

Clerk's stamp:

COURT FILE NUMBER 2401-03404  
COURT COURT OF KING'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
MATTER IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c C-36, AS AMENDED  
  
AND IN THE MATTER OF THE COMPROMISE OR  
ARRANGEMENT OF CANADIAN OVERSEAS PETROLEUM  
LIMITED AND THOSE ENTITIES LISTED IN SCHEDULE "A"  
  
DOCUMENT **AFFIDAVIT**  
  
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Dentons Canada LLP  
15<sup>th</sup> Floor, Bankers Court  
850 – 2<sup>nd</sup> Street SW  
Calgary, AB T2P 0R8  
Attention: Derek Pontin  
Email: derek.pontin@dentons.com  
Ph: (403) 268 7015 Fax: (403) 268-3100

**AFFIDAVIT OF KENNETH JOAQUIN ANDERSON**

**Sworn on April 23, 2024**

I, Kenneth Joaquin Anderson, of the City of Houston, in the State of TX, USA,  
**MAKE OATH AND SAY THAT:**

1. I am an employee of BP American Production Company ("BP America") with the title Structured Solutions Origination Manager. As such, I have knowledge of the matters to which I herein depose. Where that knowledge is based on information or belief, I have stated the source of that information and verily believe it to be true.
2. I am authorized to swear this Affidavit on behalf of BP America.
3. BP America is affiliated with BP Energy Company ("BP"), which are both direct wholly owned subsidiaries of BP Company North America Inc. BP is a secured creditor of COPL America, Inc., one of the applicants in the within proceedings ("COPL America", together with the other entities filed in these proceedings, collectively referred to as the "Debtors").

4. I am advised by BP's legal counsel, Derek Pontin, at Dentons Canada LLP, that the Debtors sought and obtained protection under the *Companies' Creditors Arrangement Act* (the "**CCAA**") pursuant to an initial order from the Court of King's Bench of Alberta (the "**Court**") granted on March 8, 2024 (the "**Initial Order**") and thereafter on March 19, 2024, sought and obtained an Amended and Restated Initial Order from the Court (the "**ARIO**"). The ARIO approved, *inter alia*, an interim financing arrangement pursuant to which Summit Partners Credit Fund III, L.P., Summit Investors Credit III, LLC, and Summit Investors Credit III (UK), L.P. (the "**Interim Lender**") made available to the Debtors a credit facility for the purposes of funding the within CCAA proceedings, in the initial amount of \$1.5 MM (USD) and increased to a maximum amount of \$11 MM(USD).
5. I am further advised by my counsel that concurrently with the ARIO, the Debtors sought and obtained an order approving a sale and investment solicitation process in respect of the business and assets of the Debtors (the "**SISP Approval Order**"). Pursuant to the SISP Approval Order, the Court approved the terms of a stalking horse agreement, to be entered into among Summit Partners Credit Fund III, L.P., Summit Investors Credit III, LLC, Summit Investors Credit III (UK), L.P., and Summit Investors Credit Offshore Intermediate Fund III, L.P. (the "**Summit Parties**", or the "**Stalking Horse Purchaser**") and the Debtors. The Summit Parties and the Debtors entered into the Stalking Horse Agreement on or about April 8, 2024 (the "**Stalking Horse Agreement**").
6. I swear this affidavit in opposition to an application filed by the Debtors for an Approval and Vesting Order with respect to the Stalking Horse Agreement, and the transaction contemplated thereunder (the "**Proposed AVO**").

#### **Swap and Loan Agreements**

7. BP and COPL America entered into certain hedging arrangements with respect to the oil and gas production of the Debtors, which were governed by a ISDA Master Agreement, dated March 15, 2021 (as amended, the "**ISDA Agreement**"). A copy of the ISDA Agreement is attached hereto as **Exhibit "A"**.
8. As contemplated by the ISDA Agreement, COPL America and BP entered into a series of hedging transactions (the "**Hedging Transactions**").
9. On March 16, 2021, BP, COPL America and ABC Funding, LLC, in its capacity as administrative agent for the Summit Parties, entered into an Intercreditor Agreement (the "**Initial Intercreditor Agreement**"). A copy of the Initial Intercreditor Agreement is attached hereto and marked as **Exhibit "B"**.
10. The Initial Intercreditor Agreement was subsequently amended on October 4, 2023 (the "**First Amended Intercreditor Agreement**"), and again on October 13, 2023 (the "**Second Amended**

**Intercreditor Agreement**", together with the Initial Intercreditor Agreement and the First Amended Intercreditor Agreement, collectively the "**Intercreditor Agreement**"). Copies of the First Amended Intercreditor Agreement and the Second Amended Intercreditor Agreement are attached hereto and marked as **Exhibits "C"** and **"D"**, respectively.

11. The Intercreditor Agreement was entered into for the purpose of establishing relative priorities and sharing of common collateral among the Summit Parties and BP under their respective arrangements with COPL America.

12. Article II, Section 2.01 of the Initial Intercreditor Agreement provides:

Section 2.01. Obligations and Liens Pari Passu.

(a) Subject to the other terms and conditions of this Agreement, the Obligations shall be *pari passu* with the Swap Obligations. At the times and under the conditions described in Article IV, the Obligations and the Swap Obligations will be repaid Ratably with the proceeds of Collateral after the payment of expenses. Upon the execution of this Agreement, the Liens granted under the Collateral Documents that are in effect at the time of execution of this Agreement shall be in favor of the Collateral Agent for the benefit of the Creditors, to secure, Ratably, the Obligations and the Swap Obligations. Such Collateral Documents are in all substantive respects in the form approved by the Swap Counterparty.

13. "Obligations" are generally defined in the Intercreditor Agreement as all obligations of COPL America owing to the Summit Parties under the Term Loan Credit Agreement, entered into among the Interim Lender and the Debtors dated March 16, 2021, as subsequently amended (such obligations hereinafter referred to as the "**Summit Loan Obligations**"). "Swap Obligations" are generally defined in the Intercreditor Agreement as the obligations of COPL America owing to BP under the ISDA Agreement.

14. During the course of 2023, COPL America experienced losses on the Hedging Transactions. As set out in the Affidavit of Peter Kravitz, sworn March 7, 2024, the obligations of COPL America to BP, as of September 30, 2023, with respect to losses under the Hedging Transactions, included a current commodity derivative liability of \$8.8 MM (USD), and a non-current commodity derivative liability of \$1.8 MM (USD).

15. Pursuant to a letter agreement dated October 12, 2023 (the "**Swap Termination Agreement**"), effective October 4, 2023, BP and COPL terminated the Hedging Transactions. The Swap Termination Agreement crystalized COPL America's obligations under the ISDA Agreement to BP in the amount of USD \$11,873,702.13 (the "**Swap Termination Obligation**"). A copy of the Swap Termination Agreement is attached hereto and marked as **Exhibit "E"**.

16. The Swap Termination Agreement states (with my emphasis added):

Such Termination Payment remains a Swap Obligation and BP Specified Swap Obligations as defined in the Intercreditor Agreement and shall be paid on a pro rata and pari passu basis with all Loan Obligations in accordance with and subject to such Intercreditor Agreement. In the event of any inconsistency, conflict or ambiguity between this letter and the Intercreditor Agreement, the terms of the Intercreditor Agreement shall control and supersede any such inconsistency, conflict, or ambiguity.

17. Pursuant to the Swap Termination Agreement, in the event of default by COPL America under the ISDA Agreement, the Swap Termination Obligation shall become immediately due and payable. COPL America is in default of the ISDA Agreement, including (without limitation) by declaring insolvency and filing for CCAA protection in the within proceedings. The Swap Termination Obligation is presently owing, due and payable to BP.
18. Further to the Intercreditor Agreement and the Swap Termination Agreement, BP and the Summit Parties are *pari passu* creditors. The *pari passu* provisions of the agreements entered by BP are material and imperative terms of those agreements.
19. The fact COPL America is indebted to BP in the amount of the Swap Termination Obligation, and BP's rights and ranking as a *pari passu* creditor with the Summit Parties, are not in dispute in these proceedings, as reflected in the Debtors' affidavits and filed materials.

#### **CCAA Proceedings**

20. Prior to the commencement of these CCAA proceedings, BP was engaged in some discussions with: (i) representatives of the Debtors; (ii) Peter Kravitz with Province, LLC (the "**Province LLC Representative**"); and (ii) Patrick Murphy and Ashley Smith as representatives of the Summit Parties (the "**Summit Parties Representatives**"), specifically in respect of BP's willingness to participate as a lender for purposes of interim debtor-in-possession ("**DIP**") financing. BP declined to participate as an interim DIP lender.
21. BP was advised by the Province LLC Representative and Summit Parties Representatives that, if it failed to participate as an interim DIP lender for COPL, that a priority or priming charge may be granted in favour of another interim lender, with the effect of establishing a priority ahead of BP's *pari passu*, first secured position against COPL America.
22. BP is aware that an interim DIP financing loan was approved in favour of the Debtors, which interim financing was extended by the Interim Lender (being some of the Summit Parties). BP was aware that the granting of the interim financing charge would prime its position, and that the interim financing charge would equivalently prime the Summit Parties, as the *pari passu* first lien creditor.

23. At no time was I advised that the Debtors or the Summit Parties were intending to directly or indirectly alter the relative priority among BP and Summit. BP has never agreed, and does not agree, to any waiver or abrogation of its rights as a *pari passu* creditor ranked equally with the Summit Parties.
24. I am aware that the interim financing granted in favour of the Debtors is approximately (USD) \$11 MM. BP views the value of the Debtors, or the Debtors' assets, to be significantly greater than that amount. BP was not opposed to an interim financing charge of (USD) \$11 MM being granted, on the basis of the assumed value of the Debtor's assets being substantially higher than this amount. In BP's view, a provident sale would realize something greater than (USD) \$11 MM, and the proceeds in excess of the interim financing would be paid to BP and the Summit Parties on a pro-rata basis, in keeping with the parties' respective rights under the Intercreditor Agreement.

#### **SISP**

25. Prior to the Debtors' filing for CCAA protection, BP was aware that the Debtors were marketing and soliciting offers for the purchase of the Debtors' assets. BP was involved in high-level discussions with certain potentially interested parties. The value of the Debtors' assets at that time, discussed generally (and as I've indicated, above) were always in excess of (USD) \$11 MM.
26. The values being discussed at the relevant times were less than (USD) \$56 MM. That appears to be the baseline upon which the Debtors' assets were marketed, under the Stalking Horse Agreement. That is, a qualifying offer needed to be sufficient to repay the DIP (which the Summit Parties propose to credit bid), and also repay the Summit Loan Obligations (which the Summit Parties propose to assume as debt, rather than credit bid).
27. There is no attendance to BP's equivalent rights as a *pari passu*, senior secured creditor, in the stalking horse agreement that is being presented for approval.
28. In view of the foregoing, it is not a surprise that no competitive bids were made within the SISP. The assets, in BP's understanding, are worth less than (USD) \$56 MM. That has now been demonstrated by a lack of bids made. However, the assets are worth more than (USD) \$11 MM, which is the limit of the amount the Summit Parties are able to credit bid. A fair process would either set the floor at (USD) \$11 MM, reflecting only the super-priority debt, or at (USD) \$67 MM (using round numbers), with clear understanding that any qualifying bid must address both senior secured creditors – not just one.
29. Aside from the foregoing, BP has also been advised, by the Chief Financial Officer Spectrum Energy, that he contacted the Monitor as a potentially interested party in respect of the Debtors'

assets. He received no response, and thereafter conducted his own investigations. He ultimately concluded the stalking horse floor price was too high to warrant a bid submission.

30. The timeline for an LOI was only 30 days. BP has concerns with the integrity of the SISP, if there was not sufficient ability for interested parties to participate within the compressed solicitation timeline.
31. Further, I am not aware of any general solicitation(s) to have been circulated in relevant industry publications. I am aware a news release was issued, but no targeted solicitations of interest for the Debtors' assets.

### **Summary**

32. In summary, BP views the proposed vesting order as being substantially prejudicial, for the following reasons:
  - (a) the Debtors own and operate substantial oil and gas holdings, which must be adequately exposed to market for a time and at a price floor that will stimulate the greatest possible interest;
  - (b) the process in this case was chilling and ineffective, due to the price floor being set above market;
  - (c) normally, the highest possible stalking horse would be supported, as it would benefit the affected stakeholders;
  - (d) that is not the case here – the stakeholders are equivalent, but receive specifically disparate treatment.
33. In the circumstances, BP's view is that a further solicitation is required, with a floor price either set at (USD) \$56 MM, for the benefit of both equivalent senior creditors, or at a lesser number where the market can be properly tested for what these asset may sell for.
34. The alternative would be the total extinguishment of BP's rights, and the total preservation (and elevation) of the Summit Parties' rights, contrary to the Intercreditor Agreement.

35. I make this Affidavit in opposition to the Debtors application for the approval and vesting order with respect to the Stalking Horse Agreement and the transaction contemplated thereunder, and for no improper purpose.

**SWORN BEFORE ME** at the City of Calgary, )  
in the Province of Alberta, this 23<sup>rd</sup> day of )  
April, 2024 )



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Commissioner for Oaths in and for the  
Province of Alberta

**HAO YANG HUA**  
Student-At-Law



\_\_\_\_\_  
**KENNETH JOAQUIN ANDERSON**

## SCHEDULE "A"

1. Canadian Overseas Petroleum Limited
2. COPL America Holding Inc.
3. COPL America Inc.
4. Canadian Overseas Petroleum (UK) Limited
5. Canadian Overseas Petroleum (Ontario) Limited
6. COPL Technical Services Limited
7. Canadian Overseas Petroleum (Bermuda Holdings) Limited
8. Canadian Overseas Petroleum (Bermuda) Limited
9. Southwestern Production Corporation
10. Atomic Oil and Gas LLC
11. Pipeco LLC



**THIS IS EXHIBIT "A"**

**REFERRED TO IN THE AFFIDAVIT OF**

**KENNETH JOAQUIN ANDERSON**

**Sworn before me this 23rd day of April, 2024**



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**A COMMISSIONER FOR OATHS IN AND  
FOR THE PROVINCE OF ALBERTA**

**HAO YANG HUA**  
**Student-At-Law**

# ISDA<sup>®</sup>

International Swaps and Derivatives Association, Inc.

## 2002 MASTER AGREEMENT

dated as of ..... March 15, 2021 .....

..... BP Energy Company ..... and ..... COPL America Inc .....

have entered and/or anticipate entering into one or more transactions (each a “Transaction”) that are or will be governed by this 2002 Master Agreement, which includes the schedule (the “Schedule”), and the documents and other confirming evidence (each a “Confirmation”) exchanged between the parties or otherwise effective for the purpose of confirming or evidencing those Transactions. This 2002 Master Agreement and the Schedule are together referred to as this “Master Agreement”.

Accordingly, the parties agree as follows:—

### 1. Interpretation

- (a) **Definitions.** The terms defined in Section 14 and elsewhere in this Master Agreement will have the meanings therein specified for the purpose of this Master Agreement.
- (b) **Inconsistency.** In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement, such Confirmation will prevail for the purpose of the relevant Transaction.
- (c) **Single Agreement.** All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this “Agreement”), and the parties would not otherwise enter into any Transactions.

### 2. Obligations

- (a) **General Conditions.**
  - (i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.
  - (ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.

(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other condition specified in this Agreement to be a condition precedent for the purpose of this Section 2(a)(iii).

(b) **Change of Account.** Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the Scheduled Settlement Date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) **Netting of Payments.** If on any date amounts would otherwise be payable:—

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by which the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount and payment obligation will be determined in respect of all amounts payable on the same date in the same currency in respect of those Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or any Confirmation by specifying that "Multiple Transaction Payment Netting" applies to the Transactions identified as being subject to the election (in which case clause (ii) above will not apply to such Transactions). If Multiple Transaction Payment Netting is applicable to Transactions, it will apply to those Transactions with effect from the starting date specified in the Schedule or such Confirmation, or, if a starting date is not specified in the Schedule or such Confirmation, the starting date otherwise agreed by the parties in writing. This election may be made separately for different groups of Transactions and will apply separately to each pairing of Offices through which the parties make and receive payments or deliveries.

(d) **Deduction or Withholding for Tax.**

(i) **Gross-Up.** All payments under this Agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is so required to deduct or withhold, then that party ("X") will:—

- (1) promptly notify the other party ("Y") of such requirement;
- (2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;
- (3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and

(4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:—

(A) the failure by Y to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d); or

(B) the failure of a representation made by Y pursuant to Section 3(f) to be accurate and true unless such failure would not have occurred but for (I) any action taken by a taxing authority, or brought in a court of competent jurisdiction, after a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (II) a Change in Tax Law.

(ii) **Liability.** If:—

(1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(i)(4);

(2) X does not so deduct or withhold; and

(3) a liability resulting from such Tax is assessed directly against X,

then, except to the extent Y has satisfied or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for interest, but including any related liability for penalties only if Y has failed to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d)).

### 3. Representations

Each party makes the representations contained in Sections 3(a), 3(b), 3(c), 3(d), 3(e) and 3(f) and, if specified in the Schedule as applying, 3(g) to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(f), at all times until the termination of this Agreement). If any “Additional Representation” is specified in the Schedule or any Confirmation as applying, the party or parties specified for such Additional Representation will make and, if applicable, be deemed to repeat such Additional Representation at the time or times specified for such Additional Representation.

(a) **Basic Representations.**

(i) **Status.** It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;

(ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;

(iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(v) **Obligations Binding.** Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, 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)).

(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it, any of its Credit Support Providers or any of its applicable Specified Entities any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) **Accuracy of Specified Information.** All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

(e) **Payer Tax Representation.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(c) is accurate and true.

(f) **Payee Tax Representations.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(f) is accurate and true.

(g) **No Agency.** It is entering into this Agreement, including each Transaction, as principal and not as agent of any person or entity.

#### 4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

(a) **Furnish Specified Information.** It will deliver to the other party or, in certain cases under clause (iii) below, to such government or taxing authority as the other party reasonably directs:—

(i) any forms, documents or certificates relating to taxation specified in the Schedule or any Confirmation;

(ii) any other documents specified in the Schedule or any Confirmation; and

(iii) upon reasonable demand by such other party, any form or document that may be required or reasonably requested in writing in order to allow such other party or its Credit Support Provider to make a payment under this Agreement or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other party and to be executed and to be delivered with any reasonably required certification,

in each case by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) **Maintain Authorisations.** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) **Comply With Laws.** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

(d) **Tax Agreement.** It will give notice of any failure of a representation made by it under Section 3(f) to be accurate and true promptly upon learning of such failure.

(e) **Payment of Stamp Tax.** Subject to Section 11, it will pay any Stamp Tax levied or imposed upon it or in respect of its execution or performance of this Agreement by a jurisdiction in which it is incorporated, organised, managed and controlled or considered to have its seat, or where an Office through which it is acting for the purpose of this Agreement is located ("Stamp Tax Jurisdiction"), and will indemnify the other party against any Stamp Tax levied or imposed upon the other party or in respect of the other party's execution or performance of this Agreement by any such Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to the other party.

## 5. Events of Default and Termination Events

(a) **Events of Default.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes (subject to Sections 5(c) and 6(e)(iv)) an event of default (an "Event of Default") with respect to such party:—

(i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 9(h)(i)(2) or (4) required to be made by it if such failure is not remedied on or before the first Local Business Day in the case of any such payment or the first Local Delivery Day in the case of any such delivery after, in each case, notice of such failure is given to the party;

(ii) **Breach of Agreement; Repudiation of Agreement.**

(1) Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 9(h)(i)(2) or (4) or to give notice of a Termination Event or any agreement or obligation under Section 4(a)(i), 4(a)(iii) or 4(d)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied within 30 days after notice of such failure is given to the party; or

(2) the party disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, this Master Agreement, any Confirmation executed and delivered by that party or any

Transaction evidenced by such a Confirmation (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(iii) **Credit Support Default.**

(1) Failure by the party or any Credit Support Provider of such party to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document, or any security interest granted by such party or such Credit Support Provider to the other party pursuant to any such Credit Support Document, to be in full force and effect for the purpose of this Agreement (in each case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(iv) **Misrepresentation.** A representation (other than a representation under Section 3(e) or 3(f)) made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) **Default Under Specified Transaction.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(1) defaults (other than by failing to make a delivery) under a Specified Transaction or any credit support arrangement relating to a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, such default results in a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction;

(2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment due on the last payment or exchange date of, or any payment on early termination of, a Specified Transaction (or, if there is no applicable notice requirement or grace period, such default continues for at least one Local Business Day);

(3) defaults in making any delivery due under (including any delivery due on the last delivery or exchange date of) a Specified Transaction or any credit support arrangement relating to a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, such default results in a liquidation of, an acceleration of obligations under, or an early termination of, all transactions outstanding under the documentation applicable to that Specified Transaction; or

(4) disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, a Specified Transaction or any credit support arrangement relating to a Specified Transaction that is, in either case, confirmed or evidenced by a document or other confirming evidence executed and delivered by that party, Credit Support Provider or Specified Entity (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) **Cross-Default.** If “Cross-Default” is specified in the Schedule as applying to the party, the occurrence or existence of:—

(1) a default, event of default or other similar condition or event (however described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) where the aggregate principal amount of such agreements or instruments, either alone or together with the amount, if any, referred to in clause (2) below, is not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments before it would otherwise have been due and payable; or

(2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments under such agreements or instruments on the due date for payment (after giving effect to any applicable notice requirement or grace period) in an aggregate amount, either alone or together with the amount, if any, referred to in clause (1) above, of not less than the applicable Threshold Amount;

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4)(A) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official, or (B) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation, and such proceeding or petition is instituted or presented by a person or entity not described in clause (A) above and either (I) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (II) is not dismissed, discharged, stayed or restrained in each case within 15 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 15 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) above (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or



(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, or reorganises, reincorporates or reconstitutes into or as, another entity and, at the time of such consolidation, amalgamation, merger, transfer, reorganisation, reincorporation or reconstitution:—

- (1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party; or
- (2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) **Termination Events.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes (subject to Section 5(c)) an Illegality if the event is specified in clause (i) below, a Force Majeure Event if the event is specified in clause (ii) below, a Tax Event if the event is specified in clause (iii) below, a Tax Event Upon Merger if the event is specified in clause (iv) below, and, if specified to be applicable, a Credit Event Upon Merger if the event is specified pursuant to clause (v) below or an Additional Termination Event if the event is specified pursuant to clause (vi) below:—

(i) **Illegality.** After giving effect to any applicable provision, disruption fallback or remedy specified in, or pursuant to, the relevant Confirmation or elsewhere in this Agreement, due to an event or circumstance (other than any action taken by a party or, if applicable, any Credit Support Provider of such party) occurring after a Transaction is entered into, it becomes unlawful under any applicable law (including without limitation the laws of any country in which payment, delivery or compliance is required by either party or any Credit Support Provider, as the case may be), on any day, or it would be unlawful if the relevant payment, delivery or compliance were required on that day (in each case, other than as a result of a breach by the party of Section 4(b)):—

- (1) for the Office through which such party (which will be the Affected Party) makes and receives payments or deliveries with respect to such Transaction to perform any absolute or contingent obligation to make a payment or delivery in respect of such Transaction, to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or
- (2) for such party or any Credit Support Provider of such party (which will be the Affected Party) to perform any absolute or contingent obligation to make a payment or delivery which such party or Credit Support Provider has under any Credit Support Document relating to such Transaction, to receive a payment or delivery under such Credit Support Document or to comply with any other material provision of such Credit Support Document;

(ii) **Force Majeure Event.** After giving effect to any applicable provision, disruption fallback or remedy specified in, or pursuant to, the relevant Confirmation or elsewhere in this Agreement, by reason of force majeure or act of state occurring after a Transaction is entered into, on any day:—

- (1) the Office through which such party (which will be the Affected Party) makes and receives payments or deliveries with respect to such Transaction is prevented from performing any absolute or contingent obligation to make a payment or delivery in respect of such Transaction, from receiving a payment or delivery in respect of such Transaction or from complying with any other material provision of this Agreement relating to such Transaction (or would be so prevented if such payment, delivery or compliance were required on that day), or it becomes impossible or

impracticable for such Office so to perform, receive or comply (or it would be impossible or impracticable for such Office so to perform, receive or comply if such payment, delivery or compliance were required on that day); or

(2) such party or any Credit Support Provider of such party (which will be the Affected Party) is prevented from performing any absolute or contingent obligation to make a payment or delivery which such party or Credit Support Provider has under any Credit Support Document relating to such Transaction, from receiving a payment or delivery under such Credit Support Document or from complying with any other material provision of such Credit Support Document (or would be so prevented if such payment, delivery or compliance were required on that day), or it becomes impossible or impracticable for such party or Credit Support Provider so to perform, receive or comply (or it would be impossible or impracticable for such party or Credit Support Provider so to perform, receive or comply if such payment, delivery or compliance were required on that day),

so long as the force majeure or act of state is beyond the control of such Office, such party or such Credit Support Provider, as appropriate, and such Office, party or Credit Support Provider could not, after using all reasonable efforts (which will not require such party or Credit Support Provider to incur a loss, other than immaterial, incidental expenses), overcome such prevention, impossibility or impracticability;

(iii) **Tax Event.** Due to (1) any action taken by a taxing authority, or brought in a court of competent jurisdiction, after a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (2) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Settlement Date (A) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 9(h)) or (B) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 9(h)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));

(iv) **Tax Event Upon Merger.** The party (the "Burdened Party") on the next succeeding Scheduled Settlement Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 9(h)) or (2) receive a payment from which an amount has been deducted or withheld for or on account of any Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets (or any substantial part of the assets comprising the business conducted by it as of the date of this Master Agreement) to, or reorganising, reincorporating or reconstituting into or as, another entity (which will be the Affected Party) where such action does not constitute a Merger Without Assumption;

(v) **Credit Event Upon Merger.** If "Credit Event Upon Merger" is specified in the Schedule as applying to the party, a Designated Event (as defined below) occurs with respect to such party, any Credit Support Provider of such party or any applicable Specified Entity of such party (in each case, "X") and such Designated Event does not constitute a Merger Without Assumption, and the creditworthiness of X or, if applicable, the successor, surviving or transferee entity of X, after taking into account any applicable Credit Support Document, is materially weaker immediately after the occurrence of such Designated Event than that of X immediately prior to the occurrence of such Designated Event (and, in any such event, such party or its successor, surviving or transferee entity, as appropriate, will be the Affected Party). A "Designated Event" with respect to X means that:—

(1) X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets (or any substantial part of the assets comprising the business conducted by X as of the

date of this Master Agreement) to, or reorganises, reincorporates or reconstitutes into or as, another entity;

(2) any person, related group of persons or entity acquires directly or indirectly the beneficial ownership of (A) equity securities having the power to elect a majority of the board of directors (or its equivalent) of X or (B) any other ownership interest enabling it to exercise control of X; or

(3) X effects any substantial change in its capital structure by means of the issuance, incurrence or guarantee of debt or the issuance of (A) preferred stock or other securities convertible into or exchangeable for debt or preferred stock or (B) in the case of entities other than corporations, any other form of ownership interest; or

(vi) **Additional Termination Event.** If any “Additional Termination Event” is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties will be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) **Hierarchy of Events.**

(i) An event or circumstance that constitutes or gives rise to an Illegality or a Force Majeure Event will not, for so long as that is the case, also constitute or give rise to an Event of Default under Section 5(a)(i), 5(a)(ii)(1) or 5(a)(iii)(1) insofar as such event or circumstance relates to the failure to make any payment or delivery or a failure to comply with any other material provision of this Agreement or a Credit Support Document, as the case may be.

(ii) Except in circumstances contemplated by clause (i) above, if an event or circumstance which would otherwise constitute or give rise to an Illegality or a Force Majeure Event also constitutes an Event of Default or any other Termination Event, it will be treated as an Event of Default or such other Termination Event, as the case may be, and will not constitute or give rise to an Illegality or a Force Majeure Event.

(iii) If an event or circumstance which would otherwise constitute or give rise to a Force Majeure Event also constitutes an Illegality, it will be treated as an Illegality, except as described in clause (ii) above, and not a Force Majeure Event.

(d) **Deferral of Payments and Deliveries During Waiting Period.** If an Illegality or a Force Majeure Event has occurred and is continuing with respect to a Transaction, each payment or delivery which would otherwise be required to be made under that Transaction will be deferred to, and will not be due until:—

(i) the first Local Business Day or, in the case of a delivery, the first Local Delivery Day (or the first day that would have been a Local Business Day or Local Delivery Day, as appropriate, but for the occurrence of the event or circumstance constituting or giving rise to that Illegality or Force Majeure Event) following the end of any applicable Waiting Period in respect of that Illegality or Force Majeure Event, as the case may be; or

(ii) if earlier, the date on which the event or circumstance constituting or giving rise to that Illegality or Force Majeure Event ceases to exist or, if such date is not a Local Business Day or, in the case of a delivery, a Local Delivery Day, the first following day that is a Local Business Day or Local Delivery Day, as appropriate.

(e) **Inability of Head or Home Office to Perform Obligations of Branch.** If (i) an Illegality or a Force Majeure Event occurs under Section 5(b)(i)(1) or 5(b)(ii)(1) and the relevant Office is not the Affected Party’s head or home office, (ii) Section 10(a) applies, (iii) the other party seeks performance of the relevant obligation or

compliance with the relevant provision by the Affected Party's head or home office and (iv) the Affected Party's head or home office fails so to perform or comply due to the occurrence of an event or circumstance which would, if that head or home office were the Office through which the Affected Party makes and receives payments and deliveries with respect to the relevant Transaction, constitute or give rise to an Illegality or a Force Majeure Event, and such failure would otherwise constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1) with respect to such party, then, for so long as the relevant event or circumstance continues to exist with respect to both the Office referred to in Section 5(b)(i)(1) or 5(b)(ii)(1), as the case may be, and the Affected Party's head or home office, such failure will not constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1).

## **6. Early Termination; Close-Out Netting**

(a) **Right to Terminate Following Event of Default.** If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, the other party (the "Non-defaulting Party") may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early Termination" is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

### **(b) Right to Terminate Following Termination Event.**

(i) **Notice.** If a Termination Event other than a Force Majeure Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction, and will also give the other party such other information about that Termination Event as the other party may reasonably require. If a Force Majeure Event occurs, each party will, promptly upon becoming aware of it, use all reasonable efforts to notify the other party, specifying the nature of that Force Majeure Event, and will also give the other party such other information about that Force Majeure Event as the other party may reasonably require.

(ii) **Transfer to Avoid Termination Event.** If a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, other than immaterial, incidental expenses) to transfer within 20 days after it gives notice under Section 6(b)(i) all its rights and obligations under this Agreement in respect of the Affected Transactions to another of its Offices or Affiliates so that such Termination Event ceases to exist.

If the Affected Party is not able to make such a transfer it will give notice to the other party to that effect within such 20 day period, whereupon the other party may effect such a transfer within 30 days after the notice is given under Section 6(b)(i).

Any such transfer by a party under this Section 6(b)(ii) will be subject to and conditional upon the prior written consent of the other party, which consent will not be withheld if such other party's policies in effect at such time would permit it to enter into transactions with the transferee on the terms proposed.

(iii) **Two Affected Parties.** If a Tax Event occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice of such occurrence is given under Section 6(b)(i) to avoid that Termination Event.

(iv) ***Right to Terminate.***

(1) If:—

(A) a transfer under Section 6(b)(ii) or an agreement under Section 6(b)(iii), as the case may be, has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(B) a Credit Event Upon Merger or an Additional Termination Event occurs, or a Tax Event Upon Merger occurs and the Burdened Party is not the Affected Party,

the Burdened Party in the case of a Tax Event Upon Merger, any Affected Party in the case of a Tax Event or an Additional Termination Event if there are two Affected Parties, or the Non-affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, if the relevant Termination Event is then continuing, by not more than 20 days notice to the other party, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(2) If at any time an Illegality or a Force Majeure Event has occurred and is then continuing and any applicable Waiting Period has expired:—

(A) Subject to clause (B) below, either party may, by not more than 20 days notice to the other party, designate (I) a day not earlier than the day on which such notice becomes effective as an Early Termination Date in respect of all Affected Transactions or (II) by specifying in that notice the Affected Transactions in respect of which it is designating the relevant day as an Early Termination Date, a day not earlier than two Local Business Days following the day on which such notice becomes effective as an Early Termination Date in respect of less than all Affected Transactions. Upon receipt of a notice designating an Early Termination Date in respect of less than all Affected Transactions, the other party may, by notice to the designating party, if such notice is effective on or before the day so designated, designate that same day as an Early Termination Date in respect of any or all other Affected Transactions.

(B) An Affected Party (if the Illegality or Force Majeure Event relates to performance by such party or any Credit Support Provider of such party of an obligation to make any payment or delivery under, or to compliance with any other material provision of, the relevant Credit Support Document) will only have the right to designate an Early Termination Date under Section 6(b)(iv)(2)(A) as a result of an Illegality under Section 5(b)(i)(2) or a Force Majeure Event under Section 5(b)(ii)(2) following the prior designation by the other party of an Early Termination Date, pursuant to Section 6(b)(iv)(2)(A), in respect of less than all Affected Transactions.

(c) ***Effect of Designation.***

(i) If notice designating an Early Termination Date is given under Section 6(a) or 6(b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 9(h)(i) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date will be determined pursuant to Sections 6(c) and 9(h)(ii).

(d) **Calculations; Payment Date.**

(i) **Statement.** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including any quotations, market data or information from internal sources used in making such calculations), (2) specifying (except where there are two Affected Parties) any Early Termination Amount payable and (3) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation or market data obtained in determining a Close-out Amount, the records of the party obtaining such quotation or market data will be conclusive evidence of the existence and accuracy of such quotation or market data.

(ii) **Payment Date.** An Early Termination Amount due in respect of any Early Termination Date will, together with any amount of interest payable pursuant to Section 9(h)(ii)(2), be payable (1) on the day on which notice of the amount payable is effective in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default and (2) on the day which is two Local Business Days after the day on which notice of the amount payable is effective (or, if there are two Affected Parties, after the day on which the statement provided pursuant to clause (i) above by the second party to provide such a statement is effective) in the case of an Early Termination Date which is designated as a result of a Termination Event.

(e) **Payments on Early Termination.** If an Early Termination Date occurs, the amount, if any, payable in respect of that Early Termination Date (the "Early Termination Amount") will be determined pursuant to this Section 6(e) and will be subject to Section 6(f).

(i) **Events of Default.** If the Early Termination Date results from an Event of Default, the Early Termination Amount will be an amount equal to (1) the sum of (A) the Termination Currency Equivalent of the Close-out Amount or Close-out Amounts (whether positive or negative) determined by the Non-defaulting Party for each Terminated Transaction or group of Terminated Transactions, as the case may be, and (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (2) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If the Early Termination Amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of the Early Termination Amount to the Defaulting Party.

(ii) **Termination Events.** If the Early Termination Date results from a Termination Event:—

(1) **One Affected Party.** Subject to clause (3) below, if there is one Affected Party, the Early Termination Amount will be determined in accordance with Section 6(e)(i), except that references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and to the Non-affected Party, respectively.

(2) **Two Affected Parties.** Subject to clause (3) below, if there are two Affected Parties, each party will determine an amount equal to the Termination Currency Equivalent of the sum of the Close-out Amount or Close-out Amounts (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions, as the case may be, and the Early Termination Amount will be an amount equal to (A) the sum of (I) one-half of the difference between the higher amount so determined (by party "X") and the lower amount so determined (by party "Y") and (II) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to Y. If the Early Termination Amount is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of the Early Termination Amount to Y.

(3) *Mid-Market Events.* If that Termination Event is an Illegality or a Force Majeure Event, then the Early Termination Amount will be determined in accordance with clause (1) or (2) above, as appropriate, except that, for the purpose of determining a Close-out Amount or Close-out Amounts, the Determining Party will:—

(A) if obtaining quotations from one or more third parties (or from any of the Determining Party's Affiliates), ask each third party or Affiliate (I) not to take account of the current creditworthiness of the Determining Party or any existing Credit Support Document and (II) to provide mid-market quotations; and

(B) in any other case, use mid-market values without regard to the creditworthiness of the Determining Party.

(iii) *Adjustment for Bankruptcy.* In circumstances where an Early Termination Date occurs because Automatic Early Termination applies in respect of a party, the Early Termination Amount will be subject to such adjustments as are appropriate and permitted by applicable law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) *Adjustment for Illegality or Force Majeure Event.* The failure by a party or any Credit Support Provider of such party to pay, when due, any Early Termination Amount will not constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1) if such failure is due to the occurrence of an event or circumstance which would, if it occurred with respect to payment, delivery or compliance related to a Transaction, constitute or give rise to an Illegality or a Force Majeure Event. Such amount will (1) accrue interest and otherwise be treated as an Unpaid Amount owing to the other party if subsequently an Early Termination Date results from an Event of Default, a Credit Event Upon Merger or an Additional Termination Event in respect of which all outstanding Transactions are Affected Transactions and (2) otherwise accrue interest in accordance with Section 9(h)(ii)(2).

(v) *Pre-Estimate.* The parties agree that an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks, and, except as otherwise provided in this Agreement, neither party will be entitled to recover any additional damages as a consequence of the termination of the Terminated Transactions.

(f) *Set-Off.* Any Early Termination Amount payable to one party (the "Payee") by the other party (the "Payer"), in circumstances where there is a Defaulting Party or where there is one Affected Party in the case where either a Credit Event Upon Merger has occurred or any other Termination Event in respect of which all outstanding Transactions are Affected Transactions has occurred, will, at the option of the Non-defaulting Party or the Non-affected Party, as the case may be ("X") (and without prior notice to the Defaulting Party or the Affected Party, as the case may be), be reduced by its set-off against any other amounts ("Other Amounts") payable by the Payee to the Payer (whether or not arising under this Agreement, matured or contingent and irrespective of the currency, place of payment or place of booking of the obligation). To the extent that any Other Amounts are so set off, those Other Amounts will be discharged promptly and in all respects. X will give notice to the other party of any set-off effected under this Section 6(f).

For this purpose, either the Early Termination Amount or the Other Amounts (or the relevant portion of such amounts) may be converted by X into the currency in which the other is denominated at the rate of exchange at which such party would be able, in good faith and using commercially reasonable procedures, to purchase the relevant amount of such currency.

If an obligation is unascertained, X may in good faith estimate that obligation and set off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained.

Nothing in this Section 6(f) will be effective to create a charge or other security interest. This Section 6(f) will be without prejudice and in addition to any right of set-off, offset, combination of accounts, lien, right of retention or withholding or similar right or requirement to which any party is at any time otherwise entitled or subject (whether by operation of law, contract or otherwise).

## **7. Transfer**

Subject to Section 6(b)(ii) and to the extent permitted by applicable law, neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:—

- (a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and
- (b) a party may make such a transfer of all or any part of its interest in any Early Termination Amount payable to it by a Defaulting Party, together with any amounts payable on or with respect to that interest and any other rights associated with that interest pursuant to Sections 8, 9(h) and 11.

Any purported transfer that is not in compliance with this Section 7 will be void.

## **8. Contractual Currency**

(a) **Payment in the Contractual Currency.** Each payment under this Agreement will be made in the relevant currency specified in this Agreement for that payment (the “Contractual Currency”). To the extent permitted by applicable law, any obligation to make payments under this Agreement in the Contractual Currency will not be discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in good faith and using commercially reasonable procedures in converting the currency so tendered into the Contractual Currency, of the full amount in the Contractual Currency of all amounts payable in respect of this Agreement. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency payable in respect of this Agreement, the party required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Contractual Currency so received exceeds the amount in the Contractual Currency payable in respect of this Agreement, the party receiving the payment will refund promptly the amount of such excess.

(b) **Judgments.** To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in clause (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other party the amount of any shortfall of the Contractual Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purpose of such judgment or order and the rate of exchange at which such party is able, acting in good faith and using



commercially reasonable procedures in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party.

(c) **Separate Indemnities.** To the extent permitted by applicable law, the indemnities in this Section 8 constitute separate and independent obligations from the other obligations in this Agreement, will be enforceable as separate and independent causes of action, will apply notwithstanding any indulgence granted by the party to which any payment is owed and will not be affected by judgment being obtained or claim or proof being made for any other sums payable in respect of this Agreement.

(d) **Evidence of Loss.** For the purpose of this Section 8, it will be sufficient for a party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

## 9. Miscellaneous

(a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter. Each of the parties acknowledges that in entering into this Agreement it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to in this Agreement) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Agreement will limit or exclude any liability of a party for fraud.

(b) **Amendments.** An amendment, modification or waiver in respect of this Agreement will only be effective if in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system.

(c) **Survival of Obligations.** Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.

(d) **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

### (c) Counterparts and Confirmations.

(i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission and by electronic messaging system), each of which will be deemed an original.

(ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation will be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes, by an exchange of electronic messages on an electronic messaging system or by an exchange of e-mails, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex, electronic message or e-mail constitutes a Confirmation.

(f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

(g) **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

(h) ***Interest and Compensation.***

(i) ***Prior to Early Termination.*** Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction:—

(1) ***Interest on Defaulted Payments.*** If a party defaults in the performance of any payment obligation, it will, to the extent permitted by applicable law and subject to Section 6(c), pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as the overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment (and excluding any period in respect of which interest or compensation in respect of the overdue amount is due pursuant to clause (3)(B) or (C) below), at the Default Rate.

(2) ***Compensation for Defaulted Deliveries.*** If a party defaults in the performance of any obligation required to be settled by delivery, it will on demand (A) compensate the other party to the extent provided for in the relevant Confirmation or elsewhere in this Agreement and (B) unless otherwise provided in the relevant Confirmation or elsewhere in this Agreement, to the extent permitted by applicable law and subject to Section 6(c), pay to the other party interest (before as well as after judgment) on an amount equal to the fair market value of that which was required to be delivered in the same currency as that amount, for the period from (and including) the originally scheduled date for delivery to (but excluding) the date of actual delivery (and excluding any period in respect of which interest or compensation in respect of that amount is due pursuant to clause (4) below), at the Default Rate. The fair market value of any obligation referred to above will be determined as of the originally scheduled date for delivery, in good faith and using commercially reasonable procedures, by the party that was entitled to take delivery.

