

This Customer Agreement (including: the Terms and Conditions of Use for the BP Fuels eSales System — ("Terms of Use") set forth the terms and conditions on which BP Products North America, Inc. (hereinafter, ("BP"), a Maryland corporation, offers qualified, independent purchasers of unbranded fuel with access to and use of the BP Fuels eSales System ("SYSTEM") and which govern and are incorporated into each transaction effected by the Customer or on the Customer's behalf through the BP Fuels eSales System.

**PLEASE READ THESE TERMS OF USE CAREFULLY. BY PLACING AN ORDER THROUGH OR OTHERWISE ACCESSING OR USING THE BP FUELS ESALSALES SYSTEM, YOU (HEREINAFTER, ("CUSTOMER") ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND AND AGREE TO BE LEGALLY BOUND BY THESE TERMS OF USE.**

#### **1. Defined Terms.**

Various terms contained in these Terms of Use have the meanings set forth in Section 8. Definitions below.

#### **2. BP Fuels eSales System License.**

BP has licensed the BP Fuels eSales System (a customized version of TheOTCDesk System) from Audentes, LLC ("Audentes" or "Software Provider") under a Hosted Software License Agreement whereby BP's authorized Customers are granted access to the SYSTEM to purchase refined gasoline and diesel fuels for delivery within the United States.

#### **3. Proprietary Rights.**

##### **3.1 Copyright Material and Ownership of Intellectual Property.**

The SYSTEM has been developed by the Software Provider through significant expenditures of time and money and contains material amounts of proprietary information that the Software Provider considers to be "proprietary trade secrets". You agree that you will not copy, reproduce, modify, sell, distribute, transmit, display, perform, circulate, transfer, broadcast, create derivative works from, publish, or use for any commercial or unlawful purpose, download or attempt to download, reverse engineer or attempt to reverse engineer any of the content, underlying programming and/or source code contained in the SYSTEM.

##### **3.2 BP Data, Trademarks and Intellectual Property.**

BP and its suppliers have and retain exclusive ownership of and all right, title and interest in and to the BP Fuels eSales System Brand, including but not limited to all domains and sub-domains, the custom BP Branding contained in the SYSTEM's design, layout, graphics, i.e. the BP Fuels eSales System "look and feel" customized exclusively for BP, any BP Data collected by or uploaded to the System, including all BP analytical data utilized in the operation of the BP Fuels eSales System, and all copyrights, trademarks and trade dress appurtenant thereto, all goodwill associated therewith, and all other intellectual property and proprietary rights of any nature throughout the world embodied therein relating to the BP Data, Trademarks and intellectual property. All rights not expressly granted to Customer in these Terms of Use are reserved. From time to time, Customer may provide BP with suggestions, ideas or other feedback regarding the BP Fuels eSales System. BP, its suppliers (including the Software Provider), and their successors and assigns are and will be free to use, disclose and otherwise commercialize and exploit such feedback free of any and all ownership claims by or monetary obligations to Customer, or proprietary, confidentiality or other restrictions of any kind, including for purposes of developing improvements to the BP Fuels eSales System.

##### **3.3 Customer and its Authorized Users may not, and represent and warrant that they will not, nor will they authorize or permit any other person or entity to:**

(i) reproduce, distribute, publicly display, sublicense, lease, rent, loan, transfer, or otherwise make available the BP Fuels eSales System; (ii) modify, adapt, alter, translate, or create derivative works of the BP Fuels eSales System; (iii) use the BP Fuels eSales System in or as part of a service bureau, timesharing or outsourcing capacity; (iv) develop an alternative to the BP Fuels eSales System that is based on or derived from, in whole or in part, the BP Fuels eSales System, its documentation or other information or materials of BP; (v) use the BP Fuels eSales System in violation of any import, export, re-export, intellectual property or other applicable laws or regulations; (vi) remove or obscure any copyright or other proprietary rights notices, trademarks or trade designations for the BP Fuels eSales System, or on any user screens or documentation; or (vii) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code or underlying programming, data or database structures for the BP Fuels eSales System.

#### **4. Agreement Not To Disseminate Information.**

Information contained in the SYSTEM including but not limited to, Market Quotations and Price Charts (if any), are protected by copyright and other intellectual property laws and may only be used for the authorized user's personal use. If you download any information from the SYSTEM Internet site for your personal reference, you agree that you will not remove or obscure any

copyright or other notices contain in such information. Except as provided in the preceding sentence, you agree not to copy, reproduce, modify, sell, distribute, transmit, display, perform, circulate, transfer, broadcast, create derivative works from, publish, or use for any commercial or unlawful purpose any Market Quotations, Price Charts (if any) or other information contained in or which you receive through the SYSTEM.

## 5. Binding Contracts.

You agree that by "Accepting" a Quotation you are, in fact, agreeing to purchase the specific product on the terms and conditions set forth in the Quotation, and; that by "Placing" a Limit Order, if said Limit Order is "Matched" through the SYSTEM, you will be obligated to purchase the specific product subject to the terms and conditions set forth on such Limit Order. Furthermore, you represent that you are financially able to fulfill all obligations created by either "Accepting" a Quotation or by "Placing" a Limit Order which is subsequently matched through the SYSTEM and agree to "promptly settle" any and all such transactions and are fully capable, and in fact have analyzed the risks associated with the transaction(s) contemplated by you through accessing any utilizing the SYSTEM.

