

Freepoint changes dated August 2, 2021 to LEAP RINs Single Transaction Agreement V2.0:

Section 1.1 Definitions. Delete and replace subsection (d) Bankrupt as follows: Bankrupt means, with respect to a Party, that such Party: (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger) or files, or has filed against it, a petition in the bankruptcy court; (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; or (iii) makes or proposes a general assignment, arrangement or composition with or for the benefit of its creditors.

Insert new section 1.4 Inconsistency as follows:

“1.4 Inconsistency. In the event of any inconsistency between the provisions of any Confirmation and this Agreement, such Confirmation will prevail for the purposes of the relevant Transaction.”;

Insert new section 4.7 Offsetting Transactions as follows:

“4.7 Offsetting Transactions. If the Parties enter into one or more Transactions, which in conjunction with one or more other outstanding Transactions, constitute Offsetting Transactions, then all such Offsetting Transactions may, by agreement of the Parties, be netted so that: (a) the Party obligated to deliver the greater amount of the RINs will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Transactions, and (b) the Party owing the greater aggregate payment will pay the net difference owed between the Parties. Each single Transaction resulting under this Section 4.7 shall be deemed part of the single agreement between the Parties referenced in Section 1.3, and once such resulting Transaction occurs, outstanding obligations under the Offsetting Transactions that are satisfied by such offset shall terminate.”;

Insert new section 4.8 Bookouts as follows:

“4.8 Bookouts. To the extent that the Parties subsequently agree orally or in writing, either bilaterally or as part of a multiparty arrangement, to a bookout or other cancellation or modification of physical delivery obligations in respect of a Transaction (in each case, a “Bookout”) to take effect on a date (the “Bookout Effective Date”), (a) the delivery obligations under the relevant Transaction will be extinguished or modified (whether in whole or in part), and (b) any agreed payment will be due on the same day as the effective date of the Bookout. At any time prior to the agreed effective date of the Bookout, either Party may elect, at its option and upon notice to the other Party, to break the Bookout and thereby restore all original contract terms, including delivery and payment, all without liability to the other Party. Any such Bookout shall be a subsequent and independent transaction from the Transaction that is subject to the Bookout.”;

In Section 7.1 Event of Default, subsection (a), after the words “this Agreement”, insert the words “or otherwise”;

In Section Force Majeure, insert a new Section 9.5 as follows:

“If deliveries and acceptances in respect of a Transaction are suspended pursuant to this Section 9 for a period of thirty (30) days or more, such Transaction may be terminated at the option of the Party that is not claiming Force Majeure by giving written notice to the other Party. If a Party terminates a Transaction pursuant to this Section 9.5, neither Party shall have any further liability to the other Party hereunder with respect to such Transaction except for (a) any payment or indemnification obligations arising in respect of the performance of such Transaction prior to the date of termination.”;

Insert a new Section 19. Compliance as follows:

“19. Compliance. Notwithstanding any other provision in this agreement, neither party shall be required to take any action, or refrain from action, if in that party’s reasonable opinion such action, or refraining from such action, would be penalized under any Applicable Law, including (without limitation), anti-boycott and sanctions laws and/or trade restriction laws, anti-bribery and anti-money laundering legislation. “Applicable Law” shall include (without limitation) that of the United Nations, European Union, United States, England, Canada and Switzerland. Further, both parties agree to be bound and abide by both the letter and spirit of the US Foreign Corrupt Practices Act.”

**LEAP SINGLE TRADE AGREEMENT
FOR PURCHASING AND SELLING
RENEWABLE IDENTIFICATION NUMBERS
Version 2.0
(“LEAP RINs Single Trade Agreement”)**

DISCLAIMER

THE OBJECTIVE OF THIS AGREEMENT IS TO FACILITATE THE ORDERLY AND PROMOTE THE EFFICIENT TRADING OF RENEWABLE IDENTIFICATION NUMBERS. USE OF THIS AGREEMENT OR ANY PROVISION THEREOF IS COMPLETELY VOLUNTARY. USE OF THIS AGREEMENT IS NOT RESTRICTED AND LEAP HEREBY AUTHORIZES ANYONE TO USE THIS AGREEMENT OR ANY PROVISION THEREOF.

NONE OF LEAP, ANY LEAP MEMBER COMPANY OR ANY OF THEIR AGENTS, REPRESENTATIVES OR ATTORNEYS SHALL BE RESPONSIBLE FOR THE USE OF THIS AGREEMENT, OR ANY DAMAGES OR LOSSES RESULTING THEREFROM. BY PROVIDING THIS AGREEMENT, LEAP DOES NOT OFFER LEGAL ADVICE AND ALL USERS ARE URGED TO CONSULT THEIR OWN LEGAL COUNSEL AND TAX ADVISORS TO ENSURE THAT THIS AGREEMENT WILL ACHIEVE THEIR COMMERCIAL OBJECTIVES AND THEIR LEGAL INTERESTS ARE ADEQUATELY PROTECTED.

Effective as of _____

 (“Buyer”)
 [Company Name, Physical Address]

and

 (“Seller”)
 [Company Name, Physical Address]

WHEREAS Buyer desires to purchase and Seller desires to sell RINs as specified below and in accordance with the RFS Program, Applicable Law, and the terms and conditions of this LEAP RINs Single Trade Agreement (this “Agreement”).

