



**Freepoint changes dated May 1, 2020 to BP Global Oil Americas General Terms and Conditions for Purchases and Sales of Crude Oil, Refined Petroleum and Related Products, 2015 Edition:**

**Part I, Sec. 11.3.6:** In 1<sup>st</sup> line of Sec. 11.3.6, delete “(in excess of US \$5,000,000.00)”.

**Part I, Sec. 11.11:** Re-number Sec. 11.11 as 11.12, and insert the following as Sec. 11.11:

11.11 If a Party (the “Failing Party”) fails to deliver or take delivery of all or part of the quantity of Goods pursuant to any transaction under this Agreement, then:

11.11.1. Seller Non-Performance. If Seller is the Failing Party, Seller shall pay Buyer, within one (1) Business Day after receipt of invoice, an amount equal to the excess, if any, of (I) over (II) where:

(I) is the sum of:

(A) the product of: (x) the undelivered quantity of Goods and (y) the market price per unit at which Buyer purchases, or would be able to purchase, a quantity of Goods equal to the undelivered quantity, as determined by Buyer in a commercially reasonable manner, plus

(B) any other costs reasonably incurred by Buyer in acquiring such substitute Goods, including without limitation any additional charges reasonably incurred to transport such substitute Goods to the delivery location specified for such transaction.

(II) is the product of: (x) the undelivered quantity of Goods and (y) the price per unit of Goods specified for such transaction.

11.11.2. Buyer Non-Performance. If Buyer is the Failing Party, Buyer shall pay Seller, within one (1) Business Day after receipt of invoice, an amount equal to the excess, if any, of (I) over (II) where:

(I) is the sum of:

(A) the product of: (x) the undelivered quantity of Goods and (y) the price per unit of Goods specified for such transaction, plus

(B) any storage, transportation or other costs reasonably incurred by Seller in reselling such Goods.

(II) is the product of: (x) the undelivered quantity of Goods multiplied by (y) the market price per unit at which Seller sells, or would be able to sell, a quantity of Goods equal to the undelivered quantity, as determined by Seller in a commercially reasonable manner.

**In the event Buyer and Seller are both organized or incorporated under the laws of any state of the United States or a US territory, the following shall apply:**

**Part I, Sec. 27:** Delete Sec. 27 (Arbitration) in its entirety, and insert the following:

“27. Each Party irrevocably submits to the exclusive jurisdiction of the courts of the State of New York and the federal courts in each case situated in the borough of Manhattan, New York City and to service of process by certified mail, delivered to the Party at its last designated address. Each Party irrevocably waives, to the fullest extent permitted by applicable law, any objection to the jurisdiction of any such court or to venue therein or any claim of inconvenient forum of such court or of sovereign immunity. FURTHER, EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDINGS RELATING TO ANY TRANSACTION.”



**BP Global Oil Americas  
General Terms and Conditions for  
Purchases and Sales of Crude  
Oil, Refined Petroleum and Related Products**



**2015 Edition**

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## PART ONE - Applicable to all Parts

### Section 1. Definitions and Interpretation

1.1 In addition to terms defined elsewhere in the Agreement, the following terms shall have the meanings specified below when capitalized throughout the Agreement:

**"Affiliate"** means, with respect to any entity, any other entity that, directly or indirectly controls, or is controlled by, or is under common control with, such entity. For this purpose, **"control"** means the power, directly or indirectly, to cause the direction of the management and/or policies of an entity, whether through the ownership of voting securities, by contract, or otherwise.

**"Agreement"** means the Special Provisions, any applicable Appendices and these GTCs.

**"All Fast"** means that the Vessel is safely secured to the berth and the gangway is in place.

**"Applicable Law"** means any international, federal, state, regional, provincial or local law, statute, regulation, code, ordinance, license, permit, compliance requirement, decision, order, writ, injunction, directive, judgment, policy, decree, including any judicial or administrative interpretations thereof, and/or coast guard, port authority or Terminal regulation, in each case applicable to either Party or either Party's performance under any transaction, and any amendments or modifications to the foregoing.

**"Approved Industry Practice"** means the measurement, sampling and analysis activities and methods of a standard no less than those published by the American Petroleum Institute ("**API**") in the Manual of Petroleum Measurement Standards ("**MPMS**") or as published by ASTM International, formerly known as the American Society for Testing and Materials ("**ASTM**"), in each case in effect at the time of the relevant measurement, sampling, or analysis.

**"BS&W"** means bottom sediment and water.

**"Bulk Oil Clauses SP 13C"** means the American Institute of Marine Underwriters Form SP 13C Bulk Oil Clauses published in January 1962.

**"Business Day"** means a day other than a Saturday or Sunday when federal banks are open for business in New York, New York.

**"CFR", "CIF", "CIP", "CPT", "DAP", "DDP", "FCA"**, shall each have the meaning given to it in Incoterms® 2010, except as modified by the Agreement.

**"Delivery Period"** means the period set out in the Special Provisions during which the Seller shall make the Goods available to the Buyer.

**"ETA"** means the estimated time of arrival of a Vessel at a Terminal by the party responsible for the Vessel.

**"Ex Ship"** shall have the meaning given to the term DES or DDP (as relevant) in Incoterms® 2000, or DAP or DDP (as relevant) in Incoterms® 2010, except as modified by Parts 1 and 7 of the GTCs. Where the Special Provisions refer to DES, DAP or DDP (as relevant), the provisions in the Agreement relating to Ex Ship as set out in Part 7 of these GTCs shall be deemed to apply.

**"Ex Tank", "Into Tank" and "In Situ"** shall have the meaning given to it in Part 3 Section 1 of these GTCs.

**“FIP”** means free into pipeline.

**“FOB”** shall: (i) for waterborne Goods, have the meaning given to it in Incoterms® 2010, except as modified by Parts 1 and 5 of these GTCs; and (ii) for Goods transported by pipeline or truck, have the meaning given to it in Article 2 of the Uniform Commercial Code, except as modified by Parts 1, 2 and 4 of these GTCs.

**“Force Majeure Event”** shall have the meaning given to it in Part 1 Section 8 of these GTCs.

**“Free Pratique”** means clearance granted to a Vessel to proceed into a port after compliance with all relevant health regulations.

**“Goods”** means those goods, whether crude oil, refinery feedstock, refined petroleum products, ethanol, RINs, or otherwise that are the subject of a transaction to which these GTCs are made applicable, as more fully set out in the relevant Special Provisions.

**“Governmental Authority”** means any foreign or U.S. federal, state, regional, local or municipal governmental body, agency, instrumentality, authority or entity established or controlled by a government or subdivision thereof, including any legislative, administrative or judicial body, or any person acting on behalf thereof.

**“GTCs”** means these General Terms and Conditions for Purchases and Sales of Crude Oil, Petroleum, and Related Products 2015.

**“ICS”** means the International Chamber of Shipping.

**“ILX”** means an in line transfer.

**“IMO”** means the International Maritime Organization.

**“Indirect Taxes”** includes, but is not limited to, federal, state or local excise taxes, sales and use taxes, ad valorem taxes, motor fuel taxes, gross receipts taxes, franchise taxes, environmental taxes and also includes types of indirect taxes assessed in any foreign country.

**“Inland Barge”** means any combination of boats and barges with the ability to function as a flotilla or as single units which are certified to operate only within the U.S. inland waterways.

**“Inspector’s Report”** means any licensed inspector’s report, certificate of quantity and quality, or other equivalent document with respect to the Goods issued by an inspector in accordance with Approved Industry Practice.

**“Institute Cargo Clauses (A)”** means the most recent publication of the terms and conditions known as Institute Cargo Clauses (A) issued by the Lloyd’s Market Association and International Underwriting Association of London.

**“Institute Strikes Clauses (Cargo)”** means the most recent publication of the terms and conditions known as Institute Strikes Clauses (Cargo) issued by the Lloyd’s Market Association and International Underwriting Association of London.

**“Institute War Clauses (Cargo)”** means the most recent publication of the terms and conditions known as Institute War Clauses (Cargo) issued by the Lloyd’s Market Association and International Underwriting Association of London.

**“ISGOTT”** means the International Safety Guide for Oil Tankers and Terminals, as current from time to time.

“**ISPS**” means the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS.

“**Laydays**” shall have the meaning given to it, in the case of: (i) FOB deliveries, in Part 5 Section 4 of these GTCs, or (ii) Ex Ship deliveries, in Part 7 Section 4 of these GTCs.

“**Laytime**” means: (i) for FOB deliveries, the time allowed to the Seller for loading or, (ii) for CIF, CFR or Ex Ship deliveries, the time allowed to the Buyer for discharge, as the case may be.

“**Lightering**” means the use of lightering Vessels to carry cargo discharged from a larger Vessel in order to reduce the draught of larger Vessel.

“**Measurement**” means the measurement of the quantities of the Goods and the taking of and analysis of samples for the purposes of determining the compliance of the Goods with the quality and quantity provisions of the Special Provisions.

“**MSDS**” means a material safety data sheet, as defined in Applicable Law.

“**MTSA**” means the US Maritime Transportation Security Act 2002.

“**NAFTA**” means the North American Free Trade Agreement.

“**Nomination**” means written notice of a proposed Vessel containing all the information required in, as applicable, Part 5 Section 5, Part 6 Section 7 and Part 7 Section 5 of these GTCs.

“**NOR**” means the notice of readiness submitted by the Vessel’s master or its agent when the Vessel arrives at the Terminal, confirming that: (i) the Vessel has arrived at the Terminal, (ii) has completed all formalities, including any required coastguard inspections; and (iii) is in all ways ready, legally and operationally, to proceed to the berth and commence cargo operations. The Vessel will be considered to have arrived at the Terminal when it is at the customary berth, anchorage or fleeting area. If these conditions are not met, the NOR shall be considered invalid and the Vessel must re-tender NOR when the conditions for validity are met.

“**NSV**” means net standard volume.

“**OBQ**” means on board quantity.

“**Ocean-Going Barge**” means an ocean-going barge that is a nonself-propelled vessel of at least 100 gross tons making voyages beyond the Boundary Line (as defined in 46 CFR Part 7).

“**OCIMF**” means Oil Companies International Marine Forum.

“**Party**” means either the Seller or the Buyer to the Agreement and, collectively, the Seller and the Buyer shall be referred to as the “**Parties**”.

“**Payment Date**” means the date payment under this Agreement is due.

“**Pipeline Delivered**” means out of the pipeline.

“**Public Official**” shall include (i) any minister, civil servant, director, officer or employee or other official of any government or any department, agency or body, and/or of any government-owned or controlled company, any company or enterprise in which a government owns an interest of more than thirty percent, and/or of any public international organization; (ii) any person acting in any official, legislative, administrative or judicial capacity for or on behalf of any government department, agency, body, or public international organization, including without limitation any judges or other court

officials, military personnel and customs, police, national security or other law enforcement personnel; and (iii) any close family member of any of the foregoing.

**“Qualified Institution”** means either: (i) a commercial bank or trust company organized under the laws of the U.S. or a political subdivision thereof, that has: (1) at least an A- Long Term Rating Issued by Standard & Poor’s Ratings Group and an A3 Deposit Rating issued by Moody’s Investor Services, Inc.; (2) total equity of at least ten billion US Dollars (\$10,000,000,000); and (3) not exceeded any of Secured Party’s internal credit limits in place at the time of the establishment of the letter of credit; or (ii) a first class international bank reasonably acceptable to the Seller.

**“Q88”** means Intertanko’s Standard Chartering Questionnaire 88.

**“Receiving Party”** means the customers, carriers, or other designees of the Buyer which receive the Goods delivered by the Seller to the Buyer under this Agreement.

**“Restricted Jurisdiction”** means any country, state, territory or region against which there are sanctions imposed by the United States, United Kingdom, United Nations or any other sanctions specified in the Special Provisions which prohibit, restrict, or condition the shipment through or thereto of the Goods.

**“Setoff”** as used herein means setoff, offset, combination of accounts, right of retention or withholding, or any similar right or requirement to which the Liquidating 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 Liquidating Party.

**“Special Provisions”** means the commercial terms and/or any other terms and conditions of the Parties’ agreement.

**“Tanker”** means any self-propelled tanker, or any barge, whether such barge is under tow or sailing as an integrated unit, which is certified for ocean service.

**“Terminal”** means any refinery or terminal facility, single point mooring, single buoy mooring, or Vessel delivering Goods to or receiving Goods from a Vessel.

**“Trading Hub”** means a point at which there is a regular market for the purchase and sale of goods of the same kind as the Goods, with multiple buyers and sellers, including: (a) major common carrier pipelines; and (b) public Terminals with water or common carrier pipeline access.

**“VEF”** means vessel experience factor calculated in accordance with standard industry practice.

**“Vessel”** means Tankers, Inland Barges and Ocean-Going Barges.

1.2 In construing this Agreement, and except where the context otherwise requires, the following principles shall be followed:

1.2.1 words denoting the singular include the plural and vice versa; words denoting any gender include all genders; and words denoting persons include firms and corporations and vice versa; and

1.2.2 the words “include” and “including” shall mean “include” or “including without limiting the generality thereof”, and are used in an illustrative sense and not a limiting sense; and

1.2.3 reference to a Part or Section shall mean a part or section of these GTCS, and reference to a particular Applicable Law, form, or contract, shall be construed to refer to such Applicable Law, form, or contract as the same shall be amended, supplemented, restated, or superseded.



**Section 2. Representations and Warranties**

- 2.1 At the time specified for title in the Goods to transfer to the Buyer, the Seller hereby represents and warrants that the Buyer receives marketable title in the Goods, free and clear of any liens or encumbrances, and that the Seller has full right and authority to transfer such title and effect delivery of such Goods to the Buyer.
- 2.2 Each Party represents and warrants to the other that unless otherwise stipulated in the Special Provisions, each Party is acting under this Agreement as a principal and not as an agent.

**Section 3. Quality and Claims In Respect of Quality/Quantity**

- 3.1 Quality:
- 3.1.1 The sole quality specifications for the Goods shall be those contained in the Special Provisions (but modified in the case of a transaction governed by Part 2, to the extent necessary to meet any minimum or maximum specification of the relevant pipeline to allow for the contemplated delivery), provided that where there are no quality provisions in the Special Provisions, the quality of the Goods shall comply with, in the case of:
- (a) crude oil delivered by or to a Vessel, meet the usual production grades at the time of sale; or
  - (b) Goods other than crude oil, meet the latest industry specifications,
- provided however, that in no circumstance shall the Goods contain any deleterious substances or concentrations of any contaminants that may make the Goods either commercially unacceptable in general industry application or, where relevant, render it a lower grade.*
- 3.1.2 EXCEPT AS MAY BE EXPRESSLY PROVIDED IN ELSEWHERE IN THE AGREEMENT, THERE ARE NO REPRESENTATIONS, GUARANTEES OR WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS, OR SUITABILITY OF THE GOODS FOR ANY PARTICULAR PURPOSE, OR OTHERWISE, WHICH EXTEND BEYOND THE FOREGOING.
- 3.2 Claims In Respect of Quality/Quantity:
- 3.2.1 Any complaint of deficiency of quantity (subject to Part 5 Section 2.3 or Part 6 Section 2.3, as relevant) or non-conformity of quality under or in connection with the Agreement, must be delivered in writing: (a) by the complaining Party to the other Party within ninety (90) days of the date of title transfer; and (b) must be accompanied by supporting documentation and reasonable details of the facts on which the claim is based. Any claim submitted that does not satisfy the requirements specified in the preceding sentence shall be deemed waived.
- 3.2.2 For waterborne Goods, no claim shall be admitted in respect of any deficiency of quantity where the difference between the loaded and discharged quantity is 0.3 (zero point three) percent of the loaded quantity or less.

**Section 4. Destination**

- 4.1 It is a condition of the Agreement that the Goods shall not be imported (by the Buyer or others), directly or indirectly and irrespective of means, to any destination which is at the time of such import prohibited under Applicable Law. The Buyer shall keep itself informed as to such Applicable Law.
- 4.2 The Buyer acknowledges that, as of each trade date and any subsequent delivery date, it is informed of all such Applicable Laws.

- 4.3 The Buyer undertakes that the Goods deliverable hereunder shall not:
- 4.3.1 be exported to any Restricted Jurisdiction;
  - 4.3.2 be sold or supplied to any natural or legal person in any Restricted Jurisdiction; or
  - 4.3.3 be sold or supplied to any natural or legal person for the purposes of any commercial activity carried out in or from any such Restricted Jurisdiction.
- 4.4 For waterborne Goods, so as to enable the Seller to comply with Applicable Law, the Buyer, on request from the Seller, shall provide the Seller with the legally necessary documentation so required by the Seller. Such documentation shall be provided within thirty (30) days of the date of request or within such lesser period as required by Applicable Law. The obligations of the Buyer to comply with such requirement shall not be affected by any sale or disposal of the Goods in question by the Buyer.
- 4.5 In the event of any failure to comply with such undertakings, or if the Seller has reasonable grounds for believing that such undertakings will not be complied with and will subject the Seller to regulatory, customs, governmental or other action as a result, the Seller may (without prejudice to its other rights), upon notice to the Buyer, suspend performance and demand adequate assurance pursuant to its rights under the Uniform Commercial Code, or decline to commence or complete loading.

**Section 5. Taxes**

- 5.1 The Buyer's responsibilities:
- 5.1.1 The Buyer shall be responsible for and indemnify the Seller for:
    - (a) any Indirect Taxes, duties, imposts, fees, charges and dues of every description imposed or levied by any governmental, local or Terminal authority on the Goods supplied hereunder, or on its export, purchase, delivery, transportation, ownership, sale or use, in respect of any time after title and risk in such Goods has passed to the Buyer;
    - (b) the New York Motor Fuel Excise Tax, the Tennessee Fuel tax, or any similar motor fuel and sales/use taxes that have been prepaid by the Seller but are to be passed on to the Buyer in accordance with industry practice; and
    - (c) any Quebec Motor Fuel Tax incurred on Goods delivered into Quebec regardless as to:
      - (i) which Party arranges for the carriage of the Goods;
      - (ii) where title and risk of loss passes; or
      - (iii) whether the Seller passes title and risk of loss for such Goods to the Buyer.
  - 5.1.2 In respect of any:
    - (a) waterborne FOB transaction, any taxes, dues and imposts of every description incurred in respect of the Vessel at the load Terminal, shall be for the account of the Buyer; and
    - (b) any CIF/CFR transaction, any taxes, dues and imposts of every description incurred in respect of the Vessel at the discharge Terminal (except for any specified in Worldscales as being for the Vessel owner's account), shall be for the account of the Buyer;and the Seller's right to require reimbursement of these amounts is limited only by the relevant statute of limitations.
  - 5.1.3 Where Applicable Law or regulation imposes upon the Seller the obligation to collect any Indirect Taxes, the Buyer shall promptly reimburse the Seller for the amount of such Indirect

Taxes, less any applicable allowances, unless the Buyer, in advance, has provided the Seller with documentation of applicable licenses or exemption certificates. The Buyer must reimburse the Seller for any Indirect Taxes that the Seller must pay due to subsequent discovery of taxability or under audit by any taxing authority, including any interest, penalties and costs in respect thereto. The Seller's right to require reimbursement of Indirect Taxes is limited only by the relevant statute of limitations.

- 5.2 The Seller's responsibilities:
- 5.2.1 Subject always to Part 1 Section 5.1, the Seller shall be responsible for and indemnify the Buyer for:
- (a) any Indirect Taxes, duties, imposts, fees, charges and dues of every description imposed or levied by any governmental, local or Terminal authority on the Goods supplied hereunder, in respect of any time prior to title and risk in such Goods passing to the Buyer; and
  - (b) any income, franchise or other type of direct tax that may inure to the Seller as a result of this transaction including the "Business and Occupation Tax" levied by the State of Washington or any political subdivision of the State of Washington.
- 5.2.2 In respect of any deliveries Ex Ship, any taxes, dues and imposts of every description incurred in respect of the Vessel at the discharge Terminal shall be for the Seller's account and the Buyer's right to require reimbursement of these amounts is limited only by the relevant statute of limitations.
- 5.3 If gasoline, diesel, or kerosene (including aviation fuel) is sold or purchased hereunder, each Party represents that it is appropriately registered with the Internal Revenue Service for the purpose of the federal manufacturers excise tax. Each Party also represents that it holds the applicable state tax registrations to purchase, use, resale, transport or handle the Goods.
- 5.4 Upon the Seller's request or upon any change in registration or exemption status in any taxing jurisdiction where the Buyer conducts business, the Buyer shall deliver to the Seller the appropriate state registration number, the Buyer's federal employer identification number and/or amended exemption certificates. The Buyer shall deliver such notifications to the Seller within thirty (30) days of such request or change in registration or exemption status or the Seller will invoice the Buyer for applicable taxes and the Buyer shall be responsible for and indemnify the Seller for any costs, penalties or additional taxes that result from the Buyer's failure to comply with its obligations pursuant to this Part 1 Section 5.4.
- 5.5 When one Party makes payments to be reimbursed by the other Party, the paying Party shall use its best efforts to verify the correctness of the charges and to pay only the minimum amount due. There shall be no reimbursement for penalties or interest incurred as the result of the paying Party's negligence. If applicable, federal oil spill tax may be billed as a separate line item on the invoice.
- 5.6 Save as otherwise specifically set out in the Special Provisions or for any sales DDP, the Seller shall in no instance be the importer of record but shall be responsible for ensuring that the Buyer is provided with all necessary documentation required to comply with customs and excise entry procedures at the discharge Terminal and all duties and taxes that arise in respect of such customs and excise entry shall be for the Buyer's account.
- 5.7 For all transactions of Goods at either the Mexican/USA or Canadian/USA borders (as the case may be), unless otherwise stipulated in the Special Provisions, the Goods are deemed not eligible for NAFTA preferential duty treatment, except where the Seller (a) has provided, prior to or at the time the trade is entered into, appropriate documentation necessary to substantiate that such Goods are eligible for

NAFTA preferential duty treatment, or (b) warrants that such Goods qualify as “2710: Petroleum oils and oils obtained from bituminous minerals, other than crude” under the US Harmonized Tariff Schedule.

Where the Special Provisions stipulate that the Goods qualified for NAFTA preferential duty treatment and the Goods are subsequently found to be ineligible for NAFTA preferential duty treatment, the Seller shall reimburse the Buyer for any customs duties, taxes, fees, interest and penalties incurred by the Buyer as a result of such Goods being found to be ineligible for NAFTA preferential duty treatment provided that:

- 5.7.1 the Buyer provided timely notice to the Seller that the relevant customs authority (“Customs”) was challenging the Buyer’s claim for NAFTA preferential duty treatment so that the Seller could respond to Customs’ challenge adequately and in a timely fashion;
- 5.7.2 whether at the Seller’s request or otherwise, the Buyer filed an adequate and timely response to Customs’ challenge;
- 5.7.3 the Buyer permitted the Seller to assume control and direction of a part or all, as determined by the Seller, of the handling and response to Customs’ challenge including audit enquiries, appeals, litigation and any other proceedings in connection therewith and provided all reasonable cooperation requested by the Seller of the Buyer; and
- 5.7.4 the Buyer made no act or omission to prejudice or otherwise adversely affect the eligibility of the Goods, or the claim, for NAFTA preferential duty treatment.

#### **Section 6. Payment**

6.1 Except as expressly provided elsewhere in the Agreement, payment shall be made by the Buyer to the Seller without any discount, deduction, withholding, offset or counterclaim by wire transfer of same day funds on or before the Payment Date. Where any Applicable Law requires a deduction or withholding in respect of tax to be made, the Buyer shall inform the Seller of that requirement and shall pay such additional amount to the Seller as will ensure that the net amount received by the Seller is equal to the full amount that the Seller would have received had the deduction or withholding not been required.

6.2 Payment Documents:

6.2.1 Payment for the Goods shall be made against presentation to the Buyer of the invoice referred to in Part 1 Section 6.4 and, subject to Part 1 Section 6.2.2 below:

- (a) For FOB/CIF/CFR Vessel deliveries:
  - (i) US Coastwise Tankers, Ocean-Going Barges and Inland Barges, a copy of the certificates of quantity and quality or Inspector’s Report as issued in accordance with the Agreement showing the quantity and quality of the Goods loaded.
  - (ii) Non-US Tankers, 3/3 original bills of lading properly issued or endorsed to the order of Buyer, a copy of the valid certificate of origin, and a copy of the certificates of quantity and quality or Inspector’s Report as issued in accordance with this Agreement showing the quantity and quality of the Goods loaded.
- (b) For Ex Ship deliveries, a copy of the certificates of quantity and quality as issued in accordance with the Agreement showing the quantity and quality of the Goods discharged and, for foreign Goods, a copy of a valid certificate of origin.
- (c) For all pipeline deliveries, a copy of the pipeline ticket containing the information identifying the transaction, the net volume transferred and the quality of the Goods, as issued by the relevant Terminal or pipeline operating company.

