UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-Q

Quarterly report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
For the quarterly period ended March 31, 2021

Commission file number: **000-12627**

GLOBAL CLEAN ENERGY HOLDINGS, INC.

(Exact name of registrant as specified in its charter)

Delaware	**87-0407858**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification Number)
2790 Skypark Drive, Suite 105 Torrance, California	**90505**
(Address of principal executive offices)	(Zip Code)

(310) 641-4234
(Registrant's telephone number, including area code)

Securities registered under Section 12(b) of the Act:

Title of Each Class	Trading Symbol	Name of Each Exchange on Which Registered
N/A	N/A	N/A

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	☐	Accelerated filer	☐
Non-accelerated filer	☒	Smaller reporting company	☒
		Emerging growth company	☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act): Yes☐ No ☒

The number of shares of the issuer's Common Stock, par value $0.001 per share, outstanding as of May 17, 2021 was 38,765,194.

Part I. FINANCIAL INFORMATION

Item 1: Financial Statements

GLOBAL CLEAN ENERGY HOLDINGS, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS

ASSETS	**March 31, 2021 (Unaudited)**	**December 31, 2020 (Audited)**
CURRENT ASSETS		
Cash and cash equivalents	$ 3,119,063	$ 3,370,519
Accounts receivable	96,061	143,823
Restricted cash	11,855,532	12,943,222
Inventory	903,504	846,197
Investment in farming activities	745,843	404,258
Prepaid expenses and other current assets	4,639,774	5,027,294
Total Current Assets	21,359,777	22,735,313
RESTRICTED CASH, NET OF CURRENT PORTION	20,763,986	22,668,984
DEBT ISSUANCE COSTS	1,508,211	840,211
RIGHT-OF-USE ASSET	73,867	51,611
INTANGIBLE ASSETS, NET	4,125,482	4,180,746
LONG TERM DEPOSITS	586,812	628,382
PROPERTY, PLANT AND EQUIPMENT, NET	170,028,718	138,972,675

ADVANCES TO CONTRACTORS	16,000,000	16,000,000
TOTAL ASSETS	$ 234,446,853	$ 206,077,922
LIABILITIES AND STOCKHOLDERS' DEFICIT		
CURRENT LIABILITIES		
Accounts payable and accrued liabilities	$ 30,257,909	$ 22,597,951
Lease liabilities	74,911	52,653
Notes payable	3,436,499	4,198,113
Convertible notes payable	1,413,500	1,697,000
Total Current Liabilities	35,182,819	28,545,717
LONG-TERM LIABILITIES		
Mandatorily redeemable equity instruments of subsidiary	7,193,000	5,123,000
Long-term debt, net	17,353,088	16,155,138
Long-term debt, net (credit facility)	174,426,075	146,769,225
Asset retirement obligations, net of current portion	16,548,318	17,762,977
Environmental liabilities, net of current portion	20,120,764	20,455,938
TOTAL LIABILITIES	270,824,064	234,811,995
STOCKHOLDERS' DEFICIT		
Preferred stock - $0.001 par value; 50,000,000 shares authorized Series B, convertible; 13,000 shares issued and outstanding (aggregate liquidation preference of $1,300,000)	13	13
Common stock, $0.001 par value; 500,000,000 shares authorized; 37,438,668 and 35,850,089 shares issued and outstanding, respectively	374,386	358,499
Additional paid-in capital	37,702,003	37,139,854
Accumulated deficit	(74,453,613)	(66,232,439)
Total Stockholders' Deficit	(36,377,211)	(28,734,073)
TOTAL LIABILITIES AND STOCKHOLDERS' DEFICIT	$ 234,446,853	$ 206,077,922

The accompanying notes are an integral part of these financial statements

GLOBAL CLEAN ENERGY HOLDINGS, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)

	For the three months ended March 31	
	2021	**2020**
REVENUE		
Seed sales	94,645	—
Cost of Goods Sold	(85,276)	—
Gross Profit	9,369	—
OPERATING EXPENSES		
General and Administrative	3,714,962	309,084
Facilities expense	2,840,537	—
Depreciation expense	25,670	—
Amortization of intangible assets	89,030	61,307
Total Operating Expenses	6,670,199	370,391
OPERATING LOSS	(6,660,830)	(370,391)
OTHER INCOME (EXPENSE)		
Interest expense (net)	(710,162)	(179,948)
Other income	1,049	—
Gain in derecognition of derivative liabilities	—	512,363
Change in fair value of Class B Units	(851,231)	—
Change in fair value derivative and finance charges related to derivative liability	—	5,476,000
Total Other Income (Expense), net	(1,560,344)	5,808,415
NET INCOME/(LOSS)	(8,221,174)	5,438,024
BASIC NET INCOME/(LOSS) PER COMMON SHARE	(0.23)	0.15
DILUTED NET INCOME PER COMMON SHARE	(0.23)	0.08
BASIC WEIGHTED AVERAGE SHARES OUTSTANDING	36,096,794	35,183,117
DILUTED WEIGHTED-AVERAGE SHARES OUTSTANDING	36,096,794	64,077,486

The accompanying notes are an integral part of these financial statements

GLOBAL CLEAN ENERGY HOLDINGS, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY (DEFICIT)
(Unaudited)

Additional

	Series B		Common Stock		Paid in	Accumulated	
	Shares	Amount	Shares	Amount	Capital	Deficit	Total
Balance at December 31, 2019	**13,000**	**$ 13**	**34,402,944**	**$ 344,029**	**$ 31,259,365**	**$ (55,682,264)**	**$ (24,078,857)**
Share-based compensation from issuance of options and compensation-based warrants	—	—	—	—	25,614	—	25,614
Exercise of stock options	—	—	817,732	8,177	63,419	—	71,596
Net income for the quarter ended March 31, 2020	—	—	—	—	—	5,438,024	5,438,024
Balance at March 31, 2020	**13,000**	**$ 13**	**35,220,676**	**352,206**	**$ 31,348,398**	**$ (50,244,240)**	**$ (18,543,623)**

	Series B		Common Stock		Additional Paid in	Accumulated	
	Shares	Amount	Shares	Amount	Capital	Deficit	Total
Balance at December 31, 2020	**13,000**	**$ 13**	**35,850,089**	**$ 358,499**	**$ 37,139,854**	**$ (66,232,439)**	**$ (28,734,073)**
Share-based compensation from issuance of options and compensation-based warrants	—	—	—	—	102,000	—	102,000
Shares issued upon reverse split to avoid fractional shares	—	—	1,793	19	(19)	—	—
Conversion of note payable to shares	—	—	1,586,786	15,868	460,168	—	476,036
Net loss for the quarter ended March 31, 2021	—	—	—	—	—	(8,221,174)	(8,221,174)
Balance at March 31, 2021	**13,000**	**$ 13**	**37,438,668**	**$ 374,386**	**$ 37,702,003**	**$ (74,453,613)**	**$ (36,377,211)**

The accompanying notes are an integral part of these financial statements

GLOBAL CLEAN ENERGY HOLDINGS, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENT OF CASH FLOWS
(Unaudited)

	For the three months ended March 31,	
	2021	2020
Operating Activities:		
Net Income/(Loss)	$ (8,221,174)	$ 5,438,024
Adjustments to reconcile net loss to net cash used in operating activities:		
Share-based compensation	102,000	25,614
Depreciation and amortization	114,700	61,306
Accretion of asset retirement liabilities	245,000	91,372
Gain on settlement of liabilities	—	(512,363)
Change in fair value of derivative liability	—	(5,476,000)
Change in fair value of Class B Units	851,231	—
Amortization of debt discount	597,390	—
Changes in operating assets and liabilities:		
Accounts receivable	47,762	—
Inventories	(57,307)	—
Farming activities	(341,585)	—
Prepaid expenses	387,520	—
Deposits and other assets	41,570	—
Accounts payable and accrued expenses, interest and compensation	3,146,978	553,482
Asset retirement obligations	(775,248)	—
Environmental liabilities	(114,068)	—
Lease liabilities and assets	2	—
Other operating activities	—	259
Net Cash (Used in) Provided by Operating Activities	(3,975,229)	181,694
Investing Activities:		
Pre-acquisition costs and deposit on refinery acquisition	—	(582,634)
Intangible assets	(33,766)	—
Property, plant & equipment	(29,844,053)	—
Net Cash Used in Investing Activities	(29,877,819)	(582,634)
Financing Activities:		
Proceeds received from exercise of stock options	—	71,596
Payments on notes payable and long-term debt	(761,614)	—
New borrowings	600,560	—
Long-term debt (credit facility)	30,769,958	—
Net Cash Provided by Financing Activities	30,608,904	71,596
Net Change in Cash, Cash Equivalents and Restricted Cash	(3,244,144)	(329,344)
Cash, Cash Equivalents and Restricted Cash at Beginning of Period	38,982,725	457,331
Cash, Cash Equivalents and Restricted Cash at End of Period	$ 35,738,581	$ 127,987
Supplemental Disclosures of Cash Flow Information		
Cash Paid for Interest	$ 3,887,108	—
Cash Paid for Income Tax	—	—

Supplemental Noncash Investing and Financing Activities

During the quarter ended March 31, 2020, the Company converted a derivative liability of $19.3 million into a fixed payment obligation with a fair value of $18.8 million, and thereby recognized a gain on derecognition of the derivative liability of $0.5 million.

During the quarter ended March 31, 2021, the Company recognized $1.2 million in debt issuance costs related to Class B units of its subsidiary that were either issued or became issuable to the lender.

During the quarter ended March 31, 2021, the Company recorded debt issuance of $3.8 million in debt issuance costs related to accrued costs due to the creditors of its senior credit and mezzanine facilities in connection with the fees related to a loan amendment. Approximately $3.1 million of the debt issuance have been allocated to the senior credit facility and $0.7 have been allocated to the mezzanine facility.

During the quarter ended March 31, 2021, the Company issued 1,586,786 shares in connection with the conversion of a note payable and accrued interest of $0.5 million.

During the quarter ended March 31, 2021, the Company capitalized $5.0 million of interest in property, plant and equipment, of which $1.0 million related to in-kind interest that was added to the principal balance of the credit facility and $0.3 million related to amortization of the debt issuance costs.

The accompanying notes are an integral part of these consolidated financial statements

GLOBAL CLEAN ENERGY HOLDINGS, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)

NOTE A — ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES

Description of Business

Global Clean Energy Holdings, Inc., a Delaware corporation, and its wholly owned subsidiaries (collectively, the "Company", "we", "us" or "our") is a U.S.-based integrated agricultural-energy biofuels company that holds assets across feedstocks and plant genetics, agronomics, cultivation, and regulatory approvals, commercialization, and downstream biorefining and storage. The Company is focused on the development and refining of nonfood-based bio-feedstocks and has an investment in several proprietary varieties of *Camelina Sativa* ("Camelina"), a fast growing, low input and ultra-low-carbon intensity crop used as a feedstock for renewable fuels. The Company holds its Camelina assets (including all related intellectual property related rights and approvals) and operates its Camelina business through its subsidiary, Sustainable Oils Inc., a Delaware corporation.

In 2018 and 2019 the Company pursued the acquisition of a crude oil refinery in Bakersfield, California with the objective of retrofitting it to produce renewable diesel from Camelina and other non-food feedstocks. On May 7, 2020 the Company completed the acquisition of the targeted refinery (the "Bakersfield Biorefinery"). The Bakersfield Biorefinery is owned by Bakersfield Renewable Fuel, LLC, ("BKRF") an indirect subsidiary of Global Clean Energy Holdings, Inc. The retrofitting of the refinery commenced promptly after the acquisition. The engineering and construction of the project is expected to be completed in early 2022 based on our engineering, procurement and construction contract with a substantial completion date of January 22, 2022. After necessary start-up procedures and testing is complete, we expect production to be approximately 10,000 barrels per day (420,000 gallons per day). Although the Bakersfield Biorefinery will have a nameplate capacity of 15,000 barrels per day, we do not expect to produce more than 10,000 barrels per day for at least the first year of production. The Company has entered into both a product offtake agreement and a term purchase agreement with a major oil company for the purchase by the oil company of all, or substantially all, of the renewable diesel to be produced at the Bakersfield Biorefinery for the first five years of production. See Note B - Basis of Presentation and Liquidity and Note I - Subsequent Events which describes the offtake agreement in more detail.

Basis of Presentation

The accompanying condensed and consolidated balance sheet of the Company at December 31, 2020, has been derived from audited condensed and consolidated financial statements, but does not include all disclosures required by accounting principles generally accepted in the United States of America ("U.S. GAAP"). The accompanying unaudited condensed and consolidated financial statements as of March 31, 2021 and for the three months ended March 31, 2021 and 2020, have been prepared in accordance with U.S. GAAP for interim financial information and with the instructions to Form 10-Q and Article 8 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by U.S. GAAP for complete financial statements, and should be read in conjunction with the audited condensed and consolidated financial statements and related notes to the financial statements included in the Company's Annual Report on Form 10-K for the year ended December 31, 2020 as filed with the U.S. Securities and Exchange Commission (SEC). In the opinion of the Company's management, all material adjustments (consisting of normal recurring adjustments) considered necessary for a fair presentation have been made to the unaudited condensed and consolidated financial statements. The unaudited condensed and consolidated financial statements include all material adjustments (consisting of all normal accruals) necessary to make the condensed and consolidated financial statements not misleading as required by Regulation S-X Rule 10-01. Operating results for the three months ended March 31, 2021 are not necessarily indicative of the results that may be expected for the year ended December 31, 2021 or any future periods.

The accompanying condensed consolidated financial statements include the accounts of Global Clean Energy Holdings, Inc. and its subsidiaries. All intercompany accounts and transactions have been eliminated in consolidation.

GLOBAL CLEAN ENERGY HOLDINGS, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)

NOTE A — ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Per Share Information

On March 26, 2021, the Company effected a one-for-ten reverse stock split. All common stock and per share information (other than par value) contained in these financial statements and footnotes have been adjusted to reflect the foregoing reverse stock split. Prior to the reverse stock split the Company had 358,499,606 shares outstanding and immediately after the stock split the Company had 35,850,089 shares outstanding. The Company issued additional shares after the reverse stock split and the outstanding shares as of May 17, 2021 was 38,765,194.

Restricted Cash

In accordance with the Company's senior credit agreement (see Note E - Debt), the Company is required to advance the calculated interest expense on its borrowings at the time of such borrowings to the estimated commercial operational date of the Bakersfield Biorefinery. This interest is deposited into a designated account and the appropriate amount is paid to the lender at the end of each quarter. Additionally, the construction funds are deposited into its own designated account and deposited from that designated account into the Bakersfield Renewable Fuel, LLC account only upon approval by the lender to pay for specific construction, facility and related costs. These two accounts are restricted and not directly accessible by the Company for general use, although these funds are assets of the Company. The Company estimates how much of this cash is likely to be capitalized into the Bakersfield Biorefinery project in the form of a long-term asset, and classifies this amount as long-term. The Company makes this determination based on its budget, recent and near-term invoicing, and internal projections.

Cash and Cash Equivalents; Concentration of Credit Risk

The Company considers all highly liquid debt instruments maturing in three months or less to be cash equivalents. The Company maintains cash and cash equivalents at high quality financial institutions. However, deposits exceed the federally insured limits. At March 31, 2021, the Company had approximately $34.7 million in uninsured cash.

Property, Plant and Equipment

Property, plant and equipment are stated at cost. Depreciation of office equipment is computed using the straight-line method over estimated useful lives of 3 to 5 years. Refinery assets and buildings are depreciated using the straight-line method over estimated useful lives of 5 to 25 years. However, the refinery will not begin to be depreciated until its retrofitting has been completed and it is ready for operations. Normal maintenance and repair items are charged to operating costs and are expensed as incurred. The cost and accumulated depreciation of property, plant and equipment sold or otherwise retired are removed from the accounts and any gain or loss on disposition is reflected in

the statement of operations. Interest on borrowings related to the retrofitting of the Bakersfield Biorefinery is being capitalized, which will continue until the refinery is available for commercial use. During the quarter ended March 31, 2021, $5.0 million of interest was capitalized, and is included in property, plant and equipment, net, for a total of $15.2 million of capitalized interest for the project.

Long-Lived Assets

In accordance with U.S. GAAP for the impairment or disposal of long-lived assets, the carrying values of intangible assets and other long-lived assets are reviewed on a regular basis for the existence of facts or circumstances that may suggest impairment. The Company recognizes impairment when the aggregate of the expected undiscounted future cash flows is less than the carrying amount of the asset. Impairment losses, if any, are measured as the excess of the carrying amount of the asset over its estimated fair value. During the quarters ended March 31, 2021 and March 31, 2020, there were no impairment losses recognized on long-lived assets.

NOTE A — ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Pre-Acquisition Costs

We began capitalizing pre-acquisition costs once we determined that the acquisition of the Bakersfield Biorefinery project was probable, which was in April of 2019 when the product offtake agreement was signed. We capitalized those costs directly identifiable with the specific property and those costs that would be capitalized if the property were already acquired. Upon the acquisition of the Bakersfield Biorefinery, these capitalized pre-acquisition costs, which totaled $3.2 million, were reclassified to property and equipment.

Debt Issuance Costs

The acquisition of the refinery and the related $365 million of financing to fund the retrofit closed in May 2020. In connection with financing the refinery, we incurred approximately $5 million of debt issuance costs as of the date of the closing. However, in connection with the senior credit facility, we issue the creditors Class B equity units of our subsidiary BKRF OCB, LLC as funds are advanced from the facility. The fair value of these Class B units on the date of issuance is recorded as a liability with an offsetting adjustment to debt issuance costs. In addition, in March 2021, we amended our credit agreements (see Note E), and as part of that amendment, we agreed to pay the lenders a 1% fee in our equity securities based upon the amount of the facilities, which amounts to $3.8 million.

Debt issuance costs are amortized over the term of the loan as interest: however, as such interest relates to retrofitting of the refinery, these costs are being capitalized as part of the refinery until the refinery is placed in service. The amortization of the debt issuance costs that are not capitalized is recorded as interest expense. At March 31, 2021 and December 31, 2020, unamortized debt issuance costs related to the senior credit facility are classified as a direct deduction from the carrying amount of the credit facility; however, unamortized debt issuance costs related to the mezzanine facility are presented on the balance sheet as an asset as there have not been any borrowings on the mezzanine facility. See Note E - Debt for more detail on the financing.

Accounts Payable and Accrued Liabilities

For presentation purposes, accounts payable and accrued liabilities have been combined. As of March 31, 2021 and December 31, 2020, accounts payable and accrued liabilities consists of:

	As of March 31, 2021	As of December 31, 2020
Accounts payable	$ 12,237,029	$ 9,724,136
Accrued compensation and related liabilities	3,163,254	3,034,688
Accrued interest payable	1,989,423	2,093,649
Other accrued expenses	7,363,687	3,146,478
Current portion of asset retirement obligations	4,400,410	3,716,000
Current portion of environmental liabilities	1,104,106	883,000
	$ 30,257,909	$ 22,597,951

NOTE A — ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Asset Retirement Obligations

The Company recognizes liabilities which represent the fair value of a legal obligation to perform asset retirement activities, including those that are conditional on a future event, when the amount can be reasonably estimated. If a reasonable estimate cannot be made at the time the liability is incurred, we record the liability when sufficient information is available to estimate the liability's fair value. We have asset retirement obligations with respect to our Bakersfield Biorefinery due to various legal obligations to clean and/or dispose of these assets at the time they are retired. However, the majority of these assets can be used for extended and indeterminate periods of time provided that they are properly maintained and/or upgraded. It is our practice and intent to continue to maintain these assets and make improvements based on technological advances. A portion of these obligations relate to the required cleanout of hydrocarbons previously used in the pipeline and terminal tanks. In order to determine the fair value of the obligations management must make certain estimates and assumptions including, among other things, projected cash flows, a credit-adjusted risk-free rate and an assessment of market conditions that could significantly impact the estimated fair value of the asset retirement obligations. We believe the estimates selected, in each instance, represent our best estimate of future outcomes, but the actual outcomes could differ from the estimates selected.

We estimate our escalation rate at 3.33% and our discount factor ranges from 3.62% in year one to 7.26% in year twenty, with the weighted average discount rate being 5.0%. See Note H - Commitments and Contingencies for more detail on environmental liabilities, which are accounted for separately from asset retirement obligations.

The following table provides a reconciliation of the changes in asset retirement obligations for the quarter ended March 31, 2021 and the year ended December 31, 2020.

	Three months ended March 31, 2021	Year ended December 31, 2020
Asset retirement obligations - beginning of period	$ 21,478,977	$ —
Additions related to acquisition of refinery	—	21,901,977
Disbursements	(775,249)	(135,000)
Accretion	245,000	652,000

Revised obligation estimates	—	(940,000)
Asset retirement obligations - end of period	$ 20,948,728	$ 21,478,977

The amount shown as of March 31, 2021 and 2020, includes $4.4 million and $3.7 million, respectively, which has been classified as current liabilities and included in accounts payable and accrued liabilities and $16.5 million and $17.8 million, respectively which have been classified as long-term liabilities as of March 31, 2021 and December 31, 2020, respectively.

Advances to Contractors

Upon the acquisition of the Bakersfield Biorefinery, the Company advanced $20.1 million to its primary engineering, procurement and construction contractor. These funds are credited against future invoices in accordance with an agreed schedule. As of March 31, 2021, the funds advance has been reduced to $16.0 million.

Income Taxes

The Company utilizes the liability method of accounting for income taxes. Under the liability method, deferred tax assets and liabilities are determined based on differences between financial reporting and tax basis of assets and liabilities and the carryforward of operating losses and tax credits, and are measured using the enacted tax rates and laws that will be in effect when the differences are expected to reverse. A valuation allowance against deferred tax assets is recorded when it is more likely than not that such tax benefits will not be realized. Assets and liabilities are established for uncertain tax positions taken or positions expected to be taken in income tax returns when such positions are judged to not meet the "more-likely-than-not" threshold based on the technical merits of the positions. Estimated interest and penalties related to uncertain tax positions are included as a component of general and administrative expense.

NOTE A — ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Revenue Recognition

The Company recognizes revenue in accordance with ASC 606 using the following five-step model: (1) identify the contract with the customer, (2) identify the performance obligations in the contract, (3) determine the transaction price, (4) allocate the transaction price to the performance obligations in the contract, and (5) recognize revenue. The Company recognized $0.1 million in revenues during the quarter ended March 31, 2021 and had no comparable sales in the quarter ended March 31, 2020. The Company is engaged in contracting with farmers to grow camelina grain that will be processed into oil for use in Bakersfield Biorefinery. The Company will recognize revenues upon the sale of its patented camelina seed to the farmers and also for the crushed camelina meal that it plans to sell to third party livestock and poultry operators. Based upon the Company's Product Offtake Agreement (see Note B - Basis of Presentation and Liquidity), the Company expects to recognize revenue from the sale of biofuel beginning in 2022.

Research and Development

Research and development costs are charged to operating expenses when incurred.

Fair Value Measurements and Fair Value of Financial Instruments

As of March 31, 2021 and December 31, 2020, the carrying amounts of the Company's financial instruments that are not reported at fair value in the accompanying consolidated balance sheets, including cash and cash equivalents, accounts receivable, accounts payable, and accrued liabilities approximate their fair value due to their short-term nature. The Company's derivative liability related to its derivative forward contract is reported at fair value.

U.S. GAAP specifies a hierarchy of valuation techniques based on whether the inputs to those valuation techniques are observable or unobservable. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect the Company's market assumptions. These two types of inputs have created the following fair-value hierarchy:

Level 1— Quoted prices for identical instruments in active markets;

Level 2— Quoted prices for similar instruments in active markets, quoted prices for identical or similar instruments in markets that are not active, and model-derived valuations in which all significant inputs and significant value drivers are observable in active markets; and

Level 3— Valuations derived from valuation techniques in which one or more significant inputs or significant value drivers are unobservable.

At December 31, 2019, the Company had a derivative liability of $24.8 million related to a forward contract that also included a call option. The notional amount of the forward contract related to gallons of the commodity, Ultra Low Sulfur Diesel. Under the terms of the contract the Company was obligated to pay the equivalent of the notional amount multiplied by the market price of Ultra Low Sulfur Diesel at the settlement dates; however, the call option of the contract capped the market price of Ultra Low Sulfur Diesel.

In March of 2020 the Company settled the derivative contract by agreeing to a payment of $5.5 million due on April 30, 2020 and six equal payments beginning in October of 2021 totaling $17.6 million. The Company recognized $5.5 million of income from the decrease in fair value on the derivative contract from January 1, 2020 through March 19, 2020, and also recognized a gain of $512,000 on the derecognition of the derivative contract. The derivative forward contract was amended again in April 2020. Under the amendment, the contract was replaced with a fixed payment obligation, whereby the Company agreed to pay the counterparty a total of $24.8 million, which included a payment of $4.5 million that the Company paid in June 2020, and six equal installment payments beginning in 2022 totaling $20.3 million.

NOTE A — ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

The fair value of the derivative forward contract is primarily based upon the notional amount and the forward strip market prices of Ultra Low Sulfur Diesel, and is reduced by the fair value of the call option. The forward strip market prices are observable. However, to determine the fair value of the call option, the Company used the Black's 76 option pricing model. As a result, the contract as a whole is included in the Level 3 of the fair value hierarchy.

The Company's mandatorily redeemable equity instruments of its subsidiary are also measured at fair value on a recurring basis. See Note E - Debt for more information.

The derivative liability discussed herein was derecognized in the first quarter of 2020, and the Company had no derivative liabilities in the quarter ending March 31, 2021. The following presents the change in the derivative liability for the three months ended March 31, 2020:

	Three Months Ended March 31, 2020
Beginning Balance	$ 24,767,000
Conversion to note payable	(19,291,000)
Change in fair value recognized in earnings	(5,476,000)
Ending Balance	$ —

The carrying value of the mandatorily redeemable equity instruments of subsidiary as of March 31, 2021:

	Carrying Value	Total Fair Value	Quoted prices in active markets for identical assets - Level 1	Significant other observable inputs - Level 2	Significant unobservable inputs - Level 3
Liabilities					
Mandatorily redeemable equity instruments of subsidiary	$ 7,193,000	$ 7,193,000	$ —	$ —	$ 7,193,000

The following presents changes in the mandatorily redeemable equity instruments of subsidiary (Class B Units) through the three months ended March 31, 2021 and the year ended December 31, 2020:

	Three months ended March 31, 2021	Year ended December 31, 2020
Beginning Balance	$ 5,123,000	$ —
New unit issuances	1,218,769	3,101,344
Change in fair value recognized in earnings	851,231	2,021,656
Ending Balance	$ 7,193,000	$ 5,123,000

NOTE A — ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Estimates

Management uses estimates and assumptions in preparing financial statements. Those estimates and assumptions affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities, and reported revenues and expenses. Significant estimates used in preparing these financial statements include a) valuation of common stock, warrants, and stock options, b) estimated useful lives of equipment and intangible assets, c) the estimated costs to remediate or clean-up the refinery site, and the inflation rate, credit-adjusted risk-free rate and timing of payments to calculate the asset retirement obligations, d) the estimated costs to remediate or clean-up identified environmental liabilities, e) the estimated future cash flows and the various metrics required to establish a reasonable estimate of the value of the Class B Units, and f) the allocation of the acquisition price of the Bakersfield Biorefinery to the various assets acquired. It is at least reasonably possible that the significant estimates used will change within the next year.

Income/Loss per Common Share

Income/Loss per share amounts are computed by dividing income or loss applicable to the common stockholders of the Company by the weighted-average number of common shares outstanding during each period. Diluted income or loss per share amounts are computed assuming the issuance of common stock for potentially dilutive common stock equivalents. The number of dilutive warrants and options is computed using the treasury stock method, whereby the dilutive effect is reduced by the number of treasury shares the Company could purchase with the proceeds from exercises of warrants and options.

The following table presents: 1) instruments that were dilutive for the quarter ended March 31, 2020 were included in the diluted earnings per share, and 2) instruments that were anti-dilutive for the quarter ended March 31, 2021 that were excluded from diluted earnings per share as they would have been anti-dilutive:

	Three Months Ended March 31, 2021	Three Months Ended March 31, 2020
Convertible notes and accrued interest	8,906,773	10,007,550
Convertible preferred stock - Series B	1,181,818	1,181,818
Compensation-based stock options and warrants	19,220,714	17,705,000

Stock Based Compensation

The Company recognizes compensation expenses for stock-based awards expected to vest on a straight-line basis over the requisite service period of the award based on their grant date fair value. However, in the case of awards with accelerated vesting, the amount of compensation expense recognized at any date will be based upon the portion of the award that is vested at that date. The Company estimates the fair value of stock options using a Black-Scholes option pricing model which requires management to make estimates for certain assumptions regarding risk-free interest rate, expected life of options, expected volatility of stock and expected dividend yield of stock.

Subsequent Events

The Company has evaluated subsequent events through the date these condensed consolidated financial statements were available to be issued. See Note I to these condensed consolidated financial statements for a description of events occurring subsequent to March 31, 2021.

NOTE B — BASIS OF PRESENTATION AND LIQUIDITY

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As shown in the accompanying consolidated financial statements, the Company incurred losses from continuing operations of $8.2 million during the quarter ended March 31, 2021, and has an accumulated deficit of $74.5 million at March 31, 2021. At March 31, 2021, the Company had working capital of negative $13.8 million (which includes current restricted cash of $11.9 million) and total stockholders deficit of $36.4 million. The Company is progressing its Bakersfield Biorefinery retooling project and is on track to achieve its initial revenues

from the production and sale of renewable diesel in early 2022.

On May 4, 2020, a group of lenders agreed to provide a $300 million senior secured term loan facility to BKRF OCB, LLC, one of Global Clean Energy Holdings, Inc.'s subsidiaries, to enable that subsidiary to acquire the equity interests of Bakersfield Renewable Fuels, LLC and to pay the anticipated costs of the retooling of the Bakersfield Biorefinery owned by Bakersfield Renewable Fuels, LLC. Concurrently with the senior credit facility, a group of mezzanine lenders also agreed to provide a $65 million secured term loan facility to be used to pay the costs of repurposing and starting up the Bakersfield biorefinery. Although the funds provided by the senior and mezzanine lenders may only be used for the Bakersfield Biorefinery and servicing these debt obligations, Global Clean Energy Holdings, Inc. will nevertheless, realize a reduction in certain of its operating and general and administrative expenses as the Company shares certain personnel and related costs. The Company believes that these cost savings, plus the Company's other financial resources should be sufficient to fund the Company's operations through the start-up of the Bakersfield Biorefinery. See "Note E - Debt" and "Note I - Subsequent Events." In November 2020, the Company's senior and mezzanine facilities were increased by a total of $15 million for the Bakersfield Biorefinery and the Company's upstream Camelina business.

In April of 2019, the Company executed a binding Product Offtake Agreement (the "Offtake Agreement") with ExxonMobil Oil Corporation ("Purchaser") pursuant to which Purchaser has committed to purchase 2.5 million barrels per year of renewable diesel annually from the Bakersfield Biorefinery (with a right to purchase higher volumes as available), and the Company has committed to sell these quantities of renewable diesel to Purchaser. The Purchaser's obligation to purchase renewable diesel will last for a period of five years following the date that the Bakersfield Biorefinery commences commercial operations. The Purchaser has the option to extend the initial five-year term. Either party may terminate the Offtake Agreement if the Bakersfield Biorefinery does not meet certain production levels by certain milestone dates following the commencement of the Bakersfield Biorefinery's operations. See "Note I - Subsequent Events."

NOTE C – PROPERTY, PLANT AND EQUIPMENT

On May 7, 2020 through its subsidiary BKRF OCB, LLC, the Company purchased all of the outstanding equity interests of Alon Bakersfield Property, Inc. a company that owned a crude oil refinery in Bakersfield, California from Alon Paramount Holdings, Inc. ("Alon Paramount") for a total consideration of $89.4 million (excluding acquisition costs). Immediately prior to the purchase, Alon Bakersfield Property Inc. was converted into a limited liability company and renamed as "Bakersfield Renewable Fuels, LLC." The Company is now retooling the acquired crude oil refinery into a biorefinery. In accordance with ASC Topic 805, *Business Combinations*, the Company determined that the purchase is an asset purchase and not a business combination based the following a) substantially all of the fair value of the gross assets acquired is concentrated in a single identifiable asset group, b) that the existing crude oil based (very high carbon) refinery is not able to produce renewable diesel (very low carbon) fuel, c) no refinery in the U.S. has been designed specifically around the plant oil feedstock extracted from Camelina seeds, thus the technical aspect is new and unique to the Bakersfield Biorefinery and d) the Company did not acquire an assembled workforce. Thus, the acquired asset group does not have the full inputs or substantive process to produce outputs and does not have any acquired revenue generating contractual arrangements.

The total consideration for the purchase of the Bakersfield Biorefinery was $89.4 million, and consisted of $40 million of cash, an option right valued at $5.5 million granted to the seller, and an assumption of $43.9 million of liabilities. The liabilities assumed consist of $21.9 million of asset retirement obligations (ARO) and $22 million of other environmental remediation liabilities. These liabilities are the estimated costs of clean-up, remediation and associated costs of the acquired assets in accordance with current regulations. The option right was valued using various inputs, including a volatility of 116%, a risk free rate of 0.14% and a marketability discount of 25%. The total consideration of the purchase was allocated to the asset categories acquired based upon their relative fair value, except that the fair value of the ARO were allocated to the specific assets to which they relate. The following summarizes this allocation of the purchase price and also the reclassification of the pre-acquisition costs:

Asset Category	Capitalized Costs Based on Acquisition Valuation	Allocated Pre-Acquisition Costs	Total Capitalized Costs on Acquisition
Property and Equipment			
Land	$ 7,584,961	—	$ 7,584,961
Buildings	2,053,570	—	2,053,570
Refinery	77,845,201	3,222,449	81,067,650
Intangible Assets	1,921,082	—	1,921,082
Total	$ 89,404,814	$ 3,222,449	$ 92,627,263

Property and equipment as of March 31, 2021 and December 31, 2020 are as follows:

	March 31, 2021	December 31, 2020
Land	$ 7,584,961	7,584,961
Office Equipment	61,078	61,078
Buildings	2,053,570	2,053,570
Refinery Equipment	103,635,160	86,019,130
Construction in Process	41,684,071	33,212,695
Construction period interest	15,215,073	10,220,766
Total Cost	$ 170,233,913	139,152,200
Less accumulated depreciation	(205,195)	(179,525)
Property and equipment, net	$ 170,028,718	138,972,675

Depreciation expense for property and equipment was approximately $25,000 for the quarter ended March 31, 2021. There was no depreciation for the quarter ended March 31, 2020.

NOTE D - INTANGIBLE ASSETS

The Company holds certain patents, intellectual property and rights related to the development of Camelina as a biofuels feedstock and continues to incur costs related to patent license fees and patent applications for Camelina sativa plant improvements. These patents have an expected useful life of approximately 17 years and are carried at cost less any accumulated amortization and any impairment losses. Amortization is calculated using the straight-line method over their remaining patent life. The termination dates of our earliest patents will begin to occur in 2029. Any future costs associated with the maintenance of these patents and patent and registration costs for any new patents that are essential to our business will be capitalized and amortized over the life of the patent once issued. Upon the Company's acquisition of the Bakersfield Biorefinery, the Company acquired necessary permits for the operation of the facility. The permit cost of $1.9 million is amortized on a straight-line basis over 15 years. The intangible assets as of March 31, 2021 and December 31, 2020 is shown in the following table:

	March 31, 2021	December 31, 2020
Patent licenses	4,476,319	4,442,553
Refinery permits	1,921,082	1,921,082
Less accumulated amortization	(2,271,919)	(2,182,889)
Intangible Assets, Net	4,125,482	4,180,746

Amortization expense for intangible assets was approximately $89,000 and $61,000 for the quarters ended March 31, 2021 and March 31, 2020, respectively. The estimated amortization expense for the next five years is expected to be approximately $500,000 annually.

NOTE E – DEBT

The table below summarizes our notes payable and long-term debt at March 31, 2021 and at December 31, 2020:

	March 31, 2021	December 31, 2020
Notes Payable		
Senior credit facility	$ 185,141,188	$ 153,405,569
Fixed payment obligation, net of discount	16,752,528	16,155,138
Other notes - current	3,436,499	4,198,113
Other notes - long-term	600,560	—
	205,930,775	173,758,820
Less: unamortized debt issuance costs	(10,715,113)	(6,636,344)
Subtotal	195,215,662	167,122,476
Convertible Notes Payable		
Convertible note payable to executive officer	1,000,000	1,000,000
Other convertible notes payable	413,500	697,000
Subtotal	1,413,500	1,697,000
Total	$ 196,629,161	$ 168,819,476

Credit Facilities

On May 4, 2020, in order to fund the purchase of the Bakersfield Renewable Fuels, LLC, BKRF OCB, LLC, a subsidiary of the Company, entered into a senior secured credit agreement with a group of lenders (the "Senior Lenders") pursuant to which the Senior Lenders agreed to provide a $300 million senior secured term loan facility to BKRF OCB (which was increased to $313.2 million in November 2020) to pay the costs of the retooling the Bakersfield Biorefinery. The senior loan bears interest at the rate of 12.5% per annum, payable quarterly, provided that the borrower may defer up to 2.5% interest to the extent it does not have sufficient cash to pay the interest, with such deferred interest being added to principal. The principal of the senior loans matures in November 2026, provided that BKRF OCB, LLC must offer to prepay the senior loans with any proceeds of such asset dispositions, borrowings other than permitted borrowings, proceeds from losses, and excess net cash flow. BKRF OCB, LLC may also prepay the senior loan in whole or in part with the payment of a prepayment premium. As additional consideration for the senior loans, the Senior Lenders are issued Class B Units in BKRF HCP, LLC, an indirect parent company of BKRF OCB, LLC, as the Company draws on the facility. As of March 31, 2021, 182.4 million Class B Units have either been issued or are issuable, and the aggregate fair value of such units on the date of their issuances totaled approximately $4.3 million which were recorded as debt issuance costs. The aggregate fair value of the earned units as of March 31, 2021 was approximately $7.2 million. The fair value of such units is remeasured at each new issuance and at each quarter end. It is expected that the fair value will increase as the Company continues to de-risk the project through ongoing retooling activities. The senior loans are secured by all the assets of BKRF OCB, LLC (including its membership interests in Bakersfield Renewable Fuels, LLC), all the outstanding membership interest in BKRF OCB, LLC, and all the assets of Bakersfield Renewable Fuels, LLC. The credit facility contains certain covenants. In March 2021, the Company and the lenders amended the credit agreements, thereby bringing the Company into compliance with the covenants as of the amendment date.

NOTE E – DEBT (CONTINUED)

Effective March 26, 2021, the Company and its Senior Lenders entered into Amendment No. 3 to the Credit Agreement to, among other things, establish a contingency reserve account to fund the costs of the additional capabilities and equipment and to fund possible cost overruns at the Bakersfield Biorefinery. Concurrently, the Company and the mezzanine lenders entered into Consent No. 2 And Amendment No. 2 To Credit Agreement to amend the $65 million mezzanine credit facility. Under these two amendments we agreed to establish an additional cash reserve of at least $35 million, which cash reserve would be used at the direction of the agent for the lenders to fund project costs of the Bakersfield Biorefinery to the extent that such costs exceed the amounts available under the two credit agreements. Funds remaining in the additional reserve account after the completion of the Bakersfield Biorefinery will, with the approval of the lenders' agent, be used to first make a $5 million principal payment on the senior loan, and any remaining funds will be returned to us. In order to fund the new $35 million contingency cash reserve, the two amendments to the credit agreements provide that we will raise no less than $35 million in a public or private financing transaction by July 31, 2021 and that we will deposit, by that date, at least $35 million into the new Bakersfield Biorefinery cash reserve account. As consideration for the amendments to the two credit agreements, we agreed to pay each senior and mezzanine lender an amendment and consent premium equal to 1.00% of the aggregate commitments and loans of such lender. The fee is payable in the same securities that we may issue in connection with raising the $35 million cash reserve. If we fund the $35 million cash reserve other than through a financing transaction, we will pay the 1% lenders' premium in shares of our common stock or in cash.

On May 4, 2020, BKRF HCB, LLC, the indirect parent of BKRF OCB, LLC, entered into a credit agreement with a group of mezzanine lenders who agreed to provide a $65 million secured term loan facility to be used to pay the costs of repurposing and starting up the Bakersfield biorefinery. As of March 31, 2021, BKRF HCB, LLC has not drawn down on the credit facility. The mezzanine loans bear interest at the rate of 15.0% per annum on amounts borrowed, payable quarterly, provided that the borrower may defer up to 2.5% interest to the extent it does not have sufficient cash to pay the interest. Such deferred interest is added to principal. As additional consideration for the mezzanine loans, the mezzanine lenders will be issued Class C Units in BKRF HCP, LLC at such times as advances are made under the mezzanine loans. The mezzanine loans will be secured by all of the assets of BKRF HCP, LLC, including all of the outstanding membership interest in BKRF HCB, LLC. The mezzanine loans mature in November 2027.

Fixed Payment Obligation

As described in Note A, under "Fair Value Measurements and Fair Value of Financial Instruments", the Company amended a derivative forward contract during the quarter ended March 31, 2020, with the counterparty. The amendment terminated the derivative forward contract and replaced it with a fixed payment obligation. Under the terms of the fixed payment obligation, the Company agreed to pay the counterparty a total of $23.1 million, which included a payment of $5.5 million in April 2020, and six equal installment payments in 2022 totaling $17.6 million. Under the subsequent revised terms of the fixed payment obligation in April 2020, the Company agreed to pay the counterparty a total of $24.8 million, which included a payment of $4.5 million in June 2020 (which was paid), and six equal monthly installment payments beginning in May 2022. For financial reporting purposes, the fixed payment obligation has been recorded at the present value of future payments, or $16.8 million, using a discount rate of 14.8%.

Other Notes Payable

Included in "other notes" as of March 31, 2021, in the above table, is a note, that is due upon demand related to the Company's business activities prior to 2019, in the principal amount of $1.3 million and an interest rate of 18% per annum. Also, included in other notes above, is a note payable that was used to finance the Company's insurance policies. Upon the acquisition of the Bakersfield Biorefinery in May 2020, the Company purchased numerous insurance contracts to cover its corporate, ownership and construction risks primarily to provide financial protection against various risks and to satisfy certain lender requirements. The Company paid 35% of the total premiums and financed the balance at 3.8% annual interest rate. The Company is obligated to make seventeen equal monthly payments totaling approximately $4.5 million beginning in July 2020. The insurance policies cover various periods from 12 to 60 months. As of March 31, 2021, the Company had eight payments remaining for a total of $2.1 million.

NOTE E – DEBT (CONTINUED)

Convertible Note Payable to Executive Officer

On October 16, 2018, Richard Palmer, the Company's Chief Executive Officer and President, entered into a new employment agreement with the Company and concurrently agreed to defer $1 million of his accrued unpaid salary and bonus for two years. In order to evidence the deferral, the Company and Mr. Palmer entered into a $1 million convertible promissory note (the "Convertible Note"). The Convertible Note accrues simple interest on the outstanding principal balance of the note at the annual rate of five percent (5%) and became due and payable on October 15, 2020, its maturity date. Under its existing credit agreements, the Company is restricted from repaying Mr. Palmer's loan and, accordingly, is currently in default under the Convertible Note. The Company accrued interest expense of $12,500 on this note in each quarter ended March 31, 2021 and 2020. As of the quarters ended March 31, 2021 and 2020, the Company had recorded accrued interest payable of approximately $122,000 and $72,000 respectively. Under the Convertible Note, Mr. Palmer has the right, exercisable at any time until the Convertible Note is fully paid, to convert all or any portion of the outstanding principal balance and accrued and unpaid interest into shares of the Company's Common Stock at an exercise price of $0.154 per share.

Convertible Notes Payable

The Company has several notes that are convertible into shares of the Company or the Company's subsidiaries at different prices: ranging from $0.30 per share into the parent company's stock and up to $1.48 per share into a subsidiary's common stock. These notes have passed their original maturity date and they continue to accrue interest at varying rates, from 8% to 10%. On March 26, 2021, we issued 1,586,786 shares of the Company's common stock to the holder of a convertible promissory note upon the conversion of the entire outstanding balance, principal and accrued interest, for that note. On a combined basis, as of March 31, 2021 the principal amount of these remaining outstanding notes was approximately $0.4 million.

The following table summarizes the minimum required payments of notes payable and long-term debt as of March 31, 2021:

Year	Required Minimum Payments
2021	$ 3,849,999
2022	21,250,000
2023	—
2024	—
2025	—
Thereafter	185,741,748
Total	$ 210,841,747

Class B Units of Subsidiary Issued to Lenders

As described above, during the year ended December 31, 2020 and through March 31, 2021, the Company issued or had issuable 184.2 million Class B Units of its subsidiary, BKRF HCB, LLC, to its Senior Lenders. To the extent that there is distributable cash, the Company is obligated to make certain distribution payments to holders of Class B Units, and after the distributions reach a certain limit the units will no longer require further distributions and will be considered fully redeemed. The Class B unit holders may receive a portion of the distributable cash, as defined under the Credit Agreement, available to BKRF HCB, LLC, but generally only up to 25% of the available cash after the required interest and principal payments, operating expenses and ongoing capital requirements have been paid. Such payments may commence once the Bakersfield Biorefinery begins operations and will continue through the later of five years after operations of the refinery begins or until the cumulative distributions reach a certain threshold defined in the operating agreement of BKRF HCB, LLC. The Company has estimated the aggregate amount of distributions to the Class B Unit holders (upon the total amount under the credit facility to be drawn) may range from $13 million to as much as $171 million, provided that the aggregate total payments (including distributions to the Class B Units, all interest and principal payments) to the Senior Lenders cannot exceed two times the amount of the borrowings under the Credit Agreement, or approximately $626 million. As of March 31, 2021, the Company has valued the liability based on the estimated fair value for the Class B Unit distributions at approximately $7.2 million. The fair value is largely based on the present value of the expected distributions that will be made to the Class B Unit holders, which consider various risk factors, including a market risk premium, project size, the uniqueness and age of the refinery, the volatility of the feedstock and refinery inputs, operational costs, environmental costs and compliance, effective tax rates, illiquidity of the units, etc. As completion of retrofitting the refinery progresses, the fair value is expected to increase, and further increases in fair value are expected when the refinery becomes operational and begins generating revenues. For accounting purposes, these Class B Units are considered to be mandatorily redeemable and have been classified as liabilities in the accompanying March 31, 2021 balance sheet and are remeasured at fair value at the end of each reporting period.

NOTE F - STOCKHOLDERS' EQUITY

Common Stock

In the first quarter of 2021, the Company did not issue any shares of its Common Stock upon the exercise of stock options.

On March 26, 2021, we issued 1,586,786 shares of the Company's common stock to the holder of a convertible promissory note upon the conversion of the entire outstanding

balance, principal and accrued interest, for that note which was $476,036.

Series B Preferred Stock

On November 6, 2007, the Company sold a total of 13,000 shares of Series B Convertible Preferred Stock ("Series B Shares") to two investors for an aggregate purchase price of $1.3 million, less offering costs of $9,265. Each share of the Series B Shares has a stated value of $100.

The Series B Shares may, at the option of each holder, be converted at any time or from time to time into shares of the Company's Common Stock at the conversion price then in effect. The number of shares into which one Series B Share shall be convertible is determined by dividing $100 per share by the conversion price then in effect. The current conversion price per share for the Series B Shares is $1.10, which is subject to adjustment for certain events, including stock splits, stock dividends, combinations, or other recapitalizations affecting the Series B Shares.

Each holder of Series B Shares is entitled to the number of votes equal to the number of shares of the Company's Common Stock into which the Series B Shares could be converted on the record date for such vote, and has voting rights and powers equal to the voting rights and powers of the holders of the Company's Common Stock.

No dividends are required to be paid to holders of the Series B shares. However, the Company may not declare, pay or set aside any dividends on shares of any class or series of the Company's capital stock (other than dividends on shares of our Common Stock payable in shares of Common Stock) unless the holders of the Series B shares shall first receive, or simultaneously receive, an equal dividend on each outstanding share of Series B shares.

In the event of any liquidation, dissolution or winding up of the Company, the holders of the Series B Preferred Stock shall be entitled to receive, prior to any distribution to the holders of the Common Stock, an amount equal to $100 per share, or $1.3 million in the aggregate, plus an amount equal to any dividends declared and unpaid with respect to each such share.

NOTE G – STOCK OPTIONS AND WARRANTS

2020 Equity incentive Plan

In April 2020, the Company's Board of Directors adopted the Global Clean Energy Holdings, Inc. 2020 Equity Incentive Plan (the "2020 Plan") wherein 2,000,000 shares of the Company's common stock were reserved for issuance thereunder. Options and awards granted to new or existing officers, directors, employees, and non-employees vest ratably over a period as individually approved by the Board of Directors generally over three years, but not in all cases. The 2020 Plan provides for a three-month exercise period of vested options upon termination of service. The exercise price of options granted under the 2020 Plan is equal to the fair market value of the Company's common stock on the date of grant. Options issued under the 2020 Plan have a maximum term of ten years for exercise and may be exercised with cash consideration or through a cashless exercise in which the holder forfeits a portion of the award in exchange for shares of common stock of the remaining portion of the award. As of March 31, 2021, there were 825,000 shares available for future option grants under the 2020 Plan.

During the first quarter ended March 31, 2021 the Company granted stock options for the purchase of a total of 140,500 shares of Common Stock under the 2020 Plan, of which 100,500 were to employees and 40,000 were to directors.

A summary of the option award activity in 2021 and awards outstanding at March 31, 2021 is as follows:

	Shares Under Option	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (Years)	Aggregate Intrinsic Value
Outstanding at December 31, 2020	19,230,214	0.16	3.9	$ 30,044,649
Granted	140,500	5.92		
Exercised	—	—		
Forfeited	(100,000)	0.41		—
Expired	—	—		—
Outstanding at March 31, 2021	19,270,714	2.56	2.8	$ 116,514,943
Vested and exercisable at March 31, 2021	18,123,095	1.97	2.7	$ 110,605,999

NOTE G – STOCK OPTIONS AND WARRANTS (CONTINUED)

The fair value of stock option grants with only continued service conditions for vesting is estimated on the grant date using a Black-Scholes option pricing model. The following table illustrates the assumptions used in estimating the fair value of options granted during the periods presented:

	Three months ended March 31, 2021
Expected Term (in Years)	2 to 5
Volatility	85%
Risk Free Rate	1.4%
Dividend Yield	0%
Suboptimal Exercise Factor (1)	1.3
Exit Rate Pre-vesting (2)	0%
Exit Rate Post-vesting (3)	0%
Aggregate Grant Date Fair Value	$ 470,630

(1) The suboptimal exercise factor estimates the value realized by the holder upon exercise of the option and the estimated point at which an option holder would exercise an in-the-money option. The Company estimated the suboptimal factor based on the holder realizing a pre-tax profit of $500,000.

(2) Assumed forfeiture rate for market condition option awards prior to vesting.

(3) Assumed expiration or forfeiture rate for market condition option awards after vesting.

For the quarters ended March 31, 2021 and 2020, the Company recognized stock compensation expenses related to stock option awards of $102,000 and $25,614 respectively. The Company recognizes all stock-based compensation in general and administrative expenses in the accompanying condensed consolidated statements of operations. As of March 31, 2021, there was approximately $448,000 of unrecognized compensation cost related to option awards that will be recognized over the remaining service period of approximately 3.3 years.

Stock Purchase Warrants and Call Option

In the quarter ended March 31, 2021, the Company did not issue any new warrants to purchase shares of Global Clean Energy Holdings, Inc.

In 2020, the Company issued, to a party interested in Camelina development, a non-transferable warrant for the purchase of an approximately eight-percent interest in its subsidiary, Sustainable Oils, Inc. for approximately $20 million. The warrant expires on June 1, 2021. At the time of issuance, the fair value of the warrant was deemed to be immaterial.

Concurrently with the acquisition of the Bakersfield Biorefinery, GCEH, through its subsidiary, GCE Acquisitions, issued an option right to the seller of the refinery to purchase up to 33 1/3% of the membership interests of GCE Acquisitions. The fair value of the option right on the date of issuance was $5.5 million and expires at ninety days after the refinery meets certain operational criteria.