In consideration of the mutual undertakings in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

COMMERCIAL TERMS:

Attention	[insert Name, Phone Number, Facsimile Number, Email Address and Physical Address]
Seller	[insert]
Seller’s EPA Company ID	[insert]
Buyer	[insert]
Buyer’s EPA Company ID	[insert]
Trade Date	[insert]
Type	Type: D code of [insert] RIN Generation Year: [insert] K-Code: 2 RIN Generator Company ID: [insert]
Transaction Volume	[insert]
Transfer Period	[insert]
Contract Price	[insert]
Payment Due Date	[insert]

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions.

- (a) “Affected Party” has the meaning specified in Section 17.1.
- (b) “Agreement” has the meaning set out in the preamble.

- (c) “Applicable Law” means any federal, national, state or local law, statute, regulation, code, ordinance, license, permit, compliance requirement, decision, order, writ, injunction, directive, judgment, policy, decree, including any judicial or administrative interpretations thereof, or any agreement, concession or arrangement with any Governmental Authority, applicable to either Party or either Party’s performance under this Agreement, and any amendments or modifications to the foregoing.
- (d) “Bankrupt” means, with respect to a Party, that such Party: (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger) or files a petition in the bankruptcy court; (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; or (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors.
- (e) “Bankruptcy Code” has the meaning specified in Section 8.5.
- (f) “Batch Number” is a serial number assigned to a batch of fuel under the RFS Program.
- (g) “B-RIN” has the meaning in Section 80.1401 of the RFS Program.
- (h) “Buyer” means the Party obligated to purchase RINs under this Agreement.
- (i) “Contract Price” means the price (expressed in U.S. Dollars) of a RIN as specified in the Commercial Terms table above.
- (j) “Contract Value” means the amount of the RINs remaining to be delivered or received under this Agreement multiplied by the Contract Price.
- (k) “Credit Support Document” means any and all agreements, written assurances, undertakings or guarantees documenting the terms of any Performance Assurance or other credit support provided in respect of this Agreement.
- (l) “Credit Support Provider” has the meaning specified in Section 7.1(d).
- (m) “D-Code” means the number designating the type of renewable fuel with which a given RIN is associated, as described in Section 80.1425(g) of the RFS Program.
- (n) “Defaulting Party” has the meaning specified in Section 8.1.
- (o) “Deficient Quantity” means the volume of Deficient RINs.
- (p) “Deficient RIN” has the meaning specified in Section 6.1.
- (q) “Early Termination Date” has the meaning specified in Section 8.1.
- (r) “Eastern Prevailing Time” means the time prevailing on the East Coast of the U.S., taking into account daylight savings time if it is in effect.
- (s) “EMTS” means the EPA Moderated Transaction System or any replacement or successor system designated by the EPA.
- (t) “EPA” means the U.S. Environmental Protection Agency or any successor having responsibility at law for the RFS Program.
- (u) “EPA Company ID” means the identification number issued to an entity under the RFS Program.
- (v) “Event of Default” has the meaning specified in Section 7.1.

- (w) “Facility” means a facility at which the batch of renewable fuel associated with the purchased RINs was produced or imported.
- (x) “Force Majeure” has the meaning specified in Section 9.1.
- (y) “Generator” means an entity that generates RINs under the RFS Program.
- (z) “Governmental Authority” means any U.S. 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 acting on behalf thereof.
- (aa) “Initiate” means the submission of a sell transaction in EMTS by Seller; provided, however, that a Seller shall not be deemed to have submitted any RINs where Seller cancels such sell transaction in EMTS before Buyer accepts it in EMTS.
- (bb) “Invoice” has the meaning set forth in Section 4.1.
- (cc) “K-Code” means the number designating whether or not a RIN is separated or assigned to a volume of fuel under the RFS Program.
- (dd) “LEAP” means the organization called Leadership for Energy Automated Processing.
- (ee) “LEAP RINs Single Trade Agreement” has the meaning specified in the cover sheet.
- (ff) “Market Value” means the amount of the RINs remaining to be delivered or received under this Agreement multiplied by the market price for an equivalent transaction for Qualified Replacement RINs as determined by the Performing Party in a commercially reasonable manner. To ascertain the Market Value, the Performing Party may consider, among other valuations, quotations from leading dealers in swap contracts or physical trading markets, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term, relevant Payment Due Dates, Transfer Dates, and Transaction Volume. A Party shall not be required to enter into a replacement transaction in order to determine the Market Value of a RIN. For the avoidance of doubt, any option pursuant to which one Party has the right to extend the term of this Agreement shall be considered in determining Contract Value and Market Values.
- (gg) “New York Banking Day” means a day (other than a Saturday or Sunday or banking holiday) on which commercial banks are authorized to open for business in the State of New York.
- (hh) “Original Index” has the meaning specified in Section 17.2.
- (ii) “Other Amounts” has the meaning specified in Section 8.3.
- (jj) “Party” means Buyer or Seller, individually, and “Parties” means Buyer and Seller, collectively.
- (kk) “Payment Due Date” means the payment due date specified in the Commercial Terms table above (or otherwise agreed in writing by the Parties), provided that if the Payment Due Date is not so specified or agreed, then it shall be five (5) New York Banking Days after the later of (A) the Transfer Date or (B) the payer’s receipt of the payee’s Invoice.
- (ll) “Pending RINs” has the meaning specified in Section 6.3.
- (mm) “Performance Assurance” has the meaning specified in Section 5.
- (nn) “Performing Party” has the meaning specified in Section 8.1.
- (oo) “Posting Party” has the meaning specified in Section 5.