- (d) For DAP, DAT, FOB and FCA truck deliveries, a copy of the monthly statement issued by ExTex, or any successor or substitute company, detailing the amounts due on the Goods.
  - (e) For case of Ex Tank, Into Tank, In Situ deliveries, a copy of the certificate of quantity and quality (or equivalent documents) for the Goods issued at the relevant Terminal/pipeline facility.
- 6.2.2 Where the Parties have agreed in the Special Provisions that electronic documents shall be used, the provisions of Appendix C shall also apply.
- 6.3 The Seller's Indemnity In Lieu of Shipping Documents:

In the event the bills of lading referred to in Part 1 Section 6.2 (a) (ii) are temporarily unavailable on the Payment Date, the Buyer shall pay for the Goods against the Seller's invoice and a letter of indemnity in the format set out in in Appendix B, counter-signed by the Seller's bank if so requested by the Buyer.
- 6.4 The Seller's Invoice:
  - 6.4.1 The Seller's invoice shall be prepared on the basis of:
    - (a) for all deliveries other than those set out in Part 1 Section 6.4.1(b), the certificate of quantity and, where applicable, quality (or equivalent document in respect of the Goods issued at the load Terminal; or
    - (b) in the case of delivery Ex Ship, the Inspector's report at the discharge Terminal.
  - 6.4.2 Where the applicable pricing mechanism or the availability of discharge quantities does not allow for the preparation of a final invoice prior to the Payment Date, the Seller may issue and the Buyer shall make payment against a provisional invoice. The provisional invoice shall, unless otherwise agreed between the Parties, be based upon:
    - (a) the pricing information available to the Seller at the time it issues such provisional invoice; and
    - (b) the mean of any maximum or minimum quantity specified in the Special Provisions.

Payment of any balance due by either Party to the other shall be made within three (3) Business Days of receipt of the Seller's final invoice which shall be prepared as soon as practicable after all relevant pricing and/or quantity information becomes available to the Seller.
  - 6.4.3 Unless otherwise agreed, the Buyer shall remain liable for any other costs, expenses and charges which arise under the terms of the Agreement and the Buyer's payment shall be due for immediate settlement to the Seller pursuant to the terms of this Part 1 Section 6.
- 6.5 Payment Date:
  - 6.5.1 The Payment Date shall be as stated in the Special Provisions, or, if not stated in the Special Provisions, the Payment Date shall be three (3) Business Days following the Buyer's receipt of the invoice and supporting documents.
  - 6.5.2 Subject to Part 1 Section 6.5.3, if the Payment Date is based on the date on which a Vessel tenders a valid NOR and such NOR is tendered prior to the commencement of any agreed Laydays established in the Special Provisions, then the official NOR date for pricing and payment purposes shall be the first day of such agreed Laydays. If a Vessel tenders NOR after

such agreed Laydays, then the official NOR date for payment purposes shall be the last day of such agreed Laydays.

6.5.3 For CIF/CFR deliveries where the payment due date in the Special Provisions is based either on the date on which a Vessel tenders NOR at the discharge Terminal or on the completion of discharge date, then providing title in the Goods has passed to the Buyer, if the Vessel for any reason either:

(a) does not tender NOR at the discharge Terminal; or

(b) does not complete discharge;

in both instances, within thirty (30) days after the bill of lading date, then for payment purposes, payment shall be due thirty (30) days after the bill of lading date.

6.5.4 In the event an entire amount on an invoice is disputed in good faith and cannot be timely verified, confirmed and agreed, such amount shall not be paid under this Agreement until the dispute is resolved. Where a Party disputes only a portion of an amount on an invoice, the undisputed amount shall be paid. By way of example, and not limitation, if the Parties disagree: (a) on the price, the amount due using the lower price shall be paid, or (b) on the volume delivered, the amount due using the lower estimated volume shall be paid, and, in each case, only the remaining amount shall be settled later. The Parties shall make every reasonable effort to achieve mutual agreement on such unresolved amount prior to the applicable Payment Date, and in any case, as soon as reasonably possible.

6.6 Payments Due on Weekends or Bank Holidays:

If the Payment Date falls on a Saturday or U.S. Bank Holiday other than a Monday, payment shall be made on the preceding Business Day. If the Payment Date falls on a Sunday or a Monday U.S. Bank Holiday, payment shall be made on the succeeding Business Day. If this Agreement includes an exchange for related position ("EFRP"), payment shall be made on the later of the date indicated above or one (1) Business Day after the posting of the EFRP.

6.7 Interest:

For each day on which a Party owes a past-due balance, such balance shall accrue simple interest (basis three hundred and sixty (360) days per year) at a rate equal to the Prime Rate as listed in the Wall Street Journal on the Payment Date for each day on which any balance is past due plus two percent (2%). If a Party accepts payment from the other Party after the Payment Date, such action shall not waive the Party's right to receive interest and in no circumstances will be considered as an agreement to provide extended credit. In the event of a disputed amount pursuant to Part 1 Section 6.5.2, upon a determination that a disputed amount is in fact due and payable, interest shall accrue from the original Payment Date.

The provisions of this Part 1 Section 6.7 shall not be construed as an indication of any willingness on the part of the Party receiving payment to provide extended credit as a matter of course, and shall be without prejudice to any rights and remedies which the Party receiving payment may have under the Agreement or otherwise. Any expenses incurred by the Party receiving payment, including reasonable legal fees, court costs and collection agency fees, caused by delayed or non-payment by the paying Party of the amount due shall be for the account of the paying Party and payable upon demand with supporting documentation.

6.8 Payment Account:

Payment shall be made to the Seller's bank, account name and account number as specified in the Special Provisions or, subject to Part 1 Section 6.11, as otherwise notified by the Seller in writing.

6.9 Netting of Invoices:

If the Parties agree prior to the Payment Date, they may net invoices for amounts that are due to each other on the same date. In that case, prior to the due date, the Parties shall confirm, by telephone or otherwise, the invoice amounts and the amount remaining, if any, after net out. Any remaining balance shall be paid by the Party owing such amount to the other Party on the date the gross amounts were due. The gross amounts owed between the Parties will be extinguished upon receipt of the balance due after net out to the Party owed the balance. Notwithstanding the above, payments for any claims including demurrage, quantity, quality or any indemnity shall not be included in such netting of invoices.

6.10 Pricing:

Pricing shall be as specified in the Special Provisions. For pricing days, if not provided for in the Special Provisions, the effective pricing day for weekends and holidays shall be the following: (a) if the pricing day falls on a Saturday, the first preceding day on which the price is published; (b) if the pricing day falls on a Sunday, the first succeeding day on which the price is published; or (c) if the pricing day falls on any day other than a Saturday or Sunday on which there is no price posted, the first succeeding day on which the price is published. If the pricing period is five (5) days or more, the price will be calculated only with reference to the posted days within the relevant period (*i.e.*, for weekly or monthly price periods all non-posting days shall be ignored).

6.11 Change of Banking Information:

If at any time either Party sends notice of changed banking information or an invoice containing banking information different from that currently in the other Party's records, the paying Party may, prior to making any payment then due, require that the other Party provide email or fax confirmation of the new banking information as well as the paying Party's usual account opening information. The other Party shall provide such information in a timely manner and payment shall not be due until one (1) Business Day after the paying Party has completed its account opening process (including any "know your customer" verification). The paying Party shall update its records in a timely manner upon receipt of the confirmation so as to avoid unnecessary further requests for confirmation.

**Section 7. Financial Responsibility**

If at any time the reliability or financial responsibility of a Party (the "**Posting Party**") under any transaction governed by this Agreement should, in the reasonable opinion of the other Party (the "**Secured Party**"), be or become impaired or unsatisfactory, the Secured Party shall have the right upon written notice (which shall refer to the transaction) to require the Posting Party to provide financial assurance at the Secured Party's choosing in the form of any of:

- 7.1 prepayment, received by the Secured Party no later than two (2) Business Days after such demand, and in any event prior to commencing the Delivery Period;
- 7.2 establishing, at the Posting Party's cost, by 1300 hours (New York, NY time) on the second Business Day following such request (and in any event prior to commencing the Delivery Period), either an irrevocable standby or a documentary letter of credit, in a form substantially as set out in Appendix D or E (whichever is applicable), and in all respects acceptable to the Secured Party, opened by a Qualified Institution; or
- 7.3 a guaranty in a form substantially as set out in Appendix F, and in all respects acceptable to the Secured Party, and from a parent or Affiliate of the Posting Party acceptable to the Secured Party, received by the Secured Party no later than two (2) Business Days after such demand, and in any event prior to commencing Delivery Period;

in each case, in an amount equal to, or greater than, the Secured Party's good faith estimate of its financial exposure to the Posting Party for transactions subject to this Agreement. The Secured Party may determine its financial exposure in any reasonable manner. Failure by the Posting Party to provide financial assurance, as required, shall be

a material breach and shall give the Secured Party the right to terminate the affected transaction. Notwithstanding any agreed Delivery Period, during the period following notice and prior to the establishment of said financial assurance, the Secured Party shall have no obligation to deliver Goods to the Posting Party under any affected transaction or to extend to the Posting Party any credit whatsoever.

If at any time financial assurance previously provided is considered insufficient by the Secured Party, (whether due to a subsequent increase in financial exposure or otherwise), or ceases to meet the requirements of this Section, then the Secured Party may require the posting of additional or substitute financial assurance on the second Business Day after request.

### **Section 8. Force Majeure**

8.1 A Party will not be liable for any failure to perform its obligations under the Agreement to the extent that such performance is rendered impossible or commercially impracticable due to any cause, whether foreseeable or unforeseeable, that is reasonably beyond the control of the Party declaring force majeure, and, which such Party could not have reasonably mitigated or overcome (each such event, a “**Force Majeure Event**”), including, so long as such event meets the aforesaid standards, any of the following events:

8.1.1 compliance with Applicable Law or any guidelines, requests, or the like, of any Governmental Authority or of international organizations of which the United States is a member, including the International Energy Agency;

8.1.2 restriction or cessation of production of Goods due to the imposition of conditions or requirements by any Government Authority that makes it necessary to cease or to reduce the manufacture of the Goods;

8.1.3 hostilities of war (declared or undeclared), embargoes, blockades, civil unrest, riots or disorders, terrorism, or sabotage;

8.1.4 fires, explosions, lightning, maritime peril, collisions, storms, landslides, earthquakes, floods, and other acts of God;

8.1.5 strikes, lockouts, or other labor difficulties (whether or not involving employees of the Seller or the Buyer); provided, however, that settlement of strikes and other labor difficulties shall be wholly within the discretion of the Party having difficulty; or

8.1.6 disruption or breakdown of production or transportation facilities, equipment, labor or materials, including the closing of harbors, pipelines or other transportation routes.

8.2 For purposes of this Agreement, the term Force Majeure Event expressly excludes:

8.2.1 any lack of a market or unfavorable market conditions for any Goods;

8.2.2 any failure by a Party to apply for, obtain or maintain any permit, license, approval or right of way necessary under Applicable Law for the performance of any obligation hereunder;

8.2.3 a Party’s inability to economically perform its obligations under this Agreement; or

8.2.4 any delay, hindrance, interference with, curtailment or prevention of a Party’s accrued obligation to make payment under the Agreement whether in respect of price, despatch, demurrage or any other financial obligation whatsoever where the impediment is solely caused by lack of funds of such Party.



- 8.3 Except where the context of the transaction clearly demonstrates that the Parties intended otherwise, the inability:
- 8.3.1 of the Seller to supply Goods from its originally intended source shall not relieve the Seller of the obligation to supply Goods, even if the cost of such alternate supply is greater than the cost of the original source; and
  - 8.3.2 of the Buyer to use the Goods for its originally intended purpose or to resell the Goods to its originally intended purchaser shall not relieve the Buyer of the obligation to take and pay for delivery.

For the avoidance of doubt, if delivery was to occur at or from a Trading Hub, the context will be conclusively presumed to be consistent with Part 1 Sections 8.3.1 and 8.3.2 above.

- 8.4 Without prejudice to the provisions of Part 2 Section 5, Part 5 Section 7.3.5, Part 6 Section 9.3.3 and Part 7 Section 7.3.3, in the event that either Party (the “**Relying Party**”) believes a Force Majeure Event has occurred that will require it to invoke the provisions in this Part 1 Section 8, the Relying Party shall use commercially reasonable efforts to give prompt verbal notice to the other Party followed by written notice within two (2) Business Days following the occurrence of such event, of the underlying circumstances of the particular causes of the Force Majeure Event, the expected duration thereof and the volume of Goods affected. The Relying Party shall also use commercially reasonable efforts to mitigate and overcome the effects of the Force Majeure Event and to give the other Party notice of the cessation of the Force Majeure Event and the date when performance is expected to resume. In the event the Relying Party delays or fails to comply with the notice provisions of this Section, the Relying Party shall be liable to the other Party for any loss such other Party reasonably could have avoided had it received prompt notice. Such other Party’s calculation is prima facie evidence of the amount of its loss that could have reasonably been avoided.
- 8.5 Without prejudice to the provisions of Part 2 Section 5, Part 5 Section 7.3.5, Part 6 Section 9.3.3 and Part 7 Section 7.3.3, the appropriate relief under this Section for a Force Majeure Event shall be as follows:
- 8.5.1 where performance of the delivery obligation is not permanently impossible or commercially impracticable, but is delayed, hindered, reduced or interfered with, either Party shall be entitled by written notice to the other Party, to terminate if the Force Majeure Event continues to excuse performance beyond the earlier of: (i) midnight local time after the last date of the agreed Delivery Period set out in the Special Provisions; or (ii) such time as the Force Majeure Event no longer excuses performance; or
  - 8.5.2 where performance of any obligation other than as set out in Part 1 Section 8.5.1 is delayed, hindered, reduced or interfered with, the affected obligation shall be immediately postponed without liability for damages, penalties and other contractual sanctions until such time as the Force Majeure Event no longer excuses performance.
- 8.6 Without prejudice to the foregoing provisions, where there is (a) curtailment or interference with the Seller’s availability of the Goods of the quality deliverable hereunder where such Goods are for delivery at or from a point other than a Trading Hub, or (b) allocation by the relevant pipeline, the obligation of the Seller to supply Goods from other sources shall be determined in accordance with Section 2-615 of the Uniform Commercial Code, and the obligation of the Buyer to take delivery shall be determined by comparable standards.

#### **Section 9. Limitation of Liability and Indemnity**

- 9.1 EXCEPT TO THE EXTENT EXPRESSLY PROVIDED UNDER THIS AGREEMENT, AND WITHOUT PREJUDICE TO PART 1 SECTION 11, NEITHER PARTY SHALL BE REQUIRED TO PAY, OR BE LIABLE TO, THE OTHER PARTY FOR SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, OR INDIRECT DAMAGES UNDER OR IN CONNECTION WITH THE AGREEMENT OR ANY OTHER THEORY OF LAW (WHETHER IN CONTRACT, TORT OR OTHERWISE) (INCLUDING, IF

AND TO THE EXTENT THAT THEY MIGHT OTHERWISE NOT CONSTITUTE SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, OR INDIRECT DAMAGES, PLANT SHUT-DOWN OR REDUCED PRODUCTION, LOSS OF POWER GENERATION, BLACKOUTS OR ELECTRICAL SHUT-DOWN OR REDUCTION, GOODWILL, USE, MARKET REPUTATION, BUSINESS RECEIPTS OR CONTRACTS OR COMMERCIAL OPPORTUNITIES, WHETHER OR NOT FORESEEABLE.

- 9.2 EACH PARTY TO THE AGREEMENT SHALL INDEMNIFY, DEFEND, AND HOLD THE OTHER HARMLESS FROM CLAIMS, DEMANDS, AND CAUSES OF ACTION ASSERTED AGAINST THE OTHER BY ANY OTHER PERSON (INCLUDING EMPLOYEES OF EITHER PARTY) FOR PERSONAL INJURY, FOR LOSS OF OR DAMAGE TO PROPERTY, OR FOR VIOLATIONS OF LAW RESULTING FROM THE WILLFUL MISCONDUCT OR NEGLIGENT ACTS OR OMISSIONS OF THE INDEMNIFYING PARTY. WHERE PERSONAL INJURY, DEATH, OR LOSS OF OR DAMAGE TO PROPERTY IS THE RESULT OF THE JOINT NEGLIGENCE OR MISCONDUCT OF THE PARTIES HERETO, THE PARTIES EXPRESSLY AGREE TO INDEMNIFY EACH OTHER IN PROPORTION TO THEIR RESPECTIVE SHARE OF SUCH JOINT NEGLIGENCE OR MISCONDUCT.

**Section 10. Time Bar**

Without derogating from the specific time limits set out in this Agreement requiring compliance within a given period, all of which shall remain in full force and effect, and excluding any claims for any indemnity or payment of taxes, legal proceedings in respect of any claim or dispute arising under the Agreement in accordance with Part 1 Section 27 shall be filed within one (1) year of the date on which the cause of action has accrued, failing which the claim shall be time barred and any liability or alleged liability of the other Party shall be finally extinguished.

**Section 11. Default and Liquidation; Setoff**

- 11.1 For the purposes of this Part 1 Section 11:
- 11.1.1 **“Forward Contract”** shall mean either a forward contract or a master netting agreement as defined in the Bankruptcy Code (11 U.S.C. Sec. 101(25) and (38A)).
  - 11.1.2 **“Trading Forward Contracts”** shall mean all Forward Contracts between the Parties other than “Specified Forward Contracts.”
  - 11.1.3 **“Specified Forward Contracts”** shall mean Forward Contracts between the Parties where the BP Party is the downstream refining and marketing business or Air BP divisions of BP Products North America Inc.
- 11.2 The Parties acknowledge that this Agreement is a Forward Contract, unless the maturity date is not more than two (2) days after the date this Agreement was entered into.
- 11.3 If one Party (the **“Defaulting Party”**):
- 11.3.1 becomes the subject of bankruptcy or other insolvency proceedings for the appointment of a receiver, trustee or similar official;
  - 11.3.2 becomes insolvent or generally unable to pay its debts as they become due;
  - 11.3.3 proposes to make or makes a general assignment for the benefit of creditors;
  - 11.3.4 is dissolved;

- 11.3.5 transfers, merges or consolidates with any other person where the entity existing after the transfer, merger or consolidation does not assume the obligations of the Party, by operation of law or otherwise,
- 11.3.6 failure by the Defaulting Party to make, when due, any payment (in excess of US \$5,000,000.00) under the Agreement required to be made by it if such failure is not remedied on or before the third Business Day in the case of such payment after notice of such failure is given to the Defaulting Party;
- 11.3.7 failure to provide financial responsibility in accordance with Section 7;
- 11.3.8 failure by the Defaulting Party or its credit support provider 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;
- 11.3.9 the expiration or termination of a credit support document or the failing or ceasing of a credit support document, or any security interest granted by the Defaulting Party or credit support provider to the other Party pursuant to any 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 the Defaulting Party under each transaction to which such credit support document relates without the written consent of the other Party;
- 11.3.10 the Defaulting Party or its 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); or
- 11.3.11 failure by the Party to comply with or perform any material agreement or obligation (other than an obligation to make a payment or delivery under this Master Agreement) to be complied with or performed by the Party in accordance with this Master Agreement if such failure is not remedied within thirty (30) days after notice of such failure is given to the Party by the other Party,

then an “**Event of Default**” shall be deemed to have occurred.

- 11.4 When an Event of Default has occurred, the other Party (the “**Liquidating Party**”) may:
  - 11.4.1 withhold additional deliveries without notice;
  - 11.4.2 terminate this Agreement and either:
    - (a) where the Event of Default has occurred pursuant to Part 1 Sections 11.3.1 through 11.3.4, all other Trading Forward Contracts and Specified Forward Contracts between the Parties, or;
    - (b) where the Event of Default has occurred pursuant to Part 1 Sections 11.3.5 through 11.3.11, all other Trading Forward Contracts, but not Specified Forward Contracts (other than pursuant to the terms thereof), between the Parties;
  - 11.4.3 withhold payment of any amounts due and unpaid hereunder (the “**Unpaid Amounts**”);
  - 11.4.4 close out and liquidate this and (i) where the Event of Default has occurred pursuant to Part 1 Sections 11.3.1 through 11.3.4, all other Trading Forward Contracts and Specified Forward Contracts between the Parties, or (ii) where the Event of Default has occurred pursuant to Part 1 Sections 11.3.5 through 11.3.11, all other Trading Forward Contracts, but not Specified Forward Contracts (other than pursuant to the terms thereof), between the Parties (each a “**Commodity Transaction**”) by calculating the Settlement Amount as determined below; and/or

11.4.5 setoff or aggregate, as appropriate, any or all indebtedness or obligation under this Agreement or any other agreement or obligation between the Parties, whether matured or un-matured, so that all such amounts are aggregated or netted to a single amount payable by one Party to the other, including netting the Unpaid Amounts payable by both parties together with the Settlement Amounts for the terminated Commodity Transactions into a single amount payable by one party to the other (together, the "**Liquidation Amount**"); provided that the Liquidating Party shall have the right to setoff against any Liquidation Amount hereunder any amounts owed under other agreements or obligations by the Defaulting Party to the Liquidating Party and/or any of its Affiliates. For the avoidance of doubt, in its calculation of the Liquidation Amount, the Liquidating Party may setoff or aggregate indebtedness or obligations under the Specified Forward Contracts whether or not terminated.

Notwithstanding the above, payments for any demurrage, quantity, quality or tax claims not yet determinable shall not be included in such netting, and may be asserted later.

11.5 Upon termination under this Section, the **Settlement Amount** shall be determined as follows:

11.5.1 with respect to each Commodity Transaction the Settlement Amount is equal to:

- (a) for delivered quantities not already reflected within Unpaid Amounts, the sum of the quantity delivered multiplied by the purchase price specified in the Agreement; or
- (b) for undelivered quantities, such undelivered quantity multiplied by the difference between the purchase price and the Commodity Transaction Market Price on the date the Liquidating Party terminates the Agreement ("**Termination Date**"), with such amount expressed as a loss or gain based on the difference between the purchase price and the Commodity Transaction Market Price; and
- (c) any other amounts otherwise payable with respect to the Commodity Transaction and not otherwise captured within the definition of Unpaid Amount or Settlement Amount; and

11.5.2 for the avoidance of doubt, shall not include any amounts in respect of payments assigned pursuant to Part 1 Section 14.2.

11.6 The components of any such Settlement Amount shall be discounted to present value as of the Termination Date by the Liquidating Party, using a rate of interest determined by that Party to be commercially reasonable, in order to preserve the economic equivalent of the obligations of the Parties under the affected Forward Contracts.

11.7 The Liquidating Party is entitled to recover reasonable costs incurred in the collection of any amounts owed under this Agreement, including external attorneys' fees and amounts incurred in connection with any legal proceedings.

11.8 The Liquidating Party may, at its option, include in the calculation of the Settlement Amount any amounts owed by the Defaulting Party to any parent or Affiliate of the Liquidating Party.

11.9 Payment of the Settlement Amount shall not relieve either Party from the obligations to settle any valid and timely submitted quality, quantity, tax or demurrage claims not reflected in the calculation of the Liquidation Amount.

11.10 The Liquidation Amount shall be due upon the Termination Date and must be paid in immediately available funds within two (2) Business Days after the Termination Date. If no Termination Date has been set, the Liquidation Amount shall be due within a reasonable time.

- 11.11 The rights under this Section shall be without prejudice to any right of Setoff to which a Party is at any time otherwise entitled whether by operation of law, contract, or otherwise. A Party's failure to exercise its rights under this paragraph shall not be construed as a waiver of such rights.

#### **Section 12. Compliance with Applicable Law**

The Seller and the Buyer shall comply with Applicable Law (which, for the purpose of this Part 1 Section 12 shall be deemed to include the laws of the United States and the United Kingdom), in the performance of their respective obligations under this Agreement and each transaction, including:

- 12.1 that all Goods sold and/or purchased under this Agreement and, where relevant, the chartering and use of any transportation method in respect of any Goods shall be in full compliance with all Applicable Laws. Each Party shall immediately notify the other Party in writing of any violation or alleged violation with respect to the Goods sold in a transaction and/or where relevant, any Vessel or any other arriving means of transport used in a transaction and, upon reasonable request, shall provide the other with evidence of inspections or audits by any governmental entity or agency with respect to such Goods and/or, where relevant, the Vessel or other arriving means of transport;
- 12.2 those Applicable Laws relating to sanctioned individuals or organizations, anti-bribery or anti-money laundering ("**Compliance Obligation**"). In particular, each Party shall ensure that (i) it and its directors, officers, employees and service providers (including but not limited to its subcontractors, agents and other intermediaries) will not, offer, give, promise to give or authorize the giving to any person, including any Public Official, or solicit, accept or agree to accept from any person, including any Public Official, either directly or indirectly, anything of value including gifts or entertainment or facilitation payments in order to obtain, influence, induce or reward any improper advantage in connection with this Agreement, and (ii) it shall take no action which would subject the other to fines or penalties under the Compliance Obligation. Either Party may terminate the Agreement forthwith upon written notice to the other Party at any time if, in its reasonable judgment, the other Party is in breach of the provisions of this Part 1 Section 12.2;
- 12.3 the Seller shall furnish the Buyer with a MSDS that provides warnings and safety and health information concerning the Goods. The Buyer shall be responsible for further distribution of such MSDS as necessary; and
- 12.4 nothing in this Agreement shall relieve either Party of its duties in relation to the safe and proper evaluation, storage, use, transport and disposal of the Goods sold hereunder.

#### **Section 13. General Savings Clause**

Notwithstanding anything to the contrary herein, nothing in the Agreement is intended, and nothing herein should be interpreted or construed, to induce, require or request either Party hereto to act or agree to act in any manner (including failing to take any actions in connection with a transaction) that is inconsistent with, penalized or prohibited, or which could trigger any reporting obligations, under any laws of the United States of America or the United Kingdom, regulations or other official United States of America or United Kingdom government rules or requirements applicable to such Party that relate to international boycotts of any type.

