

BULK OIL SUPPLY AGREEMENT

between

SFF ASSOCIATION NPC

("SELLER")

and

NAME OF BUYER

("BUYER")

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1 PARTIES

The Parties to this Agreement are:

- 1.1 **The SFF Association NPC**, (Registration Number: 1964/010277/08), a state-owned not for profit company duly incorporated in accordance with the laws of the Republic of South Africa ("**Seller**"); and
- 1.2 _____, (Registration Number: xxxx/0000000/07), a private company with limited liability duly incorporated and registered in the Republic of South Africa, ("**Buyer**").

2 INTRODUCTION

- 2.1 **WHEREAS** the Buyer is a ;
- 2.2 **WHEREAS** the Seller is a state-owned entity whose primary mandate is to manage and control strategic stocks of crude oil, certain strategic assets and the commercialization of such assets for and on behalf of the government of the Republic of South Africa, currently operating mainly from the Saldanha Bay Storage Terminal in the Western Cape, Republic of South Africa;
- 2.3 **WHEREAS** the Seller, on or2024 and through a Request for Proposals, invited interested parties to submit offers to purchase a certain quantity of crude oil of specific quality;
- 2.4 **WHEREAS** the Buyer has submitted an offer to the Seller to purchase some quantities of the Product, in bulk, from the strategic stock reserves held and managed by the Seller on behalf of the state;
- 2.5 **WHEREAS** the Minister has approved the Buyer's offer to the Seller on the terms and conditions as stipulated in the Schedule;
- 2.6 **WHEREAS** upon due assessment of the Buyer's offer, the Seller is prepared to sell the Product to the Buyer, on, and subject to, the terms and conditions set out in this Agreement; and

3 DEFINITIONS AND INTERPRETATION

- 3.1 In this Agreement, the following expressions shall, unless the context otherwise requires, have the following meanings:

"Affiliate"	any company or other legal entity directly or indirectly controlling or controlled by a party to the Agreement or controlled directly or indirectly by any company or other legal entity having direct or indirect control over that party;
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“Agreement”	this agreement for the supply of the Product, together with the Schedule, annexures, and/or appendices attached to it from time to time;
“Anti-Bribery Laws”	(i) the South African Prevention and Combatting of Corrupt Activities Act (2004) , (ii) the U.S. Foreign Corrupt Practices Act 1977, (iii) the UK Bribery Act 2010, (iv) the other public and commercial anti-bribery laws which may apply and (v) international anti-corruption treaties such as the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the United Nations Convention against Corruption);
“Applicable Data Protection Legislation”	<p>the following, as amended from time to time, to the extent it applies to a Party (including, as applicable, the Sub-Operators) or to the Agreement (including the performance, delivery, receipt or use of the products or services, as applicable and wherever occurring) whether in the Republic of South Africa or in any other country in which the Product is being sold and/or purchased:</p> <ul style="list-style-type: none"> - any data protection statute, regulation, notice, policy, directive, ruling or subordinate legislation (including treaties, multinational conventions and the like having the force of law); - any binding court order, judgement or ruling; - any applicable industry code, policy or standard having the force of law, and - any applicable direction, policy or order that is given by any regulator, competent authority or organ of state or industry body;
“Business Day”	any day other than a Saturday, Sunday or statutory public holiday in the Republic of South Africa;
“Data Subject/s”	shall have the same meaning stipulated in Applicable Data Protection Legislation(s);
“Delivery”	shall bear the meaning ascribed to it in clause 7.2 below,

	and “Delivered” shall have the corresponding meaning;
“Delivery Point”	Port of Saldanha, being the loading port and/or the delivery facilities at which the Product is loaded or is to be loaded, unless otherwise specified in the Schedule as may be agreed in writing between the Parties from time to time;
“Effective Date”	the date so specified in the Schedule notwithstanding the Signature Date;
“Expiry Date”	the date as specified in the Schedule;
“Information Regulator”	shall have the same meaning stipulated in Applicable Data Protection Legislation(s) and includes any data protection or regulatory authorities whose main responsibilities pertain to the enforcement of laws and regulations governing the protection of Personal Information;
“FOB”	as ascribed thereto in Incoterms 2020 (as amended from time to time), except as modified by the Agreement. If there is any inconsistency or conflict between said Incoterms and the Agreement, the Agreement shall prevail;
“Laws”	all statutes, regulations, rulings, directives, judgments, by-laws and the like (including authorisations, permits, licenses and certificates) having the force of law, as well as universally accepted standards pertaining to, without any limitation thereto: <ul style="list-style-type: none"> a) the supply of the Product; b) the protection of health, safety and the environment; c) any hazardous products or substances capable of causing harm to the public or contamination or pollution or degradation of the environment; and d) incident management; and “Law” shall have a corresponding meaning;
“Minister”	the Minister of Mineral Resources and Energy, or his/her successor in title;

“Month”	a calendar month, reckoned from the first to the last day of the same month;
“N.O.R”	notice of readiness;
“Operator” or “Processor”	shall have the same meaning stipulated in Applicable Data Protection Legislation(s), and for the avoidance of doubt, means a Party that Processes Personal Information on behalf of a Responsible Party/Controller.
“Personal Information”	any information relating to an identifiable, living, natural person, and where it is applicable, an identifiable, existing juristic person, as defined in Applicable Data Protection Legislation;
“Personal Information Breach”	the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Information transmitted, stored or otherwise Processed;
“Processing”	any operation or activity or any set of operations, whether or not by automatic means, concerning Personal Information, as defined in the Applicable Data Protection Legislation, and “Processed” shall have the same corresponding meaning;
“Responsible Party/ies” or “Controller/s”	shall have the same meaning stipulated in Applicable Data Protection Legislation(s);
“Sub-Operator(s) or Sub-Processor(s)”	any Operator/Processor engaged by the Operator/Processor exclusively for Processing activities to be carried out on behalf of Responsible Party/Processor in accordance with the Agreement and Scope of Work.
“Product”	such crude oil(s), and/or condensate(s) as specifically described in the Schedule and sold or nominated to be sold under this Agreement;
“Public Official”	

(i) an employee or officer of a government entity or department, agency or instrumentality thereof; (ii) any person acting in an official capacity for or on behalf of any such government or instrumentality; (iii) any federal, state, regional, county or municipal working person or functionary; (iv) an employee or officer of an organization authorized by the local government to perform government functions; (v) an employee, officer or director of a federal, state, regional, county or municipality -owned or -controlled commercial corporation, enterprise, institution or organization (whether partially or wholly owned); (vi) an outside director of a federal, state, regional, county or municipality -owned entity; (vii) a legislator (whether full or part-time); (viii) a person holding an honorary or ceremonial government position; (ix) any political party official, or candidate for political office; and (x) an officer or employee of a public international organization;

“Sanctions”

travel, trade, economic or financial sanctions provisions, laws, regulations, embargoes or restrictive measures imposed, administered or enforced from time to time by a Sanctions Authority.

“Sanctions Authority”

- the United Nations;
- the European Union;
- the Government of the United States of America;
- the Government of the United Kingdom; and
- any of their governmental authorities.

“Sanctions Country”

a country or territory which is, or whose government is, subject to comprehensive (broad-based and geographically oriented) Sanctions (currently Iran, Cuba, Syria, Crimea and North Korea).

“Sanctioned Entity”

- a person or entity, which is listed on a list issued by a Sanctions Authority or is otherwise subject to

Sanctions;

- a person which is ordinarily resident in Sanctioned Country;
- an entity that is located or incorporated in a Sanctioned Country; and/or
- an entity that is owned or controlled by a Sanctioned Entity.

“Schedule”

the schedule to this Agreement setting out the Product Specification, description, quality, quantity, delivery and price specifications in respect of a particular portion of and/or order for the Product pursuant to this Agreement as agreed to and initialled by the Parties from time to time;

“Shipment”

any specific quantity of the Product delivered or to be delivered under the Agreement as one full or part cargo lot;

“Signature Date”

the date on which the last remaining Party signs this Agreement;

“SOLAS”

the International Convention for the Safety of Life at Sea 1974 (as amended);

“Operator” or “Processor”

shall have the same meaning stipulated in Applicable Data Protection Legislation(s), and for the avoidance of doubt, means a Party that Processes Personal Information on behalf of a Responsible Party/Controller.