## 6. Modification to the SYSTEM and System Functionality.

BP and the Software Provider reserve the right to add, delete or modify the SYSTEM functionality and to amend or supplement these Terms of Use without prior notice, however BP shall attempt to deliver notice of any such change to authorized users promptly by e-mail or by an on-screen alert on the **Error! Hyperlink reference not valid.** web site.

## 7. Definitions.

"**Accept**" means to Accept, Accept All, and Accept Group functions in BP Fuels eSales System.

"**Account**" means a unique user account assigned to Customer by BP, along with the related Log-In credential necessary to access the [www.BPFuels-eSales.com](http://www.BPFuels-eSales.com).

"**Audentes, LLC**" means the developer and owner of TheOTCDesk System and the Software Provider of the BP Fuels eSales System under an HSLA with BP.

"**Authorized User**" means each of Customer's designated purchase agents acting solely on Customer's behalf.

"**BP**" means BP Products North America Inc., a Maryland corporation.

"**BP Fuels eSales System**" means a customized version TheOTCDesk System made available to authorized Customers of BP under the BP Fuels eSales System Brand.

"**Customer**" means the person or entity purchasing unbranded fuel on the BP Fuels eSales System.

"**Customer Data**" means the data input or processed by Customer or its Authorized Users using the BP Fuels eSales System.

"**Delivery**" means when Customer picks up the unbranded fuel with its vehicle at the coupler at the loading rack.

"**E15**" means a gasoline that contains more than 10 and no more than 15 volume percent ethanol, as specified at 40 C.F.R. § 1090.80.

"**Force Majeure**" means "Acts of God", strikes, lockouts, labor disturbances, or other industrial disturbances, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and people, arrests and restraints of government, either federal or state, inability of any Party to obtain necessary materials, supplies, or permits due to existing or future rules, orders, laws of governmental authorities (both federal and state), civil disturbances (in this or any other country), explosions, sabotage, breakage or accident to machinery, equipment, or lines of pipe, freezing of lines of pipe, and any other causes, whether of the kind herein enumerated or otherwise related or similar thereto.

"**HSLA**" means the Hosted Software License Agreement entered into between BP and the Software Provider Audentes, LLC whereby BP has licensed the use of the BP Fuels eSales System for use by its authorized Customers.

"**Included Costs**" means the common carrier pipeline tariffs, for-hire barge and shipping costs or third party terminalling cost.

"**Party**" means BP and/or Customer, as the context requires.

"**Penalty**" means three cents (\$0.03) per gallon.

"**Purchase Confirmation**" means the confirmation from BP to Customer on the BP Fuels eSales System showing the date of purchase, delivery/lifting date, product, price, quantity, location of pick-up, and Payment Terms for a given purchase of

unbranded fuels.

"**Software Provider**" means the Software Provider identified in the HSLA (i.e. Audentes, LLC).

"**Terms of Use**" means these Terms of Use, as the same may be modified from time to time by BP, in its sole discretion. For each Purchase Confirmation, the Terms of Use that apply will be the Terms of Use in effect at the time the purchase was made by the Customer.

## **8. Requirements to Use Site; Permitted Use; Prohibited Activities.**

You may not access the BP Fuels eSales System unless (a) you have been issued an Account by BP to use the BP Fuels eSales System, (b) you have read this " Customer Agreement " , and (c) you have acknowledged that you've read, understand and agreed to the Customer Agreement , including the "Terms of Use" by choosing "I Accept". Access to and use of the BP Fuels eSales System is limited to qualified, independent purchasers of unbranded fuel that have been issued an Account for the BP Fuels eSales System by BP and meet and agree to the Terms of Use set forth herein. By accessing or using the BP Fuels eSales System, Customer represents and warrants that it meets, and will at all times during Customer's use of the BP Fuels eSales System continue to meet and comply with, the foregoing criteria. All other access to or use of the BP Fuels eSales System without the express written consent of a duly authorized representative of BP is prohibited.

In order to access and use the BP Fuels eSales System, each of Customer's Authorized Users must establish a unique user Account. Customer is responsible for (i) designating and supervising its Authorized Users, (ii) establishing (by contacting BP) and overseeing access privileges, and (iii) disabling Accounts (by contacting BP) when access is no longer required, including immediately upon termination of an Authorized User's employment or affiliation with Customer.

Customer will maintain in strict confidence, and will ensure that its Authorized Users maintain in strict confidence, all User login credentials. Customer will notify BP immediately upon discovering any known or suspected unauthorized access to, misuse of, or breach of security for Customer's Accounts, and will provide all information and take all reasonable steps requested by BP in connection therewith. Customer is responsible for Customer's Authorized Users' acts and omissions in connection with the BP Fuels eSales System and for all activities occurring under Customer's Accounts. BP reserves the right to suspend access to or use of the BP Fuels eSales System with or without advance notice, and without any liability, in order to protect the security and integrity of BP's or the Software Provider's or other suppliers' systems, facilities, equipment or data.

BP may condition its permission for a Customer to use the BP Fuels eSales System on the Customer depositing a letter of credit, deposit or other form of security upon BP's request.

BP may suspend a Customer's ability to use the BP Fuels eSales System as provided in these Terms of Use.

Upon the suspension, expiration or termination of Customer's access to or use of the BP Fuels eSales System for any reason: (i) Customer and its Authorized Users will immediately cease all access to and use of the BP Fuels eSales System, including Customer's Accounts; (ii) all rights and licenses granted by BP under these Terms of Use will automatically and immediately terminate; and (iii) Customer will immediately pay BP any and all outstanding fees and charges due and owing under these Terms of Use, including but not limited to: Sections 9.3, 14 through and including 20, 23.2, and 26, and any other provisions of these Terms of Use which by their terms or nature are intended to survive, will survive the expiration or termination of Customer's access to or use of the BP Fuels eSales System for any reason, and will be binding on and inure to the benefit of the parties and their respective successors and permitted assigns.