- (pp) “Product Transfer Document” or “PTD” means such document(s) transferring title to the purchased RINs from Seller to Buyer as may be required pursuant to the RFS Program, 40 C.F.R. Part 80, Subpart M. Each Product Transfer Document shall include a corresponding Invoice Number.
- (qq) “Q-RIN” has the meaning in Section 80.1401 of the RFS Program.
- (rr) “Qualified Replacement RIN” means a valid RIN (i) of the same D-Code specified in the Commercial Terms table above; (ii) of the same RIN Generation Year specified in the Commercial Terms table above, or if RINs generated in the year specified are not reasonably available in the market or have expired, then the then current compliance year; (iii) if the RIN is a B-RIN or a Q-RIN, approved under the same Quality Assurance Plan as the Deficient RIN; and, in any event, (iv) acceptable to the Buyer. For example, if the Deficient RIN is a B-RIN, then the Qualified Replacement RIN must be a B-RIN, in addition to meeting the other requirements.
- (ss) “Reference Price” means a price that is determined by reference to a specified pricing source.
- (tt) “Required Authorizations” has the meaning set out in Section 3.1(a).
- (uu) “RFS Program” means Renewable Fuel Standard Program under the Energy Policy Act of 2005 and the Energy Independence and Security Act of 2007 and implementing regulations, including without limitation, 40 C.F.R. Part 80, Subpart M.
- (vv) “RIN” means a Renewable Identification Number as defined in the RFS Program.
- (ww) “RIN Generation Year” means the calendar year in which a RIN was generated under the RFS Program.
- (xx) “RIN Generator Company ID” means the EPA Company ID of the Generator of the relevant RINs.
- (yy) “RIN Generator Facility ID” means the EPA Facility registration ID of the Facility.
- (zz) “Secured Party” has the meaning specified in Section 5.
- (aaa) “Specified RIN” has the meaning specified in Section 2.4.
- (bbb) “Termination Payment” has the meaning specified in Section 8.2.
- (ccc) “Trade Date” means the date this Agreement is entered into between the Parties.
- (ddd) “Transaction” means this Agreement for the purchase and sale of RINs between Seller and Buyer.
- (eee) “Transaction Volume” means each volume of RINs specified in the Commercial Terms table above.
- (fff) “Transfer Date” means the date specified as such on the Product Transfer Document.
- (ggg) “Transfer Period” means, for a Transaction, the date range specified in the Commercial Terms table above during which Seller must Initiate the Transaction Volume.
- (hhh) “U.S.” means United States of America, and every reference to money, price, or Contract Price pertains to U.S. Dollars.
- (iii) “Verified RIN” has the meaning in Section 80.1401 of the RFS Program.

1.2 Interpretation. All headings in this Agreement are intended solely for convenience of reference and shall not affect the meaning of this Agreement. Capitalized terms used in this Agreement have the meanings ascribed to them herewith. Unless provided otherwise, when a Party’s response is required within a specific time period following receipt of notice or documentation, as applicable, the day of receipt shall be considered day zero. No presumption of

contract interpretation or construction shall apply to the advantage or disadvantage of the drafter of this Agreement. Any specific references to laws, statutes, or regulations will include any amendments thereto.

2. SALE AND PURCHASE OF RINS

2.1 General Obligations.

- (a) Seller shall Initiate each Transaction Volume within its respective Transfer Period, or the Deficient Quantity of Qualified Replacement RINs, if applicable, within the period specified in Section 6.1.
- (b) Buyer shall accept or deny those RINs in EMTS no later than five (5) New York Banking Days after Initiation.
- (c) All rights, title and interest in and to each RIN identified in this Agreement shall transfer from Seller to Buyer on the Transfer Date; provided, however, that if Buyer denies any RINs in EMTS pursuant to Section 2.3, such transfer shall be deemed void *ab initio* as to those denied RINs.
- (d) A failure by Buyer to accept or deny a RIN in EMTS by the fifth (5th) New York Banking Day after Initiation shall constitute a failure by Buyer to accept such RIN pursuant to Section 6.3, regardless of whether a basis existed for denial under Section 2.3.

2.2 Seller and Buyer shall adhere to the rules of the RFS Program and do all things necessary to Initiate and accept or deny RINs in EMTS within the time provided for in this Agreement. Seller and Buyer shall comply with Applicable Law in the performance of their respective obligations under this Agreement.

2.3 Buyer's Right to Deny RINs. Except as limited by Section 2.4, Buyer shall have the right, at its reasonable discretion, to deny any RINs in EMTS within five (5) New York Banking Days of Initiation. For the avoidance of doubt, and without limitation, Buyer shall be conclusively deemed to have reasonably exercised its discretion to deny where:

- (a) Buyer has blocked the Generator or Facility that produced the RINs or Qualified Replacement RINs in EMTS;
- (b) The RINs are invalid under Section 80.1431(a) of the RFS Program;
- (c) There is a reasonable prospect that the RINs will be invalid under Section 80.1431 of the RFS Program; or
- (d) Except where this Agreement is for Specified RINs, Buyer does not have or has not analyzed information sufficient to assess the invalidity of the RINs or the prospect of such RINs becoming invalid under Section 80.1431(a) of the RFS Program.

For the purposes of making its assessment it shall be reasonable for Buyer to disregard the benefit of any warranties given to it under this Agreement.

Without prejudice to the application of Section 9, it is not a reasonable exercise of discretion for Buyer to deny RINs solely on the basis of scarcity of supply of, and/or the market price of, RINs.