#### **Section 14. Assignment**

- 14.1 Neither Party shall assign the Agreement or any rights or obligations hereunder without the prior consent in writing of the other Party, which consent shall not be unreasonably withheld or delayed. In the event of an assignment in accordance with the terms of this Section, the assignor shall nevertheless remain responsible for the proper performance of the Agreement. Any assignment not made in accordance with the terms of this Section shall be void.
- 14.2 Notwithstanding Part 1 Section 14.1, the Seller may without the Buyer's consent assign all or a portion of its rights to receive and obtain payment under the Agreement in connection with any finance, securitization or bank funding arrangements, always providing such assignment does not contravene any Applicable law

binding upon the Buyer or the Buyer's then current account opening procedures. Any payment made by the Buyer to the payee specified in the Seller's invoice in respect of Goods deliverable under the Agreement shall be in full discharge of the Buyer's payment obligations to the Seller under the Agreement and, for the avoidance of doubt, shall not be included in the determination of Settlement Amount under Part 1 Section 11.3. Any such assignment will not detract from the Seller's obligations under the Agreement.

#### **Section 15. Notices**

- 15.1 Unless otherwise provided in the Agreement, any communication by either Party to the other Party must be sent by express or priority U.S. mail or courier, by facsimile transmission, or by email to the address of the other Party specified for this purpose in the Special Provisions and shall, unless otherwise provided herein, be deemed to have been received as follows:
- 15.1.1 in the case of a communication by facsimile transmission: if it is transmitted on a Business Day before 4.00 p.m., then on that day; in any other case it will be treated as being received on the next Business Day; or
- 15.1.2 in the case of a communication by express or priority U.S. mail or courier: if delivered on a Business Day before 4.00 p.m., then on that day; in any other case it will be treated as being received on the next Business Day.
- 15.2 Except for notices under Part 1 Sections 11 and 14, the Parties may exchange messages with respect to the performance of the Agreement by email. Any message sent by email shall be sent to the address of the other Party specified for this purpose in the Special Provisions or communicated in writing. Email messages are only valid if and when actually received and the sender bears the risk of a failure in transmission.

#### **Section 16. Severability, Rules and Regulations**

- 16.1 If any provision of the Agreement is declared to be illegal, invalid or otherwise unenforceable by a court of competent jurisdiction or either Party's compliance with any ruling or resolution of the United Nations has a like or similar effect, the remainder of the Agreement (and of such provision) shall not be affected except to the extent necessary to delete such illegal, invalid or unenforceable provision (or part thereof).
- 16.2 To the extent applicable, the clauses with respect to government contracts set forth at 48 C.F.R. 52.222-26 (Equal Opportunity), 48 C.F.R. 52.222-21 (Prohibition of Segregated Facilities), 48 C.F.R. 222-35 (Equal Opportunity for Special Disabled Veterans of the Vietnam Era, and Other Eligible Veterans), 48 C.F.R. 52.222-37 (Employment Reports on Special Disabled Veterans of the Vietnam Era, and Other Eligible Veterans), 48 C.F.R. 52.222-36 (Affirmative Action for Workers with Disabilities) are incorporated by reference and shall have the same binding effect, as if reproduced herein in their entirety.

#### **Section 17. Survivability**

If for any reason the Agreement shall be terminated, then such termination shall be without prejudice to any rights, obligations or liabilities of either Party which have accrued at the date of termination but have not been performed or discharged and any provisions which expressly or implicitly survive termination, and any parts of the Agreement having any relevance thereto or any bearing thereon shall, notwithstanding the termination of the Agreement for any reason, continue in force and effect.

#### **Section 18. Consents**

Each Party shall be responsible for obtaining all consents, authorizations, approvals and assurances of whatsoever nature necessary to enable it to comply with its obligations under the Agreement.

**Section 19. Conflicts and Interpretation**

Where there is conflict between the Special Provisions and these GTCs, the Special Provisions shall govern. Where there is any conflict between Incoterms® and the Agreement, the Agreement shall prevail.

**Section 20. Amendment**

An amendment, modification or waiver in respect of the Agreement will only be effective if in writing (including a writing evidenced by an email or facsimile transmission) that is executed by each of the Parties.

**Section 21. Waiver**

A failure or delay in exercising all or any portion of any right, power or privilege in respect of the Agreement will not be presumed to operate as a waiver of that or any other right, power or privilege.

**Section 22. Telephone Recordings**

Each Party: (a) consents to the recording of telephone conversations between the trading, marketing and other personnel of the parties in connection with the Agreement or any potential transaction; (b) agrees to obtain any necessary consent of, and give any necessary notice of such recording to, its relevant personnel; and (c) agrees, to the extent permitted by Applicable Law, that recordings may be submitted in evidence in any proceedings relating to the Agreement.

**Section 23. Entire Agreement**

This Agreement contains the entire agreement between the Parties with respect to the matters set forth in the Agreement and supersedes all prior agreements, whether oral or written, in connection therewith.

**Section 24. Trademarks**

Nothing contained in the Agreement, shall be deemed to confer any right upon the Buyer to apply any trademark owned by the Seller or any of its Affiliates to any Goods supplied under the Agreement nor to use such trademarks in relation to such Goods.

**Section 25. Counterparts**

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

**Section 26. Governing Law**

The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including disputes or claims arising under other theories of law other than contract, including tort, and strict liability) shall be governed by the internal laws of the State of New York, without giving effect to its provisions relating to conflicts of law. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

**Section 27. Arbitration**

Any unresolved dispute arising out of or relating to this Agreement, or the breach, termination or validity thereof, shall be finally settled in accordance with the American Arbitration Association (“AAA”) rules for commercial arbitration in effect on the date of this Agreement. The arbitrators shall be independent and selected by AAA. If the total amount in dispute is less than One Million US Dollars (\$1,000,000) there shall be a single (1) arbitrator. If the total amount in dispute is One Million US Dollars (\$1,000,000) or greater, there shall be three (3) arbitrators. The award of the arbitrators shall be accompanied by a reasoned opinion. The United States Arbitration Act shall govern

the interpretation, enforcement, and proceedings pursuant to the arbitration clause in this Agreement. Judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The place of arbitration shall be New York, New York, and the language of the arbitration shall be English. Except to the extent expressly provided herein, the arbitrators are not empowered to award consequential, indirect, special, punitive or exemplary damages, and each Party hereby irrevocably waives any damages in excess of actual damages. Either Party may apply to the arbitrators seeking injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either Party also may, without waiving any remedy under this Agreement, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that Party, pending the establishment of the arbitral tribunal (or pending the arbitral tribunal's determination of the merits of the controversy). The courts of the State of New York shall have jurisdiction to hear any action to compel arbitration or any other judicial proceedings with respect to this Agreement.

**Section 28. Sovereign Immunity**

Each Party warrants that it has entered into the Agreement in a commercial capacity and that with respect to the Agreement it is in all respects subject to civil and commercial law. Each Party hereby irrevocably and unconditionally and to the fullest extent permitted by Applicable Law waives any rights of sovereign immunity which it may have now or which it may subsequently acquire in respect of its position or any property and/or assets (present or subsequently acquired and wherever located) belonging to it, and agree to appear in dispute proceedings before the arbitration panel identified herein; and to submit to any proceeding required to enforce such panel's decision.



**PART TWO – Applicable to pipeline deliveries FIP, FOB, ILX or Pipeline Delivered**

**Section 1. Delivery**

The Goods shall be delivered by the Seller to the Buyer FIP, FOB, ILX or Pipeline Delivered at the relevant flange of the pipeline, as set out in the Special Provisions.

**Section 2. Measurement and Sampling**

The quality of the Goods shall be assessed, and the quantity shall be measured, pursuant to the requirements of the relevant pipeline.

**Section 3. Title and Risk of Loss.**

Title to and risk of loss or damage to any Goods delivered shall be transferred from the Seller to the Buyer: (a) in the case of FIP and FOB deliveries, when the Goods pass into the entry flange of the relevant pipeline; (b) in the case of ILX deliveries, in accordance with the procedures of the relevant pipeline, and (c) in the case of Pipeline Delivered deliveries, when the Goods pass the outlet flange of the relevant pipeline.

**Section 4. Nominations**

The Seller or the Buyer (as applicable) shall make nominations in accordance with the standard operating procedures of the relevant pipeline operating company. If delivery is made to or from a pipeline and a Party (“X”) fails to make or take delivery as required by the Agreement or otherwise conform to a pipeline tariff, the damages recoverable by the other Party (“Y”) shall include any demurrage, penalties or fees assessed for such failure by the pipeline operating company. Any such damages shall be paid by X to Y in accordance with Part 1 Section 6 following the delivery of a notice containing a pipeline charge statement to X reflecting such damages.

**Section 5. Imbalances (Buy/Sell) or Exchange**

If this Agreement is a buy-sell or exchange, the Parties shall each use commercially reasonable efforts to maintain an even buy-sell or exchange balance on a month-to-month basis, as near as pipeline or In Situ conditions will permit. For the avoidance of doubt, this Part 2 Section 5 shall not apply to a buy-sell or exchange transaction where one leg of the transaction provides for delivery by means other than pipeline or In Situ.

If this Agreement is a buy-sell or exchange of crude oil, and if because of pipeline allocation, events beyond the control of a party, or a Force Majeure Event, an imbalance in volume of greater than one thousand (1000) barrels (whether or not in excess of the total contract volume) between the buy-sell or exchanged grade volumes is created for a month (the “**Shortfall Month**”), then the Parties shall resolve the volume difference as follows:

- 5.1 the under-delivered volume necessary to correct the imbalance (“**Payback Volume**”) shall be delivered during the calendar month immediately following the Shortfall Month;
- 5.2 if some or all of the Payback Volume cannot reasonably be delivered in the next calendar month, it shall be delivered as soon as reasonably possible in a subsequent month;
- 5.3 the price for the Payback Volume shall be the price under this Agreement for the Shortfall Month, and not for the month of actual delivery;
- 5.4 the Parties may at their option and by mutual agreement elect to cure the imbalance by having the Party that received a higher volume redeliver Payback Volume of such grade back to the originally delivering Party in a subsequent month; and

5.5 such re-delivery shall be made at the price for the Shortfall Month and not the price for the month of delivery.

**Section 6. Re-grades**

If the grade purchased and sold has changed as a result of transportation on a pipeline ("**Re-grade**"), then the Parties shall mutually agree pricing on such grade to reflect the Re-grade.

## **PART THREE – Applicable to deliveries Into Tank, In Situ and Ex Tank**

### **Section 1. Delivery**

The Goods shall be delivered by the Seller to the Buyer into a tank (“**Into Tank**”), by stock transfer (“**In Situ**”) or out of a tank (“**Ex Tank**”), as set out in the Special Provisions.

### **Section 2. Measurement and Sampling; Independent Inspection**

#### 2.1 Performance of Measurement and Sampling Obligations:

- 2.1.1 The Parties shall jointly agree to a licensed independent inspector to perform all Measurements. The relevant Party (or both Parties in the case of In Situ) who has the storage agreement with the relevant storage company shall arrange for access by such inspector to the Terminal. All costs associated with a Measurement shall be shared equally between the Parties.
- 2.1.2 Subject to Sections 2.1.3 and 2.1.4 of this Part 3 and unless otherwise mutually agreed by the Parties in writing, Measurements shall be carried out in accordance with Approved Industry Practice. The Parties each agree to instruct the inspector to provide Inspector’s Reports to both Parties. In the event the inspector fails to send the Inspector’s Reports to both Parties, the Party receiving the report shall deliver a copy of the report to the other Party on its request.
- 2.1.3 Quantity shall be measured as follows:
- (a) in the case of Ex Tank deliveries, quantity shall be measured in the following order of priority:
    - (i) for crude oil, fuel oil, vacuum gasoil and residual fuel, by
      - (x) using proven meters (if available) at the Seller’s tank manifold exit point; or
      - (y) if proven meters are unavailable, by manual measurement of the Seller’s static tank which at all times have the floating roofs afloat and are above the critical zone by a minimum of six (6) inches; or
      - (z) if the Seller’s tank is active or is unable to be measured manually, pursuant to any other generally accepted industry methodology; and
    - (ii) for all other Goods, by
      - (x) manual measurement of the Seller’s static tank which at all times have the floating roofs afloat and are above the critical zone by a minimum of two (2) inches for gasoline or gasoline components stored in tanks at KMI Pasadena, Galena Park or Carteret Terminals, and six (6) inches for all other Goods;
      - (y) if the Seller’s tank is active or is unable to be measured manually, pursuant to any other generally accepted industry methodology; or
      - (z) using proven meters (if available) at the Seller’s tank manifold exit point.
  - (b) in the case of Into Tank deliveries, quantity shall be measured in the following order of priority:

- (i) for crude oil, vacuum gasoil and residual fuel, by
  - (x) using proven meters (if available) at the Buyer's tank manifold entry point; or
  - (y) if proven meters are unavailable, by manual measurement of the Buyer's static tank which at all times have the floating roofs afloat and are above the critical zone by a minimum of six (6) inches; or
  - (z) if the Buyer's tank is active or is unable to be measured manually, pursuant to Part 3 Section 2.1.3(a); and
- (ii) for all other Goods, by
  - (x) by manual measurement of the Buyer's static tank which at all times have the floating roofs afloat and are above the critical zone by a minimum of two (2) inches for gasoline or gasoline components stored in tanks at KMI Pasadena, Galena Park or Carteret Terminals, and six (6) inches for all other Goods;
  - (y) if the Buyer's tank is active or is unable to be measured manually, pursuant to Part 3 Section 2.1.3(a) or
  - (z) using proven meters (if available) at the Seller's tank manifold exit point; and
- (c) in the case of In Situ deliveries, as specified in the Special Provisions.

2.1.4 Quality shall be determined as follows:

- (a) in the case of Ex Tank deliveries, sampling shall be undertaken by volumetrically correct composite sampling of the Seller's static tank, or, if the Seller's tank is active, as mutually agreed by the Parties;
- (b) in the case of Into Tank deliveries, sampling shall be undertaken at the tank manifold entry point at the time of delivery or, if not available, by volumetrically correct composite sampling of the Seller's static tank (or, if the Seller's tank is active, as mutually agreed by the Parties);
- (c) in the case of In Situ deliveries, the quality shall be determined by volumetrically correct composite sampling of the relevant tank; and
- (d) for the avoidance of doubt, where delivery is made from more than one (1) tank, then the quality shall be determined by volumetrically correct composite sampling from each of the Seller's static tanks (or, if applicable as provided above, as mutually agreed by the Parties) and then blended according to the proportions from each tank.

2.1.5 The Buyer may at its own expense, upon prior reasonable notice to the Seller, require the Seller to use reasonable efforts to ensure that the Buyer's representative may witness any Measurement.

2.2 Inspector's Reports:

The Inspector's Reports shall be used to prepare invoices hereunder.

**Section 3. Title and Risk of Loss**

Title to and risk of loss or damage to any Goods delivered shall be transferred from the Seller to the Buyer as follows:

- 3.1.1 in the case of delivery Ex Tank, as the Goods passes the outlet flange of the Seller's storage tank from which the Goods are being delivered;
- 3.1.2 in the case of delivery Into Tank, as the Goods passes the inlet flange of the Buyer's receiving storage tank; or
- 3.1.3 in the case of delivery In Situ, in accordance with the Terminal's standard operating procedures, and where not inconsistent therewith, as agreed by the Parties as specified in the Special Provisions, or otherwise.

**Section 4. Nominations**

In the case of delivery Ex Tank, In Situ or Into Tank, the Seller or the Buyer (as applicable) shall make nominations in accordance with the standard operating procedures of the relevant storage company.

**PART FOUR – Applicable to truck deliveries DAT, DAP, FOB, FCA or otherwise from, or into, a tank truck**

**Section 1. Delivery**

The Goods shall be delivered from the Seller to the Buyer DAT, DAP, FOB, FCA or otherwise from, or into, a tank truck, as set out in the Special Provisions.

**Section 2. Measurement and Sampling; Independent Inspection**

2.1 Performance of Measurement and Sampling Obligations:

2.1.1 Subject to Sections 2.1.2 and 2.1.3 of this Part 4 and unless otherwise mutually agreed by the Parties, Measurements shall be carried out in accordance with Approved Industry Practice. The Parties shall jointly agree to a licensed independent inspector to perform all Measurements. All costs associated with a Measurement shall be shared equally between the Parties. The Parties each agree to instruct the inspector to provide Inspector's Reports to both Parties. In the event the inspector fails to send the Inspector's Reports to both Parties, the Party receiving the report shall deliver a copy of the report to the other Party on its request. The Buyer may at its own expense, upon prior reasonable notice to the Seller, require the Seller to use reasonable efforts to allow the Buyer's representative to witness any Measurements.

2.1.2 Quantity shall be measured using:

(a) for Goods that constitute refined petroleum products, ethanol, or bio-based liquids:

(i) in the case of deliveries DAT or DAP:

(x) the discharge Terminal's custody transfer meter at the discharge Terminal at the time of discharge or, if none,

(y) the discharge Terminal operator's certified weight scale at the discharge Terminal at the time of discharge or, if none,

(z) as otherwise agreed between the Parties.

(ii) in the case of deliveries FCA or FOB:

(x) the load Terminal operator's proven metering device readings at the load Terminal at the time of loading, or, if none,

(y) the load Terminal operator's certified weight scale at the load Terminal at the time of loading, or, if none,

(z) as otherwise agreed between the Parties.

(b) for Goods that constitute crude oil:

(i) in the case of deliveries DAT or DAP:

(x) the discharge Terminal's custody transfer meter at the discharge Terminal at the time of discharge, or, if none,

(y) the discharge Terminal operator's certified weight scale at the discharge Terminal at the time of discharge, or, if none,

(z) as otherwise agreed between the Parties.

(ii) in the case of deliveries FCA or FOB:

(x) either the load Terminal's custody transfer meter at the load Terminal at the time of loading, or the lease automatic custody transfer unit at the lease location at the time of loading, or, if none,

(y) static tank gauge measurements taken immediately before and immediately after loading, or, if none,

(z) as otherwise agreed between the Parties.

2.1.3 Quality shall be determined:

(a) in the case of deliveries DAT or DAP:

(i) by the discharge Terminal's custody transfer meter at the time of discharge, or, if none

(ii) in accordance with Part 4 Section 2.1.3(b) below.

(b) in the case of deliveries FCA or FOB:

(i) by the volumetric composite sample drawn or metered at the load Terminal/lease location prior to loading, or if a volumetric composite sample is not available or an independent inspector cannot verify the quality determination, then

(ii) in order of priority, by the terminal operator or the carrier at or near the delivery location.

2.1.4 Results of the Measurements set forth in this Section shall be issued in the form of the certificates of quantity and/or quality, bill of lading, meter tickets or weight tickets (as applicable) with respect to the Goods delivered and shall be issued by the terminal operator or the carrier and independent inspector if independent inspection occurs.

2.2 Independent Inspector:

The Inspector's Reports shall be used to prepare invoices hereunder. For invoicing purposes, all volumes shall be net volumes with full deduction for all BS&W and free water content, and shall be made according to Approved Industry Practice. The quantity shall be adjusted to 60 degrees Fahrenheit (or 15.6 degrees Centigrade).

### **Section 3. Title and Risk of Loss**

Title to and risk of loss or damage to any Goods delivered shall be transferred from the Seller to the Buyer as follows:

3.1 in the case of deliveries DAT or DAP, at the discharge Terminal as the Goods pass the inlet flange of that Terminal's receiving equipment; or

3.2 in the case of deliveries FCA and FOB, as the Goods pass the inlet flange of the tank truck at the load Terminal or lease location.

**Section 4. Nominations**

In the case of all deliveries, nominations shall be made in accordance with the standard operating procedures at the relevant load or discharge Terminal or lease location.

**Section 5. Acceptance of Tank Trucks**

Tank trucks presented by the Buyer for loading in the case of deliveries FCA and FOB, or by the Seller for discharge in the case of deliveries DAP or DAT, shall be fit, and in all respects ready to load or discharge the Goods (as the case may be) by the Parties and as required by the relevant Terminal operator.

**Section 6. Ethanol, Gasohol, Natural Gasoline or Gasoline Deliveries by Tank Truck**

Where the Goods being transported by tank truck are ethanol, gasohol, natural gasoline, or gasoline (“**Approved Commodities**”), the Party arranging for transportation of the Approved Commodities shall ensure that the tank truck is in sufficient condition to haul these Approved Commodities without contamination.



## **PART FIVE – Applicable to FOB deliveries by Vessel**

### **Section 1. Delivery**

The Goods shall be delivered by the Seller to the Buyer FOB at the load Terminal.

### **Section 2. Measurement and Sampling; Independent Inspection**

#### **2.1 Performance of Measurement and Sampling Obligations:**

2.1.1 The Parties shall jointly agree on an independent inspector to perform all Measurements. The Seller shall arrange for access by such inspector to the load Terminal. All costs associated with a Measurement shall be shared equally between the Parties.

2.1.2 Subject to Part 5 Sections 2.1.3 and 2.1.4, and unless otherwise mutually agreed by the Parties in writing, Measurements shall be carried out in accordance with Approved Industry Practice. The Parties each agree to instruct the inspector to provide Inspector's Reports to both Parties. In the event the inspector fails to send the Inspector's Reports to both Parties, the Party receiving the report shall deliver a copy of the report to the other Party on its request.

2.1.3 Quantity shall be measured using, in order of precedence:

- (a) for crude oil, fuel oil, vacuum gasoil and residual fuel, by
  - (i) the load Terminal's calibrated meter; or if none;
  - (ii) shore tank measurements taken immediately before and immediately after loading from shore tanks that are static and which at all times have the floating roofs afloat and are above the critical zone by a minimum of six (6) inches; or failing that,
  - (iii) the Vessel's receiving figures for the NSV on board at the completion of loading, less any OBQ of the Goods present at the time loading commences, corrected by the Vessel's valid load VEF; and
- (b) for all other Goods, by
  - (i) shore tank measurements taken immediately before and immediately after loading from shore tanks that are static and which at all times have the floating roofs afloat and are above the critical zone by a minimum of two (2) inches for gasoline or gasoline components stored in tanks at KMI Pasadena, Galena Park or Carteret Terminals, and six (6) inches for all other Goods, or failing that,
  - (ii) the Vessel's receiving figures for the NSV on board at the completion of loading, less any OBQ of the Goods present at the time of the Goods present at the time loading commences, corrected by the Vessel's valid load VEF, or failing that
  - (iii) the load Terminal's calibrated meter.

- 2.1.4 Subject to Part 5 Section 2.3, quality shall be determined by (a) Seller's static shoretank or, if active, (b) inline sampling at the Vessel's manifold at the time of the loading of the Vessel at the load Terminal, or, if not available, then (c) by volumetrically correct composite sampling of the Vessel's tanks at the time of loading.
- 2.1.5 The Buyer may at its own expense, upon prior reasonable notice to the Seller, require the Seller to use reasonable efforts to allow the Buyer's representative to witness any Measurements.
- 2.2 Inspector's Reports:
- The Inspector's Reports shall be used to prepare invoices hereunder. For invoicing purposes, all volumes shall be net volumes with full deduction for all sediment and water and free water content shall be made according to Approved Industry Practice, and the quantity shall be adjusted to sixty (60) degrees Fahrenheit (or fifteen point six (15.6) degrees Centigrade) using the appropriate tables.
- 2.3 Blending, Dyeing and Addition of Additives:
- Without prejudice to Part 1 Section 3, the Seller may: (a) blend Goods; (b) add or inject dye; and/or (c) add additives to the Goods on board the Vessel during and/or after loading but always prior to sailing (each, an **"On-Board Operation"**), provided always that any delay arising solely out of or in connection with such activity shall be for the Seller's account. In particular, where agreed in the Special Provisions that the specification for the Goods shall be the Vessel composite, the Buyer shall confirm in its Nomination pursuant to Part 5 Section 5 that the Vessel is fully capable of blending evenly during loading operations. The Seller shall provide, at its own cost, a representative to supervise the On-Board Operation. The Buyer, as the charterer of the Vessel, shall direct the Vessel to comply with the Seller's reasonable instructions for the On-Board Operations, and shall otherwise assist the Seller in ensuring the On-Board Operation is done properly. Quality shall be measured by sampling of the Vessel composite after completion of the On-Board Operation.

### **Section 3. Title and Risk of Loss**

Title to and risk of loss or damage to any Goods delivered shall be transferred from the Seller to the Buyer as the Goods pass the Vessel's permanent manifold connection at the load Terminal.

### **Section 4. Laydays**

The "**Laydays**" are the day or range of days in which the Buyer's Vessel must tender NOR at the load Terminal pursuant to Part 5 Section 6.1.2. The Laydays shall be either specified in the Special Provisions or determined in accordance with the procedure specified in the Special Provisions.

### **Section 5. Nominations of Vessels, Rejection, Substitution, etc.**

#### 5.1 Full Cargo and Part Cargo:

The Buyer may elect to take delivery of the Goods as either a full cargo or part cargo, provided that, where there will be a part cargo delivery by more than one Vessel or from more than one Terminal, it shall be subject to the prior agreement of the Seller and the load Terminal operator.

#### 5.2 Nomination of Vessels:

5.2.1 The Buyer shall nominate in writing to the Seller each Vessel that will load Goods pursuant to any transaction hereunder. Subject to Part 5 Section 2.3, the Buyer's Nomination shall include:

- (a) a completed and accurate Q88 or the information that would be required in a completed Q88;

- (b) the grade and approximate quantity to be loaded;
- (c) the ETA of the Vessel at the load Terminal;
- (d) the destination of the Vessel prior to its arrival at the load Terminal;
- (e) full written instructions regarding the particulars and destination of the bills of lading and such other customary load Terminal documentation which may be required; and
- (f) full details of any cargo on board or to be loaded on board if loading a part cargo.

