relevant delivery point as determined in accordance with the relevant Included Crude Sales Transaction or, if such Crude Oil is being sold to the Company pursuant to Section 5.4(a)(ii), the exit flange from the applicable Included Storage Location or as otherwise agreed between the Parties.

“Crude Intake Point” means, in relation to a delivery of Crude Oil to Macquarie at an Included Storage Location pursuant to a Macquarie Crude Procurement Contract, the relevant delivery location as determined in accordance with such Macquarie Crude Procurement Contract or, in relation to a purchase of Crude Oil by Macquarie from the Company, as agreed between the Parties.

“Crude Oil” means crude oil of any type or grade, excluding any Sludge.

“Crude Oil or Product Differential” means any Differential applicable to a Current Month Pricing Benchmark with respect to Crude Oil or Product as shall be set forth on Schedule H and as may be adjusted from time to time pursuant to Section 7.4.

“Crude Purchase Adjustment” has the meaning specified in Section 6.4.

“Crude Sales Proposal” has the meaning specified in Section 5.4(b)(i).

"Crude Storage Tanks" means any of the tanks at the Refinery listed on Schedule E that store Crude Oil, including, as applicable, any related facilities or pipelines owned by the Company or Plains Marketing, L.P. and used in connection with such tanks.

"Crude Transaction" has the meaning given to that term in the Master Agreement.

"Current Financial Statements" means:

- (a) audited consolidated balance sheet of the Parent and its Subsidiaries for the fiscal year ended December 31, 2020, and the related consolidated statement of operations, shareholder's equity and cash flows for the fiscal year then ended; and
- (b) the unaudited consolidated balance sheet of the Parent and its Subsidiaries for the twelve (12) months ended December 31, 2021, and the related consolidated statement of operations and cash flows for the twelve (12) months then ended.

"Current Month Pricing Benchmark(s)" means, for any month and with respect to a particular Pricing Group, the pricing index, formula or benchmark plus or minus the applicable Differential (if any) set forth on and determined in accordance with Schedule H for such month.

"Customer" means any third party purchaser of Crude Oil or Products from Macquarie (other than the Company).

"Daily Crude Purchases" means for any day, Macquarie's estimate of the aggregate volume of Crude Oil purchased by Macquarie from Company at any Crude Intake Point.

"Daily Crude Sales" means on any Delivery Date the volume of Crude Oil sold at a Crude Delivery Point by Macquarie to Company, other than sales pursuant to Section 5.4(a)(ii).

"Daily Prices" means, with respect to a particular Pricing Group, the Current Month Pricing Benchmark applicable to such Pricing Group on any Delivery Date.

"Daily Product Purchases" means, for any day and Product Group, Macquarie's estimate of the aggregate volume of such Product purchased by Macquarie from the Company during such day pursuant to (i) Section 8.1(a) or (ii) Section 8.1(c).

"Daily Product Sales" means, for any day and Product Group, Macquarie's estimate of the aggregate sales volume of such Product sold by Macquarie during such day to Company.

"Debtor" has the meaning given to that term in the Interim Intermediation Order.

"Default" means any event that, with notice or the passage of time, would constitute an Event of Default.

"Default Interest Rate" has the meaning given to that term in the Fee Letter.

"Defaulting Party" has the meaning specified in Section 20.4(a).

"Definitive Commencement Date Value" has the meaning specified in the Inventory Sales Agreement.

"Delivery Date" means any day.

"Delivery Month" means, with respect to Crude Oil, the calendar month in which Crude Oil is to be delivered into one or more Crude Storage Tanks or Included Crude Pipelines and, with respect to Products, the month in which Product is to be delivered into one or more Included Product Locations or Company Storage Locations.

"Derivative Transaction" means any obligation in respect of any transaction in the nature of a transaction as described in the definition of Specified Transaction and any reference to the amount of Specified Indebtedness becoming, or becoming capable of being declared, due and payable shall, in the case of a Derivative Transaction, refer to the amount that becomes, or would become, due and payable as a result of the termination of such Derivative Transaction.

"Designated Affiliate" means the Parent, the Company and any Subsidiary of the Company.

"Determining Party" has the meaning specified in Section 20.4(c).

"Differential" means, for each Current Month Pricing Benchmark, the amount added to or subtracted from the applicable pricing index, formula or benchmark set forth on SCHEDULE H to determine such Current Month Pricing Benchmark. The Differentials applicable during the Term, shall be as set forth on SCHEDULE H and as may be adjusted from time to time pursuant to Section 7.4.

"DIP Orders" means, collectively, the Interim DIP Order and the Final DIP Order.

"Disclosure Letter" means the disclosure letter/perfection certificate dated as of the Commencement Date containing certain information and schedules delivered by the Company and the Parent to Macquarie.

"Disclosure Statement" has the meaning given to the term "Acceptable Disclosure Statement" in the Post-Petition Financing Agreement.

"Effective Date" has the meaning specified in the introductory paragraph of this Agreement.

"Eligible Hydrocarbon Inventory" means, as of any day, Crude Oil, Products and Eligible Lien Products owned by the Company that are subject to a valid, first priority perfected Lien and security interest in favor of Macquarie, including, without limitation, the aggregate volume of such Crude Oil, Products and Eligible Lien Products constituting linefill; provided that, unless Macquarie shall otherwise elect in its reasonable discretion, Eligible Hydrocarbon Inventory shall not include any Hydrocarbon:

- (a) that is held on consignment or not otherwise owned by the Company, as applicable;
- (b) that is unmerchantable or damaged product or constitutes product that is permanently off-spec;
- (c) that is subject to any other Lien whatsoever (other than Permitted S&O Liens);
- (d) that consists solely of chemicals (other than commodity chemicals maintained in bulk), samples, prototypes, supplies, or packing and shipping materials;
- (e) that has been sold to a customer of the Company, as applicable;
- (f) that is not located at a Company Storage Location;
- (g) that is not currently either useable or saleable, at market price, in the normal course of the Company's, business; or
- (h) that is not identified on Schedule A, unless otherwise mutually agreed by the Parties.

"Eligible Lien Product" means liquefied petroleum gas.

"Emergence Milestone Date" means the date that is 115 days after the Petition Date; provided that if such day falls after the date on which the Monthly True-Up Amount for the relevant Delivery Month would otherwise be due as per Article 11 (the "MTA Payment Date" for such Delivery Month), then upon the reasonable request of the Company in connection with a contemplated Acceptable Plan or Sale (and subject to continued compliance with the terms hereof, including (without limitation, Section 19.5), the Emergence Milestone Date will instead be deferred to a day no later than such MTA Payment Date.

"Ending Company Product Inventory" has the meaning specified in Section 9.2(a).

"Ending In-Tank Crude Inventory" has the meaning specified in Section 9.2(a).

"Ending In-Tank Product Inventory" has the meaning specified in Section 9.2(a).

"Environmental Law" means any existing or past Applicable Law, policy, judicial or administrative interpretation thereof or any legally binding requirement that governs or purports to govern the protection of persons, natural resources or the environment (including the protection of ambient air, surface water, groundwater, land surface or subsurface strata, endangered species or wetlands), occupational health and safety and the manufacture, processing, distribution, use, generation, handling, treatment, storage, disposal, transportation, release or management of solid waste, industrial waste or hazardous substances or materials.

"Equity Interests" mean shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity interests in any Person, and any option, warrant, convertible debt or other right entitling the holder thereof to purchase or otherwise acquire any such equity interest.

"EST" means the prevailing time in the Eastern time zone of the United States of America.

"Estimated Commencement Date Value" has the meaning specified in the Inventory Sales Agreement.

"Estimated Termination Amount" has the meaning specified in Section 21.2(b).

"Estimated Yield" has the meaning specified in [Section 8.3\(a\)](#).

"Event of Default" has the meaning set forth in [Section 20.1](#).

"Excess Inventory Level" has the meaning specified in [Section 7.7](#).

"Excess Quantity" has the meaning specified in [Section 7.8\(a\)](#).

"Exchange Act" means the Securities Exchange Act of 1934.

"Existing Financing Agreements" means ~~that certain Loan and Security Agreement, dated as of April 1, 2022, by and among the Company, as borrower, the other parties party thereto from time to time as guarantors, Cantor Fitzgerald Securities, as agent for the lenders and the lenders party thereto from time to time.~~ [\(1\) the Pre-Petition Financing Agreements; and \(2\) the Post-Petition Financing Agreements.](#)

"Expiration Date" has the meaning specified in [Section 3.1](#).

"FATCA" mean Sections 1471 through 1474 of the Code, any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b)(1) of the Code, any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code, and any fiscal or regulatory legislation, rules or practices adopted pursuant to any such intergovernmental agreement.

"Fee Letter" means that certain letter from Macquarie to the Company, executed on or before the Commencement Date and as from time to time thereafter amended and/or restated, which identifies itself as the "Fee Letter" for purposes hereof, and pursuant to which the Parties have set forth the amounts for and other terms relating to certain fees payable hereunder and other amounts determined for purposes hereof.

"Final DIP Order" [has the meaning given to it in Section 20.1\(u\)\(iv\).](#)

"Final Intermediation Order" [means a final order of the Bankruptcy Court granted the relief provided for in the Interim Intermediation Order on a final basis.](#)

"Financing Agreement" means any credit agreement, indenture, financing agreement, hedging agreement or other agreement (including, without limitation, the Credit Agreement Documents) under which the Company may incur or become liable for Specified Indebtedness.

"Force Majeure" means any cause or event reasonably beyond the control of a Party, including fires, earthquakes, lightning, floods, explosions, storms, adverse weather, pandemics, landslides and other acts of natural calamity or acts of God; navigational accidents or maritime peril; vessel damage or loss; strikes, grievances, actions by or among workers or lock-outs (whether or not such labor

difficulty could be settled by acceding to any demands of any such labor group of individuals and whether or not involving employees of the Company or Macquarie); accidents at, closing of, or restrictions upon the use of mooring facilities, docks, ports, pipelines, harbors, railroads or other navigational or transportation mechanisms; disruption or breakdown of, explosions or accidents to wells, storage plants, refineries, terminals, machinery or other facilities; acts of war, hostilities (whether declared or undeclared), civil commotion, embargoes, blockades, terrorism, sabotage or acts of the public enemy; any act or omission of any Governmental Authority; good faith compliance with any order, request or directive of any Governmental Authority; curtailment, interference, failure or cessation of supplies reasonably beyond the control of a Party; or any other cause reasonably beyond the control of a Party, whether similar or dissimilar to those above and whether foreseeable or unforeseeable, which, by the exercise of due diligence, such Party could not have been able to avoid or overcome. Solely for purposes of this definition, the failure of any Third Party Supplier to deliver Crude Oil pursuant to any Macquarie Crude Procurement Contract or Product under any Included Product Purchase Transaction, whether as a result of Force Majeure as defined above, "force majeure" as defined in such Macquarie Crude Procurement Contract or Included Product Purchase Transactions, breach of contract by such Third Party Supplier or any other reason, shall constitute an event of Force Majeure for Macquarie under this Agreement with respect to the quantity of Crude Oil or Product that was not delivered subject to that Macquarie Crude Procurement Contract or Included Product Purchase Transaction, as applicable.

"GAAP" means generally accepted accounting principles in the U.S. set out in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and the Financial Accounting Standards Board as in effect from time to time.

"Governmental Authority" means any federal, state, regional, local, or municipal governmental body, agency, instrumentality, authority or entity established or controlled by a government or subdivision thereof, including any legislative, administrative or judicial body, or any person purporting to act therefor.

"Guaranties" means each of:

- (a) the guaranty, dated as of the Commencement Date, from the Parent (the "Parent Guaranty"); and
- (b) the guaranty, dated as of the "Effective Date" (as defined in the Vertex Renewables SOA), from Vertex Renewables (the "VR Guaranty"),

and, in each case, provided to Macquarie in connection with this Agreement, the other Transaction Documents and the transactions contemplated hereby and thereby, in a form and in substance satisfactory to Macquarie, each a "Guaranty".

"Guarantors" means Parent, Vertex Renewables and each other Person from time to time that guarantees the Transaction Obligations hereunder, each a "Guarantor".

"Hazardous Substances" means any explosive or radioactive substances or wastes and any toxic or hazardous substances, materials, wastes, contaminants or pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances defined or listed as "hazardous substances," "hazardous materials," "hazardous wastes" or "toxic substances" (or similarly identified), regulated under or forming the basis for liability under any applicable Environmental Law.

"High-Risk Country" means, any Sanctioned Country, Afghanistan, Belarus, Crimea, Cuba, Democratic Republic of Congo, Donetsk People's Republic, Luhansk People's Republic and any other territory or region of the Republic of Ukraine occupied by Russia or Russian-backed separatist forces, Eritrea, Iran, Mali, Myanmar, Nicaragua, North Korea, Russia, Syria and Venezuela and any country or other territory which Macquarie has notified to the Company as such from time to time in accordance with Section 5.2(e)(i).

"Hydrocarbon Credit Support" means, as of any time, all Inventory constituting or consisting of Hydrocarbons then owned or at any time hereafter acquired by the Company, as applicable, that is located at a Company Storage Location; *provided that* Hydrocarbon Credit Support shall not include any "Excluded Property" as such term is defined in the Pledge and Security Agreement.

"Hydrocarbons" means Crude Oil, intermediate feedstocks, blendstocks (including, for the avoidance of doubt additives), and finished and unfinished petroleum products and fuels, including without limitation, Products, gasoline, diesel fuels, fuel oil and jet fuels.

"Identified Crude Oil Delivery" has the meaning specified in Section ~~5.2(d)(ii)(A)~~ 5.2(d)(ii)(A).

"Identified Facilities" has the meaning specified in Section 15.5(a).

"Included Barge" means the barges listed as such on Schedule E that store Product from time to time whilst in transit to the Refinery, the Refinery Facilities, the BWC Storage Facilities, the Plains Storage Facilities, the Center Point Storage Facilities, or such other third party storage terminal as Macquarie and the Company may agree.

"Included Crude Pipelines" means the Crude Oil pipelines or sections thereof owned or leased by the Company or by a third party that is listed on Schedule O as such schedule may from time to time be amended by the Parties.

"Included Crude Sales Transaction" means sales of Crude Oil from an Included Storage Location by Macquarie to a Customer.

"Included Product Locations" means, collectively, the Included Barges, the Included Product Tanks and the Included Product Pipelines identified in Schedule A hereto.

"Included Product Pipelines" means the Product pipelines or sections thereof owned or leased by the Company or by a third party that is listed on Schedule O as such schedule may from time to time be amended by the Parties.

"Included Product Purchase Transaction" means an agreement entered into by Macquarie under Section 8.2(b) pursuant to which Macquarie purchases for delivery into the Included Storage Locations any Products from a Product Supplier.

"Included Product Tanks" means the Product storage tanks owned and operated by the Company or by third parties as further identified and described on Schedule E, including, as applicable with respect to the inventory report provided by such third party, any related facilities or pipelines used in connection with such tanks.

"Included Sales Transaction" means sales of Product from an Included Storage Location by Macquarie to an offtaker pursuant to any Tripartite Product Offtake Agreement and any other sales of Product from an Included Storage Location by Macquarie to a Customer pursuant to this Agreement.

"Included Storage Locations" means, collectively, the Crude Storage Tanks, Included Crude Pipelines and the Included Product Locations, as more particularly described on Schedule E and Schedule O.

"Included Tanks" means the Crude Storage Tanks and Included Product Tanks, as more particularly described on Schedule E.

"Independent Amount" has the meaning assigned to such term in the Independent Amount Letter.

"Independent Amount Letter" means that certain letter from Macquarie to the Company, executed on or before the Commencement Date and as from time to time thereafter amended and/or restated, which identifies itself as the "IA Letter", and pursuant to which the Parties have set forth the amounts for and other terms relating to the transfer of Independent Amount as determined for the purposes hereof.

"Independent Inspection Company" has the meaning specified in Section 13.3.

"Index Crude Purchase Value" means (i) in respect of a delivery of Macquarie Procurement Barrels to a Crude Intake Point during the day, the number of Barrels of Crude Oil delivered, multiplied by (ii) the Current Month Pricing Benchmark for Crude Oil on such day.

"Index Product Purchase Value" means, for any Product Group and a day, the product of (i) the number of Barrels of such Product Group purchased during such day under Included Product Purchase Transactions, multiplied by (ii) the Current Month Pricing Benchmark for that Product Group and day.

"Index Product Sale Value" means, for any Product Group and relevant period, the product of (i) the sum of the aggregate quantity of Barrels of such Product Group sold during such period under Included Sales Transactions, multiplied by (ii) the Current Month Pricing Benchmark for that Product Group and period.

"Initial Estimated Yield" has the meaning specified in Section 2.1(x).

"Insolvency or Liquidation Proceeding" means:

- (a) any case commenced by or against any Person under any Bankruptcy Law for the relief of debtors, any other proceeding for the reorganization, recapitalization or adjustment or marshalling of the assets or liabilities of any Person, any receivership or assignment for the benefit of all or substantially all creditors relating to any Person or any similar case or proceeding relative to any Person or all or substantially all of its creditors, as such, in each case whether or not voluntary; or
- (b) any liquidation, dissolution, marshalling of assets or liabilities or other winding up of or relating to any Person, in each case whether or not voluntary and whether or not involving bankruptcy or insolvency, except for any liquidation or dissolution permitted under the Transaction Documents.

"Insolvent" means, with respect to any Person as of any date of determination, that (a) the sum of the debt (including contingent liabilities existing as of the date hereof) of such Person and its subsidiaries (on a consolidated basis) exceeds the present fair saleable value of the present assets of such Person and its subsidiaries (on a consolidated basis), (b) the capital of such Person and its subsidiaries (on a consolidated basis) is not unreasonably small in relation to its business as of such date or as contemplated as of such date, (c) such Person and its subsidiaries have incurred, or reasonably believe that they will incur, debts beyond their ability to pay such debts as they mature or, in the case of contingent liabilities, otherwise become payable, or (d) such Person is not "solvent" or is "insolvent", as applicable within the meaning given those terms and similar terms under Applicable Law relating to fraudulent transfers and conveyances.

~~"Initial Estimated Yield" has the meaning specified in Section 2.1(x).~~

~~"Interim Payment" means a net payable amount determined by netting all of the Macquarie Interim Payments and Company Interim Payments.~~

~~"Intermediated Product Offtake Contract" means each of (i) the term agreement for offtake of ULSD and Jet A 1/Defstan between the Company and Shell Trading (US) Company dated April 1, 2022, (ii) the term agreement for offtake of Heavy Olefin Plant Feed between the Company and Shell Chemical LP dated April 1, 2022, (iii) the term agreement for offtake of Jet Fuel between the Company and Shell Trading (US) Company dated April 1, 2022, (iv) the term agreement for offtake of Gasoline between the Equilon Enterprises LLC, dba Shell Oil Product US, dated April 1, 2022 and any other agreement designated as such by the Parties.~~

"Intercreditor Agreement" means that certain intercreditor agreement, dated as of April 1, 2022 (as amended, restated, amended and restated, supplemented, modified, extended, renewed, replaced, refinanced or restructured from time to time) by and among Cantor Fitzgerald Securities, as agent for the Term Loan Secured Parties (as defined therein), Macquarie Energy North America Trading Inc., as Intermediation Facility Secured Party (as defined therein), Vertex Refining Alabama LLC, and each of the other Grantors (as defined therein) party thereto.

"Interim Crude Supply Agreement" means the interim crude and hydrocarbon feedstock supply agreement dated April 1, 2022 and entered into between Shell Chemical LP, Shell Trading (US) Company and the Company.

"Interim Crude Supply Assignment Agreement" means the assignment agreement entered into between the Company and Macquarie dated on or around the Commencement Date in respect of

the assignment of the Company's rights and obligations under the Interim Crude Supply Agreement to Macquarie.

"Interim DIP Order" means that certain order: (1) authorizing the Debtors to obtain post-petition financing; (2) authorizing the Debtors to use cash collateral; (3) granting liens and providing claims with superpriority administrative expense status; (4) granting adequate protection to the pre-petition term loan secured parties; (5) modifying the automatic stay; (6) scheduling a final hearing; and (7) granting related relief.

"Interim Intermediation Order" means that certain order: (1) authorizing continuation of the Intermediation Contracts (as defined therein); (2) authorizing the Debtors to enter into and perform post-petition transactions under the Intermediation Contracts ("Intermediation Transactions") and post-petition hedging transactions; (3) providing superpriority administrative expense status and liens in respect of Intermediation Transactions and post-petition hedging transactions; (4) granting adequate protection to Macquarie; (5) providing superpriority administrative expense status in respect of Purchaser Support Agreements (as defined therein); (6) modifying the automatic stay; (7) setting a final hearing; and (8) granting related relief, entered on or around September 25, 2024, in the Chapter 11 Cases.

"Interim Payment" means a net payable amount determined by netting all of the Macquarie Interim Payments and Company Interim Payments.

"Intermediated Product Offtake Contract" means (i) the Jet Fuel Sales Agreement between the Company and Glencore Ltd. dated as of April 1, 2024, and (ii) the term agreement for offtake of Gasoline between Equilon Enterprises LLC, dba Shell Oil Product US, dated April 1, 2022, and any other agreement designated as such by the Parties.

"Intermediation Orders" means the Interim Intermediation Order and the Final Intermediation Order.

"Inventory" has the meaning assigned to such term in the Uniform Commercial Code of the State of New York as in effect from time to time.

"Inventory Report" has the meaning as specified in Section 12.1(a).

"Inventory Sales Agreement" means the purchase and sale agreement, in form and in substance mutually agreeable to the Parties, dated as of the Commencement Date, pursuant to which the Company is selling and transferring to Macquarie the Commencement Date Volumes then owned by the Company for the Commencement Date Purchase Value related thereto, free and clear of all liens, claims and encumbrances of any kind, other than Permitted S&O Liens.

~~"Inventory Swap Delivery Date" has the meaning specified in Section 0~~

~~"Inventory Swap Election" has the meaning specified in Section 0.~~

"Knowledge" means, with respect to a Person, the knowledge of the individuals of such Person, including a Responsible Officer, who have the responsibility for any day-to-day decision making, or legal, operational, or financial affairs of such Person, which knowledge shall include any and all facts and other information of such Person actually knew or reasonably should have known in accordance with all applicable industry standards and commercially reasonable prudence and diligence.

"Latest Commencement Date" has the meaning specified in Section 2.3(a).

"Liabilities" means any losses, liabilities, charges, damages, deficiencies, assessments, interests, fines, penalties, costs and expenses (collectively, "Costs") of any kind (including reasonable attorneys' fees and other fees, court costs and other disbursements), including any Costs directly or indirectly arising out of or related to any suit, proceeding, judgment, settlement or judicial or administrative order and any Costs arising from compliance or non-compliance with Environmental Law.

"Lien Documents" means the Pledge and Security Agreement and any other instruments, documents, Orders and agreements delivered by or on behalf of the Company and its Affiliates and/or entered by the Bankruptcy Court, as applicable, in order to grant to and perfect in favor of Macquarie

a security interest in and lien on the Hydrocarbon Credit Support as security for the obligations of the Company pursuant to this Agreement and the other Transaction Documents.

“Liens” has the meaning specified in Section 19.4(f)(ii).

“Liquidated Amount” has the meaning specified in Section 20.4(g).

“Macquarie” has the meaning specified in the introductory paragraph of this Agreement.

“Macquarie Crude Procurement Contract” means ~~the~~ Tripartite Crude Supply Agreement and any other contract entered into by Macquarie pursuant to this Agreement (including, without limitation, pursuant to Section 5.2(d)) for the procurement and/or purchase of Crude Oil ~~within the U.S.~~ to be sold and delivered to Macquarie at the relevant Crude Intake Point.

“Macquarie Interim Payment” has the meaning specified in Section 11.1(a).

“Macquarie Procurement Barrels” means barrels of Crude Oil purchased by Macquarie under a Macquarie Crude Procurement Contract.

“Macquarie’s Inspector” means any Person selected by Macquarie in a commercially reasonable manner that is acting as an agent for Macquarie and that (1) is a licensed Person who performs sampling, quality analysis and quantity determination of the Crude Oil and Products purchased and sold hereunder, (2) is not an Affiliate of any Party and (3) in the reasonable judgment of Macquarie, is qualified and reputed to perform its services in accordance with Applicable Law and industry practice, to perform any and all inspections required by Macquarie.

“Macquarie’s Policies and Procedures” shall have the meaning specified in Section 15.5(a).

“Macquarie’s Property” has the meaning specified in Section 19.4(f)(ii).

~~“Macquarie Swap Payment Amount” has the meaning specified in Section 0-~~

“Master Agreement” means the Master Crude Oil and Products Agreement, dated as of the Commencement Date, between the Company and Macquarie.

“Master Agreement Termination Event” means, with respect to a party, any “Event of Default” under the Master Agreement with respect to such party or any “Additional Termination Event” under the Master Agreement for which such party is the sole Affected Party thereunder.

“Material Adverse Change” means, in each case and solely to the extent occurring after the Petition Date (a) a material adverse change in, or a material adverse effect upon, the operations, assets, business, properties, liabilities (actual or contingent) or condition (financial or otherwise) of the Company or of the Parent and its Subsidiaries taken as a whole; (b) a material impairment of the ability of the Company, Parent or any other Subsidiary of Parent to perform its obligations under any of the Transaction Documents to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against the Company, the Parent or any Subsidiary of the Parent of any Transaction Document to which it is a party; ~~provided that (and notwithstanding the foregoing), the commencement of the Chapter 11 Cases or any sale or liquidation of any, all or substantially all of the Company’s assets in such Chapter 11 Cases in accordance with the terms of an Approved Bankruptcy Court Order or this Agreement shall not, individually or collectively, constitute a Material Adverse Change.~~

“Material Obligation” means, in respect of the Company, a failure to comply with:

- (a) Section 14.1 (*Provision of Financial Information*);
- (b) Paragraphs (c), (e) and (g) of Section 14.2 (*Additional Information*);
- (c) Section 14.3 (*Notification of Certain Events*);
- (d) Article 17 (*Insurance*);
- (e) Paragraphs (c), (d), (e), (f) (j) and (k) of Section 19.3 (*Company’s Covenants*);

(f) Section 19.4(f) (Further Assurances); and

~~(g) Section 19.5 (Negative Covenants); and~~

~~(g)~~ ~~(h)~~ Section 19.6 (Additional Covenants).

"Measured Crude Quantity" means, for any Delivery Date, the total quantity of Crude Oil that, during such Delivery Date, was withdrawn and lifted by and delivered to the Company at the Crude Delivery Point, as evidenced by either (i) meter readings and meter tickets for that Delivery Date ~~or~~, (ii) barge inspection reports for that Delivery Date or (iii) tank gaugings conducted at the beginning and end of such Delivery Date.

"Measured Product Quantity" means, for any Delivery Date, the total quantity of a particular Product that, during such Delivery Date, was delivered by the Company to Macquarie at the Products Intake Point, as evidenced by either (i) meter readings and meter tickets for that Delivery Date ~~or~~, (ii) barge inspection reports for that Delivery Date or (iii) tank gaugings conducted at the beginning and end of such Delivery Date.

"MENAT Required Terms" means the sanctions, anti-corruption, confidentiality and other legal or regulatory related provisions required in accordance with Macquarie's Policies and Procedures from time to time which, as at the date of this Agreement are set out in Part 2 (MENAT Required Terms) of Schedule J (Crude GTCs and MENAT Required Terms).

"Minimum Liquidity Requirement" has the meaning specified in Section 19.5.

"Monthly Crude Confirmation" has the meaning specified in Section 5.1(b)(ii)(B).

"Monthly Crude Forecast" has the meaning specified in Section 5.1(b)(iii).

"Monthly Crude Purchase Offer" has the meaning specified in Section 5.1(b)(ii)(A).

"Monthly Product Estimate" has the meaning specified in Section 8.3(b).

"Monthly True-Up Amount" has the meaning specified in SCHEDULE C.

"MTA Payment Date" has the meaning specified in the definition of "Emergence Milestone Date".

"Net Storage Volume" means, with respect to any measurement of volume, the total liquid volume, excluding sediment and water, corrected for the observed temperature to 60° F.

"Non-Affected Party" has the meaning specified in Section 18.1.

"Non-CL Affected Party" has the meaning given to it in Section 20.2(a)(ii)(A).

"Non-Defaulting Party" has the meaning specified in Section 20.4(a).

"Notice of Title" means, in respect of each Included Barge and the relevant Barge Operator and Barge Owner, an irrevocable notice in writing from the Company and Macquarie, notifying such Barge Operator and such Barge Owner of Macquarie's title to any such Crude Oil or Product transported on such Included Barge to or from the Refinery and an Included Product Location, in each case, in form and substance satisfactory to Macquarie.

"Obligations" has the meaning specified in Section 14.4(c).

"OET Fee" has the meaning given to that term in the Fee Letter.

"OET Notice" has the meaning specified in Section 3.2.

"OFAC" means the Office of Foreign Assets Control of the United States Department of the Treasury.

"Operational Schedule" means Schedule A, Schedule D, Schedule E, Schedule F, Schedule I, Schedule J, Schedule K, Schedule N, Schedule O, Schedule V and Schedule W.

~~"Optional Early Termination Date" has the meaning specified in Section 3.1(b).~~

"Orders" means the Intermediation Orders, the Cash Management Order and the DIP Orders.

"Organization Documents" means, (a) with respect to any corporation, the charter or certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction), (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement or limited liability company agreement (or equivalent or comparable documents with respect to any non-U.S. jurisdiction), (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization (or equivalent or comparable documents with respect to any non-U.S. jurisdiction) and (d) with respect to all entities, any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization (or equivalent or comparable documents with respect to any non-U.S. jurisdiction).

"Overriding Obligations" means, for the purposes of the Unwind Procedures, the Company's obligation to perform its obligations under this Agreement and act in accordance with:

- (a) Accepted Industry Practice; and
- (b) to the extent not covered by paragraph (a) above, any Authorizations held by the Company ~~and~~ all applicable laws including Environmental Laws and all applicable orders of the Bankruptcy Court.

"Parent" means Vertex Energy, Inc.

"Parent Guaranty" has the meaning specified in the definition of "Guaranties".

"Party" or "Parties" has the meaning specified in the preamble to this Agreement.

"Patriot Act" means The USA Patriot Act.

"Permitted Article 10 Liens" means any Liens which are permitted pursuant to Article 10.

"Permitted S&O Liens" means: (a) (1) Liens created in favor of Macquarie under the Lien Documents or pursuant to an Intermediation Order; (2) junior ranking Liens created in favor of the Collateral Agent (as defined in the relevant Existing Financing Agreement) pursuant to the Cash Management Order or any DIP Order; and (3) junior ranking Liens created in favor of Macquarie Bank Limited (as hedge provider) pursuant to the Interim Intermediation Order or, when entered into, the Final Intermediation Order, (b) Liens for taxes, assessments, judgments, decrees, attachments, governmental charges or levies, or claims not yet delinquent or the non-payment of which is being diligently contested in good faith by appropriate proceedings and for which adequate reserves have been made; (c) Liens of mechanics, laborers, non-commodity suppliers, workers, materialmen, and other similar liens incurred in the ordinary course of business for sums not yet due or being diligently contested in good faith, if such reserve or appropriate provision, if any, as shall be required by GAAP shall have been made therefor (but not including any such Liens in favor of the Company or any of its Affiliates); (d) except to the extent released in any "bailee letter" or such similar documents, Liens securing rental, storage, throughput, transportation, handling or other similar fees or charges owing from time to time to carriers, bailees, transporters or warehousemen, solely to the extent of such fees or charges (but not including any such Liens in favor of the Company or any of its Affiliates); (e) Liens (1) incurred in the ordinary course of business ~~(a)~~ except to the extent released in any "bailee letter" or such similar documents, in connection with the purchase or shipping of goods or assets (or the related assets and proceeds thereof), which Liens arise by operation of law in favor of the seller or shipper of such goods or assets, which attach to such goods or assets and cease to be in effect upon payment in full of the purchase price for or for shipping of such goods or assets, and ~~(b)~~ to the extent available under Applicable Law, arising upon the purchase of oil or gas from the first producer thereof, which attach to such goods and cease to be in effect upon payment in full of the purchase price for such goods and (2) in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods; and (f) Permitted Article 10 Liens.

"Permitted Supplier" means Shell Trading (US) Company and any other Third Party Supplier between the Parties from time to time.

"Permitted Supplier's Crude Confirmation" means the confirmation of the Crude Oil grades (including the volumes per grade and the pricing levels) secured by the Permitted Supplier for a Delivery Month, as communicated to the Company by the Permitted Supplier in accordance with the terms of the Tripartite Crude Supply Agreement [relating to the Shell Crude Supply Agreement](#).

"Permitted Supplier Crude Estimate" means the Permitted Supplier's best estimate of (a) prices; and (b) volume availability, in each case, for the each relevant grade of Crude Oil for a Delivery Month and as communicated to the Company by the Permitted Supplier in accordance with the terms of the Tripartite Crude Supply Agreement [relating to the Shell Crude Supply Agreement](#).

"Person" means an individual, corporation, partnership, limited liability company, joint venture, trust or unincorporated organization, joint stock company or any other private entity or organization, Governmental Authority, court or any other legal entity, whether acting in an individual, fiduciary or other capacity.

["Petition Date" has the meaning given to that term in the Interim DIP Order.](#)

"Plains Agreements" means:

- (a) the Plains Terminalling Agreement;
- (b) the Plains Storage Rights Agreement; and
- (c) the Plains Consent Letter.

"Plains Consent Letter" means the "Consent to Storage and Usage Agreement" dated on or around the date of this Agreement and entered into between the Plains Operator, Macquarie and the Company.

"Plains Operator" means Plains Marketing, L.P., or such other successor that operates the Plains Storage Facilities.

"Plains Storage Facilities" has the meaning given to the term "Storage Facilities" in the Plains Storage Rights Agreement.

"Plains Storage Rights Agreement" means the storage rights agreement entered into between the Company and Macquarie dated on or about the date of this Agreement

"Plains Terminalling Agreement" means the terminal services agreement (Agreement No. 5716-15-02-0121) dated as of March 1, 2015 between the Plains Operator and the Company, as successor in interest to Shell Chemical LP (as from time to time further amended, modified, supplemented, extended, renewed and/or restated).

"Pledge and Security Agreement" means that certain Pledge and Security Agreement by and between the Company and Macquarie, dated as of the Commencement Date.

["Post-Petition Financing Agreement" means that certain Senior Secured Super-Priority Debtor-in-Possession Loan and Security Agreement dated on or around September 24, 2024 by and among the Company, as borrower, the other parties party thereto from time to time as guarantors, Cantor Fitzgerald Securities, as agent for the lenders and the lenders party thereto from time to time.](#)

["Pre-Petition Financing Agreements" means that certain Loan and Security Agreement, dated as of April 1, 2022, by and among the Company, as borrower, the other parties party thereto from time to time as guarantors, Cantor Fitzgerald Securities, as agent for the lenders and the lenders party thereto from time to time.](#)

"Pricing Group" means any of the Product Groups listed as a pricing group on [Schedule H](#).

"Product" means any of the petroleum products listed on [Schedule A](#), as from time to time amended by mutual agreement of the Parties.

"Product Group" means Crude Oil or a group of Products as specified on [Schedule A](#).

"Product Purchase Adjustment" has the meaning specified in Section 8.9(b).

"Product Sale Adjustment" has the meaning specified in Section 8.9(a).

"Product Supplier" means any third party seller of Products with whom a Party proposes that Macquarie enter into an Included Product Purchase Transaction in accordance with Section 8.1(b).

"Product Transaction" has the meaning given to that term in the Master Agreement.

"Products Cover Costs" means, collectively, any additional costs and expenses or related damages as a result of the shortfall in the quantity of Product held for its account (in the circumstances described in Section 7.5).

"Products Delivery Point" means, (1) with respect to any delivery of Product from an Included Storage Location, (x) the relevant delivery point as described in the relevant Tripartite Product Offtake Agreement or Included Sales Transaction or, (y) the outlet flange of the relevant Included Barge; or (2) in relation to a sale of Products to the Company, at the exit flange of the relevant Included Storage Location.

"Products Intake Point" means the inlet flange of the relevant Included Product Tank or Included Barge.

"Projected Monthly Run Volume" has the meaning specified in Section 7.2(a).

"Projection Week" means Monday through Sunday.

"Provisional Contract Price" means, with respect to any quantity of Crude Oil or Products of a given type, grade, or specification which is purchased or sold by Macquarie pursuant to a Macquarie Crude Procurement Contract, Included Product Purchase Transaction or Included ~~Product~~ Sales Transaction, the applicable pricing index plus the applicable differential specified in the applicable trade contract for such type, grade, or specification of Crude Oil or Product.

"RD Negotiation Period" has the meaning specified in Section 2.5(b).

~~"RD Early Termination Date" has the meaning specified in Section 3.2(a).~~

~~"Renewable Diesel Intermediation" has the meaning specified in Section 2.5(b).~~

"Refinery" has the meaning specified in the recitals hereto.

"Refinery Facilities" means (i) all the facilities located at the Refinery, and (ii) any associated or adjacent facility used by the Company to carry out the terms of this Agreement, excluding Crude Storage Tanks and Included Product Tanks.

"Refinery Procured Crude Barrels" has the meaning given in Section 5.3(a).

"Refinery Procured Product Barrels" has the meaning specified in Section 8.1(c).

"Refinery Product Contract" means a procurement contract entered into by the Company for the purchase by the Company of Product, which Product is to be resold by the Company to Macquarie at the time such Product passes the Products Intake Point.

"Refinery SPA" means the sale and purchase agreement in relation to the Refinery between (i) Equilon Enterprises LLC d/b/a Shell Oil Products US, Shell Chemical LP and Shell Oil Company, collectively as seller and (ii) the Vertex Energy Operating LLC as buyer.

"Related Hedges" means any transactions from time to time entered into by Macquarie with third parties unrelated to Macquarie or its Affiliates to hedge Macquarie's exposure resulting from this Agreement or any other Transaction Document and Macquarie's rights and obligations hereunder or thereunder.

"Relevant Date" has the meaning specified in Section 20.6(a).

"Relevant Default" has the meaning specified in Section 5.4(a).

"Renewable Diesel Intermediation" has the meaning specified in Section 2.5(b).

"Required Storage and Transportation Arrangements" means such designations and other binding contractual arrangements hereafter entered into, in form and substance reasonably satisfactory to Macquarie (all such designations and other binding contractual arrangements entered into or in effect prior to the Restructuring Effective Date being deemed satisfactory for all purposes under the Transaction Document), pursuant to which the Company (or its Affiliates) hereafter shall provide Macquarie with the Company's (or its Affiliates') full right to use the third party Included Product Pipelines and third party Included Product Tanks, pursuant to the terms and conditions of the Base Agreements or such other agreements creating the Company's rights in and to such facilities and the rights of existing third parties.

"Responsible Officer" means the President, Chief Executive Officer, Chief Financial Officer, Head of Finance, or Controller of any Person.

"Restructuring Effective Date" has the meaning given to the term "Effective Date" in the Assurance Agreement.

"Revised Estimated Yield" has the meaning specified in Section 8.3(a).

"RSA" has the meaning given to that term in the Interim Intermediation Order.

"Sanctioned Country" means any country or other territory which is from time to time subject to a general export, import, financial or investment embargo under any Sanctions Law, which, as of the date of this Agreement, are Crimea, Cuba, Iran, North Korea, and Syria.

"Sanctions Authority" means:

- (a) the United Nations;
- (b) the United States of America;
- (c) the European Union;
- (d) the United Kingdom;
- (e) Australia; and
- (f) the respective governmental, legislative, and regulatory institutions or bodies of any of the foregoing including the OFAC, the U.S. Department of Commerce, the U.S. Department of State, and any other agency of the U.S. government, ~~Her~~His Majesty's Treasury of the United Kingdom, the United Nations Security Council or other relevant sanctions authority.

"Sanctions Law" or "Sanctions Laws" means any economic or financial sanctions law and/or regulation, export control, trade embargo, prohibition, restrictive measure, decision, executive order, or notice from any regulator implemented, adapted, imposed, administered, enacted and/or enforced by any Sanctions Authority from time to time.

"Sanctions Target" means any Person: (a) that is the subject or target of any Sanctions Law; (b) named in any Sanctions-related list maintained by OFAC, the U.S. Department of State, the U.S. Department of Commerce or the U.S. Department of the Treasury, including the OFAC list of "Specially Designated Nationals and Blocked Persons," or any similar list maintained by any other Sanctions Authority (c) located, organized or resident in a country, territory or geographical region which is itself the subject or target of any Sanctions Law (including, without limitation, Cuba, Iran, North Korea, Syria, Crimea and so-called Donetsk People's Republic ("DNR") and Luhansk People's Republic ("LNR") regions of Ukraine, and, prior to January 1, 2017, Sudan) or (d) owned or controlled (as such terms are defined by the applicable Sanctions Laws) by any such Person or Persons described in the foregoing clauses (a) to (c).

"SEC" means the U.S. Securities and Exchange Commission.

"Settlement Amount" has the meaning specified in Section 20.4(c).

"Shell Crude Supply Agreement" means the term Crude Oil supply agreement between the Company and Shell Trading (US) Company dated on or about the date of this Agreement.

"Sludge" means a semi-solid slurry consisting of hydrocarbons, sediment, paraffin and water, produced from a process or as a result of solids separated from suspension in a liquid.

"SOFR" has the meaning given to that term in the Fee Letter.

"Sourcing Transaction" has the meaning specified in Section 19.3(h).

"Specified Event" means a transaction or other event that results in all or substantially all of the assets constituting the Refinery are sold (whether in one transaction or in a series of related transactions) to a Person that is not an Affiliate of the Parent; provided that (and notwithstanding the foregoing or any other term or provision of this Agreement or any other Transaction Document), no transaction or other event or series of transactions or other events shall be deemed to be a "Specified Event" if such transaction(s) or event(s) occur either (i) in accordance with an Approved Bankruptcy Court Order; or (ii) otherwise with the consent of Macquarie.

"Specified Indebtedness" means any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of a repurchase transaction, borrowed money (including capitalized lease obligations and reimbursement obligations with respect to letters of credit) or money raised, any finance lease, redeemable preference share, letter of credit, futures contract, guarantee, indemnity or any Derivative Transaction.

"Specified Transaction" means (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between Macquarie (or any of its Affiliates) and the Company (or any of its Designated Affiliates) (including, without limitation, any transaction entered into under the MBL Secured ISDA) (i) which is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, commodity spot transaction, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, weather swap, weather derivative, weather option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, or forward purchase or sale of a security, commodity or other financial instrument or interest (including any option with respect to any of these transactions) or (ii) which is a type of transaction that is similar to any transaction referred to in clause (i) that is currently, or in the future becomes, recurrently entered into the financial markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, option or other derivative on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, or economic indices or measures of economic risk or value, (b) any combination of these transactions, (c) any other transaction identified as a Specified Transaction in this agreement or the relevant confirmation; provided, that, "Specified Transaction" shall not include the Vertex Renewables SOA or any Vertex Renewables Transaction Documents.

"Step-Out Inventory Sales Agreement" means the purchase and sale agreement, in the form provided on Schedule M, to be dated as of the Termination Date, if elected by Macquarie, pursuant to which the Company shall buy Crude Oil and Products from Macquarie subject to the provisions of this Agreement and any other terms agreed to by the Parties thereto.

"Storage Facilities Agreement" means the storage facilities agreement, in form and substance mutually agreeable to the Parties, to be dated as of the Commencement Date, between the Company and Macquarie, pursuant to which the Company has granted to Macquarie an exclusive right to use the Crude Storage Tanks and Included Product Tanks (to the extent that such exclusive right can be granted) in connection with this Agreement.

"Sub-Bareboat Charter" means, in respect of an Included Barge, the relevant sub-bareboat charter entered into between Company and the relevant Barge Operator in respect of that Included Barge.

“Subsidiaries” means, with respect to any Person (the “parent”), any corporation, partnership, joint venture, limited liability company, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, partnership, joint venture, limited liability company, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power, or in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

~~“Swap Payment Amount”~~ “Supply/Offtake Consultation Notice” has the meaning specified in Section 9.19.6(b).

“Target Month End Company Product Volume” means the commercially reasonable projected volume for Product in the Company Storage Locations at the end of the applicable Delivery Month as set forth in a report provided monthly by the Company in a form acceptable to Macquarie, and reconciling to Product purchases, run rates and sales for the applicable period.

“Target Month End Crude Inventory Volume” means the commercially reasonably projected volume for (i) Crude Oil in the Crude Storage Tanks; *plus* (ii) Crude Cargo Rollover Barrels, in each case, at the end of the Delivery Month set forth in a report provided monthly by the Company in a form acceptable to Macquarie, and reconciling to Crude Oil purchases, run rates and sales for the applicable period.

“Target Month End Product Inventory Volume” means the commercially reasonably projected volume for Product in the Included Product Locations at the end of the applicable Delivery Month as set forth in a report provided monthly by the Company in a form acceptable to Macquarie, and reconciling to Product purchases, run rates and sales for the applicable period.

“Target Month End Product Volume” means the Target Month End Product Inventory Volume and Target Month End Company Product Volume, collectively.

“Tax” or “Taxes” has the meaning specified in Section 16.1(a).

“Term” has the meaning specified in Section 3.1.

“Term Loan Agent” means Cantor Fitzgerald Securities, in its capacity as agent under, as the context may require, either or both of the Pre-Petition Financing Agreement and the Post-Petition Financing Agreement.

“Termination Amount” means, without duplication, the total net amount owed by one Party to the other Party upon termination of this Agreement under Section 21.2(a).

“Termination Date” has the meaning specified in Section 21.1.

“Termination Date Crude Oil Volumes” has the meaning specified in Section 21.1(c).

“Termination Date Product Volumes” has the meaning specified in Section 21.1(c).

“Termination Date Volumes” has the meaning specified in Section 21.1(c).

“Termination Event” has the meaning specified in Section 20.3(a).

“Termination Notice” has the meaning specified in Section 20.3(b).

“Termination Reconciliation Statement” has the meaning specified in Section 21.2(c).

“Third Party Offtaker” means any purchaser of Crude Oil under an Included Crude Sales Transaction or Product under an Included Sales Transaction (in each case, other than the Company).

“Third Party Storage Agreements” means the BWC Agreements (but only from (and including) the relevant BWC Inclusion Date), the Center Point Agreements (but only from (and including) the

relevant Center Point Inclusion Date), the Plains Agreement and any other agreements entered into between or among the Company, Macquarie and/or a Third Party Storage Provider designated as "Third Party Storage Agreements" by Macquarie and the Company.

"Third Party Storage Provider" means:

- (a) from (and including) the relevant BWC Inclusion Date, each relevant BWC Operator;
- (b) ~~(a)~~ from (and including) the relevant Center Point Inclusion Date, ~~the~~ each relevant Center Point Operator;
- (c) ~~(b)~~ the Plains Operator; and
- (d) ~~(c)~~ any other third party storage provider approved in writing by Macquarie and the Company; *provided that* Macquarie has entered into a "Consent to Storage and Usage Agreement" on terms satisfactory to it.

"Third Party Supplier" means any seller of Crude Oil under a Macquarie Crude Procurement Contract or Product under an Included Product Purchase Transaction (in each case, other than the Company).

"Third Party Supplier Crude Purchase Amount" has the meaning specified in Section 6.4.

"Third Party Supply/Oftake Agreement" means collectively, the Macquarie Crude Procurement Contracts, Included Product Purchase Transaction, Included Crude Sales Transactions, Included Sales Transactions, the Shell Crude Supply Agreement, a Tripartite Crude Supply Agreement, an Intermediated Product Offtake Contract and a Tripartite Product Offtake Agreement.

"Third Party Terminalling ~~Agreements~~ Agreement" means:

- (a) in respect of the BWC Storage Facilities from and including the relevant BWC Inclusion Date, the relevant BWC Terminalling Agreement,
- ~~(a)~~ (b) in respect of the Center Point Storage Facilities from ~~(and including)~~ the relevant Center Point Inclusion Date, the relevant Center Point Terminalling Agreement;
- ~~(b)~~ (c) in respect of the Plains Storage Facilities, the Plains Terminalling Agreement; and
- ~~(c)~~ (d) in respect of any other Third Party Storage Provider, the terminalling services agreement entered into between the Company and such other Third Party Storage Provider.

"Transaction Document" means (i) any of this Agreement, the Inventory Sales Agreement, the Storage Facilities Agreement, the Step-Out Inventory Sales Agreement, the Guaranties, the Required Storage and Transportation Arrangements, the Fee Letter, the Independent Amount Letter, the Lien Documents, the Intercreditor Agreement, the Master Agreement, the Convenience Exchange Agreement, the Third Party Storage Agreements, the ~~Interim Crude Supply Agreement, the Interim Crude Supply Assignment Agreement, the~~ Shell Crude Supply Agreement, the Tripartite Crude Supply Agreement, the Intermediated Product Offtake Contracts, each Tripartite Product Offtake Agreement, any Macquarie Crude Procurement Contract, Included Crude Sales Transaction, Included Sales Transaction or Included Product Purchase Transaction; and (ii) any other agreement or instrument contemplated hereby or executed in connection herewith, including any guarantees or other credit support documents as may be from time to time provided by the Company and/or any of its Affiliates; *provided, however*, that (1) none of (a) that certain 2002 ISDA Master Agreement, dated as of April 1, 2022, including all schedules and annexes thereto, by and between Macquarie Bank Limited and the Company (the "MBL Secured ISDA"), (b) the Vertex Renewables SOA; (c) the Vertex Refining Guaranty; and (d) any other Vertex Renewables Transaction Documents that are not otherwise expressly listed as Transaction Documents under sub-paragraph (i) above shall constitute "Transaction Documents"; ~~and (2) (a) the Tripartite Crude Supply Agreement and Shell Crude Supply Agreement will only constitute Transaction Documents to the extent that Macquarie has made a "Positive Election" (as defined in the Tripartite Crude Supply Agreement relating to the Shell Crude Supply Agreement) for a delivery month; and (b) any other Tripartite Crude Supply Agreement, Tripartite Product Offtake Agreement or similar tripartite agreement entered into on or after the Restructuring Effective Date but with a similar election mechanism as the Tripartite Crude Supply Agreement relating to the Shell Crude Supply Agreement will only constitute a Transaction Document~~

to the extent that Macquarie has made a "Positive Election" (howsoever described or defined) in that relevant agreement, but in the case of (a) or (b), only in respect of the portion thereof assigned to Macquarie in respect of a month.

"Transaction Obligations" means all obligations, including Obligations, owing from time to time by the Parent, Vertex Renewables, the Company and any of the Company's Subsidiaries to Macquarie pursuant to this Agreement, the Guaranties or any other Transaction Document and shall include, without limitation, (a) all principal, premium, if any, reimbursement obligations, interest accrued or accruing (or which would, absent commencement of an Insolvency or Liquidation Proceeding, accrue) in accordance with the relevant Transaction Document and (b) all fees, costs, expenses, indemnifications, damages, guarantees, and charges and other liabilities or amounts incurred in connection with any of the Transaction Documents and provided for thereunder, in the case of each of clause (a) and clause (b) whether before or after commencement of an Insolvency or Liquidation Proceeding and irrespective of whether any claim for such interest, fees, costs, expenses, indemnifications, damages, guarantees, charges or other liabilities or amounts is allowed as a claim in such Insolvency or Liquidation Proceeding; *provided, however, that*, for the avoidance of doubt, obligations of the Company pursuant to the Vertex Refining Guaranty shall not constitute "Transaction Obligations".

"Transaction Supplement" has the meaning given to that term in Section 5.2(d).

"Transactions" has the meaning given to that term in Section 11.5.

"Transitional Extension Fee" has the meaning specified in the Fee Letter.

"Transitional Support Period" has the meaning specified in Section 3.1.

"Tripartite Crude Supply Agreement" means (1) the tripartite agreement among the Company, Macquarie and the Permitted Supplier in relation to the Shell Crude Supply Agreement; and (2) any tripartite agreement entered into among the Company, Macquarie and a Third Party Supplier on the Third Party Supplier List in relation to a Macquarie Crude Procurement Contract.

"Tripartite Product Offtake Agreement" means any tripartite agreement entered into among the Parties and the relevant offtaker in relation to an Intermediated Product Offtake Contract.

"UCC" means the Uniform Commercial Code as from time to time in effect in the State of New York.

"Unrestricted Cash" means cash or Cash Equivalents:

- (a) that are not, and are not required to be, designated as "restricted" on the financial statements of the Company or Vertex Renewables;
- (b) that are not contractually required, and have not been contractually committed by the Company or Vertex Renewables, to be used for a specific purpose;
- (c) that are not subject to:
 - (i) any provision of law, statute, rule or regulation;
 - (ii) any provision of the organizational documents of the Company or Vertex Renewables;
 - (iii) any order of any Governmental Authority; or
 - (iv) any contractual restriction (including the terms of any Equity Interests),

in each case of (i) through (iv), preventing such cash or Cash Equivalents from being applied to the payment of ~~the "Obligations" (as defined in any of the Company's or Vertex Renewables' payment obligations under~~ the Existing Financing Agreements) ~~or any of the Company's or Vertex Renewables' payment obligations under,~~ the Transaction Documents and the Vertex Renewables Transaction Documents (without duplication);

- (d) in which no Person other than the Term Loan Agent has a Lien other than "Permitted Liens" as set forth in clause (f) of the definition of "Permitted Liens" in the ~~Existing~~Pre-Petition

Financing Agreements and in clause (e) of the definition of "Permitted Liens" in the Post-Petition Financing Agreements;

- (e) that are held in a "Deposit Account" or "Securities Account" (~~each~~ as defined in ~~the any~~ Existing Financing ~~Agreements Agreement~~), as applicable, but in all cases shall exclude the amount of the Company's or Vertex Renewables' "Indebtedness" (as defined in ~~the any~~ Existing Financing ~~Agreements Agreement~~) (without duplication) which is more than 10 Business Days overdue (or in the case of Indebtedness of the type described in clause (e) of the definition of Indebtedness, remains outstanding more than 10 Business Days from the date constituting Indebtedness).

"Unwind Period" means the period from, and including, the date on which an Acceleration Notice is delivered to the Company by Macquarie to, and excluding, the Macquarie Unwind Termination Date.

"Unwind Procedures" means the unwind procedures set out in Sections 20.5 to 20.9 (inclusive).

"U.S." means the United States of America.

"Vertex Party" means each of the Parent, the Company and Vertex Renewables (together, the "Vertex Parties").

"Vertex Refining Guaranty" means the guaranty entered into between Macquarie and the Company on or around the "Effective Date" (as defined in the Vertex Renewables SOA) and pursuant to which the Company guarantees the obligations of Vertex Renewables under the Vertex Renewables Transaction Documents.

"Vertex Renewables" means Vertex Renewables Alabama LLC, a Delaware limited liability company, located at 1331 Gemini Street, Suite 250, Houston, Texas, TX 77058-2764 United States.

"Vertex Renewables Guarantor" means:

(a) in respect of the Vertex Refining Guaranty, the Company; and

(b) in respect of the Parent Renewables Guaranty, the Parent,

(collectively, the "Vertex Renewables Guarantors").

"Vertex Renewables SOA" means the supply and offtake agreement entered into between Vertex Renewables and Macquarie on May 26, 2023 as may be further amended, amended and restated, and/or supplemented or varied from time to time.

"Vertex Renewables SOA Guaranties" means (a) the Vertex Refining Guaranty; and (b) the guaranty entered into between Macquarie and the Company on or around the "Effective Date" (as defined in the Vertex Renewables SOA) and pursuant to which the Parent guarantees the obligations of Vertex Renewables under the Vertex Renewables Transaction Documents (the "Parent Renewables Guaranty") (each, a "Vertex Renewables SOA Guaranty").

"Vertex Renewables Transaction Documents" has the meaning given to the term "Transaction Documents" in the Vertex Renewables SOA.

"VR Guaranty" has the meaning specified in the definition of "Guaranties".

"Volume Determination Procedures" means (a) in respect of determining the Net Storage Volume of Crude Oil in the ~~Crude Storage Tanks or Products in the~~ Included ~~Product Tanks~~ Storage Locations (other than any Included Storage Locations that are Included Barges), the Company's ordinary daily and month-end procedures, which include manually gauging each Crude Storage Tank or Included Product Tank owned by Company on the last day of the month to ensure that the automated tank level readings are accurate to within a tolerance of two inches; provided that if the automated reading cannot be calibrated to be within such tolerance, "Volume Determination Procedures" shall include the manual gauge reading in the Company's calculation of month-end inventory; (b) in respect of determining the Net Storage Volume of Products in the Included Product Tanks owned by any third party, using the volumes reported on the most recently available daily reports or monthly statements in respect of such tanks; (c) in respect of the linefill in the Included Crude Pipelines, such pipelines shall be deemed full, except when products owned by third parties are flowing through such pipelines;

~~and~~; (d) in respect to linefill or stored barrels in an Included Crude Pipelines owned by third parties, the most recently available daily storage reports or monthly statements indicating the amount of Crude Oil in respect of such pipelines, adjusted for best available information for daily injections and receipts since the last storage report date; and (e) in respect of determining the Net Storage Volume of Crude Oil or Products in the Included Barges, the most recent volume reports prepared by the operators of such Included Barges.

"Weekly Crude Projection" has the meaning specified in Section 5.1(c).

"Weekly Product Projection" has the meaning specified in Section 8.3(c).

"Weekly Variance Report" has the meaning specified in the Post-Petition Financing Agreement.

1.2 Construction of Agreement.

- (a) Unless otherwise specified, reference to, and the definition of any document or agreement (including this Agreement, as well as all schedules thereto and hereto) shall be deemed a reference to such document or agreement as may be, amended, restated, amended and restated, supplemented, revised or otherwise modified from time to time (in each case, to the extent not prohibited by their terms or by this Agreement and the other Transaction Documents).
- (b) Unless otherwise specified, all references to an "Article," "Section," or "Schedule" are to an Article or Section hereof or a Schedule attached hereto.
- (c) All headings herein are intended solely for convenience of reference and shall not affect the meaning or interpretation of the provisions of this Agreement.
- (d) Unless expressly provided otherwise, the word "including" as used herein does not limit the preceding words or terms and shall be read to be followed by the words "without limitation" or words having similar import.
- (e) Unless expressly provided otherwise, all references to days, weeks, months and quarters mean calendar days, weeks, months and quarters, respectively.
- (f) A reference to any Party to this Agreement or another agreement or document includes the Party's permitted successors and assigns.
- (g) Unless the contrary clearly appears from the context, for purposes of this Agreement, the singular number includes the plural number and vice versa; and each gender includes the other gender.
- (h) Except where specifically stated otherwise, any reference to any Applicable Law or agreement shall be a reference to the same as amended, supplemented or re-enacted from time to time.
- (i) Unless otherwise expressly stated herein, any reference to "volume" shall be deemed to refer to actual Net Storage Volume, unless such volume has not ~~been~~ yet been determined, in which case, volume shall be an estimated net volume determined in accordance with the terms hereof.
- (j) The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement.
- (k) All references herein to "estimates" or "projections" are intended to be references to good faith statements with respect to future events, and are not to be construed as guarantees of future performance.
- (l) Unless otherwise expressly stated herein, all references to "Schedules" shall mean and include such Schedules as they may be amended, revised or updated from time to time, as evidenced by written agreement (including, to the extent permitted herein, by exchange of e-mails between Authorized Representatives of the Parties) of the Parties evidencing such

revision, amendment or update (it being acknowledged hereby that the foregoing does not require any Party hereto to revise, amend or update any such Schedule).

- 1.3 The Parties acknowledge that they and their counsel have reviewed and revised this Agreement and that no presumption of contract interpretation or construction shall apply to the advantage or disadvantage of the drafter of this Agreement.

2 CONDITIONS TO COMMENCEMENT

- 2.1 Conditions to Obligations of Macquarie. The effectiveness of this Agreement and the obligations of Macquarie contemplated by this Agreement shall be subject to satisfaction (or waiver by Macquarie) of the following conditions precedent on and as of the Commencement Date:

- (a) The "Effective Time" has occurred under the Refinery SPA.
- (b) The Inventory Sales Agreement shall have been duly executed by the Company and, pursuant thereto, the Company shall have agreed to transfer to Macquarie on the Commencement Date, all right, title and interest in and to the Commencement Date Volumes subject thereto, free and clear of all Liens, other than Permitted S&O Liens;
- (c) The Interim Crude Supply Agreement and the Interim Crude Supply Assignment Agreement shall have been duly executed by the Company;
- (d) The Company shall have agreed to a form of the Step-Out Inventory Sales Agreement in form and in substance satisfactory to Macquarie;
- (e) The Company shall have duly executed the Storage Facilities Agreement in form and in substance satisfactory to Macquarie and provided Macquarie satisfactory documentation that it has secured, for the benefit of Macquarie, full, unencumbered storage and usage rights of the Crude Storage Tanks and Included Product Tanks;
- (f) Macquarie shall have confirmed to its satisfaction that, as of the Commencement Date, the Intercreditor Agreement contains provisions (including through amendments thereto and other ancillary documents such as lien releases, in each case in form and substance satisfactory to Macquarie) that (i) recognize the respective rights and obligations of the Parties under this Agreement and the other Transaction Documents, (ii) confirm that this Agreement, the other Transaction Documents and the transactions contemplated hereby and thereby do not and shall not conflict with or violate any terms and conditions of such Existing Financing Agreements, (iii) recognize that Macquarie is the owner of Crude Oil and Products to the extent contemplated hereby and by the other Transaction Documents, free and clear of any liens of any lender or other creditor that is party to such Existing Financing Agreements, (iv) recognize that Macquarie has a perfected first priority Lien on (A) the Hydrocarbon Credit Support and that such Hydrocarbon Credit Support is not part of the collateral security under the Existing Financing Agreements; and (B) related proceeds of insurance and that such proceeds of insurance are subject to the lien priorities set forth in the Intercreditor Agreements; and (v) confirm the release of any lien in favor of such lender or other creditor that might apply to or be deemed to apply to any Crude Oil and/or Products of which Macquarie is the owner or on which Macquarie has a Lien, in each case as contemplated by this Agreement and the other Transaction Documents;
- (g) Without limiting the generality of clause (e) above, Macquarie shall have received the Intercreditor Agreement with respect to the Existing Financing Agreements;
- (h) The Company shall have provided Macquarie with evidence, in a form reasonably satisfactory to Macquarie, that the Commencement Date Volumes shall be sold to Macquarie free and clear of any Liens, other than Permitted S&O Liens;
- (i) The Company shall have entered into the Lien Documents granting and perfecting in favor of Macquarie the security interest and lien contemplated thereby and all actions necessary to perfect the Liens granted thereunder shall have been completed, including the delivery of executed bailee's letters as contemplated thereby but excluding the filing of UCC financing statements which shall be filed promptly following the Commencement Date.

- (j) The Company shall have duly executed the Fee Letter and the Independent Amount Letter and performed any terms and conditions thereof to be performed by the Company on or before the Commencement Date;
- (k) The Company shall have delivered to Macquarie the Guaranty, duly executed by the Parent;
- (l) The Company shall have delivered to Macquarie a duly executed officer's certificate of each of the Company and the Parent containing the following documents: (i) the Organization Documents of the Company or the Parent, as applicable (which, to the extent filed with a Governmental Authority, shall be certified as of a recent date by such Governmental Authority), (ii) resolutions authorizing the entry into of this Agreement and the other Transaction Documents to which it is a party, (iii) a good standing certificate for each of the Company and the Parent from (A) the relevant state of formation and (B) from any state where it is, or is required to be, qualified to do business to the extent failure to so qualified could reasonably be expected to result in a Material Adverse Change and (iv) incumbency and representative signatures;
- (m) The Company shall have delivered to Macquarie a solvency certificate from the chief financial officer, chief executive officer, president or similar senior officer of Parent (after giving effect to the transactions contemplated by this Agreement, the other Transaction Documents and the Existing Financing Agreements) certifying that the Company and the Parent, individually and collectively, are not Insolvent;
- (n) The Company shall have delivered to Macquarie a duly executed Disclosure Letter, in form and substance satisfactory to Macquarie;
- (o) The Company shall have delivered to Macquarie:
 - (i) the Current Financial Statements of Parent;
 - (ii) a copy of the most recent balance sheet, statement of income and statement of cash flow of the Company for the relevant fiscal year, as reviewed by the Company's independent certified public accountants,
 - (iii) a copy of the Parent's most recent quarterly report, containing unaudited consolidated financial statements of the Company for the relevant fiscal year; and
 - (iv) a copy of the Parent's consolidated financial statements including a cash flow statement, income statement and balance sheet for the second month preceding the Commencement Date, and certified by a Responsible Officer of Parent;
- (p) The Company shall have delivered to Macquarie an opinion of counsel, in form and substance satisfactory to Macquarie, covering such matters as Macquarie shall reasonably request, including: good standing; existence and due qualification; power and authority; due authorization and execution; and the enforceability of the Transaction Documents and the Guaranty;
- (q) No action or proceeding shall have been instituted nor shall any action by a Governmental Authority be threatened, nor shall any order, judgment or decree have been issued or proposed to be issued by any Governmental Authority as of the Commencement Date to set aside, restrain, enjoin or prevent the transactions and performance of the obligations contemplated by this Agreement;
- (r) Neither the Refinery nor any of the Included Storage Locations shall have been affected adversely or threatened to be affected adversely by any loss or damage, whether or not covered by insurance, unless such loss or damages would not have a material adverse effect on the usual, regular and ordinary operations of the Refinery or the Included Storage Locations;
- (s) The Company shall have delivered to Macquarie insurance certificates evidencing the effectiveness of the insurance policies and endorsements required by Article 17 below within five (5) Business Days after the Commencement Date;

- (t) The Company shall have complied with all covenants and agreements hereunder that it is required to comply with on or before the Commencement Date;
- (u) All representations and warranties of the Company and its Affiliates contained in the Transaction Documents shall be true and correct on and as of the Commencement Date, except for such representations and warranties that are expressly limited to another date;
- (v) The Company shall have delivered to Macquarie all necessary consents of stockholders or members and other third parties with respect to the execution, delivery and performance of the Transaction Documents by the Company and the Parent and such other certificates, documents and instruments as may be reasonably necessary to consummate the transactions contemplated herein;
- (w) [reserved];
- (x) On or prior to the Commencement Date, the Company shall have provided to Macquarie:
 - (i) the Target Month End Crude Inventory Volume and the Target Month End Product Volume in respect of April 2022;
 - (ii) the Monthly Crude Purchase Offer in respect of April 2022;
 - (iii) the most recent reports (as at the Commencement Date):
 - (A) the Monthly Crude Forecast;
 - (B) the Monthly Product Estimate;
 - (C) the Projected Monthly Run Volume;
 - (D) the Weekly Crude Projection; and
 - (E) the Weekly Product Projection; and
 - (iv) an expected Product yield for the Refinery based on its then current operating forecast for the Refinery (the "Initial Estimated Yield");
- (y) Macquarie shall have received payment of all fees, expenses and other amounts due and payable on or prior to the Commencement Date required to be reimbursed or paid by the Company hereunder, under the Fee Letter or any other Transaction Document on or prior to such date, including reimbursement or payment of Macquarie's and its Affiliates' reasonable out-of-pocket expenses (including fees, charges and disbursements of Macquarie's counsel, experts and consultants);
- (z) The Independent Amount shall have been posted with Macquarie as contemplated by Section 4.3;
- (aa) Payment of other Macquarie fees and expenses expressly required hereby and due on the Commencement Date. For the avoidance of doubt, this does not include any monthly fees due throughout the term of the contract;
- (bb) On or prior to the Commencement Date, Reed Smith LLP shall have provided to Macquarie such legal opinions or memoranda of law regarding this Agreement as may be required by Macquarie; and
- (cc) Without duplication, the Company shall have provided Macquarie fully executed Transaction Documents in form and in substance satisfactory to Macquarie.