“VAT”

value added tax, levied and payable in terms of the VAT Act;

“VAT Act”

the Value Added Tax Act, No. 89 of 1991, as amended from time to time;

“Vessel”

a tankship or other vessel which is adapted for the carriage of the Product; and

“Vessel Presentation Range”

the day or range of days (or part thereof) as specified for delivery in the Schedule or established in accordance with the procedures set out, or referred to, in the Schedule

or if not so specified or established, as notified by the Seller to the Buyer.

- 3.2 Any reference to a statutory provision or enactment shall include references to any amendment, modification or re-enactment of any such statutory provision or enactment (whether before or after the date of this Agreement), to any previous enactment which has been replaced or amended and to any regulation or order made under such statutory provision or enactment.
- 3.3 References to the Introduction, Schedule and clauses are, unless otherwise specified, references respectively to the Introduction, Schedule and clauses to and of this Agreement.
- 3.4 Words importing one gender shall be treated as importing any gender, words importing individuals shall be treated as importing corporations and *vice versa*, words importing the singular shall be treated as importing the plural and *vice versa*, and words importing the whole shall be treated as including a reference to any part thereof.
- 3.5 Clause headings are inserted for ease of reference only and shall not affect the construction of this Agreement.
- 3.6 Where any term is defined within the context of any particular clause in this Agreement, the term so defined shall, unless it appears clearly from the clause in question that such term has limited application to the relevant clause, bear the meaning ascribed for all purposes in terms of this Agreement, notwithstanding that such term has not been defined in this clause.
- 3.7 The rule of construction that provisions are to be construed against the party drafting an agreement or part thereof or on whose behalf an agreement or part thereof was drafted shall not apply to this Agreement.
- 3.8 All rules of interpretation providing for the limitation of general words and terms due to their association with words and terms of a specific nature shall not apply to this Agreement.
- 3.9 Any number of days or Business Days expressed in this Agreement to commence running from a specified date or event shall commence running on the day or Business Day, as applicable, following such specified date or the date of such event.
- 3.10 Should the day for the performance of any obligation in terms of this Agreement fall on a day which is not a Business Day, then such obligation shall be performed on the next day which is a Business Day.
- 3.11 References to a "calendar year" shall be to a period commencing on 1 January and ending on 31 December. References to a number of years from a specified date shall be the period commencing on the day following the specified date and ending on the anniversary of the specified date

(inclusive of both the commencing day and the ending day), and the specified number of years shall be determined accordingly.

- 3.12 The expiration or termination of this Agreement shall not affect such of its provisions as expressly provided that they will continue to apply after such expiration or termination, or which of necessity must continue to apply after such expiration or termination.
- 3.13 Any communication which is required to be “in writing” shall include a communication which is written or produced by any substitute for writing or which is partly written and partly so produced, and shall include printing, typewriting, lithography, facsimile or electronic mail or any form of electronic communication or other process or partly one and partly another.
- 3.14 Unless expressly otherwise provided, all amounts set out in this Agreement are exclusive of VAT, sales tax and any other withholdings, levies, taxes, duties or imposts.
- 3.15 Nothing in the Agreement shall be considered or construed as conferring any right or benefit on a person not a party to the Agreement and the parties do not intend that any term of the Agreement should be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to the Agreement.

4 SUPPLY OF THE PRODUCT

- 4.1 The Seller hereby agrees to sell the Product to the Buyer and the Buyer hereby agrees to purchase the Product from Seller, subject to the terms and conditions of this Agreement.
- 4.2 The Product to be supplied hereunder shall be in such quantity and quality specifications as more specifically set out in the Schedule hereto.
- 4.3 It is the express and common understanding of the Parties that the Buyer is an independent Buyer, and nothing in this Agreement shall be construed to create or imply a joint venture, principal and agent relationship or employer and employee relationship, a partnership, or any relationship other than that of independent Buyer.
- 4.4 Neither Party shall have any right, power or authority to create any obligation, whether express or implied, on behalf of, or in any way bind the other or generally to act on behalf of the other Party or to represent that it has the authority to act on behalf of the other Party. Each Party accordingly bears sole liability for obligations assumed in its own name, or for any liability arising from its own conduct and obligations.

5 COMMENCEMENT AND DURATION

- 5.1 Notwithstanding the Signature Date, this Agreement shall come into effect on the Effective Date and shall terminate on the Expiry Date, unless otherwise terminated earlier in accordance with its

terms, as provided for elsewhere in this Agreement.

- 5.2 Any termination of this Agreement shall not: i) absolve the Parties from the obligation to observe the confidentiality measures and other restraints as set out herein; ii) prejudice or affect the rights or liabilities of either Party already accrued prior to any such termination; or iii) affect the provisions of this Agreement which expressly provide that they shall operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

6 QUALITY AND QUANTITY DETERMINATIONS

- 6.1 The inspection of each Shipment of the Product for quality and quantity shall be conducted at the time of loading at the Delivery Point. The inspector shall be appointed by both Parties jointly with the costs split as 50% for the Buyer and 50% for the Seller.
- 6.2 Unless otherwise specifically stated in the Schedule, the quality of the Product shall be determined on the basis of analysis prior to loading, whilst the quantity shall be determined on the basis of the Vessel bill of lading quantity in net barrels.
- 6.3 The quality and quantity of the Product thus ascertained shall be set forth in the certificate of inspection issued by the appointed inspector.
- 6.4 Without prejudice to the Quantity Operational Tolerance limits as set out in the Schedule, and subject thereto, both Parties shall accept the certificate of the inspector as evidence of the quality and quantity of the Product, save for fraud or manifest error
- 6.5 In no event shall the Seller be liable (i) for the first zero point five (0.5) per cent short delivery of the invoice quantity and/or (ii) for any claim regarding the quantity and/or quality of any Shipment, unless the Buyer has promptly, but no later than thirty (30) days from date of inspection, submitted such claim to the Seller in writing, with full details of the specific facts on which the claim is based and supporting documentation, which notice shall be accompanied by a certificate of the relevant independent inspector supporting such claim.
- 6.6 Should the Buyer fail to submit such claim or provide such details and/or any supporting documentation within the above time limit, then such claim shall be deemed to have been waived and any liability on the part of the Seller shall be extinguished.

7 DELIVERY

- 7.1 Unless otherwise specified in the Schedule hereto, the Product shall be Delivered to the Buyer in bulk FOB at the Delivery Point, onto Vessel(s) to be provided by the Buyer.
- 7.2 Notwithstanding the Seller's right to retain the shipping documents until payment Delivery shall,

unless otherwise specified in the Schedule hereto, be complete when the Product has passed the flange connection between the delivery hose and the permanent hose connection of the Vessel at the Delivery Point ("**Delivery**"), upon which ownership and risk shall pass from the Seller to the Buyer as contemplated in clause 9.1 below.

- 7.3 Buyer shall not return the Product to Seller for any reason whatsoever unless the Parties have agreed in writing to such return and the conditions thereof.
- 7.4 Notwithstanding anything elsewhere in the Agreement to the contrary, save where the failure to accept or take delivery is caused by the wilful misconduct or negligence of the Seller, if the Buyer fails to accept or take delivery of any quantity of the Product made available for Delivery at the Delivery Point, or the Seller is unable to deliver the Product on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations, then:
 - 7.4.1 without prejudice to any other rights or remedies which Seller may have in law against Buyer, Seller may, at its sole and irrevocable option, either: i) store the undelivered quantity of the Product until Delivery, whereupon Buyer will be liable for all related costs and expenses (including without limitation storage and insurance) or ii) Seller shall dispose freely of, and may sell or otherwise dispose of, such undelivered quantity of the Product at its sole and absolute discretion. The provisions of this sub-clause 7.4.1 shall apply whether Buyer is to receive one, or more than one, Shipment hereunder; and
 - 7.4.2 Buyer may not suspend payment for the Product.
- 7.5 Subject to the limitation of liability provision in clause 15, loss of, or damage to, the Product occurring, during or after the loading operations, which is caused by the Vessel, the Vessel's owner, or the Buyer or any of their respective contractors, agents or employees, shall be for the account of the Buyer.
- 7.6 Each Party shall maintain documentary records of all Deliveries, on the basis provided for in this Agreement and otherwise in accordance with reasonable best practice in the Product supply industry.