5.2.2 The Buyer must deliver its Nomination to the Seller no later than the fifth day prior to the first day of the Laydays. Notwithstanding the foregoing, if the Seller receives the Buyer's Nomination after such fifth day and the Seller accepts such Nomination pursuant to Part 5 Section 5.4, such Nomination shall be deemed effective; *provided, however*, subject to Part 5 Sections 6.2.1 and 7.2, running Laytime allowed for the Seller to load the Goods in accordance with Part 5 Section 7 shall not commence until such time as the Vessel has been approved by the Seller in accordance with Part 5 Section 4.4 and the Vessel has actually commenced loading. In the event this Agreement is entered into five (5) or fewer days prior to the first day of the Laydays, the Buyer's Nomination must be received by the Seller no fewer than two (2) days prior to the first day of the Laydays.

5.3 Vessel Substitution:

The Buyer may nominate a substitute Vessel for any Vessel previously nominated pursuant to Part 5 Section 5.2 and must nominate a substitute Vessel for any Vessel rejected by the Seller pursuant to Part 5 Section 5.4. With respect to any such substitution:

- 5.3.1 the size of the substitute Vessel and the quantity of Goods to be loaded shall not, without the Seller's prior written consent, materially differ from the size of the Vessel previously nominated and the quantity of Goods specified in such prior Nomination;
- 5.3.2 the Laydays which would have applied in respect of the Buyer's originally-nominated Vessel shall apply to the substitute Vessel; and
- 5.3.3 the Buyer shall provide the Seller with written notice of the substitution containing all information that would have been required had the substitute Vessel been originally nominated pursuant to Part 5 Section 5.2 by the later of: (a) one (1) Business Day following the Buyer's fixing of such Vessel "sub-details"; and (b) the earlier of the ETA of the substitute Vessel or the ETA of the Buyer's originally-nominated Vessel.

5.4 Acceptance or Rejection of Vessels and Consequences of Rejection:

- 5.4.1 The Seller shall deliver written notice to the Buyer accepting or rejecting any Vessel nominated by the Buyer within one (1) Business Day of the Seller's receipt of the Buyer's Nomination.
- 5.4.2 Notwithstanding anything to the contrary, the Seller shall have the right:
  - (a) to reject, on any reasonable ground, any Nomination made by the Buyer, including where the Seller determines that the Vessel is unacceptable under the Seller's documented vessel assurance requirements;
  - (b) to refuse, on any reasonable ground, to load any Vessel named in a Nomination;
  - (c) to reject a Vessel, notwithstanding any prior acceptance of such Vessel (whether named in the Special Provisions or nominated or substituted pursuant to Part 5 Sections 5.2 or 5.3), if, at any time after such prior acceptance, more recent information becomes available to the Seller that reasonably indicates that the Vessel and/or its crew is unsafe for the performance of the voyage in question.

5.4.3 In the event a rejection, delay, or other restriction of the Vessel occurs as a direct result of the application of any Applicable Law, the requirements of this Part 5 Section 5, or the applicable requirements of Appendix A:

- (a) the Seller shall not be liable for the consequences of such rejection, delay or restriction, and any time consumed as a result thereof shall not count as used Laytime or, if the Vessel is on demurrage, as time on demurrage;
- (b) the Buyer shall be liable for any direct costs or damages incurred by the Seller: (i) arising out of any such rejection, delay or restriction; and/or (ii) resulting from any delays in loading the Goods hereunder due to the failure by the Buyer to comply with the requirements of this Part 5 Section 5 in a timely manner; and
- (c) the Buyer's obligations under the Agreement to nominate a suitable Vessel in accordance with Part 5 Section 5.2 and to ensure that it tenders NOR at the load Terminal in accordance with Part 5 Section 6.1.2 shall be unaffected.

5.5 Vessel Requirements:

The Vessel shall comply with:

5.5.1 Applicable Law; and

5.5.2 the applicable requirements set out in Appendix A.

5.6 Changes in Procedures:

Without prejudice to the Buyer's rights and obligations as set out in Part 5 Section 6.3.1, and upon prior written notice from the Seller to the Buyer, the Seller may modify terms agreed to between the Parties pursuant to this Part 5 Section 5 to take account of changes in the Nomination and/or other procedures applicable from time to time at the load Terminal.

5.7 Prompt Delivery:

If the date of the Agreement is later than any of the dates for notifications, Nominations, procedures and/or any other obligations specified in the Special Provisions or these GTCs, then both Parties shall use best efforts to complete, within two (2) Business Days of the date of the Agreement, any outstanding time limited requirements, notifications, Nominations, procedures and/or any other obligations which would have preceded the date of the Agreement.

**Section 6. Arrival of Vessel, Berth, etc.**

6.1 Arrival of Vessel:

6.1.1 The Buyer shall notify the Seller and the load Terminal of the Vessel's ETA on request of the Seller, and otherwise in accordance with the standard reporting procedure applicable from time to time at the load Terminal. If the Buyer's Vessel fails, for any reason, to give at least twenty four (24) hours' prior notice of arrival at the load Terminal, the time allowed to the Seller for loading pursuant to Part 5 Section 7.2 shall be extended by a period equal to the delay in giving such twenty four (24) hours' notice, but in any case not exceeding an additional twenty four (24) hours.

6.1.2 The Buyer shall ensure that NOR has been tendered by no later than 2400 hours (local time) on the last day of the Laydays. In the event that the Buyer fails to tender NOR by such time, the Seller shall be entitled to recover from the Buyer any damages available to the Seller under the Agreement or at law as a result of such failure and, in addition to such damages, where:

- (a) subject to Section 6.1.2 (b), NOR has not been tendered within five (5) days of the last day of the Laydays, the Seller shall be entitled to terminate this Agreement upon notice to the Buyer; or
  - (b) the Goods are crude oil and NOR has not been tendered within ten (10) days of the last day of the Laydays, the Seller shall be entitled to terminate this Agreement upon notice to the Buyer.
- 6.1.3 Once NOR has been tendered pursuant to this Section 6 and subject to Part 5 Section 7, the Buyer shall be obligated to receive delivery of the Goods in accordance with Part 5 Section 6.2.
- 6.2 Loading:
  - 6.2.1 Unless otherwise agreed in writing by the Seller, the Seller shall not be under any obligation to commence loading of the Goods prior to 0600 hours (local time) on the first (1<sup>st</sup>) day of the Laydays.
  - 6.2.2 After receipt of NOR, the Seller, subject to: (a) the requirements and procedures of the load Terminal; (b) Part 5 Sections 7.3.1 (c) or 7.3.2(c) (as relevant); and (c) the time when the Vessel has complied with the provisions of Part 5 Section 6.1, shall commence and complete loading in a commercially reasonable manner, even if this means the loading is completed outside the Laydays.
- 6.3 Vessel Berths:
  - 6.3.1 Subject to compliance by the Buyer and its nominated Vessel with all other requirements of the load Terminal at the time in question, the Seller shall use due diligence to provide a safe berth, free of wharfage for a normal cargo transfer.
  - 6.3.2 The Seller shall at all material times and at no expense to the Buyer cause to be provided and maintained, in good working order, all necessary flexible hoses, connections, pipelines and tankage facilities necessary for the loading of the Buyer's Vessel.
  - 6.3.3 The Seller shall not be deemed to warrant the safety of any channel, fairway, anchorage, or other waterway used in approaching or departing from the berth and shall not be liable for:
    - (a) any loss, damage, injury, or delay to the Vessel resulting from the use of such waterways; or
    - (b) any damage to the Vessel caused by other vessels passing in the waterway either while in transit or while at the berth.

If, while the Vessel nominated by the Buyer is approaching, entering or departing from or is present in the berth, the length, draft or other dimensions of such Vessel shall exceed the length, draft or other dimensions so ascertained for the berth in question for whatever reason, the Seller shall not be liable for any loss or damage caused as a result thereof and the Seller shall not be obligated to commence or continue loading.
- 6.4 Vacation of Berth:
  - 6.4.1 The Buyer shall ensure that the Vessel vacates the berth as soon as hoses have been disconnected following loading, provided that such Vessel's departure is not delayed awaiting production of load Terminal documents, unless: (a) such documents can be delivered to the Vessel at a suitable anchorage; or (b) an early departure procedure can be applied.
  - 6.4.2 If the Vessel fails to vacate the berth, other than for reasons attributable to the Seller, its supplier or the load Terminal operator:

- (a) any loss or damage suffered by the Seller or its supplier resulting from such failure shall be paid by the Buyer to the Seller; and
- (b) any excess berth utilization charge imposed on the Seller in respect of the Buyer's Vessel at the load Terminal in accordance with either Applicable Law or a contractually agreed or other established scale, shall be for the account of the Buyer who shall reimburse and indemnify the Seller for such charges.

6.5 Vessel Shifting:

- 6.5.1 The Buyer agrees to shift the Vessel's berth to another berth or to anchorage if so requested by either the load Terminal or the Seller.
- 6.5.2 When shifting is done for the convenience of the load Terminal or the Seller, the Seller shall pay all pilot, tug, and load Terminal expenses incurred in shifting the Vessel, and the time consumed on account of shifting shall count as used Laytime or, if the Vessel is on demurrage, as time on demurrage.
- 6.5.3 Save as provided in Part 5 Section 6.5.2, when shifting is required for any other reason, including due to an unsafe condition or breakdown of the Vessel or her crew, the Buyer shall be responsible for and shall indemnify the Seller for all related expenses and the time shall not count as Laytime or, if the Vessel is on demurrage, as time on demurrage.
- 6.5.4 If the Vessel's master determines that he/she requires a stand-by tug for assistance, and tug assistance is not required by the Terminal, the Buyer shall be responsible for and shall indemnify the Seller for all resulting delays or costs related to the tug assistance, and the time shall not count as Laytime or, if the Vessel is on demurrage, as time on demurrage.

6.6 Lightering, Vessel-to-Vessel and Transshipment Transfer Operations:

- 6.6.1 Either Party may, upon prior written notice to the other Party, exercise the option to load the nominated Vessel by Lightering, Vessel-to-Vessel, or transshipment transfer operations. The requesting Party shall be responsible for the risk thereof and shall pay and indemnify the other Party for the cost of such operations (together with any additional expenses reasonably incurred by the Vessel in respect thereof). In the event that:
  - (a) the Buyer is the requesting Party, any Vessel proposed by the Buyer to perform these operations may be rejected by the Seller on any basis as may be set out in Part 5 Section 5.4 which shall be equally applicable to this Section; and
  - (b) the Seller is the requesting Party, the Buyer shall have the right to reject any Vessel proposed by the Seller to perform these operations on any reasonable ground.

The requesting Party shall pay, be liable for and indemnify the other Party for any losses, costs, damages and proceedings arising from any Lightering, Vessel-to-Vessel or transshipment transfer operations.

- 6.6.2 Any Lightering, Vessel-to-Vessel transfer operations, or transshipment shall be carried out in accordance with the procedures set out in the ICS/ OCIMF ship-to-ship transfer guide and MARPOL Annex I as amended by Resolution MEPC.186 (59), Chapter 8: Prevention of Pollution during Transfer of Oil Cargo between Oil Tankers at Sea, Regulations 40, 41, 42 for the transfer of Crude Oil and Petroleum Products or any modifications thereto.

Any Lightering, Vessel-to-Vessel, or transshipment transfer operations, whether at sea or inside the load Terminal limits, shall always be performed at a location considered safe and acceptable to both the owner of the nominated Vessel and the other Party. The Party requesting the Lightering,

Vessel-to-Vessel or transshipment transfer operation must notify the place of Lightering, Vessel-to-Vessel or transshipment transfer operation to the nominated Vessel and the other Party when NOR is tendered. The place of Lightering, Vessel-to-Vessel or transshipment transfer operation so notified shall be deemed to be the berth for purposes of this Section and Section 7, and all references therein to the berth shall be construed accordingly.

- 6.6.3 In relation to any dispute as to quantity when Lightering, Vessel-to-Vessel or transshipment operations have been undertaken, the figures of the nominated Vessel shall prevail, subject always to the provisions of Part 1 Section 3.
- 6.6.4 Part 1 Section 9 shall not apply to this Part 5 Section 6.6.
- 6.7 Fees and Other Charges at the Load Terminal:
  - 6.7.1 The Buyer shall be solely liable for, and shall reimburse and indemnify the Seller of all dockage and service fees incurred in respect of the Vessel at the load Terminal, including those for mooring, tugs, pilots, port costs (including fleeting and quay), fresh water, steam, and oily slops receipts, but excluding, for the avoidance of doubt, any taxes, imposts and dues on the Vessel at the load Terminal which are more fully referred to in, and recoverable under, Part 1 Section 5.
  - 6.7.2 Any claims by the Seller for reimbursement of these dockage and service fees by the Buyer must be made by written notice delivered to the Buyer within one hundred and eighty (180) days of the date of title transfer and shall be accompanied supporting documentation and reasonable details of the facts on which the claim is based. Any claim submitted after the relevant notice period is deemed waived.

**Section 7. Delays, Time Allowed and Demurrage**

7.1 Delays and demurrage:

If the shipment is not loaded within the time allowed in accordance with Part 5 Section 7.2, the Seller shall pay to the Buyer demurrage, in the same currency as is prescribed for payment of the Goods delivered under the Agreement, in respect of the excess time at the appropriate rate per day (or pro rata for part of a day) as specified in this Section, subject to Part 5 Sections 5.4.3, 7.2, 7.3, 7.4 and the following conditions:

- 7.1.1 The Seller shall pay demurrage at the rate specified below for each running hour and pro rata for each part of an hour, for all time that running Laytime (as calculated pursuant to Part 5 Section 7.3) exceeds the allowed Laytime. Should the Vessel be loaded for the account of two (2) or more parties at a single Terminal or at single berth (as the case may be), the Seller shall be liable only for:
  - (a) its pro rata share of demurrage based on the part cargo loaded for the Seller's account at such Terminal or single berth (as applicable) as a percentage of total gross volume of the Goods loaded at that Terminal or berth (as applicable); and
  - (b) its share of time waiting for the berth based on its cargo volume loaded for its account as a percentage of the total gross cargo loaded at such berth. However, the Seller shall not be liable for any portion of Laytime used which is solely attributable to the other party.
- 7.1.2 For a Tanker and an Ocean-Going Barge, the demurrage rate shall be, in order of precedence:
  - (a) the rate, if any, specified in the Special Provisions;
  - (b) the demurrage rate or overtime rate, if applicable, specified in the voyage charterparty, or if neither (a) nor (b) apply; then
  - (c) the market rate current on the date the Laytime commences for a Vessel of the size and type

appropriate to the Vessel's cargo for a single voyage charter from the load Terminal to the Buyer's discharge Terminal. In determining the market rate:

- (i) each Party shall refer to an independent broker;
- (ii) each independent broker shall give a written opinion about the spot market level on the day Vessel berthed, and the rate used shall be based on the arithmetic mean of the two (2) levels, provided the two (2) levels do not differ by more than twenty (20) percent;
- (iii) in the event the two (2) levels specified by the independent brokers differ by more than twenty (20) percent, each Party shall refer the matter to another broker who shall each give a written opinion on the spot market level, using a rate based on the arithmetic mean of the two new levels, provided these levels do not differ more than twenty (20) percent; and
- (iv) in the event the levels in (iii) differ more than twenty (20) percent, the arithmetic mean of the middle two (2) of the four (4) specified levels shall be used.

7.1.3 For an Inland Barge, the demurrage rate shall be, in order of precedence:

- (a) the rate, if any, specified in the Special Provisions; or
- (b) the rate specified in the voyage charterparty; or, if neither (a) or (b) apply;
- (c) the daily hire rate of the Inland Barge on the date the Laytime commences.

7.1.2 Any demurrage claim must be delivered in writing: (a) by the Buyer to the Seller within ninety (90) days of the date of disconnection of loading hoses; and (b) must include a statement of claim setting out the demurrage calculation and all supporting documentation substantiating each and every constituent part of the calculation in respect of the demurrage claim. In the event the Buyer fails to comply with the requirements in the preceding sentence with respect to any demurrage claim, such claim shall be deemed to be waived and the Seller shall be discharged and released from all liability in respect of any demurrage claims which the Buyer may have against the Seller under this Section with respect to such occurrence.

7.2 Allowed Laytime:

Laytime shall be:

7.2.1 In the case of a Tanker or Ocean-Going Barge, where the Goods comprise a cargo of:

- (a) 24,999 barrels or fewer : twelve (12) hours;
- (b) between 25000 barrels to and including 99,999 Barrels : twenty (20) hours;
- (c) between 100000 barrels to and including 149,999 Barrels : twenty four (24) hours; or
- (d) 150,000 barrels or greater : thirty six (36) hours.

7.2.2 In the case of an Inland Barge, where the Goods comprise a cargo of 25,000 barrels or greater, shall be three (3) hours plus such amount based either: (i) on the applicable charterparty terms, or, in the absence thereof; (ii) one hour for each 2,500 barrels discharged, provided that, in either case, Laytime shall never be less than twelve (12) hours.



All days, including all holidays, shall be included in such allowed Laytime unless loading on the day or holiday in question is prohibited by Applicable Law.

7.3 Running Laytime Hours:

7.3.1 Subject to Part 5 Sections 7.3.3 and 7.3.7, when a Tanker or Ocean-Going Barge tenders NOR:

- (a) within the Laydays in accordance with Part 5 Section 6.1.2, running Laytime shall commence (berth or no berth) as of the earlier of: (i) six (6) hours after the Seller's receipt of such NOR; or (ii) when such Vessel is All Fast;
- (b) earlier than the Laydays, running Laytime shall commence as of the earlier of: (i) 0600 hours local time on the first day of the specified Laydays; or (ii) when such Vessel is All Fast; or
- (c) after the last day of the Laydays and is accepted for loading by the Seller in its sole and absolute discretion, then, without prejudice to any of the Seller's other rights, running Laytime shall commence when such Vessel is All Fast.

7.3.2 Subject to Part 5 Sections 7.3.3 and 7.3.7, when an Inland Barge:

- (a) tenders NOR within the Laydays, running Laytime shall commence upon its arrival;
- (b) tenders NOR earlier than the Laydays, running Laytime shall commence as of the earlier of: (i) 0001 hours on the first day of the Laydays; or (ii) when the Inland Barge is All Fast; or
- (c) arrives after the last day of the Laydays and is accepted for loading by the Seller in its sole and absolute discretion, then, without prejudice to any of the Seller's other rights, running Laytime shall commence when the Inland Barge is All Fast.

7.3.3 When a Vessel is loaded at a Public Dock, Laytime shall commence when the Vessel is All Fast. **"Public Dock"** for the purposes of this Section 7.3.3 means any marine terminal facility for handling cargo to or from Vessels requiring a wharf, dock, quay or buoy, that is (i) not operated by the Seller or any of its Affiliates, and (ii) which berths Vessels on a first come, first served basis, subject to dock availability.

7.3.4 For purposes of calculating running Laytime, running Laytime shall end when the Vessel's cargo hoses are disconnected.

7.3.5 After NOR has been tendered and Laytime has commenced, any delay arising from a Force Majeure Event shall count as one half running Laytime or, if the Vessel is on demurrage, as one half the time on demurrage, provided that:

- (a) neither Part 1 Section 8.4 with regard to the giving of notices only, nor Part 1 Section 8.5 in its entirety shall not apply to this Part 5 Section 7.3.5; and
- (b) if the Force Majeure Event continues for a period of fifteen (15) days, any such delay shall count as full running Laytime or, if the Vessel is on demurrage, as full time on demurrage.

7.3.6 All time used for extra sampling and analysis to determine the quality of the Goods will be for the account of the Party requesting the extra tests, provided however that, if the Goods prove to be off specification, the Seller shall be liable for all costs, including running Laytime or demurrage, related to the extra sampling and analysis.

7.3.7 Mississippi River Ports: A Vessel arriving from sea or the inland waterway and destined for Mississippi ports shall tender its NOR upon arrival at the Terminal or nearest customary anchorage or waiting place for the Terminal. The customary anchorage for selected ports are as follows:

Location	Anchorage
Convent, LA	Burnside Anchorage
Geismar, LA	Burnside Anchorage
Gretna, LA	Nine Mile Anchorage
Norco, LA	AMA Anchorage
St. James, LA	Grandview Anchorage
St. Rose, LA	AMA Anchorage

7.4 Laytime Exceptions:

In addition to any deductions from running Laytime set out in Part 5 Sections 5.4.3, 6.5 or 7.3, any time consumed due to, but not limited to, any of the following situations shall not count as Laytime or, if the Vessel is on demurrage, as time on demurrage:

- 7.4.1 on inward passage from the time the Vessel passes the customary point of entry into the load Terminal until it is All Fast at berth, or from the time the Vessel passes the customary point of entry into the load Terminal until the Vessel is secure at anchorage and from the time the Vessel weighs anchor until it is All Fast at berth;
- 7.4.2 time awaiting Free Pratique, except if concurrent with cargo-related operations or customarily given after All Fast;
- 7.4.3 time awaiting pilots, tugs, tides or daylight, provided however that the Seller shall only be entitled to deduct time awaiting one tide and/or one wait for daylight immediately preceding berthing. If during this waiting period the dock or berth is not available, the exclusions for waiting pilots, tugs, tide or daylight shall not apply;
- 7.4.4 restrictions imposed by the owner, charterer, or master of the Vessel, or load Terminal authority including load Terminal closure or prohibitions on cargo operations at night;
- 7.4.5 discharging slops; cleaning and inspection of the Vessel's tanks, pumps, pipelines (but excluding any time spent on inspection of the Goods themselves pursuant to Part 5 Section 2); ballasting or de-ballasting; bunkering; or for these and any other purposes of the Vessel unless such operations are performed concurrent with cargo operations and do not delay cargo operations;
- 7.4.6 overflow, breakdown, inefficiency, repairs or other conditions whatsoever attributable to the Vessel, master, officers, crew, owners, the Buyer or their representatives, employees or agents, including any inability to load or discharge the Goods expeditiously;
- 7.4.6 the Vessel's failure to comply with the requirements of the load Terminal with respect to equipment aboard or any other matter causing delay or restriction of cargo operations;

- 7.4.7 delays due to the Vessel's failure to have the required certificate of financial responsibility, or failure to be in compliance with Applicable Law (or hold the necessary waiver if not in compliance), or failure to have any other required documentation;
- 7.4.8 delay or suspension of cargo operations by the Seller because of the Vessel's or the Buyer's failure to comply with the requirements of the Agreement relating to payment;
- 7.4.9 escape or discharge of Goods or the threat of an escape or discharge of Goods on or from the Vessel;
- 7.4.10 delay or suspension of cargo operations directed by the Seller or the load Terminal operator due to an unsafe condition of the Vessel;
- 7.4.11 quarantine, unless such quarantine was in force at the time when such load Terminal or place was nominated by the Buyer to the Vessel owner;
- 7.4.12 delays due to fire or explosion on the Vessel, labor dispute, strike, go slow, work to rule, lockout, stoppage or restraint of labor involving the master, officers or crew of the Vessel or tugboats or pilots;
- 7.4.13 any action, additional inspections, or special or additional security measures required by a relevant authority, pilots (excluding those described in Part 5 Section 7.4.3), coast guard or other security agency over which neither Party has control; and
- 7.4.14 any other delay solely for the Buyer's or the Vessel's purposes.

## **PART SIX – Applicable to CFR and CIF deliveries by Vessel**

### **Section 1. Delivery**

The Goods shall be delivered by the Seller to the Buyer at the load Terminal and the Seller shall contract or arrange a contract for the carriage of the Goods CFR or CIF (as applicable) from the load Terminal to the discharge Terminal specified in the Special Provisions.

### **Section 2. Measurement and Sampling; Independent Inspection**

#### **2.1 Performance of Measurement and Sampling Obligations:**

- 2.1.1 The Parties shall jointly agree on an independent inspector to perform all Measurements. The Seller shall arrange for access by such inspector to the load Terminal. All costs associated with a Measurement shall be shared equally between the Parties.
- 2.1.2 Subject to Part 6 Sections 2.1.3 and 2.1.4, and unless otherwise mutually agreed by the Parties in writing, Measurements shall be carried out in accordance with Approved Industry Practice. The Parties each agree to instruct the inspector to provide Inspector's Reports to both Parties. In the event the inspector fails to send the Inspector's Reports to both Parties, the Party receiving the report shall deliver a copy of the report to the other Party on its request.
- 2.1.3 Quantity shall be measured using, in order of precedence:
  - (a) for crude oil, fuel oil, vacuum gasoil and residual fuel, by
    - (i) the load Terminal's calibrated meter; or if none;
    - (ii) shore tank measurements taken immediately before and immediately after loading from shore tanks that are static and which at all times have the floating roofs afloat and are above the critical zone by a minimum of six (6) inches; or failing that,
    - (iii) the Vessel's receiving figures for the NSV on board at the completion of loading, less any OBQ of the Goods present at the time loading commences, corrected by the Vessel's valid load VEF; and
  - (b) for all other Goods, by
    - (i) shore tank measurements taken immediately before and immediately after loading from shore tanks that are static and which at all times have the floating roofs afloat and are above the critical zone by a minimum of two (2) inches for gasoline or gasoline components stored in tanks at KMI Pasadena, Galena Park or Carteret Terminals, and six (6) inches for all other Goods, or failing that,
    - (ii) the Vessel's receiving figures for the NSV on board at the completion of loading, less any OBQ of the Goods present at the time of the Goods present at the time loading commences, corrected by the Vessel's valid load VEF, or failing that
    - (iii) the load Terminal's calibrated meter,

2.1.4 Subject to Part 6 Section 2.3, quality shall be determined by inline sampling at the Vessel's manifold at the time of the loading of the Vessel at the load Terminal, or, if not available, then by volumetrically correct composite sampling of the Seller's or its supplier's shore tanks at the time of loading.