(3) ***Interest on Deferred Payments.*** If:—

(A) a party does not pay any amount that, but for Section 2(a)(iii), would have been payable, it will, to the extent permitted by applicable law and subject to Section 6(c) and clauses (B) and (C) below, pay interest (before as well as after judgment) on that amount to the other party on demand (after such amount becomes payable) in the same currency as that amount, for the period from (and including) the date the amount would, but for Section 2(a)(iii), have been payable to (but excluding) the date the amount actually becomes payable, at the Applicable Deferral Rate;

(B) a payment is deferred pursuant to Section 5(d), the party which would otherwise have been required to make that payment will, to the extent permitted by applicable law, subject to Section 6(c) and for so long as no Event of Default or Potential Event of Default with respect to that party has occurred and is continuing, pay interest (before as well as after judgment) on the amount of the deferred payment to the other party on demand (after such amount becomes payable) in the same currency as the deferred payment, for the period from (and including) the date the amount would, but for Section 5(d), have been payable to (but excluding) the earlier of the date the payment is no longer deferred pursuant to Section 5(d) and the date during the deferral period upon which an Event of Default or Potential Event of Default with respect to that party occurs, at the Applicable Deferral Rate; or

(C) a party fails to make any payment due to the occurrence of an Illegality or a Force Majeure Event (after giving effect to any deferral period contemplated by clause (B) above), it will, to the extent permitted by applicable law, subject to Section 6(c) and for so long as the event or circumstance giving rise to that Illegality or Force Majeure Event

continues and no Event of Default or Potential Event of Default with respect to that party has occurred and is continuing, pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as the overdue amount, for the period from (and including) the date the party fails to make the payment due to the occurrence of the relevant Illegality or Force Majeure Event (or, if later, the date the payment is no longer deferred pursuant to Section 5(d)) to (but excluding) the earlier of the date the event or circumstance giving rise to that Illegality or Force Majeure Event ceases to exist and the date during the period upon which an Event of Default or Potential Event of Default with respect to that party occurs (and excluding any period in respect of which interest or compensation in respect of the overdue amount is due pursuant to clause (B) above), at the Applicable Deferral Rate.

(4) *Compensation for Deferred Deliveries.* If:—

(A) a party does not perform any obligation that, but for Section 2(a)(iii), would have been required to be settled by delivery;

(B) a delivery is deferred pursuant to Section 5(d); or

(C) a party fails to make a delivery due to the occurrence of an Illegality or a Force Majeure Event at a time when any applicable Waiting Period has expired,

the party required (or that would otherwise have been required) to make the delivery will, to the extent permitted by applicable law and subject to Section 6(c), compensate and pay interest to the other party on demand (after, in the case of clauses (A) and (B) above, such delivery is required) if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

(ii) *Early Termination.* Upon the occurrence or effective designation of an Early Termination Date in respect of a Transaction:—

(1) *Unpaid Amounts.* For the purpose of determining an Unpaid Amount in respect of the relevant Transaction, and to the extent permitted by applicable law, interest will accrue on the amount of any payment obligation or the amount equal to the fair market value of any obligation required to be settled by delivery included in such determination in the same currency as that amount, for the period from (and including) the date the relevant obligation was (or would have been but for Section 2(a)(iii) or 5(d)) required to have been performed to (but excluding) the relevant Early Termination Date, at the Applicable Close-out Rate.

(2) *Interest on Early Termination Amounts.* If an Early Termination Amount is due in respect of such Early Termination Date, that amount will, to the extent permitted by applicable law, be paid together with interest (before as well as after judgment) on that amount in the Termination Currency, for the period from (and including) such Early Termination Date to (but excluding) the date the amount is paid, at the Applicable Close-out Rate.

(iii) *Interest Calculation.* Any interest pursuant to this Section 9(h) will be calculated on the basis of daily compounding and the actual number of days elapsed.

## 10. Offices; Multibranch Parties

(a) If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to and agrees with the other party that, notwithstanding the place of booking or its jurisdiction of incorporation or organisation, its obligations are the same in terms of recourse against it as if it had entered into the Transaction through its head or home office, except that a party will not have recourse to the head or home office of the other party in respect of any payment or delivery deferred pursuant to Section 5(d) for so long as the payment or delivery is so deferred. This representation and agreement will be deemed to be repeated by each party on each date on which the parties enter into a Transaction.

(b) If a party is specified as a Multibranch Party in the Schedule, such party may, subject to clause (c) below, enter into a Transaction through, book a Transaction in and make and receive payments and deliveries with respect to a Transaction through any Office listed in respect of that party in the Schedule (but not any other Office unless otherwise agreed by the parties in writing).

(c) The Office through which a party enters into a Transaction will be the Office specified for that party in the relevant Confirmation or as otherwise agreed by the parties in writing, and, if an Office for that party is not specified in the Confirmation or otherwise agreed by the parties in writing, its head or home office. Unless the parties otherwise agree in writing, the Office through which a party enters into a Transaction will also be the Office in which it books the Transaction and the Office through which it makes and receives payments and deliveries with respect to the Transaction. Subject to Section 6(b)(ii), neither party may change the Office in which it books the Transaction or the Office through which it makes and receives payments or deliveries with respect to a Transaction without the prior written consent of the other party.

## 11. Expenses

A Defaulting Party will on demand indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees, execution fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

## 12. Notices

(a) **Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner described below (except that a notice or other communication under Section 5 or 6 may not be given by electronic messaging system or e-mail) to the address or number or in accordance with the electronic messaging system or e-mail details provided (see the Schedule) and will be deemed effective as indicated:—

- (i) if in writing and delivered in person or by courier, on the date it is delivered;
- (ii) if sent by telex, on the date the recipient's answerback is received;
- (iii) if sent by facsimile transmission, on the date it is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
- (iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date it is delivered or its delivery is attempted;
- (v) if sent by electronic messaging system, on the date it is received; or

- (vi) if sent by e-mail, on the date it is delivered,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication will be deemed given and effective on the first following day that is a Local Business Day.

- (b) **Change of Details.** Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system or e-mail details at which notices or other communications are to be given to it.

### 13. Governing Law and Jurisdiction

- (a) **Governing Law.** This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

- (b) **Jurisdiction.** With respect to any suit, action or proceedings relating to any dispute arising out of or in connection with this Agreement (“Proceedings”), each party irrevocably:—

- (i) submits:—

- (1) if this Agreement is expressed to be governed by English law, to (A) the non-exclusive jurisdiction of the English courts if the Proceedings do not involve a Convention Court and (B) the exclusive jurisdiction of the English courts if the Proceedings do involve a Convention Court; or

- (2) if this Agreement is expressed to be governed by the laws of the State of New York, to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City;

- (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party; and

- (iii) agrees, to the extent permitted by applicable law, that the bringing of Proceedings in any one or more jurisdictions will not preclude the bringing of Proceedings in any other jurisdiction.

- (c) **Service of Process.** Each party irrevocably appoints the Process Agent, if any, specified opposite its name in the Schedule to receive, for it and on its behalf, service of process in any Proceedings. If for any reason any party’s Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Section 12(a)(i), 12(a)(iii) or 12(a)(iv). Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by applicable law.

- (d) **Waiver of Immunities.** Each party irrevocably waives, to the extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction or order for specific performance or recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

## 14. Definitions

As used in this Agreement:—

**“Additional Representation”** has the meaning specified in Section 3.

**“Additional Termination Event”** has the meaning specified in Section 5(b).

**“Affected Party”** has the meaning specified in Section 5(b).

**“Affected Transactions”** means (a) with respect to any Termination Event consisting of an Illegality, Force Majeure Event, Tax Event or Tax Event Upon Merger, all Transactions affected by the occurrence of such Termination Event (which, in the case of an Illegality under Section 5(b)(i)(2) or a Force Majeure Event under Section 5(b)(ii)(2), means all Transactions unless the relevant Credit Support Document references only certain Transactions, in which case those Transactions and, if the relevant Credit Support Document constitutes a Confirmation for a Transaction, that Transaction) and (b) with respect to any other Termination Event, all Transactions.

**“Affiliate”** means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, “control” of any entity or person means ownership of a majority of the voting power of the entity or person.

**“Agreement”** has the meaning specified in Section 1(c).

**“Applicable Close-out Rate”** means:—

(a) in respect of the determination of an Unpaid Amount:—

(i) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;

(ii) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate;

(iii) in respect of obligations deferred pursuant to Section 5(d), if there is no Defaulting Party and for so long as the deferral period continues, the Applicable Deferral Rate; and

(iv) in all other cases following the occurrence of a Termination Event (except where interest accrues pursuant to clause (iii) above), the Applicable Deferral Rate; and

(b) in respect of an Early Termination Amount:—

(i) for the period from (and including) the relevant Early Termination Date to (but excluding) the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable:—

(1) if the Early Termination Amount is payable by a Defaulting Party, the Default Rate;

(2) if the Early Termination Amount is payable by a Non-defaulting Party, the Non-default Rate; and

(3) in all other cases, the Applicable Deferral Rate; and

(ii) for the period from (and including) the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable to (but excluding) the date of actual payment:—

(1) if a party fails to pay the Early Termination Amount due to the occurrence of an event or circumstance which would, if it occurred with respect to a payment or delivery under a Transaction, constitute or give rise to an Illegality or a Force Majeure Event, and for so long as the Early Termination Amount remains unpaid due to the continuing existence of such event or circumstance, the Applicable Deferral Rate;

(2) if the Early Termination Amount is payable by a Defaulting Party (but excluding any period in respect of which clause (1) above applies), the Default Rate;

(3) if the Early Termination Amount is payable by a Non-defaulting Party (but excluding any period in respect of which clause (1) above applies), the Non-default Rate; and

(4) in all other cases, the Termination Rate.

**“Applicable Deferral Rate”** means:—

(a) for the purpose of Section 9(h)(i)(3)(A), the rate certified by the relevant payer to be a rate offered to the payer by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the payer for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market;

(b) for purposes of Section 9(h)(i)(3)(B) and clause (a)(iii) of the definition of Applicable Close-out Rate, the rate certified by the relevant payer to be a rate offered to prime banks by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the payer after consultation with the other party, if practicable, for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market; and

(c) for purposes of Section 9(h)(i)(3)(C) and clauses (a)(iv), (b)(i)(3) and (b)(ii)(1) of the definition of Applicable Close-out Rate, a rate equal to the arithmetic mean of the rate determined pursuant to clause (a) above and a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount.

**“Automatic Early Termination”** has the meaning specified in Section 6(a).

**“Burdened Party”** has the meaning specified in Section 5(b)(iv).

**“Change in Tax Law”** means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs after the parties enter into the relevant Transaction.

**“Close-out Amount”** means, with respect to each Terminated Transaction or each group of Terminated Transactions and a Determining Party, the amount of the losses or costs of the Determining Party that are or would be incurred under then prevailing circumstances (expressed as a positive number) or gains of the Determining Party that are or would be realised under then prevailing circumstances (expressed as a negative number) in replacing, or in providing for the Determining Party the economic equivalent of, (a) the material terms of that Terminated Transaction or group of Terminated Transactions, including the payments and deliveries by the parties under Section 2(a)(i) in respect of that Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date (assuming satisfaction of the conditions precedent in

Section 2(a)(iii)) and (b) the option rights of the parties in respect of that Terminated Transaction or group of Terminated Transactions.

Any Close-out Amount will be determined by the Determining Party (or its agent), which will act in good faith and use commercially reasonable procedures in order to produce a commercially reasonable result. The Determining Party may determine a Close-out Amount for any group of Terminated Transactions or any individual Terminated Transaction but, in the aggregate, for not less than all Terminated Transactions. Each Close-out Amount will be determined as of the Early Termination Date or, if that would not be commercially reasonable, as of the date or dates following the Early Termination Date as would be commercially reasonable.

Unpaid Amounts in respect of a Terminated Transaction or group of Terminated Transactions and legal fees and out-of-pocket expenses referred to in Section 11 are to be excluded in all determinations of Close-out Amounts.

In determining a Close-out Amount, the Determining Party may consider any relevant information, including, without limitation, one or more of the following types of information:—

- (i) quotations (either firm or indicative) for replacement transactions supplied by one or more third parties that may take into account the creditworthiness of the Determining Party at the time the quotation is provided and the terms of any relevant documentation, including credit support documentation, between the Determining Party and the third party providing the quotation;
- (ii) information consisting of relevant market data in the relevant market supplied by one or more third parties including, without limitation, relevant rates, prices, yields, yield curves, volatilities, spreads, correlations or other relevant market data in the relevant market; or
- (iii) information of the types described in clause (i) or (ii) above from internal sources (including any of the Determining Party's Affiliates) if that information is of the same type used by the Determining Party in the regular course of its business for the valuation of similar transactions.

The Determining Party will consider, taking into account the standards and procedures described in this definition, quotations pursuant to clause (i) above or relevant market data pursuant to clause (ii) above unless the Determining Party reasonably believes in good faith that such quotations or relevant market data are not readily available or would produce a result that would not satisfy those standards. When considering information described in clause (i), (ii) or (iii) above, the Determining Party may include costs of funding, to the extent costs of funding are not and would not be a component of the other information being utilised. Third parties supplying quotations pursuant to clause (i) above or market data pursuant to clause (ii) above may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors, brokers and other sources of market information.

Without duplication of amounts calculated based on information described in clause (i), (ii) or (iii) above, or other relevant information, and when it is commercially reasonable to do so, the Determining Party may in addition consider in calculating a Close-out Amount any loss or cost incurred in connection with its terminating, liquidating or re-establishing any hedge related to a Terminated Transaction or group of Terminated Transactions (or any gain resulting from any of them).

Commercially reasonable procedures used in determining a Close-out Amount may include the following:—

- (1) application to relevant market data from third parties pursuant to clause (ii) above or information from internal sources pursuant to clause (iii) above of pricing or other valuation models that are, at the time of the determination of the Close-out Amount, used by the Determining Party in the regular course of its business in pricing or valuing transactions between the Determining Party and unrelated third parties that are similar to the Terminated Transaction or group of Terminated Transactions; and



(2) application of different valuation methods to Terminated Transactions or groups of Terminated Transactions depending on the type, complexity, size or number of the Terminated Transactions or group of Terminated Transactions.

**“Confirmation”** has the meaning specified in the preamble.

**“consent”** includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

**“Contractual Currency”** has the meaning specified in Section 8(a).

**“Convention Court”** means any court which is bound to apply to the Proceedings either Article 17 of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters or Article 17 of the 1988 Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

**“Credit Event Upon Merger”** has the meaning specified in Section 5(b).

**“Credit Support Document”** means any agreement or instrument that is specified as such in this Agreement.

**“Credit Support Provider”** has the meaning specified in the Schedule.

**“Cross-Default”** means the event specified in Section 5(a)(vi).

**“Default Rate”** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

**“Defaulting Party”** has the meaning specified in Section 6(a).

**“Designated Event”** has the meaning specified in Section 5(b)(v).

**“Determining Party”** means the party determining a Close-out Amount.

**“Early Termination Amount”** has the meaning specified in Section 6(e).

**“Early Termination Date”** means the date determined in accordance with Section 6(a) or 6(b)(iv).

**“electronic messages”** does not include e-mails but does include documents expressed in markup languages, and **“electronic messaging system”** will be construed accordingly.

**“English law”** means the law of England and Wales, and **“English”** will be construed accordingly.

**“Event of Default”** has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

**“Force Majeure Event”** has the meaning specified in Section 5(b).

**“General Business Day”** means a day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits).

**“Illegality”** has the meaning specified in Section 5(b).

**“Indemnifiable Tax”** means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organised, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under, or enforced, this Agreement or a Credit Support Document).

**“law”** includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority), and **“unlawful”** will be construed accordingly.

**“Local Business Day”** means (a) in relation to any obligation under Section 2(a)(i), a General Business Day in the place or places specified in the relevant Confirmation and a day on which a relevant settlement system is open or operating as specified in the relevant Confirmation or, if a place or a settlement system is not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) for the purpose of determining when a Waiting Period expires, a General Business Day in the place where the event or circumstance that constitutes or gives rise to the Illegality or Force Majeure Event, as the case may be, occurs, (c) in relation to any other payment, a General Business Day in the place where the relevant account is located and, if different, in the principal financial centre, if any, of the currency of such payment and, if that currency does not have a single recognised principal financial centre, a day on which the settlement system necessary to accomplish such payment is open, (d) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), a General Business Day (or a day that would have been a General Business Day but for the occurrence of an event or circumstance which would, if it occurred with respect to payment, delivery or compliance related to a Transaction, constitute or give rise to an Illegality or a Force Majeure Event) in the place specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (e) in relation to Section 5(a)(v)(2), a General Business Day in the relevant locations for performance with respect to such Specified Transaction.

**“Local Delivery Day”** means, for purposes of Sections 5(a)(i) and 5(d), a day on which settlement systems necessary to accomplish the relevant delivery are generally open for business so that the delivery is capable of being accomplished in accordance with customary market practice, in the place specified in the relevant Confirmation or, if not so specified, in a location as determined in accordance with customary market practice for the relevant delivery.

**“Master Agreement”** has the meaning specified in the preamble.

**“Merger Without Assumption”** means the event specified in Section 5(a)(viii).

**“Multiple Transaction Payment Netting”** has the meaning specified in Section 2(c).

**“Non-affected Party”** means, so long as there is only one Affected Party, the other party.

**“Non-default Rate”** means the rate certified by the Non-defaulting Party to be a rate offered to the Non-defaulting Party by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the Non-defaulting Party for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market.

**“Non-defaulting Party”** has the meaning specified in Section 6(a).

**“Office”** means a branch or office of a party, which may be such party’s head or home office.

**“Other Amounts”** has the meaning specified in Section 6(f).

**“Payee”** has the meaning specified in Section 6(f).

**“Payer”** has the meaning specified in Section 6(f).

**“Potential Event of Default”** means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

**“Proceedings”** has the meaning specified in Section 13(b).

**“Process Agent”** has the meaning specified in the Schedule.

**“rate of exchange”** includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

**“Relevant Jurisdiction”** means, with respect to a party, the jurisdictions (a) in which the party is incorporated, organised, managed and controlled or considered to have its seat, (b) where an Office through which the party is acting for purposes of this Agreement is located, (c) in which the party executes this Agreement and (d) in relation to any payment, from or through which such payment is made.

**“Schedule”** has the meaning specified in the preamble.

**“Scheduled Settlement Date”** means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

**“Specified Entity”** has the meaning specified in the Schedule.

**“Specified Indebtedness”** means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

**“Specified Transaction”** means, subject to the Schedule, (a) any transaction (including an agreement with respect to any such transaction) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is not a Transaction under this Agreement but (i) which is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, weather index transaction or forward purchase or sale of a security, commodity or other financial instrument or interest (including any option with respect to any of these transactions) or (ii) which is a type of transaction that is similar to any transaction referred to in clause (i) above that is currently, or in the future becomes, recurrently entered into in the financial markets (including terms and conditions incorporated by reference in such agreement) and which is a forward, swap, future, option or other derivative on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic indices or measures of economic risk or value, or other benchmarks against which payments or deliveries are to be made, (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

**“Stamp Tax”** means any stamp, registration, documentation or similar tax.

**“Stamp Tax Jurisdiction”** has the meaning specified in Section 4(e).

**“Tax”** means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

**“Tax Event”** has the meaning specified in Section 5(b).

**“Tax Event Upon Merger”** has the meaning specified in Section 5(b).

**“Terminated Transactions”** means, with respect to any Early Termination Date, (a) if resulting from an Illegality or a Force Majeure Event, all Affected Transactions specified in the notice given pursuant to Section 6(b)(iv), (b) if resulting from any other Termination Event, all Affected Transactions and (c) if resulting from an Event of Default, all Transactions in effect either immediately before the effectiveness of the notice designating that Early Termination Date or, if Automatic Early Termination applies, immediately before that Early Termination Date.

**“Termination Currency”** means (a) if a Termination Currency is specified in the Schedule and that currency is freely available, that currency, and (b) otherwise, euro if this Agreement is expressed to be governed by English law or United States Dollars if this Agreement is expressed to be governed by the laws of the State of New York.

**“Termination Currency Equivalent”** means, in respect of any amount denominated in the Termination Currency, such Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency (the “Other Currency”), the amount in the Termination Currency determined by the party making the relevant determination as being required to purchase such amount of such Other Currency as at the relevant Early Termination Date, or, if the relevant Close-out Amount is determined as of a later date, that later date, with the Termination Currency at the rate equal to the spot exchange rate of the foreign exchange agent (selected as provided below) for the purchase of such Other Currency with the Termination Currency at or about 11:00 a.m. (in the city in which such foreign exchange agent is located) on such date as would be customary for the determination of such a rate for the purchase of such Other Currency for value on the relevant Early Termination Date or that later date. The foreign exchange agent will, if only one party is obliged to make a determination under Section 6(e), be selected in good faith by that party and otherwise will be agreed by the parties.

**“Termination Event”** means an Illegality, a Force Majeure Event, a Tax Event, a Tax Event Upon Merger or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

**“Termination Rate”** means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

**“Threshold Amount”** means the amount, if any, specified as such in the Schedule.

**“Transaction”** has the meaning specified in the preamble.

**“Unpaid Amounts”** owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii) or due but for Section 5(d)) to such party under Section 2(a)(i) or 2(d)(i)(4) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date, (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii) or 5(d)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market value of that which was (or would have been) required to be delivered and (c) if the Early Termination Date results from an Event of Default, a Credit Event Upon Merger or an Additional Termination Event in respect of which all outstanding Transactions are Affected Transactions, any Early Termination Amount due prior to such Early Termination Date and which remains unpaid as of such Early Termination Date, in each case together with any amount of interest accrued or other

compensation in respect of that obligation or deferred obligation, as the case may be, pursuant to Section 9(h)(ii)(1) or (2), as appropriate. The fair market value of any obligation referred to in clause (b) above will be determined as of the originally scheduled date for delivery, in good faith and using commercially reasonable procedures, by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it will be the average of the Termination Currency Equivalents of the fair market values so determined by both parties.

**“Waiting Period”** means:—

(a) in respect of an event or circumstance under Section 5(b)(i), other than in the case of Section 5(b)(i)(2) where the relevant payment, delivery or compliance is actually required on the relevant day (in which case no Waiting Period will apply), a period of three Local Business Days (or days that would have been Local Business Days but for the occurrence of that event or circumstance) following the occurrence of that event or circumstance; and

(b) in respect of an event or circumstance under Section 5(b)(ii), other than in the case of Section 5(b)(ii)(2) where the relevant payment, delivery or compliance is actually required on the relevant day (in which case no Waiting Period will apply), a period of eight Local Business Days (or days that would have been Local Business Days but for the occurrence of that event or circumstance) following the occurrence of that event or circumstance.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

BP Energy Company

COPL America Inc

.....  
(Name of Party)

.....  
(Name of Party)

DocuSigned by:  
*Joaquin Anderson*



By: .....  
78F74685ADG74F4.....

By: .....

Name: Joaquin Anderson

Name: Arthur Millholland

Title: Attorney In Fact

Title: President

Date: 15 March 2021

Date:

# ISDA

## SCHEDULE to the 2002 Master Agreement

dated as of March 15, 2021

between

**BP Energy Company (“Party A”),**  
a corporation incorporated under the State laws of Delaware

and

**COPL America Inc. (“Party B”),**  
a corporation incorporated under the State laws of Delaware

### Part 1 - Termination Provisions

In this Agreement:

(a) **“Specified Entity”** means:

in relation to Party A and in relation to Party B, for the purpose of:

Section 5(a)(v):	Not Applicable
Section 5(a)(vi):	Not Applicable
Section 5(a)(vii):	Not Applicable
Section 5(b)(v):	Not Applicable

(b) **“Specified Transaction”** has the meaning given to it in Section 14 of the Agreement.

(c) The **“Cross Default”** provisions of Section 5(a)(vi) will apply to Party A and will apply to Party B, as amended such that the phrase “or becoming capable at such time of being declared” is deleted from the seventh line of Section 5(a)(vi)(1), and adding the following language to the end thereof: “provided, however, that, notwithstanding the foregoing, an Event of Default shall not occur under either (1) or (2) above if (I) the default, or other similar event or condition referred to in (1) or the failure to pay referred to in (2) is a failure to pay or deliver caused by an error or omission of an administrative or operational nature, and (II) funds or the asset to be delivered were available to such party to enable it to make the relevant payment or delivery when due and (III) such payment or delivery is made within three Local Business Days following such failure to pay;”

- (i) “Specified Indebtedness” has the meaning specified in Section 14 except that for Party A it excludes an obligation for borrowed money where the creditor’s recourse on the obligation is limited to assets for which the money was borrowed.
- (ii) “Threshold Amount” means with respect to Party A, 3% of the Shareholders’ Equity of the Credit Support Provider of Party A, and with respect to Party B, \$500,000.

For the purposes of the definition of Threshold Amount, “Shareholders’ Equity” means, at any time, the amount represented in the most recent quarterly consolidated balance sheet.

- (d) The “**Credit Event Upon Merger**” provisions of Section 5(b)(v) will apply to Party A and will apply to Party B; provided that, as to Party B, any event permitted under the Credit Agreement or that is otherwise consented to by the Lenders under the Credit Agreement shall not constitute a Credit Event Upon Merger hereunder.
- (e) The “**Automatic Early Termination**” provision of Section 6(a) will not apply to Party A and will not apply to Party B.
- (f) “**Termination Currency**” means United States Dollars.
- (g) **Additional Termination Event** will apply. The occurrence of any of the following events will constitute an Additional Termination Event with Party B as the sole Affected Party and all Transactions then outstanding as Affected Transactions:
  - (i) If any of the Credit Agreement or Collateral Documents (i) expire, (ii) are terminated, replaced or refinanced, (iii) assigned to any third party, or (iv) amended, the result of which event under (i), (ii), (iii) or (iv) is to materially reduce the value of the collateral, security, or credit support available to Party A, as determined by Party A in its sole discretion, while Transactions are still in effect or outstanding hereunder and Party B does not within two (2) business days of such expiration, termination, replacement, refinancing, assignment, or amendment, as applicable, either (A) deliver pari passu 1st lien replacement security having a value and terms and conditions acceptable to Party A in its sole discretion, or (B) provide Party A with replacement security sufficient in form, amount and for a term acceptable to Party A in its sole discretion (such security including but not limited to providing a standby irrevocable letter of credit, a prepayment, a security interest in an asset, a performance bond or guaranty, or a mutually agreed to Credit Support Annex and Paragraph 13 to this Agreement);
  - (ii) If the obligations owing to Party A under this Agreement fail or cease to be secured pursuant to a first priority security interest and lien on the Collateral, as such term is defined in the Credit Agreement;
  - (iii) If the obligations owing to Party A under this Agreement fail or cease to be pari passu in all respects with and secured to the same extent as the Obligations, as such term is defined in the Intercreditor Agreement; or
  - (iv) If the value of the Collateral is materially diminished, as determined by Party A in its reasonable discretion.

## Part 2 - Tax Representations

- (a) **Payer Tax Representation:** For the purpose of Section 3(e), Party A and Party B will make the following representation:

It is not required by any applicable law, as modified by the practice, application or official interpretation of any relevant governmental revenue authority, of any Relevant Jurisdiction or under any applicable tax treaty between the Relevant Jurisdictions to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 9(h) of this Agreement) to be made by it to the other party under this Agreement. In making this representation, it may rely on:

- (i) the accuracy of any representations made by the other party pursuant to Section 3(f) of this Agreement;
  - (ii) the satisfaction of the agreement of the other party contained in Section 4(a)(i) or 4(a)(iii) of this Agreement and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of this Agreement; and
  - (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of this Agreement, *provided* that it shall not be a breach of this representation where reliance is placed on clause (ii) and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.
- (b) **Payee Tax Representations:** For the purpose of Section 3(f) of this Agreement, Party A and Party B each make the representation(s) specified below:
- (1) For the purpose of Section 3(f) of this Agreement, Party A represents that (i) it is a corporation organized and existing under the laws of the State of Delaware, (ii) it is a “United States person” within the meaning of Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended (the “Code”), (iii) it is a “U.S. person” (as that term is used in section 1.1441-4(a)(3) of the U.S. Treasury Regulations) for U.S. federal income tax purposes, (iv) it is exempt within the meaning of sections 1.6041-3(p) and 1.6049-4(c) of U.S. Treasury Regulations from information reporting on Form 1099 and backup withholding, and (v) its U.S. taxpayer identification number is 36-3421804.
  - (2) For the purpose of Section 3(f) of this Agreement, Party B represents that (i) it is a corporation organized and existing under the laws of the State of Delaware, (ii) it is a ..“United States person” within the meaning of Section 7701(a)(30) of the Code, and (iii) its U.S. taxpayer identification number is 86-2409018.

## Part 3 – Agreement to Deliver Documents

Each party agrees to deliver the following documents as applicable:

- (a) For the purpose of Section 4(a)(i) of this Agreement, tax forms, documents or certificates to be delivered are:

Party required to deliver	Form/Document/Certificate	Date by which to be
---------------------------	---------------------------	---------------------



<b>document</b>		<b>delivered</b>
Party B	An executed IRS Form W-9, and any such form as required per Section 4(a)	Upon execution of this Agreement.
Party A	An executed IRS Form W-9 (or any successor thereto).  Any other Applicable tax withholding documentation as required per Section 4(a).	Upon execution of this Agreement, and thereafter (i) promptly after reasonable request by Party B and (ii) promptly upon learning that any such form previously provided has become obsolete, incorrect, or ineffective.

(b) For the purpose of Section 4(a)(ii) of this Agreement, other documents to be delivered are:

<b>Party required to deliver document</b>	<b>Form/Document/Certificate</b>	<b>Date by which to be delivered</b>	<b>Covered by Section 3(d) Representation</b>
Party A	Incumbency certificate.	Upon execution of this Agreement.	Yes
Party A	Certification of the authenticity of the signature of Party A's signatory certified by Party A's Company Secretary; provided that, this certification shall not be required to the extent Party A executes this Agreement via Docusign or other electronic signature platform.	Upon execution of this Agreement.	Yes
Party A	Most recent annual audited financial statements of Party A's Credit Support Provider.	Upon written request, unless publicly available through EDGAR or some other source.	Yes
Party A	The guaranty of its Credit Support Provider.	Upon the execution of this Agreement.	Yes
Party A	The guaranty of its Credit Support Provider	Upon execution of this Agreement.	No
Party A	Disclosures of Material Information Concerning	Available at <a href="http://www.bpecresource.bp.com">www.bpecresource.bp.com</a>	No

	Swaps.		
Party B	A certified copy of the resolution of the Board of Directors of Party B of its relevant committee, authorizing such party to enter into this Agreement and each Transaction, and an incumbency certificate.	Upon execution of this Agreement.	Yes
Party B	Certification of the authenticity of the signature of Party B's signatory certified by Party B's Company Secretary.	Upon execution of this Agreement.	Yes
Party B	Most recent annual audited financial statements of Party B or its Credit Support Provider, (if applicable).	Upon written request, unless publicly available through EDGAR or some other source but no sooner than 120 days after the end of each of its fiscal years while there are any obligations outstanding under this Agreement.	Yes
Party B	Dodd-Frank related documentation.	Upon the execution of this Agreement.	No
Party B	Copies of all documents, notices and/or reports required to be provided by Party B to Collateral Agent pursuant to the Credit Agreement.	Upon the execution of this Agreement, and thereafter as soon as practicable after the receipt of such report by Party B.	Yes
Party B	Executed copies of all Security Instruments as defined herein.	Upon request, as soon as reasonably practicable.	Yes

Notwithstanding the foregoing provisions of this Part 3(b), no such delivery to Party A of any documents shall be required under this Part 3(b) to the extent that (i) the Administrative Agent under the Credit Agreement provides such documents to Party A or posts such documents on a website that is accessible by Party A or its Affiliate; or (ii) such documents are made available on EDGAR or other similar publicly available source.

#### Part 4 - Miscellaneous

(a) **Addresses for Notices.** For the purpose of Section 12(a) of this Agreement:

Address for **Confirmations** to Party A:

Address: BP Energy Company  
201 Helios Way  
Houston, Texas 77079

Attention: Confirmation Department

Email: [nagpconfirmations@bp.com](mailto:nagpconfirmations@bp.com)

Address for other **notices** or communications to Party A (other than Confirmations):

Address: BP Energy Company  
201 Helios Way  
Houston, Texas 77079

Attention: Contract Services

Telephone No.: 281-366-2000

Email: [FinancialContractsExternal@uk.bp.com](mailto:FinancialContractsExternal@uk.bp.com)

Address for **Invoices** to Party A:

Address: BP Energy Company  
201 Helios Way  
Houston, Texas 77079

Attention: Financial Settlements

Telephone No.: 281-366-2000

Email: [nagpfs1@bp.com](mailto:nagpfs1@bp.com)

Wire Payment Instructions:

For the Account of: BP Energy Company  
JP Morgan Chase Bank, NY  
ABA: 021-000021  
Acct No.: 910-2-548097  
New York, NY 10081-6000

Address for Complaints to Party A:

Email: [BPEnergyNotice@bp.com](mailto:BPEnergyNotice@bp.com)

Telephone No.: 713-323-0911

Address for **Confirmations** to Party B:

Address: COPL America Inc.  
3200, 715 - 5th Avenue SW  
Calgary, AB T2P 2X6 | Canada

Attention: Arthur Millholland; Ryan Gaffney

Facsimile No.: (403) 263-3251  
Telephone No.: (403) 262-5441; (403) 513-1903  
Email: [amillholland@canoverseas.com](mailto:amillholland@canoverseas.com); [rgaffney@canoverseas.com](mailto:rgaffney@canoverseas.com)

Address for other **notices** or communications to Party B (other than Confirmations):

Address: COPL America Inc.  
3200, 715 - 5th Avenue SW  
Calgary, AB T2P 2X6 | Canada

Attention: Arthur Millholland; Ryan Gaffney

Facsimile No.: (403) 263-3251  
Telephone No.: (403) 262-5441; (403) 513-1903  
Email: [amillholland@canoverseas.com](mailto:amillholland@canoverseas.com); [rgaffney@canoverseas.com](mailto:rgaffney@canoverseas.com)

Address for **Invoices** to Party B:

Address: COPL America Inc.  
3200, 715 - 5th Avenue SW  
Calgary, AB T2P 2X6 | Canada

Attention: Ryan Gaffney

Facsimile No.: (403) 263-3251  
Telephone No.: (403) 513-1903  
Email: [rgaffney@canoverseas.com](mailto:rgaffney@canoverseas.com)

Wire Payment Instructions:

For the Account of: Southwestern Production Corp.  
Bank: JPMORGAN CHASE BANK, N.A.  
ABA: 021 000 021  
Acct No.: 633186828  
City/State/Zip DENVER, CO 80202

(b) **Process Agent.** For the purpose of Section 13(c) of this Agreement:

Party A appoints as its Process Agent: Not Applicable

Party B appoints as its Process Agent: Not Applicable

(c) **Offices.** The provisions of Section 10(a) will apply to this Agreement.

(d) **Multibranch Party.** For the purpose of Section 10(b) of this Agreement:

Party A is not a Multibranch Party.

Party B is not a Multibranch Party.

(e) **Calculation Agent.** The Calculation Agent is Party A, with any calculation or determination made by Party A in such capacity to be binding and conclusive absent manifest error, unless an Event of Default has occurred and is continuing with respect to Party A, in which case Party B may appoint a Leading Dealer, mutually agreed to and such approval not to be unreasonably withheld, to act as substitute Calculation Agent for so long as such Event of Default is continuing. A “Leading Dealer” means a leading dealer in the relevant market that is not an Affiliate of either of the parties.

(f) **Credit Support Document.** Details of any Credit Support Document:

With respect to Party A, the guaranty of its Credit Support Provider.

With respect to Party B, each Collateral Document; provided, however, that no Event of Default shall occur with respect to Party B or any Credit Support Provider of Party B under clauses (1) or (2) of Section 5(a)(iii) of the Agreement unless the event or circumstances giving rise thereto shall also constitute an Event of Default under Section 5(a)(vi) of the Agreement as modified pursuant to Part I(c) hereof.

(g) **Credit Support Provider.**

Credit Support Provider means in relation to Party A, BP Corporation North America Inc., an Indiana corporation.

Credit Support Provider means in relation to Party B, each Guarantor as defined in the Credit Agreement; provided, however, that no Event of Default shall occur with respect to Party B or any Credit Support Provider of Party B under clauses (1) or (2) of Section 5(a)(iii) of the Agreement unless the event or circumstances giving rise thereto shall also constitute an Event of Default under Section 5(a)(vi) of the Agreement as modified pursuant to Part I(c) hereof.

(h) **Governing Law.** This Agreement will be governed by and construed in accordance with New York law, without reference to its choice of law doctrine other than Section 5-1401 of the New York General Obligations Law.

(i) **Jurisdiction.** Section 13(b) of the Agreement is hereby amended by (i) deleting the word “non-exclusive” appearing in paragraph (i)(1) and (i)(2) thereof and substituting therefor the word “exclusive” and (ii) deleting Section 13(b)(ii) and substituting therefor the following sentence:

“Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction if (A) the courts of the State of New York or the United States District Court located in the Borough of Manhattan in New York City lacks jurisdiction over the parties or the subject matter of the Proceedings or declines to accept the Proceedings on the grounds of lacking such jurisdiction; (B) the Proceedings are commenced by a party for the purpose of enforcing against the other party’s property, assets or estate any decision or judgment rendered by any court in which Proceedings may be brought as provided hereunder; (C) the Proceedings are commenced to appeal any such court’s decision or judgment to any higher court with competent appellate jurisdiction over that court’s decisions or judgments if that higher court is located outside the State of New York or Borough of Manhattan, such as a federal court of appeals or the U.S. Supreme

Court; or (D) any suit, action or proceeding has been commenced in another jurisdiction by or against the other party or against its property, assets or estate (including, without limitation, any suit, action or proceeding described in Section 5(a)(vii)(4) of this Agreement), and, in order to exercise or protect its rights, interests or remedies under this Agreement, the party (1) joins, files a claim, or takes any other action, in any such suit, action or proceeding, or (2) otherwise commences any Proceeding in that other jurisdiction as the result of that other suit, action or proceeding having commenced in that other jurisdiction.”

(j) **Netting of Payments.** “Multiple Transaction Payment Netting” will apply for the purpose of Section 2(c) of this Agreement to all Transactions.

(k) **“Affiliate”** will have the meaning specified in Section 14 of this Agreement.

(l) **“Absence of Litigation”.**

(a) Section 3(c) is amended by the inclusion of the word “adversely” before the word “affect” in the third line.

(b) For the purpose of Section 3(c):

**“Specified Entity”** means in relation to Party A, Not Applicable.

**“Specified Entity”** means in relation to Party B, Not Applicable.

(m) **No Agency.** The provisions of Section 3(g) will apply to Party A and will apply to Party B.

(n) **Additional Representation.** Will apply. For the purpose of Section 3 of this Agreement, the following will each constitute an Additional Representation (which representations will be deemed to be repeated by each party, as appropriate, on each date on which a Transaction is entered into):

(i) **Eligible Contract Participant.** It constitutes an “eligible contract participant” as such term is defined in the U.S. Commodity Exchange Act, as amended.

(ii) **Swap Agreement.** This Agreement and any Transaction entered into hereunder constitutes a “swap agreement” within the meaning of the United States Bankruptcy Code (11 USC Sec. 101(53B) (2000)).

(iii) **Line of Business.** It has entered into this Agreement (including each Transaction) in conjunction with its line of business (including financial intermediation services) or the financing of its business.

(iv) **Relationship Between the Parties.** In connection with the negotiation of, the entering into, and the confirming of the execution of, this Agreement, any Credit Support Document to which it is a party, and each Transaction: (i) it is acting as principal (and not as agent or in any other capacity, fiduciary or otherwise); (ii) the other party is not acting as a fiduciary or financial or investment advisor for it; (iii) it is not relying upon any representations (whether written or oral) of the other party other than the representations expressly set forth in this Agreement and in such Credit Support Document; (iv) the other party has not given to it (directly or indirectly through any other person) any advice,

counsel, assurance, guaranty, or representation whatsoever as to the expected or projected success, profitability, return, performance, result, effect, consequence, or benefit (either legal, regulatory, tax, financial, accounting, or otherwise) of this Agreement, such Credit Support Document, or such Transaction; (v) it has consulted with its own legal, regulatory, tax, business, investment, financial, and accounting advisors to the extent it has deemed necessary, and it has made its own investment, hedging, and trading decisions based upon its own judgment and upon any advice from such advisors as it has deemed necessary, and not upon any view expressed by the other party; (vi) all trading decisions have been the result of arm's length negotiations between the parties; and (vii) it is entering into this Agreement, such Credit Support Document, and such Transaction with a full understanding of all of the risks hereof and thereof (economic and otherwise), and it is capable of assuming and willing to assume (financially and otherwise) those risks.

- (o) **Recording of Telephone Conversations.** To the extent permitted by applicable law, each party: (i) consents to the recording of telephone conversations between the trading, marketing and other relevant personnel of the parties in connection with this Agreement or any potential Transaction, (ii) agrees to obtain prior to entering into any Transaction any necessary consent of, and give any necessary notice of such recording to, its relevant personnel, (iii) agrees that recordings may be submitted in evidence in any Proceedings, and (iv) acknowledges to the other party and consents that such other party may from time to time and without further notice (A) retain electronic transmissions (including telephone conversations, email and instant messaging between the parties' respective representatives in connection with the Agreement, any potential Transaction and any Transaction or other commercial matters between the parties) on central and local databases for their respective legitimate purposes, and (B) monitor electronic transmissions through their internal and external networks for purposes of security and compliance with applicable laws, regulations and internal policies for their legitimate business purposes. Each party further agrees that it will indemnify, defend and hold the other party harmless from any and all damages, losses, claims, liabilities, judgments, costs and expenses, including but not limited to reasonable attorney's fees and costs of court arising directly or indirectly from or out of such party's failure to obtain any consent necessary from a party's trading, marketing and other relevant personnel, agents or representatives or such party's failure to give any notice required to such individuals.

#### **Part 5 - Other Provisions**

- (a) **General Conditions.** Section 2(a)(ii) shall be amended by the deletion of the final sentence thereof and the addition of the following in substitution thereof: "The parties agree that all payments under this Agreement shall be made by wire transfer of immediately available funds to the party receiving payment, at the account specified by such party."
- (b) **Limitation on Condition Precedent.** With respect to any Transaction entered into under this Agreement, Section 2(a)(iii) of this Agreement is hereby amended by adding the following phrase at the end of clause (1) immediately before the last comma of such phrase:

"(provided, however, that in relation to any Transaction, if an Event of Default or a Potential Event of Default has occurred and is continuing for longer than ten (10) days

without an Early Termination Date being designated, then the condition specified in this clause (1) shall cease to be a condition precedent to the obligations under Section 2(a)(i).”

- (c) **Change of Account.** Section 2(b) of this Agreement is hereby amended by the insertion of the following at the end thereof after the word “change”:

“, provided that if such new account shall not be in the same jurisdiction having the same power to tax as the original account, the party not changing its account shall not be obliged to pay any greater amounts and shall not receive less as a result of such change than would have been the case if such change had not taken place.”