8 **ACKNOWLEDGEMENT – NATIONAL STRATEGIC STOCK REQUIREMENTS**

- 8.1 Notwithstanding any other provision contained in this Agreement, the Buyer acknowledges that the Seller stores and keeps custody of the Product on behalf of, and for the Government of the Republic of South Africa's strategic needs. As such, the Buyer acknowledges that should at any time before the Product is deliverable under this Agreement be required of the Seller by the Government of the Republic of South Africa to not Deliver the Product to the Buyer under this Agreement for strategic reasons, Seller shall be entitled not to Deliver the Product under this Agreement when the Government of South Africa requires the stored crude oil in case of liquid

fuel crisis for strategic purposes. In the event of such occurrence Seller shall not be liable to Buyer for anything in respect of such non-delivery or early termination of this Agreement pursuant thereto.

- 8.2 The occurrence of the liquid fuel crisis as contemplated in clause 8.1 above will be notified by the Seller by written notice to the Buyer upon the directive or mandate issued by the Minister upon the occurrence of a liquid fuel crisis.

9 OWNERSHIP AND RISK

- 9.1 Title to and ownership of the Product risk in or of loss of, or damage to the Product delivered under this Agreement shall pass as contemplated in clause 7.2 above, at which point Seller's risk in and/or liability on the Product shall cease.

10 PRICE

- 10.1 As consideration for the Product Delivered by the Seller in terms of and pursuant to this Agreement, the Buyer shall pay the Seller the price as set out in the Schedule hereto, payable no later than the due date as so specified therein.
- 10.2 The Buyer shall be solely responsible for its normal operational costs and the expenses and disbursements incurred by it in the course of performing its obligations pursuant to this Agreement.
- 10.3 If after the date of entering into this Agreement there shall be enacted or promulgated any statute, by-law, regulation or other provision having the force of law, and if compliance therewith shall unavoidably cause an increase in the cost to the Seller of performing any part of its obligations pursuant to this Agreement which would not otherwise have occurred, then the amount payable by Buyer to Seller for the Product pursuant to this Agreement shall be increased accordingly. The Seller shall notify the Buyer in writing as soon as reasonably possible of it becoming aware of such legislation.
- 10.4 The Buyer shall be entitled to terminate this Agreement by giving the Seller 30 days written notice pursuant to an increase as contemplated in clause 10.3 above

11 GOVERNMENT TAXES

- 11.1 For the purpose of this clause 11, ("**Government Taxes**") shall mean the total of monetary payments and value of other benefits accruing to, or received by, the government(s) of any country(ies) arising or attributable, directly or indirectly, out of or to the production, storage, transportation, delivery, sale or export of the Product or by any agency, instrumentality, authority or entity established or controlled by government(s) or any person purporting to act therefor, and shall include (but without limitation) all costs and expenses incurred directly or indirectly in

purchasing the Product, royalties, rentals, duties, income and other taxes, participation payments or benefits, whether in the form of dividends, crude oil payments or other rights.

- 11.2 Any amount equal to any and all new or increased Government Taxes (as defined above) directly or indirectly imposed on the price of, or attributable to, the Product, which occurs, whether prospectively or retrospectively, after the date of the Seller's acceptance of the Buyer's offer pursuant to, or from time to time during the term of, this Agreement, shall be added to the price of the Product pursuant to sub-clause 11.3 below.
- 11.3 The Seller shall give the Buyer written notice of any and all new or increased Government Taxes, as the case may be, and of their effective date (whether retroactive or not) and shall be entitled to add the amount thereof to the price per barrel of the Product from such effective date, and the Buyer shall pay the new adjusted price for the Product.

12 INVOICING AND PAYMENT

- 12.1 The Seller shall issue an invoice to the Buyer in respect of the price and any such other related charges payable for the Product supplied to the Buyer on the due date as specified in the Schedule.
- 12.2 Unless otherwise specified in the Schedule hereto, payment of the full amount of the Seller's invoice shall be made without any discount, deduction, withholding, abatement, set-off or counterclaim, in United States dollars by electronic transfer in immediately available same day funds into the Seller's designated bank account, latest 30 (thirty) calendar days, as more fully set out in the Schedule.
- 12.3 Payment is to be effected against presentation of the Seller's commercial invoice in the Seller's standard format. In case final price is not known when payment becomes due, provisional payment to be effected on due date against presentation of a provisional invoice, which shall be based on the average of the published quotations available at time of invoicing, or if none available, on the last publication preceding the date of invoicing, adjusted by premium or discount as per the Schedule hereto. Difference between provisional invoice and final invoice to be settled latest two (2) banking days after final pricing elements become available against receipt of Seller's final invoice.
- 12.4 Payment due on a Sunday or Monday bank holiday shall be made on the next banking day. Payment due on a Saturday or any other bank holiday shall be made on the preceding banking day. Where the due date falls on a Sunday or a Monday which is not a banking day at such other place so designated, then any such payment shall be made on the next following banking day.
- 12.5 Any delay in effecting any payment by the due date shall entitle Seller to receive payment of interest for each day of delay calculated as per the USD rate for ONE (1) month of BRITISH

BANKERS ASSOCIATION LIBOR RATES ("**BBALR**") as published on the due date (subject to sub-clause 12.4 above) on Reuters page "LIBORO1" and/or on www.bba.org.uk/public/libor (or successor thereto), plus TWO (2) percentage points per annum, such interest being in no circumstances to be construed as an agreement by the Seller to provide extended credit, and is in addition to any other rights of Seller arising out of such delay.

- 12.6 No payment shall be deemed to have been received until the Seller has received cleared funds. Accordingly, Buyer's obligation to pay shall survive the term of the Agreement and shall not be deemed fulfilled for so long as the price of the Product and any other costs, expenses and charges have not been credited in full into Seller's bank account, save for any reasonable delays.

13 CREDIT TERMS

- 13.1 If payment by means of provision of an irrevocable documentary letter of credit is not already provided for in the Schedule, Seller shall be entitled at any time before the due date to demand payment to be effected by means of provision of an irrevocable letter of credit or by payment in advance notwithstanding the method of payment as described in the Schedule. Nothing in this sub-clause 13.1 shall relieve Buyer of its obligation to pay the total price of each Shipment as and when due under this Agreement.
- 13.2 When, under the Agreement, or as a consequence of the provisions of sub-clause 13.1 above, payment is to be made by means of an irrevocable letter of credit (referred to herein as "**L/C**"), the following provisions shall apply, unless otherwise specified in the Schedule:

- 13.2.1 the L/C shall be issued or confirmed by a bank and in a format both of which must be acceptable to Seller, within the Vessel Presentation Range, or on such other date and at such time as Seller may in writing require;
- 13.2.2 all fees, commissions, costs and expenses incurred with respect to such payment or L/C shall be borne by Buyer;
- 13.2.3 the L/C shall cover the mean value of the Shipment at the contract price (including, if applicable, any Value Added Tax and/or excise duty) plus ten (10) per cent and shall at all times be valid for shipment three (3) days before and seven (7) days after the Vessel Presentation Range;
- 13.2.4 no loading operations will commence without an L/C and all associated costs as a result of delays in issuing the L/C shall be for the Buyer;
- 13.2.5 if for any reason the loading will not take place within the period for such loading referred to in the L/C, Buyer shall either obtain an extension of such period or provide a new L/C in terms acceptable to Seller;
- 13.2.6 no term of the L/C (nor any agreed amendment thereto) shall amend, alter, add to, or in any way affect the terms of this Agreement (or any of them) unless Seller and Buyer expressly agree in writing to amend this Agreement accordingly.
- 13.3 It is a material condition of the Agreement that Buyer complies with its payment obligations under this Agreement (including any obligation to provide security or a payment undertaking in the form specified by Seller as well as any and all obligations under this clause 13 within the time prescribed by Seller and/or by this Agreement. Any failure either in whole or in part by Buyer to comply with any such obligation shall be a breach of a material condition. On the occurrence of such breach and for so long as such breach is continuing:
 - 13.3.1 Seller may at any time by notice to Buyer, without prejudice to any other legal remedies Seller may have and without any liability whatsoever for any cost, loss or damage (including liabilities to third parties) incurred by Buyer, forthwith:
 - 13.3.1.1 cancel delivery of all or any Shipments; or
 - 13.3.1.2 without prejudice to any other rights of Seller, withhold delivery of the Product under the Agreement and/or release of shipping documents or letter of indemnity.
- 13.4 Seller may exercise the rights set out in clause 13.3.1 above whether or not nominations have been made or accepted and, if Seller exercises any such right, Seller shall be entitled to dispose freely of any resulting quantity of the Product and Buyer shall be liable for, and indemnify Seller and/or Seller's Supplier for, any costs, losses and damages incurred by Seller and/or

Seller's Supplier as a result of Buyer's breach, including but not limited to, any demurrage payable by Seller and/or Seller's Supplier in respect of the Vessel or other vessels waiting at the Loading Terminal.

