

LOSS PORTFOLIO TRANSFER AGREEMENT
by and between the
Iowa Comprehensive Petroleum Underground Storage Tank Fund Board
and
Petroleum Marketers Management Insurance Company

LOSS PORTFOLIO TRANSFER AGREEMENT

This Agreement is entered into by and between the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board (“Board”), an Iowa governmental entity created pursuant to Iowa Code chapter 455G, and Petroleum Marketers Management Insurance Company (“PMMIC”). This Agreement is effective as of the date it is fully executed by all parties (“Effective Date”).

WHEREAS, Iowa Code section 455G.6(17) authorizes the Board to adopt rules providing for the transfer of all or a portion of the liabilities of the Board, and the Board has adopted rules contained in 591 Iowa Admin. Code chapter 9 providing for the transfer of the Board’s liabilities to third parties (“loss portfolio transfer”); and

WHEREAS, the Board published a request for proposals seeking proposals from qualified third parties to assume the liabilities and responsibilities of the Board under Iowa Code sections 455G.9 and 455G.21 (2017) and under 591 Iowa Administrative Code 11 (2017) with respect to claims for corrective action (as defined in Iowa Code section 455G.2(5) and paragraph 1.1 of this Agreement) as listed on Attachment 1 (the “Assumed Claims”); and

WHEREAS, the Board evaluated PMMIC’s proposal pursuant to the criteria contained in 591 Iowa Admin. Code 9.3, and deems a loss portfolio transfer to PMMIC to be in the best interest of the program; and

WHEREAS, PMMIC agrees to assume and accept no less liability than the Board to reimburse claimants for corrective action costs for the Assumed Claims, subject to the terms and conditions set forth in this Agreement; and

WHEREAS, upon completion of the transfer of records and funds to PMMIC described in paragraphs 1.4 and 2.1 of this Agreement after the Effective Date, a liability transfer will occur with respect to all Assumed Claims to PMMIC, and the Board will be discharged from any and all liability with respect to the Assumed Claims, including, but not limited to, any duty to reimburse claimants for those liabilities transferred; and

THEREFORE, in consideration of the foregoing, of mutual promises and covenants of the parties made herein and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the Board and PMMIC agree as follows:

SECTION 1. TRANSFER

1.1 Subject to the terms and conditions of this Agreement, the Board hereby transfers and assigns, and PMMIC hereby irrevocably and unconditionally assumes the Assumed Claims and any and all known and unknown liabilities for corrective action (as defined in Iowa Code section 455G.2(5)) with respect to such Assumed Claims, including, but not limited to, all copayment reimbursement responsibilities of the Board pursuant to certain global settlement agreements with major oil companies. PMMIC’s obligations under this Agreement are conditioned upon completion of the transfer of records and funds to PMMIC described in paragraphs 1.4 and 2.1 of this Agreement after the Effective Date.

1.2 By assuming the liabilities as set forth in this section, PMMIC hereby agrees to assume any and all related responsibilities and activities of the Board respecting corrective action for the Assumed Claims, including but not limited to, project funding and management, claim adjustment, and consultation with claimants, contractors and the Iowa Department of Natural Resources (“DNR”). PMMIC shall have full authority to administer all aspects of the Assumed Claims and such matters shall be under PMMIC’s control, subject to the terms and conditions of this Agreement.

1.3 To the extent permitted by law, PMMIC’s assumed liabilities and responsibilities under this section shall not be affected by any future amendments to Iowa Code chapter 455G or administrative rules promulgated by the Board that would increase or reduce benefits for the Assumed Claims after the Effective Date. The foregoing shall not be construed, however, to restrict PMMIC from offering or providing benefits in excess of those which are authorized or required under Iowa Code chapter 455G or other applicable law.

1.4 Upon the Effective Date of this Agreement, the Board shall make electronic data and original hardcopy files containing all records in its possession concerning the Assumed Claims available for transfer to PMMIC, and shall cease to maintain any ongoing duty whatsoever to PMMIC or the claimants in relation to the Assumed Claims.

1.5 Some records provided to PMMIC by the Board may contain confidential, personal, or proprietary information, and PMMIC shall preserve the confidentiality of such data and information. PMMIC shall assume that all records provided by the Board contain confidential or proprietary information, and PMMIC will not disclose or disseminate to any person any information or data received, collected, created, maintained, or used in the course of performance of this Agreement, except as required by law, either during performance under the Agreement or thereafter. PMMIC shall maintain and implement appropriate physical, technical, administrative, organizational and other security procedures to preserve the confidentiality of all such data and information and to protect it against accidental, unauthorized or unlawful, access, use, or disclosure. In the event of any breach of security or unauthorized acquisition or use of personal, proprietary or sensitive information, PMMIC shall be solely responsible for complying with any applicable laws, regulations and requirements, including but not limited to those relating to notification or data security and privacy, and shall be fully responsible and liable for any and all related or resulting costs, damages, expenses, fees, fines or other amounts of any kind whatsoever.