2.1.5 The Buyer may at its own expense, upon prior reasonable notice to the Seller, require the Seller to use reasonable efforts to allow the Buyer's representative to witness any Measurements.

2.2 Inspector's Reports:

The Inspector's Reports shall be used to prepare invoices hereunder. For invoicing purposes, all volumes shall be net volumes with full deduction for all sediment and water and free water content shall be made according to Approved Industry Practice, and the quantity shall be adjusted to sixty (60) degrees Fahrenheit (or fifteen point six (15.6) degrees Centigrade) using the appropriate tables.

2.3 Blending, Dyeing and Addition of Additives

Without prejudice to Part 1 Section 3, and subject always to Part 6 Section 6.1.5, the Seller may: (a) blend Goods; (b) add or inject dye; and/or (c) add additives to the Goods on board the Vessel during and/or after loading but always prior to sailing ("**On-Board Operation**"), provided always that any delay arising solely out of or in connection with such activity shall be for the Seller's account. In particular, where agreed in the Special Provisions that the specification for the Goods shall be the Vessel composite, the Buyer shall confirm in its Nomination pursuant to Part 6 Section 7 that the Vessel is fully capable of blending evenly during loading operations. The Seller, as the charterer of the Vessel, shall direct the Vessel to comply with the Seller's reasonable instructions for the On-Board Operations, and shall otherwise assist the Buyer in ensuring the On-Board Operation is done properly. Quality shall be measured by sampling of the Vessel composite after completion of the On-Board Operation.

2.4 Part Cargo Delivered CFR or CIF:

Where delivery is made as an un-segregated part cargo lot to the Buyer and a third party, the quantity determined in accordance with the foregoing shall be adjusted so that, following completion of discharge of the relevant part cargo lots, the Buyer and such third party shall each be allocated a percentage of the total loaded quantity equal to that percentage of the total quantity (determined at each discharge Terminal in the same manner as set out in Part 6 Section 2.1) which was discharged at its discharge Terminal. The costs of such independent inspection shall be shared equally between the parties for their respective Discharge Terminals and the Inspector's Report shall be made available to all parties.

**Section 3. Title and Risk of Loss**

Notwithstanding the Seller's right to retain the documents referred to in Part 1 Section 6 until payment, title to and risk of loss or damage to any Goods delivered shall be transferred from the Seller to the Buyer as the Goods pass the Vessel's permanent manifold connection at the load Terminal.

**Section 4. Indicative Discharge Date**

The Seller may expressly or by implication, whether in the Special Provisions or otherwise, provide the Buyer with a date or range of dates for the arrival of the Vessel at the discharge Terminal and/or its performance of discharge operations. The Seller shall provide any such dates in good faith and shall not assume any responsibility for the delivery of the Goods at the discharge Terminal, but unless otherwise expressly stated in writing as a definitive commitment to ensure delivery or arrange for delivery on the specified dates, they are estimates only, not binding commitments, and are also subject to Part 1 Sections 8 and Part 6 Section 5.3.2.

**Section 5. Insurance**

- 5.1 For CFR deliveries, neither Party shall have any obligation to the other Party to secure insurance, whether against marine or other risks.
- 5.2 For CIF deliveries, the Seller shall procure and pay for insurance against marine risks to the full value of the Goods plus ten percent (10%). Such insurance, which shall operate from the time the Goods pass the Vessel's permanent hose connection at the load Terminal until the time the Goods pass the Vessel's permanent hose connection at the discharge Terminal, shall be in accordance with the provisions of a Marine Cargo Insurance Policy subject to Bulk Oil Clauses SP-13C, or at the Seller's option, Institute Cargo Clauses (A), and the benefit thereof shall accrue to the Buyer upon the passing of risk in the Cargo as provided for in the Agreement.

The Seller is not obligated to procure insurance against war, strikes, riots, or civil commotions in respect of the delivery of the Goods hereunder, save where the Seller shall, by written notice actually received by it at least two (2) Business Days prior to the commencement of loading, have been requested by the Buyer to procure such insurance. Where, upon request as aforesaid, the Seller procures such insurance, it shall be subject to the Institute War Clauses (Cargo) and Institute Strikes Clauses (Cargo) current on the date of sailing of the Vessel and the actual premium payable at the current New York Market rate for the voyage to be performed shall be charged to, and be recoverable from, the Buyer by the Seller as an addition to the purchase price in the Agreement under the Special Provisions and such addition shall then form part of such purchase price. If requested by the Buyer, the Seller shall provide the Buyer with the original certificate of insurance or broker's cover note.

- 5.3 Additional Vessel Insurance, etc.:
- 5.3.1 If the Seller determines that additional insurance or war risk insurance premiums are necessary in excess of those in place as at the date of the Agreement for the Vessel's hull and machinery and/or Goods during the voyage to the discharge Terminal or while on any seas through which the Vessel has to travel in performance of the Agreement, the Seller will obtain quotes for such additional insurance or premiums and provide the Buyer with the Seller's recommendation to obtain such additional insurance or pay such additional premiums and the quotes obtained by the Seller for same. The Buyer shall then determine, at its sole discretion, whether the Seller should obtain such additional insurance or pay such additional premiums. If the Seller, at the Buyer's instruction, incurs such additional insurance or pays such additional premiums, the cost of such additional insurance and/or additional premiums shall be paid by the Buyer to the Seller in addition to the price payable pursuant to the Agreement. The Buyer and the Seller shall mutually agree on the invoicing procedures for amounts payable pursuant to this paragraph.
- 5.3.2 The Seller reserves the right to refuse at any time:
- (a) to direct any Vessel to undertake or to complete the voyage to the discharge Terminal if such Vessel would thereby be required to transit or to proceed to or to remain in waters so that the Vessel concerned would be involved in a breach of any Institute Warranties (if applicable) or, in the Seller's opinion, to risk its safety or to risk ice damage, or to transit or to proceed to or to remain in waters where there is war (de facto or de jure) or threat thereof;
  - (b) prior to the commencement of loading, to direct any Vessel to undertake the voyage to the intended discharge Terminal if such Vessel would thereby be required to transit waters which, in the Seller's reasonably held opinion, would involve abnormal delay; or
  - (c) to undertake any activity in furtherance of the voyage which in the opinion of the Vessel's Master could place the Vessel, its cargo or crew at risk.

- 5.3.3 If the Seller in its sole discretion agrees to direct a Vessel to undertake or to complete the voyage under any circumstances listed in Part 6 Sections 5.3.2(a)–(c), the Buyer shall reimburse the Seller, in addition to the price payable under the Agreement, for costs incurred by the Seller in respect of any additional insurance premium and any other sums that the Seller may be required to pay to the Vessel's owner, including any sums in respect of any amounts deductible under such owner's insurance and any other costs and/or expenses incurred by the Seller.

**Section 6. Charterparty Conditions**

- 6.1 The contract of carriage shall contain the following conditions:
- 6.1.1 that amounts due under the charterparty or other contract of carriage shall be directly paid by the Seller;
  - 6.1.2 that Vessel pumping off expenses shall be included in freight, or if not, at no additional cost to the Buyer;
  - 6.1.3 that the charterparty shall include an alternative discharge port should the nominated discharge port become illegal for any involved party due to trade sanctions, legislation, or executive pronouncement; or if not included, another safe port may be nominated by the Buyer, always subject to the Seller's reasonable acceptance and in that instance, all expenses including additional freight and deviation for such shall be for the Buyer's account;
  - 6.1.4 that discharge without presentation of, and/or at a different place than named on, the bill of lading is allowed under a letter of indemnity from the Seller to the Vessel owner, of which a reciprocal letter shall be issued from the Buyer to the Seller; and
  - 6.1.5 that the following operations after completion of loading are allowed in the charterparty, or otherwise agreed to: blending, breach of natural segregation, the addition of additives (other than dye), on board blending, the carriage of additives or dye on deck, or other reasonable and similar requests. The above operations are always subject to vessel design, safe circumstances, and the Master's discretion; and only will be attempted after the receipt of a letter of indemnity in the Vessel owner's wording issued from the Buyer to the Seller. Additional costs caused, if any, are for the Buyer's account.
- 6.2 Any indemnity given by the Buyer to the Seller pursuant to either this Section shall not be subject to the provisions of Part 1 Section 9.
- 6.3 Save as otherwise set forth herein, and without limiting the Buyer's obligations under Part 6 Section 9, the Seller shall be responsible for paying any freight and/or demurrage due to the Vessel owner.

**Section 7. Nomination of Vessels, Rejection, Substitution, etc.**

- 7.1 Full Cargo and Part Cargo:
- The Goods shall be delivered to the Buyer as either a full cargo or part cargo at the Seller's option.
- 7.2 Nomination of Vessels:
- The Seller shall nominate in writing to the Buyer each Vessel that will load Goods pursuant to any transaction hereunder. The Seller's Nomination shall include:
- 7.2.1 a completed and accurate Q88 or the information that would be required in a completed Q88;
  - 7.2.2 the grade and approximate quantity to be loaded;

- 7.2.3 the ETA of the Vessel at the load and discharge Terminals;
- 7.2.4 the Vessel/charterer's agent at the discharge Terminal;
- 7.2.5 full details of any cargo on board or to be loaded on board if loading a part cargo;
- 7.2.6 in the case of any sales afloat, whereby the Goods have been or will be laden onboard (which shall include storage, and any intervening transshipment as well as by way of carriage) more than one Vessel, the name of each such Vessel, date built and flag; and
- 7.2.7 confirmation that the Vessel complies with the applicable requirements of Appendix A hereto.

7.3 Vessel Substitution:

The Seller may nominate a substitute Vessel for any Vessel previously nominated pursuant to Part 6 Section 7.2, and must nominate a substitute Vessel for any Vessel rejected by the Buyer pursuant to Part 6 Section 7.6. With respect to any such substitution:

- 7.3.1 the size of the substitute Vessel and the quantity of Goods to be loaded shall not, without the Buyer's prior written consent, materially differ from the size of the Vessel previously nominated and the quantity of Goods specified in such prior Nomination; and
- 7.3.2 the Seller shall provide the Buyer with written notice of the substitution containing all information that would have been required had the substitute Vessel been originally nominated pursuant to Part 6 Section 7.2 by the earlier of the ETA at the load Terminal of (a) the substitute Vessel and (b) the Seller's originally-nominated Vessel.

7.4 Acceptance or Rejection of Vessels and Consequences of Rejection:

7.4.1 The Buyer shall within one (1) Business Day, or such other period as may be specified in the Special Provisions, of the Buyer's receipt of the Seller's Nomination:

- (a) deliver written notice to the Seller accepting or rejecting any Vessel nominated by the Seller;
- (b) notify the Seller of the final discharge Terminal, if not already specified in the Special Provisions. The Seller must accept or reject the final discharge Terminal within one (1) Business Day after receiving the Buyer's notice, such acceptance not to be unreasonably withheld. No change to the final discharge Terminal so nominated or specified shall be made without the Seller's prior written acceptance which shall not be unreasonably withheld and subject always to the provisions of Part 6 Sections 7.6.1 and 7.6.2. If the Special Provisions provide a range within which a discharge Terminal or ports may be nominated by the Buyer, the Seller's acceptance of each discharge Terminal or port shall be required in writing within one (1) Business Day after any valid nomination, such acceptance not to be unreasonably withheld; and
- (c) provide full written instructions regarding the particulars and destination of the bills of lading and such other customary load Terminal documentation which may be required. The Seller shall have the right to issue its own instructions if such instructions are not so provided by the Buyer.

All costs (including demurrage) arising out of any failure by the Buyer to comply with this Section shall be for the Buyer's account.

7.4.2 Notwithstanding anything to the contrary, the Buyer shall have the right (which right may only be exercised prior to the passing of risk and title in the Goods):



- (a) to reject, on any reasonable ground, any Nomination made by the Seller, including where the Buyer determines that the Vessel is unacceptable under the Buyer's documented vessel assurance requirements;
- (b) to reject a Vessel, notwithstanding any prior acceptance of such Vessel (whether named in the Special Provisions or nominated or substituted pursuant to this Section), if, at any time after such prior acceptance, more recent information becomes available to the Buyer which reasonably indicates to the Buyer that the Vessel and/or its crew is unsafe for the performance of the voyage in question.

7.4.3 In the event a rejection, delay or other restriction of the Vessel occurs as a direct result of the application of any Applicable Law, the requirements of this Part 6 Section 7, and/or the applicable requirements of Appendix A:

- (a) the Buyer shall not be liable for the consequences of such rejection, delay or restriction, and any time consumed as a result thereof at the discharge Terminal shall not count as used Laytime or, if the Vessel is on demurrage, as time on demurrage;
- (b) the Seller shall be liable for any direct costs or damages incurred by the Buyer (i) arising out of any such rejection, delay or restriction of the Vessel; and/or (ii) resulting from any delays in discharging the Goods hereunder due to the failure by the Seller to comply with the requirements of this Section in a timely manner; and
- (c) the Seller's obligations under the Agreement to nominate a suitable Vessel in accordance with Part 6 Section 7.2 shall be unaffected.

7.5 Vessel Requirements:

7.5.1 The Vessel shall comply with:

- (a) Applicable Law; and
- (b) the applicable requirements set out in Appendix A.

7.5.2 The Buyer shall provide all information regarding restrictions at the discharge Terminal and such other discharge Terminal regulations or requirements that are readily available to it, upon the Seller's written request.

7.6 Alternative Discharge Terminal:

Unless otherwise negotiated by the Parties, where the Buyer exercises any discharge Terminal options in accordance with the Special Provisions that are available to the Seller under the terms of the relevant charterparty:

7.6.1 The price stated in the Special Provisions shall be adjusted by the freight differential calculated in accordance with such charterparty terms or, if the Vessel has not been voyage chartered, such rate as shall be mutually agreed between the Parties in respect of such discharge Terminal. Any delays arising out of the failure of the Parties to agree shall be for the Buyer's account.

7.6.2 The Buyer shall be liable for any reasonable additional costs incurred by the Seller, including, but not limited to, deviation costs and costs in respect of any additional bunker consumption.

7.7 Loaded Details:

As soon as possible after loading has been completed, the Seller shall notify the Buyer of the actual quantity loaded and, if requested by the Buyer, the latest ETA of the Vessel at the discharge Terminal.

**Section 8. Arrival of Vessel, Berth, etc.**

8.1 Arrival of Vessel:

8.1.1 The Seller shall notify the Buyer or its representative and the discharge Terminal of the Vessel's ETA on request of the Buyer, and otherwise in accordance with the standard reporting procedure applicable from time to time at the discharge Terminal. If the Seller's Vessel fails, for any reason, to give at least twenty four (24) hours' prior notice of arrival at the discharge Terminal, the time allowed to the Buyer for discharging pursuant to Part 6 Section 9.2 shall be extended by a period equal to the delay in giving such twenty four (24) hours' notice, but in any case not exceeding an additional twenty four (24) hours.

8.1.2 After receipt of NOR, both Parties, subject to the requirements and procedures of the discharge Terminal, shall perform their respective obligations to commence and complete discharge in a commercially reasonable manner.

8.2 Vessel Berths:

8.2.1 Subject to compliance by the Seller and its nominated Vessel with all other requirements of the discharge Terminal at the time in question, the Buyer shall provide a safe berth, free of wharfage for a normal cargo transfer.

8.2.2 The Buyer shall at all material times, and at no expense to the Seller, cause to be provided and maintained, in good working order, all necessary flexible hoses, connections, pipelines and tankage facilities necessary for the discharge of the Seller's Vessel.

8.2.3 Notwithstanding the Buyer's obligations under Part 6 Section 8.2.1, where the Buyer has purchased the Goods on board a named Vessel, the Seller represents to the Buyer and warrants that the named Vessel can safely berth and discharge the contractual quantity of Goods at the discharge Terminal regardless as to whether the contractual quantity is a full cargo or part cargo and irrespective of the port scheduling the Vessel. Failure to comply with this term shall entitle the Buyer to refuse to berth the named Vessel. Any costs incurred by the Seller in providing a substitute Vessel, or Lightering and/or transshipping the Goods at the discharge Terminal, including demurrage, pursuant to such refusal by the Buyer shall be paid by and the sole responsibility of the Seller.

8.3 Vessel Shifting:

The Buyer shall have the right to request the Vessel to shift from one berth to another. All costs, including damages for delay, shall be paid by and the sole responsibility of the Seller if such shifting is due to reasons within the Seller's control and/or the Vessel's control and otherwise shall be paid by and the sole responsibility of the Buyer.

8.4 Lightering, Vessel-to-Vessel and Transshipment Transfer Operations:

8.4.1 Either Party may, upon prior written notice to the other Party, request that the nominated Vessel be discharged by Lightering, Vessel-to-Vessel, or transshipment transfer operations, provided always that the requesting Party shall be responsible for the risk thereof and shall pay and indemnify the other Party for the cost of such operations (together with any additional expenses reasonably incurred by the Vessel in respect thereof). The non-requesting Party may

reject any Vessel proposed by the requesting Party to perform these operations on any basis as may be set out in Part 6 Section 7.4.2 which shall be equally applicable to this Section, save that references in Part 6 Section 7.4.2 to "Seller" shall refer to "requesting Party", "Buyer" shall refer to "non-requesting Party" and "Nomination" shall refer to a request for Lightering, Vessel-to-Vessel, or transshipment transfer operations.

- 8.4.2 Any Lightering, Vessel-to-Vessel transfer operations, or transshipment shall be carried out in accordance with the procedures set out in the ICS/OCIMF ship-to-ship transfer guide and MARPOL Annex I as amended by Resolution MEPC.186 (59), Chapter 8: Prevention of Pollution during Transfer of Oil Cargo between Oil Tankers at Sea, Regulations 40, 41, 42 for the transfer of Crude Oil and Petroleum Products or any modifications thereto.

Any Lightering, Vessel-to-Vessel, or transshipment transfer operations, whether at sea or inside the discharge Terminal limits, shall always be performed at a location considered safe and acceptable to both the nominated Vessel's owner and the non-requesting Party, and the requesting Party must notify the place of Lightering, Vessel-to-Vessel or transshipment transfer operation to the nominated Vessel and the non-requesting Party when NOR is tendered. The place of Lightering, Vessel-to-Vessel or transshipment transfer operation so notified shall be deemed to be the berth for purposes of this Section and Part 6 Section 9, and all references therein to the berth shall be construed accordingly.

- 8.4.3 To the extent the Buyer elects to discharge the Vessel by Lightering, Vessel-to-Vessel or transshipment transfer operations pursuant to this Section, all time used for any such operations (excluding any time consumed for the purposes set out in Part 6 Section 9.4) and any additional steaming and/or waiting time used solely for the purposes of any such operations shall be for the Buyer's account.

- 8.4.4 In relation to any dispute as to quantity when Lightering, Vessel-to-Vessel or transshipment operations have been undertaken, the figures of the nominated Vessel shall prevail, subject always to the provisions of Part 6 Section 2.3.

- 8.4.5 Part 1 Section 9 shall not apply to this Part 6 Section 8.4.

8.5 Fees and Other Charges at the Discharge Terminal:

- 8.5.1 Save where specified in Worldscale as being for the Vessel owner's account, the Buyer shall be solely liable for, and shall reimburse and indemnify the Seller for all dockage and service fees incurred at the discharge Terminal, including those for mooring, tugs, pilots, port costs (including fleeting and quay), fresh water, steam, and oily slops receipts, but excluding, for the avoidance of doubt, any taxes, imposts and dues on the Vessel at the discharge Terminal which are more fully referred to in, and recoverable under, Part 1 Section 5.

- 8.5.2 Any claims by the Seller for reimbursement hereof by the Buyer must be made by written notice delivered to the Buyer within one hundred and eighty (180) days of the date of discharge and shall be accompanied supporting documentation and reasonable details of the facts on which the claim is based. Any claim submitted after the relevant notice period is deemed waived.

**Section 9. Delays, Time Allowed and Demurrage**

9.1 Delays and Demurrage:

If the shipment is not discharged within the time allowed in accordance with Part 6 Section 9.2, the Buyer shall pay to the Seller demurrage, in the same currency as is prescribed for payment of the Goods delivered under the Agreement, in respect of the excess time at the appropriate rate per day (or pro rata for part of a day) as specified in this Part 6 Section 9.1, subject to Part 6 Sections 7.4.3, 8.3, 9.2, 9.4 and the following conditions:

9.1.1 The Buyer shall pay demurrage at the rate specified below for each running hour and pro rata for each part of an hour, for all time that running Laytime (as calculated pursuant to Part 6 Section 9.3) exceeds the allowed Laytime. Should the Vessel be discharged for the account of two (2) or more parties at a single Terminal, the Buyer shall be liable only for its pro rata share of demurrage incurred at the Terminal based on the part cargo discharged for the Buyer's account at a Terminal as a percentage of total gross volume of cargo discharged at that Terminal. However, the Buyer shall not be liable for any portion of Laytime used solely attributable to the other party.

9.1.2 For a Tanker or Ocean-Going Barge, the demurrage rate shall be, in order of precedence:

- (a) the rate, if any, specified in the Special Provisions;
- (b) the demurrage rate or overtime rate, if applicable, specified in the voyage charterparty, or if neither (a) nor (b) apply; then
- (c) the market rate current on the date the Laytime commences for a Vessel of the size and type appropriate to the Vessel's cargo for a single voyage charter from the load Terminal to the Buyer's discharge Terminal. In determining the market rate:
  - (i) each Party shall refer to an independent broker;
  - (ii) each independent broker shall give a written opinion about the spot market level on the day such Vessel berthed, and the rate used shall be based on the arithmetic mean of the two (2) levels, provided the two (2) levels do not differ by more than twenty (20) percent;
  - (iii) in the event the two (2) levels specified by the independent brokers differ by more than twenty (20) percent, each Party shall refer the matter to another broker who shall each give a written opinion on the spot market level, using a rate based on the arithmetic mean of the two new levels, provided these levels do not differ more than twenty (20) percent; and
  - (iv) in the event the levels in (iii) differ more than twenty (20) percent, the arithmetic mean of the middle two of the four (4) specified levels shall be used.

9.1.3 For an Inland Barge, the demurrage rate shall be, in order of precedence:

- (a) the rate, if any, specified in the Special Provisions; or
- (b) the rate specified in the voyage charterparty or, if neither (a) or (b) apply;
- (c) the daily hire rate of the Inland Barge on the date the Laytime commences.

9.1.4 Any demurrage claim must be delivered in writing (a) by the Seller to the Buyer within ninety (90) days of the date of disconnection of discharge hoses, and (b) must include a statement of claim setting out the demurrage calculation and all supporting documentation substantiating each and every constituent part of the calculation in respect of the demurrage claim. In the event the Seller fails to comply with the requirements in the preceding sentence with respect to any demurrage claim, such claim shall be deemed to be waived and the Buyer shall be discharged and released from all liability in respect of any demurrage claims which the Seller may have against the Buyer under this Section with respect to such occurrence.

9.2 Allowed Laytime:

Laytime shall be:

9.2.1 In the case of a Tanker:

- (a) thirty-six (36) running hours for a full cargo;
- (b) in the event of a partial delivery of the Goods under the Agreement, thirty six (36) hours allocated pro rata by dividing the contractual quantity of the Goods delivered to the Buyer by the Tanker's full cargo volume for the voyage as determined either: (i) by the bills of lading for such voyage or, if not available; (ii) the total NSV outturn volume, provided that, in either case, Laytime shall never be less than twelve (12) hours; and
- (c) if for any reason, other than safety, the Tanker is required to discharge the Goods separately, the Party requiring separate discharge shall be responsible for Laytime or demurrage, if on demurrage.

9.2.2 In the case of an Ocean-Going Barge, where the Goods comprise a cargo of:

- (a) 24,999 barrels or fewer : twelve (12) hours;
- (b) between 25000 to and including 49,999 barrels : fourteen (14) hours;
- (c) between 50000 to and including 74,999 barrels : sixteen (16) hours;
- (d) between 75000 to and including 99,999 barrels : eighteen (18) hours;
- (e) between 100000 to and including 124,999 barrels : twenty (20) hours;
- (f) between 125000 to and including 149,999 barrels : twenty two (22) hours; or
- (g) 150,000 barrels or greater : twenty four (24) hours.

9.2.3 In the case of an Inland Barge, where the Goods comprise a cargo of 25,000 barrels or greater, shall be three (3) hours plus such amount based either: (i) on the applicable charterparty terms, or, in the absence thereof; (ii) one hour for each 2,500 barrels discharged, provided that, in either case, Laytime shall never be less than twelve (12) hours.

All days, including all holidays, shall be included in such allowed Laytime unless discharging on the day or holiday in question is prohibited by Applicable Law.

9.3 Running Laytime Hours:

9.3.1 Running Laytime shall commence (berth or no berth) six (6) hours after NOR is tendered at the discharge Terminal or when the Vessel is All Fast, whichever is the earlier. Notwithstanding

the foregoing, in the event the cargo documents are not on board the Vessel within three (3) hours of the commencement of the running Laytime, the running Laytime shall be suspended and the running Laytime will not resume until the cargo documents are on board the Vessel.