14 NO WARRANTY

- 14.1 There are no representations, duties (whether in negligence or otherwise) conditions, guarantees, warranties or terms, express or implied by statute or otherwise, as to the description or satisfactory quality, fitness or suitability of the Product for any purpose whatsoever, or otherwise relating to specification, description or quality of the Product, which extend beyond the description of the Product appearing in this Agreement, and any and all statutory or other terms, conditions or warranties, express or implied, with respect to the description or satisfactory quality of the Product or its fitness for any purpose or otherwise are excluded.
- 14.2 In any event, without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, the only rights or remedies in relation to any representation, warranty, assurance, covenant, indemnity, undertaking or commitment given or action taken in connection with this Agreement are pursuant to this Agreement and for the avoidance of doubt and without limitation, neither Party has any other right or remedy (whether by way of a claim for contribution or otherwise) in tort (including negligence) or for misrepresentation (whether negligent or otherwise, and whether made prior to, or in, this Agreement).
- 14.3 The Buyer acknowledges that it will only assume all risk and responsibility for handling the Product, after Delivery of the Product by the Seller, for the results obtained by the use of the Product in manufacturing processes or otherwise, and for the results obtained by the use of the said Product in combination with other substances.

15 LIMITATION OF LIABILITY

- 15.1 Notwithstanding anything herein to the contrary, and to the extent provided in law, in no event shall either the Seller or the Buyer be liable for consequential, incidental, punitive, special, exemplary or indirect damages (including without limitation damages for loss of profit, goodwill, production, revenue or for business interruption), whether by statute, in tort, contract or otherwise arising out of or in connection with the performance, failure to perform or termination of this Agreement.
- 15.2 Seller shall in no event be liable for more than the difference between the market price and the contract price as set out in the Schedule hereto with respect to the relevant quantity of the Product, or be liable for any loss of profit or anticipated profit, use, goodwill business receipts, contracts or commercial opportunities, market reputation, cost of overheads thrown away or loss resulting from

shut down of any plant of Buyer or receiver of the Product, whether or not that is not too remote or foreseeable.

16 HEALTH, SAFETY AND THE ENVIRONMENT

- 16.1 The Parties acknowledge that they are familiar with the Product as specifically mentioned in the Schedule, in particular its separate and independent knowledge of the risks relating to the Product, such as the risks associated with handling, using, transporting, storing, and disposing of the Product, including, without limitation, those set forth in the Safety Data Sheets for the Product (“**SDS**”) as are generally known in the respective party’s industry.
- 16.2 The Parties shall comply with the Laws of the Republic of South Africa and other applicable international laws and requirements relating to the handling, packaging, labelling, carriage and transportation of the Product and shall maintain full compliance with all environmental, safety and health related governmental requirements and shall take all reasonable and practicable steps to inform, warn and familiarize its employees, agents, contractors and customers with all hazards associated with the Product, including handling, shipment, storage, use and disposal as well as protect any surrounding environment. The Parties shall be responsible for providing its employees with appropriate information and training to enable them to handle and use the Product Delivered hereunder in a manner which does not endanger their health or safety. The Parties shall not deliver or consign commercial or sample quantities of Product to any party whom the Parties reasonably believe will handle, ship, store, use or dispose of said Product in a dangerous manner or contrary to law.
- 16.3 To the extent permissible by law Seller shall not be liable in any respect whatsoever for any loss, damage or injury resulting from any risks relating to the Product after Delivery of same in terms of this Agreement, which risks Buyer acknowledges and warrants that it is familiar with and has separate and independent knowledge thereof as contemplated in clause 16.1 above.

17 INDEMNITY

- 17.1 Each Party (“the Indemnitor”) hereby agrees to indemnify and hold the other Party (“The Indemnatee”) harmless against any and all claims arising out of, or as a result of performance under this Agreement which are brought against the Indemnatee by third parties, including the employees of the Indemnatee whether such claims relate to damage to property or bodily injury or death arising out of any wilful act or omission of the Indemnitor or its employees or agents whilst acting in the course and scope of their employment.
- 17.2 The right to be indemnified against any claim brought by a third party shall be conditional on the Indemnatee giving reasonable notice in writing to the Indemnitor of the third party claim in respect of which indemnification is sought.

17.3 Seller shall not be liable for, and Buyer agrees to indemnify and hold Seller harmless from and against any Liabilities, whether based in contract, negligence, strict liability, or otherwise caused or resulting in whole or in part from any accidents, incidents, releases, spills, environmental damage, explosions, fires, or any other claims involving the Product after Delivery to Buyer.

17.4 This clause 17 shall survive the termination of this Agreement for any reason whatsoever.

18 **INSURANCE**

18.1 Buyer shall procure and pay for delivery vessel cargo insurance.

18.2 Seller does not undertake to procure insurance against war, strikes, riots and civil commotions risks in respect of the delivery of the Product hereunder save where Seller shall, by written notice actually received by it at least 2 Business Days prior to the commencement of loading, have been requested by Buyer to procure such insurance. Where, upon request as aforesaid, Seller procures such insurance, it shall be subject to 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 London market rate for the voyage to be performed ruling on the said date shall be charged to and be recoverable from Buyer by Seller as an addition to the price in this Agreement under the special provisions and such addition shall then form part of such price in this Agreement.

18.3 If and for so long as the voyage to the discharge terminal, or any seas through which the vessel has to travel in performance of the Agreement, Seller shall pursuant to the terms of the relevant charter party incur additional insurance or war risk insurance *premia* whether at the date of the Agreement or subsequently for the vessel's hull and machinery, protection and indemnity or cargo insurances, crew bonuses and the provision of security services for the vessel, or any or all of them, the cost of such additional insurance and/or additional *premia* shall be paid by Buyer to Seller in addition to the price payable pursuant to the Agreement.

18.4 Seller reserves the right to refuse at any time:

18.4.1 to direct any vessel to undertake or to complete the voyage to the discharge terminal if such vessel is required in the performance of the Agreement: i) 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 Seller's opinion, to risk its safety or to risk ice damage; or ii) to transit or to proceed to or to remain in waters where there is war (de facto or de jure) or threat thereof;

- 18.4.2 prior to the commencement of loading to direct any vessel to undertake the voyage to the intended discharge terminal if such vessel is required in the performance of the terms of the Agreement to transit waters which, in Seller's reasonably held opinion, would involve abnormal delay; or
- 18.4.3 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.
- 18.5 If Seller agrees to direct a vessel to undertake or to complete the voyage as referred to above, Buyer undertakes to reimburse Seller, in addition to the price payable under the Agreement, for costs incurred by Seller in respect of any additional insurance *premia* (including those referred to above) and any other sums that Seller may be required to pay to the vessel's owner including any sums in respect of any amounts deductible under such vessel.

19 REGULATORY CHANGE

- 19.1 For the purposes of this clause 19, the term "**Change in Law**" shall mean any changes in the, (including the coming into effect of any such), new laws, rules, regulations, decrees of, and the agreements, concessions and arrangements with, government(s), or any agency, instrumentality, authority or entity established or controlled by government(s), or any person purporting to act therefor, in effect on the date this Agreement is entered into, in respect of, or directly or indirectly affecting, the Product, including, but without limitation, the production, acquisition, gathering, selling, transportation, supply and delivery thereof insofar as such Change in Law affects Seller or Seller's Supplier.
- 19.2 Subject to and without prejudice to the provisions of clauses 10.3 and 11 above, if, at any time after Seller's acceptance of Buyer's offer pursuant to, or from time to time during the term of, this Agreement, there is any Change in Law (as defined above), not covered by any other provision of this Agreement, and having an adverse economic effect upon Seller:
 - 19.2.1 then Seller shall have the option to request renegotiation of the terms and conditions provided for in this Agreement. Such option may be exercised by written notice from Seller to Buyer at any time after such Change in Law is published; and
 - 19.2.2 Such notice shall contain the effective date of such Change in Law and the terms and conditions under which Seller is prepared to continue delivering the Product under this Agreement consequent thereto.
- 19.3 If for any reason the Parties are unable to reach agreement in writing within three (3) days from the date of Seller's renegotiation request, Seller shall have the right, but not be obligated, to

terminate this Agreement, without any liability whatsoever, by giving to Buyer at least twenty-four (24) hour's prior written notice to this effect.