2.4 Specified RINs. Without prejudice to Buyer's rights to rely on the Seller's representation and warranties given under this Agreement, where this Agreement specifies a specific Generator, Facility or Batch Number (a "Specified RIN") and unless otherwise agreed by the Parties in writing, Seller shall Initiate such Specified RINs, and Buyer shall accept such Specified RINs; provided, however, that if the Specified RINs are invalid or there is a reasonable prospect that the RINs will be invalid under Section 80.1431(a) of the RFS Program before Buyer accepts them in EMTS, then Buyer shall have the right to deny such RINs in accordance with Section 2.3 above.

3. REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties by Both Parties.

Each Party represents and warrants to the other Party (which representations and warranties are deemed to be repeated by each Party on each Transfer Date) that:

- (a) It has the corporate and legal capacity, authority, and power, and all governmental and other licenses, authorizations, and other approvals (if any), necessary to execute and perform this Agreement (“Required Authorizations”), and states that such Required Authorizations shall remain in full force and effect until its obligations under this Agreement have been fulfilled;
- (b) It is a registered user of EMTS and has completed any registration required by the RFS Program;
- (c) This Agreement, and such Party’s performance, is in compliance with the RFS Program;
- (d) Its obligations pursuant to this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy or similar laws affecting creditors’ rights generally and subject, as to enforceability, to equitable principles of general application);
- (e) It is not relying upon any representations of the other Party other than those expressly set forth in this Agreement or any Credit Support Document;
- (f) It has entered into this Agreement as principal, has a full understanding of the material terms and risks of this Agreement, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or suitable for it based upon its own judgment and upon advice from such advisors as it has deemed necessary and it is capable of assuming those risks; and
- (g) The Parties intend that each Transaction Volume shall be physically settled.

3.2 Representations and Warranties by Seller.

Seller represents and warrants to Buyer that on each Transfer Date:

- (a) Seller shall convey good title to all RINs it sells hereunder, free and clear of any liens or security interests by any third party;
- (b) Each RIN Initiated or sold: (i) is valid under the RFS Program; (ii) is separated and unassigned; (iii) was generated from a Facility; (iv) has no basis for becoming invalid under Section 80.1431(a) of the RFS Program; and (v) shall not otherwise result in a violation of Section 80.1431(a)(2) of the RFS Program, nor shall the Seller engage in any future conduct that would result in such a violation; and
- (c) Each RIN Initiated or sold is of the D-Code, K-Code, and RIN Generation Year (other than where a later year is permitted in accordance with this Agreement) specified in the Commercial Terms table above and has not been retired.

3.3 OTHER THAN THE WARRANTIES SPECIFIED OR REFERRED TO IN SECTION 3 AND THE REQUIREMENT OF COMPLIANCE WITH APPLICABLE LAW CONTAINED IN SECTION 2.2, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, SELLER MAKES NO OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY THAT THE RINS WILL BE MERCHANTABLE OR FIT OR SUITABLE FOR A SPECIFIC PURPOSE, EVEN IF SUCH PURPOSE IS KNOWN TO SELLER, UNLESS OTHERWISE STATED IN WRITING. SELLER EXPRESSLY DISCLAIMS ANY WARRANTY AGAINST INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT AND IS NOT RESPONSIBLE FOR THEIR FUTURE USE OR MISUSE IN CONJUNCTION WITH COMPLIANCE WITH ANY OTHER GOVERNMENT REGULATIONS.

4. PAYMENTS AND INVOICES

- 4.1 Trade Documentation. Payee (generally Seller) shall promptly send payer (generally Buyer) (a) a written invoice (“Invoice”) showing sufficient detail from which to determine the Transaction Volume(s) to which it relates, the amount due and how such amount was calculated, and the Payment Due Date.
- 4.2 Making Payment. All payments shall be made in U.S. Dollars by the Payment Due Date via wire transfer in same day funds. Except as provided herein or as otherwise agreed by the Parties, payment shall be made without deduction, withholding or set-off.
- 4.3 Timing of Invoices. All Invoices under this Section 4 must be received by 12:00 noon Eastern Prevailing Time on a New York Banking Day in order to be considered received on such day, otherwise such Invoice shall be considered received on the following New York Banking Day.
- 4.4 Price Rounding. All U.S. dollar amounts shall be rounded to the nearest cent (and half cents shall be rounded upward).
- 4.5 Interest. Any amount payable hereunder, if not paid when due, and any amount payable as a refund as a result of an overpayment, shall bear interest from the Payment Due Date or the date of overpayment until the date payment is received at an annual rate (based upon the actual number of days in the relevant calendar year) equal to the rate of two (2) percentage points above the prime rate of interest effective for the Payment Due Date as published in the Wall Street Journal under “Money Rates”. If there is no publication on the Payment Due Date, then the most recent preceding day’s publication will be used. The relevant Party shall pay any interest due within three (3) New York Banking Days following receipt of the interest invoice.
- 4.6 Payment Dispute. If a Party, in good faith, disputes the accuracy of the amount due in respect of a Transaction Volume, such Party will timely pay such amount as it believes to be correct and provide written notice stating the reasons why the remaining disputed amount is incorrect, along with supporting documentation. Payment of the disputed amount shall not be required until the dispute is resolved. In the event that it is determined that the Party that is disputing the amount due must pay the disputed amount, then such Party shall pay interest in accordance with Section 4 from the originally scheduled Payment Due Date to, but excluding, the date paid.