SECTION 2. TRANSFER OF FUNDS

2.1 Within 30 days of the Effective Date of this Agreement, the Board shall pay PMMIC a lump sum total of **\$13,061,497.41** for the transfer of liabilities and responsibilities to PMMIC for the Assumed Claims. Such payment will constitute a complete discharge of any and all responsibilities, obligations, and liabilities of the Board hereunder with respect to corrective action for the Assumed Claims, and PMMIC will not have any other recourse to or claims against the Board, the State of Iowa (“State”), the general fund or any other funds or accounts of the State with respect to the Assumed Claims.

2.2 PMMIC agrees to accept the amount set forth in this section as the full and final payment it will receive from the Board for its assumption and acceptance of all liabilities and responsibilities of the Board with respect to the Assumed Claims, and hereby irrevocably waives any and all rights and remedies it has, or may ever have, to seek or claim additional funds, damages, or any other recourse from or against the Board or the State of Iowa in relation to the Assumed Claims or this Agreement. PMMIC acknowledges and agrees that pursuant to Iowa Code section 455G.6(17) and 591 Iowa Admin. Code 9.2, once an Assumed Claim is transferred as part of a loss portfolio transfer transaction, the Board will no longer have any duty to reimburse for any costs or liabilities associated with such Assumed Claim.

SECTION 3. REPORTING

3.1 During the term of this Agreement, PMMIC will provide the Board with a quarterly report that contains ongoing information and data for each Assumed Claim. The quarterly report will include a summary of corrective action costs and remaining liabilities for Assumed Claims by: open claim count by claim type (Remedial, Retroactive, Innocent Land Owner and Global Settlement), risk classification for each open claim, closed claim count by claim type, total open and closed claims, and claim reserve, amount paid, and remaining reserve on a monthly, quarterly and annual basis for each Assumed Claim and for all Assumed Claims. Such reports will contain such other information and data directly related to an Assumed Claim as the Board may reasonably request from time to time. The Board may also request other documentation as it deems necessary and appropriate to monitor PMMIC's performance under this Agreement and its compliance with applicable provisions of Iowa Code Chapter 455G.

3.2 PMMIC's obligation to provide data and information in each quarterly report shall continue for each Assumed Claim until the site subject to the Assumed Claim achieves a No Further Action certificate from the DNR. A representative of PMMIC with knowledge of the information contained in the quarterly report shall attend in person or by telephone the next regular public meeting of the Board after the report is provided to discuss the Assumed Claims and respond to inquiries of the Board concerning the report.

3.3 Upon mutual agreement between PMMIC and the Board, such information and data may be shared on a more or less frequent or ongoing basis.

SECTION 4. RECORD RETENTION AND ACCESS

4.1 From the Effective Date of this Agreement, and for a period of three (3) years following the date the site subject to an Assumed Claim receives a No Further Action certificate from the DNR, PMMIC shall maintain accurate, current and complete books, documents and records that sufficiently and properly document PMMIC's performance associated with such Assumed Claim under this Agreement, including all records that document all expenses associated with such Assumed Claim.

4.2 If any litigation, claim, negotiation, audit or other action involving the books, documents and records has been started before the expiration of the three-year period, PMMIC must retain the records until completion of the action and resolution of all issues which arise from it, or until the end of the above-described three (3) year period, whichever is later.

4.3 PMMIC shall permit the State of Iowa, the Auditor of the State of Iowa, or any authorized representative of the State of Iowa, and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, at no charge, to access and examine, audit, excerpt and transcribe any pertinent books, documents, and records, electronic or optically stored and created records or other records of PMMIC relating directly or indirectly to PMMIC's performance under this Agreement, wherever located. At the request of the State of Iowa, PMMIC shall deliver and provide, at no charge, complete copies of such books, documents and records to the State of Iowa or its designee in electronic or paper form and within such time period as may be specified by the State of Iowa in its request. PMMIC shall not impose a charge or seek payment for any fee, charge, or expense associated with any audit, examination or delivery of such books, documents and records.

4.4 PMMIC shall require its subcontractors to agree to the same provisions of this section. Based on the audit findings, the State of Iowa reserves the right to address PMMIC's board or other managing entity regarding performance and expenditures.