## **9. Price**

**9.1** The price for the unbranded fuel available for purchase on the BP Fuels eSales System is subject to change at any time. Prior to purchasing the unbranded fuel, the Customer will be shown the price on the website applicable to the product, quantity, location, and date of pick-up of the unbranded fuel.

**BY CLICKING "ACCEPT" ON THE BP FUELS ESALES SYSTEM OR BY PLACING A LIMIT ORDER WHICH IS SUBSEQUENTLY MATCHED BY THE BP FUELS ESALES SYSTEM, THE CUSTOMER AGREES TO PURCHASE THE UNBRANDED FUEL SHOWN IN THE PURCHASE CONFIRMATION FROM BP AND TO PICK-UP THE UNBRANDED FUEL AT THE LOCATION ON THE LIFTING DATE AND BY THE TIME DESIGNATED ON THE PURCHASE CONFIRMATION. BP REPRESENTS THAT THE PURCHASED UNBRANDED FUEL WILL BE AVAILABLE FOR PICK-UP ON THE LIFTING DATE AND AT THE LOCATION DESIGNATED ON THE PURCHASE CONFIRMATION, BUT SUCH REPRESENTATION AS TO AVAILABILITY DOES NOT APPLY TO ANY OTHER DAYS.**

**9.2** Notwithstanding anything in these Terms of Use to the contrary, Requests For Quotes are Accepted, Limited Orders are Matched and Purchase Confirmations are issued based in part on the reference prices received via real time price feeds from third party vendors and/or are based on BP proprietary prices. While, BP and the vendor(s) take various measures to verify the accuracy of a particular price quotation, erroneous reference price quotations can cause a market quotation to indicate a quote price that clearly bears no relationship to the prevailing market price, to cause a Request For Quote to be accepted or a Limit Order to be Matched which, in fact, was not entitled. BP reserves the right to cancel any transaction, if upon a review of the price feed record or other material information, a particular reference price quotation was generated that was clearly erroneous and a Purchase Confirmation was issued as a result of such erroneous quotation.

**9.3** The price shown on the BP Fuels eSales System does include the Included Costs. The price shown on the BP Fuels eSales System does not include reimbursement for, and Customer is liable for and shall pay, cause to be paid, or reimburse BP if BP has paid, any tax, business license tax or fee, inspection or environmental fee, duty, tariff or other like charge which are not an Included Cost (including penalty and interest, if any) imposed, levied, or assessed by federal, state, local, Native American, or foreign authority upon the unbranded fuel, or upon the import, manufacture, storage, sale, use, transportation, delivery, or export of the unbranded fuel, or upon the privilege of doing any of these activities, whether imposed on or measured by the volume, price, or proceeds of sale of the unbranded fuel. Customer shall indemnify, defend and hold BP harmless from any liability for such taxes and other charges that are not Included Costs.

**9.4** Nothing in these Terms of Use shall be construed as obligating BP to extend credit to Customer. BP reserves the right to change its credit terms at any time including, but not limited to, by requiring that Customer pay for all unbranded fuel in advance or at the time of delivery, in cash, in certified funds or via wire transfer.

## **10. Method of Payment.**

Customer shall pay BP via EFT subject to the Payment Terms specified in the Purchase Confirmation. Customer's failure to timely and fully pay monies owed to BP in accordance with these Terms of Use shall entitle BP to immediately suspend and/or terminate Customer's ability to purchase unbranded fuel on the BP Fuels eSales System.

## **11. Rack Lifting and Penalty.**

**11.1 Under-lifted Order.** Temperature can affect the density of any fuel. Fuel transport vehicles have both volume and weight restrictions that must be followed. Therefore, any order placed on the BP Fuels eSales System by any Customer will be considered complete if the volume of each product picked up by the Customer is within 90% of each product ordered. If Customer lifts less than 90% of the ordered volume ("Underlifting"), Customer will be subject to the Penalty. The Penalty applies to every gallon that falls between the actual lifted volume and 90% of the ordered volume.

**11.2 Over-lifted Order.** Temperature can affect the density of any fuel. Fuel transport vehicles have both volume and weight restrictions that must be followed. Therefore, any order placed on the BP Fuels eSales System by any Customer will be considered complete if the volume of each product picked up by the Customer is within 110% of each product ordered. If Customer lifts more than the 110% of the ordered volume ("Overlifting"), Customer will be subject to the Penalty. The Penalty applies to every gallon that falls above the 110% tolerance.

**11.3 Un-lifted Order.** The Customer must pick up the unbranded fuel at the location designated in the Purchase Confirmation on the date specified in the Lifting Terms. If Customer does not pick up the unbranded fuel on the Lifting Date or Customer doesn't complete the transaction as ordered, then (a) BP may charge the Customer the Penalty for every gallon not picked up on that day or not completed as ordered, and/or (b) BP shall have the right to suspend Customer's access to the BP Fuels eSales System, and (c) the unbranded fuel ordered will no longer be available at contracted price for pick up by Customer.

**11.4 Lifting without an Order.** The Customer must pick up the unbranded fuel at the location designated in the Purchase Confirmation on the date specified in the Lifting Terms. If Customer lifts unbranded fuel without a Purchase Confirmation (Lifting without an Order), then (a) BP will invoice the Customer at the **OPIS Contract Average Net** price at 6pm for the product lifted, and (b) BP shall have the right to suspend Customer's access to the BP Fuels eSales System.