- 9.3.2 For purposes of calculating running Laytime, running Laytime shall end when the Vessel's discharge hoses are disconnected.
- 9.3.3 After NOR has been tendered, any delay arising from a Force Majeure Event shall count as one half running Laytime or, if the Vessel is on demurrage, as one half the time on demurrage, provided that,
- (a) neither Part 1 Section 8.4 with regard to the giving of notices only, nor Part 1 Section 8.5 in its entirety shall not apply to this Part 6 Section 9.3.3; and
  - (b) should the Force Majeure Event continue for a period of fifteen (15) days, any such delay shall count as full running Laytime or, if the Vessel is on demurrage, as full time on demurrage.
- 9.3.4 All time used for extra sampling and analysis to determine the quality of the Goods pursuant to any right given to the relevant Party under the Agreement shall be for the account of the Party requesting the extra tests, provided however that, if the Goods prove to be off specification, the Seller shall be liable for all costs, including running Laytime or demurrage related to the extra sampling and analysis.

#### 9.4 Laytime Exceptions:

In addition to any deductions from running Laytime set out in Part 6 Section 9.3, any time consumed due to, but not limited to, any of the following situations shall not count as Laytime or, if the Vessel is on demurrage, as time on demurrage:

- 9.4.1 on inward passage from the time the Vessel passes the customary point of entry into the discharge Terminal until it is All Fast at berth, or from the time the Vessel passes the customary point of entry into the discharge Terminal until the Vessel is secure at anchorage and from the time the Vessel weighs anchor until it is All Fast at berth;
- 9.4.2 time awaiting Free Pratique, except if concurrent with cargo-related operations or customarily given after All Fast;
- 9.4.3 time awaiting pilots, tugs, tides or daylight, provided, however, that the Buyer shall only be entitled to deduct time awaiting one tide and/or one wait for daylight immediately preceding berthing. If during this waiting period the dock or berth is not available, the exclusions for waiting pilots, tugs, tide or daylight shall not apply;
- 9.4.4 restrictions imposed by the owner, charterer, or master of the Vessel, or discharge Terminal authority including discharge Terminal closure or prohibitions on cargo operations at night;
- 9.4.5 discharging slops; cleaning and inspection of the Vessel's tanks, pumps, pipelines; ballasting or de-ballasting; bunkering; or for these and any other purposes of the Vessel unless such operations are performed concurrent with cargo operations and do not delay cargo operations;
- 9.4.6 overflow, breakdown, inefficiency, repairs or other conditions whatsoever attributable to the Vessel, master, officers, crew, owners, the Seller or their representatives, employees or agents, including any inability to load or discharge the Goods expeditiously;

- 9.4.7 the Vessel's failure to comply with the requirements of the discharge Terminal with respect to equipment aboard or any other matter causing delay or restriction of cargo operations;
- 9.4.8 delays due to the Vessel's failure to have the required certificate of financial responsibility, or failure to be in compliance with Applicable Law (or hold the necessary waiver if not in compliance), or failure to have any other required documentation;
- 9.4.9 escape or discharge of Goods or the threat of an escape or discharge of Goods on or from the Vessel;
- 9.4.10 delay or suspension of cargo operations directed by the Buyer or the discharge Terminal operator due to an unsafe condition of the Vessel;
- 9.4.11 quarantine, unless such quarantine was in force at the time when such discharge Terminal or place was nominated by the Seller to the Vessel owner;
- 9.4.12 delays due to fire or explosion on the Vessel, labor dispute, strike, go slow, work to rule, lockout, stoppage or restraint of labor involving the master, officers or crew of the Vessel or tugboats or pilots;
- 9.4.13 any action, additional inspections, or special or additional security measures required by a relevant authority, pilots (excluding those described in Part 6 Section 9.4.3), coast guard or other security agency over which neither Party has control; and
- 9.4.14 any other delay solely for the Seller's or the Vessel's purposes.

## **PART SEVEN – Applicable to Vessel deliveries Ex Ship**

### **Section 1. Delivery**

Subject to the provisions of the Agreement, the Goods shall be delivered by the Seller to the Buyer Ex Ship at the discharge Terminal specified in the Special Provisions.

### **Section 2. Measurement and Sampling; Independent Inspection**

#### **2.1 Performance of Measurement and Sampling Obligations:**

Measurements shall be carried out at the discharge Terminal at the time of discharge in the following manner:

2.1.1 The Parties shall jointly agree on an independent inspector to perform all Measurements. The Buyer shall arrange for access by such inspector to the discharge Terminal. All costs associated with a Measurement shall be shared equally between the Parties.

2.1.2 Subject to Part 7 Sections 2.1.3 and 2.1.4, and unless otherwise mutually agreed by the Parties in writing, Measurements shall be carried out in accordance with Approved Industry Practice. The Parties each agree to instruct the inspector to provide Inspector's Reports to both Parties. In the event the inspector fails to send the Inspector's Reports to both Parties, the Party receiving the report shall deliver a copy of the report to the other Party on its request.

#### **2.1.3 In relation to quantity:**

(a) for crude oil, fuel oil, vacuum gasoil and residual fuel, by

(i) the discharge Terminal's calibrated meter; or if none;

(ii) shore tank measurements taken immediately before and immediately after loading from shore tanks that are static and which at all times have the floating roofs afloat and are above the critical zone by a minimum of six (6) inches or, failing which

(iii) by Vessel measurement taken immediately before and immediately after delivery less any ROB adjusted by its VEF; and

(b) for all other Goods, by

(i) shore tank measurements taken immediately before and immediately after loading from shore tanks that are static and which at all times have the floating roofs afloat and are above the critical zone by a minimum of two (2) inches for gasoline or gasoline components stored in tanks at KMI Pasadena, Galena Park or Carteret Terminals, and six (6) inches for all other Goods; or, failing which

(ii) by Vessel measurement taken immediately before and immediately after delivery less any ROB adjusted by its VEF; or failing that

(iii) the discharge Terminal's calibrated meter.

2.1.4 For Goods other than crude oil, fuel oil, vacuum gasoil and residuals, quality shall be determined by a weighted, volumetric composite of representative samples taken manually



from the Vessel's tanks prior to discharge at the discharge Terminal, provided that, where the Buyer is to receive the Goods at more than one (1) Terminal, the samples taken from the Vessel's tanks prior to discharge at the first discharge Terminal shall apply to the Goods discharged at the second and subsequent discharge Terminals, unless Applicable Law requires a samples to be taken from the Vessel's tanks prior to discharge at each discharge Terminal.

2.1.5 The Seller may at its own expense, upon prior reasonable notice to the Buyer, require the Buyer to use reasonable efforts to ensure that the Seller's representative may witness any Measurements.

2.2 Inspector's Reports:

The Inspector's Reports shall be used to prepare invoices hereunder. For invoicing purposes, all volumes shall be net volumes with full deduction for all sediment and water and free water content shall be made according to Approved Industry Practice, and the quantity shall be adjusted to sixty (60) degrees Fahrenheit (or fifteen point six (15.6) degrees Centigrade) using the appropriate tables.

**Section 3. Title and Risk of Loss**

Title to and risk of loss or damage to any Goods delivered shall be transferred from the Seller to the Buyer as the Goods pass the Vessel's permanent manifold connection at the discharge Terminal.

**Section 4. Laydays**

The "**Laydays**" shall be the day or range of days (issued in accordance with standard practice at the discharge Terminal) either specified in the Specified Provisions, or determined in accordance with a procedure established in the Special Provisions in which the Seller's Vessel must tender NOR at the discharge Terminal pursuant to Part 7 Section 6.

**Section 5. Nominations of Vessels, Rejection, Substitution, etc.**

5.1 Full Cargo and Part Cargo:

Deliveries of Goods shall be given and taken as a full cargo or part cargo at the Seller's option.

5.2 Nomination of Vessels:

The Seller shall nominate in writing to the Buyer each Vessel that will discharge Goods pursuant to any transaction hereunder. The Seller's nomination shall specify:

5.2.1 a completed and accurate Q88 or the information that would be required in a completed Q88;

5.2.2 the grade and approximate quantity to be discharged;

5.2.3 the ETA of the Vessel at the discharge Terminal;

5.2.4 the destination of the Vessel prior to its arrival at the discharge Terminal;

5.2.5 full written instructions regarding the particulars and destination of the bills of lading and such other customary discharge Terminal documentation which may be required;

5.2.6 full details of any cargo on board or to be discharged if discharging a part cargo; and

5.2.7 confirmation that the Vessel complies with the applicable requirements of Appendix A hereto.

5.3 Vessel Substitution:

The Seller may nominate a substitute Vessel for any Vessel previously nominated pursuant to Part 7 Section 5.2 and must nominate a substitute Vessel for any Vessel rejected by the Buyer pursuant to Part 7 Section 5.4. With respect to any such substitution:

- 5.3.1 the size of the substitute Vessel and the quantity of Goods to be discharged shall not, without the Buyer's prior written consent, materially differ from the size of the Vessel previously nominated and the quantity of Goods specified in such prior nomination;
- 5.3.2 the Laydays which would have applied in respect of the Seller's originally nominated Vessel shall apply to the substitute Vessel; and
- 5.3.3 the Seller shall provide the Buyer with written notice of the substitution containing all information that would have been required had the substitute Vessel been originally nominated pursuant to Part 7 Section 5.2 within twenty-four (24) hours following the Seller's fixing of such Vessel "sub-details" but in any event by the later of (a) twenty-four (24) hours following the Seller's fixing of such Vessel "sub-details", and (b) the earlier of the ETA of the substitute Vessel or the ETA of the Seller's originally-nominated Vessel.

5.4 Acceptance or Rejection of Vessels and Consequences of Rejection:

- 5.4.1 The Buyer shall, within one (1) Business Day or such other period as may be specified in the Special Provisions, of receipt of the Seller's Nomination:
  - (a) deliver written notice to the Seller accepting or rejecting any Vessel nominated by the Seller; and
  - (b) notify the Seller of the final discharge Terminal, if not already specified in the Special Provisions. The Seller must accept or reject the final discharge Terminal within one (1) Business Day after receiving the Buyer's notice, such acceptance not to be unreasonably withheld. No change to the final discharge Terminal so nominated or specified shall be made without the Seller's prior written acceptance which shall not be unreasonably withheld and subject always to the provisions of Part 7 Sections 5.6.1 and 5.6.2. If the Special Provisions provide a range within which a discharge Terminal or ports may be nominated by the Buyer, the Seller's acceptance of each discharge Terminal or port shall be required in writing within one (1) Business Day after any valid nomination, such acceptance not to be unreasonably withheld.

All costs (including demurrage) arising out of any failure by the Buyer to comply with this Section shall be for the Buyer's account.

5.4.2 Notwithstanding anything to the contrary, the Buyer shall have the right:

- (a) to reject, on any reasonable ground, any Nomination made by the Seller, including where the Buyer determines that the Vessel is unacceptable under the Buyer's documented vessel assurance requirements;
- (b) to refuse, on any reasonable ground, to accept for discharge any Vessel named in a Nomination;

- (c) to reject a Vessel, notwithstanding any prior acceptance of such Vessel (whether named in the Special Provisions or nominated or substituted pursuant to Part 7 Sections 5.2 or 5.3), if, at any time after such prior acceptance, more recent information becomes available to the Buyer which reasonably indicates to the Buyer that the Vessel and/or its crew is unsafe for the performance of the voyage in question.

5.4.3 In the event a rejection, delay, or other restriction of the Vessel occurs as a direct result of the application of any Applicable Law, the requirements of this Section and/or the applicable requirements of Appendix A:

- (a) the Buyer shall not be liable for the consequences of rejection, delay or restriction, and any time consumed as a result thereof shall not count as used Laytime or, if the Vessel is on demurrage, as time on demurrage;
- (b) the Seller shall be liable for any direct costs or damages incurred by the Buyer: (i) arising out of any such rejection, delay or restriction; and/or (ii) resulting from any delays in discharging the Goods hereunder due to failure by the Seller to comply with the requirements of this Section in a timely manner; and
- (c) the Seller's obligations under the Agreement to nominate a suitable Vessel in accordance with Part 7 Section 5.2 and to ensure that it tenders NOR at the discharge Terminal in accordance with Part 7 Section 6 shall be unaffected.

5.5 Vessel Requirements:

5.5.1 The Vessel shall comply with:

- (a) all Applicable Law; and
- (b) the applicable requirements set out in Appendix A.

5.5.2 The Buyer shall provide all information regarding restrictions at the discharge Terminal and such other discharge Terminal regulations or requirements that are readily available to it, upon the Seller's request.

5.6 Discharge Terminal/Alternative Discharge Terminal:

5.6.1 The Seller reserves the right to refuse at any time:

- (a) to direct any Vessel to undertake or to complete the voyage to the discharge Terminal or to transit, proceed to, or remain in, areas where this would mean the Vessel concerned breaching any International Navigating Limits, similar insurance restrictions or contractual warranties or, in the Vessel Master's opinion, to risk the safety of the Vessel, its cargo or crew or to risk ice damage;
- (b) to transit, or proceed to, or remain in, areas where there is a war (de facto or de jure) or threat thereof; or
- (c) to undertake any activity in furtherance of the voyage which in the opinion of the Vessel's Master could place the Vessel, its cargo or crew at risk.

Following the Seller's notice to the Buyer of its refusal to direct a Vessel to undertake or to complete the voyage as referred in this Part 7 Section 5.6, the Buyer shall nominate an alternative Terminal reasonably acceptable to the Seller. In this event, any extra freight,

expenses, demurrage and dues incurred as result of such change and damages payable to the Vessel owner as a result, shall be paid for by the Buyer. Where the Buyer fails to nominate an alternative discharge Terminal reasonably acceptable to the Seller, the Buyer shall cover all additional costs incurred by the Seller as a result of the Vessel not being able to complete its voyage as intended.

- 5.6.2 Unless otherwise negotiated by the Parties, where the Buyer exercises any discharge Terminal options in accordance with the Special Provisions that are available to the Seller under the terms of the relevant charterparty:
- (a) The price stated in the Special Provisions shall be adjusted by the freight differential calculated in accordance with such charterparty terms or, if the Vessel has not been voyage chartered, such rate as shall be mutually agreed between the Parties in respect of such discharge Terminal. Any delays arising out of the failure of the Parties to agree shall be for the Buyer's account.
  - (b) The Buyer shall be liable for any reasonable additional costs incurred by the Seller, including deviation costs and costs in respect of any additional bunker consumption.

**Section 6. Arrival of Vessel, Berth, etc.**

6.1 Arrival of Vessel:

- 6.1.1 The Seller shall notify the Buyer or its representative and the discharge Terminal of the Vessel's ETA on request of the Buyer and otherwise in accordance with the standard reporting procedure applicable from time to time at the discharge Terminal. If the Seller's Vessel fails, for any reason, to give at least twenty four (24) hours' prior notice of arrival at the discharge Terminal, the time allowed to the Buyer for discharging pursuant to Part 7 Section 7.2 shall be extended by a period equal to the delay in giving such twenty four (24) hours' notice, but in any case not exceeding an additional twenty four (24) hours.
- 6.1.2 In the event that Laydays are stipulated in the relevant Special Provisions, the Seller shall ensure that by no later than 2400 hours (local time) on the last day of such Laydays, NOR has been tendered. In the event that the Vessel fails to tender NOR as set out in this Section, the Buyer shall be entitled to any damages that the Buyer may recover for the Seller's failure to deliver as specified the Agreement or by law and, in addition to such damages, where:
- (a) subject to Section 6.1.2 (b), NOR has not been tendered within five (5) days of the last day of the Laydays, the Buyer shall be entitled to terminate this Agreement upon notice to the Buyer; or
  - (b) the Goods are crude oil and NOR has not been tendered within ten (10) days of the last day of the Laydays, the Buyer shall be entitled to terminate this Agreement upon notice to the Buyer.
- 6.1.3 After receipt of NOR, and subject to the requirements and procedures of the discharge Terminal, both Parties shall perform their obligations to commence and complete loading in a commercially reasonable manner.

6.2 Vessel Berths:

- 6.2.1 Subject to compliance by the Seller and its nominated Vessel with all other requirements of the discharge Terminal at the time in question, the Buyer shall use due diligence to provide a safe berth, free of wharfage for a normal cargo transfer.

- 6.2.2 The Buyer shall at all material times and at no expense to the Seller cause to be provided and maintained, in good working order, all necessary flexible hoses, connections, pipelines, and tankage facilities necessary for the discharge of the Seller's Vessel.
- 6.2.3 Notwithstanding the Buyer's obligations under Part 7 Section 6.2.1, where the Buyer has purchased the Goods on board a named Vessel, the Seller represents to the Buyer and warrants that the named Vessel can safely berth and discharge the contractual quantity of Goods at the discharge Terminal regardless of whether the contractual quantity is a full cargo or part cargo and irrespective of the port scheduling the Vessel. Failure to comply with this term shall entitle the Buyer to refuse to berth the named Vessel. Any costs, including demurrage, incurred by the Seller in providing a substitute Vessel, or any Lightering and/or transshipping the Goods at the discharge Terminal (which shall be done in accordance with Part 7 Section 6.4), shall be for the Seller's account.

6.3 Vessel Shifting:

The Buyer shall have the right to request the Vessel to shift from one berth to another. All costs, including damages for delay, shall be for the Seller's account if such shifting is due to reasons within the Seller's control or the Vessel's control and otherwise shall be for the Buyer's account.

6.4 Lightering, Vessel-to-Vessel and Transshipment Transfer Operations:

- 6.4.1 Either Party may, upon prior written notice to the other Party, request that the Vessel nominated pursuant to Part 7 Section 5 be discharged by Lightering, Vessel-to-Vessel, or transshipment transfer operations, provided always that the requesting Party shall be responsible for the risk thereof and shall pay and indemnify the other Party for the cost of such operations (together with any additional expenses reasonably incurred by the Vessel in respect thereof). The non-requesting Party may reject any Vessel proposed by the requesting Party to perform these operations on any basis as may be set out in Part 7 Section 5.4.2 which shall be equally applicable to this Part 7 Section 6.4.1, save that references in that Part 7 Section 5.4.2 to "Seller" shall refer to "requesting Party", "Buyer" shall refer to "non-requesting Party" and "Nomination" shall refer to a request for Lightering, Vessel-to-Vessel, or transshipment transfer operations.
- 6.4.2 Any Lightering, Vessel-to-Vessel transfer operations, or transshipment shall be carried out in accordance with the procedures set out in the ICS/OCIMF ship-to-ship transfer guide and MARPOL Annex I as amended by Resolution MEPC.186 (59), Chapter 8: Prevention of Pollution during Transfer of Oil Cargo between Oil Tankers at Sea, Regulations 40, 41, 42 for the transfer of Crude Oil and Petroleum Products or any modifications thereto. Any Lightering, Vessel-to-Vessel, or transshipment transfer operations, whether at sea or inside the discharge Terminal limits, shall always be performed at a location considered safe and acceptable to both the owner of the Vessel nominated pursuant to Part 7 Section 5 and the non-requesting Party, and the requesting Party must notify the place of Lightering, Vessel-to-Vessel or transshipment transfer operation to the Vessel nominated pursuant to Part 7 Section 5 and the non-requesting Party when NOR is tendered. The place of Lightering, Vessel-to-Vessel or transshipment transfer operation so notified shall be deemed to be the berth for purposes of this Section and Part 7 Section 7, and all references therein to the berth shall be construed accordingly.
- 6.4.3 To the extent the Buyer elects to discharge the Vessel by Lightering, Vessel-to-Vessel or transshipment transfer operations pursuant to this Part 7 Section 6.4, all time used for any such operations (excluding any time consumed for the purposes set out in Part 7 Section 7.4) and any additional steaming and/or waiting time used solely for the purposes of any such operations shall be for the Buyer's account.

- 6.4.4 In relation to any dispute as to quantity when Lightering, Vessel-to-Vessel or transshipment operations have been undertaken, the figures of the Vessel nominated pursuant to Part 7 Section 5 shall prevail.
- 6.4.5 Part 1 Section 9 shall not apply to this Part 7 Section 6.4.
- 6.5 Fees and Other Charges at the Discharge Terminal:
- 6.5.1 The Seller shall be solely liable for, and shall reimburse and indemnify the Buyer for all dockage and service fees on the Vessel incurred at the discharge Terminal, including those for mooring, tugs, pilots, port costs (including fleeting and quay), fresh water, steam, and oily slops receipts, but excluding, for the avoidance of doubt, any taxes, imposts and dues on the Vessel at the discharge Terminal which are more fully referred to in, and recoverable under, Part 1 Section 5.
- 6.5.2 Any claims by the Buyer for reimbursement hereof by the Seller must be made by written notice delivered to the Seller within one hundred and eighty (180) days of the date of discharge and shall be accompanied supporting documentation and reasonable details of the facts on which the claim is based. Any claim submitted after the relevant notice period is deemed waived.

**Section 7. Delays, Time Allowed and Demurrage**

7.1 Delays and demurrage:

If the shipment is not discharged within the time allowed in accordance with Part 7 Section 7.2, the Buyer shall pay to the Seller demurrage, in the same currency as is prescribed for payment of the Goods delivered under the Agreement, in respect of the excess time at the appropriate rate per day (or pro rata for part of a day) as specified in this Part 7 Section 7.1, subject to Part 7 Sections 7.2 and 7.3 and the following conditions:

- 7.1.1 The Buyer shall pay demurrage at the rate specified below for each running hour and pro rata for each part of an hour, for all time that running Laytime (calculated pursuant to Part 7 Section 7.3) exceeds the allowed Laytime. Should the Vessel be discharged for the account of two (2) or more parties at a single Terminal, the Buyer shall be liable only for its pro rata share of demurrage incurred at the Terminal based on the part cargo discharged for the Buyer's account at a Terminal as a percentage of total gross volume of cargo discharged at that Terminal. However, the Buyer shall not be liable for any portion of Laytime used solely attributable to the other party.
- 7.1.2 For a Tanker or Ocean-Going Barge, the demurrage rate shall be, in order of precedence:
- (a) the rate, if any, specified in the Special Provisions;
  - (b) the rate as agreed by the Parties at the time of Vessel acceptance;
  - (c) the demurrage rate or overtime rate, if applicable, specified in the voyage charterparty, or if neither (a), (b) or (c) apply,
  - (d) the market rate current on the date the Laytime commences for a Vessel of the size and type appropriate to the Vessel's cargo for a single voyage charter from the load Terminal to the Buyer's discharge Terminal. In determining the market rate:
    - (i) each Party shall refer to an independent broker;

- (ii) each independent broker shall give a written opinion about the spot market level on the day such Vessel berthed, and the rate used shall be based on the arithmetic mean of the two (2) levels, provided the two (2) levels do not differ by more than twenty (20) percent;
- (iii) in the event the two (2) levels specified by the independent brokers differ by more than twenty (20) percent, each Party shall refer the matter to another broker who shall each give a written opinion on the spot market level, using a rate based on the arithmetic mean of the two new levels, provided these levels do not differ more than twenty (20) percent; and
- (iv) in the event the levels in (iii) differ more than twenty (20) percent, the arithmetic mean of the middle two of the four specified levels shall be used.

7.1.3 For an Inland Barge, the demurrage rate shall be, in order of precedence:

- (a) the rate, if any, specified in the Special Provisions;
- (b) the rate specified in the voyage charterparty; or, if neither (a) or (b) apply; then
- (c) the daily hire rate of the Inland Barge on the date the Laytime commences.

7.1.2 If the Seller fails to present its invoice setting out its demurrage claim calculation in writing to the Buyer, together with all supporting documentation substantiating each and every constituent part of such calculation in respect of its demurrage claim, within ninety (90) days of the date of disconnection of discharge hoses, such claim shall be deemed to be waived and the Buyer shall be discharged and released from all liability in respect of any demurrage claims which the Seller may have against the Buyer under this Section.

7.2 Allowed Laytime:

Laytime shall be:

7.2.1 In the case of a Tanker,

- (a) thirty-six (36) running hours for a full cargo;
- (b) in the event of a partial delivery of the Goods under the Agreement, thirty six (36) hours allocated pro rata by dividing the contractual quantity of the Goods delivered to the Buyer by the Tanker's full cargo volume for the voyage as determined either: (i) by the bills of lading for such voyage or, if not available; (ii) the total NSV outturn volume, provided that, in either case, Laytime shall never be less than twelve (12) hours; and
- (c) if for any reason, other than safety, the Tanker is required to discharge the Goods separately, the Party requiring separate discharge shall be responsible for Laytime or demurrage, if on demurrage.

7.2.2 In the case of an Ocean-Going Barge, where the Goods comprise a cargo of:

- (a) 24,999 barrels or fewer : twelve (12) hours;
- (b) between 25000 to and including 49,999 barrels : fourteen (14) hours;
- (c) between 50000 to and including 74,999 barrels : sixteen (16) hours;

- (d) between 75000 to and including 99,999 barrels : eighteen (18) hours;
- (e) between 100000 to and including 124,999 barrels : twenty (20) hours;
- (f) between 125000 to and including 149,999 barrels : twenty two (22) hours; or
- (g) 150,000 barrels or greater : twenty four (24) hours.

7.2.3 In the case of an Inland Barge, where the Goods comprise a cargo of 25,000 barrels or greater, shall be three (3) hours plus such amount based either: (i) on the applicable charterparty terms, or, in the absence thereof; (ii) one hour for each 2,500 barrels discharged, provided that, in either case, Laytime shall never be less than twelve (12) hours.

All days and holidays shall be included in such allowed Laytime unless discharging on the day or holiday in question is prohibited by Applicable Law.