SECTION 5. ASSIGNMENT, DELEGATION AND SETTLEMENT

5.1 The Assumed Claims transferred by this Agreement may not be sold, assigned, transferred, or conveyed to any person or entity, or otherwise be settled with a claimant, in whole or in part, without the prior written consent of the Board (except with respect to environmental covenants or deed restrictions, which PMMIC may settle without prior Board consent), which consent may be withheld by the Board in its sole discretion and for any reason. This Agreement, and any duties, obligations, liability, rights, or remedies, or amounts paid by the Board hereunder, may not be assigned or transferred, in whole or in part, by PMMIC, without the prior written consent of the Board. For purposes of construing this clause, a transfer of 50% or more interest in PMMIC, or transfers of interest in PMMIC that create a single interest of greater than 49%, a merger, sale or consolidation of or involving PMMIC, or a sale of substantially all of PMMIC's assets, shall be considered an assignment or transfer. The Board may assign this Agreement, including, without limitation, any of its rights, remedies and interest hereunder, to any State agency or department. PMMIC agrees that it shall not use this Agreement, or any portion thereof, for collateral or to otherwise secure any financial obligation of PMMIC or any affiliate thereof without the prior written consent of the Board. PMMIC further agrees that it may not assign, pledge as collateral, grant a security interest in, create a lien against, or otherwise encumber any payments or amounts that may or will be made to PMMIC under this Agreement.

5.2 PMMIC may, subject to the terms of this Agreement, use subcontractors to perform services, but will be fully responsible and liable for their performance in accordance with and subject to the terms of this Agreement, and for their acts or omissions. PMMIC shall select and utilize only those subcontractors that are fully qualified and capable of meeting or exceeding all of the terms, conditions and requirements of this Agreement and all applicable professional and industry standards (collectively "Requirements"). PMMIC shall oversee each subcontractor's compliance with such Requirements and shall be fully and financially responsible to the Board and the State for any failure of a subcontractor to meet any Requirements, including but not limited to any terms or conditions of this Agreement or applicable laws, rules or regulations. All subcontracts shall contain provisions which allow the Board or its designee to access the subcontractor's books, documents, and records and for inspections of work. No subcontract or delegation of work shall relieve or discharge PMMIC from any obligation, provision, or liability under this Agreement. PMMIC shall remain responsible for such performance and shall be fully

responsible and liable for all acts or omissions of its subcontractors. Any action or inaction of a subcontractor, which, if done by PMMIC, would constitute a breach of this Agreement, shall be deemed a breach by PMMIC and have the same legal effect.

5.3 In the event the Board ceases to exist, or to effectively operate as an agency of the State, the State (or any agency or governmental entity or official designated by the State) shall become the Board's successor and a party to this Agreement, and all rights, remedies, and interest of or held by the Board under this Agreement automatically and immediately transfer and belong to, and otherwise inure to the benefit of, the State or its designee. Notice of this transfer shall be given to PMMIC pursuant to paragraph 9.5.

SECTION 6. EVENT OF DEFAULT

6.1 This Agreement shall remain in full force and effect until PMMIC has satisfied all of its obligations hereunder and the DNR issues No Further Action Certificates with respect to all Assumed Claims.

6.2 The intent of this Agreement is to facilitate continued funding of corrective action activities for the Assumed Claims pursuant to the provisions of Iowa Code sections 455G.9 and 455G.21. Therefore, the following shall constitute an event of default under this Agreement (an "Event of Default"): (1) PMMIC has failed to comply with any material requirement of this Agreement; (2) PMMIC has failed to comply with any applicable federal, state or local laws, rules, ordinances, regulations and orders when performing within the scope of this Agreement; or (3) with respect to a particular Assumed Claim, if no corrective action has been undertaken with respect to such Assumed Claim within three (3) years after the Effective Date, or during any continuous three (3)-year period after the Effective Date.

6.3 If the Board, at its sole discretion, determines at any time after the Effective Date of this Agreement that PMMIC has committed an Event of Default, PMMIC shall have thirty (30) days after receiving written notice of the Event of Default (a "Default Notice") to cure the failure(s) identified by the Board. In the event PMMIC fails to timely cure an Event of Default, the Board may terminate this Agreement and/or, without limiting any other available rights or remedies whether at law or in equity, demand a return of all or any part of any Remaining Funds (as defined below) transferred to PMMIC under this Agreement plus interest at the rate of ten percent (10%) per annum (which interest shall begin to accrue from the 31st day after the Board's written notice demanding a return of all or part of any Remaining Funds transferred to PMMIC with respect to the applicable Assumed Claim), and PMMIC shall return to the Board such Remaining Funds within 30 days from the date of the Board's demand; provided that, with respect to an Event of Default under subparagraph (3) of paragraph 6.2 above, the Board may not terminate this Agreement, but may declare an Event of Default with respect to such Assumed Claim (and take the foregoing actions under this paragraph 6.3 with respect to such Assumed Claim). Upon the termination of this Agreement, PMMIC shall transfer all liabilities and responsibilities for corrective action of any remaining open Assumed Claims to the Board. If an Event of Default is declared with respect to only certain Assumed Claims and the funds demanded for just those Assumed Claims, then all liabilities and responsibilities for corrective action for those Assumed Claims shall be transferred by PMMIC back to the Board. For purposes of this paragraph 6.3, "Remaining Funds" means: the unspent dollar amount of the reserve transferred for the applicable Assumed Claim plus the remaining prorated share of the 20% risk premium and 7.75% administrative fee for that Assumed Claim.