- (d) **Deduction or Withholding for Tax.** Section 2(d)(i)(4) is amended by the addition of “; or” at the end of sub-paragraph (B) and the addition of a new sub-paragraph (C) as follows:

“(C) Y refusing to supply any form or document under Section 4(a)(iii) on grounds of material prejudice to its legal or commercial position.”

- (e) **Representations.** The opening paragraph of Section 3 is amended by replacing “in the case of the representations in Section 3(f)” with “in the case of the representations in Sections 3(f) and 3(h)(iv)” and adding the following new sub-sections 3(h), and 3(i):

“(h) **Dodd Frank Representations.**

(i) **Hedging Transactions.** Unless otherwise noted in the applicable Confirmation for any Transaction, such Transaction constitutes for Party B a bona fide hedging transaction as defined in CFTC Regulation 1.3(z) (17 C.F.R. § 1.3(z)).

(ii) **End User Clearing Exemption.** If with respect to any Transaction Party B has elected an exemption from the clearing requirement under Section 2(h)(7)(A) of the CEA, then as of the date of the execution of such Transaction (and not as of the date of this Agreement) (1) it is not a “financial entity” as defined in Section 2(h)(7)(C)(i) of the CEA, subject to certain exceptions in Sections 2(h)(7)(C)(ii), 2(h)(7)(C)(iii) and 2(h)(7)(D) of the CEA; (2) it is using such Transaction to hedge or mitigate commercial risk; (3) it has reported the information required to be submitted under 17 C.F.R. § 50.50(b)(1)(iii) in an annual filing made no more than 365 days prior to the Trade Date of such Transaction, pursuant to 17 C.F.R. § 50.50(b)(2), and (4) to the extent it is required to do so under Section 2(j) of the CEA and 17 C.F.R. § 50.50(b)(1)(iii)(D)(2), it has obtained all necessary approvals by the appropriate committee of its board of directors (or equivalent body) to rely on the exception to the clearing requirement under Section 2(h)(7)(A) of the CEA.

(iii) **Special Entity Status.** Party B is not a federal agency, state agency, city, county, municipality or other political subdivision of a state, or any instrumentality, department or entity established thereby, or any other Special Entity as defined by the CFTC Regulation 23.401(c).



(iv) **DF Protocols.** Each of the parties hereby agrees to enter into additional reasonable documentation or modify existing documentation between the parties to satisfy the requirements imposed upon one or both of the parties by the Dodd-Frank Wall Street Reform and Consumer Protection Act, the CEA and/or CFTC Regulations thereunder, including, upon reasonable request, adhering to or entering into such other protocols, suggested amendments, market conventions and other contractual provisions published by ISDA from time to time and intended to enhance one or both party's compliance with the CEA, the Dodd-Frank Wall Street Reform and Consumer Protection Act, CFTC Regulations and other applicable laws, or to facilitate the orderly processing of Transactions.

(i) **Variation and Initial Margin Requirements Representations.** Party B represents that it is not a Financial End User, Swap Dealer or Major Swap Participant as set forth in CFTC Regulation 23.151."

(f) **Tax Event.** Section 5(b)(iii) shall be amended by the addition of "or (C)" after the words "or (B)" at the end of the last line.

(g) **Set off.** Section 6(f) is deleted in its entirety and replaced with the following:

**"Set-off.** Without affecting or prejudicing the provisions of this Agreement requiring the calculation and payment of certain net payment amounts on Scheduled Settlement Dates, all payments will be made without Set-off or counterclaim; provided, however, that any Early Termination Amount payable to one party (the "Payee") by the other party (the "Payer") in circumstances where there is a Defaulting Party or where there is one Affected Party in the case where either a Credit Event Upon Merger has occurred or any other Termination Event in respect of which all outstanding Transactions are Affected Transactions has occurred, will, at the sole option of the Non-defaulting Party or the Non-affected Party, as the case may be ("X") (and without prior Notice to the Defaulting Party or the Affected Party, as the case may be), will be reduced by its setoff against any other amounts payable by the Payee to the Payer (whether arising under this Agreement, matured or contingent and irrespective of the currency, place of payment or place of booking of the obligation (collectively "Other Amounts"). Additionally, the set-off rights under this section include but are not limited to the following: (i) any Early Termination Amount against any Posted Credit Support held by a party relating to the Agreement; (ii) any Early Termination Amount against any amount(s) (including any excess collateral, security or credit support) owed by or to a party under any other agreement or arrangement between the parties; (iii) any Early Termination Amount owed to the Non-defaulting Party against any amount(s) (including any excess collateral, security or credit support) owed by the Non-defaulting Party or its Affiliates to the Defaulting Party under any other agreement or arrangement; (iv) any Early Termination Amount owed to the Defaulting Party against any amount(s) (including any excess collateral, security or credit support) owed by the Defaulting Party to the Non-defaulting Party or its Affiliates under any other agreement or arrangement; and/or (v) any Early Termination Amount owed to the Defaulting Party against any amount(s) (including any excess collateral, security or credit support) owed by the Defaulting Party or its Affiliates to the Non-defaulting Party under any other agreement or arrangement. For the purposes of this Section 6(f) and with respect to Party B, "Affiliates" shall mean none.

If an obligation is unascertained, X may in good faith estimate that obligation and set off in respect of the estimate subject to the relevant party accounting to the other when the obligation is ascertained.

To the extent that Other Amounts or any other sums otherwise owed by the Non-defaulting Party's Affiliate to the Defaulting Party, have been setoff by the Non-defaulting Party pursuant to this Section 6(f), the Non-defaulting Party's Affiliate shall not be liable to, and shall be released by, the Defaulting Party; provided further that the Defaulting Party shall be forever estopped from asserting that the Non-defaulting Party's Affiliate owes the Other Amounts or other sums to the Defaulting Party. The obligations of the Non-defaulting Party, the Non-defaulting Party's Affiliates, the Defaulting Party and the Defaulting Party's Affiliates under this Agreement or otherwise in respect of such Other Amounts or other sums shall be deemed satisfied and discharged to the extent of any such setoff. For this purpose, the Other Amounts or other sums subject to the setoff may be converted at the applicable prevailing exchange rate into U.S. Dollars by the Non-defaulting Party. The Non-defaulting Party will give the Defaulting Party notice of any setoff effected under this section provided that failure to give such notice shall not affect the validity of the setoff. Nothing in this paragraph shall be deemed to create a charge or other security interest. "Setoff" as used herein means setoff, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the Non-defaulting Party is entitled or subject to (whether arising under this Agreement, another contract, applicable law or otherwise) that is exercised by, or imposed on, the Non-defaulting Party."

(h) **Transfer.** Section 7 is amended by (1) inserting "and the Collateral Agent (as defined in the Intercreditor Agreement) under the Intercreditor Agreement" after "party" and before "," in the first sentence, (2) deleting "and" at the end of subparagraph (a), (3) deleting "." at the end of subparagraph (b) and (4) inserting the following at the end of subparagraph (b) "; and (c) Party B may assign and grant a security interest in its rights and interests hereunder in accordance with the Intercreditor Agreement to the Collateral Agent, as contractual representative for itself and other creditors pursuant to the Intercreditor Agreement as security for Party B's present and future obligations to Collateral Agent and such other creditors. Until Party A is notified in writing by Collateral Agent to pay to Collateral Agent directly amounts due and owing by Party B hereunder, Party A may continue to make such payments to Party B. Any payments made by Party A to the Collateral Agent directly at the instruction of the Collateral Agent will satisfy Party A's payment obligations under this Agreement, and relieve Party A from the obligation to make a payment to Party B.

(i) **Counterparts and Confirmations.**

(i) Section 9(e)(i) shall be deleted in its entirety and replaced with the following:

"This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile, electronic mail in portable document format (.pdf) or by such other electronic means intended to preserve the original graphic and pictorial appearance of a document), each of which will be deemed an original and shall have the same effect as delivery of an executed original of this Agreement (or amendment, modification and waiver, as applicable). Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement

are intended to authenticate this writing and to have the same force and effect as manual signatures.”

- (ii) The second and third sentences of Section 9(e)(ii) shall be deleted and replaced by the following:

“Any Transaction may be effectuated in an EDI transmission or telephone conversation or other electronic means of communication with the offer and acceptance constituting the agreement of the parties. The parties shall be legally bound from the time they so agree to transaction terms and may each rely thereon. Any such Transaction shall be considered a “writing” and to have been “signed”. Notwithstanding the foregoing sentence, the parties agree that Party A (the “**Confirming Party**”) will promptly send a Confirmation to Party B to confirm a telephonic transaction by any reasonable means, including, without limitation, by facsimile, hand delivery, courier, or certified United States mail (return receipt requested) within three Business Days of a Transaction, provided that the failure to send a Confirmation shall not invalidate the oral agreement of the parties. Confirming Party adopts its confirming letterhead, or the like, as its signature on any Confirmation as the identification and authentication of Confirming Party. If the Confirmation contains any provisions other than those relating to the commercial terms of the transaction (i.e., price, quantity, performance obligation, delivery point, period of delivery and/or transportation/transmission conditions), which modify or supplement the Transaction or the terms of this Master Agreement (e.g., Force Majeure, arbitration or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to this Section 9(e)(ii) but must be expressly agreed to by both parties; provided that the foregoing shall not invalidate any Transaction agreed to by the parties. If Party A's Confirmation is materially different from Party B's understanding of the Transaction, Party B shall notify the Confirming Party via facsimile, EDI or mutually agreeable electronic means by the Confirm Deadline, unless Party B has previously sent a Confirmation to the Confirming Party. The failure of Party B to so notify the Confirming Party in writing by the Confirm Deadline constitutes Party B's agreement to the terms of the Transaction described in the Confirming Party's Confirmation. If there are any material differences between timely sent Confirmations governing the same Transaction, or if Party B has timely objected to the terms of the Confirming Party's Confirmation, such Transaction remains valid and the parties remain legally bound thereby, however, both parties shall in good faith attempt to resolve such differences. Once such material differences are resolved, the Confirming Party shall transmit a written Confirmation to Party B, and such written Confirmation shall be accepted (or disputed) pursuant to the provisions of this Section 9(e)(ii). The provisions of this Section 9(e)(ii) may be repeated as many times as necessary to produce a written Confirmation that is accepted or deemed accepted by Party B. In the event of a conflict among the terms of (i) a binding Confirmation pursuant to this Section 9(e)(ii), (ii) the oral agreement of the parties (which may be evidenced by a recording of such transaction, oral testimony, data in a computer system, trade tickets, and/or notes), and (iii) this Master Agreement, the terms of the items shall govern in the priority listed in this sentence.

**"Confirm Deadline"** shall mean the earlier of (1) 5:00 p.m. in Party B's time zone on the fifth New York Business Day following the New York Business Day a

Confirmation is received by Party B; provided, if the Confirmation is received after 5:00 p.m. in Party B's time zone, it shall be deemed received at the opening of the next New York Business Day, or (2) on and after the effective date of the confirmation rules set forth in CFTC Regulation 23.501, such earlier time as is set forth in the compliance schedule in CFTC Regulation 23.501(a), as modified by CFTC Regulation 23.501(c). "***New York Business Day***" shall mean any day except for a Saturday, Sunday or a day on which the Federal Reserve Bank of New York is closed.

Notwithstanding the provisions of Section 12(a)(iii) of the Agreement, a written Confirmation and any other writing related to or in response to a written Confirmation shall be deemed delivered to the receiving party (i) when actually received by the receiving party or (ii) with respect to a written Confirmation and other writing delivered by facsimile, when the sending party's facsimile machine indicates by an electronic or written facsimile log that the receiving party's facsimile machine received such written Confirmation.

Party A shall not be required to maintain or retain a paper-based version of the written Confirmation delivered to Party B. In addition to a paper-based version of the written Confirmation delivered to Party B, the following shall constitute a "written Confirmation" for all purposes of this Agreement: (i) an electronic image of a paper-based version of the written Confirmation, and (ii) data in Party A's computer system.

Any document generated by the parties with respect to a Transaction, including this Agreement, may be imaged and stored electronically ("***Imaged Documents***"). Imaged Documents may be introduced as evidence in any proceeding as if such were original business records and neither party shall contest the admissibility of Imaged Documents as evidence in any proceeding."

(iii) Notwithstanding the foregoing, the Confirming Party will endeavour to send the Confirmation to the other Party as soon as technologically practicable, but in any event will endeavour to do so in accordance with the compliance schedule set forth in CFTC Regulation 23.501(a), as modified by CFTC Regulation 23.501(c).

(j) ***Notices.*** The wording of Section 12(a)(iii) shall be replaced in its entirety by the following:

"if sent by facsimile transmission, on receipt by the sender of a valid transmission report."

(k) ***ISDA Definitions and Inconsistency.***

(i) This Agreement, each Confirmation and each Transaction between the parties are subject to the 2005 ISDA Commodity Definitions as published by the International Swaps and Derivatives Association, Inc., ("the Definitions"), and will be governed in all relevant respects by the provisions set forth in the Definitions, without regard to any amendment to the Definitions subsequent to the date hereof. The provisions of the Definitions are incorporated by reference and shall be deemed a part of this Agreement, except that sub-annexes B to I inclusive shall not apply.

(ii) In the event of any inconsistency between the provisions of this Agreement and the Definitions, this Agreement will prevail. In the event of any inconsistency between the provisions of any Credit Support Document and the Definitions, the Credit Support Document will prevail. Subject to Section 1(b) of this Agreement, in the event of any inconsistency between the provisions of any Confirmation and this Agreement or the Definitions, the Confirmation will prevail for the purpose of the relevant Transaction.

(l) ***Market Disruption Events; Additional Market Disruption Events.***

(i) The “Market Disruption Events” specified in Section 7.4(c) of the Definitions shall apply; and

(ii) “Additional Market Disruption Events” shall apply only if specified in the relevant Confirmation.

(m) ***Disruption Fallbacks.***

The “Disruption Fallbacks” specified in Section 7.5(c) of the Definitions shall apply, except that:

(i) “Fallback Reference Price” shall not apply;

(ii) for the purposes of Section 7.6 of the Definitions, the Maximum Days of Disruption will be five (5) Commodity Business Days; and

(iii) “Reference Dealers” means, with respect to any transaction for which the relevant Commodity Reference Price is “Commodity-Reference Dealers”, the four independent leading dealers selected in good faith and jointly agreed upon by the parties satisfying all the criteria that the parties apply generally at the time of deciding whether to offer or to make an extension of credit or to enter into a transaction comparable to this Transaction. Such dealers will be appointed to make a determination of the Commodity-Reference Price, taking into consideration the latest available quotation for the Commodity-Reference Price and any other information that in good faith they deem relevant. If the parties have not agreed upon the appointment of the dealers on or before the sixth Commodity Business Day following the first Pricing Date on which the Market Disruption Event occurred or existed, or if a determination of the relevant Commodity-Reference Price cannot be obtained from at least four dealers, the next applicable Disruption Fallback will apply to the Transaction.

(n) ***Severability.*** In the event any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. The parties shall endeavour, in good faith negotiations, to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

(o) ***Payment Date During Transfer Period.*** If the parties are required by Section 6(b)(ii) to make efforts to transfer certain obligations under this Agreement in connection with a Termination Event, and a Payment Date (as defined in the related Confirmation) will

occur under the relevant Affected Transaction during the period specified in Section 6(b) for those efforts, then the payment(s) due to be made on that Payment Date shall be postponed until the earlier of (i) the Local Business Day following the day on which a transfer is effected in consequence of such efforts; (ii) the Local Business Day following the day on which such period ends, if an Early Termination Date is not designated by a party on such day; and (iii) the Early Termination Date for the relevant Affected Transaction, with such postponed payment(s) then being treated as Unpaid Amounts. In either case, the postponed payment(s) shall bear interest (before as well as after judgment) at the Applicable Deferral Rate from (and including) such Payment Date to (but excluding) the date of actual payment.

- (p) **Termination Payments by Non-defaulting Party.** Notwithstanding the provisions of Sections 6(d) and 6(e) of the Agreement, if there is a Defaulting Party, the obligations of the Non-defaulting Party to pay to the Defaulting Party any amount under Section 6(e) shall not arise until, and shall be subject to the conditions precedent that, the Non-defaulting Party shall have received confirmation satisfactory to it in its sole discretion that (i) all Transactions are terminated in accordance with Section 6(c), and (ii) all obligations (contingent or absolute, matured or unmatured) of the Defaulting Party and any Affiliate of the Defaulting Party to make any payment to the Non-defaulting Party or any Affiliate of the Non-defaulting Party shall have been fully and finally performed; and provided, further, that if under the foregoing provisions it is determined that the Non-defaulting Party is to make a payment to the Defaulting Party, there shall be deducted from the amount of such payment all amounts which the Defaulting Party may be obligated to pay under Section 11.
- (q) **Confidentiality.** The contents of this Agreement and all other documents relating to this Agreement, and any information (including any financial information) made available by one party or its Credit Support Provider to the other party or its Credit Support Provider with respect to this Agreement is confidential and shall not be disclosed to any third party (nor shall any public announcement relating to this Agreement be made by either party) without the prior written consent of the other party, except for such information (i) as may become generally available to the public, (ii) as may be necessary to enforce this Agreement or implement any Transaction hereunder, (iii) as may be required or appropriate in response to any summons, subpoena, or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, or accounting disclosure rule or standard, (iv) as may be necessary to comply with a regulatory agency's reporting requirements, including but not limited to gas cost recovery proceedings; (v) as may be delivered to such third party for the sole purpose of calculating a published index; (vi) as may be obtained from a non-confidential source that disclosed such information in a manner that did not violate its obligations to the non-disclosing party or its Credit Support Provider in making such disclosure, or (vii) as may be furnished to the disclosing party's Affiliates, and to each of such person's auditors, attorneys, advisors, lenders, monitors or prospective purchasers of all or substantially all of a party's assets or any of its rights under this Agreement, provided such persons are required to keep the information that is disclosed in confidence. Notwithstanding the foregoing, if information would be permitted to be disclosed pursuant to DF Supplement Section 2.13, then such disclosure shall be permitted under any other applicable confidentiality provision or agreement. Any confidential information received by a party may be used by such party and, to the extent disclosure is not restricted hereunder, may be disclosed and used by such permitted recipients, including in each case use by persons acting in a structuring, sales or trading capacity. With respect to information provided with respect

to this Agreement, this obligation shall survive for a period of one (1) year following the expiration or termination of this Agreement, provided, however, that with respect to information provided with respect to a Transaction, this obligation shall only survive for a period of one (1) year following the expiration or termination of such Transaction.

- (r) **LIMITATION OF LIABILITY. NO PARTY SHALL BE REQUIRED TO PAY OR BE LIABLE FOR PUNITIVE, EXEMPLARY, CONSEQUENTIAL, SPECIAL, INCIDENTAL OR INDIRECT DAMAGES (WHETHER OR NOT ARISING FROM ITS NEGLIGENCE OR STRICT LIABILITY) TO ANY OTHER PARTY; PROVIDED, HOWEVER, THAT NOTHING IN THIS PROVISION SHALL AFFECT THE ENFORCEABILITY OF SECTION 6(e) OF THIS AGREEMENT OR THE OBLIGATION TO PAY ANY AMOUNT REQUIRED PURSUANT TO SECTION 6(e) OF THIS AGREEMENT. IF AND TO THE EXTENT ANY PAYMENT REQUIRED TO BE MADE PURSUANT TO THIS AGREEMENT IS DEEMED TO CONSTITUTE LIQUIDATED DAMAGES, THE PARTIES ACKNOWLEDGE AND AGREE THAT SUCH DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE AND THAT SUCH PAYMENT IS INTENDED TO BE A REASONABLE APPROXIMATION OF THE AMOUNT OF SUCH DAMAGES AND NOT A PENALTY.**

- (s) **Definitions.** Section 14 shall be amended to add the following definitions:

**“Collateral Documents”** shall have the meaning set forth in the Intercreditor Agreement.

**“Credit Agreement”** shall mean that certain term loan credit agreement dated as of March 15, 2021, by and among Party B, as Borrower, COPL America Holding Inc., as Parent, the Lenders from time to time party thereto and ABC Funding, LLC, as administrative agent for the Lenders and as collateral agent for the Secured Parties, and as may be amended from time to time.

**“EDI”** shall mean an electronic data interchange pursuant to an agreement entered into by the parties, specifically relating to the communication of a Transaction.

**“Intercreditor Agreement”** shall mean that certain intercreditor agreement dated as of March 15, 2021, by and among (i) Party A, (ii) Party B, as Borrower, (iii) the other Loan Parties party thereto from time to time, and (iv) ABC Funding, LLC, in its capacity as Administrative Agent and as Collateral Agent for the Creditors, and as may be amended from time to time.

- (t) **2002 Master Agreement Protocol.** The parties agree that, with effect from the date of this Agreement, the terms of each Annex to the 2002 Master Agreement Protocol published by the International Swaps and Derivatives Association Inc. on July 15, 2003, (the “Protocol”) shall apply to this Agreement as if the parties had adhered to the Protocol without amendment.

- (u) **WAIVER OF RIGHT TO TRIAL BY JURY. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION.**

- (v) ***Right to Clear and Choose DCO.*** Notwithstanding anything in DF Supplement Section 2.24, if a Transaction is subject to mandatory clearing requirements under Section 2(h) of the CEA, and the party other than BP Energy Company fails to designate a DCO in connection with the execution of the Transaction, then BP Energy Company may select a DCO to which the other party has transaction rights to be the DCO for such Transaction on behalf of such other party.
- (w) Party B's Global Market Entity Identifier (GMEI) utility Legal Entity Identifier ("LEI") is 213800FBAAVNE9MKUF70.
- (x) ***Withholding Tax Imposed on Payments to Non-US Counterparties Under the United States Foreign Account Tax Compliance Act.*** "Tax" as used in Part 2(a) of this Schedule (Payer Tax Representation) and "Indemnifiable Tax" as defined in Section 14 of this Agreement shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the Code, any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a "***FATCA Withholding Tax***"). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of this Agreement.
- (y) ***Disclosure of Material Information Concerning Swaps.*** Party B hereby acknowledges and agrees that it has received and reviewed the written risk disclosures, as the same may be amended, modified or otherwise supplemented from time to time, made available by Party A to Party B at [www.bpecresource.bp.com](http://www.bpecresource.bp.com) and understands the risks as identified therein.
- (z) **Cyber Attack.** Subject to Section 5(b)(ii), the parties hereby agree that a Cyber Attack (as defined below) that causes a breach of a party's confidentiality obligations arising under this Agreement will constitute a Force Majeure Event. In addition, notwithstanding the provisions of Sections 5(a)(i) or 5(a)(iii), the parties agree that a failure to pay or a failure to post Eligible Credit Support in the form of Cash that is solely the result of a Cyber Attack will not constitute an Event of Default; provided that (a) sufficient funds were available for such party to fulfil its obligations hereunder on the relevant date, and (b) the payment is made as soon as practicable but in no event later than 15 days after the occurrence of the Cyber Attack. "Cyber Attack" means a third-party attack that compromises the integrity or availability of information from an information system or systems required to perform the obligations under this Agreement.
- (aa) Party B acknowledges, agrees and covenants to Party A that (i) this Agreement is a "Swap Agreement", (ii) all transactions entered into hereunder constitute "Acceptable Commodity Hedging Transactions", (iii) all obligations arising hereunder are "Swap Obligations", and Party A is a "Swap Counterparty", each as defined in the Credit Agreement or Intercreditor Agreement, as applicable.





*Signature pages to follow.*

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

**BP Energy Company**  
**("Party A")**

**COPL America Inc.**  
**("Party B")**

By:   
76F74685ADC74F4...  
Name: Joaquin Anderson  
Title: Attorney In Fact  
Date: 15 March 2021

By:   
Name: Arthur Millholland  
Title: President  
Date: \_\_\_\_\_

**THIS IS EXHIBIT "B"**

**REFERRED TO IN THE AFFIDAVIT OF**

**KENNETH JOAQUIN ANDERSON**

**Sworn before me this 23rd day of April, 2024**



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**A COMMISSIONER FOR OATHS IN AND  
FOR THE PROVINCE OF ALBERTA**

**HAO YANG HUA**  
*Student-At-Law*

## INTERCREDITOR AGREEMENT

THIS INTERCREDITOR AGREEMENT (this “**Agreement**”) is entered into as of March 16, 2021, by and among **BP ENERGY COMPANY**, a Delaware corporation (the “**Swap Counterparty**”), **COPL AMERICA INC.**, a Delaware corporation (the “**Borrower**”), the Loan Parties party hereto, and **ABC FUNDING, LLC** (“**ABC Agent**”), with ABC Agent acting: (i) as the administrative agent (in such capacity, together with its successors in such capacity, the “**Administrative Agent**”) under the Credit Agreement defined below and (ii) as the collateral agent (in such capacity, the “**Collateral Agent**”, and, together with the Swap Counterparty, the Borrower, the other Loan Parties party hereto and the Administrative Agent, the “**Parties**”) for the benefit of the Creditors hereunder. See below for certain defined terms used herein.

### RECITALS:

A. The Administrative Agent and the Lenders defined in the Credit Agreement (collectively, and together with any of their successors and assigns, the “**Lender Group**”) and the Borrower entered into that certain Credit Agreement, dated as of March 16, 2021 (as amended, supplemented, restated or otherwise modified from time to time, the “**Credit Agreement**”).

B. References in this Agreement to the Administrative Agent are to ABC Agent in its capacity as contractual representative of the Lender Group. References in this Agreement to the Collateral Agent are to ABC Agent in its capacity as the contractual representative holding and enforcing certain Liens, granted under the Collateral Documents, for the benefit of the Creditors.

C. The Borrower and the Swap Counterparty have entered or will enter into that certain ISDA Master Agreement, together with the Schedule thereto, dated on or about March 16, 2021, (as amended, restated, supplemented or otherwise modified from time to time in accordance with this Agreement, the “**Swap Counterparty Master Agreement**”), and have entered into or will enter into one or more transactions thereunder.

D. The Administrative Agent, the Collateral Agent, the Swap Counterparty and the Loan Parties desire to enter into this Agreement (i) to establish the relative priorities with respect to payment of the Obligations (defined below) and the Swap Obligations (defined below) and (ii) to have both the Swap Counterparty and the Administrative Agent appoint ABC Agent, and ABC Agent agree to serve, as the Collateral Agent for the benefit of the Creditors for the purposes of the holding of and the enforcement of Liens granted under the Collateral Documents.

In consideration of the recitals and the covenants and promises of this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Collateral Agent, the Administrative Agent, the Swap Counterparty and the Loan Parties agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

Section 1.01. Credit Agreement Definitions. Each term defined in the Credit Agreement shall have the same meaning when used herein unless otherwise defined herein or the context otherwise requires.

Section 1.02. Other Definitions. As used in this Agreement, the terms defined in the Recitals hereto shall have the meanings assigned to those terms in such Recitals, and the following terms shall have the meanings assigned as follows:

**“Accelerated Creditor”** means any Creditor that (i) has delivered notice of a Triggering Event to Collateral Agent, or (ii) holds a Loan that has matured (whether by acceleration or otherwise).

**“Acceptable Commodity Hedging Transactions”** means any Commodity Hedging Transaction permitted or required by the Credit Agreement.

**“Business Day”** has the meaning assigned to such term in the Credit Agreement.

**“Collateral”** means, collectively, all Collateral as defined in the Credit Agreement.

**“Collateral Agent”** has the meaning assigned to such term in the Preamble.

**“Collateral Documents”** means the “Collateral Documents” as defined in the Credit Agreement and includes, without limitation, those documents listed in Schedule 1 attached hereto and incorporated herein by this reference.

**“Collateral Value”** means, with respect to any Oil and Gas Property, the value of such Oil and Gas Property as reasonably determined by the Administrative Agent.

**“Commodity Hedging Transaction”** means a Swap Agreement related to commodities.

**“Credit Agreement Modifications”** has the meaning given such term in Section 2.03(f).

**“Creditors”** means the Lenders, the Administrative Agent, and the Swap Counterparty, collectively, and “Creditor” means any of them.

**“Cross-Default”** means (i) any Event of Default under the Loan Documents that is caused solely by the occurrence of an Event of Default (as defined in the Swap Documents) or Termination Event (as defined in the Swap Documents), with respect to any Loan Party (unless the Swap Counterparty has designated an Early Termination Date (as defined in the Swap Documents)) or (ii) any Event of Default (as defined in the Swap Documents) or Termination Event (as defined in the Swap Documents) under the Swap Counterparty’s Swap Documents that is caused solely by the occurrence of an Event of Default under the Loan Documents (unless the Administrative Agent has declared the Obligations due and payable).

**“Debtor Relief Law”** means any applicable law in respect of liquidation, conservatorship, bankruptcy, insolvency, rearrangement, moratorium, reorganization, or similar debtor relief laws (including the Bankruptcy Code) affecting the rights of creditors generally from time to time in effect.

**“Exposure”** as of any day means, collectively, the amount, if any, that would be payable to the Loan Parties by the Swap Counterparty or to the Swap Counterparty by the Loan Parties pursuant to Section 6(e)(ii)(1) of the Swap Counterparty Master Agreement as if all outstanding Commodity Hedging Transactions between the Loan Parties and the Swap Counterparty were being terminated as of the close of business on that day, as determined by the Swap Counterparty using its estimates at mid-market of the amounts that would be paid for replacement transactions.

**“Lien”** has the meaning assigned to such term in the Credit Agreement.

**“Loan Documents”** means the “Loan Documents” as defined in the Credit Agreement, but not including this Agreement.

**“Obligations”** means the “Obligations” as defined in the Credit Agreement, whether now existing or hereafter incurred, whether direct, indirect, fixed, contingent, liquidated, unliquidated, joint, several, or joint and several, now or hereafter existing, due or to become due, whether evidenced in writing or not, together with all reasonable costs, expenses, and attorneys’ fees incurred in the enforcement or collection thereof, and including interest thereon after the commencement of any proceedings under any Debtor Relief Laws.

**“Permitted Dispositions”** means sales, transfers or other dispositions of Collateral permitted under the Credit Agreement as in effect on the Closing Date and without giving effect to any amendments or modifications thereto or consents or waivers thereof.

**“Principal Agreements”** means the Loan Documents and the Swap Documents, collectively.

**“Proceeds”** includes any and all proceeds from any sale, exchange, destruction, condemnation, foreclosure, liquidation under any Debtor Relief Law or other disposition of any of the Collateral (each, a **“Disposition”**); provided, however, prior to the occurrence of a Triggering Event, such term will not include (i) Permitted Dispositions or (ii) Dispositions made with each Creditor’s written consent unless a Creditor’s consent is conditioned by a requirement that the proceeds thereof continue to be held as Collateral.

**“Ratably”** or **“Ratable”** means, with respect to any amount to be allocated between the Lender Group and the Swap Counterparty, the allocation of a portion of such amount to (a) Lender Group such that the ratio that the amount allocated to the Lender Group bears to the total amount to be so allocated equals the total of the Obligations to the Total Obligations and (b) the Swap Counterparty such that the ratio that the amount allocated to the Swap Counterparty bears to the total amount to be so allocated equals the ratio of the Swap Obligations to the Total Obligations.

**“Refinance”** means, in respect of the Obligations, to refinance, restructure, replace, refund or repay, or to issue other indebtedness in exchange or in replacement for, the Obligations, in whole or in part. **“Refinancing”** shall have a correlative meaning.

“**Right**” or “**Rights**” means rights, remedies, powers, privileges and benefits.

“**Swap Documents**” means the Swap Counterparty Master Agreement, including, where the context requires, each confirmation now or hereafter entered into thereunder for Acceptable Commodity Hedging Transactions.

“**Swap Obligations**” means all obligations, whether now existing or hereafter created, of the Borrower to the Swap Counterparty under the Swap Documents for Acceptable Commodity Hedging Transactions that are secured by the Collateral Documents following the netting of such Acceptable Commodity Hedging Transactions, together with any interest due thereon and all costs and expenses (including, reasonable attorneys’ fees) incurred in the enforcement or collection thereof, and interest thereon after the commencement of any proceedings under any Debtor Relief Laws; provided, however, that (i) if the Administrative Agent notifies the Borrower and the Swap Counterparty pursuant to Section 2.01(c) that the Swap Counterparty’s status as a Secured Party has been revoked, any Commodity Hedging Transactions entered into thereafter between the Borrower and the Swap Counterparty and any interest, costs or expenses associated with such new Commodity Hedging Transactions shall be excluded from the scope of “Swap Obligations,” and shall not be secured by a Lien on the Collateral and (ii) for purposes of the definition of “Ratable” and “Ratably” and for purposes of Section 4.02(b), “Swap Obligations” means the Swap Obligations then due and owing.

“**Total Obligations**” means, as of the date of determination, an amount equal to the Obligations *plus* the Swap Obligations.

“**Triggering Event**” shall mean, with respect to the Loan Parties, either of the following:

(i) The Collateral Agent shall have received from the Swap Counterparty written notice that (A) an Event of Default (as defined in the Swap Documents) or a Termination Event (as defined in the Swap Documents) with respect to the Loan Parties has occurred and is continuing under one or more of the Swap Documents (but excluding any Cross-Default), (B) an Early Termination Date (as defined in the Swap Documents) has been designated as a result thereof, (C) specifies the sum of all unpaid amounts and settlement payments then due as the result of the designation of such early termination date and the amount of interest and other amounts then due and payable by the Loan Parties in respect thereof, and (D) the amount set forth in the preceding clause (C) has not been paid in full or discharged to the satisfaction of the Swap Counterparty (the “**Swap Counterparty Triggering Event Notice**”); or

(ii) The Swap Counterparty or the Borrower shall have received from the Administrative Agent written notice that (x) an Event of Default (as defined in the Credit Agreement, but excluding any Cross-Default) has occurred and is continuing and (y) the unpaid principal amount of the Loans under the Credit Agreement has been declared to be then due and payable (the “**Administrative Agent Triggering Event Notice**”);

provided, however, that any Triggering Event shall be deemed to be continuing at all times after its occurrence unless prior to the exercise of any remedies under any of the Collateral Documents or the occurrence of an Event of Default under Sections 8.1(f) or (g) of the Credit

Agreement, (1) in the case of a Triggering Event under clause (i) above, the Swap Counterparty has rescinded the Swap Counterparty Triggering Event Notice it delivered to the Collateral Agent in accordance with clause (i) above by way of written notice of such rescission delivered to the Collateral Agent, and (2) in the case of a Triggering Event under clause (ii) above, the Administrative Agent (acting at the written direction of the requisite number of Lenders required under the Credit Agreement) has rescinded the Administrative Agent Triggering Event Notice it delivered to the Swap Counterparty or the Borrower in accordance with clause (ii) above by way of written notice of such rescission delivered to the Swap Counterparty and the Borrower; provided, further, that, to the extent an Event of Default occurs under Sections 8.1(f) or (g) of the Credit Agreement, neither the Administrative Agent nor any Swap Counterparty shall be required to deliver an Swap Counterparty Triggering Event Notice or Administrative Agent Triggering Event Notice, as applicable, to any Loan Party in order for a Triggering Event to occur.

Section 1.03. Headings. Article and section headings of this Agreement are for convenience of reference only, and shall not govern the interpretation of any of the provisions of this Agreement.

Section 1.04. Terms Generally. References in this Agreement to Exhibits, Schedules, Annexes, Appendixes, Attachments, Articles, Sections, Recitals or clauses shall be to exhibits, schedules, annexes, appendixes, attachments, articles, sections, recitals or clauses of this Agreement, unless expressly stated to the contrary. References in this Agreement to “hereby,” “herein,” “hereinafter,” “hereinabove,” “hereinbelow,” “hereof,” “hereunder” and words of similar import shall be to this Agreement in its entirety and not only to the particular Exhibit, Schedule, Annex, Appendix, Attachment, Article, or Section in which such reference appears unless specifically stated otherwise. Exhibits and Schedules to any Loan Document or this Agreement shall be deemed incorporated by reference in such Loan Document or this Agreement, as applicable. References to any document, instrument, or agreement (a) shall include all exhibits, schedules, and other attachments thereto, and (b) shall include all documents, instruments, or agreements issued or executed in replacement thereof. This Agreement, for convenience only, has been divided into Articles and Sections; and it is understood that the rights and other legal relations of the parties hereto shall be determined from this instrument as an entirety and without regard to the aforesaid division into Articles and Sections and without regard to headings prefixed to such Articles or Sections. The phrases “this Section” and “this clause” and similar phrases refer only to the sections or clauses hereof in which such phrases occur. Whenever the context requires, reference herein made to the single number shall be understood to include the plural; and likewise, the plural shall be understood to include the singular. Definitions of terms defined in the singular or plural shall be equally applicable to the plural or singular, as the case may be, unless otherwise indicated. Words denoting sex shall be construed to include the masculine, feminine and neuter, when such construction is appropriate; and specific enumeration shall not exclude the general but shall be construed as cumulative; the word “or” is not exclusive; the word “including” (in its various forms) shall mean “including, without limitation”; in the computation of periods of time, the word “from” means “from and including” and the words “to” and “until” mean “to but excluding”; and all references to money refer to the legal currency of the United States of America. The Exhibits, Schedules, Annexes, Appendixes and Attachments attached to this Agreement and items referenced as being attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for all purposes. The words “asset” and “property” shall be



construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, real property, securities, accounts and general intangibles.

Section 1.05. Joint Preparation; Construction of Indemnities and Releases. **This Agreement, the Loan Documents and the Swap Documents have been reviewed and negotiated by sophisticated parties with access to legal counsel, and no rule of construction shall apply hereto or thereto which would require or allow this Agreement, any Loan Document or any Swap Document to be construed against any party because of its role in drafting such document. All indemnification and release of liability provisions of this Agreement shall be construed broadly (and not narrowly) in favor of the Persons receiving indemnification or releases of liability.**

## **ARTICLE II**

### **NATURE OF OBLIGATIONS AND LIENS**

#### Section 2.01. Obligations and Liens Pari Passu.

(a) Subject to the other terms and conditions of this Agreement, the Obligations shall be pari passu with the Swap Obligations. At the times and under the conditions described in Article IV, the Obligations and the Swap Obligations will be repaid Ratably with the proceeds of Collateral after the payment of expenses. Upon the execution of this Agreement, the Liens granted under the Collateral Documents that are in effect at the time of execution of this Agreement shall be in favor of the Collateral Agent for the benefit of the Creditors, to secure, Ratably, the Obligations and the Swap Obligations. Such Collateral Documents are in all substantive respects in the form approved by the Swap Counterparty.

(b) The Liens under the Collateral Documents shall be Permitted Liens and the Administrative Agent consents to the Loan Parties granting such Liens. The Swap Counterparty hereby acknowledges and consents to the Loan Parties' grants of Liens to the Administrative Agent in all rights of the Loan Parties under the Swap Documents, including all payments owing to the Loan Parties thereunder, notwithstanding any restrictions on assignment in any Swap Document.

(c) The Administrative Agent consents to the Loan Parties' entering into Commodity Hedging Transactions with the Swap Counterparty that constitute Acceptable Commodity Hedging Transactions. The Administrative Agent agrees and consents to the Swap Counterparty being a Secured Party (as defined in the Credit Agreement) with respect to Acceptable Commodity Hedging Transactions; provided, however, that the Administrative Agent may, by giving written notice to the Borrower and to the Swap Counterparty, elect to revoke the Swap Counterparty's status as a Secured Party for purposes of any Acceptable Commodity Hedging Transactions entered into beginning on the fifth (5<sup>th</sup>) Business Day following the Borrower's and the Swap Counterparty's receipt (or deemed receipt pursuant to Section 5.09) of such notice. The Administrative Agent also agrees that in the event the Administrative Agent notifies the Borrower that the Borrower's entry into a Commodity Hedging Transaction would not constitute an Acceptable Commodity Hedging Transaction, then the Administrative Agent will also concurrently notify the Swap Counterparty of such determination.

(d) Without the prior written consent of the Administrative Agent, the Loan Parties and the Swap Counterparty shall not amend, supplement, delete or otherwise modify the Swap Counterparty Master Agreement or any provision thereof from the form presented to the Administrative Agent for its review prior to execution of this Agreement:

(i) if such action would result in a violation, or the creation of an obligation on the part of the Borrower to violate, the limitations on credit support set forth in Section 2.02 hereof;

(ii) such that the Threshold Amount (as defined in the Swap Counterparty Master Agreement) that is applicable to the Borrower would be anything other than a fixed dollar amount equal to or greater than \$500,000; or

(iii) in a manner that changes or expands the events that constitute Events of Default or Additional Termination Events (each as defined in the Swap Counterparty Master Agreement) or otherwise have the effect of causing an event to have consequences similar to an Event of Default or Additional Termination Event.

Notwithstanding clauses (i) through (iii) preceding, if (1) the Swap Counterparty notifies the Administrative Agent that it and the Borrower propose an amendment, supplement, deletion or modification to the Swap Counterparty Master Agreement mandated by the regulatory requirements imposed by the Commodity Futures Trading Commission under the Dodd-Frank Wall Street Reform and Consumer Protection Act and (2) the Borrower's request for the Administrative Agent's consent to the proposed amendment, supplement, deletion or modification is accompanied by a legal opinion of counsel reasonably satisfactory to the Administrative Agent confirming to the Administrative Agent that such amendment, supplement, deletion or modification is legally required, then the Administrative Agent will not unreasonably withhold or delay its consent to any such amendment, supplement, deletion or modification.

(e) The amounts payable by the Loan Parties to each Creditor at any time under any of the Principal Agreements to which such Creditor is a party shall be separate and independent debts, and each Creditor shall be entitled to enforce any Right arising out of the applicable Principal Agreement to which it is a party, subject to the terms thereof and of this Agreement. Subject to clauses (h) and (i), both before and during an insolvency or liquidation proceeding, any Creditor may take any actions and exercise any and all rights that they would have as an unsecured creditor, including the commencement of an insolvency or liquidation proceeding against the Loan Parties in accordance with applicable law and the termination of any Principal Agreement in accordance with the terms thereof; provided, that if any Creditor becomes a judgment Lien creditor in respect of Collateral as a result of its enforcement of its rights as an unsecured creditor with respect to the Swap Obligations or the Obligations, as the case may be, such judgment Lien shall be subject to the terms of this Agreement for all purposes as the other Liens securing the Total Obligations are subject to this Agreement and the proceeds thereof shall be applied as provided in Section 4.02(b).

(f) Each Creditor hereby agrees that no Creditor shall have any right individually to realize upon any Liens granted under the Collateral Documents, it being understood

and agreed that such Rights may be exercised only by the Collateral Agent or the trustee under the Collateral Documents for the Ratable benefit of the Creditors.