5. CREDIT

- 5.1 If a Party (the “Secured Party”) has commercially reasonable grounds for insecurity with respect to the other Party’s (the “Posting Party”) creditworthiness or performance under this Agreement, the Secured Party may provide the Posting Party with written notice requesting an amount of Performance Assurance determined by the Secured Party in a commercially reasonable manner, and, upon such written notice, the Posting Party shall provide such Performance Assurance in accordance with this Section 5.1. “Performance Assurance” means:
- (a) prepayment, received by the Secured Party no later than two (2) New York Banking Days after such notice, and in any event prior to commencing the Delivery Period; or
 - (b) an irrevocable standby letter of credit in a form and term acceptable to the Secured Party and opened by a Qualified Institution no later than two (2) New York Banking Days after such notice. “Qualified Institution” means either:
 - (i) a commercial bank, unaffiliated with either Party, organized in a jurisdiction reasonably acceptable to the Secured Party, that has:
 - (A) at least an A- Long Term Rating Issued by Standard & Poor’s Ratings Group and at least an A3 Deposit Rating issued by Moody’s Investor Services, Inc.;
 - (B) total equity of at least ten billion U.S. dollars (\$10,000,000,000); and
 - (C) not exceeded any of Secured Party’s internal credit limits in place at the time of the establishment of the letter of credit; or
 - (ii) a bank acceptable to the Secured Party in its sole discretion; or

(c) other credit support acceptable to the Secured Party in its sole discretion.

If a letter of credit is provided pursuant to Section 5.1(b) above, it shall be established at the Posting Party's cost.

5.2 It is the Parties' intent that the right to request Performance Assurance set forth in Section 5.1 shall be a Party's exclusive right to request Performance Assurance in respect of a Transaction, and that any similar right available under the UCC or at law shall not be available.

6. REMEDIES FOR FAILURE TO INITIATE OR ACCEPT RINS, AND DEFICIENT RINS

6.1 In the event that:

- (a) Seller fails to Initiate all or part of a Transaction Volume during the applicable Transfer Period;
- (b) Buyer exercises its right to deny all or part of a Transaction Volume pursuant to Section 2.3;
- (c) Seller breaches any of the warranties contained in Section 3.1(b) or (c), Section 3.2, or any warranty specified as subject to this Section 6.1(c); or
- (d) Initiated RINs accepted by Buyer are or become invalid for purposes of the RFS Program,

(each such affected RIN a "Deficient RIN"), then, Seller shall, at Seller's sole cost and expense, Initiate Qualified Replacement RINs in a volume equal to the Deficient Quantity within (i) in the case of Sections 6.1(a) or (b), three (3) New York Banking Days after Seller receives notice from Buyer that the circumstances in Sections 6(a) or (b) apply, or (ii) in the case of Sections 6.1(c) or (d), fifteen (15) calendar days after Seller receives notice from Buyer that the circumstances in Sections 6(c) or (d) apply; provided, however, that if such day is not a New York Banking Day, then the deadline shall be the immediately preceding New York Banking Day.

For the avoidance of doubt, if Deficient RINs are Q-RINs or B-RINs, notwithstanding the Buyer's limited exemption under Section 80.1474 (e) or (f) of the RFS Program, the Seller shall Initiate Qualified Replacement RINs in a volume equal to the Deficient Quantity.

Notwithstanding the foregoing, if Seller transfers Deficient RINs to Buyer, then to the extent such Deficient RINs are not invalid RINs under the RFS Program, but deficient for other reasons, Buyer shall be required to transfer such Deficient RINs back to Seller within three (3) business days of having received the Qualified Replacement RINs from Seller.

6.2 Except where Section 6.3 applies, if:

- (a) Seller fails to timely or fully comply with its obligation to Initiate contained in Section 6.1; or
- (b) at the time the circumstances in Sections 6.1(b), (c) or (d) occur and less than ten (10) New York Banking Days remain before the annual RFS compliance deadline given in 40 CFR §80.1451 of the year that is two (2) calendar years after the year the originally Initiated RINs were generated,

then Seller shall, at Buyer's election by notice either (i) Initiate Qualified Replacement RINs in a volume equal to the Deficient Quantity in accordance with Section 6.1 above, or (ii) pay Buyer within five (5) New York Banking Days of receipt of Buyer's Invoice, unless otherwise mutually agreed between the Parties, the positive difference, if any, between (a) Market Value and (b) Contract Value, with such sum increased by any amount already paid by Buyer to Seller on account of the Deficient RINs.

For purposes of Section 6.2, (i) the phrase "the amount of the RINs remaining to be delivered or received under this Agreement" as used in the defined terms "Market Value" and "Contract Value" shall refer to and mean the Deficient Quantity; and (ii) the Market Value shall be calculated on the New York Banking Day notified by Buyer that falls (i) where Section 6.2 (a) applies, no sooner than the last day for performance of Seller's obligations under Section 6.1 applies and, (ii) where Section 6.2(a) or 6.2(b) applies, no later than three (3) New York Banking Days after the date Buyer gives notice of its election.