2.2 Conditions to Obligations of the Company. The obligations of the Company contemplated by this Agreement shall be subject to satisfaction by Macquarie of the following conditions precedent on and as of the Commencement Date:

- (a) Macquarie shall have duly executed and delivered the Inventory Sales Agreement in form and substance satisfactory to the Company;
- (b) Macquarie shall have duly executed and delivered the Interim Crude Supply Assignment Agreement in form and substance satisfactory to the Company;
- (c) Macquarie shall have agreed to the form of the Step-Out Inventory Sales Agreement in form and in substance satisfactory to the Company;
- (d) Macquarie shall have duly executed and delivered the Storage Facilities Agreement in form and in substance satisfactory to the Company;
- (e) Macquarie shall have duly executed and delivered the Fee Letter and the Independent Amount Letter;
- (f) Macquarie shall have executed and delivered the Lien Documents to the extent its signature is required thereunder;
- (g) All representations and warranties of Macquarie contained in the Transaction Documents shall be true and correct on and as of the Commencement Date except for such as are expressly limited to another date;
- (h) Macquarie shall have complied with all covenants and agreements hereunder that it is required to comply with on or before the Commencement Date;
- (i) Macquarie shall have delivered to the Company such other certificates, documents and instruments as may be reasonably necessary to consummate the transactions contemplated herein; and
- (j) Macquarie shall have delivered satisfactory evidence of its federal form 637 license.

2.3 Commencement Date.

- (a) Subject to the satisfaction (or waiver) of the conditions set forth in Sections 2.1 and 2.2, the “Commencement Date” shall be a Business Day mutually agreed to by the Parties on or after the Effective Date and on or prior to April 1, 2022 or such later date as the Parties shall agree (the “Latest Commencement Date”).
- (b) If the Commencement Date has not occurred on or before the Latest Commencement Date, this Agreement shall terminate on the first Business Day following the Latest Commencement Date. In such case, all obligations of the Parties hereunder shall terminate, except for the obligations set forth in Article 2 (excluding Section 2.5(b)), Article 22, Article 23 and Article 25 and any obligation under the last sentence of this Section 2.3(b); provided, however, that nothing herein shall relieve any Party from liability for the breach of any of its representations, warranties, covenants or agreements set forth in this Agreement. Without limiting the foregoing, if the failure of the Commencement Date to occur on or before the Latest Commencement Date is due to (i) any breach by the Company of its obligations hereunder, including its obligations under clause (b) below or (ii) the failure of any of the conditions contained in Section 2.1 to be satisfied on or before the Latest Commencement Date unless such failure is due to any breach by Macquarie of its obligations hereunder, including its obligations under clause (b) below, then the Company shall be obligated to reimburse Macquarie for any out of pocket losses, costs and damages incurred or realized by Macquarie as a result of its maintaining, terminating or obtaining any Related Hedges.
- (c) From and after the Effective Date, the Company shall use commercially reasonable efforts to cause each of the conditions referred to in Section 2.1 to be satisfied on or prior to the Latest Commencement Date and Macquarie shall use commercially reasonable efforts to cause each of the conditions referred to in Section 2.2 to be satisfied on or prior to the Latest Commencement Date.

2.4 UCC Filings and Mortgages.

- (a) UCC Filings.

- (i) From and after the Commencement Date, the Company shall cooperate with Macquarie to cause to be prepared, and filed, in such jurisdictions as Macquarie shall deem necessary or appropriate, UCC-1 financing statements reflecting (i) Macquarie as owner of all Crude Oil and Products in the Included Storage Locations and (ii) Macquarie as a secured party with respect to the Credit Support to perfect Macquarie's security interest under the Lien Documents. The Company shall execute and deliver to Macquarie, and the Company hereby authorizes Macquarie to file (with or without the Company's signature), at any time and from time to time, all such financing statements, amendments to financing statements, continuation financing statements, termination statements, relating to such Crude Oil and Products and the Credit Support, and other documents and instruments, all in form satisfactory to Macquarie, as Macquarie may request, to confirm Macquarie's ownership of such Crude Oil and Products and to otherwise accomplish the purposes of this Agreement and as required pursuant to the Lien Documents.
- (ii) Without limiting the generality of the foregoing, the Company ratifies and authorizes the filing by Macquarie of any financing statements filed prior to the Commencement Date and identified by Macquarie in writing to the Company.

2.5 Post-Commencement Date Covenants

- (a) [Reserved]
- (b) Renewable Diesel Conversion. From and after the Commencement Date to and including the date falling 90 days after the Commencement Date or such later date as may be agreed between the parties (the "RD Negotiation Period"), the Company and Macquarie shall, in good faith, use commercially reasonable efforts to negotiate mutually agreeable terms for Macquarie's intermediating of renewable feedstocks and renewable diesel that will be utilized and/or produced by the Company in connection with and following the renewable diesel conversion project (such intermediation, the "Renewable Diesel Intermediation"). During the RD Negotiation Period, the Company acknowledges and agrees that Macquarie shall have the first right of refusal in respect of any intermediation arrangements for renewable feedstock and renewable diesel and accordingly, the Company shall not (and shall procure that neither the Parent nor any of its Affiliates shall) enter into any negotiations with any third parties in respect to any such intermediation arrangements unless and until the earliest to occur of (i) Macquarie notifying the Company in writing that it is not able or willing to enter into a Renewable Diesel Intermediation in relation to the Refinery; and (ii) 11:59 p.m. (EST) on the last day of the RD Negotiation Period. Notwithstanding the foregoing, this Agreement (including this Section 2.5(b)) shall not limit or otherwise restrict the Company's ability to enter into and negotiate agreements for the purchase and sale of renewable diesel and renewable feedstock with third parties and any such agreements, and any renewable feedstocks or renewable diesel (and any products or proceeds thereof) owned, purchased or sold by the Company shall not be governed by this Agreement unless and until the Parties have consummated the Renewable Diesel Intermediation.
- (c) Cashflow Forecast. From and after the Commencement Date, the Company shall cooperate with Macquarie to develop a form of Cashflow Forecast (in form and substance satisfactory to Macquarie) by no later than the date falling 10 Business Days after the Commencement Date to enable Macquarie to monitor the Company's compliance with the Minimum Liquidity Requirement and the requirements of Section 19.5 (Negative Covenants),
- (d) Notice of Title. On any day from (and including) each day on which a new Included Barge is specified in Schedule E hereto (each, a "Barge Inclusion Date"), the Company shall deliver a duly executed Notice of Title (in form and substance satisfactory to Macquarie) to the relevant Barge Operator and the relevant Barge Owner in respect of that Included Barge.
- (e) Notice and Acknowledgment of Title.
 - (i) On any date on or after the Restructuring Effective Date on which either (A) an Included Barge is first specified in Schedule E hereto; or (B) the date on which the Company becomes aware of a change of Barge Owner or Barge Operator in respect of an Included Barge (such date, the "Notification Date"), the Company shall deliver a Notice of Title to each relevant Barge Owner and/or Barge Operator in respect of such Included Barge.

- (ii) From (and including) the Barge Inclusion Date or, if later, the Notification Date, the Company shall use commercially reasonable efforts to procure that each Barge Operator and each Barge Owner provides a written Acknowledgment of Title (in form and substance satisfactory to Macquarie) by the date falling 30 calendar days after the Restructuring Effective Date or, if later, the relevant Notification Date for that Included Barge.
- (iii) Failure to obtain such Acknowledgment of Title from each Barge Operator and each Barge Owner in respect of each Included Barge shall not constitute a Default or an Event of Default in respect of the Company for the purposes of this Agreement but instead Macquarie may, in its sole discretion, elect to vary the applicable Product Delivery Point(s) or the Product Intake Point(s) as necessary to account for the failure of the relevant Barge Owner and/or Barge Operator, as the case may be, to provide an Acknowledgment of Title in respect of a barge that would (but for such failure to deliver an Acknowledgment of Title) have been treated by Macquarie and the Company as an Included Barge. If an Acknowledgment of Title is not provided in respect of a barge by the Barge Owner and the Barge Operator, such barge shall cease to be treated as an Included Barge for the purposes of this Agreement.
- (f) Bidding Process. With respect to a potential sale under section 363 of the Bankruptcy Code, the Company shall reasonably apprise Macquarie regarding the progress of the bidding process and shall use reasonable good faith efforts to introduce Macquarie to potential bidders interested in the provision of intermediation services in connection with their bid, in all cases subject to and in accordance with the Bankruptcy Code and any procedures approved by the Bankruptcy Court governing the bidding process.
- (g) Step-Out Inventory Sales Agreement. Following the Restructuring Effective Date, to the extent reasonably requested by either Party, the Parties will cooperate in good faith to mutually review the Step-Out Inventory Sales Agreement and agree to such conforming changes and other updates as may be appropriate to reflect the circumstances of the Chapter 11 Cases.
- (h) Sale of Products by Macquarie to Customers. Following the Restructuring Effective Date, the Parties will use commercially reasonable efforts to amend the terms of this Agreement to provide a more detailed framework for the entry into of Included Sales Transactions pursuant to which (i) the Company may request that Macquarie enter into an Included Sales Transactions from time to time; and (ii) Macquarie shall review any such request and use commercially reasonable efforts to accommodate the entry into Included Sales Transactions to the extent it is permitted to do so in accordance with Macquarie's Policies and Procedures; provided that any such framework must be substantially similar to (x) the sale and purchase mechanisms contemplated by the Tripartite Product Offtake Agreements in effect as at the Restructuring Effective Date; and (y) with respect to the procedures relating to the delivery and consideration of Product Sales Request, the procedures relating to the entry into of Macquarie Crude Procurement Contracts as set out in Section 5.2(d).

3 TERM OF AGREEMENT

3.1 Term.

- (a) ~~3.1 Term.~~ The Agreement shall become effective on the Effective Date, and subject to Section 3.2, shall continue for a 24 month period immediately following the "Effective Date" (as defined in the Vertex Renewables SOA) (until the earlier of:

(i) the date falling:

(A) 4 months after the Petition Date; or

(B) if Macquarie so consents following a request made by the Company in writing at least ten (10) calendar days' prior to the expiration of the then current Term (a "Term Extension Request"), 5 months or 6 months after the Petition Date, it being acknowledged that the Company may only make two requests for an extension to the Term of no more than one month at a time); and

- (ii) the effective date of a confirmed plan of reorganization or the closing date of a sale under Section 363 of the Bankruptcy Code.

~~(the "Term")-The and the last day of the Term-is, the "Expiration Date"-Unless an Optional Early Termination Date or an RD-Early Termination Date is designated).~~ In considering whether or not to consent to a Term Extension Request, Macquarie shall take into account factors such as it, in its sole discretion, deems relevant, including, without limitation, the application of Macquarie's Policies and Procedures, whether the most recent Cashflow Forecast delivered to it pursuant to Section 3.2, ~~the Term shall be automatically extended for a further year period on the date that is the then-prevailing Expiration Date.~~

~~3.2~~ 14.2(i)(i) evidences the Company's ability to comply with the Minimum Liquidity Requirement for the duration of the Term (as so extended) and if a Default or Event of Default has occurred and is continuing with respect to the Company or if a ~~Early~~ Termination ~~Rights~~ Event has occurred.

(b) ~~(a) Either Party may elect to terminate this Agreement by providing the other Party notice of any such election pursuant to Article 28; provided that (i) no such election shall be effective until the day falling 180 calendar days following the date on which such notice is delivered (the "Optional Early Termination Date"); and (ii) if the Company has elected to terminate this Agreement, such election to terminate shall not be valid unless and until Vertex Renewables has also elected to terminate the Vertex Renewables SOA in accordance with the terms of that agreement and, notwithstanding the foregoing proviso, the "Optional Early Termination Date" in these circumstances shall be the date falling 180 calendar days after the later of the date on which (A) the Company notified Macquarie of its election to terminate this Agreement; and (B) Vertex Renewables notified Macquarie of its election to terminate the Vertex Renewables SOA. For the avoidance of doubt, the Termination Amount for any early termination pursuant to this paragraph shall be calculated in accordance with~~ If the Term ends on a date that is not the last day of a Month, the Company shall, or shall cause any replacement intermediation provider or purchaser pursuant to an Acceptable Plan or Sale to either (i) accept the transfer, by way of novation, of each Macquarie Crude Procurement Contract or Included Product Purchase Transaction (including any sale and purchase transaction entered into under a Tripartite Crude Supply Agreement) in respect of which the relevant quantity of Crude Oil or Product that is the subject to such Macquarie Crude Procurement Contract or Included Product Purchase Transaction is in transit to the Refinery but has not yet arrived (collectively, the "In-Transit Inventory"); or (ii) if Macquarie determines that it is not able to novate each Macquarie Crude Procurement Contract or Included Product Purchase Transaction (including, without limitation, in circumstances where Macquarie is not able to transact with the Company, any Guarantor, purchaser or replacement intermediation provider following the effective date of a plan of reorganization), prepay to Macquarie an amount equal to the amount payable under the terms of this Agreement for all such In-Transit Inventory (or provide such alternate credit support (which may but need not be in the form of a letter of credit) as Macquarie may reasonably deem acceptable), in which case title and risk to such Crude Oil or Products shall pass upon delivery to the Company. If a Macquarie Crude Procurement Contract or an Included Product Purchase Transaction has not yet completed pricing as of the last day of the Term (each, an "Unpriced Contract"), then Macquarie shall estimate, in good faith and in a commercially reasonable manner, the price payable for any In-Transit Inventory that is the subject of an Unpriced Contract using the pricing benchmark(s) and differential(s) specified in such Unpriced Contract; provided that this sentence will supplement, and not limit, Section 21.2 21.2(b) below.

(c) The Company may, by notice in writing at least ten (10) calendar days prior to the Expiration Date, request that the Term be extended for a transitional period of no more than ninety (90) calendar days (the "Transitional Support Period") in order to facilitate an orderly transition as contemplated by this Section 3.2(b) and Section 21. Macquarie shall be under no obligation to agree to extend the Term for the Transitional Support Period if (i) it determines, in accordance with Macquarie's Policies and Procedures and after completing all necessary "know-your-customer" checks, that it is not able to transact with the Company or a Guarantor after the end of the Chapter 11 Case; or (ii) the Company does not provide a Cashflow Forecast to Macquarie that is dated no more than two (2) weeks prior to the Expiration Date; or (iii) any such Cashflow Forecast delivered by the Company does not evidence its ability to comply, on an ongoing basis, with the Minimum Liquidity Requirement (as may be amended by Macquarie, in its reasonable discretion, to reasonably reflect any change in creditworthiness or ownership structure of the Company after the date that would (but for the Transitional

Support Period) have been the end of the Term) for the duration of the Transitional Support Period. Unless Macquarie determines, in accordance with Macquarie's Policies and Procedures and after completing all necessary "know-your-customer" checks, that it cannot extend the Term for the Transitional Support Period for the foregoing reasons, then (i) subject to sub-paragraphs (ii) and (iii) below, the Term shall be extended by a period of time equal in length to the duration of the Transitional Support Period; (ii) the Company shall pay to Macquarie an amount equal to the Transitional Extension Fee on the first Business Day of the Transitional Support Period; and (iii) the terms of the Transaction Document shall be amended to the extent reasonably required by Macquarie in its reasonable discretion to reasonably reflect any change in creditworthiness or ownership structure of the Company following the date that would (but for the Transitional Support Period) have been the end of the Term.

3.2 Early Termination Rights.

~~(a) (b) If, by the end of the RD Negotiation Period and without limiting either Parties' rights under Section 3.1(b), Macquarie and the Company, each acting in good faith and in a commercially reasonable manner, have not been able to reach commercial agreement regarding the entry into of a Renewable Diesel Intermediation between Macquarie and the Company, the~~ The Company may elect to terminate this Agreement by providing the other Party with written notice of any such election ~~(which shall specify the effective date of termination (the "RD Early Termination Date")) to Macquarie~~ pursuant to Article 28 (an "OET Notice"); provided that:

(i) no such election ~~shall~~will be effective ~~earlier than~~until the date falling ~~90~~fifteen (15) calendar days following the date on which notice is delivered (or, if later, the end of the calendar month in which such notice is delivered, or any termination date specified in such OET Notice) (the "Optional Early Termination Date"); and

~~(c) During the period from (and including) the date on which a notice to terminate has been delivered to Macquarie or to the Company, under Section 3.1(b) or Section 3.2(a), as the case may be, but prior to occurrence of the Optional Early Termination Date or the RD Early Termination Date, as applicable, (i) each of the Parties shall cooperate in good faith and in a commercially reasonable manner with the other Party to implement an orderly transition and (ii) Macquarie will agree to use commercially reasonable efforts to facilitate a sale of all of Crude Oil and Products then stored Included Storage Locations to the Company or to a replacement intermediation provider, as the case may be.~~

(ii) simultaneously with the delivery of the OET Notice, the Company must provide evidence in form and substance reasonably acceptable to Macquarie that:

(A) the Company will have sufficient funds available to it on the Optional Early Termination Date to (x) purchase all Crude Oil and Product owned by Macquarie pursuant to the Transaction Documents, in full, in cash, at a price consistent with the then applicable Current Month Pricing Benchmark; and (y) satisfy in full any other payment obligations owed to Macquarie under the terms of the Transaction Documents as of the Optional Early Termination;

(B) any Third Party Supply/Offtake Agreements in respect of which the delivery date for the relevant delivery of Crude Oil or Product (including, without limitation, In-Transit Inventory) has not occurred will either:

(3) in the case of an Included Sales Transaction (including those entered into under a Tripartite Product Offtake Agreement) or an Included Crude Sales Transaction be transferred, by way of novation to the Company; and

(4) in the case of a Macquarie Crude Procurement Contract, an Included Product Purchase Transaction and a Tripartite Crude Supply Agreement will be transferred, by way of novation, or otherwise prepaid for in the manner contemplated by (and in accordance with the requirements set out in) Section (c).

(iii) in consideration for delivering an OET Notice to Macquarie, the Company shall pay to Macquarie an amount equal to the OET Fee on the Optional Early Termination Date, which shall form part of the calculation of the amount payable by one Party to another

in accordance with Article 21. For these purposes (and in consideration for the payment of the OET Fee), the amount payable in accordance with Article 21 shall disregard any fee payments that would (but for the designation of an Optional Early Termination Date) have been payable by the Company to Macquarie for further calculation periods during the Term, it being acknowledged that any breakage costs incurred by Macquarie in connection with the termination, unwinding or redeploying of all Related Hedges as a result of such early termination shall nevertheless still form part of the amount calculated in accordance with Article 21.

(b) [Reserved].

- 3.3 Obligations upon Termination. The Parties shall perform their obligations relating to termination pursuant to Article 21 in connection with the termination of the Agreement on the Expiration Date.

4 **COMMENCEMENT DATE TRANSFER**

- 4.1 Transfer and Payment on the Commencement Date. The Parties acknowledge that Macquarie's obligations hereunder (other than its obligation under Section 2.3 above) shall commence on the Commencement Date only if the Commencement Date Volumes shall be sold and transferred to Macquarie as provided under the Inventory Sales Agreement upon payment of the Estimated Commencement Date Value as provided therein.
- 4.2 Post-Commencement Date Reconciliation and True-Up. The Parties further acknowledge that the determination and payment of the Definitive Commencement Date Value shall be made as provided in the Inventory Sales Agreement.
- 4.3 Posting of Independent Amount. The Company shall transfer or otherwise make available to Macquarie the Independent Amount in accordance with the Independent Amount Letter. The Independent Amount shall (a) constitute credit support for all of the Company's obligations to Macquarie under the Transactions Documents, inclusive of all of the Company's obligations to Macquarie under Transactions and (b) be subject to the applicable provisions of this Agreement, including Section 14.4(c), and (c) except as otherwise applied or returned in accordance with the terms of the Transaction Documents, be returned to the Company only if (and when) the Transaction Documents have been terminated and all of the Company's respective obligations to Macquarie under the Transactions Documents have been satisfied in full.

5 **PURCHASE AND SALE OF CRUDE OIL**

- 5.1 Monthly and Weekly Forecasts and Projections.

- (a) Target Month End Crude Inventory Volume and Target Month End Product Volume. No later than the twenty-fifth (25th) day of the month preceding a Delivery Month, the Company shall provide Macquarie with a preliminary written forecast in the form of SCHEDULE P of the Target Month End Crude Inventory Volume and the Target Month End Product Volume for the following Delivery Month. During the first (1st) month of deliveries of Crude Oil made pursuant to this Agreement, the Target Month End Crude Inventory Volume and Target Month End Product Volume shall be the amounts set forth on SCHEDULE G.

- (b) Monthly Crude Forecast.

(i) If, following the commencement of the Chapter 11 Cases, the Permitted Supplier remains Shell Trading (US) Company, then:

(A) ~~(i) No~~ later than the tenth (10th) day of the second month preceding a Delivery Month, the Company will deliver to Macquarie the Permitted Supplier Crude Estimate for that Delivery Month;

(B) ~~(ii) No~~ later than the twentieth (20th) day of the second month preceding a Delivery Month, the Company shall provide Macquarie and the Permitted Supplier with an initial mandate for that Delivery Month in the form of SCHEDULE Q, setting forth the Refinery's anticipated Crude Oil requirements (each, a "Monthly Crude Forecast"). The Monthly Crude Forecast will include (i) the quantity, grade and schedule of Crude Oil to be supplied to Macquarie by the Permitted Supplier

in accordance with the terms of the relevant Tripartite Crude Supply Agreement; and (ii) the quantity, grade and schedule of any Refinery Procured Crude Barrels (if any) expected to be delivered for that Delivery Month~~;~~

but only to the extent that the foregoing requirements are consistent with the terms of the Shell Crude Supply Agreement and the Tripartite Crude Supply Agreement relating thereto as in effect after the commencement of the Chapter 11 Cases, the entry of the Interim Intermediation Order and/or the Final Intermediation Order.

- (ii) ~~(iii)~~ No later than the twenty-fifth (25th) day of the month preceding a Delivery Month~~, or promptly following the Company's receipt of the Permitted Supplier's Crude Confirmation from the Permitted Supplier~~ (such date being, the "Monthly Crude Notification Date"), the Company will deliver to Macquarie:

~~(A) the Permitted Supplier's Crude Confirmation for that Delivery Month (a "Monthly Crude Confirmation"); and~~

~~(A)~~ ~~(B)~~ an offer to purchase certain grades and quantities of Crude Oil from Macquarie (a "Monthly Crude Purchase Offer") in accordance with the terms of this Agreement within two calendar months of the Monthly Crude Notification Date~~;~~ and

~~(B)~~ if Shell Trading (US) Company remains the Permitted Supplier following the commencement of the Chapter 11 Cases and the terms of the Shell Crude Supply Agreement and the related Tripartite Crude Supply Agreement as in effect following the commencement of the Chapter 11 Cases require the Permitted Supplier to deliver a monthly confirmation to the Company of the Crude Oil grades (including the volumes per grade and the pricing levels) secured by the Permitted Supplier for a Delivery Month, the Permitted Supplier's Crude Confirmation for that Delivery Month (a "Monthly Crude Confirmation").

- (iii) ~~(iv)~~ Macquarie shall ~~have the right to reject any Monthly Crude Confirmation and/or any Monthly Crude Purchase Offer; provided, however, that~~ promptly accept each Monthly Crude Purchase Offer and, subject to the provisions of this Section (iii)5.1(b)(iii), each Monthly Crude Confirmation. The Company and Macquarie acknowledge and agree ~~that (x) Macquarie shall be under no obligation to accept a Monthly Crude Confirmation if Macquarie determines, in good faith and in a commercially reasonable manner, that the Commitment Requirements are not satisfied in relation to the Monthly Crude Confirmation and corresponding Delivery Month and accordingly, Macquarie may reject a Monthly Crude Confirmation if it determines, in good faith and in a commercially reasonable manner, that such Commitment Requirements are not met; (y) the acceptance of a Monthly Crude Confirmation and the entry into any resulting transactions with the Permitted Supplier pursuant to the Tripartite Crude Supply Agreement shall constitute an extension of credit and a "financial accommodation" to or for the benefit of the Company within the meaning of Section 365(c)(2) and 365(e)(2) of the Bankruptcy Code; and (z) if Macquarie determines that it is not able to accept any Monthly Crude Confirmation or any Monthly Crude Purchase Offer, in good faith and in a commercially reasonable manner that the Commitment Requirements are met for a Delivery Month, it will notify the Company within one (1) Business Day of the Monthly Crude Notification Date~~ Macquarie shall make a "Positive Election" to the Permitted Supplier in accordance with the terms of the Tripartite Crude Supply Agreement relating to the Shell Crude Supply Agreement. Macquarie shall, subject to confidentiality and compliance with its internal policies and procedures of general application and consistently applied, provide a reasonably detailed explanation for its rejection of such Monthly Crude Confirmation ~~and/or such Monthly Crude Purchase Offer, as applicable,~~ to the extent possible but shall be under no obligation to disclose any information that Macquarie determines, in good faith and in a commercially reasonable manner, to be confidential or proprietary information. In the event that Macquarie does not reject a Monthly Crude Confirmation ~~or a Monthly Crude Purchase Offer~~ within one (1) Business Day of the Monthly Crude Notification Date, Macquarie shall be deemed to have accepted the same. In the event Macquarie timely rejects any Monthly Crude Confirmation ~~and/or any Monthly Crude Purchase Offer~~, the Parties will meet not later than the following day to agree upon a mutually agreeable alternative.

- (iv) ~~(v)~~ If thereafter any change occurs outside of customary refinery operations affecting the quantity, grade or schedule of the Crude Oil to be supplied to Macquarie by the Permitted Supplier or any Third Party Supplier ~~pursuant to Section 5.1(b)(iii)~~ on the Third Party Supplier List or the Refinery Procured Crude Barrels (if any) that the Company expects to procure for delivery during a Delivery Month that the Monthly Crude Forecast, Monthly Crude Purchase Offer or Monthly Crude Confirmation (if any) relates to, the Company shall promptly advise Macquarie of such change and resolve and agree upon any needed changes in Target Month End Crude Inventory Volumes.
- (c) Weekly Crude Projection. No later than 5:00 p.m., CT on Thursday of each week, the Company shall provide Macquarie with a written summary in the form of SCHEDULE R of the Refinery's projected Crude Oil runs for the next immediately succeeding Projection Week (each, a "Weekly Crude Projection"). ~~Macquarie shall have the right to reject any Weekly Crude Projection if it determines that either (i) such Weekly Crude Projection is not consistent with the terms of any Monthly Crude Purchase Offer that has been accepted by Macquarie; and/or (ii) such Weekly Crude Projection is inconsistent with the quantities of Crude Oil expected to be stored in the Crude Storage Tanks on any day during the relevant Projection Week, after taking into account any quantities of Crude Oil that Macquarie has notified the Company that it intends to withdraw from the Crude Storage Tanks on or prior to such date in accordance with the terms of the Storage Facilities Agreement; provided, however, that in the event Macquarie does not reject a Weekly Crude Projection by Friday at 5:00 pm CT, Macquarie shall be deemed to have accepted the same. In the event that Macquarie timely rejects any Weekly Crude Projection, the Parties will meet not later than the following day to agree upon a mutually agreeable alternative to be used as the Weekly Crude Projection.~~
- (d) Change in Weekly Crude Projection. The Company shall promptly notify Macquarie in writing upon learning of any material change in any Weekly Crude Projection or if it is necessary to delay any previously scheduled pipeline nominations.
- (e) Responsibility of Company for Forecast and Projections. The Parties acknowledge that the Company is solely responsible for providing the Monthly Crude Confirmation, the Monthly Crude Purchase Offer, the Monthly Crude Forecast and the Weekly Crude Projection and for making any adjustments thereto, and the Company agrees that any forecasts and projections shall be prepared in good faith, with due regard to all available and reliable historical information and the Company's then-current business prospects, and in accordance with Accepted Industry Practice; *provided, however*, that the Parties acknowledge and agree that any such forecasts and projections are only estimates and not guarantees of future performance, and the Company shall have no liability to Macquarie for any differences between such forecasts and projections provided by the Company in good faith and the actual crude requirements or runs. The Company acknowledges and agrees that (i) Macquarie shall be entitled to rely and act, and shall be fully protected in relying and acting, upon all such forecasts and projections until notified otherwise by the Company in accordance with Section ~~5.1(b)(iv)~~ 5.1(b)(iv) or (d) of this Agreement, and (ii) Macquarie shall not have any responsibility to make any investigation into the facts or matters stated in such forecasts or projections.

5.2 Macquarie Crude Procurement Contracts.

- (a) Volume of Macquarie Procurement Barrels. On and after the Commencement Date through the end of the Term, Macquarie shall, ~~if it has agreed to do so in accordance with the terms and conditions set forth therein~~ subject to all applicable terms hereof, purchase from:
- (i) the Permitted Supplier under the Tripartite Crude Supply Agreement; ~~if it has agreed to do so in accordance with the terms and conditions set forth therein; relating to the Shell Crude Supply Agreement if a "Positive Election" (as defined in such Tripartite Crude Supply Agreement) has been made by Macquarie for the relevant Delivery Month;~~
 - (ii) a Third Party Supplier (other than the Permitted Supplier under the Tripartite Crude Supply Agreement relating to the Shell Crude Supply Agreement) but only to the extent that Macquarie has notified the Company pursuant to Section 5.2(d)(v) ~~5.2(d)(v)~~ that it is willing and able to enter into a Macquarie Crude Procurement Contract with the relevant Third Party Supplier in relation to an Identified Crude Oil Delivery and subject always to Section 5.2(g); and/or

- (iii) the Company, in the limited circumstances described in Section ~~5.2(d)(viii)~~ 5.2(d)(viii) below,

in each case, the Crude Oil set out in each Monthly Crude Confirmation ~~accepted by Macquarie for a Delivery Month or as may be determined in accordance with the Monthly Crude Purchase Offer for that Delivery Month.~~ The Company and Macquarie acknowledge and agree that (x) Macquarie shall be under no obligation to enter into a Macquarie Crude Procurement Contract unless Macquarie determines, in good faith and in a commercially reasonable manner, that the Commitment Requirements are met in relation to any request to enter into a Macquarie Crude Procurement Contract and accordingly, Macquarie may reject a request to enter into a Macquarie Crude Procurement Contract if it determines, in good faith and in a commercially reasonable manner, that such Commitment Requirements are not met in relation to that Macquarie Crude Procurement Contract; (y) the entry into each Macquarie Crude Procurement Contract shall constitute an extension of credit and a "financial accommodation" to or for the benefit of the Company within the meaning of Section 365(c)(2) and 365(e)(2) of the Bankruptcy Code; and (z) if Macquarie determines that the Commitment Requirements are met in relation to a request to enter into a Macquarie Crude Procurement Contract, the provisions of Section 5.2(d) below shall apply.

- (b) Sale of Macquarie Procurement Barrels. For sales of Macquarie Procurement Barrels by Macquarie to the Company, title and risk of loss for each quantity of Crude Oil shall pass to Company on an "ex works" basis (EXW Incoterms ® 2010) as the Crude Oil passes the applicable Crude Delivery Point and such title shall pass to the Company free of all Liens, other than Permitted S&O Liens which are not Permitted Article 10 Liens. The Parties acknowledge that the consideration due from the Company to Macquarie for any Crude Oil shall be paid for in accordance with Article 11.

(c) Third Party Suppliers and Third Party Offtakers

- (i) Schedule V (Third Party Supplier List and Third Party Offtaker List) contains a list of (x) Third Party Suppliers; and (y) Third Party Offtakers, in each case, in respect of whom Macquarie has completed all necessary "know-your-customer" and similar on-boarding procedures as at the Restructuring Effective Date (with respect to (x) the "Third Party Supplier List" and with respect to (y), the "Third Party Offtaker List"). Each of the Third Party Supplier List and the Third Party Offtaker List may be updated by notice from Macquarie to the Company from time to time.
- (ii) The Company may from time to time propose to Macquarie the addition of a new Third Party Supplier to the Third Party Supplier List or a new Third Party Offtaker to the Third Party Offtaker List. Macquarie shall consider any proposal, in good faith and in a commercially reasonable manner, and shall seek to accommodate each such proposal to the extent it is able to do so in accordance with Macquarie's Policies and Procedures. Macquarie shall promptly after receipt of such proposal from the Company confirm to the Company whether Macquarie expects that it or an Affiliate will or will not be able to enter into (i) a Macquarie Crude Procurement Contract or Included Product Purchase Transaction with such proposed Third Party Supplier(s); or (y) an Included Crude Sale Transaction or Included Sales Transaction with such proposed Third Party Offtakers.
- (iii) If Macquarie has confirmed to the Company that it expects that it or an Affiliate will be able to enter into (x) a Macquarie Crude Procurement Contract or Included Product Purchase Transaction with a proposed Third Party Supplier; or (y) an Included Crude Sales Transaction or Included Sales Transaction with a proposed Third Party Offtaker, Macquarie shall use reasonable endeavors to complete all necessary "know-your-customer" and similar on-boarding procedures in respect of such proposed Third Party Supplier or Third Party Offtaker, as applicable, in order to permit Macquarie or an Affiliate to enter into (1) Macquarie Crude Procurement Contracts or Included Product Purchase Transactions with the proposed Third Party Supplier or (2) Included Crude Sales Transactions or Included Sales Transaction, as applicable, following which Macquarie shall include such proposed Third Party Supplier or Third Party Offtaker on the Third Party Supplier List or Third Party Offtaker List.
- (iv) Macquarie shall notify the Company promptly after its operational team involved in the management of the Transactions contemplated by this Agreement becomes aware that it or an Affiliate may or may not be able to enter into (x) a Macquarie Crude Procurement

Contract or Included Product Purchase Transaction with any Third Party Supplier already on the Third Party Supplier List; or (y) an Included Crude Sales Transaction or an Included Sales Transaction with a Third Party Offtaker already on the Third Party Offtaker List (including as a consequence of the application of Macquarie's Policies and Procedures). The Parties shall consult in relation to the same to determine if there are consequential steps mutually agreeable to both Parties that might operate to alleviate the relevant issue such that Macquarie or an Affiliate is able to enter into (1) Macquarie Crude Procurement Contracts or Included Product Purchase Transactions with the relevant Third Party Supplier or (2) Included Crude Sales Transaction or Included Sales Transactions with the relevant Third Party Offtaker. Until and in the absence of agreement between the Parties in relation to the same, the relevant entity shall not be treated as being on the Third Party Supplier List or Third Party Offtaker List and any Transaction Supplement (other than a Transaction Supplement which has been accepted in accordance with Section 5.2(d) or Section 8.1(b), which shall continue in accordance with its terms) referencing such Third Party Supplier or Third Party Offtaker shall be deemed to have been withdrawn.

(d) ~~(e)~~ Procedures and Mechanisms for Additional Macquarie Crude Procurement Contracts.

- (i) Macquarie and the Company may, from time to time, ~~to the extent not prohibited by the terms of the Tripartite Crude Supply Agreement and the Shell Crude Supply Contract but subject always to Section 5.2(g)~~, agree on an *ad hoc* basis that Macquarie will procure Crude Oil pursuant to a Macquarie Crude Procurement Contract on such terms and subject to such conditions as the Parties may agree, each in their sole discretion.
- (ii) Without limiting the foregoing, the Company may, from time to time but subject always to Section 5.2(g) (if and to the extent permitted by the terms of the Tripartite Crude Supply Agreement and the Shell Crude Supply Contract that such contracts remain in effect following the commencement of the Chapter 11 Cases), notify Macquarie of:
 - (A) one or more quantities of Crude Oil available in the market for delivery (each an "Identified Crude Oil Delivery") which:
 - (1) are available from a Third Party Supplier (other than the Permitted Supplier under the Shell Crude Supply ~~Contract~~ Agreement) on the Third Party Supplier List;
 - (2) are of a specified grade; ~~and~~
 - (3) the underlying Crude Oil in respect of such Identified Crude Oil Delivery does not originate from, nor has been supplied through or loaded and discharged in any High-Risk Country and
 - (B) the terms (including any applicable discount or premium to index, and terms and conditions of sale) on which such cargoes or pipeline crudes are expected to be available for purchase (for the avoidance of doubt on a DES, DAT, ~~FOB, CFR, or DAP or CIF~~ basis (or any others as may be agreed in writing as between the parties)) and whether the Company requires freight to be arranged for such Identified Crude Oil Delivery,

by providing Macquarie with a notice in the relevant form set out in Schedule L (Form of Transaction Supplement) (a "Transaction Supplement") or in such other form as may be agreed by the Parties in writing from time to time which:

- (1) shall comply with all applicable Sanctions Laws and other Applicable Laws relating to the control of export and contract;
- (2) shall relate to a proposed contract with a Third Party Supplier included on the Third Party Supplier List:
 - (I) on open credit terms, unless otherwise agreed with Macquarie in its sole discretion (in which case, without duplication, any costs of expenses incurred by Macquarie in

connection with the provision and maintenance of such credit support or collateral shall be deemed to be Ancillary Costs for which the Company is required to indemnify Macquarie); and

- (II) which are on contract terms with the relevant Third Party Supplier that are acceptable to Macquarie;
 - (3) shall provide for each cargo of Crude Oil to be supplied on a customs-cleared basis where the original Third Party Supplier shall arrange and pay for export documentation and costs;
 - (4) shall include full charterparty options for discharge and with diversions at charterparty cost, with access to vessel and charterparty data; ~~and~~
 - (5) when such volume of Crude Oil is expected to be purchased by the Company from Macquarie; ~~and~~
 - (6) shall be consistent with the terms set out in Schedule W (Relevant Jurisdictions).
- (iii) The Company shall use commercially reasonable efforts to:
- (A) separately provide to Macquarie and the relevant Third Party Supplier a draft trade recap in respect of each Transaction Supplement; and
 - (B) negotiate and agree the terms of any proposed Macquarie Crude Procurement Contract with a Third Party Supplier in principle prior to delivering a Transaction Supplement and the corresponding draft trade recap to Macquarie by:
 - ~~(B) agree~~ (1) agreeing to terms with the relevant Third Party Supplier to permit Macquarie to disclose the resultant Macquarie Crude Procurement Contract and related information to the Company; ~~and~~
 - (2) to the extent that the Company is aware of such MENAT Required Terms, ensuring that the relevant Macquarie Crude Procurement Contract to be entered into with a relevant Third Party Supplier contains the MENAT Required Terms (unless: (i) Macquarie or the relevant Affiliate has otherwise consented explicitly in writing to any specific amendments thereto; or (ii) Macquarie has notified the Company that Macquarie or the relevant Affiliate has previously agreed terms of sale with such Third Party Supplier which contain alternative sanctions and anti-corruption provisions, in which case such alternative provisions shall apply in respect of the Macquarie Crude Procurement Contract).
- in each case, at the same time as its delivery of the relevant Transaction Supplement ~~or as soon as practicable thereafter (and, in any case, prior to Macquarie and the relevant Third Party Supplier entering into the relevant Macquarie Crude Procurement Contract).~~
- (iv) Upon receipt of a Transaction Supplement from the Company pursuant to Section 5.2(d)(ii) ~~5.2(d)(ii)~~ above, Macquarie shall:
 - (A) promptly notify the Company that it has received the same; and
 - (B) promptly review the proposed terms of purchase of the identified delivery of Crude Oil set out in the relevant trade recap and corresponding Transaction Supplement.
 - (v) Macquarie will consider any request to enter into a Macquarie Crude Procurement Contract in good faith and in a commercially reasonable manner and will seek to accommodate such request to the extent it is able to do so in accordance with Macquarie's Policies and Procedures but subject always to the requirements set out below. Macquarie shall as soon as is reasonably practicable and in any event within

~~one~~two (1~~2~~) Business ~~Day~~Days of receipt of a Transaction Supplement pursuant to Section ~~5.2(d)(ii)~~5.2(d)(ii) above, notify the Company and the relevant Third Party Supplier whether or not Macquarie is willing and able to enter into a contract to purchase the Identified Crude Oil Delivery on the terms set out in the ~~Transaction Supplement~~relevant trade recap (provided that if the Company indicates together with the relevant Transaction Supplement that greater urgency is required setting out a target time for response then Macquarie shall use commercially reasonable efforts to respond by the target time so notified). ~~Macquarie may in its sole discretion determine whether or not it is willing and~~ and shall advise (x) the Company whether any amendments are required to the terms of the Transaction Supplement; and (y) the Company and the relevant Third Party Supplier whether any amendments are required to the relevant trade recap and corresponding Macquarie Crude Procurement Contract, in each case, in order to incorporate all MENAT Required Terms. Issues in respect of which Macquarie may determine that it or an Affiliate is unable to enter into the contract include (1) the application of Macquarie's Policies and Procedures; (2) that such trade recap and corresponding Transaction Supplement do not contain (in form and substance satisfactory to Macquarie) the inclusion of the MENAT Required Terms; (3) Macquarie determining, in good faith and in a commercially reasonable manner, that the Commitment Requirements are not met in relation to such trade recap and corresponding Transaction Supplement. If Macquarie determines that it or an Affiliate is unwilling or unable to enter into the contract, Macquarie shall, subject to confidentiality and compliance with its internal policies and procedures of general application and consistently applied, provide a reasonably detailed explanation for its rejection of such Transaction Supplement and corresponding Macquarie Crude Procurement Contract, to the extent possible but shall be under no obligation to disclose any information that Macquarie determines, in good faith and in a commercially reasonable manner, to be confidential or proprietary information and Macquarie and the Company shall consult in relation to the same to determine if there are consequential steps mutually agreeable to both such Parties that might operate to alleviate the relevant issue such that Macquarie is able to enter into ~~such~~the relevant contract.

- (vi) If Macquarie notifies the Company pursuant to Section ~~5.2(d)(v)~~5.2(d)(v) that, subject to the terms of any Macquarie Crude Procurement Contract being in form and substance acceptable to Macquarie, ~~it is~~ (as determined in accordance with the requirements set out herein), it or an Affiliate is willing and able to enter into a Macquarie Crude Procurement Contract to purchase the Identified Crude Oil Delivery on the terms set out in the Transaction Supplement, then the following process shall be followed with a view to completing all steps set out in sub-paragraphs (A) to (C) below, to the extent possible, within two (2) Business Days of receipt of the original Transaction Supplement delivered to Macquarie pursuant to Section 5.2(d)(ii) above (provided that if the Company indicates together with the relevant Transaction Supplement that greater urgency is required setting out a target time for response then Macquarie shall use ~~commercially~~ reasonable ~~efforts to promptly enter into such~~ endeavors to respond by the target time so notified):

(A) if Macquarie has advised the Company and the relevant Third Party Supplier that amendments are required to the terms of the proposed Macquarie Crude Procurement Contract in order to incorporate all MENAT Required Terms, Macquarie and the Company shall negotiate the terms of any such Macquarie Crude Procurement Contract with the Third Party Supplier to ensure that the Macquarie Crude Procurement Contract contains the MENAT Required Terms (unless: (i) Macquarie has otherwise consented explicitly in writing to any specific amendments thereto; or (ii) Macquarie has notified the Company that Macquarie has previously agreed terms of sale with such Third Party Supplier which contain alternative sanctions and anti-corruption provisions, in which case such alternative provisions shall apply in respect of the Macquarie Crude Procurement Contract);

(B) once Macquarie, the Company and the Third Party Supplier have agreed the terms of the relevant trade recap, the Company shall amend the corresponding Transaction Supplement relating to that trade recap as soon as reasonably practicable thereafter to reflect the amendments made to the trade recap by Macquarie, the Company and the Third Party Supplier (such revised Transaction

Supplement, the "Amended Transaction Supplement") and shall deliver the Amended Transaction Supplement to Macquarie;

(C) promptly following receipt of the Amended Transaction Supplement, Macquarie shall confirm to the Company whether it or an Affiliate is willing and able to enter into an Macquarie Crude Procurement Contract with the relevant Third Party Supplier to purchase the Identified Crude Oil Delivery on the terms set out in such Amended Transaction Supplement; and

(D) if Macquarie has notified the Company that it or an Affiliate is willing and able to enter into an Macquarie Crude Procurement Contract on the terms set out in the relevant trade recap and Amended Transaction Supplement, Macquarie or the relevant Affiliate, as applicable, shall use commercially reasonable endeavors to enter into such Macquarie Crude Procurement Contract with the Third Party Supplier for the purchase of the Identified Crude Oil Delivery (as on the same may be terms negotiated between Macquarie, the Company and the Third Party Supplier), provided that the Identified Crude Oil Delivery remains available for purchase on the market under those same terms (or similar terms acceptable to the Company and Macquarie) and provided always that Macquarie, in its sole discretion, may decline to enter into any such Macquarie Crude Procurement Contract. In the event that Macquarie, in its sole discretion, declines to enter into any such Macquarie Crude Procurement Contract, it shall promptly notify the Company of its decision.

(vii) Macquarie shall notify the Company promptly after entering into any Macquarie Crude Procurement Contract pursuant to Section ~~5.2(d)(vi)~~ 5.2(d)(vi) (and, in any event, no later than one (1) Business Day after entering into the relevant Macquarie Crude Procurement Contract).

(viii) If Macquarie notifies the Company that it is unwilling or unable to enter into the relevant Macquarie Crude Procurement Contract with a Third Party Supplier, the Company may instead purchase the Identified Crude Oil Delivery from the relevant Third Party Supplier and sell the relevant Identified Crude Oil Delivery to Macquarie in accordance with Section 5.3 below.

(e) Procurement Terms

(i) High Risk Countries. If, at any point, Macquarie's operational team in respect of the Agreement (the "MENAT Operational Team") becomes aware that either (i) a country which is not a Sanctioned Country (a "New High Risk Country") should be included as a High-Risk Country; or (ii) a High-Risk Country should no longer be included as a High-Risk Country (a "Ceased High Risk Country"), in either case, as a consequence of the application of Macquarie's Policies and Procedures, Macquarie shall notify the Company of such New High-Risk Country or Ceased High Risk Country as soon as reasonably practicable upon becoming aware of any change in Macquarie's Policies and Procedures as a result of Macquarie making such determination. From the date of such notice, any Ceased High Risk Country shall no longer be treated as a High-Risk Country for the purposes of this Agreement and any New High-Risk Country shall be a High-Risk Country and any relevant Transaction Supplement (other than Transaction Supplement which has been accepted by Macquarie or an Affiliate and which shall continue in accordance with its terms) shall be deemed to have been withdrawn.

(ii) Jurisdictions

(A) Schedule W (Relevant Jurisdictions) sets out the jurisdictions and territories (each, a "Relevant Jurisdiction") in respect of which, as at the Restructuring Effective Date, Macquarie or any Affiliate may enter into a Macquarie Crude Procurement Contract or an Included Product Purchase Transaction and on which Incoterm basis.

(B) The Company may, from time to time, propose to Macquarie a list of potential additional jurisdictions (or proposed amendments to the geographical coverage of existing Relevant Jurisdictions) from which and on which Incoterms basis it anticipates Macquarie or an Affiliate may purchase Crude Oil or Product,

Macquarie shall promptly after receipt of such proposal from the Company, confirm to the Company whether Macquarie or an Affiliate may or may not enter into purchase contracts in accordance with Sections 5.2 or 8.1(b) in such jurisdictions and on such Incoterms basis. Upon confirmation of the same, Macquarie shall update Schedule W (Relevant Jurisdictions) as required to reflect any additional or updated Relevant Jurisdictions and Incoterm bases.

(C) Macquarie shall promptly notify the Company after the MENAT Operational Team becomes aware that Macquarie or an Affiliate will or may not be able to enter into a Macquarie Crude Procurement Contract or an Included Product Purchase Transaction in respect of a Relevant Jurisdiction on a pre-agreed Incoterms basis (including as a consequence of the application of Macquarie's Policies and Procedures). Promptly thereafter, the Parties shall consult in relation to the same to determine if there are consequential steps mutually agreeable to both Parties that might operate to alleviate the relevant issue such that Macquarie or the relevant Affiliate is able to enter into Macquarie Crude Procurement Contracts in respect of such Relevant Jurisdiction and Incoterms basis. Until and in the absence of agreement between the Parties in relation to the same, the relevant jurisdiction shall not be treated as being a Relevant Jurisdiction and any Transaction Supplement (other than a Transaction Supplement which has been accepted in accordance with Section 5.2(d) or Section 8.1(b) which shall continue in accordance with its terms) referencing such jurisdiction and Incoterms basis shall be deemed to have been withdrawn.

(f) Crude GTCs. Following the Restructuring Effective Date (but prior to the Company requesting that Macquarie enter into a Macquarie Crude Procurement Contract with a Third Party Supplier (other than the Permitted Supplier), the Parties will cooperate in good faith and in a commercially reasonable manner to agree the Crude GTCs upon which basis the Company wishes to purchase Crude Oil, which shall be specified in Schedule J (Crude GTCs and MENAT Required Terms). The Company may, from time to time, propose to Macquarie new Crude GTCs (or amendments to the existing Crude GTCs) on which basis the Company wishes Macquarie to purchase Crude Oil. Macquarie shall consider any such proposal in good faith and in a commercially reasonable manner and shall seek to accommodate each such proposal to the extent it is able to do so in accordance with Macquarie's Policies and Procedures and after taking into account the MENAT Required Terms, in addition to the other requirements set out in Section 5.2(d) above. Macquarie shall, as soon as reasonably practicable after receipt of such proposal from the Company, confirm to the Company whether Macquarie or an Affiliate may or may not enter into Macquarie Crude Procurement Contracts in accordance with Sections 5.2 on such proposed new terms. Upon confirmation of the same, Macquarie shall update Schedule J (Crude GTCs and MENAT Required Terms).

(g) Breach of Contractual Arrangements. Macquarie shall not be required to enter into a proposed Macquarie Crude Procurement Contract if entering into such proposed Macquarie Crude Procurement Contract would result in a breach of the Permitted Supplier's exclusive right to supply Crude Oil under the Shell Crude Supply Agreement unless:

- (i) the Shell Crude Supply Agreement has effectively terminated (whether by rejection, other order of the Bankruptcy Court, or otherwise); and
- (ii) the first delivery under the proposed Macquarie Crude Procurement Contract is scheduled to occur after the end of the last Delivery Month for which Macquarie has made a Positive Election (as defined in the Tripartite Crude Supply Agreement relating to the Shell Crude Supply Agreement).

(h) Policies and Procedures. In applying Macquarie's Policies and Procedures in connection with this Agreement and the other Transaction Documents, Macquarie will apply such Policies and Procedures in good faith, in a timely manner and in a non-discriminatory fashion.

5.3 Refinery Procured Crude Barrels.

(a) Macquarie Purchase of Refinery Procured Crude Barrels. Macquarie shall purchase all quantities of Crude Oil which the Company procures from a Third Party Supplier ("Refinery Procured Crude Barrels") which are consistent with the volumetric nominations in the applicable Monthly Crude Confirmation that has been accepted by Macquarie; provided that

Macquarie is satisfied that the following conditions are met and subject always to Section 5.2(g):

- (i) such Refinery Procured Crude Barrels are of such grade as Macquarie has approved (including any of the grades specified in the Shell Crude Supply ~~Contract~~Agreement);
- ~~(ii) the procurement of such Refinery Procured Crude Barrels by the Company does not breach and/or would not cause the Company or Macquarie to breach the terms of the Shell Crude Supply Agreement or the Tripartite Crude Supply Agreement;~~
- ~~(ii)~~ ~~(iii)~~ the quantities of Crude Oil comprising such Refinery Procured Crude Barrels do not exceed, and would not cause the Company to exceed, the maximum inventory level for Crude Oil set forth on Schedule D; and
- ~~(iii)~~ ~~(iv)~~ no Relevant Default has occurred and is continuing in respect of the Company and no Event of Default has occurred and is continuing under this Agreement.
- (b) Procedures and Mechanisms for Refinery Procured Crude Barrels. Prior to the delivery of any Refinery Procured Crude Barrels hereunder, the Parties shall establish procedures and mechanisms, reasonably satisfactory to Macquarie, for determining and reporting specific volumes of such Refinery Procured Crude Barrels.
- (c) Sales of Refinery Procured Crude Barrels. For sales by the Company to Macquarie, they shall be on DDP (Incoterms 2010) basis (or such other basis as may be agreed between the Parties) at Current Month Pricing Benchmark(s), subject to the calculation of the Monthly True-Up Amounts as provided for on SCHEDULE C, and title and risk of loss for each quantity of Crude Oil shall pass to Macquarie as the Crude Oil passes the applicable Crude Intake Point free of Liens other than Permitted S&O Liens. The Parties acknowledge that the consideration due from Macquarie to the Company for any Crude Oil shall be paid for in accordance with Article 11.
- (d) Sale of Refinery Procured Crude Barrels. For sales of Refinery Procured Crude Barrels by Macquarie to Company, title and risk of loss for each quantity of Crude Oil shall pass to Company on an "ex works" basis (EXW Incoterms ® 2010) as the Crude Oil passes the applicable Crude Delivery Point free of Liens, other than Permitted S&O Liens which are not Permitted Article 10 Liens. The Parties acknowledge that the consideration due from the Company to Macquarie for any Crude Oil shall be paid for in accordance with Article 11.
- (e) Company's Obligation to Refinery Procured Crude Barrels. The Company acknowledges and agrees that, subject to the terms and conditions of this Agreement, it is obligated to purchase and take delivery of Refinery Procured Crude Barrels acquired by Macquarie from the Company.

5.4 Sale of Crude Oil by Macquarie at Crude Delivery Points.

- (a) Sale of Crude Oil by Macquarie to the Company. Provided that (a) no Default pursuant to Section 20.1(a), ~~20.1(d) or~~ Section 20.1(e) or Section 20.1(u) of this Agreement has occurred and is continuing with respect to the Company (a "Relevant Default"); or (b) no Event of Default has occurred and is continuing:
 - (i) the Company shall be permitted to purchase Crude Oil from the Crude Storage Tanks and take delivery of such Crude Oil at the Crude Delivery Point in accordance with the Weekly Crude Projection and contracted for under ~~an accepted~~ a Monthly Crude Purchase Offer, or as otherwise mutually agreed to by the Parties. ~~The Parties acknowledge and agree that Macquarie is under no obligation to sell Crude Oil purchased by Macquarie pursuant to a Macquarie Crude Procurement Contract to the Company but, in any event, Macquarie is obliged to sell Crude Oil to the Company in accordance with the terms of any accepted Monthly Crude Purchase Offer.~~ The sale and receipt of any Crude Oil by Company at any Crude Delivery Point shall be on an "ex works" basis (EXW Incoterms 2010) free of liens, other than Permitted S&O Liens. Upon such sale, title and risk of loss will transfer to the Company. The Company shall take all commercially reasonable actions necessary to maintain a connection with the

Crude Storage Tanks to enable withdrawal and delivery of Crude Oil to be made as contemplated hereby; and

- (ii) the Company may, from time to time, notify Macquarie that it wishes to optimize the Crude Oil stored in the Crude Storage Tanks by purchasing Crude Oil from such Crude Storage Tanks and on-selling such Crude Oil to a third party. In such circumstances, the Company shall take delivery of such Crude Oil at a Crude Delivery Point for such purposes which, for the avoidance of doubt, shall be different to the Crude Delivery Point for purchases of Crude Oil by the Company from Macquarie pursuant to subparagraph (i) above. The terms for pricing and transfer of title and risk of loss for any such sale shall be as set forth in Sections 5.2(b) and 5.3(d); *provided, that*, on the date falling one Business Day prior to the relevant Delivery Date, the Company shall prepay to Macquarie an amount equal to the applicable Daily Price (determined by Macquarie as of the date falling two (2) Business Days prior to the relevant Delivery Date) for any volumes of Crude Oil which the Company purchases pursuant to this Section 5.4(a)(ii) prior to the withdrawal of such Crude Oil from the Included Storage Locations. Any such prepayment will be subject to the calculation of the Monthly True-Up Amounts as provided for on SCHEDULE C and shall be invoiced and otherwise payable by the Company in accordance with Article 11 of this Agreement. For the avoidance of doubt, any such prepaid volumes shall not be separately included in the calculation of Daily Crude Sales. Any such sales shall corresponding reduce the obligations of the Parties under the relevant Monthly Crude Purchase Offer.

(b) Included Crude Sales Transactions.

- (i) Notwithstanding anything to the contrary in this Agreement, the Company may from time to time propose to Macquarie that Macquarie enter into an Included Crude Sales Transaction with ~~a Customer~~ Third Party Offtaker on the Third Party Offtaker List. Any such proposal must specify an identified ~~Customer~~ Third Party Offtaker on the Third Party Offtaker List and trade terms, including price, quantity, delivery period(s), product grade or other material terms (a "Crude Sales Proposal"); *provided, that* the Company shall not have authority to bind Macquarie to, or enter into on Macquarie's behalf, any Included Sales Transactions and the Company shall not represent to any Person that it has such authority. Macquarie shall consider any such proposal to enter into an Included Crude Sales Transaction in good faith and in a commercially reasonable manner, but shall be under no obligation to enter into any such Included Crude Sale Transaction. Macquarie may, as a condition precedent to the entry into of any such Included Crude Sales Transaction, require in its sole and absolute discretion that (i) an additional fee is payable by the Company to Macquarie in relation to Included Crude Sales Transactions; and (ii) procedures and mechanisms for determining and reporting the quantities and grades of Crude Oil that are the subject of any Included Crude Sales Transaction are agreed between the Parties.
- (ii) If, and only if, the Company and Macquarie agree on the terms for a potential Included Crude Sales Transaction (each in their sole and absolute discretion), Macquarie shall use commercially reasonable efforts to promptly enter into a binding agreement with a potential Customer on pricing terms at least as favorable to the Company as those on which the Company proposed that Macquarie enter into such Included Crude Sales Transaction, as specified in the Crude Sales Proposal. In the event that Macquarie identifies and enters into such an agreement with a Customer, Macquarie shall promptly finalize and confirm such Included Crude Sales Transaction to the Company using its ordinary documentation and confirmation procedures. Macquarie shall use commercially reasonable efforts to obtain the relevant Customer's consent to Macquarie's disclosing the applicable trade documents for such Included Sales Transaction to the Company.
- (iii) Each of the Company and Macquarie acknowledges and agrees that the difference between the amount at which Macquarie sold the relevant quantity of Crude Oil to a Customer pursuant to an Included Crude Sales Transaction and the amount at which Macquarie would have sold such quantity of Crude Oil to the Company in accordance with the terms of Section 5.4(a)(i) of the Agreement shall form part of the calculation of the Monthly True-Up Amount.

- 5.5 Transportation, Storage and Delivery of Crude Oil. Macquarie shall have the exclusive right to inject (except for such injections by the Company otherwise contemplated in Section 11.3), store and withdraw Crude Oil in and from the Crude Storage Tanks as provided in and subject to the Storage Facilities Agreement or applicable Required Storage and Transportation Arrangement; provided, however, that the Company shall (i) bear sole responsibility for the physical transfer of Crude Oil to and from the Crude Storage Tanks and (ii) be permitted to withdraw, transfer and inject Crude Oil to facilitate the transactions contemplated by this Agreement and as otherwise permitted by the terms of the Storage Facilities Agreement and the other Transactions Documents.
- 5.6 Hydrocarbon Credit Support. In the event that the Company holds title to any Hydrocarbon Credit Support, the Company shall, (for the avoidance of doubt in construing Article 22) indemnify and hold harmless Macquarie, its Affiliates and their agents, representatives, contractors, employees, directors and officers, for all Liabilities directly or indirectly arising therefrom as and to the extent provided in Article 22 (and subject thereto in all respects) except to the extent such Liabilities are caused by or attributable to any of the matters for which Macquarie is indemnifying the Company pursuant to Article 22.
- 5.7 Contract Documentation, Confirmations and Conditions.
- Conditions to Macquarie Delivery of Crude. Macquarie's obligations to sell Crude Oil to the Company under this Agreement shall be subject to (i) all of the terms and conditions of the Macquarie Crude Procurement Contracts, (ii) the Company fulfilling its obligations to deliver Refinery Procured Crude Barrels (if any) to Macquarie and (iii) the condition precedent that no Relevant Default and/or no Event of Default has occurred and is continuing with respect to the Company.
- 5.8 DISCLAIMER OF WARRANTIES. EXCEPT FOR THE WARRANTY THAT (I) MACQUARIE SHALL HAVE AND CONVEY GOOD TITLE TO ALL CRUDE OIL OR PRODUCTS SOLD BY MACQUARIE TO COMPANY HEREUNDER; OR (II) THE COMPANY SHALL HAVE AND CONVEY GOOD TITLE TO ALL CRUDE OIL OR PRODUCTS SOLD TO MACQUARIE BY THE COMPANY HEREUNDER, IN EACH CASE, FREE AND CLEAR OF ALL LIENS, OTHER THAN PERMITTED S&O LIENS (WHICH, FOR CONVEYANCES TO THE COMPANY, ARE NOT PERMITTED ARTICLE 10 LIENS), NEITHER THE COMPANY NOR MACQUARIE, AS APPLICABLE, MAKES ANY WARRANTY, CONDITION OR OTHER REPRESENTATION, WRITTEN OR ORAL, EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS OR SUITABILITY OF SUCH CRUDE OIL OR PRODUCTS FOR ANY PARTICULAR PURPOSE OR OTHERWISE AND ALL SUCH WARRANTIES, CONDITIONS AND OTHER REPRESENTATIONS ARE HEREBY DISCLAIMED. FURTHER, MACQUARIE MAKES NO WARRANTY OR REPRESENTATION THAT SUCH CRUDE OIL OR PRODUCTS CONFORMS TO THE SPECIFICATIONS IDENTIFIED IN ANY CONTRACT WITH THE COMPANY OR ANY THIRD PARTY SUPPLIER.
- 5.9 Losses, Quality Claims and Claims Handling.
- (a) Responsibility for volume differences. Where a delivery of Crude Oil to Macquarie from a Third Party Supplier pursuant to a Macquarie Crude Procurement Contract prices based on load volume, the Company shall indemnify and hold Macquarie harmless against any losses, costs and damages incurred by Macquarie if the actual volume of Crude Oil delivered to the relevant Crude Intake Point is less than the supplier invoiced load volume, including, without limitation as a result of Macquarie adjusting, entering into or terminating or obtaining any Related Hedges; *provided that* the Company shall be under no obligation to indemnify and hold Macquarie harmless against any losses, costs and damages incurred by Macquarie if such losses, costs and damages were caused as a result of the gross negligence, willful misconduct or intentional default of Macquarie.
- (b) Responsibility for Specifications of Crude Oil. The failure of any Crude Oil or Product that Macquarie hereunder sells to the Company to meet the specifications or other quality requirements applicable thereto as stated in a Macquarie Crude Procurement Contract for that Crude Oil shall be for the sole account of the Company and shall not entitle the Company to any reduction in the amounts due by it to Macquarie hereunder; provided, however, that any claims made by Macquarie with respect to such non-conforming Crude Oil or Product shall be for the Company's account and resolved in accordance with this Section 5.9. The sale of any Crude Oil to the Company by Macquarie that does not meet the specifications or other quality requirements application thereto as specified in the relevant Macquarie Crude Procurement Contract for that Crude Oil shall not constitute a breach of this Agreement by Macquarie.

- (c) Coordination of Resolution of Disputes with Third Parties. The Parties shall consult with each other and coordinate how to handle and resolve any claims arising in the ordinary course of business (including claims related to Crude Oil, Products, pipeline, tank transfers, ocean transportation or Ancillary Costs and any dispute, claim, or controversy arising hereunder or under or in relation to any Transaction Document between Macquarie and any of its vendors or counterparties who supply goods or services in conjunction with Macquarie's performance of its obligations under this Agreement) made by or against Macquarie arising out of or in connection with the Transaction Documents or the transactions contemplated therein. In all instances wherein any such claims are made by a third party against Macquarie which, absent any gross negligence, willful misconduct or intentional default on the part of Macquarie, shall be for the account of the Company, the Company shall have the right, subject to Section 5.9(e), to either direct Macquarie to take commercially reasonable actions in the handling of such claims or assume the handling of such claims in the name of Macquarie, all at the Company's cost and expense; provided that Macquarie may require that the Company assume the handling of any such claim. To the extent that the Company believes that any claim should be made by Macquarie for the account of the Company against any third party (whether a Third Party Supplier, terminal facility, pipeline, storage facility or otherwise), and subject to Section 5.9(e), Macquarie shall take any commercially reasonable actions as requested by the Company either directly, or by allowing the Company to do so, to prosecute such claim all at the Company's cost and expense and all recoveries resulting from the prosecution of such claim shall be for the account of the Company.
- (d) Macquarie Involvement Resolution of Disputes with Third Parties. Macquarie shall, in a commercially reasonable manner, cooperate with the Company in prosecuting any such claim and shall be entitled to assist in the prosecution of such claim at the Company's expense, if the Company so requests. In the event that Macquarie assists in the prosecution of such claim not at the request of Company, such prosecution shall be at Macquarie's sole cost and expense. In no event may Macquarie settle any such claim without the Company's prior written consent, such consent not to be unreasonably conditioned, delayed or withheld. In the event that Macquarie has a claim or cause of action arising under any Macquarie Crude Procurement Contract that Macquarie declines to pursue or prosecute, then Macquarie shall, upon written request of the Company, to the extent possible through the use of commercially reasonable efforts either assign such claim or cause of action to the Company, or designate the Company as Macquarie's limited agent, so as to facilitate the Company's ability to pursue or prosecute such claim.
- (e) Disputes Subject to Indemnification Provisions. In addition, any claim that is or becomes subject to Article 22 shall be handled and resolved in accordance with the provisions of Article 22.
- (f) Disputes with a ~~Permitted~~Third Party Supplier: Macquarie shall be under no obligation to pay any amount to the Company in relation to any quantity, quality or other claim in relation to any Crude Oil or Product delivered to Refinery that is the subject of a Macquarie Crude Procurement Contract or an Included Product Purchase Transaction including, without limitation, in relation to any damage caused to the Refinery, the Refinery Facility, the Included Storage Locations or otherwise, except and to the extent only, that Macquarie has received the corresponding payment from the Permitted Supplier or Third Party Supplier or other third party with respect to such claim.
- (g) Intent of the Parties. The Parties acknowledge and agree that the excusal of Macquarie's performance under Sections 5.9(a), 5.9(b), and otherwise under this Agreement and the other Transaction Documents, is solely for purposes of allocating the respective rights, liabilities and obligations as between Macquarie and the Company and is not intended to excuse a default or limit the liability of any third party.
- 5.10 Communications Regarding Nominations and Deliveries. The Parties shall coordinate all nominations and deliveries according to the communications protocol on SCHEDULE I.
- 6 **PURCHASE PRICE FOR CRUDE OIL**
- 6.1 Daily Volumes. Each Business Day the Company shall provide to Macquarie meter tickets and/or meter readings, barge inspection report(s), and tank gauge readings confirming the Measured Crude Quantity for each of the Crude Storage Tanks for all Delivery Dates since the prior Business Day. The Company shall use commercially reasonable efforts to deliver such tickets, readings and other

information by 10:00 a.m. CT on the relevant Business Day (as applicable) but shall in any event deliver such tickets, readings and other information by no later than 12:00 pm CT on such day or Business Day.

- 6.2 Purchase Price for Crude Oil. The per Barrel purchase price for the Daily Crude Sales and Daily Crude Purchases shall equal the Current Month Pricing Benchmark specified for Crude Oil, subject to the calculation of the Monthly True-Up Amounts as provided for on SCHEDULE C, and Macquarie shall provide interim invoice statements (subject to the calculation of the Monthly True-Up Amount) to the Company during each month based on provisional prices (determined using the index price for the day plus the applicable Differential for such month) established in good faith by Macquarie for Barrels purchased.
- 6.3 Material Crude Grade Changes. If either the Company or Macquarie concludes in its reasonable judgment that the specifications (including specific gravity and sulfur content of the Crude Oil) of the Crude Oil procured, or projected to be procured, differ materially from the grades that have generally been run by the Refinery or such grades that the Company may run from time to time in accordance with Accepted Industry Practice, then the Company and Macquarie shall endeavor in good faith to mutually agree on (i) acceptable price indices for such Crude Oil, and (ii) a settlement payment from one Party to the other that is sufficient to compensate the relevant Party for the relative costs and benefits to each of the price differences between the prior price indices and the amended price indices.
- 6.4 Crude Purchase Adjustment. In respect of each ~~delivery of~~ commitment to deliver Macquarie Procurement Barrels to a Crude Intake Point pursuant to a Macquarie Crude Procurement Contract, Macquarie shall determine whether an amount is due by one Party to the other (a "Crude Purchase Adjustment") in accordance with the following terms and conditions:
- (a) Macquarie shall determine the quantity of Barrels of Crude Oil committed to be purchased and Macquarie shall provide interim invoice statements (subject to adjustment in accordance with the Crude Purchase Adjustment contemplated in this Section 6.4(b) and (c)) for a provisional amount equal to the product of (i) the applicable number of Barrels of Crude Oil committed to be delivered on that day; and (ii) the applicable Provisional Contract Price(s) on such the day of such committed delivery (a "Third Party Supplier Crude Purchase Amount"); ~~provided that, for delivery by vessel, a Third Party Supplier Crude Purchase Amount will not be calculated until the applicable cargo has fully discharged;~~
 - (b) If, (i) the Third Party Supplier Crude Purchase Amount exceeds the Index Crude Purchase Value, then the Crude Purchase Adjustment for that Crude Oil shall equal such excess and shall be due to Macquarie or (ii) the Index Crude Purchase Value exceeds the Third Party Supplier Crude Purchase Amount, then the Crude Purchase Adjustment for that Crude Oil shall equal such excess and shall be due to Company, in either case within two Business Days after the relevant commitment; and
 - (c) Once the final price is known for the relevant delivery of Crude Oil by a Third Party Supplier to Macquarie, a further true-up shall be determined and incorporated as a component of the ~~next~~ Monthly True-Up Amount in accordance with SCHEDULE C.