(g) Each Acceptable Commodity Hedging Transaction at the time it is executed by the Borrower or other Loan Party and the Swap Counterparty shall be deemed to be acceptable under this Agreement if permitted under the Credit Agreement. The Swap Counterparty Master Agreement will be a "Secured Swap Agreement" under and as defined in the Guarantee and Collateral Agreement. The Swap Counterparty and the Loan Parties will enter into Commodity Hedging Transactions under the Swap Counterparty Master Agreement that will comply with the limitations set forth in the definition of Acceptable Commodity Hedging Transaction and any Commodity Hedging Transaction that does not comply with such limitations will not be secured by the Collateral. If a Commodity Hedging Transaction would otherwise be secured under the Collateral Documents but for a deviation from the criteria for "Acceptable Commodity Hedging Transactions" set forth in the definition hereof, and that deviation is consented to in writing and delivered via electronic mail to the Swap Counterparty in accordance with Section 5.09 by the Administrative Agent (with such approvals as may be required by the Credit Agreement), then such Commodity Hedging Transaction shall be secured by the Collateral Documents.

(h) Each Creditor hereby agrees that it shall not (and hereby waives any right to) contest, or support any other Person in contesting, in any proceedings (including any insolvency or liquidation proceedings), the priority, validity or enforceability of a Lien held by or on behalf of the Collateral Agent in any Collateral; provided that nothing in this Agreement shall be construed to prevent or impair the rights of the Collateral Agent or any Creditor to enforce this Agreement as provided herein.

(i) Each Lender and Swap Counterparty agrees that (i) it will not (and hereby waives any right to) challenge or question in any proceeding the validity or enforceability of any of the Total Obligations or any Collateral Document or the validity, attachment, perfection or priority of any Lien under any Collateral Document or the validity or enforceability of the priorities, rights or duties established by or other provisions of this Agreement, (ii) it will not take or cause to be taken any action the purpose or intent of which is, or could be, to interfere, hinder or delay, in any manner, whether by judicial proceedings or otherwise, any sale, transfer or other disposition of the Collateral by Collateral Agent in accordance with the terms of this Agreement, (iii) it will not institute any suit or assert in any suit, bankruptcy, insolvency or other proceeding any claim against Collateral Agent or any other Creditor seeking damages from or other relief by way of specific performance, instructions or otherwise with respect to any Collateral, and none of Collateral Agent or any other Creditor shall be liable for any action taken or omitted to be taken by Collateral Agent or Creditor, with respect to any Collateral in accordance with the provisions of this Agreement, (iv) it will not seek, and hereby waives any right, to have any Collateral or any part thereof marshaled upon any foreclosure or other disposition of such Collateral and (v) it will not attempt, directly or indirectly, whether by judicial proceedings or otherwise, to challenge the enforceability of any provision of this Agreement; provided, that nothing in this Agreement shall be construed to prevent or impair the rights of any of Collateral Agent or any other Creditor to enforce this Agreement.

Section 2.02. Limitations on Separate Credit Support. The Swap Counterparty agrees that, without the prior written consent of the Administrative Agent, the Swap Counterparty will

not seek or accept credit support for any Swap Obligation or any other Commodity Hedging Transaction between the Loan Parties and the Swap Counterparty, including without limitation letters of credit, guarantees from any owner of the Loan Parties or any other Person, or Liens on any Property of the Loan Parties, other than the Rights of the Swap Counterparty under the Collateral Documents until after the full payment and cancellation of the Obligations.

Section 2.03. Release of Collateral; Authorization; Amendments to Loan Documents; Notice of Releases.

(a) Subject to the terms hereof and the Loan Documents, the Collateral Agent shall permit the Loan Parties to remain in possession and control of the Collateral, to operate the Collateral, and to collect, invest and dispose of any income thereon or therefrom.

(b) The Collateral Agent shall have the right from time to time to release Collateral from the Liens created by the Collateral Documents; provided that, subject to Section 5.04, the written consent of the Swap Counterparty shall be required for any release of Collateral (other than Permitted Dispositions) during any rolling 12-month period that, when aggregated with all other Oil and Gas Properties for which Lien releases have been granted within the immediately preceding 12-month period for which the Swap Counterparty did not grant its consent (other than Permitted Dispositions), have aggregate Collateral Value in excess of 10% of the aggregate Collateral Value of all Oil and Gas Properties of the Loan Parties. Notwithstanding anything to the contrary in this Agreement, and for the avoidance of doubt, the proceeds of a sale of Collateral occurring while no Triggering Event has occurred (or would result therefrom) shall be applied as required by the Loan Documents. Subject to Section 5.04, the Collateral Agent shall not, in connection with a Disposition, release any Collateral from Liens created by the Collateral Documents during the existence of a Triggering Event, except for Permitted Exceptions; provided, that all Parties acknowledge and agree that the proceeds of any Permitted Disposition that occurs during the existence of a Triggering Event shall constitute Proceeds and shall be applied in accordance with Section 4.02 hereof

(c) To the extent permitted by, and subject to the provisions of, the applicable Collateral Documents, (i) the Collateral Agent may, in its sole discretion and without the consent of the Creditors, take all actions it deems necessary or appropriate in order to enforce any of the terms of the Collateral Documents and (ii) the Collateral Agent shall have power to institute and to maintain such suits and proceedings as it may deem expedient (A) to prevent any impairment of the Collateral by any act that may be unlawful or in violation of the Principal Agreements, and (B) to preserve or protect its interests and the interests of the Creditors in the Collateral; provided, that, for the avoidance of doubt, the foregoing shall not be understood to grant the Collateral Agent any rights it does not have under the Credit Agreement and Collateral Documents (excluding this Agreement and any other Swap Intercreditor Agreement). Notwithstanding the above, the Collateral Agent may choose not to take any action authorized by this Section until it receives written direction from a Creditor.

(d) The Collateral Agent is authorized to receive any Proceeds for the benefit of the Creditors and to distribute such Proceeds to the Creditors in accordance with the provisions of this Agreement.

(e) The Collateral Agent shall, as soon as reasonably practicable after any release of the Collateral permitted by Section 2.03(b), notify the Swap Counterparty of such release giving full particulars with respect thereto; provided, however, that any failure of the Collateral Agent to comply with the requirements of this sentence shall not give rise to any breach of contract claim against the Collateral Agent, the Administrative Agent or any Lender or result, directly or indirectly, in any liability being imposed on the Collateral Agent, the Administrative Agent or any Lender in connection therewith.

(f) The Lender Group may enter into any increase, amendment, modification or supplement to any Loan Document (other than (x) the Collateral Documents, unless permitted by clause (g) below and (y) Section 2.12(f) of the Credit Agreement in a manner adverse to the Swap Counterparty), enter into new or additional credit facilities with the Loan Parties, or grant any waiver, consent, release, indulgence, extension or renewal with respect to any Loan Document (other than the Collateral Documents, unless permitted by clause (g) below) or such new or additional credit facilities (“**Credit Agreement Modifications**”), and such Credit Agreement Modifications shall be deemed accepted by the Swap Counterparty and the Loan Parties for the purposes of the Swap Counterparty Master Agreement with respect to those provisions of the Loan Documents (other than the Collateral Documents, unless permitted by clause (g) below) incorporated by reference in the Swap Counterparty Master Agreement. The Administrative Agent shall, as soon as reasonably practicable after entering into any amendment, modification or supplement to the Credit Agreement or any Collateral Document, notify the Swap Counterparty and provide the Swap Counterparty with a copy of such amendment, modification or supplement; provided, however, that any failure of the Administrative Agent to comply with the requirements of this sentence shall not impact the validity of such amendment, modification or supplement, give rise to any breach of contract claim against the Administrative Agent or any Lender or result, directly or indirectly, in any liability being imposed on the Administrative Agent or any Lender in connection therewith.

(g) The Collateral Agent may enter into any amendment, modification or supplement to any of the Collateral Documents, unless the effect of such amendment would be to (i) change the priority of or subordinate the Liens created thereby, except to the extent the Administrative Agent is permitted to do so under the Credit Agreement, (ii) materially modify any remedy provided for therein if adverse to the Swap Counterparty, (iii) materially reduce or diminish the benefits of all or substantially all of the security provided for in the Collateral Documents, except to the extent the Administrative Agent is permitted to do so under the Credit Agreement, or (iv) otherwise have any material detrimental effect on the Swap Counterparty’s rights and obligations under this Agreement.

(h) Within two (2) Business Days of each date on which (i) the outstanding Exposure of the Loan Parties under the Swap Documents exceeds (and continues to exceed) \$100,000,000 or (ii) BP Corporation North America Inc.’s credit rating falls to lower than Baa3 as listed by Moody’s Investors Service, Inc. or BBB- as listed by Standard & Poor’s Corporation, the Swap Counterparty shall (a) furnish written notice to the Collateral Agent and the Administrative Agent of such occurrence, including in such notice the aggregate amount of Exposure then in existence, (b) negotiate in good faith with the Loan Parties and the Administrative Agent to provide additional credit support for the Swap Counterparty’s existing and future potential Exposure and other obligations under the Swap Documents in addition to the guaranty

of BP Corporation North America Inc. being executed and delivered contemporaneously with this Agreement and (c) cause to be furnished to the Loan Parties and the Administrative Agent within two (2) Business Days of the occurrence of an event specified in clause (i) or (ii) preceding such additional credit support.

Section 2.04. Hedge Reports. Borrower hereby agrees that Swap Counterparty may provide to the Administrative Agent from time to time, and the Swap Counterparty hereby agrees to provide or otherwise make available (which may be via access to an online portal containing the daily mark to market information of Borrower) to the Administrative Agent within five Business Days following such request, a report of the marked-to-market positions of the various transactions in effect from time to time under the relevant Swap Counterparty Master Agreement. Borrower hereby irrevocably consents and agrees that the Swap Counterparty may provide or otherwise make available to the Administrative Agent, its successors and assigns such reports, confirmations and mark to market information as contemplated above, including, without limitation, by granting the Administrative Agent access to an online portal that reflects the daily mark to market information of Borrower.

Section 2.05. Consent to Disclosures. The Loan Parties hereby consent to Creditors' disclosure to each other of any confidential information relating to the Loan Parties that has been provided to any Creditor by or for the benefit of the Loan Parties, notwithstanding any confidentiality agreement between the Loan Parties and any Creditor that might otherwise limit or prohibit such disclosure; provided that the receiving Creditor agrees to treat such information as confidential in accordance with the terms of Section 10.17 of the Credit Agreement.

Section 2.06. Refinancing. The Swap Counterparty consents to any Refinancing of the Credit Agreement and the indebtedness thereunder; provided that the holders of such Refinancing debt (or an agent on their behalf) bind themselves in writing to the terms of this Agreement, and provided further that any such Refinancing shall require the prior written consent of the Swap Counterparty if, on the date of such Refinancing, such Refinancing causes the aggregate principal amount outstanding under the Credit Agreement (after giving effect to such Refinancing) to exceed 85% of the aggregate present value of the future net income with respect to proved and producing reserves attributable to the Oil and Gas Properties of Borrower and its Subsidiaries as set forth in the most recently provided Reserve Report, discounted at a 9% per annum discount rate, thus causing a material reduction in the value of the Collateral, security or credit support available to the Swap Counterparties, while Swap Obligations are still in effect or outstanding hereunder, unless Borrower (i) delivers pari passu first lien replacement security (unencumbered, except for liens and encumbrances permitted by the Credit Agreement) to be shared ratably by the Creditors under and in accordance with this Agreement, having a value and terms and conditions reasonably acceptable to the Swap Counterparty, or (ii) provides the Swap Counterparty with replacement security sufficient in form, amount and for a term reasonably acceptable to the Swap Counterparty.

### **ARTICLE III** **COLLATERAL AGENT**

Section 3.01. Appointment of the Collateral Agent. Each Creditor hereby designates the Collateral Agent to act as the contractual representative for the Creditors, to hold and enforce the Liens under the Collateral Documents for the benefit of the Creditors and take certain other actions

as permitted by the Collateral Documents and this Agreement. Each Creditor hereby authorizes the Collateral Agent to take such action on its behalf under the provisions of this Agreement and the Collateral Documents and to exercise such powers and to perform such duties hereunder and thereunder as are specifically delegated to it hereunder or under any Collateral Document or required of the Collateral Agent by the terms hereof or thereof and such other powers as are reasonably incidental thereto. The Collateral Agent may perform any of its duties hereunder by or through its affiliates, agents or employees and the exculpatory and indemnification provisions in this Agreement and the Collateral Documents shall apply to any such affiliate, agent or employee. The Collateral Agent agrees to act as the Collateral Agent upon the express terms and conditions contained herein.

Section 3.02. Nature of Duties of the Collateral Agent. The Collateral Agent shall have no duties or responsibilities, except those expressly set forth in this Agreement, the Credit Agreement, or the Collateral Documents. The Collateral Agent shall have and may exercise such powers hereunder and under the Collateral Documents as are specifically delegated to the Collateral Agent by the terms hereof, together with such powers as are reasonably incidental thereto. Neither the Collateral Agent nor any of its affiliates, directors, officers, employees or agents (each, a “**Protected Party**”) shall be liable to the Creditors for any damages caused by any action taken or omitted by any Protected Party hereunder or under the Collateral Documents (**INCLUDING THOSE DAMAGES CAUSED BY THE SOLE NEGLIGENCE, COMPARATIVE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR CONCURRENT NEGLIGENCE OF ANY PROTECTED PARTY**), unless caused solely by the gross negligence or willful misconduct of the Protected Party seeking protection under this Section 3.02. The duties of the Collateral Agent shall be mechanical and administrative in nature; and the Collateral Agent, in its capacity as such, shall not have by reason of this Agreement or the Collateral Documents a fiduciary relationship in respect of any Creditor. Nothing in this Agreement, expressed or implied, is intended to or shall be so construed as to impose upon the Collateral Agent any duties or obligations in respect of this Agreement and the Collateral Documents except as expressly set forth herein. Other than its duties expressly provided herein or in the Collateral Documents, Collateral Agent shall have no implied duties to Creditors or the Loan Parties under or in connection with this Agreement and no implied duties as to any Property belonging to the Borrower (whether or not the same constitutes Collateral), whether such Property is in Collateral Agent’s possession or control or in the possession or control of any of its agents or nominees, or any income thereon or as to the preservation of Rights against prior parties or any other rights pertaining thereto or available at law or otherwise. Collateral Agent shall have the same Rights hereunder as any other Creditor and may exercise the same as though it were not performing the duties specified herein. The Person serving as Collateral Agent may engage in any kind of other business with the Loan Parties or any of the Loan Parties’ affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from the Loan Parties and such other Persons in connection with this Agreement or any Principal Agreement, and otherwise, without having to account for the same to the other Creditors except as specified herein.

Section 3.03. Lack of Reliance on the Collateral Agent.

(a) Independently and without reliance upon the Collateral Agent or any other Creditor, each Creditor represents to the Collateral Agent and each of the other Creditors that, as of the date of this Agreement, such Creditor has made (i) its own independent investigation of the

financial condition and affairs of the Loan Parties based on such documents and information as it has deemed appropriate in connection with the taking or not taking of any action in connection herewith, and (ii) its own appraisal of the creditworthiness of the Loan Parties. Each Creditor also acknowledges that it will, independently and without reliance upon the Collateral Agent or any other Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement or the Collateral Documents. Except as expressly provided in this Agreement, the Collateral Agent shall have no duty or responsibility, either initially or on a continuing basis, to provide any Creditor with any credit or other information concerning the affairs, financial condition or business of the Loan Parties which may come into the possession of the Collateral Agent or any of its affiliates whether now in its possession or in its possession at any time or times hereafter; and the Collateral Agent shall not be required to keep itself informed as to the performance or observance by the Loan Parties of this Agreement, any Collateral Document or any other document referred to or provided for herein or to inspect the Properties or books of the Loan Parties.

(b) The Collateral Agent shall not (i) be responsible to any Creditor for any recitals, statements, information, representations or warranties herein, in any Collateral Document, or in any document, certificate or other writing delivered in connection herewith or therewith or for the execution, effectiveness, genuineness, validity, enforceability, collectability, priority or sufficiency of this Agreement or the Collateral Documents or the financial condition of the Loan Parties; or (ii) be required to make any inquiry concerning (a) the performance or observance by others of any of the terms, provisions or conditions of this Agreement or the Collateral Documents, including the content of notices, opinions, certificates and directions given under this Agreement or the Collateral Documents, (b) the financial condition of the Loan Parties, or (c) the existence or possible existence of any “default” or “event of default” under the Principal Agreements. To the extent the Collateral Agent receives any written notice of default provided to the Loan Parties by the Administrative Agent, it shall promptly provide a copy of the same to the Swap Counterparty but shall in no event have any liability to the Swap Counterparty for any failure to so provide such notice.

Section 3.04. Certain Rights of the Collateral Agent. If the Collateral Agent shall request instructions from the Creditors with respect to any act or action (including the failure to act) in connection with this Agreement or the Collateral Documents, the Collateral Agent shall be entitled to refrain from such act or taking such action unless and until the Collateral Agent shall have received written instructions from any Creditor or Creditors pursuant to the terms hereof; and the Collateral Agent shall not incur liability to any Person by reason of so refraining. Without limiting the foregoing, no Creditor shall have any right of action whatsoever against the Collateral Agent as a result of the Collateral Agent acting or refraining from acting under this Agreement or the Collateral Documents in accordance with the written instructions given in accordance with this Agreement, and such instructions and any action taken or failure to act pursuant thereto shall be binding on all the Creditors. The Collateral Agent shall be fully justified in failing or refusing to take any action hereunder or under the Collateral Documents unless it shall first be indemnified to its satisfaction by the Creditors against any and all liability and expense which may be incurred by the Collateral Agent by reason of taking or continuing to take any such action. Notwithstanding any other provision of this Article III or any indemnity or instructions provided by any or all of the Creditors, the Collateral Agent shall not be required to take any action which, in the reasonable belief of the Collateral Agent, exposes the Collateral Agent to personal liability or which, in the



reasonable belief of the Collateral Agent, is contrary to this Agreement, the Collateral Documents or applicable law.

Section 3.05. Reliance by the Collateral Agent. The Collateral Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, statement, certificate or telecopier message, cablegram, radiogram, facsimile transmission, e-mail, order or other documentary, teletransmission or telephone message believed by it to be genuine and correct and to have been signed, sent or made by the proper Person. The Collateral Agent may consult with legal counsel, accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts.

Section 3.06. Creditors as Owners. The Collateral Agent may deem and treat each Creditor as the owner of its portion of the Total Obligations as described herein for all purposes hereof unless and until the Collateral Agent is notified of a change in Creditors.

Section 3.07. Successor Collateral Agent.

(a) Collateral Agent shall not be subject to removal by Creditors or the Loan Parties; provided that if the Person serving as Administrative Agent is replaced as Administrative Agent under the Credit Agreement, the Person serving as replacement Administrative Agent shall automatically and without further action or consent by the Loan Parties or the Swap Counterparty become Collateral Agent under this Agreement. The Collateral Agent may resign at any time by giving 30 days prior written notice thereof to the Creditors and the Borrower. Following any such notice of resignation, the resigning Collateral Agent shall have the right to appoint a successor Collateral Agent, subject to the consent of the Swap Counterparty to the appointee (which consent shall not be unreasonably withheld, conditioned or delayed). If within 30 days after the retiring Collateral Agent's giving of notice of resignation, no successor Collateral Agent shall have been so appointed by the resigning Collateral Agent which has accepted such appointment, then the Swap Counterparty may, in its sole discretion, appoint a successor Collateral Agent.

(b) Upon the acceptance of any appointment as the Collateral Agent hereunder by a successor Collateral Agent, such successor Collateral Agent shall thereupon succeed to and become vested with all the Rights and duties of the retiring Collateral Agent, and the retiring Collateral Agent shall be discharged from its duties under this Agreement. After any retiring Collateral Agent's resignation hereunder as the Collateral Agent, the provisions of this Agreement shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Collateral Agent under this Agreement.

Section 3.08. Employment of Collateral Agent and Counsel. The Collateral Agent may execute any of its duties as the Collateral Agent hereunder or under the Collateral Documents by or through employees, agents, and attorneys-in-fact and shall not be answerable to the Creditors for the default or misconduct of any such employees, agents or attorneys-in-fact reasonably selected by it in good faith unless such default or misconduct is a direct result of the gross negligence or willful misconduct of the Collateral Agent in monitoring the activities of such employees, agents or attorneys-in-fact; provided that the Collateral Agent shall always be obligated to account for moneys or securities received by it or its authorized agents. The Collateral

Agent shall be entitled to advice of independent legal counsel concerning all matters pertaining to the collateral agency hereby created and its duties hereunder or under the Collateral Documents.

Section 3.09. Limitation on Liability of the Creditors and the Collateral Agent. The Creditors and the Collateral Agent shall not be deemed, as a result of the execution and delivery of the Collateral Documents or the consummation of the transactions contemplated by this Agreement and the Collateral Documents, to have assumed any obligation of the Loan Parties with respect to the Collateral or any liability under or with respect to any of the contracts, agreements, leases, instruments or documents which are, or which may hereafter be, assigned to the Collateral Agent for the benefit of the Creditors.

#### **ARTICLE IV** **ELECTION TO PURSUE REMEDIES; PROCEEDS**

##### Section 4.01. Procedures Regarding Remedies.

(a) Upon the occurrence and during the continuance of any Triggering Event, the Collateral Agent shall, upon the request of any of the Accelerated Creditors specifying the particular actions being requested by such Accelerated Creditor, and subject to the other provisions of this Agreement, commence to take, or direct the appropriate trustee or agent to take, those requested actions provided for in the Collateral Documents relating to the pursuit of remedies; provided, that the Swap Counterparty shall not have the right to require Collateral Agent to realize on any Liens or take any enforcement actions granted pursuant to the Collateral Documents until, if the amount of Swap Obligations owing to the Swap Counterparty is equal to or greater than fifty percent (50%) of the Total Obligations, the 45th day after a Triggering Event of the type referred to in clause (i) of the definition of Triggering Event shall have occurred (the “**Standstill Period**”) and provided further that such Triggering Event shall be continuing on such date and the Collateral Agent shall not have diligently commenced exercise of remedies on such date; provided further that, to the extent the amount of Swap Obligations owing to the Swap Counterparty is equal to or greater than seventy-five percent (75%) of the Total Obligations, the Swap Counterparty will not be subject to the Standstill Period and may immediately request the Collateral Agent to take actions as provided in this Section 4.01. For the avoidance of doubt, the Swap Counterparty shall not have the right to require Collateral Agent to realize on any Liens or take any enforcement actions granted pursuant to the Collateral Documents if the amount of Swap Obligations owing to the Swap Counterparty is less than fifty percent (50%) of the Total Obligations.

(b) The Loan Parties and the Creditors agree that upon the occurrence of a Triggering Event, all payments made to any Creditor by the Loan Parties shall be shared by all Creditors in accordance with Section 4.02.

(c) Each Creditor agrees: (i) to deliver to each other Creditor, as applicable, at the same time it makes delivery to the Borrower, a copy of any (A) notice declaring the occurrence of an Event of Default under any Loan Documents, (B) notice declaring the occurrence of an Event of Default (as defined in the Swap Documents) or Termination Event (as defined in the Swap Documents) under any Swap Documents, (C) notice of intent to accelerate or notice of acceleration of the Loan Parties’ obligations, or (D) notice of the designation of an Early Termination Date (as defined in the Swap Documents) with respect to any Swap Obligation; (ii) to deliver to each other

Creditor, at the same time it makes delivery to any other Person, a copy of any notice of the commencement of any judicial proceeding and a copy of any other notice with respect to the exercise of remedies with respect to any of the Total Obligations; and (iii) deliver the Early Termination Amount (as defined in the Swap Documents). Any failure by a party hereto to furnish a copy under this clause (c) shall not limit or affect the rights and obligations hereunder.

(d) Each of the Swap Counterparty and the Collateral Agent hereby agrees that it shall endeavor to furnish the Borrower with a copy of any notice provided or received, as applicable, by it pursuant to clause (i) of the definition of Triggering Event. Each of the Borrower and the Administrative Agent hereby agrees that it shall endeavor to furnish the Swap Counterparty with a copy of any notice received or provided, as applicable, by it pursuant to clause (ii) of the definition of Triggering Event. Any failure by a party hereto to furnish a copy under this clause (d) shall not limit or affect the rights and obligations hereunder.

(e) The Borrower hereby agrees that the Swap Counterparty may provide to the Administrative Agent from time to time, and the Swap Counterparty hereby agrees to provide to the Administrative Agent within three (3) Business Days following the Swap Counterparty's receipt of a written request therefor from the Administrative Agent, a report of the marked-to-market positions of the various transactions in effect from time to time under the Swap Documents. Any unintentional failure by the Swap Counterparty to timely furnish information required under this clause (e) shall not limit or affect the parties' rights and obligations hereunder.

(f) In the event that the Liens created under the Collateral Documents conflict with the Liens created under other security documents in favor of or for the benefit of the Administrative Agent, the Liens created under the Collateral Documents shall have priority.

(g) Collateral Agent shall not be obligated to follow any instructions of any Accelerated Creditor if Collateral Agent determines, in its sole and absolute discretion, that: (i) such instructions conflict with the provisions of this Agreement, any Principal Agreement, any Collateral Document or any Governmental Requirement, (ii) such instructions are ambiguous, inconsistent, in conflict with other instructions (whether from the same or another Accelerated Creditor) or otherwise insufficient to direct the actions of Collateral Agent; provided that Collateral Agent explains the grounds for a refusal, or (iii) Collateral Agent has not been adequately indemnified to its satisfaction (including indemnity from the Accelerated Creditors in accordance with the Ratable amounts of Total Obligations owing to them). Collateral Agent shall have the right, in its discretion, to take any action authorized under this Agreement or the Collateral Documents, to the extent that such action is not prohibited by the terms hereof or thereof, which it deems proper and consistent with the instructions given by any Accelerated Creditor as provided for herein or otherwise in the best interest of Creditors. In the absence of written instructions from any Accelerated Creditor for any particular matter, Collateral Agent shall have no duty to take or refrain from taking any action unless such action or inaction is explicitly required by the terms of this Agreement or any Governmental Requirement. Collateral Agent shall have no duty with respect to a Triggering Event unless it has received written notice from an Accelerated Creditor that a Triggering Event has occurred.

(h) The Collateral Agent shall cease to comply with any direction by a Swap Counterparty pursuant to this Section 4.01 if (i) the Triggering Event under the Swap Documents

of such Swap Counterparty has been cured or waived or (ii) the amounts owed by Borrower to such Swap Counterparty under Acceptable Commodity Hedging Transactions have been paid in full or otherwise discharged.

Section 4.02. Proceeds.

(a) The Creditors hereby agree between themselves that (i) prior to the occurrence of a Triggering Event, each Creditor shall be entitled to receive and retain for its own account, and shall never be required to disgorge to the Collateral Agent or any other Creditor hereunder or acquire direct or participating interests in the Obligations or the Swap Obligations, as the case may be, owing to such Creditor, scheduled payments or voluntary prepayments, payments for the redemption or purchase of principal, interest, fees and premium, if any, settlement payments and any other payments in respect of the Principal Agreements or Credit Agreement Modifications, all in compliance with the terms thereof, and (ii) upon the occurrence and during the continuance of a Triggering Event, all such amounts received by any Creditor after a Triggering Event shall constitute Proceeds, shall be turned over to the Collateral Agent, and shall be shared by the Creditors, Ratably, and in accordance with Section 4.02(b) below; provided, however, and for the avoidance of doubt, if the Administrative Agent grants its consent for any letter of credit pursuant to Section 2.02, the Swap Counterparty shall not be obligated to hold in trust, pay over or share with the Administrative Agent any portion of the proceeds of any such letter of credit.

(b) All Proceeds received by the Collateral Agent during the existence of a Triggering Event shall be applied in accordance with this Section 4.02. To the extent any Creditor ever receives any portion of such Proceeds in excess of its Ratable share (or to the extent the Collateral Agent receives reimbursement in excess of expenses actually incurred), the party receiving those excess Proceeds agrees to promptly make all necessary transfers so as to give full effect to this Section 4.02. All Proceeds received by the Collateral Agent during the existence of a Triggering Event shall be applied in the following order:

(i) **First**, to reimburse the Collateral Agent for expenses in accordance with Section 5.01;

(ii) **Second**, Ratably, to the Administrative Agent in respect of amounts owing to the Lender Group and to the Swap Counterparty until the Total Obligations are fully satisfied; and

(iii) **Third**, to the extent that any Proceeds remain, to the Borrower or as otherwise required by applicable law.

Section 4.03. Notice of Amount of Indebtedness. Upon receipt of any Proceeds to be distributed pursuant to Section 4.02, the Collateral Agent shall give the Creditors notice thereof, and each Creditor (or its representative) shall, within three (3) Business Days, notify the Collateral Agent of the amount of the Total Obligations owing to it. Such notification shall state the amount of the Total Obligations owing to it and how much is then due and owing. If requested by the Collateral Agent, each Creditor (or its representative) shall demonstrate that the amounts set forth in its notice are actually owing to such Creditor to the reasonable satisfaction of the Collateral Agent. Notwithstanding the foregoing, the Collateral Agent may conclusively rely on information

in such notices without any investigation. In the event that any Creditor fails to timely notify the Collateral Agent of the amount of the Total Obligations owed to it, the Collateral Agent shall distribute such Proceeds on any basis deemed reasonable by it and not in bad faith.

Section 4.04. Additional Swap Counterparties. The Swap Counterparty hereby agrees to execute and deliver any amended or restated version of this Agreement that is executed by the Loan Parties, the Administrative Agent, the Collateral Agent and any other counterparty to a Secured Swap Agreement (under and as defined in the Collateral Documents) which provides for Acceptable Commodity Hedging Transactions that are agreed to by the Administrative Agent as being secured obligations under the Collateral Documents.

## **ARTICLE V** **MISCELLANEOUS**

Section 5.01. Expenses. The Lenders and the Swap Counterparty shall each bear their Ratable share of any reasonable expenses incurred by the Collateral Agent in taking action on behalf of the Creditors in connection with its investigation, evaluation or enforcement of any Rights under the Collateral Documents or the performance of its duties under this Agreement or under any of the Collateral Documents, but only to the extent Collateral Agent does not receive reimbursement for such expenses from the Loan Parties or from Proceeds within 30 days after such expenses are invoiced; provided, that, to the extent any Creditor reimburses Collateral Agent for such expenses, such Creditor will be entitled to receive its Ratable share of any reimbursement subsequently received by Collateral Agent from the Loan Parties or from Proceeds.

Section 5.02. Limitation of Collateral Agent Liability; Indemnification of the Collateral Agent. Neither the Collateral Agent nor any of its representatives shall (i) be liable for any action taken or omitted to be taken by it or them hereunder or under the Collateral Documents in good faith and reasonably believed by it or them to be within the discretion or power conferred upon it or them by this Agreement and the Collateral Documents or (ii) be responsible for the consequences of any error of judgment, except to the extent arising solely from its gross negligence or willful misconduct. The Collateral Agent shall not be responsible in any manner to any other party for the effectiveness, enforceability, genuineness, validity or the due execution of the Collateral Documents or for any representation, warranty, document, certificate, report or statement made in or in connection with the Collateral Documents or be under any obligation to any other party to ascertain or inquire as to the performance or observation of any of the terms, covenants or conditions of any of the Loan Documents or the Swap Documents on the part of the Borrower. The Lenders and the Swap Counterparty agree to Ratably reimburse and indemnify the Collateral Agent and its affiliates, directors, officers, employees and agents (each an “**Indemnified Party**”) on a current basis and hold the indemnified parties harmless on a current basis from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, reasonable expenses, and reasonable disbursements of any kind or nature whatsoever which may be imposed on, asserted against or incurred by any Indemnified Party in any way relating to or arising out of this Agreement or the Collateral Documents or any action taken or omitted by an Indemnified Party under this Agreement or the Collateral Documents, **INCLUDING ANY SUCH LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, ACTIONS, JUDGMENTS, SUITS, COSTS, REASONABLE EXPENSES AND REASONABLE DISBURSEMENTS ARISING OUT OF THE SOLE, CONCURRENT, CONTRIBUTORY**

**OR COMPARATIVE NEGLIGENCE OF ANY INDEMNIFIED PARTY**, except to the extent the same results solely from the gross negligence or willful misconduct of such Indemnified Party. The provisions of this Section shall survive the termination of this Agreement, whether in whole or in part.

Section 5.03. Limitation of Liability. The Swap Counterparty (including any individual partner, member, director, employee or agent of the Swap Counterparty) shall not incur any liability under this Agreement to the Loan Parties except for liabilities arising from the Swap Counterparty's gross negligence or willful misconduct, as determined by a court of competent jurisdiction. This Agreement is intended to benefit only Collateral Agent and the Creditors, and neither the Loan Parties nor any other Person shall have any rights hereunder or be entitled to claim any damages or defenses on account hereof from or against Collateral Agent or any Creditor (or any affiliate of Collateral Agent or any Creditor).

Section 5.04. Term.

(a) This Agreement shall terminate upon (i) the full payment of the Swap Obligations due and owing to the Swap Counterparty and the delivery by the Loan Parties of a written notice to the Swap Counterparty following such payment that the Loan Parties is terminating the Swap Counterparty Master Agreement; (ii) payment in full of all Obligations (other than indemnity obligations and similar obligations that survive the termination of the Credit Agreement for which no notice of a claim has been received by the Administrative Agent) under the Credit Agreement or (iii) the execution and delivery of a written termination notice signed by each of the parties; provided that if at any time any payment of the Total Obligations is rescinded or must be restored or returned upon the insolvency, bankruptcy or reorganization of the Borrower or otherwise, the obligations of the Borrower and the Rights of the Creditors under this Agreement, with respect to that payment, shall be reinstated as though the payment had been due but not made at that time. The Swap Counterparty agrees that the Loan Parties may terminate the Swap Counterparty Master Agreement by providing written notice to the Swap Counterparty at any time that there are no outstanding Commodity Hedging Transactions or payment obligations for any Commodity Hedging Transactions thereunder, irrespective of whether the Loan Parties has that express right under the terms of the Swap Counterparty Master Agreement. For purposes of the preceding clause (i), the Collateral Agent or the Borrower may request in writing that the Swap Counterparty confirm the termination of the Swap Counterparty Master Agreement. The Swap Counterparty shall have ten (10) Business Days from the date the notice is deemed given pursuant to Section 5.09 in which to either confirm in writing such termination or provide a written notice to the Collateral Agent and the Borrower of the total amount of outstanding Swap Obligations claimed in good faith by the Swap Counterparty. If the Swap Counterparty does not provide any notice within the 10 Business Day period, or if notice is provided of outstanding Swap Obligations and those obligations are paid in full, the Swap Counterparty Master Agreement will be deemed terminated for purposes of the preceding clause (i).

(b) If Borrower has issued to the Swap Counterparty a letter of credit or other credit support as credit support replacement for the Collateral Documents then securing such Swap Counterparty (such letter of credit or other credit support to be in form and substance and in an amount and from an issuing bank reasonably satisfactory to the Swap Counterparty) to secure payment of all Swap Obligations owing the Swap Counterparty, such Person shall cease to be a

Swap Counterparty for all purposes of this Agreement and the Collateral Documents and such Swap Obligations and the Swap Documents of the Swap Counterparty shall cease to be secured by the Collateral Documents.

Section 5.05. Survival of Rights. All of the respective Rights and interests of the Creditors under this Agreement (and the respective obligations and agreements of the Creditors under this Agreement), shall remain in full force and effect regardless of:

(a) any lack of validity or enforceability of any of the Loan Documents, the Swap Documents or any other agreement or instrument related thereto; or

(b) any other circumstance which might otherwise constitute a defense available to, or discharge of, the Loan Parties with respect to the Obligations or the Swap Obligations (other than the defense that such obligations have been fully satisfied).

Section 5.06. Representations and Warranties. Each of the Loan Parties and the Swap Counterparty represents and covenants to each other and to the Collateral Agent that as of the date of its entry into any Commodity Hedging Transactions it will be, an "Eligible Contract Participant" as defined in 7 U.S.C. § 1a(18). ABC Agent, as the Administrative Agent and as the Collateral Agent, and the Swap Counterparty each represent and warrant to the other that:

(a) neither the execution and delivery of this Agreement nor its performance of or compliance with the terms and provisions hereof will conflict with, or result in a breach of the terms, conditions or provisions of, or constitute a default under, any other agreement to which it is now subject;

(b) it has all requisite authority to execute, deliver and perform its obligations under this Agreement; and

(c) this Agreement constitutes its legal, valid, and binding obligation, enforceable against it in accordance with its terms, subject only to applicable bankruptcy, insolvency or similar laws and general principles of equity.

Section 5.07. Further Assurances. The Administrative Agent and the Swap Counterparty each covenant that, as long as this Agreement remains in effect, it will execute and deliver any and all other instruments reasonably requested by the other to give effect to the terms and conditions of this Agreement.

Section 5.08. Assignment; Agreement Binding on Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of each Creditor and its respective successors and permitted assigns. The terms and provisions of this Agreement shall not inure to the benefit of, nor be relied upon by, the Borrower or its successors or assigns. The Swap Counterparty shall not assign, transfer or sell any part of its portion of the Total Obligations without the prior written consent of the Administrative Agent in its sole and absolute discretion. For purposes of the immediately preceding sentence, a change of control of the Swap Counterparty or a merger by the Swap Counterparty with another entity shall not constitute an assignment of the Swap Counterparty's portion of the Total Obligations. This Agreement, the

Loan Documents and the Obligations may be assigned at any time to any Person(s) without the consent of the Swap Counterparty.

Section 5.09. Notice. Unless otherwise provided, any consent, request, notice, or other communication under or in connection with this Agreement must be in writing to be effective and shall be deemed to have been given (a) if sent by a nationally recognized overnight delivery service using its overnight delivery option (e.g., Federal Express, UPS or the United States postal service), on the Business Day after it is enclosed in an envelope and properly addressed, stamped and deposited with such delivery service, (b) if by other form of mail, on the third Business Day after it is enclosed in an envelope and properly addressed, stamped, sealed, certified return receipt requested, and deposited in the appropriate official postal service, or (c) if by courier, electronic transmissions, or facsimile transmission, when actually delivered. Until changed by a subsequent notice delivered in accordance with this Section, notices for each party are to be directed to:

For delivery to the Swap Counterparty:

BP Energy Company  
201 Helios Way  
Houston, TX 77079  
Attn: Contract Services  
Email: FinancialContractsExternal@uk.bp.com

For delivery to the Loan Parties:

390 Union Blvd.  
Ste. 250  
Lakewood, CO 80228  
Attn: Arthur Millholland  
Email: a.milholland@canoverseas.com  
Facsimile: 303-534-0102

For delivery to the Administrative Agent, ABC Agent or the Collateral Agent:

ABC Funding, LLC  
222 Berkeley Street, 18<sup>th</sup> Floor  
Boston, MA 02116.  
Attn: Kevin Messerle  
Email: kmesserle@summitpartners.com  
Telephone: 617-598-4818

Section 5.10. Amendment. This Agreement may only be waived, amended, modified, or terminated by a written agreement signed by the party against whom enforcement of any such waiver, amendment, modification, or termination is sought. Delivery of an executed counterpart of such written instrument by telecopy, e-mail, facsimile or other electronic means shall be effective delivery of a manually executed counterpart of such written instrument.

Section 5.11. Governing Law; Venue.



(a) This Agreement, the entire relationship of the parties to the extent related hereto, and any litigation between the parties (whether grounded in contract, tort, statute, law or equity) to the extent related hereto shall be governed by, construed in accordance with, and interpreted pursuant to the laws of the State of New York, without giving effect to its choice of laws principles.

(b) ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY OF THE BORROWER, ANY LENDER, THE SWAP COUNTERPARTY OR THE ADMINISTRATIVE AGENT OR THE COLLATERAL AGENT OR ANY OTHER PARTY HERETO ARISING OUT OF, CONCERNING OR RELATING TO IN ANY MANNER WHATSOEVER HERETO, MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE COURTS OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, IN EACH CASE LOCATED IN NEW YORK COUNTY AND APPELLATE COURTS FROM ANY THEREOF. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH OF THE PARTIES HERETO, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (i) TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ACCEPTS GENERALLY AND UNCONDITIONALLY ON BEHALF OF SUCH PARTY THAT ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING OUT OF, CONCERNING OR RELATING TO IN ANY MANNER WHATSOEVER HERETO SHALL BE BROUGHT EXCLUSIVELY IN THE STATE OR FEDERAL COURT OF COMPETENT JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE COURTS OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, IN EACH CASE LOCATED IN NEW YORK COUNTY AND APPELLATE COURTS FROM ANY THEREOF, (II) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (III) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 5.09 IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND (iv) AGREES THAT THE ADMINISTRATIVE AGENT AND THE LENDERS RETAIN THE RIGHT TO SERVE PROCESS TO ANY LOAN PARTY IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY LOAN PARTY IN THE COURTS OF ANY OTHER JURISDICTION.

Section 5.12. Invalid Provisions. If any part of this Agreement is for any reason found to be unenforceable, all other portions nevertheless remain enforceable. However, if the provision held to be unenforceable is a material part of the Agreement, such unenforceable provision may, to the extent permitted by law, be replaced by a clause or provision judicially construed and interpreted to be as similar in substance and content to the original terms of such provision as the context would reasonably allow, so that such clause or provision would thereafter be enforceable.

Section 5.13. Multiple Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all signatories had signed the same document, and will be effective upon the execution of one or more counterparts hereof by each of the parties hereto. In this regard, each of the parties hereto acknowledges that a counterpart of this Agreement

containing a set of counterpart execution pages reflecting the execution of each party hereto shall be sufficient to reflect the execution of this Agreement by each party hereto. All counterparts will, taken together, constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, e-mail, facsimile or other electronic means shall be effective as a delivery of a manually executed counterpart of this Agreement.

Section 5.14. Jury Waiver. EACH OF THE COLLATERAL AGENT, THE ADMINISTRATIVE AGENT (FOR ITSELF AND ON BEHALF OF THE LENDERS), THE SWAP COUNTERPARTY AND THE LOAN PARTIES HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) AMONG THE COLLATERAL AGENT, THE ADMINISTRATIVE AGENT, THE LENDERS, THE SWAP COUNTERPARTY AND THE LOAN PARTIES (OR ANY OF THEM) ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT AND EACH IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT TO RECOVER ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES IN ANY DISPUTE ARISING IN CONNECTION HEREWITH.

Section 5.15. Controlling Agreement. To the extent the terms of this Agreement directly conflict with a provision in either the Loan Documents or the Swap Documents, the terms of this Agreement shall control.