6.4 The Default Notice provided by the Board under paragraph§ 6.3 shall identify the default, the date of default, the Assumed Claims affected, and an itemization of the amount of funds demanded to be returned to the Board, plus any interest, in the event the default is not cured as provided in paragraph 6.3. Upon an Event of Default, PMMIC shall cease work under this Agreement on all the Assumed Claims identified by the Board, take all necessary or appropriate steps to limit disbursements and minimize costs with respect to the same, and furnish a report within thirty (30) days of receipt of the Default Notice, describing the status of all work on such identified Assumed Claims, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters the Board may reasonably require.

6.5 If there is an Event of Default, and the Board demands a return of a portion or all remaining funds transferred to PMMIC with respect to any and all Assumed Claims identified by the Board, PMMIC shall also comply with the Board's instructions for the timely transfer of any and all records and documents of any kind associated with such Assumed Claims.

6.6 This Section 6 in no way limits the rights or remedies available to the Board and shall not be construed to require the Board to pay any compensation or other amounts hereunder if the Board terminates this Agreement. Notwithstanding any provision in this Agreement to the contrary, the Board shall not be liable, under any circumstances, for any of the following:

6.6.1 The payment of unemployment compensation to PMMIC's employees;

6.6.2 The payment of workers' compensation claims, which occur during the Agreement or extend beyond the date on which the Agreement terminates;

6.6.3 Any costs or liabilities incurred by PMMIC in its performance of the Agreement, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Agreement;

6.6.4 Any damages or other amounts, including amounts associated with the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Agreement;

6.6.5 Any taxes PMMIC may owe in connection with the performance of this Agreement, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

SECTION 7. INSURANCE

7.1 PMMIC, and any subcontractor, shall maintain in full force and effect, with insurance companies licensed by the State of Iowa, at PMMIC's expense, insurance covering its work under this Agreement. PMMIC's insurance shall, among other things, be occurrence based and shall insure against any loss or damage resulting from or related to PMMIC's performance of this Agreement regardless of the date the claim is filed or expiration of the policy.

7.2 Unless otherwise requested by the Board in writing, PMMIC shall cause to be issued insurance coverages insuring PMMIC and/or subcontractors against all general liabilities, product liability, personal injury, property damage, and (where applicable) professional liability in the

amounts specified in the Request for Proposals. In addition, PMMIC shall ensure it has any necessary workers' compensation and employer liability insurance as required by Iowa law.

7.3 PMMIC shall maintain all insurance policies required by this Agreement in full force and effect while performing work under this Agreement, and shall not permit such policies to be canceled or amended except with the advance written approval of the Board. PMMIC shall submit certificates of the insurance, which indicate coverage and notice provisions as required by this Agreement, to the Board upon execution of this Agreement. The certificates shall be subject to approval by the Board. The insurer shall state in the certificate that no cancellation of the insurance will be made without at least thirty (30) days' prior written notice to the Board. Approval of the insurance certificates by the Board shall not relieve PMMIC of any obligation under this Agreement.

7.4 PMMIC shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against the State. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to the Board.

SECTION 8. REPRESENTATIONS, WARRANTIES, AND COVENANTS

8.1 PMMIC represents and warrants that all services rendered pursuant to this Agreement shall be performed using sound, professional practices and in a competent and professional manner by knowledgeable, trained and qualified personnel in accordance with the terms of this Agreement and the standards of performance considered generally acceptable in PMMIC's industry for similar tasks and projects. In the absence of a detailed specification for the performance of any portion of this Agreement, the parties agree that the applicable specification shall be the generally accepted industry standard.

8.2 PMMIC represents, warrants and covenants that all obligations owed to claimants and other third parties with respect to corrective action for the Assumed Claims and all other activities contemplated to be undertaken by PMMIC pursuant to this Agreement are or will be fully satisfied by PMMIC so that neither the Board nor the State will have any obligations with respect thereto.

8.3 PMMIC represents and warrants that the services under this Agreement shall be performed by PMMIC, its employees, subcontractors approved by the Board, affiliates, and other persons selected and paid by PMMIC. The obligations of such persons shall be undertaken and performed in the interest of PMMIC. Nothing herein shall create any contractual relationship between such employees, subcontractors, affiliates, or other persons and the State or Board. PMMIC shall be responsible to, and shall indemnify, the State and Board for all acts and omissions of such employees, subcontractors, affiliates and other persons in any way relating to this Agreement.