7 **TARGET INVENTORY LEVELS AND DIFFERENTIAL ADJUSTMENT**

- 7.1 Target Inventory Levels. Monthly inventory targets for Crude Oil and Products shall be set pursuant to this Article 7. Such monthly inventory targets for Crude Oil and Products shall (except in the case of Crude Cargo Rollover Barrels) be subject to the minimum and maximum inventory levels set forth in Schedule D for each Pricing Group, which minimum and maximum inventory levels shall be satisfied by the procurement and sale of Crude Oil and Products in accordance with the terms hereof. The Company represents and warrants that the respective Target Month End Crude Inventory Volumes and Target Month End Product Volumes that the Company sets for each month during the Term hereof shall be the Company's good faith estimate (which is not a guarantee of actual performance), at the time it sets such targets, of the Ending In-Tank Crude Inventory (and, as applicable, Crude Cargo Rollover Barrels) and the Ending In-Tank Product Inventory at the end of such month.

7.2 Target Month End Crude Inventory Volume.

- (a) Projected Monthly Run Volume. By no later than the twenty-fifth (25th) day of the month preceding each Delivery Month, the Company shall notify Macquarie of the aggregate quantity of Crude Oil that the Company expects to run at the Refinery during such Delivery Month (the "Projected Monthly Run Volume"). Macquarie shall have the right to reject any Projected Monthly Run Volume if it determines that either (i) such Projected Monthly Run Volume is not consistent with the terms of any Monthly Crude Purchase Offer ~~that has been accepted by Macquarie~~; and/or (ii) such Projected Monthly Run Volume is inconsistent with the quantities of Crude Oil expected to be stored in the Crude Storage Tanks on any day during the relevant Delivery Month, ~~after taking into account any quantities of Crude Oil that Macquarie has notified the Company that it intends to withdraw from the Crude Storage Tanks on or prior to such date in accordance with the terms of the Storage Facilities Agreement~~; *provided, however*, that in the event Macquarie does not reject a Projected Monthly Run Volume within one (1) Business Day of receipt, Macquarie shall be deemed to have accepted the same. If Macquarie elects to reject any Projected Monthly Run Volume, it shall, subject to confidentiality and compliance with its internal policies and procedures of general application and consistently applied, provide a reasonably detailed explanation for its rejection of such Projected Monthly Run Volume to the extent possible, but shall be under no obligation to disclose any information that Macquarie determines, in good faith and a commercially reasonable manner to be confidential or proprietary information. In the event that Macquarie timely rejects any Projected Monthly Run Volume, the Parties will meet not later than the following day to agree upon a mutually agreeable alternative to be used as the Projected Monthly Run Volume.
- (b) Constraints on Target Month End Crude Inventory Volume. In establishing a Target Month End Crude Inventory Volume, the Parties acknowledge that any increase in a Target Month End Crude Inventory Volume is constrained by the maximum inventory levels specified in Schedule D and the terms of any relevant Monthly Crude Purchase Offer ~~that has been accepted by Macquarie~~, and that such Target Month End Crude Inventory volumes may not exceed such limits for the applicable month without the prior written consent of Macquarie.
- (c) Adjustments to Target Month End Crude Inventory Volume. The Parties may, by mutual agreement, adjust the Target Month End Crude Inventory Volume for any month. Any change to a Target Month End Crude Inventory Volume shall affect only the subject month and does not impact the calculation of the Target Month End Crude Inventory Volume in subsequent months.

7.3 Target Month End Product Volume.

- (a) Target Month End Product Volume; Applicable Range. Subject to events of Force Majeure, facility turnarounds, the performance of any third parties (including purchasers of Products under Included Sales Transactions and offtakers pursuant to the Tripartite Product Offtake Agreements), the Company shall, in establishing each Target Month End Product Volume, use commercially reasonable efforts to cause such Target Month End Product Volume to be within the applicable range specified for such Product on Schedule D.
- (b) Changes to Target Month End Product Volume. At any time the Parties may, by mutual agreement, change such Target Month End Product Volume.

7.4 Differential Adjustments. Promptly following the twenty-fifth (25th) of each month (a "Scheduled Differential Adjustment Review Date") and, if Macquarie (in its sole and absolute discretion) considers (after taking into account the then prevailing market conditions) that a further review is required prior to the immediately succeeding Scheduled Differential Adjustment Review Date, on such other date as Macquarie may select for these purposes (an "Optional Differential Adjustment Review Date"), Macquarie shall review the data for such month and the immediately succeeding Delivery Month and determine in consultation with the Company, and in good faith and in a commercially reasonable manner, whether, based on such data, an adjustment to any of the Crude Oil or Product Differentials is appropriate so as to more closely approximate applicable market differentials for Crude Oil or Product during that month and shall communicate such determination to the Company; *provided that*, if Macquarie or the Company determines in its reasonable judgment that the data for such months does not provide a representative basis for such determination (due to anomalies, distortions or other factors identified by Macquarie), such party shall propose an adjustment to the applicable Crude Oil and/or Product Differentials. In the event that the Parties mutually agree to the proposed adjustments

to such Crude Oil and/or Product Differentials, such adjustments shall become effective (x) in respect of a Scheduled Differential Adjustment Review Date, commencing with the month immediately following such month in which such Scheduled Differential Adjustment Review Date occurred; and (y) in respect of an Optional Differential Adjustment Review Date, on the Business Day immediately following the date on which the Parties mutually agree to the proposed adjustments to the applicable Crude Oil or Product Differentials (in each case, in accordance with this Section 7.4); *provided, however*, that in the event that no such mutual agreement is made, the relevant Crude Oil and/or Product Differentials set forth on Schedule H will continue to apply. Macquarie shall deliver a revised SCHEDULE H to the Company reflecting any such amended Differentials;

7.5 Products Cover Costs.

- (a) If, for any month (or portion thereof), Macquarie reasonably determines that, as a result of the Company's failure to produce the quantities of Product projected under this Agreement, regardless of how caused (including any event of Force Majeure), Macquarie retains insufficient quantities of Product to comply with its obligations to any third parties under Included Sales Transactions, and Macquarie incurs any Products Cover Costs, then the Company shall be obliged to reimburse Macquarie for such Products Cover Costs; subject to any mitigation of such costs actually achieved by the Company.
- (b) If, for any month (or portion thereof), the Company reasonably determines that, solely as a result of the withdrawal of Product from an Included Product Tank by Macquarie (other than pursuant to Included Sales Transactions and/or sales to the Company), there are insufficient quantities of Product available to be sold to the Company by Macquarie pursuant to Section 8.2(b) below and the Company incurs any Product Cover Costs, then Macquarie shall be obliged to reimburse the Company for such Products Cover Costs.

7.6 Costs Related to Shortfall of Product.

- (a) To the extent that Macquarie is required to cover, pursuant to an Included Sales Transaction, any shortfall in any Product delivery, which shortfall arises as a result of the failure by the Company to produce, store or deliver when due such Product of the correct quality and quantity, using any inventory Macquarie owns and acquires separately from the inventory owned and maintained in connection with this Agreement, regardless of how caused (including any event of Force Majeure), any out of pocket cost or loss (excluding lost profits) incurred by Macquarie in connection therewith that is not otherwise included as a Products Cover Cost shall constitute an Ancillary Cost that is to be reimbursed to Macquarie.
- (b) To the extent that, as a result of the withdrawal of Product from an Included Product Tank by Macquarie, there is a shortfall in any Product to be sold to the Company by Macquarie pursuant to Section 8.2(b) below, any out of pocket cost or loss (excluding lost profits) incurred by the Company in connection therewith that is not otherwise included as a Products Cover Cost shall, notwithstanding anything to the contrary in this Agreement, constitute an Ancillary Cost that is to be reimbursed to the Company by Macquarie.

7.7 Excess Target Levels. No later than five (5) Business Days prior to the date on which the Company is obligated to establish the Target Month End Crude Inventory Volume or the Target Month End Product Volumes for any month, the Company may request that Macquarie agree to a level for any of the foregoing that, without taking into any account any Crude Cargo Rollover Barrels, exceeds that applicable maximum level set forth on Schedule D (an "Excess Inventory Level"); provided that such request may be for only such month or for a period of two (2) or more consecutive months starting with such month, as the Company shall specify in its request. If such request is made in a timely manner, Macquarie shall promptly review such request and advise the Company as to whether Macquarie accepts or rejects such Excess Inventory Level; provided that, Macquarie is under no obligation to accept any such request. If Macquarie accepts any request for an Excess Inventory Level, then for all purposes of this Agreement and in lieu of the relevant level set forth on Schedule D, such Excess Inventory Level shall constitute the maximum inventory level for the relevant Product Group for the period specified in such request; provided that, after such period, the applicable level set forth on Schedule D shall be in effect for purposes of this Agreement. If Macquarie rejects any such request, then the applicable level set forth on Schedule D shall continue in effect, unless otherwise expressly agreed by the Parties in writing.

7.8 Excess Inventory Levels.

- (a) Excess Quantity. If, at any time, either Party determines, with respect to any Product Group, that the aggregate quantity of such Product Group being held in the Included Storage Locations exceeds the maximum inventory level set forth on Schedule D for such Product Group in the Included Storage Locations (such excess, an "Excess Quantity"), such Party shall promptly notify the other Party of the existence and volume of such Excess Quantity. Within three (3) Business Days after such notice is given, Macquarie shall advise the Company as to whether Macquarie accepts such Excess Quantity (in which case Section 7.8(b) shall apply) or rejects such Excess Quantity (in which case Section 7.8(c) shall apply).
- (b) Response for Excess Quantity. If, and as of the day that, Macquarie accepts an Excess Quantity then:
 - (i) for all purposes of this Agreement, the Excess Inventory Level for the relevant Product Group for the Included Storage Locations shall be increased by such Excess Quantity for the balance of the month in which such Excess Quantity was first identified and, at Macquarie's option, for such additional month or months as Macquarie may specify; provided that if Macquarie does not accept such Excess Quantity for any additional month or months, such Excess Inventory Level shall only be in effect for the then current month and if the maximum inventory level is exceeded after the end of such current month, the provisions of this Section 7.8 shall apply anew as of the beginning the following month; and
 - (ii) the provisions of this Agreement relating to the purchase and sale of Product (including, without limitation, Article 8 below) shall apply as if such quantity of Product did not constitute Excess Quantity.
- (c) Deferred Payment for Excess Quantity. If Macquarie rejects an Excess Quantity then, Macquarie shall purchase such Excess Quantity of Product from the Company on deferred payment terms and, accordingly, the provisions of Article 8 below shall not apply and no Monthly True-Up Amount shall be calculated in respect of such Excess Quantity. Instead, on (i) the date on which such Excess Quantity of Product is sold to the Company in accordance with the Weekly Product Projections, Macquarie shall pay to the Company an amount equal to the amount payable for the purchase of such Excess Quantity of Product by the Company, as determined in accordance with the terms of this Agreement; and (ii) the second Business Day following the date on which Excess Quantity of Product is sold to an offtaker in accordance with the terms of the relevant Tripartite Product Offtake Agreement, Macquarie shall pay to the Company an amount equal to the amount payable for the purpose of such Excess Quantity by the relevant offtaker, as determined in accordance with the terms of the relevant Tripartite Product Offtake Agreement. For the purposes of determining when any Excess Quantity of Product is sold, such Excess Quantity shall be deemed to have been withdrawn from the Included Product Tanks first.

8 PURCHASE AND DELIVERY OF PRODUCTS

8.1 Purchase and Sale of Products.

- (a) Macquarie Purchase of Products. From (and including) the Commencement Date through to (and including) the last day of the Term, the Company agrees to offer to sell and deliver to Macquarie, the entire Products output of the Refinery (excluding Eligible Lien Products). ~~Macquarie has accepted (or is deemed to have accepted) In respect of~~ a Monthly Product Estimate ~~delivered to it pursuant to Section 8.3 below, then~~ and a Month, Macquarie shall purchase and receive from the Company the entire Products output of the Refinery (excluding the Eligible Lien Products) during the Month in respect of which the Monthly Product Estimate relates, irrespective of whether or not such Products output is consistent with that Monthly Product Estimate.
- (b) Included Product Purchase Transaction.
 - (i) From time to time, the Company may ~~propose~~ notify Macquarie of one or more quantities of Product of a particular Product Group that is available from an identified Product Supplier and request that Macquarie enter into an Included Product Purchase Transaction with ~~an~~ such identified Product Supplier ~~or on certain specified trade terms, such as price, quantity, delivery period(s), product grade or any other material term(s) by providing Macquarie with a transaction supplement in substantially the relevant form~~

included in Schedule L (Form of Transaction Supplement) (a "Product Purchase Proposal"). ~~Macquarie may, in its sole and absolute discretion, reject a~~Each Product Purchase Proposal ~~from the Company.~~

~~(ii) If, and only if, the Company and Macquarie agree on the terms for a potential Included Product Purchase Transaction, Macquarie shall use commercially reasonable efforts to promptly enter into a binding agreement with a potential Product Supplier on terms which, unless otherwise agreed by the Company, are at least as favorable to the Company as those specified by the Company in the relevant Product Purchase Proposal, to the extent such terms were accepted by Macquarie. In the event that Macquarie enters into an Included Product Purchase Transaction in accordance with the foregoing procedures, Macquarie shall promptly confirm such Included Product Purchase Transaction and its key trade terms to the Company using Macquarie's ordinary documentation and confirmation procedures. Macquarie shall use commercially reasonable efforts to obtain the consent of each Product Supplier party to an Included Product Purchase Transaction to Macquarie's disclosing the applicable trade documents for such Included Product Purchase Transaction to the Company and, if required and so provided, shall share such documents with the Company.~~

(A) shall comply with all applicable Sanctions Laws and other Applicable Laws relating to the control of export and contract;

(B) shall relate to a proposed contract with a Product Supplier included on the Third Party Supplier List;

(I) on open credit terms, unless otherwise agreed with Macquarie in its sole discretion (in which case, without duplication, any costs or expenses incurred by Macquarie in connection with the provision and maintenance of such credit support or collateral shall be deemed to be Ancillary Costs for which the Company is required to indemnify Macquarie); and

(II) which are on contract terms with the relevant Product Supplier that are acceptable to Macquarie;

(C) shall provide for each cargo of Product to be supplied on a customs-cleared basis where the original Product Supplier shall arrange and pay for export documentation and costs;

(D) shall include full charterparty options for discharge and with diversions at charterparty cost, with access to vessel and charterparty data;

(E) when such volume of Product is expected to be purchased by the Company from Macquarie; and

(F) is consistent with the terms set out in Schedule W (Relevant Jurisdictions).

(ii) The Company shall use commercially reasonable efforts to:

(A) separately provide to Macquarie and the relevant Product Supplier a draft trade recap in respect of each Product Purchase Proposal; and

(B) negotiate and agree the terms of any proposed Included Product Purchase Transaction with a Product Supplier in principle prior to delivering a Product Purchase Proposal and the corresponding draft trade recap to Macquarie by:

(1) agreeing to terms with the relevant Product Supplier to permit Macquarie to disclose the resultant Included Product Purchase Transaction and related information to the Company; and

(2) to the extent that the Company is aware of such MENAT Required Terms, ensuring that the relevant Included Product Purchase Transaction to be entered into with a relevant Product Supplier contains the MENAT Required Terms (unless: (i) Macquarie or the relevant Affiliate has

otherwise consented explicitly in writing to any specific amendments thereto; or (ii) Macquarie has notified the Company that Macquarie or the relevant Affiliate has previously agreed terms of sale with such Product Supplier which contain alternative sanctions and anti-corruption provisions, in which case such alternative provisions shall apply in respect of the Included Product Purchase Transaction).

in each case, at the same time as its delivery of the relevant Product Purchase Proposal.

- (iii) Macquarie will consider any request to enter into an Included Product Purchase Transaction in good faith and in a commercially reasonable manner and will seek to accommodate such request to the extent it is able to do so in accordance with Macquarie's Policies and Procedures but subject always to the requirements set out below. The Company and Macquarie acknowledge and agree that (x) Macquarie shall be under no obligation to enter into an Included Product Purchase Transaction unless Macquarie determines, in good faith and in a commercially reasonable manner, that the Commitment Requirements are met in relation to any request to enter into a Included Product Purchase Transaction and accordingly, Macquarie may reject a request to enter into an Included Product Purchase Transaction if it determines, in good faith and in a commercially reasonable manner, that such Commitment Requirements are not met in relation to that Included Product Purchase Transaction; (y) the entry into each Included Product Purchase Transaction shall constitute an extension of credit and a "financial accommodation" to or for the benefit of the Company within the meaning of Section 365(c)(2) and 365(e)(2) of the Bankruptcy Code; and (z) if Macquarie determines that the Commitment Requirements are met in relation to a request to enter into an Included Product Purchase Transaction, the provisions of this Section 8.1(b) shall apply.
- (iv) Macquarie shall as soon as is reasonably practicable and in any event within two (2) Business Days of receipt of a Product Purchase Proposal pursuant to Section 8.1(b)(ii)(A) above, notify the Company and the relevant Product Supplier whether or not Macquarie is willing and able to enter into the proposed Included Product Purchase Transaction on the terms set out in the relevant trade recap (provided that if the Company indicates together with the relevant Product Purchase Proposal that greater urgency is required setting out a target time for response then Macquarie shall use commercially reasonable efforts to respond by the target time so notified) and shall advise (x) the Company whether any amendments are required to the terms of the Product Purchase Proposal; and (y) the Company and the relevant Product Supplier whether any amendments are required to the relevant trade recap and corresponding Included Product Purchase Transaction, in each case, in order to incorporate all MENAT Required Terms. Issues in respect of which Macquarie may determine that it or an Affiliate is unable to enter into the contract include (1) the application of Macquarie's Policies and Procedures; (2) that such trade recap and corresponding Product Purchase Proposal do not contain (in form and substance satisfactory to Macquarie) the inclusion of the MENAT Required Terms; or (3) Macquarie determines, in good faith and in a commercially reasonable manner that the Commitment Requirements are not met with respect to such Product Purchase Proposal. If Macquarie determines that it or an Affiliate is unwilling or unable to enter into the contract, Macquarie shall, subject to confidentiality and compliance with its internal policies and procedures of general application and consistently applied, provide a reasonably detailed explanation for its rejection of such Product Purchase Proposal and corresponding Included Product Purchase Transaction, to the extent possible but shall be under no obligation to disclose any information that Macquarie determines, in good faith and in a commercially reasonable manner, to be confidential or proprietary information and Macquarie and the Company shall consult in relation to the same to determine if there are consequential steps mutually agreeable to both such Parties that might operate to alleviate the relevant issue such that Macquarie is able to enter into the relevant contract.
- (v) If Macquarie notifies the Company pursuant to Section 8.1(b)(iii) that, subject to the terms of any Included Product Purchase Transaction being in form and substance acceptable to Macquarie (as determined in accordance with the requirements set out herein), it or an Affiliate is willing and able to enter into an Included Product Purchase Transaction to purchase the relevant quantity of Product on the terms set out in the Product Purchase Proposal, then the following process shall be followed with a view to

completing all steps set out in sub-paragraphs (A) to (C) below, to the extent possible, within two (2) Business Days of receipt of the original Product Purchase Proposal delivered to Macquarie pursuant to Section 8.1(b)(i) above (provided that if the Company indicates together with the relevant Product Purchase Proposal that greater urgency is required setting out a target time for response then Macquarie shall use reasonable endeavors to respond by the target time so notified);

(A) if Macquarie has advised the Company and the relevant Product Supplier that amendments are required to the terms of the proposed Included Product Purchase Transaction in order to incorporate all MENAT Required Terms, Macquarie and the Company shall negotiate the terms of any such Included Product Purchase Transaction with the Product Supplier to ensure that the Included Product Purchase Transaction contains the MENAT Required Terms (unless: (i) Macquarie has otherwise consented explicitly in writing to any specific amendments thereto; or (ii) Macquarie has notified the Company that Macquarie has previously agreed terms of sale with such Product Supplier which contain alternative sanctions and anti-corruption provisions, in which case such alternative provisions shall apply in respect of the Included Product Purchase Transaction);

(B) once Macquarie, the Company and the Product Supplier have agreed the terms of the relevant trade recap, the Company shall amend the corresponding Product Purchase Proposal relating to that trade recap as soon as reasonably practicable thereafter to reflect the amendments made to the trade recap by Macquarie, the Company and the Product Supplier (such revised Transaction Supplement, the "Amended Product Purchase Proposal") and shall deliver the Amended Product Purchase Proposal to Macquarie;

(C) promptly following receipt of the Amended Product Purchase Proposal, Macquarie shall confirm to the Company whether it or an Affiliate is willing and able to enter into an Included Product Purchase Transaction with the relevant Product Supplier to purchase the relevant quantity of Product on the terms set out in such Amended Product Purchase Proposal; and

(D) if Macquarie has notified the Company that it or an Affiliate is willing and able to enter into an Included Product Purchase Transaction on the terms set out in the relevant trade recap and Amended Product Purchase Proposal, Macquarie or the relevant Affiliate, as applicable, shall use commercially reasonable endeavors to enter into such Included Product Purchase Transaction with the Product Supplier for the purchase of the relevant quantity of Product (on the terms negotiated between Macquarie, the Company and the Product Supplier), provided that the quantities and specification of Product specified in the relevant Product Purchase Proposal remains available for purchase on the market under those same terms (or similar terms acceptable to the Company and Macquarie);

(vi) Macquarie shall notify the Company promptly after entering into any Included Product Purchase Transaction pursuant to Section 8.1(b)(v)(D) (and, in any event, no later than one (1) Business Day after entering into the relevant Included Product Purchase Transaction);

(vii) If Macquarie notifies the Company that it is unwilling or unable to enter into the relevant Included Product Purchase Transaction with a Product Supplier, the Company may instead purchase the relevant quantities and specification of Product specified in the relevant Product Purchase Proposal from the relevant Product Supplier and sell such quantities of Product to Macquarie in accordance with Section 8.1(c) below.

(c) Refinery Procured Product Barrels. No later than the fifteenth (15th) day of the month preceding a Delivery Month, the Company shall inform Macquarie whether the Company intends to purchase any Product (other than any Eligible Lien Product) that is being procured under a Refinery Product Contract for delivery during such Delivery Month ("Refinery Procured Product Barrels") (such notification, a "Refinery Procured Product Notification"). In connection with each such quantity of Refinery Procured Product Barrels, the Company shall provide to Macquarie a transaction supplement in substantially the form annexed hereto as Schedule L (Form of Transaction Supplement) stating the known or estimated quantity, grade and delivery

terms of such Refinery Procured Product Barrels expected to be delivered to the Included Product Tanks or such other Included Product Location designated by the Company. Macquarie shall consider any such notification in its sole and absolute discretion and, subject to Section 5.2(g), shall notify the Company whether it is willing and able to purchase such Refinery Procured Product Barrels from the Company during such Delivery Month. Macquarie shall be under no obligation to consider any such Refinery Procured Product Notification unless it is satisfied that (i) no Relevant Default or Event of Default with respect to the Company has occurred and is then continuing; (ii) such Refinery Procured Product Barrels are of such grades as Macquarie has approved (including any of the grades specified in any Tripartite Products Offtake Agreement), would fall within an existing Product Group, and such quantity upon delivery does not exceed the maximum inventory level for such Products set forth on Schedule D; and (iii) the purchase by the Company of such Refinery Procured Product Barrels does not and would not cause the Company to breach the terms of any Intermediated Product Offtake Contract. If Macquarie accepts a Refinery Procured Product Notification, Macquarie shall purchase such quantity from the Company on a “DDP” (Incoterms 2010) basis (or such other basis as may be agreed between the Parties) at Current Month Pricing Benchmark(s), subject to the calculation of the Monthly True-Up Amounts as provided for in SCHEDULE C, and title and risk of loss for such quantity shall pass to Macquarie as and when it passes the Products Intake Point free of Liens (other than Permitted S&O Liens). If any change occurs in the quantity, grade or delivery terms of the Refinery Procured Product Barrels that the Company expects to procure for delivery during such month, the Company shall promptly advise Macquarie of such change. The Parties acknowledge that the consideration due from Macquarie to the Company for any Refinery Procured Product Barrels shall be paid for in accordance with Article 11.

8.2 Sale and Purchase of Products.

- (a) Sale of Products from the Company to Macquarie. Unless otherwise agreed by Macquarie, all Products output of the Refinery (other than Eligible Lien Products) that Macquarie has agreed to purchase pursuant to Section 8.1(a) above shall be delivered and sold by the Company to Macquarie at the Products Intake Point of the Included Product Tanks on a DDP (Incoterms 2010) basis (or such other basis as may be agreed between the Parties) at the Current Month Pricing Benchmark(s), subject to the calculation of the Monthly True-Up Amounts as provided for in SCHEDULE C, free and clear of all Liens (other than Permitted S&O Liens), with the Company being responsible for ensuring transportation and delivery of such Product into the Included Product Tanks. Title and risk for loss shall transfer from the Company to Macquarie at the time of such sale.
- (b) Sale of Products by Macquarie to the Company. Provided no Relevant Default and/or Event of Default has occurred and is continuing, the Company shall be permitted to purchase Products from the Included Product Tanks and take delivery of such Products at any Products Delivery Point in accordance with ~~any accepted~~ Weekly Products Projection, or as otherwise mutually agreed to by the Parties. ~~Though not obligated to do so,~~ Macquarie shall, absent a Relevant Default or an Event of Default, use commercially reasonable efforts to sell Products to the Company before selling to another Person. The sale and delivery of any Products by Macquarie at the Products Delivery Point shall be on an “ex works” basis (EXW Incoterms 2010) at the Current Month Pricing Benchmark(s), subject to the calculation of the Monthly True-Up Amounts as provided for in SCHEDULE C, and free of Liens, other than Permitted S&O Liens which are not Permitted Article 10 Liens. Title and risk of loss for such Products shall pass to the Company as such Products pass the applicable Products Delivery Point. The Company shall bear sole responsibility for the withdrawal of Products from the Included Product Tanks. The Company shall take all commercially reasonable actions necessary to maintain a connection with the Included Product Tanks to enable withdrawal and delivery of Products to be made as contemplated hereby.
- (c) Sale of Products by Macquarie to Third Party. Macquarie shall not be required to enter into any transactions involving the sale of Products to any third party other than ~~an off-taker~~ Third Party Offtaker included on the Third Party Offtaker List pursuant to a Tripartite Product Offtake Agreement (to the extent that such Included Sales Transaction is a term contract as opposed to a spot contract). Notwithstanding the foregoing the Company may from time to time propose to Macquarie that Macquarie enter into an Included Sales Transaction, which proposal must specify an ~~identified Customer~~ Third Party Offtaker included on the Third Party Offtaker List and trade terms, including price, quantity, delivery period(s), product grade or other material terms (a “Third Party Product Sales Proposal”); *provided, that* the Company shall not have

authority to bind Macquarie to, or enter into on Macquarie's behalf, any Included Sales Transactions and the Company shall not represent to any Person that it has such authority. Macquarie shall consider any Third Party Product Sales Proposal in good faith and in a commercially reasonable manner and shall seek to accommodate any such Third Party Product Sales Proposal to the extent it is able to do so in accordance with Macquarie's Policies and Procedures.

- (d) If, and only if, the Company and Macquarie agree on the terms for a potential Included Sales Transaction (each in their sole and absolute discretion). Macquarie shall use commercially reasonable efforts to promptly enter into a binding agreement with a potential ~~Customer~~Third Party Offtaker on pricing terms at least as favorable to the Company as those specified in the Third Party Product Sales Proposal, to the extent such terms were accepted by Macquarie. In the event that Macquarie identifies and enters into such an agreement with a ~~Customer~~Third Party Offtaker, Macquarie shall promptly finalize and confirm such Included Sales Transaction to the Company using its ordinary documentation and confirmation procedures. Macquarie shall use commercially reasonable efforts to obtain the consent of each ~~Customer~~Third Party Offtaker party to an Included Sales Transaction to Macquarie's disclosing the applicable trade documents for such Included Sales Transaction to the Company. In addition, to the extent it is not prohibited from doing so, Macquarie shall endeavor to keep the Company apprised of, and consult with the Company regarding, the terms and conditions being incorporated into any Included Sales Transaction under negotiation with a customer. Macquarie shall notify the Company promptly after entering into any such Included Sales Transaction (and, in any event, no later than one (1) Business Day after entering into the relevant Included Sales Transaction).

8.3 Expected Yield and Estimated Output; Weekly Products Projection.

(a) Estimated Yield.

- (i) From time to time, based on its then current operating forecast for the Refinery, the Company may provide to Macquarie a revised expected Product yield for the Refinery (each, a "Revised Estimated Yield" and, together with the Initial Estimated Yield, an "Estimated Yield").
- (ii) By no later than the last Business Day of each month, the Company shall deliver to Macquarie, its expected Product yield for the Refinery for the next three calendar months (the "90-day Product Yield").

(b) Monthly Product Estimate.

- (i) No later than the twenty-fifth (25th) day of the month preceding a Delivery Month, the Company shall, based on the then current Estimated Yield and such other operating factors as it deems relevant, prepare and provide to Macquarie an estimate in the form of SCHEDULE T of the Product quantities it expects to deliver to Macquarie during such month (each, a "Monthly Product Estimate").
- (ii) Macquarie shall have the right to reject any Monthly Product Estimate only if it determines that (i) a Relevant Default has occurred and is continuing in respect of the Company and/or an Event of Default has occurred and is continuing; or (ii) such Monthly Product Estimate is not consistent with the terms of any relevant Monthly Crude Purchase Offer ~~that Macquarie has accepted~~; *provided, however*, that in the event Macquarie does not reject the same within one (1) Business Day after receiving the Monthly Product Estimate, Macquarie shall be deemed to have accepted the same. In the event Macquarie timely rejects any Monthly Product Estimate, the Parties will meet not later than the following day to seek to agree upon a mutually agreeable alternative.

- (c) Weekly Product Projection. No later than 5:00 p.m., CT on Thursday of each week, the Company shall provide Macquarie with a written summary in the form of Schedule S of the Company's projected Product purchases from Macquarie at the Included Product Tanks for the next immediately succeeding Projection Week (each, a "Weekly Product Projection"). Macquarie shall have the right to reject any Weekly Product Projection only if it determines that (i) a Relevant Default has occurred and is continuing in respect of the Company and/or an Event of Default has occurred and is continuing; or (ii) such Weekly Product Projection is not consistent with the quantities of Product expected to be stored in the Included Product Tanks on any day during the relevant Delivery Month, ~~after taking into account any quantities~~

~~of Product that Macquarie has notified the Company that it intends to withdraw from the Included Product Tanks on or prior to such date in accordance with the terms of the Storage Facilities Agreement.~~ In the event Macquarie does not reject a Weekly Product Projection by 5:00 pm CT on the next succeeding Friday, Macquarie shall be deemed to have accepted the same. In the event Macquarie timely rejects any Weekly Product Projection, the Parties will meet not later than the following day to seek to agree upon a mutually agreeable alternative.

8.4 Delivered Quantities.

- (a) Readings. For each Delivery Date, the Company shall provide to Macquarie meter tickets and/or meter readings and tank gauge readings confirming the Measured Product Quantity in each Included Product Tank for each Product delivered during that Delivery Date and other such relevant information including but not limited to Product identifiers and the location of Products, aggregated on a Product Group basis. The Company shall use commercially reasonable efforts to deliver such meter tickets and/or meter readings and tank gauge readings, by no later than 10:00 a.m. CT on the first Business Day following such Delivery Date but shall in any event deliver such meter tickets and/or meter readings and tank gauge readings by no later than 12:00 pm CT on such Business Day.
- (b) Correction of Readings. If the Company determines that any meter tickets and/or meter readings and tank gauge readings provided pursuant to clause (a) above are inaccurate, the Company shall provide to Macquarie such corrected meter tickets and/or meter readings and tank gauge readings by no later than 10:00 a.m. CT on the third (3rd) Business Day following the date on which such determination is made.

8.5 Product Specifications. The Company agrees that all Products sold to Macquarie hereunder shall conform to the respective specifications set forth on SCHEDULE B or to such other specifications as are from time to time agreed upon by the Parties, provided that Products that do not conform to specifications shall be subject to mutual agreement between the Parties, each acting in good faith and in a commercially reasonable manner, as to a product differential to reflect such difference in values. The sale of any Products by the Company to Macquarie that do not conform to the respective specifications set forth on SCHEDULE B or to such other specifications as are from time to time agreed upon by the Parties shall not constitute an Event of Default in respect of the Company.

8.6 Purchase Price of Products. The per Barrel purchase price for the Daily Product Sales and Daily Product Purchases for each type of Product Group bought or sold hereunder shall equal the Current Month Pricing Benchmark specified for such Product Group, subject to the calculation of the Monthly True-Up Amount provided for on SCHEDULE C.

8.7 Storage of Products. Macquarie shall have the exclusive right (to the extent that such exclusive right can be granted, and except to the extent otherwise expressly contemplated in Section 7.8) to inject into, store in and withdraw Products from the Included Product Tanks as provided under the Storage Facilities Agreement and, if hereafter entered into, any Required Storage and Transportation Arrangements; provided, however, that the Company shall be permitted to withdraw, transfer and inject Products to facilitate the transactions contemplated by this Agreement and as otherwise permitted by the terms of the Storage Facilities Agreement and the other Transactions Documents.

8.8 Material Product Grade Changes. If either the Company or Macquarie concludes in its reasonable judgment that the specifications or the mix of the constituents of a Pricing Group produced, or projected to be produced, differ materially from those that have generally been produced by the Refinery or those that the Company may produce from time to time in accordance with Accepted Industry Practice, then the Company and Macquarie shall endeavor in good faith to mutually agree on (i) acceptable price indices for such Product, and (ii) a settlement payment from one Party to the other sufficient to compensate the relevant Party for the relative costs and benefits to each of the price differences between the prior price indices and the amended price indices.

8.9 Product Purchase and Product Sale Adjustments.

- (a) Product Sale Adjustment. For each day during the Term and for each Product Group, Macquarie shall determine whether an amount is due by one Party to the other in relation to Included Sales Transactions in accordance with the following terms and conditions:
 - (i) In respect of each Product Group and all related Included Sales Transactions entered into on that day, Macquarie shall provide interim invoice statements to the Company

during each day for a provisional amount equal to the aggregate sum of the products in relation to each relevant Included Sales Transactions of (A) the quantity of Barrels of such Product Group sold pursuant to such Included Sales Transaction on such day; and (B) the applicable Provisional Contract Price (such aggregate sum, the "Aggregate Product Sale Amount");

- (ii) If, for any Product Group and relevant day, (i) the Aggregate Product Sale Amount exceeds the Index Product Sale Value, then the Product Sale Adjustment for that Product Group shall equal such excess and shall be due to the Company or (ii) the Index Product Sale Value exceeds the Aggregate Product Sale Amount, then the "Product Sale Adjustment" for that Product Group shall equal such excess and shall be due to Macquarie, in each case within two Business Days; and
 - (iii) Once the final price is known for the relevant delivery of Product by Macquarie to a Customer, a further true-up shall be determined and incorporated as a component of the next Monthly True-Up Amount in accordance with SCHEDULE C.
- (b) Product Purchase Adjustment. For each day during the Term and for each Product Group, Macquarie shall determine whether an amount is due by one Party to the other in relation to Included Product Purchase Transaction in accordance with the following terms and conditions:
- (i) In respect of each Product Group and all related Included Product Purchase Transactions entered into on a day, Macquarie shall provide interim invoice statements to the Company during each day for a provisional amount equal to the aggregate sum of the products in relation to each Included Product Purchase Transaction of (A) the quantity of Barrels of such Product Group purchased by Macquarie pursuant to such Included Product Purchase Transaction; and (B) the applicable Provisional Contract Price (such amount being, the "Aggregate Product Purchase Amount" in respect of that day);
 - (ii) If, for any Product Group and day, (i) the Aggregate Product Purchase Amounts exceeds the Index Product Purchase Value, then the Product Purchase Adjustment for that Product Group shall equal such excess and shall be due to Macquarie or (ii) the Index Product Purchase Value exceeds the Aggregate Product Purchase Amounts, then the "Product Purchase Adjustment" for that Product Group shall equal such excess and shall be due to the Company, in each case within two Business Day; and
 - (iii) Once the final price is known for the relevant purchase of Product by Macquarie from a Products Supplier, a further true-up shall be determined and incorporated as a component of the next Monthly True-Up Amount in accordance with SCHEDULE C.
- 8.10 Upon reasonable request by the Company, Macquarie shall provide such information from Macquarie's settlement model as the Company may reasonably request regarding the accounting for and settlement of transactions, movements and other costs and amounts under the Transaction Documents.

9 **ANCILLARY COSTS AND MONTH END INVENTORY**

9.1 Ancillary Costs.

- (a) The Parties agree that, to the maximum extent reasonably practicable, the Company shall pay directly any item that would constitute an Ancillary Cost.
- (b) Without limiting the foregoing, the Company agrees to reimburse Macquarie for all Ancillary Costs incurred by Macquarie. Such reimbursement shall occur from time to time upon demand of Macquarie to the Company and shall be invoiced to the Company in accordance with Article 11 below. When making such demand, Macquarie shall promptly provide the Company with copies of any relevant trade tickets, invoices or other supporting documentation for Ancillary Costs incurred by Macquarie and shall consult with the Company, in good faith and in a commercially reasonable manner to the extent that any such Ancillary Costs are disputed or relate to a claim that has been made against Macquarie prior to settling any such Ancillary Costs.

- (c) To the extent the Company has not paid or reimbursed Macquarie for any Ancillary Costs then outstanding and payable with respect to any month or any adjustments or refunds have occurred with respect to any Ancillary Costs previously paid or reimbursed, Macquarie may include in the Monthly True-Up Amount for such month as a separate line item on the applicable Monthly True-Up Amount invoice an amount to compensate the Parties, as appropriate, for such items.
- (d) From time to time upon the reasonable request of either Party, the Parties shall consult to assess whether (i) Ancillary Costs actually being incurred are consistent with the expectations of the Parties and the terms of this Agreement, (ii) procedures for paying, handling or otherwise dealing with Ancillary Costs can be improved or should be modified, (iii) documentation relating to substantiation of Ancillary Costs is sufficient and (iv) in any other respect the processing of Ancillary Costs hereunder can or improved or modified.

9.2 Month End Inventory.

(a) Ending Inventory.

- (i) On the first Business Day of any Delivery Month, the Company, using Best Available Inventory Data, provided that if such inventory data is not available, using the last day for which such data is available, shall report to Macquarie the following: (i) the aggregate volume of Crude Oil held in the Crude Storage Tanks at that time (the "Ending In-Tank Crude Inventory"), (ii) for each Product, the aggregate volume of such Product held in the Included Product Locations at that time (each, an "Ending In-Tank Product Inventory"), and (iii) for each Product, the aggregate volume of such Product held in the Company Storage Locations at that time (each, an "Ending Company Product Inventory"). The Company shall use commercially reasonable efforts to deliver the Ending In-Tank Crude Inventory, the Ending In-Tank Product Inventory, and the Ending Company Product Inventory by 10:00 a.m. CT on the relevant Business Day, but shall in any event deliver the same by no later than 12:00 pm CT on such Business Day.
- (ii) As of 11:59 p.m., CT, on the last day of each month, the Company shall apply the Volume Determination Procedures to the Included Storage Locations, and Company Storage Locations and based thereon shall determine for such month (i) the aggregate volume of Crude Oil held in the Included Storage Locations at that time, (ii) for each Product, the aggregate volume of such Product held in the Included Product Locations at that time and (iii) for each Product, the aggregate volume of such Product held in the Company Storage Locations at that time. The Company shall notify Macquarie of such volumes by no later than 5:00 p.m., CT on the fifth Business Day thereafter, except that with respect to volume information provided by third parties, the Company shall endeavor to cause third parties to provide such information to Macquarie by the fifteenth (15th) day after the end of such month.

- (b) Inspection of Volume Determination Procedures. Macquarie may, or may have Macquarie's Inspector, at Macquarie's sole cost and expense, witness all or any aspects of the Refinery Facilities or any Included Storage Location or Company Storage Location as Macquarie shall direct. If, in the reasonable judgment of Macquarie or Macquarie's Inspector, the Volume Determination Procedures have not been applied correctly, then the Company shall cooperate with Macquarie, or Macquarie's Inspector, to ensure the correct application of the Volume Determination Procedures, including making such revisions to the Ending In-Tank Crude Inventory, any Ending In-Tank Product Inventory and any Ending Company Product Inventory as may be necessary to correct any such errors.

- (c) Records Related to Volume Determination. The Company agrees that in addition to reporting to Macquarie the volume determinations made by the Company pursuant to Section 6.4(b), the Company shall provide to Macquarie copies of all volume reports and statements related to Crude Oil or Products held at any Included Storage Locations or Company Storage Locations or with respect to any hydrocarbon inventories held by the Company at any other locations including any inventory, quantity, or quality inspection reports prepared by a third party.

10 **PLEDGE OVER MACQUARIE'S PROPERTY**

Notwithstanding anything to the contrary contained in any agreement or in any Transaction Document or otherwise in effect, the Company hereby acknowledges and agrees that, Macquarie may, and shall have the right to (i), pledge and grant a security interest, in favor of any lender to Macquarie from time to time (a "Macquarie Lender"), in and to Macquarie's Property (and for the avoidance of doubt, Macquarie's Property does not include the assets or rights of the Company) that is subject to this Agreement (including, without limitation, Crude Oil and Products to which Macquarie holds title while located in Crude Storage Tanks and Included Product Locations); and (ii) grant a security interest in favor of any Macquarie Lender over its rights under the Storage Facilities Agreement and the Plains Storage Rights Agreement, in each case, as collateral security for any and all obligations due and owing by Macquarie or its Affiliates to any such Person, without the need for any consent or approval of, or any further action taken by, the Company or any of the Company's Affiliates. In consideration of the foregoing, Macquarie shall procure that any such liens and security interests shall be terminated and extinguished automatically at such time as this Supply and Offtake Agreement is terminated (other than with respect to any provisions or obligations, including indemnity obligations, as applicable, that survive such termination pursuant to the terms of the Transaction Documents) and the Company has performed all of its payment obligations under Article 20 and Article 21 of this Agreement.

11 **PAYMENT PROVISIONS**11.1 Interim Payments.

- (a) Macquarie Interim Payments. For each Delivery Date, Macquarie shall calculate a provisional payment (each a "Macquarie Interim Payment") by applying the applicable Daily Prices to the Daily Crude Purchases and Daily Product Purchases for that day.
- (b) Company Interim Payments. For each day, Macquarie shall calculate a provisional payment (each a "Company Interim Payment") by applying the applicable Daily Prices to the Daily Crude Sales for that day and Daily Product Sales for that day (or, in either case, in relation to any volumes of Crude Oil and/or Products which the Company is required to prepay for). If, in accordance with the terms of this Agreement, the Company is required to prepay for any volume of Crude Oil and/or Products, the applicable Daily Price shall be determined as of the date falling two (2) Business Days prior to the relevant Delivery Date and shall be paid by no later than 5:00 p.m. CT on the date falling one (1) Business Day prior to the relevant Delivery Date.
- (c) Macquarie shall determine the Macquarie Interim payments and Company Interim Payments using Best Available Inventory Data; provided that if inventory data have not been reported on any day within a two (2) Business Day period, Macquarie shall use the inventory data for the day occurring during the thirty (30) day period preceding such day that results in the largest Daily Crude Sales, in any case resulting in an amount equal to the highest daily amount that would be payable to Macquarie (or lowest amount payable by Macquarie); provided further that, if Macquarie determines (including without limitation upon Macquarie's receipt of updated Best Available Inventory Data) that any inventory data or assumption or estimate it has used in such determination was inaccurate, then Macquarie shall adjust future Company Interim Payments or Macquarie Interim Payments, as applicable, to take account of any corrected or updated inventory data, and Macquarie shall notify the Company of such adjustment when made.
- (d) The Company shall, at the end of each day, provide to Macquarie inventory reports in the form set forth on Schedule F, showing the quantity of (i) Crude Oil held in the Crude Storage Tanks, (ii) Products held in the Included Product Locations and (iii) Products that are Company Product Inventory.
- (e) Invoices for Interim Payments. For any Business Day, the Interim Payments and the Party responsible for such Interim Payments shall be determined by Macquarie for all Delivery Dates since the prior Business Day and Macquarie shall advise the Company of the amount of Interim Payments via invoice. Each invoice will contain a breakdown of the applicable Product Groups.
- (f) Payment Due Dates of Interim Payments. The Interim Payment shall be made by the responsible Party on the Business Day that follows the day Macquarie issues the applicable

invoice- unless such Interim Payment arises during the period from (and including) the Petition Date to (but including) the Restructuring Effective Date, in which case, such Interim Payment shall be deferred until the date falling one (1) Business Day after the Restructuring Effective Date.

11.2 Monthly True-Up Amount.

- (a) Macquarie shall use commercially reasonable efforts to provide to the Company, within five (5) Business Days following receipt of the Ending In-Tank Crude Inventory and the Ending In-Tank Product Inventory pursuant to Section 20.1, a calculation and appropriate documentation to support the calculations for such month contemplated in the Transaction Documents for the Monthly True-Up Amount as set forth in SCHEDULE C. Macquarie may from time to time during a month, if it determines that the Company is not or will not be in compliance with the Minimum Liquidity Requirement, calculate and invoice the Company for a provisional Monthly True-Up Amount based on all applicable data available to it at the time.
- (b) If the final or provisional Monthly True-Up Amount is a negative number, then the absolute value of such number shall be the amount due from Macquarie to the Company, and if the final or provisional Monthly True-Up Amount is a positive number, such amount shall be due from the Company to Macquarie. The Company shall pay any final or provisional Monthly True-Up Amount due to Macquarie no later than the two (2) Business Days after the Company's receipt of the relevant invoice and all related documentation supporting the invoiced amount or such earlier date as may be required by Macquarie if it determines that the Minimum Liquidity Requirement has been breached on or prior to such date and such breach is continuing at the time the payment is due. Macquarie shall pay any final or provisional Monthly True-up Amount due to the Company no later than two (2) Business Days after making its definitive determination of such amount.
- (c) Macquarie may, upon reasonable request from the Company, provide the Company with a good faith estimate of the expected quantum of any provisional Monthly True-Up Amount that would be payable by the Company if the Company were to breach the Minimum Liquidity Requirement.

11.3 Maximum Inventory Levels. Notwithstanding any transfer of title to Macquarie to any Crude Oil or Products or the quantity of any Eligible Hydrocarbon Inventory in a Company Storage Location, Macquarie shall not be obligated at any time to pay for any quantity of Crude Oil or Product under Section (k) or (b) or otherwise hereunder to the extent such payment would relate to an aggregate quantity of Products in the Included Storage Locations in excess of the then applicable maximum inventory level as set forth on Schedule D or as may have been temporarily adjusted under Section (i).

11.4 Invoices.

- (a) Invoices shall be provided to the Company by Macquarie not later than 5:00 pm CT on a Business Day (and if delivered thereafter shall be deemed delivered on the next succeeding Business Day).
- (b) If the Company in good faith disputes the amount of any invoice issued by Macquarie relating to any amount payable hereunder (including Interim Payments, Monthly True-Up Amounts or Ancillary Costs), the Company shall pay Macquarie the undisputed amount of such invoice by the due date and inform Macquarie in writing of the portion of the invoice with which it disagrees and why; the Company may retain such disputed amount pending resolution of such dispute. The Parties shall cooperate in resolving the dispute expeditiously. If the Parties agree that the Company does owe some or all of the disputed amount or as may be determined by a court pursuant to Article 26, the Company shall pay such amount to Macquarie, together with interest at a rate equal to SOFR plus 350 basis points from the date such amount was originally due, within two (2) Business Days from, as appropriate, the date of their agreement or the date of the final, non-appealable decision of such court. Following resolution of any such disputed amount, Macquarie shall issue a corrected invoice and any residual payment that would be required thereby shall be made by the appropriate Party within two (2) Business Days or, to the extent the payment is due from the Company, such earlier date after delivery of such invoice as Macquarie may require by specifying therein if it determines that the Minimum Liquidity Requirement has been breached on or prior to such date and that such breach is continuing at such time as such invoice is delivered.

- 11.5 Payment Netting. All payments owing under each Crude Transaction and each Product Transaction (each individually referred to as a “Transaction” and collectively, “Transactions”) shall be net such that all amounts owing on a particular day shall result in a single net payment by the owing Party to the owed Party. The Parties agree that if on any date amounts are due and payable by each Party to the other, then, on such date, each Party’s obligation to make payment of any such amounts will be automatically satisfied and discharged by netting the aggregate amount payable by one Party against the aggregate amount payable by the other Party and replacing those payment obligations with a single payment obligation (such obligation, a “Net Payment Amount”) of the Party owing the larger such aggregate amount to pay the net difference between such aggregate amounts to the other Party on the applicable payment date by wire transfer of immediately available funds. The Parties shall cooperate to calculate the aggregate mutual amounts due and payable to or from each Party by examining the payments due on each applicable payment date and determining which Party is the net payer and which is the net receiver.
- 11.6 Other Feedstocks. If Macquarie procures any catfeed or other non-Crude Oil feedstocks for the Company to run at the Refinery, the Parties shall agree in connection with such procurement upon terms for incorporating the purchase of such feedstocks into the daily and monthly settlements contemplated by Section (k) and (b) above.
- 11.7 Interest. Interest shall accrue on late payments under this Agreement at the Default Interest Rate from the date that payment is due until the date that payment is actually received by Macquarie.
- 11.8 Payment in Full in Same Day Funds. All payments to be made under this Agreement shall be made by wire transfer of same day funds in U.S. dollars to such bank account at such bank as the payee shall designate in writing to the payor from time to time and, in respect of payments to be made to the Company by Macquarie, by no later than 5:00 p.m. (CT).
- 11.9 Shipments from ~~Blakely~~Blakeley Island: Any sales of Product by Macquarie to the Company for onward delivery by the Company to any of the Company’s customers by way of a vessel loading at ~~Blakely~~Blakeley Island must be prepaid by the Company prior to any removal from the Included Product Locations or any delivery or transfer of title to such Product.
- 11.10 Minimum Liquidity Requirement: If, at any time, Macquarie determines that the Company and Vertex Renewables have failed to maintain Unrestricted Cash in compliance with the requirements of Section 19.5, then, without prejudice to any of Macquarie’s rights or remedies under any Transaction Documents or otherwise, Macquarie may require that (i) to the extent that the Company is purchasing Product from Macquarie pursuant to Section 8.2(b) above, that the Company prepay the amount payable to Macquarie prior to any removal from the Included Product Locations or any delivery or transfer of title to such Product; and (ii) accelerate the timing for any other payments due from the Company to Macquarie in accordance with the terms of this Agreement.
- 12 **ELIGIBLE HYDROCARBON INVENTORY**
- 12.1 Eligible Hydrocarbon Inventory Reporting.
- (a) For each day during the Term, the Company shall provide to Macquarie on the first Business Day following such day, via email, a report in form and substance reasonably satisfactory to Macquarie as illustrated in Schedule F (the “Inventory Report”) showing the inventory quantities that then constitute Eligible Hydrocarbon Inventory, including the quantity and location of each type of inventory. The Company shall use commercially reasonable efforts to deliver the Inventory Report by 10:00 a.m. CT on the relevant Business Day but shall in any event deliver such Inventory Reports by no later than 12:00 pm CT on such Business Day.
- (b) By delivering an Inventory Report, the Company shall be deemed to represent and warrant to Macquarie (to the same extent as if set forth in this Agreement) that all Hydrocarbons identified as Eligible Hydrocarbon Inventory in such report meet all the requirements of Eligible Hydrocarbon Inventory set forth in this Agreement.
- 13 **INDEPENDENT INSPECTORS; STANDARDS OF MEASUREMENT**
- 13.1 Macquarie shall be entitled to have Macquarie’s Inspector, at Macquarie’s sole cost and expense, present at any time the Volume Determination Procedures are to be applied in accordance with the terms of this Agreement and to observe the conduct of Volume Determination Procedures. The

foregoing notwithstanding, the reasonable out of pocket costs, of the initial surveying by an independent inspector of the Company's facilities, shall be paid by the Company.

- 13.2 In addition to its rights under Section (c), Macquarie may, from time to time during the Term of this Agreement, upon reasonable prior notice to the Company, have Macquarie's Inspector conduct surveys and inspections of any of the Included Tanks or observe any Crude Oil or Product transmission, handling, metering or other activities being conducted at such Included Tanks or any delivery or offtake point; provided that such surveys, inspections and observations shall not materially interfere with the ordinary course of business being conducted at such Included Tanks or the Refinery. The Company shall cover the reasonable costs of no more than any one such inspection per calendar quarter, which shall constitute Ancillary Costs for the purposes of this Agreement and accordingly, shall be invoiced to the Company no more frequently than once per quarter and shall be payable in accordance with Article 11. The Company acknowledges and agrees that, subject to the provision of reasonable prior notice to the Company, Macquarie shall not be prevented from conducting inspections more than once per calendar month if it considers it necessary or appropriate to do so.
- 13.3 In the event that recalibration of meters, gauges or other measurement equipment is requested by Macquarie such as "strapping," the Parties shall select a mutually agreeable certified and licensed independent petroleum inspection company (the "Independent Inspection Company") to conduct such recalibration. The cost of the Independent Inspection Company is to be shared equally by the Company and Macquarie.
- 13.4 Standards of Measurement. All quantity determinations herein shall be corrected to sixty (60) degrees Fahrenheit based on a U.S. gallon of two hundred thirty one (231) cubic inches and forty two (42) gallons to the Barrel, in accordance with the latest supplement or amendment to ASTM-IP petroleum measurement tables (Table 6A of ASTM-IP for Crude Oil and Table 6B of ASTM-IP for Products).

14 **FINANCIAL INFORMATION; CREDIT SUPPORT**

14.1 Provision of Financial Information. The Company shall provide Macquarie:

- (a) as soon as available, but in any event within the earlier of (x) within one hundred twenty (120) days following the end of each of its fiscal years; and, in the case of sub-paragraph (i) below, (y) the date on which the Parent delivered to the SEC the Parent's consolidated financial statements:
 - (i) a copy of the Parent's annual report, containing audited consolidated financial statements of the Parent and its consolidated subsidiaries for such fiscal year certified by independent certified public accountants; and
 - (ii) the balance sheet, statement of income and statement of cash flow of the Company, Vertex Renewables and the Parent for such fiscal year, as reviewed by the Parent's independent certified public accountants;
 - (iii) a copy of the Company's and Vertex Renewables' unaudited financial statement for such fiscal year;
- (b) as soon as available, but in any event, within the earlier of (x) sixty (60) days after the end of its first three fiscal quarters of each of its fiscal years; and, in the case of sub-paragraph (i) below, (y) the date on which the Parent delivered to the SEC the Parent's unaudited consolidated financial statements:
 - (i) a copy of the Parent's quarterly report, containing unaudited consolidated financial statements of the Parent and its consolidated subsidiaries for such fiscal quarter; and
 - (ii) each of the Company's and Vertex Renewables' quarterly report, containing unaudited financial statements of the Company for such fiscal quarter;
- (c) if a Default or Event of Default has occurred and is continuing in respect of the Company, as soon as available, but in any event within thirty (30) days after the end of each calendar month (in form and substance satisfactory to Macquarie), the Parent's consolidated financial

statements including a cash flow statement, income statement and balance sheet for the period reported, and certified by a Responsible Officer of the Parent; and

- (d) if a Default or Event of Default has occurred and is continuing in respect of the Company, as soon as available, but in any event within ninety (90) days after the end of the Parent's fiscal year, an annual operating budget and financial projections (including income statements, balance sheets and cash flow statements) for such fiscal year, presented in a quarterly format reasonably acceptable to the Macquarie,

provided that so long as the Parent is required to make public filings of its quarterly and annual financial results pursuant to the Exchange Act, such filings are available on the SEC's EDGAR database and such filings are made in a timely manner, then the Company shall not be required to provide the Parent's annual or quarterly reports to Macquarie.

14.2 Additional Information.

- (a) The Company shall promptly provide Macquarie with copies of any notices sent or received by the Company in relation to the Shell Crude Supply Agreement, any Macquarie Crude Procurement Contract or Intermediated Product Offtake Contract;
- (b) The Company shall promptly provide Macquarie with copies of any notices sent or received by the Company in relation to ~~the~~any Third Party Terminalling Agreement;
- (c) Upon reasonable notice, the Company shall provide to Macquarie such additional information as Macquarie may reasonably request to enable it to ascertain the current financial condition of the Company, including product reports in the form of Schedule N; and
- (d) From time to time, upon reasonable request by Macquarie, the Company shall obtain and provide to Macquarie additional information regarding third party arrangements relating to the operation of the Refinery or any Crude Oil and/or Product, if any, but only to the extent the Company may contractually disclose such arrangements to Macquarie.
- (e) Any notices of default or acceleration and any other information which is material or would have a material adverse effect on the ability of the Company to comply with its obligations under the Transaction Documents from time to time delivered to the Company or its Affiliates by lenders, agents, noteholders, trustees or other creditors under the outstanding Financing Agreements shall be promptly delivered to Macquarie.
- (f) Any notices, requests for amendments or waivers and any other information which is material or would have a material adverse effect on the ability of the Company to comply with its obligations under the Transaction Documents from time to time and which are delivered by the Company or its Affiliates to lenders, agents, noteholders, trustees or other creditors under the outstanding Financing Agreements shall be promptly delivered to Macquarie.
- (g) Within ten (10) days of any amendments being made to the plan of reorganization supported under the RSA as of the Restructuring Effective Date, the Company shall deliver to Macquarie an updated plan of reorganization, which describes Macquarie's and the Company's claims and the treatment thereof to the satisfaction of Macquarie.
- (h) The Company shall promptly provide (or procure that such information is provided) to Macquarie such information as Macquarie may reasonably request with respect to the progress of the Chapter 11 Cases, any plan of reorganization or any sale pursuant to Section 363 of the Bankruptcy Code.
- (i) The Company shall:
 - (i) procure that Alvarez & Marsal promptly provide to Macquarie (x) on every fourth Thursday following the Petition Date; and (y) at such other times as may be required to ensure that Macquarie is able to accept a Monthly Crude Purchase Offer, a Monthly Crude Confirmation (if any), a Transaction Supplement in respect of a proposed Macquarie Crude Procurement Contract or a Product Purchase Proposal, a projected statement of sources and uses of cash for the Company for the current and following 13 calendar weeks (but not any preceding weeks), including the anticipated uses of the

proceeds of any loans for each week during such period (the "Cashflow Forecast"). As used herein, "Cashflow Forecast" shall initially refer to the 13-week cash flow forecast most recently delivered on or prior to the Restructuring Effective Date and, thereafter, the most recent Cashflow Forecast delivered by the Company in accordance with Section 14.2); and

(ii) ~~(g) The Company shall~~ promptly provide to ~~the~~ Macquarie:

(A) copies of each Weekly Variance Report delivered under the Post-Petition Financing Agreement at the same time that such Weekly Variance Report is required to be delivered to the Term Loan Agent under and in accordance with the terms of the Post-Petition Financing Agreement; and

(B) by no later than 10 a.m. CT on each Business Day during the Term, its end-of-day cash balance for the immediately preceding Business Day; and

~~(i) on the Wednesday of each week during the Term:~~

~~(A) a cashflow forecast and projected financials report for the immediately succeeding week, which, amongst other matters, specifies the amount of Unrestricted Cash that the Company and Vertex Renewables expects to have on their balance sheets for the immediately succeeding week, in the form agreed between the Company and Macquarie for such purposes and as may be appended to this Agreement on or after the Commencement Date (the "Cashflow Forecast"); and~~

~~(B) confirmation from two directors of the Company that (1) the Cashflow Forecast for the immediately succeeding week represents the good faith and reasonable expectations of the Company and Vertex Renewables in respect of the relevant period; and (2) the Company and Vertex Renewables have complied with the requirements of Section 19.5 (Negative Covenants) for the immediately preceding week; and~~

(C) ~~(ii)~~ at any other time upon reasonable request by Macquarie, such other information as Macquarie may require for the purpose of determining whether the Minimum Liquidity Requirement ~~have~~has been breached.

14.3 Notification of Certain Events. The Company shall notify Macquarie (i) of the matters set forth in Section (ii) (as and to the extent set forth therein), and (ii) within four (4) Business Days after learning of any of the following events:

- (a) The Parent's, Vertex Renewables', the Company's or any of their respective Subsidiaries binding written agreement to sell, lease, sublease, transfer or otherwise dispose of, or grant any Person an option to acquire, in one transaction or a series of related transactions, all or a material portion of the Refinery assets;
- (b) The Company's or any of its Affiliates' binding agreement to consolidate or amalgamate with, merge with or into, or transfer all or substantially all of its assets to, another entity (including an Affiliate);
- (c) An early termination of or any notice of or the occurrence of any "event of default" under any Base Agreement, if any;
- (d) An early termination of or any notice of or the occurrence of an "event of default" under any Financing Agreement;
- (e) Any Master Agreement Termination Event;
- (f) An early termination of or any notice of or the occurrence of an "event of default" under a Guaranty;
- (g) Any default of a material obligation under, or termination or revocation, of any Third Party Storage Agreements;

- (h) An amendment to any Financing Agreement; provided that the Company shall notify Macquarie at least ten (10) Business Days prior to entering into any new Financing Agreement; and
- (i) The execution of any agreement or other instrument or the announcement of any transaction or proposed transaction that contemplates or results in a Change of Control or Specified Event.

14.4 Credit Support.

- (a) Guaranties. As a condition to Macquarie's entering into this Agreement, the Company agreed to provide the Parent Guaranty and as a condition to Macquarie entering into the Vertex Renewables SOA with Vertex Renewables and effecting the consequential amendments to be made to this Agreement as a result of the entry into the Vertex Renewables SOA, the Company agreed to provide the VR Guaranty, in each case, as credit support for the prompt and complete performance and payment of all of the Company's obligations hereunder and under the other Transaction Documents.
- (b) Lien Documents. As further security for the prompt and complete payment of all amounts due or that may become due hereunder, the Company shall grant the Lien contemplated by, comply with the terms of and maintain in full force and effect the Lien Documents and assist Macquarie in maintaining any UCC financing statements or other filings necessary to preserve Macquarie's Liens pursuant to the Lien Documents.
- (c) Independent Amount.
 - (i) As security for the prompt and complete payment of all amounts due or that may become due from the Company, to Macquarie, and the performance by the Company of all covenants and obligations to be performed by it for Macquarie pursuant to this Agreement and all other Transaction Documents and all outstanding transactions hereunder and thereunder, inclusive of all of the Company's aggregate obligations under Transactions (collectively, the "Obligations"), the Company hereby pledges, assigns, conveys and transfers to Macquarie as margin, and hereby grants to Macquarie a present and continuing security interest in and to, and a general first lien upon and right of set off against, the amount of U.S. dollars constituting the Independent Amount and all interest and other proceeds from time to time received, receivable or otherwise distributed in respect thereof, or in exchange therefor; provided that (i) the Company shall effect such pledge, assignment, conveyance and transfer of the Independent Amount as and when required under Section (i) hereof and (ii) once the full amount (or any subsequent additional portions thereof) of the Independent Amount has been so pledged, assigned, conveyed and transferred, the Company agrees that for the duration of the Term, it shall maintain such pledge, assignment, conveyance and transfer (subject to permitted reductions in the amount of such Independent Amount as set forth in the Independent Amount Letter) and take such action as Macquarie reasonably requests, including providing Macquarie with possession of an amount of immediately available funds necessary to satisfy the then prevailing required Independent Amount, as applicable, in order to perfect Macquarie's continuing security interest in, and lien on (and right of setoff against), such amount. Notwithstanding the provisions of Applicable Law, at all times even if no Event of Default has occurred and is continuing with respect to Macquarie, then Macquarie shall have the right to sell, pledge, rehypothecate, assign, invest, use, commingle or otherwise use in its business all or any portion of the Independent Amount, free from any claim or right of any nature whatsoever of the Company, including any equity or right of redemption by the Company. Nothing in this Section 20.3 shall limit any rights of Macquarie under any other provision of this Agreement or any other Transaction Documents, including without limitation, under Section C or Article 20 below. The Company acknowledges and agrees that, as provided in the Master Agreement, the Independent Amount constitutes credit support for the Company's obligations under the Master Agreement in accordance with the terms thereof. Macquarie shall exercise reasonable care to assure the safe custody of the Independent Amount to the extent required by Applicable Law.
 - (d) As further security for the prompt and complete payment of all amounts due or that may become due hereunder, the Company shall grant the Lien contemplated by, comply with the terms of and maintain in full force and effect the Lien Documents and assist Macquarie in

maintaining any UCC financing statements or other filings necessary to preserve Macquarie's Liens pursuant to the Lien Documents.