**11.5** Both parties agree the above penalties are calculated within 60 days after invoice date and Customer agrees to pay, via EFT, such penalties upon 30 days' notice from BP.

**11.6** Customer shall be responsible for and bear all costs associated with arranging for and actually picking up of the unbranded fuel at the designated location.

## **12. Time for Payment.**

Customer shall pay BP for all unbranded fuel purchased by Customer on the BP Fuels eSales System promptly, subject to the Payment Terms set forth in the Purchase Confirmation. If BP does not receive payment subject to the Payment Terms set forth in the Purchase Confirmation, then interest shall accrue commencing on the original due date at the rate of the lesser of (a) the greatest amount allowed under applicable law, or (b) eighteen percent (18%) per annum, compounded monthly in arrears until the date paid.

## **13. Availability of Unbranded Fuel.**

**13.1** BP does not make any representation or warranty that unbranded fuel will be available for purchase on any given day in any particular volume or at any particular location. Customer's ability to purchase unbranded fuel at any time shall not be construed as be a commitment by BP that additional unbranded fuel will be available for Customer to purchase.

**13.2** BP will make every reasonable attempt to supply the fuel ordered through the BP Fuels eSales System. However, there may be circumstances outside of BP's immediate control that prevent BP from having fuel available to fulfill Customer orders on the Lifting Date ("Unforeseen Event"). In the event, BP has an Unforeseen Event, BP will 1) cancel the order without any

penalty or 2) at BP's sole discretion, may offer Customer an alternative option.

#### **14. Biodiesel.**

BP makes no warranties, express or implied, with respect to whether any biodiesel blend purchased by Customer, if any, is compatible with Customer's equipment or vehicles.

#### **15. Quality.**

**15.1** The unbranded fuel shall conform to the requirements of all applicable environmental laws, regulations, and ASTM industry standards for petroleum products, provided the exact content, including biofuels components, may vary from time to time in accordance with such laws, regulations and standards. In the event the unbranded fuel BP seeks to deliver to Customer shall fail to conform to such quality standards and specifications, Customer may, at its option and in addition to all other available remedies, either (a) refuse to accept delivery of such nonconforming product, or (b) accept such product and cure the nonconformity, provided such cure shall be at BP's expense through a payment reduction or otherwise, at Customer's option.

**15.2** Rejection of the unbranded fuel must occur within 48 hours of receipt; after 48 hours product will be regarded as accepted by Customer. If the unbranded fuel is rejected, written notice must be given to BP fully specifying all claimed shortages, defects, and/or nonconformities. The failure to specify shall constitute a waiver of that shortage, defect, or nonconformity.

#### **16. DISCLAIMER and Limitation on BP/Software Provider's Responsibilities and Liabilities.**

You understand and agree that the SYSTEM utilizes the Internet to transport data and communications. Both BP and the Software Provider disclaims any liability for interception of any such data or communications. You agree that neither BP nor the Software Provider nor any third party working with BP or the Software Provider in providing services, including market quotations or prices or internet or telecommunications access hereunder shall be responsible for any damages caused by any unauthorized interception or modification of data or communication, any communications line failure, any system failure, and other occurrences beyond their control or from any unauthorized trading or theft by any third party who gains access to your account by use of your Username and Password as a result of your intentional or unintentional conduct, including negligence by you or your representatives. You agree to bear the full costs associated with your access to the SYSTEM.

**EXCEPT AS EXPRESSLY STATED IN THESE TERMS OF USE, BP MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE UNBRANDED FUEL, AND WARRANTIES OF FITNESS OR MERCHANTABILITY FOR ANY PARTICULAR PURPOSE OR USE ARE EXPRESSLY DISCLAIMED.**

**EXCEPT AS EXPRESSLY STATED IN THESE TERMS OF USE, THE BP FUELS ESALES SYSTEM IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AND ALL USE OF THE BP FUELS ESALES SYSTEM IS AT CUSTOMER'S OWN RISK. WITHOUT LIMITING THE FOREGOING, BP AND THE SOFTWARE PROVIDER HEREBY DISCLAIMS ANY IMPLIED OR STATUTORY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR QUIET ENJOYMENT. NEITHER BP NOR THE SOFTWARE PROVIDER REPRESENTS OR WARRANTS THAT THE BP FUELS ESALES SYSTEM WILL OPERATE UNINTERRUPTED OR ERROR-FREE, THAT THE BP FUELS ESALES SYSTEM OR INFORMATION OR PRICING AVAILABLE ON THE BP FUELS ESALES SYSTEM WILL BE ACCURATE, COMPLETE, UP-TO-DATE, OR FREE FROM VIRUSES, TYPOGRAPHICAL ERRORS OR ALTERATIONS, OR THAT THE BP FUELS ESALES SYSTEM WILL BE COMPATIBLE OR INTEROPERATE WITH CUSTOMER'S NETWORK, SYSTEMS OR DATA, MEET CUSTOMER'S PARTICULAR REQUIREMENTS, OR ACHIEVE ANY PARTICULAR RESULTS. THE BP FUELS ESALES SYSTEM MAY BE SUBJECT TO TRANSMISSION ERRORS, DELIVERY FAILURES OR DELAYS, AND OTHER LIMITATIONS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. NEITHER BP OR THE SOFTWARE PROVIDER GUARANTEES THE AVAILABILITY OF THE BP FUELS ESALES SYSTEM AND WILL NOT BE LIABLE FOR ANY PERIODS OF INACCESSIBILITY OR INOPERABILITY. NO EMPLOYEE OR AGENT HAS AUTHORITY TO BIND BP OR THE SOFTWARE PROVIDER TO ANY REPRESENTATIONS OR WARRANTIES NOT EXPRESSLY SET FORTH IN THESE TERMS OF USE.**