Section 5.16. Integration. THIS AGREEMENT REPRESENTS THE FINAL AGREEMENT AMONG THE COLLATERAL AGENT, THE ADMINISTRATIVE AGENT, THE LENDERS, THE SWAP COUNTERPARTY AND THE LOAN PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS BY THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.

*[Signature Pages Follow]*

IN WITNESS WHEREOF, the parties have executed this Intercreditor Agreement as of the date first hereinabove written.


**SWAP COUNTERPARTY:**

BP ENERGY COMPANY

By:   
Print: **Will Shappley**  
Title: **Vice President**


**BORROWER:**

COPL AMERICA INC.


  
By: \_\_\_\_\_  
Print: Arthur Millholland  
Title: President

**OTHER LOAN PARTIES:**


SOUTHWESTERN PRODUCTION CORP.

  
By: \_\_\_\_\_  
Name: Arthur Millholland  
Title: President


ATOMIC OIL AND GAS LLC

  
By: \_\_\_\_\_  
Name: Arthur Millholland  
Title: President

PIPECO LLC

  
By: \_\_\_\_\_  
Name: Arthur Millholland  
Title: President


COPL AMERICA HOLDING INC.

  
By: \_\_\_\_\_  
Name: Arthur Millholland  
Title: President

**ABC Agent, in its capacity as the  
Administrative Agent for the Lender  
Group:**

ABC FUNDING, LLC, as the  
Administrative Agent


By: Summit Partners Credit Advisors, L.P.  
Its: Manager

By:  \_\_\_\_\_  
Name: James Freeland  
Title: Authorized Signatory

**ABC Agent, in acceptance of its  
appointment as Collateral Agent:**

ABC FUNDING, LLC, as the Collateral  
Agent

By: Summit Partners Credit Advisors, L.P.  
Its: Manager

By:  \_\_\_\_\_  
Name: James Freeland  
Title: Authorized Signatory

## **SCHEDULE 1**

1. Guarantee and Collateral Agreement
2. Each of the Mortgages
3. Each Control Agreement

**THIS IS EXHIBIT "C"**

**REFERRED TO IN THE AFFIDAVIT OF**

**KENNETH JOAQUIN ANDERSON**

**Sworn before me this 23rd day of April, 2024**



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**A COMMISSIONER FOR OATHS IN AND  
FOR THE PROVINCE OF ALBERTA**

**HAO YANG HUA**  
Student-At-Law

## FIRST AMENDMENT TO INTERCREDITOR AGREEMENT

THIS FIRST AMENDMENT TO INTERCREDITOR AGREEMENT (this “**Amendment**”) entered into and effective as of October 4, 2023 (the “**Amendment Effective Date**”) by and among **BP ENERGY COMPANY**, a Delaware corporation (the “**Swap Counterparty**”), **COPL AMERICA INC.**, a Delaware corporation (the “**Borrower**”), the Loan Parties party hereto, and **ABC FUNDING, LLC** (“**ABC Agent**”), with ABC Agent acting: (i) as the administrative agent (in such capacity, together with its successors in such capacity, the “**Administrative Agent**”) under the Intercreditor Agreement defined below and (ii) as the collateral agent (in such capacity, the “**Collateral Agent**”, and, together with the Swap Counterparty, the Borrower, the other Loan Parties party hereto and the Administrative Agent, the “**Parties**”) for the benefit of the Creditors hereunder.

### RECITALS

A. The Swap Counterparty, the Borrower, the other Loan Parties, the Administrative Agent and the Collateral Agent are parties to that certain Intercreditor Agreement, dated as of March 16, 2021 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof, the “**Existing Intercreditor Agreement**” and as further amended, restated, amended and restated, supplemented or otherwise modified by this Amendment, the “**Intercreditor Agreement**”).

B. References in this Agreement to the Administrative Agent are to ABC Agent in its capacity as contractual representative of the Lender Group. References in this Agreement to the Collateral Agent are to ABC Agent in its capacity as the contractual representative holding and enforcing certain Liens, granted under the Collateral Documents, for the benefit of the Creditors.

C. The Parties have agreed to enter into this Amendment to (without limitation) amend certain provisions of the Existing Intercreditor Agreement as set forth herein.

NOW, THEREFORE, to induce the Parties to enter into this Amendment and in consideration of the premises and the mutual covenants herein contained, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Defined Terms. Each capitalized term used herein but not otherwise defined herein has the meaning given such term in the Intercreditor Agreement. Unless otherwise indicated, all section references in this Amendment refer to sections of the Intercreditor Agreement. Upon and after the execution of this Amendment by each of the parties hereto, each reference in the Intercreditor Agreement to “this Agreement”, “hereunder”, “hereof” or words of like import referring to the Intercreditor Agreement, and each reference in the Loan Documents to “the Intercreditor Agreement”, “thereunder”, “thereof” or words of like import referring to the Intercreditor Agreement, shall mean and be a reference to the Existing Intercreditor Agreement as modified hereby.

Section 2. Amendments to the Existing Intercreditor Agreement. In reliance on the representations, warranties, covenants and agreements contained in this Amendment, and subject to the satisfaction of the conditions precedent set forth in Section 3 hereof, as of the Amendment



Effective Date, the Existing Intercreditor Agreement is hereby amended to delete the stricken text (indicated in the same manner as the following example: ~~stricken text~~) and to add the bold and double underlined text (indicated textually in the same manner as the following example: **bold and double underlined text**) as set forth on the pages of the Intercreditor Agreement attached as Exhibit A hereto.

Section 3. Conditions Precedent. This Amendment shall become effective and enforceable against the parties hereto upon the following:

3.1 The Administrative Agent and the Collateral Agent (or Kirkland & Ellis LLP) shall have received executed counterparts of this Amendment, duly and validly executed and delivered by duly authorized officers of the Borrower, the other Loan Parties, the Administrative Agent, the Collateral Agent and the Swap Counterparty.

Section 4. Representations and Warranties. Each of the Parties hereto hereby represent and warrant to each other that:

4.1 Representations and Warranties. All representations and warranties contained in the Intercreditor Agreement shall be true and correct in all material respects (unless already qualified by materiality in which case such applicable representation and warranty shall be true and correct) with the same effect as though such representations and warranties had been made as of the date hereof (it being understood and agreed that any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct in all material respects (unless already qualified by materiality in which case such applicable representation and warranty shall be true and correct) only as of such specified date).

Section 5. Miscellaneous.

5.1 Ratification and Affirmation. The Parties hereto hereby (i) acknowledge this Amendment and its terms, (ii) ratify and affirm their obligations under, and acknowledge, renew and extend their continued liability under the Intercreditor Agreement, as applicable, (iii) agree that the Intercreditor Agreement remains in full force and effect, and (iv) agree that from and after the Amendment Effective Date each reference to the Intercreditor Agreement in the Loan Documents shall be deemed to be a reference to the Existing Intercreditor Agreement, as amended by this Amendment.

5.2 No Waiver. The execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of the Parties under the Intercreditor Agreement, nor constitute a waiver of any provision of the Intercreditor Agreement.

5.3 Counterparts. This Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Delivery of this Amendment by facsimile or electronic transmission in portable document format (.pdf) shall be effective as delivery of a manually executed counterpart hereof.

5.4 Entire Agreement. **THIS AMENDMENT REPRESENTS THE FINAL AGREEMENT AMONG THE COLLATERAL AGENT, THE ADMINISTRATIVE**

**AGENT, THE LENDERS, THE SWAP COUNTERPARTY AND THE LOAN PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS BY THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.**

5.5 GOVERNING LAW. THIS AMENDMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.


5.6 Severability. In case any provision in or obligation under this Amendment shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

[SIGNATURES BEGIN NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Intercreditor Agreement as of the date first hereinabove written.


**BP:**

**BP ENERGY COMPANY**

By:   
Print: Joaquin Anderson  
Title: Attorney In Fact

**BORROWER:**

COPL AMERICA INC.

By:   
\_\_\_\_\_  
Print: John Cowan  
Title: Director

**OTHER LOAN PARTIES:**

SOUTHWESTERN PRODUCTION CORP.

By:   
\_\_\_\_\_  
Name: Ryan Gaffney  
Title: Chief Financial Officer


ATOMIC OIL AND GAS LLC

By:   
\_\_\_\_\_  
Name: Ryan Gaffney  
Title: Chief Financial Officer

PIPECO LLC

By:   
\_\_\_\_\_  
Name: Ryan Gaffney  
Title: Chief Financial Officer

COPL AMERICA HOLDING INC.

By:   
\_\_\_\_\_  
Name: John Cowan  
Title: Director

**ABC Agent, in its capacity as the ADMINISTRATIVE AGENT for the Lender Group:**

**ABC FUNDING, LLC, as the Administrative Agent**

By: Summit Partners Credit Advisors, L.P.  
Its: Manager

By:   
Name: Adam Hennessey  
Title: Authorized Signatory

**ABC Agent, in its ACCEPTANCE OF ITS APPOINTMENT AS COLLATERAL AGENT:**

**ABC FUNDING, LLC, as the Collateral Agent**

By: Summit Partners Credit Advisors, L.P.  
Its: Manager

By:   
Name: Adam Hennessey  
Title: Authorized Signatory

**Exhibit A**

**[see attached]**

## INTERCREDITOR AGREEMENT

THIS INTERCREDITOR AGREEMENT (this “**Agreement**”) is entered into as of March 16, 2021, by and among **BP ENERGY COMPANY**, a Delaware corporation (~~the “BP”~~ and together with each other Person that becomes a Swap Counterparty pursuant to a Joinder Supplement, collectively the “Swap Counterparties” and each, a “Swap Counterparty”), **COPL AMERICA INC.**, a Delaware corporation (the “**Borrower**”), the Loan Parties party hereto, and **ABC FUNDING, LLC** (“**ABC Agent**”), with ABC Agent acting: (i) as the administrative agent (in such capacity, together with its successors in such capacity, the “**Administrative Agent**”) under the Credit Agreement defined below and (ii) as the collateral agent (in such capacity, the “**Collateral Agent**”, and, together with the Swap Counterparties, the Borrower, the other Loan Parties party hereto and the Administrative Agent, the “**Parties**”) for the benefit of the Creditors hereunder. See below for certain defined terms used herein.

### RECITALS:

A. The Administrative Agent and the Lenders defined in the Credit Agreement (collectively, and together with any of their successors and permitted assigns, the “**Lender Group**”) and the Borrower entered into that certain Credit Agreement, dated as of March 16, 2021 (as amended, supplemented, restated or otherwise modified from time to time, the “**Credit Agreement**”).

B. References in this Agreement to the Administrative Agent are to ABC Agent in its capacity as contractual representative of the Lender Group. References in this Agreement to the Collateral Agent are to ABC Agent in its capacity as the contractual representative holding and enforcing certain Liens, granted under the Collateral Documents, for the benefit of the Creditors.

C. The Borrower and ~~the Swap Counterparty have~~BP entered ~~or will enter~~ into that certain ISDA Master Agreement, together with the Schedule thereto, dated ~~on or about~~ March 16, 2021, (as amended, restated, supplemented or otherwise modified from time to time in accordance with this Agreement, the “BP Swap Counterparty Master Agreement” and together with any other ISDA Master Agreements, Schedules and transaction confirmation(s) entered into between any Loan Party and any Swap Counterparty from time to time in accordance with the terms of the Credit Agreement, collectively, the “Swap Counterparty Master Agreements” and each individually, a “Swap Counterparty Master Agreement”), and have entered into ~~or will enter into~~ one or more transactions thereunder.

D. As of the Tenth Amendment Effective Date (as defined in the Credit Agreement), the Borrower has incurred Swap Obligations due and owing to BP in an aggregate amount of \$10,800,000<sup>1</sup> (collectively, the “BP Specified Swap Obligations”) pursuant to the BP Swap Counterparty Master Agreement as supplemented by the Supplemental BP Swap Transaction (defined below).

<sup>1</sup> Not inclusive of accrued interest.

E. The Borrower and BP will enter into that certain additional obligation under the Swap Counterparty Master Agreement on the Tenth Amendment Effective Date in the amounts and on the terms as may be mutually agreed by the Borrower and BP and set forth in the Swap Counterparty Agreement (collectively, the “Supplemental BP Swap Transaction”).

F. ~~D.~~ The Administrative Agent, the Collateral Agent, the Swap Counterpartyies and the Loan Parties desire to enter into this Agreement (i) to establish the maturity of and relative priorities with respect to payment of the Loan Obligations (defined below), the BP Specified Swap Obligations, and the Swap Obligations (defined below) and (ii) to have both the Swap Counterpartyies and the Administrative Agent appoint ABC Agent, and ABC Agent agree to serve, as the Collateral Agent for the benefit of the Creditors for the purposes of the holding of and the enforcement of Liens granted under the Collateral Documents.

In consideration of the recitals and the covenants and promises of this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Collateral Agent, the Administrative Agent, the Swap Counterpartyies and the Loan Parties agree as follows:

## **ARTICLE I** **DEFINITIONS**

Section 1.01. Credit Agreement Definitions. Each term defined in the Credit Agreement shall have the same meaning when used herein unless otherwise defined herein or the context otherwise requires.

Section 1.02. Other Definitions. As used in this Agreement, the terms defined in the Recitals hereto shall have the meanings assigned to those terms in such Recitals, and the following terms shall have the meanings assigned as follows:

“**Accelerated Creditor**” means any Creditor that (i) has delivered notice of a Triggering Event to Collateral Agent, or (ii) holds a Loan that has matured (whether by acceleration or otherwise).

“**Acceptable Commodity Hedging Transactions**” means any Commodity Hedging Transaction permitted or required by the Credit Agreement.

“BP Account” means an account at a bank designated by BP from time to time as the account into which Loan Parties shall make all payments to BP due and owing under Section 2.02.

~~“Business Day” has the meaning assigned to such term in the Credit Agreement.~~

~~“Collateral” means, collectively, all Collateral as defined in the Credit Agreement.~~

~~“Collateral Agent” has the meaning assigned to such term in the Preamble.~~



“**Collateral Documents**” means the “Collateral Documents” as defined in the Credit Agreement and includes, without limitation, those documents listed in Schedule 1 attached hereto and incorporated herein by this reference.

“**Collateral Value**” means, with respect to any Oil and Gas Property, the value of such Oil and Gas Property as reasonably determined by the Administrative Agent.

“**Commodity Hedging Transaction**” means a Swap Agreement related to commodities.

“**Credit Agreement Modifications**” has the meaning given such term in Section 2.034(f).

“**Creditors**” means, collectively, the Lenders, the Administrative Agent, and the Swap Counterpartyies, ~~collectively~~, and “**Creditor**” means any of them.

“**Cross-Default**” means (i) any Event of Default under the Loan Documents that is caused solely by the occurrence of an Event of Default (as defined in the applicable Swap Documents) or Termination Event (as defined in the applicable Swap Documents), with respect to any Loan Party (unless the applicable Swap Counterparty has designated an Early Termination Date (as defined in the applicable Swap Documents)) or (ii) any Event of Default (as defined in the applicable Swap Documents) or Termination Event (as defined in the applicable Swap Documents) under the applicable Swap Counterparty’s Swap Documents that is caused solely by the occurrence of an Event of Default under the Loan Documents (unless the Administrative Agent has declared the Loan Obligations due and payable).

“**Debtor Relief Law**” means any applicable law in respect of liquidation, conservatorship, bankruptcy, insolvency, rearrangement, moratorium, reorganization, or similar debtor relief laws (including the Bankruptcy Code) affecting the rights of creditors generally from time to time in effect.

“**Exposure**” means, as of any day ~~means~~, collectively, the aggregate amount, if any, that would be payable to the Loan Parties by ~~the any~~ Swap Counterparty or to the Swap Counterpartyies by the Loan Parties pursuant to ~~Section 6(e)(ii)(1) of~~ the Swap Counterparty Master Agreements as if all outstanding Commodity Hedging Transactions between the Loan Parties and the Swap Counterpartyies were being terminated as of the close of business on ~~that~~such day, as determined by the Swap Counterpartyies using its estimates at mid-market of the amounts that would be paid for replacement transactions.

~~“**Lien**” has the meaning assigned to such term in the Credit Agreement.~~

“**Loan Documents**” means the “Loan Documents” as defined in the Credit Agreement, but not including this Agreement.

“**Loan Obligations**” means the “Obligations” as defined in the Credit Agreement, whether now existing or hereafter incurred, whether direct, indirect, fixed, contingent, liquidated, unliquidated, joint, several, or joint and several, now or hereafter existing, due or to become due, whether evidenced in writing or not, together with all reasonable costs, expenses, and attorneys’

fees incurred in the enforcement or collection thereof, and including interest thereon after the commencement of any proceedings under any Debtor Relief Laws.

“**Permitted Dispositions**” means sales, transfers or other dispositions of Collateral permitted under the Credit Agreement as in effect on the Closing Date and without giving effect to any amendments or modifications thereto or consents or waivers thereof.

“**Principal Agreements**” means the Loan Documents and the Swap Documents, collectively.

“**Proceeds**” includes any and all proceeds from any sale, exchange, destruction, condemnation, foreclosure, liquidation under any Debtor Relief Law or other disposition of any of the Collateral (each, a “**Disposition**”); provided, however, prior to the occurrence of a Triggering Event, such term will not include (i) Permitted Dispositions or (ii) Dispositions made with each Creditor’s written consent unless a Creditor’s consent is conditioned by a requirement that the proceeds thereof continue to be held as Collateral.

“**Ratably**” or “**Ratable**” means, with respect to any amount to be allocated between the Lender Group and the Swap Counterpartyies, the allocation of a portion of such amount to (a) Lender Group such that the ratio that the amount allocated to the Lender Group bears to the total amount to be so allocated equals the total of the Loan Obligations to the Total Obligations and (b) ~~the~~any Swap Counterparty such that the ratio that the amount allocated to ~~the~~such Swap Counterparty bears to the total amount to be so allocated equals the ratio of the Swap Obligations owing to such Swap Counterparty to the Total Obligations.

“**Refinance**” means, in respect of the Loan Obligations, to refinance, restructure, replace, refund or repay, or to issue other indebtedness in exchange or in replacement for, the Loan Obligations, in whole or in part. “**Refinancing**” shall have a correlative meaning.

“**Right**” or “**Rights**” means rights, remedies, powers, privileges and benefits.

“**Swap Documents**” means ~~the~~, collectively, (i) the BP Swap Counterparty Master Agreement as supplemented by the Supplemental BP Swap Transaction and (ii) each other Swap Counterparty Master Agreement, including, where the context requires, each confirmation now or hereafter entered into thereunder for Acceptable Commodity Hedging Transactions.

“**Swap Obligations**” means ~~all~~, collectively, (i) the BP Specified Swap Obligations and (ii) all other obligations, whether now existing or hereafter created, of the Borrower to the Swap Counterpartyies under the Swap Documents for Acceptable Commodity Hedging Transactions that are secured by the Collateral Documents following the netting of such Acceptable Commodity Hedging Transactions, together with any interest due thereon and all costs and expenses (including, reasonable attorneys’ fees) incurred in the enforcement or collection thereof, and interest thereon after the commencement of any proceedings under any Debtor Relief Laws; provided, however, that (~~x~~) if the Administrative Agent notifies the Borrower and the applicable Swap Counterparty pursuant to Section 2.01(c) that ~~the~~such Swap Counterparty’s status as a ~~Secured Party~~Creditor has been revoked, any Commodity Hedging Transactions entered into thereafter between the Borrower and ~~the~~such Swap Counterparty and any interest, costs or expenses associated with such new Commodity Hedging Transactions shall be excluded

from the scope of “Swap Obligations,” and shall not be secured by a Lien on the Collateral and ~~(ii)~~ for purposes of the definition of “Ratable” and “Ratably” and for purposes of Section 4.02(b), “Swap Obligations” means the Swap Obligations then due and owing to such Swap Counterparty.

“**Total Obligations**” means, as of the date of determination, an amount equal to the Loan Obligations *plus* the Swap Obligations.

“**Triggering Event**” shall mean, with respect to the Loan Parties, either of the following:

(i) The Collateral Agent shall have received from the Swap Counterparty written notice that (A) an Event of Default (as defined in the such Swap Counterparty’s Swap Documents) or a Termination Event (as defined in ~~the~~such Swap Counterparty’s Swap Documents) with respect to the Loan Parties has occurred and is continuing under one or more of ~~the~~such Swap Counterparty’s Swap Documents (but excluding any Cross-Default), (B) an Early Termination Date (as defined in ~~the~~such Swap Counterparty’s Swap Documents) has been designated as a result thereof, (C) specifies the sum of all unpaid amounts and settlement payments then due to such Swap Counterparty as the result of the designation of such ~~e~~Early ~~Termination~~ ~~d~~ate and the amount of interest and other amounts then due and payable by the Loan Parties in respect thereof, and (D) the amount set forth in the preceding clause (C) has not been paid in full or discharged to the satisfaction of ~~the~~such Swap Counterparty (the “**Swap Counterparty Triggering Event Notice**”); or

(ii) The Swap Counterparty~~ies~~ or the Borrower shall have received from the Administrative Agent written notice that (x) an Event of Default (as defined in the Credit Agreement, but excluding any Cross-Default) has occurred and is continuing and (y) the unpaid principal amount of the Loans under the Credit Agreement has been declared to be then due and payable (the “**Administrative Agent Triggering Event Notice**”);

provided, however, that any Triggering Event shall be deemed to be continuing at all times after its occurrence unless prior to the exercise of any remedies under any of the Collateral Documents or the occurrence of an Event of Default under Sections 8.1(f) or (g) of the Credit Agreement, (1) in the case of a Triggering Event under clause (i) above, the applicable Swap Counterparty has rescinded the Swap Counterparty Triggering Event Notice it delivered to the Collateral Agent in accordance with clause (i) above by way of written notice of such rescission delivered to the Collateral Agent, and (2) in the case of a Triggering Event under clause (ii) above, the Administrative Agent (acting at the written direction of the requisite number of Lenders required under the Credit Agreement) has rescinded the Administrative Agent Triggering Event Notice it delivered to the applicable Swap Counterparty or the Borrower in accordance with clause (ii) above by way of written notice of such rescission delivered to ~~the~~such Swap Counterparty and the Borrower; provided, further, that, to the extent an Event of Default occurs under Sections 8.1(f) or (g) of the Credit Agreement, neither the Administrative Agent nor any Swap Counterparty shall be required to deliver an Swap Counterparty Triggering Event Notice or Administrative Agent Triggering Event Notice, as applicable, to any Loan Party in order for a Triggering Event to occur. Notwithstanding the foregoing, BP shall not have the right to declare a Swap Counterparty Triggering Event Notice with respect to any of the BP

Specified Swap Obligations if the Borrower is in compliance with its payment obligations set forth in Section 2.02.

Section 1.03. Headings. Article and section headings of this Agreement are for convenience of reference only, and shall not govern the interpretation of any of the provisions of this Agreement.

Section 1.04. Terms Generally. References in this Agreement to Exhibits, Schedules, Annexes, Appendixes, Attachments, Articles, Sections, Recitals or clauses shall be to exhibits, schedules, annexes, appendixes, attachments, articles, sections, recitals or clauses of this Agreement, unless expressly stated to the contrary. References in this Agreement to “hereby,” “herein,” “hereinafter,” “hereinabove,” “hereinbelow,” “hereof,” “hereunder” and words of similar import shall be to this Agreement in its entirety and not only to the particular Exhibit, Schedule, Annex, Appendix, Attachment, Article, or Section in which such reference appears unless specifically stated otherwise. Exhibits and Schedules to any Loan Document or this Agreement shall be deemed incorporated by reference in such Loan Document or this Agreement, as applicable. References to any document, instrument, or agreement (a) shall include all exhibits, schedules, and other attachments thereto, and (b) shall include all documents, instruments, or agreements issued or executed in replacement thereof. This Agreement, for convenience only, has been divided into Articles and Sections; and it is understood that the rights and other legal relations of the parties hereto shall be determined from this instrument as an entirety and without regard to the aforesaid division into Articles and Sections and without regard to headings prefixed to such Articles or Sections. The phrases “this Section” and “this clause” and similar phrases refer only to the sections or clauses hereof in which such phrases occur. Whenever the context requires, reference herein made to the single number shall be understood to include the plural; and likewise, the plural shall be understood to include the singular. Definitions of terms defined in the singular or plural shall be equally applicable to the plural or singular, as the case may be, unless otherwise indicated. Words denoting sex shall be construed to include the masculine, feminine and neuter, when such construction is appropriate; and specific enumeration shall not exclude the general but shall be construed as cumulative; the word “or” is not exclusive; the word “including” (in its various forms) shall mean “including, without limitation”; in the computation of periods of time, the word “from” means “from and including” and the words “to” and “until” mean “to but excluding”; and all references to money refer to the legal currency of the United States of America. The Exhibits, Schedules, Annexes, Appendixes and Attachments attached to this Agreement and items referenced as being attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for all purposes. The words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, real property, securities, accounts and general intangibles.

Section 1.05. Joint Preparation; Construction of Indemnities and Releases. **This Agreement, the Loan Documents and the Swap Documents have been reviewed and negotiated by sophisticated parties with access to legal counsel, and no rule of construction shall apply hereto or thereto which would require or allow this Agreement, any Loan Document or any Swap Document to be construed against any party because of its role in drafting such document. All indemnification and release of liability provisions of this Agreement shall be**

construed broadly (and not narrowly) in favor of the Persons receiving indemnification or releases of liability.

## ARTICLE II NATURE OF OBLIGATIONS AND LIENS

### Section 2.01. Obligations and Liens Pari Passu.

(a) Subject to the other terms and conditions of this Agreement, the Loan Obligations ~~shall be pari passu with~~ and the Swap Obligations shall be secured on a first priority, pari passu basis by the Liens on the Collateral granted to the Collateral Agent under the Collateral Documents.

At the times and under the conditions described in Article IV, the Loan Obligations and the Swap Obligations will be repaid Ratably with the proceeds of Collateral after the payment of expenses. Upon the execution of this Agreement, the Liens granted under the Collateral Documents that are in effect at the time of execution of this Agreement shall be in favor of the Collateral Agent for the benefit of the Creditors, to secure, Ratably, the Loan Obligations and the Swap Obligations. Such Collateral Documents are in all substantive respects in the form approved by the Swap Counterpartyies.

(b) The Liens under the Collateral Documents shall be Permitted Liens and the Administrative Agent consents to the Loan Parties granting such Liens. The Swap Counterpartyies hereby acknowledges and consents to the Loan Parties' grants of Liens to the Administrative Agent in all rights of the Loan Parties under the Swap Documents, including all payments owing to the Loan Parties thereunder, notwithstanding any restrictions on assignment in any Swap Document.

(c) The Administrative Agent consents to the Loan Parties' entering into the Swap Counterparty Master Agreements and Commodity Hedging Transactions with ~~the~~each Swap Counterparty, that constitutes Acceptable Commodity Hedging Transactions. The Administrative Agent agrees and consents to ~~the~~each Swap Counterparty being a Secured Party (as defined in the Credit Guarantee and Collateral Agreement) with respect to Acceptable Commodity Hedging Transactions; provided, however, that the Administrative Agent may, by giving written notice to the Borrower and to the applicable Swap Counterparty, elect to revoke ~~the~~such Swap Counterparty's status as a Secured Party for purposes of any Acceptable Commodity Hedging Transactions entered into beginning on the fifth (5<sup>th</sup>) Business Day following the Borrower's and ~~the~~such Swap Counterparty's receipt (or deemed receipt pursuant to Section 5.09) of such notice. The Administrative Agent also agrees that in the event the Administrative Agent notifies the Borrower that the Borrower's entry into a Commodity Hedging Transaction would not constitute an Acceptable Commodity Hedging Transaction, then the Administrative Agent will also concurrently notify ~~the~~such Swap Counterparty of such determination.

(d) Without the prior written consent of the Administrative Agent, the Loan Parties and ~~the~~each Swap Counterparty shall not amend, supplement, delete or otherwise modify ~~the~~any Swap Counterparty Master Agreement or any provision thereof from the form presented to the Administrative Agent for its review prior to execution of this Agreement:

(i) if such action would result in a violation, or the creation of an obligation on the part of the Borrower to violate, the limitations on credit support set forth in Section 2.023 hereof;

(ii) such that the Threshold Amount (as defined in the applicable Swap Counterparty Master Agreement) that is applicable to the Borrower would be anything other than a fixed dollar amount equal to or greater than \$500,000; or

(iii) in a manner that changes or expands the events that constitute Events of Default or Additional Termination Events (each as defined in the Swap Counterparty Master Agreements) or otherwise have the effect of causing an event to have consequences similar to an Event of Default or Additional Termination Event.

Notwithstanding clauses (i) through (iii) preceding, if (1) ~~the~~any Swap Counterparty notifies the Administrative Agent that it and the Borrower propose an amendment, supplement, deletion or modification to ~~the~~any Swap Counterparty Master Agreement mandated by the regulatory requirements imposed by the Commodity Futures Trading Commission under the Dodd-Frank Wall Street Reform and Consumer Protection Act and (2) the Borrower's request for the Administrative Agent's consent to the proposed amendment, supplement, deletion or modification is accompanied by a legal opinion of counsel reasonably satisfactory to the Administrative Agent confirming to the Administrative Agent that such amendment, supplement, deletion or modification is legally required, then the Administrative Agent will not unreasonably withhold or delay its consent to any such amendment, supplement, deletion or modification.

(e) The amounts payable by the Loan Parties to each Creditor at any time under any of the Principal Agreements to which such Creditor is a party shall be separate and independent debts, and each Creditor shall be entitled to enforce any Right arising out of the applicable Principal Agreement to which it is a party, subject to the terms thereof and of this Agreement. Subject to clauses (h) and (i), both before and during an insolvency or liquidation proceeding, any Creditor may take any actions and exercise any and all rights that they would have as an unsecured creditor, including the commencement of an insolvency or liquidation proceeding against the Loan Parties in accordance with applicable law and the termination of any Principal Agreement in accordance with the terms thereof; provided, that if any Creditor becomes a judgment Lien creditor in respect of Collateral as a result of its enforcement of its rights as an unsecured creditor with respect to the Swap Obligations or the Loan Obligations, as the case may be, such judgment Lien shall be subject to the terms of this Agreement for all purposes as the other Liens securing the Total Obligations are subject to this Agreement and the proceeds thereof shall be applied as provided in Section 4.02(b).

(f) Each Creditor hereby agrees that no Creditor shall have any right individually to realize upon any Liens granted under the Collateral Documents, it being understood and agreed that such Rights may be exercised only by the Collateral Agent or the trustee under the Collateral Documents for the Ratable benefit of the Creditors.

(g) Each Acceptable Commodity Hedging Transaction at the time it is executed by the Borrower or other Loan Party and the any Swap Counterparty shall be deemed to be acceptable under this Agreement if permitted under the Credit Agreement. ~~The~~Each Swap Counterparty

Master Agreement will be a “Secured Swap Agreement” under and as defined in the Guarantee and Collateral Agreement. ~~The~~Each Swap Counterparty and the Loan Parties have entered to or will enter into Commodity Hedging Transactions under the applicable Swap Counterparty Master Agreement that ~~will~~ comply with the limitations set forth in the definition of Acceptable Commodity Hedging Transaction and any Commodity Hedging Transaction that does not comply with such limitations will not be secured by the Collateral. If a Commodity Hedging Transaction would otherwise be secured under the Collateral Documents but for a deviation from the criteria for “Acceptable Commodity Hedging Transactions” set forth in the definition hereof, and that deviation is consented to in writing and delivered via electronic mail to the applicable Swap Counterparty in accordance with Section 5.09 by the Administrative Agent (with such approvals as may be required by the Credit Agreement), then such Commodity Hedging Transaction shall be secured by the Collateral Documents.

(h) Each Creditor hereby agrees that it shall not (and hereby waives any right to) contest, or support any other Person in contesting, in any proceedings (including any insolvency or liquidation proceedings), the priority, validity or enforceability of a Lien held by or on behalf of the Collateral Agent in any Collateral; provided that nothing in this Agreement shall be construed to prevent or impair the rights of the Collateral Agent or any Creditor to enforce this Agreement as provided herein.

(i) Each Lender and each Swap Counterparty agrees that (i) it will not (and hereby waives any right to) challenge or question in any proceeding the validity or enforceability of any of the Total Obligations or any Collateral Document or the validity, attachment, perfection or priority of any Lien under any Collateral Document or the validity or enforceability of the priorities, rights or duties established by or other provisions of this Agreement, (ii) it will not take or cause to be taken any action the purpose or intent of which is, or could be, to interfere, hinder or delay, in any manner, whether by judicial proceedings or otherwise, any sale, transfer or other disposition of the Collateral by Collateral Agent in accordance with the terms of this Agreement, (iii) it will not institute any suit or assert in any suit, bankruptcy, insolvency or other proceeding any claim against Collateral Agent or any other Creditor seeking damages from or other relief by way of specific performance, instructions or otherwise with respect to any Collateral, and none of Collateral Agent or any other Creditor shall be liable for any action taken or omitted to be taken by Collateral Agent or Creditor, with respect to any Collateral in accordance with the provisions of this Agreement, (iv) it will not seek, and hereby waives any right, to have any Collateral or any part thereof marshaled upon any foreclosure or other disposition of such Collateral and (v) it will not attempt, directly or indirectly, whether by judicial proceedings or otherwise, to challenge the enforceability of any provision of this Agreement; provided, that nothing in this Agreement shall be construed to prevent or impair the rights of any of Collateral Agent or any other Creditor to enforce this Agreement.

#### Section 2.02. Specified Swap Obligations.

(a) Commencing on the Tenth Amendment Effective Date, the BP Specified Swap Obligations shall bear interest at the rate per annum set forth in Section 2.6(a) of the Credit Agreement for the Loans then outstanding; provided, that if at any time, the Borrower has outstanding one or more Term SOFR Loans and one or more ABR Loans, the BP Specified

Swap Obligations shall bear interest at a rate determined by reference to Adjusted Term SOFR plus the Applicable Rate.

(b) On each Interest Payment Date, interest accrued on the BP Specified Swap Obligations shall be due and payable in cash; provided, that to the extent the Borrower elects PIK Interest pursuant to Section 2.6(b) of the Credit Agreement (and the Administrative Agent approves such election in accordance with the Credit Agreement), BP acknowledges and agrees that interest on the BP Specified Swap Obligations for the applicable Interest Period will accrue as PIK Interest to the same extent as the Loan Obligations without further action of any party hereto. All interest hereunder shall be computed at the time and in the manner set forth in Section 2.6(b) of the Credit Agreement.

(c) [reserved].

(d) All payments with respect to the BP Specified Swap Obligations due pursuant to this Section 2.02, shall be made to the Administrative Agent for distribution to BP (to the BP Account or otherwise as mutually agreed between BP and the Administrative Agent) pursuant to the procedures set forth with respect to payment of interest set forth in the Credit Agreement.

(e) The BP Specified Swap Obligations (i) shall be due and payable in full on the Maturity Date and (ii) shall not require any ongoing mark to market payments, amortization, fees or otherwise.

(f) From and after the Tenth Amendment Effective Date, while no Triggering Event has occurred, the proceeds of (i) any sale of Collateral, (ii) repayments pursuant to Section 2.7 of the Credit Agreement, (iii) voluntary prepayments pursuant to Section 2.8 of the Credit Agreement and (iv) mandatory prepayments pursuant to Section 2.9 of the Credit Agreement shall, in each case, be applied Ratably among the Loan Obligations and the BP Specified Swap Obligations.

Section 2.03. ~~Section 2.02.~~ Limitations on Separate Credit Support. ~~The~~Each Swap Counterparty agrees that, without the prior written consent of the Administrative Agent, ~~the~~such Swap Counterparty will not seek or accept credit support for any Swap Obligation or any other Commodity Hedging Transaction between the Loan Parties and ~~the~~such Swap Counterparty, including without limitation letters of credit, guarantees from any owner of the Loan Parties or any other Person, or Liens on any Property of the Loan Parties, other than the Rights of ~~the~~such Swap Counterparty under the Collateral Documents until after the full payment and cancellation of the Loan Obligations.

Section 2.04. ~~Section 2.03.~~ Release of Collateral; Authorization; Amendments to Loan Documents; Notice of Releases.

(a) Subject to the terms hereof and the Loan Documents, the Collateral Agent shall permit the Loan Parties to remain in possession and control of the Collateral, to operate the Collateral, and to collect, invest and dispose of any income thereon or therefrom.

(b) The Collateral Agent shall have the right from time to time to release Collateral from the Liens created by the Collateral Documents; ~~provided that, subject to Section 5.04, the written consent of the Swap Counterparty shall be required for any release of Collateral (other than~~



~~Permitted Dispositions) during any rolling 12-month period that, when aggregated with all other Oil and Gas Properties for which Lien releases have been granted within the immediately preceding 12-month period for which the Swap Counterparty did not grant its consent (other than Permitted Dispositions), have aggregate Collateral Value in excess of 10% of the aggregate Collateral Value of all Oil and Gas Properties of the Loan Parties. Notwithstanding anything to the contrary in this Agreement, and for the avoidance of doubt, the proceeds of a sale of Collateral occurring while no Triggering Event has occurred (or would result therefrom) shall be applied as required by the Loan Documents.~~ Subject to Section 5.04, the Collateral Agent shall not, in connection with a Disposition, release any Collateral from Liens created by the Collateral Documents during the existence of a Triggering Event, except for Permitted ExceptionsDispositions; provided, that all Parties acknowledge and agree that the proceeds of any Permitted Disposition that occurs during the existence of a Triggering Event shall constitute Proceeds and shall be applied in accordance with Section 4.02 ~~hereof~~.

(c) To the extent permitted by, and subject to the provisions of, the applicable Collateral Documents, (i) the Collateral Agent may, in its sole discretion and without the consent of the Creditors, take all actions it deems necessary or appropriate in order to enforce any of the terms of the Collateral Documents and (ii) the Collateral Agent shall have power to institute and to maintain such suits and proceedings as it may deem expedient (A) to prevent any impairment of the Collateral by any act that may be unlawful or in violation of the Principal Agreements, and (B) to preserve or protect its interests and the interests of the Creditors in the Collateral; provided, that, for the avoidance of doubt, the foregoing shall not be understood to grant the Collateral Agent any rights it does not have under the Credit Agreement and Collateral Documents (excluding this Agreement and any other Swap Intercreditor Agreement). Notwithstanding the above, the Collateral Agent may choose not to take any action authorized by this Section until it receives written direction from a Creditor.

(d) The Collateral Agent is authorized to receive any Proceeds for the benefit of the Creditors and to distribute such Proceeds to the Creditors in accordance with the provisions of this Agreement.

(e) The Collateral Agent shall, as soon as reasonably practicable after any release of the Collateral permitted by Section 2.034(b), notify ~~the~~each Swap Counterparty of such release giving full particulars with respect thereto; provided, however, that any failure of the Collateral Agent to comply with the requirements of this sentence shall not give rise to any breach of contract claim against the Collateral Agent, the Administrative Agent or any Lender or result, directly or indirectly, in any liability being imposed on the Collateral Agent, the Administrative Agent or any Lender in connection therewith.

(f) The Lender Group may enter into any increase, amendment, modification or supplement to any Loan Document (other than (x) the Collateral Documents, unless permitted by clause (g) below and (y) Section 2.12(f) of the Credit Agreement in a manner adverse to ~~the~~any Swap Counterparty), enter into new or additional credit facilities with the Loan Parties, or grant any waiver, consent, release, indulgence, extension or renewal with respect to any Loan Document (other than the Collateral Documents, unless permitted by clause (g) below) or such new or additional credit facilities (“**Credit Agreement Modifications**”), and such Credit Agreement Modifications shall be deemed accepted by the Swap Counterpartyies and the Loan Parties for

the purposes of the Swap Counterparty Master Agreements with respect to those provisions of the Loan Documents (other than the Collateral Documents, unless permitted by clause (g) below) incorporated by reference in ~~the~~each Swap Counterparty Master Agreement. The Administrative Agent shall, as soon as reasonably practicable after entering into any amendment, modification or supplement to the Credit Agreement or any Collateral Document, notify the Swap Counterpartyies and provide the Swap Counterpartyies with a copy of such amendment, modification or supplement; provided, however, that any failure of the Administrative Agent to comply with the requirements of this sentence shall not impact the validity of such amendment, modification or supplement, give rise to any breach of contract claim against the Administrative Agent or any Lender or result, directly or indirectly, in any liability being imposed on the Administrative Agent or any Lender in connection therewith.

(g) The Collateral Agent may enter into any amendment, modification or supplement to any of the Collateral Documents, unless the effect of such amendment would be to (i) change the priority of or subordinate the Liens created thereby, except to the extent the Administrative Agent is permitted to do so under the Credit Agreement, (ii) materially modify any remedy provided for therein if adverse to ~~the~~any Swap Counterparty, (iii) materially reduce or diminish the benefits of all or substantially all of the security provided for in the Collateral Documents, except to the extent the Administrative Agent is permitted to do so under the Credit Agreement, or (iv) otherwise have any material detrimental effect on ~~the~~any Swap Counterparty's rights and obligations under this Agreement.

(h) The Borrower hereby agrees that substantially concurrently with any notice that is delivered to (i) the Administrative Agent or the Collateral Agent pursuant the Credit Agreement, or (ii) the Swap Counterparty pursuant to the Swap Documents, it shall deliver such notice to the Administrative Agent, the Collateral Agent and the Swap Counterparty, as applicable; provided, however, that any failure of the Borrower to comply with the requirements of this clause (h) shall not shall not impact the validity of such notices.

Section 2.05. ~~Section 2.04.~~ Hedge Reports. The Borrower hereby agrees ~~that~~any Swap Counterparty may provide to the Administrative Agent from time to time, and ~~the~~such Swap Counterparty hereby agrees to provide or otherwise make available (which may be via access to an online portal containing the daily mark to market information of the Borrower) to the Administrative Agent within five (5) Business Days following such request, a report of the marked-to-market positions of the various transactions in effect from time to time under the ~~relevant~~ Swap Counterparty Master Agreements. Borrower hereby irrevocably consents and agrees that the Swap Counterpartyies may provide or otherwise make available to the Administrative Agent, its successors and assigns such reports, confirmations and mark to market information as contemplated above, including, without limitation, by granting the Administrative Agent access to an online portal that reflects the daily mark to market information of the Borrower.

Section 2.06. ~~Section 2.05.~~ Consent to Disclosures. The Loan Parties hereby consent to Creditors' disclosure to each other of any confidential information relating to the Loan Parties that has been provided to any Creditor by or for the benefit of the Loan Parties, notwithstanding any confidentiality agreement between the Loan Parties and any Creditor that might otherwise limit or prohibit such disclosure; provided that the receiving Creditor agrees to treat such

information as confidential in accordance with the terms of Section 10.17 of the Credit Agreement.