15 REFINERY TURNAROUND, MAINTENANCE AND CLOSURE

- 15.1 As between Macquarie and the Company, the Company shall be responsible for all operations and maintenance of Included Storage Locations which are, directly or indirectly, owned by the Company. The Company shall promptly notify Macquarie in writing of the date for which any inspection, maintenance, restart or turnaround at the Included Storage Locations, Refinery or the Refinery Facilities has been scheduled, or any revision to previously scheduled inspection, maintenance, restart or turnaround, which may materially affect receipts of Crude Oil at the Refinery, the Included Tanks, the processing of Crude Oil in the Refinery or the delivery of Products to Macquarie or by Macquarie to the Company or any third parties, it being acknowledged that any turnaround shall be considered material for these purposes; provided that, (i) promptly after the Company completes its annual business plan with respect to any year, it shall notify Macquarie of any such inspection, maintenance, restart or turnaround contemplated with respect to such year and (ii) the Company shall give Macquarie at least two (2) months' prior written notice of the commencement of any such scheduled restart or turnaround or any inspection or maintenance which would be reasonably expected to have a material impact on the Refinery's operations.
- 15.2 Promptly upon Macquarie's reasonable request ~~by Macquarie, acting reasonably~~, and in any event no later than five (5) Business Days following the end of each Delivery Month and to the extent it is permitted to do so contractually and is not otherwise subject to any confidentiality restrictions, the Company shall use commercially reasonable efforts to promptly deliver to Macquarie information relating to the partial conversion of the Refinery for the production of Products constituting renewable diesel including costs incurred to date and projected further costs, staffing requirements, projected downtime, changes to the expected consumption of Crude Oil or any other feedstocks, negotiations with suppliers, and such other information that Macquarie may reasonably request.
- 15.3 The Company shall (i) promptly notify Macquarie of any discharge into the environment of any Hydrocarbons, in a manner contrary to Applicable Law, which discharge would reasonably be expected to result in a Material Adverse Change, and (ii) use commercially reasonable efforts to notify Macquarie promptly of the suspension, for a period in excess of twenty-four (24) hours, of more than 50% of the applicable daily forecasted production of all Products (taken as a whole) at the Refinery as set forth in the Weekly Product Projection; provided that, in each case, such notice must first be delivered orally and followed by prompt written notice.
- 15.4 In the event of a scheduled shutdown of the Refinery, the Company shall, to the extent feasible and commercially reasonable (as determined in accordance with Accepted Industry Practice), complete processing of all Crude Oil being charged to, processed at or consumed in the Refinery at that time.
- 15.5
- (a) Subject to Section 8.9(a)(ii) below, if at any time Macquarie determines that the maintenance and operation of all or any portion of the facilities constituting an Included Storage Location (in each case, "Identified Facilities") in accordance with the Company's policies and procedures would fail to satisfy Macquarie's then applicable policies and procedures (such policies and procedures to be in reasonable accordance with and not to exceed industry, regulatory and customary practices) relating to the prudent maintenance and operation of storage tanks, pipeline facilities, vessels and other infrastructure used to store or transport crude oil and/or refined products ("Macquarie's Policies and Procedures"), and without limiting any other rights and remedies available to Macquarie hereunder or under any other Transaction Document, Macquarie may provide the Company notice of such failure so long as such failure is continuing and, if Macquarie provides such notice, the following provisions shall be applicable:
- (i) in the case of any Identified Facilities that are subject to the Storage Facilities Agreement, upon such date as Macquarie shall specify, but not less than two hundred seventy (270) days after the date such notice is delivered to the Company (so as to allow to the Company time to remedy the non-compliance or other failure or to find substitute financial arrangements), such Identified Facilities shall cease to constitute an Included Storage Location (or part of an Included Storage Location) for purposes hereof and any payment to Macquarie in respect of any Crude Oil or Products held in such Identified Facilities shall, unless such failure has been cured to the reasonable

satisfaction of Macquarie, become due in accordance with the provisions of Article 11 hereof; and

- (ii) in the case of any Identified Facilities that are subject to a Required Storage and Transportation Arrangement, the Parties shall endeavor, within not more than two hundred seventy (270) days after the date such notice is delivered to the Company (so as to allow to the Company time to remedy the non-compliance or other failure or to find substitute financial arrangements), to execute such rights, provide such notices, negotiate such reassignments or terminations and/or take such further actions as Macquarie deems necessary or appropriate to terminate Macquarie's status as the party entitled to use and/or hold Crude Oil or Products at such Identified Facilities and, concurrently with effecting the termination of such status, such Identified Facilities shall cease to constitute an Included Storage Location (or part of an Included Storage Location) for purposes hereof and any payment to Macquarie in respect of any Crude Oil or Products held in such Identified Facilities shall become due in accordance with the provisions of Article 11 hereof.
- (b) Macquarie's rights under Section A above are subject to the following additional terms and conditions:
- (i) Macquarie shall apply Macquarie's Policies and Procedures with respect to the Included Storage Locations in a non-discriminatory manner as compared with other similar storage tanks and pipeline facilities utilized by Macquarie in a similar manner;
 - (ii) If the failure of any Identified Facilities to satisfy Macquarie's Policies and Procedures is a result of Macquarie's Policies and Procedures exceeding the standards or requirements imposed under Applicable Law or good and prudent industry practice, then (1) Macquarie shall not require the removal of such Identified Facilities as Included Storage Locations until the 270th day after giving the Company written notice of such failure, (2) during such 270 day period, Macquarie shall consult with the Company in good faith to determine whether based on further information provided by the Company such Identified Facilities comply with Macquarie's Policies and Procedures and/or whether additional actions or procedures can be taken or implemented so that, as a result, such Identified Facilities would comply with Macquarie's Policies and Procedures, and (3) if it is determined that such Identified Facilities do comply with Macquarie's Policies and Procedures or, as a result of such additional actions or procedures, such Identified Facilities become so compliant within such 270 day period, then such Identified Facilities shall not cease to be Included Storage Locations based on the noncompliance stated in Macquarie's notice to the Company;
 - (iii) If within the 270 day period referred to in clause (ii)(2) above, the Company has identified and diligently commenced the implementation of additional actions or procedures that are intended to result in such Identified Facilities becoming compliant with Macquarie's Policies and Procedures, but such implementation cannot through commercially reasonable efforts be completed within such 270 day period, then so long as the Company continues to diligently and in a commercially reasonable manner pursue the implementation of such additional actions and procedures, Macquarie shall extend such 270 day period up for up to an additional ninety (90) days (or such longer period as the Parties may mutually agree) to allow for such implementation to be completed and if such implementation is completed within such additional 90 day period (or such longer period as the Parties may mutually agree), then such Identified Facilities shall not cease to be Included Storage Locations based on the noncompliance stated in Macquarie's notice to the Company; and
 - (iv) If any Identified Facilities cease to be Included Storage Locations pursuant to Section A above and thereafter Macquarie determines, in its reasonable good faith judgment, that such Identified Facilities have become compliant with Macquarie's Policies and Procedures, then Macquarie shall promptly cooperate with the Company to re-establish such Identified Facilities as Included Storage Locations hereunder.

16 TAXES

- 16.1 (a) The Company shall pay and indemnify and hold Macquarie harmless against, the amount of all sales, use, value added, transfer, stamp, property, duties, ad valorem, or other similar taxes,

(but excluding all taxes imposed on or measured by net income or profits, all franchise taxes, all branch profits taxes, and all U.S. federal withholding taxes, including U.S. federal withholding tax imposed pursuant to FATCA), howsoever designated regardless of the taxing authority, and all penalties and interest thereon, paid, owing, asserted against, or incurred by Macquarie directly or indirectly with respect to the Crude Oil procured and sold to Company hereunder, and the Products purchased and resold to Company hereunder, and other transactions contemplated hereunder, except to the extent any such taxes, penalties, or interest are due to the gross negligence or willful misconduct of Macquarie or breach of the terms hereof by Macquarie (each indemnifiable tax is a “Tax” and collectively are “Taxes”). The Company shall pay when due such Taxes unless there is an applicable exemption from such Tax, with written confirmation of such Tax exemption to be contemporaneously provided to Macquarie. To the extent Macquarie is required by law to collect such Taxes, one hundred percent (100%) of such Taxes shall be added to invoices as separately stated charges and paid in full by the Company in accordance with this Agreement, unless the Company is exempt from such Taxes and furnishes Macquarie with a certificate of exemption, and Macquarie shall timely pay the full amount of such Taxes to the applicable taxing authority in accordance with applicable law. Any refund or credit with respect to any Taxes paid or indemnified by the Company hereunder shall belong to the Company and Macquarie shall promptly remit any such amounts that it receives to the Company. For the avoidance of doubt, Macquarie shall be responsible for all taxes imposed on or measured by Macquarie’s net or gross (or any derivative thereof) income, and the Company shall be responsible for all taxes imposed on or measured by the Company’s net or gross (or any derivative thereof) income.

- (b) In addition to paragraph (a) above, the Company shall complete and file all necessary property tax returns on Macquarie’s behalf with respect to Crude Oil and Products, regardless of whether property tax laws place the obligation to do so upon Macquarie or the Company, disclose Macquarie’s ownership interest therein, and pay such amounts as due. Provided that the Company pays (or indemnifies Macquarie for) all such property Taxes, the Company shall have the first right to claim income tax credits or deductions for such property Taxes paid and shall be solely responsible for the extent to which such credits or deductions are available to or realized by the Company.
- 16.2 If the Company disagrees with Macquarie’s determination that any Tax is due with respect to transactions under this Agreement, the Company shall have the right to seek an administrative determination from the applicable taxing authority, or, alternatively, the Company shall have the right to contest any asserted claim for such Taxes, subject to its agreeing to indemnify Macquarie for the entire amount of such contested Tax should such Tax be deemed applicable. Macquarie agrees to reasonably cooperate with the Company, in the event the Company determines to contest any such Taxes. Company shall be responsible for all reasonable out of pocket costs and expenses incurred by Company or Macquarie in the event Company decides to seek an administrative determination from the applicable taxing authority or to contest any such Taxes. The Company and Macquarie agree to act reasonably in cooperating with each other to claim any refund or drawback of such Taxes at the time or times reasonably requested by the other Party.
- 16.3 (a) The Company and Macquarie shall promptly inform each other in writing of any assertion by a taxing authority of additional liability for Taxes in respect of said transactions. Any legal proceedings or any other action against Macquarie with respect to such asserted liability shall be under Macquarie’s direction but the Company shall be kept reasonably informed and consulted by Macquarie, provided that so long as the Company has sufficient available liquidity (as reasonably determined by Macquarie), then the Company shall have the option to assume the control and direction of any such legal proceedings or actions. Any legal proceedings or any other action against the Company with respect to such asserted liability shall be under the Company’s direction but Macquarie shall be consulted. In any event, the Company and Macquarie shall fully cooperate with each other as to the asserted liability. Each Party shall bear all the reasonable out of pocket costs of any action undertaken by the other Party pursuant to this Section 16.3(a) at that other Party’s request.
- (b) In addition to paragraph (a) above and other information sharing requirements applicable to Macquarie and the Company, Macquarie and the Company shall annually and from time to time as is otherwise reasonable exchange and share information with each other as necessary to properly report, defend, challenge, and pay Taxes (including but not limited to sales taxes and file tax returns (including without limitation any returns referred to in Section 16.1(a)), including information that supports and demonstrates total sales, sales that are exempt from Tax, and sales that are subject to Tax at a reduced rate.

- 16.4 On or prior to the date of this Agreement (and from time to time thereafter upon the reasonable request of the Company), Macquarie shall deliver to the Company an executed original of IRS Form W-8 or W-9, as applicable, certifying that Macquarie is exempt from U.S. federal backup withholding tax, and if such form expires or becomes obsolete in any respect, Macquarie shall provide an updated form certifying that it is exempt from U.S. federal backup withholding tax.
- 16.5 Any other provision of this Agreement to the contrary notwithstanding, this Article 16 shall survive until ninety (90) days after the expiration of the statute of limitations for the assessment, collection, and levy of any Tax.

17 **INSURANCE**

17.1 Insurance Coverages. The Company shall procure and maintain in full force and effect throughout the Term of this Agreement insurance coverages of the following types and amounts and with insurance companies rated not less than A- by A.M. Best Company, or otherwise equivalent in respect of the Company's properties and operations consistent with or exceeding, the insurance coverage that the Company maintains as of the date of this Agreement.

- (a) Property damage including business interruption coverage on an "all risk" basis, including but not limited to flood, earthquake, windstorm, and tsunami, covering damage to the Refinery Facilities and the Included Storage Locations on a repair or replacement cost basis in an amount sufficient to repair major components of such Included Storage Locations. Business interruption and extra expense coverage shall include at least 18 months indemnity period and shall be in an amount equal to the projected net income and costs that would necessarily continue from such Refinery Facilities based upon the Company's reasonable estimate thereof. The property damage and business interruption premium must be maintained with a minimum amount of \$850,000,000 per occurrence with sub-limits in a minimum amount of \$200,000,000 for earthquake, flood and windstorm, each peril separately.
- (b) Inventory coverage on an "all risk" basis, including but not limited to flood, earthquake, windstorm, and tsunami, covering the loss, damage, destruction and/or theft of the Refinery's Crude Oil and Products in an amount equal to the market value or potential full replacement cost. Such coverage may be incorporated into the property insurance required in Section B.
- (c) Commercial general liability coverage which includes bodily injury, broad form property damage and contractual liability, cross suit liability, products and completed operations liability, and sudden and accidental pollution liability, in a minimum amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- (d) (i) Workers compensation in the amount required by Applicable Law, and (ii) employer's liability with a minimum amount of \$1,000,000 per accident, \$1,000,000 per disease, and \$1,000,000 aggregate.
- (e) Commercial automobile liability insurance in a minimum amount of \$1,000,000 per accident, or as required by Applicable Law.
- (f) Umbrella/excess liability coverage providing coverage with respect to the coverage required under Sections 32.10, Section 17.1(d)(ii) and Section 25 in a minimum amount of \$500,000,000 per occurrence and in the aggregate.

17.2 Additional Insurance Requirements.

- (a) The foregoing policies in Section 17.1, in each case, shall include or provide that the underwriters waive all rights of subrogation against Macquarie and the insurance is primary without contribution from Macquarie's insurance. The foregoing policies in Section 17.1 shall, in each case, include (i) Macquarie as additional insured and (ii) Macquarie as loss payee under Sections 17.1(b) only.
- (b) The Company shall cause its insurance carriers or its authorized insurance broker to furnish Macquarie with insurance certificates, in Acord form or equivalent, evidencing the existence of the coverages and the endorsements required above. The Company shall provide thirty (30) days' written notice prior to cancellation or material modification of insurance becoming effective. The Company also shall provide renewal certificates prior to expiration of the policy.

- (c) The Company shall comply with all notice and reporting requirements in the foregoing policies and timely pay all premiums.
 - (d) The Company shall be responsible for any deductibles or retentions that are applicable to the insurance required pursuant to Section 17.1.
- 17.3 No Reduction or Release. The mere purchase and existence of insurance does not reduce or release either Party from any liability incurred or assumed under this Agreement.
- 17.4 Macquarie Insurance. Macquarie shall maintain its own insurance in relation to any Crude Oil or Products owned by it and any Eligible Hydrocarbon Inventory, and such insurance shall be the primary policy in respect of such Crude Oil or Products. To the extent that any insurance procured by Macquarie is duplicative with insurance procured by the Company, the insurance procured by the Company shall be the secondary policy in respect of such Crude Oil or Products.
- 18 **FORCE MAJEURE**
- 18.1 If a Party is rendered unable by an event of Force Majeure to perform in whole or in part any obligation or condition of this Agreement (the "Affected Party"), it shall not be liable to the other Party to perform such obligation or condition (except for payment and indemnification obligations) for so long as the event of Force Majeure exists and to the extent that performance is prevented or materially hindered, in whole or in part, by such event of Force Majeure; provided, however, that the Affected Party shall use any commercially reasonable efforts to avoid or remove the event of Force Majeure. During the period that performance by the Affected Party of a part or whole of its obligations under this Agreement has been suspended by reason of an event of Force Majeure, the other Party (the "Non-Affected Party") may suspend the performance of all or a part of its obligations hereunder (except for any payment and indemnification obligations) to the extent that such suspension is commercially reasonable in respect of such event of Force Majeure and which obligations of the Affected Party are suspended as a result thereof, except for any payment and indemnification obligations. The Parties acknowledge that if, as a result of an event of Force Majeure, the Company were to suspend its receipt and/or processing of Crude Oil, then Macquarie would be entitled to suspend, to a comparable extent, its purchasing of Products.
- 18.2 The Affected Party shall give prompt oral notice to the Non-Affected Party of its declaration of an event of Force Majeure, to be followed by written notice within twenty-four (24) hours after receiving such oral notice of the occurrence of a Force Majeure event, including, to the extent feasible, the details and the expected duration of the Force Majeure event and the volume of Crude Oil or Products affected. The Affected Party also shall promptly notify the Non-Affected Party when the event of Force Majeure is terminated. However, the failure or inability of the Affected Party to provide such notice within the time periods specified above shall not preclude it from declaring an event of Force Majeure.
- 18.3 In the event the Affected Party's performance is suspended due to an event of Force Majeure in excess of sixty (60) consecutive days after the date that notice of such event is given pursuant to Section 18.2 above, and so long as such event is continuing, the Non-Affected Party, in its sole discretion, may terminate or curtail its obligations under this Agreement affected by such event of Force Majeure (the "Affected Obligations") by giving notice of such termination or curtailment to the Affected Party, and neither Party shall have any further liability to the other in respect of such Affected Obligations to the extent terminated or curtailed, except for the rights and remedies previously accrued under this Agreement, any payment and indemnification obligations by either Party under this Agreement and the obligations set forth in Article 21. Without limiting any rights of any Non-Affected Party under this Article 18, the parties agree that following notice of an event of Force Majeure, they shall consult in good faith to assess potential actions or steps with respect thereto.
- 18.4 If any Affected Obligation has been suspended but has not been terminated pursuant to this Article 18 or any other provision of this Agreement, performance shall resume to the extent made possible by the end or amelioration of the event of Force Majeure in accordance with the terms of this Agreement; provided, however, that the term of this Agreement shall not be extended.
- 18.5 The Parties acknowledge and agree that the right of Macquarie to declare a Force Majeure based upon any failure by a Third Party Supplier to deliver Crude Oil under a Macquarie Crude Procurement Contract or Products under an Included Product Purchase Transaction is solely for purposes of determining the respective rights and obligations as between Macquarie and the Company with respect to any Crude Oil or Products delivery affected thereby, and any such declaration shall not

excuse the default of such Third Party Supplier under one or more Macquarie Crude Procurement Contracts or Included Product Purchase Transactions. Any claims that Macquarie may have as a result of such Third Party Supplier's failure shall be subject to Section 5.9 and any other applicable provisions of this Agreement relating to claims against third parties.

- 18.6 If at any time during the Term any of the Required Storage and Transportation Arrangements cease to be in effect (in whole or in part) or any of the applicable Included Product Pipelines or Included Product Tanks cease, in whole or in part, to be available to Macquarie pursuant to the Required Storage and Transportation Arrangements, and the foregoing is a result of or attributable to any owner or operator of such Included Product Pipelines or Included Product Tanks becoming Bankrupt or breaching or defaulting in any of its obligations relating to the Required Storage and Transportation Arrangements, then:
- (a) The Company shall use commercially reasonable efforts to promptly establish for Macquarie's benefit alternative and/or replacement storage and transportation arrangements no less favorable to Macquarie (in Macquarie's reasonable judgment) than those that have ceased to be available;
 - (b) Until such alternative and/or replacement arrangements complying with clause (a) above have been established, each Party shall be deemed to have been affected by an event of Force Majeure and its obligations under this Agreement shall be curtailed to the extent such performance is hindered by such lack of effectiveness of any Required Storage and Transportation Arrangements or the availability of any pipeline or storage facility related thereto; and
 - (c) Without limiting the generality of the foregoing, in no event shall Macquarie have any obligation under or in connection with this Agreement to store Crude Oil or Product in any pipeline or store Crude Oil or Product in any storage facility at any time from and after the owner or operator thereof becomes Bankrupt (other than any such Included Storage Location owned and/or operated by a Vertex Party, in which case, the provisions of the Assurance Agreement, including section 5 of the Assurance Agreement, shall apply). If any such storage facility is an Included Storage Location then Macquarie may, in its discretion, elect upon written notice to the Company that such storage facility shall cease to be an Included Storage Location as of a date specified in such written notice in which case any Crude Oil or Product held by Macquarie therein shall be purchased by the Company in accordance with the applicable provisions of Sections (k) and (b) hereof.

19 REPRESENTATIONS, WARRANTIES AND COVENANTS

- 19.1 Mutual Representations. Each Party represents and warrants to the other Party as of the Effective Date, the Restructuring Effective Date and each sale of Crude Oil hereunder, that:
- (a) It is an "Eligible Contract Participant," as defined in Section 1a(18) of the Commodity Exchange Act, as amended.
 - (b) It is a "forward contract merchant" in respect of this Agreement and each sale of Crude Oil or Products hereunder constitutes a "forward contract," as such term is used in Section 556 of the Bankruptcy Code.
 - (c) It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and in good standing under such laws.
 - (d) It has the corporate, governmental or other legal capacity, authority and power to execute and deliver the Transaction Documents to which it is a party and to perform its obligations under this Agreement, and has taken all necessary action to authorize the foregoing.
 - (e) The execution, delivery and performance of the Transaction Documents to which it is a party and the performance of its obligations thereunder and the consummation of the transactions contemplated thereby do not violate any Applicable Law (to its knowledge), any provision of its constitutional documents, any order or judgment of any court or Governmental Authority applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets.

- (f) Except for the filing of UCC-1 or UCC-3 financing statements and the Lien Documents in applicable state and county filing offices, all governmental and other authorizations, approvals, consents, notices and filings that are required to have been obtained or submitted by it with respect to the Transaction Documents have been obtained or submitted and are in full force and effect, and all conditions of any such authorizations, approvals, consents, notices and filings have been complied with, except for such of the foregoing the absence or failure of which would not result in a Material Adverse Change.
- (g) Its obligations under the Transaction Documents to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application regardless of whether enforcement is sought in a proceeding in equity or at law).
- (h) ~~No~~Other than in connection with the commencement of the Chapter 11 Cases and except as contemplated by section 5 of the Assurance Agreement, no Event of Default or Default has occurred and is continuing with respect to such Party, and no such event or circumstance would occur as a result of its entering into or performing its obligations under the Transaction Documents (disregarding for these purposes, any Event of Default or Default as contemplated by, as between the Parties hereto, section 5 of the Assurance Agreement).
- (i) There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, Governmental Authority, official or any arbitrator that is likely to affect the legality, validity or enforceability against it of the Transaction Documents or its ability to perform its obligations under the Transaction Documents.
- (j) It is not relying upon any representations of the other Party other than those expressly set forth in this Agreement or the other Transaction Documents.
- (k) It has entered into this Agreement as principal (and not as advisor, agent, broker or in any other capacity, fiduciary or otherwise), with a full understanding of the material terms and risks of the same, and is capable of assuming those risks.
- (l) It has made its trading and investment decisions (including their suitability) based upon its own judgment and any advice from its advisors as it has deemed necessary and not in reliance upon any view expressed by the other Party.
- (m) The other Party (i) is acting solely in the capacity of an arm's-length contractual counterparty with respect to this Agreement, (ii) is not acting as a financial advisor or fiduciary or in any similar capacity with respect to this Agreement and (iii) has not given to it any assurance or guarantee as to the expected performance or result of this Agreement.
- (n) It is not bound by any agreement that would be violated by the execution, delivery or performance of this Agreement.
- (o) Neither it nor any of its Affiliates has been contacted by or negotiated with any finder, broker or other intermediary in connection with the sale or purchase of Crude Oil or Products hereunder who is entitled to any compensation with respect thereto.
- (p) None of its directors, officers, employees or agents or those of its Affiliates has received or shall receive any commission, fee, rebate, gift or entertainment of significant value in connection with this Agreement.

19.2 Company's Representations. The Company represents and warrants as follows:

- (a) ~~Each Vertex Party, individually and collectively, is not Insolvent~~[Reserved].
- (b) No representation, warranty or other statement made by any Vertex Party in any Transaction Document, certificate or written statement furnished to Macquarie, taken together with all such certificates, Transaction Documents and written statements, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained in such Transaction Documents, certificates or statements not misleading (other

than by reason of the commencement of the Chapter 11 Cases or otherwise as contemplated by section 5 of the Assurance Agreement), it being recognized by Macquarie that the projections and forecasts provided by each Vertex Party in good faith and based upon reasonable assumptions are not to be viewed as facts and that actual results during the period or periods covered by any such projections and forecasts may differ from the projected or forecasted results.

- (c) As of the Commencement Date, Macquarie has received the Current Financial Statements of the Parent. The Current Financial Statements fairly present in all material respects Parent's consolidated financial condition as of the dates thereof and consolidated results of operations for the periods then ended, subject, in the case of unaudited financial statements, to normal year-end adjustments and the absence of footnote disclosures. On the Commencement Date, there has not been a Material Adverse Change in the financial condition of Vertex Parties or any of their respective Subsidiaries, taken as a whole, since the date of the most recent of such Current Financial Statements.
- (d) No Vertex Party nor any of their respective Subsidiaries, and to its Knowledge, any of their directors, officers, agents, employees or Affiliates is, or is owned or controlled (as such terms are defined in the applicable Sanctions Laws) by Persons that are, currently subject to or the target of any Sanctions Laws, or is a Sanctions Target, or is located, organized or resident in a country or territory that is the subject of Sanctions. The Company will not Knowingly directly or indirectly use the proceeds of any payment made to it by Macquarie or otherwise make available such proceeds to any Person, for the purpose of materially financing the activities of any Person that is currently a Sanctions Target.
- (e) To the Knowledge of the Company, neither the entry into any of the Transaction Documents nor the use of any payments received thereunder will materially violate (i) the United States Trading with the Enemy Act, as amended, (ii) any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) executive order relating thereto, (iii) Executive Order No. 13,224, 66 Fed Reg 49,079 (2001), issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism) (the "Terrorism Order"), (iv) USA PATRIOT ACT, or (v) USA FREEDOM ACT. No part of any payment made to the Company under and in accordance with the terms of this Agreement will be Knowingly used, directly or indirectly, for any material payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.
- (f) To the Knowledge of the Company, neither it, nor any other Vertex Party, (i) is or will become a "blocked person" as described in Section 1.01 of the Terrorism Order or (ii) engages or will engage in any dealings or transactions, or is otherwise associated, with any such blocked person.
- (g) To the Knowledge of the Company, it, each other Vertex Party, and their respective Affiliates are in compliance, in all material respects, with the USA PATRIOT ACT and the USA FREEDOM ACT.
- (h) To the Knowledge of the Company, the agents of the Company, are in material compliance with all applicable Sanctions and all Anti-Corruption Laws and Anti-Money Laundering Laws. Each Vertex Party has instituted and maintain policies and procedures designed to ensure continued compliance with applicable Sanctions Laws and Anti-Corruption Laws and Anti-Money Laundering Laws.

- (i) The Transaction Documents, taken together with the Intermediation Orders and the DIP Orders are effective to create in favour of Macquarie, legal, valid, enforceable and continuing first priority Liens on, and security interests in, the Credit Support (other than, with respect to priority, the DIP Collateral (as defined in the Interim DIP Order) in respect of which Macquarie has a second priority Lien) pledged thereunder, in each case, subject to no Liens other than with respect to Permitted S&O Liens. Pursuant to the terms of the Interim Intermediation Order and/or Final Intermediation Order, no filing or other action will be necessary to perfect or protect such Liens and security interests. Pursuant to and to the extent provided in the Interim Intermediation Order and the Final Intermediation Order, the obligations of the Vertex Parties

under the Transaction Documents will be granted superpriority administrative expense status in the Chapter 11 Cases under Section 364(c)(1) of the Bankruptcy Code, having priority over all administrative expense claims and unsecured claims against such Vertex Parties now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expense claims of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code and all super-priority administrative expense claims granted to any other Person, subject only to the Carve Out (as defined in the Interim DIP Order).

- (j) Each of the Interim Intermediation Order (to the extent necessary, with respect to the period prior to the entry of the Final Intermediation Order) or the Final Intermediation Order (from and after the date the Final Intermediation Order is entered) is in full force and effect and has not been vacated, reversed or rescinded or, without the prior written consent of Macquarie, in its sole discretion, amended or modified and no appeal of such order has been timely filed or, if timely filed, no stay pending such appeal is currently effective.

19.3 Company Covenants. The Company represents, warrants and covenants to Macquarie as follows:

- (a) The Company shall deliver true and complete copies of the Base Agreements and all amendments thereto to Macquarie as and when such agreements are entered into by the Company.
- (b) The Company shall in all material respects perform its obligations under and comply with the terms of the Base Agreements and Required Storage and Transportation Arrangements as and when such agreements are entered into by the Company.
- (c) The Company shall maintain and pursue diligently all of its material rights under the Base Agreements and Required Storage and Transportation Arrangements and take all reasonable steps to enforce its rights and any rights granted to the Company thereunder as and when such agreements are entered into by the Company, except where the failure to do so would not result in a Material Adverse Change.
- (d) The Company shall not modify, amend or waive rights arising under any of the Base Agreements or the Required Storage and Transportation Arrangements as and when such agreements are entered into by the Company without the prior written consent of Macquarie; provided, however, that if the Company provides Macquarie with prior written notice of such modifications, amendments or waivers, the Company may make such modifications or amendments and grant such waivers, including extensions or elections under any of the foregoing, that do not materially and adversely affect Macquarie's rights hereunder, degrade, reduce or limit the standards applicable to the operator thereunder or otherwise interfere with Macquarie's rights to use the Included Product Pipelines and Included Product Tanks subject thereto.
- (e) The Company shall not cause or permit any of the Crude Oil or Products held at the Included Storage Locations to become subject to any Liens, except for Permitted S&O Liens.
- (f) The Company represents and warrants that the Company Storage Locations and Included Storage Locations, to the extent owned or operated by or with the assistance of the Company, have been maintained, repaired, inspected and serviced in accordance with Accepted Industry Practice and Applicable Law and are in good working order and repair in all material respects.
- (g) In the event the Company becomes Bankrupt, and to the extent permitted by Applicable Law, the Company intends that (i) Macquarie's right to liquidate, collect, net and set off rights and obligations under this Agreement and liquidate and terminate this Agreement shall not be stayed, avoided, or otherwise limited by the Bankruptcy Code, including sections 362(a), 547, 548 or 553 thereof; (ii) Macquarie shall be entitled to the rights, remedies and protections afforded by and under, among other sections, sections 362(b)(6), 362(b)(17), 362(b)(27), 362(o), 546(e), 546(g), 546(j), 548(d), 553, 556, 560, 561 and 562 of the Bankruptcy Code; and (iii) any cash, securities or other property provided as performance assurance, credit support or collateral with respect to the transactions contemplated hereby shall constitute "margin payments" as defined in section 101(38) of the Bankruptcy Code and all payments for, under or in connection with the transactions contemplated hereby, shall constitute "settlement payments" as defined in section 101(51A) of the Bankruptcy Code.

- (h) In connection with Macquarie's procurement of Crude Oil or Products, whether from the Company or any third party and whether under a Macquarie Crude Procurement Contract or an Included Product Purchase Transaction (each a "Sourcing Transaction"), the Company covenants and agrees that any out of pocket costs, losses or damages that Macquarie may incur as a result of such Sourcing Transaction, including due to failure by the Company or any such third party to deliver the Crude Oil or Products subject to such Sourcing Transaction, shall constitute, without duplication, Ancillary Costs and be for the account of the Company and claims arising in connection therewith shall be subject to Section 5.9 hereof, except to the extent that such out of pocket costs, losses or damages have been incurred by Macquarie as a result of its gross negligence, willful misconduct or intentional default.
- (i) This Agreement, the other Transaction Documents and the transactions contemplated hereby and thereby do not and shall not violate any terms and conditions of any Existing Financing Agreement or other Financing Agreement that is hereafter entered into by the Company.
- (j) The Company shall not modify or amend (including any extensions of or elections under), or waive any arising under, any Financing Agreement without the prior written consent of Macquarie, if doing so would (i) adversely affect in any respect any of Macquarie's rights or remedies under this Agreement or the other Transaction Documents or (ii) cause any Existing Financing Agreement to no longer satisfy the conditions set forth in Section 1.1(e) above (which, for these purposes, shall be deemed to refer to the Intercreditor Agreement and the Orders collectively but shall disregard junior liens on the Hydrocarbon Credit Support to the extent permitted by the Orders), including, without limitation, the recognition that Macquarie is the owner of Crude Oil and Products to the extent contemplated hereby and by the other Transaction Documents, free and clear of any liens of any lender or other creditor that is party to such Financing Agreement, other than Permitted S&O Liens; provided however, that Macquarie will not charge a fee to the Company for any written acknowledgment that any such amendment of a Financing Agreement does not adversely affect in any material respect any of Macquarie's rights or remedies hereunder.
- (k) The Company shall not, from and after the Effective Date, enter into any Financing Agreement (an "Additional Financing Agreement") that would cause its aggregate Specified Indebtedness (excluding, for these purposes, the Existing Financing Agreements) to exceed USD 10,000,000 without the prior written consent of Macquarie (such consent not to be unreasonably withheld, conditioned or delayed) unless such Additional Financing Agreement, at the time it is entered into, does not adversely affect in any respect (i) any of Macquarie's rights or remedies under this Agreement or the other Transaction Documents or (ii) Macquarie's status as the owner of Crude Oil and Products to the extent contemplated hereby and by the other Transaction Documents, free and clear of any liens of any lender or other creditor that is party to such Financing Agreement, other than Permitted S&O Liens, in which case, the Company shall notify Macquarie of such Additional Financing Agreement by no later than the date on which Additional Financing Agreement is entered into. The Company shall not modify or amend (including any extensions of or elections under), or waive any rights arising under, any Additional Financing Agreement without the prior written consent of Macquarie, if doing so would adversely affect in any respect any of Macquarie's rights or remedies under this Agreement or the other Transaction Documents including, without limitation, Macquarie's status as the owner of Crude Oil and Products to the extent contemplated hereby and by the other Transaction Documents, free and clear of any liens of any lender or other creditor that is party to such Financing Agreement.
- (l) Except as otherwise provided herein or approved by Macquarie, the Company shall not use any cash or the proceeds of any transactions hereunder in a manner or for a purpose inconsistent with this Agreement, the other Transaction Documents and the Orders.

19.4 Affirmative Covenants. The Company shall, and shall cause each of its Subsidiaries to:

- (a) Preservation of Existence, Etc. (i) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Applicable Laws of the jurisdiction of its organization except in a transaction permitted by the Existing Financing Agreements with prior notice to Macquarie and provided that all required actions are taken, or caused to be taken, so to preserve the perfection of liens in favor of Macquarie created in connection herewith on or before the consummation of any such transaction; (ii) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to result in a Material Adverse Change; and (iii) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to result in a Material Adverse Change.
- (b) Maintenance of Properties. (i) Maintain, preserve and protect all of its material properties and equipment necessary in conduct of its business and operation in accordance with Accepted Industry Practice, ordinary wear and tear excepted; and (ii) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to result in a Material Adverse Change.
- (c) Compliance with Laws. Comply in all respects with the requirements of all Applicable Laws and all orders, writs, injunctions and decrees applicable to it or to the conduct of its business, operations or property, except in such instances in which (i) such requirement of Applicable Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (ii) the failure to comply therewith could not reasonably be expected to result in a Material Adverse Change.
- (d) Books and Records. (i) Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP in all material respects and consistently applied shall be made of all financial transactions and matters involving the assets and business of the Company; and (ii) maintain such books of record and account in conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over the Company, except where the failure to do so would not result in a Material Adverse Change. To the extent permitted by GAAP, the Company shall reflect the buy/sell transactions contemplated hereby as buy/sell transactions on its books and records and will not list as assets in its books and records any Crude Oil or Product agreed hereunder to be owned by Macquarie. To the extent permitted by GAAP, the Company shall not reflect amounts owed to Macquarie hereunder as indebtedness for borrowed money, but will reflect them as trade payables.
- (e) Additional Inspection Rights. In addition to the inspection rights of Macquarie set forth elsewhere in this Agreement or any other Transaction Document, all of which rights shall continue in full force and effect, and notwithstanding anything to the contrary contained in this Agreement or in any other Transaction Document, upon providing commercially reasonable notice and during normal business hours, permit Macquarie (or any representative of Macquarie) to visit and inspect any of the Company's properties, to examine the Company's corporate, financial and operating records with respect to the Transaction Documents, and make copies thereof or abstracts therefrom, and to discuss the Company's affairs, finances and accounts with any of the Company's directors (or equivalent), or officers and, if requested by the Company, in the presence of an officer of the Company, in each case, as often as reasonably may be desired by Macquarie, all at the sole cost and expense of the Company.
- (f) Further Assurances.
 - (i) To the extent deemed necessary or appropriate by Macquarie, the Company shall cause to be filed acknowledgements and/or releases (including without limitation, amendments or terminations of UCC financing statements), in form and substance reasonably satisfactory to Macquarie, confirming the release of any Lien in favor of any lender or other creditor, other than Permitted S&O Liens, that might apply to or be deemed to apply to any Crude Oil and/or Products of which Macquarie is the owner as contemplated by this Agreement and the other Transaction Documents and recognition of Macquarie's first priority Lien with respect to the Hydrocarbon Credit Support granted to Macquarie under the Lien Documents, and agrees to use commercially reasonable efforts to provide Macquarie with such further documentation as it may reasonably request in order to confirm the foregoing.

- (ii) The Company agrees that it shall not have any interest in or the right to dispose of (other than as set forth in the Transaction Documents) (but shall have the right to purchase contemplated herein), and shall not permit the creation of, or suffer to exist, any security interest, lien, mortgage, encumbrance, charge or other claim of any nature (collectively, "Liens"), other than Permitted S&O Liens, with respect to, any quantities of Crude Oil or Products that are owned by Macquarie from time to time pursuant to the Transaction Documents and held in the Included Storage Locations (collectively, "Macquarie's Property"). The Company authorizes Macquarie to file at any time and from time to time any UCC financing statements describing the quantities of Macquarie's Property subject to this Agreement and Macquarie's ownership thereof and title thereto, as well as any inventory or other Credit Support on which the Company, as applicable, or has granted to Macquarie a first priority Lien pursuant to the Lien Documents, and the Company shall execute and deliver to Macquarie, and the Company hereby authorizes Macquarie to file (with or without such the Company's signature), at any time and from time to time, all amendments to financing statements, assignments, continuation financing statements, termination statements, and other documents and instruments, in form reasonably satisfactory to Macquarie, as Macquarie may reasonably request, to provide public notice of Macquarie's ownership of and title to the quantities of Macquarie's Property subject to this Agreement and to otherwise protect Macquarie's interest therein and provide notice of Macquarie's Liens on any property covered thereby.

19.5 Negative Covenants. The Company covenants and agrees that it shall not (and shall procure that Vertex Renewables shall not), at any time, permit the Unrestricted Cash of the Company and Vertex Renewables (together with any undrawn commitments under the Post-Petition Financing Agreement) to be less than ~~\$25,000,000~~ 15,000,000 in the aggregate for any period of more than three (3) consecutive Business Days (the "Minimum Liquidity Requirement").

19.6 Additional Covenants.

(a) Subject to Section 19.3(j), the Company will provide prior written notice to Macquarie of any amendments, restatements, supplements or other material modifications of or to any Financing Agreement prior to the effectiveness of same, provided however, that the Company shall not be required hereby to provide notice of (i) supplements to any indenture if such supplement either (a) does not change a material term thereof or (b) adds a guarantor or pledger thereunder, (ii) changes to any hedging contract, forward purchase agreement or swap agreement, (iii) the addition or release of any collateral (so long as such collateral does not constitute the Company's Hydrocarbons) with respect to any Financing Agreement.

(b) In all respects subject to the Bankruptcy Code and applicable confidentiality arrangements, prior to (x) submitting a motion to reject within the meaning of Section 365(a) of the Bankruptcy Code; or (y) exercising any right it may have to terminate, the Shell Crude Supply Agreement, the Tripartite Crude Supply Agreement related thereto, any Intermediated Product Offtake Contract or corresponding Tripartite Product Offtake Agreement, the Company shall notify Macquarie in advance on a confidential basis (a "Supply/Offtake Consultation Notice"). As soon as reasonably practicable following receipt of a Supply/Offtake Consultation Notice and subject in all respects to the other terms and conditions under this Agreement and the Intermediation Orders, the Parties shall consult (i) with a view to ensuring that, to the extent that the Company intends to request that Macquarie enter into Macquarie Crude Procurement Contracts, Included Product Purchase Transactions, Included Sales Transactions or Included Crude Sales Transactions in lieu of obtaining supply or offtake from the Permitted Supplier, Product Supplier or Third Party Offtaker, there are sufficient arrangements in place between Macquarie and the Company such that (and subject to the provisions of this Agreement), Macquarie and the Company are operationally ready (to the extent feasible in advance) to facilitate the entry into of Macquarie Crude Procurement Contracts, Included Product Purchase Transactions, Included Crude Sales Transactions or Included Sales Transactions (if applicable); and (ii) with respect to any anticipated effects on the next upcoming Cashflow Forecast.

19.7 Acknowledgment. The Company acknowledges and agrees that (1) Macquarie is a merchant of Crude Oil and Products and may, from time to time, be dealing with prospective counterparties, or pursuing trading or hedging strategies, in connection with aspects of Macquarie's business which are unrelated hereto and that such dealings and such trading or hedging strategies may be different from or opposite to those being pursued by or for the Company, (2) Macquarie may, in its sole

discretion, determine whether to advise the Company of any potential transaction with a Third Party Supplier and prior to advising the Company of any such potential transaction Macquarie may, in its discretion, determine not to pursue such transaction or to pursue such transaction in connection with another aspect of Macquarie's business and Macquarie shall have no liability of any nature to the Company as a result of any such determination, (3) Macquarie has no fiduciary duties or trust obligations of any nature with respect to the Refinery or the Company or any of its Affiliates, (4) Macquarie may enter into transactions and purchase Crude Oil or Products for its own account or the account of others at prices more favorable than those being paid by the Company hereunder and (5) nothing herein shall be construed to prevent Macquarie, or any of its partners, officers, employees or Affiliates, in any way from purchasing, selling or otherwise trading in Crude Oil, Products or any other commodity for its or their own account or for the account of others, whether prior to, simultaneously with or subsequent to any transaction under this Agreement.

20 DEFAULT AND TERMINATION

20.1 Events of Default. Notwithstanding any other provision of this Agreement, the occurrence of ~~(x)~~ any of the following events (other than sub-paragraph (d) or (f) below) with respect to a Vertex Party shall constitute an "Event of Default" with respect to ~~such Party~~ the Company and; (y) any of the following events set out in sub-paragraph (a), (c), (d), (e) and (f) shall constitute an "Event of Default" with respect to Macquarie:

- (a) Failure to Pay. Either Party fails to make payment when due under any Transaction Document within one (1) Business Day after delivery of a written notice from the other Party of such failure to pay; or
- (b) Material Obligations. Other than a default described in Section 20.1(a), 20.1(c), 20.1(e), or 20.1(p), the Company fails to:
 - (i) comply with the ~~requirements of~~ Minimum Liquidity Requirement set out in Section 19.5 (Negative Covenants); or
 - (ii) perform any Material Obligation ~~(other than as described in sub-paragraph (i) above)~~ under this Agreement ~~or any other Transaction Document~~, which is not cured to the reasonable satisfaction of the other Party ~~(in its reasonable discretion)~~ within two Business Days after the date that such Party receives written notice that such obligation or covenant has not been performed; (or such longer grace period as provided under the applicable Transaction Document) or
- (c) Misrepresentation. Either Party (or, if applicable, any Affiliate of such Party that is party to a Transaction Document, including, without limitation, Vertex Renewables) breaches any material representation or material warranty made or repeated or deemed to have been made or repeated by the Party (or any such Affiliate of such Party), or any warranty or representation proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated under any Transaction Document; provided, however, that if such breach is curable, such breach is not cured to the reasonable satisfaction of the other Party within ten (10) Business Days after the date that such Party receives notice that corrective action is needed (or such longer grace period as provided under the applicable Transaction Document) or
- (d) Bankruptcy. ~~Either Party~~ Macquarie becomes Bankrupt; or
- (e) Default under Specified Transaction. Either Party or any of its Affiliates (1) defaults on payment obligations under any Specified Transaction, or (2) defaults on posting required collateral or credit support in connection with any Specified Transaction and such breach is not cured to the reasonable satisfaction of the other Party within two (2) Business Days after the date that such Party receives notice that corrective action is needed; or
- (f) Master Agreement. A Master Agreement Termination Event occurs with respect to ~~either Party~~ Macquarie; or
- (g) Change of Control or Specified Event. A Change of Control or Specified Event occurs; or

- (h) Material Agreement. The Company fails, after giving effect to any applicable notice requirement or grace period, to perform its obligations under, comply with, or maintain in any material respect a Base Agreement or the Required Storage and Transportation Arrangements, if any; or
- (i) Disposals. The Company, Vertex Renewables or any of its Subsidiaries sells, leases, subleases, transfers or otherwise disposes of, in one transaction or a series of related transactions (other than an Acceptable Plan or Sale), all or substantially all of the assets that constitute the Refinery; or
- (j) Merger. ~~The~~Other than an Acceptable Plan or Sale, the Company (i) consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity (including an Affiliate) or any such consolidation, amalgamation, merger or transfer is consummated, and (ii) (A) the successor entity resulting from any such consolidation, amalgamation or merger or the Person that otherwise acquires all or substantially all of the assets of the Company does not assume, in a manner reasonably satisfactory to Macquarie, all of the Company's obligations hereunder and under the other Transaction Documents, or (B) in the reasonable judgment of Macquarie, the creditworthiness of the resulting, surviving or transferee entity, taking into account any guaranties, is materially weaker than the Company immediately prior to the consolidation, amalgamation, merger or transfer; or
- (k) Breach of covenant. The Company fails to perform or observe any covenant, affirmative or negative, set forth herein or in any other Transaction Document (other than any such covenant specified in any other sub-section of this Section 20.1 or any contemplated by, as between the Parties hereto, section 5 of the Assurance Agreement) and the Company fails to cure, correct or eliminate such failure or non-compliance within five (5) Business Days after receipt from Macquarie of written notice of such failure; *provided further* that no Event of Default shall occur pursuant to this sub-section (k) if (1) an administrative, technical or unintentional error is identified in a report delivered to Macquarie by the Company pursuant to this Agreement and the Parties have agreed to correct any such error; or (2) a default or termination occurs under a Transaction Document that is a Third Party Supply/Offtake Agreement (other than any breach of any exclusivity provisions set out in such agreements) (and without limiting any other right that Macquarie may have under this Section 20.1 or otherwise in connection with such default or termination).
- (l) Cross Default. ~~There~~Other than in connection with the commencement of the Chapter 11 Cases, there shall occur, after giving effect to any applicable notice requirement or grace period, either (A) a default, event of default or other similar condition or event (however described) in respect of the Company or any of its Guarantors under one or more agreements or instruments relating to Specified Indebtedness (other than any Financing Agreement) in an aggregate amount of not less than (\$20,000,000) which has resulted in such Specified Indebtedness becoming due and payable under such agreements and instruments before it would have otherwise been due and payable ~~or~~; (B) a default by the Company or any of its Guarantors in making one or more payments on the due date thereof in an aggregate amount of not less than (\$20,000,000) under such agreements or instruments (after giving effect to any applicable notice requirement or grace period); or (C) an event or default or termination event (including an additional termination event) occurs in respect of which the Company is the defaulting party or an affected party under the MBL Secured ISDA; or
- (m) Financing Agreement. Any indebtedness of the Company or any of its Guarantors pursuant to a Financing Agreement is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of the occurrence of an event of default (howsoever described) under any of the Financing Agreements; or
- (n) Repudiation. A Vertex Party disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenge the validity of this Agreement or the Guaranty to which it is a party; or
- (o) Guarantor. Any of the following: (i) a Guarantor or a Vertex Renewables Guarantor fails to perform or otherwise defaults in any payment obligation under the Guaranty or Vertex Renewables SOA Guaranty to which it is a party, (ii) ~~a Guarantor becomes Bankrupt, (iii) any any Guaranty or any Vertex Renewables SOA~~ Guaranty expires (other than in accordance with its terms or pursuant to any mutually agreed termination arrangement) or terminates or ceases to be in full force and effect prior to (x) in the case of the Guaranties, the satisfaction

of all obligations of the Company to Macquarie under this Agreement and the other Transaction Documents; or ~~(iv)–ay) in the case of the Vertex Renewables Guaranties, Macquarie determining that there are no further actual or potential liabilities of Vertex Renewables to Macquarie that could arise after the termination of the Vertex Renewables SOA, or (iii) a Guarantor or a Vertex Renewables~~ Guarantor disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of the Guaranty or Vertex Renewables SOA Guaranty to which it is a party or any of the Intercreditor Provisions (as defined below); or

- (p) Security Instruments. (i) Macquarie fails to have a valid perfected security interest in any portion of the Credit Support (other than Credit Support released in accordance with the Transaction Documents) or (ii) any Lien Document shall at any time and for any reason (other than solely with respect to any action or inaction of Macquarie) cease to create a security interest on the Credit Support purported to be subject to such instrument in accordance with the terms of such instrument, or cease to be in full force and effect (except to the extent that the Interim Intermediation Order is replaced by the Final Intermediation Order or the Interim DIP Order is replaced by the Final DIP Order, once entered by the Bankruptcy Court); or
- (q) Compliance with Governmental Authority. A Vertex Party fails to comply in any respect with the order, regulation or directive of any Governmental Authority pertaining in any way to such person, the transactions contemplated by the Transaction Documents or the Credit Support, except for such failure to comply as would not result in a Material Adverse Change; or
- (r) Judgments Against Company. ~~There~~Other than in connection with the commencement of the Chapter 11 Cases, there is entered against the Company (i) one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding \$20,000,000 (to the extent not covered by independent third-party insurance) which is not paid when due in accordance with its terms, or (ii) one or more non-monetary final orders of a court of competent jurisdiction that have, or would reasonably be expected to result in, individually or in the aggregate, a Material Adverse Change; or
- (s) Judgments Against a Guarantor. ~~There~~Other than in connection with the commencement of the Chapter 11 Cases, there is entered against a Guarantor (i) one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding \$ 20,000,000 (to the extent not covered by independent third-party insurance) which is not paid when due in accordance with its terms, or (ii) one or more non-monetary final orders of a court of competent jurisdiction that have, or would reasonably be expected to result in, individually or in the aggregate, a Material Adverse Change; or
- (t) Intercreditor Agreement.
 - (i) any of the intercreditor, subordination, standstill, payover and insolvency related provisions of the Intercreditor Agreement (except to the extent superseded by an Intermediation Order), the Intermediation Orders or, solely as they relate to Macquarie or the Intermediation Facility Priority Collateral (as defined in the Interim Intermediation Order), the other Orders (“Intercreditor Provisions”) shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the applicable indebtedness (other than pursuant to an Approved Bankruptcy Court Order); ~~or~~
 - (ii) the Company shall, directly or indirectly, disavow or contest in any manner the effectiveness, validity or enforceability of any of the Intercreditor Provisions; or

~~(u) Vertex Renewables SOA. There shall occur an “Event of Default” (as defined in the Vertex Renewables SOA) in respect of Vertex Renewables under the Vertex Renewables SOA.~~

(iii) the Term Loan Agent on behalf of itself and other DIP Loan Secured Parties contests, protest or objects to, or supports any other person in contesting, protesting or objecting to, Macquarie's title to or ownership of all or any part of the Macquarie Owned Inventory (as defined below).

(u) Bankruptcy Proceedings.

- (i) the Interim DIP Order, in form and substance reasonably acceptable to Macquarie, is not entered by the Bankruptcy Court by the date falling three (3) days after the Petition Date; *provided, that* the form of the proposed Interim DIP Order filed on the docket is deemed to be in form and substance reasonably acceptable to Macquarie;
- (ii) the Post-Petition Financing Agreement has not been funded in the amount of at least US\$39,390,204.38 by September 27, 2024 and thereafter, in accordance with the Approved Budget (as defined in the Post-Petition Financing Agreement);
- (iii) the Final Intermediation Order, in form and substance reasonably acceptable to Macquarie is not entered by the date falling thirty (30) days after the Petition Date;
- (iv) a final order that approves the Post-Petition Financing Agreement and that is in form and substance reasonably acceptable to Macquarie (the "Final DIP Order"), is not entered by the Bankruptcy Court, within thirty (30) days following the Petition Date;
- (v) failure to consummate or confirm, as applicable, an Acceptable Plan or Sale by the Expiration Date;
- (vi) the Vertex Parties fail to satisfy any of their material obligations (including credit support obligations and any exclusivity requirement) under the Transaction Documents (in each case, other than under a Transaction Document that is a Third Party Supply/Offtake Agreement unless the relevant failure to comply relates to a breach of any exclusivity requirement, and without limiting any other right Macquarie may have under this Section 20.1 or otherwise), the Assurance Agreement, the Interim Intermediation Order or, following its entry, the Final Intermediation Order;
- (vii) (1) a Vertex Party moves to reject an Intermediation Contract (as defined in the Interim Intermediation Order) or such Intermediation Contract is rejected under section 365(a) of the Bankruptcy Code; or (2) a Vertex Party moves to reject a Third Party Supply/Offtake Agreement other than in compliance with Section 19.6(b);
- (viii) any Vertex Party declares itself to be, or is found by the Bankruptcy Court to be, administratively insolvent, or any Vertex Party declares that it does not intend to pay allowed administrative expense claims in full;
- (ix) any Vertex Party moves or supports a motion seeking to convert any Vertex Party's bankruptcy case to a case under Chapter 7 of the Bankruptcy Code or dismissing any Vertex Party's bankruptcy case;
- (x) the Bankruptcy Court enters an order converting any Vertex Party's bankruptcy case to a case under Chapter 7 of the Bankruptcy Code or dismissing any Vertex Party's bankruptcy case;
- (xi) the Bankruptcy Court enters an order, or any Vertex Party files or supports an application, motion, or request for an order directing the appointment under section 1104 of the Bankruptcy Code of (1) a trustee or (2) an examiner or any other person with enlarged powers relating to the operation of the business of any Vertex Party (i.e., powers beyond those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code);
- (xii) any debtor-in-possession financing facility under which any Debtor is obligated to perform is accelerated by the lender or the lender's agent or otherwise matures and remains unpaid;
- (xiii) any Vertex Party has a receiver, custodian, trustee or liquidator appointed over all or a substantial portion of its assets or is subject to such an appointment or to any similar proceeding under the laws of any jurisdiction;
- (xiv) any Vertex Party files or supports a motion, proposed plan or other pleading, or any order is entered in the bankruptcy case that in any material way affects, impairs, or limits (including the imposition of any stay or injunction) Macquarie's rights or the Vertex Parties' obligations under the Transaction Documents (other than under a Transaction Document that is a Third Party Supply/Offtake Agreement and without limitation any

right Macquarie may have under this Section 20.1 or otherwise in connection herewith), the Assurance Agreement, the Interim Intermediation Order or the Final Intermediation Order or the validity, priority or enforceability of any security interests or claims granted to Macquarie pursuant to the Interim Intermediation Order, the Interim DIP Order, the Final DIP Order or the Final Intermediation Order;

- (xv) the Interim Intermediation Order or, following its entry, the Final Intermediation Order, shall cease to be in full force and effect, in each case as determined by Macquarie in its commercially reasonable discretion;
- (xvi) the Interim Intermediation Order, or, following its entry, the Final Intermediation Order:
 - (A) shall have been, directly or indirectly, affected, impaired, limited reversed, stayed, vacated or subjected to a stay pending appeal or otherwise modified in any way materially adverse to the protections afforded to Macquarie under the Interim Intermediation Order or, when entered into, the Final Intermediation Order, in either case, without the prior written consent of Macquarie; or
 - (B) are modified or amended in any way that affects any termination rights available to the Macquarie Bank Limited (in its capacity as hedge provider) (the "Hedge Provider") under the MBL Secured ISDA, as amended in the manner described in the Interim Intermediation Order, or that is otherwise materially adverse to the protections afforded to the Hedge Provider under the Interim Intermediation Order and/or the Final Intermediation Order, without the prior written consent of the Hedge Provider;
- (xvii) an order is entered by the Bankruptcy Court requiring the avoidance of any payment received by Macquarie under any Transaction Document or any Vertex Party moves for the avoidance of any payment received by Macquarie under any Transaction Document, whether such payment is received prior to, on or after the Petition Date;
- (xviii) any Transaction Document shall be assigned by any Vertex Party to any third party without the prior written consent of the other party or parties, as applicable, to such Transaction Document;
- (xix) any motion or other pleading is filed by a Vertex Party proposing a transaction (other than the transactions expressly contemplated by the Acceptable Plan (as defined in the Interim DIP Order)) for the sale of the Refinery (through a sale of assets, sale of substantially all assets, merger, reorganization or otherwise) that is not also an Acceptable Plan or Sale;
- (xx) the Bankruptcy Court enters an order or orders granting relief from the automatic stay under section 362 of the Bankruptcy Code with regard to any assets of the Vertex Parties and such relief would have or could reasonably be expected to have a material adverse effect; or
- (xxi) noncompliance by any Vertex Party with any of the material terms of the Interim Intermediation Order or the Final Intermediation Order.

20.2 Change in Law.

- (a) If, due to a Change in Law after the date of this Agreement:
 - (i) it becomes:
 - (A) unlawful or otherwise prohibited on any day, or it would become unlawful or otherwise prohibited if the relevant payment, delivery or compliance were required on that day, for a Party (the "**CL Affected Party**") to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery under this Agreement or to comply with any other material provision of this Agreement or any other Transaction Document; or

(B) unlawful for any Affiliate of the CL Affected Party, for the CL Affected Party to do the acts described at Section 20.2(a)(i) above; or

(ii) if the CL Affected Party is Macquarie, it would be or is likely to be subject to additional or increased burdens or costs if it were to continue to hold Crude Oil and Product in the manner contemplated by this Agreement,

then:

(A) the CL Affected Party shall promptly notify the other Party (the “**Non-CL Affected Party**”) upon becoming aware of that event; and

(B) without prejudice to Section 20.2(c) below, the relevant right, obligation or other provision shall be suspended to the extent required to avoid any breach of the matter which is the subject of the Change in Law or any other unlawfulness on the part of the CL Affected Party.

(b) The obligations of the Non-CL Affected Party under this Agreement shall be suspended to the same extent as those of the CL Affected Party.

(c) If either:

(i) at any time it is not possible by virtue of the suspension described in Section 20.2(a)(ii) (B) above to avoid the breach or other unlawfulness on the part of the CL Affected Party described in Section 20.2(a)(ii); or

(ii) it is so possible but the Parties have been unable to agree, each acting in good faith and in a commercially reasonable manner, consequential amendments to be made to the Transactions that may be substituted for any such invalid, illegal or unenforceable provision and which, as nearly as is practicable in all the circumstances, preserve the commercial intention of the Parties and the intended economic effect of the transactions contemplated by the Transaction Documents,

in either such case by the date falling 10 (ten) Business Days after the date of the notice described in Clause 20.2(a) (or, if earlier, the date specified by the CL Affected Party in the notice described in Clause 20.2(a) as the last day of any applicable grace period permitted by Applicable Law), the CL Affected Party shall be entitled to terminate this Agreement by notice to the Non-CL Affected Party (an “**Illegality Termination Notice**”).

(d) An Illegality Termination Notice shall specify the termination date which shall not be earlier than:

(i) where it has not been possible to avoid the breach or unlawfulness described in Section 20.2(a), the date of the Illegality Termination Notice; or

(ii) otherwise, 30 (thirty) days after the date of the Illegality Termination Notice.

20.3 Termination Event.

(a) The occurrence of any of the following events shall constitute a “Termination Event” for the purposes of this Agreement:

(i) Illegality Termination Notice. An Illegality Termination Notice is delivered by the CL Affected Party to the Non-CL Affected Party pursuant to Section 20.2(c).

(ii) Invalidity. Any material obligation(s) of the Company or Macquarie under any Transaction Document between the Company and Macquarie are not or cease to be legal, valid, binding or enforceable.

~~(iii) Termination of certain agreements: An Intermediated Product Offtake Contract, the Shell Crude Supply Agreement or the Tripartite Crude Supply Agreement is terminated by any party thereto.~~

~~(iv) Vertex Renewables SOA. There shall occur a "Termination Event" (as defined in the Vertex Renewables SOA) under the Vertex Renewables SOA.~~

- (b) Following the occurrence of a Termination Event, either Party may, by notice in writing to the other Party, elect to terminate this Agreement (a "Termination Notice"). A Termination Notice must specify the date on which the Agreement shall terminate, which shall be a date no earlier than the date of that notice and, in the case of a Termination Event pursuant to sub-paragraph 20.3(a)(i) above, shall be a date no earlier than the date determined in accordance with Section 20.2(d) above. Once a Termination Notice has been validly given, the Agreement shall terminate on the date specified in that Termination Notice.
- (c) Following termination of this Agreement pursuant to this Section 20.3, the provisions of Article 21 shall apply unless, following the occurrence of a Change in Law, the CL Affected Party determines that compliance with Article 21 would be contrary to Applicable Law, in which case, Section 20.4 (other than Section 20.4(a)) shall apply.

20.4 Remedies.

- (a) Acceleration. Notwithstanding any other provision of this Agreement, if any Event of Default with respect to the Company, on the one hand, or Macquarie, on the other hand (such defaulting Party, the "Defaulting Party") has occurred and is continuing, Macquarie (where the Company is the Defaulting Party) or the Company (where Macquarie is the Defaulting Party) (such non-defaulting Party or Parties, the "Non-Defaulting Party") may, upon notice to the Defaulting Party (an "Acceleration Notice"), (i) designate a date not earlier than the date of the Acceleration Notice as the date on which this Agreement shall terminate and declare all of the Defaulting Party's obligations under this Agreement to be forthwith due and payable, all without presentment, demand, protest or further notice of any kind, all of which are expressly waived by the Defaulting Party and/or (ii) subject to Section 20.4(d), exercise any rights and remedies provided or available to the Non-Defaulting Party under this Agreement, the other Transaction Documents or at law or equity, including all remedies provided under the UCC and as provided under this Section 20.4.
- (b) Termination/Settlement Amount. Notwithstanding any other provision of this Agreement, if an Event of Default has occurred and is continuing with respect to the Defaulting Party, the Non-Defaulting Party shall have the right, to terminate the Agreement (and any other contract or agreement that may then be outstanding between the Parties that relates specifically to this Agreement, including any Transaction Document) on a date no earlier than the date specified in the Acceleration Notice or, to the extent that the provisions of this Section 20.4 apply following the occurrence of a Change in Law, the relevant Termination Date, and, subject to Section 20.4(d), to liquidate and terminate any or all rights and obligations under this Agreement and such other Transaction Documents; provided that, in the event Macquarie is the Non-Defaulting Party, this Agreement shall not be deemed to have terminated in full until Macquarie shall have disposed of all Crude Oil and Products owned or maintained by Macquarie in which Macquarie has lien or other rights in connection herewith and exercised in full all of its rights and remedies with respect to the Hydrocarbon Credit Support.
- (c) Settlement Amount. The Settlement Amount (as defined below) payable upon the early termination of this Agreement pursuant to Section 20.3(c) or Section 20.4(a) shall be calculated in a commercially reasonable manner based on such liquidated and terminated rights and obligations and shall be payable by one Party to the other. The "Settlement Amount" shall mean the amount, expressed in U.S. dollars, of losses and out of pocket costs that are or would be incurred by (i) Macquarie, if the Agreement is terminated pursuant to Section 20.3(c) and the provisions of this Section 20.4 apply; or (ii) the Non-Defaulting Party (each, the "Determining Party") (expressed as a positive number) or gains that are or would be realized by the Determining Party (expressed as a negative number) as a result of the liquidation and termination of all rights and obligations under this Agreement and such other Transaction Documents. The determination of the Settlement Amount shall include (without duplication): (w) if Macquarie is the Determining Party, the losses and out of pocket costs (or gains) incurred or realized (and determined in a commercially reasonable manner) by Macquarie in accordance with the Unwind Procedures, (x) the losses and out of pocket costs (or gains) incurred or realized (and determined in a commercially reasonable manner) by the Determining Party in terminating, transferring, redeploying or otherwise modifying any outstanding Macquarie Crude Procurement Contracts, (y) the losses and out of pocket costs (or gains) incurred or realized (and determined in a commercially reasonable manner) by the

Determining Party in terminating and liquidating any transactions subject hereto, including but not limited to, any unpaid amounts owed pursuant to Section (k) and Section (b) herein and (z) all breakage costs, losses and out of pocket costs (or gains) incurred or realized by the Determining Party, as a result of the Determining Party's terminating, liquidating, maintaining, obtaining or re-establishing any Related Hedges (including, if Macquarie is the Determining Party, all hedging transactions relating to the roll procedures set forth in the Fee Letter).

- (d) Determination of Settlement Amount. The Settlement Amount shall be determined by the Determining Party, acting in good faith, in a commercially reasonable manner. The Determining Party shall determine the Settlement Amount commencing as of the date on which such termination occurs by reference to such futures, forward, swap and options markets as it shall select in its commercially reasonable judgment; provided that the Determining Party is not required to effect such terminations and/or determine the Settlement Amount on a single day, but rather may effect such terminations and determine the Settlement Amount over a commercially reasonable period of time. Without limiting the generality of the foregoing, it is agreed that for purposes of determining the Settlement Amount: to the extent the Determining Party deems it commercially reasonable to do so, it may in referencing prices in the futures, forward, swap and options markets for purposes of calculating various elements of the Settlement Amount endeavor to align the dates as of which such reference prices are determined. In calculating the Settlement Amount, the Determining Party shall discount to present value (in any commercially reasonable manner based on London interbank rates for the applicable period and currency) any amount which would be due at a later date and shall add interest (at a rate determined in the same manner) to any amount due prior to the date of the calculation.
- (e) Additional Rights of Macquarie. Without limiting any other rights or remedies hereunder, if an Event of Default has occurred and is continuing and Macquarie is the Non-Defaulting Party, Macquarie may, in its discretion, (i) withhold or suspend its obligations, including any of its delivery or payment obligations, under this Agreement or any other Transaction Documents, (ii) withdraw from storage any and all of the Crude Oil and/or Products then in the Included Storage Locations, (iii) otherwise arrange for the disposition of any Crude Oil and/or Products subject to any outstanding Macquarie Crude Procurement Contract or Included Product Purchase Transaction and/or the modification, settlement or termination of such outstanding Macquarie Crude Procurement Contract or Included Product Purchase Transaction in such manner as it elects, (iv) liquidate in a commercially reasonable manner any credit support, margin or collateral, to the extent not already in the form of cash (including applying any other margin or collateral) and apply and set off such credit support, margin or collateral or the proceeds thereof against any obligation owing by the Company or any of its Affiliates, to Macquarie or any of its Affiliates, (including without limitation the Independent Amount), (v) foreclose any lien or security interest, and (vi) exercise its rights in respect of any agreement or assignment of rights from a third party in respect of the transportation or storage of the Company Product Inventory. Macquarie shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available hereunder. The Company shall in all events remain liable to Macquarie for any amount payable by the Company in respect of any of its obligations remaining unpaid after any such liquidation, application and set off and, to the extent that the disposition of any Crude Oil and/or Products, the liquidation of any applicable credit support, margin or collateral or the exercise of any of its other rights or remedies hereunder results in Macquarie receiving amounts in excess of the amount owed to it by the Company, the amount of such excess shall be for the account of the Company.
- (f) Company's Rights. Without limiting any other rights or remedies hereunder or under any other Transaction Document and notwithstanding anything to the contrary specified herein or therein, if an Event of Default has occurred and is continuing and the Company is the Non-Defaulting Party, the Company may, in its discretion, (i) withhold or suspend its obligations, including any of its delivery or payment obligations, under this Agreement (ii) otherwise provide for the settlement or termination of the Parties' outstanding commitments hereunder, (iii) arrange for the sale in a commercially reasonable manner of Crude Oil and/or Product hereunder for Macquarie's account with the prior written consent of Macquarie (such consent not to be unreasonably withheld, conditioned or delayed), and the replacement of the intermediation, supply and offtake transactions contemplated hereby with such alternative arrangements as it may procure, and the consolidation of Macquarie's Property into a subset of Included Storage Locations without loss to or commingling of Macquarie's Property; *provided that* if the Company recovers any amount(s) in excess of the amount that would be

payable to Macquarie if such sale were to the Company under the Step-Out Inventory Sales Agreement on the relevant delivery date, then such excess shall be for the account of the Company to the extent not otherwise accounted for in the Settlement Amount; or (iv) elect, at any time following the occurrence of an Event of Default in respect of Macquarie and, from time to time thereafter, to purchase, in one or more transactions, all or any portion of the volumes of Crude Oil and Products at the Included Storage Locations (upon discharge therefrom or, with respect to a purchase of all Crude Oil and Products, *in situ*), in each case, at the applicable Current Month Pricing Benchmark(s) in effect as of the date of such purchase; *provided that*, for these purposes, no payment shall be due from the Company until the date on which it is due to receive payment for such quantities of Product from an offtaker pursuant to a Tripartite Product Offtake Agreement or such other customer.