#### **17. E15 Requirements.**

**17.1** Customer will comply, and will ensure that any retail station dispensing E15 purchased from BP and supplied to the retail station by Customer complies, as the case may be, with the provisions set forth in BP's EPA-approved misfueling mitigation plan ("MMP"), which is incorporated herein in its entirety and a copy of which is available for review, including but not limited to those provisions specifying criteria for the three approved hose configurations and associated labeling requirements for dispensing E15. As specified in the MMP, those criteria require that, if a common hose is used to dispense both E15 and other gasoline-ethanol fuel blends, the retail station will either (a) provide at least one dedicated fueling position offering gasoline with no more than 10% ethanol from a dedicated hose/nozzle, post clear and visible signage of the non-E15 fuel's availability, and affix a label on the E15 dispenser consistent with applicable regulations; or (b) prominently label the shared pumps with a warning stating, "Minimum Fueling Volume 4 Gallons; Dispensing Less May Violate Federal Law."

**17.2** Customer will comply, and will ensure that any retail station dispensing E15 purchased from BP and supplied to the retail station by Customer complies, as the case may be, with federal and state regulations applicable to the sale and

dispensing of E15, including but not limited to those rules set forth in 40 C.F.R. Part 1090, Subparts C, O, P, and R. In particular, Customer understands that, as of the effective date of this contract, those regulations include the prohibition against the offering or sale of gasoline above applicable, maximum RVP per-gallon standards during the summer season contained in 40 C.F.R. § 1090.215.

**17.3** Customer will ensure that infrastructure used by itself or any retail station to store and dispense E15 that Customer purchases from BP and that the Customer supplies to the retail station, is compatible with the fuel and compliant with all applicable local, state and federal underground storage tank ("UST") codes and regulations governing the compatibility of USTs with E15. Customer will maintain written records of all maintenance and inspections of UST equipment and shall retain such records for the term required by law.

**17.4** Customer agrees to indemnify, protect, defend, and hold BP harmless from and against any and all claims, actions, costs, losses, and expenses (including without limitation reasonable attorneys' fees, costs of investigation and remediation) arising directly or indirectly from Customer's failure to adhere to its obligations under this Agreement to comply with BP's MMP and any and all laws and regulations applicable to the sale, dispensing, and storage of E15 and to ensure that retail stations dispensing E15 that Customer purchases from BP also comply with such obligations, laws and regulations.

**17.5** Customer agrees to indemnify, protect, defend, and hold harmless BP from and against any and all liabilities, claims, actions, losses, costs, and expenses (including without limitation reasonable attorneys' fees, costs of investigation and remediation) of misfueling of E15 that Customer purchases from BP by a consumer in a vehicle, equipment or engine not approved or suitable for such fuel, at any retail station dispensing E15 that Customer purchases from BP, whether or not such misfueling is the result of any act, omission, fault or negligence of Customer or Customer's agents, employees, contractors, invitees or licensees.

**17.6** BP shall not be liable to Customer for any losses, including personal injury, property damage, or business losses, caused by, arising out of or resulting from BP's sale of E15 to Customer or Customer's storage, dispensing or sale of such E15

## **18. Possession and Title.**

**18.1** As between the Parties, BP shall be deemed to be in exclusive control and possession of all unbranded fuel prior to its delivery to Customer, and BP shall bear the risk of loss and be responsible for any damage or injury caused by such unbranded fuel prior to its delivery to Customer. BP shall indemnify Customer and hold Customer harmless from all liability and expense on account of any and all damages, claims or actions, including injury to and death of persons, arising with respect to such unbranded fuel prior to its delivery to Customer.

**18.2** As between the Parties, Customer shall be deemed to be in exclusive control and possession of all unbranded fuel after its delivery, and Customer shall bear the risk of loss and be responsible for any damage or injury caused by such unbranded fuel after its delivery to Customer. Customer shall indemnify BP and hold BP harmless from all liability and expense on account of any and all damages, claims or actions, including injury to and death of persons, arising with respect to such unbranded fuel after its delivery to Customer.

**18.3** Title to all unbranded fuel sold and purchased through the BP Fuels eSales System shall pass from BP to Customer at the location designated in the Purchase Confirmation.

**18.4** BP warrants title to all unbranded fuel sold and all unbranded fuel delivered under the BP Fuels eSales System, free and clear of all liens, encumbrances, production burdens and other adverse claims to title whatsoever.

## **19. Material Safety Data Sheet.**

Customer acknowledges receipt of BP's Material Safety Data Sheet (MSDS) and is aware of its contents and of the hazards in handling, storage, use and transportation of unbranded fuel. Customer will inform its employees or agents of any fuel hazards or risks, and will provide a copy of each product MSDS to its handlers of the unbranded fuel.

## **20. Notices.**

Except as provided herein, any communications required or permitted under these Terms of Use shall be in the method and to the notice addresses set forth in this Terms of Use.

## **21. Resale and BP's Trade Identities.**

**20.1** Customer's resale of unbranded fuel is limited to Customer's sale or resale of the unbranded fuel for Customer's normal business operations.