NOTE H – COMMITMENTS AND CONTINGENCIES

Employment Agreements

The Company maintains an employment agreement with its Chief Executive Officer, Executive Vice-President and Chief Financial Officer that provide for the terms of their compensation, including bonuses and share-based compensation. See the Company's December 31, 2020 Form 10-K for further details.

Engineering, Procurement and Construction Contract

On April 30, 2020, GCE Acquisitions entered into an Engineering, Procurement and Construction Agreement with a national engineering firm pursuant to which this firm agreed to provide services for the engineering, procurement, construction, start-up and testing of the Bakersfield Biorefinery. The agreement, which was assigned by GCE Acquisitions to BKRF OCB, LLC, the borrower under the senior credit facility, provides for this engineering firm to be paid on a cost-plus fee basis subject to a guaranteed maximum price of $201.4 million, subject to increase for approved change orders. As of May 17, 2021, the remaining balance of the contract was approximately $151 million.

Environmental Remediation Liabilities

The Company recognizes its asset retirement obligation and environmental remediation liabilities in accordance with ASC 410-30, and has estimated such liabilities as of its acquisition date. It is the Company's policy to accrue environmental and clean-up related costs of a non-capital nature when it is both probable that a liability has been incurred and the amount can be reasonably estimated. Environmental remediation liabilities represent the current estimated costs to investigate and remediate contamination at our properties. This estimate is based on internal and third-party assessments of the extent of the contamination, the selected remediation technology and review of applicable environmental regulations, typically considering estimated activities and costs for 20 years, and up to 30 years if a longer period is believed reasonably necessary. Accruals for estimated costs from environmental remediation obligations generally are recognized no later than completion of the remedial feasibility study and include, but are not limited to, costs to perform remedial actions and costs of machinery and equipment that are dedicated to the remedial actions and that do not have an alternative use. Such accruals are adjusted as further information develops or circumstances change. We discount environmental remediation liabilities to their present value if payments are fixed and determinable. However, as the timing and amount of these costs were undeterminable as of March 31, 2021, these costs have not been discounted. Expenditures for equipment necessary for environmental issues relating to ongoing operations are capitalized. Changes in laws and regulations and actual remediation expenses compared to historical experience could significantly impact our results of operations and financial position. We believe the estimates selected, in each instance, represent our best estimate of future outcomes, but the actual outcomes could differ from the estimates selected. At March 31, 2021, accrued environmental remediation liability costs totaled $21.2 million of which $1.1 million have been classified as current liabilities.

Legal

On May 7, 2020 through BKRF OCB, LLC, one of the Company's indirect subsidiaries, the Company purchased all of the outstanding equity interests of Bakersfield Renewable Fuels, LLC from Alon Paramount Holdings, Inc. ("Alon Paramount") for a total consideration of $89.4 million, including $40 million in cash and assumption of liabilities of $43.9 million. Bakersfield Renewable Fuels, LLC owns an oil refinery in Bakersfield, California that the Company is retooling into a biorefinery. In connection with the acquisition, BKRF OCB, LLC agreed to undertake certain cleanup activities at the refinery and provide a guarantee for liabilities arising from the cleanup. The Company has assumed significant environmental and clean-up liabilities associated with the purchase of the Bakersfield Refinery.

NOTE H – COMMITMENTS AND CONTINGENCIES (CONTINUED)

Bakersfield Renewable Fuels, LLC, formerly Alon Bakersfield Property, Inc., is one of the parties to an action pending in the United States Court of Appeals for the Ninth Circuit. In June 2019, the jury awarded the plaintiffs approximately $6.7 million against Alon Bakersfield Property, Inc. and Paramount Petroleum Corporation (a parent company of Alon Bakersfield Property, Inc. at the time of the award in 2019). Under the agreements pursuant to which we purchased Bakersfield Renewable Fuels, LLC (Alon Bakersfield Property, Inc.) Alon Paramount agreed to assume and be liable for (and to indemnify, defend, and save Bakersfield Renewable Fuels harmless from) this litigation. In addition, Paramount Petroleum has posted a bond to cover this judgment amount. All legal fees in this matter are being paid by Alon Paramount. As Paramount Petroleum Corporation and the Company are jointly and severally liable for the judgement, and Paramount Petroleum Corporation has agreed to absorb all of the liability and has posted a bond to cover the judgement amount, no loss has been accrued by the Company with respect to this matter.

In August 2020, a complaint was filed against GCE Holdings Acquisitions, LLC for a claimed breach of a certain consulting agreement. The claim is for $1.2 million. On

October 14, 2020, GCE Holdings Acquisitions, LLC filed an answer and denied all allegations in the complaint. The Company does not believe that the ultimate resolution of this matter will have a material effect on its financial statements, and no loss has been accrued regarding this claim.

In the ordinary course of business, the Company may face various claims brought by third parties and the Company may, from time to time, make claims or take legal actions to assert the Company's rights, including intellectual property rights, contractual disputes and other commercial disputes. Any of these claims could subject the Company to litigation. Management believes the outcomes of currently pending claims will not likely have a material effect on the Company's consolidated financial position and results of operations.

Indemnities and Guarantees

In addition to the indemnification provisions contained in the Company's organization documents, the Company generally enters into separate indemnification agreements with the Company's directors and officers. These agreements require the Company, among other things, to indemnify the director or officer against specified expenses and liabilities, such as attorneys' fees, judgments, fines and settlements, paid by the individual in connection with any action, suit or proceeding arising out of the individual's status or service as the Company's directors or officers, other than liabilities arising from willful misconduct or conduct that is knowingly fraudulent or deliberately dishonest, and to advance expenses incurred by the individual in connection with any proceeding against the individual with respect to which the individual may be entitled to indemnification by the Company. The Company also indemnifies its lessor in connection with its facility lease for certain claims arising from the use of the facility. These guarantees and indemnities do not provide for any limitation of the maximum potential future payments the Company could be obligated to make. Historically, the Company has not been obligated nor incurred any payments for these obligations and, therefore, no liabilities have been recorded for these indemnities and guarantees in the accompanying condensed consolidated balance sheets.

COVID-19

In December 2019, a novel strain of coronavirus diseases ("COVID-19") was first reported in Wuhan, China. Less than four months later, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic. The extent of COVID-19's effect on the Company's operational and financial performance is ongoing but the Company believes that the pandemic to date has not materially impacted the Company's operations and that the pandemic is not expected to be materially disruptive to its future plans and targeted date of beginning commercial operations. The Company has implemented strict protocols on its on-site workforce and continues to monitor the potential impacts to its business. The Company expects that the future impacts due to COVID-19 are not likely to be disruptive to its ongoing business.

NOTE I – SUBSEQUENT EVENTS

On April 13, 2021, the Company raised $3.1 million in a private placement by selling 496,000 shares at $6.25 per share and issuing warrants for the purchase of 19,840 shares. The warrants have an exercise price of $6.25 per share and a five-year term and are fully vested. If the warrants are exercised, the Company will receive additional proceeds of $124,000.

On April 15, 2021, the Company acquired 100% of the outstanding equity of Agribody Technologies, Inc., a private agricultural biotechnology company, in an all-stock transaction for a total value of approximately $5 million. In consideration for the shares of Agribody Technologies, Inc. the Company issued 830,526 shares at an approximate value of $6.02 per share.

On April 20, 2021, our BKRF subsidiary entered into a Term Purchase Agreement ("TPA") with ExxonMobil Oil Corporation ("ExxonMobil") under which ExxonMobil has the right to purchase additional quantities of renewable diesel from our Bakersfield Biorefinery, and we are obligated to sell such additional amounts of renewable diesel to ExxonMobil. Under the Offtake Agreement, signed in 2019, ExxonMobil committed to purchase 2.5 million barrels of renewable diesel per year (the "Committed Volume") from the Bakersfield Biorefinery. However, the Bakersfield Biorefinery is designed to produce more than the Committed Volume. Under the TPA, ExxonMobil has the exclusive right to purchase all renewable diesel produced in excess of the Committed Volume that we sell to ExxonMobil under the Offtake Agreement. We have also agreed to transfer title to ExxonMobil of the RINs allocated to the quantities of renewable diesel purchased under the TPA. In the event that ExxonMobil does not purchase all of the renewable diesel that it can under the TPA and, as a result our inventory levels exceed certain specified levels, we can sell that extra inventory to third parties. ExxonMobil will pay us a price for the renewable diesel purchased under the TPA based on a tiered formula reflecting the margins realized by ExxonMobil from its downstream resales of the TPA renewable diesel. The TPA has a five-year term. ExxonMobil has the option to extend the initial five-year term for a second five-year term if it elects to extend the Offtake Agreement.

On May 12, 2021, the Company repaid in full an outstanding convertible note for a cash payment of $487,000 (including both principal and interest). The Company no longer has any convertible notes into GCEH shares outstanding.

On May 18, 2021 our BKRF subsidiary and CTCI Americas, Inc., a Texas corporation ("CTCI"), entered into a Turnkey Agreement with a Guaranteed Maximum Price for the Engineering, Procurement and Construction of the Bakersfield Renewable Fuels Project (the "CTCI EPC Agreement"). CTCI Americas is a worldwide leading provider of reliable engineering, procurement and construction services, including for the refinery market. Under the CTCI EPC Agreement, CTCI has agreed to provide services to complete the engineering, procurement, construction, pre-commissioning, commissioning, start-up and testing of our renewable diesel production facility under construction in Bakersfield, California. The CTCI EPC Agreement requires the Bakersfield Biorefinery to be substantially complete, and to be ready for commercial operations, on January 22, 2022. CTCI's fees and costs, including direct costs, overhead fees and the contractor's fee, are guaranteed not to exceed $178 million (which maximum price is subject to adjustment for certain change orders). The obligations of CTCI have been guaranteed by CTCI Corporation, the Taiwanese parent company of CTCI.

On May 18, 2021 certain of our subsidiaries, including Bakersfield Renewable Fuels, LLC, entered into Amendment No. 4 to our Credit Agreement with the Senior Lenders. The Amendment was entered into primarily to consent to the replacement of the ARB EPC Agreement with the CTCI EPC Agreement.

On May 19, 2021 we notified ARB, Inc. that we were terminating that certain Engineering, Procurement and Construction Agreement dated April 30, 2020 with ARB, Inc. (the "ARB EPC Agreement"), effective immediately. The subcontracts for the Bakersfield Biorefinery will remain in effect and are being subsumed in the CTCI EPC Agreement. Accordingly, the subcontractors will continue to provide their services for the Bakersfield Biorefinery through CTCI.

Item 2: Management's Discussion and Analysis of Financial Condition and Results of Operations

This report contains forward-looking statements. These statements relate to future events or the Company's future financial performance. In some cases, you can identify forward-looking statements by terminology such as "may," "will," "should," "expect," "plan," "anticipate," "believe," "estimate," "predict," "potential" or "continue," the negative of such terms or other comparable terminology. These statements are only predictions. Actual events or results may differ materially.

Although the Company believes that the expectations reflected in the forward-looking statements are reasonable, the Company cannot guarantee future results, levels of activity, performance or achievements. Moreover, neither the Company, nor any other person, assumes responsibility for the accuracy and completeness of the forward-looking statements. The Company is under no obligation to update any of the forward-looking statements after the filing of this Quarterly Report on Form 10-Q to conform such statements to actual results or to changes in its expectations.

The following discussion should be read in conjunction with the Company's unaudited condensed consolidated financial statements and the related notes and other financial information appearing elsewhere in this Form 10-Q. Readers are also urged to carefully review and consider the various disclosures made by the Company which attempt to advise interested parties of the factors which affect the Company's business, including without limitation the disclosures made under the caption "Management's Discussion and Analysis of Financial Condition and Results of Operations," under the caption "Risk Factors," and the audited consolidated financial statements and related notes included in the Company's Annual Report filed on Form 10-K for the year ended December 31, 2020 and other reports and filings made with the Securities and Exchange Commission ("SEC").

Overview

Since 2013 Global Clean Energy Holdings, Inc. and its subsidiaries (collectively, hereinafter the "Company," "we," "us," or "our) has been engaged in developing its Camelina assets as a biofuels feedstock. Between July 2018, the date that we entered into a letter of intent for the purchase of a 500-acre crude oil refinery in Bakersfield, California and the closing of the purchase of the Bakersfield Biorefinery in May 2020, we were exclusively engaged in completing the purchase of the refinery and in obtaining the financing necessary purchase and retool the Bakersfield Biorefinery into a renewable fuels facility. Accordingly, our principal expenses during 2019 and until we purchased the Bakersfield Biorefinery in May 2020 consisted of general and administrative expenses and costs incurred to obtain the financing required to purchase and retool the Bakersfield Biorefinery. After the purchase of the Bakersfield Biorefinery on May 7, 2020, both our operating expenses and our capital expenditures increased significantly.

Since all of our resources were dedicated to the purchase and financing of the Bakersfield Biorefinery, we did not generate any operating revenues in either 2019 or 2020. In order to fund our operating expenses during these periods, we obtained $6 million under a derivative contract (the "Derivative Contract") that we entered into with a commodity trading company late in October 2018. In October 2019 we modified the Derivative Contract, entered into a new Derivative Contract, and received another $4 million in cash. The Derivative Contract was further amended in 2020 and replaced by a fixed payment obligation that requires the Company to make total payments of $24.8 million, consisting of the $4.5 million payment we made in June 2020, and six equal monthly installment payments beginning in May 2022. The cash that we received from the Derivative Contract was used to fund our operating costs, our due diligence costs, our pre-acquisition costs, the purchase price down payment/deposit for the Bakersfield Biorefinery, our consulting and legal fees associated with the acquisition, and our payments to key vendors and suppliers.

In May 2020 we completed the purchase of the Bakersfield Biorefinery. The total amount of cash consideration paid for the refinery was $40 million and the total amount of all consideration and assumed liabilities was $89.4 million. In order to fund the purchase price of the Bakersfield Biorefinery and the currently on-going conversion of the facility into a renewable diesel refinery, in May 2020 we also entered into a $300 million senior loan facility and a $65 million mezzanine loan facility. In November 2020 we added a total of $15 million to our credit facilities whereby as of December 31, 2020 our senior loan facility was $313.2 million, and our mezzanine loan facility was $66.8 million. We are currently converting the Bakersfield Biorefinery from a crude oil refinery into a biorefinery, and we do not expect to commence our biofuel refinery operations until early 2022. Therefore, we do not anticipate generating revenues from the operations of the Bakersfield Biorefinery until the first half of 2022.

We continue to contract with farmers for the planting of our Camelina certified seed for grain production for the 2021 crop year. As of April 30, 2021 we have contracted for cultivation of approximately 15,000 acres of our proprietary varieties of Camelina. We anticipate a significant ramp up of production of Camelina in 2022. We do expect to generate some revenues from Camelina seed sales to farmers in 2021, but that amount is not expected to be material. Additionally, we are strengthening our Camelina patent position by adding another six variety patents and seven utility patents and are continuing our gene editing program to improve the ultimate yields and oil composition of our patented Camelina varieties.

In order to further strengthen our ability to produce genome edited, proprietary varieties of Camelina, on April 15, 2021, we acquired 100% of the outstanding equity of Agribody Technologies, Inc., a privately held agricultural biotechnology company that owns 16 patents related to the use of genetics to increase yield, shelf life and other sustainability traits in Camelina and many other crops. The acquisition was effected in an all-stock transaction for a total value of approximately $5 million. In consideration for the shares of Agribody Technologies, Inc. the Company issued 830,526 shares at an approximate value of $6.02 per share.

Critical Accounting Policies

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported assets, liabilities, sales and expenses in the accompanying financial statements. Critical accounting policies are those that require the most subjective and complex judgments, often employing the use of estimates about the effect of matters that are inherently uncertain.

The Company's most critical accounting policies and estimates that may materially impact the Company's results of operations include:

Asset Retirement Obligations. The Company recognizes liabilities which represent the fair value of a legal obligation to perform asset retirement activities, including those that are conditional on a future event, when the amount can be reasonably estimated. If a reasonable estimate cannot be made at the time the liability is incurred, we record the liability when sufficient information is available to estimate the liability's fair value. We have asset retirement obligations with respect to our Bakersfield Biorefinery due to various legal obligations to clean and/or dispose of these assets at the time they are retired. However, the majority of these assets can be used for extended and indeterminate periods of time provided that they are properly maintained and/or upgraded. It is our practice and intent to continue to maintain these assets and make improvements based on technological advances. A portion of these obligations relate to the required cleanout of hydrocarbons previously used in the pipeline and terminal tanks. In order to determine the fair value of the obligations management must make certain estimates and assumptions including, among other things, projected cash flows, a credit-adjusted risk-free rate and an assessment of market conditions that could significantly impact the estimated fair value of the asset retirement obligations. We believe the estimates selected, in each instance, represent our best estimate of future outcomes, but the actual outcomes could differ from the estimates selected.

Environmental Remediation Liabilities. The Company recognizes its asset retirement obligation and environmental remediation liabilities in accordance with ASC 410-30, and has estimated such liabilities as of its acquisition date. It is the Company's policy to accrue environmental and clean-up related costs of a non-capital nature when it is both probable that a liability has been incurred and the amount can be reasonably estimated. Environmental remediation liabilities represent the current estimated costs to investigate and remediate contamination at our properties. This estimate is based on internal and third-party assessments of the extent of the contamination, the selected remediation technology and review of applicable environmental regulations, typically considering estimated activities and costs for 20 years, and up to 30 years if a longer period is believed reasonably necessary. Accruals for estimated costs from environmental remediation obligations generally are recognized no later than completion of the remedial feasibility study and include, but are not limited to, costs to perform remedial actions and costs of machinery and equipment that are dedicated to the remedial actions and that do not have an alternative use. Such accruals are adjusted as further information develops or circumstances change. We discount environmental remediation liabilities to their present value if payments are fixed and determinable. Expenditures for equipment necessary for environmental issues relating to ongoing operations are capitalized. Changes in laws and regulations and actual remediation expenses compared to historical experience could significantly impact our results of operations and financial position. We believe the estimates selected, in each instance, represent our best estimate of future outcomes, but the actual outcomes could differ from the estimates selected.

Recoverability of Intangible Assets. The Company invests in the development of various plant-based feedstocks for conversion to fuel as part of its core business plan and mandate. The Company has purchased patents and associated know-how that relate directly to the development and growing of Camelina. The Company invests in the ongoing development of Camelina through research and additional patents as breakthroughs occur. The Company capitalizes all of its patent expenses and amortizes these costs over an approximate 17-year period in conjunction with the life of the patent protection. We evaluate the carrying costs of these assets on a periodic basis and will impair such value if deemed necessary. As of March 31, 2021, no impairment is necessary and the carrying value of our intellectual property (intangible assets) remains a significant value and expected economic generator going forward.

Certain other critical accounting policies, including the assumptions and judgments underlying them, are disclosed in the Company's Annual Report filed on Form 10-

K with the SEC. However, we do not believe that there are any alternative methods of accounting for our operations that would have a material effect on our financial statements.

Results of Operations

Three Months Ended March 31, 2021 vs. Three Months Ended March 31, 2020

Revenues. As discussed above, during the first quarter of 2020 and continuing until we purchased the Bakersfield Biorefinery on May 7, 2020, our activities were devoted solely to the acquisition and financing of the Bakersfield Biorefinery. Therefore, we had no operating revenues in the fiscal quarter ended March 31, 2020 (the "2020 fiscal quarter"). Following the acquisition, we focused our efforts on building our operations and management teams and on putting the processes in place to accomplish the task of retrofitting the Bakersfield Biorefinery. We did not engage in any operating activities that generated revenues until the first quarter of 2021 when we started selling our Camelina seeds to farmers for the production of Camelina seed and grain for our Bakersfield Biorefinery. Therefore, we had no operating revenues from the Bakersfield Biorefinery in the fiscal quarters ended March 31, 2021 (the "2021 fiscal quarter") and only a minimal amount of seed revenues, ($0.1 million).

General And Administrative Expenses and Facility Expenses. General and administrative expense consists of expenses generally involving corporate overhead functions and operations. In the 2020 fiscal quarter, we did not own the Bakersfield Biorefinery and, as a result, we had fewer overhead expenses. In the 2021 fiscal quarter, we owned the Bakersfield Biorefinery and, therefore, had significantly higher expenses, including higher employment, facilities, insurance, legal, and general overhead expenses. As a result our administrative expenses increased by $3.4 million from $0.3 million in the 2020 fiscal quarter to $3.7 million in the 2021 fiscal quarter. This increase was primarily related to an increase in overall payroll costs and benefits, professional fees, insurance costs, technology and communications costs and various vendor costs. We anticipate that our general and administrative expenses will continue to increase as the development of the refinery progresses and operations commence. Facility expense primarily consists of maintenance costs to keep the Bakersfield assets, purchased in May 2020, in an operational mode and expenses normally related to the operations of a refinery. Our facility expenses were $2.8 million in the 2021 fiscal quarter and we incurred no such expenses in the 2020 fiscal quarter.

Other Income/Expense. In the 2021 fiscal quarter we had no impact from derivatives, whereas in the 2020 fiscal quarter we recognized $5.5 million of income from the decrease in fair value on a derivative contract and a gain of $0.5 million on the derecognition of the Derivative Contract. In the 2021 fiscal quarter we recognized a charge of $0.9 million on the change in fair value of our Class B Units and we had no such charge in the 2020 fiscal quarter.

Interest Income/Expense. Interest expense in the 2021 fiscal quarter and the 2020 fiscal quarter consisted of interest of $0.7 million and $0.2 million, respectively, from outstanding promissory notes. Our incurred interest will increase significantly in the future as we draw down on the $313.2 million senior and $66.8 million mezzanine loans, and as the outstanding principal balances of those loans increases. However, construction period interest will be capitalized as part of the cost of the refinery and will be depreciated, and therefore, will not impact our interest expense.

Net losses. We incurred an operating loss of $6.7 million and $0.4 million in the 2021 and 2020 fiscal quarters respectively. We incurred a net loss of $8.2 million in the 2021 fiscal quarter compared to a $5.4 million net income in the 2020 fiscal quarter. Our operating loss increased as a result of the increase in activity related to our purchase of the Bakersfield Biorefinery. We expect to incur losses for the remainder of 2021 while our biorefinery is under construction and therefore not operational. The lower operating and net losses in fiscal 2020 quarter were the result of one-time non-cash accounting adjustments to recognize the gains attributable to the change in the fair value of the Derivative Contract and the derecognition of that contract.

Liquidity and Capital Resources

As of March 31, 2021 and 2020, we had approximately $35.7 million and $0.1 million of cash, respectively, of which $20.8 million is considered long-term as that cash is more likely to be spent on the construction project and will be capitalized into the project as spent. On March 31, 2021 we had negative working capital of $13.8 million and negative working capital of $12.4 million at the end of March 31, 2020, respectively. However, of the $35.7 million of cash as of March 31, 2021, only $3.1 million is unrestricted and available to pay our current liabilities, while the remaining $32.6 million of cash is restricted and can only be used to fund our senior loan interest obligations and our biorefinery construction costs.

In order to fund some of our working capital expenses, on April 13, 2021, the Company raised $3.1 million through the sale of 496,000 shares at $6.25 per share to three accredited investors. In connection with the foregoing sale of shares, we also issued to the investors warrants for the purchase of 19,840 shares (which warrants have an exercise price of $6.25).

Our efforts to acquire the Bakersfield refinery commenced in early 2018. Our operating costs, including the costs of the professionals that we engaged, exceeded our capital resources. Accordingly, on October 15, 2018, we entered into a derivative contract with a commodities trading company whereby we received $6 million of cash in exchange for a contract for ultra-low sulfur diesel to be settled beginning in July of 2020. We subsequently unwound the original derivative contract on October 29, 2019 and entered into a new derivative transaction whereby we received an additional cash payment of $4 million. The new derivative contract was amended again on April 20, 2020 and called for a cash payment of $4.5 million in June 2020 (that we paid) and six equal monthly payments of $3.375 million beginning in May 2022. This payment stream is scheduled to coincide around the commencement of operations and the resulting cash flow of the Bakersfield Biorefinery.

The Bakersfield Biorefinery is currently being retooled and converted from a crude oil refinery into a biofuels refinery. The construction of the Bakersfield Biorefinery is expected to be completed, and the Bakersfield Biorefinery is expected to commence commercial operations in early 2022. Until the Bakersfield Biorefinery is operational, we will not generate any refinery operating revenues. We anticipate that we will generate some revenues in 2021 from sales of Camelina seed, although such revenues are not expected to be significant. During the construction phase of the biorefinery, we will incur significant operating costs and capital expenditures to upgrade the existing equipment and facilities. The expenses that we expect to incur include, among others, the purchase of new biorefinery equipment, the payments to our contractors under the various engineering, procurement and construction agreements that we entered into, the costs of maintaining the existing facility during the construction phase, paying engineering fees and payroll costs, the costs of upgrading the refinery's rail line and certain pipelines, and making interest and other payments under our senior and mezzanine credit facilities.

In order to fund the cost of acquiring the Bakersfield Biorefinery, converting the existing refinery into a biorefinery, and paying all operating expenses during the preoperational period, in May 2020 we entered into (i) a $300 million senior secured term loan facility with certain senior lenders which credit facility was upsized to $313.2 million in November 2020, and (ii) a $65 million secured term loan facility with certain mezzanine lenders which was also upsized to $66.8 million in November 2020. As of March 31, 2021, we have borrowed $182.4 million under the senior credit facility, of which approximately $43 million was unspent as of the end of March 31, 2021. As of March 31, 2021, we have not yet utilized the mezzanine credit facility.

The senior credit facility bears interest at the rate of 12.5% per annum, payable quarterly. No principal payments are required to be made under the senior loan until maturity. The senior loan matures on November 4, 2026. The mezzanine loan will bear interest at the rate of 15.0% per annum on amounts borrowed, payable quarterly, provided that we may defer up to 2.5% interest to the extent we do not have sufficient cash to pay the interest (any deferred interest will be added to principal). Principal of the mezzanine loans is due at maturity. As additional consideration for the senior loans and mezzanine loans, the senior lenders were issued Class B units (and the mezzanine lenders will be issued Class C Units when we borrow under the mezzanine loans) in our subsidiary that indirectly owns the Bakersfield Biorefinery. The Class B and C Units will not affect our liquidity until the Bakersfield Biorefinery commences operations in 2022. However, since the holders of the Class B and C Units will be entitled to certain priority cumulative distributions, if any, that may be made in the future from the operations of the Bakersfield Biorefinery, distributions made on behalf of the Class B and C Units will reduce the amount of distributions that we may be entitled to receive in the future from the operations of the Bakersfield Biorefinery.

Based on our construction budget (including the purchase orders we have issued for the required equipment) and on our internal projections of our future operating

expenses, we anticipated that the $380 million available to us under the senior and mezzanine loans should be sufficient to fund our original projected capital expenditures and operating expenses at the Bakersfield Biorefinery until the Bakersfield Biorefinery becomes operational. However, the scope of the Bakersfield Biorefinery has both changed and expanded to include additional capabilities and equipment, which changes are expected to increase the cost of installing, developing and constructing the Bakersfield Biorefinery. In order to be prepared for cost overruns and the additional facility investments, we have agreed with our senior and mezzanine lenders to establish a $35 million contingency reserve by July 31, 2021 to fund such costs. We currently do not have the funds to establish the contingency reserve and will, therefore, have to raise this amount through a public or private sale of our securities or from other arrangements. No assurance can be given that we will be able to raise the funds by July 31, 2021, or at all. A portion of GCEH's corporate overhead has been funded from the senior and mezzanine loan advances, which advances GCEH has agreed to pay to the Bakersfield Biorefinery.

Our transition to profitability is dependent upon, among other things, the successful and timely development and construction of our biorefinery and the future commercialization of the products that we intend to produce at the Bakersfield Biorefinery. To ensure that we have a buyer for the renewable diesel produced at our biorefinery, we have entered into an offtake agreement with ExxonMobil Oil Corporation (ExxonMobil). Under that agreement, ExxonMobil has agreed to purchase 2.5 million barrels per year of renewable diesel from the Bakersfield Biorefinery for a period of five years following the date that the Bakersfield Biorefinery commences commercial operations, with the right to acquire additional volumes. The Bakersfield Biorefinery is being designed for a capacity of 15,000 barrels per day or an annual volume of approximately 5.4 million barrels per year. On April 20, 2021 we entered into a second agreement, a term purchase agreement, with ExxonMobil whereby ExxonMobil has the right to purchase additional quantities of renewable diesel above the original 2.5 million barrels per year. The revenues we expect to receive under the offtake agreement and the term purchase agreement, together with our other projected sources of revenues, are expected to fund our anticipated working capital and liquidity needs.

Once completed, the Bakersfield Biorefinery will be able to produce renewable diesel from various renewable feedstocks, such as Camelina oil produced from our patented Camelina varieties, soybean oil, used cooking oil, inedible animal fat, and other vegetable oils. We believe that one of our strategic advantages is that a significant portion of the feedstock expected to be used at our biorefinery will be Camelina grain produced by third party farmers for the Bakersfield Biorefinery using our patented Camelina varieties. However, we anticipate that we will need additional funding for general corporate purposes and to grow our certified Camelina seeds, to enter into agreements with farmers, and to otherwise ramp up the cultivation and production of Camelina. As of the date of this report, we have only secured limited funding for our Camelina production plans. Although we are currently in discussions with certain agri-finance companies, other strategic partners, our existing lenders, investment bankers and possible third party investors for debt or equity financing for our Camelina operations and for general corporate purposes, no assurance can be given that we will obtain the necessary funds, or that if we do obtain such funding, that the terms under which we obtain such funding will be beneficial to us.

To the extent that we raise additional funds by issuance of equity securities, our stockholders would experience further dilution and the terms of these securities could include liquidation or other preferences that would adversely affect our stockholders' rights. Our ability to secure additional equity financing could be significantly impacted by numerous factors including our the status, timing and cost of the conversion of the Bakersfield Biorefinery, positive or negative developments in the environmental regulations and the demand for biofuels, and general market conditions, and there can be no assurance that we will successful in raising capital or that any such financing will be available, available on favorable or acceptable terms or at the times, or in the amounts needed. Additionally, while the potential economic impact brought on by and the duration of the coronavirus pandemic is difficult to assess or predict, the significant impact of the coronavirus pandemic on the global financial markets, and on our own stock trading price, may reduce our ability to access additional capital, which would negatively impact our short-term and longer-term liquidity.

Inflation and changing prices have had minimal effect on our continuing operations over our two most recent fiscal years.

We have no off-balance sheet arrangements as defined in Item 303(a) of Regulation S-K.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

As a "smaller reporting company" as defined by Item 10 of Regulation S-K promulgated by the SEC under the U.S. Securities Act of 1933, as amended, we are not required to provide the information required by this Item 3.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures (as defined in Exchange Act Rule 13a-15(e)) that are designed to assure that information required to be disclosed in our Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to management, including our Chief Executive Officer and our Chief Financial Officer (the "Certifying Officers"), as appropriate, to allow timely decisions regarding required disclosures.

In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide reasonable assurance only of achieving the desired control objectives, and management necessarily is required to apply its judgment in weighing the costs and benefits of possible new or different controls and procedures. Limitations are inherent in all control systems, so no evaluation of controls can provide absolute assurance that all control issues and any fraud within the company have been detected.

As required by Exchange Act Rule 13a-15(b), as of the end of the period covered by this Quarterly Report on Form 10-Q, management, under the supervision and with the participation of our Certifying Officers, evaluated the effectiveness of our disclosure controls and procedures. Based on this evaluation, the Certifying Officers have concluded that, as of the period covered by this Quarterly Report on Form 10-Q, our disclosure controls and procedures were, based on the Framework of Internal Control - Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") 2013, not effective because of the following material weaknesses in our internal control over financial reporting: (i) ineffective controls over period end financial disclosure and reporting processes, including not timely performing certain reconciliations, and lack of approval of adjusting journal entries, and (ii) the Company has not performed a risk assessment and mapped the accounting processes to control objectives. We have taken remedial steps to address the material weaknesses in our disclosure controls and procedures. These remedial steps include the following:

(a) The Company has hired additional financial and accounting personnel who are experienced in U.S. GAAP financial reporting. The Company is also evaluating its accounting personnel as necessary to remediate the identified weaknesses;

(b) The Company is implementing more robust financial reporting, accounting and management controls over its accounting and financial reporting functions, including developing and implementing a supplemental approval procedure for costs and expenses in excess of budgeted line items. The Company continues to evaluate and modify, as necessary, its approval control procedures;

(c) The Company has engaged, and will continue to engage, the necessary independent experts to assist the Company in improving its internal control over financial reporting.

Except as described above, there has been no change in the Company's internal control over financial reporting during the quarter ended March 31, 2021 that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

Part II. OTHER INFORMATION

Item 1. Legal Proceedings

The information required with respect to this item can be found under “Legal” in Note H to our condensed consolidated financial statements included elsewhere in this Form 10-Q and is incorporated by reference into this Item 1.

In the future, we may become party to legal matters and claims arising in the ordinary course of business, the resolution of which we do not anticipate would have a material adverse impact on our financial position, results of operations or cash flows.

Item 1A. Risk Factors

The discussion of our business and operations should be read together with the risk factors contained in Item 1A of our Annual Report on Form 10-K for the fiscal year ended December 31, 2020 filed with the SEC, which describe various risks and uncertainties to which we are or may become subject. These risks and uncertainties have the potential to affect our business, financial condition, results of operations, cash flows, strategies or prospects in a material and adverse manner.

COVID-19. In December 2019, a novel strain of coronavirus diseases (“COVID-19”) was first reported in Wuhan, China. Less than four months later, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic. The extent of COVID-19’s effect on the Company’s operational and financial performance is ongoing but the Company believes that this particular pandemic is not likely to be materially disruptive to its future plans and targeted date of beginning commercial operations. While the Company has implemented strict protocols on its on-site workforce and continues to monitor the potential impacts to its business. The Company has implemented strict protocols on its on-site workforce and continues to monitor the potential impacts to its business. While the Company expects that the future impacts due to COVID-19 are not currently nor expected to be disruptive to its ongoing business, the impact of COVID-19 on the economy, its industry, and on the Company’s contractors and subcontractors are constantly evolving, and the future effects continue to be highly uncertain and unpredictable.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

On March 26, 2021, we issued 1,586,786 shares of the Company’s common stock to the holder of a convertible promissory note upon the conversion of the entire outstanding balance, principal and accrued interest, for that note which was $476,036. The issuance was exempt from the registration requirements of the Securities Act of 1933, as amended, pursuant to Section 4(a)(2) of the act applicable to a transaction by an issuer not involving a public offering of securities. No underwriter was involved in the issuance of the shares.

Item 3. Defaults upon Senior Securities

Nothing to report.

Item 4. Mine Safety Disclosures

Nothing to report.

Item 5. Other Information

Engineering, Procurement and Construction Agreement

On May 18, 2021 our Bakersfield Renewable Fuels, LLC subsidiary and CTCI Americas, Inc., a Texas corporation (“CTCI”), entered into that certain Turnkey Agreement with a Guaranteed Maximum Price for the Engineering, Procurement and Construction of the Bakersfield Renewable Fuels Project (the “CTCI EPC Agreement”). CTCI Americas is a worldwide leading provider of reliable engineering, procurement and construction services, including for the refinery market. Under the CTCI EPC Agreement, CTCI has agreed to provide services to complete the engineering, procurement, construction, pre-commissioning, commissioning, start-up and testing of our renewable diesel production facility under construction in Bakersfield, California. The CTCI EPC Agreement requires the Bakersfield Biorefinery to be substantially complete, and to be ready for commercial operations, on January 22, 2022. CTCI’s fees and costs, including direct costs, overhead fees and the contractor’s fee, are guaranteed not to exceed $178 million (which maximum price is subject to adjustment for certain change orders). The obligations of CTCI have been guaranteed by CTCI Corporation, the Taiwanese parent company of CTCI.

Termination of ARB, Inc. EPC Agreement

ARB Inc. has been the primary contractor for the Bakersfield Biorefinery and has operated under that certain Turnkey Agreement with a Guaranteed Maximum Price for the Engineering, Procurement and Construction of the Bakersfield Renewable Fuels Project, dated as of April 30, 2020 (the “ARB EPC Agreement”). On May 19, 2021 we notified ARB, Inc. that we were terminating the ARB EPC Agreement, effective immediately. The subcontracts for the Bakersfield Biorefinery were not terminated and are being subsumed in the CTCI EPC Agreement. Accordingly, the subcontractors will continue to provide their services for the Bakersfield Biorefinery through CTCI.

Amendment to Credit Agreement

Certain of our subsidiaries, including Bakersfield Renewable Fuels, LLC, were parties to a Credit Agreement, dated May 4, 2020, with a group of lenders (the "Senior Lenders") under which the Senior Lenders have agreed to provide our subsidiaries with a $313.2 million senior secured term loan facility (the foregoing agreement, as amended to date, is herein referred to as the “Credit Agreement”). On May 18, 2021 we entered into Amendment No. 4 to Credit Agreement (the “Amendment”) with the Senior Lenders. The Amendment was entered into primarily to consent to the replacement of the ARB EPC Agreement with the CTCI EPC Agreement. Concurrently with the execution of the Amendment, the lenders under the $66.8 million mezzanine credit facility (none of which has yet been used) also entered into a consent and waiver agreement to evidence their consent to the replacement of the ARB EPC Agreement with the CTCI EPC Agreement.

Item 6. Exhibits

Exhibit Number	Description
10.1	Term Purchase Agreement, dated April 20, 2021 between Bakersfield Renewable Fuels, LLC and ExxonMobil Oil Corporation*
10.2	Amendment No. 4 to Credit Agreement, dated as of May 18, 2021, between BKRF OCB, LLC, BKRF OCP, LLC, and the senior lenders referred to therein*
10.3	Turnkey Agreement with a Guaranteed Maximum Price for the Engineering, Procurement and Construction of the Bakersfield Renewable Fuels Project, dated May 18, 2021, between Bakersfield Renewable Fuels, LLC and CTCI Americas, Inc.*
31.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

32.2	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	XBRL Instance Document.
101.SCH	XBRL Taxonomy Schema.
101.CAL	XBRL Taxonomy Extension Calculation Linkbase.
101.DEF	XBRL Taxonomy Extension Definition Linkbase.
101.LAB	XBRL Taxonomy Extension Label Linkbase.
101.PRE	XBRL Taxonomy Extension Presentation Linkbase.

* Certain confidential portions of this Exhibit were omitted by means of marking such portions with an asterisk because the identified confidential portions are (i) not material and (ii) would be competitively harmful if publicly disclosed.

SIGNATURES

In accordance with the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

GLOBAL CLEAN ENERGY HOLDINGS, INC.

Date: May 20, 2021

By: /s/ Richard Palmer
Richard Palmer
President and Chief Executive Officer

Date: May 20, 2021

By: /s/ Ralph Goehring
Ralph Goehring
Chief Financial Officer

CERTAIN CONFIDENTIAL INFORMATION IN THIS EXHIBIT HAS BEEN OMITTED AND REPLACED WITH "[…*…]" BECAUSE IT IS BOTH NOT MATERIAL AND IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL.**

TERM PURCHASE AGREEMENT

This **Term Purchase Agreement** ("**Agreement**"), dated April 20, 2021 ("**Effective Date**"), is made by and between Bakersfield Renewable Fuels, LLC, a Delaware limited liability company ("**BKRF**" or "**GCE**"), and ExxonMobil Oil Corporation, a New York corporation (" **ExxonMobil**"). GCE and ExxonMobil are each individually referred to herein as a "Party", and collectively as the "Parties".

WHEREAS, GCE intends to produce renewable diesel fuel at its refinery in Bakersfield, California;

WHEREAS, ExxonMobil desires to purchase and GCE desires to sell certain quantities of renewable diesel fuel, on the terms and conditions contained herein;

NOW, THEREFORE, in consideration of the aforesaid premises and the mutual covenants contained herein, the Parties hereby agree:

DEFINITIONS

Unless the context indicates otherwise, as used in this Agreement, the following terms have the meanings indicated below:

"**Additional Renewal Term**" shall have the meaning given to that term in Section 2.1(c).

"**Adjusted GCE Margin Share**" shall have the meaning given to that term in Schedule 4.2.

"**Affiliate**" means, with respect to a person, any other person which controls, either directly or indirectly, such person or which is controlled directly or indirectly by such person or is directly or indirectly controlled by a person which directly or indirectly controls such person. "**Control**" for purposes of the immediately preceding sentence means the power to direct or cause the direction of the management and policies of the company, partnership or legal entity, whether through the ownership directly or indirectly of more than fifty percent (50%) of the voting securities, by contract or otherwise.

"**Agreement**" shall have the meaning given to that term in the preamble to this Agreement.

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

"**API 1640**" shall have the meaning given to that term in Section 9.4.

"**Applicable Law**" means all statutes, ordinances, rules, regulations, orders, and directives of federal, state, or local authority, including those applicable to environmental pollution, and all presidential proclamations which apply to either Party or the Project.

"**Bakersfield Terminaling Agreement**" means the agreement for services related to storage and handling of Products at the Project site, which the Parties intend to enter simultaneously with this Agreement.

"**Barrel**" means a volume equal to forty-two (42) Gallons.

"**BKRF**" shall have the meaning given to that term in the preamble to this Agreement.

"**Business Day**" means a day (except Saturdays and Sundays and public holidays) when deposit-taking banks are open in New York, New York, for the business of over-the-counter deposit-taking.

"**CARB**" means the California Air Resources Board.

"**Commercial Operations Date**" means the date that the Project has completed required testing and commissioning under the engineering, procurement and construction agreements for the Project and can start producing Renewable Diesel for sale.

"**Committed Volume**" shall have the meaning given to that term in Section 2.2(a) of the Offtake Agreement.

"**Decision**" shall have the meaning given to that term in Section 12.2(f).

"**Delivery Point**" means: (a) for transport by truck, the point at which the Products in question passes the vehicle's flange connection on loading into the vehicle; (b) for transport by rail, the point at which the Products in question passes the rail tank wagon's flange connection on loading into the rail tank wagon; (c) for transfers into the ExxonMobil Delivery Tanks, at the inlet flange of the applicable tank; and (d) for transport by pipeline, the point mutually agreed by the Parties in

accordance with Section 3.2.

"**Delivery Week**" means one calendar week, beginning Monday 12:00 AM local time through Sunday 11:59 PM local time.

"**Effective Date**" shall have the meaning given to that term in the preamble to this Agreement.

"**EMTS**" shall have the meaning given to that term in Section 5.3.

"**EPA**" means the U.S. Environmental Protection Agency.

"**Expert**" shall have the meaning given to that term in Section 12.2(b).

"**ExxonMobil Delivery Tank**" means a storage tank at the Project into which Products are delivered to ExxonMobil pursuant to in-tank sales made under Section 3.2.

"**FBTC**" means the Federal Blenders Tax Credit, which applies to blenders of Biodiesel (including Renewable Diesel) mixtures as set forth in Internal Revenue Code Sections 6426(a) and (c), and persons that sell or use alternative fuel as a fuel in a motor vehicle or motorboat and in aviation, as set forth in Internal Revenue Code Sections 6426(a) and (d).

"**FCA**" means Free Carrier, as defined in the Incoterms published by the International Chamber of Commerce.

[…***…]

"**Force Majeure**" shall have the meaning given to that term in Section 11.1.

"**FPTC**" means Federal Producer Tax Credit, which applies to producers of Biodiesel (including Renewable Diesel).

"**Gallon(s)**" means a unit of volume equivalent to 231 cubic inches measured at 60 degrees Fahrenheit.

"**GCE**" shall have the meaning given to that term in the preamble to this Agreement.

"**GCE Margin Share**" shall have the meaning given to that term in Schedule 4.2.

"**GCE Renewable Diesel Price**" means the price per Gallon of Renewable Diesel as per the formula set forth in Schedule 4.1.

"**Governmental Authority**" means, in respect of any country, any national, regional, state, or local government, any subdivision, agency, commission or authority thereof (including any quasi-governmental agency) having jurisdiction over a Party, the Project or Renewable Diesel to be delivered pursuant to this Agreement and acting within its legal authority.

"**Governmental Authorization**" means all permits, authorizations, variances, approvals, registrations, certificates of legal status, certificates of occupancy, orders or other approvals or licenses (and in any case, any amendments or supplements thereto) granted or issued by any Governmental Authority having or asserting jurisdiction over matters covered in this Agreement or with respect to a Party.

"**Initial Term**" shall have the meaning given to that term in Section 2.1(a).

"**Information**" shall have the meaning given to that term in Section 14.4.

"**Intellectual Property Right**" shall have the meaning given to that term in Section 9.3.

"**Invalid RIN**" shall have the meaning given to that term in Section 5.5.

"**IRS**" means the United States Internal Revenue Service.

"**LCFS**" means the Low Carbon Fuel Standard.

"**Lenders**" shall have the meaning given to that term in the Offtake Agreement.

"**Margin**" shall have the meaning given to that term in Section 4.2(b).

"**Margin Notice**" shall have the meaning given to that term in Section 4.2(b).

"**Margin Payment**" shall have the meaning given to that term in Section 4.2(b).

"**Monthly Delivery Schedule**" shall have the meaning given to that term in Section 3.1(b).

"**Monthly Limit Notice**" shall have the meaning given to that term in Section 3.1(a).

"**Monthly Operating Volume**" shall have the meaning given to that term in Section 3.1(a).

"**Monthly Payment Amount**" shall have the meaning given to that term in Section 4.2(d).

"**Monthly Scheduled Volume**" shall have the meaning given to that term in Section 3.1(a).

"**Offtake Agreement**" means the Product Offtake Agreement between GCE (as successor by assignment to GCE Holdings Acquisitions, LLC) and ExxonMobil dated April 10, 2019, as amended by that certain Amendment and Waiver Letter Agreement dated March 31, 2020, and as may be further amended by the Parties.

"**OPIS**" means Oil Price Information Service as published by UGC Holdings LP or its successors.

"**Product**" or "**Products**" means Renewable Diesel and/or SAF (if agreed by the Parties pursuant to Section 1.1).

[…***…]

"**Project**" means the renewable diesel facility located in Bakersfield, California that GCE intends to convert, own and operate to process approximately 15,000 Barrels per day of renewable feedstock into renewable diesel utilizing Haldor Topsøe HydroFlex technology. At design capacity, the Project is expected to produce approximately two hundred ten (210) million Gallons per Year of Renewable Diesel as well as other co-products.

"**Proposal**" shall have the meaning given to that term in Section 12.2(c).

"**Price Reopener Dispute"** shall have the meaning given to that term in Section 4.3(c).

"**Renewable Diesel**" means product that meets the Specifications in Schedule 1.1.

"**Renewal Term**" shall have the meaning given to that term in Section 2.1(b).

"**Representatives**" shall have the meaning given to that term in Section 14.5(i).

"**Resale Price**" shall have the meaning given to that term in Section 4.2(b).

"**RFS2**" means the Renewable Fuel Standard issued in accordance with the Energy Policy Act of 2005 and modified by the Energy Independence and Security Act of 2007.

"**RFS2 Regulations**" means rules and regulations issued by any Governmental Authority having or asserting jurisdiction over matters related to RSF2.

"**RINs**" shall have the meaning given to that term in Section 5.1.

"**Rules**" shall have the meaning given to that term in Section 12.1.

"**SAF**" means sustainable aviation fuel.

"**Specification(s)**" means the specifications for the Products, as set forth in Schedule 1.1.

"**Start Date**" shall have the meaning given to that term in Section 2.1(a).

"**Table 4.2**" shall have the meaning given to that term in Section 4.2(d).

"**Taxes, Fees, and/or Other Similar Levies"** means all taxes, fees, levies or charges imposed by any Governmental Authority, including federal manufacturers excise taxes, environmental taxes, state and local motor fuel excise taxes, state and local sales and use taxes, gross receipts or franchise taxes, business and occupation taxes, state and local inspection fees, and federal, state and local oil spill taxes or fees.

"**Term**" means collectively, the Initial Term and any subsequent Renewal Term or Additional Renewal Term.

"**Transfer Date**" shall have the meaning given to that term in Section 5.3.

"**Turnaround**" means a planned maintenance event that results in an interruption of normal production for a particular refinery unit or group of units at the Project for a limited period of time.

"**Year**" shall mean each twelve (12) month period commencing when the Initial Term commences.

Terms not otherwise defined in this section shall have the meanings ascribed to such terms elsewhere in this Agreement.

ARTICLE I
AGREEMENT TO PURCHASE

1.1 Purchase of Products.

(a) During the Term of this Agreement, ExxonMobil shall have the right to purchase and receive Products from GCE, and GCE agrees to sell and deliver Products to ExxonMobil, in each case, in accordance with the terms and conditions of this Agreement and at the prices set forth in Schedule 4.1 to this Agreement.

(b) The Parties acknowledge that, initially, the Project will only be capable of producing and delivering Renewable Diesel, and that GCE may elect to modify the Project to be capable of producing and delivering SAF. Unless and until this Agreement is modified in writing by the mutual agreement of the Parties to address the production, delivery and sale of SAF in accordance with clause (c) below, "Products" shall not include SAF.

(c) If GCE decides to make such modifications to the Project, whether in accordance with Section 3.4 of the Offtake Agreement or independent thereof, GCE and

ExxonMobil agree to negotiate in good faith for a period of one hundred and twenty (120) days regarding the potential for SAF to be added as a Product under this Agreement and related terms and conditions, including, without limitation, a mutually agreeable price formula for SAF, volumes of SAF, specifications for SAF and a margin sharing regime for SAF, and any other related changes to this Agreement. During this 120-day period, ExxonMobil shall use reasonable efforts to conduct and complete its "fit for use" evaluation of the specifications for the SAF proposed by GCE.

(d) In the event the Parties are unable to reach agreement on the deal terms for such SAF sale within such 120-day period, then GCE may sell SAF from the Project to third parties; provided that, absent agreement in accordance with clause (c) above, GCE shall convert no more than 2,500 Barrels-per-day of the Project's capacity to the production of SAF; provided further that such limitation shall not apply to any volumes of SAF sold to ExxonMobil under the Offtake Agreement.

1.2 Volumes. Subject to the terms of this Agreement, ExxonMobil shall have the exclusive right to purchase all of the Renewable Diesel and SAF (to the extent an agreement is reached in accordance with Section 1.1) produced at the Project that is not Committed Volume to ExxonMobil under the Offtake Agreement. For the avoidance of doubt, except for the Monthly Scheduled Volume determined pursuant to Section 3.1(a) which is subject to Section 1.4, GCE shall have no obligation hereunder to produce any minimum volumes of Renewable Diesel.

1.3 Suspension of Exclusivity. If (a) GCE's on-site inventory of Renewable Diesel exceeds, at any time, […***…] Barrels, (b) GCE gives ExxonMobil written notice of such event, and (c) ExxonMobil does not purchase and take delivery of Renewable Diesel from GCE such that GCE's on-site inventory is equal to or is less than […***…] Barrels within five (5) days of such notice, then after such 5-day period GCE may sell to third parties an amount of Renewable Diesel from the Project equal to the sum of (x) […***…] Barrels plus (y) the amount of Barrels, if any, by which ExxonMobil's purchases of Renewable Diesel under this Agreement and the Offtake Agreement during such 5-day period are less than the amount of Renewable Diesel produced and certified at the Project during such 5-day period. Any such sales by GCE must occur in the 14-day period after the expiration of the 5-day notice period described in the previous sentence; provided, however, that GCE's right to sell to third parties shall persist beyond such 14-day period to the extent that GCE's on-site inventory contines to exceed […***…] Barrels and ExxonMobil remains unwilling to purchase such excess. Promptly following the first year of the Initial Term, the Parties shall meet to discuss the adequacy of Product storage capacity at the Project. If ExxonMobil desires additional Product storage capacity, then the Parties shall negotiate in good faith regarding appropriate adjustments needed to this Agreement or the Bakersfield Terminaling Agreement to bring online additional Product storage tanks at the Project.

1.4 […***…]

1.5 Local Sales. Recognizing the value of developing strong local relationships, ExxonMobil agrees consider in good faith any offers to purchase Renewable Diesel made by feedstock suppliers to GCE in and near Bakersfield, California.

ARTICLE II
TERM AND TERMINATION

2.1 Term.

(a) The initial delivery term of the Agreement ("**Initial Term**") shall be sixty (60) months, commencing upon the date that the Project commences operations (the "**Start Date**"), as notified by GCE to ExxonMobil in accordance with Section 2.5 of the Offtake Agreement.