- 19.4 Any of the Product which is loaded after receipt of Seller's renegotiation request or after the effective date of the new or changed Regulations (whichever is the later) and prior to termination as provided for herein shall be sold and purchased subject to the provisions of clauses 10.3 and 11 above.
- 19.5 If a Change in Law requires any further license to be obtained by any Party, such Party shall exercise its reasonable endeavours to obtain such license as soon as is reasonably possible, but in any event by no later than the date on which such license is required in terms of such Change in Law.

20 EPIDEMICS CLAUSE

- 20.1 In the event that ports are affected by severe epidemic, plague, or highly contagious diseases which are deemed to be extremely harmful to human health (the "affected area") as determined and notified by the world health organization, the following terms apply:
- 20.2 The Vessel shall not be ordered to nor bound to enter any affected area where notices by the port authority or other governmental agency forbid or prohibit vessels and people on those vessels from entering such place owing to severe epidemic, plague, or highly contagious diseases.
- 20.3 If at any stage of the voyage the vessel master or owner deems that there is a material risk, as determined by the World Health Organization, cognizant port authority or cognizant governmental agency, that:
- 20.3.1 calling at the discharge port(s) in an affected area exposes crew members to severe epidemic, plague, or highly contagious diseases, Seller may give notice to Buyer requiring them to nominate any other port which lies within the range for discharging within 48 hours of Seller's request. If Buyer has not nominated such port or ports within forty-eight (48) hours of receipt of notice of such requirement, Seller shall have the option, if such option is taken by the vessel owner, of cancelling the delivery with all cost and consequences to be a *force majeure* event; and
- 20.3.2 any part of the route (including any canal or waterway) which is normally and customarily used in a voyage of the nature contracted for, exposes crew members to severe epidemic, plague, or highly contagious diseases, and there is an alternative route to the discharging port, Seller shall give notice to Buyer that this alternative route will be taken.
- 20.4 Any delays, additional reasonable costs and/or expenses, directly arising out of Buyer's discharge orders for the Vessel to call at an affected area, including but not limited to screening, cleaning, and/ or the obtaining of medical treatment for any infected crew, either in an affected area or at

subsequent ports of call, and any time lost as a result of complying with the same shall be for the sole and exclusive account of Buyer.

21 REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

21.1 Each Party represents, warrants and undertakes that, as at the Effective Date, and for the term of this Agreement:

21.1.1 it is and shall continue to be a duly established legal entity in its country of incorporation and all necessary approvals, permits, authorisations and licences from the authorities required by it under the laws and regulations of its country of incorporation to enter into and perform this Agreement have been obtained and all actions have been taken by it to comply with all legal and other requirements necessary to ensure that by entering into this Agreement and performing its obligations under this Agreement, it will not infringe any laws or regulations applicable to it or the terms of any such approval, permit, authorisation or licence;

21.1.2 all actions, conditions and things required to be taken, fulfilled and done (including the obtaining of any necessary consents), in order to: i) enable it lawfully to enter into, exercise its rights and perform and comply with its obligations under this Agreement; and ii) ensure that those obligations are valid, legally binding and enforceable, have been taken, fulfilled and done;

21.1.3 it has the necessary power and authority to enter into this Agreement and to exercise its rights and observe and perform its obligations hereunder and the execution of this Agreement by it has been duly authorised so that upon execution, this Agreement will constitute valid and binding obligations of it in accordance with its terms; and

21.1.4 its entry into, exercise of its rights and/or performance of or compliance with its obligations under this Agreement do not and will not contravene or constitute a default under its constitutional documents or under any other agreement, contract, instrument, law or other form of commitment or obligation.

22 VESSEL NOMINATION

22.1 Unless otherwise agreed in the Schedule, Buyer will, at least fifteen (15) days before the first day of the agreed loading date range, provide to Seller by electronic mail the following details necessary to implement this Agreement:

- 22.1.1 a Q88 questionnaire of the nominated Vessel and/ or the name of the vessel, date built, summer deadweight, flag and cargo tank capacity excluding slop tanks;
- 22.1.2 the expected date of the Vessel's arrival at the Terminal;
- 22.1.3 the quantity and quality of the grade(s) of Product to be loaded; and
- 22.1.4 charter party demurrage rate of the nominated Vessel or its substitute.
- 22.2 In case of rejection, Buyer will, as soon as possible, nominate to Seller an alternative Vessel for Seller's prompt acceptance or rejection, and, in the case of the latter, the Parties will negotiate a mutually acceptable nomination.
- 22.3 Buyer may, if necessary, to perform its obligations hereunder and with Seller's prior written consent, substitute any Vessel with another Vessel which is similar in all material respects to the Vessel so replaced. Buyer may also, with Seller's prior written consent and by giving Seller reasonable notice, amend in other respects any Vessel nomination or series of Vessel nominations. If such amendment is rejected by Seller, the Parties will negotiate a mutually acceptable alternative Vessel nomination.
- 22.4 Buyer warrants, undertakes and indemnifies Seller for any loss incurred as a consequence of failure to keep to the undertaking that:

- 22.4.1 it is familiar with the latest Vessel size restrictions, including but not limited to, deadweight, draught, beam and overall length limitations of the Terminal and will not nominate a Vessel exceeding such limitations;
- 22.4.2 it is familiar with, and will cause the Vessel to comply with, all regulations in force at the terminal, including but not limited to, those relating to fires on board Vessels; and
- 22.4.3 it shall ensure that each Vessel nominated hereunder will, at the time of loading:
 - 22.4.3.1 comply with all applicable rules, regulations and directions of the governmental, local and terminal authorities and will conform in all material respects to all relevant international regulations and agreements;
 - 22.4.3.2 have hull, machinery, boilers, tanks, equipment and facilities which are in good order and condition, in every way fit for the service required and fit to carry the cargo specified;
 - 22.4.3.3 have a full and efficient complement of master, officers and crew; and
 - 22.4.3.4 be owned or demise chartered throughout the entire period of the voyage to and from the loading terminal by a member of the International Tanker Owners Pollution Federation Limited ("ITOPF"); and
 - 22.4.3.5 it is familiar with and shall comply with Seller SHEQ policies.
- 22.4.4 Buyer shall ensure that any Vessel nominated to Seller has on board a valid International Safety Management (ISM) code safety management certificate for the Vessel, and a certified copy of the Vessels' manager's document of compliance as required by the IMS code and SOLAS convention 1974 as amended.
- 22.4.5 All applicable governmental, local and port authority regulations, Seller's, Seller Supplier's and/or Delivery Point Operator's regulations, procedures and any other requirement of any nature whatsoever in force at the Delivery Point at the time of delivery shall apply to Buyer's Vessel (including for determining at what time and date any N.O.R. tendered by the Master or his representative is effective).

23 ARRIVAL, TRANSFER AND LOADING OF THE VESSEL AT DELIVERY POINT

- 23.1 Unless otherwise agreed in the Schedule, Buyer shall give Seller fifteen (15) days' notice, or such longer period as may be necessary, to allow Seller to obtain full instructions consistent with the Terminal regulations regarding the loading of each Vessel and the preparation of documentation covering the cargo(es). Seller will use its reasonable endeavours to arrange for such instructions

to be carried out, but it will not be obliged to arrange for an instruction to be carried out which is inconsistent with any provision, expressed or implied in this Agreement.