8.4 PMMIC represents and warrants it: (i) is a sophisticated party possessing sufficient knowledge and expertise concerning the subject matter of this Agreement; (ii) is able to fully and independently evaluate the advisability of entering into and assuming and performing all duties, liabilities and obligations under this Agreement; and (iii) has conducted its own independent gathering, review and investigation of all information, facts and data necessary for purposes of making an informed decision whether to enter into this Agreement and to assume and perform all duties, liabilities, and obligations set forth herein, without relying on any specific facts, information or representations of any kind made or provided by or on behalf of the Board,

including any information presented in the RFP. PMMIC agrees that the Board and the State shall not be liable for any information provided in the RFP or for any information or data that may be unintentionally omitted from the RFP regardless of whether such omitted information or data might be material or relevant for purposes of making such an informed decision.

8.5 Authorization. PMMIC represents and warrants that: (i) it has the right, power and authority to enter into and perform its obligations under this Agreement; (ii) it has taken all requisite action (corporate, statutory, or otherwise) to approve the execution, delivery and performance of this Agreement, (iii) this Agreement constitutes a legal, valid and binding obligation of PMMIC, enforceable in accordance with its terms; and (iv) the execution, delivery and performance of this Agreement will not result in a breach of, or constitute a default under, any agreement or contract to which PMMIC is a party or by which it or its property is bound.

8.6 Conflicts of Interest. PMMIC represents, warrants, and covenants that no relationship exists or will exist during the term of the Agreement that is a conflict of interest. If a conflict of interest is proven to the Board, the Board may terminate this Agreement, and PMMIC shall be liable for any excess costs to the Board as a result of the conflict of interest. PMMIC shall report any potential, real, or apparent conflict of interest to the Board. The Board acknowledges and agrees that the fact PMMIC is an insurer with respect to certain of the Assumed Claims is not a conflict of interest.

8.7 PMMIC represents, warrants, and covenants that its duties, obligations, and liability under this Agreement shall: (i) be continuing, absolute, primary, and unconditional, (ii) not be subject to any counterclaim, recoupment, set off, reduction or defense based upon any claim that it may have against the Board, the State, or any claimant of an Assumed Claim, and (iii) not be affected, impaired or released by any act or omission of the Board or the State or any failure of any amount or amounts paid by the Board hereunder to be adequate or sufficient to pay or reimburse, in whole or in part, costs associated with any or all of the Assumed Claims.

8.8 Notwithstanding any provision in this Agreement to the contrary, PMMIC: (a) expressly waives any and all defenses which might constitute a legal or equitable discharge of any obligation, duty, or liability it has or may have under this Agreement, and (b) agrees that this Agreement shall be valid, binding, and enforceable against it regardless of: (i) the insufficiency or inadequacy of any amount or amounts paid by the Board hereunder, (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against any claimant or other third party, or (iii) the assertion by the Board against PMMIC of any of the Board's rights or remedies under this Agreement, or existing at law or equity.

SECTION 9. MISCELLANEOUS PROVISIONS

9.1 General Release. In consideration for receipt of the funds described in Section 2 of this Agreement, PMMIC hereby releases, acquits, and forever discharges the Board and the State of Iowa and their officers, employees, assigns, agents, and successors in interest from any and all claims, rights, demands, actions, obligations, liabilities, and causes of action of any and every kind, nature, and character whatsoever, known or unknown (and whether currently existing or arising in the future), whether based on federal, state, or local law, or for claims based on tort, contract (implied, oral, or written), or any other theory of recovery, and whether for compensatory or punitive damages, for any matter related to or concerning this Agreement or the Assumed Claims.

9.2 Compliance with the Law.

PMMIC and its employees, agents, officers, directors, and approved subcontractors shall comply with all applicable federal, state, international, and local laws, rules, ordinances, codes, regulations and orders when performing within the scope of this Agreement, including without limitation, all laws applicable to the prevention of discrimination in employment (e.g., Iowa Code chapter 216 and Iowa Code section 19B.7), the administrative rules of the Iowa Department of Administrative Services and the Iowa Civil Rights Commission which pertain to equal employment opportunity and affirmative action, laws relating to prevailing wages, occupational safety and health standards, prevention of discrimination in employment, payment of taxes, gift laws, lobbying laws, and laws relating to the use of targeted small businesses as subcontractors or suppliers. PMMIC shall comply with any applicable reporting and compliance standards of the Iowa Department of Administrative Services regarding equal employment.