(b) ExxonMobil shall have a one-time option to extend the Term for an additional five (5) Year period (a " **Renewal Term**") which must be exercised, if at all, by delivery of written notice to GCE at least twelve (12) months prior to expiry of the Initial Term; provided that, in order to extend the Initial Term for the Renewal Term, ExxonMobil must concurrently exercise its corresponding extension option under Section 2.3(b) of the Offtake Agreement and not be in breach thereof. If ExxonMobil fails to properly deliver timely notice of its exercise of this option for a Renewal Term, the Term of this Agreement will expire at the end of the Initial Term.

(c) If ExxonMobil exercises its Renewal Term option, ExxonMobil will have an additional right to require the Parties to enter into good faith negotiations on a pricing structure for a further five (5) year period beyond the end of the Renewal Term (an "**Additional Renewal Term**"). ExxonMobil must exercise its option to enter into good faith negotiations relating to an Additional Renewal Term (if at all) not later than twelve (12) months prior to expiry of the Renewal Term; provided that, in order to exercise such option, ExxonMobil must concurrently exercise its corresponding extension option under Section 2.3(c) of the Offtake Agreement and not be in breach thereof. If the Parties are unable to reach agreement on terms for the Additional Renewable Terms, or the terms of the corresponding extension option under Section 2.3(c) of the Offtake Agreement, in either case, at least nine (9) months prior to expiry of the Renewal Term, the term of this Agreement will end upon the expiry of the Renewal Term.

(d) Notwithstanding anything contained herein to the contrary, GCE shall have the right to terminate this Agreement if (i) ExxonMobil fails to purchase and receive at least […***…] percent ([…***…]%) of the Monthly Operating Volumes (as may be modified by a Monthly Limit Notice) measured on a rolling three-month average basis during the Term, (ii) GCE has provided written notice of such event to ExxonMobil and (iii) following receipt of such notice, ExxonMobil has failed to increase its purchases so that ExxonMobil purchases and receives at least […***…] percent ([…***…]%) of the Monthly Operating Volumes (as may be modified by a Monthly Limit Notice) in each consecutive month after such notice

until the weighted average of ExxonMobil's monthly purchases (starting with the first month of the three-month period in which the ExxonMobil first breached the obligation described in clause (i) above) equals at least […***…] percent ([…***…]%) of the Monthly Operating Volumes (as may be modified by a Monthly Limit Notice) over that same period.

2.2 Default. In addition to the provisions of Section 11.1, this Agreement may be terminated by a non-defaulting Party, upon notice to the defaulting Party, if one or more of the following events have occurred and remain uncured within the specified time period:

(a) (i) the other Party defaults, in any material respect, in the performance or observance of any material term, covenant or agreement contained in this Agreement (other than a default relating to any payment obligation or any default for which a sole and exclusive remedy is provided in this Agreement), (ii) such default has a material adverse impact on the (A) defaulting Party's performance of its obligations to purchase or sell Renewable Diesel hereunder or (B) non-defaulting Party, and (iii) and such default is not cured within thirty (30) days following receipt by the defaulting Party of written notice of such default from the non-defaulting Party or, if the defaulting Party has commenced a cure and is diligently pursuing cure to completion, such period of time as reasonably needed by the defaulting Party to complete such cure;

(b) the other Party fails to pay any amount owed hereunder on the due date for such payment, except for any amounts being disputed in good faith, and such amount (and any interest accrued thereon) remains unpaid for ten (10) days following receipt by such Party of written notice from the non-defaulting Party of such failure to pay;

(c) the other Party commences any case, proceeding or any other action: (1) under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debt; or (2) seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its assets or the other Party shall make a general assignment for the benefit of its creditors;

(d) there is commenced against the other Party any case, proceeding or other action of a nature referred to in clause (c) above that has not been dismissed within sixty (60) days;

(e) there is commenced against the other Party any case, proceeding or other action seeking issuance of a warrant of attachment, execution or similar process against all or any substantial part of its assets;

(f) the other Party takes any action in furtherance of, or indicating its consent to,

approval of, or acquiescence in, any of the acts set forth in clause (c) (d), or (e) above; or

(g) the other Party is in default under the Offtake Agreement pursuant to Section 2.7 thereof.

ARTICLE III
PROGRAMMING OF DELIVERIES

3.1 Quarterly Forecasts.

(a) On a quarterly basis at least forty-five (45) days prior to the first day of each given calendar quarter during the Term, GCE shall provide written notice to ExxonMobil setting forth the volume of Product for each of the three months of delivery during such calendar quarter that GCE estimates that it will make available for sale and delivery to ExxonMobil hereunder (the volume for each month of delivery, the "**Monthly Operating Volume**"). Within ten (10) Business Days of receipt of such notice, ExxonMobil shall provide written notice to GCE nominating the volume of Product for each of the three months of delivery, in each case, not to exceed the Monthly Operating Volume, that ExxonMobil estimates that it will purchase and receive hereunder (the volume for the month of delivery set forth in such nomination, as may be revised in accordance with the last sentence of this clause (a), is referred to herein as the "**Monthly Scheduled Volume**"). GCE may revise, upwardly or downwardly, the Monthly Operating Volume for any month of delivery by delivering written notice of such revision (a "**Monthly Limit Notice**") no later than the twelfth (12^{th}) day of the month preceding the month of delivery. ExxonMobil shall revise the Monthly Scheduled Volume by providing written notice of such revision within three (3) days of delivery of a Monthly Limit Notice; provided, that, in the event ExxonMobil fails to deliver a notice to revise the Monthly Operating Volume by such date, the Monthly Scheduled Volume shall remain unchanged from ExxonMobil's initial notice; provided further, that the Monthly Scheduled Volume shall in no event exceed the quantity of Products available for sale set forth in a Monthly Limit Notice.

(b) On or prior to the fifteenth (15^{th}) day of each month during the Term, GCE shall provide to ExxonMobil a ratable delivery schedule for the Monthly Scheduled Volume for the upcoming month (the "**Monthly Delivery Schedule**"), which sets out the estimated volumes of Products to be produced at the Project and the amount of Products to be made available for delivery hereunder on each day of such month. GCE agrees to use commercially reasonable efforts to modify any Monthly Delivery Schedule to the extent reasonably requested by ExxonMobil. Moreover, GCE shall have the right to modify, on a day-ahead basis, the Monthly Delivery Schedule as may be reasonably necessary to accommodate any operational issues relating to the Project. Products shall be considered sold and transferred to ExxonMobil hereunder when delivery is made pursuant to Section 3.2 below.

(c) GCE's remedies for ExxonMobil's failure to purchase and receive all of the Monthly Operating Volume (as may be modified by a Monthly Limit Notice) shall be limited to the following, if applicable: (a) the temporary suspension of exclusivity in accordance with Section 1.3 and (b) the right to terminate this Agreement in accordance with Section 2.1(d).

3.2 Deliveries. At ExxonMobil's sole option, GCE shall deliver Products to ExxonMobil at the Project in Bakersfield, California either (i) FCA into an ExxonMobil Delivery Tank consistent with the commercial terms of the Bakersfield Terminaling Agreement, (ii) FCA over the rack into rail tank wagons, or (iii) FCA over the rack into trucks with title transferring in accordance with Section 10.1. Products may also be delivered by pipeline on terms and conditions mutually agreed by the Parties (in each Party's sole and absolute discretion), which terms and conditions shall identify the Delivery Point for pipeline deliveries. The Parties shall cooperate to establish a lifting and delivery scheduling process. […***…]

3.3 Operational Covenants. GCE will operate all loading facilities at the Project 24 hours a day, 7 days a week, subject to scheduled and unscheduled outages and Force Majeure. Additionally, GCE agrees to comply with the terms of Schedule 3.3 regarding communication of loading rack issues.

(a) ExxonMobil shall be entirely responsible (at its sole risk, cost and expense) for loading and transporting the Renewable Diesel and SAF in trucks from the Delivery Point. ExxonMobil shall cause its transporters and contractors and their respective employees or its customers' transporters and contractors and their respective employees to comply with all Applicable Law and all generally applicable access; loading; scheduling; environmental, health and safety and insurance requirements put in place by GCE in connection with the operations of the Project.

(b) GCE shall be entirely responsible (at its sole risk, cost and expense) for loading and transporting the Renewable Diesel and SAF into rail tank wagons from the Delivery Point.

(c) ExxonMobil shall be responsible for delivery of rail tank wagons to the Project site in accordance with the Monthly Delivery Schedule. Once on site, GCE shall be responsible to move rail tank wagons as required within the Project site for product delivery.

ARTICLE IV
PRICE

4.1 Price of Product. ExxonMobil shall pay to GCE the GCE Renewable Diesel Price for each Gallon of Renewable Diesel delivered pursuant to Section 3.2.

4.2 Margin Payments.

(a) GCE shall be entitled to receive payments from ExxonMobil, on a tiered basis in accordance with Schedule 4.2, based on the Margin realized by ExxonMobil's

downstream sales of Renewable Diesel purchased from GCE under this Agreement. ExxonMobil agrees to act in good faith […***…].

(b) For purposes of this Agreement, "**Margin**" is equal to:

(i) […***…]; *MINUS*

(ii) […***…]; *MINUS*

(iii) […***…].

The Margin shall be calculated […***…] in accordance with Schedule 4.2, and ExxonMobil shall provide notice (the "**Margin Notice**") to GCE of the result of such calculation and the resulting payment owed pursuant to this Section 4.2 (each, a "**Margin Payment**") within ten (10) Business Days of making such calculation. For purposes of this Section, the Parties agree that, during the Initial Term, […***…] and that any changes to such amount shall require mutual agreement.

(c) […***…]

(d) […***…]

(e) In order for GCE to make economic decisions on the quantities of Product to be made available in the Monthly Operating Volumes in accordance with Section 3.1(a), the Parties agree to establish a quarterly process whereby they will meet and discuss, subject to the provisions of Article 14 and applicable confidentiality restrictions, domestic and international market fundamentals, including but not limited to prices and new markets for Renewable Diesel, expected during the following quarter and potential, future marketing opportunities for Renewable Diesel from the Project. ExxonMobil agrees to consider in good faith marketing opportunities in jurisdictions other than California for Renewable Diesel produced at the Project that are identified by GCE. EXXONMOBIL MAKES NO WARRANTIES OF ANY KIND WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO, AND SHALL HAVE NO LIABILITY IN CONNECTION WITH, THE ACCURACY OR COMPLETENESS OF FORWARD-LOOKING INFORMATION (INCLUDING ANTICIPATED SALES PRICES) PROVIDED TO GCE HEREUNDER.

(f) Both Parties agree alternative markets may exist to sell the Products outside of California, which may have colder climates and require different cold temperature properties. Based on the mutual agreement of both Parties (in each Party's respective sole discretion), Renewable Diesel may be produced with cold temperature properties for specific markets, based on the technology and capability of the Project, and Product prices may be adjusted on the mutual agreement of both Parties (in each Party's respective sole discretion), due to the lower yield from the Project.

4.3 Price Reopener.

(a) […***…].

(b) […***…].

(c) […***…].

4.4 Price and Cost Audit.

(a) GCE has the right, at its own cost and expense, to have a third party auditor, who is reasonably acceptable to both Parties, audit ExxonMobil's invoices and records for the purpose of verifying […***…]. This Section 4.4 shall survive termination of this Agreement for a period of three (3) years.

(b) In addition to the foregoing, ExxonMobil agrees to communicate […***…]

ARTICLE V
RENEWABLE IDENTIFICATION NUMBERS

5.1 RINS. As of the Effective Date, the Parties anticipate that each Gallon of Renewable Diesel sold and purchased hereunder shall have one and seven-tenths (1.7) times the associated Renewable Identification Numbers ("**RINs**") in which the "RR" component of each RIN, as defined at 40 CFR Section 80.1425(f), has a value of 17, in accordance with calculation contemplated under 40 CFR Section 80.1425(f) and 40 CFR Section 80.1415(b)(4), and the "D" code of each RIN as defined at 40 CFR Section 80.1425(g)(2) has a value of 4.

5.2 Representations and Warranties Regarding RINS. With respect to the RINs transferred under this Agreement, GCE, without prejudice to ExxonMobil's remedies contained herein, warrants that upon delivery of the Renewable Diesel:

(i) RINs will be property generated by an EPA registered facility or are otherwise valid pursuant to RFS2 Regulations, and GCE will have the right to transfer such RINs pursuant to the applicable RFS2 Regulations;

(ii) GCE will have good and marketable title to the RINs, and such RINs will be free and clear of any GCE created claims, liens, charges, encumbrances, pledges, or security interests whatsoever;

(iii) The RINs will have been assigned to the volume of Renewable Diesel transferred under this Agreement and have not been previously transferred to another party; and

(iv) GCE will not have taken any action or made an omission that would prohibit or limit ExxonMobil's use of the RINs.

With respect to the RINs transferred under this Agreement, ExxonMobil covenants that it will use, transfer, or retire the RINs in compliance with the applicable RFS2 Regulations and all other Applicable Law.

GCE shall participate in an EPA-certified Quality Assurance Plan (QAP) under 40 C.F.R. §80.1469 and 80.1472 as a way to ensure all RINS generated at the Project are properly generated under the EPA regulations.

5.3 RIN Title and Risk Transfer. GCE shall transfer title to ExxonMobil of the quantity of RINs properly allocable to the quantities of Renewable Diesel purchased under this Agreement through the EPA Moderated Transaction System ("**EMTS**") under 40 C.F.R. §80.1452 within five (5) Business Days after the date of delivery of the associated Renewable Diesel under this Agreement ("**Transfer Date**"). GCE shall enter a "sell" transaction into EMTS for the subject RINs on or before the Transfer Date, identifying the purchaser as ExxonMobil, assignment code, RIN D code, period of generation, quantity, volume of associated Renewable Diesel, and the mutually agreed per-Gallon price of associated Renewable Diesel transferred. ExxonMobil shall enter a corresponding "purchase" transaction into EMTS in accordance with the RFS2 Regulation. Title to and risk of loss of the RINs shall pass from GCE to ExxonMobil upon ExxonMobil's completion of the "purchase" transaction into EMTS.

5.4 RIN Product Transfer Documents. GCE shall provide ExxonMobil a "Product Transfer Document" that fulfills all of the requirements set forth in 40 C.F.R. § 80.1453, and shall include, but not be limited to, the following information:

(i) The name and address of seller and buyer;

(ii) GCE's and buyer's EPA company registration number;

(iii) The volume of Renewable Diesel transferred;

(iv) The date of transfer;

(v) The quantity of RINs being transferred;

(vi) The RIN type(s) ("D" code) and Assignment Code(s) ("K" code);

(vii) The RIN generation year; and

(viii) The EMTS field description of the reason for the transfer (e.g., standard trade).

5.5 Remedies for Invalid RINS. A RIN shall be deemed invalid (a) if it meets the invalid RIN criteria described in 40 CFR Subpart M § 80.1431 - Treatment of invalid RINs or (b) if the EPA has provided notice to a party regulated under the regulations or otherwise has made its determination public that the RIN is invalid (in each case, an "**Invalid RIN**"). In the event that GCE transfers Invalid RINs, GCE shall, at GCE's sole expense, transfer to ExxonMobil qualified replacement RINs in an amount equal to the amount of Invalid RINs within thirty (30) days of the later of: (i) the discovery of the invalid RINs; or (ii)

ExxonMobil's demand for replacement. For the purpose of this Section, qualified replacement RINs may be either assigned or separated RINs but must be the same D code and must be the same year of generation, if available; otherwise, such replacement RINs shall be the next unexpired year of generation. In the event that GCE fails or refuses to transfer sufficient qualified replacement RINs, GCE shall, within ten (10) days of ExxonMobil's written request, reimburse ExxonMobil's actual costs and expenses incurred in connection with ExxonMobil obtaining qualified replacement RINs where the cost of such qualified replacement RINs purchased by ExxonMobil was no less favorable than that available to ExxonMobil through good faith negotiations in an arms-length transaction. GCE shall reimburse ExxonMobil for any penalties or fines imposed upon ExxonMobil by government authorities as a result of ExxonMobil's use of RINs supplied to it under this Agreement that are subsequently found to be invalid RINs.

5.6 Reporting of Transactions. Both Parties shall report transactions under this Agreement to the EPA in accordance with the requirements set forth in the RFS2 Regulation.

5.7 RFS2 Repeal or Modification. In the event RFS2 is repealed or is modified in a manner that materially affects GCE's ability to deliver RINs under this Agreement that does not constitute a Change in Law, both Parties agree that this Agreement will continue, subject to the following:

(a) the Parties agree to negotiate in good faith with respect to pricing modifications, based on mutually acceptable terms (in each Party's sole and absolute discretion), to reflect, as applicable, the changes to RFS2 or any subsequent federal renewable fuel mandates and/or state level renewable mandates; and

(b) if no mutual agreement with respect to pricing structure modifications can be reached within ninety (90) days from the date any Party notifies the other Party in writing of any such repeal or modification of the RFS2, Section 5.8 below shall apply and the GCE Renewable Diesel Price and the calculation of Margin shall be automatically modified to remove RIN-related costs and values to the extent that GCE is unable to deliver such products.

5.8 Obligation. Notwithstanding anything in this Agreement to the contrary, (i) upon the effective date of such repeal or modification, GCE's obligation to supply RINs shall not apply in the event RFS2 is repealed or in the event that RFS2 is modified in a manner (and to the extent) that GCE is unable to deliver such products as described in Section 5.7 and (ii) any repeal or modification of RFS2 that is properly considered a Change in Law shall be handled in accordance with Section 8.1.

ARTICLE VI
PAYMENT

6.1 Invoicing. GCE will electronically invoice ExxonMobil within […***…] Business Days following each […***…] for the Products sold and delivered during such […***…].

6.2 Payment. Payment shall be made by ExxonMobil to GCE no later than […***…] Business Days following the date of receipt of GCE's initial valid invoice. All payments

hereunder shall be made in U.S. dollars, by means of a wire transfer of immediately available funds to the account designated by GCE in the relevant invoice and, except to the extent required by Applicable Law, without any discount, allowance, set-off, retention or deduction. All payments otherwise due on a Saturday, Sunday, or a United States banking holiday will be deemed due the following Business Day.

6.3 Disputed Invoices. In the event ExxonMobil in good faith disagrees with any invoice, it shall immediately notify GCE of the reasons for the dispute. In such event, GCE shall promptly issue a revised invoice for the undisputed portion of the initial invoice, without prejudice to any rights of GCE with respect to the disputed portion. The Parties shall endeavor to resolve the disputed portion within thirty (30) days. Failing resolution, either Party may pursue dispute resolution in accordance with Article 12. Promptly after resolution of any dispute, and upon receipt of invoice for the remaining portion, payment shall be made to GCE under the agreed payment terms.

6.4 **Interest.** Amounts not paid by a Party to another Party when due (including any payments of disputed amounts under Section 3.3 above) under any provisions of this Agreement shall bear interest at a per annum rate of interest equal to the lesser of (a) the then-effective prime rate of interest published under "Money Rates" by *The Wall Street Journal*, or (b) the maximum rate permitted by Applicable Law from the date such payment is due until and including the date of payment.

6.5 **Taxes.** Subject to the immediately succeeding sentence, any and all Taxes, Fees, and/or Other Similar Levies imposed or assessed by a Governmental Authority on or with respect to Renewable Diesel prior to the Delivery Point shall be borne by GCE. Any and all Taxes, Fees, and/or Other Similar Levies imposed or assessed by a Governmental Authority on or with respect to Renewable Diesel at and after the Delivery Point shall be borne by ExxonMobil. Any Taxes, Fees, and/or Other Similar Levies, the taxable incident of which is the transfer of title or the delivery of the Renewable Diesel hereunder, or the receipt of payment therefor, regardless of the character, method of calculation or measure of the levy or assessment, shall be paid by the party upon whom the tax, fee or charge is imposed by applicable law. If ExxonMobil claims exemption from any of the aforesaid taxes, then ExxonMobil, in lieu of payment of or reimbursement of such taxes/fees to GCE, shall furnish GCE with a properly completed and executed exemption certificate in the form prescribed by the appropriate taxing authority. ExxonMobil shall promptly notify GCE in writing of any change in the status of its exemption or registration. ExxonMobil shall promptly furnish GCE any renewal certificate as requested by GCE. Notwithstanding anything contained herein to the contrary neither Party shall be responsible for the income, franchise, ad valorem or similar taxes of the other Party and each Party agrees to defend, indemnify and hold the other Party harmless from and against any such tax asserted by any Governmental Authority to be due and payable by the other Party.

ARTICLE VII
LCFS PATHWAYS AND CI VALUES

7.1 **CARB LCFS Pathways and Approved CI Values.**

(a) As of the Effective Date, the Parties anticipate that each Gallon of Renewable Diesel sold and purchased hereunder shall have an assigned CI value from one or more approved fuel pathways in the CARB LCFS program, which will ultimately generate LCFS credits to a regulated party if blended for use in the California transportation fuel market. The method for determining the LCFS Values is set forth in Schedule 7.1.

(b) At either Party's request, the Parties shall use commercially reasonable efforts to secure additional approved fuel pathways under the CARB LCFS program.

7.2 **Representations and Warranties Regarding LCFS CI Values.** With respect to the LCFS transactions under this Agreement and the extent Renewable Diesel has an assigned CI value from one or more approved fuel pathways in the CARB LCFS program, GCE, without prejudice to ExxonMobil's remedies contained herein, warrants that upon delivery of the Renewable Diesel:

(i) theRenewable Diesel

(ii) to the extent that GCE as the producer is treated as the initial regulated party under the LCFS Program, GCE shall use all commercially reasonable efforts to enable ExxonMobil to become the regulated party upon title transfer of the Renewable Diesel.

7.3 **LCFS Product Transfer Documents.** GCE shall provide ExxonMobil a "Product Transfer Document" that fulfills all of the requirements of the CARB LCFS regulation, and shall include, but not be limited to, the following information:

(i) Transferor Company Name, Address and Contact Information;

(ii) Transferee Company Name, Address and Contact Information;

(iii) Transaction Date;

(iv) For Non-Aggregated Transactions: Date of Title Transfer;

(v) Fuel Pathway Code (FPC) and CI;

(vi) Volume/Amount and Units;

(vii) A statement identifying whether the LCFS Obligation is passed to the transferee; and

(viii) Fuel Production Company ID and Facility ID as registered with the LCFS program.

7.4 **Reporting of Transactions.** Both Parties shall report transactions under this Agreement to CARB in accordance with the requirements set forth in the CARB LCFS regulation.

7.5 **Obligation.** Notwithstanding anything in the Agreement to the contrary, GCE's obligations pursuant to this Article 7 shall not apply in the event the CARB LCFS regulation is repealed or materially changed after the Effective Date. If the CARB LCFS regulation is repealed or materially changed, such event will be treated as a Change in Law and handled in accordance with Article 8 below.

ARTICLE VIII
NEW OR CHANGED APPLICABLE LAW

8.1 **New or Changed Applicable Law.** If after the Effective Date of this Agreement, any new Applicable Law becomes effective or any existing Applicable Law or its interpretation is materially changed (which change is not addressed by another provision of this Agreement), and such new Applicable Law or change in Applicable Law has, individually or in the aggregate with other such new or changed Applicable Laws, a material adverse economic impact upon a Party or a material adverse impact upon the economic benefits expected to be derived from this Agreement (each, a "**Change in Law**"), the affected Party, acting in good faith, shall have the option to request renegotiation of the relevant provisions of this Agreement with respect to future performance. The Parties shall then meet to negotiate in good faith amendments to this Agreement that will address the Change in Law while preserving the Parties' economic, operational, commercial and competitive arrangements in accordance with the understandings set forth herein.

8.2 **Consequences**. If mutual agreement in respect to any new or changed Applicable Law cannot be reached within ninety (90) days from the effective date of such new or changed Applicable Law, then either Party shall have the right, during the 60-day period starting at the end of such 90-day period, to terminate this Agreement by providing written notice to the other Party.

ARTICLE IX
WARRANTY, QUANTITY AND QUALITY DETERMINATIONS

9.1 **Warranty.** GCE warrants that with regards to the Products to be delivered under this Agreement:

(a) the Products will meet the Specifications, as may be amended from time to time in accordance with the provisions of this Section;

(b) GCE will have free and clear title to the Products delivered under this Agreement;

(c) such Products will be delivered free from lawful security interests, liens, and encumbrances, except those generated in the ordinary course of business; and

(d) GCE will obtain, at its expense, all the necessary registrations, certificates, permits, licenses and authorizations to deliver the Products pursuant to this Agreement.

EXCEPT AS EXPRESSLY PROVIDED IN SECTION 5.2, THIS SECTION 9.1, AND SECTION 9.3, GCE MAKES NO WARRANTIES OF ANY KIND WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE FEEDSTOCK OR THE

RESULTING RENEWABLE DIESEL; RINS OR ANY OTHER ENVIRONMENTAL ATTRIBUTES OF THE PRODUCTS, INCLUDING ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, CONFORMITY TO MODELS OR SAMPLES, OR OTHERWISE, AND ALL SUCH WARRANTIES WITH RESPECT TO SUCH PRODUCTS ARE HEREBY EXPRESSLY DISCLAIMED AND EXCLUDED FROM THIS AGREEMENT.

To the extent that ExxonMobil wishes, or is required, to change the Specifications, ExxonMobil agrees to provide GCE a reasonable notification period prior to the desired adoption of any new Specifications. GCE agrees to use commercially reasonable efforts to work with ExxonMobil to amend or update the Specifications following receipt of such a request; provided, that such changes: (i) are achievable within the existing design basis and technology limits of the Project, (ii) are consistent with prudent operating practices, (iii) would not give rise to any concerns regarding the environment, health or safety, (iv) will not violate any Applicable Law, (v) would not result in a breach of GCE's obligations to its other customers, and (vi) are not expected to reduce Project output or give rise to additional costs to GCE unless ExxonMobil agrees to equitably compensate GCE for any resulting economic losses. To the extent new Specifications are agreed to, Schedule 1.1 will be amended to reflect such changes. If any requested Specifications require material upgrades or changes to the Project, the Parties must first mutually agree (in each Party's respective

sole discretion) on sharing the potential additional costs associated with such upgrades or changes.

9.2 Indemnity.

(a) To the fullest extent permitted by Applicable Law and subject to the provisions of Section 9.5, GCE will indemnify, defend and hold harmless the ExxonMobil from and against any and all claims and liabilities of third parties, including all reasonable court costs and attorneys' fees incurred with respect thereto, for personal injury or death and/or damage or loss to real or personal property arising out of or in connection with the ownership, possession, control, operation or use of any Product prior to and at the Delivery Point(s).

(b) To the fullest extent permitted by Applicable Law and subject to the provisions of Section 9.5, ExxonMobil will indemnify, defend and hold harmless GCE from and against any and all claims and liabilities of third parties, including all reasonable court costs and attorneys' fees incurred with respect thereto, for personal injury or death and/or damage or loss to real or personal property arising out of or in connection with the ownership, possession, control, operation or use of any Product after the Delivery Point(s) (specifically including any liabilities arising out of or in connection with entry by ExxonMobil on to the Project site for purposes of transporting Product), except to the extent such liability results from a claim wholly related to the renewable fuel manufactured produced or sold by GCE, or from GCE's negligence or willful misconduct.

9.3 Intellectual Property Matters. For purposes of this Section, "**Intellectual Property Right**" means any patent, trademark, copyright, trade secret, or other proprietary right of a

third party. GCE warrants and represents that Products, when delivered, will be free from any valid claim of a third party for infringement or misappropriation of an Intellectual Property Right. GCE shall defend at GCE's expense and indemnify and hold ExxonMobil and Affiliates harmless against any and all expenses, liability or loss from any claim or lawsuit for alleged infringement or misappropriation of any Intellectual Property Right resulting from the manufacture, sale, use, possession or other disposition of any Product sold pursuant to this Agreement. The indemnities set forth in this paragraph shall include, without limitation, payment as incurred and when due of all penalties, awards, and judgments; all court and arbitration costs; attorney's fees and other reasonable out-of-pocket costs incurred in connection with such claims or lawsuits. ExxonMobil or an Affiliate, as applicable, may, at its option, be represented by counsel of its own selection, at its own expense. GCE shall not consent to (i) an injunction against ExxonMobil or its Affiliate's operations, (ii) the payment of money damages by ExxonMobil, (iii) the granting of a license by ExxonMobil or (iv) the parting of anything of value to ExxonMobil or an Affiliate with respect to resolution or settlement of any claim or lawsuit. Nothing in this Agreement shall be construed as granting to ExxonMobil any right or interest in the intellectual property of GCE, SUSOILS, or their respective Affiliates.

9.4 Data Integrity. In connection with this Agreement, where GCE must perform or desires to perform any product quality test on Product it delivers to ExxonMobil, GCE is accountable for the integrity and results of any such product quality test, whether performed by it, or by a third party laboratory or inspector employed by it. Furthermore, GCE is accountable for recording and retaining such data for ten (10) years, whether GCE performs the product quality test itself, or employs a third party laboratory or inspector to do so. GCE shall ensure that with respect to any such test performed by it or on its behalf:

(i) Product quality test measurements are complete, accurate and timely and that such test measurements are performed upon unaltered samples collected in a manner that: (i) is expected to yield samples representative of the product per ASTM/API MPMS sampling guidelines or industry standards; or (ii) complies with the manner of collection specified by written agreement between the Parties.

(ii) Any samples used for quality test measurements as required by this Agreement are retained for a period of not less than sixty (60) days after such tests are performed. If there is a dispute regarding product quality, GCE agrees that relevant samples shall be retained for the duration of such dispute.

(iii) Specified industry standard test methods including sampling and instrument calibration procedures are used without modification, unless: (i) that modification has been approved by written agreement between the Parties; and (ii) the certificates of analysis of such data indicate such test method or procedure was altered.

(iv) Except where agreed in writing with ExxonMobil, GCE does not employ a modified test method or instrument calibration procedure if such method or calibration procedure may be expected to yield materially different test results.

(v) Documentation and records of quality results state clearly the test method used to obtain the results.

(vi) A quality assurance system is in place for any laboratory facility involved. This system must be designed to aid in the deterrence, detection and correction of any incorrect data generated or communicated and must also assure the data generated meets the relevant industry standards for precision and bias as well as assuring the maintenance and calibration of measurement instruments.

(vii) Testing and measurement personnel involved are trained in the necessary skills required for data generation and data management. This training must include: (i) initial and ongoing personnel training; (ii) testing; and (iii) standards to ensure that all such personnel possess the skills required by this subsection (vii).

(viii) GCE utilizes a self-monitoring and assessment system to determine the extent to which GCE is complying with the requirements set forth above. This system must include a method for resolving problems found in the assessments and must include plans and responsibilities for appropriate follow-up.

(ix) GCE acknowledges that it is familiar with American Petroleum Institute's Recommended Practice 1640, Product Quality in Light Product Storage and Handling Operations, First Edition, August 2013 ("**API 1640**"), providing guidance on the minimum equipment standards and operating procedures for the receipt, storage, blending and delivery of non-aviation light products, their blend components, and additives at distribution and intermediate storage, including related operations of pipeline, road and rail transport. GCE certifies that it will have a plan in place to evaluate and implement the requirements of API 1640 to the extent applicable to the equipment, facilities and/or operations at the Project.

9.5 Independent Inspector. ExxonMobil may request a quality inspection be performed by a mutually-agreed laboratory or inspector with tests specified by ExxonMobil. Such quality inspections shall be performed no more frequently than four times per year. The cost of such quality inspection service will be shared equally between the Parties.

9.6 Quantity Determinations.

(a) At each respective Delivery Point, the quantity of Product delivered to ExxonMobil by GCE shall be established by outbound meter tickets expressed in Gallons in accordance with standards commonly used within the fuels industry in the U.S. GCE shall provide copies of meter tickets when requested by ExxonMobil. Calculations from the meter readings for determining such quantities shall conform to the procedures set out below:

(i) GCE agrees to maintain and calibrate all its meters and associated equipment in accordance with the latest edition of API Manual of Petroleum Measurement Standards Chapters 4, 5, 6 and 12.

(ii) GCE shall provide ten (10) days' notice to ExxonMobil of the date and time of meter calibrations. ExxonMobil shall be entitled to have representatives present to witness such tests and to verify GCE calibrations.

(iii) GCE will retain records of such calibrations for three (3) years and make such records available to ExxonMobil at its written request.

(iv) Meters shall be mechanically adjusted to operate with as close to zero error as possible, or the meter factor adjusted to achieve zero error.

(b) The following provisions govern the measurement of Product at the point of custody transfer:

(i) GCE is responsible for measuring the quantity of Product delivered and shall use calibrated and proved meters to measure quantities.

(ii) GCE shall ensure that such meters and temperature probes are operated, calibrated, and, proved, in accordance with then-current API Manual of Petroleum Measurement Standards (API MPMS), but in any event, calibration and proving must occur not less frequently than once every six (6) months. If ExxonMobil has reasonable cause, it will have the right to independently certify, at its own expense, the calibration of such meters and temperature probes. ExxonMobil may request copies of previous or future calibration and proving results for any equipment used for transfers under this Agreement without giving cause.

(iii) Each Party has the right to have one representative present at all deliveries (in addition to the independent inspector if present) to witness all gauges, tests, and measurements. Such representative must comply with any applicable dock, terminal, and/or pipeline facilities' safety procedures or requirements. If the independent inspector is present, however, the independent inspector's gauges, tests, and measurements will be binding upon the Parties absent fraud or manifest error.

(iv) Unless otherwise specified elsewhere in this Agreement, all quantities measured will be adjusted to net Gallons at 60 degrees F. in accordance with ASTM D-1250 Petroleum Measurement Tables, as revised from time to time.

(c) […***…].

ARTICLE X
TITLE AND RISK OF LOSS

10.1 Title and Risk of Loss. Title and risk of loss for Products delivered into rail car, pipeline or tank trucks shall transfer from GCE to ExxonMobil as the Product passes the Delivery Point.

ARTICLE XI
FORCE MAJEURE

11.1 Force Majeure. Neither Party will be liable to the other for failure to perform any obligations under this Agreement (other than the payment of money which shall not be subject to this Section 11.1) to the extent that such failure is caused by a Force Majeure event. As used in this Agreement, a "**Force Majeure**" event means any event, cause or circumstance beyond the reasonable control of the Party claiming suspension of its obligations, including but not limited to, acts of God, fire, flood, or governmental regulation, governmental direction or government request, accident, strikes, lockouts, wars, protests, and unavoidable breakdowns of production or transportation facilities. Either Party shall have the right to (i) suspend the Agreement if a Force Majeure event occurs and continues for sixty (60) consecutive days, provided that the other Party receives written notification, and (ii) terminate the Agreement if the Force Majeure event occurs and continues for three hundred sixty five (365) consecutive days or more. Other termination rights include breaches of material terms and obligations after expiration of any applicable cure periods. For the avoidance of doubt, any modification or change to LCFS, RFS2, the FBTC, or FPTC shall not constitute a Force Majeure event.

11.2 Duty to Mitigate. In the event that a Party is affected by a Force Majeure event, it shall endeavor to mitigate the effects of such Force Majeure event on the performance of its obligations hereunder. In addition, nothing in this Agreement may be construed as requiring either Party to settle any strikes or labor differences.

11.3 Supply Interruptions. If, during the Term of this Agreement, there is a scheduled Turnaround at the Project and that Turnaround impacts the production of Product purchased by ExxonMobil pursuant to this Agreement, GCE shall be relieved of its obligation to supply Monthly Scheduled Volumes designated hereunder during the period of the scheduled Turnaround. GCE shall make reasonable efforts to provide at least six (6) months advance written notice to ExxonMobil before the commencement of the Turnaround, including GCE's reasonable estimates on the impact to potentially available volumes. Should GCE's production of Renewable Diesel be limited due to Turnaround, both Parties agree to use commercially reasonable efforts to agree upon preemptive mitigation measures, such as on-site inventory build. ExxonMobil shall hold information related to the Turnaround strictly confidential and shall not disclose to anyone other than those employees of ExxonMobil who require the information to perform their job duties.

11.4 Suspensions. GCE's obligation to supply Monthly Scheduled Volumes shall also be suspended if there is a general problem at the Project that affects the production and delivery of such Monthly Scheduled Volumes; provided that such problem is not caused by the negligence or willful misconduct of GCE or its Affiliates. For purposes of this Section, "general problem" includes, but is not limited to, verifiable problems with the selection of feedstock, production units or storage facilities or pipelines involved in the supply of the Product purchased by ExxonMobil pursuant to this Agreement. For the avoidance of doubt, in no event shall the selection of feedstocks that are reasonably assumed to be capable of producing Renewable Diesel and SAF at the Project be considered negligence or willful misconduct on the part of GCE or its Affiliates.

ExxonMobil shall be notified in writing of such problems as soon as practicably possible. For the avoidance of doubt, economic shutdowns will not relieve GCE's obligation to supply the Monthly Scheduled Volumes.

ARTICLE XII
RESOLUTION OF DISPUTES

12.1 Arbitration. Except as set forth in Section 12.2 below, any controversy, dispute or claim arising out of, in connection with, or in relation to the interpretation, performance, nonperformance, validity or breach of this Agreement, including any claim based in contract, tort, statute or constitution, shall be settled exclusively and finally by arbitration. The arbitration shall be conducted and finally settled by three (3) arbitrators in New York, NY, in accordance with the then-existing Rules for Complex Arbitration of the American Arbitration Association (the " **Rules**"), and any judgment, ruling or determination rendered by the arbitrators shall be final, binding and unappealable, and such judgment, ruling or determination may be entered by any state or Federal court having jurisdiction thereof. The pre-trial discovery procedures of the then-existing Federal Rules of Civil Procedure and the then-existing Rules 46 and 47 of the Civil Rules for the United States District Court for the Southern District of New York shall apply to any arbitration. ExxonMobil and GCE shall each select one such arbitrator, and the two arbitrators so selected shall select the third arbitrator. Each arbitrator shall sign an oath agreeing to be bound by the Code of Ethics for Arbitrators in Commercial Disputes promulgated by the AAA for Neutral Arbitrators. It is the intent of the Parties to avoid the appearance of impropriety due to bias or partiality on the part of any arbitrator. Prior to each arbitrator's formal appointment, such arbitrator shall disclose to the Parties and the other arbitrators any financial, fiduciary, kinship or other relationship between such arbitrator and any Party or its counsel, or between such arbitrator and any individual or entity with any financial, fiduciary, kinship or other relationship with any Party. For the purpose of this Agreement, "appearance of impropriety" shall be defined as such relationship or behavior as would cause a reasonable person to believe that bias or partiality on the part of the arbitrator may exist in favor of any Party. Any award or portion thereof, whether preliminary or final, shall be in a written opinion containing findings of fact and conclusions of law signed by each arbitrator. The arbitrators shall hear and determine any preliminary issue of law asserted by a Party to be dispositive of any claim or for summary judgment, pursuant to such terms and procedures as the arbitrators deem appropriate. It is the intent of the Parties that, barring extraordinary circumstances, any arbitration hearing shall be concluded within two months of the date the statement of claim is received by the American Arbitration Association. The arbitrators shall use their best efforts to issue the final award or awards within a period of thirty (30) days after closure of the proceedings. Failure to do so shall not be a basis for challenging the award. The Parties and the arbitrators shall treat all aspects of the arbitration proceedings, including discovery, testimony, and other evidence, briefs and the award, as strictly confidential. The Parties intend that the provisions to arbitrate set forth in this Agreement be valid, enforceable and irrevocable. In their award the arbitrators shall allocate, in their discretion, among the Parties to the arbitration all costs of the arbitration, including the fees and expenses of the arbitrators and reasonable attorneys' fees, costs and expert witness expense of the Parties. The undersigned agree to comply with any award made in any such arbitration proceedings that has become final in accordance with the Rules and agree to the

entry of a judgment in any jurisdiction upon any award rendered in such proceedings becoming final under the Rules. The arbitrators shall be entitled, if appropriate, to award any remedy in such proceedings, including monetary damages, specific performance and all other forms of legal and equitable relief.

12.2. Determination of Price Reopeners.

(a) Any Price Reopener Dispute shall be settled exclusively and finally […***…] pursuant to this Section 12.2.

(b) […***…].

(c) […***…].

(d) […***…].

(e) […***…].

(f) […***…].

ARTICLE XIII
AUDIT

13.1 Audits. Each Party, through its authorized representatives, has the right to witness custody transfer measurement procedures in accordance with Section 9.6(b)(iii). In addition, each Party shall permit the other Party and its duly authorized representatives to have access to the laboratory test records and other documents maintained by the other Party or subcontractors relating to any performance under this Agreement. Each Party shall keep and maintain in accordance with generally accepted accounting practices the complete books, invoices, and records relating to its performance hereunder for a period of at least three (3) years after the performance to which such books, invoices and records relate. Either Party has the right, upon reasonable notice during normal business hours, at its expense, to audit such books, invoices and records, including the work sites, personnel and subcontractors, for the sole purpose of verifying compliance with the terms and conditions of this Agreement. Each Party shall have the right to reproduce documents reviewed during audit to be used for auditor work paper documentation. Neither Party shall be liable for any of the other Party or subcontractor's cost resulting from an audit. This Section 13.1 shall survive termination of this Agreement for a period of ten (10) years.

13.2 **Claims.** ExxonMobil shall assert any claims it has as to defects in quality by providing written notice (together with all necessary supporting documentation) to GCE within ninety (90) days after the delivery in question. If ExxonMobil fails to assert such claims within this time frame, such claims will be deemed to have been waived. Except in the case where a mutually acceptable independent inspector has been appointed and issued a certificate of quality, in the event of a dispute between the Parties relating to conflicting data from multiple laboratory analyses of product quality, the protocol outlined in ASTM D3244 or ISO 4259 shall be applied to resolve the differences between ExxonMobil's quality test results and GCE's quality determination, unless otherwise agreed between the Parties.

Any Product samples that are involved in a Product quality dispute shall not be disposed of until the dispute is resolved.

ARTICLE XIV
BUSINESS ETHICS AND CONFIDENTIALITY

14.1 **Compliance.** The Parties shall each comply with all Applicable Laws relating to the observance or performance of their respective obligations under this Agreement.

14.2 **Accurate Records.** The Parties acknowledge that all reports and billings rendered by one Party to the other Party under this Agreement shall properly reflect the facts of all activities and transactions handled and subject to Article 5 and Article 7, may be relied upon as being complete and accurate in any further recording or reporting made by the other Party for any purpose.

14.3 **Notification.** Each Party shall notify the other Party in writing promptly upon discovery of any failure to comply with Section 14.1 or upon either Party having reason to believe that any data supplied pursuant to Section 14.2 is no longer accurate and complete and in the latter event such Party shall then provide the other Party with the accurate and complete data in question.

14.4 **Confidential Information.** The Parties agree that all information, documentation, data and reports provided by either Party in the course of the performance of services and supply of Renewable Diesel under this Agreement but specifically excluding information on the quality of Renewable Diesel which is normally divulged in the marketing of such Renewable Diesel shall constitute confidential information ("**Information**"). The Parties agree not to divulge Information to any outside source (including governmental agencies) unless:

(i) Prior written approval to divulge or use the Information has been received from the other Party, which approval shall not be unreasonably withheld or delayed; or

(ii) the Information is determined to be part of the public knowledge or literature; or

(iii) the Information was known by the other Party prior to its disclosure by the divulging Party, having become known by the other Party in a bona fide manner; or

(iv) The Information is required by Applicable Law or stock exchange to be disclosed provided that the request for such disclosure is proper and the disclosure does not exceed that which is required.

14.5 **Permitted Disclosure.**

(i) Notwithstanding Section 14.4, each Party shall be permitted to disclose Information to its Affiliates, and, in the case of GCE, existing or prospective Lenders to or investors in the Project, and its and their respective employees, officers, directors, consultants, contractors, attorneys, accountants, financial advisors, and other

representatives (collectively, "**Representatives**") who have a need to know such Information. Prior to the first disclosure of Information to a Lender or investor in the Project (or any of its Representatives), GCE shall give prior to notice to ExxonMobil. Each Party shall be responsible for any improper disclosure of any Information in violation of this Agreement by its Representatives.

(ii) Notwithstanding Section 14.4(iv), each Party, upon receiving a request for Information from any Governmental Authority, stock exchange, or from any party in a proceeding pending before any court or governmental body, the Party to whom the request has been made shall provide the other Party written notice of such request as soon as reasonably practicable. The Parties shall reasonably cooperate with each other in exercising any applicable rights to oppose the disclosure of the requested Information.

ARTICLE XV
MISCELLANEOUS

15.1 Safety and Hazardous Warning Responsibility.

(a) Safety. Each Party shall ensure that its agents, representatives, and employees comply with all applicable safety regulations of the other's facilities when such agents, representatives, and employees are present at such facilities in connection with these General Terms. Either Party may obtain written copies of these regulations upon request of the local office operating the facility.

(b) Hazardous Warning Responsibilities. GCE shall provide ExxonMobil with a Material Safety Data Sheet for any Product delivered hereunder. Each Party acknowledges that it is aware of hazards or risks in handling or using such Renewable Diesel. GCE and ExxonMobil shall maintain compliance with all safety and health related governmental requirements concerning such Product and shall take steps as are reasonable and practicable to inform their employees, agents, contractors and customers of any hazards or risks associated with such Product, including but not limited to, dissemination of pertinent information contained in the Safety Data Sheet, as appropriate.

15.2 Assignment.

(a) No Party may assign its rights and obligations under this Agreement without the prior written consent of the other Party, provided, however, that (i) GCE may assign the Agreement to an Affiliate that owns the Project without consent, and (ii) ExxonMobil may assign the Agreement to a majority controlled Affiliate without consent. For the avoidance of doubt, any assignment of this Agreement shall not constitute a novation of this Agreement unless expressly agreed by the Parties.

(b) Notwithstanding the provisions of Section 15.2(a), GCE (or any assignee of GCE in accordance with Section 15.2(a)) may assign, mortgage, or pledge all or any of its rights, interests, and benefits under this Agreement to one or more Lenders to secure payment of any indebtedness or working capital incurred or to be incurred

in connection with the acquisition, construction, procurement, upgrading, converting, financing, refinancing, maintenance and operation of any portion of the Project or any modifications thereto. Any such assignment to Lenders shall not relieve GCE of any obligations hereunder. ExxonMobil shall provide to the Lenders a consent to assignment or similar agreement, covering matters that are customary in financings of projects of this type (including the Lenders' security rights with respect to this Agreement, certain notices to Lenders and extended cure rights).

15.3 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED ENTIRELY WITHIN NEW YORK, WITHOUT REGARD TO THE CONFLICTS OF LAW PRINCIPLES OF NEW YORK.

15.4 Waiver and Amendment. No waiver shall be deemed to have been made by any Party of any of its rights under this Agreement unless the waiver is in writing and is signed on its behalf by its authorized officer. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the Party granting such waiver in any other respect or at any other time. To be binding, any amendment of this Agreement must be effected by an instrument in writing signed by the Parties.

15.5 No Consequential Damages. Notwithstanding anything to the contrary contained in this Agreement, except in the case of gross negligence or willful misconduct, neither Party shall be liable to the other Party for any incidental or consequential damages that such other Party may suffer. The Parties acknowledge that this Section 15.5 is intended only to limit their liability to each other for incidental and consequential loss or damage and shall not be construed so as to limit their liability to third parties or their right to seek indemnification for third party claims in accordance with any other Section of this Agreement.

15.6 Headings. The headings contained in this Agreement are for convenience of reference only and shall not in any way affect the meaning or interpretation of this Agreement.

15.7 Notices. All notices, demands, instructions, waivers, consents or other communications that are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given: (i) when received, if personally delivered; (ii) when transmitted, if transmitted by electronic or digital transmission method subject to the sender confirming receipt, provided, that a notice given in accordance with this sentence but received on a non-working day or after business hours in the place of receipt will be deemed to be given on the next working day in that place. In each case notice shall be sent to the following addresses:

(i) if to GCE, to:

Bakersfield Renewable Fuels, LLC

Attention: Richard Palmer, CEO

(ii) If to ExxonMobil, to:

ExxonMobil Oil Corporation
22777 Springwoods Village Parkway
Spring, TX 77389
Attention: Americas Trading Manager

Or to such other address as ExxonMobil or GCE shall have specified by notice in writing in the manner specified in this Section.

15.8 Entire Agreement. This Agreement, including the Schedules hereto, which are hereby incorporated by reference, sets forth the entire understanding and agreement between the Parties as to matters covered herein and supersedes any prior understanding, agreement or statement (written or oral) of intent between the Parties with respect to the subject matter hereof. In the event that there is a conflict between this Agreement and any Schedules hereto, the terms of this Agreement shall prevail.

15.9 No Partnership. Nothing contained in this Agreement shall constitute, or be construed to be, or create a partnership or joint venture between the Parties, or their respective Affiliates, successors and assigns, nor shall either Party be liable for any debts incurred on behalf of the other Party or be able to bind the other Party.

15.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. Electronic signatures shall have the same effect as originals.

15.11 Severability. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Party or any circumstance, is invalid or unenforceable, (i) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision; and (ii) the remainder of this Agreement and the application of such provision to the other Party or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

15.12 Third-Party Rights. This Agreement is for the sole benefit of the Parties hereto and their permitted assigns and nothing herein express or implied shall give or be construed to give to any person, other than the Parties hereto and such assigns, any legal or equitable rights hereunder.

15.13 Press Releases. No press releases, media interviews, and any other public announcements relating to the Project or this Agreement will be made by either Party unless determined jointly by the Parties and mutually agreed by the Parties in writing.

15.14 Representations. Each Party represents and warrants to the other, as of the Effective Date, that:

(a) it is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing, and has all company or corporate authority to execute this Agreement and any other related documentation that it is required by this Agreement to deliver and to perform its obligations under this Agreement, and has taken all necessary action to authorize such execution, delivery and performance;

(b) this Agreement constitutes a valid and binding agreement, enforceable in accordance with its terms;

(c) execution, delivery and performance of this Agreement do not violate or conflict with any Applicable Law in any material respect, any provision of its constitutional documents, order or judgment of any court or Governmental Authority or, in any material respect, any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(d) its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective 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);

(e) it is not relying upon any representations of any other Party other than those expressly set forth in this Agreement;

(f) is not bound by any agreement that would preclude or hinder its execution, delivery, or performance of its material obligations under this Agreement; and

(g) 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 of Renewable Diesel or other products hereunder who is entitled to any compensation with respect thereto.

15.15 Interpretation.

(a) The topical headings used in this Agreement are for convenience only and shall not be construed as having any substantive significance or as indicating that all of the provisions of this Agreement relating to any topic are to be found in any particular Article or that an Article relates only to the topical heading.

(b) Reference to the singular includes a reference to the plural and vice versa.

(c) Reference to any gender includes a reference to all other genders.

(d) Unless otherwise provided, reference to any Article, Section, Schedule, means an Article, Section, or Schedule of this Agreement.

(e) The words "include" and "including" means include or including without limiting the generality of the description preceding such term and are used in an illustrative sense and not a limiting sense.

(f) Unless the context otherwise requires, any reference to a statutory provision is a reference to such provision as amended or re-enacted or as modified by other statutory provisions from time to time and includes subsequent legislation and regulations made under the relevant statute.

(g) References to United States Dollars shall be a reference to the lawful currency from time to time of the United States of America.

15.16 No Recourse. EACH PARTY SHALL LOOK ONLY TO THE OTHER PARTY FOR THE PERFORMANCE OF SUCH OTHER PARTY'S RESPECTIVE OBLIGATIONS UNDER THIS AGREEMENT, AND ALL LIABILITIES AND INDEMNITY OBLIGATIONS HEREUNDER SHALL BE WITH RECOURSE ONLY TO THE PARTIES THEMSELVES, AND NONE OF THE LENDERS, AFFILIATES OF A PARTY, OR THE EMPLOYEES, SHAREHOLDERS, OFFICERS, DIRECTORS, OR AGENTS OF ANY OF THEM, SHALL HAVE ANY LIABILITY TO THE OTHER PARTY OR TO ANY OTHER PERSON UNDER OR PURSUANT TO THIS AGREEMENT.

15.17 General Provisions. In addition to the above terms and conditions, ExxonMobil Oil Corporation Terms for the Bulk Purchase and Sale of Petroleum Products dated as of January 3, 2007 ("**GTCs**") shall govern this Agreement and are hereby incorporated by reference. In any case of conflict between the GTCs and the above terms and conditions, the above terms and conditions shall prevail.

[*remainder of page intentionally left blank*]

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement as of the Effective Date.