**20.2** Unless expressly set forth in written agreement between BP and Customer, Customer does not have a license or any other type of right to use or display BP's trade identities. Customer agrees that it has no right and will not advertise, distribute or resell the unbranded fuel purchased through the BP Fuels eSales System as BP-branded motor fuels.

## **22. Force Majeure.**

**22.1** Except with regard to Customer's obligations to make payments due to BP, in the event either Party (the "Affected Party") is rendered unable, wholly or in part, by Force Majeure to perform any or all of its obligations (other than an event or circumstance that results in a Party not having sufficient funds to comply with an obligation to pay money), upon the Affected Party's giving notice and full particulars of such Force Majeure to the other Party as soon as reasonably possible (such notice may be telephonic provided it is confirmed in writing as soon as possible), the obligations the Affected Party is unable to perform due to the Force Majeure shall be suspended during the continuance of such inability. The cause of the Force Majeure shall as far as possible be remedied with all reasonable diligence and dispatch, including endeavoring to utilize alternative supply sources, transportation routes and/or delivery point(s); provided, no provision of this paragraph shall be interpreted to require BP to deliver, or Customer to receive, quantities of unbranded fuel at points other than the location set forth in the Purchase Confirmation.

**22.2** Force Majeure are conditions which were not anticipated at the time the order was entered into, which are not within the control of the Party claiming suspension and which by the exercise of due diligence such Party is unable to overcome. It is expressly agreed by the parties that neither (a) Customer's inability economically to use or resell unbranded fuel purchased under the BP Fuels eSales System, nor (b) BP's loss of supply or ability to sell unbranded fuel at a more advantageous price constitutes Force Majeure.

**22.3** It is understood and agreed that the settlement of strikes or lockouts shall be entirely within the discretion of the Party having the difficulty, and that the above requirement of the use of diligence and dispatch in restoring normal operation conditions shall not require the settlement of strikes or lockouts when such course is inadvisable in the discretion of the Party having the difficulty.

## **23. Defaults, Purchase Order Errors, Claims and Disputes.**

**23.1** If Customer, or any affiliate of Customer, is a Party to a branded jobber contract with BP or other supply agreement ("Supply Agreement"), any default by Customer or its affiliate of the Supply Agreement shall be deemed an immediate default of these Terms of Use. If Customer is in default of these Terms of Use, BP may terminate and/or suspend Customer's ability to use the BP Fuels eSales System. The foregoing right shall be in addition to any other rights or remedies contained in these Terms of Use, or otherwise available at law or equity.

**23.2** You agree to immediately provide BP with telephonic notification of any and all Purchasing Errors, Purchase Order Related Errors and/or Purchase Order Related Disputes. BP may electronically record any of your telephone conversations conducted with BP, its Vendors and/or SYSTEM personnel. The SYSTEM provides multiple Order Confirmation Notifications (in real time) of all Orders Accepted by the User or Matched by the SYSTEM, therefore, immediately means "upon occurrence, without delay". Immediate telephone notification to an BP Analyst, followed by written notification by e-mail, is required to satisfy your requirement to make "immediate notification by you", of any and all Purchasing Errors, Order Related Errors and/or Purchase order Related Disputes. BP, in its sole and absolute discretion, shall determine if an adjustment (including Purchase Order Cancellation) is warranted.

You specifically agree that if you fail to immediately notify BP of any Purchasing Error, Order Related Error and/or Order Dispute that your obligations under said Accepted RFQ and/or Matched Limit Order shall remain unaffected. Additionally, BP reserves the right to modify (including Purchase Order Cancellation) any transaction that was entered into in error whenever BP becomes aware of such error. Any such modification shall be supported by the Reference Price Record received from the SYSTEM's data vendor(s) or other material information.

**23.3** Failure by a Party to complain of any act of the other Party or to declare the other Party in default with respect these Terms of Use, irrespective of how long that failure continues, does not constitute a waiver by that Party of its rights with respect to that default until the applicable statute of limitations period has run.

**23.4** Customer will indemnify, defend and hold BP and the Software Provider harmless from and against any and all claims, demands, suits, damages, liabilities, costs and expenses (including reasonable attorneys' fees and court costs) arising out of or resulting in whole or in part from Customer's or its Authorized Users' use or misuse of the BP Fuels eSales System or violation of these Terms of Use, or Customer's negligence or willful misconduct in its performance hereunder, or relative to Customer or its agents, employees, or contractors entering, leaving or being on BP's premises, or involving any spills or discharges of fuel purchased hereunder or any other conduct that is, or is alleged to be, in violation of any law, regulation, or

ordinance, including without limitation all activities occurring under Customer's Accounts, any actual or alleged violation of applicable laws or the rights of another person or entity in connection therewith (whether on a direct, vicarious or contributory basis), and/or any claims or allegations (whether or not bona fide) by third parties arising out of or related thereto; provided, however, Customer will have no indemnification obligation for any liability resulting from and attributable solely to the gross negligence or willful misconduct of BP or its personnel.

**23.5** BP shall indemnify, defend and hold Customer harmless from any and all suits, actions, debts, accounts, damages, costs, losses, and expenses arising from or out of liens, encumbrances, production burdens and other adverse claims whatsoever of any or all persons to said unbranded fuel or to royalties, license fees or charges thereon, which are applicable to said unbranded fuel at or prior to its delivery to Customer at the location designated in the Purchase Confirmation. Customer, in addition to all other available remedies, may refuse to accept all fuel failing to meet the foregoing title requirements.