- 23.2 Buyer shall cause the Delivery Point Operator (with a copy to Seller) to be advised of the estimated date and time of arrival ("**ETA**") of the Vessel at the Delivery Point at least seventy- two (72), forty-eight (48), and twenty-four (24) hours before arrival, or as otherwise required by the rules and regulations applicable at the Delivery Point.
- 23.3 Failure to give each or any one of the above ETAs shall increase the laytime allowed to Seller under the Agreement by the number of hours by which the actual notice is less than the required notice, but the total increase in laytime shall not exceed twenty-four (24) hours.
- 23.4 Buyer shall ensure that the Vessel shall, within the Vessel Presentation Range and within any time limit prescribed in the regulations, procedures and requirements referred to in sub-clause 22.4.5 above: i) arrive at the Delivery Point, complete formalities and in all respects be ready to load the Shipment and ii) tender an effective N.O.R.
- 23.5 Subject to compliance by Buyer and its nominated Vessel with all requirements (including but not limited to characteristics, dimensions and draught) of the Delivery Point at the time in question, the loading berth indicated by Seller or its representative shall enable that Vessel to proceed thereto, lie thereat, load the Product and depart therefrom, always safely afloat.
- 23.6 Seller will at all times and at no expense to Buyer provide and maintain, or cause to be provided and maintained, in good working condition all necessary flexible hoses, connections, pipelines, Storage Tank and other accommodation for such loading and discharging of the Vessel. The time allowed for loading each cargo under this Agreement will be twenty-four (24) running hours per 840 000 Bbl cargo. Laytime will commence either:
 - 23.6.1 at the expiry of six (6) hours after N.O.R to load or discharge had been tendered to Seller, or by any other party nominated by Seller, from the master or his representative, which notice of readiness may be tendered only after the Vessel has arrived within the customary anchorage or waiting place of the port, or
 - 23.6.2 if the Vessel moves directly to the berth, when the Vessel is securely moored at the berth whichever occurs first, except:
 - 23.6.2.1 if the Vessel arrives before the first day of the agreed loading or discharging date range nominated and accepted in accordance with the provisions of clause 23.1 above (Vessel Nomination) below,

laytime will not commence until 06h00 hours South African time on the first day of the agreed loading or discharging date range or when vessel is all fast, whichever occurs first; or

23.6.2.2 if the Vessel arrives after the last day of the agreed loading or discharging date range nominated and accepted in accordance with the provisions of clause 23.1 above (Vessel Nomination), laytime will commence at the time when loading or discharge commences;

23.6.2.3 notwithstanding the provisions of sub-clause 23.6.2.1, if the N.O.R is tendered after the last day of the agreed loading or discharging date range, then Seller shall endeavour to berth the vessel and commence operations at the first available opportunity and Seller shall not incur any additional costs.

24 CONFIDENTIALITY

24.1 For the purposes of this Agreement:

24.1.1 the Party disclosing Proprietary Information is the “**Disclosing Party**”;

24.1.2 the Party to which Proprietary Information is disclosed is the “**Receiving Party**” and

24.1.3 “**Proprietary Information**” shall mean any of the Disclosing Party’s information of a confidential nature embodied in: data, technical knowledge, specifications, chemical makeup, material, marketing information, price and/or other communications relating to or useful in connection with this Agreement but shall not include information which the Receiving Party can conclusively establish: **i)** at the time of disclosure, is, or, after disclosure, becomes generally known or available to the public through no act or failure to act by the Receiving Party; **ii)** was known to it or was possessed by it without restriction prior to the disclosure by the Disclosing Party; **iii)** was rightfully acquired free from restriction from a third party having an unrestricted right to disclose same; or **iv)** was independently developed by it.

24.2 Neither Party shall disclose the terms and conditions of this Agreement and/or any Proprietary Information to a third party. The Receiving Party shall not disclose the Disclosing Party’s Proprietary Information, however disclosed, without the prior written consent of the Disclosing Party. The Disclosing Party may, in its sole discretion, disclose its own Proprietary Information to any third party.

Each Party’s confidentiality obligations shall survive termination of the Agreement and shall terminate three (3) years from the date of termination. When this Agreement is terminated, the Receiving Party shall, upon request, return to the Disclosing Party all of its Proprietary Information within 30 days of the request.

25 FORCE MAJEURE

25.1 Neither Party shall be deemed to be in breach of this Agreement, or be liable to the other for,

failure, omission or delay in its performance, wholly or partially, of any of the terms or conditions of this Agreement (save for obligations to make payments or provide security for payment under this Agreement) to the extent that such failure, omission or delay is due to *Force Majeure*.

25.2 For the purposes of this clause 25, and without limitation to the generality of sub-clause 25.1 above, “**Force Majeure**” means any cause beyond the reasonable control of that Party and which could not reasonably have been foreseen, prevented or mitigated by that Party, including without limitation, acts of God, perils of navigation, civil commotion, riots, insurrection, acts of government, acts of terror, fire, explosion, the elements, epidemics, governmental embargoes, floods, war (declared or undeclared), hostilities, executive or administrative orders or acts of either general or particular application of any government or of any officer or agent purporting to act under the authority of such government, blockade, labour disturbance, strikes, riot, quarantine restrictions, earthquakes, accident, breakdown or injury, expropriation, confiscation or requisitioning of any property, or like causes, which interfere with the production or transportation of the Product covered by this Agreement or with the supply of any raw material (whether or not the source of supply was in existence or contemplated at the time of this Agreement) or energy source used in connection therewith, or interfere with Seller’s procurement of such Products, provided that in no event shall Buyer be relieved of the obligation to pay in full for the Product delivered hereunder. Without limitation on the foregoing, neither Party shall be required to remove any cause listed above or replace the affected source of supply or facility if it shall involve additional expense or departure from its normal practices.

25.3 For the purposes of this Agreement, a *Force Majeure* in respect of Seller shall include:

25.3.1 compliance, voluntary or involuntary, with a directive or request from the Minister of Mineral Resources and Energy (or his/her successor in title) in the event of the occurrence of a liquid fuel crisis in order to address the Government of South Africa’s national strategic requirements as contemplated in clause 8above;

25.3.2 compliance, voluntary or involuntary, with a directive or request (including any obligation arising out of the exercise of a requirement to deliver crude oil of the grade deliverable hereunder by way of royalty-in-kind) of any international, national, port, transportation, or local government or other authority or person purporting to act with such authority; or

any force majeure declared by a participant in Seller’s supply chain in terms of the applicable agreements or from any one or part of Seller’s sources or its anticipated sources of supply in whatever country situated (whether or not such source is a source or anticipated source for the purposes of this Agreement or such country is referred to in this Agreement)., including, without any limitation thereto, any curtailment of, hindrance to, interference with, or delay to the availability, delivery or transportation of: i) the Product or the grade of crude oil deliverable under the Agreement; or ii) any crude oil, whether or not of the grade to be delivered under the

Agreement, if this results in insufficient crude oil being available to Seller on a regular and reliable basis to enable it, or renders it clearly uneconomic for Seller, to supply its Affiliates with both their reasonable and notified requirements for crude oil and to supply fully its other purchasers of crude oil; or iii) any crude oil, whether or not of the grade to be delivered under the Agreement, as a result of Seller's actions based on, or arising in connection with, compliance with a request to, or requirement of, a relevant government, made by, or through, the International Energy Agency.