BAKERSFIELD RENEWABLE FUELS, LLC

By: /s/ Richard Palmer

Title: President

Date: _____

EXXONMOBIL OIL CORPORATION

By: /s/ Avilo Olivia

Title: N.A. Biofuels & NGL Manager

Date: _____

[Signature Page to Term Purchase Agreement]

SCHEDULE 1.1

[…***…]

SCHEDULE 3.3

OUTAGE NOTIFICATION PROTOCOL

In the event of any planned or unplanned maintenance activity that impacts loading at the truck rack of a lifting location, GCE shall use the following protocol:

In the event of:

- An unplanned outage at a delivery rack, GCE will notify ExxonMobil as soon as reasonably possible after the unplanned outage as well as the schedule for repair. GCE will provide ExxonMobil with routine updates to confirm there are no changes to the schedule.
- A planned outage at a delivery rack that will last up to 24 hrs, GCE will notify ExxonMobil at least 3 days before the event as well as the schedule for repair. GCE will provide ExxonMobil with routine updates to confirm there are no changes to the schedule.
- A planned outage at a delivery rack that will last between 24 and 48 hrs, GCE will notify ExxonMobil 15 days before the event as well as the schedule for repair. GCE will provide ExxonMobil with routine updates to confirm there are no changes to schedule.
- A planned outage at a delivery rack that will last above 48 hrs. GCE will notify ExxonMobil 45 days before the event as well as the schedule for repair. GCE will provide ExxonMobil with routine updates to confirm there are no changes to the schedule.

Additionally and with the intent of avoiding/anticipating any impact to quality, the GCE shall communicate

- The nature of a planned or unplanned maintenance/outage at the delivery racks that could potentially have an impact on the quality of the product delivered, together with steps to prevent/avoid them.
- All software, hardware and operational changes to either the blending or loading operation. Communication shall take place prior to implementation including steps to prevent any impact to quality.

SCHEDULE 4.1

PRODUCT PRICING – RENEWABLE DIESEL

Applicable price for Renewable Diesel shall be determined on the date of delivery as follows:

[…***…]

SCHEDULE 4.2

[…***…]

SCHEDULE 7.1

[…***…]

CERTAIN CONFIDENTIAL INFORMATION IN THIS EXHIBIT HAS BEEN OMITTED AND REPLACED WITH "[...*...]" BECAUSE IT IS BOTH NOT MATERIAL AND IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL.**

AMENDMENT NO. 4 TO CREDIT AGREEMENT

This AMENDMENT NO. 4 TO CREDIT AGREEMENT, dated as of May 18, 2021 (this " Agreement"), is entered into by and among BKRF OCB, LLC, a Delaware limited liability company (the "Borrower"), BKRF OCP, LLC, a Delaware limited liability company ("Holdings"), Bakersfield Renewable Fuels, LLC, a Delaware limited liability company (the " Project Company"), Orion Energy Partners TP Agent, LLC, in its capacity as the administrative agent (in such capacity, the " Administrative Agent"), and the Tranche A Lenders and Tranche B Lenders party hereto, constituting 100% of the Tranche A Lenders and the Tranche B Lenders to the Credit Agreement (as defined below) (the "Signatory Lenders"). As used in this Agreement, capitalized terms which are not defined herein shall have the meanings ascribed to such terms in the Amended Credit Agreement unless otherwise specified.

W I T N E S E T H

WHEREAS, the Borrower, Holdings, the Administrative Agent, Orion Energy Partners TP Agent, LLC, in its capacity as the collateral agent, and each Tranche A Lender and Tranche B Lender from time to time party thereto have entered into that certain Credit Agreement, dated as of May 4, 2020 (as amended, amended and restated, modified and supplemented on or prior to the date hereof, the "Credit Agreement" and the Credit Agreement as expressly amended by this Agreement, the " Amended Credit Agreement");

WHEREAS, the Project Company and ARB Inc., a California corporation (" ARB"), are party to that certain Cost Plus Fixed-Fee Turnkey Agreement with a Guaranteed Maximum Price for the Engineering, Procurement and Construction of the Bakersfield Renewable Fuels Project, dated as of April 30, 2020 (the "ARB EPC Agreement");

WHEREAS, Primoris Services Corporation, a Delaware corporation, issued that certain Parent Guarantee, dated as of April 30, 2020 (the "ARB Parent Guarantee"), in favor of the Project Company (as assigned by GCE Holdings Acquisitions, LLC);

WHEREAS, the Project Company intends to (i) terminate the ARB EPC Agreement in accordance with the termination documentation in the forms attached hereto as Exhibit A (the "ARB EPC Termination Documentation") and (ii) enter into a Replacement Project Document consisting of that certain Cost Plus Fixed-Fee Turnkey Agreement with a Guaranteed Maximum Price for the Engineering, Procurement and Construction of the Bakersfield Renewable Fuels Project, to be dated as of the date hereof (the "CTCI EPC Agreement"), by and between the Project Company and CTCI Americas, Inc., a Texas corporation (" CTCI");

WHEREAS, pursuant to the CTCI EPC Agreement, CTCI Corporation, a corporation duly organized and existing under the laws of Taiwan ("CTCI Guarantor"), will issue a guarantee in favor of the Project Company pursuant, to be dated as of the date hereof (the "CTCI Parent Guarantee");

WHEREAS, pursuant to this Agreement, the Borrower has requested, and the parties hereto have agreed, subject to the satisfaction of the conditions precedent set forth in this Agreement, to amend the Credit Agreement on the Fourth Amendment Effective Date to, among other things, evidence the Signatory Lenders consent for the Borrower to replace the ARB EPC Agreement and ARB Parent Guarantee with the CTCI EPC Agreement and CTCI Parent Guarantee, respectively; and

WHEREAS, the Borrower, Holdings, the Project Company, the Administrative Agent and the Signatory Lenders entered into that certain Waiver No. 3 to Credit Agreement, dated as of the date hereof (the "Waiver").

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Amendments. Subject to the satisfaction of the conditions precedent set forth in Section 3 hereof, as of the Fourth Amendment Effective Date, the Borrower, the other Loan Parties, the Administrative Agent and the Signatory Lenders, who constitute all of the Lenders under the Credit Agreement, hereby agree that the Credit Agreement is amended as follows:

(a) Section 1.01 of the Credit Agreement is hereby amended by inserting the following new definitions:

"ARB Credit Support" has the meaning assigned to such term in Section 6.21(b).

"CTCI" means CTCI Americas, Inc., a Texas corporation.

"CTCI EPC Agreement" means that certain Cost Plus Fixed-Fee Turnkey Agreement with a Guaranteed Maximum Price for the Engineering, Procurement and Construction of the Bakersfield Renewable Fuels Project, dated as of May 18, 2021, by and between the Project Company and CTCI.

"CTCI Parent Guarantee" means that certain Parent Guarantee, dated as of May 18, 2021, issued by CTCI Corporation, a corporation duly organized and existing under the laws of Taiwan, in favor of the Project Company.

"CTCI Transition Plan" means the transition plan as set forth in Exhibit X hereto.

"EPC Subcontract" means each of the Technip Subcontract and OnQuest Subcontract.

"Fourth Amendment" means that certain Amendment No. 4 to Credit Agreement, dated as of May 18, 2021, by and among the Borrower, Holdings, the Project Company, the Administrative Agent and the Required Lenders.

"Fourth Amendment Effective Date" means May 18, 2021.

"Material Communication" has the meaning assigned to such term in Section 5.11(a).

"Technip Subcontract" means that certain Engineering Subcontract Agreement, dated as of June 25, 2020, by and between CTCI (as successor in interest to ARB, Inc.) and Technip Stone & Webster Process Technology, Inc.

"OnQuest Subcontract" means that certain Engineering Subcontract Agreement, dated as of May 21, 2020, by and between CTCI (as successor in interest to ARB, Inc.) and Primoris Design & Construction, Inc.

(b) The references to the "ARB EPC Agreement" in the definitions of "EPC Agreements," "Performance Tests," "Substantial Completion," in Section 1.01 of the Credit Agreement are hereby replaced with a reference to the "CTCI EPC Agreement".

(c) The reference to the "ARB Parent Guarantee" in the definition of "Initial Material Project Documents" in Section 1.01 of the Credit Agreement is hereby replaced with a reference to the "CTCI Parent Guarantee".

(d) The definition of "Material Construction Contracts" is hereby amended to add a new clause (g) thereto which reads as follows: "(g) solely to the extent such contracts are assigned from ARB to the Loan Parties, the EPC Subcontracts;".

(e) Schedule 4.01(f) to the Credit Agreement is hereby deleted and replaced in its entirety as set forth in Exhibit B attached hereto.

(f) The CTCI Transition Plan set forth in Exhibit C hereto is hereby inserted as a new Exhibit X to the Credit Agreement.

(g) Section 5.11(a) of the Credit Agreement is hereby amended by inserting the following:

(o) notice of the receipt or delivery in writing of any force majeure claim, change order request, indemnity claim, material dispute, breach or default, or other material written communication under the ARB EPC Agreement, the CTCI EPC Agreement or any Material Project Documents (collectively, a "Material Communication"), including, without limitation: (i) any such Material Communication received by any Loan Party in respect of a subcontractor doing work or supplier or vendor providing goods or services under the ARB EPC Agreement relating to the termination of such contract and transition to the CTCI EPC Agreement, (ii) any Material Communication from any employees or authorized labor representatives of the Loan Parties, ARB, CTCI or any of their Affiliates or (iii) any other material written communication by or on behalf of ARB or CTCI related to the transition from ARB to CTCI as EPC Contractor or the termination of ARB as EPC Contractor, in each case, (x) such notice to be accompanied by copies of the Material Communication and (y) for the avoidance of doubt, excluding administrative, ministerial or routine communications, including ordinary course day-to-day communications regarding the construction of the Project;

(h) Article V of the Credit Agreement is hereby amended by inserting the following new Section 5.31:

Section 5.31 Obligations Under the ARB EPC Agreement and ARB Parent Guarantee . On and after the Fourth Amendment Effective Date, Borrower shall (i) comply in all material respects of their obligations under the ARB EPC Agreement and ARB Parent Guarantee (in each case, to the extent such obligations survive the termination of the ARB EPC Agreement) and (ii) promptly, and in coordination with the Administrative Agent, enforce its rights in the ARB EPC Agreement and ARB Parent Guarantee.

(i) Article V of the Credit Agreement is hereby amended by inserting the following new Section 5.32:

Section 5.32 Post-Fourth Amendment Covenants.

(a) CTCI Transition Plan . In connection with the termination of the ARB EPC Agreement and entry into the CTCI EPC Agreement, Borrower shall, and shall use commercially reasonable efforts to cause each of ARB and CTCI to, comply with the CTCI Transition Plan in all material respects as and to the extent specified therein.

(b) COMA Reimbursement. On or prior to May 31, 2021, the Administrative Agent shall have received evidence that the Borrower has received a payment from one or more parent companies in the amount of

$1,300,000 to the following account: Account Name / Beneficiary: BKRF OCB, LLC; Account #: […***…]; ABA #: […***…]; Bank: […***…].

(j) Article VI of the Credit Agreement is amended by inserting the following new Section 6.21:

Section 6.21 Post-Fourth Amendment Covenants.

(a) ARB Litigation. Without the prior written consent of the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed), no Loan Party shall initiate, pursue, advance or settle any litigation, investigation, action or proceeding law or in equity by or before any court, arbitrator or Governmental Authority which relates or is related to ARB, Primoris Services Corporation, the ARB EPC Agreement or the ARB Parent Guarantee;

(b) ARB Credit Support. Without the prior written consent of the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed), no Loan Party shall make any request for a drawing upon any letter of credit or other credit support provided by ARB under the ARB EPC Agreement (collectively, the "ARB Credit Support");

(c) Assignment of Subcontractors under the ARB EPC Agreement. Without the prior written consent of the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed), no Loan Party shall accept any assignment of any subcontract under the ARB EPC Agreement to the Loan Parties;

(d) Demobilization Costs. Without the prior written consent of the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed), no Loan Party shall initiate or accept any demobilization activities relating to the transition from the ARB EPC Agreement to the CTCI EPC Agreement with a value or cost reasonably expected to be in excess of $1,000,000; and

(e) Public Announcements. Without the prior written consent of the other

Administrative (such consent not to be unreasonably withheld, conditioned or delayed), no Loan Party shall issue any press releases or otherwise make any public statements with respect to the transition from the ARB EPC Agreement to the CTCI EPC Agreement, unless such action is required by Applicable Law.

(k) Section 7.01(d)(i) of the Credit Agreement is hereby amended by adding a reference to Section 5.32(b) after the reference to Section 5.13 therein.

(l) Section 7.01 to the Credit Agreement is hereby amended by inserting the following:

(q) the Borrower shall have failed to either (i) receive reimbursement from ARB (through ARB's payment to the Borrower, through the Borrower's drawing or demand upon the ARB Credit Support, or otherwise) or (ii) set off such amounts against other amounts owed by the Loan Parties to ARB, in either case, for mobilization payments in an amount equal to at least $10 million within ninety (90) days after the Fourth Amendment Effective Date (it being acknowledged that no Default or Event of Default shall exist pursuant to this clause (q) prior to such date);

2. Representations and Warranties. Each Loan Party hereby represents and warrants to the other parties hereto that:

(a) Each Loan Party has full corporate, limited liability company or other organizational powers, authority and legal right to enter into, deliver and perform its respective obligations under this Agreement, and has taken all necessary corporate, limited liability company or other organizational action to authorize the execution, delivery and performance by it of this Agreement. This Agreement has been duly executed and delivered by the Loan Parties, is in full force and effect and constitutes a legal, valid and binding obligation of the Loan Parties, enforceable against such Loan Party in accordance with its respective terms, except as enforcement may be limited (i) by Bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws affecting creditors' rights generally, (ii) by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) and (iii) implied covenants of good faith and fair dealing.

(b) The execution, delivery and performance by each Loan Party of this Agreement does not and will not (i) conflict with the Organizational Documents of such Loan Party, (ii) conflict with or result in a breach of, or constitute a default under, any indenture, loan agreement, mortgage, deed of trust or other instrument or agreement to which such Loan Party is a party or by which it is bound or to which such Loan Party's property or assets are subject (other than any Material Project Document to which such Loan Party is a party), except where such contravention or breach could not reasonably be expected to be material and adverse to the Loan Parties or Lenders, (iii) conflict with or result in a breach of, or constitute a default under, any Material Project Document to which such Loan Party is a party, (iv) conflict with or result in a breach of, or constitute a default under, in any material respect, any Applicable Law, except where such contravention or breach could not reasonably be expected to have a Material Adverse Effect, or (v) with respect to each Loan Party, result in the creation or imposition of any Lien (other than a Permitted Lien) upon any of such Loan Party's property or the Collateral.

(c) Except as provided in this Agreement, no Default or Event of Default has occurred and is continuing or would result from the transactions contemplated in this Agreement.

(d) After giving effect to the forbearances and waivers set forth in the Waiver and the amendments set forth in this Agreement, the representations and warranties of each of the Loan Parties set forth in Article III of the Credit Agreement and in each other Financing Document are true and correct in all material respects (except where already qualified by materiality or Material Adverse Effect, in which case, such representations and warranties are true and correct in all respects) on and as of the Fourth Amendment Effective Date (unless stated to relate solely to an earlier date, in which case such representations and warranties were true and correct as of such earlier date).

3. Effectiveness; Conditions Precedent. This Agreement shall become effective on the first date on which each of the following conditions have been satisfied or waived (such date, the "Fourth Amendment Effective Date"):

(a) This Agreement shall have been executed by the Administrative Agent, the Loan Parties and the Signatory Lenders (such execution not to be unreasonably delayed or waived) and the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto.

(b) The Administrative Agent shall have received duly executed copies of each of the following documents: (i) CTCI EPC Agreement, (ii) CTCI Parent Guaranty, (iii) that certain Consent and Agreement, dated as of the date hereof, by and among CTCI, the Project Company and Orion Energy TP Agent, LLC, in its capacity as the collateral agent and (iv) that certain Consent and Agreement, dated as of the date hereof, by and among CTCI Guarantor, the Project Company and Orion Energy TP Agent, LLC, in its capacity as the collateral agent, in each case, in form and substance reasonably satisfactory to the Administrative Agent.

(c) The Administrative Agent shall have received duly executed copies of the ARB EPC Termination Documentation, in form and substance satisfactory the Administrative Agent in its sole discretion.

(d) Borrower has arranged for payment on the Fourth Amendment Effective Date of all reasonable and documented out-of-pocket fees and expenses then due and payable pursuant to the Financing Documents.

(e) After giving effect to the waivers set forth in the Waiver and the amendments set forth in this Agreement, the representations and warranties of each of the Loan Parties set forth in the Financing Documents shall be true and correct in all material respects (except where already qualified by materiality or Material Adverse Effect, in which case, such representations and warranties shall be true and correct in all respects) on and as of the Fourth Amendment Effective Date (unless stated to relate solely to an earlier date, in which case such representations and warranties were true and correct as of such earlier date).

(f) After giving effect to the waivers set forth in the Waiver and the amendments set forth in this Agreement, no Default or Event of Default shall have occurred and be continuing as of the Fourth Amendment Effective Date.

(g) The Administrative Agent shall have received an updated Construction Budget, which shall be in form and substance acceptable to the Administrative Agent, in its sole discretion.

4. Miscellaneous.

(a) Effect of Amendments. From and after the Fourth Amendment Effective Date, the

Credit Agreement shall be construed after giving effect to the amendments set forth in Section 1 hereof and all references to the Credit Agreement in the Financing Documents shall be deemed to refer to the Amended Credit Agreement.

(b) No Other Modification. Except as expressly modified by this Agreement, the Credit Agreement and the other Financing Documents are and shall remain unchanged and in full force and effect, and nothing contained in this Agreement shall, by implication or otherwise, limit, impair, constitute a waiver of, or otherwise affect the rights and remedies of the Lenders, the Administrative Agent, or any of the other parties, or shall alter, modify, amend or in any way affect any of the other terms, conditions, obligations, covenants or agreements contained in the Credit Agreement which are not by the terms of this Agreement being amended, or alter, modify or amend or in any way affect any of the other Financing Documents.

(c) Successor and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective successors and permitted assigns.

(d) Incorporation by Reference. Sections 10.07 (*Severability*), 10.11 (*Headings*), 10.09 (*Governing Law; Jurisdiction; Etc.*) and 10.17 (*Electronic Execution of Assignments and Certain Other Documents*) of the Credit Agreement are hereby incorporated by reference herein, *mutatis mutandis*.

(e) Financing Document. This Agreement shall be deemed to be a Financing Document.

(f) Counterparts; Integration. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single

contract. The Amended Credit Agreement and the other Financing Documents to which a Loan Party is party constitute the entire contract between and among the parties relating to the subject matter hereof and thereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Delivery of an executed counterpart of a signature page to this Agreement by telecopy or scanned electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

(g) Electronic Signatures. The words "execution," "execute", "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the parties hereto, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

(h) Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

(i) Release. IN ORDER TO INDUCE THE ADMINISTRATIVE AGENT AND THE LENDERS TO ENTER INTO THIS AGREEMENT, EACH OF THE LOAN

PARTIES AND THEIR RESPECTIVE SUCCESSORS-IN-TITLE AND ASSIGNEES AND, TO THE EXTENT THE SAME IS CLAIMED BY RIGHT OF, THROUGH OR UNDER ANY OF THE LOAN PARTIES, FOR THEIR RESPECTIVE PAST, PRESENT AND FUTURE EMPLOYEES, AGENTS, REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, MANAGERS, AND TRUSTEES (EACH, A "RELEASING PARTY," AND COLLECTIVELY, THE "RELEASING PARTIES"), DOES HEREBY REMISE, RELEASE AND DISCHARGE, AND SHALL BE DEEMED TO HAVE FOREVER REMISED, RELEASED AND DISCHARGED, THE ADMINISTRATIVE AGENT AND EACH OF THE LENDERS, AND THE ADMINISTRATIVE AGENT'S AND EACH LENDER'S RESPECTIVE SUCCESSORS-IN-TITLE, LEGAL REPRESENTATIVES AND ASSIGNEES, PAST, PRESENT AND FUTURE OFFICERS, DIRECTORS, AFFILIATES, SHAREHOLDERS, MEMBERS, MANAGERS, TRUSTEES, AGENTS, EMPLOYEES, BOARD OBSERVERS, CONSULTANTS, EXPERTS, ADVISORS, ATTORNEYS AND OTHER PROFESSIONALS AND ALL OTHER PERSONS AND ENTITIES TO WHOM ANY OF THE FOREGOING WOULD BE LIABLE IF SUCH PERSONS OR ENTITIES WERE FOUND TO BE LIABLE TO ANY RELEASING PARTY, OR ANY OF THEM (COLLECTIVELY HEREINAFTER, THE " RELEASED PARTIES"), FROM ANY AND ALL MANNER OF ACTION AND ACTIONS, CAUSE AND CAUSES OF ACTION, CLAIMS, CHARGES, DEMANDS, COUNTERCLAIMS, OFFSET RIGHTS, RIGHTS OF RECOUPMENT, DEFENSES, SUITS, DEBTS, DUES, SUMS OF MONEY, ACCOUNTS, RECKONINGS, BONDS, BILLS, SPECIALTIES, COVENANTS, CONTRACTS, CONTROVERSIES, DAMAGES, JUDGMENTS, EXPENSES, EXECUTIONS, LIENS, CLAIMS OF LIENS, CLAIMS OF COSTS, PENALTIES, ATTORNEYS' FEES, OR ANY OTHER COMPENSATION, RECOVERY OR RELIEF ON ACCOUNT OF ANY LIABILITY, OBLIGATION, DEMAND OR CAUSE OF ACTION OF WHATEVER NATURE, WHETHER IN LAW, EQUITY OR OTHERWISE (INCLUDING, WITHOUT LIMITATION, ANY SO CALLED "LENDER LIABILITY" CLAIMS, INTEREST OR OTHER CARRYING COSTS, PENALTIES, LEGAL, ACCOUNTING AND OTHER PROFESSIONAL FEES AND EXPENSES AND INCIDENTAL, CONSEQUENTIAL AND PUNITIVE DAMAGES PAYABLE TO THIRD PARTIES, OR ANY CLAIMS FOR AVOIDANCE OR RECOVERY UNDER ANY OTHER FEDERAL, STATE OR FOREIGN LAW EQUIVALENT), WHETHER KNOWN OR UNKNOWN, FIXED OR CONTINGENT, JOINT AND/OR SEVERAL, SECURED OR UNSECURED, DUE OR NOT DUE, PRIMARY OR SECONDARY, LIQUIDATED OR UNLIQUIDATED, CONTRACTUAL OR TORTIOUS, DIRECT, INDIRECT, OR DERIVATIVE, ASSERTED OR UNASSERTED, FORESEEN OR UNFORESEEN, SUSPECTED OR UNSUSPECTED, NOW EXISTING, HERETOFORE EXISTING OR WHICH MAY HERETOFORE ACCRUE AGAINST ANY OF THE RELEASED PARTIES SOLELY IN THEIR CAPACITIES AS SUCH UNDER THE FINANCING DOCUMENTS, WHETHER HELD IN A PERSONAL OR REPRESENTATIVE CAPACITY, AND WHICH ARE BASED ON ANY ACT, FACT, EVENT OR OMISSION OR OTHER MATTER, CAUSE OR THING OCCURRING AT OR FROM ANY TIME PRIOR TO AND INCLUDING THE DATE HEREOF IN ANY WAY, DIRECTLY OR INDIRECTLY ARISING OUT OF, CONNECTED WITH OR RELATING TO THE AMENDED CREDIT AGREEMENT OR ANY OTHER FINANCING DOCUMENT AND THE TRANSACTIONS CONTEMPLATED THEREBY, AND ALL OTHER AGREEMENTS, CERTIFICATES, INSTRUMENTS AND OTHER DOCUMENTS AND STATEMENTS (WHETHER WRITTEN OR ORAL) RELATED TO ANY OF THE FOREGOING (EACH, A "CLAIM," AND

COLLECTIVELY, THE "CLAIMS"), IN EACH CASE, EXCLUDING ANY CLAIM TO THE EXTENT SUCH CLAIM AROSE OUT OF, OR WAS CAUSED BY, THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF, OR MATERIAL BREACH OF THE AMENDED CREDIT AGREEMENT OR ANY OTHER FINANCING DOCUMENT BY, SUCH RELEASED PARTIES. EACH RELEASING PARTY FURTHER STIPULATES AND AGREES WITH RESPECT

TO ALL SUCH CLAIMS, THAT IT HEREBY WAIVES ANY AND ALL PROVISIONS, RIGHTS, AND BENEFITS CONFERRED BY ANY LAW OF ANY STATE OF THE UNITED STATES.

[*Signature Pages Follow*]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their duly authorized signatories as of the day and year first above written.

BKRF OCB, LLC,
as the Borrower

By:/s/ RICHARD PALMER
Name:
Title:

BKRF OCP, LLC,
as Holdings

By: /s/ RICHARD PALMER
Name:
Title:

BAKERSFIELD RENEWABLE FUELS, LLC,
as Project Company

By: /s/ RICHARD PALMER
Name:

Title:

ORION ENERGY PARTNERS TP AGENT, LLC,
as Administrative Agent

By: /s/ GERRIT NICHOLAS
Name: Gerrit Nicholas
Title: Managing Partner

ORION ENERGY CREDIT OPPORTUNITIES FUND II, L.P.,
as a Lender

By: Orion Energy Credit Opportunities Fund II GP, L.P., its general partner

By: Orion Energy Credit Opportunities Fund II Holdings, LLC, its general partner

By: /s/ GERRIT NICHOLAS
Name: Gerrit Nicholas
Title: Managing Partner

ORION ENERGY CREDIT OPPORTUNITIES FUND II PV, L.P. ,
as a Lender

By: Orion Energy Credit Opportunities Fund II GP, L.P., its general partner

By: Orion Energy Credit Opportunities Fund II Holdings, LLC, its general partner

By: /s/ GERRIT NICHOLAS
Name: Gerrit Nicholas
Title: Managing Partner

ORION ENERGY CREDIT OPPORTUNITIES FUND II GPFA, L.P. ,
as a Lender

By: Orion Energy Credit Opportunities Fund II GP, L.P., its general partner

By: Orion Energy Credit Opportunities Fund II Holdings, LLC, its general partner

By: /s/ GERRIT NICHOLAS
Name: Gerrit Nicholas
Title: Managing Partner

ORION ENERGY CREDIT OPPORTUNITIES GCE CO-INVEST, L.P.,
as a Lender

By: Orion Energy Credit Opportunities Fund II GP, L.P., its general partner

By: Orion Energy Credit Opportunities Fund II Holdings, LLC, its general partner

By: /s/ GERRIT NICHOLAS
Name: Gerrit Nicholas
Title: Managing Partner

VOYA RETIREMENT INSURANCE AND ANNUITY COMPANY
RELIASTAR LIFE INSURANCE COMPANY,
as a Lender

By: Voya Investment Management LLC, as Agent

By: /s/ EDWARD LEVIN
Name: Edward Levin
Title: Edward Levin

LIF AIV 1, L.P.
as a Lender

By: GCM Investments GP, LLC, its General Partner

By: /s/ TODD HENIGAN
Name: Todd Henigan
Title:

CERTAIN CONFIDENTIAL INFORMATION IN THIS EXHIBIT HAS BEEN OMITTED AND REPLACED WITH "[…*…]" BECAUSE IT IS BOTH NOT MATERIAL AND IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL.**

TURNKEY AGREEMENT WITH A GUARANTEED MAXIMUM PRICE

for the

ENGINEERING, PROCUREMENT AND CONSTRUCTION

of the

BAKERSFIELD RENEWABLE FUELS PROJECT

by and between

BAKERSFIELD RENEWABLE FUELS, LLC

as Owner

and

CTCI AMERICAS, INC.

as Contractor

Dated as of the 18th Day of May, 2021

TABLE OF CONTENTS

LIST OF ATTACHMENTS AND SCHEDULES

ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

THIS ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT (this "***Agreement***"), dated as of the 18th Day of May, 2021 (the "***Effective Date***"), is entered into by and between **BAKERSFIELD RENEWABLE FUELS, LLC** ("***Owner***"), and **CTCI AMERICAS, INC.** ("***Contractor***" and, together with Owner, each a "***Party***" and together the "***Parties***").

WHEREAS, Owner entered into an agreement ("***Owner's Prior EPC Agreement***") with Arb, Inc. ("***Owner's Prior EPC Contractor***") on April 30, 2020 to provide services for the engineering, procurement, construction, pre-commissioning, commissioning, start-up and testing of a renewable diesel production facility and related facilities to be located near Bakersfield, California (the "***Site***," as further described in Attachment T) and, for various reasons, Owner is terminating Owner's Prior EPC Agreement with Owner's Prior EPC Contractor and, pursuant to this Agreement, is replacing Owner's Prior EPC Contractor with Contractor; and

WHEREAS, Owner desires to enter into an agreement with Contractor to take over from the Owner's Prior EPC Contractor to perform the remaining engineering, procurement, construction, pre-commissioning, commissioning, start-up and testing of the renewable diesel production facility and related facilities (as more fully described in Attachment A , the "***Project***") at the Site, which also includes EPC Contractor taking responsibility for the work performed by Owner's Prior EPC Contractor as if Contractor had originally performed the work performed by Owner's Prior EPC Contractor, all as further described herein; and

WHEREAS, Contractor, itself or through its vendors, suppliers, and subcontractors, desires to provide the foregoing engineering, procurement, construction, pre-commissioning, commissioning, start-up and testing on a cost plus fee basis subject to a Guaranteed Maximum Price (as described herein);

NOW THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties, hereby agree as follows:

Article 1
DEFINITIONS

1.1 Defined Terms. In addition to other defined terms used throughout this Agreement, when used herein, the following capitalized terms have the meanings specified in this Section 1.1.

"***Abnormal Weather***" means weather conditions abnormal to the Site and to the season of the year, including above normal continuous days of precipitation, above normal amount of precipitation within a twenty four (24) hour period, or above normal days of extreme cold or hot temperatures affecting installation/application of the Work due to manufacturer or specification limitations, in each case as substantiated with evidence from a weather bureau or other authoritative source. Normal conditions at the Site shall be defined as the average number of Days, amounts, or both over a five (5)-year period averaged per season.

"***Actual Contract Sum***" has the meaning set forth in Section 7.17.

"***Affiliate***" means (i) any Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with a Party, or (ii) any Person that, directly or indirectly, is the beneficial owner of fifty percent (50%) or more of any class of equity securities of, or other ownership interests in, a Party or of which the Party is directly or indirectly the owner of fifty percent (50%) or more of any class of equity securities or other ownership interests. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities or otherwise.

"***Affiliate Costs***" has the meaning set forth in Section 7.7.

"***Affiliate Subcontract***" means (i) any agreement by Contractor with an Affiliate Subcontractor for the performance of any portion of the Work, or (ii) any agreement by an Affiliate Subcontractor with another Affiliate Subcontractor for the performance of any portion of the Work.

"***Affiliate Subcontractor***" means any Subcontractor or Sub-subcontractor conducting design and engineering Work that is an Affiliate of Contractor.

"***Agreement***" means this Agreement for the performance of the Work (including all Attachments and Schedules attached hereto), as it may be amended from time to time in accordance with this Agreement.

"***Applicable Codes and Standards***" means any and all codes, standards or requirements set forth herein (including Attachment A) or in any Applicable Law, which codes, standards and requirements shall govern Contractor's performance of the Work, as provided herein. In the event of an inconsistency or conflict between any of the Applicable Codes and Standards, the highest performance standard as contemplated therein shall govern Contractor's performance under this Agreement.

"***Applicable Law***" means all laws, statutes, ordinances, certifications, orders (including presidential orders or proclamations), tariffs, quotas, duties, decrees, injunctions, licenses, Permits, approvals, agreements, rules and regulations, including any conditions thereto, of any Governmental Instrumentality having jurisdiction over any Party, all or any portion of the Site or the Project or performance of all or any portion of the Work, or other legislative or administrative action of a Governmental Instrumentality, or a final decree, judgment or order of a court which relates to the performance of Work hereunder or the interpretation or application of this Agreement, including (i) any and all Permits, (ii) any Applicable Codes and Standards set forth in Applicable Law, and (iii) any Applicable Law related to (y) conservation, improvement, protection, pollution, contamination or remediation of the environment or (z) Hazardous Materials or any handling, storage, release or other disposition of Hazardous Materials.

"***approval***" and "***consent***" means, unless specified otherwise herein, written approval and written consent. Wherever in this Agreement a provision is made for the giving or issuing of any

consent by a Party, unless otherwise specified, such consent shall be in writing and the words "consent", "approve", "accept" or "certify" are to be construed accordingly.

"***Books and Records***" has the meaning set forth in Section 3.13.1.

"***Business Day***" means every Day other than a Saturday, a Sunday or a Day that is an official holiday for employees of the federal government of the United States of America.

"***CAD***" has the meaning set forth in Section 3.3.5.

"***Change Order***" means a written order issued by Owner to Contractor after the execution of this Agreement, in the form of Schedule D-2, or a written instrument signed by both Parties after the execution of this Agreement in the form of Schedule D-1, that authorizes an addition to, deletion from, suspension of, or any other modification or adjustment to the requirements of this Agreement, including an addition to, deletion from or suspension of the Work or any modification or adjustment to any Changed Criteria. Owner and Contractor are entitled to a Change Order in accordance with Article 6.

"***Changed Criteria***" has the meaning set forth in Section 6.1.1.2.

"***Changes in Law***" means any amendment, modification, superseding act, deletion, addition or change in or to Applicable Law including tariffs that occurs and takes effect after the Effective Date, *provided that* Contractor did not know, or reasonably would not have known, that such amendment, modification, superseding act, deletion, addition or change in or to Applicable Law would occur following the Effective Date, *provided further that* a Change in Law shall not include (i) variances from any applicable Permit granted by a Governmental Instrumentality, which are requested or promoted by Contractor to Owner to benefit Contractor's performance of the Work, (ii) additional restrictions or new or different obligations imposed by any Governmental Instrumentality arising out of any violation of Applicable Law (including applicable Permits) by Contractor or any of its Subcontractors or Sub-subcontractors, or (iii) changes to Tax laws where such Taxes are based upon Contractor's inventory, revenue, income, profits/losses or cost of finance or withholding Tax.

"***Claims***" means liabilities, judgments, losses, costs (including court costs, reasonable attorneys' fees and costs of investigation), fines, penalties, expenses, damages, claims, suits and demands, of whatsoever kind or nature.

"***Compensation***" has the meaning set forth in Section 7.1.

"***Confidential Information***" has the meaning set forth in Section 19.3.

"***Construction Equipment***" means the equipment, machinery, structures, scaffolding, materials, tools, supplies and systems, purchased, owned, rented or leased by Contractor or its Subcontractors or Sub-subcontractors for use in accomplishing the Work, but not intended for incorporation into the Project.

"***Contractor***" has the meaning set forth in the preamble hereto.

"***Contractor Indemnified Parties***" means (i) Contractor, its parent, and each of their respective Affiliates, (ii) the respective directors, officers, agents, members, partners, shareholders, employees, representatives and invitees of each Person specified in clause (i) above, and (iii) Contractor's Subcontractors and Sub-Subcontractors. A "***Contractor Indemnified***

Party" means any of the Contractor Indemnified Parties.

"***Contractor Representative***" means that Person or Persons designated by Contractor in a written notice to Owner and acceptable to Owner, who shall have complete authority to act on behalf of Contractor on all matters pertaining to this Agreement or the Work, including giving instructions and making changes in the Work.

"***Contractor-Supplied Equipment***" means all Equipment other than Owner-Supplied Items and Existing Plant Equipment.

"***Contractor's Confidential Information***" has the meaning set forth in Section 19.2.

"***Contractor's Fee***" has the meaning set forth in Section 7.5.

"***Contractor's Intellectual Property***" has the meaning set forth in Section 11.2.

"***Cost Savings***" has the meaning set forth in Section 7.17.

"***Corrective Work***" has the meaning set forth in Section 13.3.

"***COVID-19***" means the Coronavirus pandemic.

"***CPM Schedule***" has the meaning set forth in Section 5.3.1.

"***Day***" means a calendar day.

"***Default***" has the meaning set forth in Section 16.1.1.

"***Defect***" or "***Defective***" has the meaning set forth in Section 13.1.1.

"***Defect Correction Period***" means the period commencing upon Substantial Completion and ending eighteen (18) Months thereafter (as may be extended pursuant to Section 13.3.2), except that with respect to Subcontractors, such period shall end twelve (12) months after Substantial Completion (as may be extended pursuant to Section 13.3.2), unless Contractor can obtain a longer period from such Subcontractors using commercially reasonable efforts.

"***Delay Liquidated Damages***" has the meaning set forth in Section 14.1.

"***Deposit Payment***" has the meaning set forth in Section 7.8.2.

"***Design Basis***" means the basis of design and technical limits and parameters of the Project as set forth in Attachment A.

"***Direct Costs of the Work***" has the meaning set forth in Section 7.3.

"***Disallowed Cost***" has the meaning set forth in Section 7.6.

"***Disclosing Party***" has the meaning set forth in Section 19.3.

"***Dispute***" means any claim, dispute, controversy, difference, disagreement, or grievance (of any and every kind or type, whether based on contract, tort, statute, regulation or otherwise) arising out of, connected with or relating in any way to this Agreement (including the construction, validity, interpretation, termination, enforceability or breach of this Agreement).

"***Drawings***" means the graphic and pictorial documents (in written or electronic format) showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams, which are prepared as a part of and during the performance of the Work.

"***Effective Date***" has the meaning set forth in the preamble.

"***EH&S***" has the meaning set forth in Section 3.10.

"***Equipment***" means all equipment, materials, supplies and systems required for the completion of and incorporation into the Work, including all Contractor-Supplied Equipment, Existing Plant Equipment, and all Owner-Supplied Items.

"***Existing Plant Equipment***" means existing plant equipment at the Site, a portion of which is intended to be incorporated into the Work of the Contractor, as more fully described in Attachment A.

"***Final Completion***" means all obligations of Contractor under this Agreement (excluding only the completion of items which survive the termination or expiration of this Agreement, including obligations for Warranties and correction of Defective Work and any other obligations covered under Section 12.8) are fully and completely performed in accordance with

the terms of this Agreement, including: (i) the successful achievement of Mechanical Completion and Substantial Completion; (ii) any and all Delay Liquidated Damages due and owing have been paid (directly, by offset, or by collection on the Letter of Credit, at Owner's sole discretion) to Owner; (iii) the completion of all Punchlist items; (iv) delivery by Contractor to Owner of a fully executed Lien and Claim Waiver upon Final Payment in the forms of Schedules K-2 and K-4; (v) delivery by Contractor to Owner of all documentation related to the Work required to be delivered under this Agreement including final, "as-built" Drawings and Specifications and Owner's Confidential Information; (vi) removal from the Site of all of Contractor's, Subcontractors' and Sub-subcontractors' personnel, supplies, waste, materials, rubbish, and temporary facilities; (vii) Contractor shall have removed all Contractor Equipment and all Contractor stored materials from the Site; (viii) delivery by Contractor to Owner of evidence acceptable to Owner that all Subcontractors and Sub-subcontractors have been fully and finally paid, including fully executed Final Lien and Claim Waivers upon Final Payment from all Major Subcontractors in the forms in Schedules K-2 and K-5, and if requested by Owner, fully executed Final Lien and Claim Waivers upon Final Payment from Major Sub-subcontractors in a form substantially similar to the forms in Schedules K-2 and K-5; (ix) delivery by Contractor to Owner of a Final Completion Certificate in the form of Attachment N and as required under Section 12.6, which Owner has accepted by

signing such certificate; and (x) performance by Contractor of all other obligations required under this Agreement for Final Completion.

"***Final Completion Certificate***" has the meaning set forth in Section 12.6.

"***Force Majeure***" means Abnormal Weather, storms, floods or lightning, tornadoes, hurricanes, earthquakes, named tropical storms and other acts of God, wars, civil disturbances, terrorist attacks, revolts, insurrections, sabotage, commercial embargoes, epidemics, quarantine restrictions, pandemics (including COVID-19), fires and explosions; *provided that* such act or event (i) delays or renders impossible the affected Party's performance of its obligations under this Agreement, (ii) is beyond the reasonable control of the affected Party, not due to its fault or negligence and was not reasonably foreseeable, and (iii) could not have been prevented or avoided by the affected Party through the exercise of due diligence, including the expenditure of any reasonable sum taking into account the Guaranteed Maximum Price subject to Contractor's entitlement to an adjustment of the Guaranteed Maximum Price in accordance with Section 6.7. For avoidance of doubt, Force Majeure shall not include any of the following: (a) economic hardship, (b) changes in market conditions, (c) late delivery or failure of Construction Equipment or Equipment unless otherwise due to an event of Force Majeure, (d) labor availability (unless unavailability is otherwise the result of Force Majeure events), strikes, or other similar labor actions, (e) climatic conditions (including rain, snow, wind, temperature and other weather conditions) which do not constitute Abnormal Weather, or (f) COVID-19 related impacts that do not (1) impose any greater obligations on Contractor or (2) impose requirements that are more stringent, in each case, than those in effect on the Effective Date (including the requirements described in Section 3.10).

"***GAAP***" means generally accepted accounting principles.

"***Good Engineering and Construction Practices***" or "***GECP***" means the generally accepted practices, methods, skill, care, techniques and standards employed by the United States engineering and construction industries with respect to: (i) engineering, procurement, construction, pre-commissioning, commissioning, start-up and testing of renewable diesel production facilities, all in compliance with Applicable Codes and Standards, Applicable Law, and the standards recommended by the suppliers and manufacturers of Equipment provided hereunder; (ii) personnel and facility safety and environmental protection; (iii) optimizing the scheduling of Work; and (iv) optimizing the reliability and availability of the Project under the operating conditions reasonably expected at the Site, as specified in Attachment A. GECP are not intended to be limited to the optimum practices, methods, techniques or standards to the exclusion of all others, but rather to be a spectrum of reasonable and prudent practices, methods, techniques and standards employed by the United States engineering and construction industries.

"***Governmental Instrumentality***" means any federal, state or local department, office, instrumentality, agency, board or commission having jurisdiction over a Party or any portion of the Work, the Project or the Site.

"***Guaranteed Final Completion Date***" has the meaning set forth in Section 5.2.2.

"***Guaranteed Maximum Price***" or "***GMP***" has the meaning set forth in Section 7.2.

"***Guaranteed Substantial Completion Date***" has the meaning set forth in Section 5.2.1.

"***Guarantor***" means CTCI Corporation.

"***Hazardous Materials***" means any substance that under Applicable Law is considered to be hazardous or toxic or is or may be required to be remediated, including (i) any petroleum or petroleum products, radioactive materials, asbestos in any form, transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls and processes and certain cooling systems that use chlorofluorocarbons, (ii) any chemicals, materials or substances which are now or hereafter

become defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," or any words of similar import pursuant to Applicable Law, or (iii) any other chemical, material, substance or waste, exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Instrumentality, or which may be the subject of liability for damages, costs or remediation.

"***Hourly Rates***" has the meaning set forth in Section 7.3.1.1.

"***Indemnified Party***" means any Owner Indemnified Party or Contractor Indemnified Party, as the context requires.

"***Indemnifying Party***" means Owner or Contractor, as the context requires.

"***Investment Grade***" has the meaning set forth in Section 10.2.

"***Invoice***" means Contractor's request for a payment pursuant to Section 7.8 for progress payments and pursuant to Section 7.9 for final payment, which invoice shall be in the form of Schedule I-1 for progress payments and Schedule I-2 for final payment.

"***JAMS***" has the meaning set forth in Section 18.1.

"***Key Personnel***" or "***Key Persons***" has the meaning set forth in Section 2.2.1.

"***Lender***" means (i) any and all Persons or successors in interest thereof (including any agent, trustee or other representative thereof) lending money or extending credit to Owner for the interim or permanent financing or refinancing of the Project or for working capital or other ordinary business requirements of the Project (including the maintenance, repair, replacement or improvement of the Project); or (ii) any lessor under a lease finance arrangement relating to the Project.

"***Letter of Credit***" has the meaning set forth in Section 10.2.

"***Lien and Claim Waiver(s) upon Final Payment***" means the waiver and release provided to Owner by Contractor, Major Subcontractors and Major Sub-subcontractors in accordance with the requirements of Section 7.9, which shall be in the forms of Schedules K-2, K-3, K-4 and K-5.

"***Lien Waiver(s) upon Progress Payment***" means the waiver and release provided to Owner by Contractor, Major Subcontractors and Major Sub-subcontractors in accordance with the requirements of Section 7.8.4, which shall be in the form of Schedule K-1.

"***Major Subcontract***" means (i) any Subcontract having an aggregate value in excess of five hundred thousand U.S. Dollars (U.S.$ 500,000), (ii) multiple Subcontracts with one Subcontractor that have an aggregate value in excess of five hundred thousand U.S. Dollars (U.S.$ 500,000), (iii) any Affiliate Subcontract entered into with an Affiliate Subcontractor or (iv) or any Subcontractor performing a portion of the Work listed in Attachment G.

"***Major Subcontractor***" means any Affiliate Subcontractor or Subcontractor with whom Contractor enters, or intends to enter, into a Major Subcontract.

"***Major Sub-subcontract***" means (i) any Sub-subcontract having an aggregate value in excess of five hundred thousand U.S. Dollars (U.S.$ 500,000), or (ii) multiple Sub-subcontracts with one Sub-subcontractor that have an aggregate value in excess of five hundred thousand U.S. Dollars (U.S.$ 500,000).

"***Major Sub-subcontractor***" means any Sub-subcontractor with whom a Subcontractor or Sub-subcontractor enters, or intends to enter, into a Major Sub-subcontract.

"***Material Adverse Change***" has the meaning set forth in Section 10.3.2.

"***Mechanical Completion***" means that, with respect to the Project that, with the exception of Punchlist items, all of the following have occurred: (i) Contractor has completed all procurement, fabrication, assembly, erection, installation and pre-commissioning checks and tests of all Work (including all Equipment and all systems and components of Equipment, such as all operating, protection, fire, safety and other related systems required or necessary prior to start-up) to ensure that the entire Work, and each component thereof, was correctly specified, designed, fabricated, assembled, erected and installed and is capable of safely commencing start-up and commissioning within the requirements contained in this Agreement, all as set forth in greater detail in Attachment A and the Mechanical Completion checklists agreed by Owner and Contractor in accordance with Section 12.1 (ii) all pre-commissioning, commissioning, testing and start-up spare parts necessary for the Project to achieve Substantial Completion have been delivered to the Site; (iii) Contractor has submitted an initial Punchlist of items as set forth in Section 12.5; (iv) Contractor has delivered to Owner a Mechanical Completion Certificate in the form of Attachment L and Owner has accepted such certificate by signing such certificate; and (v) performance by Contractor of all other obligations required under the Agreement for Mechanical Completion.

"***Mechanical Completion Certificate***" has the meaning set forth in Section 12.1.

"***Milestone***" is a stage of completion of the Project, as more particularly described in Attachment E.

"***Milestone Dates***" means the schedule of dates in which Contractor is required to achieve the Milestones, including the Guaranteed Substantial Completion Date and the Guaranteed Final Completion Date, as more particularly described in Section 0 and Attachment E.

"***Minimum Acceptance Criteria***" or "***MAC***" has the meaning set forth in Attachment Q.

"***Minimum Acceptance Criteria Correction Period***" has the meaning set forth in Section 12.4.1.

"***Month***" means a Gregorian calendar month; "***month***" means any period of thirty (30) consecutive Days.

"***Monthly***" means an event occurring or an action taken once every Month.

"***Monthly Progress Reports***" has the meaning set forth in Section 3.20.1.2.

"***Notice to Proceed***" or "***NTP***" means a full notice to proceed issued by Owner in accordance with Section 5.2.3 for all of the Work.

"***Offshore Affiliate***" means an offshore Affiliate of Contractor, which provides personnel to perform certain engineering Work.

"***Overhead Costs***" has the meaning set forth in Section 7.4.2.

"***Overhead Fee***" has the meaning set forth in Section 7.4.1.

"***Owner***" has the meaning set forth in the preamble hereto.

"***Owner Indemnified Parties***" means (i) the Owner, its parent, Lender, and each of their respective Affiliates, and (ii) the respective directors, officers, agents, members, partners, shareholders, employees, representatives and invitees of each Person specified in clause (i) above. An "***Owner Indemnified Party***" means any one of the Owner Indemnified Parties.

"***Owner-Supplied Items***" has the meaning set forth in Section 4.7.

"***Owner Representative***" means that Person or Persons designated by Owner in a written notice to Contractor who shall have complete authority to act on behalf of Owner on all matters pertaining to the Work, including giving instructions and making changes in the Work. Owner designates Richard Palmer as the Owner Representative. Notification of a change in Owner Representative shall be provided to Contractor.

"***Owner's Confidential Information***" has the meaning set forth in Section 19.1.

"***Owner's Prior EPC Agreement***" has the meaning set forth in the Recitals.

"***Owner's Prior EPC Contractor***" has the meaning set forth in the Recitals.

"***Parent Guarantee***" has the meaning set forth in Section 21.13.

"***Party***" or "***Parties***" means Owner or Contractor and their permitted successors and permitted assigns.

"***Payment Schedule***" means the terms for payment as set forth in Attachment C.

"***Performance Tests***" means those tests performed to determine whether the Work meets the Minimum Acceptance Criteria set forth in Attachment Q, which tests shall be as set forth in such Attachment Q.

"***Permit***" means any waiver, certificate, approval, consent, license, exemption, variance, franchise, permit, authorization or similar order or authorization from any Governmental Instrumentality required to be obtained or maintained in connection with the Project, the Site or the Work.

"***Person***" means any individual or any company, joint venture, corporation, partnership, association, joint stock company, limited liability company, trust, estate, unincorporated organization, Governmental Instrumentality or other entity having legal capacity, including the Parties, any Subcontractors and Sub-subcontractors, and their respective directors, officers, agents, employees, representatives.

"***Pre-Existing Hazardous Materials***" has the meaning set forth in Section 3.17.

"***PDF***" means portable document format.

"***Pre-Effective Date Engineering Documentation***" has the meaning set forth in Section 2.5.1.

"***Process License Agreements***" means any agreements related to the supply of equipment for this Project between Owner and Haldor Topsoe.

"***Process Licensor***" means Haldor Topsoe A/S.

"***Progress As-Built Drawings and Specifications***" means Drawings and Specifications that show all current "as-built" conditions, as required under Attachment A.

"***Project***" has the meaning set forth in the Recitals.

"***Punchlist***" means a list of those finishing items required to complete the Work, the completion of which shall not interrupt, disrupt or interfere with the safe and reliable operation or use of all or any part of the Project as contemplated by this Agreement, as more fully described in Section 12.5 of this Agreement and Attachment A.

"***Receiving Party***" has the meaning set forth in Section 19.3.

"***Record As-Built Drawings and Specifications***" means final, record Drawings and Specifications showing the "as-built" conditions of the completed Work, as required under Attachment A.

"***Recovery Schedule***" has the meaning set forth in Section 5.4.

"***Rely Upon Information***" means the information identified in Attachment S.

"***Rules***" has the meaning set forth in Section 18.1.

"***Schedule Bonus Date***" has the meaning set forth in Section 14.2.1.

"***Scope of Work***" means the description of Work to be performed by Contractor as set forth in this Agreement, including Section 3.1 and Attachment A.

"***Show-up Pay***" has the meaning set forth in Section 7.3.1.6.

"***Site***" has the meaning set forth in the Recitals.

"***Specifications***" means those documents consisting of the written requirements for Equipment, standards and workmanship for the Work and performance of related services, which are prepared as a part of and during the performance of the Work.

"***Subcontract***" means an agreement by Contractor with a Subcontractor for the performance of any portion of the Work.

"***Subcontractor***" means any Person who has a direct contract with Contractor to manufacture or supply Contractor-Supplied Equipment which is a portion of the Work, to lease Construction Equipment to Contractor in connection with the Work, to perform a portion of the Work or to otherwise furnish labor or Contractor-Supplied Equipment in connection with the Work.