Upon the Board's written request, PMMIC shall submit to the Board a copy of its affirmative action plan, containing goals and time specifications, and accessibility plans and policies as required under Iowa Administrative Code chapter 11—121. PMMIC, its employees, agents and approved subcontractors shall also comply with all federal, state, and local laws, including any permitting and licensure requirements, in carrying out the work performed under this Agreement. In the event the Board approves PMMIC entering into contracts with subcontractors or other third parties, PMMIC shall take all steps necessary to ensure such third parties are bound by the terms and conditions contained in this section. Notwithstanding anything in this Agreement to the contrary, PMMIC's failure to fulfill any requirement set forth in this section shall be regarded as a material breach of this Agreement the Board may cancel, terminate, or suspend, in whole or in part, this Agreement, and PMMIC may be declared ineligible for future State contracts in accordance with authorized procedures or PMMIC may be subject to other sanctions as provided by law or rule.

9.3 PMMIC acknowledges and agrees that this Agreement memorializes an arms-length transaction and does not create any relationship of employer and employee or principal and agent, or any partnership, between the parties. PMMIC shall not hold itself out as an employee or agent of the Board. The Board shall not provide PMMIC with office space, support staff, equipment or tools, or supervision. Neither PMMIC nor any of its staff are eligible for any State employee benefits, including, but not limited to, retirement benefits, insurance coverage or the like. PMMIC and its staff shall not be considered employees or agents of the Board or the State for any purpose, including for federal or State tax purposes or for purposes of Iowa Code chapter 669. The Board shall not withhold taxes on behalf of PMMIC or have any responsibility of any kind for indemnifying or defending PMMIC. PMMIC shall be responsible for payment of all taxes in connection with any income earned from performing this Agreement and for all expenses it incurs in connection with this Agreement.

9.4 Governing Law and Jurisdiction.

9.4.1 This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the State of Iowa, without giving effect to the choice of law principles thereof;

9.4.2 Any and all litigation or actions commenced in connection with this Agreement, including after expiration or termination of this Agreement, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if

jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division. PMMIC irrevocably: (i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with or arising out of this Agreement shall be brought and maintained exclusively in the aforesaid courts; (ii) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts; and (iii) waives any objection to such jurisdiction based on forum non conveniens or otherwise;

9.4.3 This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the Board or the State, including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise;

9.4.4 PMMIC irrevocably consents to service of process by certified or registered mail addressed to PMMIC's designated agent. PMMIC appoints G. Thomas Sullivan, 700 Walnut Street, Suite 1600, Des Moines, Iowa 50309, as its agent to receive service of process. If for any reason PMMIC's agent for service is unable to act as such or the address of the agent changes, PMMIC shall immediately appoint a new agent and provide the Board with written notice of the change in agent or address. Any change in the appointment of the agent or address will be effective only upon actual receipt by the Board. Nothing in this provision will alter the right of the Board to serve process in any other manner permitted by law;

9.4.5 This Section 9.4 shall survive termination of this Agreement.

9.5 Notices.

9.5.1 Notices. Notices under this Agreement shall be in writing and delivered to the representative of the party to receive notice (identified below) at the address of the party to receive notice as it appears below or as otherwise provided for by proper notice hereunder. The effective date for any notice under this Agreement shall be the date of delivery of such notice (not the date of mailing) which may be effected by certified U.S. Mail return receipt requested with postage prepaid thereon or by recognized overnight delivery service, such as Federal Express or UPS:

PMMIC
2894 106th St. Ste. 220
PO Box 7628
Urbandale, Iowa 50323
Ph: 800/942-1000, 515/334-3001
Fax: 515/334-3013

Iowa Underground Storage
Tank Fund Board
2700 Westown Parkway, Suite 320
West Des Moines, IA 50266
(Tel.) 515-225-9263
(Fax) 515-225-9361

9.5.2 Any notice or communication sent by certified U.S. Mail under this Agreement shall be deemed given upon receipt as evidenced by the U.S. Postal Service return receipt card, or if sent by overnight delivery service, upon receipt as evidenced by the signature attained by the carrier;

9.5.3 From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

9.6 Public Record. The parties acknowledge this Agreement is a public record under Iowa Code chapter 22, and is available for public inspection and copying.

9.7 Headings or Captions and Terms. The section headings or captions are for identification purposes only and do not limit or construe the contents of the sections. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural, and the word “or” has the inclusive meaning represented by the phrase “and/or.” The words “include” and “including” shall be deemed to be followed by the phrase “without limitation.” The words “thereof,” “herein,” “hereunder,” and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement.

9.8 Joint Drafting. This Agreement was drafted jointly by the parties and shall not be construed in favor of, or against, either party because of which party was responsible for drafting a particular portion of the Agreement.