Section 2.07. ~~Section 2.06. Refinancing.~~ The Swap Counterpartyies consents to any Refinancing of the Credit Agreement and the indebtedness thereunder; provided that the holders of such Refinancing debt (or an agent on their behalf) bind themselves in writing to the terms of this Agreement, and provided further that any such Refinancing shall require the prior written consent of the Swap Counterpartyies if, on the date of such Refinancing, such Refinancing causes the aggregate principal amount outstanding under the Credit Agreement (after giving effect to such Refinancing) to exceed 85% of the aggregate present value of the future net income with respect to proved and producing reserves attributable to the Oil and Gas Properties of the Borrower and its Subsidiaries as set forth in the most recently provided Reserve Report, discounted at a 9% per annum discount rate, thus causing a material reduction in the value of the Collateral, security or credit support available to the Swap Counterparties, while Swap Obligations are still in effect or outstanding hereunder, unless Borrower (i) delivers *pari passu* first lien replacement security (unencumbered, except for liens and encumbrances permitted by the Credit Agreement) to be shared ratably by the Creditors under and in accordance with this Agreement, having a value and terms and conditions reasonably acceptable to the Swap Counterpartyies, or (ii) provides the Swap Counterpartyies with replacement security sufficient in form, amount and for a term reasonably acceptable to the Swap Counterpartyies.

### **ARTICLE III** **COLLATERAL AGENT**

Section 3.01. Appointment of the Collateral Agent. Each Creditor hereby designates the Collateral Agent to act as the contractual representative for the Creditors, to hold and enforce the Liens under the Collateral Documents for the benefit of the Creditors and take certain other actions as permitted by the Collateral Documents and this Agreement. Each Creditor hereby authorizes the Collateral Agent to take such action on its behalf under the provisions of this Agreement and the Collateral Documents and to exercise such powers and to perform such duties hereunder and thereunder as are specifically delegated to it hereunder or under any Collateral Document or required of the Collateral Agent by the terms hereof or thereof and such other powers as are reasonably incidental thereto. The Collateral Agent may perform any of its duties hereunder by or through its affiliates, agents or employees and the exculpatory and indemnification provisions in this Agreement and the Collateral Documents shall apply to any such affiliate, agent or employee. The Collateral Agent agrees to act as the Collateral Agent upon the express terms and conditions contained herein.

Section 3.02. Nature of Duties of the Collateral Agent. The Collateral Agent shall have no duties or responsibilities, except those expressly set forth in this Agreement, the Credit Agreement, or the Collateral Documents. The Collateral Agent shall have and may exercise such powers hereunder and under the Collateral Documents as are specifically delegated to the Collateral Agent by the terms hereof, together with such powers as are reasonably incidental thereto. Neither the Collateral Agent nor any of its affiliates, directors, officers, employees or agents (each, a "**Protected Party**") shall be liable to the Creditors for any damages caused by any action taken or omitted by any Protected Party hereunder or under the Collateral Documents **(INCLUDING THOSE DAMAGES CAUSED BY THE SOLE NEGLIGENCE,**

**COMPARATIVE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR CONCURRENT NEGLIGENCE OF ANY PROTECTED PARTY**), unless caused solely by the gross negligence or willful misconduct of the Protected Party seeking protection under this Section 3.02. The duties of the Collateral Agent shall be mechanical and administrative in nature; and the Collateral Agent, in its capacity as such, shall not have by reason of this Agreement or the Collateral Documents a fiduciary relationship in respect of any Creditor. Nothing in this Agreement, expressed or implied, is intended to or shall be so construed as to impose upon the Collateral Agent any duties or obligations in respect of this Agreement and the Collateral Documents except as expressly set forth herein. Other than its duties expressly provided herein or in the Collateral Documents, Collateral Agent shall have no implied duties to Creditors or the Loan Parties under or in connection with this Agreement and no implied duties as to any Property belonging to the Borrower (whether or not the same constitutes Collateral), whether such Property is in Collateral Agent's possession or control or in the possession or control of any of its agents or nominees, or any income thereon or as to the preservation of Rights against prior parties or any other rights pertaining thereto or available at law or otherwise. Collateral Agent shall have the same Rights hereunder as any other Creditor and may exercise the same as though it were not performing the duties specified herein. The Person serving as Collateral Agent may engage in any kind of other business with the Loan Parties or any of the Loan Parties' affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from the Loan Parties and such other Persons in connection with this Agreement or any Principal Agreement, and otherwise, without having to account for the same to the other Creditors except as specified herein.

Section 3.03. Lack of Reliance on the Collateral Agent.

(a) Independently and without reliance upon the Collateral Agent or any other Creditor, each Creditor represents to the Collateral Agent and each of the other Creditors that, as of the date of this Agreement, such Creditor has made (i) its own independent investigation of the financial condition and affairs of the Loan Parties based on such documents and information as it has deemed appropriate in connection with the taking or not taking of any action in connection herewith, and (ii) its own appraisal of the creditworthiness of the Loan Parties. Each Creditor also acknowledges that it will, independently and without reliance upon the Collateral Agent or any other Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement or the Collateral Documents. Except as expressly provided in this Agreement, the Collateral Agent shall have no duty or responsibility, either initially or on a continuing basis, to provide any Creditor with any credit or other information concerning the affairs, financial condition or business of the Loan Parties which may come into the possession of the Collateral Agent or any of its affiliates whether now in its possession or in its possession at any time or times hereafter; and the Collateral Agent shall not be required to keep itself informed as to the performance or observance by the Loan Parties of this Agreement, any Collateral Document or any other document referred to or provided for herein or to inspect the Properties or books of the Loan Parties.

(b) The Collateral Agent shall not (i) be responsible to any Creditor for any recitals, statements, information, representations or warranties herein, in any Collateral Document, or in any document, certificate or other writing delivered in connection herewith or therewith or for

the execution, effectiveness, genuineness, validity, enforceability, collectability, priority or sufficiency of this Agreement or the Collateral Documents or the financial condition of the Loan Parties; or (ii) be required to make any inquiry concerning (a) the performance or observance by others of any of the terms, provisions or conditions of this Agreement or the Collateral Documents, including the content of notices, opinions, certificates and directions given under this Agreement or the Collateral Documents, (b) the financial condition of the Loan Parties, or (c) the existence or possible existence of any “default” or “event of default” under the Principal Agreements. To the extent the Collateral Agent receives any written notice of default provided to the Loan Parties by the Administrative Agent, it shall promptly provide a copy of the same to ~~the~~each Swap Counterparty but shall in no event have any liability to ~~the~~any Swap Counterparty for any failure to so provide such notice.

Section 3.04. Certain Rights of the Collateral Agent. If the Collateral Agent shall request instructions from the Creditors with respect to any act or action (including the failure to act) in connection with this Agreement or the Collateral Documents, the Collateral Agent shall be entitled to refrain from such act or taking such action unless and until the Collateral Agent shall have received written instructions from any Creditor or Creditors pursuant to the terms hereof; and the Collateral Agent shall not incur liability to any Person by reason of so refraining. Without limiting the foregoing, no Creditor shall have any right of action whatsoever against the Collateral Agent as a result of the Collateral Agent acting or refraining from acting under this Agreement or the Collateral Documents in accordance with the written instructions given in accordance with this Agreement, and such instructions and any action taken or failure to act pursuant thereto shall be binding on all the Creditors. The Collateral Agent shall be fully justified in failing or refusing to take any action hereunder or under the Collateral Documents unless it shall first be indemnified to its satisfaction by the Creditors against any and all liability and expense which may be incurred by the Collateral Agent by reason of taking or continuing to take any such action. Notwithstanding any other provision of this Article III or any indemnity or instructions provided by any or all of the Creditors, the Collateral Agent shall not be required to take any action which, in the reasonable belief of the Collateral Agent, exposes the Collateral Agent to personal liability or which, in the reasonable belief of the Collateral Agent, is contrary to this Agreement, the Collateral Documents or applicable law.

Section 3.05. Reliance by the Collateral Agent. The Collateral Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, statement, certificate or telecopier message, cablegram, radiogram, facsimile transmission, e-mail, order or other documentary, teletransmission or telephone message believed by it to be genuine and correct and to have been signed, sent or made by the proper Person. The Collateral Agent may consult with legal counsel, accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts.

Section 3.06. Creditors as Owners. The Collateral Agent may deem and treat each Creditor as the owner of its portion of the Total Obligations as described herein for all purposes hereof unless and until the Collateral Agent is notified of a change in Creditors.

Section 3.07. Successor Collateral Agent.

(a) Collateral Agent shall not be subject to removal by Creditors or the Loan Parties; provided that if the Person serving as Administrative Agent is replaced as Administrative Agent under the Credit Agreement, the Person serving as replacement Administrative Agent shall automatically and without further action or consent by the Loan Parties or the Swap Counterpartyies become Collateral Agent under this Agreement. The Collateral Agent may resign at any time by giving thirty (30) days prior written notice thereof to the Creditors and the Borrower. Following any such notice of resignation, the resigning Collateral Agent shall have the right to appoint a successor Collateral Agent, subject to the consent of the Swap Counterpartyies to the appointee (which consent shall not be unreasonably withheld, conditioned or delayed). If within thirty (30) days after the retiring Collateral Agent's giving of notice of resignation, no successor Collateral Agent shall have been so appointed by the resigning Collateral Agent which has accepted such appointment, then the Swap Counterparty may, in its sole discretion, appoint a successor Collateral Agent.

(b) Upon the acceptance of any appointment as the Collateral Agent hereunder by a successor Collateral Agent, such successor Collateral Agent shall thereupon succeed to and become vested with all the Rights and duties of the retiring Collateral Agent, and the retiring Collateral Agent shall be discharged from its duties under this Agreement. After any retiring Collateral Agent's resignation hereunder as the Collateral Agent, the provisions of this Agreement shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Collateral Agent under this Agreement.

Section 3.08. Employment of Collateral Agent and Counsel. The Collateral Agent may execute any of its duties as the Collateral Agent hereunder or under the Collateral Documents by or through employees, agents, and attorneys-in-fact and shall not be answerable to the Creditors for the default or misconduct of any such employees, agents or attorneys-in-fact reasonably selected by it in good faith unless such default or misconduct is a direct result of the gross negligence or willful misconduct of the Collateral Agent in monitoring the activities of such employees, agents or attorneys-in-fact; provided that the Collateral Agent shall always be obligated to account for moneys or securities received by it or its authorized agents. The Collateral Agent shall be entitled to advice of independent legal counsel concerning all matters pertaining to the collateral agency hereby created and its duties hereunder or under the Collateral Documents.

Section 3.09. Limitation on Liability of the Creditors and the Collateral Agent. The Creditors and the Collateral Agent shall not be deemed, as a result of the execution and delivery of the Collateral Documents or the consummation of the transactions contemplated by this Agreement and the Collateral Documents, to have assumed any obligation of the Loan Parties with respect to the Collateral or any liability under or with respect to any of the contracts, agreements, leases, instruments or documents which are, or which may hereafter be, assigned to the Collateral Agent for the benefit of the Creditors.

**ARTICLE IV**  
**ELECTION TO PURSUE REMEDIES; PROCEEDS**

Section 4.01. Procedures Regarding Remedies.

(a) Upon the occurrence and during the continuance of any Triggering Event, the Collateral Agent shall, upon the request of any of the Accelerated Creditors specifying the particular actions being requested by such Accelerated Creditor, and subject to the other provisions of this Agreement, commence to take, or direct the appropriate trustee or agent to take, those requested actions provided for in the Collateral Documents relating to the pursuit of remedies; provided, that the Swap Counterparty~~ies~~ shall not have the right to require Collateral Agent to realize on any Liens or take any enforcement actions granted pursuant to the Collateral Documents until, if the amount of Swap Obligations owing to the Swap Counterparty is equal to or greater than fifty percent (50%) of the Total Obligations, the forty-fifth (45<sup>th</sup>) day after a Triggering Event of the type referred to in clause (i) of the definition of Triggering Event shall have occurred (the “**Standstill Period**”) and provided further that such Triggering Event shall be continuing on such date and the Collateral Agent shall not have diligently commenced exercise of remedies on such date; provided further that, ~~to the extent the amount of Swap Obligations owing to the one or more Swap Counterparty~~ies~~ is equal to or greater than seventy-five percent (75%) of the Total Obligations, ~~the~~such Swap Counterparty~~ies~~ will not be subject to the Standstill Period and may immediately request the Collateral Agent to take actions as provided in this Section 4.01. For the avoidance of doubt, the Swap Counterparty shall not have the right to require Collateral Agent to realize on any Liens or take any enforcement actions granted pursuant to the Collateral Documents if the amount of Swap Obligations owing to the Swap Counterparty is less than fifty percent (50%) of the Total Obligations.~~

(b) The Loan Parties and the Creditors agree that upon the occurrence of a Triggering Event, all payments made to any Creditor by the Loan Parties shall be shared by all Creditors in accordance with Section 4.02.

(c) Each Creditor agrees: (i) to deliver to each other Creditor, as applicable, at the same time it makes delivery to the Borrower, a copy of any (A) notice declaring the occurrence of an Event of Default under any Loan Documents, (B) notice declaring the occurrence of an Event of Default (as defined in the applicable Swap Documents) or Termination Event (as defined in the applicable Swap Documents) under any Swap Documents, (C) notice of intent to accelerate or notice of acceleration of the Loan Parties’ obligations, or (D) notice of the designation of an Early Termination Date (as defined in the applicable Swap Documents) with respect to any Swap Obligation; (ii) to deliver to each other Creditor, at the same time it makes delivery to any other Person, a copy of any notice of the commencement of any judicial proceeding and a copy of any other notice with respect to the exercise of remedies with respect to any of the Total Obligations; and (iii) deliver the Early Termination Amount (as defined in the applicable Swap Documents). Any failure by a party hereto to furnish a copy under this clause (c) shall not limit or affect the rights and obligations hereunder.

(d) Each of the Swap Counterparty~~ies~~ and the Collateral Agent hereby agrees that it shall endeavor to furnish the Borrower with a copy of any notice provided or received, as applicable, by it pursuant to clause (i) of the definition of Triggering Event. Each of the Borrower and the

Administrative Agent hereby agrees that it shall endeavor to furnish the Swap Counterparty~~ies~~ with a copy of any notice received or provided, as applicable, by it pursuant to clause (ii) of the definition of Triggering Event. Any failure by a party hereto to furnish a copy under this clause (d) shall not limit or affect the rights and obligations hereunder.

(e) The Borrower hereby agrees that ~~the~~any Swap Counterparty may provide to the Administrative Agent from time to time, and ~~the~~such Swap Counterparty hereby agrees to provide to the Administrative Agent within three (3) Business Days following ~~the~~such Swap Counterparty's receipt of a written request therefor from the Administrative Agent, a report of the marked-to-market positions of the various transactions in effect from time to time under the applicable Swap Documents. Any unintentional failure by ~~the~~any Swap Counterparty to timely furnish information required under this clause (e) shall not limit or affect the parties' rights and obligations hereunder.

(f) In the event that the Liens created under the Collateral Documents conflict with the Liens created under other security documents in favor of or for the benefit of the Administrative Agent, the Liens created under the Collateral Documents shall have priority.

(g) Collateral Agent shall not be obligated to follow any instructions of any Accelerated Creditor if Collateral Agent determines, in its sole and absolute discretion, that: (i) such instructions conflict with the provisions of this Agreement, any Principal Agreement, any Collateral Document or any Governmental Requirement, (ii) such instructions are ambiguous, inconsistent, in conflict with other instructions (whether from the same or another Accelerated Creditor) or otherwise insufficient to direct the actions of Collateral Agent; provided that Collateral Agent explains the grounds for a refusal, or (iii) Collateral Agent has not been adequately indemnified to its satisfaction (including indemnity from the Accelerated Creditors in accordance with the Ratable amounts of Total Obligations owing to them). Collateral Agent shall have the right, in its discretion, to take any action authorized under this Agreement or the Collateral Documents, to the extent that such action is not prohibited by the terms hereof or thereof, which it deems proper and consistent with the instructions given by any Accelerated Creditor as provided for herein or otherwise in the best interest of Creditors. In the absence of written instructions from any Accelerated Creditor for any particular matter, Collateral Agent shall have no duty to take or refrain from taking any action unless such action or inaction is explicitly required by the terms of this Agreement or any Governmental Requirement. Collateral Agent shall have no duty with respect to a Triggering Event unless it has received written notice from an Accelerated Creditor that a Triggering Event has occurred.

(h) The Collateral Agent shall cease to comply with any direction by ~~a~~any Swap Counterparty pursuant to this Section 4.01 if (i) the Triggering Event under the applicable Swap Documents of such Swap Counterparty has been cured or waived or (ii) the amounts owed by Borrower to such Swap Counterparty under Acceptable Commodity Hedging Transactions have been paid in full or otherwise discharged.

#### Section 4.02. Proceeds.

(a) The Creditors hereby agree between themselves that (i) prior to the occurrence of a Triggering Event, each Creditor shall be entitled to receive and retain for its own account, and



shall never be required to disgorge to the Collateral Agent or any other Creditor hereunder or acquire direct or participating interests in the Loan Obligations or the Swap Obligations, as the case may be, owing to such Creditor, scheduled payments or voluntary prepayments, payments for the redemption or purchase of principal, interest, fees and premium, if any, settlement payments and any other payments in respect of the Principal Agreements or Credit Agreement Modifications, all in compliance with the terms thereof, and (ii) upon the occurrence and during the continuance of a Triggering Event, all such amounts received by any Creditor ~~after~~ following such Triggering Event shall constitute Proceeds, shall be turned over to the Collateral Agent, and shall be shared by the Creditors, Ratably, and in accordance with Section 4.02(b) below; provided, however, and for the avoidance of doubt, if the Administrative Agent grants its consent for any letter of credit pursuant to Section 2.023, ~~then~~ no Swap Counterparty shall ~~not~~ be obligated to hold in trust, pay over or share with the Administrative Agent any portion of the proceeds of any such letter of credit.

(b) All Proceeds received by the Collateral Agent during the existence of a Triggering Event shall be applied in accordance with this Section 4.02. To the extent any Creditor ever receives any portion of such Proceeds in excess of its Ratable share (or to the extent the Collateral Agent receives reimbursement in excess of expenses actually incurred), the party receiving those excess Proceeds agrees to promptly make all necessary transfers so as to give full effect to this Section 4.02. All Proceeds received by the Collateral Agent during the existence of a Triggering Event shall be applied in the following order:

(i) **First**, to reimburse the Collateral Agent for expenses in accordance with Section 5.01;

(ii) **Second**, Ratably, to the Administrative Agent in respect of amounts owing to the Lender Group and to the Swap Counterparties until the Total Obligations are fully satisfied; and

(iii) **Third**, to the extent that any Proceeds remain, to the Borrower or as otherwise required by applicable law.

Section 4.03. Notice of Amount of Indebtedness. Upon receipt of any Proceeds to be distributed pursuant to Section 4.02, the Collateral Agent shall give the Creditors notice thereof, and each Creditor (or its representative) shall, within three (3) Business Days, notify the Collateral Agent of the amount of the Total Obligations owing to it. Such notification shall state the amount of the Total Obligations owing to it and how much is then due and owing. If requested by the Collateral Agent, each Creditor (or its representative) shall demonstrate that the amounts set forth in its notice are actually owing to such Creditor to the reasonable satisfaction of the Collateral Agent. Notwithstanding the foregoing, the Collateral Agent may conclusively rely on information in such notices without any investigation. In the event that any Creditor fails to timely notify the Collateral Agent of the amount of the Total Obligations owed to it, the Collateral Agent shall distribute such Proceeds on any basis deemed reasonable by it and not in bad faith.

~~Section 4.04. Additional Swap Counterparties.—The Swap Counterparty hereby agrees to execute and deliver any amended or restated version of this Agreement that is executed by the Loan Parties, the Administrative Agent, the Collateral Agent and any other counterparty to a~~

~~Secured Swap Agreement (under and as defined in the Collateral Documents) which provides for Acceptable Commodity Hedging Transactions that are agreed to by the Administrative Agent as being secured obligations under the Collateral Documents.~~

. If any Person that is approved by Administrative Agent as a counterparty to a Swap Agreement under the Credit Agreement desires to become a “Swap Counterparty” for the purposes of this Agreement and the Collateral Documents, then it shall execute and deliver to the Administrative Agent and the Borrower a Joinder Supplement. In each case, upon execution and delivery of such Joinder Supplement by such Person, Administrative Agent and Borrower, such Person shall be deemed a Swap Counterparty hereunder as if an original signatory. Joinder Supplements executed pursuant to this Section 4.04 do not require the signatures or consents of all Creditors party to this Agreement. Promptly after execution of any such Joinder Supplement, the parties thereto will endeavor to send a copy thereof to each other Swap Counterparty, but failure or delay in doing so will not make such Joinder Supplement void or voidable or otherwise affect the rights and duties of the parties hereto.

## **ARTICLE V MISCELLANEOUS**

Section 5.01. Expenses. The Lenders and the Swap Counterparty~~ies~~ shall each bear their Ratable share of any reasonable expenses incurred by the Collateral Agent in taking action on behalf of the Creditors in connection with its investigation, evaluation or enforcement of any Rights under the Collateral Documents or the performance of its duties under this Agreement or under any of the Collateral Documents, but only to the extent Collateral Agent does not receive reimbursement for such expenses from the Loan Parties or from Proceeds within thirty (30) days after such expenses are invoiced; provided, that, to the extent any Creditor reimburses Collateral Agent for such expenses, such Creditor will be entitled to receive its Ratable share of any reimbursement subsequently received by Collateral Agent from the Loan Parties or from Proceeds.

Section 5.02. Limitation of Collateral Agent Liability; Indemnification of the Collateral Agent. Neither the Collateral Agent nor any of its representatives shall (i) be liable for any action taken or omitted to be taken by it or them hereunder or under the Collateral Documents in good faith and reasonably believed by it or them to be within the discretion or power conferred upon it or them by this Agreement and the Collateral Documents or (ii) be responsible for the consequences of any error of judgment, except to the extent arising solely from its gross negligence or willful misconduct. The Collateral Agent shall not be responsible in any manner to any other party for the effectiveness, enforceability, genuineness, validity or the due execution of the Collateral Documents or for any representation, warranty, document, certificate, report or statement made in or in connection with the Collateral Documents or be under any obligation to any other party to ascertain or inquire as to the performance or observation of any of the terms, covenants or conditions of any of the Loan Documents or the Swap Documents on the part of the Borrower. The Lenders and the Swap Counterparty~~ies~~ agree to Ratably reimburse and indemnify the Collateral Agent and its affiliates, directors, officers, employees and agents (each an “**Indemnified Party**”) on a current basis and hold the indemnified parties harmless on a current basis from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, reasonable expenses, and reasonable disbursements of any kind or nature

whatsoever which may be imposed on, asserted against or incurred by any Indemnified Party in any way relating to or arising out of this Agreement or the Collateral Documents or any action taken or omitted by an Indemnified Party under this Agreement or the Collateral Documents, **INCLUDING ANY SUCH LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, ACTIONS, JUDGMENTS, SUITS, COSTS, REASONABLE EXPENSES AND REASONABLE DISBURSEMENTS ARISING OUT OF THE SOLE, CONCURRENT, CONTRIBUTORY OR COMPARATIVE NEGLIGENCE OF ANY INDEMNIFIED PARTY**, except to the extent the same results solely from the gross negligence or willful misconduct of such Indemnified Party. The provisions of this Section shall survive the termination of this Agreement, whether in whole or in part.

Section 5.03. Limitation of Liability. ~~The~~No Swap Counterparty (including any individual partner, member, director, employee or agent of ~~the~~any Swap Counterparty) shall ~~not~~ incur any liability under this Agreement to the Loan Parties except for liabilities arising from ~~the~~such Swap Counterparty's gross negligence or willful misconduct, as determined by a court of competent jurisdiction. This Agreement is intended to benefit only Collateral Agent and the Creditors, and neither the Loan Parties nor any other Person shall have any rights hereunder or be entitled to claim any damages or defenses on account hereof from or against Collateral Agent or any Creditor (or any affiliate of Collateral Agent or any Creditor).

Section 5.04. Term.

(a) This Agreement shall terminate upon (i) the full payment of the Swap Obligations due and owing to the Swap Counterparty~~ies~~ and the delivery by the Loan Parties of a written notice to the Swap Counterparty~~ies~~ following such payment that the Loan Parties is terminating the Swap Counterparty Master Agreements; (ii) payment in full of all Loan Obligations (other than indemnity obligations and similar obligations that survive the termination of the Credit Agreement for which no notice of a claim has been received by the Administrative Agent) under the Credit Agreement or (iii) the execution and delivery of a written termination notice signed by each of the parties; provided that if at any time any payment of the Total Obligations is rescinded or must be restored or returned upon the insolvency, bankruptcy or reorganization of the Borrower or otherwise, the obligations of the Borrower and the Rights of the Creditors under this Agreement, with respect to that payment, shall be reinstated as though the payment had been due but not made at that time. ~~The~~Each Swap Counterparty~~ies~~ agrees that the Loan Parties may terminate ~~the~~any Swap Counterparty Master Agreement by providing written notice to ~~the~~such Swap Counterparty at any time that there are no outstanding Commodity Hedging Transactions or payment obligations for any Commodity Hedging Transactions thereunder, irrespective of whether the Loan Parties has that express right under the terms of the Swap Counterparty Master Agreement. For purposes of the preceding clause (i), the Collateral Agent or the Borrower may request in writing that ~~the~~such Swap Counterparty confirm the termination of the applicable Swap Counterparty Master Agreement. ~~The~~Such Swap Counterparty shall have ten (10) Business Days from the date the notice is deemed given pursuant to Section 5.09 in which to either confirm in writing such termination or provide a written notice to the Collateral Agent and the Borrower of the total amount of outstanding Swap Obligations claimed in good faith by ~~the~~such Swap Counterparty. If ~~the~~such Swap Counterparty does not provide any notice within the ten (10) Business Day period, or if notice is provided of outstanding Swap Obligations and

those obligations are paid in full, ~~the~~such Swap Counterparty Master Agreement will be deemed terminated for purposes of the preceding clause (i).

(b) If Borrower has issued to ~~the~~any Swap Counterparty a letter of credit or other credit support as credit support replacement for the Collateral Documents then securing such Swap Counterparty (such letter of credit or other credit support to be in form and substance and in an amount and from an issuing bank reasonably satisfactory to ~~the~~such Swap Counterparty) to secure payment of all Swap Obligations owing ~~the~~such Swap Counterparty, such Person shall cease to be a Swap Counterparty for all purposes of this Agreement and the Collateral Documents and such Swap Obligations and the Swap Documents of ~~the~~such Swap Counterparty shall cease to be secured by the Collateral Documents.

Section 5.05. Survival of Rights. All of the respective Rights and interests of the Creditors under this Agreement (and the respective obligations and agreements of the Creditors under this Agreement), shall remain in full force and effect regardless of:

(a) any lack of validity or enforceability of any of the Loan Documents, the Swap Documents or any other agreement or instrument related thereto; or

(b) any other circumstance which might otherwise constitute a defense available to, or discharge of, the Loan Parties with respect to the Loan Obligations or the Swap Obligations (other than the defense that such obligations have been fully satisfied).

Section 5.06. Representations and Warranties. Each of the Loan Parties and ~~the~~each Swap Counterparty represents and covenants to each other and to the Collateral Agent that as of the date of its entry into any Commodity Hedging Transactions it will be, an “Eligible Contract Participant” as defined in 7 U.S.C. § 1a(18). ABC Agent, as the Administrative Agent and as the Collateral Agent, and ~~the~~each Swap Counterparty each represent and warrant to the other that:

(a) neither the execution and delivery of this Agreement nor its performance or compliance with the terms and provisions hereof will conflict with, or result in a breach of the terms, conditions or provisions of, or constitute a default under, any other agreement to which it is now subject;

(b) it has all requisite authority to execute, deliver and perform its obligations under this Agreement; and

(c) this Agreement constitutes its legal, valid, and binding obligation, enforceable against it in accordance with its terms, subject only to applicable bankruptcy, insolvency or similar laws and general principles of equity.

Section 5.07. Further Assurances. ~~The~~Each of the Administrative Agent and the Swap Counterparty~~s~~ ~~each~~ covenant that, as long as this Agreement remains in effect, ~~it~~each of the Administrative Agent and the Swap Counterparties will execute and deliver any and all other instruments reasonably requested by the other to give effect to the terms and conditions of this Agreement.

Section 5.08. Assignment; Agreement Binding on Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of each Creditor and its respective successors and permitted assigns. The terms and provisions of this Agreement shall not inure to the benefit of, nor be relied upon by, the Borrower or its successors or assigns.

~~The~~No Swap Counterparty shall ~~not~~ assign, transfer or sell any part of its portion of the Total Obligations without the prior written consent of the Administrative Agent in its sole and absolute discretion. For purposes of the immediately preceding sentence, a change of control of ~~the~~any Swap Counterparty or a merger by ~~the~~any Swap Counterparty with another entity shall not constitute an assignment of ~~the~~such Swap Counterparty's portion of the Total Obligations. This Agreement, the Loan Documents and the Loan Obligations may be assigned at any time to any Person(s) without the consent of ~~the~~any Swap Counterparty.

Section 5.09. Notice. Unless otherwise provided, any consent, request, notice, or other communication under or in connection with this Agreement must be in writing to be effective and shall be deemed to have been given (a) if sent by a nationally recognized overnight delivery service using its overnight delivery option (e.g., Federal Express, UPS or the United States postal service), on the Business Day after it is enclosed in an envelope and properly addressed, stamped and deposited with such delivery service, (b) if by other form of mail, on the third Business Day after it is enclosed in an envelope and properly addressed, stamped, sealed, certified return receipt requested, and deposited in the appropriate official postal service, or (c) if by courier, electronic transmissions, or facsimile transmission, when actually delivered. Until changed by a subsequent notice delivered in accordance with this Section, notices for each party are to be directed to:

For delivery to ~~the Swap Counterparty~~BP:

BP Energy Company  
201 Helios Way  
Houston, TX 77079  
Attn: Contract Services  
Email: FinancialContractsExternal@uk.bp.com

For delivery to the Loan Parties:

390 Union Blvd.  
Ste. 250  
Lakewood, CO 80228  
Attn: Arthur Millholland  
Email: a.milholland@canoverseas.com  
Facsimile: 303-534-0102

For delivery to the Administrative Agent, ABC Agent or the Collateral Agent:

ABC Funding, LLC  
222 Berkeley Street, 18<sup>th</sup> Floor  
Boston, MA 02116.  
Attn: ~~Kevin Messerle~~Patrick Murphy, Ashley Smith  
Email: ~~kmesserle~~PMurphy@summitpartners.com,  
ASmith@summitpartners.com  
Telephone: 617-598-48184, 617-598-4826

Section 5.10. Amendment. This Agreement may only be waived, amended, modified, or terminated by a written agreement signed by the party against whom enforcement of any such waiver, amendment, modification, or termination is sought. Delivery of an executed counterpart of such written instrument by telecopy, e-mail, facsimile or other electronic means shall be effective delivery of a manually executed counterpart of such written instrument.

Section 5.11. Governing Law; Venue.

(a) This Agreement, the entire relationship of the parties to the extent related hereto, and any litigation between the parties (whether grounded in contract, tort, statute, law or equity) to the extent related hereto shall be governed by, construed in accordance with, and interpreted pursuant to the laws of the State of New York, without giving effect to its choice of laws principles.

(b) ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY OF THE BORROWER, ANY LENDER, ~~THE~~ANY SWAP COUNTERPARTY OR THE ADMINISTRATIVE AGENT OR THE COLLATERAL AGENT OR ANY OTHER PARTY HERETO ARISING OUT OF, CONCERNING OR RELATING TO IN ANY MANNER WHATSOEVER HERETO, MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE COURTS OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, IN EACH CASE LOCATED IN NEW YORK COUNTY AND APPELLATE COURTS FROM ANY THEREOF. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH OF THE PARTIES HERETO, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (i) TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ACCEPTS GENERALLY AND UNCONDITIONALLY ON BEHALF OF SUCH PARTY THAT ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING OUT OF, CONCERNING OR RELATING TO IN ANY MANNER WHATSOEVER HERETO SHALL BE BROUGHT EXCLUSIVELY IN THE STATE OR FEDERAL COURT OF COMPETENT JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE COURTS OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, IN EACH CASE LOCATED IN NEW YORK COUNTY AND APPELLATE COURTS FROM ANY THEREOF, (II) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (III) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 5.09 IS SUFFICIENT TO

CONFER PERSONAL JURISDICTION OVER THE APPLICABLE PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND (iv) AGREES THAT THE ADMINISTRATIVE AGENT AND THE LENDERS RETAIN THE RIGHT TO SERVE PROCESS TO ANY LOAN PARTY IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY LOAN PARTY IN THE COURTS OF ANY OTHER JURISDICTION.

Section 5.12. Invalid Provisions. If any part of this Agreement is for any reason found to be unenforceable, all other portions nevertheless remain enforceable. However, if the provision held to be unenforceable is a material part of the Agreement, such unenforceable provision may, to the extent permitted by law, be replaced by a clause or provision judicially construed and interpreted to be as similar in substance and content to the original terms of such provision as the context would reasonably allow, so that such clause or provision would thereafter be enforceable.

Section 5.13. Multiple Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all signatories had signed the same document, and will be effective upon the execution of one or more counterparts hereof by each of the parties hereto. In this regard, each of the parties hereto acknowledges that a counterpart of this Agreement containing a set of counterpart execution pages reflecting the execution of each party hereto shall be sufficient to reflect the execution of this Agreement by each party hereto. All counterparts will, taken together, constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, e-mail, facsimile or other electronic means shall be effective as a delivery of a manually executed counterpart of this Agreement.

Section 5.14. Jury Waiver. EACH OF THE COLLATERAL AGENT, THE ADMINISTRATIVE AGENT (FOR ITSELF AND ON BEHALF OF THE LENDERS), THE SWAP COUNTERPARTYIES AND THE LOAN PARTIES HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) AMONG THE COLLATERAL AGENT, THE ADMINISTRATIVE AGENT, THE LENDERS, THE SWAP COUNTERPARTYIES AND THE LOAN PARTIES (OR ANY OF THEM) ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT AND EACH IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT TO RECOVER ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES IN ANY DISPUTE ARISING IN CONNECTION HEREWITH.

Section 5.15. Controlling Agreement. To the extent the terms of this Agreement directly conflict with a provision in either the Loan Documents or the Swap Documents, the terms of this Agreement shall control.

Section 5.16. Integration. THIS AGREEMENT REPRESENTS THE FINAL AGREEMENT AMONG THE COLLATERAL AGENT, THE ADMINISTRATIVE AGENT, THE LENDERS, THE SWAP COUNTERPARTYIES AND THE LOAN PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF AND MAY NOT

BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR  
SUBSEQUENT ORAL AGREEMENTS BY THE PARTIES. THERE ARE NO  
UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.

*[Signature Pages Follow]*



IN WITNESS WHEREOF, the parties have executed this Intercreditor Agreement as of the date first hereinabove written.

~~SWAP COUNTERPARTY~~BP:

BP ENERGY COMPANY

By: \_\_\_\_\_

Print:

Title:

**BORROWER:**

COPL AMERICA INC.

By: \_\_\_\_\_

Print:

Title:

**OTHER LOAN PARTIES:**

SOUTHWESTERN PRODUCTION CORP.

By: \_\_\_\_\_

Name:

Title:

ATOMIC OIL AND GAS LLC

By: \_\_\_\_\_

Name:

Title:

PIPECO LLC

By: \_\_\_\_\_

Name:

Title:

COPL AMERICA HOLDING INC.

By: \_\_\_\_\_

Name:

Title:

**ABC Agent, in its capacity as the  
Administrative Agent for the Lender  
Group:**

ABC FUNDING, LLC, as the  
Administrative Agent

By: Summit Partners Credit Advisors, L.P.  
Its: Manager

By: \_\_\_\_\_  
Name:  
Title:

**ABC Agent, in acceptance of its  
appointment as Collateral Agent:**

ABC FUNDING, LLC, as the Collateral  
Agent

By: Summit Partners Credit Advisors, L.P.  
Its: Manager

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE 1**

1. Guarantee and Collateral Agreement
2. Each of the Mortgages
3. Each Control Agreement

**EXHIBIT A**

**JOINDER SUPPLEMENT**

This Joinder Supplement (this “Supplement”) dated as of \_\_\_\_\_ is executed by (the “New Swap Counterparty”), COPL America Inc., a Delaware corporation (the “Borrower”), and ABC Funding, LLC, as the Administrative Agent and Collateral Agent as herein provided.

COPL AMERICA INC., a Delaware corporation (the “Borrower”), the Loan Parties party hereto, and ABC FUNDING, LLC (“ABC Agent”), with ABC Agent acting: (i) as the administrative agent (in such capacity, together with its successors in such capacity, the “Administrative Agent”) under the Credit Agreement defined below and (ii) as the collateral agent (in such capacity, the “Collateral Agent”, and, together with the Swap Counterparty, the Borrower, the other Loan Parties party hereto and the Administrative Agent, the “Parties

All capitalized terms used herein but not defined herein shall have the meanings set forth in the Agreement (as defined below).

**WITNESSETH:**

WHEREAS, BP, ABC Funding, LLC, as the Administrative Agent and Collateral Agent, the Borrower, and each of the other Loan Parties from time to time party thereto have heretofore entered into that certain Swap Intercreditor Agreement dated as of March 16, 2021 (as amended, restated, supplemented or otherwise modified from time to time, the “Agreement”), providing for, among other matters, the relative rights and obligations and apportionment of certain collections among the Creditors and the exercise of certain remedies under the Security Instruments;

WHEREAS, the Agreement provides that one or more additional Persons may become Swap Counterparties thereunder if each such Person is approved by Administrative Agent and becomes a Swap Counterparty for the purposes of the Agreement and the Collateral Documents by executing and delivering a Joinder Supplement; and

WHEREAS, the New Swap Counterparty desires to become a “Swap Counterparty” under the Agreement;

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

A. Recognition. Each of Administrative Agent and Collateral Agent hereby recognizes the New Swap Counterparty as a “Swap Counterparty” under the Agreement and the Security Instruments.

B. Agreement to be Bound. The New Swap Counterparty hereby agrees to be bound by all of the terms and provisions of the Agreement as, and assumes all of the obligations of, a

Swap Counterparty thereunder. The New Swap Counterparty acknowledges and agrees that the terms of the Agreement shall control over the terms of any Swap Counterparty Master Agreement, including each confirmation now or hereafter entered into thereunder, between a Loan Party and the New Swap Counterparty to the extent any conflict exists between the Agreement and any such agreement or confirmation.

C. Ratification of Agreement; Joinder Supplement Part of Agreement. This Supplement shall form a part of the Agreement for all purposes. As expressly supplemented hereby, the Agreement is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect.

D. No Representation by the Collateral Agent. Collateral Agent makes no representation as to the validity or sufficiency of the Collateral Documents, and the New Swap Counterparty acknowledges, consents to and accepts the disclaimers by, and limitations on the liability of, Collateral Agent that are provided in the Agreement.

E. Representations and Warranties of the New Swap Counterparty. The New Swap Counterparty represents and warrants to the other Creditors that:

1. neither the execution and delivery of this Supplement or the Agreement nor its performance of or compliance with the terms and provisions hereof or thereof will conflict with, or result in a breach of the terms, conditions or provisions of, or constitute a default under, any other agreement to which it is now subject;
2. it has all requisite authority to execute, deliver and perform its obligations under this Supplement and the Agreement; and
3. each of this Supplement and the Agreement constitutes its legal, valid, and binding obligation, enforceable against it in accordance with its terms, subject only to applicable bankruptcy, insolvency or similar laws and general principles of equity.

F. Counterparts. The parties may sign any number of counterparts of this Joinder Supplement, and different parties may sign on different signature pages. Each signed counterpart shall be an original, but all of them together shall represent the same Joinder Supplement. Delivery of an executed signature page of this Joinder Supplement by facsimile transmission or other electronic means shall be effective as delivery of a manually executed counterpart hereof.

G. Address for Notices. All notices and other communications given to the New Swap Counterparty under the Agreement may be given at its address, facsimile number or e-mail as set forth on its signature page.

**(Signatures appear on following pages)**

IN WITNESS WHEREOF, the parties hereto have caused this Supplement to be duly executed as of the date first above written.

NEW SWAP COUNTERPARTY: [ \_\_\_\_\_ ]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address for notices under the Agreement:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ADMINISTRATIVE AGENT:

ABC FUNDING, LLC,  
as the Administrative Agent

By: Summit Partners Credit Advisors, L.P.  
Its: Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

COLLATERAL AGENT:

ABC FUNDING, LLC,  
as Collateral Agent

By: Summit Partners Credit Advisors, L.P.  
Its: Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LOAN PARTIES:

COPL AMERICA INC.

By: \_\_\_\_\_  
Print:  
Title:

SOUTHWESTERN PRODUCTION CORP.

By: \_\_\_\_\_  
Name:  
Title:

ATOMIC OIL AND GAS LLC

By: \_\_\_\_\_  
Name:  
Title:

PIPECO LLC

By: \_\_\_\_\_  
Name:  
Title:

COPL AMERICA HOLDING INC.

By: \_\_\_\_\_  
Name:  
Title:



**THIS IS EXHIBIT "D"**

**REFERRED TO IN THE AFFIDAVIT OF**

**KENNETH JOAQUIN ANDERSON**

**Sworn before me this 23rd day of April, 2024**

A handwritten signature in blue ink, consisting of several fluid, overlapping strokes, positioned above a horizontal line.

**A COMMISSIONER FOR OATHS IN AND  
FOR THE PROVINCE OF ALBERTA**

**HAO YANG HUA**  
Student-At-Law

**SECOND AMENDMENT TO INTERCREDITOR AGREEMENT**

**THIS SECOND AMENDMENT TO INTERCREDITOR AGREEMENT** (this “**Amendment**”) entered into and effective as of October 13, 2023 (the “**Amendment Effective Date**”) by and among **BP ENERGY COMPANY**, a Delaware corporation (the “**Swap Counterparty**”), **COPL AMERICA INC.**, a Delaware corporation (the “**Borrower**”), the Loan Parties party hereto, and **ABC FUNDING, LLC** (“**ABC Agent**”), with ABC Agent acting: (i) as the administrative agent (in such capacity, together with its successors in such capacity, the “**Administrative Agent**”) under the Intercreditor Agreement defined below and (ii) as the collateral agent (in such capacity, the “**Collateral Agent**”, and, together with the Swap Counterparty, the Borrower, the other Loan Parties party hereto and the Administrative Agent, the “**Parties**”) for the benefit of the Creditors hereunder.