"***Substantial Completion***" means that all of the following have occurred with respect to the Project: (i) Mechanical Completion has been achieved; (ii) Contractor has paid Delay Liquidated Damages (directly, by offset, or by collection on the Letter of Credit, at Owner's sole discretion) to Owner; (iii) Contractor and Owner have agreed upon a revised and updated Punchlist of items as set forth in Section 12.5; (iv) Contractor has delivered to Owner a Substantial Completion Certificate in the form of Attachment M and as required under Section 12.2 and Owner has accepted such certificate by signing such certificate; (v) the Work is available for full commercial operation without any defect or deficiency (other than those covered by the agreed upon Punchlist), and is capable of being safely operated in accordance with the requirements and specifications of this Agreement and GECP, Applicable Law and Applicable Codes and Standards without damage to the Work, the Project, the Site or any other property and without injury to any Person; (vi) all Performance Tests have been performed and as measured by such Performance Tests, the Project has achieved or exceeded each of the Minimum Acceptance Criteria; (vii) Contractor has obtained all Permits required to be taken under Contractor's name for the Work other than those listed in Attachment P as being the responsibility of Owner; (viii) Contractor has delivered to Owner fully executed Lien Waivers upon Progress Payment in the form of Schedule K-1, fully executed Lien Waivers upon Progress Payment from all Major Subcontractors in the form of Schedule K-1 and, if requested by Owner, fully executed Lien Waivers upon Progress Payment from all Major Sub-subcontractors substantially in the form of Schedule K-1, covering all Work up to the date of Substantial

Completion; (ix) Contractor has assigned to or provided Owner with all Warranties to the extent Contractor is obligated to do so pursuant to this Agreement; and (x) Contractor has performed all other obligations required under this Agreement for Substantial Completion.

"***Substantial Completion Certificate***" has the meaning set forth in Section 12.2.

"***Sub-subcontract***" means any agreement by a Subcontractor with a Sub-subcontractor or by a Sub-subcontractor with another Sub-subcontractor for the performance of any portion of the Work.

"***Sub-subcontractor***" means any Person who has a direct or indirect contract with a Subcontractor or another Sub-subcontractor to manufacture or supply Contractor-Supplied Equipment which comprises a portion of the Work, to lease Construction Equipment to Subcontractor or another Sub-subcontractor in connection with the Work, to perform a portion of the Work or to otherwise furnish labor or Contractor-Supplied Equipment in connection with the Work.

"***Taxes***" means any and all taxes, assessments, levies, tariffs, duties, fees, charges and withholdings of any kind or nature whatsoever and howsoever described, including gross receipts, payroll, income, franchise, value-added, sales and use, property, excise, capital stock, import, stamp, transfer, employment, occupation, generation, privilege, utility, regulatory, energy, consumption, lease, filing, recording and activity taxes, levies, duties, fees, charges, imposts and withholding, together with any and all penalties, interest and additions thereto, but excluding any California state and local sales and use taxes.

"***Third Party Intellectual Property***" has the meaning set forth in Section 11.2.

"***Two Week Look-ahead Schedule***" has the meaning set forth in Section 5.3.4.

"***U.S. Dollars***" or "***U.S.$***" means the legal tender of the United States of America.

"***Unforeseen Subsurface Conditions***" means any underground subsurface conditions at the Site that (i) differ from those indicated in any documents provided by or on behalf of Owner, (ii) differ materially from those ordinarily found to exist and generally recognized as inherent in activities of the character provided for in the Agreement, and (iii) were not discovered or reasonably discoverable by Contractor or any of its Subcontractors or Sub-subcontractors, acting in accordance with GECP, from inspections and investigations performed by Contractor or any of its Subcontractors or Sub-subcontractors or from the general knowledge of the Contractor or any of its Subcontractors or Sub-subcontractors relating to site conditions in the area of the Site. Such Unforeseen Subsurface Conditions may include pre-existing refinery equipment and materials located underground, provided that such equipment or materials meet the requirements of Unforeseen Subsurface Conditions.

"***Warranty***" or "***Warranties***" has the meaning set forth in Section 13.1.1.

"***Work***" means all obligations, duties and responsibilities required of Contractor pursuant to this Agreement, including all Construction Equipment; pre-commissioning, commissioning, start-up and Performance Tests; engineering, procurement, fabrication, manufacture, delivery and transportation of Contractor-Supplied Equipment; unloading, storage, assembly, erection, and installation of all Equipment; construction, workmanship, labor, inspection, testing and any other services, work or things; in all cases furnished or used or required to be furnished or used, by Contractor in the performance of this Agreement, including that set forth in Attachment A and Section 3.1.1, any Corrective Work, and all other work required in order for the Project to achieve the Minimum Acceptance Criteria. Without limiting the foregoing and notwithstanding anything

to the contrary in this Agreement, the Work shall include all work, including all engineering, procurement and construction work, performed by Owner's Prior EPC Contractor.

"***Work Product***" has the meaning set forth in Section 11.1.

1.2 Interpretation. The meanings specified in this Article 1 are applicable to both the singular and plural. As used in this Agreement, the terms "herein," "herewith," "hereunder" and "hereof" are references to this Agreement taken as a whole, and the terms "include," "includes" and "including" mean "including, without limitation," or variant thereof. Unless expressly stated otherwise, reference in this Agreement to an Article or Section shall be a reference to an Article or Section contained in this Agreement (and not in any Attachments or Schedules to this Agreement) and a reference in this Agreement to an Attachment or Schedule shall be a reference to an Attachment or Schedule attached to this Agreement. The word "or" shall have the inclusive meaning represented by the phrase "and/or".

Article 2
RELATIONSHIP OF OWNER, CONTRACTOR AND SUBCONTRACTORS

2.1 Status of Contractor. The relationship of Contractor to Owner shall be that of an independent contractor. Any provisions of this Agreement which may appear to give Owner or the Owner Representative the right to direct or control Contractor as to details of performing the Work, or to exercise any measure of control over the Work, shall be deemed to mean that Contractor shall follow the desires of Owner or the Owner Representative in the results of the Work only and not in the means by which the Work is to be accomplished, and Contractor shall have the complete right, obligation and authoritative control over the Work as to the manner, means or details as to how to perform the Work. Nothing herein shall be interpreted to create a master-servant or principal-agent relationship between Contractor, or any of its Subcontractors or Sub-subcontractors, and Owner. Nevertheless, Contractor shall strictly comply with all provisions, terms and conditions of this Agreement, and the fact that Contractor is an independent contractor does not relieve it from its responsibility to fully, completely, timely and safely perform the Work in strict compliance with this Agreement.

2.2 **Key Personnel, Organization Chart and Contractor Representative.**

2.2.1. ***Key Personnel and Organization Chart***. Attachment F sets forth Contractor's organizational chart to be implemented for the Work and also contains a list of key personnel ("***Key Personnel***" or "***Key Persons***") from Contractor's organization who will be assigned to the Work. Owner shall have the right, but not the obligation, at any time to request that Contractor replace any Key Person with another employee acceptable to Owner. Neither Owner's request for removal of any Key Person or Owner's approval of any Key Personnel shall relieve Contractor of its obligations under this Agreement. Except where a Key Person has retired, resigned (and not taken employment with any of the Affiliates of Contractor), or been terminated (and not taken employment with any of the Affiliates of Contractor) or is otherwise unavailable beyond the reasonable control of Contractor due to death, disability or serious illness, Contractor shall not remove or replace any Key Personnel without Owner's express prior written approval. Furthermore, Owner and Contractor acknowledge and agree the continuity of the Key Personnel on this Project

is a material requirement of this Agreement, and that replacement of a Key Person will be detrimental to the Owner and the overall quality of the Work.

2.2.2. ***Contractor Representative***. Contractor designates Don Chaney as the Contractor Representative. The Contractor Representative is a Key Person.

2.3 Subcontractors and Sub-subcontractors. Owner acknowledges and agrees that Contractor intends to have portions of the Work accomplished by Subcontractors pursuant to written Subcontracts between Contractor and such Subcontractors, and that such Subcontractors may have certain portions of the Work performed by Sub-subcontractors. All Subcontractors and Sub-subcontractors shall be reputable, qualified firms with an established record of successful performance in their respective trades performing identical or substantially similar work. All contracts with Subcontractors and Sub-subcontractors shall be consistent with the terms and provisions of this Agreement. No Subcontractor or Sub-subcontractor is intended to be or shall be deemed a third-party beneficiary of this Agreement. Contractor shall be fully responsible to Owner for the acts and omissions of Subcontractors and Sub-subcontractors and of Persons directly or indirectly employed by any of them, as Contractor is for the acts or omissions of Persons directly employed by Contractor. The work of any Subcontractor or Sub-subcontractor shall be subject to inspection by Owner, Lender or any of their representative to the same extent as the Work of Contractor. All Subcontractors and Sub-subcontractors and their respective personnel are to be instructed by Contractor in the terms and requirements of Owner-approved access, safety and environmental protection policies and procedures. In the event that any personnel do not adhere to such policies and procedures, such personnel shall be removed by Contractor. In no event shall Contractor be entitled to any adjustment of the Guaranteed Maximum Price or Milestone Dates as a result of compliance with such policies and procedures or any removal of personnel necessitated by non-compliance. Nothing contained herein shall create any contractual relationship between any Subcontractor and Owner, or between any Sub-subcontractor and Owner, or obligate Owner to pay any amounts of any nature to any Subcontractor or Sub-subcontractor.

2.4 Subcontracts and Sub-subcontracts.

2.4.1. ***Proposed Major Subcontractors and Major Sub-subcontractors***.

2.4.1.1. Approvals. As a part of the Work, Contractor shall provide all necessary services related to the bidding of Major Subcontracts by new or replacement Major Subcontractors, including the following: (a) preparing lists of prospective bidders; (b) preparing proposed forms of Subcontract and purchase orders; (c) establishing bid schedules; (d) advertising for bids and developing bidder interest in the Project; (e) furnishing information concerning the Project to prospective bidders; (f) conducting pre-bid conferences; (g) receiving bids and analyzing bids; (h) investigating the acceptability and responsibility of Subcontractors and advising Owner of such evaluations; (i) negotiating with Subcontractors concerning any matter related to the Project; and (j) such other services required by Owner with respect to the bidding process. Within forty-five (45) Days after NTP, Contractor shall submit its procurement process to Owner for

approval, which at a minimum shall include a requirement to obtain at least three (3) bids from three competitive bidders for each portion of the Work that is awarded to a Major Subcontractor to the extent commercially available, *provided that* no such procurement process is required for the Subcontractors listed in Attachment G. Contractor shall be responsible for Major Subcontractor bid solicitation, scope confirmation, and bid evaluation and shall keep all bids, scoping documents and evaluations in an organized format and available to Owner at any time. Contractor shall prepare, on a form acceptable to Owner, an Owner authorization sheet which summarizes Contractor's proposed award to a Major Subcontractor. Contractor shall obtain Owner authorization prior to the award of any Major Subcontract (unless such Major Subcontract is with a Subcontractor listed in Attachment G, as such Subcontractors have already been approved), but such Owner approval shall not relieve Contractor of its responsibility of Subcontractors. Contractor shall also ensure that all Major Subcontractors include in their Subcontracts with Major Sub-subcontractors the requirements in this Section 2.4.1.

2.4.1.2. Prior Subcontracts with Owner's Prior EPC Contractor. Contractor, at its option, may either take assignment of existing subcontracts with Owner's Prior EPC contractor, enter into new Subcontracts with existing subcontractors, or enter into new subcontracts with new subcontractors. In all cases and notwithstanding anything to the contrary in this Agreement, Contractor assumes all responsibility for such subcontractors, with such subcontractors being considered Subcontractors under this Agreement, and the responsibility under such subcontracts, with such subcontracts being considered Subcontracts under this Agreement. Sections 2.4.1 and 2.4.5 shall not apply to the existing subcontracts with Owner's Prior EPC contractor that Contractor takes assignment of.

2.4.1.3. Contractor may use an Offshore Affiliate to perform certain engineering Work. Contractor shall be fully responsible for the Work and all acts and omissions of such Offshore Affiliate, and such Offshore Affiliate shall be bound by the terms of this Agreement.

2.4.2. ***Selection***. Subject to the terms of Section 2.4.1, in the event that Contractor is considering the selection of a Subcontractor or Sub-subcontractor that would qualify as a Major Subcontractor or Major Sub-subcontractor, or is considering replacing a Major Subcontractor or Major Sub-subcontractor, Contractor shall (i) notify Owner of its proposed Major Subcontractor or Major Sub-subcontractor as soon as possible during the selection process and furnish to Owner all information reasonably requested by Owner with respect to Contractor's selection criteria (including copies of bid packages furnished to prospective Major Subcontractors and Major Sub-subcontractors and the qualifications and responding bids of the proposed Major Subcontractors or Major Sub-subcontractors), and (ii) notify Owner no less than fifteen (15) Days prior to the execution of a Major Subcontract with a Major Subcontractor or Major Sub-subcontract. Owner shall have the discretion, not to be unreasonably exercised, to reject any proposed Major Subcontractor or Major Sub-subcontractor for a Major Subcontract or Major Sub-subcontract. Contractor shall not enter into any Major Subcontract with a proposed Major Subcontractor or Major Sub-subcontract with a Major Sub-subcontractor that is rejected by Owner in accordance

with the preceding sentence. Owner shall undertake in good faith to review the information provided by Contractor pursuant to this Section 2.4.1.1 expeditiously and shall notify Contractor of its decision to accept or reject a proposed Major Subcontractor or Major Sub-subcontractor as soon as practicable after such decision is made. Failure of Owner to accept a proposed Major Subcontractor or Major Sub-subcontractor within fifteen (15) Days shall be deemed to be acceptance of such Major Subcontractor or Major Sub-subcontractor.

2.4.3. ***Other Additional Proposed Subcontractors and Sub-subcontractors***. For any Subcontractor not covered by Section 2.4.1, Contractor shall, within fifteen (15) Days prior to the selection of any such Subcontractor, notify Owner in writing of the selection of such Subcontractor and inform Owner generally what portion of the Work such Subcontractor is performing at the Site.

2.4.4. ***Delivery of Major Subcontracts and Major Sub-subcontracts***. Contractor shall furnish Owner with a copy of all Major Subcontracts and Major Sub-subcontracts within ten (10) Days after execution thereof and, within ten (10) Days of Owner's request, furnish Owner with a copy of any other Subcontracts or Sub-subcontracts. Notwithstanding the above, Owner's receipt and review of any Subcontracts or Sub-subcontracts shall not relieve the Contractor of any obligations under this Agreement nor shall such action constitute a waiver of any right or duty afforded Owner under this Agreement, or approval of or acquiescence in a breach hereunder.

2.4.5. ***Terms of Major Subcontracts and Major Sub-subcontracts***. In addition to the requirements in Section 2.3 and without in any way relieving Contractor of its full responsibility to Owner for the acts and omissions of Subcontractors and Sub-subcontractors, each Major Subcontract and each Major Sub-subcontract shall contain the following provisions:

2.4.5.1. the Major Subcontract and the Major Sub-subcontract may be assigned to Owner without the consent of the respective Major Subcontractor or Major Sub-subcontractor; and

2.4.5.2. the Major Subcontractor and the Major Sub-subcontractor shall comply with and perform for the benefit of Owner all requirements and obligations of Contractor to Owner under this Agreement, as such requirements and obligations are applicable to the performance of the work under the respective Major Subcontract or Major Sub-subcontract, including the competitive bidding process for Major Subcontractors in substance the same as that included in Section 2.4.1, an indemnity in substance the same as that included in Article 17, and the insurance requirements specified in Article 10.

2.5 Contractor Acknowledgements.

2.5.1. ***The Agreement***. Prior to the execution of this Agreement, Contractor has examined the documents comprising the entirety of Attachment A and all information contained therein (including the drawings, specifications and other documentation referenced in Schedule A-3 that was developed by Owner's Prior EPC Contractor or its

Affiliates or their subcontractors ("***Pre-Effective Date Engineering Documentation***")). Contractor understands and agrees that the Pre-Effective Date Engineering Documentation is not complete, and that Contractor shall, as part of the Work, complete the engineering in accordance with the requirements of this Agreement. Contractor also understands and agrees that, except with respect to Rely Upon Information, it is responsible for any inaccuracies, errors or omissions in the Pre-Effective Date Engineering Documentation (as well as with respect to the remainder of Attachment A), as Contractor has examined the Pre-Effective Date Engineering Documentation and either verified the accuracy of Pre-Effective Date Engineering Documentation or shall during the performance of the Work modify the Pre-Effective Date Engineering Documentation to correct such inaccuracies, errors or omissions without any increase to the Guaranteed Maximum Price. Contractor has included in the Guaranteed Maximum Price, Milestone Dates and other obligations what it believes is sufficient contingency to account for any such circumstances. Except with respect to Rely Upon Information identified in Attachment S, Contractor represents that such information is accurate, adequate and complete to perform the Work, including finishing the engineering and detail design, finishing procurement, and constructing, pre-commissioning, commissioning, starting-up and testing the Project in accordance with all requirements of this Agreement.

2.5.2. ***Conditions of the Site***.

2.5.2.1. Contractor further agrees that it understands the climate and terrain related to the Site (including site conditions for Work performed in offsite locations) that it may encounter in performing the Work in accordance with the Milestone Dates. Contractor warrants that it has the experience, resources, qualifications and capabilities at its disposal to perform the Work in accordance with the Milestone Dates. Subject to Section 2.5.2.2, Contractor assumes all risks related to, and waives any right to claim an adjustment in the Guaranteed Maximum Price or the Milestone Dates in respect of, any failure to timely perform the Work in accordance with the Milestone Dates as a result of any conditions at the Site or at any other location where the Work is performed, which shall include: (i) river levels (excluding Force Majeure events), topography and subsurface soil conditions (subject to the terms of Section 2.5.2.2); (ii) climatic conditions and seasons; (iii) availability of laborers, Subcontractors, Sub-subcontractors and Construction Equipment; (iv) adequate availability and transportation of Equipment; and (v) breakdown or other failure of Construction Equipment or Contractor's or its Subcontractor's computer equipment (excluding breakdown or other failures caused by Force Majeure events).

2.5.2.2. Notwithstanding Section 2.5.2.1, if Contractor encounters Unforeseen Subsurface Conditions in the performance of the Work that materially and adversely affect Contractor's actual cost to perform the Work or that delay (as such term is defined in Section 6.9) Contractor's performance of the Work, Contractor shall be entitled to request a Change Order for an adjustment to the Guaranteed Maximum Price to the extent of the material and adverse effect (which costs shall be adequately documented and supported) or a time extension to the Guaranteed Substantial Completion Date, as applicable, pursuant to Section

6.2.1.6, provided that Contractor complies with the notice and Change Order request requirements set forth in Sections 6.2 and 6.5, uses all reasonable efforts not to disturb such Unforeseen Subsurface Conditions prior to Owner's investigation and, with respect to claims for costs for delay or schedule relief for delay, satisfies the requirements of Section 6.8.

2.5.3. ***Applicable Law and Applicable Codes and Standards***. Contractor has investigated to its satisfaction Applicable Law and Applicable Codes and Standards, (excluding environmental codes, regulations, and air permit as related to Equipment), and warrants that it can perform the Work in accordance with Applicable Law and Applicable Codes and Standards. Contractor shall perform the Work in accordance with Applicable Law and Applicable Codes and Standards, whether or not such Applicable Law or Applicable Codes and Standards came into effect before the Effective Date or during the performance of the Work; *provided, however*, Contractor shall be entitled to a Change

Order for Changes in Law to the extent allowed under Section 6.2.1.1, provided that Contractor complies with the notice and Change Order request requirements set forth in Sections 6.2 and 6.5, and, with respect to claims for costs for delay or schedule relief for delay, satisfies the requirements of Section 6.8.

Article 3
CONTRACTOR'S RESPONSIBILITIES

3.1 Scope of Work.

3.1.1. ***Generally***. Subject to Section 3.1.4, the Work shall include all engineering, procurement, construction, pre-commissioning, commissioning, start-up and testing of Contractor-Supplied Equipment; assembly, erection, installation, delivery, transportation, storage and construction of all Equipment; evaluation, modification, repair, and testing of Existing Plant Equipment as required in Section 3.1.3 and Attachment A; all Construction Equipment as required for the Work, labor, workmanship, inspection, manufacture, fabrication, installation, design, delivery, transportation, storage and all other items or tasks that are required to achieve Mechanical Completion, Substantial Completion and Final Completion of the Project in accordance with the requirements of this Agreement, including achieving the Minimum Acceptance Criteria. Contractor shall perform the Work in accordance with GECP, Applicable Law, Applicable Codes and Standards, and all other terms and provisions of this Agreement, with the explicit understanding that the Facility will operate as a renewable diesel production facility meeting all requirements and specifications of this Agreement, including Applicable Codes and Standards, Applicable Law and the Warranties, and Contractor shall, as part of the Work, ensure the Project achieves the Minimum Acceptance Criteria. It is understood and agreed that the Work shall include all work that can reasonably be inferred in accordance with GECP as required in accordance with this Agreement, excluding only those items which Owner has specifically agreed to provide under the terms of this Agreement. Accordingly, if any work is required to achieve the Minimum Acceptance Criteria or meet any other requirement of this Agreement, Contractor shall perform such work without an increase in the Guaranteed Maximum Price, regardless of whether such work is described in Attachment A or the Agreement, unless and only if it is an express exception listed in Section 3.1.4. Without

limiting the generality of the foregoing, the Work is more specifically described in Attachment A.

3.1.2. Without limiting Section 3.1.1 and notwithstanding anything to the contrary in this Agreement, the Work shall include all work, including all engineering, procurement and construction work, performed by Owner's Prior EPC Contractor related to the Project, as Contractor is taking responsibility for such work as if it performed the Work itself, and Contractor waives all claims for an adjustment to the Guaranteed Maximum Price or any Milestone Date or any other Changed Criteria relating to the performance by Owner's Prior EPC Contractor, and such claims shall not be the basis for Contractor's failure to achieve the requirements of this Agreement, including the Minimum Acceptance Criteria. Without limiting the foregoing, to the extent that Owner's Prior EPC Contractor performed defective work under Owner's Prior EPC Agreement that was not performed pursuant to a Subcontract and which Owner is unable to assign its rights against Owner's Prior EPC Contractor to Contractor to enforce the warranties related to such defective work, Owner shall reasonably cooperate with Contractor and make reasonable efforts to enforce such warranties against Owner's Prior EPC Contractor for defective work; provided that, (i) in no event does the foregoing relieve Contractor of its responsibilities for the Work (including any work performed by Owner's Prior EPC Contractor) or relieve Contractor of any liability for the Work (including any work performed by Owner's Prior EPC Contractor), and (ii) such reasonable efforts shall not require litigation or arbitration against Owner's Prior EPC Contractor.

3.1.3. ***Existing Plant Equipment***. Contractor shall evaluate, modify, repair, and test the Existing Plant Equipment as necessary to perform the Work and achieve the Minimum Acceptance Criteria, except that Contractor's responsibility to evaluate, modify or repair the Existing Plant Equipment listed in Attachment A, Schedule A-2 is limited to the requirements set forth therein.

3.1.4. ***Exception to Scope of Work***. Contractor shall not be responsible for providing (i) those Permits listed in Attachment P as being the responsibility of Owner; (ii) those requirements set forth under Section 4.3; (iii) the survey control point pursuant to Section 4.5; and (iv) the Owner-Supplied Items.

3.2 Specific Obligations. Without limiting the generality of Section 3.1 or the requirements of any other provision of this Agreement, Contractor shall:

3.2.1. procure, supply and transport all Contractor-Supplied Equipment;

3.2.2. unload, handle, properly store, assemble, erect and install all Equipment;

3.2.3. provide construction, construction management (including the furnishing of all Construction Equipment and all Site supervision and craft labor), civil/structural, electrical, instrumentation, field design, inspection and quality control services required to ensure that the Work is performed in accordance herewith;

3.2.4. negotiate all guarantees, warranties, delivery schedules and performance requirements with all Subcontractors so that all Subcontracts are consistent with this

Agreement, as set forth in Sections 2.3 and 2.4, to the extent that they are commercially available;

3.2.5. pay Subcontractors in a timely fashion in accordance with the respective Subcontracts;

3.2.6. ensure that the Work is performed in accordance with the Milestone Dates;

3.2.7. replace any Subcontractor(s) who fails to perform its Subcontract obligations;

3.2.8. conduct and manage all pre-commissioning, start-up operations, commissioning, Performance Tests and other testing of the Project, while supervising operations and maintenance personnel provided by Owner and coordinating with Process Licensor personnel;

3.2.9. provide training for Owner's operating and maintenance personnel per Section 3.5;

3.2.10. Reserved;

3.2.11. engineer, procure, construct, pre-commission, commission, start up and test all utilities on the Site up to the applicable interconnection points, as further set forth in this Agreement and Attachment A; and

3.2.12. perform design and engineering Work in accordance with this Agreement, including that specified in Section 3.3.

3.3 Design and Engineering Work.

3.3.1. ***General***. Contractor shall, as part of the Work, perform the design and engineering Work necessary to achieve the requirements of this Agreement, including Minimum Acceptance Criteria.

3.3.2. ***Drawings and Specifications***. Upon receipt of NTP, Contractor shall prepare any remaining Drawings and Specifications required for the Work. The Drawings and Specifications shall be based on the requirements of this Agreement, including the Scope of Work, Design Basis, GECP, Applicable Codes and Standards, Applicable Law, and all applicable provisions of this Agreement.

3.3.3. ***Review Process***.

3.3.3.1. *Not used.*

3.3.3.2. *Submission by Contractor*. Contractor shall submit copies of the Drawings and Specifications to Owner for formal review, comment, disapproval and approval in accordance with Attachment A. Owner shall have up to seven (7) Business Days from its receipt of Drawings and Specifications

submitted in accordance with this Section 3.3.3.2 to issue written comments, proposed changes or written approvals or disapprovals of the submission of such Drawings and Specifications to Owner.

3.3.3.3. *No Owner Response.* If Owner does not issue any comments, proposed changes or written approvals or disapprovals within the time period set forth in Section 3.3.3.2, Contractor may proceed with the development of such Drawings and Specifications and any construction relating thereto.

3.3.3.4. *Disapproval by Owner.* If Owner disapproves the Drawings or Specifications, Owner shall provide Contractor with a written statement of the reasons for such rejection within the time period required for Owner's response for disapproval of Drawings and Specifications. Contractor shall provide Owner with revised and corrected Drawings and Specifications as soon as possible thereafter and Owner's rights with respect to the issuing of comments, proposed changes or approvals or disapprovals of such revised and corrected Drawings or Specifications are governed by the procedures specified above in Section 3.3.3.2; *provided that* Contractor shall not be entitled to any extensions of time to the Milestone Dates, an adjustment to the Guaranteed Maximum Price or an adjustment to any other Changed Criteria, unless such disapproval is due to one or more material changes required by Owner to any such Drawings or Specifications and not the result of such Drawings or Specifications non-compliance with the requirements of the Agreement and such disapproval adversely impacts Contractor's costs or ability to perform the Work in accordance with the Milestone Dates and Contractor complies with and meets the requirements under Article 6.

3.3.3.5. *Approval by Owner.* If Owner provides written approval of the Drawings and

Specifications, such Drawings and Specifications shall be the Drawings and Specifications that Contractor shall use to construct the Work; *provided that* Owner's review or approval of any Drawings and Specifications shall not in any way be deemed to limit or in any way alter Contractor's responsibility to perform and complete the Work in strict accordance with the requirements of this Agreement.

3.3.4. ***Design Licenses***. Contractor shall perform all design and engineering Work in accordance with Applicable Law and Applicable Codes and Standards, and all Drawings, Specifications and design and engineering Work shall be signed and stamped by design professionals licensed in accordance with Applicable Law.

3.3.5. ***Format of Deliverables***. Unless otherwise expressly provided under this Agreement, all Drawings and Record As-Built Drawings prepared by Contractor or its Subcontractors or Sub-subcontractors under this Agreement shall be prepared using computer aided design ("***CAD***"). All CAD drawing files shall be in fully operable and editable native format in the latest commercially available version of Contractor's preferred software. In addition, all Record As-Built Drawings and Specifications shall be provided to Owner in fully operable and editable native format in the latest commercially available version of AutoCAD®. Contractor shall provide all other deliverables in fully operable and

editable native format in such software as specified by Owner, unless, with respect to such other deliverables, the only output available is in PDF.

3.3.6. ***As-Built Drawings and Specifications***. During construction, Contractor shall keep an up-to-date, redlined, marked set of Progress As-Built Drawings and Specifications on the Site as required under Attachment A. As a condition precedent to Final Completion, Contractor shall deliver to Owner the Record As-Built Drawings and Specifications in accordance with Attachment A, which shall include delivery of final as-built drawing files for Record As-Built Drawings in fully operable and editable native format in the latest commercially available version of AutoCAD®.

3.3.7. ***Other Information***. Contractor shall deliver copies of all other documents required to be delivered pursuant to Attachment A within and in accordance with the requirements set forth in Attachment A, including in fully operable and editable native format in such software as specified by Owner, and in accordance with the timing set forth in Attachment A, provided that, with respect to other documents, if the fully operable and editable native format is not available, Contractor may provide such documents in PDF.

3.4 Spare Parts.

3.4.1. ***Commissioning Spare Parts***. Contractor shall provide all pre-commissioning, commissioning, testing and start-up spare parts necessary for Contractor-Supplied Equipment to achieve Substantial Completion and shall, prior to and as a condition precedent to achieving Mechanical Completion, deliver such spare parts to the Site; provided that, Contractor does not have to deliver such spare parts already delivered by Owner's Prior EPC Contractor, if any, and accepted by Owner. The cost associated with all Work related to such pre-commissioning, commissioning, testing and start-up spare parts is included in the Guaranteed Maximum Price, including all Work related to procuring such spare parts and the purchase price for such spare parts.

3.4.2. ***Operating Spare Parts***. With respect to operating spare parts for use after Substantial Completion, Contractor shall deliver to Owner for Owner's written approval a detailed priced list of the manufacturer and Contractor-recommended operating spare parts for each applicable item of Contractor-Supplied Equipment necessary for operating such equipment (including components and systems of such equipment) for two (2) years after Substantial Completion. Such list shall be provided to Owner for each item of Contractor-Supplied Equipment for which there is manufacturer or Contractor-recommended operating spare parts prior to execution of the applicable Subcontract for such equipment. Owner shall have thirty (30) Days to respond to Contractor identifying which operating spare parts, if any, that Owner wishes Contractor to procure as part of its execution of the Subcontract. In the event Owner requests in writing that Contractor procure any operating spare parts on Owner's behalf, Contractor shall be entitled to request a Change Order in accordance with Section 6.2.1.7, to increase the Guaranteed Maximum Price for the actual purchase price of such requested operating spare parts.

3.5 Operator Training Program. As part of the Work, a reasonable number of personnel designated by Owner in its sole discretion shall be given training designed and

administered by Contractor on a reimbursable basis as provided herein, which shall be based on the program requirements contained in Attachment A and shall cover at a minimum the following topics: (i) the testing of each item of Equipment; (ii) the start-up, operation and shut-down of each item of Equipment; (iii) the performance of routine, preventative and emergency maintenance for each item of Equipment; (iv) spare parts to be maintained for each item of Equipment, and their

installation and removal; and (v) any other subject matter required in Attachment A. Contractor shall provide group training for up to two (2) weeks and the cost of such training is included in the Guaranteed Maximum Price. Such training shall include instruction for Owner's operations and maintenance personnel in the operation and routine maintenance of each item of Equipment prior to completion of commissioning of each item of Equipment. As part of the training, Contractor shall provide Owner's operating and maintenance personnel with full access to the Project during commissioning, testing and start up. Training shall be provided by personnel selected by Contractor who, in Contractor's and the Equipment Subcontractor's judgment, are qualified to provide such training, and shall take place at such locations and at such times as agreed upon by the Parties. Contractor shall provide trainees with materials described in Attachment A. Contractor shall also provide to Owner all training materials and aids developed to conduct such training in order to facilitate future training by Owner of personnel hired in the future.

3.6 Environmental Regulations and Environmental Compliance. Without limitation of Section 3.1, Contractor is fully responsible for ensuring that the Work is performed in an environmentally sound manner and in compliance with all provisions of this Agreement regarding the environment, Applicable Law (including Permits) and in compliance with the policies and procedures set forth in Attachment J. Contractor shall dispose of all non-hazardous wastes and Hazardous Materials brought to the Site by Contractor or its Subcontractors during performance of the Work at approved disposal facilities off-Site permitted to receive such wastes and Hazardous Materials.

3.7 Contractor's Tools and Construction Equipment. Contractor shall furnish all Construction Equipment necessary and appropriate for the timely and safe completion of the Work in strict compliance with this Agreement. Notwithstanding anything to the contrary contained in this Agreement, Contractor shall be responsible for damage to or destruction or loss of, from any cause whatsoever, all Construction Equipment owned, rented or leased by Contractor or its Subcontractors or Sub-subcontractors for use in accomplishing the Work. Contractor shall require all insurance policies (including policies of Contractor and all Subcontractors and Sub-subcontractors) in any way relating to such Construction Equipment to include clauses stating that each underwriter will waive all rights of recovery, under subrogation or otherwise, against the Owner Indemnified Parties.

3.8 Employment of Personnel.

3.8.1. Contractor shall not employ, or permit any Subcontractor or Sub-subcontractor to employ, in connection with its performance under this Agreement anyone not skilled or qualified or otherwise unfit to perform the work assigned to such Person. Contractor agrees to promptly remove (or to require any Subcontractor or Sub-subcontractor to remove) from its services in connection with the Work any Person who does not meet the foregoing requirements. **NOTWITHSTANDING THE**

FOREGOING, OWNER SHALL HAVE NO LIABILITY AND CONTRACTOR AGREES TO RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER INDEMNIFIED PARTIES FROM AND AGAINST ANY AND ALL CLAIMS WHICH MAY DIRECTLY OR INDIRECTLY ARISE OR RESULT FROM CONTRACTOR OR ANY SUBCONTRACTOR OR SUB-SUBCONTRACTOR TERMINATING THE EMPLOYMENT OF OR REMOVING FROM THE WORK ANY SUCH EMPLOYEE WHO FAILS TO MEET THE FOREGOING REQUIREMENTS FOLLOWING A REQUEST BY OWNER TO HAVE SUCH EMPLOYEE REMOVED FROM THE WORK. Contractor shall replace any such employee at its sole cost and expense.

3.8.2. Contractor and its Subcontractors and Sub-subcontractors and the personnel of any of them shall not bring onto the Site: (i) any firearm of whatsoever nature or any other object which in the sole judgment of Owner is determined to be a potential weapon, unless Applicable Law requires Owner to allow such items on the Site; (ii) alcoholic beverages or intoxicants of any nature; (iii) any substance that creates a hazard and not related to the Work; (iv) illegal or non-prescription drugs of any nature; or (v) any prescription drugs without a valid prescription. In addition, all employees and agents of Contractor and its Subcontractors and Sub-subcontractors shall successfully complete a drug screening test prior to performing Work at the Site and periodically thereafter, and upon Owner's request, Contractor shall provide Owner with copies of such drug screening tests. Contractor and its Subcontractors and Sub-subcontractors shall abide by and enforce the requirements of this Section 3.8.2, and shall immediately remove from the Work and the Site any employee or agent of Contractor, Subcontractor or Sub-subcontractor who, in Owner's sole judgment, has violated the requirements of this Section 3.8.2. **THE PROVISIONS OF SECTION 3.8.1 WITH REGARD TO LIABILITY OF ANY OF THE OWNER INDEMNIFIED PARTIES AND CONTRACTOR'S RELEASE, INDEMNIFICATION, DEFENSE AND HOLD HARMLESS OBLIGATIONS SHALL APPLY TO THE REMOVAL OF ANY SUCH PERSON UNDER THIS SECTION 3.8.2.**

3.9 Clean-up. Contractor shall, to Owner's satisfaction, at all times keep the Site free from all waste materials or rubbish caused by the activities of Contractor or any of its Subcontractors or Sub-subcontractors. Contractor shall clean up all such waste materials or rubbish at Owner's request with reasonable notice as described further in Attachment A. As soon as practicable after the completion of all Punchlist items, Contractor shall with respect to such Work remove, all Construction Equipment and other items not constituting part of the Project and remove trash, debris, and scrap produced by Contractor which shall be properly disposed of in Owner supplied receptacles and all waste material and demolished equipment will be removed to the suitable lay down yard at the Site in accordance with all Permits and this Agreement. In

the event of Contractor's failure to comply with any of the foregoing, upon forty-eight (48) hours written notice to Contractor, Owner may accomplish the same; *provided, however*, that Contractor shall be liable for and pay to Owner (directly, by offset, or by collection on the Letter of Credit, at Owner's sole discretion) all costs associated with such removal or restoration.

3.10 Safety and Security. Contractor recognizes and agrees that safety and physical security are of paramount importance in the performance of the Work and that Contractor is responsible for performing the Work in a safe and physically secure manner. Contractor agrees to implement a safety program that is to be received by Owner for its written approval twenty-one (21) Days prior to the commencement of the Work at the Site. Contractor further agrees to perform the Work in accordance with the safety and health rules and standards of Applicable Law and such safety program, as approved by Owner, and Contractor shall assume all costs associated with compliance therewith. Contractor's safety program shall include the standards set forth in Attachment J. Owner's review and approval of Contractor's safety program shall not in any way relieve Contractor of its responsibility regarding safety, and Owner, in reviewing and approving such safety program, assumes no liability for such safety program. Contractor shall appoint one or more (as appropriate) safety representative(s) acceptable to Owner who shall be resident at the Site, have responsibility to immediately correct unsafe conditions or unsafe acts associated with the Work and the Project, act on behalf of Contractor on safety and health matters, and participate in periodic safety meetings with Owner at least once per week or at such greater frequency as Owner may request. Contractor further agrees to provide or cause to be provided necessary training and safety Construction Equipment to its employees, Subcontractors and Sub-subcontractors and enforce the use of such training and safety Construction Equipment. Contractor shall maintain all accident, injury and any other records required by Applicable Law and this Agreement, including Attachment J. Contractor shall fully cooperate with Owner and Owner's on-Site environmental, health and safety ("***EH&S***") coordinator in demonstrating safe practices, including full cooperation during any investigations. Contractor shall be responsible for the specific lighting for the Work and supervision of the Project until all of the requirements of Substantial Completion of the Project have been satisfied. Owner shall provide security, fencing, guarding and general lighting for the Site. Contractor is aware of all requirements established by Governmental Instrumentalities in effect as of the Effective Date (including social distancing, use of protective equipment, travel restrictions, stay-at-home orders and quarantine requirements) and applicable guidelines issued by the Center for Disease Control or from other public health bodies relevant to the Work and which Contractor, based on GECP, would implement (including testing and temperature checks), and Contractor has taken such requirements and guidelines into account in planning the Work.

3.11 Emergencies. In the event of any emergency endangering life or property in any way relating to the Work, the Project or the Site, whether on the Site or otherwise, Contractor shall take such action as may be reasonable and necessary to prevent, avoid or mitigate injury, damage, or loss and shall, as soon as possible, report any such incidents, including Contractor's response thereto, to Owner. If Contractor has not taken reasonable precautions for the safety of personnel on the Site, the public or the protection of the Work, and such failure creates an emergency requiring immediate action, then Owner, with or without notice to Contractor may, but shall be under no obligation to, take reasonable action as required to address such emergency and all such costs incurred by Owner shall be for Contractor's account. The taking of any such action by Owner, or Owner's failure to take any action, shall not limit Contractor's liability.

3.12 Permits. Other than the Permits listed in Attachment P, Contractor shall obtain all Permits required to be taken under Contractor's name, to perform the Work and shall

promptly provide information, assistance and documentation to Owner as reasonably requested in connection with the Permits to be obtained or modified by Owner in Attachment P.

3.13 Books, Records and Audits.

3.13.1. Contractor shall keep full and detailed books, construction logs, records, daily reports, accounts, schedules, payroll records, receipts, statements, electronic files, correspondence and other pertinent documents as may be necessary for proper management under this Agreement, as required under Applicable Law or this Agreement, and in any way relating to this Agreement ("***Books and Records***"). Contractor shall maintain all such Books and Records in accordance with GAAP, and shall retain all such Books and Records for a minimum period of three (3) years after Final Completion of the Project, or such greater period of time as may be required under Applicable Law.

3.13.2. Upon reasonable notice, Owner, Lender, and any of their representatives, including Lender's independent engineer, shall have the right to audit or to have audited Contractor's Books and Records; *provided, however*, such parties shall not have the right to audit or have audited Contractor's Books and Records in connection with the internal composition of any compensation that is fixed in amount hereunder including by way of example and not limitation any base rates and multipliers or prorates used to calculate burdened rates on taxable wages including but not limited to payroll taxes, insurance, small tools and consumables, except to the extent that any such compensation has any bearing with respect to (i) any proceeding (including any civil, criminal or administrative proceeding or

investigation) before any Governmental Instrumentality in which Owner is involved. When requested by Owner, Contractor shall provide the auditors with reasonable access to all such Books and Records, and Contractor's personnel shall cooperate with the auditors to effectuate the audit or audits hereunder. The auditors shall have the right to copy all such Books and Records. Owner shall bear all costs incurred by Contractor in assisting Owner with audits performed pursuant to this Section 3.13. Contractor shall include audit provisions identical to this Section 3.13 in all Subcontracts. The restrictions in this Section 3.13.2 to the audit rights by Owner, Lender or Lender's independent engineer shall not control over any rights such parties have under Applicable Law in discovery in any arbitration or litigation arising out of Section 18.1 of this Agreement or in any litigation or arbitration against Guarantor.

3.14 Tax Accounting. Within a reasonable period of time following a request therefor, Contractor shall provide Owner with any information regarding quantities, descriptions and costs of any Contractor-Supplied Equipment installed on or ordered for the Project and any other information, including Books and Records, as Owner may deem reasonably necessary in connection with the preparation of its tax returns or other tax documentation.

3.15 Temporary Utilities, Roads, Facilities and Storage. To the extent there are existing utilities that can be used by Contractor, Owner shall pay for such utilities, but otherwise Contractor shall obtain all other utilities that may be required. Contractor shall construct and maintain temporary access and haul roads as may be necessary for the proper performance of this Agreement. Roads constructed on the Site shall be subject to Owner's

written approval. All Equipment and other items comprising part of the Work stored at a location other than on the Site shall be segregated from other goods, and shall be clearly marked as "Property of Bakersfield Renewable Fuels, LLC."

3.16 Subordination of Liens. In consideration of ten U.S. Dollars (U.S.$10) incorporated into the Compensation and as part of the consideration of receiving this Agreement and other valuable consideration received and acknowledged by Contractor, Contractor hereby subordinates any mechanics' and materialmen's liens or other claims or encumbrances that may be brought by Contractor against any or all of the Work, the Site or the Project to any liens granted in favor of Lender, whether such lien in favor of Lender is created, attached or perfected prior to or after any such liens, claims or encumbrances, and shall require its Subcontractors and Sub-subcontractors to similarly subordinate their lien, claim and encumbrance rights. Contractor agrees to comply with reasonable requests of Owner for supporting documentation required by Lender, including any necessary lien subordination agreements, affidavits or other documents that may be required to demonstrate that Owner's property and premises are free from liens, claims and encumbrances arising out of the furnishing of Work under this Agreement.

3.17 Hazardous Materials. In the performance of the Work, Contractor shall, and shall cause its Subcontractors and Sub-subcontractors to, comply with all Applicable Laws, Applicable Codes and Standards, and the requirements specified in Attachment J relating to Hazardous Materials. Contractor shall conduct its activities under this Agreement, and shall cause each of its Subcontractors and Sub-subcontractors to conduct its activities, in a manner designed to prevent pollution of the environment or any other release of any Hazardous Material brought on to the Site by Contractor or its Subcontractors and Sub-subcontractors. Neither Contractor nor its Subcontractors or Sub-subcontractors shall bring Hazardous Material to the Site, except as necessary to perform the Work, and Contractor shall remain responsible and strictly liable for all such Hazardous Materials and for any Hazardous Materials that are brought to the Site by Contractor or any of its Subcontractors or Sub-subcontractors. Contractor shall be responsible for the management of, and proper disposal of, all Hazardous Material brought onto the Site by it or its Subcontractors or Sub-subcontractors. If any spillage, discharge, emission, or release should occur as a result of any Hazardous Materials brought on to the Site by Contractor or its Subcontractors or Sub-subcontractors or discovered by them, Contractor shall immediately notify Owner and take all reasonable steps necessary to: (i) stop and contain the spillage, discharge, emission, or release; (ii) make any report(s) of the spillage, discharge, emission, or release as required under Applicable Laws; and (iii) clean-up and remediate the spillage, discharge, emission, or release of Hazardous Materials brought onto the Site by Contractor or any of its Subcontractors or Sub-subcontractors as required by Applicable Law. Contractor shall cause all such Hazardous Material brought onto the Site by it or its Subcontractors or Sub-subcontractors: (y) to be transported only by carriers maintaining valid Hazardous Material transportation Permits (as required) and operating in compliance with such Permits and Applicable Laws regarding the transportation of Hazardous Material and only pursuant to manifest and shipping documents identifying only Contractor as the generator of waste or Person who arranged for waste disposal through Contractor or any Subcontractor or Sub-subcontractor; and (z) to be treated and disposed of only at treatment, storage, and disposal facilities maintaining valid Permits (as required) regarding Hazardous Material and in accordance with Applicable Law. Contractor

shall submit to Owner a list of all Hazardous Material to be brought onto the Site as permitted by this Agreement prior to bringing such Hazardous Material onto or at the Site. Contractor shall keep Owner informed as to the status of all Hazardous Material brought onto the Site by Contractor or its Subcontractors and Sub-subcontractors and disposal of such Hazardous Material from the Site by Contractor or its Subcontractors or Sub-subcontractors. Notwithstanding anything to the contrary in the foregoing, Contractor will have no liability or responsibility for any release, clean-up, remediation, transportation, or disposal of any Hazardous Materials existing at the Site that pre-date Contractor's or its Subcontractors'

or Sub-subcontractors' commencement of any Work at the Site (the "***Pre-Existing Hazardous Materials***"), and as between Owner and Contractor, Owner will retain all responsibility for Pre-Existing Hazardous Materials, except to the extent of Contractor's or any Subcontractor's or Sub-subcontractor's negligent or otherwise wrongful handling, disturbance, transport, storage, disposal, aggravation or exacerbation of such Pre-Existing Hazardous Materials.

3.18 Environmental Releases. If Contractor or any of its Subcontractors or Sub-subcontractors releases any Hazardous Material on, at, or from the Site, or becomes aware of any Person who has stored, released, or disposed of Hazardous Material on, at, or from the Site during the Work, Contractor shall immediately notify Owner in writing. If Contractor's Work is involved in the area where such release occurred, Contractor shall immediately stop any Work affecting the area. Contractor will not thereafter resume performance of the Work in the affected area except with the prior written permission of Owner. Contractor shall, at its sole cost and expense, diligently proceed to take all necessary or desirable remedial action to clean up and remediate fully and dispose of, in accordance with Applicable Laws, any contamination caused by: (i) Contractor's or any of its Subcontractor's or Sub-subcontractor's negligent or otherwise wrongful handling, disturbance, transport, storage, disposal, aggravation or exacerbation of any Pre-Existing Hazardous Materials; and (ii) Contractor's or any of its Subcontractor's or Sub-subcontractor's negligence or otherwise wrongful handling of any Hazardous Material that was brought onto the Site by Contractor or any of its Subcontractors or Sub-subcontractors, whether on or off the Site. If and when Contractor is instructed to resume performance of the Work with respect to a stoppage as a result of the release of any Hazardous Material that is not Contractor's responsibility pursuant to the previous sentence (after disposal or other decision by Owner regarding treatment of such Hazardous Material), to the extent that any such suspension materially and adversely affects Contractor's actual cost or time for performance of the Work, Contractor shall be entitled to a Change Order to the extent of the material and adverse effect. Contractor shall not, and shall cause its Subcontractors and Sub-subcontractors to not, take any action that may exacerbate any such contamination. In addition to Contractor's obligations as set forth above, if Owner desires Contractor to perform all or part of any clean up or remediation that may become necessary as a result of the discovery of any Pre-Existing Hazardous Material that are not Contractor's responsibility, Contractor shall be entitled to a Change Order for the actual cost of such additional Work. Contractor shall cooperate with and assist Owner in making the Site available for taking necessary remedial steps to clean-up/remediate any such contamination at Owner's expense.

3.19 Quality Assurance. No later than fifteen (15) Days after the date Owner issues NTP, Contractor shall submit to Owner for its review and approval, a Project-specific quality control and quality assurance plan and inspection plan, including inspection

procedures. Contractor shall promptly modify such Project-specific quality control and quality assurance plan and inspection plan to incorporate all comments provided by Owner, if any. Owner's approval of Contractor's quality control and assurance plan, inspection plan and inspection procedure shall in no way relieve Contractor of its responsibility for performing the Work in compliance with this Agreement. As part of the quality control and assurance plan, inspection plan and inspection procedure, Contractor shall keep a daily log of inspections performed, and Contractor shall make available at the Site for Owner's review a copy of all such inspections.

3.20 Reports and Meetings.

3.20.1. ***Reports***. Contractor shall provide Owner with electronic copies of progress reports and such other information as reasonably requested by Owner, including the following:

3.20.1.1. Safety or environmental incident reports within one (1) Business Day of the occurrence of any such incident, including "near miss" incidents wherein no individual was injured or property was damaged, except for any safety or environmental incident involving a significant non-scheduled event such as natural gas releases, fires, explosions, mechanical failures, unusual over-pressurizations or major injuries which shall be provided to Owner within eight (8) hours of the occurrence of such incident; provided, however, notification shall be provided to Owner immediately if any safety or environmental incident threatens public or employee safety, causes significant property damage, or interrupts the Work; and

3.20.1.2. Monthly progress reports ("***Monthly Progress Reports***"), in a form acceptable to Owner and Contractor but containing the information specified in Attachment R. Contractor shall provide the Monthly Progress Report no later than the tenth (10th) Day of the succeeding Month (or, if a holiday, the last Business Day immediately preceding the tenth (10th) Day of the succeeding Month), which shall be submitted with the Invoice for such Month, and the Monthly Progress Report shall cover activities up through the end of the previous Month. Contractor shall provide Owner with the number of copies of such reports and shall arrange for the distribution thereof as Owner may reasonably request.

3.20.2. ***Meetings***. A weekly (or as otherwise agreed between the Parties) progress meeting shall be held at the Site, or at an alternate site mutually agreeable to Owner and Contractor, to discuss the matters described in Attachment R for the prior week. A Monthly progress meeting shall be held by Contractor at the Site, or at an alternate site mutually agreeable to Owner and Contractor, to discuss the matters described in Attachment R for the prior Month and to review the Monthly Progress Report for that Month with Owner. The meetings shall be attended by a representative

of Owner, the Contractor Representative and those Contractor employees and Subcontractors requested by Owner.

3.21 Payment. Contractor shall timely make all payments required to be paid to Owner pursuant to the terms of this Agreement.

3.22 Title to Materials Found. As between Owner and Contractor, the title to water, soil, rock, gravel, sand, minerals, timber, and any other materials developed or obtained in the excavation or other operations of Contractor, any Subcontractor or Sub-subcontractor at the Site and the right to use said materials or dispose of same is hereby expressly reserved by Owner. Contractor may, at the sole discretion of Owner, be permitted, without charge, to use in the Work any such materials that comply with the requirements of this Agreement.

3.23 Survey Control Points and Layout. Contractor shall establish all survey control points and layout the entire Work in accordance with the requirements of this Agreement, which shall be based on the survey control point established by Owner pursuant to this Agreement. Contractor acknowledges that it has confirmed the proper placement of such Owner-provided survey control point. If Contractor or any of its Subcontractors, Sub-subcontractors or any of the representatives or employees of any of them move or destroy or render inaccurate the survey control point provided by Owner, such control point shall be replaced by Contractor at Contractor's own expense.

3.24 Owner-Supplied Items. Owner-Supplied Items shall be made available to Contractor by Owner at a location at the Site, and, upon delivery, Contractor shall promptly visually inspect the Owner-Supplied Items. Contractor shall promptly notify Owner of any visible defect or discrepancy in the Owner-Supplied Items or any error in the quantity of such Owner-Supplied Items. If Contractor fails to notify Owner of any such visible defect, discrepancy, or error in quantity before performing Contractor's dependent Work, and such defect, discrepancy, noncompliance or error in quantity would have been discovered in the course of a reasonably thorough visual inspection and measurement, Contractor shall correct such defect or discrepancy on the same basis as if it were Defective Work in accordance with Article 13. Contractor shall assume care, custody and control and risk of loss for all such Owner-Supplied Items after delivery to the Site and prior to offloading such Owner-Supplied Items, including the storage, maintenance and care for Owner-Supplied Items in accordance with the manufacturer's and Owner's recommendations and procedures.