- (g) Net Liquidated Amount. The Determining Party shall set off (i) the Settlement Amount (if due to the other Party), plus any performance security (including any other margin or collateral) then held by the Determining Party pursuant to the Transaction Documents, plus (at the Determining Party's election) any or all other amounts due to the other Party hereunder (including under Article 11), against (ii) the Settlement Amount (if due to the Determining Party), plus any performance security (including any other margin or collateral) then held by the other Party, plus (at the Determining Party's election) any or all other amounts due to the Determining Party hereunder (including under Article 11), so that all such amounts (including, for the avoidance of doubt, the amount of any Independent Amount held by Macquarie) shall be netted to a single liquidated amount payable by one Party to the other (the "Liquidated Amount"). The Party with the payment obligation shall pay the Liquidated Amount to the applicable other Parties within one (1) Business Day after such amount has been determined. In addition, the Parties acknowledge that, in connection with an Event of Default hereunder, the Step-Out Inventory Sales Agreement may be terminated and with respect thereto any rights and remedies available hereunder, under any other agreement between the Parties hereto or the parties thereto, or at law or equity may be exercised.
- (h) No Abandonment of Rights. No delay or failure on the part of the Determining Party in exercising any right or remedy to which it may be entitled on account of any Event of Default or a Change in Law shall constitute an abandonment of any such right, and the Non-Defaulting Party or Non-CL Affected Party shall be entitled to exercise such right or remedy at any time during the continuance of an Event of Default or, as applicable, at any time following the occurrence of the Change in Law.
- (i) Rights Cumulative. The Non-Defaulting Party's rights under this Section 20.4 shall be in addition to, and not in limitation or exclusion of, any other rights which the Non-Defaulting Party may have (whether by agreement, operation of law or otherwise), including any rights of recoupment, setoff, combination of accounts or other rights under any credit support that may from time to time be provided in connection with this Agreement or at law or in equity. The Defaulting Party shall indemnify and hold the Non-Defaulting Party harmless from all reasonable out of pocket costs and expenses, including reasonable attorney fees, incurred in the exercise of any remedies hereunder, as and to the extent provided in Article 22 hereof, and subject to the limitations set forth therein.
- (j) Setoff. If an Event of Default has occurred and is continuing or a Change in Law has occurred and an Illegality Notice has been delivered to the Non-CL Affected Party by the CL Affected Party, the Determining Party may, without limitation on its rights under this Section 20.4, set off amounts which the other Party owes to it against any amounts which it owes to the other Party (whether hereunder, under any other contract or agreement or otherwise and whether or not then due).
- (k) Master Netting Agreement. The Parties acknowledge and agree that this Agreement is intended to be a "master netting agreement" as such term is defined in section 101(38A) of the Bankruptcy Code. As used in this Section 20.4, unless otherwise expressly provided, each reference to "this Agreement" shall, and shall be deemed to, be a reference to "this Agreement and the other Transaction Documents."
- (l) Additional Master Netting and Setoff. The Parties acknowledge and agree that the Non-Defaulting Party or Non-CL Affected Party has such additional netting and setoff rights as are provided in any master netting agreement executed in connection herewith and expressly referencing this Agreement.

20.5 Unwind Procedures.

- (a) The Parties acknowledge and agree that, the provisions set out in these Sections 20.5 to ~~20.10~~20.9 are intended to establish an orderly arrangement promptly following the delivery by Macquarie of an Acceleration Notice (or such other time as may be agreed between the Parties):

- (i) for the processing, sale, transfer and/or evacuation of all Crude Oil and Products owned by Macquarie; and
- (ii) for the enforcement and realization of Macquarie's Security Interest (as defined in the Lien Documents) over its Collateral (as defined in the Lien Documents) pursuant to the Pledge and Security Agreement,

and that by establishing this orderly arrangement, (i) the processing, sale, transfer and/or evacuating of all Crude Oil and Products owned by Macquarie and (ii) the enforcement and realization of Macquarie's Security Interest over the Collateral following the delivery by Macquarie of an Acceleration Notice will take less time than the arrangements set out in the other Transaction Documents and Macquarie's losses, costs and expenses will be lower (thereby enabling a greater amount of Independent Amount to be returned to the Company by Macquarie pursuant to the terms of the Independent Amount Letter and the other Transaction Documents or resulting in a smaller net amount to be payable by the Company than would otherwise be the case).

- (b) The Company shall cooperate with Macquarie to process, sell or otherwise evacuate (i) Crude Oil and Products to which Macquarie has title pursuant to the Transaction Documents ("Macquarie Owned Inventory"); and (ii) Eligible ~~Lien Products~~Hydrocarbon Inventory, in each case, in accordance with the terms of this Agreement, the Storage Facilities Agreement and the Lien Documents, including in respect of the engagement with third parties in connection with third party rights over and obligations to the Company and/or Company owned or operated assets which may impact Macquarie Owned Inventory whether pursuant to the terms of the Intercreditor Agreement, the Intermediation Orders or otherwise under and in accordance with such agreements.
- (c) The Parties shall work together and use commercially reasonable efforts to expeditiously effect the intent of these Sections 20.5 to ~~20.10~~20.9 (inclusive) in respect of all Macquarie Owned Inventory and Eligible ~~Lien Products~~Hydrocarbon Inventory.

20.6 Company Sales

- (a) If there are, on any date during the Unwind Period (for the purposes of this Section 20.6 a "Relevant Date"):
- (i) any amounts due from the Company to Macquarie under the Transaction Documents (including, to the extent such amount has been calculated by Macquarie on or prior to such date, the Settlement Amount) which remain unpaid as at the Relevant Date; or
 - (ii) any amounts due in respect of transactions pursuant to the Transaction Documents where title to the relevant Inventory has been transferred to the Company on or prior to the Relevant Date, but either the due date for payment has not yet occurred as at the Relevant Date or the relevant transaction has not yet been priced under the Transaction Documents as at the Relevant Date,

then in furtherance of the intent of these Sections 20.5 to ~~20.10~~20.9 (inclusive) Macquarie may, notwithstanding any other provision in the Transaction Documents, calculate the amounts due (including estimating the pricing of such transactions as of the Relevant Date in a commercially reasonable manner) (such amounts, the ~~"Company Due Amounts"~~ as of the Relevant Date), and (but without prejudice to the other rights of Macquarie in respect of such amounts under the Transaction Documents and this Agreement):

- (A) Macquarie may by written notice (substantially in the form set out in ~~Schedule~~ Schedule U (*Form of Company Due Amount Inventory Swap Notice*)) to the Company require that any part of the Company Product Inventory of a value

reasonably estimated by Macquarie to be equivalent to or exceeding the Company Due Amounts be sold at the delivery date specified in such notice, which shall be a date selected by Macquarie as being as soon as reasonably practicable following the date of the Company Due Amount Inventory Swap Amount (the "CDA Swap Delivery Date") to Macquarie upon such pricing and such other terms as Macquarie may determine, in good faith and in a commercially reasonable manner, after taking into account the then prevailing circumstances, in accordance with the provisions of this Agreement, and title shall pass from the Company to Macquarie *in situ* on the CDA Swap Delivery Date specified in such notice;

- (B) the parties agree that the final pricing applicable to any Company Product Inventory the subject of a notice pursuant to paragraph (A) above shall be determined as of the CDA Swap Delivery Date specified in such notice, or, if the CDA Swap Delivery Date is not a Business Day, the Business Day immediately following the CDA Swap Delivery Date (the "CDA Swap Pricing Date");
- (C) the amount payable by Macquarie for any such Company Product Inventory shall be payable by Macquarie to the Company on the CDA Swap Pricing Date, and Article 11 shall apply to such amount payable by Macquarie and the Company Due Amounts;
- (D) if, on or following the CDA Swap Pricing Date, Macquarie determines that the amount that would otherwise be payable by Macquarie on the CDA Swap Pricing Date exceeds the amount of the Company Due Amount specified in the notice provided pursuant to paragraph (A) above, the parties agree (i) that the amount so payable by Macquarie shall be equal to that Company Due Amount and (ii) that the volumes of each type of Product and/or grade of Crude Oil sold and in respect of which title shall pass on the CDA Swap Delivery Date, shall be reduced *pro rata* such that their aggregate value, determined by Macquarie in accordance with this Agreement described above, is equal to that Company Due Amount; and
- (E) if Macquarie determines (acting in good faith) that the Company did not have the right to sell the full volumes of the relevant Products and/or Crude Oil intended to be sold hereunder on the relevant CDA Swap Delivery Date, Macquarie shall in good faith and in a commercially reasonable manner (retrospectively if necessary) adjust the volumes of Products and/or Crude Oil which are the subject of the relevant sale in order to ensure that the Company was able to comply with its delivery obligation, and the amount payable by Macquarie shall be adjusted accordingly, and the Company acknowledges and agrees to any such adjustments and/or reductions; *provided that* no such adjustments may be made retroactively in respect of any Crude Oil and/or Product no longer stored in an Included Storage Location or otherwise at the Refinery. Macquarie shall provide the Company with an amended notice reflecting any such adjustments and/or reductions.

20.7 Inventory Swap Election.

~~(a) During the Unwind Period and in furtherance of the intent of these Sections 20.5 to 20.10 (inclusive), Macquarie may, from time to time by sending the Company written notice (substantially in the form set out in Schedule V (Form of Inventory Swap Election)) require that the Company purchase a specified grade or volume of Macquarie Owned Inventory and sell to Macquarie Company Product Inventory having an equal value (an "Inventory Swap Election"), and the Company hereby agrees to any such sale and purchase pursuant to the terms of this Agreement.~~

~~(b) In respect of the sales and purchases pursuant to Section 00 above:~~

~~(i) the delivery date (the "Inventory Swap Delivery Date") shall be as specified by Macquarie under the Inventory Swap Election (which shall be a date determined by Macquarie as being as soon as reasonably practicable on or following the date of the Inventory Swap Election);~~

- ~~(ii) Macquarie shall specify the inventory it wishes to buy from or sell to the Company in the Inventory Swap Election;~~
- ~~(iii) the aggregate purchase amount for the sale of Company Product Inventory by the Company to Macquarie in any Inventory Swap Election (the "Macquarie Swap Payment Amount") and for the sale of Macquarie Owned Inventory by Macquarie to the Company in any Inventory Swap Election (the "Company Swap Payment Amount" together with the Macquarie Swap Payment Amount, the "Swap Payment Amount") which shall be as close as reasonably practicable to the Macquarie Swap Payment Amount, specified (including any differentials) shall be determined by Macquarie in good faith and in a commercially reasonable manner, taking into account the then prevailing circumstances, where the date of fixing the relevant pricing shall be the Inventory Swap Delivery Date, or, if the Inventory Swap Delivery Date is not a Business Day, the Business Day immediately following the Inventory Swap Delivery Date;~~
- ~~(iv) subject to sub-paragraph (d) below, the Company Product Inventory to be purchased by Macquarie (or Macquarie Owned Inventory to be sold by Macquarie) shall be determined by Macquarie and notified to the Company as soon as reasonably practicable following determination by Macquarie of the Swap Payment Amount such that the Macquarie Swap Payment Amount shall be as close as reasonably possible to the Company Swap Payment Amount;~~
- ~~(v) in respect of the Crude Oil or Product purchased by Macquarie, Macquarie shall pay to the Company the Macquarie Swap Payment Amount and title shall pass from the Company to Macquarie *in situ*, in each case on the specified Inventory Swap Delivery Date; and~~
- ~~(vi) in respect of the Crude Oil or Product purchased by the Company, the Company shall pay to Macquarie, the Company Swap Payment Amount and title shall pass to the Company from Macquarie *in situ*, in each case on the specified Inventory Swap Delivery Date;~~
- ~~irrespective whether any invoice or self invoice has been issued in respect of such sales and purchases.~~
- ~~(c) If Macquarie subsequently determines (acting in good faith) that either Macquarie or the Company did not have the right to sell the full volumes of the relevant grades Crude Oil and/or types of Products as specified in the notice from Macquarie intended to be sold hereunder as a result of any Inventory Swap Election on the relevant Inventory Swap Delivery Date, Macquarie shall (retrospectively if necessary) adjust the volumes of Crude Oil and/or Product which are the subject of such Inventory Swap Election in order to ensure that each Party was able to comply with its delivery obligations and such that the Swap Payment Amount due from each Party on the relevant Inventory Swap Delivery Date would be equal and the Company acknowledges and agrees to any such adjustment(s) to the relevant volumes of Crude Oil and/or Product and the relevant Swap Payment Amounts; *provided that no such adjustments shall be made retrospectively in respect of Product or Crude Oil which has been moved or sold after the relevant Inventory Swap Delivery Date.*~~
- ~~(d) If, on or following the pricing date specified in Section 0 above, Macquarie determines that the Company Swap Payment Amount would otherwise be greater than the Macquarie Swap Payment Amount, the parties agree (i) that the Company Swap Payment Amount shall be reduced so as to be equal to the Macquarie Swap Payment Amount and (ii) that the volumes of each type of Product or grade of Crude Oil sold by Macquarie, and in respect of which title passed on the relevant Inventory Swap Delivery Date, shall be reduced *pro rata* such that their aggregate value, determined by Macquarie described above, is equal to the Macquarie Swap Payment Amount.~~
- ~~(e) Macquarie shall provide the Company with an amended Inventory Swap Election reflecting any adjustments and/or reductions made in reliance on Sections 20.70 or 0.~~

20.7

~~20.8~~ **Put Option.** At any time during the Unwind Period, Macquarie may by notice to the Company transfer to the Company (for delivery at such date as specified in the notice) title to any specified Macquarie Owned Inventory located at the Included Storage Locations and the Refinery Facilities *in situ* at zero cost (or if specified by Macquarie in its notice for an amount not more than the Settlement Amount for the Macquarie Owned Inventory) with the Settlement Amount calculated by Macquarie as if such date of transfer was the Macquarie Unwind Termination Date, and the Company shall pay

such amount, if any, to Macquarie and title and risk to the Macquarie Owned Inventory shall pass on payment (or, if no payment is required, the Company shall accept delivery of and title and risk to the Macquarie Owned Inventory on the relevant delivery date notified by Macquarie to the Company).

20.8 ~~20.9~~ Processing and Other Activities

- (a) At any time during the Unwind Period in furtherance of the intent of these Sections 20.5 to ~~20.10~~20.9 (inclusive) Macquarie may by written notice require the Company to take any of the following actions and the Company hereby agrees to take such actions unless any such actions would breach an Overriding Obligation:
 - (i) refine, blend or otherwise process any of the Macquarie Owned Inventory or related materials provided hereunder to Macquarie's reasonable specifications, determined in accordance with the historic operations of the Refinery; *provided that* for any Crude Oil so processed, an amount equal to the difference between (i) the price that would have been payable by the Company for such Crude Oil in accordance with this Agreement if no Acceleration Notice had been delivered by Macquarie; and (ii) the price at which Macquarie sells the resulting Product to a third party, shall be credited against the Settlement Amount for the Company's account;
 - (ii) provide advice and input into the potential blends and yields achievable in respect of the Macquarie Owned Inventory and related materials, including providing Macquarie with reasonable access to the Company's linear programming model (and its inputs and outputs accordingly), production planning staff and other modelling tools except where such access is limited by statutory or contractual confidentiality requirements;
 - (iii) to the extent not otherwise readily available to Macquarie, sell or provide to Macquarie (priced in accordance with the terms of this Agreement or, if no such pricing mechanism exists for the relevant materials, at cost for any fixed price component and in accordance with the relevant pricing benchmark(s) for any floating price component priced on the date of delivery to Macquarie, or, if such date is not a Business Day, the following Business Day) such additives, components or other materials, utilities or services as the Company owns or is able to source or provide where such additives, components or other materials, utilities or services would promote the aims of these Unwind Procedures (except that any branded additives shall only be made available to Macquarie for the purpose of the relevant Product being sold to the third party customer whom such branded additives relates);
 - (iv) agree to work with such Macquarie personnel or representatives in respect of this Agreement (which may include the secondment of Macquarie personnel to the Company at no additional cost to the Company), including but not limited to on issues of linear programming management, economics, planning, logistics, tax, environmental and compliance, in each case, as may be necessary or appropriate to ensure the implementation of this Agreement;
 - (v) provide Macquarie with any certificates of quality in respect of Crude Oil or Product or other documents that Macquarie may require and which the Company prepares in the ordinary course of its business;
 - (vi) provide Macquarie with any unused storage capacity in the Included Storage Locations and the Refinery Facilities for any other Macquarie Owned Inventory that Macquarie determines is reasonably likely to promote the aims of these Unwind Procedures;
- (b) The Company may at any time during the Unwind Period suggest the blending or processing of Macquarie Owned Inventory for the purpose of promoting the aims these Unwind Procedures and Macquarie shall consider such suggestions (which may require Macquarie to amend such requests as it deems necessary or appropriate in its sole discretion to take into account such suggestions).
- (c) The Company shall at all times during the Unwind Period:
 - (i) use reasonable efforts to utilize the Refinery, the Included Storage Locations, the Refinery Facilities and their surrounding infrastructure (whether owned by the Company

or otherwise) in a manner which promotes the aims of these Unwind Procedures, which shall include using reasonable efforts to reduce costs (including but not limited to demurrage, terminal costs, liabilities to third party service providers and the costs of hiring equipment) subject to operational feasibility and its Overriding Obligations;

- (ii) secure and maintain all necessary environmental and/or operational consents, permits and Authorizations so as to enable the fulfilment of this Agreement;
- (iii) comply in all material respects with all Applicable Laws;
- (iv) ensure it obtains and/or (as applicable) maintains the level of access to, and enforces its rights as appropriate over, all infrastructure surrounding the Refinery, as may be necessary to give effect to the aims of these Unwind Procedures subject to operational feasibility and its Overriding Obligations;
- (v) work with all tax authorities and use all reasonable efforts to maintain its tax warehouse status and deferral accounts as at the date of this Agreement;
- (vi) cooperate with Macquarie to use such deferral accounts and other similar arrangements to promote the aims of these Unwind Procedures; and
- (vii) immediately notify Macquarie if:
 - (A) any such tax warehouse status or deferral account is terminated or amended; or
 - (B) any tax authority requests for any additional requirements to maintain such tax warehouse status or deferral accounts,

and, in each case, provide all details of such as Macquarie may reasonably request and cooperate with Macquarie to minimize the impact of such termination, amendment or request on this Agreement.

20.9

~~20.10~~ Notwithstanding anything to the contrary in this Agreement or the other Transaction Documents:

- (a) Macquarie shall not be obliged to remove Macquarie Owned Inventory from the Included Storage Locations and the Refinery Facilities (including any deadstock) or other substances utilized for the purposes of this Agreement (including water or nitrogen); and
- (b) the Company shall be responsible for all such materials (including the costs of cleaning or similar maintenance associated with such materials) remaining in the Included Storage Locations and the Refinery Facilities following the Macquarie Unwind Termination Date.
- (c) if Macquarie effects any *in-situ* sales or transfers during the Unwind Period pursuant to this Article 22 and, as a result of such sale or transfer, Macquarie Owned Inventory is commingled with Company Product Inventory or such commingling becomes necessary for the continued operation of the Refinery in the ordinary course, the Company shall not be liable for any breach of any provision of a Transaction Document that may occur as a result of such commingling.

21 SETTLEMENT AT TERMINATION

- 21.1 Procedures for Settlement at Termination. Upon expiration or termination of this Agreement for any reason other than as a result of an Event of Default or, if applicable, a Change in Law in respect of which Section 20.4 applies (in which case the Expiration Date or such other date as the Parties may agree shall be the "Termination Date"; provided that if such date is not a Business Day, the Termination Date shall occur on the immediately preceding Business Day), the Parties covenant and agree to proceed as provided in this Article 21; provided that (x) this Agreement shall continue in effect following the Termination Date until all obligations are finally settled as contemplated by this Article 21 and (y) the provisions of this Article 21 shall in no way limit the rights and remedies which the Non-Defaulting Party may have as a result of an Event of Default, whether pursuant to Article 20 above or otherwise:

- (a) Macquarie Contracts. If any Macquarie Crude Procurement Contract, Included Product Purchase Transaction, Included Sales Transaction or Included Crude Sales Transaction does not either (i) by its terms automatically become assigned to the Company on and as of the Termination Date in a manner which releases Macquarie from all obligations thereunder for all periods following the Termination Date or (ii) by its terms, expire or terminate on and as of the Termination Date, then the Parties shall promptly negotiate and enter into, with each of the then existing Third Party Suppliers and Customers, assignments, assumptions and/or such other documentation, in form and substance reasonably satisfactory to the Parties, pursuant to which, as of the Termination Date, (w) such Macquarie Crude Procurement Contract, Included Product Purchase Transaction, Included Sales Transaction or Included Crude Sales Transaction shall be assigned to the Company or shall be terminated, (x) all rights and obligations of Macquarie under each of the then outstanding Macquarie Crude Procurement Contract, Included Product Purchase Transaction, Included Sales Transaction or Included Crude Sales Transactions shall be assigned to the Company, (y) the Company shall assume all of such obligations to be paid or performed following such termination, and (z) Macquarie shall be released by such Third Party Suppliers, Customers and the Company from any further obligations thereunder. In connection with the assignment or reassignment of any Macquarie Crude Procurement Contract, Included Product Purchase Transaction, Included Sales Transaction or Included Crude Sales Transaction, the Parties shall endeavor, in a commercially reasonable manner, to facilitate the transitioning of the supply and payment arrangements, including any change in payment terms, under the relevant Macquarie Crude Procurement Contract, Included Product Purchase Transaction, Included Sales Transaction or Included Crude Sales Transaction so as to prevent any material disruption thereunder.
- (b) Tripartite Agreements. If, pursuant to any Tripartite Crude Supply Agreement or Tripartite Product Offtake Agreement, any sales commitments are outstanding which, by their terms, extend beyond the Termination Date, then the Parties shall promptly negotiate and enter into, with each of the purchasers thereunder, assignments, assumptions and/or such other documentation, in form and substance reasonably satisfactory to the Parties, pursuant to which, as of the Termination Date, (i) such purchase or sales commitment shall be assigned (or reassigned) to the Company or shall be terminated, (ii) all rights and obligations of Macquarie with respect to each then outstanding purchase or sales commitment shall be assigned to the Company, (iii) the Company shall assume all of such obligations to be paid or performed following such termination, and (iv) Macquarie shall be released by the purchasers or sellers thereunder and the Company from any further obligations with respect to such sales commitments. In connection with the assignment or reassignment of any Tripartite Crude Supply Agreement or Tripartite Product Offtake Agreement or transaction thereunder, the Parties shall use commercially reasonable efforts to facilitate the transitioning so as to prevent any material disruption in the receipt of Crude Oil at and distribution of Products from the Refinery.
- (c) Purchase and Transfer of Crude and Products. The volume of Crude Oil and Products at the Included Storage Locations, ~~at Macquarie's election (i) unless otherwise mutually agreed, shall be purchased and transferred as contemplated in the Step-Out Inventory Sales Agreement; (ii) at Macquarie's cost, but with the mutual agreement of both Parties (each in its sole discretion), including the use of any Base Contracts, shall be taken and accepted in kind satisfaction of obligations hereunder or (iii) at Macquarie's cost, but with Company's reasonable assistance, including the use of any Base Contracts, shall be sold in its entirety or in parts to Customers of Macquarie's choosing but with withdrawal from the Included Storage Locations in connection therewith promptly; provided that in connection with an Acceptable Plan or Sale and the amount payable for such volumes of Crude Oil and Products shall be calculated by~~ Macquarie ~~shall~~, in good faith and in a commercially reasonable manner, consider any request by the Company to facilitate a sale of Crude Oil and/or Products then stored in an Included Storage Location to the Company or to ~~using the methodology (including, without limitation and notwithstanding the terms of the Step-Out Inventory Sales Agreement, with respect to pricing measurements and calculations) mutually agreed between the Parties and, where relevant, any~~ replacement intermediation provider ~~at the relevant time~~. The Crude Oil volumes measured by Macquarie's Inspector at the Termination Date and recorded in Macquarie's Inspector's final inventory report shall be the "Termination Date Crude Oil Volumes" for the purposes of this Agreement and the Product volumes measured by Macquarie's Inspector at the Termination Date and recorded in Macquarie's Inspector's final inventory report shall be the "Termination Date Product Volumes" for purposes of this Agreement, and such Termination Date Crude Oil Volumes and Termination Date Product Volumes shall collectively be referred to as the "Termination Date Volumes."

- (d) Determination of Termination Amount. Macquarie shall promptly reconcile and determine the Termination Amount pursuant to Section 21.2. The Parties shall promptly exchange all information necessary to determine the estimates and final calculations contemplated by Section 21.2.
- (e) No Further Obligations. Macquarie shall have no further obligation to purchase and shall not purchase or pay for Crude Oil or Products, or incur any such purchase obligations on and after the Termination Date. Except as may be required for Macquarie to fulfil its obligations hereunder until the Termination Date or during any obligatory notice period pursuant to any Macquarie Crude Procurement Contract, Macquarie shall not be obligated to purchase, take title to or pay for any Crude Oil or Products on or following the Termination Date or such earlier date as the Parties may determine in connection with the transitioning of such supply arrangements to the Company or its designee. Notwithstanding anything to the contrary herein, no Delivery Date shall occur later than the day immediately preceding the Termination Date.
- (f) Counterparty Designee. If, contemporaneously with the Termination Date, it is anticipated that the effective date of an Acceptable Plan or Sale will occur and/or a replacement intermediation or other working capital transaction is scheduled to close, then for the purposes of this Article 21, the Company may request that any or all of the purchases, assignments, novations and other obligations contemplated by this Article 21 be performed by one or more designees. Macquarie will use good faith, commercially reasonable efforts to accommodate any such request to the extent it is able to do so in accordance with Macquarie's Policies and Procedures, at the Company's request and subject always to compliance with Applicable Law, Macquarie's "know your customer" requirements, Macquarie's onboarding requirements as consistently and non-discriminatorily applied, and Macquarie's Policies and Procedures.

21.2 Termination Amount.

- (a) The "Termination Amount" shall equal:
 - (i) Any unpaid amounts owed by the Company to Macquarie pursuant to the Step-Out Inventory Sales Agreement and, without duplication, in respect of Crude Oil delivered on or prior to the Termination Date but not otherwise accounted for in the Step-Out Inventory Sales Agreement; *minus*
 - (ii) to the extent ~~Macquarie has elected to sell the~~ Crude Oil or Product at the Included Storage Locations are sold by Macquarie to one or more third parties pursuant to Section 21.1(c), an amount equal to the positive difference, if any, between the sale price paid by such third parties and the price the Company would have paid for such Crude Oil pursuant to Article 6 of this Agreement or such Product pursuant to Article 8 of this Agreement; *plus*
 - (iii) all Ancillary Costs incurred through the Termination Date that have not yet been paid or reimbursed by the Company, *plus*
 - (iv) in the case of an early termination, the amount reasonably determined by Macquarie as the breakage costs it incurred directly in connection with the termination, unwinding or redeploying of all Related Hedges as a result of such early termination, including all hedging transactions relating to the roll procedures set forth in the Fee Letter; *plus*
 - (v) the aggregate amount due under Section 11.2(b), calculated as of the Termination Date with such date being the final day of the last monthly period for which such calculations are to be made under this Agreement; provided that, if such amount under Section 11.2(b) is due to Macquarie, then such amount shall be included in this Termination Amount as a positive number and if such amount under Section 11.2(a) is due to the Company, then such amount shall be included in this Termination Amount as a negative number; *plus*
 - (vi) all unpaid amounts payable hereunder by Macquarie to the Company in respect of Product delivered on or prior to the Termination Date.

All of the foregoing amounts shall be aggregated or netted to a single liquidation amount owing from one Party to the other. If the Termination Amount is a positive number, it shall be due to Macquarie and if it is a negative number, the absolute value thereof shall be due to the Company.

- (b) The Parties acknowledge that one or more of the components of the Termination Amount may not be capable of definitive determination by the Termination Date and therefore agree that Macquarie shall, in a commercially reasonable manner, estimate in good faith each of such components and use such estimated components to determine an estimate of the Termination Amount (the "Estimated Termination Amount"); provided that the Parties agree that Macquarie shall apply the Independent Amount against the Estimated Termination Amount and shall not wait until final settlement is completed pursuant to Section 21.2(c). Without limiting the generality of the foregoing, the Parties agree that the amount due under Section 21.2(a)(i) above shall be estimated by Macquarie in the same manner and using the same methodology as it used in preparing the Estimated Commencement Date Value, but applying the then Current Month Benchmark Price(s) (the "Step-Out Prices") and other price terms provided for herein with respect to the purchase of the Termination Date Volumes. Macquarie shall use commercially reasonable efforts to prepare, and provide the Company with, an initial Estimated Termination Amount, together with appropriate supporting documentation, at least five (5) Business Days prior to the Termination Date. To the extent reasonably practicable, Macquarie shall endeavor to update its calculation of the Estimated Termination Amount by no later than 12:00 p.m. CT on the Business Day prior to the Termination Date. If Macquarie is able to provide such updated amount, that amount shall constitute the Estimated Termination Amount and shall be due and payable by no later than 5:00 p.m., CT on the Business Day preceding the Termination Date. Otherwise, the initial Estimated Termination Amount shall be the amount payable on the Termination Date. If the Estimated Termination Amount is a positive number, it shall be due to Macquarie and if it is a negative number, the absolute value thereof shall be due to the Company. Substantially concurrently with Macquarie's receiving (or making) payment of the Estimated Termination Amount upon request by (and at the sole cost and expense of) the Company, Macquarie shall (i) cause any filing or recording of any UCC financing statements filed by Macquarie in respect of the Transaction Obligations and Macquarie's Property to be terminated, (ii) release and terminate all Lien Documents pursuant to one or more instruments mutually acceptable to the Parties and release or cause to be released all Permitted Article 10 Liens on Macquarie Property and (iii) deliver, re-assign, re-convey and transfer, as applicable, to the Company any other Collateral or credit support held or maintained by Macquarie; provided that Macquarie may retain such portion of the Independent Amount as Macquarie determines in a commercially reasonable manner is appropriate to secure potential obligations of the Company in respect of amounts which may remain to be paid by the Company pursuant to the Termination Reconciliation Statement until such statement is finalized and, if any such amounts are due from the Company, until such amounts are paid.
- (c) On or before ten (10) Business Days following the Termination Date, Macquarie shall prepare, and provide the Company with, (i) a statement showing the calculation, as of the Termination Date, of the Termination Amount, (ii) a statement (the "Termination Reconciliation Statement") reconciling the Termination Amount with the sum of the Estimated Termination Amount pursuant to Section 21.2(b) and the Independent Amount and indicating any amount remaining to be paid by one Party to the other as a result of such reconciliation. Within one (1) Business Day after receiving the Termination Reconciliation Statement and the related supporting documentation, the Parties shall make any and all payments required pursuant thereto. Promptly after receiving such payment (but in any event within five (5) Business Days of such receipt), Macquarie shall (x) cause any filing or recording of any UCC financing forms to be terminated, (y) release and terminate all Lien Documents pursuant to one or more instruments mutually acceptable to the Parties and (z) deliver, re-assign, re-convey and transfer, as applicable, to the Company any other Credit Support or credit support held or maintained by Macquarie (including, without limitation, the remaining balance, if any, of the Independent Amount after giving effect to this Article 21).
- (d) Notwithstanding anything herein to the contrary, Macquarie shall not have any obligation to make any payment contemplated by this Section 21.2, transfer title to Crude Oil or Products or to otherwise cooperate in the transition matters described in Section 21.1 unless (i) the Company shall have performed its obligations under the Step-Out Inventory Sales Agreement and this Section 21.2 as and when required pursuant to the terms hereof and thereof, and (ii) except as otherwise agreed by the Parties, the Master Agreement and all Transactions

outstanding thereunder have been terminated and all amounts due with respect to such terminated Transactions shall have been paid in full.

- 21.3 Transition Services. To the extent necessary to facilitate the transition to the purchasers of the storage and transportation rights and status contemplated hereby, each Party shall take such additional actions, execute such further instruments and provide such additional assistance as the other Party may from time to time reasonably request for such purposes.

22 INDEMNIFICATION; EXPENSES

- 22.1 To the fullest extent permitted by Applicable Law and except as specified otherwise elsewhere in the Transaction Documents, Macquarie shall defend, indemnify and hold harmless the Company, its Affiliates, and their directors, officers, employees, representatives, agents and contractors for and against any Liabilities directly or indirectly arising out of

- (a) any breach by Macquarie of any covenant or agreement contained herein or made in connection herewith or any representation or warranty of Macquarie made herein or in connection herewith proving to be false or misleading or incorrect in any material respect,
- (b) any failure by Macquarie to comply with or observe any Applicable Law,
- (c) Macquarie's negligence or willful misconduct, or
- (d) injury, disease, or death of any person or damage to or loss of any property, fine or penalty, any of which is caused by Macquarie or its employees, representatives, agents or contractors in exercising any rights or performing any obligations hereunder or in connection herewith,

except to the extent that any indemnified Liability arising under this Section 22.1 has resulted from (A) the negligence or willful misconduct on the part of the Company, its Affiliates or any of their respective employees, representatives, agents or contractors or (B) the breach by the Company of its obligations hereunder.

- 22.2 To the fullest extent permitted by Applicable Law and except as specified otherwise elsewhere in this Agreement, the Company shall defend, indemnify and hold harmless Macquarie, its Affiliates, and their directors, officers, employees, representatives, agents and contractors from and against any Liabilities directly or indirectly arising out of

- (a) any breach by the Company of any covenant or agreement contained herein or made in connection herewith or any representation or warranty of the Company made herein or in connection herewith proving to be false or misleading or incorrect in any material respect, including, without limitation the Company's obligation for payment of taxes pursuant to Section 16.1,
- (b) the Company's transportation, handling, storage, refining or disposal of any Crude Oil or the products thereof, including any conduct by the Company on behalf of or as the agent of Macquarie under the Required Storage and Transportation Arrangements,
- (c) the Company's failure to comply with its obligations under the terminalling, pipeline and lease agreements underlying the Required Storage and Transportation Arrangements,
- (d) the Company's negligence or willful misconduct,
- (e) any failure by the Company to comply with or observe any Applicable Law,
- (f) injury, disease, or death of any person or damage to or loss of any property, fine or penalty, any of which is caused by the Company or its employees, representatives, agents or contractors in exercising any rights or performing any obligations hereunder or in connection herewith,
- (g) actual or alleged presence or release of Hazardous Substances in connection with the Transaction Documents or the transactions contemplated thereby, or any liability under any Environmental Law related in any way to or asserted in connection with the Transaction Documents or the transactions contemplated thereby or

- (h) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Company, and regardless of whether Macquarie is a party thereto,

except to the extent that any Liability arising under this Section 22.2 has resulted from (A) the negligence or willful misconduct on the part of Macquarie, its Affiliates or any of their respective employees, representatives, agents or contractors, or (B) the breach by Macquarie of its obligations hereunder.

- 22.3 The Parties' obligations to defend, indemnify, and hold each other harmless under the terms of the Transaction Documents shall not vest any rights in any third party (except as expressly provided for in this Article 22), nor shall they be considered an admission of liability or responsibility for any purposes other than those enumerated in the Transaction Documents.
- 22.4 Each Party agrees to notify the other as soon as practicable after receiving notice of any claim or suit brought against it within the indemnities of this Agreement, shall furnish to the other the complete details within its knowledge and shall render all reasonable assistance requested by the other in the defense; provided that, the failure to give such notice shall not affect the indemnification provided hereunder, except to the extent that the indemnifying Party is materially adversely affected by such failure. Each Party shall have the right but not the duty to participate, at its own expense, with counsel of its own selection, in the defense and settlement thereof without relieving the other of any obligations hereunder.
- 22.5 The Company shall pay (i) all reasonable and documented out-of-pocket expenses incurred by Macquarie and its Affiliates (including the reasonable fees, charges and disbursements of counsel and tax consultants for Macquarie) in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Transaction Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) and (ii) all reasonable and documented out-of-pocket expenses incurred by Macquarie and its Affiliates in connection with the enforcement or protection of Macquarie's rights under or in connection with this Agreement and the other Transaction Documents.

23 **LIMITATION ON DAMAGES**

- 23.1 LIMITED RIGHT TO DAMAGES. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES' LIABILITY FOR DAMAGES IS LIMITED TO DIRECT, ACTUAL DAMAGES ONLY (WHICH INCLUDE ANY AMOUNTS DETERMINED UNDER ARTICLE 20) AND NEITHER PARTY SHALL BE LIABLE FOR SPECIFIC PERFORMANCE, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, OR SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, IN TORT, CONTRACT OR OTHERWISE, OF ANY KIND, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE, THE SUSPENSION OF PERFORMANCE, THE FAILURE TO PERFORM, OR THE TERMINATION OF THIS AGREEMENT; PROVIDED, HOWEVER, THAT THE FORGOING IS NOT (AND IS NOT INTENDED TO BE AND SHALL NOT BE DEEMED TO CONSTITUTE) A WAIVER BY A PARTY OF ANY RIGHT TO RECOVER COMPENSATORY DAMAGES SUFFERED BY A PARTY THAT ARE OR COULD HAVE BEEN REASONABLY FORESEEABLE AS A RESULT OF ANY BREACH OF ARTICLE 25 (EVEN IF SUCH COMPENSATORY DAMAGES COULD BE CHARACTERIZED AS INDIRECT, CONTINGENT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES); AND PROVIDED FURTHER THAT SUCH LIMITATION SHALL NOT APPLY WITH RESPECT TO ANY THIRD PARTY CLAIM FOR WHICH INDEMNIFICATION IS AVAILABLE UNDER THIS AGREEMENT. EACH PARTY ACKNOWLEDGES THE DUTY TO MITIGATE DAMAGES HEREUNDER.

24 **RECORDS AND INSPECTION THEREOF**

During the Term of this Agreement each Party and its duly Authorized Representative upon reasonable notice, and during normal working hours, shall have access to the accounting records and other documents maintained by the other Party, or any of the other Party's contractors and agents, which relate to this Agreement; provided that, neither this Section nor any other provision hereof shall entitle the Company to have access to any records concerning any hedges or offsetting transactions or other trading positions or pricing information that may have been entered into with other parties or utilized in connection with any transactions contemplated hereby or by any other Transaction Document. The right to inspect or audit such records shall survive termination of this

Agreement for a period of two (2) years following the Termination Date. Each Party shall preserve, and shall use commercially reasonable efforts to cause all contractors or agents to preserve, all of the aforesaid documents for a period of at least two (2) years from the Termination Date.

25 CONFIDENTIALITY

25.1 In addition to the Company's confidentiality obligations under the Transaction Documents and as set forth in Section 32.10, the Parties agree that the specific terms and conditions of this Agreement, including any list of counterparties, the Transaction Documents and the drafts of this Agreement exchanged by the Parties and any information exchanged between the Parties, including calculations of any fees or other amounts paid by the Company to Macquarie under this Agreement and all information received by Macquarie from the Company relating to the costs of operation, operating conditions, and other commercial information of the Company not made available to the public, are confidential and shall not be disclosed to any third party, except (i) as may be required by court order or Applicable Laws (including without limitation as may be required by any applicable federal or state securities laws), (ii) as requested by a Governmental Authority, (iii) to such Party's or its Affiliates' employees, directors, shareholders, auditors, consultants, banks, lenders, financial advisors and legal advisors for purposes of administering, negotiating, considering, processing or evaluating this Agreement and the other Transaction Documents or the transactions contemplated thereby, or (iv) to such Party's insurance providers, solely for the purpose of procuring insurance coverage or confirming the extent of existing insurance coverage; provided that, prior to any disclosure permitted by this clause (iv), such insurance providers shall have agreed in writing to keep confidential any information or document subject to this Section 25.1.

25.2 The confidentiality obligations under this Agreement shall survive termination of this Agreement for a period of two (2) years following the Termination Date. The Parties shall be entitled to all remedies available at law, or in equity, to enforce or seek relief in connection with the confidentiality obligations contained herein (including, without limitation), the right to seek injunctive relief.

25.3 In the case of disclosure covered by clause (i) of Section 25.1, to the extent practicable and in conformance with the relevant court order, Applicable Law or request, the disclosing Party shall notify the other Party in writing of any proceeding of which it is aware which may result in disclosure.

25.4 Tax Disclosure. Notwithstanding anything herein to the contrary, the Parties (and their respective employees, representatives or other agents) are authorized to disclose to any person the U.S. federal and state income tax treatment and tax structure of the transaction and all materials of any kind (including tax opinions and other tax analyses) that are provided to the Parties relating to that treatment and structure, without the Parties imposing any limitation of any kind. However, any information relating to the tax treatment and tax structure shall remain confidential (and the foregoing sentence shall not apply) to the extent necessary to enable any person to comply with securities laws. For this purpose, "tax structure" is limited to any facts that may be relevant to that treatment.

26 GOVERNING LAW

26.1 THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED AND ENFORCED UNDER THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO ITS CONFLICT OF LAWS PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER STATE.

26.2 EACH OF THE PARTIES HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ~~ANY FEDERAL OR STATE COURT OF COMPETENT JURISDICTION SITUATED IN THE CITY OF NEW YORK~~THE BANKRUPTCY COURT, (WITHOUT RECOURSE TO ARBITRATION UNLESS BOTH PARTIES AGREE IN WRITING), AND TO SERVICE OF PROCESS BY CERTIFIED MAIL, DELIVERED TO THE PARTY AT THE ADDRESS INDICATED IN ARTICLE 28. EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION TO PERSONAL JURISDICTION, WHETHER ON GROUNDS OF VENUE, RESIDENCE OR DOMICILE.

26.3 EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDINGS RELATING TO THIS AGREEMENT.

27 **ASSIGNMENT**

- 27.1 This Agreement shall inure to the benefit of and be binding upon the Parties hereto, their respective successors and permitted assigns.
- 27.2 Neither Party shall assign this Agreement or its rights or interests hereunder in whole or in part, or delegate its obligations hereunder in whole or in part, without the consent of the other Party. Notwithstanding the foregoing, Macquarie may, without the Company's consent, assign and delegate all of Macquarie's rights and obligations hereunder to (i) any Affiliate of Macquarie, provided it is no worse a credit counterparty and would not result in any adverse tax consequences to the Company and all Company's costs, if any, are covered—just as provided above for a Company transfer or (ii) any non-Affiliate Person that succeeds to all or substantially all of its assets and business and assumes Macquarie's obligations hereunder, whether by contract, operation of law or otherwise, provided that (i) the creditworthiness of such successor entity is equal or superior to the creditworthiness of Macquarie (taking into account any credit support for Macquarie) immediately prior to such assignment, and (ii) such successor assumes all of the obligations of Macquarie under the Transaction Documents.
- 27.3 Any attempted assignment in violation of this Article 27 shall be null and void *ab initio* and the non-assigning Party shall have the right, without prejudice to any other rights or remedies it may have hereunder or otherwise, to terminate this Agreement effective immediately upon notice to the Party attempting such assignment.

28 **NOTICES**

All invoices, notices, requests and other communications given pursuant to this Agreement shall be in writing and sent by email or nationally recognized overnight courier. A notice shall be deemed to have been received when transmitted by email to the other Party's email set forth in SCHEDULE K, or on the following Business Day if sent by nationally recognized overnight courier to the other Party's address set forth in Schedule K and to the attention of the person or department indicated. A Party may change its address or email address by giving written notice in accordance with this Section, which is effective upon receipt.

29 **NO WAIVER, CUMULATIVE REMEDIES**

- 29.1 The failure of a Party hereunder to assert a right or enforce an obligation of the other Party shall not be deemed a waiver of such right or obligation. The waiver by any Party of a breach of any provision of, or Event of Default or Default under, this Agreement shall not operate or be construed as a waiver of any other breach of that provision or as a waiver of any breach of another provision of, Event of Default or Default under, this Agreement, whether of a like kind or different nature.
- 29.2 Each and every right granted to the Parties under this Agreement or allowed it by law or equity shall be cumulative and may be exercised from time to time in accordance with the terms thereof and Applicable Law.

30 **NATURE OF THE TRANSACTION AND RELATIONSHIP OF PARTIES**

- 30.1 No Partnership or Joint Venture. This Agreement shall not be construed as creating a partnership, association or joint venture between the Parties. It is understood that each Party is an independent contractor with complete charge of its employees and agents in the performance of its duties hereunder, and nothing herein shall be construed to make such Party, or any employee or agent of the Company, an agent or employee of the other Party.
- 30.2 No Authority to Contract. Neither Party shall have the right or authority to negotiate, conclude or execute any contract or legal document with any third person; to assume, create, or incur any liability of any kind, express or implied, against or in the name of the other; or to otherwise act as the representative of the other, unless expressly authorized in writing by the other.
- 30.3 No Indebtedness. The transactions contemplated hereunder are intended to be construed and characterized as sales and purchases of commodities and the Lien Documents, the Independent Amount and any other security posted in connection with this Agreement is to be construed as security for the performance by the Company of its obligations expressly set out in this Agreement. The Company will account for transactions arising hereunder in accordance with GAAP however.

31 **AMENDMENTS AND MODIFICATIONS**

- 31.1 The Parties may, from time to time, by written agreement amend or modify any provision of this Agreement. Notwithstanding the foregoing, if an amendment is required to be made to an Operational Schedule, the Parties may evidence their agreement to the amendment of such Operational Schedule by an exchange of e-mails between Authorized Representatives of the Parties.

32 **MISCELLANEOUS**

- 32.1 If any Article, Section or provision of this Agreement shall be determined to be null and void, voidable or invalid by a court of competent jurisdiction, then for such period that the same is void or invalid, it shall be deemed to be deleted from this Agreement and the remaining portions of this Agreement shall remain in full force and effect.
- 32.2 The terms of this Agreement constitute the entire agreement between the Parties with respect to the matters set forth in this Agreement, and no representations or warranties shall be implied or provisions added in the absence of a written agreement to such effect between the Parties. This Agreement shall not be modified or changed except by written instrument executed by the Parties' duly Authorized Representatives.
- 32.3 No promise, representation or inducement has been made by either Party that is not embodied in this Agreement or the Transaction Documents, and neither Party shall be bound by or liable for any alleged representation, promise or inducement not so set forth.
- 32.4 Time is of the essence with respect to all aspects of each Party's performance of any obligations under this Agreement.
- 32.5 Nothing expressed or implied in this Agreement is intended to create any rights, obligations or benefits under this Agreement in any person other than the Parties and their successors and permitted assigns.
- 32.6 All audit rights, payment, confidentiality and indemnification obligations and obligations under this Agreement shall survive for the time periods specified herein.
- 32.7 This Agreement may be executed by the Parties in separate counterparts and initially delivered by facsimile transmission, pdf or otherwise, with original signature pages to follow, and all such counterparts shall together constitute one and the same instrument.
- 32.8 All transactions hereunder are entered into in reliance on the fact that this Agreement and all such transactions constitute a single, integrated agreement between the Parties, and the Parties would not have otherwise entered into any other transactions hereunder.
- 32.9 In the event of a conflict between any of the Transaction Documents and this Agreement, the term and conditions contained in this Agreement shall control (except solely with respect to any fees, amounts, transfers and payments set forth in the Fee Letter and/or the Independent Amount Letter).
- 32.10 Macquarie and the Company shall consult with each other with regard to all press releases or other announcements to the general public issued or made at or prior to the Commencement Date concerning this Agreement or the transactions contemplated herein, and, except as may be required by Applicable Laws, neither Company nor Macquarie shall issue any such press release or other announcement to the general public without the prior written consent of the other Party, which consent shall not be unreasonably withheld. The Parties shall be obligated to hold all specific terms and provisions of this Agreement strictly confidential until the expiration of two years following the Termination Date under this Agreement. Nothing contained in this Section 32.10 shall prohibit, limit or restrict disclosures by the Company or Macquarie that are (i) required by Applicable Laws, including any federal or state securities laws, (ii) any court order, judgment or decree, or (iii) ordered, directed, required or suggested by any Governmental Authority.

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SCHEDULE A**COMPANY STORAGE LOCATIONS**

Location	Included	Tank Number
Refinery owned and operated by Vertex Refining Alabama, LLC	Terminalling and Storage containing sulfur	010
	Terminalling and Storage containing LPGs	V11, V12, V13, V14, V15, V16, V31, V41, V42, V43, V44
	Terminalling and Storage containing water	103, 104, 105, 106, 107, 108, 109, 110, 111, 113, V21, V22, V23, V24, V25, V26
Refinery owned and operated by Vertex Refining Alabama, LLC in Saraland, Alabama	Processing units	N/A

SCHEDULE B

PRODUCTS AND PRODUCT SPECIFICATIONS

The specifications which are stated to be set out in Schedule B are in the excel email attachment sent by Nina Hunt for and on behalf of Macquarie Energy North America Trading Inc. on March 31, 2022 at 5:25 PM (CT), and approved by Benjamin Cowart for and on behalf of Vertex Refining Alabama LLC, in his email confirmation on March 31, 2022 at 5:27 PM (CT), as amended from time to time by mutual agreement.

SCHEDULE C

MONTHLY TRUE-UP AMOUNTS

[Filed Under Seal]

SCHEDULE D**MAXIMUM AND MINIMUM INVENTORY LEVELS**

SOA Bucket	SOA Maximum Volume	SOA Minimum Volume	SOA Tank Heels (4")
Crude	1,338,209	161,579	5,225
Diesel	718,655	68,055	1,995
Gasoline	336,000	34,840	1,475
HOF	248,610	11,810	642
Intermediates	266,045	25,945	974
Jet	199,810	11,210	740
Grand Total	3,107,329	313,439	11,051

SCHEDULE E

(Deleted graphics)

Included Tanks Effective 5/1/23

Tank/Line	Location	Shell Capacity of Tank (BBLs)	Max Operating Capacity (BBLs)	Working Volume (BBLs)	SOA Tank Heels (4") Macquarie Title, Not Advanced
101	Mobile Refinery	5,000	4,500	3,330	62
102	Mobile Refinery	5,000	4,500	3,330	59
202	Mobile Refinery	25,000	22,700	19,000	146
203	Mobile Refinery	25,000	22,700	19,000	150
204	Mobile Refinery	25,500	24,500	22,900	109
205	Mobile Refinery	25,500	24,500	22,900	152
206	Mobile Refinery	25,500	24,500	22,900	123
207	Mobile Refinery	25,000	24,500	22,900	138
208	Mobile Refinery	25,000	24,500	22,900	126
209	Mobile Refinery	25,000	24,500	22,900	123
210	Mobile Refinery	25,000	23,600	22,000	97
212	Mobile Refinery	25,000	23,600	22,000	163
501	Mobile Refinery	54,500	44,800	38,700	135
502	Mobile Refinery	56,300	49,300	43,800	271
503	Mobile Refinery	55,000	49,300	42,000	270
504	Mobile Refinery	55,000	49,400	43,900	329
505	Mobile Refinery	55,000	49,400	43,900	424
506	Mobile Refinery	55,000	49,400	43,900	152
507	Mobile Refinery	55,000	49,400	43,900	271
508	Mobile Refinery	55,000	49,400	43,900	237
801	Mobile Refinery	80,000	69,832	64,400	62
802	Mobile Refinery	80,000	71,900	64,400	327
803	Mobile Refinery	80,000	68,600	62,700	78
804	Mobile Refinery	80,000	71,100	63,500	362
805	Mobile Refinery	80,000	71,100	63,500	253
806	Mobile Refinery	80,000	71,100	63,500	231
807	Mobile Refinery	80,000	77,300	72,900	170
808	Mobile Refinery	80,000	77,300	72,900	295
901	Blakeley Island	240,000	212,500	182,100	1,348
902	Blakeley Island	225,000	206,700	178,900	502
903	Blakeley Island	240,000	212,000	182,600	821
904	Blakeley Island	230,000	210,600	182,100	502
906	Blakeley Island	158,700	139,300	121,500	271
1201	Mobile Refinery	124,000	118,600	113,000	354
1202	Mobile Refinery	124,000	118,600	113,000	359
1203	Mobile Refinery	124,000	118,600	113,000	283
1204	Mobile Refinery	124,000	118,600	113,000	407
PL1	14" Crude Pipeline		5,419	5,419	0
PL2	10" Product Pipeline		3,214	3,214	0
TK-1102	Plains Mobile	80,000	62,323	62,323	461
TK-1103	Plains Mobile	80,000	59,673	59,673	380
TK-1106	Plains Mobile	80,000	59,673	59,673	380
TK-62062	Plains Mobile	125,000	98,600	98,600	826
Linefill	Mobile Refinery	810	810	810	
Linefill	Mobile Refinery	1,241	1,241	1,241	
Linefill	Mobile Refinery	1,000	1,000	1,000	
Linefill	Mobile Refinery	1,590	1,590	1,590	
Linefill	Plains Mobile	400	400	400	
Linefill	Mobile Refinery	610	610	610	
Linefill	Mobile Refinery	1,045	1,045	1,045	

INCLUDED TANKS

<u>Tank/Line</u>	<u>Location</u>	<u>Shell Capacity of Tank (BBLs)</u>	<u>Max Operating Capacity (BBLs)</u>	<u>Working Volume (BBLs)</u>	<u>SOA Tank Heels (4") Macquarie Title. Not Advanced.</u>
<u>101</u>	<u>Mobile Refinery</u>	<u>5,000</u>	<u>4,500</u>	<u>3,330</u>	<u>62</u>
<u>102</u>	<u>Mobile Refinery</u>	<u>5,000</u>	<u>4,500</u>	<u>3,330</u>	<u>59</u>
<u>202</u>	<u>Mobile Refinery</u>	<u>25,000</u>	<u>22,700</u>	<u>19,000</u>	<u>146</u>
<u>203</u>	<u>Mobile Refinery</u>	<u>25,000</u>	<u>22,700</u>	<u>19,000</u>	<u>150</u>
<u>204</u>	<u>Mobile Refinery</u>	<u>25,500</u>	<u>24,500</u>	<u>22,900</u>	<u>109</u>
<u>205</u>	<u>Mobile Refinery</u>	<u>25,500</u>	<u>24,500</u>	<u>22,900</u>	<u>152</u>
<u>206</u>	<u>Mobile Refinery</u>	<u>25,500</u>	<u>24,500</u>	<u>22,900</u>	<u>123</u>
<u>207</u>	<u>Mobile Refinery</u>	<u>25,000</u>	<u>24,500</u>	<u>22,900</u>	<u>138</u>
<u>208</u>	<u>Mobile Refinery</u>	<u>25,000</u>	<u>24,500</u>	<u>22,900</u>	<u>126</u>
<u>209</u>	<u>Mobile Refinery</u>	<u>25,000</u>	<u>24,500</u>	<u>23,500</u>	<u>123</u>
<u>210</u>	<u>Mobile Refinery</u>	<u>25,000</u>	<u>23,600</u>	<u>22,000</u>	<u>97</u>
<u>212</u>	<u>Mobile Refinery</u>	<u>25,000</u>	<u>23,600</u>	<u>22,000</u>	<u>163</u>
<u>501</u>	<u>Mobile Refinery</u>	<u>54,500</u>	<u>44,800</u>	<u>38,700</u>	<u>135</u>
<u>502</u>	<u>Mobile Refinery</u>	<u>56,300</u>	<u>49,300</u>	<u>43,800</u>	<u>271</u>
<u>503</u>	<u>Mobile Refinery</u>	<u>55,000</u>	<u>49,300</u>	<u>42,000</u>	<u>270</u>
<u>504</u>	<u>Mobile Refinery</u>	<u>55,000</u>	<u>49,400</u>	<u>43,900</u>	<u>329</u>
<u>505</u>	<u>Mobile Refinery</u>	<u>55,000</u>	<u>49,400</u>	<u>43,900</u>	<u>424</u>
<u>506</u>	<u>Mobile Refinery</u>	<u>55,000</u>	<u>49,400</u>	<u>43,900</u>	<u>152</u>
<u>507</u>	<u>Mobile Refinery</u>	<u>55,000</u>	<u>49,400</u>	<u>43,900</u>	<u>271</u>
<u>508</u>	<u>Mobile Refinery</u>	<u>55,000</u>	<u>49,400</u>	<u>43,900</u>	<u>237</u>
<u>801</u>	<u>Mobile Refinery</u>	<u>80,000</u>	<u>69,832</u>	<u>64,400</u>	<u>62</u>
<u>802</u>	<u>Mobile Refinery</u>	<u>80,000</u>	<u>71,900</u>	<u>64,400</u>	<u>327</u>
<u>803</u>	<u>Mobile Refinery</u>	<u>80,000</u>	<u>68,600</u>	<u>62,700</u>	<u>78</u>
<u>804</u>	<u>Mobile Refinery</u>	<u>80,000</u>	<u>71,100</u>	<u>63,500</u>	<u>362</u>
<u>805</u>	<u>Mobile Refinery</u>	<u>80,000</u>	<u>71,100</u>	<u>63,500</u>	<u>253</u>
<u>806</u>	<u>Mobile Refinery</u>	<u>80,000</u>	<u>71,100</u>	<u>63,500</u>	<u>231</u>
<u>807</u>	<u>Mobile Refinery</u>	<u>80,000</u>	<u>77,300</u>	<u>72,900</u>	<u>170</u>
<u>808</u>	<u>Mobile Refinery</u>	<u>80,000</u>	<u>77,300</u>	<u>72,900</u>	<u>295</u>
<u>901</u>	<u>Blakeley Island</u>	<u>240,000</u>	<u>212,500</u>	<u>182,100</u>	<u>1,256</u>
<u>902</u>	<u>Blakeley Island</u>	<u>225,000</u>	<u>206,700</u>	<u>178,900</u>	<u>502</u>
<u>903</u>	<u>Blakeley Island</u>	<u>240,000</u>	<u>212,000</u>	<u>182,600</u>	<u>821</u>
<u>904</u>	<u>Blakeley Island</u>	<u>230,000</u>	<u>210,600</u>	<u>182,100</u>	<u>502</u>
<u>906</u>	<u>Blakeley Island</u>	<u>158,700</u>	<u>139,300</u>	<u>121,500</u>	<u>271</u>
<u>1201</u>	<u>Mobile Refinery</u>	<u>124,000</u>	<u>118,600</u>	<u>113,000</u>	<u>354</u>
<u>1202</u>	<u>Mobile Refinery</u>	<u>124,000</u>	<u>118,600</u>	<u>113,000</u>	<u>359</u>
<u>1203</u>	<u>Mobile Refinery</u>	<u>124,000</u>	<u>118,600</u>	<u>113,000</u>	<u>283</u>
<u>1204</u>	<u>Mobile Refinery</u>	<u>124,000</u>	<u>118,600</u>	<u>113,000</u>	<u>407</u>
<u>PL1</u>	<u>14" Crude Pipeline</u>	<u>-</u>	<u>5,419</u>	<u>5,419</u>	<u>0</u>
<u>PL2</u>	<u>10" Product Pipeline</u>	<u>-</u>	<u>3,214</u>	<u>3,214</u>	<u>0</u>
<u>TK-1102</u>	<u>Plains Mobile</u>	<u>80,000</u>	<u>62,323</u>	<u>62,323</u>	<u>11,960</u>
<u>TK-1103</u>	<u>Plains Mobile</u>	<u>80,000</u>	<u>59,673</u>	<u>59,673</u>	<u>8,537</u>
<u>TK-62062</u>	<u>Plains Mobile</u>	<u>125,000</u>	<u>98,600</u>	<u>98,600</u>	<u>13,363</u>
<u>80-1</u>	<u>BWC Blakely</u>	<u>80,000</u>	<u>74,223</u>	<u>73,436</u>	<u>787</u>
<u>21</u>	<u>Center Point Chickasaw</u>	<u>123,330</u>	<u>109,368</u>	<u>98,284</u>	<u>11,083</u>
<u>B 802</u>	<u>Barge In transit</u>	<u>30,000</u>	<u>24,000</u>	<u>24,000</u>	<u>-</u>
<u>B 803</u>	<u>Barge In transit</u>	<u>30,000</u>	<u>24,000</u>	<u>24,000</u>	<u>-</u>
<u>B 804</u>	<u>Barge In transit</u>	<u>30,000</u>	<u>24,000</u>	<u>24,000</u>	<u>-</u>
<u>B 805</u>	<u>Barge In transit</u>	<u>30,000</u>	<u>24,000</u>	<u>24,000</u>	<u>-</u>

<u>WEB 225</u>	<u>Barge In transit</u>	<u>30,000</u>	<u>24,000</u>	<u>24,000</u>		-
<u>WEB 250</u>	<u>Barge In transit</u>	<u>30,000</u>	<u>24,000</u>	<u>24,000</u>		-
<u>HFL 437</u>	<u>Barge In transit</u>	<u>30,000</u>	<u>26,000</u>	<u>26,000</u>		-
<u>HFL 439</u>	<u>Barge In transit</u>	<u>30,000</u>	<u>26,000</u>	<u>26,000</u>		-
<u>MPX 430</u>	<u>Barge In transit</u>	<u>30,000</u>	<u>26,000</u>	<u>26,000</u>		-
<u>MPX 431</u>	<u>Barge In transit</u>	<u>30,000</u>	<u>26,000</u>	<u>26,000</u>		-
<u>Linefill</u>	<u>Mobile Refinery</u>	<u>810</u>	<u>810</u>	<u>810</u>	-	
<u>Linefill</u>	<u>Mobile Refinery</u>	<u>1,241</u>	<u>1,241</u>	<u>1,241</u>	-	
<u>Linefill</u>	<u>Mobile Refinery</u>	<u>1,000</u>	<u>1,000</u>	<u>1,000</u>	-	
<u>Linefill</u>	<u>Mobile Refinery</u>	<u>1,590</u>	<u>1,590</u>	<u>1,590</u>	-	
<u>Linefill</u>	<u>Plains Mobile</u>	<u>400</u>	<u>400</u>	<u>400</u>	-	
<u>Linefill</u>	<u>Mobile Refinery</u>	<u>610</u>	<u>610</u>	<u>610</u>	-	
<u>Linefill</u>	<u>Mobile Refinery</u>	<u>1,045</u>	<u>1,045</u>	<u>1,045</u>	-	

**SCHEDULE F
FORM OF INVENTORY REPORTS**

Schedule F-1	Saraland Refinery Daily Yield Report
Schedule F-2	Saraland Refinery Monthly Yield Report
Schedule F-3	Saraland Refinery Daily Tank Inventory Report
Schedule F-4	Saraland Refinery Month End Tank Gauges Report
Schedule F-5	Saraland Refinery Daily Sales Summary Report
Schedule F-6	Saraland Refinery Daily Sales Report by BOL
Schedule F-7	Plains Mobile Terminal Daily Inventory Report
Schedule F-8	Plains Mobile Terminal Monthly Inventory Report
Schedule F-9	Genesis Pipeline Daily Meter Report
Schedule F-10	Genesis Pipeline Monthly Meter Report
<u>Schedule F-11</u>	<u>BWC Blakeley Island Daily Inventory Report</u>
<u>Schedule F-12</u>	<u>Center Point Chickasaw Daily Inventory Report</u>

~~See Attached~~

Schedule F-1 Saraland Refinery Daily Yield Report

Operational Yield Report

Covering Period: 2023-11-01 thru 2023-11-01

	Inventory		Period Totals				Daily Averages		Pct
			Sales	Purchases	Used in	Yields	Sales / Blends	Yields	
	Opening	Closing			Blends	(Charges)	(Purchases)	(Charge)	
Crude Products									
CRUDE HVY	60,519	56,316	0	0	0	-4,203	0	-4,203	0.00
CRUDE LT	331,806	314,566	0	0	0	-17,241	0	-17,241	0.00
HATTERSPND	23,966	29,686	0	0	0	5,720	0	5,720	0.00
LMS CRUDE	59,187	66,098	0	15,144	0	-8,234	-15,144	-8,234	0.00
JAY	34,590	27,304	0	0	0	-7,286	0	-7,286	0.00
LLS CRUDE	0	0	0	13,151	0	-13,151	-13,151	-13,151	0.00
	510,068	493,969	0	28,295	0	-44,394	-28,295	-44,394	0.00
N1540	6	6	0	0	0	0	0	0	0.00
	6	6	0	0	0	0	0	0	0.00
Subtotal:	510,074	493,975	0	28,295	0	-44,394	-28,295	-44,394	0.00
Finished Products									
SULFUR	84	86	0	0	0	1	0	1	0.00
	84	86	0	0	0	1	0	1	0.00
COMLPG	380	2,080	534	0	0	2,233	534	2,233	5.03
I-BUTANE	296	381	0	0	0	85	0	85	0.19
MOBPROP	477	652	0	0	0	175	0	175	0.39
N-BUTANE	1,632	896	0	0	0	-736	0	-736	-1.66
	2,785	4,009	534	0	0	1,758	534	1,758	3.96
EXXPUL93RVP	0	0	187	0	-187	0	0	0	0.00
EXXRULRVP	0	0	1,726	0	-1,726	0	0	0	0.00
GNPUL93RVP	0	0	110	0	-110	0	0	0	0.00
SHPUL93RVP	0	0	374	0	-374	0	0	0	0.00
SHRUL87RVP	0	0	3,320	0	-3,320	0	0	0	0.00
P PUL 93 R	0	0	447	0	-447	0	0	0	0.00
RUL87RVP>7.8	0	0	1,073	0	-1,073	0	0	0	0.00
BP RUL 87 RVP	0	0	395	0	-395	0	0	0	0.00
BP ULTIMATE93	0	0	24	0	-24	0	0	0	0.00

Schedule F-2 Saraland Refinery Monthly Yield Report

Operational Yield Report

Covering Period: 2023-10-31 thru 2023-10-31

	Period Totals						Daily Averages		Pct
	Inventory		Used in		Yields	Sales / Blends	Yields		
	Opening	Closing	Sales	Purchases	Blends	(Charges)	(Purchases)	(Charge)	
Crude Products									
CRUDE HVY	70,270	60,519	0	0	0	-9,751	0	-9,751	0.00
CRUDE LT	330,981	331,806	0	0	0	825	0	825	0.00
HATTERSPND	16,544	23,966	0	0	0	7,421	0	7,421	0.00
LMS CRUDE	65,490	59,187	0	0	0	-6,303	0	-6,303	0.00
JAY	25,283	34,590	0	9,083	0	225	-9,083	225	0.00
	508,567	510,068	0	9,083	0	-7,583	-9,083	-7,583	0.00
N1540	6	6	0	0	0	0	0	0	0.00
	6	6	0	0	0	0	0	0	0.00
Subtotal:	508,573	510,074	0	9,083	0	-7,583	-9,083	-7,583	0.00
Finished Products									
SULFUR	84	84	0	0	0	0	0	0	0.01
	84	84	0	0	0	0	0	0	0.01
COMLPG	845	380	747	0	0	282	747	282	3.72
I-BUTANE	481	296	193	0	0	7	193	7	0.10
MOBPROP	450	477	0	0	0	26	0	26	0.35
N-BUTANE	1,644	1,632	0	0	0	-12	0	-12	-0.16
	3,420	2,785	939	0	0	304	939	304	4.01
EXXPUL93RVP	0	0	60	0	-60	0	0	0	0.00
EXXRULRVP	0	0	544	0	-544	0	0	0	0.00
GNPUL93RVP	0	0	39	0	-39	0	0	0	0.00
SHPUL93RVP	0	0	205	0	-205	0	0	0	0.00
SHRUL87RVP	0	0	1,662	0	-1,662	0	0	0	0.00
P PUL 93 R	0	0	191	0	-191	0	0	0	0.00
RUL87RVP>7.8	0	0	476	0	-476	0	0	0	0.00
BP RUL 87 RVP	0	0	609	0	-609	0	0	0	0.00
BP ULTIMATE93	0	0	64	0	-64	0	0	0	0.00
UB PUL 93 RVP	0	0	451	0	-451	0	0	0	0.00
UB RUL 87 RVP	0	0	9,758	0	-9,758	0	0	0	0.00
CITGO RUL 87R	0	0	55	0	-55	0	0	0	0.00
TP RUL 87 RVP	0	0	332	0	-332	0	0	0	0.00
	0	0	14,446	0	-14,446	0	0	0	0.00