- 6.3 In the event that Buyer fails to accept or deny all or part of a Transaction Volume or Qualified Replacement RINs in EMTS, as contemplated under Section 2, Seller shall provide written notice of such failure to Buyer. If Buyer fails to accept any portion of those RINs (the “Pending RINs”) in EMTS within one (1) New York Banking Day of receiving such notice, then (a) Seller may cancel one or more of the Pending RINs in EMTS, and Seller’s obligation to sell and deliver and Buyer’s obligation to purchase and receive shall be reduced to the extent Seller cancels such Pending RINs or such Pending RINs expire in EMTS, and (b), regardless of whether Seller cancels, Buyer shall pay Seller the sum of (i) the positive difference, if any, between the Contract Price less the market price, multiplied by the volume of all Pending RINs (on all such RINs whether or not ultimately accepted), and (ii) the purchase price for any of such RINs ultimately accepted by Buyer. For purposes of this Section 6.3, market price shall be determined by Seller in a commercially reasonable manner with the date of determination as follows: (x) in the case of cancellation, as of the date of cancellation; (y) in the case of expiration, as of the date of expiration; and (z) in the case of acceptance, as of the date of acceptance.
- 6.4 In the event the provisions of this Section 6 are invoked, Seller and Buyer agree to work together in good faith to pursue an efficient, commercial and practical resolution consistent with the foregoing options (or any combination thereof) in order to cure any default with respect to any Deficient RINs, provided, however, the replacement RINs must be Qualified Replacement RINs unless otherwise mutually agreed.
- 6.5 Seller shall issue a PTD accurately describing the Qualified Replacement RIN. Buyer and Seller shall otherwise be subject to the general obligations set forth in Section 2.1.
- 6.6 Section 6.1(b), (c), (d) and, for the avoidance of doubt, Section 2.3 shall apply equally to any Qualified Replacement RINs.
- 6.7 Except in respect of a failure to pay any amount due under Section 6.2 or Section 6.3, the remedies set out in this Section 6 are exclusive remedies for the occurrence of the events described in Section 6.

7. EVENTS OF DEFAULT

- 7.1 An “Event of Default” shall mean the occurrence with respect to a Party of one of the following events:
- (a) Failure to Pay. A Party fails to make payment of any amount due when required under this Agreement, within two (2) New York Banking Days following receipt of a written notice of such failure from the other Party.
 - (b) Failure to Provide Performance Assurance. A Party fails to provide acceptable Performance Assurance support as requested by the Secured Party pursuant to Section 5 and in accordance with the period for performance specified in Section 5.
 - (c) Breach of Agreement. Except for any breach or event described in Section 6.1(a) through (d) (the exclusive remedies for which are specified in Section 6.2) or Section 6.3, and except for any event described in Section 7.1(a) and (b) above, a Party fails to perform or repudiates any material obligation to the other Party under this Agreement or breaches any representation, covenant or warranty in any material respect under this Agreement and, in each case, if capable of being cured, is not cured to the satisfaction of the other Party in its sole discretion, within two (2) New York Banking Days following receipt of written notice to such Party that corrective action is needed.
 - (d) Credit Support Failure. A Party’s guarantor or other provider of credit support for such Party, in addition to any entity specified as such, (a “Credit Support Provider” with respect to the Party), if any, (i) fails to satisfy, perform or comply with any agreement or obligation to be complied with or performed by it in accordance with the Credit Support Document and such failure continues after any applicable grace or notice period, (ii) makes any representation or warranty that proves to be incorrect or misleading in any material respect when made in connection with such Performance Assurance and/or Credit Support Document, or (iii) repudiates, disclaims, disaffirms or rejects, in whole or part, any obligation under, or challenges the validity of, its Performance Assurance and/or Credit Support Document.
 - (e) Bankruptcy. A Party or its Credit Support Provider, if any, is or becomes Bankrupt.

8. TERMINATION AND LIQUIDATION

8.1 Notwithstanding any other provision of this Agreement or the existence of any Performance Assurance, if at any time an Event of Default has occurred and is continuing with respect to a Party (such Party, the “Defaulting Party”), the other Party (the “Performing Party”) may, in its sole discretion, designate a date (not earlier than the date of such notice and not later than twenty (20) days after the date of such notice (an “Early Termination Date”)) on which to terminate, liquidate and accelerate this Agreement and all other outstanding transactions and calculate a Termination Payment (as defined below) in the manner set forth in Section 8.2 and Section 8.3. To the extent that, in the reasonable opinion of the Performing Party, this Agreement or certain transactions may not be liquidated and terminated under Applicable Law on the Early Termination Date, this Agreement and such transactions shall be terminated as soon thereafter as is reasonably practicable, in which case the actual termination date for this Agreement and such transactions will be the Early Termination Date in respect thereof for purposes of Section 8.2.

8.2 On or as soon as reasonably practicable following the Early Termination Date, the Performing Party shall determine the final amount payable between the Parties under this Agreement as provided in this Section 8.2 (the “Termination Payment”) and shall provide notice of the Termination Payment to the Defaulting Party. The Performing Party shall calculate the Termination Payment by (a) valuing each RIN at its Market Value as reasonably determined by the Performing Party as of the Early Termination Date and then determining the amount by which such then prevailing Market Value differs from the Contract Value (it being understood that (i) in the event the prevailing Market Value of a RIN exceeds the Contract Value, the difference in value shall be due from Seller to Buyer, and (ii) in the event that the prevailing Market Value of a RIN is less than the Contract Value, the difference in value shall be due from Buyer to Seller), (b) determining any other damages, costs or expenses incurred by the Performing Party as a result of the early termination of this Agreement and such transactions (without duplication and subject always to Section 12.1), (c) determining any other amounts payable from one Party to the other Party under this Agreement (including amounts due in respect of RINs Initiated and accepted hereunder) and (d) netting or aggregating the foregoing amounts into a single liquidated amount. If the Defaulting Party owes the Termination Payment to the Performing Party, then, within one (1) New York Banking Day of the date upon which the Performing Party’s notice of the Termination Payment is effective, the Defaulting Party shall pay the Termination Payment, less the value of any Performance Assurance or other collateral or credit support held by the Performing Party with respect to which the Performing Party has notified the Defaulting Party in writing of its election to exercise its setoff rights under Section 8.3. If the Performing Party owes the Termination Payment to the Defaulting Party, then, within one (1) New York Banking Day of the date upon which the Performing Party’s notice of the Termination Payment is effective, the Performing Party shall pay the Termination Payment, less the value of any Performance Assurance or other collateral or credit support held and not returned by the Defaulting Party.