3.25 Cooperation with Others. Contractor acknowledges that Owner, other contractors and other subcontractors or other Persons may be working at the Site during the performance of this Agreement and the Work or use of certain facilities may be interfered with as a result of such concurrent activities. To minimize interference with work of any of the other parties involved, Contractor shall perform the Work only in the designated areas (including laydown areas) set forth on Attachment T. Contractor shall at all times coordinate the performance of the Work on the Site with Owner and all of Owner's other contractors and other subcontractors or other Persons performing work on the Site. Contractor agrees to cooperate with Owner and such other contractors and other subcontractors or other Persons so as to not to materially interfere with the activities of such Persons working on the Site. Subject to Section 4.3, Contractor shall be fully responsible for coordinating the Work and the activities of Contractor and its Subcontractors and Sub-subcontractors occurring off of the Site with any work or activities of Owner, Owner's other contractors and its other subcontractors or other Persons. During pre-commissioning, start-up operations, commissioning, Performance Tests and other testing of the Project, Contractor shall at all times coordinate with, supervise, and manage Process Licensor personnel.

3.26 Responsibility for Property. Contractor shall plan and conduct its operations so that neither Contractor nor any of its Subcontractors or Sub-subcontractors shall (i) enter upon lands (other than the Site) or waterbodies in their natural state unless authorized by Owner in writing; (ii) close or obstruct any utility installation, highway, waterway, harbor, road or other property unless and until Permits and Owner's written permission therefore have been obtained; (iii) disrupt or otherwise interfere with the operation of any portion of any pipeline, telephone, conduit or electric transmission line, ditch, navigational aid, dock or structure unless and until otherwise specifically authorized by Owner in writing; (iv) damage any property in (ii) or (iii); or (v) damage or destroy maintained, cultivated or planted areas or vegetation (such as trees, plants, shrubs, shore protection, paving, or grass) on the Site or adjacent thereto which, as determined by Owner, do not interfere with the performance of this Agreement. The foregoing includes damage arising from performance of the Work through operation of Construction Equipment or stockpiling of materials. Contractor and its Subcontractors and Sub-subcontractors shall coordinate and conduct the performance of the Work so as to not interfere with or disrupt the use and peaceful enjoyment of any adjacent property to the Site.

3.27 Compliance with Real Property Interests. Contractor shall, in the performance of the Work, comply, and cause all Subcontractors and Sub-subcontractors to comply, with any easement, lease, right-of-way or other property interests that affect or govern the Site or any other real property used for the purposes of completing the Work, including any insurance or indemnification restrictions or obligations therein, to the extent such easement, lease, right-of-way or other property interests relate to the performance of the Work.

3.28 Explosives. Explosives shall be transported to the Site only when required to perform the Work under

this Agreement and with abundant, prior notice to and written approval of Owner. Contractor shall be responsible for properly purchasing, transporting, storing, safeguarding, handling and using explosives required to perform the Work under this Agreement. Contractor shall employ competent and qualified personnel for the use of explosives and shall assume full responsibility for all costs, losses, damages and expenses caused by the use of explosives in the performance of the Work. Residual surplus explosives shall be promptly removed from the Site and properly disposed of by Contractor. Contractor shall strictly comply with Applicable Law and Applicable Codes and Standards in the handling of explosives pursuant to this Agreement (including the U.S. Patriot Act of 2001 and any and all rules and regulations promulgated by the U.S. Department of Homeland Security and the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives), shall perform all obligations and obtain all Permits with respect to explosives, and shall develop and file and provide copies to Owner of all documentation regarding same.

3.29 Used or Salvaged Materials. If, after Substantial Completion and prior to Final Completion, (i) Contractor has any Contractor-Supplied Equipment that it purchased for the Project but did not incorporate into the Project, or (ii) if such Contractor-Supplied Equipment was purchased pursuant to a unilateral Change Order in accordance with Section 6.1.4 or 6.2.4, Owner has the option of either taking such Equipment at no cost to Owner or requiring that Contractor haul off such Equipment at Owner's cost and expense.

3.30 Supervision of Owner's Operation Personnel. During commissioning of the Project, Owner's operating and maintenance personnel providing commissioning support to the Project shall be managed and supervised by Contractor while such personnel provide such commissioning support; *provided, however*, notwithstanding the foregoing, such operating and maintenance personnel shall remain employees or agents of Owner and shall not be considered employees of Contractor for any reason. Contractor shall be responsible for the acts and omissions of Owner's operating and maintenance personnel only during such time in which such personnel are providing commissioning support to Contractor; provided, however, under no circumstances shall Contractor be liable for the gross negligence or willful misconduct of such personnel during such time. Contractor shall, no later than fourteen (14) Days after NTP, prepare for Owner's review and approval a proposed organizational chart regarding the utilization of Owner's operation and maintenance personnel during the Project.

3.31 Nondiscrimination. Contractor agrees that it shall conduct its activities without discrimination on account of race, creed, color, sex, religion, national origin, age or disability and shall comply with Applicable Law relating thereto, including Executive Order 11246, as amended. Upon the request of Owner, Contractor shall provide Owner with copies of all plans or programs that Contractor uses to satisfy the requirements of this Section 3.31.

Article 4
OWNER'S RESPONSIBILITIES

4.1 Payment. Owner shall timely pay the Contractor's Compensation in accordance with the provisions of Article 7 hereof.

4.2 Permits. Owner shall be responsible for obtaining the Permits listed in Attachment P. To the extent Owner has not obtained any such Permits prior to the Effective Date, Owner shall obtain such Permits in accordance with the schedule contained in Attachment P, or if not stated therein, in a manner that will permit Contractor to perform the Work without substantial interruption or interference. Owner shall provide information, assistance and documentation to Contractor as reasonably requested in connection with the Permits to be obtained by Contractor under this Agreement.

4.3 Access to the Site. Owner shall provide Contractor with access to the Site on which the Project is to be physically situated. Subject to Section 3.25, such access on the Site shall be sufficient to permit Contractor to progress with the Work on a continuous basis in accordance with the Milestone Dates without material interruption or interference.

4.4 California Sales and Use Tax. Owner shall reimburse Contractor for California sales and use Taxes as set forth in Article 8, unless Owner provides Contractor with evidence of abatement of such California sales and use Taxes, in which case Contractor shall not invoice Owner for any such Taxes. In addition, Owner shall administer and pay (a) property Taxes assessed on the Site, and on Equipment after delivery at the Site, and (b) all Taxes incurred due to Owner's sale of renewable diesel from the Project.

4.5 Legal Description and Survey. Within fifteen (15) Days after NTP, Owner shall provide to Contractor for Contractor's information a survey control point, the proper placement of which, Contractor has confirmed as set forth in Section 3.23.

4.6 Operation Personnel. Owner shall retain operating and maintenance personnel who are qualified and experienced generally in refining operations to provide support in the pre-commissioning, commissioning, start-up and testing of the Project.

4.7 Owner-Supplied Items. Owner shall be responsible for the procurement and delivery of the items described in Attachment V ("***Owner-Supplied Items***"), within the times and at the locations set forth therein, subject to the conditions specified therein. For the avoidance of doubt, the Owner-Supplied Items does not include connections and related services supplied by Contractor regarding the Owner-Supplied Items or any other requirements with respect to the Owner-Supplied Items set forth in Attachment A.

4.8 Existing Plant Equipment. Owner shall be solely responsible for Existing Plant Equipment meeting Applicable Codes and Standards, except to the extent set forth in Section 3.1.3.

Article 5
COMMENCEMENT OF WORK, MILESTONE DATES, AND SCHEDULING OBLIGATIONS

5.1 Commencement of Work. Upon Contractor's receipt from Owner of the NTP, Contractor shall immediately commence the performance of the Work.

5.2 Milestone Dates. Contractor shall perform the Work in accordance with the Milestone Dates set forth in this Section 0 and in Attachment E. On the Effective Date, the only Milestone Dates listed in Attachment E are the Guaranteed Substantial Completion Date and Guaranteed Final Completion Date. As part of the CPM Schedule submission described in Section 5.3.1 below, Contractor shall propose for Owner's review and approval at least ten (10) new Milestone Dates that are on the critical path of the Work, with each Milestone Date evenly spaced between the NTP and the Guaranteed Substantial Completion Date. The Parties shall agree on these Milestone Dates within thirty (30) Days after Contractor's submission of the CPM Schedule, which shall be captured in the Change Order.

5.2.1. ***Guaranteed Substantial Completion Date***. Contractor shall achieve Substantial Completion of the Work no later than Two Hundred Forty Eight (248) Days after issuance of NTP ("***Guaranteed Substantial Completion Date***"). The Guaranteed Substantial Completion Date shall only be adjusted by Change Order as provided under this Agreement.

5.2.2. ***Guaranteed Final Completion Date***. Contractor shall achieve Final Completion of the Work no later than one hundred eighty (180) Days after achieving Substantial Completion ("***Guaranteed Final Completion Date***"). The Guaranteed Final Completion Date shall only be adjusted by Change Order as provided under this Agreement.

5.2.3. Contractor shall not commence performance of the Work until Owner issues the NTP authorizing the same pursuant to this Section 5.2.3 Owner shall issue NTP no later than June 2, 2021**,** and if Owner fails to issue NTP by such date, Contractor shall be entitled to a Change Order to the extent permitted in Section 6.8**.** Upon Contractor's receipt from Owner of the NTP and the first installment of the Deposit Payment, Contractor shall immediately commence with the performance of the Work. The NTP shall be issued in the form attached hereto as Attachment H.

5.3 CPM Schedule.

5.3.1. ***CPM Schedule Submission***. Within forty-five (45) Days after the Effective Date, Contractor shall prepare and submit to Owner for its review and written approval a detailed resource/man-hour loaded critical path method schedule for the Project using Primavera Project Planner (P6) version 8.2 or later ("***CPM Schedule***"). Owner may issue written comments, proposed changes or written approval or disapproval of such CPM Schedule. The CPM Schedule shall, at a minimum, (i) include separate activities for each portion of the Project (including engineering, procurement and construction, along with non-physical activities related to the Work, such as submittal and approval of Drawings and Specifications, procurement of Equipment and inspection and testing of the Work, and obtaining Permits), (ii) be fully integrated and shall be consistent with the Milestone Dates, (iii) be detailed at a level 3 (with each activity containing Work for one discipline or craft having a maximum twenty (20) Day duration) for all activities for the Project, (iv) fully incorporate all Major Subcontractor schedules for the performance of their work (including off-site Subcontractors, suppliers and fabricators), (v) show the duration, early/late start dates, early/late finish dates and available float for each activity, activity number, activity description and responsible Contractor or Subcontractor, and an uninterrupted critical path from the NTP through each Milestone Date, including Mechanical Completion, Substantial Completion and Final Completion of the Project, (vi) be cost-loaded to reflect Contractor's expected payments during the progress of the Work; and (vii) be man-hour loaded to reflect the projected manpower to be used per activity (whether provided by Contractor or any Subcontractor or Sub-subcontractor), showing the number of personnel, the positions and titles of such personnel, and a general description of the Work being performed. With respect to each activity in the CPM Schedule, the CPM Schedule shall show the activity number, activity description, early start and early finish dates, late start and late finish dates, duration, total float value, and responsible Contractor, Subcontractor or other parties (including Owner and Owner's other contractors). The CPM Schedule shall represent Contractor's best judgment as to how it shall complete the Work in compliance with the Milestone Dates, including the Guaranteed Substantial Completion Date and the Guaranteed Final Completion Date. The CPM Schedule shall be submitted in in its native electronic format by Primavera Project Planner (P6) version 8.2 or later. Contractor shall

submit with the CPM Schedule a progress "S" curve, showing the baseline early and late curve, and actual and forecast progress by Month for total progress of the Work. Once the CPM Schedule and the required submittals have been reviewed and approved by Owner, this version of the CPM Schedule shall be the baseline CPM Schedule for the Work.

5.3.2. ***Progress Updates to CPM Schedule.*** After approval by Owner of the baseline CPM Schedule described in Section 5.3.1, Contractor shall manage and update

(no less frequently than once every four (4) weeks) the CPM Schedule with Primavera, P6 using the critical path method to show actual progress and the current forecast to complete the Work. Each updated CPM Schedule shall meet the requirements of Section 5.3.1, and in addition shall (i) at a minimum, be prepared with the same level of detail as the baseline CPM Schedule, (ii) show the baseline CPM Schedule, (iii) for each activity completed, show the actual start and finish dates for each such completed activity, (iv) for each activity started but not yet completed, show the actual start date for each such activity, the progress of Work for each such activity and forecasted completion date for each such activity, (v) for each activity not yet started, show the forecasted start and completion date for each such activity, (vi) show the actual costs incurred and to be incurred; (vii) show the man-hours expended and the projected manpower to be used per activity, showing the number of personnel, the positions and titles of such personnel, and a general description of the Work being performed, (viii) show the forecasted date of achievement of Mechanical Completion, Substantial Completion and Final Completion of the Project, and (ix) update the CPM Schedule with all other information shown in the baseline CPM Schedule, reflecting the Work as actually performed or as forecasted, including manhours for each activity. Contractor shall submit to Owner current updates to the CPM Schedule every four (4) weeks. Contractor shall promptly correct any errors or inconsistencies in the updates to the CPM Schedule identified to Contractor by Owner and resubmit a corrected update for Owner's review.

5.3.3. ***Approval of Baseline CPM Schedule and Updates to CPM Schedule.*** Owner's review and approval, or lack of review or approval, of the baseline CPM Schedule and any updated CPM Schedule shall not relieve Contractor of any obligations for the performance of the Work, change the Guaranteed Substantial Completion Date or the Guaranteed Final Completion Date, nor shall it be construed to establish the reasonableness of the CPM Schedule. Notwithstanding any approval by Owner of the baseline CPM Schedule or any updated CPM Schedule, Owner shall be entitled to reasonably rely upon the baseline CPM Schedule and any updates to the CPM Schedule, including reliance that Contractor has developed a comprehensive, reasonable and accurate schedule to complete the Work within the times set forth in the Milestone Dates.

5.3.4. ***Two Week Look-ahead Schedule***. During the period commencing upon the NTP and ending upon Substantial Completion, Contractor shall submit to Owner on a weekly basis a two (2) week look-ahead schedule ("***Two Week Look-ahead Schedule***"), which shall be based on the CPM Schedule showing in detail the activities to be performed during the next fourteen (14) Days, and shall meet all other requirements of an updated CPM Schedule as described in Section 5.3.2. The Two Week Look-ahead Schedule shall be submitted to Owner in its native electronic format.

5.3.5. ***Default***. If Contractor fails to comply with its scheduling obligations under this Agreement, including those set forth in this Section 5.3, 5.4 and 5.5, Owner may withhold any and all further payments otherwise owing Contractor until such failure is corrected.

5.4 Recovery and Recovery Schedule. If, at any time (i) the CPM Schedule shows that any activity on a critical path of the CPM Schedule is delayed such that Substantial

Completion is forecasted to occur twenty (20) or more Days after the applicable Guaranteed Substantial Completion Date or a Milestone is forecasted to occur twenty (20) or more Days after the applicable Milestone Date, (ii) Contractor fails to provide a current updated CPM Schedule in compliance with the requirements of this Agreement and Owner reasonably determines that any activity on a critical path is delayed such that Substantial Completion is forecasted to occur twenty (20) or more Days after the applicable Guaranteed Substantial Completion Date or a Milestone is forecasted to occur twenty (20) or more Days after the applicable Milestone Date or (iii) Contractor fails to achieve a Milestone within twenty (20) Days after the applicable Milestone Date, and, in each such circumstance, Contractor or any of its Subcontractors or Sub-subcontractors are responsible for such delay, then Owner may order that Contractor provide a recovery schedule ("***Recovery Schedule***") for Owner's written approval as soon as reasonably possible, but no later than twenty (20) Business Days after such order. If Owner disapproves the Recovery Schedule then Contractor shall, as soon as reasonably possible, but no later than twenty (20) Business Days after such disapproval, provide a new Recovery Schedule for Owner's written approval. The Recovery Schedule shall (a) represent Contractor's best judgment as to how it shall regain compliance with the Milestone Dates, within a time period acceptable to Owner and (b) include detailed information (in at least the same level of detail as the Milestone Dates) in a form reasonably satisfactory to Owner to demonstrate the ability of Contractor to regain compliance with the Milestone Dates within a time period acceptable to Owner. Contractor shall perform the Work in accordance with the Owner approved Recovery Schedule.

5.5 Acceleration. Owner may, at any time, direct Contractor pursuant to a Change Order under Section 6.1 to accelerate the Work, by among other things, establishing additional shifts, paying or authorizing overtime or providing additional equipment. In the event of any such directive, Owner's sole liability shall be to pay Contractor any documented costs clearly and solely attributable to such acceleration. Such costs shall include to Contractor any shift differential, premium, or overtime payments to workers or field supervisors and other employees of Contractor dedicated to the Work on a full-time basis actually incurred over and above Contractor's normal rates, inefficiency related costs caused by such acceleration, and overtime charges for Construction Equipment. Any adjustment to the Guaranteed Maximum Price or any other Changed Criteria that the Parties agree will be changed by such acceleration for Owner's acceleration of the Work shall be implemented by Change Order.

Article 6
CHANGES; FORCE MAJEURE; AND OWNER-CAUSED DELAY

6.1 Change Orders Requested by Owner. Owner shall be entitled to a Change Order upon request in accordance with this Section 6.1. Prior to the execution of any Change Order under this Section **Error! Reference source not found.**, Owner shall notify Contractor of the nature of the proposed addition to, omission from, deletion from, suspension of, or any other modification or adjustment to the requirements of this Agreement, by issuing an Owner's Change Request to Contractor in the form of Schedule D-3.

6.1.1. Within five (5) Business Days, or such longer period of time as agreed upon by Owner and Contractor in writing, after Contractor's receipt of such Owner's Change

Request, Contractor shall respond to Owner with a written statement in the form of Schedule D-3 detailing:

6.1.1.1. the description of Work to be performed;

6.1.1.2. a preliminary assessment of the effect (if any) such request, were it to be implemented by Change Order, would have on the Compensation, Milestone Dates, CPM Schedule, Payment Schedule, Minimum Acceptance Criteria, GMP, or any other obligation or potential liability of Contractor hereunder (collectively or individually, the "Changed Criteria"); and

6.1.1.3. the original Owner's Change Request number and revision numbers.

6.1.2. After submission of Contractor's written assessment in accordance with Section 6.1.1 and upon Owner's written request, Contractor shall provide Owner within ten (10) Business Days, a comprehensive written estimate setting forth in detail the effect, if any, which such request, if implemented by Change Order, would have on the Changed Criteria. This detailed estimate shall include all information required by Section 6.5.2, be in the form of Schedule D-4, Part 2 and supplement and supersede the assessment provided under Section 6.1.1.

6.1.3. If the Parties agree on such Changed Criteria for such request, the Parties shall execute a Change Order, which shall be in the form of Schedule D-1 and such Change Order shall become binding on the Parties as part of this Agreement.

6.1.4. If the Parties cannot agree on such Changed Criteria of the proposed Change Order within ten (10) Business Days of Contractor's receipt of Owner's proposed Change Order, or if Owner desires that the proposed changed Work set forth in the proposed Change Order commence immediately without the requirement of a written statement by Contractor as required under Section 0, Owner may, by issuance of a unilateral Change Order in the form attached hereto as Schedule D-2, require Contractor to commence and perform the changed Work specified in the unilateral Change Order, on a time and materials basis in accordance with Article 7. Contractor shall provide Owner, within ten (10) Business Days after receipt of a unilateral Change Order (unless a longer time is otherwise mutually agreed upon by the Parties in writing), a comprehensive written statement in accordance with Section 6.1.2 detailing the effect of such unilateral Change Order on the Changed Criteria (or if the Parties agree on the effect of such unilateral Change Order for some but not all of the Changed Criteria, the impact of each of the components of the Changed Criteria on which the Parties disagree), or (ii) in accordance with the outcome of the dispute resolution procedures set forth in Article 18; provided, however, that Contractor shall perform the Work as specified in such unilateral Change Order and Owner shall continue to pay Contractor in accordance with the terms of this Agreement and any previously agreed Change Orders pending resolution of the dispute. Contractor shall provide Owner with bi-weekly schedule updates of Contractor's progress in such unilateral Change Order Work, along with its projected completion date for such Work, as well as all costs to be incurred for such Work over the next thirty (30) Days.

When Owner and Contractor agree on the effect of such unilateral Change Order on all of the Changed Criteria, such agreement shall be recorded by execution by the Parties of a Change Order in the form attached hereto as Schedule D-1, which shall supersede the unilateral Change Order previously issued and relating to such changed Work. Contractor

shall be considered to be in Default under Section 16.1 should it (i) fail to commence the performance of the changed Work or other obligations required in such unilateral Change Order within three (3) Business Days of receipt of such unilateral Change Order (or within such other time specified in such unilateral Change Order) or (ii) fail to diligently perform the changed Work or other obligations required in such unilateral Change Order.

6.1.5. If Owner omits Work by a Change Order, Owner may subsequently perform such Work itself or have it carried out by other contractors, provided however to the extent such omission of Work materially and adversely impacts Contractor's material obligations under this Agreement (including by way of example and not limitation, achievement of the Minimum Acceptance Criteria), such adverse impact shall be addressed in the Change Order capturing such omission which may include an extension of time and costs arising from omission of Work as applicable. In determining the amount to be deducted from the Guaranteed Maximum Price for any change that results in a reduction in the scope of Work, thereby resulting in a new, reduced Guaranteed Maximum Price, such deduction will include a reduction in (and the Guaranteed Maximum Price shall be reduced by) the value of the scope of Work being omitted and the Overhead Fee and the Contractor's Fee on such value of scope of Work.

6.2 Change Orders Requested by Contractor.

6.2.1. Contractor shall only have the right to a Change Order in the event of any of the following occurrences:

6.2.1.1. Changes in Law that materially and adversely affect Contractor's actual cost (which costs including Overhead Fee and Contractor's Fee shall be adequately documented and supported) of performance of the Work or ability to perform any material requirement under this Agreement, and with respect to any delays (as that term is defined in Section 6.9) caused by such Changes in Law, a time extension to the Milestone Dates to the extent allowed under Section 6.8;

6.2.1.2. Acts or omissions of Owner including Owner caused delays that constitute a material breach of this Agreement by Owner and materially and adversely affect Contractor's actual cost (which costs shall be adequately documented and supported) of performance of the Work or ability to perform any material requirement under this Agreement and, with respect to delays caused by Owner that constitute a material breach of this Agreement by Owner, compensation and a time extension to the Mechanical Completion, Guaranteed Substantial Completion Date and Final Completion Date to the extent allowed under Section 6.8;

6.2.1.3. Force Majeure to the extent allowed under Section 6.7.1;

6.2.1.4. Acceleration of the Work ordered by Owner pursuant to Section 5.5, *provided that* a Change Order has been issued by Owner pursuant to Section 6.1;

6.2.1.5. To the extent expressly permitted under Section 13.2.1 or 3.18;

6.2.1.6. Unforeseen Subsurface Conditions at the Site to the extent allowed under Section 2.5.2.2;

6.2.1.7. Purchase of operating spare parts in accordance with Section 3.4;

6.2.1.8. Suspension in Work ordered by Owner pursuant to Section 16.3 to the extent allowed thereunder;

6.2.1.9. Owner's request for an increase in coverage under the Letter of Credit to cover any increase in the Compensation as a result of Change Orders, provided that a Change Order for such increased coverage has been executed;

6.2.1.10. Changes in the applicable collective bargaining agreements to craft labor rates that become effective after the Effective Date of the Agreement; and

6.2.1.11. Owner requiring Contractor to perform work specifically excluded in Contractor's Exclusions listed in Section H of Attachment A or Owner's failure to meet the conditions specified in Contractor's Clarifications listed in Section I of Attachment A.

6.2.2. Should Contractor desire to request a Change Order under this Section 6.2, Contractor shall, pursuant to Section 6.5, notify Owner in writing in the form set forth in Schedule D-4, Part 1 and issue to Owner a request for a proposed Change Order in the form attached hereto as Schedule D-4, Part 2, a detailed explanation of the proposed change and Contractor's reasons for proposing the change, all documentation necessary to verify the effects of the change on the Changed Criteria, and all other information required by Section 6.5.

6.2.3. If Owner agrees that a Change Order is necessary and agrees with Contractor's statement regarding the effect of the proposed Change Order on the Changed Criteria, then Owner shall issue such Change Order, which shall

be in the form of Schedule D-1, and such Change Order shall become binding on the Parties as part of this Agreement upon execution thereof by the Parties.

6.2.4. If the Parties agree that Contractor is entitled to a Change Order but cannot agree on the effect of the proposed Change Order on the Changed Criteria within ten (10) Business Days of Owner's receipt of Contractor's written notice and proposed Change Order and all other required information, or if Owner desires that the proposed changed

Work set forth in the proposed Change Order commence immediately, the rights, obligations and procedures set forth in Section 6.1.4 are applicable.

6.2.5. If the Parties cannot agree upon whether Contractor is entitled to a Change Order within ten (10) Business Days of Owner's receipt of Contractor's written notice and proposed Change Order in the form set forth in Schedule D-4, then the dispute shall be resolved as provided in Article 18. Pending resolution of the dispute, Contractor shall continue to perform the Work required under this Agreement, and Owner shall continue to pay Contractor in accordance with the terms of this Agreement, any Change Orders and any previously agreed or unilateral Change Orders.

6.3 Compensation Adjustment; Contractor Documentation. If a Change Order is executed on a time and materials basis pursuant to Section 6.1.4 or 6.2.4, then the Guaranteed Maximum Price shall be adjusted using rates set forth in Attachment C, Schedule C-1, or, if not therein, at rates not to exceed then current market rates. Contractor shall use reasonable efforts to minimize such costs (consistent with the requirements of this Agreement) and shall provide Owner with options for reducing such costs whenever possible. The foregoing costs shall be supported by reasonable documentation, including daily work logs, time sheets and receipts.

6.4 Change Orders Act as Accord and Satisfaction. Change Orders agreed pursuant to Section 0 or 6.2.3 by the Parties, and unilateral Change Orders entered into pursuant to Section 6.1.4 or 6.2.4 on a time and materials basis for which the Parties have subsequently agreed upon the effect of such unilateral Change Order and executed a superseding and mutually agreed upon Change Order as provided in Section 0 or 6.2.3, shall constitute a full and final settlement and accord and satisfaction of all effects of the change as described in the Change Order upon the Changed Criteria and shall be deemed to compensate Contractor fully for such change. Accordingly, Contractor expressly waives and releases any and all right to make a claim or demand or to take any action or proceeding against Owner for any other consequences arising out of, relating to, or resulting from such change reflected in such Change Order, whether the consequences result directly or indirectly from such change reflected in such Change Order, including any claim or demand for damages due to delay, disruption, hindrance, impact, interference, inefficiencies or extra work arising out of, resulting from, or related to, the change reflected in that Change Order (including any claims or demands that any Change Order or number of Change Orders, individually or in the aggregate, have impacted the unchanged Work).

6.5 Timing Requirements for Notifications and Change Order Requests by Contractor. Should Contractor desire to seek an adjustment to the Guaranteed Maximum Price, the Milestone Dates, the Guaranteed Substantial Completion Date or the Guaranteed Final Completion Date, the Payment Schedule, any of the Minimum Acceptance Criteria, or any other modification to any other obligation of Contractor under this Agreement for any circumstance that Contractor has reason to believe may give rise to a right to request the issuance of a Change Order, Contractor shall, with respect to each such circumstance:

6.5.1. Notify Owner in writing in the form of Schedule D-4, Part 1 of the existence of such circumstance within fifteen (15) Days of the date that Contractor knew or

reasonably should have known of the first occurrence or beginning of such circumstance, *provided that* such notice shall be given prior to the expiration of such fifteen (15) Day period should any action or inaction by Owner or Contractor be required or necessary in relation to such circumstance to prevent or mitigate any damages or losses to either Party. If any such action or inaction is required, Contractor shall give notice within five (5) Days, unless such circumstance is an emergency in which case notice shall be given immediately. In such notice, Contractor shall state in detail all known and presumed facts upon which its claim is based, including the character, duration and extent of such circumstance, the date Contractor first knew of such circumstance, any activities impacted by such circumstance, the cost and time consequences of such circumstance (including showing the impact of such circumstance, if any, on the critical path of the CPM Schedule) and any other details or information that are expressly required under this Agreement. Contractor shall only be required to comply with the notice requirements of this Section 6.5.1 once for continuing circumstances, provided the notice expressly states that the circumstance is continuing and includes Contractor's best estimate of the impact on any Changed Criteria by such circumstance; and

6.5.2. Submit to Owner a request for a proposed Change Order in the form of Schedule D-4, Part 2 as soon as

reasonably practicable after giving Owner the written notice described above but in no event later than ten (10) Days after such notice, together with a written statement (i) detailing why Contractor believes that a Change Order should be issued, plus all documentation reasonably requested by or necessary for Owner to determine the factors necessitating the possibility of a Change Order and all other information and details expressly required under this Agreement (including the information required by Attachment C, detailed estimates and cost records, daily time sheets, a graphic demonstration using the CPM Schedule and a time impact analysis showing Contractor's entitlement to a time extension to the Milestone Dates pursuant to the terms of this Agreement, which shall be provided in hard copy and in its native electronic format); and (ii) setting forth the effect, if any, which such proposed Change Order would have for the Work on any of the Changed Criteria.

The Parties acknowledge that Owner will be prejudiced if Contractor fails to provide the notices and proposed Change Orders as required under this Section 6.5, and agree that such requirements are an express condition precedent necessary to any right for an adjustment in the Guaranteed Maximum Price, the Guaranteed Substantial Completion Date or Guaranteed Final Completion Date, Payment Schedule, any Work, any of the Minimum Acceptance Criteria, or any other modification to any other obligation of Contractor under this Agreement.

6.6 Adjustment Only Through Change Order. No change in the requirements of this Agreement, whether an addition to, deletion from, suspension of or modification to this Agreement, including any Work, shall be the basis for an adjustment for any change in the Guaranteed Maximum Price, the Milestone Dates (including the Guaranteed Substantial Completion Date or Guaranteed Final Completion Date), any Work, the Payment Schedule, any of the Minimum Acceptance Criteria, or any other obligations of Contractor or right of Owner under this Agreement unless and until such addition, deletion, suspension or

modification has been authorized by a Change Order executed and issued in accordance with and in strict compliance with the requirements of this Article 6.

6.7 Force Majeure.

6.7.1. ***Contractor Relief***. If the commencement, prosecution or completion of any Work is delayed by Force Majeure, then Contractor shall be entitled to (i) an extension to the Guaranteed Substantial Completion Date if such delay affects the performance of any Work that is on the critical path of the CPM Schedule and causes Contractor to complete the Work beyond the Guaranteed Substantial Completion Date, but only if Contractor is unable to proceed with other portions of the Work so as not to cause a delay in the Guaranteed Substantial Completion Date, and (ii) an adjustment to the Guaranteed Maximum Price for the costs incurred by Contractor that could not be mitigated by commercially reasonable efforts and that are not covered by insurance, and, in each case, Contractor complies with the notice and Change Order request requirements in Section 6.5 and the mitigation requirements in Section 6.10. Any adjustment to the Guaranteed Maximum Price and Milestone Dates shall be recorded in a Change Order.

6.7.2. ***Payment and Indemnification Obligations***. No obligation of a Party to pay moneys under or pursuant to this Agreement or to provide indemnification under this Agreement shall be excused by reason of Force Majeure.

6.8 Delay Caused by Certain Conditions. Subject to Sections 2.5.1 and 3.1.1, should (a) (i) Owner or any Person acting on behalf of or under the control of Owner (other than any Contractor Indemnified Party) delay the commencement, prosecution or completion of the Work, (ii) Owner fail to meet any of its material responsibilities when required including by way of example and not limitation late delivery of Owner Supplied Equipment, plans, or specifications, (iii) provide inaccurate plans or specifications related to Owner Supplied Equipment, (iv) Owner or Owner parties fail to obtain necessary rights of access to the worksite, (v) there be a failure of other providers of the Owner to complete work which is a prerequisite to the performance of the work by Contractor as specified in this Agreement, (vi) there be defects in Owner-Supplied Items, or (vii) there be delays caused by Owner's occupancy or use of the Work pursuant to Section 12.7, and, for each of the circumstances described in subsections (i) through (vii), if such delay is not in any way attributable to Contractor or its Subcontractors or Sub-subcontractors but is caused by Owner's breach of an express obligation of Owner under this Agreement, or, should (b) Owner order a change in the Scope of the Work (provided that a Change Order has been issued in accordance with Section 6.1); (c) Owner suspend the Work for which Contractor is entitled to relief under Section 6.2.1.8; (d) a Change in Law occur for which Contractor is entitled to relief under Section 6.2.1.1; (e) Unforeseen Subsurface Conditions occur for which Contractor is entitled to relief under Section 2.5.2.2; (f) there be a failure to achieve the Minimum Acceptance Criteria for which Contractor is entitled to relief under Section 12.4.1.2; or (g) an event occurs that entitles Contractor to a Change Order pursuant to Section 6.2.1.11, in each case, delay commencement, prosecution or completion of the Work, then Contractor shall be entitled to an adjustment to the Guaranteed Maximum Price and an extension to the Guaranteed Substantial Completion Date if (i) such delay affects the performance of any Work that is on the critical path of the CPM Schedule, and (ii) such delay causes Contractor to complete the Work beyond the

Guaranteed Substantial Completion Date, and, in each case, Contractor complies with the notice and Change Order request

requirements in Section 6.5 and the mitigation requirements of Section 6.10. Any adjustment to the Guaranteed Maximum Price shall be for reasonable, additional direct costs incurred by Contractor for such delay meeting the requirements of this Section 6.8, and any adjustments to the Guaranteed Maximum Price or the Milestone Dates shall be recorded in a Change Order. The Parties agree that if they execute a Change Order with respect to any change in the Scope of Work described in this Section 6.8, any delay arising out of such change in the Scope of Work and meeting the requirements of this Section 6.8 shall be included in the Change Order incorporating such change in the Scope of Work.

6.9 Delay. For the purposes of Sections 6.2.1.1, 6.2.1.2, 6.7 and 6.8, the term "delay" shall include hindrances, disruptions or obstructions, or any other similar term in the industry and the resulting impact from such hindrances, disruptions or obstructions, including inefficiency, impact, ripple or lost production.

6.10 Contractor Obligation to Mitigate Delay. With respect to Sections 6.7 and 6.8, in no event shall Contractor be entitled to any adjustment to the Milestone Dates or any adjustment to the Guaranteed Maximum Price for that portion of delay to the extent Contractor could have taken, but failed to take, reasonable actions to mitigate such delay.

Article 7
COMPENSATION AND PAYMENTS TO CONTRACTOR

7.1 Compensation. As compensation in full to Contractor for the full and complete performance of the Work and all of Contractor's other obligations under this Agreement with respect to the Work, Owner shall pay and Contractor shall accept the Direct Costs of the Work, the Overhead Fee, and the Contractor's Fee, all as described below (collectively, the "***Compensation***"), up to the Guaranteed Maximum Price in accordance with Section 7.2. The Compensation and Guaranteed Maximum Price are subject to adjustment only by Change Order as provided in provided in Article 6 and include all Taxes, costs, charges, and expenses of whatever nature applicable to the Work. For the avoidance of doubt, the Guaranteed Maximum Price does not include California state and local sales and use taxes for which Owner shall reimburse Contractor pursuant to Article 8.

7.2 Guaranteed Maximum Price.

7.2.1. The sum of the Direct Costs of the Work, the Overhead Fee, and the Contractor's Fee (excluding California sales and use tax per Section 7.1 above) is guaranteed by Contractor not to exceed One Hundred Seventy Eight Million Thirteen Thousand One Hundred and Sixty Four U.S. Dollars (U.S. $ 178,013,164.00) (the "***Guaranteed Maximum Price***" or "***GMP***"), subject to additions and deductions by Change Order as provided in the Agreement. Notwithstanding anything to the contrary in this Agreement, (i) Contractor shall not charge and Owner shall not be required to pay any amounts which would otherwise be considered a part of the Compensation if such Work arises out of or relates to Contractor's gross negligence or fault, or any amounts defined as a Disallowed Cost, and (ii) Contractor shall not charge and Owner shall not be required to

pay any amounts in excess of the Guaranteed Maximum Price (which is subject to adjustment by Change Order as permitted in Article 6 of this Agreement).

7.2.2. Contractor shall include with its CPM Schedule submission pursuant to Section 5.3.1 a schedule of values ("***Schedule of Values***") for the Project, which shall be comprised of no less than one hundred (100) activities and an associated price for each activity. The Schedule of Values shall be submitted for Owner's approval and once agreed upon, shall be included via Change Order in Attachment C, Schedule C-2. Afterwards, Contractor in its Monthly Progress Report shall provide a percent completion of each activity and amounts remaining to be Invoiced for such activity. Contractor may reallocate amounts within the Schedule of Values (increasing the amounts of some line items and decreasing others) as reasonably necessary to maintain its cash flow but only if such reallocation reasonably allocates the remaining payments so that the GMP will not be exceeded before achieving Substantial Completion (and in all cases, subject to Section 7.2.3).

7.2.3. Attachment C, Schedule C-3 includes a schedule of the maximum cumulative amounts that Contractor is allowed to Invoice Owner at any one time during the performance of the Work (the "***Maximum Cumulative Payment Schedule***"). Contractor may not at any time invoice cumulative amounts in excess of the amount listed in Maximum Cumulative Payment Schedule without Owner's prior written consent.

7.2.4. Attachment BB sets forth how the Parties calculated (i) the Guaranteed Maximum Price, and (ii) any future credits which shall reduce the Guaranteed Maximum Price by payments Owner makes to Owner's Prior EPC Contractor after the Effective Date of the Agreement for Work performed under Owner's Prior EPC Agreement.

7.3 Direct Costs to be Reimbursed. Owner shall reimburse Contractor for the Direct Costs of the Work in accordance with this Agreement. "***Direct Costs of the Work***" means the actual costs necessarily incurred by the Contractor in the proper performance of the Work. Such actual costs for labor shall be at rates not higher than those set forth in the Payment Schedule except with prior consent of the Owner, provided that the Hourly Rates shall only be subject to adjustment as the relevant union agreement(s) expires or as a matter of Change in Law. The Direct Costs of the Work shall include only the items set forth in this Section 7.3 and shall exclude (i) those items within the definition of Overhead Costs

in Section 7.4 and (ii) those items within the definition of Contractor's Fee in Section 7.5, but shall include those items within the definition of Affiliate Costs in Section 7.7. Where any cost is subject to the Owner's prior approval, Contractor shall obtain this approval prior to incurring the cost.

7.3.1. ***Labor Costs***.

7.3.1.1. Owner shall pay the hourly rates for labor pursuant to this Section 7.3.1.1 below (the "***Hourly Rates***") at rates (and components of rates) not higher than those set forth in the Payment Schedule for Contractor's personnel and Affiliate Subcontractors' personnel engaged in the Work and all Subcontractor personnel engaged in the Work on a cost-plus basis (without a lump sum or fixed price). Owner shall also pay the applicable overtime Hourly Rates in accordance

with Section 7.3.1.8 below, provided that Contractor actually pays overtime to such personnel in accordance with Section 7.3.1.8. Hourly Rates shall apply to each billable man-hour actually paid in the proper performance of the Work. Notwithstanding anything to the contrary anywhere in this Section 7.3 or in this Agreement, billable manhour for union personnel shall mean the hours paid for by Contractor in accordance with the relevant union agreements.

7.3.1.2. Hourly Rates for union personnel shall be all-inclusive and shall show the following cost breakdown for Contractor or the applicable Subcontractor or Affiliate Subcontractor: (i) the amount of the regular, actual taxable wages, actual fringe benefits for such employee; (ii) an amount for Contractor's full statutory burdens, of taxable wages including statutory payroll liabilities for such employee, including, where required by Applicable Law, social security tax, Medicare tax, federal and state unemployment tax, local payroll tax, worker's compensation and (iii) an amount for all additional costs incurred by Contractor or the applicable Subcontractor or Affiliate Subcontractor insurance accruals for the insurances covered by Contractor. No other amounts shall be permitted to be Invoiced unless included and itemized in the cost breakdown set forth above.

7.3.1.3. Hourly Rates for non-union personnel shall be all-inclusive and shall consist of (i) the amount of the regular, actual taxable wages for such employee; plus (ii) a markup of […***…] for all engineering personnel and […***…] for all other personnel (including site and non-engineering home office personnel) that will include amounts for Contractor's full statutory burdens, including statutory payroll liabilities for such employee, including, where required by Applicable Law, social security tax, Medicare tax, federal and state unemployment tax, local payroll tax, and worker's compensation. Such markup shall also include amounts for all additional costs incurred by Contractor or the applicable Subcontractor or Affiliate Subcontractor, such as insurance premiums regularly paid by Contractor for such employee's health, life, dental, disability and accident insurance, contributions regularly made by Contractor to such employee's 401k, IRA, HSA and FSA accounts, and vacation and sick pay for such employee. No additional amounts shall be permitted to be Invoiced. Hourly Rates for Contractor's Offshore Affiliates personnel shall be an all-inclusive unit rate of fifty five U.S. Dollars ($55.00) per hour and shall be deemed to cover: (i) the regular, actual taxable wages for such employee; and (ii) Contractor's Offshore Affiliate taxable wages including statutory payroll liabilities for such employee, including, where required by Applicable Law, social security tax, Medicare tax, federal and state unemployment tax, local payroll tax, worker's compensation, insurance premiums regularly paid by Contractor's Offshore Affiliate for such employee's health, life, dental, disability and accident insurance, contributions regularly made by Contractor's Offshore Affiliate to such employee's 401k, IRA, HSA and FSA accounts, and vacation and sick pay for such employee. No other amounts shall be permitted to be Invoiced unless included and itemized in the cost breakdown set forth above.

7.3.1.4. The breakdown of the regular, taxable wages paid to Contractor's personnel, as well as the burdens described above, are attached to this Agreement as part of the Payment Schedule.

7.3.1.5. In addition to those items identified in Section above, the Hourly Rates shall be inclusive of the costs and expenses related to basic safety supplies and small tools with less than a one thousand U.S. Dollar (U.S. $1,000) dollar replacement value.

7.3.1.6. "***Show-up Pay***" means costs for Contractor's personnel unable to work due to reasons outside of Contractor's reasonable control. In the event any of Contractor's personnel show up to work but are unable to perform Work that Day for reasons outside of Contractor's reasonable control, Contractor shall be reimbursed Show-up Pay by Owner. Such reimbursement shall be for the greater of two (2) hours or the hours actually worked that Day, per reimbursable employee. Show-up Pay must be approved by Owner in signed timesheets as required prior to reimbursement. Contractor shall not be reimbursed Show-up Pay for any personnel costs included in the Contractor's Fee or the Overhead Costs.

7.3.1.7. Notwithstanding anything to the contrary, Hourly Rates and their components shall only be subject to adjustment as the applicable union agreements expire or as a matter of Change in Law.

7.3.1.8. Owner will reimburse Contractor for any overtime approved in writing, being time expended in the performance of the Work exceeding the overtime thresholds established by the relevant union agreement(s) or, if no union agreements apply, the Applicable Law will govern.

7.3.1.9. Approval is required for any hours worked over forty (40) hours a week, and any hours worked on weekends.

7.3.1.10. Owner will reimburse Contractor for per-diem(s) and travel pay based on the actual costs incurred by Contractor. Contractor shall seek Owner's prior written approval for the personnel who will receive per diem and/or travel pay.

7.3.2. ***Subcontract Costs***. Excluding Contractor's Offshore Affiliates, payments made by Contractor to Subcontractors in accordance with the requirements of the Subcontracts will be at actual cost (provided that Hourly Rates are Invoiced as set forth in Section 7.3.1 unless it is a fixed price or lump sum subcontract, in which case, the entire amount is invoiced at actual cost). Notwithstanding the foregoing, payments made by Contractor to Subcontractors under Subcontracts to which Contractor has taken assignment from Owner or Owner's Prior EPC Contractor shall be Invoiced in accordance with the requirements of such Subcontracts.

7.3.3. ***Costs of Materials, Consumables, and Equipment Incorporated in the Completed Construction***. Costs, including transportation and storage, of materials and Equipment incorporated or to be incorporated in the completed construction and costs of

such materials in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work.

7.3.4. ***Costs of Other Equipment, Temporary Utilities, Facilities and Related Items***. Rental charges for temporary facilities, utilities, structures, furniture, machinery, equipment, form work, welding gases and electrodes, and hand tools not customarily owned by construction workers that are provided by Contractor at the Site and costs of transportation, installation, minor repairs, dismantling and removal thereof. Rates of Contractor-owned Construction Equipment are set forth in the Payment Schedule and the quantities and scheduling of such Construction Equipment shall be agreed upon with Owner in advance of any use at the Site. Owner shall not be responsible for reimbursing Contractor for any period of time in which Construction Equipment is not fully capable of performing Work (*i.e.*, periods of repair or maintenance) or for storage of Construction Equipment that is not needed for the construction activities contemplated, unless agreed to by Owner. Construction Equipment is not fully capable of performing Work during mobilization, demobilization, erection and disassembly, and decontamination and washing of such Construction Equipment. Upon Owner's request, Contractor shall support any invoiced amounts by providing documentation demonstrating that Construction Equipment was required to perform or support the Work scope, on-Site and fully capable of performing the Work.

7.3.5. ***Costs of Other Materials***. Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, mobile phone, telephone land line service at the Site and reasonable petty cash and other miscellaneous expenses of the Site office.

7.3.6. ***Debris Removal and Disposal***. Costs of removal of debris from the Site and its proper and legal disposal.

7.3.7. ***Stored Materials***. Costs of materials and Equipment suitably stored off the Site at a mutually acceptable location, subject to the Owner's prior approval.

7.3.8. ***Taxes***. Sales, use, gross receipts, value added or similar taxes imposed by a Governmental Instrumentality that are related to the Work and for which Contractor is liable, except for any California sales tax and value added tax paid directly by Owner.

7.3.9. ***Permits and Licenses***. Fees and assessments for the Permits which Contractor is required by this Agreement to obtain.

7.3.10. ***Third Party Services***. Fees of third-party service providers including laboratories for tests required by this Agreement, except those related to nonconforming or Defective Work.

7.3.11. ***Royalties and License Fees***. Royalties and license fees paid for the use of a particular design, process or product required by this Agreement.

7.3.12. ***Suits and Settlements for Infringement***. The cost of defending suits or claims for infringement of patent rights arising from royalties and license fees paid for the use of a particular design, process or product required by this Agreement; and payments made in accordance with legal judgments against this Agreement resulting from such suits or claims and payments of settlements made with the Owner's consent, in each case, to the extent costs are due to the use of a particular design, process or product specifically required by Owner and that has caused Contractor to deviate from its normal course of performance.

7.3.13. ***Deposits***. Deposits lost for causes other than Contractor's negligence or failure to fulfill a specific responsibility in this Agreement.

7.3.14. ***Emergencies***. Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

7.3.15. ***Corrective and Defective Work***. Costs of repairing or correcting damaged or nonconforming Work executed by Contractor or its Subcontractors or Sub-subcontractors, provided that such damaged or nonconforming Work was not caused in whole or in part by gross negligence or failure to fulfill a specific responsibility of Contractor, including Contractor's gross negligence or fault in adequately supervising and directing the Work of any Subcontractor or Sub-subcontractor, and only to the extent that the cost of repair or correction is not recoverable by Contractor from insurance, sureties, Subcontractors, suppliers, or others after reasonable efforts to do so.

7.3.16. ***Other***. Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

7.3.17. ***Security, Insurance Premiums, and Deductibles***. Costs incurred in obtaining contract securities as required by Owner including any bond or letter of credit premiums as well as builder's risk insurance related costs including any deductibles associated therewith.

7.4 Overhead.

7.4.1. ***Overhead Fee***. Owner shall pay Contractor for performance of the Work an amount equal to […***…] of the Direct Costs of the Work for all costs and expenses associated with Contractor's Overhead Costs for the Project ("***Overhead Fee***"). In no instance will the amounts payable for Overhead Costs through the Overhead Fee be subject to a mark-up for the Contractor's Fee.

7.4.2. ***Overhead Costs***. The following costs shall be considered to be "***Overhead Costs***": (i) estimating services and services relating to purchase of tools and consumables performed in the Contractor's offices; (ii) wages and salaries (including all taxes, insurance and other items set forth in Section) for Contractor's program management, supervisory, accounting and administrative personnel performed in Contractor's offices off-Site; (iii) all other costs and expenses associated Contractor's offices off-Site, including all office equipment and furniture, office supplies, computers, fax/copier/postage, telephone and set-up, printing, allowances, and travel expenses/auto/parking; (iv) all taxes, fees or levies paid

or payable by Contractor, imposed by a Governmental Instrumentality, which are related to any of the Overhead Costs; and (v) all costs and expenses for the provision of insurance that Contractor is required to provide under this Agreement, including the premiums and other costs and expenses for Commercial General Liability Insurance, Workers' Compensation Insurance, Employer's Liability Insurance, Automobile Liability Insurance, and Umbrella Liability Insurance.

7.5 Contractor's Fee. Contractor's Fee shall be equal to […***…] ([…***…]%) of the Direct Costs of the Work ("***Contractor's Fee***").

7.6 Disallowed Costs. Notwithstanding anything to the contrary herein and subject to Contractor's right to dispute such decision pursuant to Article 18, Contractor shall not be entitled to payment or compensation for any Disallowed Cost. "***Disallowed Cost***" means any cost, other than Direct Costs of the Work, which Owner, in good faith, decides:

7.6.1. is not reasonable or is not necessarily incurred or paid by Contractor in accomplishing Work or was not properly and reasonably incurred by Contractor solely and exclusively in accordance with this Agreement;

7.6.2. is not supported by Contractor's accounts and records;

7.6.3. incorrectly includes profit and/or an element of the Contractor's Fee;

7.6.4. incorrectly includes compensation elements provided for elsewhere in this Article 7 (to the extent such compensation elements are already covered by other portions of the Compensation hereunder);

7.6.5. should not have been paid to Contractor or a Subcontractor or Sub-subcontractor in accordance with the express terms of the relevant purchase order, Subcontract, or Sub-subcontract;

7.6.6. does not relate to the performance of the Work;

7.6.7. was a cost for or in connection with:

7.6.7.1. any loss or damage for which Contractor is liable pursuant to this Agreement;

7.6.7.2. a consequence resulting from sole gross negligent acts, willful misconduct or breach by Contractor;

7.6.7.3. any expediting costs necessitated by sole or gross negligence, willful misconduct or direct fault of Contractor to the extent such expediting costs are not offset by savings in reimbursable costs;

7.6.7.4. any third party liability of Contractor for which Owner is not liable to indemnify Contractor under this Agreement; or

7.6.7.5. any other loss or liability incurred by Contractor, other than deductibles, for which insurance has been obtained pursuant to this Agreement;

7.6.8. is a cost that Contractor will recover from third parties or Project-specific insurance, or, using reasonable efforts, would have recovered under such insurance;

7.6.9. is a cost of correcting serial Defects;

7.6.10. is for resources that are in excess of that required for Work or that are not approved in writing;

7.6.11. is a cost incurred in related to the settlement of any Disputes if Contractor is not the prevailing party;

7.6.12. is payment under a purchase order which are payable by Owner separately under each such purchase order;

7.6.13. is a cost incurred by Contractor in relation to the payment of any Delay Liquidated Damages or the discharge (whether by payment, set-off or otherwise) of any liability owed by Contractor to Owner or is otherwise a cost which this Agreement provides is to be payable by Contractor to Owner; provided, however, any remaining contingency amounts within the GMP at Substantial Completion can be used by Owner to offset Delay Liquidated Damages owed by Contractor, but only after subtracting any delay liquidated damages Contractor recovers from any Subcontractor for delays caused by any such Subcontractor;

7.6.14. is a cost consisting of the reimbursement by way of counter-indemnity or otherwise by Contractor of any sums paid by the any issuer of any bond or any other security provider;

7.6.15. is a fine, penalty remediation cost or similar cost imposed on Contractor or a Subcontractor or Sub-subcontractor pursuant to or in consequence of any non-observance of any Applicable Law or Permit;

7.6.16. are expenses relating to Contractor's operating capital, including interest on Contractor's capital employed in support of the Work; or

7.6.17. is incurred because of any other risk or circumstance which was the cost, expense or to the account of Contractor, including Taxes and all other items to be borne by Contractor.