- 25.3.3 Accordingly, and for the avoidance of any doubt, Seller's ability to supply the Product under this Agreement is dependent on: i) the persistence of the circumstances that have resulted in the liquid fuel crisis as determined by the Government of South Africa; and ii) continued availability of necessary raw materials and products from its usual and anticipated suppliers and continued availability of energy supplies. In the event that: i) the circumstances that have resulted in the liquid fuel crisis as determined by the Government of South Africa persist; or ii) such raw materials, product, and energy supplies are not readily available in sufficient quantities to permit Seller to meet its total commitments for the Product, as the case may be, Seller shall have the right, at its sole discretion, either: i) not to deliver the Product to Buyer at all for as long as the circumstances that have resulted in that liquid fuel crisis persist; or ii) to allocate in a fair and reasonable manner among its customers and Seller's own requirements (including the requirements of Seller's Affiliates) such Product as is available for delivery at the time or for the duration of the *Force Majeure* event.
- 25.3.4 For the purposes of this sub-clause 25.3, the availability to Seller on the spot market of any quantity of crude oil, whether or not of the grade deliverable under this Agreement, shall not be taken into account in determining whether or not a *Force Majeure* event has occurred.
- 25.3.5 If any *Force Majeure* event occurs, then at any time thereafter and for so long as the effect of that event continues, Seller shall be entitled to withhold, suspend, reduce or cancel delivery hereunder to such extent as Seller shall in its absolute discretion determine. For the avoidance of doubt, in a *Force Majeure* event, Seller has absolute discretion to determine which of the demands for crude oil on Seller, including from its Affiliates, it meets first, and the extent to which it meets each such demand.
- 25.3.6 In such event, Seller shall not be bound to acquire by purchase or otherwise additional quantities of crude oil from any sources or anticipated sources of supply or other suppliers to satisfy Buyer's requirements hereunder. However, should Seller purchase or otherwise acquire additional crude oil, Seller shall not be required to allocate any to Buyer.
- 25.4 If either Party is prevented or restricted directly or indirectly from carrying out all or any of its obligations under this Agreement, other than a payment obligation, by *Force Majeure*, the Party so affected shall, to the extent so prevented, be relieved of its obligations hereunder (other than

payment obligations) during the period of such events and shall not be liable for any delay or failure in the performance of any obligations hereunder or loss or damage either general, special or consequential which any other Party may suffer due to or resulting from such delay or failure, provided always that written notice of the occurrence constituting *Force Majeure* shall have been given within 72 (seventy-two) hours of becoming aware thereof by the affected Party to the other Party.

- 25.5 Prompt written notice of any event of *Force Majeure* and, so far as possible, of its extent and anticipated duration shall be given by the party so affected. That party shall also give prompt written notice when the effects of the *Force Majeure* event come to an end.
- 25.6 For as long as a Party fails to perform any of its obligations under this Agreement due to *Force Majeure*, the rights of such Party shall be suspended (other than rights to receive payments).
- 25.7 If any failure, omission or delay in performance of the Agreement under this clause 25 continues for more than thirty (30) consecutive days after the day the notice of *Force Majeure* has been sent, then either party shall be entitled after said duration to cancel delivery of the Shipment(s) affected by the event of Force Majeure by written notice to the other party, without any liability on either side save that such cancellation shall be without prejudice to any other accrued rights and (if applicable) to other deliveries under the Agreement. Performance under the Agreement shall resume to the extent made possible by the end of the effects of the Force Majeure event pursuant to this clause 25.
- 25.8 Where, under the Agreement, Buyer is to receive more than one Shipment, then:
 - 25.8.1 no withholding, suspension, delay, reduction or cancellation of delivery shall operate to extend the duration of the Agreement; and
 - 25.8.2 any quantities of Oil deliverable under the Agreement that would, but for any reduction or cancellation pursuant to this clause 25, have been delivered during the period of the Agreement shall cease to be deliverable by Seller.

26 **ANTI- BRIBERY AND CORRUPTION**

- 26.1 Each Party represents that it is familiar with the Anti-Bribery Laws and that the performance under this Agreement will be made in compliance with the Anti-Bribery Laws.
- 26.2 Each Party warrants and covenants that it and its Affiliates have not made, offered, or authorised and will not make, offer, or authorise with respect to the matters which are the subject of this Agreement, any payment, gift, promise or other advantage, whether directly or through any other

person or entity, to any person (including a Public Official) where such payment, gift, promise or advantage would violate the Anti-Bribery Laws.

- 26.3 Neither Party shall make any unofficial payment to a Public Official to speed up an administrative process where the outcome is already pre-determined (facilitation payment) in the performance of its obligations in terms of this Agreement.
- 26.4 Each Party agrees to maintain adequate internal controls and to keep accurate and complete records that support the payments due and all transactions under this Agreement. and grants the other Party, as may be necessary in order to assess compliance with this Agreement, the right to inspect all relevant books and records, including without limitation financial statements, general ledger, journals and registers, and all supporting business records of the transactions identified on such records relating to this Agreement.
- 26.5 Each Party agrees to maintain adequate internal controls and to keep accurate and complete records that support the payments due and all transactions under this Agreement. and grants the other Party, as may be necessary in order to assess compliance with this Agreement, the right to inspect all relevant books and records, including without limitation financial statements, general ledger, journals and registers, and all supporting business records of the transactions identified on such records relating to this Agreement.
- 26.6 Each Party represents that, to the best of its knowledge and belief, and save as disclosed to the other Party, neither it nor any of its personnel has been investigated (or is being investigated in relation to any breach of the Anti-Bribery Laws by any law enforcement, regulatory or other governmental agency or has admitted to; or been found by a court in any jurisdiction to have engaged in, any breach of the Anti-Bribery Laws, or been debarred from bidding for any contract or business. Each Party agrees that if, at any time, it becomes aware that any of the representations set out at in this clause is no longer correct, it will notify the other Party of this immediately in writing.
- 26.7 Each Party agrees and covenants to notify the other Party immediately upon receipt of any solicitation, demand or other request for anything of value relating to the subject matter of this agreement where such payment, gift, promise or advantage would violate the applicable Anti-Bribery Laws.
- 26.8 Each Party further covenants that should it be notified by another Party of its concerns that there has been a violation of an anti-bribery clause, it shall cooperate in good faith with that Party and its representatives in determining whether such violation has occurred, and shall respond promptly

and in reasonable detail to any notice from that Party, and shall furnish documentary support for such response upon that Party's request.

- 26.9 Each Party may request that the other Party provide a certification to the effect that neither it nor any of its Affiliates, directors, officers, agents or other representatives acting on its behalf in connection with the performance under this Agreement have engaged in any transaction or activity in violation of these anti-bribery clauses. Upon request a Party shall deliver such certification within 10 (ten) business days.
- 26.10 Notwithstanding any limitation of liability clause included in this agreement each Party (the "Indemnifying Party") shall be liable for and shall indemnify, defend and hold the other (the "Indemnified Party") harmless to the maximum extent provided in law from and against any reasonable claims, losses, costs, fees, payment of interest, fines or other liabilities incurred in connection with or arising from the investigation of, or defence against, any litigation or other judicial, administrative, or other legal proceedings brought against the Indemnified Party by a regulator or governmental enforcement agency as a result of acts or omissions by the Indemnifying Party, its Affiliates, employees or entities acting on its behalf in violation of, or alleged violation of, the Anti-Bribery Laws.
- 26.11 Any breach of, or failure to comply with, the provisions in this Clause shall be deemed material and shall entitle the non-breaching Party to terminate this Agreement forthwith.
- 26.12 The indemnity contained in this clause shall survive the termination of this Agreement.
- 26.13 Unless otherwise provided for in this Agreement, no Party shall have the right to represent or make decisions on behalf of the other Party.

27 SANCTIONS

- 27.1 Each Party represents that it is familiar with the relevant Sanctions imposed by the Sanctions Authority and covenants, to the extent which such Sanctions apply to a Party, its performance under this Agreement will be made in compliance with the applicable Sanctions.
- 27.2 The Parties confirm that, to the extent that such Sanctions apply to the said Party, they have implemented and maintain in effect policies and/or procedures designed to facilitate compliance

by the Parties, their respective directors, officers, employees and agents as well as their controlled subsidiaries, subcontractors, suppliers and customers with all applicable Sanctions.

- 27.3 Each Party confirms that it is not a Sanctioned Entity, not owned or controlled by a Sanctioned Entity and that, to the best knowledge of such Party, neither its directors, officers, employees, or agents, or the directors, officers, employees, or agents of its subsidiaries, is a Sanctioned Entity.
- 27.4 To the extent permitted by law, the Seller shall ensure that the Product has no origin in, and the Buyer shall ensure that the Product is not transported through and has no destination in, a Sanctioned Country.
- 27.5 Neither Party shall be obliged to perform any obligations required by this Agreement if it would be in violation of, inconsistent with, or expose such Party to punitive measures under laws and regulations applicable to it relating to Sanctions.
- 27.6 Each Party will, upon request by the other Party, provide the other Party with the necessary information to support the other Party's ongoing due diligence and Know Your Customer (KYC) process requirements.
- 27.7 Any Party shall be entitled, without incurring any liability, to terminate or suspend this Agreement with immediate effect if the performance of this Agreement is in any way restricted or prohibited by Sanctions.