**23.6** Customer's exclusive remedy for any and all losses or damages relating to the purchase and sale of unbranded fuel under the BP Fuels eSales System, including, but not limited to, any allegations of breach of warranty, breach of contract (including failure to deliver product hereunder), negligence or strict liability, shall be limited, at BP's option, to either the return of the purchase price or the replacement of the particular unbranded fuel for which a claim is made and proved, except that nothing in this Section 23.6 shall prevent Customer from exercising any options that may be available to it under Section 15 of these Terms of Use or expand any limitation otherwise contained in these Terms of Use.

**23.7 AUDENTES (AS THE SOFTWARE PROVIDER) IS NOT A PARTY TO ANY TRANSACTION BETWEEN BP AND ITS CUSTOMERS AUTHORIZED TO ACCESS AND USE THE BP FUELS ESALES SYSTEM AND IN NO EVENT WILL THE SOFTWARE PROVIDER BEAR ANY LIABILITY OR RESPONSIBILITY OF ANY TRANSACTION ENTERED INTO BETWEEN BP AND ITS CUSTOMER(S) EVEN WHEN SUCH TRANSACTION IS EXECUTED THROUGH SUCH CUSTOMER'S ACCESS TO THE SYSTEM, OR WHERE A BP ANALYST EXECUTES A TRANSACTION THROUGH THE SYSTEM ON SUCH CUSTOMER'S BEHALF.**

**IN NO EVENT WILL BP BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, SPECIAL, PUNITIVE OR SIMILAR DAMAGES ARISING OUT OF OR RELATED TO THESE TERMS OF USE, PERFORMANCE BY BP, THE UNBRANDED FUEL, THE BP FUELS ESALES SYSTEM OR CUSTOMER'S OR ANY OTHER USER'S ACCESS TO OR USE THEREOF, INCLUDING LOSS OF BUSINESS, PROFITS, OR REVENUE, LOSS OR DESTRUCTION OF DATA, OR BUSINESS INTERRUPTION OR DOWNTIME. THE EXISTENCE OF MORE THAN ONE CLAIM OR SUIT WILL NOT EXPAND THIS LIMITATION. THE LIMITATIONS ON LIABILITY IN THIS SECTION WILL APPLY TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, REGARDLESS OF THE CAUSE OF ACTION OR BASIS OF LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), INDEMNITY, CONTRIBUTORY, VICARIOUS OR STRICT LIABILITY OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS ON LIABILITY ARE AN ESSENTIAL PART OF THESE TERMS OF USE AND WILL BE VALID AND BINDING EVEN IF ANY REMEDY IS DEEMED TO FAIL OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OF CERTAIN WARRANTIES OR TYPES OF DAMAGES, AND IN THOSE LIMITED CIRCUMSTANCES SUCH DISCLAIMERS MAY NOT APPLY TO YOU.**

**23.8** This Customer Agreement (including the Terms of Use) shall be governed by the laws of the State of Illinois, without regard to conflicts of law rules.

**23.9** The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (as enacted by any jurisdiction) do not and will not apply to transactions entered into under this Customer Agreement (including these Terms of Use), and are hereby specifically excluded.

**23.10** Any monetary disputes not resolved by BP and Customer shall be without recourse, unless litigation has been commenced within 24 months after the event causing the dispute is discovered or reasonably should have been discovered.

#### **24. License; Prohibited Activities.**

**24.1** Subject to Customer's compliance with the provisions hereof, as provided for under the HSLA entered into with the Software Provider covering the BP Fuels eSales System, BP grants Customer a limited, non-exclusive, non-transferable and non-sublicensable license for Customer's Authorized Users to remotely access and use the BP Fuels eSales System solely in accordance with these Terms of Use, in compliance with those supplemental rules, policies and procedures as may be implemented and updated by BP from time to time, and in compliance with all applicable laws and regulations. Customer may not resell, sublease, or sublicense the BP Fuels eSales System, or access or use of the BP Fuels eSales System for any other reason.

**24.2** Customer and its Authorized Users may not and warrant that they will not: (i) deactivate, bypass, or otherwise circumvent any access controls or other security measures for the BP Fuels eSales System; (ii) access or use the BP Fuels eSales System through interfaces or automated means (such as test tools, screen capture technology, scripted browsers, or other programmatic methods) not expressly approved in writing by BP; (iii) impersonate or attempt to access or use the Account of a representative of BP or another user; (iv) disseminate viruses, Trojan horses, spyware, or other malicious code through the BP Fuels eSales System; (v) engage in any activity that disrupts, diminishes the quality of, interferes with the performance of,



or otherwise impairs the BP Fuels eSales System; (vi) attempt to gain unauthorized access to BP's or another user's networks, systems, or data; (vii) engage in or promote any activity, or post or transmit any content, that is illegal, threatening, abusive, offensive, obscene, harassing, defamatory, deceptive, false, unsafe, invasive of another's privacy, or endangering of minors in any way; or (viii) infringe, misappropriate, or violate any third party intellectual property or proprietary rights, rights of privacy or publicity, or other rights, or violate any contractual, fiduciary, or other legal duty or obligation.

## **25. Customer's Responsibilities.**

Customer is responsible for: (i) procuring, installing and maintaining all client-side equipment necessary to remotely access and use the BP Fuels eSales System, including a compatible Internet browser and network connectivity; (ii) maintaining appropriate business continuity and disaster recovery procedures (as desired) in the event of unavailability of the BP Fuels eSales System for any reason; and (iii) testing and validating the BP Fuels eSales System for use in Customer's business, including compatibility with Customer's policies, procedures and operations.