9.9

9.9.1 Incorporation. The Board’s Request for Proposal No. RFP0717542004 for the Loss Portfolio Transfer (“RFP”) and PMMIC’s proposal dated July 14, 2017, in response to the RFP (“Proposal”), together with any clarifications, attachments, appendices, or amendments to the RFP and Proposal are incorporated into this Agreement by this reference as if fully set forth in this Agreement; provided, however, that none of PMMIC’s proposed exceptions or modifications to the sample agreement attached to the RFP shall be incorporated into this Agreement unless expressly set forth herein.

9.9.2 Contractual Obligations. The terms and conditions of the RFP and of the Proposal are made contractual obligations of PMMIC, except that any proposed revisions or modifications made by PMMIC to the sample agreement attached to the RFP shall not be deemed to limit, modify or otherwise affect any of the contractual obligations of PMMIC or the Board hereunder, unless expressly stated herein.

9.9.3 Preference. In the case of any inconsistency or conflict between the specific provisions of this document, the RFP or the Proposal, any inconsistency or conflict shall be resolved as follows: first, by giving preference to the specific provisions of this document and any schedules, exhibits or other attachments; second, by giving preference to the specific provisions of the RFP; and third, by giving preference to the specific provisions of the Proposal.

9.9.4 No Inconsistency. The references to the parties' obligations, which are contained in this Agreement, are intended to change, modify, supplement or clarify the obligations as stated in the RFP and the Proposal. The failure of the parties to make reference to the terms of the RFP or Proposal in this document shall not be construed as creating a conflict and will not relieve PMMIC of the contractual obligations imposed by the terms of the RFP and the Proposal. Terms offered

in the Proposal, which exceed the requirements of the RFP, shall not be construed as creating an inconsistency or conflict with the RFP or this document. Notwithstanding anything herein to the contrary, the Board shall have only those obligations that are expressly stated in this document, and the Proposal does not create any express or implied obligations of the Department. For the avoidance of doubt, PMMIC shall be responsible for performing, providing and fulfilling all of the duties, obligations and other responsibilities set forth in Section 4 of the RFP (entitled Specifications), except where otherwise expressly provided by this Agreement.

9.10 Complete Agreement. This Agreement reflects the parties' entire agreement on this matter and may not be altered or amended except by a subsequent written document signed by all parties to the Agreement.

9.11 Time is of the Essence. Time is of the essence with respect to PMMIC's performance of its obligations under this Agreement. PMMIC shall ensure that all personnel and any approved subcontractors of PMMIC providing services to the Board are responsive to the Board's requirements and requests in all respects.

9.12 Cumulative Rights. The various rights, powers, options, elections and remedies of the Board and the State provided in this Agreement shall be construed as cumulative and no one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed the Board and the State by law, and shall in no way affect or impair the right of the Board or the State to pursue any other contractual, equitable or legal remedy to which the Board and the State may be entitled. The election by the Board or the State of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

9.13 Execution. PMMIC is executing this Agreement solely in reliance upon its own knowledge, belief and judgment and not upon any representations or information made or provided by or on behalf of the Board.

9.14 Obligation Beyond Agreement Term. This Agreement shall remain in full force and effect until PMMIC fully performs and satisfies all of its duties, obligations and liabilities hereunder and the DNR issues No Further Action Certificates with respect to all Assumed Claims and Sites, unless terminated earlier pursuant to this Agreement. PMMIC's obligations under this Agreement which by their nature would continue beyond the termination of this Agreement, including, by way of illustration and not by limitation, those obligations set forth in Sections 4, 9.4 and 10 shall survive termination of this Agreement.

9.15 Waiver. Except as specifically provided for in a waiver signed by duly authorized representatives of the Board and PMMIC, failure by either party at any time to require performance by the other party or to claim a breach of any provision of this Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.

9.16 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.

9.17 Successors in Interest. All the terms, provisions, and conditions of the Agreement shall be binding upon and inure to the benefit of the parties' hereto and their respective successors, assigns, and legal representatives.

9.18 Multiple Counterparts. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one contract binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

9.19 Not a Joint Venture. Nothing in this Agreement shall be construed as creating or constituting the relationship of the partnership, joint venture (or other association of any kind or agent/principal relationship) between the parties hereto. No party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon, another party to this Agreement.

9.20 Additional Provisions. The parties agree that if an Addendum, Rider, Schedule, Appendix or Exhibit is attached hereto by the parties, and referred to herein, then the same shall be deemed incorporated herein by reference.

9.21 Further Assurances and Corrective Instruments. PMMIC agrees that it will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required or requested by the Board for carrying out the expressed intention of this Agreement.

9.22 Obligations of Joint Entities. If PMMIC is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this agreement, and for any default of such activities and obligations.