7.7 Affiliate Costs. "***Affiliate Costs***" means payments made by Contractor to Affiliate Subcontractors pursuant to any Affiliate Subcontract, which shall be made by Contractor to an Affiliate Subcontractor on a pass-through basis without any mark-up charged by such Affiliate Subcontractor to Contractor. Affiliate Costs shall consist of the Hourly Rates (as described in Section 7.3.1) charged by the respective Affiliate Subcontractor for its personnel, which shall be all inclusive and itemized as described in Section 7.3.1. Contractor may only charge to Owner a mark-up for the Overhead Fee or the Contractor's Fee on the Affiliate Subcontractor's

costs charged to Contractor and which Contractor seeks reimbursement from Owner as a Direct Costs of the Work, and such Affiliate Subcontractor may not charge any mark-up to Contractor.

7.8 Interim Payments.

7.8.1. ***Payments***. Progress payments shall be made by Owner to Contractor for the Direct Costs of the Work incurred during the applicable payment period, plus Contractor's Fee owed (calculated as a percentage of the Direct Costs of the Work for the payment period), plus Overhead Fee owed (calculated as a percentage of the Direct Costs of the Work for the payment period), and in any event, based on the progress of the Work. Owner shall also reimburse applicable California sales and use Taxes in accordance with Article 8. Each payment shall be subject to Owner's right to withhold payments under this Agreement. Payments shall be made in U.S. Dollars to an account(s) designated by Contractor.

7.8.2. ***Deposit Payment***: After the issuance of the Notice to Proceed, upon receipt of an appropriate invoice from Contractor, Owner shall make a onetime payment of […***…] ([…***…]%) of the GMP to Contractor ("***Deposit Payment***") in the following two installments: (i) fifty percent (50%) of the Deposit Payment shall be paid by Owner to Contractor within two (2) Business Days after Owner's issuance of NTP, and (ii) the remainder of the Deposit Payment shall be paid by Owner to Contractor within fourteen (14) Business Days after the first payment in subsection (i), above. The Deposit Payment shall be credited back to Owner in an amount equal to […***…] ([…***…]%) of each amount Invoiced by Contractor throughout the execution of Work, provided that Contractor may not retain any amount of the Deposit Payment at Substantial Completion, and Contractor shall, as an additional condition to achieving Substantial Completion, release all remaining amounts of the Deposit Payment to Owner (if any). Additionally, in the event of the termination of this Agreement for any reason, Contractor shall return the remainder of the Deposit Payment to Owner, as further described in Section 16.2.

7.8.3. ***Invoices***. No later than ten (10) Days after the end of each Month, Contractor shall submit to Owner an Invoice for all Compensation earned during the prior Month that includes (i) a detailed description of all Direct Costs of the Work incurred during such period, (ii) time sheets signed by Owner, on-site data reports, Subcontractor invoice information, and any other information reasonably requested by Owner for Owner to evaluate the Direct Costs of the Work (including all original documentation if requested by Owner), and (iii) and California sales and use Taxes incurred in the procurement of the Equipment in accordance with Article 8. All Invoices, other than the Invoice for final payment under this Agreement, shall be in the form of Schedule I-1, and shall include all documentation supporting the request for payment as required under this Agreement.

7.8.4. ***Lien Waivers***. Each Invoice received by Owner prior to Final Completion of the Project shall be accompanied by (i) fully executed Lien Waivers upon Progress Payment from Contractor in the forms of Schedule K-1 for all Work performed through the date for which payment is requested, (ii) fully executed Lien Waivers upon Progress Payment from each Major Subcontractor in the forms of Schedule K-1 for all Work

performed through the date for which payment is requested and (iii) if requested by Owner, fully executed Lien Waivers upon Progress Payment from all Major Sub-subcontractors requested in substantially the forms of Schedule K-1 for all Work performed through the date for which payment is requested. Lien Waivers upon Progress Payment, however, shall not be required from Major Subcontractors or Major Sub-subcontractors until they have performed Work, and Major Subcontractors and Major Sub-subcontractors shall be required to submit additional Lien Waivers upon Progress Payment only if they have performed Work not covered by a previous Lien Waiver upon Progress Payment. Submission of all Lien Waivers upon Progress Payment is a condition precedent to payment of any Invoice.

7.8.5. ***Review and Approval***. Each Invoice shall be reviewed by Owner and, upon Owner's reasonable request, Contractor shall furnish such supporting documentation and certificates and provide such further information as may be reasonably requested by Owner. Unless disputed by Owner, each Invoice (less any withholdings allowed under this Agreement) shall be due and payable thirty (30) Days after it, and all documentation required under this Agreement, is received by Owner. If an Invoice is disputed by Owner, then payment shall be made for all undisputed amounts and the dispute shall be resolved pursuant to Article 18. Payment on disputed amounts shall be made as soon as such dispute is resolved.

7.9 Final Completion and Final Payment. Upon Final Completion of the Project, Contractor shall, in addition to any other requirements in this Agreement for achieving Final Completion, including those requirements set forth in Section 1.1 for the definition of Final Completion, submit a fully executed final Invoice in the form attached hereto as Schedule I-2, along with (i) a statement summarizing and reconciling all previous Invoices, payments and Change Orders, (ii) an affidavit that all payrolls, Taxes, liens, charges, claims, demands, judgments, security interests, bills for Contractor-Supplied Equipment, and any other indebtedness connected with the Work have been paid, (iii) fully executed Lien and Claim Waivers upon Final Payment from Contractor in the forms of Schedules K-2 and K-4, (iv) fully executed Lien and Claim Waivers upon Final Payment from each Major Subcontractor in the forms of Schedules K-2 and K-5, (v) if requested by Owner, fully executed Final Lien and Claim Waivers upon Final Payment from each Major Sub-subcontractor in substantially the forms of Schedules K-2 and K-5, and (vi) a final accounting as set forth in Section 7.17. No later than thirty (30) Days after receipt by Owner of such final Invoice and all requested documentation and achieving Final Completion, Owner shall, subject to its rights to withhold payment under this Agreement, pay Contractor the remaining Compensation due under this Agreement and properly invoiced. Upon such payment, Contractor shall submit to Owner an unconditional fully executed Lien and Claim Waiver upon Final Payment in the form of Schedule K-3.

7.10 Payments Not Acceptance of Work. No payment made hereunder by Owner shall be considered as approval or acceptance of any Work by Owner or a waiver of any claim or right Owner may have hereunder. All payments shall be subject to correction or adjustment in subsequent payments.

7.11 Payments Withheld. In addition to disputed amounts set forth in an Invoice and any other rights under this Agreement, Owner may withhold payment on an Invoice or a portion thereof in an amount and to such extent as may be reasonably necessary to protect Owner from loss due to (i) Defective Work not remedied in accordance with this Agreement; (ii) any material breach by Contractor of any term or provision of this Agreement; (iii) Contractor's failure to submit any schedule required under this Agreement in accordance with the Agreement (including Recovery Schedules, Corrective Work plans and CPM Schedules); (iv) the assessment of any fines or penalties against Owner as a result of Contractor's failure to comply with Applicable Law or Applicable Codes and Standards; (v) amounts paid by Owner to Contractor in a preceding Month incorrectly or for which there was insufficient or inaccurate supporting information; (vi) Delay Liquidated Damages which Contractor owes; (vii) failure of Contractor to make payments to Subcontractors as required under their respective Subcontracts; (viii) any other costs or liabilities which Owner has incurred or will incur for which Contractor is responsible; (ix) liens or other encumbrances on all or a portion of the Site or the Work, which are filed by any Subcontractor, any Sub-subcontractor or any other Person acting through or under any of them, unless discharged by Contractor in accordance with this Agreement, excluding liens resulting from Owner's failure to make undisputed payments to Contractor that are due and payable and for which Owner does not have a right to withhold in accordance with the payment terms of this Agreement; or (x) any other reason for which Owner is entitled to withhold payment as expressly set forth in this Agreement.

7.12 Interest on Late Payments. Any amounts not paid when due and payable hereunder shall bear interest at the lesser of (i) an annual rate equal to the prime rate as published in the Wall Street Journal plus two percent (2%), or (ii) the maximum rate permitted under Applicable Law.

7.13 Payments During Default. Owner shall not be obligated to make any payments hereunder or release payments withheld, at any time in which (i) a Contractor Default shall have occurred and is continuing, or (ii) an event has occurred which, with the giving of notice or the passage of time, will constitute a Contractor Default.

7.14 Offset. Owner may, upon prior written notice to Contractor, offset any amount due and payable from Contractor to Owner against any amount due and payable to Contractor hereunder.

7.15 Payment of Amounts Withheld or Collected on the Letter of Credit. Owner shall pay Contractor the amount withheld or collected on the Letter of Credit if Contractor (i) pays, satisfies or discharges the applicable claim of Owner against Contractor under or by virtue of this Agreement and provides Owner with reasonable evidence of such payment, satisfaction or discharge, (ii) cures all such breaches and Defaults in the performance of this Agreement, or (iii) provides Owner with a bank guarantee, bond, or separate letter of credit reasonably satisfactory to Owner in the amount of the withheld payment. In the event Owner draws down or collects any amount on the Letter of Credit pursuant to this Section, and Contractor acts in accordance with either (i), (ii) or (iii) above so as to require payment from Owner, Contractor shall, within seven (7) Days of Owner's payment to Contractor, restore the Letter of Credit to the amount the Letter of Credit had immediately prior to Owner's collection

on the Letter of Credit under this Section. Owner's failure to withhold or draw down or collect against the Letter of Credit in the event of any of the circumstances described in this Section 7.15 shall not be deemed to be a waiver of any of Owner's rights under this Agreement, including Owner's right to withhold or draw down on the Letter of Credit at any time one of the circumstances in Section 7.11(i) through 7.11(ix) exists.

7.16 Conditions Precedent to Payment. It shall be a condition precedent to Contractor's entitlement to receive any payment from Owner under this Agreement that Contractor has provided to Owner (i) the Parent Guarantee in accordance with Section 21.13, (ii) the insurance certificates for policies referenced in Section 10.1, and (iii) is maintaining the insurance policies in accordance with Section 10.1. Additionally, it shall be a condition precedent to Contractor's entitlement to receive any payment from Owner under this Agreement that Contractor has provided to Owner the Letter of Credit in accordance with Section 10.2 and, if applicable, restored the Letter of Credit as required by Section 7.15.

7.17 Savings. At the end of the Defect Correction Period, the Contractor shall deliver a final accounting of the cost of the Work (including Direct Costs of the Work, the Overhead Fee, the Contractor's Fee) (collectively the "***Actual Contract Sum***") to the Owner. If the Actual Contract Sum is less than the GMP (as adjusted pursuant to this Agreement), then the amount of the difference between the GMP and the Actual Contract Sum is the cost savings for the Project ("***Cost Savings***"). Owner shall pay Contractor f[…***…] ([…***…]%) of the Costs Savings up to a Costs Savings of […***…] U.S. Dollars ($[…***…]) (*i.e.*, a maximum payment of […***…] U.S. Dollars ($[…***…])). For any Cost Savings in excess of […***…] U.S. Dollars (U.S. $[…***…]), Owner shall pay Contractor […***…] ([…***…]%) of such Cost Savings. If the Actual Contract Sum is greater than the GMP, the amount in excess of the GMP incurred by

Contractor will not be reimbursed by Owner. Within seven (7) Days after determining the Actual Contract Sum, Contractor shall be entitled to invoice Owner for its share of the Cost Savings. No later than thirty (30) Days after receipt by Owner of such Invoice and all requested documentation, Owner shall, subject to its rights to withhold payment under the Agreement, pay Contractor its share of the Cost Savings as determined in accordance with this Section 7.17.

Article 8
TAXES

8.1 California Taxes. Contractor shall be responsible for timely paying all such Taxes as well as California sales and use taxes and California value-added taxes; *provided, however*, that California sales and use taxes and California value-added taxes are excluded from the GMP. Owner shall, in accordance with Article 7, reimburse Contractor for California sales and use taxes and California value-added taxes imposed on Contractor directly resulting from the procurement of any Equipment as well as any interest or penalties which may be imposed by a Governmental Instrumentality at any time on Contractor due to Owner's failure to timely reimburse Contractor for such California sales and use taxes and California value-added taxes. Owner's obligation shall survive termination or completion of the Agreement and shall end only upon the completion of any time period allowed for audit or investigation by applicable Governmental Instrumentalities. To the extent Owner timely reimburses Contractor for all such California sales and use taxes and California value-added taxes for Equipment, (1)

Contractor shall release Owner of any further obligations for payment of such California sales and use taxes and California value-added taxes and (2) Contractor shall be responsible for the payment of any interest or penalties related to Contractor's failure to timely pay such California sales and use taxes and California value-added taxes. Owner and Contractor will provide documents, information and data, make submission to Governmental Instrumentalities, and otherwise cooperate as reasonably necessary to minimize the amount of California sales and use taxes and California value-added taxes payable for the Equipment. In the event that Contractor is audited for California sales and use taxes or California value-added taxes for the Equipment, Contractor shall timely inform Owner of such audit, allow Owner to assist with audit strategy and, at Owner's expense, allow Owner to take responsibility for defending the audit, protest or appeal based on mutually satisfactory arrangements. Contractor shall reasonably cooperate with Owner to assist in attempting to allocate local and district California sales and use taxes to the Site (which may include Contractor applying for a jobsite sub-permit), including reasonable assistance in causing local California sales and use taxes to be assigned to the Site rather than to Contractor's (or any Subcontractor's or Sub-subcontractor's) regular place of business in California. Contractor will reasonably cooperate with any joint refund claim that Owner, or its agents, wishes to file for potentially overpaid California sales and use taxes or California value-added taxes up to a period of three (3) years after Substantial Completion or until the running of the applicable statute of limitations, whichever is longer. Notwithstanding the foregoing, if Owner presents Contractor with evidence that it has an abatement of such California sales and use tax, then Contractor shall not invoice Owner for such tax, and Owner shall have no obligation to pay such tax.

Article 9
TITLE AND RISK OF LOSS

9.1 Title. Title to all or any portion of the Work (other than Work Product) shall pass to Owner upon the earlier of (i) payment by Owner therefor, (ii) delivery of the Work to the Site, or (iii) incorporation of such Work into the Project. Transfer of title to Work shall be without prejudice to Owner's right to reject Defective Work, or any other right in the Agreement. Without limiting Contractor's rights to a mechanic's lien as permitted in this Agreement, Contractor warrants and guarantees that legal title to and ownership of the Work and the Project shall be free and clear of any and all liens, claims, security interests or other encumbrances when title thereto passes to Owner.

9.2 Risk of Loss.

9.2.1. ***Prior to Substantial Completion***. Notwithstanding passage of title as provided in Section 9.1 of this Agreement, Contractor shall have care, custody and control and bear the risk of loss to the Work and each component thereof (including all Owner-Supplied Items after delivery to the Site, and including unloading of all Equipment) until Substantial Completion of the Work occurs, *provided that* Owner shall bear risk of physical loss and damage to the Work to the extent (a) the costs associated with such physical loss or damage exceeds the aggregate limits or sub-limits of the builder's risk insurance to be obtained by Owner pursuant to Attachment O, (b) such physical loss or damage is not insured under the builder's risk insurance policy required to be provided by Owner under Section 2.1.1 of Attachment O to this Agreement because of the Owner's failure to

maintain such policies in full force and effect at all times required under this Agreement, or (c) such physical loss or damage is not insured under such policies because of an exclusion, term or condition of such policies; provided however, exception (c) shall not apply (and Contractor shall therefore bear the risk of physical loss and damage) to the extent such physical loss or damage would have been covered by such policies but for an act or omission of Contractor

or any Subcontractor.

9.2.2. ***After Substantial Completion***. After Substantial Completion of the Work, Owner shall bear the risk of physical loss and damage to the Work, provided that Contractor shall be liable to Owner for all damages, costs, losses and expenses arising from or related to physical loss and damage to any portion of the Work after the Work achieves Substantial Completion to the extent such physical loss and damage arises out of or results from or is related to the negligence or fault of any Contractor Indemnified Party or Subcontractors, subject to a cap in liability of […***…] U.S. Dollars (U.S.$ […***…]) per occurrence. Contractor's liability arising under this Section 9.2.2 may be charged against the contingency that is contained within the Guaranteed Maximum Price prior to the determination of any Cost Savings under Section 7.17; provided that, Contractor shall first seek recovery for such liability from the applicable Subcontractor(s), if any, responsible for the physical loss and damage to any portion the Work after the Work achieves Substantial Completion.

9.2.3. Nothing in this Section 9.2 shall be interpreted to relieve Contractor of any of its other obligations or liabilities under this Agreement, including its obligations with respect to Warranties, Defective Work or Corrective Work.

Article 10
INSURANCE

10.1 Insurance.

10.1.1. ***Provision of Insurance***. The Parties shall provide the insurance as specified in Attachment O on terms and conditions stated therein.

10.1.2. ***No Cancellation***. All policies providing coverage hereunder shall contain a provision that at least thirty (30) Days' prior written notice shall be given to the non-procuring Parties and additional insureds prior to cancellation, non-renewal or material change in the coverage with ten (10) Days' notice prior to cancellation for non-payment of premium.

10.1.3. ***Obligations Not Relieved***. Anything in this Agreement to the contrary notwithstanding, the occurrence of any of the following shall in no way relieve Contractor from any of its obligations under this Agreement: (i) failure by Contractor to secure or maintain the insurance coverage required hereunder; (ii) failure by Contractor to comply fully with any of the insurance provisions of this Agreement; (iii) failure by Contractor to secure such endorsements on the policies as may be necessary to carry out the terms and provisions of this Agreement; (iv) the insolvency, bankruptcy or failure of any insurance company providing insurance to Contractor; (v) failure of any insurance company to pay

any claim accruing under its policy; or (vi) losses by Contractor or any of its Subcontractors or Sub-subcontractors not covered by insurance policies.

10.1.4. ***Failure to Provide Required Insurance***. In the event that liability for any loss or damage is denied by the underwriter or underwriters in whole or in part due to the breach of said insurance by a procuring Party, or for any other reason attributable to such Party, or if either Party fails to maintain any of the insurance herein required, then the defaulting Party shall defend, indemnify and hold the other Party harmless against all losses which would otherwise have been covered by said insurance.

10.2 Irrevocable Standby Letter of Credit. Within forty-eight hours after Contractor receives evidence that an Automatic Clearing House directive has been issued to Contractor's account for an amount equal to the first installment of the Deposit Payment, and as a condition precedent to Contractor's right to receive any further payments, Contractor shall deliver to Owner an irrevocable standby letter of credit, naming Owner as beneficiary, in the amount of […***…] ([…***…]%) of the Guaranteed Maximum Price and in the form of Attachment AA, and issued and confirmed by a commercial bank in the United States of America with a long-term rating of at least Investment Grade ("***Letter of Credit***"). As used herein, "***Investment Grade***" means a rating of at least AA by Standard & Poor's and at least Aa2 by Moody's Investors Service. If at any time the rating of the commercial bank that issued the Letter of Credit falls below either of such ratings, Contractor shall replace the Letter of Credit within ten (10) Days with an equivalent instrument issued by a commercial bank in the United States of America meeting such rating requirements. Owner shall have the right to draw down on or collect against such Letter of Credit upon Owner's demand in the event of a Default by Contractor or the owing by Contractor to Owner under this Agreement for Delay Liquidated Damages or any other liabilities, damages, losses, costs or expenses arising out of or relating to a breach of any obligation under this Agreement by Contractor or such Default. The amount drawn on the Letter of Credit shall not be greater than the amount that Owner, at the time of the drawing, reasonably and in good faith estimates is owed it under the Agreement for Delay Liquidated Damages, liabilities, damages, losses, costs or expenses or is necessary to remedy the Default or breach of the Agreement. In addition to the foregoing draw rights, (i) Owner shall also have the right to draw down on or collect against the Letter of Credit for all remaining funds in the Letter of Credit upon Owner's demand if Contractor has not, prior to sixty (60) Days before the then current

expiration date, delivered to Owner a replacement letter of credit substantially identical to the Letter of Credit and from a U.S. commercial bank meeting the requirements in this Section 10.2 and extending the expiration date for the shorter of (a) a period of one (1) year or (b) the expiration of the Defect Correction Period (i.e., the twelve (12) month period following Substantial Completion and any extension pursuant to Section 13.3.2), and (ii) Owner shall also have the right to draw down on or collect against the Letter of Credit for all remaining funds available under such Letter of Credit upon Owner's demand if the issuing bank is no longer Investment Grade and Contractor has not, within the applicable time period set forth in this Section 10.2, delivered to Owner a replacement letter of credit substantially identical to the Letter of Credit from a U.S. commercial bank meeting the requirements set forth in this Section 10.2.

10.2.1. The amount of the Letter of Credit shall decrease to an aggregate amount of […***…] ([…***…]%) of the Guaranteed Maximum Price upon the commercial bank's receipt from Owner of (i) a copy of the Substantial Completion Certificate signed by Contractor and (ii) a copy of the Owner acceptance or rejection of Substantial Completion form signed by Owner showing that Owner accepts the Substantial Completion Certificate. No later than ten (10) Days after Owner's acceptance of the Substantial Completion Certificate, Owner shall provide the commercial bank that issued the Letter of Credit with written notice of such acceptance.

10.2.2. The amount of the Letter of Credit shall decrease to an aggregate amount equal to the greater of […***…] ([…***…]%) of the Guaranteed Maximum Price or the amount of Corrective Work outstanding upon the commercial bank's receipt from Owner of (i) a copy of the Final Completion Certificate signed by Contractor and (ii) a copy of the Owner acceptance or rejection of Final Completion form signed by Owner showing that Owner accepts the Final Completion Certificate. No later than ten (10) Days after Owner's acceptance of the Final Completion Certificate, Owner shall provide the commercial bank that issued the Letter of Credit with written notice of such acceptance.

10.2.3. The Letter of Credit shall remain in full force and effect from the issuance of the Letter of Credit through the expiration of the Defect Correction Period for all Work, at which time the Letter of Credit will be returned to Contractor. No later than ten (10) Days following the expiration of the Defect Correction Period for all Work (i.e. the twelve (12) month period following Substantial Completion), Owner shall provide the commercial bank that issued the Letter of Credit with written notice of the expiration of the Defect Correction Period for all Work, unless, at the conclusion of this period, any of Contractor's Work remains subject to an extended warranty pursuant to Section 13.3.2, in which case the Letter of Credit shall reduce to an amount equal to one hundred twenty percent (120%) of the value of the Work remaining under the extended Defect Correction Period, and no later than ten (10) Days after expiration of such extended time, Owner shall provide the commercial bank that issued the Letter of Credit with written notice of the expiration of the Defect Correction Period for all Work. Partial drawings are permitted under the Letter of Credit.

10.3 Financial Statements and Material Adverse Change.

10.3.1. ***Financial Statements***. As and when Owner may reasonably request for a fiscal quarter or year-end financial statement, Contractor shall deliver to Owner available audited and unaudited consolidating and consolidated balance sheets of each of Contractor and Guarantor as of the end of such quarter or year-end, and the related consolidated statements of operations, income, cash flows, retained earnings and stockholders' equity for such quarter or year, all of which shall be certified by the chief financial officer or equivalent officer of each of Contractor and Guarantor, subject to normal year-end audit adjustments. All financial statements delivered pursuant to this Section 10.3.1 shall be complete and correct in all material respects and shall be prepared in accordance with GAAP applied consistently throughout the periods reflected therein.

10.3.2. ***Material Adverse Change***. If at any time during the term of this Agreement, a Material Adverse Change shall occur, Owner may, in its sole discretion and without prejudice to any other rights or remedies it may have hereunder, require further assurances, as a condition of Owner's further performance under this Agreement, of (i) Contractor's creditworthiness, financial responsibility and ability to perform its obligations under this Agreement or (ii) Guarantor's creditworthiness, financial responsibility and ability to perform its obligations under the Parent Guarantee, and Contractor shall comply with such further assurances. Owner shall notify Contractor regarding its request for such assurances, including, in form and amount satisfactory to Owner, any one or more of prepayments, a letter of credit or payment and performance bond. "***Material Adverse Change***" for the purposes of this Section 10.3.2 means adverse changes, events or effects that have occurred or been threatened which could reasonably be likely to (i) materially adversely affect the business, operations, properties, condition (financial or otherwise), assets or liabilities of Contractor or Guarantor; (ii) prevent or materially delay the performance by Contractor of any of its obligations under this Agreement; (iii) create a reasonable basis for Owner to have serious doubts about Contractor's creditworthiness, financial responsibility or ability to perform its obligations under this Agreement; (iv) prevent or materially delay performance by Guarantor of any of its obligations under the Parent Guarantee; or (v) create a reasonable basis for Owner to have serious doubts about Guarantor's creditworthiness, financial responsibility or ability to perform its obligations under the Parent Guarantee. Upon Contractor's failure to provide to Owner, in form and amount satisfactory in Owner's reasonable opinion, assurances of Contractor's or Guarantor's creditworthiness, as the case may

be, financial responsibility and ability to perform its obligations hereunder within thirty (30) Days following Owner's request for such assurance, Owner may terminate this Agreement for Default upon notice to Contractor given no less than seven (7) Days in advance of the effective date of such termination.

Article 11
OWNERSHIP OF DOCUMENTATION

11.1 Ownership of Work Product. Subject to Section 11.2, Owner and Contractor acknowledge that during the course of, and as a result of, the performance of the Work and prior work related to the Project done by Contractor for Owner, Contractor or its Subcontractors or Sub-subcontractors will create or have created for this Project certain written materials, plans, calculations, Drawings (including as-built Drawings), Specifications, Books and Records, computer files, or other tangible manifestations of Contractor's efforts related to the Project (hereinafter individually or collectively referred to as "***Work Product***"). Work Product prepared by Contractor or its Subcontractors or Sub-subcontractors shall be "works made for hire," and all rights, title and interest to the Work Product, including any and all copyrights in the Work Product, shall be owned by Owner irrespective of any copyright notices or confidentiality legends to the contrary which may have been placed in or on such Work Product by Contractor, its Subcontractors, Sub-subcontractors or any other Person. Contractor and its Subcontractors and Sub-subcontractors waive in whole all moral rights which may be associated with such Work Product. If, for any reason, any part of or all of the Work Product is not considered a work made for hire for Owner or if ownership of all right, title and interest in the Work Product shall not otherwise vest in Owner, then Contractor agrees, subject to Section 11.2, that such ownership and copyrights in the Work Product, whether or not such

Work Product is fully or partially complete, shall be automatically assigned from Contractor to Owner without further consideration, and Owner shall thereafter own all right, title and interest in the Work Product, including all copyright interests.

11.2 License to Contractor's Intellectual Property and Third Party Intellectual Property. As between Owner and Contractor, Contractor shall retain ownership of all proprietary intellectual property rights owned by Contractor and developed by it outside this Agreement or any other agreement between Owner and Contractor relating to the Project (hereinafter referred to as "***Contractor's Intellectual Property***"), regardless of whether such Contractor's Intellectual Property is included in the Work Product, and nothing in Section 11.1 shall result in a transfer of ownership of any Contractor's Intellectual Property or the proprietary intellectual property owned and developed by the Subcontractors, Sub-subcontractors or third parties for any project other than this Project ("***Third Party Intellectual Property***"). With respect to such Contractor's Intellectual Property and Third Party Intellectual Property relating to the Work or the Project, Contractor hereby grants Owner an irrevocable, perpetual and royalty-free license (including with right to assign or sublicense its rights without consent to any of the Owner Indemnified Parties or to any purchaser of an interest in all or part of the Project or any contractors, suppliers or consultants of the Owner Indemnified Parties) to use, copy, modify, distribute, sell, make, offer for sale, transfer, publish, import, make derivative works and adapt such Contractor's Intellectual Property and Third Party Intellectual Property for any purpose relating to the Project or the Work. All Subcontracts and Sub-subcontractors shall contain provisions consistent with this Section 11.2.

11.3 Return/Delivery of Certain Property. All Work Product, and all copies thereof, shall be returned or delivered to Owner upon the earlier of Substantial Completion of the Project or termination of this Agreement, except that Contractor may, subject to its confidentiality obligations set forth in Article 19, retain one record set of the Work Product. Contractor shall provide two (2) reproducible Drawings, where applicable; and two (2) sets (native and PDF files) of documents for those Drawings and Specifications generated using CAD.

11.4 Limitations on Use of Work Product. The Work Product, including all copies thereof, shall not be used by Contractor or its Subcontractors, Sub-subcontractors or any other Persons on any other project for a Person other than Owner without the prior written consent of Owner, *provided that* this Section 11.4 shall not limit or modify Contractor's ownership rights in the Contractor's Intellectual Property, or the ownership rights in the Third Party Intellectual Property, as set forth in Section 11.2.

11.5 Owner Provided Documents. All written materials, plans, drafts, specifications, computer files or other documents (if any) prepared or furnished by Owner, its Affiliates or any of Owner's other consultants or contractors shall at all times remain the property of Owner, and Contractor shall not make use of any such documents or other media for any other project or for any other purpose than as set forth herein. All such documents and other media, including all copies thereof, shall be returned to Owner upon the earlier of Substantial Completion of the Project and termination of this Agreement, except that Contractor may, subject to its confidentiality obligations as set forth in Article 19, retain one record set of such documents or other media.

Article 12

COMPLETION

12.1 Notice and Requirements for Mechanical Completion. Mechanical Completion shall be achieved for the Project when the requirements of Mechanical Completion under this Agreement (including those set forth in the definition of Mechanical Completion under Section 1.1 and the Mechanical Completion checklists agreed by Owner and Contractor as described below) have been satisfied. No later than forty-five (45) Days after the NTP, Contractor shall provide to Owner for its review and approval detailed Mechanical Completion requirements, in the form of checklists, for the Work. Once approved by Owner, such Mechanical Completion checklists shall form a part of the requirements for achieving Mechanical Completion. Upon Mechanical Completion, Contractor shall certify to Owner in the form of Attachment L ("***Mechanical Completion Certificate***") that all of the requirements under this Agreement for Mechanical Completion have occurred, including the completion of the requirements in the approved Mechanical Completion checklists.

12.2 Notice and Requirements for Substantial Completion. Contractor shall comply with all requirements for Substantial Completion herein, including as set forth in the definition of the term Substantial Completion under Section 1.1. Upon achieving all requirements under this Agreement for Substantial Completion, Contractor shall certify to Owner in the form of Attachment M ("***Substantial Completion Certificate***") that all of the requirements under this Agreement for Substantial Completion have occurred. The Substantial Completion Certificate shall be accompanied by all other supporting documentation as may be required to establish that the requirements for Substantial Completion have been met.

12.3 Owner Acceptance of Mechanical Completion and Substantial Completion. Owner shall notify Contractor whether it accepts or rejects each Mechanical Completion Certificate or Substantial Completion Certificate, as the case may be, within fifteen (15) Days following Owner's receipt thereof. All Work shall continue during pendency of Owner's review. Acceptance of such Mechanical Completion Certificate or Substantial Completion Certificate shall be evidenced by Owner's signature on such Mechanical Completion Certificate or Substantial Completion Certificate, which shall be forwarded to Contractor with such notice. If Owner agrees that Mechanical or Substantial Completion has been achieved as the case may be, the date of acceptance of Mechanical or Substantial Completion shall be the date the Mechanical or Substantial Completion certificate was submitted to Owner. If Owner does not agree that Mechanical Completion or Substantial Completion, as the case may be, has occurred, then Owner shall state the basis for its rejection in reasonable detail in a written notice provided to Contractor. The Parties shall thereupon promptly and in good faith confer and make all reasonable efforts to resolve such issue. In the event such issue is not resolved within ten (10) Business Days of the delivery by Owner of its notice, Owner and Contractor shall resolve the dispute in accordance with the dispute resolution procedures provided for under Article 18 herein. Owner's acceptance shall not relieve Contractor of any of its obligations to perform the Work in accordance with the requirements of this Agreement.

12.4 Minimum Acceptance Criteria as a Condition of Substantial Completion. As a condition of Contractor's achievement of Substantial Completion, the

Project shall achieve all Minimum Acceptance Criteria, as evidenced by the Performance Tests and as described in greater detail in this Section 12.4. The Performance Tests for determining whether the Project achieves the Minimum Acceptance Criteria are described in Attachment Q. Performance Tests and any repeat Performance Tests shall be performed as specified in Attachment Q. The Minimum Acceptance Criteria shall not include any performance guarantees of the Owner-Supplied Items, although Contractor will be responsible for proper erection and installation of the Owner-Supplied Items and supply of services and Contractor-Supplied Equipment to the Owner-Supplied Items in accordance with the manuals and instructions provided with the Owner-Supplied Items. Contractor shall evaluate, test, and as necessary, repair and modify the Existing Plant Equipment pursuant to Attachment A in accordance with the requirements of Section 3.1.3.

12.4.1. ***Minimum Acceptance Criteria Not Achieved***.

12.4.1.1. Subject to the terms of Section 12.4.1.2, in the event that the Project does not achieve all of the Minimum Acceptance Criteria, as evidenced by the Performance Tests, by the Guaranteed Substantial Completion Date, then (i) Substantial Completion shall not occur and (ii) the provisions of Section 14.1 shall apply. In addition to the foregoing, Contractor shall attempt for a period of ninety (90) Days (commencing on the date on which the Work or component thereof was shown, through the Performance Tests, to have failed to achieve one or more of the Minimum Acceptance Criteria) ("***Minimum Acceptance Criteria Correction Period***") to correct the Work to enable the Work to achieve all of the Minimum Acceptance Criteria and otherwise achieve Substantial Completion. If the Work has not achieved the Minimum Acceptance Criteria and Substantial Completion upon the termination of the Minimum Acceptance Criteria Correction Period, then Owner may, in its sole discretion, either (i) grant Contractor an additional sixty (60) Days to correct the Work to enable the Work to achieve all of the Minimum Acceptance Criteria; or (ii) claim Contractor Default pursuant to Article 16. In the event that Owner claims such a Default, Owner shall be entitled to any and all damages, costs, losses and expenses to which Owner is entitled under Section 16.1.2. If, on the other hand, the Work has achieved all of the Minimum Acceptance Criteria and Substantial Completion during the Minimum Acceptance Criteria Correction Period (or during the additional sixty (60) Day period, should Owner elect that option), then

Contractor shall be liable to Owner for all other damages, costs, losses and expenses to which Owner is entitled under Section 16.1.2.

12.4.1.2. If the failure of the Project to achieve the Minimum Acceptance Criteria is due to the Process Licensors or due to the failure of Owner-Supplied Items or Existing Plant Equipment that was not modified or repaired by Contractor, then (i) Contractor shall be entitled to a Change Order to the extent such failure is not due to the fault of Contractor or any of its Subcontractors or Sub-subcontractors (including a failure related to Contractor's installation of the Owner-Supplied Items or Contractor's modification or repair of the Existing Plant Equipment), which shall include an extension to the applicable Milestone Dates to the extent allowed under Section 6.8, and (ii) Contractor and Owner shall agree on

a work plan with respect to the number of Contractor personnel that will remain at the Site until the Minimum Acceptance Criteria are achieved.

12.5 **Punchlist.**

12.5.1. ***Punchlist for Mechanical Completion.*** Prior to Mechanical Completion, Owner and Contractor shall inspect such Work. Contractor shall prepare a proposed Punchlist of items identified as needing to be completed or corrected as a result of such inspection. Contractor shall promptly provide the proposed Punchlist to Owner for its review and written approval, together with an estimate of the time necessary to complete or correct each Punchlist item. Contractor shall add to the proposed Punchlist any Punchlist items that are identified by Owner during its review, and Contractor shall immediately initiate measures to complete or correct, as appropriate, any item on Contractor's proposed Punchlist that Owner in the exercise of its reasonable judgment, believes must be completed or corrected so that such Work will achieve Mechanical Completion. Upon Contractor's completion or correction of any items necessary to achieve Mechanical Completion and Owner's written approval of Contractor's proposed Punchlist, as modified by any Owner additions, such Punchlist shall govern Contractor's performance of the Punchlist items for the Work up to Substantial Completion.

12.5.2. ***Punchlist for Substantial Completion.*** After Mechanical Completion and prior to Substantial Completion, Owner and Contractor shall inspect the Work, and Contractor shall prepare an updated and revised proposed Punchlist of items identified as needing to be completed or corrected as a result of such inspection. Contractor shall promptly provide the proposed, updated and revised Punchlist to Owner for its review and written approval, together with an estimate of the time necessary to complete or correct each Punchlist item. Contractor shall add to the proposed, updated and revised Punchlist any Punchlist items identified by Owner during its review, and Contractor shall immediately initiate measures to complete or correct, as appropriate, any item on Contractor's proposed, updated and revised Punchlist or otherwise that Owner in the exercise of its reasonable judgment, believes must be completed or corrected to achieve Substantial Completion. Upon Contractor's completion or correction of any items necessary to achieve Substantial Completion and Owner's written approval of Contractor's proposed Punchlist, as modified by any Owner additions, such Punchlist shall govern Contractor's performance of the Punchlist items; *provided*, *however*, Contractor shall add to the Punchlist any items of a Punchlist nature that are discovered by Owner or Contractor prior to Final Completion of the Project, and further *provided that* the failure to include any items on the Punchlist shall not alter the responsibility of Contractor to complete all Work in accordance with the terms and provisions of this Agreement. All Work on the Punchlist shall be completed by the Guaranteed Final Completion Date, or Owner may, in addition to any other rights that it may have under this Agreement, at law or in equity, complete such Punchlist Work, which shall be charged against the GMP until the GMP is reached, and thereafter such costs shall be at the expense of Contractor. If Owner incurs any costs for the completion of such Punchlist Work in excess of the GMP, Contractor shall immediately pay Owner (directly, by offset, or by collection on the Letter of Credit, at Owner's sole discretion), all reasonable costs and expenses incurred by Owner in excess of the GMP in performing such Punchlist Work. Upon Contractor's request, Owner shall

provide documentation identifying the costs and expenses to complete such Punchlist Work.

12.6 Notice and Requirements for Final Completion. Final Completion of the Project shall be achieved when all requirements for Final Completion under this Agreement, including those set forth in the definition of Final Completion under Section 1.1, have been satisfied. Upon Final Completion, Contractor shall certify to Owner in the form of Attachment N ("***Final Completion Certificate***") that all of the requirements under this Agreement for Final Completion have occurred. Owner shall notify Contractor whether it accepts or rejects the Final Completion Certificate within fifteen (15) Days following Owner's receipt thereof. Acceptance of such certificate shall be evidenced by Owner's signature on such certificate, which shall be forwarded to Contractor with such notice and the date of acceptance of Final Completion shall be the date the Final Completion certificate was submitted to Owner (provided that Owner accepted the certificate). If Owner does not agree that Final Completion has occurred, then Owner shall state the basis for its rejection in reasonable detail in a written notice provided to Contractor. The Parties shall thereupon promptly and in good faith confer and make

all reasonable efforts to resolve such issue. In the event such issue is not resolved within ten (10) Business Days of the delivery by Owner of its notice, Owner and Contractor shall resolve the dispute in accordance with the dispute resolution procedures provided for under Article 18; *provided, however*, if such deficiencies relate to the failure to complete Punchlist items, Owner may, in addition to any other rights that it may have under this Agreement, at law or in equity, complete such Punchlist Work in accordance with Section 12.5.

12.7 Partial Occupancy and Use. Prior to Contractor achieving Substantial Completion, Owner may occupy or use all or any portion of the Work then capable of functioning safely, *provided that* such occupancy or use is authorized by the applicable Governmental Instrumentalities. Immediately prior to such partial occupancy or use, Owner and Contractor shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work and all personnel and environmental safety aspects of the Work. Such occupancy or use shall not in any way release Contractor or any surety of Contractor from any obligations or liabilities pursuant to this Agreement, including the obligation to engineer, procure and construct a fully operational Project within the required times set forth in the Milestone Dates and otherwise in accordance with all requirements of this Agreement, nor shall such occupancy or use be deemed to be an acceptance by Owner of such portion of the Work. However, to the extent such occupancy or use causes delays to the Work of the Contractor, Contractor shall be entitled to an extension of time and an increase in the Compensation due to such delay to the extent permitted in Section 6.8. Without limitation of the foregoing, but subject to Contractor's right to seek an extension of time as described in this Section 12.7, Contractor shall be liable for any and all Delay Liquidated Damages for failing to achieve Substantial Completion as set forth in this Agreement, regardless of whether Owner is using or occupying a portion of the Work.

12.8 Long-Term Obligations. No acceptance by Owner of any or all of the Work or any other obligations of Contractor under this Agreement, including acceptance of Mechanical Completion, Substantial Completion or Final Completion of the Project, nor any payment made hereunder, whether an interim or final payment, shall in any way release Contractor or any surety of Contractor from any obligations or liability pursuant to this

Agreement. Nothing in this Article 12 shall in any way modify or alter Contractor's obligations under Article 13 and Article 14.

Article 13
WARRANTY AND CORRECTION OF WORK

13.1 Warranty.

13.1.1. ***General***. The warranties set forth in this Article 13 (referred to individually as "***Warranty***" or collectively as "***Warranties***") are in addition to any of the Minimum Acceptance Criteria set forth in this Agreement. Any Work, or component thereof, that is not in conformity with any Warranty is defective ("***Defective***") and contains a defect ("***Defect***").

13.1.2. ***Contractor's Warranty.*** Contractor hereby warrants that the Work, including Contractor-Supplied Equipment, and each component thereof shall be: (i) new or rebuilt, as applicable (and for all rebuilt Work, such Work is approved by Owner in advance); (ii) free from encumbrances to title, as set forth in greater detail in Section 9.1; (iii) free from defects in design, material and workmanship; (iv) in accordance with all requirements of this Agreement (including GECP, Applicable Law and Applicable Codes and Standards); and (v) composed and made of proven technology; *provided however*, Contractor does not warrant the Existing Plant Equipment (except for the improvements, alterations, or modifications made by Contractor to such Equipment) or Owner-Supplied Items (except that Contractor warrants its Work related to such Equipment such as unloading, storage, assembly, erection, and installation of the Owner-Supplied Items), *provided further, however,* this shall not be interpreted to relieve Contractor of its obligations to achieve the MAC.

13.1.3. ***Assignment and Enforcement of Subcontractor Warranties***. Contractor shall, without additional cost to Owner, obtain warranties from Subcontractors and Sub-subcontractors that meet or exceed the requirements of this Agreement; *provided*, *however*, Contractor shall not in any way be relieved of its responsibilities and liability to Owner under this Agreement, regardless of whether such Subcontractor or Sub-subcontractor warranties meet the requirements of this Agreement, as Contractor shall be fully responsible and liable to Owner for its Warranty pursuant to Section 13.1.2 and Corrective Work obligations, *provided however*, Corrective Work is included in the GMP (and paid as a Direct Costs of the Work) to the extent specified in this Agreement. All such warranties shall be deemed to run to the benefit of Owner and Contractor. On or prior to the expiration of the Defect Correction Period, Contractor shall assign to Owner any Subcontractor warranties that have warranty durations exceeding such Defect Correction Period. Such warranties, with duly executed instruments assigning the warranties to Owner, shall be enforceable by Owner upon the expiration of the Defect Correction Period. All warranties provided by any Subcontractor or Sub-subcontractor shall be in such form as to permit direct enforcement by Contractor or Owner against any Subcontractor or Sub-subcontractor whose warranty is called for, and Contractor agrees that: (i) Contractor's Warranty, as provided under this Article 13 shall apply to all Work regardless of the provisions of any Subcontractor or Sub-subcontractor warranty, and such Subcontractor or

Sub-subcontractor warranties shall be in addition to, and not a limitation of, such Contractor Warranty; (ii) Contractor is jointly and severally liable with such Subcontractor or Sub-subcontractor with respect to such Subcontractor or Sub-subcontractor warranty; and (iii) service of notice on Contractor that there has been a breach of a Subcontractor or Sub-subcontractor warranty shall be sufficient to invoke the terms of the instrument. This Section 13.1.3 shall not in any way be construed to limit Contractor's liability under this Agreement for the entire Work or its obligation to enforce Subcontractor or Sub-subcontractor warranties.

13.1.4. ***Exceptions to Warranty***. The Warranty excludes remedy, and Contractor shall have no liability to Owner, for damage or defect occurring after Substantial Completion to the extent caused by: (i) normal wear and tear of the Work, (ii) Owner's failure to maintain the Work in accordance with the written preventative maintenance procedures delivered by Contractor or Subcontractors to Owner; or (iii) Owner's misuse of the Work.

13.2 Correction of Work Prior to Substantial Completion.

13.2.1. ***General Rights***. In addition to other obligations under this Agreement, if, prior to Substantial Completion, any Work is found to be Defective, Contractor shall promptly correct such Defective Work and any other portions of the Project damaged or affected by such Defective Work, whether by repair, replacement or otherwise as determined by Contractor after consultation with Owner. All Work shall be subject to inspection by Owner, Lender and either of their representatives at all times to determine whether the Work conforms to the requirements of this Agreement. Contractor shall furnish Owner, Lender and either of their representatives with access to all locations where Work is in progress, including locations not on the Site. If, in the judgment of Owner, any Work is Defective, Owner shall provide written notice to Contractor identifying and describing with reasonable specificity that portion of Work that Owner believes is Defective. Upon receipt of such written notice, Contractor shall promptly correct such Defective Work, whether by repair, replacement or otherwise as determined by Contractor after consultation with Owner. Subject to Contractor's right to pursue a Dispute under Article 18, the decision of Owner shall be conclusive as to whether the Work is conforming or Defective, and Contractor shall comply with the instructions of Owner in all such matters while pursuing any such Dispute. If it is later determined that the Work was not Defective, then a Change Order shall be issued for Direct Costs of the Work and shall address any impact the repair or replacement may have had on the GMP and Milestone Dates. If Contractor fails, after a reasonable period of time not to exceed seven (7) Days, to repair or replace any Defective Work, or to commence to repair or replace any Defective Work and thereafter continue to proceed diligently to complete the same, then Owner, after providing three (3) Days' notice to Contractor, may repair or replace such Defective Work; *provided, however*, if the Defective Work materially affects the operation or use of the Project, or presents an imminent threat to the safety or health of any Person, then Contractor shall commence to repair or replace the Defective Work within twenty four (24) hours after receipt of a written notice of such Defective Work, and thereafter continue to proceed diligently to complete the same.

13.2.2. ***Hold Points and Witness Points*.**

13.2.2.1. Within one hundred twenty (120) Days after the NTP, Contractor shall submit to Owner for approval a list of hold points for each item of Contractor-Supplied Equipment and Contractor shall provide Owner with at least ten (10) Days' prior written notice of the scheduled date of each of the tests for each such item of Contractor-Supplied Equipment listed therein. Contractor may not proceed with any such test without Owner either witnessing such test or notifying Contractor in writing that Contractor may proceed with such test without any Owner personnel present for such test.

13.2.2.2. With respect to shop testing of Contractor-Supplied Equipment by Subcontractors or Sub-subcontractors, Contractor shall provide Owner a proposed list of witness points for each such item of Contractor-Supplied Equipment for Owner's review and prior written approval no later than fifteen (15) Days after placement of the applicable Subcontract or Sub-subcontract for such item of Contractor-Supplied Equipment, and Owner shall notify Contractor which of the witness points it wishes its personnel to witness. Contractor shall provide Owner with at least ten (10) Days' prior written notice of the actual scheduled date of each of the tests Owner has indicated it wishes to witness. Contractor shall cooperate with Owner if Owner elects to witness any additional tests, and Contractor acknowledges that Owner shall have the right to witness all tests being performed in connection with the Work. Notwithstanding the foregoing, if Owner fails to witness any tests for which Contractor has provided the required notice under this Section 13.2.2.2, Contractor may proceed with conducting such tests.

13.2.2.3. Owner's right of inspection set forth in this Section 13.2.2 applies only to witnessing of hold points and witness points for Work and shall not be construed to imply a limitation on Owner's right to inspect any portion of the Work (including Contractor-Supplied Equipment) at any time in its sole discretion and in accordance with this Agreement.

13.2.3. ***No Obligation to Inspect***. Owner's or Lender's right to conduct inspections under Sections 13.2.1 and 13.2.2 shall not obligate Owner or Lender to do so. Neither the exercise of Owner or Lender of any such right, nor any failure on the part of Owner or Lender to discover or reject Defective Work shall be construed to imply an acceptance of such Defective Work or a waiver of such Defect.

13.2.4. ***Cost of Disassembling***. Subject to Section 13.2.1, the cost of disassembling, dismantling or making safe finished Work for the purpose of inspection, and reassembling such portions (and any delay associated therewith) shall be a Direct Cost of the Work.

13.3 Correction of Work After Substantial Completion. In addition to other obligations under this Agreement, if, during the Defect Correction Period, any Work performed by Contractor is found to be Defective, Contractor shall, on a reimbursable basis up to the GMP immediately and on an expedited basis (i) correct such Defective Work, whether by

repair, replacement or otherwise, including determining the root cause of the Defective Work and undertaking the necessary work to properly remedy and eliminate such root cause and (ii) repair, clean up and remediate any portions of the Site or the Project damaged or affected by such Defective Work, whether by repair, remediation, replacement or otherwise (the "***Corrective Work***"). Corrective Work shall include "in and out" corrective work, which includes gaining access for correction, repair or replacement of any Work that has already been installed and requires the removal, disassembly, disconnection, installation, reassembly, reconnection or other physical handling of facilities, equipment, structures or other improvements owned, furnished or installed by Persons or entities other than Contractor; provided, however, Contractor shall not be liable for any increased costs to access the Defect to perform such Corrective Work to the extent such increased costs are due to Owner's modification of the Project after Substantial Completion that obstructs Contractor's access to the Defective Work. If Owner reasonably believes that any Work is Defective during the Defect Correction Period, Owner shall provide written notice within a reasonable period of time after Owner's determination to Contractor of such Defect, stating the general nature of such Defect or the issue giving rise to Owner's belief; *provided that*, such notice shall not be construed as a condition precedent to Contractor's obligation to perform Corrective Work. Owner shall provide Contractor with access to the Project sufficient for Contractor to perform its Corrective Work, so long as such activities do not unreasonably interfere with the operation of the Project and subject to any reasonable security or safety requirements of Owner.

13.3.1. ***Owner Right to Correct or Complete Defective Work***. If Contractor fails to commence the Corrective Work (which commencement may include the detailed planning associated with the on-Site implementation of the Corrective Work) within a reasonable period of time not to exceed five (5) Days, or does not complete such Corrective Work on an expedited basis, then Owner, by written notice to Contractor, may (in addition to any other remedies that it has under this Agreement) perform the Corrective Work, and Contractor shall be liable to Owner for all reasonable costs and expenses in excess of the GMP incurred by Owner in connection with such Corrective Work and arising out of or relating to such Defective Work and, if such costs exceed the GMP shall pay Owner (directly, by offset, or by collection on the Letter of Credit, at Owner's sole discretion), an amount equal to such costs and expenses; *provided, however*, if such Defective Work materially affects the operation or use of any of the Project or presents an imminent threat to the safety or health of any Person and Owner knows of such Defective Work, Owner may (in addition to any other remedies that it has under this Agreement) perform such Corrective Work without giving prior written notice to Contractor (provided that Owner shall advise Contractor of such action as soon as reasonably possible), and, in that event, such work shall be charged against the GMP until the GMP is reached, and thereafter such costs shall be at the expense of Contractor. If Owner incurs any costs for such work in excess of the GMP, Contractor shall immediately pay Owner (directly, by offset, or by collection on the Letter of Credit, at Owner's sole discretion), all reasonable costs and expenses incurred by Owner in excess of the GMP in performing such Work. Upon Contractor's request, Owner shall provide documentation identifying the costs and expenses to complete such Work.

13.3.2. ***Extended Defect Correction Period for Corrective Work***. With respect to any Corrective Work performed, the Defect Correction Period for such Corrective Work

shall be extended for an additional one (1) year from the date of the completion of such Corrective Work; *provided*, *however*, in no event shall the Defect Correction Period for such Corrective Work be less than the original Defect Correction Period; and *provided further*, that the Defect Correction Period shall not extend more than six (6) months beyond the expiration of the original Defect Correction Period.