## **26. Customer Data.**

Customer is responsible for all Customer Data. Customer agrees to submit Customer Data in a format approved by BP as compatible for use with the BP Fuels eSales System. Customer is solely responsible for the quality, accuracy, and verification of Customer Data. Customer further acknowledges that BP is not and will not be deemed to be the primary record keeper or custodian of Customer Data, and that Customer is solely responsible for maintaining original copies of and backing up all Customer Data. Customer hereby authorizes BP and its suppliers to access, use and disclose Customer Data for the purpose of operating and maintaining the BP Fuels eSales System, investigating or taking action in response to actual or threatened misuse of the BP Fuels eSales System or other violation of these Terms of Use, responding to any subpoena, court order or governmental, regulatory or law enforcement request, and/or taking other actions permitted or required under applicable law or regulation.

## **27. Antibribery and Corruption.**

**27.1** BP has a zero tolerance policy towards bribery and corruption, including as regards providers of services to BP and facilitation payments/grease payments. Customer will comply with all applicable anti-bribery and corruption and anti-money laundering laws and regulations, and, in any event, will not and will procure that its employees and service providers (including its subcontractors, agents and other intermediaries) will not offer, give or agree to give any person whatsoever, or solicit, accept or agree to accept from any person, either directly or indirectly, anything of value in order to obtain, influence, induce or reward any improper advantage in connection with this Contract (the "Anti-Corruption Obligation"). "Facilitation Payments" shall include infrequent payments made to a Public Official to facilitate routine, non-discretionary governmental actions that: (i) the Public Official ordinarily performs; and (ii) BP is entitled to under the laws of the relevant country. "Public Official" shall include (i) any minister, civil servant, director, officer or employee or other official of any government or any department, agency or body, and/or of any government-owned or controlled company, any company or enterprise in which a government owns an interest of more than thirty percent, and/or of any public international organization; (ii) any person acting in any official, legislative, administrative or judicial capacity for or on behalf of any government department, agency, body, or public international organization, including without limitation any judges or other court officials, military personnel and customs, police, national security or other law enforcement personnel; and (iii) any close family member of any of the foregoing.

**27.2** Customer shall on an on-going basis: (a) immediately disclose in writing to BP details of any breach of the Anti-Corruption Obligation; (b) on request, use best efforts to co-operate with BP to ensure and monitor compliance with the Anti-Corruption Obligation; and (c) make clear, in its dealings connected to BP, that it is required to act, and is acting, in accordance with the Anti-Corruption Obligation.

**27.3** Customer agrees and acknowledges that BP itself or through its duly appointed representatives, may inspect, audit and make copies of any books and records of Customer relating to this Contract and Customer's compliance with the Anti-Corruption Obligation.

**27.4** BP shall have the right to terminate Customer's rights to use the BP Fuels eSales System or suspend all further services and payments with immediate effect if BP reasonably believes in good faith that Customer has breached the Anti-Corruption obligation or any of the requirements set out in this paragraph.

## **28. Miscellaneous.**

**28.1** If a court of competent jurisdiction declares or adjudges one or more paragraphs of this Agreement, or paragraph portions, invalid or void, the remaining paragraphs or paragraph portions will remain in full force and effect.

**28.2** The section titles and subtitles in this Agreement are for ease of reference only. They do not modify, restrict or expand upon the meaning of any provision.

**28.3** The parties hereto are independent contractors. Nothing in these Terms of Use will be deemed to create any agency, employment, partnership, fiduciary or joint venture relationship between the parties, or to give any third party any rights or

remedies under or by reason of these Terms of Use. Notwithstanding the foregoing, the disclaimers, limitations on liability and indemnification protections under these Terms of Use will extend to BP, its directors, officers, shareholders, employees, agents and affiliates. All references to BP in connection therewith will be deemed to include such persons and entities as third party beneficiaries entitled to accept all benefits afforded thereby.

**28.4** The BP Fuels eSales System comprises the confidential and proprietary information of BP, The Software Provider and BP's other suppliers, and constitutes a valuable trade secret. Customer acknowledge that any breach of the license or ownership provisions of these Terms of Use would cause irreparable harm to BP and the Software Provider, the extent of which would be difficult and impracticable to assess, and that money damages would not be an adequate remedy for such breach. Accordingly, in addition to all other remedies available at law or in equity, BP and the Software Provider will be entitled to obtain injunctive and other non-monetary equitable relief in any court of competent jurisdiction.

**28.5** BP reserves the right to amend these Terms of Use from time to time. Any amendments will be effective when posted by BP on the BP Fuels eSales System, emailed to Customer, or otherwise made available to Customer. Customer's access to or use of the BP Fuels eSales System after BP has amended these Terms of Use will signify Customer's acceptance of the amended terms.

**28.6** These Terms of Use set forth the entire agreement of the parties and supersede all prior and contemporaneous proposals, agreements and understandings, whether written or oral, pertaining to the subject matter hereof. Where Customer requires a purchase order as part of Customer's procurement process, such purchase order may be issued for administrative purposes only. Any additional or conflicting terms proposed by Customer in any purchase order, acknowledgement, or other writing will not be binding on BP, and are hereby objected to and expressly rejected.

**28.7** The BP Fuels eSales System is or may be subject to monitoring at all times to assure proper functioning of the systems, to provide security for the operation and information contained, to prevent unauthorized use, and to deter and investigate violations of law. There is no reasonable expectation of privacy in the use of this public computer system.