Schedule F-3 Saraland Refinery Daily Tank Inventory Report

Tank Inventory Report

Covering Period: 2023-11-01

Tank	Product	Hydrocarbon							Temp	Grav	Water						
		Closing	Opening	Net Change	ft	in	8's				Closing	Opening	Net Change	ft	in	8's	
_Unnamed	_default	0.0	0.0	0.0							0.0	0.0	0.0				
_Unnamed	_default	0.0	0.0	0.0							0.0	0.0	0.0				
_Unnamed	_default	0.0	0.0	0.0							0.0	0.0	0.0				
_Unnamed	_default	0.0	0.0	0.0							0.0	0.0	0.0				
_Unnamed	_default	0.0	0.0	0.0							0.0	0.0	0.0				
_Unnamed	_default	0.0	0.0	0.0							0.0	0.0	0.0				
010	SULFUR	85.8	84.4	1.4	3	11	0	250.0	10.000		0.0	0.0	0.0	0	0	0	
101	SUBOCTPRE	4,095.2	2,746.0	1,349.1	24	1	6	64.0	60.000		0.0	0.0	0.0	0	0	0	
102	SUBOCTPRE	4,135.8	2,746.2	1,389.6	24	5	0	66.0	60.000		0.0	0.0	0.0	0	0	0	
103	WATER	3,431.0	2,952.0	479.0	20	7	6	78.0	10.000		0.0	0.0	0.0	0	0	0	
104	CAUSTIC	2,577.5	2,798.7	-221.2	15	7	5	78.0	10.000		0.0	0.0	0.0	0	0	0	
105	WATER	3,328.6	3,045.7	282.9	20	0	3	88.0	10.000		0.0	0.0	0.0	0	0	0	
106	WATER	2.4	2.4	0.0	0	0	0	60.0	10.000		0.0	0.0	0.0	0	0	0	
107	WATER	3,455.3	2,990.2	465.1	20	9	4	74.0	10.000		0.0	0.0	0.0	0	0	0	
108	WATER	4,208.4	4,087.0	121.4	25	3	6	104.0	10.000		0.0	0.0	0.0	0	0	0	
109	SOURWATER	2,299.2	1,948.5	350.8	13	10	2	84.0	10.000		0.0	0.0	0.0	0	0	0	
110	WATER	3,424.1	2,948.5	475.6	20	7	2	76.0	10.000		0.0	0.0	0.0	0	0	0	
111	SALTWATER	0.0	628.3	-628.3	18	0	4	74.0	10.000		2,997.1	2,528.4	468.7	18	0	4	
113	CAUSTIC	251.9	319.6	-67.7	12	6	7	68.0	10.000		0.0	0.0	0.0	0	0	0	
1201	JET A	18,119.5	18,078.5	41.0	7	2	6	75.0	47.300		0.0	0.0	0.0	0	0	0	
1202	VGO	34,095.7	28,603.5	5,492.3	13	8	6	130.0	28.000		0.0	0.0	0.0	0	0	0	
1203	VGO	119,531.1	112,269.9	7,261.2	46	9	0	150.0	28.000		0.0	0.0	0.0	0	0	0	
1204	R100	6,767.5	6,756.0	11.5	2	10	4	85.0	48.800		0.0	0.0	0.0	0	0	0	
201	RD SLOP	4,747.5	4,339.1	408.4	8	10	5	70.0	46.800		0.0	0.0	0.0	0	0	0	
202	NAPH HVY	8,965.7	8,527.9	437.8	16	7	2	74.0	60.600		0.0	0.0	0.0	0	0	0	
203	NAPH DSN	18,898.3	19,365.4	-467.1	34	10	2	82.0	60.300		0.0	0.0	0.0	0	0	0	
204	GN #2D S15	8,071.7	22,240.3	-14,168.6	15	4	0	90.0	38.900		0.0	0.0	0.0	0	0	0	
205	GN #2D S15	1,914.6	2,376.4	-461.7	3	8	1	65.0	39.200		0.0	0.0	0.0	0	0	0	
206	GN #2D S15	8,533.8	1,856.2	6,677.6	16	1	2	76.0	39.700		0.0	0.0	0.0	0	0	0	

Schedule F-4 Saraland Refinery Month End Tank Gauges Report

Tank Inventory Report

Covering Period: 2023-10-31

Tank	Product	Hydrocarbon							Temp	Grav	Water						
		Closing	Opening	Net Change	ft	in	8's				Closing	Opening	Net Change	ft	in	8's	
_Unnamed	_default	0.0	0.0	0.0							0.0	0.0	0.0				
_Unnamed	_default	0.0	0.0	0.0							0.0	0.0	0.0				
_Unnamed	_default	0.0	0.0	0.0							0.0	0.0	0.0				
_Unnamed	_default	0.0	0.0	0.0							0.0	0.0	0.0				
_Unnamed	_default	0.0	0.0	0.0							0.0	0.0	0.0				
_Unnamed	_default	0.0	0.0	0.0							0.0	0.0	0.0				
010	SULFUR	84.4	84.0	0.5	3	10	2	250.0	10.000		0.0	0.0	0.0	0	0	0	
101	SUBOCTPRE	2,746.0	3,291.6	-545.6	16	5	0	78.0	60.000		0.0	0.0	0.0	0	0	0	
102	SUBOCTPRE	2,746.2	3,291.9	-545.6	16	5	0	78.0	60.000		0.0	0.0	0.0	0	0	0	
103	WATER	2,952.0	2,783.6	168.3	17	9	2	80.0	10.000		0.0	0.0	0.0	0	0	0	
104	CAUSTIC	2,798.7	2,775.8	22.9	17	0	0	82.0	10.000		0.0	0.0	0.0	0	0	0	
105	WATER	3,045.7	2,903.4	142.3	18	4	0	90.0	10.000		0.0	0.0	0.0	0	0	0	
106	WATER	2.4	2.4	0.0	0	0	0	60.0	10.000		0.0	0.0	0.0	0	0	0	
107	WATER	2,990.2	2,938.1	52.1	18	0	0	72.0	10.000		0.0	0.0	0.0	0	0	0	
108	WATER	4,087.0	3,201.9	885.1	24	7	0	76.0	10.000		0.0	0.0	0.0	0	0	0	
109	SOURWATER	1,948.5	1,948.5	0.0	11	9	0	90.0	10.000		0.0	0.0	0.0	0	0	0	
110	WATER	2,948.5	2,754.1	194.4	17	9	0	70.0	10.000		0.0	0.0	0.0	0	0	0	
111	SALTWATER	628.3	0.0	628.3	19	0	0	80.0	10.000		2,528.4	2,528.4	0.0	15	2	6	
113	CAUSTIC	319.6	316.6	3.1	15	11	6	74.0	10.000		0.0	0.0	0.0	0	0	0	
1201	JET A	18,078.5	18,105.5	-27.0	7	2	7	82.0	47.300		0.0	0.0	0.0	0	0	0	
1202	VGO	28,603.5	25,972.2	2,631.3	11	7	0	132.0	28.000		0.0	0.0	0.0	0	0	0	
1203	VGO	112,269.9	112,322.5	-52.5	43	11	4	154.0	28.000		0.0	0.0	0.0	0	0	0	
1204	R100	6,756.0	6,767.5	-11.5	2	10	4	88.0	48.800		0.0	0.0	0.0	0	0	0	
201	RD SLOP	4,339.1	4,355.2	-16.1	8	1	6	70.0	46.800		0.0	0.0	0.0	0	0	0	
202	NAPH HVY	8,527.9	7,792.9	735.0	15	10	0	76.0	60.600		0.0	0.0	0.0	0	0	0	
203	NAPH DSN	19,365.4	20,005.2	-639.8	35	11	4	92.0	60.300		0.0	0.0	0.0	0	0	0	
204	GN #2D S15	22,240.3	22,284.7	-44.4	41	10	0	80.0	38.900		0.0	0.0	0.0	0	0	0	
205	GN #2D S15	2,376.4	10,919.3	-8,542.9	4	6	6	76.0	39.200		0.0	0.0	0.0	0	0	0	
206	GN #2D S15	1,856.2	1,850.7	5.5	3	7	0	74.0	39.700		0.0	0.0	0.0	0	0	0	
207	SR GAS OIL	7,844.8	5,640.5	2,204.2	14	9	4	74.0	41.300		0.0	0.0	0.0	0	0	0	
208	JET A	7,828.7	7,803.7	25.0	14	9	0	72.0	46.800		0.0	0.0	0.0	0	0	0	
209	R100	12,579.3	12,601.6	-22.3	23	7	6	72.0	48.800		0.0	0.0	0.0	0	0	0	
210	JET A	9,560.3	10,701.8	-1,141.5	18	1	4	76.0	46.700		0.0	0.0	0.0	0	0	0	

Schedule F-5 Saraland Refinery Daily Sales Summary Report

7430
 DATE: 11/01/23
 TIME: 09:01
 ACTIVITY FOR: VERMOB0 VRA LLC

VERTEX REFINING ALABAMA
 RACK ACTIVITY SUMMARY
 REPORTING LOCATION: VRA LLC
 FOR FOLIO 10/031

PAGE: 001
 Period Beginning: 00:00 10/31/23
 Period Ending: 23:59 10/31/23

TRANS ID	REFERENCE OUT#/TICKET#	ACCOUNT/CUSTOMER	ACCT NAME	CARRIER	BOL NUMBER	PULL DATE	GROSS GAL	NET GAL	WEIGHT AIR LBS	TEMP	GRAV/ DENSITY	BILLED	DIF
INVENTORY PRODUCT SUMMARY:													
		404031	JET A				48001	47740				47740	0
		406922	BASE ETHANOL				61094	60956				60956	0
		407114	BG RUL 83.7 RVP > 7.8 CBOB ETOH 3.5-4.0				513224	510737				510737	0
		407116	BG PUL 91.4 RVP > 7.8 CBOB ETOH 3.5-4.0				44167	44191				44191	0
		407423	GN #2D (S-15 PPM)				360292	357510				357510	0
		~~950481~~	~~ISOBUTANE~~				~~37920~~	~~8085~~				~~8085~~	~~0~~
		~~950492~~	~~COMMERCIAL BUTANE~~				~~152860~~	~~31367~~				~~31367~~	~~0~~
		INVENTORY PRODUCT TOTALS:					1217558	1060586				1060586	0
INVENTORY ADDITIVE SUMMARY:													
		~~224261~~	~~ADD NEMO 1130~~				~~25.194~~	~~25.194~~				~~25.194~~	~~0.000~~
		~~225042~~	~~Unisol Liquid BX-50~~				~~7.964~~	~~7.964~~				~~7.964~~	~~0.000~~
		~~227620~~	~~METHYL CARBITOL (aka FS11)~~				~~20.322~~	~~20.322~~				~~20.322~~	~~0.000~~
		~~227626~~	~~KEROPUR AP 205-20~~				~~45.228~~	~~45.228~~				~~45.228~~	~~0.000~~
		~~227654~~	~~BASE INVIGORATE 3 ADDITIVE~~				~~8.934~~	~~8.934~~				~~8.934~~	~~0.000~~
		~~229464~~	~~ADD HITEC 4693MX~~				~~2.966~~	~~2.966~~				~~2.966~~	~~0.000~~
		~~229604~~	~~HITEC 65016 - YCM BRANDED~~				~~8.203~~	~~8.203~~				~~8.203~~	~~0.000~~
		INVENTORY ADDITIVE TOTALS:					118.811	118.811				118.811	0.000

Schedule F-6 Saraland Refinery Daily Sales Report by BOL

TRANS ID	OUT#/TICKET#	ACCOUNT/CUSTOMER	ACCT NAME	CARRIER	BOL	PULL	GROSS GAL	NET GAL	WEIGHT AIR LBS	TEMP	GRAV/DENSITY	BILLED	DIF
TRANSACTIONS FOR PRODUCT GNG057 - GN NRLM #2D (S-15 PPM)													
530	9003/0905	0000003100/0000003000	VMFS ALABAMA D VMFM	1676931	10/31/23	7400	7335		78.0 39.9	7335	0		
TRANSACTION ID TOTALS:													
1 TRANSACTIONS						7400	7335				7335	0	
PRODUCT TOTALS:						7400	7335				7335	0	
TRANS ID	OUT#/TICKET#	ACCOUNT/CUSTOMER	ACCT NAME	CARRIER	BOL	PULL	GROSS GAL	NET GAL	WEIGHT AIR LBS	TEMP	GRAV/DENSITY	BILLED	DIF
TRANSACTIONS FOR PRODUCT GNG058 - GN MV #2D (S-15 PPM)													
530	8846/0902	0000003100/0000003000	VMFS ALABAMA D VMFM	1676858	10/31/23	4400	4382		68.6 39.9	4382	0		
TRANSACTION ID TOTALS:													
1 TRANSACTIONS						4400	4382				4382	0	
PRODUCT TOTALS:						4400	4382				4382	0	
TRANS ID	OUT#/TICKET#	ACCOUNT/CUSTOMER	ACCT NAME	CARRIER	BOL	PULL	GROSS GAL	NET GAL	WEIGHT AIR LBS	TEMP	GRAV/DENSITY	BILLED	DIF
TRANSACTIONS FOR PRODUCT GNK002 - JET AVIATION													
530	8857/0908	0000625392/0000625391	EASTERN AVIATI MRLT	1676863	10/31/23		8000	7956		70.5	46.7	7956	0
530	8907/0937	0000625392/0000625391	EASTERN AVIATI MRLT	1676806	10/31/23		8000	7958		70.0	46.7	7958	0
530	8919/0944	0000625392/0000625391	EASTERN AVIATI MRLT	1676892	10/31/23		8000	7942		74.0	46.7	7942	0
530	8994/0982	0000625392/0000625391	EASTERN AVIATI MRLT	1676928	10/31/23		8000	7950		72.0	46.7	7950	0
TRANSACTION ID TOTALS: 4 TRANSACTIONS 32000 31806 31806 0													
PRODUCT TOTALS:						32000	31806				31806	0	
SUPPLIER TOTALS:						43800	43523				43523	0	
TRANS ID	OUT#/TICKET#	ACCOUNT/CUSTOMER	ACCT NAME	CARRIER	BOL	PULL	GROSS GAL	NET GAL	WEIGHT AIR LBS	TEMP	GRAV/DENSITY	BILLED	DIF
INVENTORY PRODUCT SUMMARY:													
407423 GN #2D (S-15 PPM)													
404031 JET A						32000	31806				31806	0	
INVENTORY PRODUCT TOTALS:						43800	43523				43523	0	
INVENTORY ADDITIVE SUMMARY:													
225042 Unisol Liquid BK-50						0.786	0.786				0.786	0.000	
INVENTORY ADDITIVE TOTALS:						0.786	0.786				0.786	0.000	
TRANS ID	OUT#/TICKET#	ACCOUNT/CUSTOMER	ACCT NAME	CARRIER	BOL	PULL	GROSS GAL	NET GAL	WEIGHT AIR LBS	TEMP	GRAV/DENSITY	BILLED	DIF
SALEABLE PRODUCT SUMMARY:													
GNG057 GN NRLM #2D (S-15 PPM)						7400	7335				7335	0	
GNG058 GN MV #2D (S-15 PPM)						4400	4382				4382	0	
GNK002 JET AVIATION						32000	31806				31806	0	
SALEABLE PRODUCT TOTALS:						43800	43523				43523	0	
TERMINAL TOTALS: 6 TRANSACTIONS						43800	43523				43523	0	

Schedule F-7 Plains Mobile Terminal Daily Inventory Report

Vertex Daily Inventory Report					
Date					
11/2/2023	Tank 1102	Tank 1103	Tank 1106	Tank 062	Avail. LMS
Tank Gauge	11-8-4	20-8-0	18-3-5	19-11-2	
Gross Volume	23,291.00	41,540.00	36,503.00	62,454.00	61,385
Pumpable Volume	11,331.00	33,002.53	23,615.78	43,354.00	
Available space	49,909.00	31,967.00	36,058.31	49,785.72	
Product	HLS	Hatterspond	UTICA	LLS	LMS
C.Gravity	31.8	67.2	55.5	40.9	43.0
Active Status	no	no	no	no	

Schedule F-8 Plains Mobile Terminal Monthly Inventory Report

MOBILE TERMINAL

Customer: 0 VERTEX REFINING ALABAMA
Contract: 5716-15-02-0121
Product: CRUDE

TERMINALLING STATEMENT
OCTOBER 2023 STATEMENT
FINAL STATEMENT

DATE	TANK#	Ticket #	TRANSPORT MODE	TRANS TYPE	PRODUCT	NSV BBLs/QTZ	VESSEL NAME/BATCH DESCRIPTION
OPENING INVENTORY:						144,411.02	
10/04/2023	62062	169000-R	BARGE	RECEIPT	CRUDE	49,786.37	HENRI 330/334
10/06/2023	62062	169070-R	BARGE	RECEIPT	CRUDE	49,667.02	COMMANDER 30062/26066
10/07/2023	1102	169001-R	BARGE	RECEIPT	CRUDE	50,370.49	JEFF MONTGOMERY 27014/310036
10/09/2023	62062	169052-R	BARGE	RECEIPT	CRUDE	49,952.22	CAPT. PIC NAQUIN
10/10/2023	1106	169142-R	BARGE	RECEIPT	CRUDE	48,174.17	CHRISTINE 316/558
10/14/2023	1106	169028-R	BARGE	RECEIPT	CRUDE	48,515.01	PATRIOT 262/0013
10/15/2023	62062	169235-R	BARGE	RECEIPT	CRUDE	49,543.64	MISS KELLY
10/18/2023	1102	169437-R	BARGE	RECEIPT	CRUDE	50,363.05	JEFF MONTGOMERY
10/20/2023	62062	169068-R	BARGE	RECEIPT	CRUDE	44,166.06	CHRISTINE 316/558
10/23/2023	62062	169637-R	BARGE	RECEIPT	CRUDE	49,160.84	JAMES ELIZABETH
10/24/2023	62062	169687-R	BARGE	RECEIPT	CRUDE	50,075.35	SEA SONIER
10/26/2023	62062	169680-R	BARGE	RECEIPT	CRUDE	49,665.64	HENRI 330/334
10/30/2023	62062	169025-R	BARGE	RECEIPT	CRUDE	49,869.87	CAPT PIC
10/31/2023	1102	396019	OFFLOADING TRUCK	RECEIPT	CRUDE	28,355.00	
10/31/2023	1103	396021	OFFLOADING TRUCK	RECEIPT	CRUDE	22,016.49	
TOTAL RECEIPTS:						689,692.02	
10/02/2023	1102	169033-D	10 PIPELINE	DELIVERY	CRUDE	-12,442.60	
10/03/2023	1106	169050-D	10 PIPELINE	DELIVERY	CRUDE	-35,218.93	
10/05/2023	62062	169067-D	10 PIPELINE	DELIVERY	CRUDE	-44,812.67	
10/06/2023	1102	169073-D	10 PIPELINE	DELIVERY	CRUDE	-2,091.51	
10/09/2023	1106	169074-D	10 PIPELINE	DELIVERY	CRUDE	-1,232.42	
10/09/2023	62062	169075-D	10 PIPELINE	DELIVERY	CRUDE	-3,541.58	
10/07/2023	1106	169079-D	10 PIPELINE	DELIVERY	CRUDE	-21,789.31	
10/09/2023	1102	169085-D	10 PIPELINE	DELIVERY	CRUDE	-27,134.33	
10/09/2023	62062	169086-D	10 PIPELINE	DELIVERY	CRUDE	-28,083.18	
10/10/2023	62062	169320-D	10 PIPELINE	DELIVERY	CRUDE	-44,993.99	
10/12/2023	1102	169216-D	10 PIPELINE	DELIVERY	CRUDE	-29,224.15	
10/13/2023	1106	169313-D	10 PIPELINE	DELIVERY	CRUDE	-48,742.17	
10/15/2023	62062	169330-D	10 PIPELINE	DELIVERY	CRUDE	-27,476.70	
10/16/2023	62062	169368-D	10 PIPELINE	DELIVERY	CRUDE	-26,211.21	

Mobile Terminal

Wednesday, November 8, 2023

Date Range: 10/1/2023 7:00:01 AM - 11/1/2023 7:00:00 AM

Page 1 of 4

rptContractReport_GainLoss_CustStmRounded_Contract



PLAINS MARKETING, LP

MOBILE TERMINAL

Customer: 0 VERTEX REFINING ALABAMA

Contract: 5716-15-02-0121

Product: CRUDE

TERMINALLING STATEMENT

OCTOBER 2023 STATEMENT

FINAL STATEMENT

DATE	TANK#	Ticket #	TRANSPORT MODE	TRANS TYPE	PRODUCT	NSV BBLs/QTZ	VESSEL NAME/BATCH DESCRIPTION
BOOK INVENTORY:						193,195.20	
CLOSING INVENTORY:						194,254.84	
GAIN/LOSS:						1,059.64	

Notes:

TANK INVENTORIES

Tank Number	Opening	Closing
1102	33,943.29	21,433.38
1103	20,506.30	42,524.79
1106	71,434.24	36,074.50
62062	18,527.19	94,222.17
TOTAL INVENTORY:	144,411.02	194,254.84

TOTAL ACCOUNTABLE INVENTORY:

144,411.02	194,254.84



PLAINS MARKETING, LP
MOBILE TERMINAL

TERMINALLING STATEMENT
OCTOBER 2023 STATEMENT
FINAL STATEMENT

Customer: 0 VERTEX REFINING ALABAMA
Contract: 5716-15-02-0121
Product: CRUDE

DATE	TANK#	Ticket #	TRANSPORT MODE	TRANS TYPE	PRODUCT	NSV BBLs/QTY	VESSEL NAME/BATCH DESCRIPTION
Transport Mode By Grade Summary				Dock Activity Summary			
	Transport Type	Product		Transport Type	Product	Volume	
RECEIPT				BARGE			
	BARGE	CRUDE		RECEIPT	CRUDE	639,318.53	
	OFFLOADING TRUCK	CRUDE				50,373.49	639,318.53
						689,692.02	
DELIVERY							
	10 PIPELINE	CRUDE				-640,907.84	
						-640,907.84	

Mobile Terminal

Date Range: 10/1/2023 7:00:01 AM - 11/1/2023 7:00:00 AM

Wednesday, November 8, 2023

Page 4 of 4

rptContractReport_GainLoss_CustStmnt_Rounded_Contract

Schedule F-9 Genesis Pipeline Daily Meter Report

Daily Projected Delivery Forecast
for November 2023

Saraland

Date	Train Arrival	Estimated Start Time	Jay Injection	Walnut Hill Injection	Saraland Injection Meters		Rate BPH	Walnut Hill Available bbls.
					Walnut Hill Delivery	JFM Volume		
1-Nov		11:00 AM	6,308	6294	0	0	2,350	6,294 bbls.
2-Nov		7:00 AM	7,279	7283	0	0	2,350	13,577 bbls.
3-Nov		7:00 AM	6,357	0	0	6,383	2,350	13,577 bbls.
4-Nov		7:00 AM	6,317	0	0	6,364	2,350	13,577 bbls.
5-Nov		7:00 AM	6,309	0	0	6,308	2,350	13,577 bbls.
6-Nov		7:00 AM	6,290	0	4,004	10,294	2,350	9,573 bbls.
7-Nov		7:00 AM	6,351	0	0	6,354	2,350	9,573 bbls.
8-Nov		7:00 AM	6,120	0	0	6,164	2,350	9,573 bbls.
9-Nov		7:00 AM	6,118	0	0	6,070	2,350	9,573 bbls.
10-Nov		7:00 AM	7,413	0	0	7,236	2,350	9,573 bbls.
11-Nov		7:00 AM	4,760	0	0	4,933	2,350	9,573 bbls.
12-Nov		7:00 AM	6,080	0	0	6,086	2,350	9,573 bbls.
13-Nov		7:00 AM	6,097	0	1,000	7,170	2,350	8,573 bbls.
14-Nov		7:00 AM	6,084	0	951	6,962	2,350	7,622 bbls.
15-Nov		7:00 AM	5,816	0	964	6,763	2,350	6,658 bbls.
16-Nov		7:00 AM	5,992	0	6,712	12,747	2,350	0 bbls.
17-Nov		7:00 AM	6,041	0	0	6,181	2,350	0 bbls.
18-Nov		7:00 AM	5,983	0	0	5,964	2,350	0 bbls.
19-Nov		7:00 AM	6,052	0	0	5,885	2,350	0 bbls.
20-Nov		7:00 AM	5,985	0	0	5,950	2,350	0 bbls.
21-Nov		7:00 AM	5,986	0	0	6,007	2,350	0 bbls.
22-Nov		7:00 AM	6,001	0	0	6,001	2,350	0 bbls.
23-Nov		7:00 AM	5,792	0	0	5,776	2,350	0 bbls.
24-Nov		7:00 AM	5,820	0	0	5,873	2,350	0 bbls.
25-Nov		7:00 AM	5,999	0	0	6,044	2,350	0 bbls.
26-Nov		7:00 AM	6,003	0	0	6,013	2,350	0 bbls.
27-Nov		7:00 AM	5,998	0	0	5,970	2,350	0 bbls.
28-Nov		7:00 AM	5,792	0	0	5,811	2,350	0 bbls.
29-Nov		7:00 AM	5,800	0	0	5,800	2,350	0 bbls.
30-Nov		7:00 AM	6,280	0	0	6,280	2,350	0 bbls.
(Nominated)		Total	183,22	13,57	13,63	183,38	JFM	

Thes number ar base o th nominate barrel comin int th system.

Schedule F-10 Genesis Pipeline Monthly Meter Report

Daily Projected Delivery Forecast
for November 2023

Saraland

Date	Train Arrival	Estimated Start Time	Jay Injection	Walnut Hill Injection	Saraland Injection Meters		Rate BPH	Walnut Hill Available bbls.
					Walnut Hill Delivery	JFM Volume		
1-Nov		11:00 AM	6,308	6294	0	0	2,350	6,294 bbls.
2-Nov		7:00 AM	7,279	7283	0	0	2,350	13,577 bbls.
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5-Nov		7:00 AM	6,309	0	0	6,308	2,350	13,577 bbls.
6-Nov		7:00 AM	6,290	0	4,004	10,294	2,350	9,573 bbls.
7-Nov		7:00 AM	6,351	0	0	6,354	2,350	9,573 bbls.
8-Nov		7:00 AM	6,120	0	0	6,164	2,350	9,573 bbls.
9-Nov		7:00 AM	6,118	0	0	6,070	2,350	9,573 bbls.
10-Nov		7:00 AM	7,413	0	0	7,236	2,350	9,573 bbls.
11-Nov		7:00 AM	4,760	0	0	4,933	2,350	9,573 bbls.
12-Nov		7:00 AM	6,080	0	0	6,086	2,350	9,573 bbls.
13-Nov		7:00 AM	6,097	0	1,000	7,170	2,350	8,573 bbls.
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16-Nov		7:00 AM	5,992	0	6,712	12,747	2,350	0 bbls.
17-Nov		7:00 AM	6,041	0	0	6,181	2,350	0 bbls.
18-Nov		7:00 AM	5,983	0	0	5,964	2,350	0 bbls.
19-Nov		7:00 AM	6,052	0	0	5,885	2,350	0 bbls.
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23-Nov		7:00 AM	5,792	0	0	5,776	2,350	0 bbls.
24-Nov		7:00 AM	5,820	0	0	5,873	2,350	0 bbls.
25-Nov		7:00 AM	5,999	0	0	6,044	2,350	0 bbls.
26-Nov		7:00 AM	6,003	0	0	6,013	2,350	0 bbls.
27-Nov		7:00 AM	5,998	0	0	5,970	2,350	0 bbls.
28-Nov		7:00 AM	5,792	0	0	5,811	2,350	0 bbls.
29-Nov		7:00 AM	5,800	0	0	5,800	2,350	0 bbls.
30-Nov		7:00 AM	6,280	0	0	6,280	2,350	0 bbls.
(Nominated)		Total	183,22	13,57	13,63	183,38	JFM	

These numbers are based on the nominated barrel commitment system.

[illegible]

SCHEDULE G
INITIAL INVENTORY TARGETS

Category	Index	Builds/Draw	April
Crude - Current Month	LCO	Purchases	2,307,000
Crude - Past Month	LCO	Purchases	575,000
Crude Cargo Rollover	LCO	Purchases	400,000
Crude	LCO	Consumption	2,250,000
Crude Pipeline	LCO	Static	7,412
Crude Ending Inventory			926,000
Gasoline	RB	Production	622,500
Gasoline	RB	Sales	653,000
Gasoline Pipeline	RB	Static	1,000
Gasoline Ending Inventory			176,000
Distillate	HO	Production	612,210
Distillate	HO	Vertex Sales	220,000
Distillate	HO	STUSCO Sales	50,000
Distillate RVO	HO	SOPUS Sales	278,000
Distillate Pipeline	HO	Static	3,670
Distillate Ending Inventory			190,000
Naphtha	LCO	Production	99,000
Naphtha	LCO	Sales	100,000
Naphtha	LCO	Consumption	-
Naphtha Ending Inventory			76,000
Jet	HO	Production	263,000
Jet	HO	Sales	212,000
Jet Pipeline	HO	Static	810
Jet Ending Inventory			126,000
Intermediates	LCO	Production	530,000
Intermediates	LCO	Vertex Sales	235,000
Intermediates	LCO	Shell Sales	250,000
Intermediates Pipeline	LCO	Static	1,605
Intermediates Ending Inventory			72,000
LPG	N/A	Lien	100,000
LPG Ending Inventory			5,000

SCHEDULE H

CURRENT MONTH PRICING BENCHMARKS

[Filed Under Seal]

SCHEDULE I

SCHEDULING AND COMMUNICATIONS PROTOCOL

Crude

<u>Report</u>	<u>Contents</u>	<u>Frequency</u>	<u>Who provides</u>
<u>Crude Nomination</u>	- Supplier to provide pricing & volume estimates for Base Slate Grades (on or before the tenth day of M-2) - Vertex to provide desired Crude Oil grades & volumes (on or before the twentieth day of M-2) – to be accepted by Macquarie - Supplier to provide confirmation of Crude Oil grades & volumes secured for the month (On or before the twenty-fifth day of M-1)	Monthly per Crude Oil Supply Agreement	Vertex / Supplier
<u>Crude Projections</u>	Vertex to provide weekly crude projections by 5pm EST Thursdays for the following week	Weekly - Thursdays	Vertex
<u>Crude Supply Transaction requests</u>	Key trade terms such as grade, volume, pricing, delivery window, mode (pipeline, storage, vessel), and delivery point	For every crude delivery	Vertex / Supplier
<u>Delivery communications</u>	Typical logistics coms for delivered ~~barrels~~ <u>bbls</u> (Vertex to act as logistics agent on behalf of Macquarie with Macquarie always in copy?)	For every crude delivery	Vertex + Macquarie / Supplier
<u>Pipeline reports</u>	- Meter tickets with delivered volumes for 24hr period - Certificate of Quantity for transfer volumes from Plains to Refinery	Daily by 12noon	Plains / Genesis
<u>Vessel delivery reports</u>	- BL docs for purchase volume verification - Certificate of Quantity for outturn figures from ~~independent~~ <u>Independent</u> inspector (shore tank up-gauge to be used so that outturn figures are in line with daily inventory gauge figures)	For every crude vessel	Independent inspector

Products

<u>Report</u>	<u>Contents</u>	<u>Frequency</u>	<u>Who provides</u>
<u>Monthly Product Estimate</u>	Monthly Product Estimate based on the current Estimated Yield by the 15th day of the month for the following month	Monthly – 15 th day	Vertex – to be accepted/rejected by Macquarie within 1 day
<u>Production Projections</u>	- Weekly production projections by 5pm EST Thursdays for the following week - Ensure it is noted what products are to be sold to Vertex and what products are to be sold to Shell	Weekly - Thursdays	Vertex– to be accepted/rejected by Macquarie within 1 day
<u>Gasoline (incl. CBOB) and ULSD</u>	- Vertex to make 3 month rolling nominations each month (M+1 & M+2 indicative) - Vertex to provide monthly production forecast (M & M+1) by the first week of each month (M-1) - Shell to nominate by the 10th day of M-1 - Delivery schedule to be agreed for M+1	Per Offtake Agreement	Vertex / Offtake -to be accepted by Macquarie
<u>Jet Fuel Rack</u>	- Vertex to nominate by the 15th day of M-1 for delivery in upcoming month – to be accepted by Macquarie no later than the 20th day of M-1 - Delivery schedule to be confirmed for each 'Confirmed Nomination Volume' - Planned outages provided quarterly for following 6 months	Per Offtake Agreement	Vertex / Offtake -to be accepted by Macquarie
<u>Heavy Olefin Feed</u>	- Vertex to provide forecast of monthly production by 15th day of M-1 ~~• Shell to nominated within 2 business days of forecast~~ - Monthly delivery schedule to be agreed (timing of this?)	Per Offtake Agreement	Vertex / Offtake -to be accepted by Macquarie
<u>Distillates</u>	- Vertex to provide forecast volumes for the following 45 days <u>on a daily basis</u> - Volumes per grade will be firm for next 30 days (rolling) ~~• Shell to nominate cargoes in line with forecast & provide loading dates no later than 10 days before the first day of the loading date range~~	Per Offtake Agreement	Vertex / Offtake -to be accepted by Macquarie
<u>Sale communications</u>	Typical logistics coms for product sales (Vertex to act as logistics agent on behalf of Macquarie with Macquarie always in copy?)	For every product sale	Vertex + Macquarie / Offtake
<u>Product rack sales</u>	Advisor report data of product rack sale volumes by rack location/product category	Daily by 12noon	Vertex

Daily/Weekly/Monthly Communications

<u>Report</u>	<u>Contents</u>	<u>Frequency</u>	<u>Who provides</u>
<u>Inventory Forecast</u>	- Forecasting of target month end inventory volumes by grade/product category utilizing PIR 3 month rolling production forecast to be provided each month by grade/product category	Monthly by the 25 th prior	Vertex
<u>Inventory report (Vertex)</u>	Split by location: Refinery& Blakely Island – Yield report & Advisor report data by tank / pipeline / processing unit number, by grade/product category: - Report to show balances as of the immediately preceding midnight (i.e. 1 day lag) - Report to show movements in volume since the previous midnight - Crude receipts (i.e. crude delivered into the tanks) - Crude consumed (i.e. crude lifted from the tanks for processing) - Product inventory volumes - Products produced less products sold (net daily change in volume per product category) – with specifications of volumes sold to STUSCO	Daily by 10am CST	Vertex
<u>Inventory report (Center Point Chickasaw)</u>	By tank by product	Daily by 10am CST	Center Point
<u>Inventory report (BWC Blakeley Island)</u>	By tank by product	Daily by 10am CST	BWC
<u>Inventory report (Barges)</u>	By barge by product	Daily by 10am CST	Vertex
<u>Inventory report (Plains)</u>	By tank by crude grade	Daily by 10am CST	Plains
<u>Daily settlement recap</u>	Recap showing value of daily volume movements priced provisionally for daily settlement	Daily by 4pm CST	Macquarie
<u>Liquidity report</u>	~~Weekly report to show the following weeks' value of sales to Vertex to determine if any sales need to be prepaid. Prepayments will be invoiced by Thursday for payment Friday.~~	~~Weekly on Wednesday by Noon CST~~	~~Vertex~~
<u>Daily settlements</u>	Invoices will be issued per recap for next day settlement	Daily by 6pm CST	Macquarie
<u>Radical reporting/access</u>	Read only access to Radical raw data for visibility & periodic reconciliation	Daily	Vertex
<u>SAP/Advisor Rec</u>	Confirmation of acceptable monthly reconciliation of SAP & Advisor (by 5th of the month?)	Monthly	Vertex
<u>Monthly ~~true~~ ups~~true~~-ups & costs</u>	Freight (if not included in Shell's crude/ product price), inspections, demurrage, hedge adjustments, final pricing ~~true~~ ups~~true~~-ups etc	Monthly	Macquarie as received from Shell

<u>Fee run</u>	Detailed calculation of Macquarie fees	Monthly	Macquarie

SCHEDULE J

~~[RESERVED]~~ CRUDE GTCs AND MENAT REQUIRED TERMS

Crude GTCs

None as at the Restructuring Effective Date.

MENAT Required Terms

None as at the Restructuring Effective Date.

SCHEDULE K

NOTICES

If to Company:

All legal notices:

1331 Gemini Street, #250, Houston, TX 77058
Attn.: General Counsel
Email: legal@vertexenergy.com

Settlements:

1331 Gemini Street, #250, Houston, TX 77058
Attn.: Chief Financial Officer
Email: settlements@vertexenergy.com

Refinery Operations:

1331 Gemini Street, #250, Houston, TX 77058
Attn.: Chief Operating Officer
Email: operations@vertexenergy.com

If to Macquarie:

All Legal Notices:

500 Dallas Street, Suite 3300
Houston, Texas 77002
Attn: Legal Risk Management Department
Email: CGMLegalHouston@macquarie.com

Settlements:

500 Dallas Street, Suite 3300
Houston, Texas 77002
Attn: Physical & Trade Finance
Email: cogmodphysicaltradedef@macquarie.com

Deal Management:

500 Dallas Street, Suite 3300
Houston, Texas 77002
Attn: US Deal Management Team
Email: cfmemdvertexoperations@macquarie.com

Trading:

500 Dallas Street, Suite 3300
Houston, Texas 77002
Attn: ~~Daniel Vize~~ Brian Houstoun with a copy to US Deal Management Team
Email: ~~Daniel.Vize~~ Brian.Houstoun@macquarie.com with a copy to cfmemdvertexoperations@macquarie.com

SCHEDULE L**FORM OF TRANSACTION SUPPLEMENT**

Transaction Supplement Request

1	Reference no:	
2	Request Type:	
3	Supplier:	
4	Incoterm:	
5	Loadport:	
6	Freight Requirements:	
7	Grade:	
8	Quantity (bbls):	.
9	Laycan:	
10	Cargo price:	
	(a) Physical Marker; plus	
	(b) Procurement Differential:	
11	Cargo Pricing Period:	
12	Quality and quantity:	
13	Laytime allowance:	
14	Differential Components, \$lbbl:	
15	Demurrage Terms	
16	Load port	
17	Berth technical restrictions	
	NOTES:	

SCHEDULE M

FORM OF STEP-OUT INVENTORY SALES AGREEMENT

[See attached]

(1) MACQUARIE ENERGY NORTH AMERICA TRADING
INC.

(2) VERTEX REFINING ALABAMA LLC

ORIGINAL/COUNTERPART

STEP-OUT INVENTORY SALES AGREEMENT

PURSUANT TO A SUPPLY AND OFFTAKE AGREEMENT DATED ON OR AROUND
THE DATE HEREOF

CONTENTS

CLAUSE

1	DEFINITIONS	1
2	ASSIGNMENT AND CONVEYANCE	2
3	DETERMINATION OF INVENTORY	2
4	PAYMENT AND PRICING	3
5	MISCELLANEOUS	4

THIS AGREEMENT dated

BETWEEN:

- (1) Macquarie Energy North America Trading Inc. ("Seller") and
- (2) Vertex Refining Alabama, LLC (the "Buyer")

(each referred to individually as a "Party" and collectively, the "Parties").

RECITALS

- (A) WHEREAS, Buyer owns and operates a crude oil refinery and related assets located in Mobile, Alabama (the "Refinery") for the processing and refining of crude oil and other feedstocks and the recovery therefrom of refined products;
- (B) WHEREAS, Seller and Buyer have entered into a Supply and Offtake Agreement, dated April 1, 2022, (the "S&O Agreement"), pursuant to which, on the Commencement Date, the Seller (i) acquired from [Buyer][Shell] all Crude Oil and Products held in the Included Storage Locations in order to enable Seller to meet its obligations under the S&O Agreement; and (ii) provide certain other financial accommodations to the Buyer based on Crude Oil and Products then being stored at Company Locations (as defined therein), amongst other things.
- (C) Pursuant to the terms of the S&O Agreement, Seller (i) purchases Crude Oil from Permitted Suppliers; (ii) sells Crude Oil to Buyer from the Crude Storage Tanks as and when it is to be processed at the Refinery, (iii) purchases Products from the Buyer produced at the Refinery to be stored in the Included Product Tanks, and (iv) sells Products from the Included Product Tanks as and when it is to be sold to Buyer or third parties;
- (D) WHEREAS, at the Termination Date, Seller desires to sell and Buyer desires to purchase, all of Seller's Crude Oil and Products held in the Included Storage Locations; and
- (E) WHEREAS, Seller and Buyer desire to enter into this Agreement to set forth their agreements regarding the protocols to be used for measuring the quantity and quality of the Crude and Product Inventory and to establish the prices to be paid for such Crude Oil and Products by Buyer.

AGREEMENTS

- (F) NOW, THEREFORE, in consideration of the foregoing premises, the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, subject to the terms and conditions hereinafter set forth, agree as follows:

1 DEFINITIONS

- 1.1 Definitions. All capitalized terms used, but that are not otherwise defined, in the body of this Agreement shall have the meanings ascribed to such terms in the S&O Agreement. The following terms shall have the following meanings for the purposes of this Agreement:

"**Agreement**" has the meaning set forth in the introductory paragraph immediately preceding the Recitals.

"**BS&W**" means basic sediment and water.

"**Buyer**" has the meaning set forth in the introductory paragraph immediately preceding the Recitals.

"**Crude and Product Inventory**" means all Crude Oil and Products that are held in the Included Storage Locations as of, and owned by Seller immediately prior to, the Inventory Transfer Time.

"**Definitive Termination Date Value**" means the price of the Definitive Termination Date Volume determined as of the Inventory Transfer Time.

"**Definitive Termination Date Volume**" has the meaning set forth in Section 3.3.

“EST” means the prevailing time in the Eastern time zone of the United States of America.

“Estimated Termination Date Value” has the meaning set forth in Section 4.1.2.

“Independent Inventory Report” has the meaning set forth in Section 3.3 of this Agreement.

“Inventory Measurement Time” means as of a specified time on the Termination Date, adjusted for timing to match inventory measurement conditions to the greatest extent practical.

“Inventory Transfer Time” means 00:00:01 a.m. EST on the Termination Date.

“Parties” and “Party” have the meanings set forth in the introductory paragraph immediately preceding the Recitals.

“Projected Inventory” has the meaning set forth in Section 4.1.1 of this Agreement.

“Refinery” has the meaning set forth in the Recitals of this Agreement.

“S&O Agreement” has the meaning specified in the Recitals hereto.

“Sales Statement” has the meaning set forth in Section 4.3.1 of this Agreement.

“Seller” has the meaning set forth in the introductory paragraph immediately preceding the Recitals.

2 ASSIGNMENT AND CONVEYANCE

2.1 Assignment, Purchase and Conveyance. Effective upon the Inventory Transfer Time, Seller shall, and hereby does, assign, transfer and deliver unto Buyer, and Buyer shall and hereby does purchase from Seller, all of Seller's right, title, and interest in and to all of the Crude and Product Inventory, free and clear of all Liens, claims and encumbrances of any nature, other than Permitted S&O Liens, to have and to hold. Seller covenants and agrees to warrant and forever defend good title to the Crude and Product Inventory, free and clear of all Liens, claims and encumbrances of any nature, subject to Permitted S&O Liens, against the claims of all parties claiming the same by, through, or under Seller, but not otherwise. The transfer of title referred to in this Section 2.1 shall not be effective until the payment of the Estimated Termination Date Value pursuant to Section 4.2, together with all other amounts due from the Buyer to the Seller on the Termination Date.

2.2 Warranties and Representations of Conveying Party; Disclaimer of Warranties.

2.2.1 EXCEPT FOR THE FOREGOING LIMITED SPECIAL WARRANTY OF TITLE, EACH CONVEYANCE OF CRUDE AND PRODUCT INVENTORY IS MADE AND ACCEPTED WITHOUT ANY WARRANTY OR REPRESENTATION WHATSOEVER, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, REGARDING THE CRUDE AND PRODUCT INVENTORY INCLUDING, WITHOUT LIMITATION, ANY WARRANTY AS TO THE CONDITION OR MERCHANTABILITY OF SUCH COMMODITY OR FITNESS OF ANY SUCH COMMODITY FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY DISCLAIMED. BUYER SHALL ACCEPT ALL OF THE CRUDE AND PRODUCT INVENTORY IN ITS “AS IS, WHERE IS” CONDITION AND “WITH ALL FAULTS.”

2.2.2 All representations and warranties of Seller contained herein shall be true and correct on and as of the Termination Date.

3 DETERMINATION OF INVENTORY

3.1 Inspection. The Independent Inspection Company shall determine and report the quantity and quality of the physical inventory, except as described in Section 3.2.2 below. Promptly upon appointment of the Independent Inspection Company, Buyer shall provide Seller and the Independent Inspection Company with an Inventory Report and any other information related to the Crude and Product Inventory reasonably requested by the Independent Inspection Company for purposes of carrying out the physical inventory, including reports submitted by the respective operators pursuant to Section 3.2.2, and select a date mutually acceptable to the Parties but in any event no later than three (3) Business Days prior to the Termination Date, for the Independent Inspection Company to commence preparing to survey the physical inventory. The Parties shall agree on and communicate to the Independent Inspection Company the Included Storage Locations, which the Independent

Inspection Company shall survey, and the scope of such survey. The cost of the Independent Inspection Company is to be borne by and is the sole responsibility of Buyer.

3.2 Physical Inventory.

3.2.1 The Independent Inspection Company shall conduct a survey of the physical inventory at the Included Storage Locations specified by the Parties pursuant to Section 3.1 above at and as of the Inventory Measurement Time, except as described in Section 3.2.2 below. The Independent Inspection Company shall conduct such physical inventory pursuant to its customary procedures and in accordance with the latest ASTM standards and principles then in effect, provided that the Independent Inspection Company shall be instructed by the Parties to maximize, to the extent reasonably practicable, the extent to which tank measurements are conducted on a static tank basis. Each of Buyer and Seller shall have the right to witness or appoint a representative to witness on its behalf, the survey of the physical inventory conducted by the Independent Inspection Company.

3.2.2 With respect to volumes (if any) located at any Included Product Tanks owned or operated by a third party, the physical inventory shall be determined by such third party at that location based on its normal month-end inventory determination procedures.

3.3 Disputes. Either Party or their respective representatives present at the survey of the physical inventory conducted by the Independent Inspection Company at the Inventory Measurement Time may question or dispute the calculations and/or laboratory results of the Independent Inspection Company. The Parties shall use commercially reasonable efforts to assure that any questions or disputes relating to the quantity and the qualitative laboratory results of the entire physical inventory shall be resolved by the Independent Inspection Company within three (3) Business Days after the receipt of the Independent Inspection Company quantity and quality report and the resolution by the Independent Inspection Company shall be final and binding on both Parties. Following resolution of any quantity and quality disputes, the agreed quantity and quality entries, together with the quantity (if any) determined under Section 3.2.2, shall be recorded in the physical inventory report (the "Independent Inventory Report") and will become the official quantity and quality measurements of the Crude and Product Inventory as of the Inventory Measurement Time. Such recorded quantity shall be adjusted for BS&W and temperature corrected to 60 degrees Fahrenheit and the volume contained in the Included Storage Locations shall be the "Definitive Termination Date Volume" for purposes of this Agreement.

3.4 Independent Inventory Report. The Parties shall use commercially reasonable efforts to cause, within five (5) Business Days after the Inventory Transfer Time, the Independent Inspection Company to provide the Parties with the Independent Inventory Report.

4 **PAYMENT AND PRICING**

4.1 Delivery of Estimated Termination Date Value.

4.1.1 Three (3) Business Days prior to the Termination Date, Buyer shall deliver to Seller a notice containing an estimate of the Crude and Product Inventory it projects will be available at Included Storage Locations at the Inventory Transfer Time (the "Projected Inventory").

4.1.2 Based on the Projected Inventory and such data as are then reasonably available and using the applicable Current Month Pricing Benchmark(s) in effect three (3) Business Days prior to the Termination Date, Seller shall, no later than two (2) Business Days prior to the Termination Date, calculate and notify Buyer of the purchase value for the Projected Inventory (the "Estimated Termination Date Value") available at the Inventory Transfer Time. Seller shall include the Estimated Termination Date Value and all supporting calculations used to determine it in the notice delivered to Buyer.

4.2 Payment on the Termination Date. On the Termination Date, Buyer shall pay to Seller an amount equal to the Estimated Termination Date Value without negating any termination payment obligations under Section 20.2 of the S&O Agreement.

4.3 Crude and Product Inventory Sales Statement.

4.3.1 Promptly after the Termination Date, Buyer shall calculate the Definitive Termination Date Value using the data regarding the Crude and Product Inventory provided in the Independent Inventory Report and the reports submitted by the respective operators pursuant to Section 3.2.2 hereof and

deliver to Seller a statement including such calculated price (the “Sales Statement”), provided that Buyer has obtained the appropriate information for such calculation. Buyer shall use the Current Month Pricing Benchmark(s) in effect as of the Termination Date to price the various quantities set forth in the Independent Inventory Report and the reports submitted by the respective operators pursuant to Section 3.2.2 hereof. Buyer shall include in the Sales Statement all supporting calculations and documentation used to determine the Definitive Termination Date Value.

- 4.3.2 Unless Seller gives notice to Buyer on or before the third (3rd) Business Day after Seller’s receipt of the Sales Statement that Seller disputes the Definitive Termination Date Value specified in the Sales Statement, the Definitive Termination Date Value shall be as specified in the Sales Statement. If Seller gives timely notice to Buyer that it disputes the Definitive Termination Date Value specified in the Sales Statement, the Parties shall consult in good faith and use all reasonable efforts to agree upon the calculation of the Definitive Termination Date Value. If the Parties have not agreed on the Definitive Termination Date Value within one (1) Business Day after Buyer’s receipt of Seller’s dispute notice, either Party shall have the right to submit such matters as remain in dispute to a single accounting firm of recognized national standing as the Parties shall mutually agree, for final resolution, which resolution shall be binding upon the Parties, and judgment upon which may be entered in any court having jurisdiction over the Party against which such determination is sought to be enforced; provided, however, that the Definitive Termination Date Volume, as provided in the Independent Inventory Report prepared by the Independent Inspection Company, shall not be subject to further review or dispute except with respect to manifest error. The accounting firm’s determination shall be in the form of a written opinion as is appropriate under the circumstances and shall confirm that the Definitive Termination Date Volume was rendered in accordance with this Section 4.3. The fees and expenses of such accounting firm for its services in resolving such dispute shall be borne equally by the Parties.

- 4.4 Crude and Product Inventory Sales Price Adjustment. Upon final determination of the Definitive Termination Date Value, if the Definitive Termination Date Value exceeds the Estimated Termination Date Value, the difference shall be due from Buyer to Seller and if the Estimated Termination Date Value exceeds the Definitive Termination Date Value, the difference shall be due from Seller to Buyer, and such amount shall be incorporated into the payment made under Section [20.2(c)] of the S&O Agreement.

- 4.5 Taxes. The Parties agree that the provisions of Section [16] of the S&O Agreement relating to tax matters shall apply to this Agreement and the transactions contemplated hereby to the same extent as if set forth herein in full (except that references to the “Company” shall be deemed to refer to the Buyer hereunder and references to “Macquarie” shall be deemed to refer to the Seller hereunder).

5 MISCELLANEOUS

- 5.1 Assignment. This Agreement shall inure to the benefit of and be binding upon the Parties hereto, their respective successors and permitted assigns.

- 5.1.1 Neither Party may assign this agreement without the express written consent of the other Party.

- 5.1.2 Any attempted assignment in violation of this Section 5 shall be null and void *ab initio* and the non-assigning Party shall have the right, without prejudice to any other rights or remedies it may have hereunder or otherwise, to terminate this Agreement effective immediately upon notice to the Party attempting such assignment.

- 5.2 Notices. All invoices, notices, requests and other communications given pursuant to this Agreement shall be in writing and sent by email or nationally recognized overnight courier. A notice shall be deemed to have been received when transmitted by email to the other Party’s email address set forth in Schedule [M] of the S&O Agreement, or on the following Business Day if sent by nationally recognized overnight courier to the other Party’s address set forth in Schedule [M] of the S&O Agreement and to the attention of the person or department indicated. A Party may change its address or email address by giving written notice in accordance with this Section, which is effective upon receipt.

- 5.3 Severability. In the event any portion of this Agreement shall be found by a court of competent jurisdiction to be unenforceable, that portion of this Agreement will be null and void and the remainder of this Agreement will be binding on the Parties as if the unenforceable provisions had never been contained herein.

5.4 Waiver; Limitation of Liability.

5.4.1 The failure of a Party hereunder to assert a right or enforce an obligation of the other Party shall not be deemed a waiver of such right or obligation. The waiver by any Party of a breach of any provision of, or default under, this Agreement shall not operate or be construed as a waiver of any other breach of that provision or as a waiver of any breach of another provision of, or default under, this Agreement, whether of a like kind or different nature.

5.4.2 IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, ARISING UNDER THIS AGREEMENT.

5.5 Entire Agreement; Amendment. The terms of this Agreement, together with the Exhibits hereto constitute the entire agreement between the Parties with respect to the matters set forth in this Agreement, and no representations or warranties shall be implied or provisions added in the absence of a written agreement to such effect between the Parties. This Agreement shall not be modified or changed except by written instrument executed by the Parties' duly authorized representatives. Headings, subheadings and captions are for the convenience of the parties only and shall not be used to construe the meaning or intent of any provision hereof.

5.6 Choice of Law; Dispute Resolution.

5.6.1 This Agreement shall be governed by, construed and enforced under the laws of the State of New York without giving effect to its conflicts of laws principles that would require the application of the laws of another state.

5.6.2 Each of the Parties hereby irrevocably submits to the exclusive jurisdiction of any federal or state court of competent jurisdiction situated in the City of New York, (without recourse to arbitration unless both Parties agree in writing), and to service of process by certified mail, delivered to the Party at the address indicated in Schedule [M] of the S&O Agreement. Each Party hereby irrevocably waives, to the fullest extent permitted by Applicable Law, any objection to personal jurisdiction, whether on grounds of venue, residence or domicile.

5.6.3 EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDINGS RELATING TO THIS AGREEMENT.

5.7 Counterparts. This Agreement may be executed by the Parties in separate counterparts and initially delivered by facsimile transmission or otherwise, with original signature pages to follow, and all such counterparts shall together constitute one and the same instrument.

5.8 Further Assurances. Both Seller and Buyer agree to execute and deliver, from time to time, such other and additional instruments, notices, transfer orders and other documents, and to do all such other and further acts and things as may be necessary to more fully and effectively transfer and assign the Crude and Product Inventory to Buyer.

5.9 Third Party Consents. The assignment and conveyance set forth in this Agreement shall not constitute an assignment or transfer of any of the Crude and Product Inventory if an attempted assignment thereof without the prior consent of a third party would result in a termination thereof, unless and until such consent shall have been obtained, at which time such asset(s) shall be and is hereby deemed to be transferred and assigned to Buyer in accordance herewith.

SCHEDULE N

FORM OF REFINERY PRODUCT VOLUME REPORT

Shell Chemical Company - Mobile Refinery

Operational Yield Report

Covering Period: 2022-01-03 thru 2022-01-03

	Inventory		Period Totals				Daily Averages		Pct
	Opening	Closing	Sales	Purchases	Used in	Yields	Sales / Blends	Yields	
					Blends	(Charges)	(Purchases)	(Charge)	
Crude Products									
CRUDE HVY	146,791	117,054	0	0	0	-29,736	0	-29,736	0.00
CRUDE LT	206,212	223,665	0	0	0	17,453	0	17,453	0.00
EAGLEFORD	0	0	0	42,045	0	-42,045	-42,045	-42,045	0.00
HATTERSPND	16,431	29,249	0	14,342	0	-1,524	-14,342	-1,524	0.00
LMS CRUDE	56,938	43,619	0	4,627	0	-17,946	-4,627	-17,946	0.00
JAY	33,265	33,831	0	3,568	0	-3,001	-3,568	-3,001	0.00
LLS CRUDE	4,619	4,504	0	0	0	-115	0	-115	0.00
	464,256	451,922	0	64,582	0	-76,916	-64,582	-76,916	0.00
NI540	283	386	0	266	0	-163	-266	-163	0.00
	283	386	0	266	0	-163	-266	-163	0.00
Subtotal	464,539	452,308	0	64,848	0	-77,079	-64,848	-77,079	0.00
Finished Products									
SULFUR	134	152	0	0	0	18	0	18	0.02
	134	152	0	0	0	18	0	18	0.02
COMLPG	52	7	0	0	0	-45	0	-45	-0.06
I-BUTANE	1,970	1,634	1,425	0	0	1,089	1,425	1,089	1.41
COMM PROPAN	0	0	1,515	0	0	1,515	1,515	1,515	1.96
MOBPROP	2,199	1,809	0	0	0	-390	0	-390	-0.51
N-BUTANE	1,232	1,111	777	0	0	656	777	656	0.85
	5,452	4,560	3,717	0	0	2,825	3,717	2,825	3.66
Company A93RV	0	0	154	0	-154	0	0	0	0.00
Company ARVP	0	0	1,973	0	-1,973	0	0	0	0.00
Company B93RV	0	0	36	0	-36	0	0	0	0.00
Company C89RV	0	0	29	0	-29	0	0	0	0.00
Company C93RV	0	0	516	0	-516	0	0	0	0.00
Company C87RV	0	0	4,990	0	-4,990	0	0	0	0.00
Company D 92 R	0	0	48	0	-48	0	0	0	0.00
Company D 93 R	0	0	75	0	-75	0	0	0	0.00
Company E RVP	0	0	1,185	0	-1,185	0	0	0	0.00
Company F 87 R	0	0	316	0	-316	0	0	0	0.00
Company G 93 R	0	0	715	0	-715	0	0	0	0.00
Company G 87 R	0	0	10,777	0	-10,777	0	0	0	0.00

SCHEDULE O

FORM OF INCLUDED STORAGE LOCATIONS

~~(1)~~ (1) Terminalling and storage at the Refinery owned and operated by Vertex Refining Alabama, LLC, except for all sulfur, LPGs and molecules within the processing units.

~~(2)~~ (2) Internal pipe systems located at the Refinery in Saraland, Alabama owned and operated by Vertex Refining Alabama, LLC (the "**Saraland Refinery**").

~~(3)~~ (3) Terminalling and storage facility at Blakely Island owned and operated by Vertex Refining Alabama, LLC (the "**Blakely Island Facility**").

~~(4)~~ (4) Terminalling and storage facility at Plains Mobile Terminal located at 1871 Hess Road Mobile, AL 36610 (the "**Plains Mobile Terminal Facility**"), whether or not owned and operated by Plains Marketing, L.P.

(5) Terminalling and storage facility at BWC Blakeley Terminal located at 1437 Cochrane Causeway Mobile, AL 36602 (the "**BWC Blakeley Terminal Facility**"), whether or not owned and operated by BWC Alabama LLC

~~(5)~~ (6) In transit to and from the Saraland Refinery to the Blakely Island Facility.

~~(6)~~ (7) In transit to and from the Saraland Refinery to the Plains Mobile Terminal Facility.

~~(7)~~ (8) In transit to and from the Saraland Refinery to the Chickasaw Dock.

(9) From and after the Center Point Inclusion Date, Tank 21 at the terminalling and storage facilities at the storage facility located at 200 Viaduct Road North, Chickasaw, Alabama 36611, regardless of whether owned and operated by Center Point Terminal Chickasaw, LLC.

10) From and after the Center Point Inclusion Date, Tanks 3, 9 and 10 at the terminalling and storage facilities at the storage facility located at 1257 Cochrane Causeway, Mobile, Alabama 36610, regardless of whether owned and operated by Center Point Terminal Blakeley Island, LLC.

11) From and after the BWC Inclusion Date, Tank 30-08 at the terminalling and storage facilities at the storage facility located at 500 Viaduct Road, Chickasaw, Alabama 36611, regardless of whether owned and operated by BWC Alabama, LLC.

12) From and after the relevant Barge Inclusion Date, Barges B 802, B 803, B 804, B805, WEB 225, WEB 250, HFL 437, HFL 439, MPX 430 and MPX 431.

[illegible]

SCHEDULE Q

MONTHLY CRUDE FORECAST

Mobile Site PIMS Model Case Data									
PRCCE#	Days in Month	Pricing Period			30		1 = BOM, 2 = M+1, -5 = M-1	February CMA	
					4	Apr			8
Crude Charge									
				\$/Bbl	BPD	Notes		Diff	Trans
JFM/\$b	JFM	\$/B	Mobile Chemical Plant_LLS_Chemicals_Crude_Tier_1	86.06	8000		\$11.37	-1.29	
CUS/\$b	WTI-Longhorn	\$/B	Mobile Chemical Plant_WTI_Crude_Tier_1	88.98	5000		\$18.48	4.77	0.00
BUA/\$b	LLS - St. James	\$/B	Mobile Chemical Plant_LLS_Chemicals_Crude_Tier_1	90.47	7500		\$0.86	0.87	2.25
LLS/\$b	HLS	\$/B	Mobile Chemical Plant_Heavy_LA_Sweet_Crude_Tier_1	87.86	5000		\$0.86	0.65	1.60
BUR/\$b	LLS - Burns	\$/B	Mobile Chemical Plant_LLS_Chemicals_Crude_Tier_1	90.35	6667		\$5.26	0.75	2.25
	MLS		Mobile Chemical Plant_LLS_Chemicals_Crude_Tier_1	87.75	19500		\$21.68	0.40	0.00
	SLS		Mobile Chemical Plant_LLS_Chemicals_Crude_Tier_1	90.34	9167		\$5.08	0.75	2.24
CEN/\$b	Eagleford	\$/B	Mobile Chemical Plant_LLS_Chemicals_Crude_Tier_1	90.00	12167		\$19.15	0.75	1.90
	Hatterspond		Mobile Chemical Plant_LLS_Chemicals_Crude_Tier_1	78.35	1000		\$1.38	-0.00	
	Goodway ATB / Dist			88.92	1000		\$1.37	0.00	
	Avg Crude			88.73	75000		\$85.53		69.91 16.82

SCHEDULE R

WEEKLY CRUDE PROJECTION

Mobile Site Weekly Production Strategy for Week of 3/16

TANK -->		501	502	503	804	805	CHARGE RATES			
CRUDE TYPE -->		EF/LMS	Jay	Slop	EF/LMS	Heavy				
CRUDE UNIT -->		#1CDU	#1CDU	#1CDU	#2CDU	#2CDU	#1CDU	#2CDU	ACTUAL TOTAL	IDEAL TOTAL*
SWING CRUDE? -->		NO	NO	NO	NO	NO	#1CDU	#2CDU	ACTUAL TOTAL	IDEAL TOTAL*
DATE	3/15/2022	21.5	7	1.5	25	20	30	45	75	78
	3/16/2022	21.5	7	1.5	25	20	30	45	75	78
	3/17/2022	21.5	7	1.5	25	20	30	45	75	78
	3/18/2022	21.5	7	1.5	25	20	30	45	75	78
	3/19/2022	21.5	7	1.5	25	20	30	45	75	78
	3/20/2022	21.5	7	1.5	25	20	30	45	75	78
	3/21/2022	21.5	7	1.5	25	20	30	45	75	78
	3/22/2022	21.5	7	1.5	25	20	30	45	75	78

*100% of actual-ideal crude rate delta is due to limited crude supply

Crude Distillation/LPG/KTU

- 1 CDU1 - Hold 30k. Hold 355-365F nap EP. #1 kero to KTU (no longer combined w #1 diesel).
 - 2 CDU2 - Hold 45k. Max kero (target 345-355F nap EP). HXC cleaning April wk1.
 - 3 Jet - All #1 and 2 kero to jet. Monitoring #1 for mercaptans (no KTU reactor). Split at NRLM to balance 807 when needed.
 - 4 LEU - No commercial make. Not fueling propane.
- * Constraints: CDU2 heater limited at 45k (120MMbtu/hr duty limit)
Crude supply limited (75kbpd max)

Naphtha & Gasoline

- 1 Gas Sales - Rack 7-day avg 19k. Intentionally building inventory.
 - 2 HDS/Ref - Max charge, max gasoline production (target +22kbpd). Ref Splitter online, no R/D in GB2 anymore, all in GB1.
 - 3 Naphtha - 506: flat. Need to draw. 202: Slow draw, need to catch.
 - 4 DSN Blending - Hold max blending to LF and HF ULSD.
- * Constraints: None

DHT & OFH

- 1 DHT - Have to manage feed due to heater limits. Keep as full as possible. Keep all LVGO in feed.
 - 2 OFH - Max conversion, max ULSD. No excess diesel in OFH feed. Recycling.
 - 3 807 - Drawing due to all kero to KTU. Will need to catch via kero at NRLM at 10-12ft.
- * Constraints: DHT heater limited when feed is cold (can limit to as low as 16k).

Oil Movements

- 1 Crude - Heavy inventory low. Can makeup w LMS in short-term if need to cut.
- 2 Ships - Product ship done. EF ship discharging today.
- 3 503 - Rag status?

Utilities

- 1 WWTP - Still running well.

SCHEDULE S

WEEKLY PRODUCT PROJECTION

Mobile Site Weekly Production Strategy for Week of 3/16

TANK -->		501	502	503	804	805	CHARGE RATES			
CRUDE TYPE -->		EF/LMS	Jay	Slop	EF/LMS	Heavy				
CRUDE UNIT -->		#1CDU	#1CDU	#1CDU	#2CDU	#2CDU				
SWING CRUDE? -->		NO	NO	NO	NO	NO				
D A T E	3/15/2022	21.5	7	1.5	25	20	30	45	75	78
	3/16/2022	21.5	7	1.5	25	20	30	45	75	78
	3/17/2022	21.5	7	1.5	25	20	30	45	75	78
	3/18/2022	21.5	7	1.5	25	20	30	45	75	78
	3/19/2022	21.5	7	1.5	25	20	30	45	75	78
	3/20/2022	21.5	7	1.5	25	20	30	45	75	78
	3/21/2022	21.5	7	1.5	25	20	30	45	75	78
	3/22/2022	21.5	7	1.5	25	20	30	45	75	78

*100% of actual-ideal crude rate delta is due to limited crude supply

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- 1 CDU1 - Hold 30k. Hold 355-365F nap EP. #1 kero to KTU (no longer combined w #1 diesel).
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Crude supply limited (75kbpd max)

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DHT & OFH

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Utilities

- 1 WWTP - Still running well.

SCHEDULE T

MONTHLY PRODUCT ESTIMATE

[illegible]

SCHEDULE U

FORM OF COMPANY DUE AMOUNT INVENTORY SWAP NOTICE

To: VERTEX REFINING ALABAMA LLC (the "**Company**")
1331 Gemini Street, Suite 250, Houston, TX 77058
Attn.: General Counsel
Email: legal@vertexenergy.com

[DATE]

Re: Inventory Swap

Dear Sirs,

1 INTERPRETATION

- 1.1 We refer to the Supply and Offtake Agreement dated April 1, 2022, as most recently amended and restated on ~~May 26~~ September 24, 2023 2024. Terms defined in the Supply and Offtake Agreement have the same meaning in this Inventory Swap Notice unless given a different meaning in this Inventory Swap Notice.
- 1.2 The provisions of section 1.2 (*Interpretation*) and Article 26 (*Governing Law*) of the Supply and Offtake Agreement apply to this letter as though they were set out in full in this letter except that references to the Supply and Offtake Agreement are to be construed as references to this letter.

2 INVENTORY SWAP

- 2.1 We refer to Section 20.6 (*Company Sales*) of the Supply and Offtake Agreement.
- 2.2 Pursuant to Section 20.6(a) of the Supply and Offtake Agreement, we require that the Company sell to us Company Product Inventory, and, for this purpose each of the following shall be as specified in Appendix 1:
- (a) the Company Due Amounts
 - (b) the Company Product Inventory to be sold to Macquarie; and
 - (c) the CDA Swap Delivery Date.
- 2.3 Pursuant to Section 20.6 and Article 11 of the Supply and Offtake Agreement, the amount payable by us for any such Company Product Inventory shall be payable on the CDA Swap Delivery Date and shall be made net of the Company Due Amount.
- 2.4 Pursuant to Section 20.6 of the Supply and Offtake Agreement, if [on the CDA Swap Delivery Date] we determine that the amount that would otherwise be payable by us on the CDA Swap Delivery Date in respect of a sale pursuant to this notice exceeds the amount of the Company Due Amount specified in Appendix 1, (i) the amount so payable by us shall be equal to that Company Due Amount and (ii) the volumes of each type of Product and/or grade of Crude Oil sold, and in respect of which title passed on the CDA Swap Delivery Date, shall be reduced pro rata such that their aggregate value, determined by Macquarie, as appropriate, described in Section 20.6 of the Supply and Offtake Agreement, is equal to that Company Due Amount.
- 2.5 The parties' delivery and payment obligations are subject to Section 20.6 of the Supply and Offtake Agreement. If we subsequently determine that the Company did not have the right to sell the full volumes of the relevant Products and/or grades of Crude Oil intended to be sold, then the volumes of the relevant Products and/or grades of Crude Oil that were sold, and in respect of which title passed on the CDA Swap Delivery Date, shall be the volumes subsequently notified by us such that the Company was able to comply with its delivery obligations, and the amount payable by us shall be adjusted accordingly; *provided that* no adjustments may be made retroactively in respect of any Crude Oil and/or Products no longer stored in an Included Storage Location or otherwise at the Refinery.

- 2.6 Any adjustments and/or reductions required under Section 20.6(a)(ii)(E) of the Supply and Offtake Agreement shall be reflected in an amended notice from us to the Company.