8.3 Closeout Setoff.

If the Performing Party elects to designate an Early Termination Date under Section 8.1, and the Termination Payment is payable to the Defaulting Party, the Performing Party shall be entitled, at its option and in its discretion (and without prior notice to the Defaulting Party), to setoff against such Termination Payment any amounts (“Other Amounts”) payable by the Defaulting Party to the Performing Party under any other agreements, instruments or undertakings between the Defaulting Party and the Performing Party (whether or not arising under this Agreement, matured or contingent and irrespective of the currency, place of payment or place of booking of the obligation). To the extent that any Other Amounts are so setoff, those Other Amounts will be discharged promptly and in all respects. The Performing Party will give notice to the other Party of any setoff effected under this Section 8.3. For this purpose, either the Termination Payment or the Other Amounts (or the relevant portion of such amounts) may be converted by the Performing Party into the currency in which the other is denominated at the rate of exchange at which the Performing Party would be able, in good faith and using commercially reasonable procedures, to purchase the relevant amount of such currency.

8.4 Grant of Security Interest/Remedies. To the extent a Party requires Performance Assurance and/or has received a Credit Support Document under this Agreement, then the Posting Party hereby grants to the Secured Party a present and continuing security interest in same (excluding, for the avoidance of doubt, a letter of credit or a guaranty). Upon or at any time after the designation or deemed designation of an Early Termination Date, the Defaulting Party must return all Performance Assurance transferred to it pursuant to this Agreement and all proceeds resulting therefrom or the liquidation thereof.

8.5 Bankruptcy Acknowledgements. The Parties intend that this Agreement shall constitute a “forward contract” under § 101(25) and a swap agreement under § 101(53b) of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq., as amended from time to time (the “Bankruptcy Code”), and that this Agreement constitutes a “master netting agreement” under § 101(38a) of the Bankruptcy Code, and that the rights of the Performing Party in Section 8 include the rights referred to in § 561(a) of the Bankruptcy Code. Further, the Parties intend that each Party shall be a “forward contract merchant” under § 101(26) and a “master netting agreement participant” under § 101(38B), for purposes of the Bankruptcy Code.

9. FORCE MAJEURE

9.1 Subject to Section 9.2, a Party shall be excused from the performance of its obligations with respect this Agreement to the extent its performance of such obligations is prevented, in whole or in part, due to the occurrence of any event or circumstance, whether foreseeable or unforeseeable, that is reasonably beyond the control of such Party and which, by the exercise of due diligence, such Party could not have remedied, avoided or overcome (any such event, a “Force Majeure”), which may include, without limitation, compliance with Applicable Law; provided however, that Seller shall not be excused from performance where the RINs it Initiates or intends to Initiate are invalid for purposes of the RFS Program.

For purposes of this Agreement, the term “Force Majeure” expressly excludes (i) a failure of performance of any person other than the Parties, except to the extent that such failure was caused by an event that would otherwise satisfy the definition of a Force Majeure event as set forth in this Section 9, (ii) the loss of Buyer’s market or any market conditions for any RINs that are unfavorable for Buyer or Seller, (iii) the loss of Seller’s intended supply of RINs, (iv) the failure of Seller’s intended supplier of RINs to perform, (v) any failure by a Party to apply for, obtain or maintain any permit, license, approval or right of way necessary under Applicable Law for the performance of any obligation hereunder, and (vi) a Party’s inability to economically perform its obligations under this Agreement.

EMTS Unavailability. In the event that EMTS is disrupted or unavailable, the affected obligations of the Parties will be suspended (but not discharged) until EMTS is not disrupted and is available.

9.2 Notwithstanding the provisions of Section 9.1, nothing contained in this Agreement shall relieve a Party of its obligation to make payments when due with respect to performance prior to the occurrence of a Force Majeure event, including Buyer’s obligation to pay in full the purchase price or any other amounts due for the RINs actually Initiated and accepted hereunder.

9.3 In the event that a Party believes a Force Majeure event has occurred that will require it to invoke the provisions in this Section 9, such Party shall use commercially reasonable efforts to give prompt oral notice to the other Party followed by written notice within two (2) New York Banking Days following the occurrence of such event, of the underlying circumstances of the particular causes of Force Majeure, the expected duration thereof and the volume of the RINs affected. The Party claiming Force Majeure shall also use commercially reasonable efforts to give the other Party such notice of cessation of the Force Majeure event and the date when performance is expected to resume.

9.4 Notwithstanding anything to the contrary in this Agreement, (a) if an event or circumstance which would otherwise constitute or give rise to a Force Majeure event under this Section 9 also constitutes an Event of Default other than an Event of Default under Section 7.1(e), it will be treated as a Force Majeure event and not as an Event of Default; and (b) if an event or circumstance which would otherwise constitute or give rise to a Force Majeure event under this Section 9 also constitutes an Event of Default under Section 7.1(e), it will be treated as an Event of Default and not as a Force Majeure event.

10. GOVERNING LAW AND SETTLEMENT OF DISPUTES

10.1 This Agreement shall be governed by the laws of the State of New York without reference to its choice of law doctrine, but without prejudice to the provisions of § 5-1401 of the General Obligations Law of the State of New York. The Parties hereby submit to the exclusive jurisdiction of any federal court of competent jurisdiction, or, if any federal court declines to exercise or does not have jurisdiction, in any New York state court situated in New York City, Borough of Manhattan, and to service of process by certified mail delivered to the Party at its last designated address. Each Party waives, to the fullest extent permitted by Applicable Law, any right it may have to a trial by jury.