**RECITALS**

A. The Swap Counterparty, the Borrower, the other Loan Parties, the Administrative Agent and the Collateral Agent are parties to that certain Intercreditor Agreement, dated as of March 16, 2021 (as amended by that certain First Amendment to Intercreditor Agreement dated as of October 4, 2023 and as further amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof, the “**Existing Intercreditor Agreement**” and as further amended, restated, amended and restated, supplemented or otherwise modified by this Amendment, the “**Intercreditor Agreement**”).

B. References in this Agreement to the Administrative Agent are to ABC Agent in its capacity as contractual representative of the Lender Group. References in this Agreement to the Collateral Agent are to ABC Agent in its capacity as the contractual representative holding and enforcing certain Liens, granted under the Collateral Documents, for the benefit of the Creditors.

C. The Parties have agreed to enter into this Amendment to (without limitation) amend certain provisions of the Existing Intercreditor Agreement as set forth herein.

NOW, THEREFORE, to induce the Parties to enter into this Amendment and in consideration of the premises and the mutual covenants herein contained, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Defined Terms. Each capitalized term used herein but not otherwise defined herein has the meaning given such term in the Intercreditor Agreement. Unless otherwise indicated, all section references in this Amendment refer to sections of the Intercreditor Agreement. Upon and after the execution of this Amendment by each of the parties hereto, each reference in the Intercreditor Agreement to “this Agreement”, “hereunder”, “hereof” or words of like import referring to the Intercreditor Agreement, and each reference in the Loan Documents to “the Intercreditor Agreement”, “thereunder”, “thereof” or words of like import referring to the Intercreditor Agreement, shall mean and be a reference to the Existing Intercreditor Agreement as modified hereby.

Section 2. Amendments to the Existing Intercreditor Agreement. In reliance on the representations, warranties, covenants and agreements contained in this Amendment, and subject

to the satisfaction of the conditions precedent set forth in Section 3 hereof, as of the Amendment Effective Date, the Existing Intercreditor Agreement is hereby amended to delete the stricken text (indicated in the same manner as the following example: ~~stricken text~~) and to add the bold and double underlined text (indicated textually in the same manner as the following example: **bold and double underlined text**) as set forth on the pages of the Intercreditor Agreement attached as Exhibit A hereto.

Section 3. Conditions Precedent. This Amendment shall become effective and enforceable against the parties hereto upon the following:

3.1 The Administrative Agent and the Collateral Agent (or Kirkland & Ellis LLP) shall have received executed counterparts of this Amendment, duly and validly executed and delivered by duly authorized officers of the Borrower, the other Loan Parties, the Administrative Agent, the Collateral Agent and the Swap Counterparty.

Section 4. Representations and Warranties. Each of the Parties hereto hereby represent and warrant to each other that:

4.1 Representations and Warranties. All representations and warranties contained in the Intercreditor Agreement shall be true and correct in all material respects (unless already qualified by materiality in which case such applicable representation and warranty shall be true and correct) with the same effect as though such representations and warranties had been made as of the date hereof (it being understood and agreed that any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct in all material respects (unless already qualified by materiality in which case such applicable representation and warranty shall be true and correct) only as of such specified date).

Section 5. Miscellaneous.

5.1 Ratification and Affirmation. The Parties hereto hereby (i) acknowledge this Amendment and its terms, (ii) ratify and affirm their obligations under, and acknowledge, renew and extend their continued liability under the Intercreditor Agreement, as applicable, (iii) agree that the Intercreditor Agreement remains in full force and effect, and (iv) agree that from and after the Amendment Effective Date each reference to the Intercreditor Agreement in the Loan Documents shall be deemed to be a reference to the Existing Intercreditor Agreement, as amended by this Amendment.

5.2 No Waiver. The execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of the Parties under the Intercreditor Agreement, nor constitute a waiver of any provision of the Intercreditor Agreement.

5.3 Counterparts. This Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Delivery of this Amendment by facsimile or electronic transmission in portable document format (.pdf) shall be effective as delivery of a manually executed counterpart hereof.

5.4 Entire Agreement. THIS AMENDMENT REPRESENTS THE FINAL AGREEMENT AMONG THE COLLATERAL AGENT, THE ADMINISTRATIVE AGENT, THE LENDERS, THE SWAP COUNTERPARTY AND THE LOAN PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS BY THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.

5.5 GOVERNING LAW. THIS AMENDMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

5.6 Severability. In case any provision in or obligation under this Amendment shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

[SIGNATURES BEGIN NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed as of the date first written above.


**SWAP COUNTERPARTY:**

**BP ENERGY COMPANY**

By:   
Name: Joaquin Anderson  
Title: Attorney In Fact

**BORROWER:**

**COPL AMERICA INC.**


By:   
Name: John Cowan  
Title: Director

**OTHER LOAN PARTIES:**

**SOUTHWESTERN PRODUCTION CORP.**

By:   
Name: Ryan Gaffney  
Title: CFO


**ATOMIC OIL AND GAS LLC**

By:   
Name: Ryan Gaffney  
Title: CFO

**PIPECO LLC.**

By:   
Name: Ryan Gaffney  
Title: CFO

**COPL AMERICA HOLDING INC.**

By:   
Name: John Cowan  
Title: Director

**ABC Agent, in its capacity as the ADMINISTRATIVE AGENT for the Lender Group:**

**ABC FUNDING, LLC, as the Administrative Agent**

By: Summit Partners Credit Advisors, L.P.

Its: Manager

By:   
Name: Adam Hennessey  
Title: Authorized Signatory

**ABC Agent, in its ACCEPTANCE OF ITS APPOINTMENT AS COLLATERAL AGENT:**

**ABC FUNDING, LLC, as the Collateral Agent**

By: Summit Partners Credit Advisors, L.P.

Its: Manager

By:   
Name: Adam Hennessey  
Title: Authorized Signatory

**Exhibit A**

**[see attached]**



## INTERCREDITOR AGREEMENT

THIS INTERCREDITOR AGREEMENT (this “**Agreement**”) is entered into as of March 16, 2021, by and among **BP ENERGY COMPANY**, a Delaware corporation (“**BP**” and together with each other Person that becomes a Swap Counterparty pursuant to a Joinder Supplement, collectively the “**Swap Counterparties**” and each, a “**Swap Counterparty**”), **COPL AMERICA INC.**, a Delaware corporation (the “**Borrower**”), the Loan Parties party hereto, and **ABC FUNDING, LLC** (“**ABC Agent**”), with ABC Agent acting: (i) as the administrative agent (in such capacity, together with its successors in such capacity, the “**Administrative Agent**”) under the Credit Agreement defined below and (ii) as the collateral agent (in such capacity, the “**Collateral Agent**”, and, together with the Swap Counterparties, the Borrower, the other Loan Parties party hereto and the Administrative Agent, the “**Parties**”) for the benefit of the Creditors hereunder. See below for certain defined terms used herein.

### RECITALS:

A. The Administrative Agent and the Lenders defined in the Credit Agreement (collectively, and together with any of their successors and permitted assigns, the “**Lender Group**”) and the Borrower entered into that certain Credit Agreement, dated as of March 16, 2021 (as amended, supplemented, restated or otherwise modified from time to time, the “**Credit Agreement**”).

B. References in this Agreement to the Administrative Agent are to ABC Agent in its capacity as contractual representative of the Lender Group. References in this Agreement to the Collateral Agent are to ABC Agent in its capacity as the contractual representative holding and enforcing certain Liens, granted under the Collateral Documents, for the benefit of the Creditors.

C. The Borrower and BP entered into that certain ISDA Master Agreement, together with the Schedule thereto, dated March 16, 2021, (as amended, restated, supplemented or otherwise modified from time to time in accordance with this Agreement, the “**BP Swap Counterparty Master Agreement**” and together with any other ISDA Master Agreements, Schedules and transaction confirmation(s) entered into between any Loan Party and any Swap Counterparty from time to time in accordance with the terms of the Credit Agreement, collectively, the “**Swap Counterparty Master Agreements**” and each individually, a “**Swap Counterparty Master Agreement**”), and have entered into one or more transactions thereunder.

D. As of ~~the Tenth Amendment Effective Date (as defined in the Credit Agreement)~~, the ~~Borrower has incurred~~ October 4, 2023, the Borrower and BP terminated certain transactions under the BP Swap Counterparty Master Agreement listed on Schedule 1 attached hereto (the “BP Swap Termination”), resulting in Swap Obligations due and owing to BP in an aggregate amount of \$~~10,960,000.00~~ 11,873,702.13 as of such date (collectively, the “**BP Specified Swap Obligations**”) ~~pursuant to the BP Swap Counterparty Master Agreement as supplemented by the Supplemental BP Swap Transaction (defined below)~~ and memorialized in the letter agreement, dated as of October 12, 2023 and attached hereto as Exhibit A (the “**BP Swap Termination Documentation**”).

~~E. The Borrower and BP will enter into that certain additional obligation under the Swap Counterparty Master Agreement on the Tenth Amendment Effective Date in the amounts and on the terms as may be mutually agreed by the Borrower and BP and set forth in the Swap Counterparty Agreement (collectively, the “Supplemental BP Swap Transaction”).~~

E. ~~F.~~The Administrative Agent, the Collateral Agent, the Swap Counterparties and the Loan Parties desire to enter into this Agreement (i) to establish the maturity of and relative priorities with respect to payment of the Loan Obligations (defined below), the BP Specified Swap Obligations, and the Swap Obligations (defined below) and (ii) to have both the Swap Counterparties and the Administrative Agent appoint ABC Agent, and ABC Agent agree to serve, as the Collateral Agent for the benefit of the Creditors for the purposes of the holding of and the enforcement of Liens granted under the Collateral Documents.

In consideration of the recitals and the covenants and promises of this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Collateral Agent, the Administrative Agent, the Swap Counterparties and the Loan Parties agree as follows:

## **ARTICLE I DEFINITIONS**

Section 1.01. Credit Agreement Definitions. Each term defined in the Credit Agreement shall have the same meaning when used herein unless otherwise defined herein or the context otherwise requires.

Section 1.02. Other Definitions. As used in this Agreement, the terms defined in the Recitals hereto shall have the meanings assigned to those terms in such Recitals, and the following terms shall have the meanings assigned as follows:

“**Accelerated Creditor**” means any Creditor that (i) has delivered notice of a Triggering Event to Collateral Agent or (ii) holds a Loan that has matured (whether by acceleration or otherwise).

“**Acceptable Commodity Hedging Transactions**” means any Commodity Hedging Transaction permitted or required by the Credit Agreement.

“**BP Account**” means an account at a bank designated by BP from time to time as the account into which Loan Parties shall make all payments to BP due and owing under Section 2.02.

“**Collateral Documents**” means the “Collateral Documents” as defined in the Credit Agreement and includes, without limitation, those documents listed in Schedule 12 attached hereto and incorporated herein by this reference.

“**Collateral Value**” means, with respect to any Oil and Gas Property, the value of such Oil and Gas Property as reasonably determined by the Administrative Agent.

**“Commodity Hedging Transaction”** means a Swap Agreement related to commodities.

**“Credit Agreement Modifications”** has the meaning given such term in Section 2.04(f).

**“Creditors”** means, collectively, the Lenders, the Administrative Agent, and the Swap Counterparties, and **“Creditor”** means any of them.

**“Cross-Default”** means (i) any Event of Default under the Loan Documents that is caused solely by the occurrence of an Event of Default (as defined in the applicable Swap Documents) or Termination Event (as defined in the applicable Swap Documents), with respect to any Loan Party (unless the applicable Swap Counterparty has designated an Early Termination Date (as defined in the applicable Swap Documents)) or (ii) any Event of Default (as defined in the applicable Swap Documents) or Termination Event (as defined in the applicable Swap Documents) under the applicable Swap Counterparty’s Swap Documents that is caused solely by the occurrence of an Event of Default under the Loan Documents (unless the Administrative Agent has declared the Loan Obligations due and payable).

**“Debtor Relief Law”** means any applicable law in respect of liquidation, conservatorship, bankruptcy, insolvency, rearrangement, moratorium, reorganization, or similar debtor relief laws (including the Bankruptcy Code) affecting the rights of creditors generally from time to time in effect.

**“Exposure”** means, as of any day, collectively, the aggregate amount, if any, that would be payable to the Loan Parties by any Swap Counterparty or to the Swap Counterparties by the Loan Parties pursuant to the Swap Counterparty Master Agreements as if all outstanding Commodity Hedging Transactions between the Loan Parties and the Swap Counterparties were being terminated as of the close of business on such day, as determined by the Swap Counterparties using its estimates at mid-market of the amounts that would be paid for replacement transactions.

**“Loan Documents”** means the “Loan Documents” as defined in the Credit Agreement, but not including this Agreement.

**“Loan Obligations”** means the “Obligations” as defined in the Credit Agreement, whether now existing or hereafter incurred, whether direct, indirect, fixed, contingent, liquidated, unliquidated, joint, several, or joint and several, now or hereafter existing, due or to become due, whether evidenced in writing or not, together with all reasonable costs, expenses, and attorneys’ fees incurred in the enforcement or collection thereof, and including interest thereon after the commencement of any proceedings under any Debtor Relief Laws.

**“Permitted Dispositions”** means sales, transfers or other dispositions of Collateral permitted under the Credit Agreement as in effect on the Closing Date and without giving effect to any amendments or modifications thereto or consents or waivers thereof.

**“Principal Agreements”** means the Loan Documents and the Swap Documents, collectively.

**“Proceeds”** includes any and all proceeds from any sale, exchange, destruction, condemnation, foreclosure, liquidation under any Debtor Relief Law or other disposition of any of the Collateral (each, a **“Disposition”**); provided, however, prior to the occurrence of a Triggering Event, such term will not include (i) Permitted Dispositions or (ii) Dispositions made with each Creditor’s written consent unless a Creditor’s consent is conditioned by a requirement that the proceeds thereof continue to be held as Collateral.

**“Ratably”** or **“Ratable”** means, with respect to any amount to be allocated between the Lender Group and the Swap Counterparties, the allocation of a portion of such amount to (a) Lender Group such that the ratio that the amount allocated to the Lender Group bears to the total amount to be so allocated equals the total of the Loan Obligations to the Total Obligations and (b) any Swap Counterparty such that the ratio that the amount allocated to such Swap Counterparty bears to the total amount to be so allocated equals the ratio of the Swap Obligations owing to such Swap Counterparty to the Total Obligations.

**“Refinance”** means, in respect of the Loan Obligations, to refinance, restructure, replace, refund or repay, or to issue other indebtedness in exchange or in replacement for, the Loan Obligations, in whole or in part. **“Refinancing”** shall have a correlative meaning.

**“Right”** or **“Rights”** means rights, remedies, powers, privileges and benefits.

**“Swap Documents”** means, collectively, (i) the BP Swap Counterparty Master Agreement ~~as supplemented by the Supplemental BP Swap Transaction~~ and (ii) each other Swap Counterparty Master Agreement, including, where the context requires, each confirmation now or hereafter entered into thereunder for Acceptable Commodity Hedging Transactions.

**“Swap Obligations”** means, collectively, (i) the BP Specified Swap Obligations and (ii) all other obligations, whether now existing or hereafter created, of the Borrower to the Swap Counterparties under the Swap Documents for Acceptable Commodity Hedging Transactions that are secured by the Collateral Documents following the netting of such Acceptable Commodity Hedging Transactions, together with any interest due thereon and all costs and expenses (including, reasonable attorneys’ fees) incurred in the enforcement or collection thereof, and interest thereon after the commencement of any proceedings under any Debtor Relief Laws; provided, however, that (x) if the Administrative Agent notifies the Borrower and the applicable Swap Counterparty pursuant to Section 2.01(c) that such Swap Counterparty’s status as a Creditor has been revoked, any Commodity Hedging Transactions entered into thereafter between the Borrower and such Swap Counterparty and any interest, costs or expenses associated with such new Commodity Hedging Transactions shall be excluded from the scope of “Swap Obligations,” and shall not be secured by a Lien on the Collateral and (y) for purposes of the definition of “Ratable” and “Ratably” and for purposes of Section 4.02(b), “Swap Obligations” means the Swap Obligations then due and owing to such Swap Counterparty.

**“Total Obligations”** means, as of the date of determination, an amount equal to the Loan Obligations *plus* the Swap Obligations.

“**Triggering Event**” shall mean, with respect to the Loan Parties, either of the following:

(i) The Collateral Agent shall have received from the Swap Counterparty written notice that (A) an Event of Default (as defined in the such Swap Counterparty’s Swap Documents) or a Termination Event (as defined in such Swap Counterparty’s Swap Documents) with respect to the Loan Parties has occurred and is continuing under one or more of such Swap Counterparty’s Swap Documents (but excluding any Cross-Default), (B) an Early Termination Date (as defined in such Swap Counterparty’s Swap Documents) has been designated as a result thereof, (C) specifies the sum of all unpaid amounts and settlement payments then due to such Swap Counterparty as the result of the designation of such Early Termination Date and the amount of interest and other amounts then due and payable by the Loan Parties in respect thereof, and (D) the amount set forth in the preceding clause (C) has not been paid in full or discharged to the satisfaction of such Swap Counterparty (the “**Swap Counterparty Triggering Event Notice**”); or

(ii) The Swap Counterparties or the Borrower shall have received from the Administrative Agent written notice that (x) an Event of Default (as defined in the Credit Agreement, but excluding any Cross-Default) has occurred and is continuing and (y) the unpaid principal amount of the Loans under the Credit Agreement has been declared to be then due and payable (the “**Administrative Agent Triggering Event Notice**”);

provided, however, that any Triggering Event shall be deemed to be continuing at all times after its occurrence unless prior to the exercise of any remedies under any of the Collateral Documents or the occurrence of an Event of Default under Sections 8.1(f) or (g) of the Credit Agreement, (1) in the case of a Triggering Event under clause (i) above, the applicable Swap Counterparty has rescinded the Swap Counterparty Triggering Event Notice it delivered to the Collateral Agent in accordance with clause (i) above by way of written notice of such rescission delivered to the Collateral Agent, and (2) in the case of a Triggering Event under clause (ii) above, the Administrative Agent (acting at the written direction of the requisite number of Lenders required under the Credit Agreement) has rescinded the Administrative Agent Triggering Event Notice it delivered to the applicable Swap Counterparty or the Borrower in accordance with clause (ii) above by way of written notice of such rescission delivered to such Swap Counterparty and the Borrower; provided, further, that, to the extent an Event of Default occurs under Sections 8.1(f) or (g) of the Credit Agreement, neither the Administrative Agent nor any Swap Counterparty shall be required to deliver an Swap Counterparty Triggering Event Notice or Administrative Agent Triggering Event Notice, as applicable, to any Loan Party in order for a Triggering Event to occur. Notwithstanding the foregoing, BP shall not have the right to declare a Swap Counterparty Triggering Event Notice with respect to any of the BP Specified Swap Obligations if the Borrower is in compliance with its payment obligations set forth in Section 2.02.

Section 1.03. Headings. Article and section headings of this Agreement are for convenience of reference only, and shall not govern the interpretation of any of the provisions of this Agreement.

Section 1.04. Terms Generally. References in this Agreement to Exhibits, Schedules, Annexes, Appendixes, Attachments, Articles, Sections, Recitals or clauses shall be to exhibits, schedules, annexes, appendixes, attachments, articles, sections, recitals or clauses of this Agreement, unless

expressly stated to the contrary. References in this Agreement to “hereby,” “herein,” “hereinafter,” “hereinabove,” “hereinbelow,” “hereof,” “hereunder” and words of similar import shall be to this Agreement in its entirety and not only to the particular Exhibit, Schedule, Annex, Appendix, Attachment, Article, or Section in which such reference appears unless specifically stated otherwise. Exhibits and Schedules to any Loan Document or this Agreement shall be deemed incorporated by reference in such Loan Document or this Agreement, as applicable. References to any document, instrument, or agreement (a) shall include all exhibits, schedules, and other attachments thereto, and (b) shall include all documents, instruments, or agreements issued or executed in replacement thereof. This Agreement, for convenience only, has been divided into Articles and Sections; and it is understood that the rights and other legal relations of the parties hereto shall be determined from this instrument as an entirety and without regard to the aforesaid division into Articles and Sections and without regard to headings prefixed to such Articles or Sections. The phrases “this Section” and “this clause” and similar phrases refer only to the sections or clauses hereof in which such phrases occur. Whenever the context requires, reference herein made to the single number shall be understood to include the plural; and likewise, the plural shall be understood to include the singular. Definitions of terms defined in the singular or plural shall be equally applicable to the plural or singular, as the case may be, unless otherwise indicated. Words denoting sex shall be construed to include the masculine, feminine and neuter, when such construction is appropriate; and specific enumeration shall not exclude the general but shall be construed as cumulative; the word “or” is not exclusive; the word “including” (in its various forms) shall mean “including, without limitation”; in the computation of periods of time, the word “from” means “from and including” and the words “to” and “until” mean “to but excluding”; and all references to money refer to the legal currency of the United States of America. The Exhibits, Schedules, Annexes, Appendixes and Attachments attached to this Agreement and items referenced as being attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for all purposes. The words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, real property, securities, accounts and general intangibles.

**Section 1.05. Joint Preparation; Construction of Indemnities and Releases. This Agreement, the Loan Documents and the Swap Documents have been reviewed and negotiated by sophisticated parties with access to legal counsel, and no rule of construction shall apply hereto or thereto which would require or allow this Agreement, any Loan Document or any Swap Document to be construed against any party because of its role in drafting such document. All indemnification and release of liability provisions of this Agreement shall be construed broadly (and not narrowly) in favor of the Persons receiving indemnification or releases of liability.**

## **ARTICLE II**

### **NATURE OF OBLIGATIONS AND LIENS**

**Section 2.01. Obligations and Liens Pari Passu.**

(a) Subject to the other terms and conditions of this Agreement, the Loan Obligations and the Swap Obligations shall be secured on a first priority, *pari passu* basis by the Liens on the Collateral granted to the Collateral Agent under the Collateral Documents. At the times and

under the conditions described in Article IV, the Loan Obligations and the Swap Obligations will be repaid Ratably with the proceeds of Collateral after the payment of expenses. Upon the execution of this Agreement, the Liens granted under the Collateral Documents that are in effect at the time of execution of this Agreement shall be in favor of the Collateral Agent for the benefit of the Creditors, to secure, Ratably, the Loan Obligations and the Swap Obligations. Such Collateral Documents are in all substantive respects in the form approved by the Swap Counterparties.

(b) The Liens under the Collateral Documents shall be Permitted Liens and the Administrative Agent consents to the Loan Parties granting such Liens. The Swap Counterparties hereby acknowledge and consent to the Loan Parties' grants of Liens to the Administrative Agent in all rights of the Loan Parties under the Swap Documents, including all payments owing to the Loan Parties thereunder, notwithstanding any restrictions on assignment in any Swap Document.

(c) The Administrative Agent consents to the Loan Parties' entering into the Swap Counterparty Master Agreements and Commodity Hedging Transactions with each Swap Counterparty, that constitutes Acceptable Commodity Hedging Transactions. The Administrative Agent agrees and consents to each Swap Counterparty being a Secured Party (as defined in the Guarantee and Collateral Agreement) with respect to Acceptable Commodity Hedging Transactions; provided, however, that the Administrative Agent may, by giving written notice to the Borrower and to the applicable Swap Counterparty, elect to revoke such Swap Counterparty's status as a Secured Party for purposes of any Acceptable Commodity Hedging Transactions entered into beginning on the fifth (5<sup>th</sup>) Business Day following the Borrower's and such Swap Counterparty's receipt (or deemed receipt pursuant to Section 5.09) of such notice. The Administrative Agent also agrees that in the event the Administrative Agent notifies the Borrower that the Borrower's entry into a Commodity Hedging Transaction would not constitute an Acceptable Commodity Hedging Transaction, then the Administrative Agent will also concurrently notify such Swap Counterparty of such determination.

(d) Without the prior written consent of the Administrative Agent, the Loan Parties and each Swap Counterparty shall not amend, supplement, delete or otherwise modify any Swap Counterparty Master Agreement or any provision thereof from the form presented to the Administrative Agent for its review prior to execution of this Agreement:

(i) if such action would result in a violation, or the creation of an obligation on the part of the Borrower to violate, the limitations on credit support set forth in Section 2.03;

(ii) such that the Threshold Amount (as defined in the applicable Swap Counterparty Master Agreement) that is applicable to the Borrower would be anything other than a fixed dollar amount equal to or greater than \$500,000; or

(iii) in a manner that changes or expands the events that constitute Events of Default or Additional Termination Events (each as defined in the Swap Counterparty

Master Agreements) or otherwise have the effect of causing an event to have consequences similar to an Event of Default or Additional Termination Event.

Notwithstanding clauses (i) through (iii) preceding, if (1) any Swap Counterparty notifies the Administrative Agent that it and the Borrower propose an amendment, supplement, deletion or modification to any Swap Counterparty Master Agreement mandated by the regulatory requirements imposed by the Commodity Futures Trading Commission under the Dodd-Frank Wall Street Reform and Consumer Protection Act and (2) the Borrower's request for the Administrative Agent's consent to the proposed amendment, supplement, deletion or modification is accompanied by a legal opinion of counsel reasonably satisfactory to the Administrative Agent confirming to the Administrative Agent that such amendment, supplement, deletion or modification is legally required, then the Administrative Agent will not unreasonably withhold or delay its consent to any such amendment, supplement, deletion or modification.

(e) The amounts payable by the Loan Parties to each Creditor at any time under any of the Principal Agreements to which such Creditor is a party shall be separate and independent debts, and each Creditor shall be entitled to enforce any Right arising out of the applicable Principal Agreement to which it is a party, subject to the terms thereof and of this Agreement. Subject to clauses (h) and (i), both before and during an insolvency or liquidation proceeding, any Creditor may take any actions and exercise any and all rights that they would have as an unsecured creditor, including the commencement of an insolvency or liquidation proceeding against the Loan Parties in accordance with applicable law and the termination of any Principal Agreement in accordance with the terms thereof; provided, that if any Creditor becomes a judgment Lien creditor in respect of Collateral as a result of its enforcement of its rights as an unsecured creditor with respect to the Swap Obligations or the Loan Obligations, as the case may be, such judgment Lien shall be subject to the terms of this Agreement for all purposes as the other Liens securing the Total Obligations are subject to this Agreement and the proceeds thereof shall be applied as provided in Section 4.02(b).

(f) Each Creditor hereby agrees that no Creditor shall have any right individually to realize upon any Liens granted under the Collateral Documents, it being understood and agreed that such Rights may be exercised only by the Collateral Agent or the trustee under the Collateral Documents for the Ratable benefit of the Creditors.

(g) Each Acceptable Commodity Hedging Transaction at the time it is executed by the Borrower or other Loan Party and the any Swap Counterparty shall be deemed to be acceptable under this Agreement if permitted under the Credit Agreement. Each Swap Counterparty Master Agreement will be a "Secured Swap Agreement" under and as defined in the Guarantee and Collateral Agreement. Each Swap Counterparty and the Loan Parties have entered to or will enter into Commodity Hedging Transactions under the applicable Swap Counterparty Master Agreement that comply with the limitations set forth in the definition of Acceptable Commodity Hedging Transaction and any Commodity Hedging Transaction that does not comply with such limitations will not be secured by the Collateral. If a Commodity Hedging Transaction would otherwise be secured under the Collateral Documents but for a deviation from the criteria for "Acceptable Commodity Hedging Transactions" set forth in the definition hereof, and that deviation is consented to in writing and delivered via electronic mail to the applicable Swap Counterparty in accordance with Section 5.09 by the Administrative Agent (with such approvals



as may be required by the Credit Agreement), then such Commodity Hedging Transaction shall be secured by the Collateral Documents.

(h) Each Creditor hereby agrees that it shall not (and hereby waives any right to) contest, or support any other Person in contesting, in any proceedings (including any insolvency or liquidation proceedings), the priority, validity or enforceability of a Lien held by or on behalf of the Collateral Agent in any Collateral; provided that nothing in this Agreement shall be construed to prevent or impair the rights of the Collateral Agent or any Creditor to enforce this Agreement as provided herein.

(i) Each Lender and each Swap Counterparty agrees that (i) it will not (and hereby waives any right to) challenge or question in any proceeding the validity or enforceability of any of the Total Obligations or any Collateral Document or the validity, attachment, perfection or priority of any Lien under any Collateral Document or the validity or enforceability of the priorities, rights or duties established by or other provisions of this Agreement, (ii) it will not take or cause to be taken any action the purpose or intent of which is, or could be, to interfere, hinder or delay, in any manner, whether by judicial proceedings or otherwise, any sale, transfer or other disposition of the Collateral by Collateral Agent in accordance with the terms of this Agreement, (iii) it will not institute any suit or assert in any suit, bankruptcy, insolvency or other proceeding any claim against Collateral Agent or any other Creditor seeking damages from or other relief by way of specific performance, instructions or otherwise with respect to any Collateral, and none of Collateral Agent or any other Creditor shall be liable for any action taken or omitted to be taken by Collateral Agent or Creditor, with respect to any Collateral in accordance with the provisions of this Agreement, (iv) it will not seek, and hereby waives any right, to have any Collateral or any part thereof marshaled upon any foreclosure or other disposition of such Collateral and (v) it will not attempt, directly or indirectly, whether by judicial proceedings or otherwise, to challenge the enforceability of any provision of this Agreement; provided, that nothing in this Agreement shall be construed to prevent or impair the rights of any of Collateral Agent or any other Creditor to enforce this Agreement.

#### Section 2.02. Specified Swap Obligations.

(a) Commencing on the Tenth Amendment Effective Date, the BP Specified Swap Obligations shall bear interest at the rate per annum set forth in Section 2.6(a) of the Credit Agreement for the Loans then outstanding; provided, that if at any time, the Borrower has outstanding one or more Term SOFR Loans and one or more ABR Loans, the BP Specified Swap Obligations shall bear interest at a rate determined by reference to Adjusted Term SOFR plus the Applicable Rate.

(b) On each Interest Payment Date, interest accrued on the BP Specified Swap Obligations shall be due and payable in cash; provided, that to the extent the Borrower elects PIK Interest pursuant to Section 2.6(b) of the Credit Agreement (and the Administrative Agent approves such election in accordance with the Credit Agreement), BP acknowledges and agrees that interest on the BP Specified Swap Obligations for the applicable Interest Period will accrue as PIK Interest to the same extent as the Loan Obligations without further action of any party hereto. All

interest hereunder shall be computed at the time and in the manner set forth in Section 2.6(b) of the Credit Agreement.

(c) [reserved].

(d) All payments with respect to the BP Specified Swap Obligations due pursuant to this Section 2.02, shall be made to the Administrative Agent for distribution to BP (to the BP Account or otherwise as mutually agreed between BP and the Administrative Agent) pursuant to the procedures set forth with respect to payment of interest set forth in the Credit Agreement.

(e) The BP Specified Swap Obligations (i) shall be due and payable in full on the Maturity Date and (ii) shall not require any ongoing mark to market payments, amortization, fees or otherwise.

(f) From and after the Tenth Amendment Effective Date, while no Triggering Event has occurred, the proceeds of (i) any sale of Collateral, (ii) repayments pursuant to Section 2.7 of the Credit Agreement, (iii) voluntary prepayments pursuant to Section 2.8 of the Credit Agreement and (iv) mandatory prepayments pursuant to Section 2.9 of the Credit Agreement shall, in each case, be applied Ratably among the Loan Obligations and the BP Specified Swap Obligations.

Section 2.03. Limitations on Separate Credit Support. Each Swap Counterparty agrees that, without the prior written consent of the Administrative Agent, such Swap Counterparty will not seek or accept credit support for any Swap Obligation or any other Commodity Hedging Transaction between the Loan Parties and such Swap Counterparty, including without limitation letters of credit, guarantees from any owner of the Loan Parties or any other Person, or Liens on any Property of the Loan Parties, other than the Rights of such Swap Counterparty under the Collateral Documents until after the full payment and cancellation of the Loan Obligations.

Section 2.04. Release of Collateral; Authorization; Amendments to Loan Documents; Notice of Releases.

(a) Subject to the terms hereof and the Loan Documents, the Collateral Agent shall permit the Loan Parties to remain in possession and control of the Collateral, to operate the Collateral, and to collect, invest and dispose of any income thereon or therefrom.

(b) The Collateral Agent shall have the right from time to time to release Collateral from the Liens created by the Collateral Documents Subject to Section 5.04, the Collateral Agent shall not, in connection with a Disposition, release any Collateral from Liens created by the Collateral Documents during the existence of a Triggering Event, except for Permitted Dispositions; provided, that all Parties acknowledge and agree that the proceeds of any Permitted Disposition that occurs during the existence of a Triggering Event shall constitute Proceeds and shall be applied in accordance with Section 4.02.

(c) To the extent permitted by, and subject to the provisions of, the applicable Collateral Documents, (i) the Collateral Agent may, in its sole discretion and without the consent of the Creditors, take all actions it deems necessary or appropriate in order to enforce any of the terms of the Collateral Documents and (ii) the Collateral Agent shall have power to institute and to maintain such suits and proceedings as it may deem expedient (A) to prevent any impairment of

the Collateral by any act that may be unlawful or in violation of the Principal Agreements, and (B) to preserve or protect its interests and the interests of the Creditors in the Collateral; provided, that, for the avoidance of doubt, the foregoing shall not be understood to grant the Collateral Agent any rights it does not have under the Credit Agreement and Collateral Documents (excluding this Agreement and any other Swap Intercreditor Agreement). Notwithstanding the above, the Collateral Agent may choose not to take any action authorized by this Section until it receives written direction from a Creditor.

(d) The Collateral Agent is authorized to receive any Proceeds for the benefit of the Creditors and to distribute such Proceeds to the Creditors in accordance with the provisions of this Agreement.

(e) The Collateral Agent shall, as soon as reasonably practicable after any release of the Collateral permitted by Section 2.04(b), notify each Swap Counterparty of such release giving full particulars with respect thereto; provided, however, that any failure of the Collateral Agent to comply with the requirements of this sentence shall not give rise to any breach of contract claim against the Collateral Agent, the Administrative Agent or any Lender or result, directly or indirectly, in any liability being imposed on the Collateral Agent, the Administrative Agent or any Lender in connection therewith.

(f) The Lender Group may enter into any increase, amendment, modification or supplement to any Loan Document (other than (x) the Collateral Documents, unless permitted by clause (g) below and (y) Section 2.12(f) of the Credit Agreement in a manner adverse to any Swap Counterparty), enter into new or additional credit facilities with the Loan Parties, or grant any waiver, consent, release, indulgence, extension or renewal with respect to any Loan Document (other than the Collateral Documents, unless permitted by clause (g) below) or such new or additional credit facilities (“**Credit Agreement Modifications**”), and such Credit Agreement Modifications shall be deemed accepted by the Swap Counterparties and the Loan Parties for the purposes of the Swap Counterparty Master Agreements with respect to those provisions of the Loan Documents (other than the Collateral Documents, unless permitted by clause (g) below) incorporated by reference in each Swap Counterparty Master Agreement. The Administrative Agent shall, as soon as reasonably practicable after entering into any amendment, modification or supplement to the Credit Agreement or any Collateral Document, notify the Swap Counterparties and provide the Swap Counterparties with a copy of such amendment, modification or supplement; provided, however, that any failure of the Administrative Agent to comply with the requirements of this sentence shall not impact the validity of such amendment, modification or supplement, give rise to any breach of contract claim against the Administrative Agent or any Lender or result, directly or indirectly, in any liability being imposed on the Administrative Agent or any Lender in connection therewith.

(g) The Collateral Agent may enter into any amendment, modification or supplement to any of the Collateral Documents, unless the effect of such amendment would be to (i) change the priority of or subordinate the Liens created thereby, except to the extent the Administrative Agent is permitted to do so under the Credit Agreement, (ii) materially modify any remedy provided for therein if adverse to any Swap Counterparty, (iii) materially reduce or diminish the benefits of all or substantially all of the security provided for in the Collateral Documents, except to the extent the Administrative Agent is permitted to do so under the Credit Agreement, or (iv)

otherwise have any material detrimental effect on any Swap Counterparty's rights and obligations under this Agreement.

(h) The Borrower hereby agrees that substantially concurrently with any notice that is delivered to (i) the Administrative Agent or the Collateral Agent pursuant the Credit Agreement, or (ii) the Swap Counterparty pursuant to the Swap Documents, it shall deliver such notice to the Administrative Agent, the Collateral Agent and the Swap Counterparty, as applicable; provided, however, that any failure of the Borrower to comply with the requirements of this clause (h) shall not shall not impact the validity of such notices.

Section 2.05. Hedge Reports. The Borrower hereby agrees any Swap Counterparty may provide to the Administrative Agent from time to time, and such Swap Counterparty hereby agrees to provide or otherwise make available (which may be via access to an online portal containing the daily mark to market information of the Borrower) to the Administrative Agent within five (5) Business Days following such request, a report of the marked-to-market positions of the various transactions in effect from time to time under the Swap Counterparty Master Agreements. Borrower hereby irrevocably consents and agrees that the Swap Counterparties may provide or otherwise make available to the Administrative Agent, its successors and assigns such reports, confirmations and mark to market information as contemplated above, including, without limitation, by granting the Administrative Agent access to an online portal that reflects the daily mark to market information of the Borrower.

Section 2.06. Consent to Disclosures. The Loan Parties hereby consent to Creditors' disclosure to each other of any confidential information relating to the Loan Parties that has been provided to any Creditor by or for the benefit of the Loan Parties, notwithstanding any confidentiality agreement between the Loan Parties and any Creditor that might otherwise limit or prohibit such disclosure; provided that the receiving Creditor agrees to treat such information as confidential in accordance with the terms of Section 10.17 of the Credit Agreement.

Section 2.07. Refinancing. The Swap Counterparties consent to any Refinancing of the Credit Agreement and the indebtedness thereunder; provided that the holders of such Refinancing debt (or an agent on their behalf) bind themselves in writing to the terms of this Agreement, and provided further that any such Refinancing shall require the prior written consent of the Swap Counterparties if, on the date of such Refinancing, such Refinancing causes the aggregate principal amount outstanding under the Credit Agreement (after giving effect to such Refinancing) to exceed 85% of the aggregate present value of the future net income with respect to proved and producing reserves attributable to the Oil and Gas Properties of the Borrower and its Subsidiaries as set forth in the most recently provided Reserve Report, discounted at a 9% per annum discount rate, thus causing a material reduction in the value of the Collateral, security or credit support available to the Swap Counterparties, while Swap Obligations are still in effect or outstanding hereunder, unless Borrower (i) delivers *pari passu* first lien replacement security (unencumbered, except for liens and encumbrances permitted by the Credit Agreement) to be shared ratably by the Creditors under and in accordance with this Agreement, having a value and terms and conditions reasonably acceptable to the Swap Counterparties, or (ii) provides the Swap Counterparties with replacement security sufficient in form, amount and for a term reasonably acceptable to the Swap Counterparties.

**ARTICLE III**  
**COLLATERAL AGENT**

Section 3.01. Appointment of the Collateral Agent. Each Creditor hereby designates the Collateral Agent to act as the contractual representative for the Creditors, to hold and enforce the Liens under the Collateral Documents for the benefit of the Creditors and take certain other actions as permitted by the Collateral Documents and this Agreement. Each Creditor hereby authorizes the Collateral Agent to take such action on its behalf under the provisions of this Agreement and the Collateral Documents and to exercise such powers and to perform such duties hereunder and thereunder as are specifically delegated to it hereunder or under any Collateral Document or required of the Collateral Agent by the terms hereof or thereof and such other powers as are reasonably incidental thereto. The Collateral Agent may perform any of its duties hereunder by or through its affiliates, agents or employees and the exculpatory and indemnification provisions in this Agreement and the Collateral Documents shall apply to any such affiliate, agent or employee. The Collateral Agent agrees to act as the Collateral Agent upon the express terms and conditions contained herein.

Section 3.02. Nature of Duties of the Collateral Agent. The Collateral Agent shall have no duties or responsibilities, except those expressly set forth in this Agreement, the Credit Agreement, or the Collateral Documents. The Collateral Agent shall have and may exercise such powers hereunder and under the Collateral Documents as are specifically delegated to the Collateral Agent by the terms hereof, together with such powers as are reasonably incidental thereto. Neither the Collateral Agent nor any of its affiliates, directors, officers, employees or agents (each, a “**Protected Party**”) shall be liable to the Creditors for any damages caused by any action taken or omitted by any Protected Party hereunder or under the Collateral Documents (**INCLUDING THOSE DAMAGES CAUSED BY THE SOLE NEGLIGENCE, COMPARATIVE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR CONCURRENT NEGLIGENCE OF ANY PROTECTED PARTY**), unless caused solely by the gross negligence or willful misconduct of the Protected Party seeking protection under this Section 3.02. The duties of the Collateral Agent shall be mechanical and administrative in nature; and the Collateral Agent, in its capacity as such, shall not have by reason of this Agreement or the Collateral Documents a fiduciary relationship in respect of any Creditor. Nothing in this Agreement, expressed or implied, is intended to or shall be so construed as to impose upon the Collateral Agent any duties or obligations in respect of this Agreement and the Collateral Documents except as expressly set forth herein. Other than its duties expressly provided herein or in the Collateral Documents, Collateral Agent shall have no implied duties to Creditors or the Loan Parties under or in connection with this Agreement and no implied duties as to any Property belonging to the Borrower (whether or not the same constitutes Collateral), whether such Property is in Collateral Agent’s possession or control or in the possession or control of any of its agents or nominees, or any income thereon or as to the preservation of Rights against prior parties or any other rights pertaining thereto or available at law or otherwise. Collateral Agent shall have the same Rights hereunder as any other Creditor and may exercise the same as though it were not performing the duties specified herein. The Person serving as Collateral Agent may engage in any kind of other business with the Loan Parties or any of the Loan Parties’ affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from the Loan Parties and such other Persons in connection with

this Agreement or any Principal Agreement, and otherwise, without having to account for the same to the other Creditors except as specified herein.

**Section 3.03. Lack of Reliance on the Collateral Agent.**

(a) Independently and without reliance upon the Collateral Agent or any other Creditor, each Creditor represents to the Collateral Agent and each of the other Creditors that, as of the date of this Agreement, such Creditor has made (i) its own independent investigation of the financial condition and affairs of the Loan Parties based on such documents and information as it has deemed appropriate in connection with the taking or not taking of any action in connection herewith, and (ii) its own appraisal of the creditworthiness of the Loan Parties. Each Creditor also acknowledges that it will, independently and without reliance upon the Collateral Agent or any other Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement or the Collateral Documents. Except as expressly provided in this Agreement, the Collateral Agent shall have no duty or responsibility, either initially or on a continuing basis, to provide any Creditor with any credit or other information concerning the affairs, financial condition or business of the Loan Parties which may come into the possession of the Collateral Agent or any of its affiliates whether now in its possession or in its possession at any time or times hereafter; and the Collateral Agent shall not be required to keep itself informed as to the performance or observance by the Loan Parties of this Agreement, any Collateral Document or any other document referred to or provided for herein or to inspect the Properties or books of the Loan Parties.