### 7.3 Running Laytime Hours:

7.3.1 When a Tanker or Ocean-Going Barge tenders NOR:

- (a) within the Laydays, running Laytime shall commence (berth or no berth): (i) six (6) hours after the Buyer's receipt of such NOR after the Tanker's arrival at the discharge Terminal; or (ii) when the Tanker is All Fast, whichever occurs first;
- (b) earlier than the Laydays, running Laytime shall commence at: (i) 0600 hours local time on the first day of the specified Laydays; or (ii) upon commencement of discharge, whichever occurs first; or
- (c) after the last day of the Laydays and is accepted for discharge by the Buyer in its sole and absolute discretion, then, without prejudice to any of the Buyer's other rights, running Laytime shall commence only when the Tanker is All Fast.

7.3.2 When an Inland Barge:

- (a) tenders NOR within the Laydays, running Laytime shall commence upon the Inland Barge's arrival;
- (b) tenders NOR earlier than the Laydays, running Laytime shall commence at 0001 hours on the first day of the Laydays or upon commencement of discharge, whichever occurs first; or
- (c) arrives after the last day of the Laydays, running Laytime shall commence when the Inland Barge is All Fast.

For purposes of calculating running Laytime, running Laytime shall end when the Vessel's discharging hoses are disconnected.

7.3.3 After NOR has been tendered, any delay arising from a Force Majeure Event shall count as one half running Laytime or, if the Vessel is on demurrage, as one half the time on demurrage, provided that

- (a) neither Part 1 Section 8.4 with regard to the giving of notices only, nor Part 1 Section 8.5 in its entirety, shall apply to this Part 7 Section 7.3.3; and



(b) where the Force Majeure Event continues for a period of fifteen (15) days, any such delay shall count as full running Laytime or, if the Vessel is on demurrage, as full time on demurrage.

7.3.4 All time used for extra sampling and analysis to determine the quality of the Goods shall be for the account of the Party requesting the extra tests, provided however that, if the Goods prove to be off specification, the Seller shall be liable for all costs, including running Laytime or demurrage, related to the extra sampling and analysis.

#### 7.4 Laytime Exceptions:

In addition to any deductions from running Laytime noted elsewhere in this Agreement, any time consumed due to, but not limited to, any of the following situations shall not count as Laytime or as time on demurrage, if Vessel is on demurrage:

- 7.4.1 on inward passage, from the time the Vessel passes the customary point of entry into the discharge Terminal until it is All Fast at berth, or from the time the Vessel passes the customary point of entry into the discharge Terminal until the Vessel is secure at anchorage and from the time the Vessel weighs anchor until it is All Fast at berth;
- 7.4.2 time awaiting Free Pratique;
- 7.4.3 time awaiting pilots, tugs, tides or daylight, provided however, that the Buyer shall only be entitled to deduct time awaiting one tide and/or one wait for daylight immediately preceding berthing. If during this waiting period the dock or berth is not available, the exclusions for waiting pilots, tugs, tide or daylight shall not apply;
- 7.4.4 restrictions imposed by the owner, charterer, or master of the Vessel, or Terminal authority including discharge Terminal closure or prohibitions on cargo operations at night;
- 7.4.5 discharging slops; cleaning and inspection of the Vessel's tanks, pumps, pipelines; ballasting or deballasting; bunkering; or for these and any other purposes of the Vessel unless such operations are performed concurrent with cargo operations and do not delay cargo operations;
- 7.4.6 overflow, breakdown, inefficiency, repairs or other conditions whatsoever attributable to the Vessel, master, officers, crew, owners, the Seller or their respective servants or agents, including inability to load or discharge the Goods expeditiously;
- 7.4.7 the Vessel's failure to comply with the requirements of the discharge Terminal with respect to equipment aboard or any other matter causing delay or restriction of cargo operations;
- 7.4.8 delays due to the Vessel's failure to have the required certificate of financial responsibility, or failure to be in compliance with coast guard regulations or other discharge Terminal state regulations (or hold the necessary waiver if not in compliance), or failure to have any other required documentation;
- 7.4.9 escape or discharge of Goods or the threat of an escape or discharge of Goods, on or from the Vessel;
- 7.4.10 delay or suspension of cargo operations directed by the Buyer or the discharge Terminal operator due to an unsafe condition of the Vessel;
- 7.4.11 quarantine, unless such quarantine was in force at the time when such discharge Terminal or place was nominated by the Seller to the Vessel owner;

- 7.4.12 delays due to fire or explosion on the Vessel, labor dispute, strike, go slow, work to rule, lockout, stoppage or restraint of labor involving the master, officers or crew of the Vessel or tugboats or pilots;
- 7.4.13 any action, additional inspections, or special or additional security measures required by a relevant authority, pilots (excluding Part 7 Section 7.4.3), coast guard or other security agency over which neither Party has control; and
- 7.4.14 any other delay solely for the Seller or the Vessel's purposes.

## PART EIGHT – Applicable to all deliveries of Biofuel with RINs

### Section 1. Delivery

- 1.1 This Part 8 governs all deliveries of biofuel with RINs. For purposes of clarity, Part 1 of these GTCs, as well as the applicable Part of these GTCs that equate to the relevant means of delivery for the biofuels, shall be applicable to this Part 8, provided however, that in the event of an inconsistency, this Part 8 shall prevail for all deliveries of biofuels with RINs. Definitions used specifically in this Part 8, where not defined within a Section, are set out in Section 1.6 of this Part 8.
- 1.2 Pursuant to the Special Provisions, the Seller shall Initiate the relevant volume of RINs within its respective Transfer Period, or the Deficient Quantity of Qualified Replacement RINs, if applicable, within the period specified in Part 8 Section 3.1.
- 1.3 Pursuant to the Special Provisions, the Buyer shall accept or deny those RINs in EMTS no later than five (5) Business Days after Initiation.
- 1.4 All rights, title and interest in and to each RIN identified in the Special Provisions shall transfer from the Seller to the Buyer on the relevant Transfer Date set out in the PTD; *provided, however*, that if the Buyer denies any RINs in EMTS pursuant to Part 8 Section 2, such transfer shall be deemed void *ab initio* as to those denied RINs.
- 1.5 A failure by the Buyer to accept or deny a RIN in EMTS by the fifth Business Day after Initiation shall constitute a failure by the Buyer to accept such RIN pursuant to Part 8 Section 3.3, regardless of whether a basis existed for denial under Part 8 Section 2.

- 1.6 For the purposes of this Part 8:

“**Batch Number**” is a serial number assigned to a batch of fuel under the RFS Program.

“**D-Code**” means the number designating the type of renewable fuel with which a given RIN is associated, as described in Section 80.1425(g) of the RFS Program.

“**Deficient Quantity**” means the volume of Deficient RINs.

“**Deficient RIN**” has the meaning specified in Part 8 Section 3.1.

“**EMTS**” means the EPA Moderated Transaction System.

“**Generator**” means an entity that generates RINs under the RFS Program.

“**Initiate**” means the submission of a sell transaction in EMTS by the Seller, provided, however, that the Seller shall not be deemed to have submitted any RINs where the Seller cancels such sell transaction in EMTS before the Buyer accepts it in EMTS; and “**Initiation**” shall be similarly construed.

“**K-Code**” means the number designating whether or not a RIN is separated or assigned to a volume of fuel under the RFS Program.

“**PTD**” means the document transferring title to the purchased RINs as may be required pursuant to the RFS Program.

“**Qualified Replacement RIN**” means a valid RIN of the same D-Code as that specified in the Special Provisions and generated either in the same year specified therein, or if RINs generated in the year

specified therein are not reasonably available in the market or have expired, the then current compliance year.

**“RFS Program”** means the Renewable Fuel Standard Program under the Energy Policy Act of 2005 and the Energy Independence and Security Act of 2007 and implementing regulations, including 40 C.F.R. Part 80, Subpart M, or any successor thereto.

**“RIN”** means a Renewable Identification Number as provided for under RFS Program.

**“RIN Generation Year”** means the calendar year in which a RIN was generated under the RFS Program.

**“RINs Facility”** means a facility at which the batch of renewable fuel associated with the purchased RINs was produced or imported.

**“Transfer Date”** means the date specified as such on the PTD.

**“Transfer Period”** means, for a transaction, the date range specified in the Special Provisions during which the Seller must Initiate the relevant volume of RINs.

## **Section 2. Accept or Deny RINs**

2.1 Except as limited by Part 8 Section 2.3, the Buyer shall have the right, at its reasonable discretion, to deny any RINs in EMTS within five (5) Business Days of Initiation. For the avoidance of doubt, and without limitation, the Buyer shall be conclusively deemed to have reasonably exercised its discretion to deny where:

2.1.1 the Buyer has blocked the Generator or RINs Facility that generated the RINs or Qualified Replacement RINs in EMTS;

2.1.2 the RINs are invalid under Section 80.1431(a) of the RFS Program;

2.1.3 there is a reasonable prospect that the RINs will be invalid under Section 80.1431 of the RFS Program; or

2.1.4 except where this Agreement is for Specified RINs, the Buyer does not have or has not analyzed information sufficient to verify that any of the RINs are not invalid and that there is no reasonable prospect of such RINs becoming invalid under Section 80.1431(a) of the RFS Program.

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

2.2 Without prejudice to the application of Part 1 Section 8, it is not a reasonable exercise of discretion for the Buyer to deny RINs solely on the basis of scarcity of supply of, and/or the market price of, RINs.

2.3 Without prejudice to the Buyer's rights to rely on the Seller's representation and warranties given under this Agreement, where this Agreement specifies a specific Generator, RINs Facility or Batch Number (a **“Specified RIN”**) and unless otherwise agreed by the Parties in writing, the Seller shall Initiate such Specified RINs, and the Buyer shall accept such Specified RINs; provided, however, that if the Specified RINs are invalid or there is a reasonable prospect that the RINs will be invalid under Section 80.1431(a) of the RFS Program before the Buyer accepts them in EMTS, the Buyer shall have the right to deny such RINs in accordance with Part 8 Section 2.1.

**Section 3. Remedies for Failure to Initiate or Accept RINs, and Deficient RINs**

3.1 In the event that:

- 3.1.1 the Seller fails to Initiate all or part of a relevant volume of RINs during the applicable Transfer Period;
- 3.1.2 the Buyer exercises its right to deny all or part of the relevant volume of RINs pursuant to Part 8 Section 2;
- 3.1.3 the Seller breaches any of the warranties contained in Part 8 Section 4, or any warranty specified as being subject to this Part 8 Section 3 in the Special Provisions; or
- 3.1.4 Initiated RINs accepted by the Buyer are, or become, invalid for purposes of the RFS Program,

(each such affected RIN a “**Deficient RIN**”), then, the Seller shall, at the Seller’s sole cost and expense, Initiate Qualified Replacement RINs in a volume equal to the Deficient Quantity within: (i) in the case of Part 8 Sections 3.1.1 or 3.1.2, three (3) Business Days after the Seller receives notice from the Buyer that the circumstances in Part 8 Sections 3.1.1 or 3.1.2 apply; or (ii) in the case of Part 8 Sections 3.1.3 or 3.1.4, fifteen (15) calendar days after the Seller receives notice from the Buyer that the circumstances in Part 8 Sections 3.1.3 or 3.1.4 apply; provided, however, that if such day is not a Business Day, then the deadline shall be the immediately preceding Business Day.

3.2 Except where Part 8 Section 2.3 applies, if:

- 3.2.1 the Seller fails to timely or fully comply with its obligation to Initiate contained in Part 8 Section 3.1; or
- 3.2.2 at the time the circumstances in Part 8 Sections 3.1.2, 3.1.3 or 3.1.4 occur and fewer than ten (10) Business Days remain before February 28 of the year that is two (2) calendar years after the year the originally Initiated RINs were generated,

then the Seller shall, at the Buyer’s election by notice either (a) Initiate Qualified Replacement RINs in a volume equal to the Deficient Quantity in accordance with Part 8 Section 3.1, or (b) pay the Buyer within five (5) Business Days of receipt of the Buyer’s invoice, unless otherwise mutually agreed between the Parties, the positive difference, if any, between (a) Market Value and (b) Contract Value, with such sum increased by any amount already paid by the Buyer to the Seller on account of the Deficient RINs.

For purposes of this Part 8 Section 3.2:

- (i) “**Market Value**” means the amount of the RINs remaining to be delivered or received under a transaction multiplied by the RINs Market Price for an equivalent transaction for Qualified Replacement RINs as determined by the performing Party in a commercially reasonable manner. To ascertain the Market Value, the performing Party may consider, among other valuations, quotations from leading dealers in swap contracts or physical trading markets, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term, relevant payment due dates, transfer dates, and relevant volume of RINs. A Party shall not be required to enter into a replacement transaction in order to determine the Market Value of a transaction. For the avoidance of doubt, any option pursuant to which one Party has the right to extend the term of a transaction shall be considered in determining Contract Value and Market Values;
- (ii) “**Contract Value**” means the amount of the RINs remaining to be delivered or received under a Transaction multiplied by the price specified in the Agreement.

- (iii) the phrase “the amount of the RINs remaining to be delivered or purchased under this Agreement” as used in the defined terms “Market Value” and “Contract Value” shall refer to and mean the Deficient Quantity; and
  - (iv) the Market Value shall be calculated on the Business Day notified by the Buyer that falls (x) where Part 8 Section 3.2.1 applies, no sooner than the last day for performance of the Seller’s obligations under Part 8 Section 3.2.1 applies and, (y) where either Part 8 Section 3.2.1 or 3.2.2 applies, at least three (3) Business Days after the date the Seller gives notice of its election.
- 3.3 In the event that the Buyer fails to accept or deny all or part of the relevant volume of RINs or Qualified Replacement RINs in EMTS, as contemplated under Part 8 Section 1, the Seller shall provide written notice of such failure to the Buyer. If the Buyer fails to accept any portion of those RINs (the “**Pending RINs**”) in EMTS within one (1) Business Day of receiving such notice, then
  - 3.3.1 the Seller may cancel one or more of the Pending RINs in EMTS, and the Seller’s obligation to sell and deliver and the Buyer’s obligation to purchase and receive shall be reduced to the extent the Seller cancels such Pending RINs or such Pending RINs expire in EMTS; and
  - 3.3.2 regardless as to whether the Seller cancels, the Buyer shall pay the Seller the sum of (a) the positive difference, if any, between (1) the RINs Market Price and (2) the price specified in the Agreement multiplied by the volume of all Pending RINs (on all such RINs whether or not ultimately accepted), and (b) the purchase price for any of such RINs ultimately accepted by the Buyer.
- 3.4 In the event the provisions of this Section are invoked, the Parties shall work together in good faith to pursue an efficient, commercial and practical resolution consistent with the foregoing options (or any combination thereof) in order to cure any default with respect to any Deficient RINs, provided, however, the replacement RINs must be Qualified Replacement RINs unless otherwise mutually agreed.
- 3.5 The Seller shall issue a PTD accurately describing the Qualified Replacement RINs.
- 3.6 For the avoidance of doubt, this Section shall apply equally to any Qualified Replacement RINs.
- 3.7 Except in respect of a failure to pay any amount due under Part 8 Sections 3.2 or 3.3, the remedies set out in this Section are exclusive remedies for the occurrence of the events described in this Section.

Notwithstanding any other provision of this Agreement for purposes of RINs, neither Party shall indemnify the other for any regulatory or governmental penalties, fees or fines arising as a result of any RINs transfer.

#### **Section 4. Warranties**

- 4.1 **By Both Parties:** Each Party represents and warrants to the other Party (which representations and warranties are deemed to be repeated by each Party on each relevant RINs Transfer Date) that:
  - 4.1.1 it has the corporate and legal capacity, authority, and power, and all governmental and other licenses, authorizations, and other approvals (if any), necessary to execute and perform this Agreement (“**Required Authorizations**”), and that such Required Authorizations shall remain in full force and effect until its obligations have been fulfilled;
  - 4.1.2 it is a registered user of EMTS and has completed any registration required by the RFS Program; and
  - 4.1.3 such Party’s performance is in compliance with the RFS Program.

- 4.2 **By the Seller:** The Seller represents and warrants to the Buyer that on each relevant Transfer Date:
- 4.2.1 it shall convey good title to all RINs it sells hereunder, free and clear of any liens, or security interests by any third party;
  - 4.2.2 each RIN Initiated or sold: (a) is valid under the RFS Program; (b) is separated and unassigned; (c) was generated from a RINS Facility; (d) has no basis for becoming invalid under Section 80.1431(a) of the RFS Program; and (e) shall not otherwise result in a violation of Section 80.1431(a)(2) of the RFS Program, nor shall the Seller engage in any future conduct that would result in such a violation; and
  - 4.2.3 each RIN Initiated or sold:
    - (a) is of the (i) D-Code; (ii) K-Code; and (iii) RIN Generation Year, (other than where a later year is permitted in accordance with this Agreement) specified in the Special Provisions; and
    - (b) has not been retired.

**Section 5. Force Majeure**

- 5.1 Part 1 Section 8.2 is revised by deleting the “or” at the end of Part 1 Section 8.2.3, adding a semicolon at the end of Part 1 Section 8.2.4, and adding the following additional Sections, all of which are subject to Part 8 Section 3.3:

- “8.2.5 a situation where the RINs the Seller Initiates or intends to Initiate are invalid for purposes of the RFS Program;
- 8.2.6 a situation where certain RIN vintages are cancelled but the RFS Program itself is not cancelled;
- 8.2.7 a situation where the RFS Program is cancelled for a date in the future but the RINs to be Initiated remain valid up until the cancellation date; or
- 8.2.8 a situation where the RFS Program is cancelled and the RINs are no longer required, but the biofuel delivered or to be delivered is not affected. In such a case, the biofuel must still be delivered pursuant to the Agreement and, if:
  - (a) the price was a fixed price; and
  - (b) the affected Party gives the other Party written notice of renegotiation not later than 15 days before the cancellation of the RFS Program is effective,

then the Parties shall work together in good faith to renegotiate a price that reflects the value of the remaining biofuel to be delivered. If the original fixed price was, in effect, established as a differential to a specific index and that index continues to be published, the parties shall apply that differential to that index. If the Parties cannot reach agreement within fifteen (15) calendar days after such notice, then, by the close of business on the sixteenth (16<sup>th</sup>) Business Day following such notice, each of the Parties shall be required to obtain a quotation from three leading independent dealers in the relevant market. The highest and lowest quotations shall be excluded and the arithmetic mean of the remaining quotations shall be the new price, absent manifest error or fraud.”

- 5.2 Notwithstanding any other provision of Part 1 Section 8, in the event that EMTS is disrupted or unavailable, the affected obligations of the Parties will be suspended (but not discharged) until EMTS is not disrupted and is available.

**APPENDIX A – Requirements for Vessels at the load or discharge Terminal and, where applicable, during the Vessel's voyage**

1. Requirements in respect of Vessels at the load Terminal or discharge Terminal:
  - 1.1. If any Vessel does not meet any of the following requirements of this Appendix A:
    - 1.1.1. at the load Terminal, the Seller or the Seller's supplier may refuse to berth, load or continue loading such Vessel; and/or
    - 1.1.2. at the discharge Terminal, the Buyer or the Buyer's receiver may refuse to berth, discharge or continue discharging such Vessel.
  - 1.2. Vessel Responsibility:
    - 1.2.1. FOB Provisions:
      - (a) For Tankers, the Buyer shall ensure that the Vessel has full and valid Protection and Indemnity ("**P&I**") insurance coverage and valid pollution liability insurance with a P&I Club that is a member of the International Group of P&I Clubs. The P&I insurance coverage shall be at no additional cost to the Seller and must include coverage against liability for loss and damage to the Goods for the full value of the Goods.
      - (b) For Inland Barges, the Buyer shall ensure that the Inland Barge has insurance coverage from a fixed premium insurer, including coverage for liability for loss and damage to the Goods for the full value of the Goods, and pollution coverage with a limit not less than \$100,000,000 USD. Nothing contained herein shall limit or waive the Vessel owner's legal or contractual responsibility to the charterer.
    - 1.2.2. CIF/CFR/Ex-Ship Provisions:
      - (a) For Tankers, the Seller shall ensure that the Vessel has full and valid P&I insurance coverage and valid pollution liability insurance with a P&I Club that is a member of the International Group of P&I Clubs. The P&I insurance coverage shall be at no additional cost to the Buyer, and must include coverage against liability for loss and damage to the Goods for the full value of the Goods.
      - (b) For Inland Barges, the Seller shall ensure that the Inland Barge has insurance coverage from a fixed premium insurer, including coverage for liability for loss and damage to the Goods for the full value of the Goods, and pollution coverage with a limit not less than \$100,000,000 USD. Nothing contained herein shall limit or waive Vessel owner's legal or contractual responsibility to the charterer.
  - 1.3. ISPS Code:
    - 1.3.1. FOB Provisions:
      - (a) The Buyer shall procure that the Vessel shall comply with the requirements of the ISPS Code and where the load Terminal is within the USA and U.S. territories or waters, with the MTSA.



- (b) The Vessel shall when required submit a Declaration of Security to the load Terminal when requested to do so.
- (c) Notwithstanding any prior acceptance of the Vessel by the Seller, if at any time prior to the passing of title the Vessel ceases to comply with the requirements of the ISPS Code or MTSA:
  - (i) the Seller shall have the right not to berth such nominated Vessel and any demurrage resulting shall not be for the account of the Seller; and
  - (ii) the Buyer shall be obliged to substitute such nominated Vessel with a Vessel complying with the requirements of the ISPS Code and MTSA and with Part 5 Sections 5.3 and 5.5.
- (d) The Seller shall procure that the load port/Terminal/installation shall comply with the requirements of the ISPS Code and if located within the USA and U.S. territories, with the MTSA. Subject always to subsection (f) below, any costs or expenses in respect of the Vessel, including demurrage or any additional charge, fee or duty, levied on the Vessel at the load Terminal and actually incurred by the Buyer resulting directly from the failure of the load port/Terminal/installation to comply with the ISPS Code and if located within the USA and U.S. territories, with the MTSA, shall be for the account of the Seller, including the time required or costs incurred by the Vessel in taking any action or any special or additional security measures required by the ISPS code or MTSA.
- (e) Save where the Vessel has failed to comply with the requirements of the ISPS Code and within the USA and U.S. territories or waters, with the MTSA, the Seller shall be responsible for any demurrage actually incurred by the Buyer arising from delay to the Vessel at the load Terminal resulting directly from the Vessel being required by the Terminal facility or any relevant authority to take any action or any special or additional security measures or undergo additional inspections.

1.3.2. CIF/CFR/Ex-Ship Provisions:

- (a) The Seller shall procure that the Vessel shall comply with the requirements of the ISPS Code and if located within the USA and U.S. territories or waters, with the MTSA.
- (b) The Vessel shall when required submit a DOS to the discharge Terminal when requested to do so.
- (c) Notwithstanding any prior acceptance of the Vessel by the Buyer, if at any time prior to the arrival of the Vessel at the discharge Terminal the Vessel ceases to comply with the requirements of the ISPS Code or MTSA:
  - (i) the Buyer shall have the right not to berth such Nominated Vessel at the discharge Terminal and any demurrage resulting shall not be for the account of the Buyer; and
  - (ii) the Seller shall be obligated to substitute such Nominated Vessel with a Vessel complying with the requirements of the ISPS Code and MTSA and with Part 6 Sections 7.3 and 7.5 (for CIF/CFR) and Part 7 Sections 5.3 and 5.5 (for Ex Ship). If title and risk of loss to the Goods on board

the Vessel subsequently substituted has already passed to the Buyer, such title and risk of loss shall be deemed to have reverted to the Seller.

- (d) The Buyer shall procure that the discharge Terminal / installation shall comply with the requirements of the ISPS Code and if located within the USA and U.S. territories, with the MTSA. Subject always to subsection (f) below, any costs or expenses in respect of the Vessel including demurrage or any additional charge, fee or duty levied on the Vessel at the discharge Terminal and actually incurred by the Seller resulting directly from the failure of the discharge Terminal/installation to comply with the ISPS Code and if located within the USA and U.S. territories, with the MTSA, shall be for the account of the Buyer, including the time required or costs incurred by the Vessel in taking any action or any special or additional security measures required by the ISPS Code or MTSA.
- (e) Save where the Vessel has failed to comply with the requirements of the ISPS Code and within the USA and U.S. territories or waters, with the MTSA, the Buyer shall be responsible for any demurrage actually incurred by the Seller arising from delay to the Vessel at the discharge Terminal resulting directly from the Vessel being required by the Terminal facility or any relevant authority to take any action or any special or additional security measures or undergo additional inspections.

1.4. Vessel Management:

The Vessel shall be manned, operated and maintained so as to fully comply with: (i) guidance provided within the latest edition of the ISGOTT; (ii) the Vessel's flag state requirements; and (iii) the OCIMF Guidelines for the Control of Drugs and Alcohol On-board Ship (1990), each as amended from time to time.

1.5. Closed loading and/or discharge:

Vessels which are loading/discharging a cargo must operate at all times in the Closed Operations mode. "**Closed Operations**" refers to the procedures whereby Vessels conduct cargo transfer and ballasting operations into cargo tanks, with tank apertures closed and with vapors being emitted only by means of the dedicated venting system which is designed to disperse vapor clear of working areas and possible ignition sources. For the purposes of this sub-clause: (i) "volatile" shall mean a liquid from which gas evaporates rapidly and shall be taken to include any naturally volatile Goods or any Goods being carried at a temperature which is higher than the flash point of the Goods minus 10 degrees Celsius; (ii) "toxic" shall mean a poison which can affect personnel following inhalation, absorption or ingestion and shall be taken to include all Goods which give off vapors containing substances for which exposure limits are recommended as they may be hazardous to the health of personnel exposed to them; and (iii) "noxious" shall mean harmful to personnel or the environment.