10.2 The Parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

11. TAXES

11.1 Tax Obligations Generally. Each Party shall be responsible for any taxes that may be imposed on it arising from the sale or purchase, respectively, of RINs pursuant to this Agreement.

12. LIMITATION OF LIABILITY

12.1 NO PARTY SHALL BE REQUIRED TO PAY OR BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES OR FOR LOST PROFITS OR ANY FINES OR PENALTIES ASSESSED BY ANY GOVERNMENTAL AUTHORITY INCLUDING, BUT NOT LIMITED TO, RFS PROGRAM FINES OR PENALTIES (WHETHER OR NOT ARISING FROM ITS NEGLIGENCE) TO ANY OTHER PARTY EXCEPT TO THE EXTENT THAT THE PAYMENTS REQUIRED TO BE MADE PURSUANT TO THIS AGREEMENT ARE DEEMED TO BE SUCH DAMAGES.

13. ASSIGNMENT

13.1 This Agreement shall not be assigned, in whole or in part, by either Party without the prior written consent of the other Party, such consent not to be unreasonably withheld. Any assignment in violation of this provision shall be void and of no legal effect. Subject to this Section 13, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

14. NON-WAIVER

14.1 No waiver by either Party of any breach by the other Party of any of the terms of this Agreement shall be construed as a waiver of any succeeding breach or term.

15. ENTIRE AGREEMENT; AMENDMENTS

15.1 No statement or agreement, oral or written, made prior to the signing of this Agreement, shall vary or modify the written terms hereof. Any amendments to this Agreement shall be in writing and signed by both Parties.

16. NOTICES

16.1 Subject to Section 4.3, all notices and other communications under this Agreement shall be deemed given on the date of the addressee's receipt thereof and shall be given only in writing by letter, facsimile or electronic data transmission. Provided that if transmitted by facsimile or electronic data transmission and it is received after close of business on a New York Banking Day, it shall be deemed to have been received on the following New York Banking Day.

17. NEW OR CHANGED LAWS OR REGULATIONS

17.1 Material Adverse Effect. The following provision shall apply:

If at any time after this Agreement is entered into any new Applicable Laws are enacted or existing Applicable Laws are amended, which individually or collectively could reasonably be expected to have a material adverse effect upon the rights and obligations of a Party (the "Affected Party") as a whole and which do not constitute a Force Majeure event, then the Affected Party may notify the other Party that it desires in good faith to renegotiate the Contract Price or other material terms or conditions so affected in order to appropriately pass through or otherwise address the effects of the new or changed Applicable Laws. Such notice shall state the new or changed Applicable Law upon which the Party's renegotiation request is based and the terms upon which it is willing to continue to perform this Agreement with respect to any RINs not yet Initiated or accepted. Without prejudice to the generality of the foregoing, the Parties shall negotiate in good faith any price adjustments that may be warranted to account for any incremental costs involved in complying with a Governmental Authority's change in required RINs specifications subsequent to the Trade Date and prior to the Transfer Date.

- 17.2 If the Contract Price is based on an industry reference index (the “Original Index”) that ceases to be published or is not published for any period applicable to calculation of the Reference Price, the Parties shall in good faith (a) select an alternative index that reflects as nearly as possible the same information as published in the Original Index; or (b) negotiate an interim Reference Price until the Original Index recommences publishing or an alternative index can be selected by the Parties in good faith to replace the Original Index.
- 17.3 If the Parties do not agree upon new prices or terms satisfactory to both within thirty (30) days of (a) a Party’s request to initiate negotiations between the Parties pursuant to Section 17.1 or (b) the failure of an Original Index to publish as described in Section 17.2, as applicable, either Party shall have the right to terminate this Agreement, in which case each Party shall determine the Termination Payment that would be payable with respect to this Agreement as though it were the Performing Party in accordance with Section 8 above. The Termination Payment payable will be an amount equal to the sum of (i) one-half of the difference between the Termination Payments calculated by the two Parties, and (ii) the lesser of such two Termination Payments. Any RINs Initiated and accepted during the thirty (30) day period shall be sold and purchased at the Contract Price and on the terms set forth herein without any price adjustment in respect of the new or changed Applicable Law concerned.
18. MISCELLANEOUS
- 18.1 Severability. If any Governmental Authority of competent jurisdiction declares any provision of this Agreement unenforceable, such provision will not invalidate, void or make unenforceable any other provision of this Agreement. The remaining terms and conditions shall remain in full force and effect.
- 18.2 Recording of Conversations. Each Party consents to the recording of telephone conversations between the trading, marketing and other relevant personnel of the Parties in connection with this Agreement as long as the party performing the recording is doing so in compliance with Applicable Law.
- 18.3 Counterparts. This Agreement may be executed in counterpart, which, when so executed, shall be deemed to be an original.
- 18.4 Party Preparing this Agreement. The Party who has prepared this Agreement for execution warrants and undertakes to the other Party that no changes have been made to the standard form LEAP Single Trade Agreement for Purchasing and Selling Renewable Identification Numbers (Version 2.0, July 2016) published by LEAP on its website in July 2016, except any revisions specifically agreed in a schedule attached hereto.
- 18.5 Deemed Acceptance. If Buyer objects to any term(s) of this Agreement, it shall notify Seller in writing of such objection within five (5) New York Banking Days of Buyer’s receipt thereof, failing which Buyer shall be deemed to have accepted this Agreement, absent manifest error.