13.4 Owner-Supplied Items and Existing Plant Equipment. The foregoing notwithstanding, Contractor is not responsible to correct any Defect in the Owner-Supplied Items or in Existing Plant Equipment that does not arise out of or result from any act or omission of Contractor or any of its Subcontractors or Sub-subcontractors or relate to the Work performed by Contractor, except (i) as set forth in Section 3.24 or (ii) if such Defect relates to improvements, alterations, or modifications of the Existing Plant Equipment by Contractor.

13.5 Waiver of Implied Warranties. Except for any express warranties under this Agreement, the Parties hereby disclaim any and all other warranties, including the implied warranty of merchantability and implied warranty of fitness for a particular purpose.

13.6 Assignability of Warranties. The Warranties made in this Agreement shall be for the benefit of Owner and its successors and assigns and the respective successors and assigns of any of them and are fully transferable and assignable.

Article 14
GUARANTEE OF TIMELY COMPLETION AND DELAY LIQUIDATED DAMAGES

14.1 Delay Liquidated Damages. If Substantial Completion occurs after the Guaranteed Substantial Completion Date (as may be adjusted by Change Order pursuant to the terms of this Agreement), Contractor shall pay to Owner the amounts listed in Attachment U per Day for each Day, or portion thereof, of delay until Substantial Completion occurs (the "***Delay Liquidated Damages***").

14.2 Early Completion Bonus.

14.2.1. The "***Schedule Bonus Date***" is thirty (30) Days prior to the Guaranteed Substantial Completion Date (as may be adjusted under this Agreement).

14.2.2. If Substantial Completion occurs on or before the Schedule Bonus Date, Owner shall pay Contractor a flat bonus equal to […***…] U.S. Dollars (U.S. $[…***…]).

14.2.3. In addition to the bonus set out in Section 14.2.2, if Substantial Completion occurs before the Schedule Bonus Date, Owner shall pay Contractor a bonus equal to […***…] U.S. Dollars (U.S. $[…***…]) per Day for each Day that Substantial Completion occurs before the Schedule Bonus Date.

14.2.4. Subject to the terms of the Agreement (including Owner's right to setoff and withholding), any early completion bonuses accrued shall be paid by Owner within

thirty (30) Days after (i) Contractor's achievement of Substantial Completion and (ii) Owner's receipt of an invoice for such early completion bonus.

Article 15
REPRESENTATIONS

15.1 Contractor Representations. Contractor represents and warrants that:

15.1.1. **Corporate Standing**. It is a corporation duly organized, validly existing and in good standing under the laws of Texas, is authorized and qualified to do business in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure to so qualify would have a material adverse effect on its financial condition, operations, prospects, taxes or business.

15.1.2. **No Violation of Law**. It is not in violation of any Applicable Law or judgment entered by any Governmental Instrumentality, which violations, individually or in the aggregate, would affect its performance of any obligations under this Agreement. There are no legal or arbitration proceedings or any proceeding by or before any Governmental Instrumentality, now pending or (to the best knowledge of Contractor) threatened against Contractor that, if adversely determined, could reasonably be expected to have a material adverse effect on the financial condition, operations, prospects or business, as a whole, of Contractor, or its ability to perform under this Agreement.

15.1.3. **Licenses**. It is the holder of all Permits required to permit it to operate or conduct its business now and as contemplated by this Agreement.

15.1.4. **No Breach**. Neither the execution and delivery of this Agreement, nor the consummation of the transactions herein contemplated or compliance with the terms and provisions hereof will conflict with or result in a breach of, or require any consent under, the organizational documents of Contractor, or any Applicable Law or regulation, or any order, writ, injunction or decree of any court, or any agreement or instrument to which Contractor is a party or by which it is bound or to which it or any of its property or assets is subject, or constitute a default under any such agreement or instrument.

15.1.5. **Corporate Action**. It has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; the execution, delivery and performance by Contractor of this Agreement has been duly authorized by all necessary action on its part; and this Agreement has been duly and validly executed and delivered by Contractor and constitutes a legal, valid and binding obligation of Contractor enforceable in accordance with its

terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar laws relating to the enforcement of creditors' rights generally.

15.1.6. **Financial Solvency**. It is financially solvent, able to pay all debts as they mature and possesses sufficient working capital to complete the Work and perform its obligations hereunder. Guarantor, guaranteeing the obligations of Contractor pursuant to Section 21.13 of this Agreement, is financially solvent, able to pay all debts as they mature,

and possesses sufficient working capital to perform the guarantee required by Section 21.13.

15.2 Owner Representations. Owner represents and warrants that:

15.2.1. **Corporate Standing**. It is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware, is qualified to do business in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure so to qualify would have a material adverse effect on its financial condition, operations, prospects or business.

15.2.2. **No Violation of Law**. It is not in violation of any Applicable Law, or judgment entered by any Governmental Instrumentality, which violations, individually or in the aggregate, would affect its performance of any obligations under this Agreement. There are no legal or arbitration proceedings or any proceeding by or before any Governmental Instrumentality, now pending or (to the best knowledge of Owner) threatened against Owner that, if adversely determined, could reasonably be expected to have a material adverse effect on the financial condition, operations, prospects or business, as a whole, of Owner, or its ability to perform under this Agreement.

15.2.3. **No Breach**. Neither the execution and delivery of this Agreement, nor the consummation of the transactions herein contemplated or compliance with the terms and provisions hereof and thereof will conflict with or result in a breach of, or require any consent under, the organizational documents of Owner, any Applicable Law, any order, writ, injunction or decree of any court, or any agreement or instrument to which Owner is a party or by which it is bound or to which it or any of its property or assets is subject, or constitute a default under any such agreement or instrument.

15.2.4. **Corporate Action**. It has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; the execution, delivery and performance by Owner of this Agreement has been duly authorized by all necessary action on its part; and this Agreement has been duly and validly executed and delivered by Owner and constitutes a legal, valid and binding obligation of Owner enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar laws relating to the enforcement of creditors' rights generally.

Article 16
DEFAULT, TERMINATION AND SUSPENSION

16.1 Default by Contractor.

16.1.1. ***Owner Rights Upon Contractor Default***. If Contractor shall at any time (i) fail to prosecute the Work in a diligent or safe manner; (ii) fail to commence the Work in accordance with the provisions of this Agreement; (iii) abandon the Project (provided that Contractor's suspension of the Work in accordance with Section 16.4 shall not be deemed an abandonment of the Work); (iv) expressly repudiate any of its obligations under this Agreement; (v) fail to use an adequate amount or quality of personnel or Construction

Equipment to perform and complete the Project without delay; (vi) be in Default pursuant to Sections 5.3.5, 6.1.4 or 21.6; (vii) fail to maintain insurance required under this Agreement; (viii) fail to provide or maintain the Parent Guarantee in accordance with this Agreement; (ix) make changes to Key Personnel in violation of the provisions in Section 2.2; (x) fail to discharge liens filed by any Subcontractor or Sub-subcontractor as required under this Agreement (provided Owner is not in breach of its payment obligations under this Agreement as it relates to the subject lien); (xi) cause, by any action or omission, any material stoppage or delay of or interference with the work or operations of Owner or its other contractors or subcontractors; (xii) commit gross negligence or willful misconduct; (xiii) fail to make payment to Subcontractors in accordance with the respective Subcontracts; (xiv) disregard Applicable Law or Applicable Codes and Standards; (xv) materially fail to comply with any provision of this Agreement; (xvi) be in violation of Section 21.10; (xvii) fail to provide satisfactory security in the event of a Material Adverse Change in Contractor's or Guarantor's creditworthiness; (xviii) fail to achieve the Minimum Acceptance Criteria pursuant to this Agreement; (xix) have paid the maximum amount of Delay Liquidated Damages payable under Section 20.2.1; (xx) itself or Guarantor becomes insolvent, has a receiver appointed, makes a general assignment or filing for the benefit of its creditors or files for bankruptcy protection; or (xxi) as otherwise specified in this Agreement (each of the foregoing being a "***Default***"), then following Owner's written notice to Contractor specifying the general nature of the Default

(unless in the event of any of the items (i) through (xvii) or (xxi) above, Contractor cures such condition within seven (7) Days, or if the Default cannot be cured with the exercise of reasonable diligence within such seven (7) Days but Contractor has commenced corrective action and cures such condition within an additional fourteen (14) Days), Owner, at its sole option and, without prejudice to any other rights that it has under this Agreement and, without further notice to Contractor, may (a) take such steps as are necessary to overcome the Default condition, in which case Contractor shall be liable to Owner for any and all costs, damages, losses and expenses (including all reasonable attorneys' fees, consultant fees and litigation or arbitration expenses) incurred by Owner in connection therewith, (b) terminate for Default Contractor's performance of all or any part of the Work, or (c) seek specific performance or interlocutory mandatory injunctive relief requiring performance of Contractor's obligations, it being agreed by Contractor that such relief may be necessary to avoid irreparable harm to Owner. Guarantor's failure to materially comply with any provisions of the Parent Guarantee shall be a Default under this Agreement.

16.1.2. ***Additional Rights of Owner Upon Default Termination***. In the event that Owner terminates this Agreement for Default in accordance with Section 16.1.1, then Owner may, at its sole option, (i) enter onto the Site and any other locations where the Work is being performed and, for the purpose of completing the Work, take possession of all Equipment and Work Product intended to be made a permanent part of the Work, documents, information, Books and Records and other items thereon, (ii) take assignment of any or all of the Subcontracts or Sub-subcontracts, or (iii) either itself or through others complete the Work. In addition, if any Equipment which is intended to be made part of the permanent Work is located off the Site, Contractor shall deliver such Equipment to Owner or, at Owner's option, make arrangements for Owner to take possession of such Equipment at its present off-Site location. Contractor's liability under this Section 16.1.2 is in addition to any other liability provided for under this Agreement and Owner shall have

the right and authority to set off against and deduct from any such excess due Contractor by Owner any other liability of Contractor to Owner under this Agreement. Owner agrees to act reasonably to mitigate any costs it might incur in connection with any termination for Default. In the event of a termination for Default, the Parties agree that Owner shall be entitled to any and all damages, losses, costs and expenses incurred by Owner arising out of or resulting from such Default, including any and all Delay Liquidated Damages. If Contractor is terminated for Default pursuant to Section 16.1, the Parties agree that, for the purposes of this Section 16.1.2, if Substantial Completion was not achieved by Contractor prior to such termination, Delay Liquidated Damages owed by Contractor to Owner shall be based on the date that the substitute contractor achieved Substantial Completion (or using GECP should have achieved Substantial Completion) subject to Contractor's aggregate limit of liability for Delay Liquidated Damages in Section 20.2.1.

16.1.3. ***Erroneous Termination for Default***. If any termination for Default by Owner is found to be not in accordance with the provisions of this Agreement or is otherwise deemed to be unenforceable, then such termination for Default shall be deemed to be a termination for convenience as provided in Section 16.2.

16.1.4. ***Obligations Upon Default Termination***. Upon termination for Default, Contractor shall (i) immediately discontinue Work on the date and to the extent specified in the notice; (ii) place no further orders for Subcontracts, Equipment, or any other items or services except as may be necessary for completion of such portion of the Work as is not discontinued; (iii) inventory, maintain and turn over to Owner all Contractor-Supplied Equipment furnished by Contractor or any other equipment or other items provided by Owner for performance of the terminated Work (including the Owner-Supplied Items); (iv) promptly make every reasonable effort to procure assignment or cancellation upon terms satisfactory to Owner of all Subcontracts, Sub-subcontracts and rental agreements to the extent they relate to the performance of the Work that is discontinued; (v) cooperate with Owner in the transfer of Work Product, including Drawings and Specifications, Permits, licenses and any other items or information and disposition of Work in progress so as to mitigate damages; (vi) comply with other reasonable requests from Owner regarding the terminated Work; (vii) thereafter execute only that portion of the Work not terminated (if any) and that portion of the Work as may be necessary to preserve and protect Work already in progress and to protect Equipment at the Site or in transit thereto, and to comply with any Applicable Law and any Applicable Codes and Standards; and (viii) perform all other obligations set forth under Section 16.2.1.

16.2 Termination for Convenience by Owner.

16.2.1. ***Owner Rights to Terminate for Convenience.*** Owner shall have the right to terminate for convenience Contractor's performance of all or any part of the Work by providing Contractor with a written notice of termination, to be effective upon receipt by Contractor. Upon termination for convenience, Contractor shall (i) immediately discontinue the Work on the date and to the extent specified in such notice, (ii) place no further orders for Subcontracts, Equipment, or any other items or services except as may be necessary for completion of such portion of the Work as is not discontinued, (iii) promptly make every reasonable effort to procure cancellation upon terms satisfactory to

Owner of all Subcontracts, Sub-subcontracts and rental agreements to the extent they relate to the performance of the Work that is discontinued unless Owner elects to take assignment of any such Subcontracts or Sub-subcontracts, (iv) assist Owner in the maintenance, protection, and disposition of Work in progress, including turning over to Owner all Contractor-Supplied Equipment and Owner-Supplied Items relating to the terminated Work, (v) cooperate with Owner for the efficient transition of the Work, (vi) cooperate with Owner in the transfer of Work Product, including Drawings and Specifications, Permits, licenses and any other items or information and disposition of Work in progress, and (vii) thereafter execute only that portion of the Work not terminated (if any) and that portion of the Work as may be necessary to preserve and protect Work already in progress and to protect Equipment at the Site or in transit thereto, and to comply with any Applicable Law and Applicable Codes and Standards. Owner may, at its sole option, take assignment of any or all of the Subcontracts or Sub-subcontracts.

16.2.2. ***Obligations of Owner upon Convenience Termination.*** Upon a convenience termination by Owner in accordance with Section 16.2.1, Contractor shall be paid (i) the reasonable value of the Work performed (the basis of payment being based on the terms of this Agreement, less any down payments, if any, made under this Agreement) prior to termination, less that portion of the Compensation previously paid to Contractor, plus (ii) reasonable direct close-out costs incurred directly associated with the termination (including Contractor's markup for overhead and profit consistent with the Overhead Fee and the Contractor's Fee), and submitted in accordance with this Section, but in no event shall Contractor be entitled to receive any amount for unabsorbed overhead, contingency, risk or anticipatory profit. Contractor shall submit all reasonable direct close-out costs to Owner for verification and audit within sixty (60) Days following the effective date of termination. If no Work has been performed by Contractor at the time of termination, Contractor shall be paid the sum of one hundred U.S. Dollars (U.S.$100) for its undertaking to perform. If NTP is not issued, Owner shall not be liable for any cancellation charges. With respect to the Deposit Payment, the Parties recognize and agree that the amount and timing of such payment has been determined in part to provide a mutually agreeable cash flow to Contractor and does not necessarily represent the value of the Work performed under this Agreement. As such, in the event of a termination for convenience, Contractor shall not be entitled to the full compensation for the Deposit Payment but instead shall be entitled to the value of the Work actually performed.

16.3 Suspension of Work. Owner may, for any reason, at any time and from time to time, by written unilateral or mutual Change Order, suspend the carrying out the Work or any part thereof, whereupon Contractor shall suspend the carrying out of such suspended Work for such time or times and in such manner as Owner may require and shall take reasonable steps to minimize any costs associated with such suspension. During any such suspension, Contractor shall properly protect and secure such suspended Work in such manner as Owner may reasonably require. Unless otherwise instructed by Owner, Contractor shall during any such suspension maintain its staff and labor on or near the Site and otherwise be ready to proceed expeditiously with the Work upon receipt of Owner's further instructions. Except where such suspension ordered by Owner is the result of or due to the fault or negligence of Contractor or any Subcontractor or Sub-subcontractor, Contractor shall be entitled to the reasonable costs (including actual, but not unabsorbed, overhead, contingency,

risk and reasonable profit consistent with the Overhead Fee and Contractor's Fee) of such suspension, including demobilization and remobilization costs, if necessary, along with appropriate supporting documentation to evidence such costs, and a time extension to the Guaranteed Substantial Completion Date if and to the extent permitted under Section 6.8. Upon receipt of notice to resume suspended Work, Contractor shall immediately resume performance of the Work to the extent required in the notice. In no event shall Contractor be entitled to any additional profits or damages due to such suspension.

16.4 Suspension by Contractor. Notwithstanding anything to the contrary in this Agreement, Contractor shall have the responsibility at all times to prosecute the Work diligently and shall not suspend, stop or cease performance hereunder or permit the prosecution of the Work to be delayed; *provided*, *however*, subject to Owner's right to withhold or offset payment to Contractor under this Agreement, if Owner fails to pay undisputed amounts due and owing to Contractor and Owner has failed to cure such failure within seven (7) Days following Contractor's written notice to Owner to cure such failure, Contractor may suspend performance of the Work until Contractor receives such undisputed amounts.

16.5 Termination by Contractor. Contractor may only terminate this Agreement if, continuing at the time of such termination, Contractor has stopped the performance of all Work under this Agreement pursuant to Section 16.4 for fifteen (15) Days, and after the expiration of such fifteen (15) Day period, Contractor gives Owner written notice specifying the nature of the default and its intent to terminate the Agreement, and Owner fails to cure such default within fifteen (15) Days after receipt of Contractor's notice. In the event of any such termination under this Section 16.5, Contractor shall have the rights (and Owner shall make the payments) provided for in Section 16.2 in the event of an Owner termination for convenience. Contractor's sole right to terminate this Agreement is set forth in this Section 16.5.

Article 17
INDEMNITIES

17.1 General Indemnification. In addition to its indemnification, defense and hold harmless obligations contained elsewhere in this Agreement, Contractor shall fully indemnify, hold harmless and defend Owner Indemnified

Parties from any and all Claims arising out of the following:

17.1.1. failure of Contractor or its Subcontractors or Sub-subcontractors to comply with Applicable Law, Applicable Codes and Standards, GECP, or safety requirements under this Agreement;

17.1.2. actual or alleged violation or infringement of any domestic or foreign patents, copyrights or trademarks or other intellectual property, or any misappropriation or improper use of confidential information or other proprietary rights that may be attributable to Contractor or any Subcontractor or Sub-subcontractor in connection with the Work;

17.1.3. actual or alleged contamination, spill, release, discharge, pollution or otherwise of the air, land or water as a result of Hazardous Materials that are brought onto

the Site by Contractor or its Subcontractors or Sub-subcontractors arising out of acts or omissions of Contractor's or any Subcontractor's or Sub-subcontractor's use, handling or disposal of such Hazardous Materials during the performance of the Work, and any environmental damage of any other nature to the extent resulting from failure by Contractor or any of its Subcontractors or Sub-subcontractors to stop Work after encountering Pre-Existing Hazardous Materials at the Site as required under Section 3.17 or the acts or omissions of Contractor or its Subcontractors or Sub-subcontractors during the performance of the Work subject to the terms of Section 3.18;

17.1.4. claims by any Governmental Instrumentality as a result of a failure by Contractor or any Subcontractor or Sub-subcontractor to pay Taxes, and claims by a Governmental Instrumentality for California state or local sales and use tax on Equipment for which Owner provided Contractor with a valid applicable California state and local sales and use tax exemption certificate or direct pay exemption certificate;

17.1.5. failure of Contractor to make payments to any Subcontractor in accordance with the respective Subcontract (provided Owner is not in breach of its payment obligations under this Agreement as it relates to the subject lien);

17.1.6. injury to, illness or death of any Person, or loss of or damage to any property of any Person, only to the extent resulting from the fault, negligence, gross negligence or willful misconduct of any Contractor Indemnified Party, any Subcontractor or Sub-subcontractor or any employee, officer, director or agent of any Subcontractor or Sub-subcontractor;

17.1.7. any failure of Contractor to maintain insurance coverages in accordance with this Agreement; or

17.1.8. any breach by Contractor of its confidentiality obligations under Article 19.

17.2 Owner's Indemnity for Personal Injury and Property Damage. Subject to Section 3.17, Owner shall fully indemnify, hold harmless and defend Contractor Indemnified Parties from and against any and all Claims arising out of personal injury or death of any Person or damage to or destruction of property of any Person (excluding the Work, and the Project, which is addressed in Section 9.2 and the Construction Equipment) only to the extent resulting from the fault, negligence, gross negligence or willful misconduct of any Owner Indemnified Party.

17.3 Patent and Copyright Indemnification. In the event that any suit, claim, temporary restraining order or preliminary injunction is granted in connection with Section 17.1.2, Contractor shall, in addition to its obligation under Section 17.1.2, make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraining order. If, in any such suit or claim, the Work, the Project, or any part, combination or process thereof, is held to constitute an infringement and its use is preliminarily or permanently enjoined, Contractor shall promptly make every reasonable effort to secure for Owner a license, at no cost to Owner, authorizing continued use of the infringing Work on the same terms and conditions as the license granted to Owner under Section 11.2. If Contractor

is unable to secure such a license within a reasonable time, Contractor shall, at its own expense and without impairing performance requirements, either replace the affected Work, in whole or part, with non-infringing components or parts or modify the same so that they become non-infringing. The foregoing notwithstanding, Contractor or its Subcontractors shall not be responsible to indemnify Owner to the extent an infringement claim is caused: (i) by Work, materials, goods or services for which Owner provided and controlled the detailed design and wherein compliance therewith has caused Contractor to deviate from its normal course or performance; or (ii) from Owner's use of the Work in combination with equipment which is not part of the Work where such infringement would not have occurred from the use of the Work not in combination with such equipment, and, in each case, Contractor is not a contributory infringer.

17.4 Excluded Claims. Contractor shall have no obligation to defend or indemnify Owner for Excluded Claims. "Excluded Claims" are Section 17.1.2 claims resulting from: (i) Owner's or Owner's Affiliates' designs or specifications that were not performed by Contractor as part of the Work, such as the design and procurement of Owner-

Supplied Items and Existing Plant Equipment (except to the extent set forth in Section 3.1.3); (ii) Owner's alteration or modification of the Work Product without Contractor's approval or involvement, and the alleged infringement would not have occurred but for such alteration or modification; (iii) Owner's combination of the Work Product with another product(s) not furnished by Contractor, except to the extent Contractor is a contributory infringer; or (iv) Owner or any Owner Affiliate settles an Intellectual Property Claim in violation of Section 17.6. Owner shall indemnify, defend and hold Contractor harmless from and against any damages, costs or expenses incurred in Contractor having to defend any Excluded Claim (other than one arising under clause (iv) hereof) to the same extent and in the same manner as provided in this section for Intellectual Property Claims for which Contractor is obligated to indemnify Owner. Contractor's obligation to indemnify Owner under this Article 17 shall be effective only if Owner gives Contractor prompt written notice in accordance with Section 17.6 after Owner knew of such Intellectual Property Claim or liability and provides information and assistance for the defense of any Intellectual Property Claim or liabilities for which Owner seeks indemnification hereunder in accordance with Section 17.6.

17.5 Lien Indemnification. Should any Subcontractor or Sub-subcontractor or any other Person acting through or under Contractor or any Subcontractor or Sub-subcontractor file a lien or other encumbrance against all or any portion of the Work, the Site or the Project, excluding liens resulting from Owner's failure to make undisputed payments to Contractor that are due and payable and for which Owner does not have a right to withhold in accordance with Section 7.11, Contractor shall, at its sole cost and expense, remove and discharge, by payment, bond or otherwise, such lien or encumbrance within ten (10) Days of the filing of such lien or encumbrance. If Contractor fails to remove and discharge any such lien or encumbrance within such ten (10) Day period, then Owner may, in its sole discretion and in addition to any other rights that it has under this Agreement, take any one or more of the following actions:

17.5.1. Remove and discharge such lien and encumbrance using whatever means that Owner, in its sole discretion, deems appropriate, including the payment of settlement amounts that it determines in its sole discretion as being necessary to discharge such lien or encumbrance. In such circumstance, Contractor shall be liable to Owner for all direct

damages, costs, losses and expenses (including all attorneys' fees, consultant fees and litigation or arbitration expenses, and settlement payments) incurred by Owner arising out of or relating to such removal and discharge. All such direct damages, costs, losses and expenses shall be paid by Contractor no later than thirty (30) Days after receipt of each invoice from Owner;

17.5.2. Seek and obtain an order granting specific performance from a court of competent jurisdiction, requiring that Contractor immediately discharge and remove, by bond, payment or otherwise, such lien or encumbrance. The Parties expressly agree that Owner shall be entitled to such specific performance and that Contractor shall be liable to Owner for all damages, costs, losses and expenses (including all attorneys' fees, consultant fees and litigation or arbitration expenses) incurred by Owner arising out of or relating to such specific performance action. Contractor agrees that the failure to discharge and remove any such lien or encumbrance will give rise to irreparable injury to Owner and Owner's Affiliates, and further, that Owner and such Owner Affiliates will not be adequately compensated by damages; or

17.5.3. Conduct the defense of any action in respect of (and any counterclaims related to) such liens or encumbrances as set forth in Section 17.6, without regard to Contractor's rights under such Section, and all direct damages, costs and expenses (including all attorneys' fees, consultant fees and litigation or arbitration expenses, settlement payments and judgments) so incurred by Owner in that event shall be reimbursed by Contractor, together with interest on same from the date any such cost and expense was paid by Owner until reimbursed by Contractor at the interest rate set forth in Section 7.12.

17.6 Legal Defense. Not later than fifteen (15) Days after receipt of written notice from the Indemnified Party to the Indemnifying Party of any claims, demands, actions or causes of action asserted against such Indemnified Party for which the Indemnifying Party has indemnification, defense and hold harmless obligations under this Agreement, whether such claim, demand, action or cause of action is asserted in a legal, judicial, arbitral or administrative proceeding or action or by notice without institution of such legal, judicial, arbitral or administrative proceeding or action, the Indemnifying Party shall affirm in writing by notice to such Indemnified Party that the Indemnifying Party will indemnify, defend and hold harmless such Indemnified Party and shall, at the Indemnifying Party's own cost and expense, assume on behalf of the Indemnified Party and conduct with due diligence and in good faith the defense thereof with counsel selected by the Indemnifying Party and reasonably satisfactory to such Indemnified Party; *provided, however*, that such Indemnified Party shall have the right to be represented therein by advisory counsel of its own selection, and at its own expense; and *provided further* that if the defendants in any such action or proceeding include the Indemnifying Party and an Indemnified Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, such Indemnified Party shall have the right to select up to one separate counsel to participate in the defense of such action or proceeding on its own behalf at the expense of the Indemnifying Party. In the event of the failure of the Indemnifying Party to perform fully in accordance with the defense obligations under this Section 17.6, such Indemnified Party may, at its option, and

without relieving the Indemnifying Party of its obligations hereunder, so perform, but all damages, costs and expenses (including all attorneys' fees, consultant fees and litigation or arbitration expenses, settlement payments and judgments) so incurred by such Indemnified Party in that event shall be reimbursed by the Indemnifying Party to such Indemnified Party, together with interest on same from the date any such cost and expense was paid by such Indemnified Party until reimbursed by the Indemnifying Party at the interest rate set forth in Section 7.12.

17.7 Enforceability.

17.7.1. The indemnity, defense and hold harmless obligations for personal injury, illness or death or property damage under this Agreement shall apply regardless of whether the Indemnified Party was concurrently negligent (whether actively or passively), it being agreed by the Parties that in this event, the Parties' respective liability or responsibility for such damages, losses, costs and expenses under this Agreement shall be determined in accordance with the principles of comparative negligence.

17.7.2. In the event that any indemnity provisions in this Agreement are contrary to the law governing this Agreement, then the indemnity obligations applicable hereunder shall be applied to the maximum extent allowed by Applicable Law. Each Party acknowledges specific payment of ten and no/100 U.S. Dollars (U.S.$10.00) as legal consideration for the indemnity obligations as may be provided in this Agreement.

Article 18
DISPUTE RESOLUTION

18.1 Arbitration. If any dispute arises out of, results from, or relates to this Agreement which the Parties are unable to settle amicably within fifteen (15) Days after the dispute arises (or such longer period as may be agreed upon by the Parties in writing), then the Parties agree that such dispute shall be decided by binding arbitration in Los Angeles County, California. Unless otherwise agreed by the Parties, the arbitration shall be administered in Los Angeles before one (1) arbitrator who shall be a retired judge admitted to practice law in the State of California. The arbitration shall be administered by Judicial Arbitration & Mediation Services, Inc ("***JAMS***"), or any like organization successor thereto, pursuant to its Streamlined Arbitration Rules and Procedures (the "***Rules***"). The arbitrator shall determine the rights and obligations of the Parties according to the substantive law of the state of California, excluding its conflict of law principles, as would a court for the state of California; provided, however, the law applicable to the validity of the arbitration clause, the conduct of the arbitration, including resort to a court for provisional remedies, the enforcement of any award and any other question of arbitration law or procedure shall be the Federal Arbitration Act, 9 U.S.C.A. § 2. The arbitration award shall be final and binding, in writing, signed by the arbitrator or all of the arbitrators (as applicable), and shall state the reasons upon which the award thereof is based. The Parties agree that judgment on the arbitration award may be entered by any court having jurisdiction thereof. The prevailing Party in any action or proceeding shall be entitled to recover from the other Party all of its reasonable costs and expenses incurred in connection with such action or proceeding including reasonable legal fees and costs at arbitration.

18.2 Continuation of Work During Dispute. Notwithstanding any Dispute, it shall be the responsibility of Contractor to continue to prosecute all of the Work diligently and in a good and workmanlike manner in conformity with this Agreement. Except to the extent provided in Sections 16.4 and 16.5, Contractor shall have no right to cease performance hereunder or to permit the prosecution of the Work to be delayed. Owner shall, subject to its right to withhold or offset amounts pursuant to this Agreement, continue to pay Contractor undisputed amounts in accordance with this Agreement; *provided, however*, in no event shall the occurrence of any negotiation, arbitration or litigation prevent or affect Owner from exercising its rights under this Agreement, including Owner's right to terminate pursuant to Article 16.

Article 19
CONFIDENTIALITY

19.1 Contractor's Obligations. Contractor hereby covenants and warrants that Contractor and its employees, officers, directors and agents shall not (without in each instance obtaining Owner's prior written consent) disclose, make commercial or other use of, or give or sell to any Person any of the following information: (i) any Work Product other than to Subcontractors or Sub-subcontractors as necessary to perform the Work (including any and all documents, manuals, work product, and information of Owner's Prior EPC Contractor that was provided to Contractor) or (ii) any other proprietary, sensitive or non-public information which relates to the technical processes, operating or maintenance methodologies, business, products, services, research or development, actual or potential clients or customers, financing of the Project, designs, methods, discoveries, trade secrets, research, development or finances of Owner or any Affiliate of Owner, or relating to similar information of a third party who has entrusted such information to Owner or any Affiliate of Owner (hereinafter individually or collectively, "***Owner's Confidential Information***"). Prior to disclosing any information in subpart (i) of this Section 19.1 to any Subcontractor or Sub-subcontractor necessary to perform the Work, Contractor shall bind such Subcontractor or Sub-subcontractor to the confidentiality obligations contained in this Section

19.1. Contractor agrees to be responsible for any breach of this Section 19.1 by any Subcontractor or Sub-subcontractor. Nothing in this Section 19.1 or this Agreement shall in any way prohibit Contractor or any of its Subcontractors or Sub-subcontractors from making commercial or other use of, selling, or disclosing any of their respective Contractor's Intellectual Property or Third Party Intellectual Property. In addition to the foregoing, neither Contractor nor any of its employees, officers, directors and agents shall disclose the existence or terms of this Agreement in any regulatory filing with the Securities and Exchange Commission unless required by Applicable Law, and provided that, prior to any such disclosure, Contractor shall give Owner reasonable notice of the information required to be disclosed and shall provide Owner with an opportunity to take appropriate steps Owner believes are necessary to protect the confidentiality or proprietary nature of this Agreement, and Contractor agrees to furnish only that portion of the information regarding this Agreement that Contractor is legally required to furnish.

19.2 Owner's Obligations. Owner hereby covenants and warrants that Owner and its employees and agents shall not (without in each instance obtaining Contractor's prior written consent) disclose, make commercial or other use of, or give or sell to any Person any pricing methodologies or pricing information relating to the Work, including the Equipment,

which is conspicuously marked and identified in writing as confidential by Contractor (hereinafter individually or collectively, "***Contractor's Confidential Information***"). The Parties agree that Owner may disclose Contractor's Confidential Information to its other contractors involved in the Project, Affiliates, underwriters, a bona fide prospective purchaser of all or a portion of Owner's or any of its Affiliates' assets or ownership interests, a bona fide prospective assignee of all or a portion of Owner's interest in this Agreement, Lender and their representatives or rating agencies, *provided that* Owner agrees to be responsible for any breach of this Section 19.2 by any such Persons.

19.3 Definitions. The term "***Confidential Information***" shall mean one or both of Contractor's Confidential Information and Owner's Confidential Information, as the context requires. The Party having the confidentiality obligations with respect to such Confidential Information shall be referred to as the "***Receiving Party***," and the Party to whom such confidentiality obligations are owed shall be referred to as the "***Disclosing Party***."

19.4 Exceptions. Notwithstanding Sections 19.1 and 19.2, Confidential Information shall not include: (i) information which at the time of disclosure or acquisition is in the public domain, or which after disclosure or acquisition becomes part of the public domain without violation of Article 19; (ii) information which at the time of disclosure or acquisition was already in the possession of the Receiving Party or its employees or agents and was not previously acquired from the Disclosing Party or any of its employees or agents directly or indirectly; (iii) information which the Receiving Party can show was acquired by such entity after the time of disclosure or acquisition hereunder from a third party without any confidentiality commitment if, to the best of Receiving Party's or its employee's or agent's knowledge, such third party did not acquire it, directly or indirectly, from the Disclosing Party or any of its employees or agents; (iv) information independently developed by the Receiving Party without benefit of the Confidential Information, but specifically excluding the Work Product; and (v) information which is required by Applicable Law or other agencies in connection with the Project, to be disclosed; *provided*, *however*, that prior to such disclosure, the Receiving Party gives reasonable notice to the Disclosing Party of the information required to be disclosed.

19.5 Equitable Relief. The Parties acknowledge that in the event of a breach of any of the terms contained in this Article 19, the Disclosing Party would suffer irreparable harm for which remedies at law, including damages, would be inadequate, and that the Disclosing Party shall be entitled to equitable relief therefor by injunction, in addition to any and all rights and remedies available under the Agreement, without the requirement of posting a bond.

19.6 Term. The confidentiality obligations of this Article 19 shall survive the expiration or termination of this Agreement for a period of five (5) years following the expiration or earlier termination of this Agreement, except Lenders' confidentiality obligations pursuant to Section 19.2 will expire after a period of two (2) years following the expiration or earlier termination of this Agreement.

Article 20

LIMITATION OF LIABILITY

20.1 Contractor Aggregate Liability. Notwithstanding anything to the contrary contained in this Agreement and to the fullest extent permitted by the governing law of this Agreement, Contractor shall not be liable to Owner for any loss, damage (including damage to Owner's or others property), injury, claim, fees, or expense (including legal costs and attorneys' fees) resulting from Contractor's Work or Contractor's negligence (including active, passive, sole, joint or concurrent negligence) or any other theory or legal liability (including breach of contract, breach of warranty, tort, strict liability, unseaworthiness of any vessel, or unairworthiest of an aircraft) arising under this Agreement for

cumulative aggregate amounts in excess of […***…] ([…***…]%) of the Guaranteed Maximum Price (as may be adjusted by Change Order); *provided that*, notwithstanding the foregoing, the limitation of liability set forth in this Section 20.1 shall not (i) apply to Contractor's personal injury or third party indemnification obligations under this Agreement; (ii) apply to Contractor's obligation to deliver to Owner full legal title to and ownership of all or any portion of the Work and Project as required under this Agreement; or (iii) apply in the event of Contractor's fraud, willful misconduct, abandonment of the Work or gross negligence. In no event shall the limitation of liability set forth in this Section 20.1 be in any way deemed to limit Contractor's obligation to perform all Work required to achieve Substantial Completion or Final Completion and the costs incurred by Contractor in performing the Work shall not be counted against the limitation of liability set forth in this Section 20.1. For avoidance of doubt, amounts paid to Owner by Contractor for Delay Liquidated Damages shall be counted against the limitation of liability set forth in this Section 20.1. For purposes of this Section 20.1, "third party" means any Person other than Owner or its Affiliates.

20.2 Limitation on Contractor's Liability for Delay Liquidated Damages.

20.2.1. ***Delay Liquidated Damages***. Subject to Section 20.2.1, Contractor's maximum liability to Owner for Delay Liquidated Damages for the Project shall not exceed ten percent (10%) of the Guaranteed Maximum Price (as may be adjusted by Change Order) in the aggregate.

20.2.2. ***Exceptions to Limitations of Liability Under Section 20.2***. Section 20.2.1 shall not be construed to limit Contractor's other obligations or liabilities under this Agreement (including (i) its obligations to complete the Work for the compensation provided under this Agreement, (ii) its obligations to achieve the Milestone Dates, Mechanical Completion, Substantial Completion and Final Completion of the Project subject to Section 20.2.1, which shall remain effective irrespective of this Section 20.2.1 and (iii) its obligations with respect to Minimum Acceptance Criteria and Warranties), nor shall the limits specified in this Section 20.2 apply in the event of fraud, abandonment of the Work, gross negligence or willful misconduct of Contractor.

20.3 Delay Liquidated Damages In General.

20.3.1. ***Delay Liquidated Damages Not Penalty***. It is expressly agreed that Delay Liquidated Damages payable under this Agreement do not constitute a penalty and that the

Parties, having negotiated in good faith for such specific Delay Liquidated Damages and having agreed that the amount of such Delay Liquidated Damages is reasonable in light of the anticipated harm caused by the breach related thereto and the difficulties of proof of loss and inconvenience or nonfeasibility of obtaining any adequate remedy, are estopped from contesting the validity or enforceability of such Delay Liquidated Damages. If Contractor, Guarantor or anyone on their behalf successfully challenges the enforceability of the agreed upon per Day (daily) amount of the Delay Liquidated Damages (such as that the amounts, though agreed to at the Effective Date, are now a penalty once they are assessed in accordance with this Agreement), Contractor specifically agrees to pay Owner all actual damages incurred by Owner in connection with such breach, including any and all consequential damages (such as loss of profits and revenues, business interruption, loss of opportunity and use) and all costs incurred by Owner in proving the same, without regard to any limitations whatsoever set forth in this Agreement.

20.3.2. ***Delay Liquidated Damages as Exclusive Damages***. Payment of any Delay Liquidated Damages with respect to any Work shall be in addition to, and not in lieu of, Contractor's other obligations under this Agreement and shall in no way affect Owner's right to terminate this Agreement under Article 16 or receive other Delay Liquidated Damages or remedies contemplated in this Agreement for any other aspect of Contractor's obligations hereunder. Notwithstanding the foregoing and without limitation of Owner's rights under Section 16.1, Delay Liquidated Damages shall be the sole and exclusive damages owed by Contractor for Contractor's delay in achieving Substantial Completion by the Guaranteed Substantial Completion Date.

20.3.3. ***Payment of Delay Liquidated Damages***. With respect to Delay Liquidated Damages that accrue, Owner, at its sole discretion, may either (i) invoice Contractor for such owed Delay Liquidated Damages, and within seven (7) Days of Contractor's receipt of such invoice, Contractor shall pay Owner Delay Liquidated Damages, (ii) withhold from Contractor amounts that are otherwise due and payable to Contractor in the amount of such Delay Liquidated Damages, or (iii) collect on the Letter of Credit in the amount of such Delay Liquidated Damages upon giving Contractor three (3) Days' written notice pursuant to Section 10.2 and Contractor's failure to pay such Delay Liquidated Damages within such three (3) Day period. In addition, Contractor shall pay Owner all Delay Liquidated Damages, if any, owed under this Agreement for Substantial Completion as a condition precedent to achieving Substantial Completion.

20.4 Consequential Damages. Notwithstanding any other provisions of this Agreement to the contrary, neither Owner nor Contractor shall be liable under this Agreement or under any cause of action related to the subject matter of this Agreement, whether in contract, tort (including negligence), strict liability, products liability, indemnity, contribution, or any other cause of action for special, indirect, incidental or consequential losses or damages, including loss of profits, use, opportunity, revenues, financing, bonding capacity, or business interruptions, or damages or losses for

principal office expenses including compensation of personnel stationed there; *provided that* the limitation of liability set forth in this Section 20.4 shall not apply (i) to amounts encompassed within Delay Liquidated Damages; (ii) to Contractor's and Owner's indemnification obligations under this Agreement for claims brought by any third party; (iii) to Contractor's confidentiality obligations under this

Agreement; (iv) to Contractor's or Owner's respective fraud, willful misconduct or gross negligence; or (v) where consequential damages are expressly permitted under Section 20.3.1. For the purposes of this Section 20.4, the term "Contractor" shall include Contractor, its Affiliates, and the employees, officers, directors and shareholders of each of Contractor and its Affiliates, the term "Owner" shall include Owner, its Affiliates, and the employees, officers, directors and shareholders of each of Owner and its Affiliates, and the term "third party" shall mean any Person other than Contractor, Owner and their respective Affiliates.

Article 21
MISCELLANEOUS PROVISIONS

21.1 Entire Agreement. This Agreement, including the Attachments and Schedules attached to and incorporated into this Agreement, contains the entire understanding of the Parties with respect to the subject matter hereof and incorporates any and all prior agreements and commitments with respect thereto. There are no other oral understandings, terms or conditions, and neither Party has relied upon any representation, express or implied, not contained in this Agreement. General or special conditions included in any of Contractor's price lists, invoices, tickets, receipts or other such documents presented to Owner shall have no applicability to Owner with respect to this Agreement. All Attachments and Schedules shall be incorporated into this Agreement by such reference and shall be deemed to be an integral part of this Agreement. Without limiting the foregoing, this Agreement supersedes in its entirety any agreements between the Parties related to the Project. All work performed under any agreements between the Parties related to the Project shall be governed by the terms and conditions set forth in this Agreement.

21.2 Amendments. Other than unilateral Change Orders issued by Owner to Contractor pursuant to Section 6.1.4 or Section 6.2.4, no change, amendment or modification of this Agreement shall be valid or binding upon the Parties hereto unless such change, amendment or modification is in writing and duly executed by both Parties hereto.

21.3 Interpretation. Preparation of this Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one of the Parties than against the other. The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope of intent of this Agreement or the intent of any provision contained herein.

21.4 Notice. Any notice, demand, offer, or other written instrument required or permitted to be given pursuant to this Agreement shall be in writing signed by the Party giving such notice and shall be hand delivered or sent by overnight courier, messenger, email or certified mail, return receipt requested, to the other Party at the address set forth below.

If delivered to Owner:

Richard Palmer
2790 Skypark Drive
Suite 105
Torrance, CA 90505

Email: rpalmer@gceholdings.com

And to:

Troy Gould
1801 Century Park East,
Suite 1600
Los Angeles CA 90067
Attn: Istvan Benko, Esq.
Email: ibenko@troygould.com

If delivered to Contractor:

CTCI Americas, Inc
Attn: Patrick Jameson
11490 Westheimer Road, Suite 200

Houston, TX 77077
Email: patrick.jameson@ctci.com

Each Party shall have the right to change the place to which notice shall be sent or delivered by sending a similar notice to the other Party in like manner. Notices, demands, offers or other written instruments shall be deemed have been duly given (i) on receipt if given by hand delivery, (ii) on the first Day following delivery to a nationally recognized United States overnight courier service, fee prepaid, return receipt or other confirmation of delivery requested, (iii) on the third Day following delivery to the U.S. Postal Service as certified or registered mail, return receipt requested, postage prepaid, and (iv) on receipt, if it is delivered by email or other means of electronic transmission.

21.5 Severability. If any provision or part thereof in this Agreement is determined to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability will not impair the operation of or affect those remaining portions of such provision and this Agreement that are legal, valid and enforceable. Such provision or part thereof will be modified so as to be legal, valid and enforceable consistent as closely as possible with the intent of the original language of such provision or part thereof and shall be enforced to the extent possible consistent with Applicable Law. If the illegality, invalidity or unenforceability of such provision or part thereof cannot be modified consistent with the intent of the original language, such provision will be deleted and treated as if it were never a part of this Agreement and shall not affect the validity of the remaining portions of the provision or this Agreement.

21.6 Assignment. Neither Party may assign its rights, title and interest in this Agreement to any other Person without the prior written consent of the non-assigning Party hereto, except Owner may, without Contractor's consent (i) assign, pledge or grant a security interest in this Agreement to any of Lender or Owner's equity partners or (ii) assign or novate its rights and responsibilities under this Agreement to any Affiliate of Owner or any equity owner of Owner. In the event that Owner elects to sell, assign or novate its interest in the Work or the Project to any Person other than Owner's Lender, equity partners, Affiliates or any equity owner of Owner, Owner shall promptly furnish reasonable evidence to Contractor, that the

Person to whom Owner intends to assign or novate Owner's interest has the ability to perform the obligations required by the terms of this Agreement and has adequate funds available as demonstrated by a current credit report, current financial statements and current bank statements or other supporting documentation as is reasonably required by Contractor. If Owner fails to provide such financial information in a timely manner, Contractor shall be entitled to reject such assignment. When duly assigned in accordance with the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the assignee; *provided that* any assignment by Contractor pursuant to this Section 21.6 shall not relieve Contractor of any of its obligations or liabilities under this Agreement. Any assignment not in accordance with this Section 21.6 shall be void and without force or effect. This Agreement shall be binding upon and inures to the benefit of the Parties hereto, their permitted successors and permitted assigns.

21.7 No Waiver. Any failure of either Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the term of this Agreement shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provisions.

21.8 Governing Law. This Agreement and all matters arising out of or relating to this Agreement shall be governed by, and construed in accordance with, the laws of the State of California (without giving effect to the principles thereof relating to conflicts of law). The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement and shall be disclaimed in and excluded from any Subcontracts and Sub-subcontracts entered into by Contractor in connection with the Work or the Project.

21.9 Further Assurances. Contractor and Owner agree to provide such information, execute and deliver any such instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party that are not inconsistent with the provisions of this Agreement and that do not involve the assumptions of obligations greater than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement.

21.10 Foreign Corrupt Practices Act. With respect to the performance of the Work, Owner shall, Contractor shall, and Contractor shall cause each of its Subcontractors and Sub-subcontractors, and the agents and employees of such Subcontractors and Sub-subcontractors, to comply with all provisions of the Foreign Corrupt Practices Act of the United States (15 U.S.C. § 78dd-1 and 2) and shall not take any action that could result in Contractor, Owner or any of their Affiliates becoming subject to any action, penalty or loss of benefits under such Act.

21.11 Priority. The documents that form this Agreement are listed below in this Section 21.11 in order of priority, with the document having the highest priority listed first and the one with the lowest priority listed last. Subject to Section 1.1 under the definition of Applicable Codes and Standards regarding conflicts or inconsistencies between any Applicable Codes and Standards, in the event of any conflict or inconsistency between a provision in one document and a provision in another document, the document with the higher priority shall

control. In the event of a conflict or inconsistency between provisions contained within the same document, then the provision that requires the highest standard of performance on the part of Contractor shall control. This Agreement is composed of the following documents, which are listed in priority: (i) Change Orders or written amendments to this Agreement; (ii) this Agreement; and (iii) Attachments and Schedules to this Agreement.

21.12 Restrictions on Public Announcements. Neither Contractor nor its Subcontractors or Sub-subcontractors shall (i) use or take any photographs or videos of any part of the Project (except as may be required to complete the Work in accordance with this Agreement) or (ii) publicly refer to the Work or the Project in any manner, including the issuance of a press release, advertisement, publicity material, prospectus, financial document or similar material, the creation of any business development materials, reference materials or similar materials, or the participation in a media interview that mentions or refers to the Work or the Project without the prior written consent of Owner in its reasonable discretion. Under no circumstance shall Contractor permit access to the Site by third parties who are not involved in the performance of the Work without prior written consent of Owner. Any announcement or press release issued by Contractor pertaining to the Work shall only include information previously released and approved by Owner in writing.

21.13 Parent Guarantee. Prior to the Effective Date, Guarantor will guarantee the full and faithful performance of all obligations of Contractor under this Agreement in the form attached as Attachment X hereto ("***Parent Guarantee***"). The guarantee contained in this Section 21.13 is unconditional and irrevocable.

21.14 Counterparts. This Agreement may be signed in any number of counterparts and each counterpart shall represent a fully executed original as if signed by each of the Parties. Electronic signatures shall be deemed as effective as original signatures.

21.15 Owner's Lender. In addition to other assurances provided in this Agreement, Contractor acknowledges that Owner intends to obtain project financing associated with the Project and Contractor agrees to cooperate with Owner and Lender in connection with such project financing, including (i) to supply such information and documentation, (ii) to grant such written consents to the assignment of this Agreement and entering into a direct agreement with the Lender (which shall be substantially in the form of Schedule Z-1), (iii) Guarantor to grant such written consents to the assignment of the Parent Guarantee and entering into a direct agreement with the Lender (which shall be substantially in the form of Schedule Z-2), (iv) to execute such amendments to this Agreement as any Lender may require to the extent that the requested changes do not materially adversely affect the rights and obligations of Contractor hereunder, and (v) to take such action or execute such documentation as any Lender shall reasonably require, covering matters that are customary in project financings of this type such as Lender assignment or security rights with respect to this Agreement, direct notices to Lender, step-in/step-out rights, access by Lender's representative and other matters applicable to such project financing; *provided however*, that Contractor shall have no obligation to assume different obligations or responsibilities pursuant to the Work than those existing under this Agreement. Contractor acknowledges and agrees that Owner's execution of this Agreement is contingent upon obtaining such non-recourse project financing and agrees further that in the event Owner does not obtain such project financing, Owner shall

not be liable to Contractor by reason of any terms and conditions contained in or connected with this Agreement except to the extent Contractor is or has performed work pursuant to written authorization received from Owner, *provided, however,* that Owner shall only be liable for Work actually performed by Contractor.

21.16 Survival. Article 10, Article 11, Article 13, Article 15, Article 16, Article 17, Article 18, Article 19, Article 20, and Sections 3.8, 3.9, 3.13, 3.17, 4.4, 9.1, 12.8 and 21.8 and this Section 21.16 shall survive termination or expiration of this Agreement, in addition to any other provisions which by their nature should, or by their express terms do, survive or extend beyond the termination or expiration of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives to be effective as of the Effective Date.

Owner:

BAKERSFIELD RENEWABLE FUELS, LLC

By: /s/ Richard Palmer
Name: Richard Palmer
Title: President

Contractor:

CTCI AMERICAS, INC.

By: /s/ Patrick Jameson
Name: Patrick Jameson
Title: President

Exhibit 31.1

CERTIFICATIONS PURSUANT TO
SECTION 302 OF
THE SARBANES-OXLEY ACT OF 2002

I, Richard Palmer, certify that:

1. I have reviewed this report on Form 10-Q for the quarter ended March 31, 2021 of Global Clean Energy Holdings, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. I am responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period for which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. I have disclosed, based on my most recent evaluation of internal control over financial reporting, to the registrant's auditors and to the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 20, 2021

/s/ Richard Palmer
Richard Palmer
President and Chief Executive Officer

Exhibit 31.2

CERTIFICATIONS PURSUANT TO
SECTION 302 OF
THE SARBANES-OXLEY ACT OF 2002

I, Ralph Goehring, certify that:

1. I have reviewed this report on Form 10-Q for the quarter ended March 31, 2021 of Global Clean Energy Holdings, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. I am responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period for which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. I have disclosed, based on my most recent evaluation of internal control over financial reporting, to the registrant's auditors and to the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 20, 2021

/s/ Ralph Goehring
Ralph Goehring
Chief Financial Officer

Exhibit 32.1

CERTIFICATION PURSUANT TO

18 U.S.C. § 1350,

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Global Clean Energy Holdings, Inc. (the "Company") on Form 10-Q for the quarter ended March 31, 2021, as filed with the Securities and Exchange Commission (the "Report"), I, Richard Palmer, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 20, 2021

/s/ Richard Palmer
Richard Palmer
President and Chief Executive Officer

Exhibit 32.2

CERTIFICATION PURSUANT TO

18 U.S.C. § 1350,

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Global Clean Energy Holdings, Inc. (the "Company") on Form 10-Q for the quarter ended March 31, 2021, as filed with the Securities and Exchange Commission (the "Report"), I, Ralph Goehring, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 20, 2021

/s/ Ralph Goehring
Ralph Goehring
Chief Financial Officer