~~3 RELATIONSHIP TO OTHER NOTICES~~

~~3.1 If we also send to the Company an Inventory Swap Election pursuant to Section 0 of the Supply and Offtake Agreement requiring the Company to sell Company Product Inventory to us on the same CDA Swap Delivery Date as that specified in Appendix 1, then we intend this notice to take effect first such that Company Product Inventory will first be applied in satisfaction of the sale required pursuant to this notice before that other sale.~~

3 4 GOVERNING LAW

3.1 ~~4.1~~ This letter and any non-contractual obligations arising out of or in relation to this letter shall be governed by, construed and enforced under the laws of the state of New York without giving effect to its conflict of laws principles that would require the application of the laws of another state. Each of the parties hereby irrevocably submits to the exclusive jurisdiction of any federal or state court of competent jurisdiction situated in the City of New York, (without recourse to arbitration unless both parties agree in writing), and to service of process by certified mail, delivered to the party at the address indicated in Article 28 (*Notices*) of the Supply and Offtake Agreement. Each party hereby irrevocably waives, to the fullest extent permitted by applicable law, any objection to personal jurisdiction, whether on grounds of venue, residence or domicile.

Yours faithfully,

.....
For and on behalf of
MACQUARIE ENERGY NORTH AMERICA TRADING INC.

APPENDIX 1

Company Due Amounts: [USD●]
Company Product Inventory to be sold to Macquarie: [Inventory]
CDA Swap Delivery Date: [Date]

SCHEDULE V
~~FORM OF INVENTORY SWAP ELECTION~~ **THIRD PARTY SUPPLIER LIST AND THIRD PARTY OFFTAKER LIST**

Third Party Supplier

Macquarie Energy North America Trading Inc

Shell Trading U.S. Company

To: VERTEX REFINING ALABAMA LLC (the "**Company**")

1331 Gemini Street, Suite 250, Houston, TX 77058

Attn.: General Counsel

Email: legal@vertexenergy.com

[DATE]

Re: Inventory Swap Election

Dear Sirs,

1 INTERPRETATION **Third Party Offtaker**

~~1.1 We refer to the Supply and Offtake Agreement. Terms defined in the Supply and Offtake Agreement have the same meaning in this Unwind Notice unless given a different meaning in this Unwind Notice.~~

~~1.2 The provisions of section 1.2 (Interpretation) and Article 26 (Governing Law) of the Supply and Offtake Agreement apply to this letter as though they were set out in full in this letter except that references to the Supply and Offtake Agreement are to be construed as references to this letter.~~

2 INVENTORY SWAP ELECTION

~~2.1 We refer to Section 0 (Inventory Swap Election) of the Supply and Offtake Agreement.~~

~~2.2 Pursuant to Section 0 of the Supply and Offtake Agreement, we require the Company to purchase Macquarie Owned Inventory and to sell to us an equal value of Company Product Inventory, and, for this purpose each of the following shall be as specified in Appendix 1:~~

~~(a) the Inventory Swap Delivery Date; and~~

~~(b) the volume of Macquarie Owned Inventory of each Product Group that we wish to sell to the Company.~~

~~2.3 We shall subsequently determine and notify you of:~~

~~(a) the Macquarie Swap Payment Amount;~~

~~(b) the Company Swap Payment Amount; and~~

~~(c) the volume of Company Product Inventory to be purchased by Macquarie.~~

~~2.4 Pursuant to Sections Section 0 and Article 11 of the Supply and Offtake Agreement, payments of the Macquarie Swap Payment Amount by us and the Company Swap Payment Amount by the Company shall be made on the Inventory Swap Delivery Date and shall be made net so that (because those amounts are equal) neither we nor the Company shall be required actually to pay an amount to the other on the Inventory Swap Delivery Date.~~

~~2.5 The parties' delivery payment obligations are subject to Section 0 of the Supply and Offtake Agreement. If we subsequently determine that either the Company or we did not have the right to sell the full volumes of the relevant grades of Crude Oil and/or Products specified in Appendix 1 (or as subsequently notified) and intended to be sold, then the respective volumes of Crude Oil and/or Product that were sold, and in respect of which title passed on the Inventory Swap Delivery Date, shall be the volumes subsequently notified by us such that each of us was able to comply with our~~

~~delivery obligations and such that the Macquarie Swap Payment Amount and the Company Swap Payment Amount remain equal; provided that no adjustment shall be made retrospectively in respect of Product or Crude Oil which has been moved or sold after the relevant Inventory Swap Delivery Date.~~

~~2.6 Pursuant to Section 0 of the Supply and Offtake Agreement, if on or following the pricing date specified in Section 0 of the Supply and Offtake Agreement, we determine that the Company Swap Payment Amount would otherwise be greater than the Macquarie Swap Payment Amount (i) the Company Swap Payment Amount shall be reduced so as to be equal to Macquarie Swap Payment Amount and (ii) the volumes of each type of Product or grade of Crude Oil sold by us, and in respect of which title passed on the Inventory Swap Delivery Date, shall be reduced *pro rata* such that their aggregate value, determined by us, as appropriate, described in Section 0 of the Supply and Offtake Agreement, is equal to the Macquarie Swap Payment Amount.~~

~~2.7 Any adjustments and/or reductions required under Section 0 or Section 0 of the Supply and Offtake Agreement shall be reflected in an amended notice from us to the Company.~~

3 RELATIONSHIP TO OTHER NOTICES

~~3.1 If we also send to the Company a notice pursuant to Section 20.6 of the Supply and Offtake Agreement requiring the Company to sell any part of Company Product Inventory to us on the same Inventory Swap Delivery Date as that specified in Appendix 1, then we intend that other notice to take effect first such that the Company Product Inventory will first be applied in satisfaction of that sale before the sale required pursuant to this notice.~~

4 GOVERNING LAW

~~4.1 This letter and any non-contractual obligations arising out of or in relation to this letter shall be governed by, construed and enforced under the laws of the state of New York without giving effect to its conflict of laws principles that would require the application of the laws of another state. Each of the parties hereby irrevocably submits to the exclusive jurisdiction of any federal or state court of competent jurisdiction situated in the City of New York, (without recourse to arbitration unless both parties agree in writing), and to service of process by certified mail, delivered to the party at the address indicated in Article 28 (Notices) of the Supply and Offtake Agreement. Each party hereby irrevocably waives, to the fullest extent permitted by applicable law, any objection to personal jurisdiction, whether on grounds of venue, residence or domicile.~~

~~Yours faithfully,~~

Equilon Enterprises LLC, dba Shell Oil Product US
Glencore Ltd.

SCHEDULE W
RELEVANT JURISDICTIONS

~~For and on behalf of~~

MACQUARIE ENERGY NORTH AMERICA TRADING INC.

~~APPENDIX 1 TO INVENTORY SWAP ELECTION~~

~~Inventory Swap Delivery Date: [Date]~~

Macquarie ~~Owned Inventory:~~ Crude Procurement Contract

~~[To be inserted]~~

<u>Relevant Jurisdiction</u>	<u>Incoterms</u>	<u>Affiliate (if required)</u>
<u>United States of America.</u>	<u>DES, DAT or DAP</u>	<u>None required.</u>

Included Product Purchase Transaction

<u>Relevant Jurisdiction</u>	<u>Product</u>	<u>Incoterms</u>	<u>Affiliate (if required)</u>
<u>United States of America.</u>	<u>Heavy Naptha</u>	<u>FOB</u>	<u>None required.</u>

SCHEDULE 3

AMENDED AND RESTATED STORAGE FACILITIES AGREEMENT

ORIGINALLY DATED 1 APRIL 1, 2022 AS MOST RECENTLY
AMENDED AND RESTATED WITH EFFECT FROM (AND INCLUDING)
THE RESTRUCTURING EFFECTIVE DATE

(1) MACQUARIE ENERGY NORTH AMERICA TRADING
INC.

(2) VERTEX REFINING ALABAMA LLC

AMENDED AND RESTATED
STORAGE & SERVICES AGREEMENT

ReedSmith

Reed Smith LLP
~~The Broadgate Tower~~ 1 Blossom Yard
20 Primrose Street
London EC2A 2RS E1 6RS
Phone: +44 (0) 20 3116 3000
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THIS **AMENDED AND RESTATED STORAGE & SERVICES AGREEMENT** (this “**Agreement**”) is originally dated ~~4~~ April 1, 2022 and amended and restated with effect from (and including) the Restructuring Effective Date (as defined below),

BETWEEN:

- (1) Macquarie Energy North America Trading Inc. (“**Macquarie**”), a Delaware corporation, located at 500 Dallas Street, Suite 3300 Houston, Texas 77002, United States of America; and
- (2) Vertex Refining Alabama LLC (the “**Company**”), a Delaware limited liability company, located at 1331 Gemini Street, Houston, Texas 77058, United States of America,

each referred to individually as a “Party” or collectively as the “Parties”.

RECITALS

- (A) **WHEREAS**, the Company owns and operates a Crude Oil refinery located in Mobile, Alabama (the “**Refinery**”) for the processing of Crude Oil (as defined below) and other feedstocks and the recovery therefrom of refined products;
- (B) **WHEREAS**, it is contemplated that (a) on the Commencement Date (as defined below), Macquarie shall purchase from the Company all Crude Oil and Products (as defined below) then being stored at the Included Storage Locations (as defined below) and during the term of the Supply and Offtake Agreement (as defined below) (b) purchase from the Company certain Products produced by the Refinery during the term of the Supply and Offtake Agreement, (c) sell and deliver the Crude Oil and Products to the Company and certain customers of the Company pursuant to the terms of the Supply and Offtake Agreement, and (d) provide certain other financial accommodations to the Company based on Crude Oil and Products being stored at Company Storage Locations (as defined below) and otherwise being purchased and sold pursuant to the terms of the Supply and Offtake Agreement;
- (C) **WHEREAS**, it is contemplated that during the term of the Supply and Offtake Agreement, (a) Macquarie will have title to and risk of loss of Crude Oil and Products while they are located in Included Storage Locations, and (b) the Company will have title and risk of loss of Crude Oil and Products while they are not in Included Storage Locations;
- (D) **WHEREAS**, it is contemplated that in relation to the Supply and Offtake Agreement and the other Crude Oil and Products Agreements (as defined below), Macquarie shall have certain access, storage, usage and information rights in respect of the Facilities (as defined below) and Company Storage Locations for purposes of carrying out the transactions contemplated by the Crude Oil and Products Agreements;
- (E) **WHEREAS**, it is contemplated that the Company shall undertake the role of service provider to Macquarie in connection with the performance of certain rights and obligations which Macquarie may have (i) under the Convenience Exchange Agreement (as defined below), and (ii) pursuant to any Positive Elections under the Tripartite Crude Supply Agreement relating to the Shell Crude Supply Agreement and each Tripartite Product Offtake Agreements (each as defined below);
- (F) **WHEREAS**, each of Vertex Renewables and the Parent (each, as defined below) shall derive substantial benefit from the transactions contemplated hereby and by the other Transaction Documents, and have each agreed to severally guarantee all obligations of the Company hereunder and under the other Transaction Documents pursuant to the Guaranty to which it is a party;
- (G) **WHEREAS**, on or around September 24, 2024, each of the Vertex Parties filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”) with the United States Bankruptcy Court for the Southern District of Texas, Houston division (such court, or another federal court exercising jurisdiction over the Chapter 11 Cases, the “Bankruptcy Court”). The Vertex Parties are continuing in the possession of their assets and continuing to operate their respective businesses and manage their respective properties as debtors and debtors in possession under Section 1107(a) and 1108 of the Bankruptcy Code;
- (H) **WHEREAS**, on the Petition Date, the Vertex Parties filed an Acceptable Disclosure Statement and an Acceptable Plan of Reorganization with the Bankruptcy Court;

- (I) WHEREAS, in connection with the Chapter 11 Cases, Macquarie and the Company wish to amend and restate this Agreement, in its entirety, upon the terms and conditions set forth in this Agreement, which amendment and restatement shall become effective of the Restructuring Effective Date;
- (J) WHEREAS, it is the intention of the Company to confirm that all Obligations of the Company under the Transaction Documents, as amended, amended and restated, supplemented, refinanced or otherwise modified hereby on or as of the Restructuring Effective Date shall continue in effect from and after the Restructuring Effective Date; and
- (K) ~~(G)~~ **WHEREAS**, the Company and Macquarie desire to record the terms and conditions upon which Macquarie shall have access, storage, usage and information rights in respect of the Facilities and Company Storage Locations, and the Company shall serve as bailee and provider of services in respect of all Macquarie Property (as defined below) and owner and provider of services in respect of all Eligible Hydrocarbon Inventory (as defined below)-;

NOW, THEREFORE, in consideration of the premises and respective promises, conditions, terms and agreements contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties do agree as follows:

1 **DEFINITIONS AND CONSTRUCTION**

1.1 **Definitions**

For purposes of this Agreement, including the foregoing recitals, the following terms shall have the meanings indicated below:

"Acceptable Disclosure Statement" has the meaning given to it in the Supply and Offtake Agreement.

"Acceptable Plan or Sale" has the meaning given to it in the Supply and Offtake Agreement.

"Accepted Industry Practice" means those practices, methods, specifications and standards of safety and performance, as the same may be changed from time to time, as are commonly used in the operation and maintenance of refineries similar to the Refinery. "Accepted Industry Practice" contemplates the exercise of that degree of skill, care, diligence, prudence and foresight that would reasonably and ordinarily be expected under similar circumstances in the refining industry in the same type of undertaking under the same or similar circumstances. "Accepted Industry Practice" does not necessarily mean one particular practice, method, specification or standard in all cases, but is instead intended to encompass a broad range of acceptable practices, methods, specifications and standards.

"Affiliate" has the meaning given to it in the Supply and Offtake Agreement.

"Applicable Law" has the meaning given to it in the Supply and Offtake Agreement.

"Barge Operator" has the meaning given to it in the Supply and Offtake Agreement.

"Barge Owner" has the meaning given to it in the Supply and Offtake Agreement.

"Barrel" has the meaning given to it in the Supply and Offtake Agreement.

"Base Agreements" has the meaning given to it in the Supply and Offtake Agreement.

"Best Available Inventory Data" has the meaning given to it in the Supply and Offtake Agreement.

"Business Day" has the meaning given to it in the Supply and Offtake Agreement.

"Commencement Date" has the meaning given to it in the Supply and Offtake Agreement.

"Company" has the meaning given to it in the Supply and Offtake Agreement.

"Company Product Inventory" has the meaning given to it in the Supply and Offtake Agreement.

"Company Storage Location" has the meaning given to it in the Supply and Offtake Agreement.

"Contaminated" or **"Contamination"** means contamination of any Crude Oil or Product to such an extent that the relevant Crude Oil or Product is not (i) readily merchantable as, and/or (ii) requires reprocessing in order to be merchantable as, Crude Oil of the grade or Product of the type and specification which would have been achievable prior to the Contamination.

"Contract Performance Services" has the meaning given to it in Section 9.1, below.

"Convenience Exchange Agreement" means the agreement between Macquarie, the Company and Equilon Enterprises LLC, dba Shell Oil Product US, dated on or about the date of this Agreement for the delivery of certain Products by SOPUS to Macquarie, and the redelivery of an equivalent quantity of Products by Macquarie to SOPUS, which contract arises in connection with the contract for the offtake of Regular CBOB, Premium CBOB and ULSD between the Company and Equilon Enterprises LLC, dba Shell Oil Product US, dated ~~1~~ April 1, 2022 and the associated Tripartite Product Offtake Agreement.

"Convenience Exchange Product" means Product at the Facilities which is Macquarie Property pursuant to the terms of the Convenience Exchange Agreement.

"Crude Delivery Point" has the meaning given to it in the Supply and Offtake Agreement.

"Crude Intake Point" has the meaning given to it in the Supply and Offtake Agreement.

"Crude Oil" has the meaning given to it in the Supply and Offtake Agreement.

"Crude Oil and Products Agreements" means collectively the Inventory Sales Agreement, the Step-Out Inventory Sales Agreement, the Required Storage and Transportation Agreements, the Lien Documents, the Master Agreement, ~~the Interim Crude~~ each Inventory Supply Agreement, ~~the Interim Crude Supply Assignment Agreement, the Shell Crude Supply Agreement, the Tripartite Crude Supply Agreement, any Macquarie Crude Procurement Contract, any Included Crude Sales Transaction, any Included Sales Transaction, any Included Product Purchase Transaction, any Tripartite Product~~ each Inventory Offtake Agreement, ~~the Convenience Exchange Agreement,~~ the Supply and Offtake Agreement, and any contract between Macquarie and a third party for the delivery of Crude Oil to or from the Refinery or the delivery of Products to or from the Refinery, ~~and the Tripartite Communications Side Letter.~~

"Crude Storage Tanks" has the meaning given to it in the Supply and Offtake Agreement.

"Customer" has the meaning given to it in the Supply and Offtake Agreement.

"Default" has the meaning given to it in the Supply and Offtake Agreement.

"Delivery Date" has the meaning given to it in the Supply and Offtake Agreement.

"Delivery Month" has the meaning given to it in the Supply and Offtake Agreement.

"Delivery Period" has the meaning specified in Section 7.2.2.

"Eligible Hydrocarbon Inventory" has the meaning given to it in the Supply and Offtake Agreement.

"Emergency" means any event or circumstance which, in the reasonable judgment of the Company, could cause imminent harm or damage to or Liabilities under Applicable Law for, as applicable, any Person or any Person's property, the environment or the Refinery.

"Ending Company Product Inventory" has the meaning given to it in the Supply and Offtake Agreement.

"Ending In-Tank Crude Inventory" has the meaning given to it in the Supply and Offtake Agreement.

"Ending In-Tank Product Inventory" has the meaning given to it in the Supply and Offtake Agreement.

"Environmental Law" has the meaning given to it in the Supply and Offtake Agreement.

"Event of Default" means an occurrence and continuation of any one or more of the events or circumstances described in Section 20.1 of the Supply and Offtake Agreement.

"Facilities" means collectively (i) the Refinery Facilities, and (ii) to the extent owned or operated by the Company, the Included Storage Locations.

"Final Export Schedule" has the meaning specified in Section 7.2.1.

"Force Majeure" has the meaning given to it in the Supply and Offtake Agreement.

"Governmental Authority" has the meaning given to it in the Supply and Offtake Agreement.

~~"Guaranties"~~ and **"Guaranty"** have the meaning given to it in the Supply and Offtake Agreement.

"Hazardous Substances" has the meaning given to it in the Supply and Offtake Agreement.

"Hydrocarbons" has the meaning given to it in the Supply and Offtake Agreement.

"Included Barges" has the meaning given to it in the Supply and Offtake Agreement.

"Included Crude Sales Transaction" has the meaning given to it in the Supply and Offtake Agreement.

"Included Product Locations" has the meaning given to it in the Supply and Offtake Agreement.

"Included Product Purchase Transaction" has the meaning given to it in the Supply and Offtake Agreement.

"Included Product Tanks" has the meaning given to it in the Supply and Offtake Agreement.

"Included Sales Transaction" has the meaning given to it in the Supply and Offtake Agreement.

"Included Storage Locations" has the meaning given to it in the Supply and Offtake Agreement.

"Included Tanks" has the meaning given to it in the Supply and Offtake Agreement.

"Indemnified Party" has the meaning specified in Section 17.2.

"Indemnifying Party" has the meaning specified in Section 17.2.

"Insurance Proceeds" has the meaning specified in Section 11.3.

"Insured Risk" means a peril which (subject to the terms and conditions of the policy document) is insured against under Macquarie's cargo insurance.

~~"Interim Crude Supply Agreement"~~ **"Intermediated Product Offtake Contract"** has the meaning given to it in the Supply and Offtake Agreement.

"Inventory Offtake Agreement" means any Included Crude Sales Transaction, any Included Sales Transaction, any Tripartite Product Offtake Agreement, any Intermediated Product Offtake Contract, the Convenience Exchange Agreement and any other agreement for the sale and delivery of Crude Oil or Product to a Third Party Offtaker.

~~"Interim Crude Supply Assignment Agreement"~~ has the meaning given to it in the Supply and Offtake Agreement.

~~"Intermediated Product Offtake Contract"~~ has the meaning given to it in the Supply and Offtake Agreement.

"Inventory Sales Agreement" has the meaning given to it in the Supply and Offtake Agreement.

"Inventory Supply Agreement" means the Shell Crude Supply Agreement, any Tripartite Crude Supply Agreement, any Macquarie Crude Procurement Contract, any Included Product Purchase Transaction and any other agreement for the delivery of Crude Oil or Product to the Refinery.

"Liabilities" has the meaning given to it in the Supply and Offtake Agreement.

"Lien" has the meaning given to it in the Supply and Offtake Agreement.

"Lien Documents" has the meaning given to it in the Supply and Offtake Agreement.

"Macquarie Crude Procurement Contract" has the meaning given to it in the Supply and Offtake Agreement.

"Macquarie Extension" has the meaning given to it in Section 7.2.1(b).

"Macquarie Group" means Macquarie and its Affiliates.

"Macquarie Inspector" means any Person selected by Macquarie in a commercially reasonable manner that is acting as an agent for Macquarie and that (1) is a licensed Person who performs sampling, quality analysis and quantity determination of the Crude Oil and Products purchased and sold pursuant to the Supply and Offtake Agreement; (2) is not an Affiliate of any Party; and (3) in the reasonable judgment of Macquarie, is qualified and reputed to perform its services in accordance with Applicable Law and industry practice, to perform any and all inspections required by Macquarie.

"Macquarie Lender" has the meaning given to it in Section 22.

"Macquarie Personnel" has the meaning given to it in Section 10.1.3.

"Macquarie Property" means collectively any quantities of Crude Oil or Products that are owned by Macquarie from time-to-time pursuant to the Crude Oil and Products Agreements and held in the Included Storage Locations; provided that, for the avoidance of doubt, Macquarie Property does not include Sludge or hard bottoms.

"Master Agreement" has the meaning given to it in the Supply and Offtake Agreement.

"Measured Crude Quantity" has the meaning given to it in the Supply and Offtake Agreement.

"Measured Product Quantity" has the meaning given to it in the Supply and Offtake Agreement.

"Monthly Crude Facilities Fee" means

[REDACTED]

"Monthly Product Facilities Fee" means,

[REDACTED]

"Monthly True-Up Amount" has the meaning given to it in the Supply and Offtake Agreement.

"Negative Election" means, in respect of the Tripartite Crude Supply Agreement relating to the Shell Crude Supply Agreement and each Tripartite Product Offtake Agreement, an election made by Macquarie which is not a Positive Election.

"Net Storage Volume" has the meaning given to it in the Supply and Offtake Agreement.

"Non-Defaulting Party" has the meaning given to it in the Supply and Offtake Agreement.

"Overriding Obligations" has the meaning given to it in the Supply and Offtake Agreement.

"Parent" has the meaning given to it in the Supply and Offtake Agreement.

“Party” or **“Parties”** has the meaning specified in the preamble to this Agreement.

“Permitted S&O Liens” has the meaning given to it in the Supply and Offtake Agreement.

“Person” has the meaning given to it in the Supply and Offtake Agreement.

“Positive Election” means, in respect of the Tripartite [Crude Supply Agreement relating to the Shell](#) Crude Supply Agreement and each Tripartite Product Offtake Agreement, an election made by Macquarie to take an assignment of certain rights and obligations of the Company thereunder, but only in relation to a particular calendar month or other period provided for therein.

“Product” has the meaning given to it in the Supply and Offtake Agreement.

“Product Group” has the meaning given to it in the Supply and Offtake Agreement.

“Product Linefill” has the meaning given to it in the Inventory Sales Agreement.

“Product Supplier” has the meaning given to it in the Supply and Offtake Agreement.

“Products Delivery Point” has the meaning given to it in the Supply and Offtake Agreement.

“Products Intake Point” has the meaning given to it in the Supply and Offtake Agreement.

“Refinery” has the meaning given to it in the Supply and Offtake Agreement.

“Refinery Facilities” means (i) all facilities located at the Refinery, and (ii) any associated or adjacent facility owned or operated by the Company and used by the Company to carry out the terms of the Supply and Offtake Agreement, excluding Crude Storage Tanks and Included Product Tanks.

“Representatives” means, in respect of a Party, any of its or its Affiliates’ employees, representatives, contractors, sub-contractors of any tier and service providers engaged in the performance of this Agreement.

“Required Permits” has the meaning specified in Section 16.2.

“Required Storage and Transportation Agreements” has the meaning given to it in the Supply and Offtake Agreement.

“Restructuring Effective Date” [has the meaning given to it in the Supply and Offtake Agreement.](#)

“Shell Capacity” means, in respect of a tank, the shell capacity of that tank indicated in Schedule E of the Supply and Offtake Agreement.

“Shell Crude Supply” has the meaning given to it in the Supply and Offtake Agreement.

“Shipping Documents” means, in relation to a delivery of Crude Oil or Products, the (i) bills of lading or equivalent documents issued by the carrier of Crude Oil or Product by vessel, barge, truck or pipeline, and (ii) to the extent in existence, certificates of quantity, quality and origin.

“Sludge” has the meaning given to it in the Supply and Offtake Agreement.

“Step-Out Inventory Sales Agreement” has the meaning given to it in the Supply and Offtake Agreement.

“Storage Term” has the meaning specified in Section 2.1.

“Supply and Offtake Agreement” means the supply and offtake agreement entered into between Macquarie and the Company dated on or about the date of this Agreement.

“Tank Bottoms” means Macquarie Property which cannot be pumped and recovered by means of the Facility’s fixed cargo pumps, lines and suction; provided that, “Macquarie Property” and “Tank Bottoms” shall not include Sludge or hard bottoms.

"Tank Change of Service" has the meaning specified in Section 8.4.3(c).

"Tank Maintenance" has the meaning specified in Section 8.4.3(c).

"Termination Date" means the earlier to occur of (i) the date on which the Company or another Person assumes title to all Macquarie Property at the Facilities pursuant to a Step-Out Inventory Sales Agreement or as otherwise agreed with Macquarie, and (ii) the date on which Macquarie certifies that there is no Crude Oil or Product to which Macquarie has title within the Facilities, which certification shall not be unreasonably withheld, conditioned or delayed.

"Third Party ~~Supplier~~Offtaker" has the meaning given to it in the Supply and Offtake Agreement.

~~"Transaction Documents~~Third Party Supplier has the meaning given to it in the Supply and Offtake Agreement.

~~**"Tripartite Communications Side Letter"** means the side letter entered into between the Company and Macquarie in relation to the Tripartite Crude Supply Agreement and each Tripartite Product Offtake Agreement on or around the Commencement Date.~~

"Transaction Documents" has the meaning given to it in the Supply and Offtake Agreement.

"Tripartite Crude Supply Agreement" has the meaning given to it in the Supply and Offtake Agreement.

"Tripartite Product Offtake Agreement" has the meaning given to it in the Supply and Offtake Agreement.

"UCC" has the meaning given to it in the Supply and Offtake Agreement.

"Unwind Period" has the meaning given to it in the Supply and Offtake Agreement.

"Unwind Procedures" has the meaning given to it in the Supply and Offtake Agreement.

"Volume Determination Procedures" has the meaning given to it in the Supply and Offtake Agreement.

"VR Guaranty" has the meaning given to it in the Supply and Offtake Agreement.

1.2 Construction of Agreement

- (a) Unless otherwise specified, reference to, and the definition of any document (including this Agreement, as well as all schedules thereto or hereto) shall be deemed a reference to such document as may be, amended, restated, amended and restated, supplemented, revised or otherwise modified from time to time.
- (b) Unless otherwise specified, all references to an "Article", "Section" or "Schedule" are to an Article or Section hereof or a Schedule attached hereto.
- (c) All headings herein are intended solely for convenience of reference and shall not affect the meaning or interpretation of the provisions of this Agreement.
- (d) Unless expressly provided otherwise, the word "including" as used herein does not limit the preceding words or terms and shall be read to be followed by the words "without limitation" or words having similar import.
- (e) Unless expressly provided otherwise, all references to days, weeks, months and quarters mean calendar days, weeks, months and quarters, respectively.
- (f) A reference to any Party to this Agreement or another agreement or document includes the Party's permitted successors and assigns.

- (g) Unless the contrary clearly appears from the context, for purposes of this Agreement, the singular number includes the plural number and vice versa; and each gender includes the other gender.
- (h) Except where specifically stated otherwise, any reference to any Applicable Law or agreement shall be a reference to the same as amended, supplemented or re-enacted from time to time.
- (i) Unless otherwise expressly stated herein, any reference to “volume” shall be deemed to refer to actual Net Storage Volume, unless such volume has not been yet been determined, in which case, volume shall be an estimated net volume determined in accordance with the terms hereof.
- (j) The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement.
- (k) All references herein to “estimates” or “projections” are intended to be references to good faith statements with respect to future events, and are not to be construed as guarantees of future performance.
- (l) Unless otherwise expressly stated herein, all references to “Schedules” shall mean and include such Schedules as they may be amended, revised or updated from time to time, as evidenced by written agreement of the Parties evidencing such revision, amendment or update (it being acknowledged hereby that the foregoing does not require any Party hereto to revise, amend or update any such Schedule).
- (m) A reference to the "date hereof" or the "date of this Agreement" is a reference to April 1, 2022.

1.3 The Parties acknowledge that they and their counsel have reviewed and revised this Agreement and that no presumption of contract interpretation or construction shall apply to the advantage or disadvantage of the drafter of this Agreement.

2 **TERM**

2.1 This Agreement shall become effective on the Commencement Date and shall continue for period ending on the Termination Date (the “**Storage Term**”).

3 **MONTHLY FACILITIES FEE**

3.1 Macquarie shall pay to the Company the Monthly Crude Facilities Fee and the Monthly Product Facilities Fee on a monthly basis, on or before the fifth (5th) Business Day of each month with respect to the previous calendar month.

3.2 Payment shall be made in accordance with the Supply and Offtake Agreement, and for the avoidance of doubt the Monthly Crude Facilities Fee and the Monthly Product Facilities Fee will form part of the calculation of the Monthly True-Up Amount in accordance with Schedule C of the Supply and Offtake Agreement.

4 **USE AND STORAGE RIGHTS OF MACQUARIE**

4.1 **Use and Storage**

4.1.1 Without prejudice to Section 16.4, the Company shall grant to Macquarie during the Storage Term: the exclusive and uninterrupted license and right to use the Included Storage Locations which are Facilities on and subject to the terms of this Agreement, including the exclusive and uninterrupted license and right to inject, store and withdraw Crude Oil and Products (as applicable) in and from the Included Storage Locations which are Facilities.

4.2 No Commingling

- 4.2.1 The Company shall procure that (except to the extent expressly provided for in any Crude Oil and Products Agreement) no other Crude Oil, Products or other materials whatsoever shall be commingled with any Macquarie Property anywhere within the Facilities.

5 TITLE AND RISK OF LOSS

- 5.1 Macquarie shall at all times retain title to and risk of loss of all Macquarie Property.

5.1.1 The Company:

- (a) agrees that it, its Affiliates and its and their Representatives shall not have any title to, interest in or (except to the extent provided for in the Supply and Offtake Agreement) right to dispose of Macquarie Property, and shall not (whether by act or omission):
 - (i) do anything that extinguishes or materially adversely affects Macquarie's title to and interest in the Macquarie Property (or which would reasonably be expected to do the same); or
 - (ii) create or cause the creation of, or (to the extent arising by, through or under the Company or its Affiliates) suffer to exist, any Lien, other than Permitted S&O Liens, with respect to any Macquarie Property;
- (b) waives any Lien it may have, or may at any time in the future have, over any Macquarie Property in accordance with the provisions of the UCC or pursuant to any other statutory or possessory lien or charge on or security interest in such Macquarie Property as might otherwise exist or arise under Applicable Law.
- (c) Notwithstanding the proceeding Sections (a) and (b), nothing herein shall affect the Company's right in the event of a Macquarie Extension to assert any Permitted S&O Liens and no rights in respect thereof are waived.

- 5.1.2 In the event that the Company becomes aware of any actual, potential or alleged claim or Lien in relation to any Macquarie Property (other than a Permitted S&O Lien), the Company shall promptly notify Macquarie and shall do (and shall procure that its Affiliates and Representatives shall do) everything reasonably necessary to discharge such actual or alleged claim or Lien (including without limitation assisting Macquarie in the defense of any claim, counterclaim, appeal of any tier, application for interim relief or assertion of right or removal of any security).

6 CUSTODY AND USE OF MACQUARIE PROPERTY

- 6.1 During the time any Macquarie Property and Eligible Hydrocarbon Inventory is within any Facilities, the Company shall be solely responsible for the care, custody and control of such Macquarie Property and Eligible Hydrocarbon Inventory and shall be solely responsible for compliance with all Applicable Law, including all Environmental Laws, pertaining to the pumping, unloading, receipt, movements, blending, transportation, storage, measuring, gauging, sampling, analysis, treatment, refining, loading, or delivery of and use of such Macquarie Property and Eligible Hydrocarbon Inventory.
- 6.2 The Company shall hold all Macquarie Property in the Facilities solely as bailee.
- 6.3 The Company shall not use (or permit any of its Affiliates or its or their Representatives or any other Person to use) any Macquarie Property or Eligible Hydrocarbon Inventory for any purpose except as may be permitted by this Agreement or any Crude Oil and Products Agreement.
- 6.4 Without Macquarie's express written agreement, the Company and its Representatives shall in no case (including for the purposes of undertaking cleaning, maintenance or repair) cause or permit the removal of Macquarie Property or Eligible Hydrocarbon Inventory from the Facilities except in accordance with the terms of this Agreement and any Crude Oil and Products Agreement.

7 RECEIPTS AND DELIVERIES OF CRUDE OIL AND PRODUCTS

7.1 Receipts and Deliveries

7.1.1 The Company shall:

- (a) receive Crude Oil and Products into the Facilities;
- (b) deliver Crude Oil and Products from the Facilities; and
- (c) deliver and receive Crude Oil and Products within the Facilities,

at such times and locations, and otherwise on such bases, as required by the terms of the Crude Oil and Products Agreements and any contractual nomination or schedule delivered thereunder or pursuant thereto.

7.1.2 Macquarie hereby agrees to each receipt or delivery of Crude Oil or Product (as applicable) in accordance with Section 7.1.1, provided that Macquarie, subject to the terms of the Supply and Offtake Agreement and the Crude Oil and Products Agreements, may at any time wholly or partially withdraw its agreement in respect of future receipts and deliveries by written notice to the Company.

7.2 Accelerated Export Rights

7.2.1 It is agreed that:

- (a) following the occurrence and during the continuance of an Event of Default under the Supply and Offtake Agreement and if Macquarie is the Non-Defaulting Party; or
- (b) in circumstances where the Supply and Offtake Agreement has expired or terminated for a reason other than an Event of Default and Macquarie has elected to proceed under Section 21.1(c)(iii) thereof (a “**Macquarie Extension**”),

Macquarie shall have the right to submit a schedule (“**Final Export Schedule**”) for delivery to Macquarie and/or a nominated third party, of all or any amount of Macquarie Property (including Tank Bottoms and Product Linefill) from any part of the Facilities.

7.2.2 Each Final Export Schedule shall specify:

- (a) the expected volumes and types of Macquarie Property to be delivered (which may be expressed as a percentage of the total volume of the relevant type of Macquarie Property);
- (b) a period for delivery of such Macquarie Property ending on a date designated by Macquarie which is a date by which (i) Macquarie ought reasonably to be able to receive, and (ii) the Company ought reasonably to be able to deliver, the relevant Macquarie Property, in each case using commercially reasonable efforts and with as little disruption to the Refinery operations as possible in the circumstances, by pumping in the normal manner without having to employ any specialist equipment or personnel (save to the extent strictly necessary in the case of Tank Bottoms and Product Linefill) and without having to operate the Facilities in a manner which would contravene Applicable Law, Accepted Industry Practice or the terms of the Required Permits (“**Delivery Period**”).

7.2.3 The Company shall promptly acknowledge receipt of any Final Export Schedule.

7.2.4 The Company shall (i) use commercially reasonable efforts to ensure that deliveries of Macquarie Property pursuant to this Section 7 are effected during the Delivery Period without unreasonable delays or interruptions, and (ii) provide such services under Section 8 of this Agreement, or other assistance as may be requested by Macquarie, as are required to effect the delivery of Macquarie Property within the Delivery Period in a reasonable manner in light of the circumstances and the operational capabilities of the Company and the Facilities.

7.2.5 Following a request for delivery of any amount of Macquarie Property under a Final Export Schedule, and unless Macquarie directs otherwise, the Company shall (subject to the operational capabilities of the Company and the Facilities and the requirements of Applicable Law, Accepted Industry Practice or the terms of the Required Permits) schedule delivery of the Macquarie Property

such that it can be removed from the Facilities within the Delivery Period by pumping in the normal manner and without having to employ any specialist equipment or personnel (save to the extent strictly necessary in the case of Tank Bottoms and Product Linefill). To the extent reasonably necessary to procure redelivery on this basis, the Company shall procure the replacement of linefill and deadstocks in the Facilities and all costs and expense of doing so shall be, in the event of a Macquarie Extension, for Macquarie's account and, otherwise, for the Company's account.

- 7.2.6 If the Final Export Schedule was submitted further to an Event of Default under the Supply and Offtake Agreement and, following reasonable notice and having been given reasonable opportunity to do so the Company fails to comply with a request to deliver any part of the Macquarie Property within the Delivery Period, then (but without prejudice to Macquarie's remedies in relation to such failure) Macquarie may (at the Company's cost and expense, but subject always to Section 10.1.3 and the terms of Applicable Law and the Required Permits) with or by such properly qualified employees, agents and contractors as it considers reasonably necessary, proceed to remove Macquarie Property from the Facilities in a safe, lawful and orderly fashion (which removal shall be confined to such actions as are necessary to receive delivery of the relevant Crude Oil and Products, and shall not for the avoidance of doubt include processing Crude Oil into Products, any works in order to reverse flow or modify any Crude Storage Tank or Included Product Tanks which are Facilities, or any action would contravene a Required Permit). The Company will (at its own cost and expense) ensure that Macquarie, its employees, agents and contractors are given such access and assistance by the Company as Macquarie requires for this purpose.

8 STORAGE-RELATED SERVICES

8.1 Storage, Transport and Handling Services

During the Storage Term, the Company shall in accordance with Accepted Industry Practice:

- 8.1.1 operate the Facilities;
- 8.1.2 keep the Facilities open for pumping, unloading, receipt, movements, blending, transportation, storage, measuring, gauging, sampling, analysis, treatment, refining, loading, or delivery of Macquarie Property and Eligible Hydrocarbon Inventory twenty-four (24) hours a day, seven (7) days a week, subject to permitted periods of maintenance or downtime affecting such Facilities;
- 8.1.3 conduct (i) all pumping, unloading, receipt, movements, blending, transportation, storage, measuring, gauging, sampling, analysis, treatment, refining, loading, or delivery of Macquarie Property and Eligible Hydrocarbon Inventory at, within and from the Facilities, and (ii) other services, in accordance with this Agreement, the Supply and Offtake Agreement and the applicable Crude Oil and Products Agreements;
- 8.1.4 provide Macquarie, each Third Party Supplier, each Product Supplier, [each Third Party Offtaker](#) and each Customer, and its and their respective Representatives (as applicable), with such access to the loading racks, loading docks and other parts of the Facilities as is reasonably required for their role in the performance of each receipt or delivery of Crude Oil or Products required by the terms of a Crude Oil and Products Agreement and any contractual nomination or schedule thereunder;
- 8.1.5 prevent any degradation of the quality of any Crude Oil that would adversely affect the merchantability of such Crude Oil or the Products refined therefrom;
- 8.1.6 except for blending activities authorized in writing by Macquarie, store each grade of Product in separate Included Product Tanks and prevent any Contamination of one grade of Product by another, or any degradation of the quality of any Product that would adversely affect the merchantability of such Product;
- 8.1.7 ensure that no Crude Oil or Products shall be Contaminated with scale or other materials, chemicals, water or any other impurities. In the event of any such Contamination, the Company may with (and on the terms of) Macquarie's prior written consent (which shall not be unreasonably withheld, delayed or conditioned) reprocess, treat or condition any such Contaminated Crude Oil or Products to a merchantable condition;
- 8.1.8 to the extent required, apply heat or steam to maintain the Macquarie Property and Eligible Hydrocarbon Inventory at the Facilities in a liquid free-flowing or pumpable state; and

- 8.1.9 not do, or omit to do (or permit to be done or omitted by any of its Affiliates or its or their respective Representatives), anything that would reasonably be expected to (i) adversely affect the Macquarie Property or Eligible Hydrocarbon Inventory (or Macquarie's title and interest in the same), or (ii) result in any Liabilities being incurred by Macquarie or its Affiliates.

8.2 Reporting Services

8.2.1 Daily Reporting

- (a) For each day during the Storage Term, the Company shall provide to Macquarie on the first Business Day following such day inventory reports in the form set forth on Schedule F to the Supply and Offtake Agreement, showing the quantity of (i) Crude Oil and Products held in the Included Storage Locations (including, in respect of Product, a breakdown of the volume of Convenience Exchange Product and non-Convenience Exchange Product), and (ii) Products that are Company Product Inventory, as of 11:59:59 p.m. CT on the previous day.
- (b) For each day during the Storage Term the Company shall provide to Macquarie on the first Business Day following such day a complete set of Best Available Inventory Data in respect of the preceding day.
- (c) Each Business Day the Company shall provide to Macquarie meter tickets and/or meter readings, [barge inspection report\(s\)](#), [quality and quantity report\(s\)](#), [load volume report\(s\)](#) and tank gauge readings confirming the Measured Crude Quantity for each of the ~~Crude~~[Included Storage Tanks](#)[Locations](#) for all Delivery Dates since the prior Business Day.
- (d) For each Delivery Date, the Company shall provide to Macquarie on the first Business Day following such Delivery Date, meter tickets and/or meter readings, [barge inspection report\(s\)](#), [quality and quantity report\(s\)](#), [load volume report\(s\)](#) and tank gauge readings confirming the Measured Product Quantity in each Included Product Tank for each Product delivered during that Delivery Date (including a breakdown of the volume of Convenience Exchange Product and non-Convenience Exchange Product) and other such relevant information including but not limited to Product identifiers and the location of Products, aggregated on a Product Group basis.

The Company shall use commercially reasonable efforts to deliver the reports, tickets, readings and other information provided for in Section 8.2.1 by 10:00 a.m. CT on the relevant Business Day but shall in any event deliver such reports, tickets, readings and other information by no later than 12:00 pm CT on such Business Day.

8.2.2 RAADICAL Platform.

- (a) During the Storage Term, beginning on the thirty-first (31st) day after the Commencement Date, the Company irrevocably grants to Macquarie a right of real time access to the RAADICAL platform.
- (b) During the first (1st) to thirtieth (30th) days after the Commencement Date, the Company shall use commercially reasonable efforts to provide an interim solution satisfactory to Macquarie (acting reasonably).

- 8.2.3 Correction of Readings. If the Company determines that any meter tickets and/or meter readings, [barge inspection report\(s\)](#), [quality and quantity report\(s\)](#), [load volume report\(s\)](#) and tank gauge readings provided pursuant to Section 8.2.1(c) above are inaccurate, the Company shall provide to Macquarie corrected meter tickets and/or meter readings, [barge inspection report\(s\)](#), [quality and quantity report\(s\)](#), [load volume report\(s\)](#) and tank gauge readings by 10:00 a.m. CT on the third (3rd) Business Day following the date on which such determination is made.

8.2.4 Ending Inventory.

- (a) On the first Business Day of any Delivery Month, the Company, using Best Available Inventory Data, provided that if such inventory data is not available, using the last day for which such data is available, shall report to Macquarie the following: (i) the aggregate volume of Crude Oil held in the Crude Storage Tanks at that time (the "**Ending In-Tank Crude Inventory**"), (ii) for each Product, the aggregate volume of such Product held in the Included Product Locations (including a breakdown of the volume of Convenience Exchange Product

and non-Convenience Exchange Product) at that time (each, an “**Ending In-Tank Product Inventory**”) and (iii) for each Product, the aggregate volume of such Product held in the Company Storage Locations at that time (each, an “**Ending Company Product Inventory**”). The Company shall use commercially reasonable efforts to deliver the Ending In-Tank Crude Inventory, the Ending In-Tank Product Inventory, and the Ending Company Product Inventory by 10:00 a.m. CT on the relevant Business Day, but shall in any event deliver the same by no later than 12:00 pm CT on such Business Day.

- (b) As of 11:59:59 p.m., CT, on the last day of each month, the Company shall apply the Volume Determination Procedures to the Included Storage Locations and Company Storage Locations, and based thereon shall determine for such month (i) the aggregate volume of Crude Oil held in the Included Storage Locations at that time, (ii) for each Product, the aggregate volume of such Product held in the Included Storage Locations at that time (including a breakdown of the volume of Convenience Exchange Product and non-Convenience Exchange Product), and (iii) for each Product, the aggregate volume of such Product held in the Company Storage Locations at that time. The Company shall notify Macquarie of such volumes by no later than 5.00 p.m. CT on the fifth Business Day thereafter, except that with respect to volume information provided by third parties, the Company shall endeavor to cause third parties to provide such information to Macquarie by the fifteenth (15th) day after the end of such month.
- (c) Inspection of Volume Determination Procedures. Macquarie may, or may have Macquarie’s Inspector, at Macquarie’s sole cost and expense, (i) witness all or any aspects of the Facilities or any Company Storage Location as Macquarie shall direct, (ii) witness the Volume Determination Procedures at any Included Storage Location or Company Storage Location as Macquarie shall direct, and (iii) be present at any time the Volume Determination Procedures are to be applied and to observe the conduct of the Volume Determination Procedures. If, in the reasonable judgment of Macquarie or Macquarie’s Inspector, the Volume Determination Procedures have not been applied correctly, then the Company shall cooperate with Macquarie, or Macquarie’s Inspector, to ensure the correct application of the Volume Determination Procedures, including making such revisions to the Ending In-Tank Crude Inventory, any Ending In-Tank Product Inventory and any Ending Company Product Inventory as may be necessary to correct any such errors.
- (d) Records Related to Volume Determination. The Company agrees that in addition to reporting to Macquarie the volume determinations made by the Company pursuant to Section 8.2.1, the Company shall provide to Macquarie copies of all volume reports and statements related to Crude Oil or Products held at any Included Storage Locations or Company Storage Locations or with respect to any hydrocarbon inventories held by the Company at any other locations including any inventory, quantity, or quality inspection reports prepared by a third party.

8.2.5 Eligible Hydrocarbon Inventory Reporting.

- (a) On each Business Day, the Company shall provide to Macquarie, via email, a report in form and substance reasonably satisfactory to Macquarie as illustrated in Schedule F of the Supply and Offtake Agreement (the “**Inventory Report**”) showing the inventory quantities that then constitute Eligible Hydrocarbon Inventory, including the quantity and location of each type of inventory.
- (b) By delivering an Inventory Report, the Company shall be deemed to represent and warrant to Macquarie (to the same extent as if set forth in this Agreement) that all Hydrocarbons identified as Eligible Hydrocarbon Inventory in such report meet all the requirements of Eligible Hydrocarbon Inventory set forth in the Supply and Offtake Agreement.
- (c) The Company shall use commercially reasonable efforts to deliver the Inventory Report by 10:00 a.m. CT on the relevant Business Day, but shall in any event deliver the same by no later than 12:00 pm CT on such Business Day.

8.3 Other Services

During the Storage Term, the Company shall:

- 8.3.1 (without prejudice to the Company's obligation under Section 8.4.1), permit Macquarie to have full and quiet possession of the Crude Storage Tanks and Included Product ~~Tanks~~Locations which are Facilities;
- 8.3.2 permit Macquarie, its Affiliates and/or its or their Representatives to have rights of access to and egress from the Refinery by crossing over, around and about the Refinery for any purpose related to this Agreement or the Crude Oil and Products Agreements, including but not limited to enforcing its rights and interests thereunder;
- 8.3.3 maintain in force in all material respects all of its leases, easements, licenses and rights-of-way material to the operation and maintenance of the Facilities and the performance of this Agreement and the Crude Oil and Products Agreements;
- 8.3.4 maintain in force, comply with, and promptly enforce the terms of all Base Agreements;
- 8.3.5 ensure that the Facilities have all connections and equipment material to the performance of this Agreement and the Crude Oil and Products Agreements;
- 8.3.6 cause the Facilities to comply in all material respects with the requirements of Applicable Law and Environmental Laws and Accepted Industry Practice;
- 8.3.7 ensure that each of the Company's Representatives involved in the performance of this Agreement or any Crude Oil and Products Agreement is appropriately trained and experienced in their field of activity;
- 8.3.8 prepare and timely submit all reports and filings in respect of the Macquarie Property and Eligible Hydrocarbon Inventory which are mandatory under Applicable Law or Environmental Laws;
- 8.3.9 maintain the records required to be maintained by Environmental Law or any Required Permit and make such records available to Macquarie following its reasonable prior written request therefor;
- 8.3.10 promptly provide Macquarie with such reports and information in the Company's custody or control as Macquarie's insurers and/or its internal risk function may reasonably request, provided that such information and reports, as applicable, are in the Company's possession or control and are reasonably related to Macquarie's or its insurers' assessments and activities in connection with this Agreement;
- 8.3.11 furnish any and all fuel, power, equipment and personnel necessary to perform to this Agreement or any Crude Oil and Products Agreement;
- 8.3.12 in the event of any Crude Oil or Product spill, leak, escape or discharge or any other environmental pollution caused by or in connection with the use of any Facilities (i) properly commence containment or clean-up operations as required by any Governmental Authorities or Applicable Law or as the Company deems appropriate or necessary and (ii) notify Macquarie promptly of any such spill, leak, escape or discharge and of any containment or clean-up operations which is reportable under Applicable Law; and
- 8.3.13 provide customary record keeping and ancillary services in furtherance of the services set out in this Agreement and the Crude Oil and Products Agreements.

8.4 Condition, Cleaning, Maintenance and Change of Service

- 8.4.1 Notwithstanding anything in the Crude Oil and Products Agreements to the contrary, the Company shall replace, maintain, operate, clean and/or repair the Facilities in accordance with Accepted Industry Practice and in all material respects in compliance with all Applicable Law and Environmental Law.
- 8.4.2 The Company shall be responsible for all scheduled and unscheduled maintenance, repairs and cleaning and other activities on the Facilities.

8.4.3 The Company agrees that:

- (a) it shall promptly notify Macquarie in writing of the date for which any inspection, maintenance, restart or turnaround at the Included Storage Locations, Refinery or the Refinery Facilities has been scheduled, or any revision to previously scheduled inspection, maintenance, restart or turnaround, which may materially affect receipts of Crude Oil at the Refinery, the Included Tanks, the processing of Crude Oil in the Refinery or the delivery of Products to Macquarie or by Macquarie to the Company or any third parties, it being acknowledged that any turnaround shall be considered material for these purposes; provided that, (i) promptly after the Company completes its annual business plan with respect to any year, it shall notify Macquarie of any such scheduled inspection, maintenance, restart or turnaround contemplated with respect to such year and (ii) the Company shall give Macquarie at least two (2) months' prior written notice of the commencement of any such scheduled restart or turnaround or any inspection or maintenance which would be reasonably expected to have a material impact on the Refinery's operations;
- (b) the Company shall notify Macquarie orally (followed by prompt written notice) as soon as reasonably practicable after the Company has actual knowledge of any material previously unscheduled downtime of any Facilities;
- (c) in addition to its general obligations under Section 8.4.3(a), the Company shall provide to Macquarie at least thirty (30) days' prior written notice of (i) any scheduled maintenance on any of the Crude Storage Tanks or the Included Product Tanks that would result in such storage tank being taken out of service for a period greater than thirty (30) days ("**Tank Maintenance**"), and (ii) any change of service of a Crude Storage Tank or Included Product Tank (including for the purposes of storage of renewable diesel) that would result in such storage tank being taken out of service for any period ("**Tank Change of Service**");
- (d) in connection with any Tank Maintenance or Tank Change of Service in respect of Crude Storage Tanks or Included Products Tanks, the Parties shall promptly consult and endeavor to agree on adjusted inventory minimum and maximum levels and other appropriate adjustments hereunder and under the relevant Crude Oil and Products Agreements that are to apply during the period of such Tank Maintenance or Tank Change of Service, if deemed necessary by the Parties;
- (e) the Company agrees that it shall use commercially reasonable efforts to complete (and to cause any third parties to complete) any Tank Maintenance or Tank Change of Service in respect of Crude Storage Tanks or Included Product Tanks as soon as practicable;
- (f) the Company shall provide Macquarie with an initial estimate of the period of any Tank Maintenance or Tank Change of Service in respect of Crude Storage Tanks or Included Product Tanks and shall regularly update Macquarie as to the progress of such Tank Maintenance or Tank Change of Service. If the Company determines that the expected completion date for Tank Maintenance or Tank Change of Service has or is likely to change by thirty (30) days or more, it shall promptly notify Macquarie of such determination; and
- (g) the Company shall provide Macquarie with at least five (5) Business Days' prior notice of inspection of the Crude Storage Tanks or Included Product Tank (as applicable) following completion of the Tank Maintenance or Tank Change of Service. Macquarie shall have the right (subject to Section 10.1.3) to have a Macquarie Inspector present at such inspection. The Parties agree that such Crude Storage Tank or Included Product Tank shall be deemed not to be an Included Storage Location until Macquarie has confirmed in writing to the Company that such inspections pursuant to Section 10.1 as Macquarie reasonably considers necessary have been undertaken and completed to Macquarie's satisfaction.

8.4.4 The Company shall ensure that if the Crude Oil in a Crude Storage Tank is removed for the purposes of cleaning such Crude Storage Tank then upon its return to service the Sludge and hard bottoms in that Crude Storage Tank shall have been removed.

8.5 **Measurements**

8.5.1 Measurement

- (a) The Company shall procure that the volume of Crude Oil and Product passing each Crude Intake Point, Crude Delivery Point, Products Intake Point and Products Delivery Point comprised in the Facilities shall be measured daily using the applicable meters and tank gauges, barge inspection report(s), quality and quantity report(s) and load volume report(s).
- (b) In addition, whenever the Volume Determination Procedures are required to be performed the Company shall procure the performance of such Volume Determination Procedures.
- (c) All quantity determinations herein shall be corrected to sixty (60) degrees Fahrenheit based on a U.S. gallon of two hundred thirty one (231) cubic inches and forty two (42) gallons to the barrel, in accordance with the latest supplement or amendment to ASTM-IP petroleum measurement tables (Table 6A of ASTM-IP for Crude Oil and Table 6B of ASTM-IP for Products).

8.5.2 Testing and Calibration of Measurement Facilities

- (a) The Company shall provide Macquarie with reasonable prior notice of any periodic testing, calibration and verification of any measurement facilities providing measurement of Macquarie Property at the Facilities and, subject to their satisfaction of all requirements under Section 10.1.3 at such time, the Company shall permit Macquarie, its Affiliates and its and their respective Representatives to observe such testing, calibration and verification at the Facilities. In addition, the Company shall provide Macquarie with any documentation regarding the testing, calibration and verification of the measurement facilities at the Facilities.
- (b) Where the Parties agree that any measurement facilities at the Facilities providing measurement of Macquarie Property may be inaccurate, or Macquarie reasonably believes that this is the case, or the Macquarie Inspector identifies a discrepancy in the inventory volumes reported by the Company to Macquarie, Macquarie may by notice require that a recalibration take place on the terms of Section (a), above.

8.6 **Processing and Other Activities during the Unwind Period**

- 8.6.1 During the Unwind Period, the Company shall at its or its Affiliate's own cost continue to maintain control and responsibility of the Included Storage Locations and the Refinery Facilities (including the Refinery) and its operations in accordance with the Overriding Obligations in performing its obligations under this Agreement. Macquarie shall have no liability for such actions nor shall Macquarie have any responsibility, during or after the end of the Unwind Period, to return the Refinery to the same state as at the date on which Macquarie delivered an Acceleration Notice to the Company (including, without limitation, whether or not there has been any pipeline reversal, pigging or tank manipulations).
- 8.6.2 Subject to the Overriding Obligations, during the Unwind Period, the Company shall use commercially reasonable efforts to ensure that any maintenance is undertaken with the least disruption to the operation of this Agreement as possible.
- 8.6.3 At any time during the Unwind Period and in furtherance of the intent of the Unwind Procedures as set out in Sections 20.5 to ~~20.10~~20.9 (inclusive) of the Supply and Offtake Agreement, Macquarie may by written notice require the Company to take any of the following actions and the Company hereby agrees to take such actions unless any such actions would breach an Overriding Obligation:
 - (a) refine, blend or otherwise process any of the Macquarie Property or related materials provided hereunder to Macquarie's reasonable specifications based upon the historic operations of the Refinery;
 - (b) provide advice and input into the potential blends and yields achievable in respect of the Macquarie Property and related materials, including providing Macquarie with reasonable access to the Company's linear programming model (and its inputs and outputs accordingly),

production planning staff and other modelling tools except where such access is limited by statutory or contractual confidentiality requirements;

- (c) (A) allow for Macquarie to have its own personnel or representatives present at the Refinery, and (B) agree to work with such Macquarie personnel or representatives in respect of this Agreement (which may include the secondment of Macquarie personnel to the Company, at no additional cost to the Company), including but not limited to on issues of linear programming management, economics, planning, logistics, tax, environmental and compliance, in each case, as may be necessary or appropriate to ensure the implementation of this Agreement;
- (d) provide Macquarie with any certificates of quality in respect of Crude Oil or Product or other documents that Macquarie may require and which the Company prepares in the ordinary course of its business;
- (e) provide Macquarie with read-only access to the Company's computer recordkeeping system for the purposes of monitoring the latest reports with respect to the quality, volume, movement and transfers of Macquarie Property; and/or
- (f) provide Macquarie with any unused storage capacity in the Included Storage Locations and the Refinery Facilities for any other Macquarie Property that Macquarie determines is reasonably likely to promote the aims of these Unwind Procedures.

9 CONTRACT PERFORMANCE SERVICES

9.1 Subject to Sections 9.3 and 9.4, below, Macquarie appoints the Company to provide it with the following services during the Storage Term ("**Contract Performance Services**"), and the Company irrevocably accepts such appointment:

9.1.1 to duly and timely exercise the rights and perform the obligations assumed by Macquarie under (i) the Tripartite Crude Supply Agreement relating to the Shell Crude Supply Agreement and each Tripartite Product Offtake Agreement pursuant to a Positive Election, ~~and~~ (ii) the Convenience Exchange Agreement and (iii) any other Inventory Supply Agreement or Inventory Offtake Agreement, in each case subject to and in accordance with the terms of such agreement ~~and of the Tripartite Communications Side Letter~~, Macquarie's written instructions (if any) and Accepted Industry Practices, including any rights and obligations:

- (a) to give, receive, accept or reject (as applicable) nominations relating to delivering, loading, transporting (whether by an Included Barge or otherwise), unloading or receiving of Crude Oil or Products;
- (b) to the extent not included within (a), above, to give, receive, accept or reject (as applicable) nominations, notices of readiness, berthing permissions (or equivalent) and other communications in respect of barges, cargo ships, trucks, pipelines, and storage tanks, in each case in accordance with applicable terminal, storage, transportation or pipeline operator requirements, procedures and safety standards;
- (c) to provide facilities for the delivery, loading, transporting, unloading or receiving of Crude Oil or Products, including where applicable a contractual berth or loading rack and, in respect of the transportation of Crude Oil or Products between Included Storage Locations, via Included Barges;
- (d) to give, receive, accept or reject (as applicable) all nominations, notices and communications related to scheduling of deliveries and receipts and the granting or booking of pipeline capacity;
- (e) to coordinate with any shipping agents and transportation or logistics providers (including, without limitation, in respect of the scheduling of Included Barges to be used to transport Crude Oil or Products between Included Storage Locations);
- (f) to undertake actions and communications in relation to scheduling of receipts and deliveries of Crude Oil and Products, including the coordination of delivery schedules and the giving and receiving of nominations and the granting or booking of capacity;

- (g) to undertake receipts and deliveries of Crude Oil or Product;
 - (h) to arrange, coordinate, permit, attend or undertake (as applicable) quantity and quality sampling, measurements, analysis and inspections for Crude Oil and Product; and
 - (i) to prepare and/or distribute Shipping Documents required to be provided to the purchaser under any Intermediated Product Offtake Contract or the Convenience Exchange Agreement (and always in accordance with the receiving party's lawful documentary instructions);
- 9.1.2 to provide warnings, documents and information in relation to environment, health and safety concerning the Crude Oil and Product, including provision of safety data sheets;
- 9.1.3 to provide Macquarie with adequate prior written notice of any known time limit for Macquarie to submit a notice or claim in relation to quality, quantity or demurrage;
- 9.1.4 to hold and deliver all Shipping Documents (i) received or prepared in relation to Crude Oil delivered to Macquarie pursuant to a Positive Election, or (ii) prepared and to be provided by Macquarie pursuant to a Positive Election in relation to Product or under the Convenience Exchange Agreement, strictly to the order of Macquarie;
- 9.1.5 to ensure that all written communications from the Company to the relevant counterparty are copied to Macquarie, and to promptly forward to Macquarie any written communications to the Company from the relevant counterparty which are not copied to Macquarie; and
- 9.1.6 notify Macquarie promptly upon becoming aware of:
- (a) any material breach by any party (including Macquarie) of ~~the Crudean Inventory Supply Agreement, the Tripartite Crude Supply Agreement, any Intermediated Product Offtake Contract, any Tripartite Product~~ or an Inventory Offtake Agreement ~~and/or the Convenience Exchange Agreement;~~
 - (b) any actual or known right of Macquarie to institute a material legal claim, suit or action under or in connection with ~~the Crudean Inventory Supply Agreement, the Tripartite Crude Supply Agreement, any Intermediated Product~~ or an Inventory Offtake ~~Contract, any Tripartite Product Offtake Agreement and/or the Convenience Exchange~~ Agreement (including any claim in respect of the quality or quantity of Crude Oil or Product, or in respect of demurrage); and
 - (c) any actual or known pending legal claim, suit or action against Macquarie arising out of or in connection with ~~the Crudean Inventory Supply Agreement, the Tripartite Crude Supply Agreement, any Intermediated Product~~ or an Inventory Offtake ~~Contract, any Tripartite Product Offtake Agreement or the Convenience Exchange~~ Agreement (including any claim in respect of the quality or quantity of Crude Oil or Product, or in respect of demurrage).
- 9.2 The Company undertakes to perform the Contract Performance Services:
- 9.2.1 consistently with any lawful nominations and instructions of Macquarie which are not in contradiction to the terms of this Agreement and the rights and obligations of Macquarie and the Company under the applicable Crude Oil and Product Agreement(s);
- 9.2.2 in accordance with Accepted Industry Practice and the terms of the applicable Crude Oil and Product Agreement(s); and
- 9.2.3 subject always to the limitations and exclusions set out at Section 9.3, below.
- 9.3 Notwithstanding any other term of this Agreement, but without prejudice to the terms of the Supply and Offtake Agreement, the Parties each acknowledge and agree that:
- 9.3.1 without limiting its obligations to Macquarie under any other agreement, the Company shall have no obligation to pay on behalf of Macquarie any invoice (including an invoice for Crude Oil) which Macquarie is liable to pay pursuant to ~~the Tripartite Crudean Inventory Supply Agreement, or any Tripartite Product~~ Inventory Offtake Agreement ~~or the Convenience Exchange Agreement;~~

- 9.3.2 without limiting the Company's rights to receive payment from Macquarie pursuant to the terms of the Supply and Offtake Agreement, the Company shall have no right to receive on Macquarie's behalf any payment owed to Macquarie pursuant to ~~the Tripartite Crude~~ any Inventory Supply Agreement or any ~~Tripartite Product~~ Inventory Offtake Agreement;
- 9.3.3 unless Macquarie has agreed otherwise in writing, the Company shall not give or purport to give on behalf of Macquarie any agreement, notice or communication under or in connection with a Macquarie Crude Procurement Contract, Included Crude Sales Transaction, Included Sales Transaction or Included Product Purchase Transaction or any agreement, notice or communication which the Company is not permitted to so give under the terms of the Tripartite Crude Supply Agreement relating to the Shell Crude Supply Agreement and each Tripartite Product Offtake Agreement; provided that for the avoidance of doubt (i) Macquarie reserves the right to at any time give such agreement, notice or communication directly on its own behalf and without prior consultation with the Company to the extent permitted and (ii) this Section 9.3.3 does not limit the Company's right to give such agreement, notice or communication on its own behalf to the extent that it is entitled to do so, including (in relation to the Tripartite Crude Supply Agreement relating to the Shell Crude Supply Agreement and each Tripartite Product Offtake Agreement) prior to a Positive Election or following a Negative Election;
- 9.3.4 the Company shall in addition have no authority to:
- (a) make an election in Macquarie's name or on its behalf under a Macquarie Crude Procurement Contract, an Included Crude Sales Transaction, an Included Sales Transaction or an Included Product Purchase Transaction;
 - (b) ~~(a)~~ make a Positive Election or a Negative Election in Macquarie's name or on its behalf in connection with a Tripartite Crude Supply Agreement or any Tripartite Product Offtake Agreement;
 - (c) ~~(b)~~ issue, vary, withdraw or pay any invoice under ~~the Tripartite Crude~~ an Inventory Supply Agreement, ~~any Tripartite Product or an Inventory~~ Offtake ~~Agreement or the Convenience Exchange Agreement~~ in Macquarie's name or on its behalf;
 - (d) ~~(c)~~ suspend or terminate ~~the Tripartite Crude~~ an Inventory Supply Agreement, ~~any Tripartite Product or an Inventory~~ Offtake Agreement, ~~the Convenience Exchange Agreement~~ or any transaction under any of the foregoing in Macquarie's name or on its behalf;
 - (e) ~~(d)~~ except in accordance with the Supply and Offtake Agreement or as otherwise agreed, vary, waive or give up any legal right (howsoever arising) of Macquarie in its name or on its behalf in writing; and
 - (f) ~~(e)~~ except in accordance with the Supply and Offtake Agreement, institute, manage or resolve any legal claim, suit or action (including for quality, quantity or demurrage) in Macquarie's name or on its behalf; and
- 9.3.5 the Company shall not in relation to this Agreement do, or omit to do (or permit to be done or omitted to be done by any of its Affiliates, or its or their respective Representatives), anything that would reasonably be expected to result in any Liabilities being incurred by Macquarie or its Affiliates under ~~the Tripartite Crude~~ an Inventory Supply Agreement, ~~any Tripartite Product or an Inventory~~ Offtake Agreement ~~or the Convenience Exchange Agreement~~,
- provided that, none of the foregoing Sections 9.3.1 through 9.3.5 shall be construed as limiting the Company's rights and ability to take all actions the Company determines necessary to respond to an Emergency in accordance with Accepted Industry Practice.
- 9.4 Macquarie may at any time by written notice to the Company during a continuing Event of Default unilaterally suspend all of the Company's rights and obligations to perform the Contract Performance Services (or any part of them) pending further written notice to the Company. Notwithstanding the foregoing, no such notice shall be construed as limiting the Company's right and ability to take all actions the Company determines necessary to respond to an Emergency in accordance with Accepted Industry Practice.