1.6. IGS:

In relation to any cargo, if it is required by Applicable Law for the Vessel to be fitted with an inert gas system ("**IGS**") and for such IGS to be operative and the cargo tanks inerted in order to lawfully load or discharge the Goods, the Vessel will not be permitted to berth or to load or discharge the Goods unless the IGS is in good order, operative and the cargo tanks inerted at all times. In the event that:

- (i) such Vessel arrives with the IGS inoperative, the Vessel will not be berthed until the IGS is operative and the cargo tanks inerted and until that time NOR shall not be given, or if

given shall not be effective, and Laytime shall not commence until commencement of loading or discharge, as the case may be; or

- (ii) the IGS fails after the Vessel has berthed, transfer operations shall be terminated immediately and the Vessel may be ordered to clear the berth until the IGS is fully operational and tanks are inerted to the pre-arrival condition. Costs and time associated with Vessel movement for IGS repair shall be for the account of the FOB Buyer or the CIF/CFR/Ex Ship Seller (as the case may be). The use of temporary or substitute equipment or procedures to correct IGS malfunctions must be accepted by the other Party prior to re-admittance to the relevant Terminal, or for continuation of Vessel loading/discharging at the Terminal. Any Vessel time lost as a result of the Vessel not complying with all of the provisions in this section shall not count as used laytime or as time on demurrage.

1.7. Overboard Discharges:

The Vessel must comply with all applicable Ballast Water Management System (BWMS) regulations in effect for its flag and the ports called. The overboard discharge of bilges, slops or sewage within the confines of the relevant Terminal is forbidden.

1.8. Port Regulations:

The Vessel shall at all times remain compliant with all local laws and government regulations in effect at the point of operation.

1.9. Automated Manifest System:

Where the Terminal is located within the USA or US Territories, the Buyer shall exercise reasonable efforts to ensure that the Vessel is aware of the requirements of the U.S. Bureau of Customs and Border Protection ruling issued on December 5, 2003 under Federal Register Part II Department of Homeland Security 19 CFR Parts 4 and 103 and will comply fully with these requirements for entering US Terminals (including the requirements of the Automated Manifest System).

If the Terminal is changed at the Seller's request such that, despite the Buyer exercising commercially reasonable efforts, the Buyer's Nominated Vessel is unable to comply with the notification period required by the US Bureau of Customs and Border Protection ruling issued on December 5, 2003 under Federal Register Part II Department of Homeland Security 19 CFR Parts 4 and 103, (including the requirements of the Automated Manifest System), then any delay directly resulting from such non-compliance shall be for the Seller's account and the Buyer shall not be liable for failure of performance directly resulting from such non-compliance.

1.10 Non-Cargo Shipments:

Under all delivery terms, and with priority over any rule or tariff, no vessel will be required to load, ship or transport slops, waste, non-cargo line fills, produced water, drill fluids, or any other non-cargo material; even for purposes of admixture, line return, or recycling. Any cost, expense, lost time, or other financial exposure due to such a terminal demand shall be for the account, as relevant, the FOB Seller, the CIF/CFR Buyer or the Ex Ship Buyer.

1.11 BP Casualty Procedure:

In the event of any incident relating to a Vessel carrying Goods, the risk in which has passed from the Seller to a member of the BP Group of companies, the Seller shall use its best efforts to ensure that the master of the Vessel implements the BP casualty emergency instructions as stated on the document instructions issued by the BP operator.

**APPENDIX B – Seller’s letter of indemnity format**

The Letter of Indemnity referred to in Part 1 Section 6 shall be in the following format:

Quote

We refer to our Agreement dated [DATE] (the “Agreement”) in respect of your purchase from us of [QUANTITY] tons of [GRADE] Product (the “Goods”) FOB/CFR/CIF on Vessel “[VESSEL NAME]”, bill of lading date [B/L DATE].

In consideration of your making payment of US dollars [US DOLLAR AMOUNT] for the Product in accordance with the Agreement and having agreed to accept delivery of the cargo without having been provided with [HERE INSERT THE RELEVANT DOCUMENTS AS SET OUT IN THE AGREEMENT] (the “Documents”), we hereby represent and warrant all of the following:

- (i) the existence and validity of the Documents;
- (ii) that we are entitled to possession of the Documents;
- (iii) that we were entitled to possession of the Goods;
- (iv) that we had good title to the Goods;
- (v) that title in the Goods has been passed as provided in the Agreement to you free of all liens, charges or encumbrances of whatever kind;
- (vi) that you will have the benefit of the warranty as to enjoyment of quiet possession implied by law in the Agreement but without prejudice to any other warranty so implied.

Without prejudice to your rights under the Agreement we hereby agree to protect, indemnify and hold you harmless from and against any and all damages, losses, liabilities, costs, claims and reasonable expenses which you may suffer by reason of:

- (a) our failure to present the Documents to you in accordance with the Agreement; and/or
- (b) any action or proceeding brought or threatened against you by reason of our said failure and any breach of our above express representations and warranties in connection with questions of title to or the right to possession of the Documents or the Goods or the proceeds of either; or any liens, charges or encumbrances asserted on the documents or the Goods or any other claims arising out of or in connection with the Documents.

Our liability hereunder shall remain in full force and effect unless and until we provide you with the Document, which we irrevocably agree to provide to you promptly after the same have come into our possession.

No term of this indemnity is intended to, or does, confer a benefit or remedy on any party other than the named Buyer under the Agreement.

This indemnity shall be governed by and construed in accordance with the laws of the State of New York, and shall cease to have effect upon the Documents being provided to you.

Signed by: ..... Title: .....

of: [COMPANY NAME]

Unquote

[THE BELOW SECTION TO BE COMPLETED AND SIGNED WHERE THE SELLER EXERCISES ITS RIGHT TO REQUIRE A BANK TO COUNTER-SIGN THE LETTER OF INDEMNITY]

Quote

In consideration of your agreeing as aforesaid we the undersigned [BANK NAME] whose customer is [FULL NAME OF SELLER] hereby jointly and severally agree to be bound by the terms of the above letter of indemnity

By: .....

Bank Authorised Signatory

Unquote

## APPENDIX C – Supplement for Electronic Documents

In the event that the Parties agree in the Special Provisions for electronic documents to be used in the Agreement, the following shall apply.

1. Notwithstanding anything herein contained, any bill of lading, waybill, delivery order, certificate, receipt or other document issued pursuant to, or in connection with, the Agreement may be issued, stored and signed in electronic form and transmitted electronically using a secure system agreed by the parties (the “**eDoc System**”) in accordance with the terms and conditions of the eDoc System as amended from time to time in accordance with its terms (the “**Terms of Use**”) and the rights, obligations and interests contained in, represented by or evidenced by any such document (each, an “**eDoc**”) may be transferred, novated or otherwise dealt with (or the transfer, novation or other dealings with them may be evidenced) electronically in accordance with the terms of the Terms of Use.
2. Any requirement of this Agreement for presentation of one or more originals or copies of a document is satisfied by the presentation of one eDoc.
3. Any applicable requirement of law, contract, custom or practice that any bill of lading, waybill, delivery order, certificate, receipt or other document or communication issued pursuant to, or in connection with, this Agreement (including any negotiation or endorsement thereof) shall be made or evidenced in writing, signed or sealed may be satisfied in electronic form, by an eDoc or by its electronic transfer as appropriate. The Parties agree not to contend in any dispute arising out of or in connection with the Agreement that any legal formality requiring any such bill of lading, waybill, delivery order, certificate, receipt or other document or communication issued pursuant to, or in connection with, the Agreement (including any negotiation or endorsement thereof) to be made or evidenced in writing, signed or sealed, has not been met by reason only that the same has been made or performed in electronic form by an eDoc.
4. The Parties agree that eDocs which are converted to paper in accordance with the terms and conditions of the Terms of Use (“**Converted eDocs**”) and which are presented, issued or otherwise utilised pursuant to, or in connection with, this Agreement shall be given full force and effect according to their tenor and in accordance with the terms and conditions of the Terms of Use, and shall not be rejected on the grounds that they are electronic records which have been converted to paper originals, or that the documents have been produced in accordance with the Terms of Use.
5. Where under the Agreement the price is to be paid by means of an irrevocable documentary letter of credit, such documentary letter of credit shall, if so required by the Seller, be opened and confirmed (if applicable) with a bank which participates in the eDocs System and is bound by the Terms of Use. The documentary letter of credit shall include the following provisions in addition to any other requirements set out in the Agreement:

"This documentary credit is subject to The Supplement to the Uniform Customs and Practice for Documentary Credits for Electronic Presentation (the “**eUCP**”) and is also subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision ICC Publication No. 600) to the extent applicable.

The following shall constitute electronic records (as defined by the eUCP) for the purposes of this documentary credit:

- (a) data created, generated, sent, communicated, received, stored or uploaded to the [insert name of eDocs System], signed electronically by the issuer and digitally signed by the [insert name of eDocs System] to authenticate the apparent identity of the sender, the apparent source of the data contained in it and that it has remained complete and unaltered; and

- (b) original paper documents which have been scanned and uploaded to the [*insert name of eDocs System*] and which have been certified by the party uploading them as a true copy of the original and digitally signed by the [*insert name of eDocs System*] for authentication purposes.

Any document which the beneficiary is required to present under this documentary credit may be presented either as a paper document or an electronic record.

Where any of the documents presented under this documentary credit is presented as an electronic record, in addition to the documents required to be presented by the beneficiary in accordance with the terms of this documentary credit, the beneficiary shall also provide a notice to the Bank to which presentation is made signifying when presentation is complete. Presentation is deemed not to have been made if the beneficiary's notice is not received.

Electronic records which are converted to paper in accordance with the provisions of the [*insert name of Terms of Use of the eDocs System*] and which are presented, issued or otherwise utilised pursuant to, or in connection with, this documentary credit shall be given full force and effect according to their tenor and in accordance with the said provisions, and shall not be rejected on the grounds that they are electronic records which have been converted to paper originals, or that the documents have been produced in accordance with the said provisions."

## APPENDIX D – Documentary Letter of Credit

Please urgently advise [FULL NAME OF SELLER], [ADDRESS], that we [BANK] hereby issue our irrevocable documentary letter of credit number [L/C NUMBER], in their favour for account of [FULL NAME OF BUYER], [ADDRESS] for an amount of USD [US DOLLAR AMOUNT] (say [US DOLLAR AMOUNT IN WORDS])  $\pm 15\%$  available at our counters [DAYS] days [FROM/AFTER] [PAYMENT TERMS] against presentation of the following documents in one original and [NUMBER OF] copies unless otherwise stated:

1. One or more signed commercial invoices.
- 2.\* [in the case of FOB/CFR/CIF delivery] one or more full sets of 3/3 original clean on board ocean bills of lading issued or endorsed to the order of.....].  
  
[in the case of In Tank Transfer/pipeline delivery] copy of the transfer certificate
3. One or more certificates of quality.
4. One or more certificates of quantity.
- 5.\* [One or more certificates of origin].
6. [in the case of CIF delivery] insurance certificate covering 110% of the cargo value

\*Amend as appropriate

Evidencing [SHIPMENT/DELIVERY] of [QUANTITY] [UNIT OF MEASURE]  $\pm 15\%$  of [PRODUCT] [INCOTERM] [LOAD/DISCHARGE PORT] between [DATE] and [DATE] (both dates inclusive).

PRICE CLAUSE [Here insert text of Price Clause as per the agreement]

This credit expires on [DATE]

[In the case of delivery FOB/CFR/CIF only] In the event that the above documents are unavailable at the time of presentation, payment will be made against document number one above (the Invoice) and a letter of indemnity issued by beneficiary in the following format:

Quote

To:

[here insert text of Letter of Indemnity]

Unquote

### SPECIAL CONDITIONS

1. This letter of credit shall take effect in accordance with its terms but such terms shall not alter, add to or in any way affect the provisions of the agreement between [BUYER] and [SELLER] to which this letter of credit relates.
2. [In the case of delivery FOB/CFR/CIF only] charterparty bills of lading/vessel bills of lading and/or bills of lading and/or bills of lading signed by the master or agent and not indicating that they have been issued by a named carrier are acceptable.
3. Documents presented later than twenty-one (21) days after the [BILL OF LADING/NOTICE OF READINESS] date but within the validity of this credit are acceptable.
4. Transshipment [ALLOWED/PROHIBITED].



5. Partial shipment [ALLOWED/PROHIBITED].
6. Photocopies in lieu of copy documents acceptable.
7. Swift/fax invoice and letter of indemnity acceptable.
8. All banking charges are for the account of the applicant.
9. The construction, validity and performance of this letter of credit shall be governed by and construed in accordance with [\*] law. Any dispute or claim arising out of or in connection with this letter of credit shall be subject to the exclusive jurisdiction of the [\*] courts.
10. Typographical and spelling errors shall not constitute a discrepancy unless with regard to quantity and amount.
11. The value of this letter of credit may escalate/de-escalate above or below the tolerances allowed without any amendment on our behalf.
12. Except as otherwise expressly stated herein, this letter of credit is subject to the Uniform Customs and Practice for Documentary Credits 2007 Revision, (ICC publication no. 600).
13. Multiple/partial drawings allowed.
14. Original documents stating grade name different to LC acceptable.
15. Any discrepancy resulting from the invoiced quantity exceeding or falling below the quantity range allowed in this letter of credit is acceptable. Payment will be effected on the invoiced quantity in case the maximum quantity allowed in this letter of credit is not exceeded. In case the invoiced quantity exceeds the maximum quantity allowed in this letter of credit the bank will pay on the maximum quantity allowed in this letter of credit.
16. Beneficiary may discount this LC at own cost and request.
17. Documents named as different but servicing the same purpose are acceptable.
18. Price clause and calculation not stated on the commercial invoice is acceptable.
19. [In event that payment due date falls on a Saturday or a New York bank holiday, except Monday, payment will be effected on the last banking day prior. If the payment due date falls on a Sunday or Monday bank holiday in New York payment will be made on the next business day].
20. [Beneficiary may draw under this letter of credit against provisional invoice based on price quotation on [NOR/BL] date. If no quotation is published on the date of [NOR/BL] date. If no quotation is published on the date of [NOR/BL], the provisional invoice to be based on the quotation published immediately preceding the date of [NOR/BL]. Balance payment to be effected under this L/C within 3 New York banking days against presentation of final invoice if the amount owed is in beneficiary's favour. If the balance of the payment is in the applicant's favour payment to be effected outside of the letter of credit].
21. [NOR date to count as delivery date and to appear on invoice only].
22. [Ports of discharge other than mentioned are acceptable].
23. [Presentation of a Tax invoice acceptable].

24. [In the case of delivery Ex Ship only] In the event that the outturn quantity is not known at the time of presentation, beneficiary may draw under the letter of credit against a provisional invoice based on the mean volume of the LC quantity. In the event the actual outturn quantity is greater than mean volume of the LC quantity beneficiary may present a final claim under this LC. If the actual outturn quantity is less than mean volume of the LC quantity then the difference is to be settled outside of the LC.
25. PDF copies acceptable.
26. Documents showing different density to invoice is acceptable.
27. Any discrepancy resulting from the invoice value exceeding or falling below the US dollar range allowed in this letter of credit is acceptable. In the event that the invoice amount does not exceed the LC value, payment will be effected on the invoice amount. In the event that the invoice value exceeds the maximum value of the LC, the bank will pay on the maximum value allowed under this Letter of Credit.

## APPENDIX E – Standby Letter of Credit

### APPLICANT:

*[Name and Address]*

### BENEFICIARY:

At the request of the above applicant, and for its account, we *[name and address of bank]* hereby issue in your favour our irrevocable standby letter of credit no *[XXX]*.

In consideration of you, the Beneficiary, having agreed to enter into a contract or contracts for the sale and/or purchase of *[\*]* (referred to herein as the contracts") from time to time with the Applicant, we hereby establish our irrevocable standby letter of credit ("this Letter of Credit") in your favour for the principal amount of *(XXX)* United States Dollars (US\$ \_\_\_\_\_) plus or minus ( $\pm$ ) ten percent (10%) effective immediately and payable upon our irrevocable undertaking as follows :

This Letter of Credit is available for payment at sight, but not prior to "*the Effective Date*" by presentation of the following documents:

1. A written statement certifying that the Applicant has defaulted in the performance of any of the terms and conditions, including but not limited to payment for any of the products, of any of the contract(s), as it or they may have been amended or varied; and
2. A copy of the Seller's commercial invoice(s) marked unpaid; and
3. A written statement as to the amount to be paid in respect of the default may include, but shall not be limited to, the invoiced amount and/or demurrage, and/or any damages, losses, late payment interest, expenses or costs suffered or incurred by you as a result of such default, determined in accordance with the contract and applicable law.

Counterparty SBLC: This Letter of Credit covers all contracts for the sale and/or purchase of oil, refined petroleum products, ethanol and/or petrochemicals and/or allied products (referred to herein as the contracts) from time to time between *[\*]* and *[Name of applicant]*

We hereby agree with you that presentation of the documents in compliance with the terms of this standby letter of credit will be duly honoured on presentation to us no later than the Expiration Date of this credit. The expiration of this Letter of Credit is "*Expiration Date*".

### 47A: Additional conditions

1. Partial and multiple drawings are permitted.
2. All banking charges are for the applicant's account
3. Above documents presented in telex, fax or photocopy form are acceptable.
4. This Letter of Credit shall take effect in accordance with its terms but such terms shall not alter, add to or in any way affect the contract (s) between *[\*]* and *[Name of Applicant]* to which this letter of credit relates.
5. Combined documents are acceptable
6. Documents received 21 days after the date of delivery, and prior to the date of expiry of this Letter of Credit are acceptable.
7. Typographical and spelling errors, with the exception of quantity and amount, are not to be considered as discrepancies as long as meaning is consistent with the other documents presented.

8. Except as otherwise expressly provided herein, this standby letter of credit is subject to the “Uniform Customs and Practices For Documentary Credits” (2007 Revision) International Chamber of Commerce Publication No. 600.

We hereby agree with you that presentation of the documents in compliance with the terms of this Letter of Credit will be duly honored on presentation to us no later than the expiration date of this Letter of Credit.

*Name*

*Authorized Signatory*

*Issuing Bank*

## APPENDIX F-- Parent Company Guaranty

This Guaranty is made and given the \_\_\_ day of \_\_\_\_, 20\_\_, by [\*] (hereinafter referred to as the "Guarantor"), in favor of \_\_\_\_\_ (hereinafter referred to as the "Beneficiary").

The Guarantor enters into this Guaranty in consideration of the Beneficiary having entered into or entering into [\*] (hereinafter referred to as "Covered Transactions") with [\*] (hereinafter referred to as the "Company"). The Guarantor acknowledges the benefit to it of the Covered Transactions between the Beneficiary and the Company.

1. The Guarantor hereby irrevocably and unconditionally guarantees to the Beneficiary the prompt payment when due (subject to written demand by Beneficiary upon Guarantor) of all amounts that now are or may hereafter become due and payable from the Company to the Beneficiary (the "Guaranteed Obligations") with respect to any Covered Transactions entered into prior to the termination of this Guaranty. This Guaranty shall continue to be effective or reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations are annulled, set aside, invalidated, declared to be fraudulent or preferential, rescinded, or must otherwise be returned, refunded or repaid by the Beneficiary as a result of or pursuant to the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Company or any other guarantor, or upon, or as a result of, the appointment of a receiver, intervener or conservator of, or trustee or similar officer for, the Company or any other guarantor or any substantial part of its property or otherwise, all as though such payment or payments had not been made.
2. In addition to the Guaranteed Obligations, the Guarantor agrees to pay on demand any and all costs, including reasonable legal fees and other expenses incurred by the Beneficiary in enforcing the Guarantor's payment obligations under this Guaranty; provided that the Guarantor shall not be liable for any expenses of the Beneficiary if no payment under this Guaranty is due.
3. Anything to the contrary notwithstanding, the aggregate of the Guarantor's obligations under this Guaranty, including without limitation liability with respect to the Guaranteed Obligations or liability with respect to costs, including reasonable legal fees and other expenses incurred by the Beneficiary in enforcing the Guarantor's payment obligations, shall not exceed [amount] million U.S. dollars (US \$\_\_\_\_\_).
4. This Guaranty shall remain in full force and effect until the earlier of (a) [date], or (b) until thirty (30) days following the Guarantor's notice, in writing, to the Beneficiary of the Guarantor's termination of this Guaranty provided, however, the expiration or termination of this Guaranty shall not affect the Guarantor's obligations hereunder with respect to Covered Transactions entered into prior to such expiration or termination.
5. The Guarantor's payments hereunder shall be made to the Beneficiary at its address set forth in Section 10 below, within ten (10) business days after receiving written demand for payment from the Beneficiary.
6. The Guarantor hereby waives:
  - (a) Notice of acceptance of this Guaranty by the Beneficiary;
  - (b) Notice that the Beneficiary has entered into a Covered Transaction with the Company;
  - (c) The modification or amendment of any Covered Transaction between the Company and the Beneficiary, including renewal or extension of time for repayment and performance of Guaranteed Obligations or notice thereof; and
  - (d) Notice of presentment, default, dishonor, protest or notice of protest with respect to any notes, drafts or other instruments evidencing indebtedness, received from the Company or demand for payment on the Company.

7. The Guarantor agrees that the Beneficiary may, from time to time, extend the time of payment of the whole, or any part, of the indebtedness of the Company and may receive and accept notes, bills, checks, trade acceptances and other instruments for the payment of money made, accepted or delivered by the Company and any other person or persons, as well as extensions or renewals thereof, without in any way releasing or discharging the Guarantor from its obligations hereunder.
8. This Guaranty is a guaranty of payment and not of collection. The Beneficiary shall not be required to proceed first against the Company or any other person, firm or corporation, or against any property or security or any other guaranty before resorting to the Guarantor for payment under this Guaranty.
9. Demands on the Guarantor for payment under this Guaranty shall be in writing and delivered by mail or telecommunication to the following address:

If to the Guarantor:

With a mandatory copy to:

All demands for payment shall be effective when received by the Guarantor. The Guarantor may change the address to which demands for payment are to be sent upon written notice to the Beneficiary.

10. Notices under this Guaranty, or which either party desires to give to the other, shall be in writing or telecommunication and delivered as follows:

To the Guarantor:

With a copy to:

To the Beneficiary:

[beneficiary & contact name]  
[address]  
[fax]

All notices given shall be deemed to have been given at the earlier of: (a) the date the notice shall be delivered, (b) the date on which the delivery shall have been refused at the address herein provided, or (c) the date as of which the delivery service shall have indicated such notice to be undeliverable at the address herein provided. The Guarantor and the Beneficiary may change the persons and/or addresses to which notices are to be sent upon written notice to the other party.

11. This Guaranty and each of its provisions may be waived, varied, released, modified, terminated (except as provided elsewhere herein) or surrendered, in whole or in part, only by a written instrument signed by the Beneficiary and the Guarantor. No failure or delay by the Beneficiary in exercising its rights or remedies under this Guaranty, subject to statute of limitations, shall operate as a waiver thereof, nor shall any single or partial exercise by the Beneficiary of any right or remedy hereunder preclude any other or future exercise of any right or remedy hereunder.
12. The Beneficiary may, at any time, assign its rights to receive payment under this Guaranty to any party to whom it assigns its interest under any Covered Transaction. Except as provided in the previous sentence, neither the Guarantor nor the Beneficiary shall assign its rights or obligations under this Guaranty to any other person without the express written consent of the other Party.

13. This Guaranty shall be governed by and construed in accordance with the laws of the State of New York, without regard to principles of conflicts of laws. The Guarantor and the Beneficiary agree that any action or proceeding to enforce or arising out of this Guaranty shall be commenced in the Supreme Court of New York for the county of New York or in the United States District Court for the Southern District of New York (the "Forum Courts"), but nothing herein shall limit Beneficiary's right to initiate legal proceedings in any other court of competent jurisdiction to enforce a judgment of the Forum Courts. **The Guarantor and the Beneficiary hereby knowingly, voluntarily, and intentionally waive any right to trial by jury in connection with this Guaranty or the transactions related hereto.**

14. The Guarantor represents and warrants that (a) the execution, delivery, and performance of this Guaranty has been authorized by all necessary corporate action and does not contravene any provision of its constituent documents, and (b) upon proper execution and delivery thereof, this Guaranty will constitute the legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally and to equitable principles of general applicability.

Without limiting the Guarantor's own defenses and rights hereunder, the Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses that the Company may have to payment of all or any portion of the Guaranteed Obligations, except for defenses arising from bankruptcy, insolvency, dissolution or liquidation of the Company and other defenses expressly waived in this Guaranty.

The obligations of the Guarantor hereunder are severable from the Company or any other person, and are primary obligations concerning which the Guarantor is the principal obligor.

15. [This Guaranty supersedes and replaces in its entirety that certain Guaranty dated as of [ ] issued by Guarantor in favor of *[List Beneficiary or Beneficiaries name(s)]*.]

16. [The Guarantor hereby irrevocably appoints [\*insert name of NY process agent] to receive, for it and on its behalf, service of process in any proceedings. If for any reason [\*insert name of NY process agent] is unable to act as such, the Guarantor will promptly notify the Beneficiary and within thirty (30) days, appoint a substitute process agent acceptable to the Beneficiary.]

Intending to be legally bound, the Guarantor has executed this Guaranty through its duly authorized representative.

[\*]

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_