(b) The Collateral Agent shall not (i) be responsible to any Creditor for any recitals, statements, information, representations or warranties herein, in any Collateral Document, or in any document, certificate or other writing delivered in connection herewith or therewith or for the execution, effectiveness, genuineness, validity, enforceability, collectability, priority or sufficiency of this Agreement or the Collateral Documents or the financial condition of the Loan Parties; or (ii) be required to make any inquiry concerning (a) the performance or observance by others of any of the terms, provisions or conditions of this Agreement or the Collateral Documents, including the content of notices, opinions, certificates and directions given under this Agreement or the Collateral Documents, (b) the financial condition of the Loan Parties, or (c) the existence or possible existence of any “default” or “event of default” under the Principal Agreements. To the extent the Collateral Agent receives any written notice of default provided to the Loan Parties by the Administrative Agent, it shall promptly provide a copy of the same to each Swap Counterparty but shall in no event have any liability to any Swap Counterparty for any failure to so provide such notice.

**Section 3.04. Certain Rights of the Collateral Agent.** If the Collateral Agent shall request instructions from the Creditors with respect to any act or action (including the failure to act) in connection with this Agreement or the Collateral Documents, the Collateral Agent shall be entitled to refrain from such act or taking such action unless and until the Collateral Agent shall have received written instructions from any Creditor or Creditors pursuant to the terms hereof; and the Collateral Agent shall not incur liability to any Person by reason of so refraining. Without limiting the foregoing, no Creditor shall have any right of action whatsoever against the Collateral Agent as a result of the Collateral Agent acting or refraining from acting under this

Agreement or the Collateral Documents in accordance with the written instructions given in accordance with this Agreement, and such instructions and any action taken or failure to act pursuant thereto shall be binding on all the Creditors. The Collateral Agent shall be fully justified in failing or refusing to take any action hereunder or under the Collateral Documents unless it shall first be indemnified to its satisfaction by the Creditors against any and all liability and expense which may be incurred by the Collateral Agent by reason of taking or continuing to take any such action. Notwithstanding any other provision of this Article III or any indemnity or instructions provided by any or all of the Creditors, the Collateral Agent shall not be required to take any action which, in the reasonable belief of the Collateral Agent, exposes the Collateral Agent to personal liability or which, in the reasonable belief of the Collateral Agent, is contrary to this Agreement, the Collateral Documents or applicable law.

Section 3.05. Reliance by the Collateral Agent. The Collateral Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, statement, certificate or telecopier message, cablegram, radiogram, facsimile transmission, e-mail, order or other documentary, teletransmission or telephone message believed by it to be genuine and correct and to have been signed, sent or made by the proper Person. The Collateral Agent may consult with legal counsel, accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts.

Section 3.06. Creditors as Owners. The Collateral Agent may deem and treat each Creditor as the owner of its portion of the Total Obligations as described herein for all purposes hereof unless and until the Collateral Agent is notified of a change in Creditors.

Section 3.07. Successor Collateral Agent.

(a) Collateral Agent shall not be subject to removal by Creditors or the Loan Parties; provided that if the Person serving as Administrative Agent is replaced as Administrative Agent under the Credit Agreement, the Person serving as replacement Administrative Agent shall automatically and without further action or consent by the Loan Parties or the Swap Counterparties become Collateral Agent under this Agreement. The Collateral Agent may resign at any time by giving thirty (30) days prior written notice thereof to the Creditors and the Borrower. Following any such notice of resignation, the resigning Collateral Agent shall have the right to appoint a successor Collateral Agent, subject to the consent of the Swap Counterparties to the appointee (which consent shall not be unreasonably withheld, conditioned or delayed). If within thirty (30) days after the retiring Collateral Agent's giving of notice of resignation, no successor Collateral Agent shall have been so appointed by the resigning Collateral Agent which has accepted such appointment, then the Swap Counterparty may, in its sole discretion, appoint a successor Collateral Agent.

(b) Upon the acceptance of any appointment as the Collateral Agent hereunder by a successor Collateral Agent, such successor Collateral Agent shall thereupon succeed to and become vested with all the Rights and duties of the retiring Collateral Agent, and the retiring Collateral Agent shall be discharged from its duties under this Agreement. After any retiring Collateral Agent's resignation hereunder as the Collateral Agent, the provisions of this

Agreement shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Collateral Agent under this Agreement.

Section 3.08. Employment of Collateral Agent and Counsel. The Collateral Agent may execute any of its duties as the Collateral Agent hereunder or under the Collateral Documents by or through employees, agents, and attorneys-in-fact and shall not be answerable to the Creditors for the default or misconduct of any such employees, agents or attorneys-in-fact reasonably selected by it in good faith unless such default or misconduct is a direct result of the gross negligence or willful misconduct of the Collateral Agent in monitoring the activities of such employees, agents or attorneys-in-fact; provided that the Collateral Agent shall always be obligated to account for moneys or securities received by it or its authorized agents. The Collateral Agent shall be entitled to advice of independent legal counsel concerning all matters pertaining to the collateral agency hereby created and its duties hereunder or under the Collateral Documents.

Section 3.09. Limitation on Liability of the Creditors and the Collateral Agent. The Creditors and the Collateral Agent shall not be deemed, as a result of the execution and delivery of the Collateral Documents or the consummation of the transactions contemplated by this Agreement and the Collateral Documents, to have assumed any obligation of the Loan Parties with respect to the Collateral or any liability under or with respect to any of the contracts, agreements, leases, instruments or documents which are, or which may hereafter be, assigned to the Collateral Agent for the benefit of the Creditors.

#### **ARTICLE IV**

#### **ELECTION TO PURSUE REMEDIES; PROCEEDS**

Section 4.01. Procedures Regarding Remedies.

(a) Upon the occurrence and during the continuance of any Triggering Event, the Collateral Agent shall, upon the request of any of the Accelerated Creditors specifying the particular actions being requested by such Accelerated Creditor, and subject to the other provisions of this Agreement, commence to take, or direct the appropriate trustee or agent to take, those requested actions provided for in the Collateral Documents relating to the pursuit of remedies; provided, that the Swap Counterparties shall not have the right to require Collateral Agent to realize on any Liens or take any enforcement actions granted pursuant to the Collateral Documents until, if the amount of Swap Obligations owing to the Swap Counterparty is equal to or greater than fifty percent (50%) of the Total Obligations, the forty-fifth (45<sup>th</sup>) day after a Triggering Event of the type referred to in clause (i) of the definition of Triggering Event shall have occurred (the “**Standstill Period**”) and provided further that such Triggering Event shall be continuing on such date and the Collateral Agent shall not have diligently commenced exercise of remedies on such date; provided further that to the extent the amount of Swap Obligations owing to one or more Swap Counterparties is equal to or greater than seventy-five percent (75%) of the Total Obligations, such Swap Counterparties will not be subject to the Standstill Period and may immediately request the Collateral Agent to take actions as provided in this Section 4.01. For the avoidance of doubt, the Swap Counterparty shall not have the right to require Collateral Agent to realize on any Liens or take any enforcement actions granted pursuant to the Collateral



Documents if the amount of Swap Obligations owing to the Swap Counterparty is less than fifty percent (50%) of the Total Obligations.

(b) The Loan Parties and the Creditors agree that upon the occurrence of a Triggering Event, all payments made to any Creditor by the Loan Parties shall be shared by all Creditors in accordance with Section 4.02.

(c) Each Creditor agrees: (i) to deliver to each other Creditor, as applicable, at the same time it makes delivery to the Borrower, a copy of any (A) notice declaring the occurrence of an Event of Default under any Loan Documents, (B) notice declaring the occurrence of an Event of Default (as defined in the applicable Swap Documents) or Termination Event (as defined in the applicable Swap Documents) under any Swap Documents, (C) notice of intent to accelerate or notice of acceleration of the Loan Parties' obligations, or (D) notice of the designation of an Early Termination Date (as defined in the applicable Swap Documents) with respect to any Swap Obligation; (ii) to deliver to each other Creditor, at the same time it makes delivery to any other Person, a copy of any notice of the commencement of any judicial proceeding and a copy of any other notice with respect to the exercise of remedies with respect to any of the Total Obligations; and (iii) deliver the Early Termination Amount (as defined in the applicable Swap Documents). Any failure by a party hereto to furnish a copy under this clause (c) shall not limit or affect the rights and obligations hereunder.

(d) Each of the Swap Counterparties and the Collateral Agent hereby agrees that it shall endeavor to furnish the Borrower with a copy of any notice provided or received, as applicable, by it pursuant to clause (i) of the definition of Triggering Event. Each of the Borrower and the Administrative Agent hereby agrees that it shall endeavor to furnish the Swap Counterparties with a copy of any notice received or provided, as applicable, by it pursuant to clause (ii) of the definition of Triggering Event. Any failure by a party hereto to furnish a copy under this clause (d) shall not limit or affect the rights and obligations hereunder.

(e) The Borrower hereby agrees that any Swap Counterparty may provide to the Administrative Agent from time to time, and such Swap Counterparty hereby agrees to provide to the Administrative Agent within three (3) Business Days following such Swap Counterparty's receipt of a written request therefor from the Administrative Agent, a report of the marked-to-market positions of the various transactions in effect from time to time under the applicable Swap Documents. Any unintentional failure by any Swap Counterparty to timely furnish information required under this clause (e) shall not limit or affect the parties' rights and obligations hereunder.

(f) In the event that the Liens created under the Collateral Documents conflict with the Liens created under other security documents in favor of or for the benefit of the Administrative Agent, the Liens created under the Collateral Documents shall have priority.

(g) Collateral Agent shall not be obligated to follow any instructions of any Accelerated Creditor if Collateral Agent determines, in its sole and absolute discretion, that: (i) such instructions conflict with the provisions of this Agreement, any Principal Agreement, any Collateral Document or any Governmental Requirement, (ii) such instructions are ambiguous, inconsistent, in conflict with other instructions (whether from the same or another Accelerated

Creditor) or otherwise insufficient to direct the actions of Collateral Agent; provided that Collateral Agent explains the grounds for a refusal, or (iii) Collateral Agent has not been adequately indemnified to its satisfaction (including indemnity from the Accelerated Creditors in accordance with the Ratable amounts of Total Obligations owing to them). Collateral Agent shall have the right, in its discretion, to take any action authorized under this Agreement or the Collateral Documents, to the extent that such action is not prohibited by the terms hereof or thereof, which it deems proper and consistent with the instructions given by any Accelerated Creditor as provided for herein or otherwise in the best interest of Creditors. In the absence of written instructions from any Accelerated Creditor for any particular matter, Collateral Agent shall have no duty to take or refrain from taking any action unless such action or inaction is explicitly required by the terms of this Agreement or any Governmental Requirement. Collateral Agent shall have no duty with respect to a Triggering Event unless it has received written notice from an Accelerated Creditor that a Triggering Event has occurred.

(h) The Collateral Agent shall cease to comply with any direction by any Swap Counterparty pursuant to this Section 4.01 if (i) the Triggering Event under the applicable Swap Documents of such Swap Counterparty has been cured or waived or (ii) the amounts owed by Borrower to such Swap Counterparty under Acceptable Commodity Hedging Transactions have been paid in full or otherwise discharged.

Section 4.02. Proceeds.

(a) The Creditors hereby agree between themselves that (i) prior to the occurrence of a Triggering Event, each Creditor shall be entitled to receive and retain for its own account, and shall never be required to disgorge to the Collateral Agent or any other Creditor hereunder or acquire direct or participating interests in the Loan Obligations or the Swap Obligations, as the case may be, owing to such Creditor, scheduled payments or voluntary prepayments, payments for the redemption or purchase of principal, interest, fees and premium, if any, settlement payments and any other payments in respect of the Principal Agreements or Credit Agreement Modifications, all in compliance with the terms thereof, and (ii) upon the occurrence and during the continuance of a Triggering Event, all such amounts received by any Creditor following such Triggering Event shall constitute Proceeds, shall be turned over to the Collateral Agent, and shall be shared by the Creditors, Ratably, and in accordance with Section 4.02(b) below; provided, however, and for the avoidance of doubt, if the Administrative Agent grants its consent for any letter of credit pursuant to Section 2.03, no Swap Counterparty shall be obligated to hold in trust, pay over or share with the Administrative Agent any portion of the proceeds of any such letter of credit.

(b) All Proceeds received by the Collateral Agent during the existence of a Triggering Event shall be applied in accordance with this Section 4.02. To the extent any Creditor ever receives any portion of such Proceeds in excess of its Ratable share (or to the extent the Collateral Agent receives reimbursement in excess of expenses actually incurred), the party receiving those excess Proceeds agrees to promptly make all necessary transfers so as to give full effect to this Section 4.02. All Proceeds received by the Collateral Agent during the existence of a Triggering Event shall be applied in the following order:

(i) **First**, to reimburse the Collateral Agent for expenses in accordance with Section 5.01;

(ii) **Second**, Ratably, to the Administrative Agent in respect of amounts owing to the Lender Group and to the Swap Counterparties until the Total Obligations are fully satisfied; and

(iii) **Third**, to the extent that any Proceeds remain, to the Borrower or as otherwise required by applicable law.

Section 4.03. Notice of Amount of Indebtedness. Upon receipt of any Proceeds to be distributed pursuant to Section 4.02, the Collateral Agent shall give the Creditors notice thereof, and each Creditor (or its representative) shall, within three (3) Business Days, notify the Collateral Agent of the amount of the Total Obligations owing to it. Such notification shall state the amount of the Total Obligations owing to it and how much is then due and owing. If requested by the Collateral Agent, each Creditor (or its representative) shall demonstrate that the amounts set forth in its notice are actually owing to such Creditor to the reasonable satisfaction of the Collateral Agent. Notwithstanding the foregoing, the Collateral Agent may conclusively rely on information in such notices without any investigation. In the event that any Creditor fails to timely notify the Collateral Agent of the amount of the Total Obligations owed to it, the Collateral Agent shall distribute such Proceeds on any basis deemed reasonable by it and not in bad faith.

Section 4.04. Additional Swap Counterparties. If any Person that is approved by Administrative Agent as a counterparty to a Swap Agreement under the Credit Agreement desires to become a "Swap Counterparty" for the purposes of this Agreement and the Collateral Documents, then it shall execute and deliver to the Administrative Agent and the Borrower a Joinder Supplement substantially in the form of Exhibit B hereto. In each case, upon execution and delivery of such Joinder Supplement by such Person, Administrative Agent and Borrower, such Person shall be deemed a Swap Counterparty hereunder as if an original signatory. Joinder Supplements executed pursuant to this Section 4.04 do not require the signatures or consents of all Creditors party to this Agreement. Promptly after execution of any such Joinder Supplement, the parties thereto will endeavor to send a copy thereof to each other Swap Counterparty, but failure or delay in doing so will not make such Joinder Supplement void or voidable or otherwise affect the rights and duties of the parties hereto.

## **ARTICLE V** **MISCELLANEOUS**

Section 5.01. Expenses. The Lenders and the Swap Counterparties shall each bear their Ratable share of any reasonable expenses incurred by the Collateral Agent in taking action on behalf of the Creditors in connection with its investigation, evaluation or enforcement of any Rights under the Collateral Documents or the performance of its duties under this Agreement or under any of the Collateral Documents, but only to the extent Collateral Agent does not receive reimbursement for such expenses from the Loan Parties or from Proceeds within thirty (30) days after such expenses are invoiced; provided, that, to the extent any Creditor reimburses Collateral Agent for such expenses, such Creditor will be entitled to receive its Ratable share of any

reimbursement subsequently received by Collateral Agent from the Loan Parties or from Proceeds.

**Section 5.02. Limitation of Collateral Agent Liability; Indemnification of the Collateral Agent.** Neither the Collateral Agent nor any of its representatives shall (i) be liable for any action taken or omitted to be taken by it or them hereunder or under the Collateral Documents in good faith and reasonably believed by it or them to be within the discretion or power conferred upon it or them by this Agreement and the Collateral Documents or (ii) be responsible for the consequences of any error of judgment, except to the extent arising solely from its gross negligence or willful misconduct. The Collateral Agent shall not be responsible in any manner to any other party for the effectiveness, enforceability, genuineness, validity or the due execution of the Collateral Documents or for any representation, warranty, document, certificate, report or statement made in or in connection with the Collateral Documents or be under any obligation to any other party to ascertain or inquire as to the performance or observation of any of the terms, covenants or conditions of any of the Loan Documents or the Swap Documents on the part of the Borrower. The Lenders and the Swap Counterparties agree to Ratably reimburse and indemnify the Collateral Agent and its affiliates, directors, officers, employees and agents (each an “**Indemnified Party**”) on a current basis and hold the indemnified parties harmless on a current basis from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, reasonable expenses, and reasonable disbursements of any kind or nature whatsoever which may be imposed on, asserted against or incurred by any Indemnified Party in any way relating to or arising out of this Agreement or the Collateral Documents or any action taken or omitted by an Indemnified Party under this Agreement or the Collateral Documents, **INCLUDING ANY SUCH LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, ACTIONS, JUDGMENTS, SUITS, COSTS, REASONABLE EXPENSES AND REASONABLE DISBURSEMENTS ARISING OUT OF THE SOLE, CONCURRENT, CONTRIBUTORY OR COMPARATIVE NEGLIGENCE OF ANY INDEMNIFIED PARTY**, except to the extent the same results solely from the gross negligence or willful misconduct of such Indemnified Party. The provisions of this Section shall survive the termination of this Agreement, whether in whole or in part.

**Section 5.03. Limitation of Liability.** No Swap Counterparty (including any individual partner, member, director, employee or agent of any Swap Counterparty) shall incur any liability under this Agreement to the Loan Parties except for liabilities arising from such Swap Counterparty’s gross negligence or willful misconduct, as determined by a court of competent jurisdiction. This Agreement is intended to benefit only Collateral Agent and the Creditors, and neither the Loan Parties nor any other Person shall have any rights hereunder or be entitled to claim any damages or defenses on account hereof from or against Collateral Agent or any Creditor (or any affiliate of Collateral Agent or any Creditor).

**Section 5.04. Term.**

(a) This Agreement shall terminate upon (i) the full payment of the Swap Obligations due and owing to the Swap Counterparties and the delivery by the Loan Parties of a written notice to the Swap Counterparties following such payment that the Loan Parties is terminating the Swap Counterparty Master Agreements; (ii) payment in full of all Loan Obligations (other than indemnity obligations and similar obligations that survive the termination of the Credit

Agreement for which no notice of a claim has been received by the Administrative Agent) under the Credit Agreement or (iii) the execution and delivery of a written termination notice signed by each of the parties; provided that if at any time any payment of the Total Obligations is rescinded or must be restored or returned upon the insolvency, bankruptcy or reorganization of the Borrower or otherwise, the obligations of the Borrower and the Rights of the Creditors under this Agreement, with respect to that payment, shall be reinstated as though the payment had been due but not made at that time. Each Swap Counterparties agrees that the Loan Parties may terminate any Swap Counterparty Master Agreement by providing written notice to such Swap Counterparty at any time that there are no outstanding Commodity Hedging Transactions or payment obligations for any Commodity Hedging Transactions thereunder, irrespective of whether the Loan Parties has that express right under the terms of the Swap Counterparty Master Agreement. For purposes of the preceding clause (i), the Collateral Agent or the Borrower may request in writing that such Swap Counterparty confirm the termination of the applicable Swap Counterparty Master Agreement. Such Swap Counterparty shall have ten (10) Business Days from the date the notice is deemed given pursuant to Section 5.09 in which to either confirm in writing such termination or provide a written notice to the Collateral Agent and the Borrower of the total amount of outstanding Swap Obligations claimed in good faith by such Swap Counterparty. If such Swap Counterparty does not provide any notice within the ten (10) Business Day period, or if notice is provided of outstanding Swap Obligations and those obligations are paid in full, such Swap Counterparty Master Agreement will be deemed terminated for purposes of the preceding clause (i).

(b) If Borrower has issued to any Swap Counterparty a letter of credit or other credit support as credit support replacement for the Collateral Documents then securing such Swap Counterparty (such letter of credit or other credit support to be in form and substance and in an amount and from an issuing bank reasonably satisfactory to such Swap Counterparty) to secure payment of all Swap Obligations owing such Swap Counterparty, such Person shall cease to be a Swap Counterparty for all purposes of this Agreement and the Collateral Documents and such Swap Obligations and the Swap Documents of such Swap Counterparty shall cease to be secured by the Collateral Documents.

Section 5.05. Survival of Rights. All of the respective Rights and interests of the Creditors under this Agreement (and the respective obligations and agreements of the Creditors under this Agreement), shall remain in full force and effect regardless of:

(a) any lack of validity or enforceability of any of the Loan Documents, the Swap Documents or any other agreement or instrument related thereto; or

(b) any other circumstance which might otherwise constitute a defense available to, or discharge of, the Loan Parties with respect to the Loan Obligations or the Swap Obligations (other than the defense that such obligations have been fully satisfied).

Section 5.06. Representations and Warranties. Each of the Loan Parties and each Swap Counterparty represents and covenants to each other and to the Collateral Agent that as of the date of its entry into any Commodity Hedging Transactions it will be, an "Eligible Contract

Participant” as defined in 7 U.S.C. § 1a(18). ABC Agent, as the Administrative Agent and as the Collateral Agent, and each Swap Counterparty each represent and warrant to the other that:

(a) neither the execution and delivery of this Agreement nor its performance of or compliance with the terms and provisions hereof will conflict with, or result in a breach of the terms, conditions or provisions of, or constitute a default under, any other agreement to which it is now subject;

(b) it has all requisite authority to execute, deliver and perform its obligations under this Agreement; and

(c) this Agreement constitutes its legal, valid, and binding obligation, enforceable against it in accordance with its terms, subject only to applicable bankruptcy, insolvency or similar laws and general principles of equity.

Section 5.07. Further Assurances. Each of the Administrative Agent and the Swap Counterparties covenant that, so long as this Agreement remains in effect, each of the Administrative Agent and the Swap Counterparties will execute and deliver any and all other instruments reasonably requested by the other to give effect to the terms and conditions of this Agreement.

Section 5.08. Assignment; Agreement Binding on Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of each Creditor and its respective successors and permitted assigns. The terms and provisions of this Agreement shall not inure to the benefit of, nor be relied upon by, the Borrower or its successors or assigns. No Swap Counterparty shall assign, transfer or sell any part of its portion of the Total Obligations without the prior written consent of the Administrative Agent in its sole and absolute discretion. For purposes of the immediately preceding sentence, a change of control of any Swap Counterparty or a merger by any Swap Counterparty with another entity shall not constitute an assignment of such Swap Counterparty’s portion of the Total Obligations. This Agreement, the Loan Documents and the Loan Obligations may be assigned at any time to any Person(s) without the consent of any Swap Counterparty.

Section 5.09. Notice. Unless otherwise provided, any consent, request, notice, or other communication under or in connection with this Agreement must be in writing to be effective and shall be deemed to have been given (a) if sent by a nationally recognized overnight delivery service using its overnight delivery option (e.g., Federal Express, UPS or the United States postal service), on the Business Day after it is enclosed in an envelope and properly addressed, stamped and deposited with such delivery service, (b) if by other form of mail, on the third Business Day after it is enclosed in an envelope and properly addressed, stamped, sealed, certified return receipt requested, and deposited in the appropriate official postal service, or (c) if by courier, electronic transmissions, or facsimile transmission, when actually delivered. Until changed by a subsequent notice delivered in accordance with this Section, notices for each party are to be directed to:

For delivery to BP:

BP Energy Company  
201 Helios Way  
Houston, TX 77079  
Attn: Contract Services  
Email: FinancialContractsExternal@uk.bp.com

For delivery to the Loan Parties:

390 Union Blvd.  
Ste. 250  
Lakewood, CO 80228  
Attn: Arthur Millholland  
Email: a.milholland@canoverseas.com  
Facsimile: 303-534-0102

For delivery to the Administrative Agent, ABC Agent or the Collateral Agent:

ABC Funding, LLC  
222 Berkeley Street, 18<sup>th</sup> Floor  
Boston, MA 02116.  
Attn: Patrick Murphy, Ashley Smith  
Email: PMurphy@summitpartners.com, ASmith@summitpartners.com  
Telephone: 617-598-4814, 617-598-4826

Section 5.10. Amendment. This Agreement may only be waived, amended, modified, or terminated by a written agreement signed by the party against whom enforcement of any such waiver, amendment, modification, or termination is sought. Delivery of an executed counterpart of such written instrument by telecopy, e-mail, facsimile or other electronic means shall be effective delivery of a manually executed counterpart of such written instrument.

Section 5.11. Governing Law; Venue.

(a) This Agreement, the entire relationship of the parties to the extent related hereto, and any litigation between the parties (whether grounded in contract, tort, statute, law or equity) to the extent related hereto shall be governed by, construed in accordance with, and interpreted pursuant to the laws of the State of New York, without giving effect to its choice of laws principles.

(b) ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY OF THE BORROWER, ANY LENDER, ANY SWAP COUNTERPARTY OR THE ADMINISTRATIVE AGENT OR THE COLLATERAL AGENT OR ANY OTHER PARTY HERETO ARISING OUT OF, CONCERNING OR RELATING TO IN ANY MANNER WHATSOEVER HERETO, MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE COURTS OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, IN EACH

CASE LOCATED IN NEW YORK COUNTY AND APPELLATE COURTS FROM ANY THEREOF. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH OF THE PARTIES HERETO, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (i) TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ACCEPTS GENERALLY AND UNCONDITIONALLY ON BEHALF OF SUCH PARTY THAT ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING OUT OF, CONCERNING OR RELATING TO IN ANY MANNER WHATSOEVER HERETO SHALL BE BROUGHT EXCLUSIVELY IN THE STATE OR FEDERAL COURT OF COMPETENT JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE COURTS OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, IN EACH CASE LOCATED IN NEW YORK COUNTY AND APPELLATE COURTS FROM ANY THEREOF, (II) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (III) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 5.09 IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND (iv) AGREES THAT THE ADMINISTRATIVE AGENT AND THE LENDERS RETAIN THE RIGHT TO SERVE PROCESS TO ANY LOAN PARTY IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY LOAN PARTY IN THE COURTS OF ANY OTHER JURISDICTION.

Section 5.12. Invalid Provisions. If any part of this Agreement is for any reason found to be unenforceable, all other portions nevertheless remain enforceable. However, if the provision held to be unenforceable is a material part of the Agreement, such unenforceable provision may, to the extent permitted by law, be replaced by a clause or provision judicially construed and interpreted to be as similar in substance and content to the original terms of such provision as the context would reasonably allow, so that such clause or provision would thereafter be enforceable.

Section 5.13. Multiple Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all signatories had signed the same document, and will be effective upon the execution of one or more counterparts hereof by each of the parties hereto. In this regard, each of the parties hereto acknowledges that a counterpart of this Agreement containing a set of counterpart execution pages reflecting the execution of each party hereto shall be sufficient to reflect the execution of this Agreement by each party hereto. All counterparts will, taken together, constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, e-mail, facsimile or other electronic means shall be effective as a delivery of a manually executed counterpart of this Agreement.

Section 5.14. Jury Waiver. **EACH OF THE COLLATERAL AGENT, THE ADMINISTRATIVE AGENT (FOR ITSELF AND ON BEHALF OF THE LENDERS), THE SWAP COUNTERPARTIES AND THE LOAN PARTIES HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY**



**DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) AMONG THE COLLATERAL AGENT, THE ADMINISTRATIVE AGENT, THE LENDERS, THE SWAP COUNTERPARTIES AND THE LOAN PARTIES (OR ANY OF THEM) ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT AND EACH IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT TO RECOVER ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES IN ANY DISPUTE ARISING IN CONNECTION HEREWITH.**

Section 5.15. Controlling Agreement. To the extent the terms of this Agreement directly conflict with a provision in either the Loan Documents or the Swap Documents, the terms of this Agreement shall control.

Section 5.16. Integration. **THIS AGREEMENT REPRESENTS THE FINAL AGREEMENT AMONG THE COLLATERAL AGENT, THE ADMINISTRATIVE AGENT, THE LENDERS, THE SWAP COUNTERPARTIES AND THE LOAN PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS BY THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.**

*[Signature Pages Follow]*

IN WITNESS WHEREOF, the parties have executed this Intercreditor Agreement as of the date first hereinabove written.

**BP:**

BP ENERGY COMPANY

By: \_\_\_\_\_

Print:

Title:

**BORROWER:**

COPL AMERICA INC.

By: \_\_\_\_\_

Print:

Title:

**OTHER LOAN PARTIES:**

SOUTHWESTERN PRODUCTION CORP.

By: \_\_\_\_\_

Name:

Title:

ATOMIC OIL AND GAS LLC

By: \_\_\_\_\_

Name:

Title:

PIPECO LLC

By: \_\_\_\_\_

Name:

Title:

COPL AMERICA HOLDING INC.

By: \_\_\_\_\_

Name:

Title:

**ABC Agent, in its capacity as the  
Administrative Agent for the Lender  
Group:**

ABC FUNDING, LLC, as the  
Administrative Agent

By: Summit Partners Credit Advisors, L.P.  
Its: Manager

By: \_\_\_\_\_  
Name:  
Title:

**ABC Agent, in acceptance of its  
appointment as Collateral Agent:**

ABC FUNDING, LLC, as the Collateral  
Agent

By: Summit Partners Credit Advisors, L.P.  
Its: Manager

By: \_\_\_\_\_  
Name:  
Title:

## **SCHEDULE 1**

1. CJE23PS00001
2. CJE23PS00002
3. CJE24PS00001

|

**SCHEDULE 2**

1. Guarantee and Collateral Agreement
2. Each of the Mortgages
3. Each Control Agreement

**EXHIBIT A**

**BP SWAP TERMINATION DOCUMENTATION**

[Attached.]



**BP Energy Company**  
201 Helios Way  
Houston, TX 77079

P.O. Box 3092  
Houston, TX 77253

10/12/2023

COPL America Inc.  
Fax #:  
Attn: Confirmation Dept.

Re: The ISDA Master Agreement, together with the Schedule thereto, dated on or about March 15, 2021, between BP Energy Company and COPL America Inc., (together with the Confirmations (as defined therein) and annexes thereto, and as may have been further amended from time to time, the "Master").

The INTERCREDITOR AGREEMENT (the "**Intercreditor Agreement**") entered into as of March 15, 2021, by and among **BP ENERGY COMPANY, COPL AMERICA INC.**, the Loan Parties thereto, and **ABC FUNDING, LLC** ("**ABC Agent**"), with ABC Agent acting: (i) as the administrative agent (in such capacity, together with its successors in such capacity, the "**Administrative Agent**") under the Credit Agreement and (ii) as the collateral agent (in such capacity, the "**Collateral Agent**", as amended on October 5, 2023.

Hello,

The purpose of this letter is to document the verbal agreement between the parties to terminate certain transaction(s) under the Master with the following identification number(s) (CJE23PS00001, CJE23PS00002, and CJE24PS00001) effective 10/04/2023 (the "Effective Date"). In consideration of such termination, BP Energy Company and COPL America Inc. have agreed that COPL America Inc. will pay BP Energy Company ("BP") an amount equal to \$10,960,000.00, in addition to the September settlement amount equal to \$913,702.13, for a total amount of \$11,873,702.13 (the "Termination Payment") which shall be immediately due and payable. Provided, however, no Event of Default shall be deemed to occur under the Master as long as the following conditions are met: (1) an initial payment of the Termination Payment in the amount of \$500,000.00 is paid to BP on the second business day following the receipt of this fully executed termination letter (2) the Termination Payment is paid in full on or before March 16, 2025, and (3) Interest will accrue at a rate per annum as set forth in that certain Intercreditor Agreement for any portion of the Termination Payment that remains outstanding, and (4) all Notices delivered to the Loan Parties under the Credit Agreement will also be delivered to BP at such time. Such Termination Payment remains a Swap Obligation and BP Specified Swap Obligations as defined in the Intercreditor Agreement and shall be paid on a pro rata and pari passu basis with all Loan Obligations in accordance with and subject to such Intercreditor Agreement. In the event of any inconsistency, conflict or ambiguity between this letter and the Intercreditor Agreement, the terms of the Intercreditor Agreement shall control and supersede any such inconsistency, conflict, or ambiguity.

Each capitalized term used herein but not otherwise defined herein has the meaning given such term in the Intercreditor Agreement.



Please evidence your agreement as indicated below and return via facsimile or email to the Confirmation Team at (713) 231-1757 or GPTAconfirmations@bp.com.

Regards:

BP Energy Company



By:

Name: Alex DeRossi

Title: Authorized Signor

AGREED TO AND ACCEPTED BY

COPL America Inc.

By:

  
Name: Ryan Gaffney

Title: Chief Financial Officer

AGREED TO AND ACCEPTED BY

ABC FUNDING, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Please evidence your agreement as indicated below and return via facsimile or email to the Confirmation Team at (713) 231-1757 or GPTAconfirmations@bp.com.

Regards:

BP Energy Company



By:  
Name: Alex DeRossi  
Title: Authorized Signatory

AGREED TO AND ACCEPTED BY

COPL America Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

AGREED TO AND ACCEPTED BY

ABC FUNDING, LLC

By: Adam Hennessey  
Name: Adam Hennessey  
Title: Authorized Signatory

-

**EXHIBIT B**

**JOINDER SUPPLEMENT**

This Joinder Supplement (this “**Supplement**”) dated as of \_\_\_\_\_ is executed by \_\_\_\_\_ (the “**New Swap Counterparty**”), COPL America Inc., a Delaware corporation (the “**Borrower**”), and ABC Funding, LLC, as the Administrative Agent and Collateral Agent as herein provided.

**COPL AMERICA INC.**, a Delaware corporation (the “**Borrower**”), the Loan Parties party hereto, and **ABC FUNDING, LLC** (“**ABC Agent**”), with ABC Agent acting: (i) as the administrative agent (in such capacity, together with its successors in such capacity, the “**Administrative Agent**”) under the Credit Agreement defined below and (ii) as the collateral agent (in such capacity, the “**Collateral Agent**”, and, together with the Swap Counterparty, the Borrower, the other Loan Parties party hereto and the Administrative Agent, the “**Parties**

All capitalized terms used herein but not defined herein shall have the meanings set forth in the Agreement (as defined below).

**WITNESSETH:**

WHEREAS, BP, ABC Funding, LLC, as the Administrative Agent and Collateral Agent, the Borrower, and each of the other Loan Parties from time to time party thereto have heretofore entered into that certain Swap Intercreditor Agreement dated as of March 16, 2021 (as amended, restated, supplemented or otherwise modified from time to time, the “**Agreement**”), providing for, among other matters, the relative rights and obligations and apportionment of certain collections among the Creditors and the exercise of certain remedies under the Security Instruments;

WHEREAS, the Agreement provides that one or more additional Persons may become Swap Counterparties thereunder if each such Person is approved by Administrative Agent and becomes a Swap Counterparty for the purposes of the Agreement and the Collateral Documents by executing and delivering a Joinder Supplement; and

WHEREAS, the New Swap Counterparty desires to become a “Swap Counterparty” under the Agreement;

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

A. **Recognition.** Each of Administrative Agent and Collateral Agent hereby recognizes the New Swap Counterparty as a “Swap Counterparty” under the Agreement and the Security Instruments.

B. **Agreement to be Bound.** The New Swap Counterparty hereby agrees to be bound by all of the terms and provisions of the Agreement as, and assumes all of the obligations of, a

Swap Counterparty thereunder. The New Swap Counterparty acknowledges and agrees that the terms of the Agreement shall control over the terms of any Swap Counterparty Master Agreement, including each confirmation now or hereafter entered into thereunder, between a Loan Party and the New Swap Counterparty to the extent any conflict exists between the Agreement and any such agreement or confirmation.

C. Ratification of Agreement; Joinder Supplement Part of Agreement. This Supplement shall form a part of the Agreement for all purposes. As expressly supplemented hereby, the Agreement is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect.

D. No Representation by the Collateral Agent. Collateral Agent makes no representation as to the validity or sufficiency of the Collateral Documents, and the New Swap Counterparty acknowledges, consents to and accepts the disclaimers by, and limitations on the liability of, Collateral Agent that are provided in the Agreement.

E. Representations and Warranties of the New Swap Counterparty. The New Swap Counterparty represents and warrants to the other Creditors that:

1. neither the execution and delivery of this Supplement or the Agreement nor its performance of or compliance with the terms and provisions hereof or thereof will conflict with, or result in a breach of the terms, conditions or provisions of, or constitute a default under, any other agreement to which it is now subject;
2. it has all requisite authority to execute, deliver and perform its obligations under this Supplement and the Agreement; and
3. each of this Supplement and the Agreement constitutes its legal, valid, and binding obligation, enforceable against it in accordance with its terms, subject only to applicable bankruptcy, insolvency or similar laws and general principles of equity.

F. Counterparts. The parties may sign any number of counterparts of this Joinder Supplement, and different parties may sign on different signature pages. Each signed counterpart shall be an original, but all of them together shall represent the same Joinder Supplement. Delivery of an executed signature page of this Joinder Supplement by facsimile transmission or other electronic means shall be effective as delivery of a manually executed counterpart hereof.

G. Address for Notices. All notices and other communications given to the New Swap Counterparty under the Agreement may be given at its address, facsimile number or e-mail as set forth on its signature page.

**(Signatures appear on following pages)**

IN WITNESS WHEREOF, the parties hereto have caused this Supplement to be duly executed as of the date first above written.

NEW SWAP COUNTERPARTY: [ \_\_\_\_\_ ]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address for notices under the Agreement:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ADMINISTRATIVE AGENT: ABC FUNDING, LLC,  
as the Administrative Agent

By: Summit Partners Credit Advisors, L.P.  
Its: Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

COLLATERAL AGENT: ABC FUNDING, LLC,  
as Collateral Agent

By: Summit Partners Credit Advisors, L.P.  
Its: Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LOAN PARTIES:**

**COPL AMERICA INC.**

**By:** \_\_\_\_\_  
**Print:**  
**Title:**

**SOUTHWESTERN PRODUCTION CORP.**

**By:** \_\_\_\_\_  
**Name:**  
**Title:**

**ATOMIC OIL AND GAS LLC**

**By:** \_\_\_\_\_  
**Name:**  
**Title:**

**PIPECO LLC**

**By:** \_\_\_\_\_  
**Name:**  
**Title:**

**COPL AMERICA HOLDING INC.**

**By:** \_\_\_\_\_  
**Name:**  
**Title:**

**THIS IS EXHIBIT "E"**

**REFERRED TO IN THE AFFIDAVIT OF**

**KENNETH JOAQUIN ANDERSON**

**Sworn before me this 23rd day of April, 2024**



---

**A COMMISSIONER FOR OATHS IN AND  
FOR THE PROVINCE OF ALBERTA**

**HAO YANG HUA**  
Student-At-Law



**BP Energy Company**  
201 Helios Way  
Houston, TX 77079

P.O. Box 3092  
Houston, TX 77253

10/12/2023

COPL America Inc.  
Fax #:  
Attn: Confirmation Dept.

Re: The ISDA Master Agreement, together with the Schedule thereto, dated on or about March 15, 2021, between BP Energy Company and COPL America Inc., (together with the Confirmations (as defined therein) and annexes thereto, and as may have been further amended from time to time, the "Master").

The INTERCREDITOR AGREEMENT (the "Intercreditor Agreement") entered into as of March 15, 2021, by and among **BP ENERGY COMPANY, COPL AMERICA INC.**, the Loan Parties thereto, and **ABC FUNDING, LLC** ("**ABC Agent**"), with ABC Agent acting: (i) as the administrative agent (in such capacity, together with its successors in such capacity, the "**Administrative Agent**") under the Credit Agreement and (ii) as the collateral agent (in such capacity, the "**Collateral Agent**", as amended on October 5, 2023.

Hello,

The purpose of this letter is to document the verbal agreement between the parties to terminate certain transaction(s) under the Master with the following identification number(s) (CJE23PS00001, CJE23PS00002, and CJE24PS00001) effective 10/04/2023 (the "Effective Date"). In consideration of such termination, BP Energy Company and COPL America Inc. have agreed that COPL America Inc. will pay BP Energy Company ("BP") an amount equal to \$10,960,000.00, in addition to the September settlement amount equal to \$913,702.13, for a total amount of \$11,873,702.13 (the "Termination Payment") which shall be immediately due and payable. Provided, however, no Event of Default shall be deemed to occur under the Master as long as the following conditions are met: (1) an initial payment of the Termination Payment in the amount of \$500,000.00 is paid to BP on the second business day following the receipt of this fully executed termination letter (2) the Termination Payment is paid in full on or before March 16, 2025, and (3) Interest will accrue at a rate per annum as set forth in that certain Intercreditor Agreement for any portion of the Termination Payment that remains outstanding, and (4) all Notices delivered to the Loan Parties under the Credit Agreement will also be delivered to BP at such time. Such Termination Payment remains a Swap Obligation and BP Specified Swap Obligations as defined in the Intercreditor Agreement and shall be paid on a pro rata and pari passu basis with all Loan Obligations in accordance with and subject to such Intercreditor Agreement. In the event of any inconsistency, conflict or ambiguity between this letter and the Intercreditor Agreement, the terms of the Intercreditor Agreement shall control and supersede any such inconsistency, conflict, or ambiguity.

Each capitalized term used herein but not otherwise defined herein has the meaning given such term in the Intercreditor Agreement.



Please evidence your agreement as indicated below and return via facsimile or email to the Confirmation Team at (713) 231-1757 or GPTAconfirmations@bp.com.

Regards:

BP Energy Company



By:

Name: Alex DeRossi

Title: Authorized Signor

AGREED TO AND ACCEPTED BY

COPL America Inc.

By:

Name: Ryan Gaffney

Title: Chief Financial Officer

AGREED TO AND ACCEPTED BY

ABC FUNDING, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Please evidence your agreement as indicated below and return via facsimile or email to the Confirmation Team at (713) 231-1757 or GPTAconfirmations@bp.com.

Regards:

BP Energy Company



By:

Name: Alex DeRossi

Title: Authorized Signatory

AGREED TO AND ACCEPTED BY

COPL America Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

AGREED TO AND ACCEPTED BY

ABC FUNDING, LLC

By: Adam Hennessey

Name: Adam Hennessey

Title: Authorized Signatory