9.23 Award of Related Agreements. The Board may undertake or award supplemental or successor agreements for work related to this Agreement. PMMIC shall cooperate fully with other contractors, consultants and other persons who may be engaged by the Board or the State in connection with this Agreement. PMMIC will ensure that any of its subcontractors that have been approved by the Board will abide by this provision.

9.24 Sovereign Immunity. The Board and the State do not waive sovereign immunity by entering into this Agreement and specifically retain and reserve the defense of sovereign immunity and all defenses available to them under State and federal laws, rules and regulations for any claim arising out of or related to this Agreement.

9.25 Disclaimer. All information contained in the RFP and any appendices or attachments thereto reflect the information available to the Board at the time the above-cited documents were prepared. The Board does not represent or warrant the accuracy of any such information and shall not be liable for any errors or omissions, or the results of errors or omissions, which may be discovered, at any time, to exist in those documents.

9.26 Enforcement Expenses. PMMIC shall immediately pay upon the Board's or the State's demand, any and all reasonable fees and expenses of the Board or the State, including the fees and expenses of the Board's and the State's attorneys (including, without limitation, the reasonable value of time of the Attorney General's Office), experts and agents, in connection with the Board's or the State's enforcement of any term(s) or provision(s) of this Agreement against PMMIC.

SECTION 10. INDEMNIFICATION AND HOLD HARMLESS

10.1 PMMIC and its successors and permitted assigns shall indemnify and hold harmless the Board, the State and their employees, officers, board members, agents, representatives, and officials ("Indemnitees") from and against any and all claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, costs and expenses (including, without limitation, the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by any Indemnitee) directly or indirectly related to, resulting from, or arising out of this Agreement, including but not limited to any claims related to, resulting from, or arising out of the following:

10.1.1 Any violation or breach of any term or condition of this Agreement by or on behalf of PMMIC, including, the furnishing or making by PMMIC of any statement, representation, warranty or certification in connection with this Agreement, the RFP or the Proposal that is false, deceptive, or misleading; or

10.1.2 Any negligent act or omissions, intentional or willful misconduct, or unlawful acts of PMMIC, its officers, employees, agents, board members, subsidiaries, affiliates, or approved subcontractors; or

10.1.3 PMMIC's performance or attempted performance of this Agreement; or

10.1.4 Failure by PMMIC or its employees, agents, officers, directors, subsidiaries, affiliates, approved subcontractors to comply with any applicable local, state, and federal laws, rules, ordinances and regulations; or

10.1.5 Any failure by PMMIC or its employees, agents, officers, directors, or approved subcontractors to make all reports, payments and withholdings required by Federal and state law with respect to Social Security, worker's compensation, employee income and other taxes, fees or costs required by PMMIC to conduct business in the State; or

10.1.6 Any claim for violation or infringement of any statutory or common law rights or any other rights of any person or entity, including, without limitation, any claims or causes of action involving torts, personal injury, defamation, or rights of publicity, privacy, confidentiality, misappropriation or security; or

10.1.7 Any breach (or threatened or claimed breach) of security or privacy or other incident affecting any personal, confidential, proprietary or sensitive data or information, or any other event involving unauthorized access to or use of any such data or information.

10.2 PMMIC's obligations under this Section 10 are not limited to third-party claims, but shall also apply to any claims that either party may assert against the other.

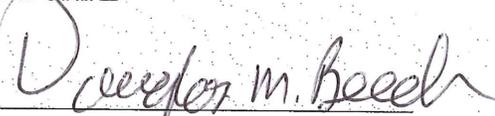
10.3 PMMIC shall be liable for any personal injury or damage to property caused by the fault or negligence of PMMIC, its officers, directors, employees, agents and approved subcontractors. In no event shall the State or the Board be liable for injuries suffered by PMMIC, or PMMIC employees or approved subcontractors, related to the work performed under this Agreement.

10.4 PMMIC's duties as set forth in this Section 10 shall survive the termination of this Agreement and shall apply to all acts or omissions taken or made in connection with the performance of this Agreement regardless of the date any potential claim is made or discovered by the Board or any other Indemnitee.

IN WITNESS WHEREOF, the parties have entered into the above Agreement and have caused their duly authorized representatives to execute this Agreement.

IOWA COMPREHENSIVE PETROLEUM
UNDERGROUND STORAGE TANK
FUND BOARD

By:

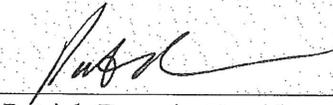

Douglas Beech, Chairperson

Date:

10/12/17

PETROLEUM MARKETERS
MANAGEMENT INSURANCE
COMPANY

By:


Patrick Rounds, President

Date:

10/11/17