- 9.5 Macquarie shall use commercially reasonable efforts to provide such information as Macquarie may have and as may reasonably be requested by the Company in relation to the Contract Performance Services in order to enable the Company to comply with its obligations under this Section 9.
- 10 **INSPECTION AND ACCESS RIGHTS**
- 10.1 **Facilities**
- 10.1.1 At any reasonable times during normal business hours and upon reasonable prior notice during the Storage Term, the Company shall permit Macquarie, its Affiliates and its or their respective Representatives (including one or more Macquarie Inspector) to access the Facilities for any purpose related to this Agreement or the Crude Oil and Products Agreements, including but not limited to:
- (a) enforcing its rights and interests under any of the foregoing and/or in the event of a Default or Event of Default under any of the foregoing;
 - (b) observing the operations of the Facilities;
 - (c) conducting such inspections of any part of the Facilities as Macquarie may wish to have performed in connection with this Agreement or the Crude Oil and Products Agreements; and
 - (d) gauging, measuring, sampling or taking readings at any part of the Facilities on a spot basis.
- Such access shall not materially interfere with the ordinary course of business being conducted at the Facilities, and the Company shall only be required to cover the reasonable costs of such inspections to the extent provided for in Section 13.2 of the Supply and Offtake Agreement.
- 10.1.2 Notwithstanding any of the foregoing, if a Default or Event of Default has occurred and is continuing under this Agreement or any Crude Oil and Products Agreement, Macquarie, its Affiliates and its or their respective Representatives (including one or more Macquarie Inspector) shall have unlimited and unrestricted access to the Facilities in relation to the Macquarie Property and the Crude Oil and Product Agreements for so long as such Default or Event of Default continues.
- 10.1.3 It is an express condition precedent to the rights of access to the Facilities for Macquarie, its Affiliates and its or their respective Representatives (including Macquarie Inspectors) ("**Macquarie Personnel**") as set out in this Section 10, elsewhere in this Agreement and the Supply and Offtake Agreement, that each of such Person shall, without limitation (unless the Company permits otherwise), consistent with the Company's usual policies and procedures for access by non-Company Persons in relevant circumstances, and without discriminatory application to Macquarie or Macquarie Personnel:
- (a) to the extent applicable, execute the Company's standardized form of access agreement;
 - (b) provide proof of any insurance required by the Company;
 - (c) use reasonable efforts to avoid disrupting the Company's operations at the Facilities;
 - (d) to the extent necessary, comply with all medical screenings and be medically cleared for access prior to visiting the Facilities;
 - (e) present valid and current government issued identification and complete the Company's sign-in and safety orientation procedures upon arrival to the Facilities;
 - (f) wear protective equipment and, to the extent necessary, comply with fit testing procedures as directed by the Company or security personnel employed by the Company;
 - (g) be accompanied, at all times, by a representative of the Company or security personnel employed by the Company;
 - (h) follow, at all times, routes and paths designated by, and such other instructions provided by, the Company or security personnel employed by the Company;

- (i) observe all security, fire and safety, and other rules and regulations of all kinds while in around or about the Facilities;
- (j) comply with the reasonable instructions of the Company or security personnel employed by the Company; and
- (k) comply with such other health, safety, regulatory, environmental and insurance related requirements, policies and procedures required by the Company in accordance with its policies and procedures (applied in a non-discriminatory manner);

provided that, notwithstanding anything herein to the contrary, the Company may deny access to the Facilities to, or remove from the Facilities, any Macquarie Personnel (including Macquarie's Inspector), in the Company's reasonable opinion in accordance with Accepted Industry Practice, poses a material risk of injury to the Facilities, its personnel, the public or the environment (including during an ongoing Emergency).

10.2 **Audit**

- 10.2.1 During the Storage Term, Macquarie and its duly authorized Representatives, upon reasonable notice and during normal working hours, without disruption to the Company's operations and subject to reasonable procedures (including to ensure that the Company's confidentiality obligations are not breached), shall have access to the accounting records and other documents maintained by the Company, its Affiliates and its Representatives which relate to this Agreement.
- 10.2.2 The right to review or receive copies of such records shall survive termination of this Agreement for a period of two (2) years following the Termination Date.
- 10.2.3 The Company shall (and shall procure that its Affiliates shall) preserve, and shall cause all contractors or agents to preserve, all of the aforesaid documents for a period of at least two (2) years from the end of the Storage Term.

10.3 **Completeness and Accuracy of Records**

- 10.3.1 All records or documents provided by any Party or its Affiliates to the other Party or its Affiliates shall, to the knowledge of such Party, accurately and completely reflect the facts about the activities and transactions to which they relate. Each Party shall promptly notify the other Party if at any time such Party has reason to believe that any records or documents previously provided to the other Party no longer are accurate or complete.

11 **INVENTORY LOSS AND DAMAGE**

- 11.1 If for any reason (including scope of coverage or the application of any excess or deductible) Macquarie does not procure a full indemnity of its loss and damage from its relevant cargo insurers (despite having used commercially reasonable efforts to do so where such Liabilities arise out of an Insured Risk), then notwithstanding Section 5, without duplication in respect of amounts recoverable by Macquarie under the Supply and Offtake Agreement, the Company shall be liable to Macquarie on an indemnity basis for all unindemnified loss of, damage to or degradation of Macquarie Property as a result of any of the following (howsoever caused, including, without limitation, by Force Majeure, but provided that the Company shall be under no obligation to indemnify Macquarie to the extent that the loss of, damage to or degradation of Macquarie Property was caused as a direct result of the gross negligence or willful default of Macquarie):
 - 11.1.1 any actual or constructive loss of, damage to or degradation of Macquarie Property arising in connection with this Agreement or any Crude Oil and Products Agreement, including due to:
 - (a) customary handling or evaporation and shrinking during receipt, handling, storage or delivery;
 - (b) actual or attempted theft or misappropriation of Macquarie Property;
 - (c) spill, leak, escape, emanation or discharge of Macquarie Property; and
 - (d) Contamination of Macquarie Property,

provided that, for the avoidance of doubt, to the extent that the Company pays Macquarie for any volumetric loss or change in grade of Macquarie Property through the settlements contemplated under the Supply and Offtake Agreement, Macquarie will be fully compensated therefor and this Section 11.1 shall have no effect.

- 11.2 For the purposes of Section 11.1, Macquarie shall be considered to have failed to make a recovery from its relevant cargo insurers (i) to the extent that it receives a formal declinature of cover for all or part of its claim, or (ii) to the extent its claim has not been paid in full by its relevant cargo insurers as at the date for payment of a relevant claim as specified in the applicable insurance policy (or in the absence of such date, the date which is 12 months after Macquarie's claim was submitted to its relevant cargo insurers).
- 11.3 If following a payment from the Company under Section 11.1 or its proviso, Macquarie receives an indemnity (or as the case may be, a further indemnity) from its relevant cargo insurers in relation to its insurance claim for the relevant lost or damaged Macquarie Property ("**Insurance Proceeds**"), Macquarie shall reimburse the Company for the amount received under this Section 11 in relation to such Macquarie Property, up to the amount of the Insurance Proceeds.

12 **INSURANCE AND TAXES**

12.1 **Insurance**

The Company shall procure and maintain in full force and effect throughout the Storage Term insurance as provided in Sections 17.1 to 17.3 of the Supply and Offtake Agreement.

12.2 **Taxes**

The provisions of Section 16 of the Supply and Offtake Agreement relating to tax matters shall apply to this Agreement and the transactions contemplated hereby to the same extent as if set forth herein in full.

13 **COMPLIANCE WITH LAWS**

- 13.1 Each Party shall, in relation to this Agreement, comply in all material respects with Applicable Law.
- 13.2 Each Party also shall promptly notify the other Party of any material violation, or any material violation alleged by a Governmental Authority, of any Environmental Law relating to any Macquarie Property or Eligible Hydrocarbons Inventory in connection with this Agreement or any Crude Oil and Products Agreement.
- 13.3 The Company shall upon request provide Macquarie with all available evidence in its possession or control of environmental inspections or audits by any Governmental Authority with respect to Macquarie Property and Eligible Hydrocarbons Inventory at the Facilities.

14 **REPRESENTATIONS**

14.1 **Representations of the Company**

The Company represents and warrants to Macquarie that the following shall be true and correct on and as of the Commencement Date and on each day during the Storage Term:

- 14.1.1 this Agreement, the rights obtained and the duties and obligations assumed by the Company hereunder, and the execution and performance of this Agreement by the Company, do not, directly or indirectly, violate any Applicable Law with respect to the Company, its Affiliates or any of its or their property or assets, the terms and provisions of the Company's organizational documents or any agreement or instrument to which the Company, its Affiliates or any of its or their property or assets are bound or subject;
- 14.1.2 the execution and delivery of this Agreement by the Company has been authorized by all necessary corporate or other action;
- 14.1.3 it has the full and complete authority and power to enter into and perform this Agreement;

- 14.1.4 upon execution and delivery by the Company, this Agreement shall be a valid, binding and subsisting agreement of the Company enforceable in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application regardless of whether enforcement is sought in a proceeding in equity or at law); and
- 14.1.5 the Company has title to all Sludge and hard bottoms in the Included Storage Locations which are a part of the Facilities.
- 14.2 Macquarie represents and warrants to the Company that the following shall be true and correct on and as of the Commencement Date and on each day during the Storage Term:
 - 14.2.1 this Agreement, the rights obtained and the duties and obligations assumed by Macquarie hereunder, and the execution and performance of this Agreement by Macquarie, do not, directly or indirectly, violate any Applicable Law with respect to Macquarie or any of its property or assets, the terms and provisions of Macquarie's organizational documents or any agreement or instrument to which Macquarie or any of its property or assets are bound or subject;
 - 14.2.2 the execution and delivery of this Agreement by Macquarie has been authorized by all necessary corporate or other action; and
 - 14.2.3 upon execution and delivery by Macquarie, this Agreement shall be a valid, binding and subsisting agreement of Macquarie enforceable in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application regardless of whether enforcement is sought in a proceeding in equity or at law).

15 **FORCE MAJEURE**

- 15.1 If the Company is rendered unable by an event of Force Majeure to perform in whole or in part any obligation or condition arising under any Section of this Agreement specified in Section 15.5 below, it shall not be liable to Macquarie to perform such obligation or condition for so long as the event of Force Majeure exists and to the extent that performance is prevented or materially hindered, in whole or in part, by such event of Force Majeure; provided, however, that the Company shall use any commercially reasonable efforts to avoid or remove the event of Force Majeure. During the period that performance by the Company of a part or whole of its relevant obligations has been suspended by reason of an event of Force Majeure, Macquarie may suspend the performance of all or a part of its obligations (except for any payment and indemnification obligations) to the extent that such suspension is commercially reasonable having regard to the event of Force Majeure and the obligations of the Company which are suspended as a result of such event of Force Majeure.
- 15.2 The Company shall give prompt oral notice to Macquarie of its declaration of an event of Force Majeure, to be followed by written notice within twenty-four (24) hours after receiving such oral notice of the occurrence of a Force Majeure event, including, to the extent feasible, the details and the expected duration of the Force Majeure event and the volume of Crude Oil or Products affected. The Company also shall promptly notify Macquarie when the event of Force Majeure is terminated. However, the failure or inability of the Company to provide such notice within the time periods specified above shall not preclude it from declaring an event of Force Majeure. The Company may satisfy its notice obligations under this Section 15.2 by providing a single notice in respect of any of the affected Crude Oil and Product Agreements, provided that such notice specifically identifies this Agreement.
- 15.3 Without limiting any rights of Macquarie under this Section 15, the Parties agree that following notice of an event of Force Majeure, they shall consult in good faith to assess potential actions or steps with respect thereto.
- 15.4 Performance of the affected obligations shall resume to the extent made possible by the end or amelioration of the event of Force Majeure in accordance with the terms of this Agreement; provided, however, that the term of this Agreement shall not be extended.
- 15.5 This Section 15 shall only apply to those obligations of the Company which arise under Sections of this Agreement: 7.1, 7.2, 8.1.2 to 8.1.9, 8.2, 8.3.2, 8.3.4 to 8.3.6, 8.3.8 to 8.3.13, 8.4.3, 8.5, 9.1 to 9.3, 10.1.1, 10.1.2, 10.2.1, 10.2.3.

16 MISCELLANEOUS

16.1 Events of Default and Remedies

- 16.1.1 Without limiting any other rights or remedies hereunder or thereunder, if an Event of Default occurs and is continuing under the Supply and Offtake Agreement and Macquarie is a Non-Defaulting Party, Macquarie may, in its sole discretion, (i) withhold or suspend its obligations, including any of its payment obligations, under this Agreement, (ii) submit one or more Final Export Schedules in accordance with this Agreement, and (iii) otherwise arrange for the disposition of any of its Macquarie Property in such manner as it elects in accordance with this Agreement and without causing a breach of its obligations under the Crude Oil and Products Agreements.

16.1.2 Macquarie agrees to only provide instructions to a Barge Operator or a Barge Owner as contemplated by an Acknowledgment of Title in respect of an Included Barge following the occurrence and during the continuation of an Event of Default in respect of the Company.

16.2 Required Permits

During the Storage Term, the Company and its Representatives shall, at their sole cost and expense, take all actions reasonably necessary or appropriate to obtain, apply for, maintain, monitor, renew, and/or modify as appropriate, in all material respects, any license, authorization, certification, filing, recording, permit, waiver, exception, variance, franchise, order or other approval with or of any Governmental Authority pertaining or relating to the use and operation of the Facilities in the manner contemplated by this Agreement and the Crude Oil and Products Agreements (the “Required Permits”). The Company and its Affiliates shall not do anything that causes a termination or suspension of the Required Permits.

16.3 Environmental and Regulatory Matters

The execution of this Agreement by the Parties does not confer any obligation or responsibility on Macquarie Group, and Company hereby defends, indemnifies, releases and holds harmless Macquarie Group from and against any Liabilities directly or indirectly arising from or in connection with:

- (a) any past, existing or future environmental condition at the Facilities, including, but not limited to, the presence of regulated or Hazardous Substances on or in environment media at the Facilities (including the presence in surface water, groundwater, soils or subsurface strata, or air), including the subsequent migration of any such substance;
- (b) any Environmental Law (including any Liability in relation to an alleged or suspected or actual breach of Environmental Law);
- (c) the Required Permits; and
- (d) any requirements arising under or relating to any Applicable Law pertaining or relating to the operation of the Facilities,

regardless of how caused (including any event of Force Majeure).

16.4 Relationship of the Parties

Notwithstanding anything to the contrary herein, the Company is and shall be the operator of the Facilities in all respects, and Macquarie shall not under any circumstances have power or authority to direct the activities of the Company, or to exert control over the operation of the Facilities, or any portion thereof, and nothing herein shall be deemed to grant or provide such power or authority to Macquarie (provided, however, that Macquarie's enforcement of this Agreement or any Crude Oil and Products Agreement in accordance with their respective terms shall not be deemed to be in contravention of the foregoing).

16.5 No Abandonment of Rights; Rights Cumulative

- 16.5.1 No delay or failure by a Party in exercising any right or remedy to which it may be entitled in connection with this Agreement shall constitute an abandonment of any such right.

16.5.2 Each and every right granted to the Parties under this Agreement or allowed it by law or equity, shall be cumulative and may be exercised from time to time in accordance with the terms thereof and Applicable Law.

17 INDEMNIFICATION

17.1 Indemnity of Company

17.1.1 Without prejudice to Section 17.3, to the fullest extent permitted by Applicable Law and except as specified otherwise elsewhere in this Agreement (including at Section 11.1), the Company shall defend, indemnify and hold harmless Macquarie, its Affiliates, and its and their respective Representatives from and against any Liabilities directly or indirectly arising out of:

- (a) any breach by the Company of any covenant or agreement contained herein or made in connection herewith or any representation or warranty of the Company made herein or in connection herewith proving to be false or misleading or incorrect in any material respect, including, without limitation the Company's obligation for payment of taxes pursuant to Section 12.2;
- (b) the Company's performance or non-performance of this Agreement;
- (c) the Company's or any of its Representatives' negligence or willful misconduct;
- (d) the Company's or any it's Representatives' failure to comply with or observe any Applicable Law or the requirements of any Required Permit;
- (e) any actual, alleged or suspected spill, leak, escape, emanation or discharge of Macquarie Property or Eligible Hydrocarbon Inventory from or at the Facilities regardless of how caused (including any event of Force Majeure);
- (f) any actual, alleged or suspected Contamination of Macquarie Property or Eligible Hydrocarbon Inventory regardless of how caused (including any event of Force Majeure); and
- (g) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Company or one of the Company's Affiliates, and regardless of whether Macquarie is a party thereto and regardless of how caused (including any event of Force Majeure),

provided that the Company shall be under no obligation to defend, indemnify or hold Macquarie, its Affiliates, or its and their respective Representatives harmless against any Liabilities caused as a result of the gross negligence or willful default of Macquarie.

17.2 No Third Party Rights; No Admission

The obligations of a Party (the "**Indemnifying Party**") to defend, indemnify, release and hold any other Party (the "**Indemnified Party**") harmless under the terms of this Agreement shall not vest any rights in any third party (whether a Governmental Authority or private entity), nor shall they be considered an admission of liability or responsibility for any purposes other than those enumerated in this Agreement.

17.3 Indemnification Procedures

Each Party shall notify the other Party as soon as practicable after receiving notice of any claim or suit brought against it within the indemnities of this Agreement, shall furnish to the other Party the complete details within its knowledge and shall render all reasonable assistance requested by the other Party in the defense; provided, that, the failure to give such notice shall not affect the indemnification provided hereunder, except to the extent that the Indemnifying Party is materially adversely affected by such failure. Each Party shall have the right but not the duty to participate, at its own expense, with counsel of its own selection, in the defense and settlement thereof without relieving the other Party of any obligations hereunder. Notwithstanding the foregoing, an Indemnifying Party shall not be entitled to assume responsibility for and control of any judicial or

administrative proceeding if such proceeding involves an Event of Default by the Indemnifying Party under this Agreement which shall have occurred and be continuing.

17.4 **Cumulative Remedy**

The indemnification in this Section 17 is in addition to and not in limitation of any indemnification provided in the Supply and Offtake Agreement or any other Crude Oil and Products Agreement.

17.5 **Credit Support**

18 **AS A CONDITION TO MACQUARIE'S ENTERING INTO THIS AGREEMENT, THE COMPANY AGREED TO PROVIDE THE PARENT GUARANTY AND AS A CONDITION TO MACQUARIE ENTERING INTO THE VERTEX RENEWABLES SOA WITH VERTEX RENEWABLES AND EFFECTING THE CONSEQUENTIAL AMENDMENTS TO BE MADE TO THE SUPPLY AND OFFTAKE AGREEMENT AND THIS AGREEMENT AS A RESULT OF THE ENTRY INTO THE VERTEX RENEWABLES SOA, THE COMPANY AGREED TO PROVIDE THE VR GUARANTY, IN EACH CASE, AS CREDIT SUPPORT FOR THE PROMPT AND COMPLETE PERFORMANCE AND PAYMENT OF ALL OF THE COMPANY'S OBLIGATIONS HEREUNDER AND UNDER THE OTHER TRANSACTION DOCUMENTS. LIMITATION ON LIABILITY AND DAMAGES**

18.1 LIMITED RIGHT TO DAMAGES. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES' LIABILITY FOR DAMAGES IS LIMITED TO DIRECT, ACTUAL DAMAGES ONLY AND NEITHER PARTY SHALL BE LIABLE FOR LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, OR SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, IN TORT, CONTRACT OR OTHERWISE, OF ANY KIND, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE, THE SUSPENSION OF PERFORMANCE, THE FAILURE TO PERFORM, OR THE TERMINATION OF THIS AGREEMENT; PROVIDED, HOWEVER, THAT THE FORGOING IS NOT (AND IS NOT INTENDED TO BE AND SHALL NOT BE DEEMED TO CONSTITUTE) A WAIVER BY A PARTY OF ANY RIGHT TO RECOVER COMPENSATORY DAMAGES SUFFERED BY A PARTY THAT ARE OR COULD HAVE BEEN REASONABLY FORESEEABLE AS A RESULT OF ANY BREACH OF SECTION 19 (EVEN IF SUCH COMPENSATORY DAMAGES COULD BE CHARACTERIZED AS INDIRECT, CONTINGENT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES); AND PROVIDED FURTHER THAT SUCH LIMITATION SHALL NOT APPLY WITH RESPECT TO ANY THIRD PARTY CLAIM FOR WHICH INDEMNIFICATION IS AVAILABLE UNDER THIS AGREEMENT.

18.2 NOTHING IN SECTION 18.1 SHALL LIMIT ANY RIGHT OF MACQUARIE TO SEEK SPECIFIC PERFORMANCE OF ANY PART OF THIS AGREEMENT.

18.3 WITHOUT PREJUDICE TO SECTION 5.1 OF THIS AGREEMENT MACQUARIE SHALL HAVE NO LIABILITY WHATSOEVER (IN DAMAGES OR OTHERWISE) TO THE COMPANY ARISING OUT OF OR IN CONNECTION WITH THE RECEIPT INTO ANY PART OF THE FACILITIES OF CONTAMINATED CRUDE OIL OR PRODUCTS.

18.4 DISCLAIMER OF WARRANTIES. MACQUARIE MAKES NO WARRANTY, CONDITION OR OTHER REPRESENTATION, WRITTEN OR ORAL, EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS OR SUITABILITY OF MACQUARIE PROPERTY FOR ANY PARTICULAR PURPOSE OR OTHERWISE AND ALL SUCH WARRANTIES, CONDITIONS AND OTHER REPRESENTATIONS ARE HEREBY DISCLAIMED. FURTHER, MACQUARIE MAKES NO WARRANTY OR REPRESENTATION THAT MACQUARIE PROPERTY CONFORMS TO THE SPECIFICATIONS IDENTIFIED IN ANY CONTRACT WITH THE COMPANY OR ANY THIRD PARTY SUPPLIER OR THE CONVENIENCE EXCHANGE AGREEMENT.

19 **CONFIDENTIALITY**

19.1 The Parties agree that the specific terms and conditions of this Agreement, including the drafts of this Agreement exchanged by the Parties and any information exchanged between the Parties, including calculations of any fees or other amounts paid by either Party under this Agreement and all information received by Macquarie from the Company relating to the costs of operation, operating conditions, and other commercial information of the Company not made available to the public, are confidential and shall not be disclosed to any third party, except (i) as may be required by court order or Applicable Law or as requested by a Governmental Authority, (ii) to such Party's or its Affiliates' employees, directors, shareholders, auditors, consultants, banks, lenders, financial

advisors and legal advisors, or (iii) to such Party's insurance providers, solely for the purpose of procuring insurance coverage or confirming the extent of existing insurance coverage; provided, that, prior to any disclosure permitted by this Section (iii), such insurance providers shall have agreed in writing to keep confidential any information or document subject to this Section.

- 19.2 The confidentiality obligations under this Agreement shall survive termination of this Agreement for a period of two years following the Termination Date. The Parties shall be entitled to all remedies available at law, or in equity, to enforce or seek relief in connection with the confidentiality obligations contained herein (including without limitation) the right to seek injunctive relief.
- 19.3 In the case of disclosure covered by (i) of Section 19.1, to the extent practicable and legally permissible, the disclosing Party shall notify the other Party in writing of any proceeding of which it is aware which may result in disclosure, and use reasonable efforts to prevent or limit such disclosure. The Party seeking to prevent or limit such disclosure shall be responsible for all costs and expenses incurred by the other Party in connection therewith. The Parties shall be entitled to all remedies available at law, or in equity, to enforce or seek relief in connection with the confidentiality obligations contained herein.
- 19.4 Notwithstanding anything herein to the contrary, the Parties (and their respective employees, representatives or other agents) are authorized to disclose to any person the U.S. federal and state income tax treatment and tax structure of the transaction and all materials of any kind (including tax opinions and other tax analyses) that are provided to the Parties relating to that treatment and structure, without the Parties imposing any limitation of any kind. However, any information relating to the tax treatment and tax structure shall remain confidential (and the foregoing sentence shall not apply) to the extent necessary to enable any person to comply with securities laws. For this purpose, "tax structure" is limited to any facts that may be relevant to that treatment.

20 **GOVERNING LAW**

- 20.1 THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED AND ENFORCED UNDER THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO ITS CONFLICT OF LAWS PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER STATE.
- 20.2 EACH OF THE PARTIES HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ~~ANY FEDERAL OR STATE COURT OF COMPETENT JURISDICTION SITUATED IN THE CITY OF NEW YORK~~THE BANKRUPTCY COURT, (WITHOUT RECOURSE TO ARBITRATION UNLESS BOTH PARTIES AGREE IN WRITING), AND TO SERVICE OF PROCESS BY CERTIFIED MAIL, DELIVERED TO THE PARTY AT THE ADDRESS INDICATED IN SECTION 23. EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION TO PERSONAL JURISDICTION, WHETHER ON GROUNDS OF VENUE, RESIDENCE OR DOMICILE.
- 20.3 EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDINGS RELATING TO THIS AGREEMENT.

21 **ASSIGNMENT**

- 21.1 This Agreement shall inure to the benefit of and be binding upon the Parties hereto, their respective successors and permitted assigns.
- 21.2 Neither Party shall assign this Agreement or its rights or interests hereunder in whole or in part, or delegate its obligations hereunder in whole or in part, without the consent of the other Party. Notwithstanding the foregoing, (a) Macquarie may, without the Company's consent, assign and delegate all of Macquarie's rights and obligations hereunder to (i) any Affiliate of Macquarie, provided it is no worse a credit counterparty and would not result in any adverse tax consequences to the Company and all the Company's costs, if any, are covered or (ii) any non-Affiliate Person that succeeds to all or substantially all of its assets and business and assumes Macquarie's obligations hereunder, whether by contract, operation of law or otherwise, provided that (A) the creditworthiness of such successor entity is equal or superior to the creditworthiness of Macquarie (taking into account any credit support for Macquarie) immediately prior to such assignment, and

(B) such successor assumes all of the obligations of Macquarie under the Crude Oil and Products Agreements to which the Company is a Party.

- 21.3 Any attempted assignment in violation of this Section 21 shall be null and void ab initio and the non-assigning Party shall have the right, without prejudice to any other rights or remedies it may have hereunder or otherwise, to terminate this Agreement effective immediately upon notice to the Party attempting such assignment.

22 PLEDGE OVER MACQUARIE PROPERTY

Notwithstanding anything to the contrary contained in this Agreement or in any Transaction Document or otherwise in effect, the Company hereby acknowledges and agrees that, Macquarie may, and shall have the right to, pledge and grant a security interest, in favor of any lender to Macquarie from time to time (a “**Macquarie Lender**”), in and to Macquarie’s Property (and for the avoidance of doubt, Macquarie’s Property does not include the assets or rights of the Company) that is subject to this Agreement, in each case, as collateral security for any and all obligations due and owing by Macquarie or its Affiliates to any such Person, without the need for any consent or approval of, or any further action taken by, the Company or any of the Company’s Affiliates. In consideration of the foregoing, Macquarie shall procure that any such liens and security interests shall be terminated and extinguished automatically at such time as this Agreement is terminated (other than with respect to any provisions or obligations, including indemnity obligations, as applicable, that survive such termination pursuant to the terms of the Transaction Documents), and the Company has performed all of its payment obligations under Sections 20 and 21 of the Supply and Offtake Agreement.

23 NOTICES

All invoices, notices, requests and other communications given pursuant to this Agreement shall be in writing and sent by email or nationally recognized overnight courier. A notice shall be deemed to have been received when transmitted by email to the other Party’s email set forth in Schedule K of the Supply and Offtake Agreement, or on the following Business Day if sent by nationally recognized overnight courier to the applicable address, or if sent by nationally recognized overnight courier to the other Party’s address set forth in Schedule K of the Supply and Offtake Agreement and to the attention of the person or department indicated. A Party may change its address or email address by giving written notice in accordance with this Section, which is effective upon receipt.

24 NATURE OF TRANSACTION AND RELATIONSHIP OF PARTIES

- 24.1 This Agreement shall not be construed as creating a partnership, association or joint venture among the Parties. It is understood that the Company is an independent contractor with complete charge of its employees and agents in the performance of its duties hereunder, and nothing herein shall be construed to make the Company, or any of its employees or agent, an agent or employee of Macquarie.
- 24.2 No Party shall have the right or authority to negotiate, conclude or execute any contract or legal document with any third person on behalf of the Parties; to assume, create, or incur any liability of any kind, express or implied, against or in the name of any of the other Parties; or to otherwise act as the representative of any of the other Parties, unless expressly authorized in writing by such other Party.

25 MISCELLANEOUS

- 25.1 The Parties acknowledge and agree that this Agreement is a security agreement or arrangement, or other credit enhancement related to the transactions entered into by the Parties in connection with the Supply and Offtake Agreement, ~~the Tripartite Crudean Inventory~~ Supply Agreement ~~and each Tripartite Product, an Inventory~~ Offtake Agreement, each of which is a “Forward Contract” or a “Swap Agreement” as defined in Title 11 of the United States Code, 11. U.S.C. §§ 101 et seq., as amended from time to time (the “Bankruptcy Code”). The Parties further acknowledge and agree that each Party is a “Forward Contract Merchant” and/or a “Financial Participant” as each such term is defined under the Bankruptcy Code.
- 25.2 If any Article, Section or provision of this Agreement shall be determined to be null and void, voidable or invalid by a court of competent jurisdiction, then for such period that the same is void or

invalid, it shall be deemed to be deleted from this Agreement and the remaining portions of this Agreement shall remain in full force and effect.

- 25.3 The terms of this Agreement constitute the entire agreement between the Parties with respect to the matters set forth in this Agreement, and no representations or warranties shall be implied or provisions added in the absence of a written agreement to such effect between the Parties. This Agreement shall not be modified or changed except by written instrument executed by the Parties' duly authorized representatives.
- 25.4 No promise, representation or inducement has been made by any of the Parties that is not embodied in this Agreement, and none of the Parties shall be bound under this Agreement by or liable for any alleged representation, promise or inducement not so set forth.
- 25.5 Time is of the essence with respect to all aspects of each Party's performance of any obligations under this Agreement.
- 25.6 Nothing expressed or implied in this Agreement is intended to create any rights, obligations or benefits under this Agreement in any person other than the Parties and their successors and permitted assigns.
- 25.7 All audit rights, payment, confidentiality and indemnification obligations and obligations under this Agreement shall survive the expiration or termination of this Agreement.
- 25.8 This Agreement may be executed by the Parties in separate counterparts and initially delivered by facsimile transmission or otherwise, with original signature pages to follow, and all such counterparts shall together constitute one and the same instrument.
- 25.9 All transactions hereunder are entered into in reliance on the fact this Agreement and all such transactions constitute a single integrated agreement between the Parties, and the Parties would not have otherwise entered into any other transactions hereunder.

[Remainder of Page Intentionally Left Blank]

Executed by **Macquarie ENERGY NORTH AMERICA TRADING INC.** acting by:

By: _____
Name:
Title:

By: _____
Name:
Title:

Executed by **VERTEX REFINING ALABAMA LLC** acting by:

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE 4

AMENDED AND RESTATED FEE LETTER

[Filed Under Seal]

SCHEDULE 5

AMENDED AND RESTATED INDEPENDENT AMOUNT LETTER

[Filed Under Seal]

Exhibit 2**Relative Lien Priorities on Collateral⁶**

Shared Collateral constituting Intermediation Facility Priority Collateral (other than Business Interruption Insurance Proceeds)	Shared Collateral constituting DIP Priority Collateral (other than Business Interruption Insurance Proceeds)	Shared Collateral constituting Business Interruption Insurance Proceeds⁷	DIP Exclusive Collateral
Carve Out	Carve Out	Carve Out	Carve Out
Permitted Priority Liens	Permitted Priority Liens	Permitted Priority Liens	Permitted Priority Liens
Intermediation Facility Liens	Hedging Liens	Hedging Liens/ Intermediation Facility Liens/DIP Liens	Hedging Liens ⁸
Intermediation Facility Adequate Protection Liens	DIP Liens	Pre-Petition Term Loan Adequate Protection Liens/ Intermediation Facility Adequate Protection Liens	DIP Liens
Hedging Liens	Pre-Petition Term Loan Adequate Protection Liens	Pre-Petition Liens	Pre-Petition Term Loan Adequate Protection Liens
DIP Liens	Pre-Petition Liens	-	Pre-Petition Liens
Pre-Petition Term Loan Adequate Protection Liens	Intermediation Facility Liens	-	-
Pre-Petition Liens	Intermediation Facility Adequate Protection Liens	-	-

⁶ Terms used in this Exhibit shall have the meaning given to such terms in **Exhibit 4**.

⁷ The Intermediator must have marshalled, taken, liquidated and exhausted all remedies and recoveries available to the Intermediator under the Intermediation Contracts from any other Intermediation Facility Priority Collateral, including Intermediation Title Property.

⁸ Only with respect to DIP Exclusive Collateral held by Participating Hedging Debtors.

Exhibit 3**Relative Claim Priorities⁹¹⁰**

Vertex Refining (with respect to proceeds of Intermediation Facility Priority Collateral (other than Business Interruption Insurance Proceeds))	Vertex Refining (with respect to proceeds of DIP Priority Collateral (other than Business Interruption Insurance Proceeds))	Vertex Refining (with respect to Business Interruption Insurance Proceeds)	Parent	Vertex Renewables	Participating Hedging Debtors (other than Vertex Refining, Parent and Vertex Renewables)	All Other Debtors
Carve Out	Carve Out	Carve Out	Carve Out	Carve Out	Carve Out	Carve Out
Intermediation Superpriority Claims	Superpriority Hedging Claims	Superpriority Hedging Claims/ DIP Super-Priority Claims/ Intermediation Superpriority Claims	Superpriority Hedging Claims	Superpriority Hedging Claims	Superpriority Hedging Claims	DIP Super-Priority Claims
Pre-Petition Intermediation Facility Adequate Protection Claims	DIP Super-Priority Claims	Pre-Petition Term Loan Adequate Protection Super-Priority Claims / Pre- Petition Intermediation Facility Adequate Protection Claims	All DIP Super-Priority Claims / Certain Intermediation Superpriority Claims (solely with respect to Business Interruption Insurance Proceeds)	All DIP Super-Priority Claims	DIP Super-Priority Claims	Pre-Petition Term Loan Adequate Protection Super-Priority Claims

⁹ Terms used in this Exhibit shall have the meaning given to such terms in **Exhibit 4**.

¹⁰ The priorities shown in this **Exhibit 3** are not binding on Shell. Shell's claim priority is as set forth in the Shell Support Agreement.

Vertex Refining (with respect to proceeds of Intermediation Facility Priority Collateral (other than Business Interruption Insurance Proceeds))	Vertex Refining (with respect to proceeds of DIP Priority Collateral (other than Business Interruption Insurance Proceeds))	Vertex Refining (with respect to Business Interruption Insurance Proceeds)	Parent	Vertex Renewables	Participating Hedging Debtors (other than Vertex Refining, Parent and Vertex Renewables)	All Other Debtors
Superpriority Hedging Claims	Intermediation Superpriority Claims	-	Intermediation Superpriority Claims (claims other than Business Interruption Insurance Proceeds)	Intermediation Superpriority Claims	Pre-Petition Term Loan Adequate Protection Super-Priority Claims	-
DIP Super-Priority Claims	Pre-Petition Term Loan Adequate Protection Super-Priority Claims	-	Pre-Petition Term Loan Adequate Protection Super-Priority Claims /Certain Pre-Petition Intermediation Facility Adequate Protection Claims (solely with respect to Business Interruption Insurance Proceeds)	Pre-Petition Term Loan Adequate Protection Super-Priority Claims	-	-
Pre-Petition Term Loan Adequate Protection Super-Priority Claims	Pre-Petition Intermediation Facility Adequate Protection Claims	-	Pre-Petition Intermediation Facility Adequate Protection Claims (claims other than Business Interruption Insurance Proceeds)	-	-	-

Exhibit 4

Certain Defined Terms

“*Books*” means, as to any Debtor, the books and records, including ledgers; records concerning such Debtor’s assets or liabilities, including the Collateral, business operations or financial condition; and all computer programs, or data storage, and the related devices and equipment, containing such information.

“*Business Interruption Insurance Percentage*” means, as of any date of determination, (i) with respect to the Intermediator, the percentage determined by dividing the outstanding Intermediation Obligations after the Intermediator has marshalled, taken, liquidated and exhausted all remedies and recoveries available to the Intermediator under the Intermediation Contracts (as defined in the Intermediation Order) from any other Intermediation Facility Priority Collateral and any insurance rights owned or held by the Intermediator in its own name covering such Intermediation Facility Priority Collateral to the Intermediation Obligations under the Intermediation Contracts, by the sum of such Intermediation Obligations, plus the outstanding Hedge Obligations plus the outstanding DIP Obligations, hereunder in each case, as of the time of the occurrence of the event giving rise to Business Interruption Insurance Proceeds; (ii) with respect to the Hedge Provider, the percentage determined by dividing the outstanding Hedge Obligations, by the sum of such Intermediation Obligations, plus the outstanding Hedge Obligations plus the outstanding DIP Obligations, hereunder in each case, as of the time of the occurrence of the event giving rise to Business Interruption Insurance Proceeds and (iii) with respect to the DIP Secured Parties hereunder, the difference between 100% and the percentages determined in items (i) and (ii) of this definition. For purposes of determining “Business Interruption Insurance Percentage” with respect to the Intermediator, the Intermediator shall be required to marshal, take, liquidate and exhaust all remedies and recoveries available to the Intermediator with respect to (x) all other categories of Intermediation Facility Priority Collateral, including Intermediation Title Property and (y) all insurance owned and held in the name of the Intermediator with respect to the Intermediation Facility Priority Collateral prior to receiving any recovery of Business Interruption Insurance Proceeds under policies required by the Intermediation Contracts and such policies shall be the secondary policy with respect to Intermediation Facility Priority Collateral.

“*Business Interruption Insurance Proceeds*” means proceeds of business interruption insurance policies maintained by Parent or Vertex Refining. Any Business Interruption Insurance Proceeds go, first, to satisfy the Carve Out, second, to any Permitted Priority Liens, and third, to any obligations secured by Hedging Liens, DIP Liens and Intermediation Facility Liens on a pari passu basis in accordance with the Business Interruption Insurance Percentage to claims secured by the DIP Liens, Hedging Liens and Intermediation Facility Liens.

“*Catalyst Assets*” means any catalyst assets and inventory constituting catalyst, precious metals assets and precious metals inventory and all additions, accessions and all rights related thereto.

“*Carve Out*” means the Carve Out (as defined in the DIP Order).

“*Collateral*” means all assets and interests in assets and proceeds thereof now owned or hereafter acquired by any Debtor or arising and wheresoever located, including all accessions thereto and products and proceeds thereof (other than Excluded Property (as defined in the DIP Order or as defined in the Intermediation Order)) in or upon which a Lien is granted by a Debtor to the Secured Parties with the priorities as set forth in Exhibit 3.

“*Debtors*” means the Debtors (as defined in the DIP Order).

“*DIP Exclusive Collateral*” means all assets and interests in assets and proceeds thereof now owned or hereafter acquired by any Debtor (excluding, Vertex Refining and limited with respect to the Hedge Provider, only Participating Hedging Debtors) or arising and wheresoever located, including all accessions thereto and products and proceeds thereof (other than Excluded Property or any other Shared Collateral, including business interruption insurance policies maintained by Parent) in or upon which a Lien is granted by a Debtor to the Hedge Provider and DIP Secured Parties with the priorities as set forth in Exhibit 3; provided that no Debtor shall grant a Lien to the Hedge Provider to the extent such Debtor does not constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the guaranty by such Debtor.

“*DIP Liens*” means the DIP Liens (as defined in the DIP Order).

“*DIP Obligations*” means the DIP Obligations (as defined in the DIP Order).

“*DIP Order*” means that certain interim or final order (I) Authorizing The Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Pre-Petition Term Loan Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief.¹

“*DIP Priority Collateral*” means Shared Collateral other than the Intermediation Facility Priority Collateral including the DIP Secured Parties’ Business Interruption Insurance Percentage.

“*DIP Secured Parties*” means the DIP Secured Parties (as defined in the DIP Order).

“*DIP Super-Priority Claims*” means the DIP Super-Priority Claims (as defined in the DIP Order).

“*Excluded Property*” means Excluded Property (as defined in the DIP Order or as defined in the Intermediation Order).

¹ Title to be updated as needed.

“*Hedge Facility*” means the Hedge Facility (as defined in the Intermediation Order).

“*Hedge Obligations*” means the Hedge Obligations (as defined in the Intermediation Order) but shall not include any other Intermediation Obligations or Transaction Obligations (as defined in the Intermediation Contracts), including, without limitation, by virtue of setoff, netting, or indemnification rights under the Intermediation Contracts.

“*Hedge Provider*” means the Hedge Provider (as defined in the Intermediation Order).

“*Hedging Liens*” means the Hedging Liens (as defined in the Intermediation Order).

“*Hydrocarbon Credit Support*” means, as of any time, all Inventory constituting or consisting of Hydrocarbons (as defined in the Intermediation Contracts) then owned or at any time hereafter acquired by Vertex Refining, that is located at a Company Storage Location (as defined in the Intermediation Contracts); provided that “Hydrocarbon Credit Support” shall not include any Excluded Property or any Catalyst Assets.

“*Independent Amount*” means the Independent Amount (as defined in the Independent Amount Letter as in effect on the date hereof).

“*Independent Amount Letter*” means the independent amount letter entered into between Vertex Refining and the Intermediator in connection with the Intermediation Contracts, as may be amended from time to time.

“*Intermediation Contracts*” means the Intermediation Contracts (as defined in the Intermediation Order).

“*Intermediation Title Property*” means Intermediation Title Property (as defined in the Intermediation Order) or the Proceeds thereof and Supporting Obligations with respect thereto, and the Independent Amount.

“*Intermediation Facility Adequate Protection Liens*” means the Intermediation Facility Adequate Protection Liens (as defined in the Intermediation Order).

“*Intermediation Facility Liens*” means the Intermediation Facility Liens (as defined in the Intermediation Order).

“*Intermediation Facility Priority Collateral*” means all of the following assets of Vertex Refining (or Parent, solely with respect to business interruption insurance policies held by the Parent subject, clause (c)) with respect to which a Lien is granted as security for the Intermediation Obligations in each case whether tangible or intangible: (a) all Inventory subject to or intended to be sold as Intermediation Title Property under the Intermediation Contracts; (b) all Inventory constituting Hydrocarbon Credit Support; (c) the Intermediator’s Business Interruption Insurance Percentage of the proceeds of business interruption insurance policies; and (d) all

Proceeds of (including other proceeds of insurance with respect to the foregoing), and Supporting Obligations (including Letter of Credit Rights) with respect to, any of the foregoing.

“Intermediation Obligations” means the Intermediation Obligations (as defined in the Intermediation Order), whether arising prepetition or post-petition, but shall not include any Hedge Obligations, including, without limitation, by virtue of setoff, netting, or indemnification rights under the Intermediation Contracts or Hedge Facility.

“Intermediation Order” means that certain interim or final order (I) Authorizing Continuation of the Intermediation Contracts, as Amended, (II) Authorizing the Debtors to Enter Into and Perform Postpetition Intermediation Transactions and Postpetition Hedging Transactions, (IV) Providing Superpriority Administrative Expense Status and Liens in Respect of Postpetition Intermediation Transactions and Postpetition Hedging Transactions, (V) Granting Adequate Protection to the Intermediation Provider, (VI) Provider Superpriority Administrative Expense Status in Respect of Purchaser Support Agreements, (VII) Modifying the Automatic Stay, (VIII) Scheduling a Final Hearing and (IX) Granting Related Relief.

“Intermediation Superpriority Claims” means the Intermediation Superpriority Claims (as defined in Intermediation Order).

“Intermediator” means Macquarie (as defined in the Intermediation Order).

“Inventory” means “inventory” as defined in the UCC, including work in process and finished products intended for sale or lease or to be furnished under a contract of service, of every kind and description now or at any time hereafter owned by or in the custody or possession, actual or constructive, of any Debtor, including such inventory as is temporarily out of its custody or possession or in transit and including any returns upon any accounts or other proceeds, including insurance proceeds, resulting from the sale or disposition of any of the foregoing and any documents of title representing any of the above, and each Debtor’s Books relating to any of the foregoing.

“Letter of Credit Rights” means “letter of credit rights” as defined in the UCC.

“Lien” means any pledge, bailment, lease, mortgage, deed of trust (or similar instrument), hypothecation, conditional sales and title retention agreement, charge, claim, encumbrance, preference, priority or other lien (statutory or otherwise) in favor of the Secured Parties under the DIP Order or Intermediation Order.

“Parent” means Vertex Energy, Inc., a Nevada corporation, as debtor and debtor-in-possession.

“Participating Hedging Debtors” means the Participating Hedging Debtors (as defined in Intermediation Order).

“Permitted Priority Liens” means the Permitted Priority Liens (as defined in the DIP Order or as defined in the Intermediation Order).

“Pre-Petition Intermediation Facility Adequate Protection Claims” means Pre-Petition Intermediation Facility Adequate Protection Claims (as defined in the Intermediation Order).

“Pre-Petition Liens” means the Pre-Petition Liens (as defined in the DIP Order).

“Pre-Petition Loan Obligations” means the Pre-Petition Loan Obligations (as defined in the DIP Order).

“Pre-Petition Term Loan Adequate Protection Liens” means the “Pre-Petition Term Loan Adequate Protection Liens (as defined in the DIP Order).

“Pre-Petition Term Loan Adequate Protection Super-Priority Claims” means the Pre-Petition Term Loan Adequate Protection Super-Priority Claims (as defined in the DIP Order).

“Proceeds” means “proceeds” as defined in the UCC.

“Secured Parties” means DIP Secured Parties, the Hedge Provider and the Intermediator.

“Shared Collateral” means all assets and interests in assets and proceeds thereof now owned or hereafter acquired by Vertex Refining and Parent (solely with respect to business interruption insurance policies maintained by Parent) thereby or arising and wheresoever located, including all accessions thereto and products and proceeds thereof (other than Excluded Property) in or upon which a Lien is granted by a Debtor with the priorities as set forth in Exhibit 3. For the avoidance of doubt and notwithstanding anything to the contrary herein, Shared Collateral constituting Intermediation Facility Priority Collateral shall not include Intermediation Title Property.

“Shell Superpriority Claims” means the Shell Superpriority Claims (as defined in Intermediation Order).

“Superpriority Hedging Claims” means the Superpriority Hedging Claims (as defined in Intermediation Order).

“Supporting Obligations” means “supporting obligations” as defined in the UCC.

“UCC” means the Uniform Commercial Code as adopted and in effect in the State of New York, as amended from time to time; provided, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, any Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of New York, the term “UCC” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

“*Vertex Refining*” means Vertex Refining Alabama, LLC, a Delaware limited liability company, as debtor and debtor-in-possession.

Exhibit 5

Shell Support Agreement

SUPPORT AGREEMENT

This SUPPORT AGREEMENT (this “Agreement”) is entered into as of September 23, 2024, by and among Vertex Refining Alabama, LLC (“Vertex Refining,” and together with each of its affiliates, “Vertex”), Shell Trading (US) Company (“STUSCO”) and Equilon Enterprises LLC d/b/a Shell Oil Products US (together with STUSCO, “Shell” and together with Vertex, the “Parties”).

RECITALS

WHEREAS, Vertex has not made any formal decision but is currently evaluating strategic alternatives, including a potential commencement of voluntary chapter 11 cases (the “Chapter 11 Cases”) under title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court” and to the extent Vertex Refining or any of its affiliates commence such Chapter 11 Cases, the “Vertex Debtors”).

WHEREAS, Shell and Vertex have entered into the Tripartite Agreements (as defined below) with Macquarie Energy North America Trading Inc. (“Macquarie”) and those certain other agreements listed on Annex I hereto (such other agreement on Annex I, collectively, the “Existing Agreements”).

WHEREAS, on the Petition Date (as defined herein), the Vertex Debtors intend to file a motion, in a form agreeable to Shell and with this Agreement as an exhibit (the “Motion”) seeking, among other things, entry of interim and final orders granting adequate protection to Shell and certain other parties in connection with Shell’s continued performance under the Existing Agreements and the Tripartite Agreement in the same or substantially similar form as existed prepetition.

WHEREAS, Vertex intends to continue to perform all of its obligations under the Existing Agreements, including the Tripartite Agreements, as set forth in the Intermediation Facility Order or as otherwise agreed to by the Parties.

NOW, THEREFORE, in consideration of the foregoing, the terms, covenants, and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Definitions.

“Agreement” is defined in the Preamble.

“Bankruptcy Code” is defined in the Recitals.

“Bankruptcy Court” is defined in the Recitals.

“Chapter 11 Cases” is defined in the Preamble.

“Crude Supply Agreement” means the Crude Oil & Hydrocarbon Feedstock Supply Agreement, Dated 1 April 2022, by and between Vertex Refining, STUSCO, and Macquarie.

“Cure Period” is defined in Section 4.

“DIP Loan Agreement” means the credit agreement for the Vertex Debtors’ debtor-in-possession financing facility (as may be amended, restated, amended and restated, supplemented, or otherwise modified from time to time).

“Event of Default” is defined in Section 5.

“Existing Agreements” is defined in the Recitals.

“Final Order” means the final Intermediation Facility Order.

“Interim Order” means the interim Intermediation Facility Order.

“Intermediation Facility” means that certain Supply and Offtake Agreement, dated April 1, 2022, by and between Vertex Refining and the Intermediation Counterparty, as may be amended from time to time in accordance with the terms thereof, including as amended and restated in connection with the Chapter 11 Cases.

“Intermediation Counterparty” means Macquarie Energy North America Trading Inc., as a party to the Intermediation Facility.

“Intermediation Facility Order” means each of the interim and final orders authorizing the Vertex Debtors to, among other things, enter into and continue performance under the Intermediation Facility on a postpetition basis and provide senior liens and priority status to the Intermediation Counterparty.

“Parties” is defined in the Preamble.

“Petition Date” means the date any of the Vertex Debtors commence Chapter 11 Cases.

“Safe Harbor Provisions” is defined in Section 2.

“Shell” is defined in the Preamble.

“STUSCO” is defined in the Preamble.

“Termination Rights” means any right to terminate, liquidate, accelerate, suspend performance under or disclaim the Existing Agreements, or any trades or transactions thereunder, as a result of, or relating to, the Chapter 11 Cases or any cross-default provisions, cross acceleration provisions, adequate assurance rights, or ratings triggers set forth in the applicable Existing Agreement.

“Termination Rights Remedies” is defined in Section 4.

“Tripartite Agreements” means, collectively, (a) the Agreement in Relation to the Crude Oil & Hydrocarbon Feedstock Supply Agreement, Dated 1 April 2022, by and between Vertex Refining, STUSCO, and Macquarie, (b) the Agreement in Relation to the Jet Fuel Rack Offtake Agreement Dated 1 April 2022, dated as of April 1, 2022, by and between Vertex Refining

Alabama LLC, STUSCO, and Macquarie, (c) the Agreement in Relation to the Gasoline and USLD Offtake Agreement, dated 1 April 2022, and (d) the Convenience Exchange Agreement Dated 1 April 2022, dated as of April 1, 2022, by and between Vertex Refining Alabama LLC, Equilon Enterprises LLC, dba Shell Oil Products US, and Macquarie.

“Vertex” is defined in the Preamble.

“Vertex Debtors” is defined in the Recitals.

“Vertex Refining” is defined in the Preamble.

“Vessel Arrangements” means, collectively, (a) that certain letter agreement, dated as of February 9, 2023, by and between STUSCO and Vertex Refining, relating to the “ATB Philadelphia” vessel, (b) that certain letter agreement, dated as of March 4, 2024, by and between STUSCO and Vertex Refining, relating to the Venture Oil & Gas, Inc leases; (c) that certain letter agreement, dated as of May 9, 2024, by and between STUSCO and Vertex Refining, relating to the existing Tellus Operating leases, (d) that certain letter agreement, dated as of May 9, 2024, by and between STUSCO and Vertex Refining, relating to the new Tellus Operating leases, (e) that certain letter agreement, dated as of June 11, 2024, by and between STUSCO and Vertex Refining, relating to the Australis+ Oil & Gas, Inc leases, and (f) that certain letter agreement, dated as of August 16, 2024, by and between STUSCO and Vertex Refining, relating to the Australis+ Oil & Gas, Inc leases.

SECTION 1. Agreement not to Exercise Termination Rights. The Parties acknowledge that the Existing Agreements are, and continue to be contracts within the meaning of, and entitled to the protections provided under sections 556, 560, and/or 561 of the Bankruptcy Code (the “Safe Harbor Provisions”) and reserve their respective rights to argue the same regarding the Tripartite Agreements. Vertex expressly acknowledges and agrees that the Safe Harbor Provisions permit, with respect to a debtor under the protection of the Bankruptcy Code, a non-debtor counterparty to exercise rights and remedies that would otherwise be prohibited by the automatic stay imposed by section 362 of the Bankruptcy Code or invalid *ipso facto* clauses pursuant to section 365 of the Bankruptcy Code. However, pursuant to the terms of this Agreement, Shell agrees to continue performing under the Existing Agreements and the Tripartite Agreements and to refrain from exercising any Termination Rights so long as no Event of Default (as defined herein) has occurred. For the avoidance of doubt, nothing herein is intended to limit or restrict Shell from exercising its remedies as set forth in the Existing Agreements on account of a postpetition default by Vertex under the applicable Existing Agreement, except as modified by this Agreement or the Intermediation Facility Order, in each case, with respect to the Termination Rights. Furthermore, Vertex agrees that any existing option or election rights exercised by Vertex in its sole discretion (such as an election to take or not to take an assignment and assumption of rights of another party, elections of volumes, terms, or similar elections) under the Existing Agreements and/or Tripartite Agreements that were made, or as in place, as of the Petition Date will remain in effect (absent an Event of Default as defined herein) during the term of this Agreement (unless agreed to by Shell). For the avoidance of doubt, the Parties shall be permitted to exercise options or election rights with respect to postpetition transactions (including with respect to volume nominations) as set forth in the Existing Agreements. Further, the Parties acknowledge and agree that Shell’s expectation in executing this Agreement is that Vertex and the Intermediation Counterparty will maintain the

same terms, elections and options applicable under the Tripartite Agreements as of the Petition Date during the term of this Agreement, and any change in such terms, options and elections (unless agreed to by Shell) may increase the risks and uncertainties to Shell.

The Parties further acknowledge and agree that to the extent this Agreement is terminated by Shell due to an Event of Default hereunder, Vertex agrees that it will not argue that the Existing Agreements are not subject to the Safe Harbor Provisions.

SECTION 2. **No Performance Assurance.** So long as Vertex complies with the terms of this Agreement and the Intermediation Facility Order, Shell will not impose more restrictive conditions or terms (including, without limitation, any request for additional collateral, credit support or other type of performance assurance, or any guarantees, beyond what Vertex has agreed, provided or posted pursuant to any of the Existing Agreements or any of the Tripartite Agreements, in each case, as of the date hereof).

SECTION 3. **Vertex Obligations.** In the event of filing of the Chapter 11 Cases, on the Petition Date, the Vertex Debtors agree to file the Motion seeking to limit the risks and uncertainties that may arise with respect to the Existing Agreements and the Tripartite Agreements under the Bankruptcy Code and create an environment conducive to continuation of the business between the Parties. The Motion, shall request, among other things, the following provisions and relief with respect to Shell:

(a) the Vertex Debtors will make all payments when due and in the ordinary course (other than termination payments for which Shell may file any necessary claims, as appropriate) as may be required under the Existing Agreements and the Tripartite Agreements (unless expressly amended pursuant to this Agreement or otherwise agreed to in writing by the Parties) when due in the ordinary course;

(b) all postpetition performance and payment obligations under the Existing Agreements and the Tripartite Agreements will be conducted pursuant to the same terms, conditions, elections and options applicable as of the Petition Date and paid at the prices specified in the Existing Agreements and the Tripartite Agreements;

(c) Shell shall receive superpriority administrative claim status pursuant to §364(c)(1) of the Bankruptcy Code for amounts owed by the applicable Vertex Debtors to Shell on account of postpetition transactions under the Existing Agreements and the Tripartite Agreements (including, if applicable and subject to the terms thereof, any actual reasonable and documented costs incurred postpetition by Shell for any accepted postpetition mandates or postpetition changes in prepetition elections under the Existing Agreements or the Tripartite Agreements by the applicable Vertex Debtors subject to Shell's duty to mitigate any such costs) subject only to superpriority administrative claims granted in respect of any debtor in possession financing facility, continuation of the Intermediation Facility on a postpetition basis, and to any carve-outs specified in connection therewith, including, for the avoidance of doubt, the professional fee carve-out;

(d) to the extent the minimum liquidity compliance requirement under the DIP Loan Agreement is changed, the applicable Vertex Debtors shall provide Shell with notice of such

change within 24 hours of such change being approved by the lenders under the DIP Loan Agreement;

(e) the Vertex Debtors will comply with the following milestones as set forth in the Intermediation Facility Order, subject to the extension or waiver of such milestones by Macquarie; *provided* that Vertex will use its best efforts to provide Shell within forty-eight hours written notice of any extension or waiver of such milestones:

- (i) No later than three (3) days after the Petition Date, subject to Bankruptcy Court availability, the Bankruptcy Court shall have entered the Interim Order.
- (ii) No later than thirty (30) days after the Petition Date, subject to Bankruptcy Court availability, the Bankruptcy Court shall have entered the Final Order.
- (iii) No later than one hundred and fifteen (115) days after the Petition Date, the Vertex Debtors shall have consummated a sale under section 363 of the Bankruptcy Code or confirmed a chapter 11 plan (the “Plan”); and

(f) The Vertex Debtors agree to pay the reasonable and documented fees and out-of-pocket expenses of Shell’s primary legal counsel incurred in connection with or enforcement of this Agreement in the Chapter 11 Cases.

The Parties acknowledge and agree that: (i) Shell will be provided with a draft of the Motion and the proposed Interim Order prior to effective execution of this Agreement (the “Final Motion and Order”), and (ii) the Motion and proposed Interim Order filed by the Vertex Debtors in the Chapter 11 Cases shall be substantially in the form of the Final Motion and entered Interim Order.

SECTION 4. Events of Default. Subject to the entry of an order by the Bankruptcy Court, Shell may exercise its Termination Rights (as defined herein) under the applicable Existing Agreements and the Tripartite Agreements, and is only required to perform as provided by the same, only upon the occurrence of any of the events set forth below (each, an “Event of Default”) which Vertex or the Vertex Debtors, as applicable, fail to cure within 5 business days after receiving written notice thereof from Shell (“Cure Period”); *provided* that after the expiration of such notice and Cure Period, and pending entry of an order by the Bankruptcy Court finding that an Event of Default has occurred, Shell has the right to suspend any deliveries or performance and/or declare an event of default under the Existing Agreements or the Tripartite Agreements to Vertex and/or the applicable Vertex Debtors and the Intermediation Counterparty (the “Termination Rights Remedies”):

(a) Vertex and/or the Vertex Debtors or the Intermediation Counterparty, if applicable, shall default in the payment when due of any amounts owing to Shell under the Existing Agreements or the Tripartite Agreements, as applicable, arising after the Petition Date;

(b) any of the Vertex Debtors’ Chapter 11 Cases are converted to a case under Chapter 7 of the Bankruptcy Code or any Vertex Debtor files a motion or other pleading seeking the conversion of any of the Chapter 11 Cases;

(c) the Bankruptcy Court enters an order approving the rejection of an Existing Agreement, a Vessel Arrangement, or any or all of the Tripartite Agreements, in which case such Event of Default shall immediately apply to the applicable Existing Agreement, and/or a corollary Tripartite Agreement, and any such rejected agreement shall, upon entry of an order by the Bankruptcy Court, be subject to immediate termination without further Cure Period as herein waived by the applicable Vertex Debtor;

(d) the Tripartite Agreements cease to be in full force and effect and/or the Intermediation Counterparty fails to make a positive election under same;

(e) the Intermediation Facility Order shall cease to be in full force and effect and/or is materially altered or breached;

(f) the Motion and Intermediation Facility Order filed by the Vertex Debtors in the Bankruptcy Court is not in substantially the same form as the Final Motion and Order;

(g) the Interim Order approving this Agreement is not entered within 3 days of the Petition Date;

(h) the Final Order approving this Agreement is not entered within 30 days of the Petition Date;

(i) Vertex asserts the invalidity or unenforceability of the Existing Agreements or files a motion or other pleading with the Bankruptcy Court asserting that the Existing Agreements are not forward contracts;

(j) Vertex files a motion seeking approval of a sale of Vertex's refinery in Mobile, Alabama, which sale would not result in Vertex's obligations under this Agreement being performed in full;

(k) Vertex fails to perform in any material respect any of its other obligations under a Tripartite Agreement, Vessel Arrangements, or an Existing Agreement (except as modified by this Agreement), including but not limited to, acting in good faith with Shell;

(l) Vertex or the Intermediation Counterparty attempts to terminate, reject or make an election or enforce an option under the Tripartite Agreements, Vessel Arrangements or the Existing Agreements that is contrary to what was in effect as of the Petition Date except as otherwise agreed to by the Parties;

(m) Vertex Debtors fail to timely deliver a 13-week cashflow forecast prior to November 25, 2024 as required by the Intermediation Facility Order.

(n) the Vertex Debtors submit a 13-week cashflow forecast pursuant to the DIP Loan Agreement that fails to project compliance with the minimum liquidity covenant thereunder through the anticipated effective date of the Chapter 11 Cases. For these purposes undrawn amounts under DIP Facility will be included as liquidity;

(o) an event of default, potential event of default, or termination event by Vertex has occurred and is continuing under the Intermediation Facility or the Crude Supply Agreement (except, for the avoidance of doubt, in connection or arising out of a chapter 11 filing by the Vertex Debtors); or

(p) an early termination date has been designated under the Intermediation Facility or the Crude Supply Agreement is no longer in full force and effect (except, for the avoidance of doubt, in connection or arising out of a chapter 11 filing by the Vertex Debtors).

For the avoidance of doubt, the Parties acknowledge and agree that: (i) the Termination Rights Remedies specifically relate to Shell's ability to declare an event of default or exercise its remedies under the Existing Agreements or Tripartite Agreements arising out of or relating to the Chapter 11 Cases and (ii) except as modified by this Agreement, Shell's rights, remedies and its ability to declare events of default under the Existing Agreements or the Tripartite Agreements unrelated to the Chapter 11 Cases are in addition to, and not in lieu of, the Termination Rights Remedies.

SECTION 5. Governing Law; Submission to Jurisdiction and Venue. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO RULES CONCERNING CONFLICTS OF LAWS. THE PARTIES SUBMIT TO THE JURISDICTION OF THE BANKRUPTCY COURT, WHICH SHALL HEAR MATTERS REGARDING THE INTERPRETATION OR ENFORCEMENT OF THIS AGREEMENT. EACH OF THE PARTIES (ON ITS OWN BEHALF AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ON BEHALF OF ITS EQUITY HOLDERS) IRREVOCABLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) RELATED TO OR ARISING OUT OF THIS AGREEMENT.

SECTION 6. Construction. This Agreement and all other agreements and documents executed and/or delivered in connection herewith have been prepared through the joint efforts of all of the Parties. Neither the provisions of this Agreement nor any such other agreements and documents nor any alleged ambiguity therein shall be interpreted or resolved against any Party on the ground that such Party or its counsel drafted this Agreement or such other agreements and documents, or based on any other rule of strict construction. Each of the Parties hereto represents and declares that such Party has carefully read this Agreement and all other agreements and documents executed in connection therewith, and that such Party knows the contents thereof and signs the same freely and voluntarily. The Parties acknowledge that they have been represented by legal counsel of their own choosing in negotiations for and preparation of this Agreement and all other agreements and documents executed in connection herewith and that each of them has read the same and had their contents fully explained by such counsel and is fully aware of their contents and legal effect. If any matter is left to the decision, right, requirement, request, determination, judgment, opinion, approval, consent, waiver, satisfaction, acceptance, agreement, option, or discretion of Shell or its employees, counsel, or agents, such action shall be deemed to be exercisable by Shell in its sole and absolute discretion and according to standards established in its sole and absolute discretion. Without limiting the generality of the foregoing, "option" and "discretion" shall be implied by the use of the words "if" and "may".

SECTION 7. **Counterparts.** This Agreement may be executed in any number of counterparts, all of which shall be deemed to be an original and such counterparts taken together shall constitute one agreement, and any of the Parties may execute this Agreement by signing any such counterpart. Delivery of an executed signature page to this Agreement by facsimile, e-mail or other electronic transmission shall be as effective as delivery of a manually signed counterpart of this Agreement.

SECTION 8. **Severability.** Each provision of this Agreement is intended to be severable and if any provision is illegal, invalid or unenforceable, such illegality, unenforceability or invalidity shall not affect the validity of this Agreement or the remaining provisions.

SECTION 9. **Further Assurances.** The Parties agree to execute and deliver such further and other documents and perform and cause to be performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part thereof, including all acts, deeds and agreements as may be necessary or desirable for the purpose of registering or filing notice of the terms of this Agreement.

SECTION 10. **Section Headings.** Section headings in this Agreement are included herein for convenience of reference only and shall not constitute part of this Agreement for any other purpose.

SECTION 11. **Notices.** Except as otherwise expressly required by the Existing Agreements, all notices, requests, and demands to or upon the Parties shall be deemed given if in writing and delivered by electronic mail, courier, or registered or certified mail (return receipt requested), to the following addresses (or at such other addresses as shall be specified by like notice):

if to Shell, to:

Shell Trading (US) Company
1000 Main Street, Level 12
Houston, Texas 77002-6336
Attention: Mario Mendez
Mario.Mendez@shell.com

and

Equilon Enterprises LLC, dba Shell Oil Products US
1000 Main Street, Level 12
Houston, Texas 77002-6336
Attention: Sarah Efland and Brad Courville
E-mail address: Sarah.efland@shell.com
brad.courville@shell.com

with copies to:

Shell USA, Inc.
Attention: Sara M. Keith (Legal Department)

Khurram Jiwani (Legal Department)
Adam MacLuckie (Legal Department)

E-mail address: Sara.Keith@shell.com
Khurram.Jiwani@shell.com
Adam.Macluckie@shell.com

if to Vertex, to:

Vertex Energy Inc.
1331 Gemini St., Suite 250
Houston, Texas 77058
Attention: James P. Gregory, Secretary & General Counsel
E-mail address: jgregory@ruddylaw.com

with copies to:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Attention: Brian Schartz, P.C.
Josephine Fina
Brian Nakhaimousa
E-mail address: bschartz@kirkland.com
josephine.fina@kirkland.com
brian.nakhaimousa@kirkland.com

and

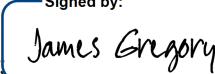
Kirkland & Ellis LLP
300 North LaSalle Street
Chicago, IL 60654
Attention: John Luze
Rachael Bentley
E-mail address: john.luze@kirkland.com
rachael.bentley@kirkland.com

SECTION 12. **Assignments; No Third Party Beneficiaries.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns; provided that Vertex shall not be entitled to assign any of their rights or remedies set forth in this Agreement without the prior written consent of Shell in its sole discretion. No person other than the Parties hereto shall have any rights hereunder or shall be entitled to rely on this Agreement and all third-party beneficiary rights are hereby expressly disclaimed.

[Signature pages follow]

IN WITNESS WHEREOF, this Agreement has been executed by the Parties as of the date first written above.

VERTEX REFINING ALABAMA, LLC
on behalf of itself and its debtor affiliates

Signed by:

By: _____
Name: James Gregory
Title: Secretary & General Counsel

SHELL TRADING (US) COMPANY

DocuSigned by:
Sean Spansel
By: Sean Spansel
Name: Sean Spansel
Title: Attorney in Fact

**EQUILON ENTERPRISES LLC D/B/A SHELL
OIL PRODUCTS US**

DocuSigned by:
Emma Lewis
By: Emma Lewis
Name: Emma Lewis
Title: President

Annex I

Existing Agreements

1. Crude Oil & Hydrocarbon Feedstock Supply Agreement, dated as of April 1, 2022, by and between Shell Trading (US) Company and Vertex Refining Alabama, LLC.
2. Vertex – Shell Products Offtake Agreement, dated as of April 1, 2022, by and between by and between Vertex Refining Alabama LLC and Equilon Enterprises LLC d/b/a Shell Oil Products US.
3. Sulfur Purchase and Sale Agreement, dated as of April 1, 2022, by and between Vertex Refining Alabama LLC and Equilon Enterprises LLC d/b/a Shell Oil Products US.
4. LPG Purchase and Sale Agreement, dated as of April 1, 2022, by and between Shell Trading (US) Company and Vertex Refining Alabama, LLC.
5. Vertex – Shell Jet Fuel Rack Offtake Agreement, dated as of April 1, 2022, by and between Shell Trading (US) Company and Vertex Refining Alabama, LLC.
6. Shell – Vertex General Terms and Conditions for the Sale and Purchase of Products, dated as of October 1, 2021, by and between Shell Trading (US) Company and Vertex Refining Alabama, LLC.
7. Convenience Exchange Agreement, dated as of April 1, 2022, by and between Equilon Enterprises LLC d/b/a Shell Oil Products US, Macquarie Energy North America Trading Inc., and Vertex Refining Alabama LLC.