28 DATA PROTECTION

- 28.1 Each Party acknowledges that Personal Information may be generated or otherwise Processed in the conclusion and performance of this Agreement. All Personal Information contained in, generated or Processed due to the conclusion of this Agreement shall be Processed in accordance with Applicable Data Protection Legislation.
- 28.2 Each Party shall be deemed a Responsible party/Controller in its own rights insofar as the Processing of Personal Information is concerned.

29 PROCESSING

When Processing Personal Information as referred to in clause 28.1 above, a Party shall:

- 29.1.1 **Compliance with Data Protection Legislation:** take reasonable and appropriate steps to ensure that their respective personnel, contractors or authorized individuals, when Processing Personal Information, comply with the relevant provisions of the Applicable Data Protection Legislation. This includes taking steps to ensure that their respective personnel, contractors or authorized

individuals that process and/or have access to Personal Information are appropriately trained and made aware of their obligations regarding the Processing of Personal Information;

- 29.1.2 **Processing:** when collecting, receiving, using or otherwise Processing Personal Information which it comes into contact with pursuant to this Agreement, carry out such Processing in a lawful manner only to the extent required to execute its respective obligations or exercise its rights in terms of this Agreement.
- 29.1.3 **Technical and Organizational Privacy Measures:** Put in place, and maintain at all times, the appropriate reasonable physical, technological and organizational information privacy measures (which is set forth in law, industry rules, codes of conduct, professional bodies and/or generally accepted information security practices and procedures which apply to that Party) to ensure the protection and confidentiality of Personal Information that it, or its employees, its contractors or other authorized individuals come into contact with pursuant to this Agreement, to ensure the prevention of a Personal Information Breach.
- 29.1.4 **Data Disclosures:** not without prior written consent of the other Party disclose, any Personal Information to any third party or Operator/Processor, unless so required by law. Each Party shall ensure that its Operator/Processor (where applicable) is contractually bound to apply technical and organisational measures, and to Process the Personal Information on terms no less stringent than the terms to which such Party has been bound under this Agreement;
- 29.1.5 **Security Compromise:** as soon as reasonably practicable but by no later than 72 (seventy-two) hours after becoming aware of any suspected or confirmed Personal Information Breach of any Personal Information in its possession or control, inform the other Party in writing thereof. Furthermore, a Party shall also inform the other Party in writing of the third party(ies) which may have been affected, the nature and extent of the Personal Information Breach and the identity of the unauthorized person/s who may have accessed or acquired the Personal Information. The Party, whose actions and/or omissions resulted in the Personal Information Breach, shall also take necessary remedial steps in order to mitigate the extent of the loss or compromise of such Personal Information, and prevent it from recurring. Such written notification however shall not be interpreted or construed as an admission of fault or liability by the other Party. Where the Party whose actions and/or omissions resulted in the Personal Information Breach, is deemed to be a Responsible Party/Controller, then it will be accountable to the Information Regulator and all affected Data Subjects, and will accordingly be required to carry out any required regulatory notifications of the Personal Information Breach in accordance with Applicable Data Protection Legislation.
- 29.1.6 **Records of Processing:** Be responsible for compliance with its respective documentation requirements, such as maintaining records of Processing activities. A Party shall reasonably assist the other Party in its documentation requirements, including providing information to the

other Party in a manner reasonably requested by such Party (such as using an electronic system) to enable it to comply with its obligations.

30 **BREACH**

- 30.1 Should either of the Parties commit a material breach of provision of this Agreement, and,
 - 30.1.1 fail to remedy such breach for 7 (seven) calendar days after receipt of a written notice from the non-breaching party requesting the remedy of the breach, or alternatively
 - 30.1.2 fail, on receipt of the said written notice, to provide guarantees, to the satisfaction of the non-breaching party, that the breach shall be remedied to the non-breaching party's satisfaction,
 - 30.1.3 then the non-breaching party may terminate this Agreement forthwith by written notice.
- 30.2 Termination of this Agreement shall not release either of the Parties from an obligation which arose prior to termination but which is still due.
- 30.3 If a party is dissolved for purposes of a *bona fide* restructuring or amalgamation without insolvency this Agreement may not be terminated and shall be binding on the restructured company or the company arising from the amalgamation. The party being restructured or amalgamated shall ensure acceptance of this Agreement by the restructured company, or the company arising from the amalgamation.
- 30.4 The foregoing notwithstanding, for the purposes of this Agreement, breach in respect of the Buyer shall include:
 - 30.4.1 failure by Buyer to pay any amounts owing in full when due or the breach by Buyer of any of its obligations under clauses 10, 11, 12 and 13 above; or
 - 30.4.2 the failure by Buyer to take receipt, during a period or at an agreed date, of any quantity of the Product as provided for in the Agreement; or
 - 30.4.3 making any intentional or negligent misrepresentation, whether in any negotiations preceding the conclusion of this Agreement, or thereafter; or
 - 30.4.4 acting dishonestly and/or in bad faith; or
- 30.5 Seller may, at its sole and exclusive discretion and without prejudice to any claim which Seller may have against Buyer as at the date of the occurrence of any breach event envisaged in clause 30.4:

- 30.5.1 suspend deliveries until all indebtedness is paid in full; or
- 30.5.2 place Buyer on a cash-on-delivery basis; or
- 30.5.3 do or cause to be done whatever may be necessary to remedy such breach and claim damages from Buyer including the cost of remedying such breach; or
- 30.5.4 on written notice to Buyer terminate this Agreement in part at it applies to sale of the Product in the event of the Buyer's default with respect to a specific request for sale of the Product; or
- 30.5.5 notwithstanding any other provision of this Agreement to the contrary, including any provision of clause 35 below, Seller shall be free to assign to any third party any and all of Seller's rights under the Agreement, whether present or future, actual or contingent, including, without limitation:
 - 30.5.5.1 any and all rights to require the due and punctual observance, discharge and performance by Buyer of all its obligations and liabilities under this Agreement;
 - 30.5.5.2 all rights to moneys received or receivable by Seller from Buyer under this Agreement, whether as a payment, compensation, damages or an indemnity;
 - 30.5.5.3 the right to claim for any sums payable or which become payable under this Agreement; or
 - 30.5.5.4 terminate this Agreement in whole, in which event such termination shall be effective upon receipt by Buyer of written notice to that effect; or
- 30.6 For the purposes of this Agreement, breach in respect of the Seller shall include:
 - 30.6.1 the failure by Seller to Deliver the quantity of the Product on the agreed date as provided for in the Agreement; or
 - 30.6.2 making any intentional or negligent misrepresentation, whether in any negotiations preceding the conclusion of this Agreement, or thereafter; or
 - 30.6.3 acting dishonestly and/or in bad faith.

31 DISPUTE RESOLUTION AND ARBITRATION

- 31.1 The Parties shall use their best efforts and in good faith seek to resolve amicably all disputes and differences arising between them out of or in connection with this Agreement or its interpretation or its implementation. Should the dispute not be capable of settlement on the aforementioned basis, the matter shall be escalated to the Chief Executive Officers of the Parties or the nominated

authorised representatives of the Parties as nominated by the Chief Executive Officers, who will attempt to resolve the dispute by negotiation.

- 31.2 If the Chief Executive Officers of the Parties or the nominated authorised representatives of the Parties as nominated by the Chief Executive Officers are unable to resolve any such dispute within 7 (seven) Business Days, then such dispute will be finally resolved by arbitration in accordance with the rules of the Arbitration Foundation of Southern Africa ("**AFSA**") by a single (1) arbitrator, being either a retired judge or suitably qualified and experienced advocate of not less than ten (10) years at senior counsel level, agreed to in writing by the Parties to the dispute or, failing such agreement within 7 (seven) days after it is requested by any Party to the dispute, appointed by AFSA. The arbitrator's decision will be binding on the Parties but it shall be subject to appeal, in which event such decision shall be suspended pending the outcome of such appeal..
- 31.3 The Parties to this Agreement -
- 31.3.1 expressly consent to any arbitration in terms of the aforesaid rules being conducted as a matter of urgency in accordance with the Expedited Rules; and
- 31.3.2 irrevocably authorises any other Party to the dispute to apply, on behalf of all Parties to the dispute, in writing, to the secretariat of AFSA in terms of rule 23 of the aforesaid rules for any such arbitration to be conducted on an urgent basis in accordance with the Expedited Rules.
- 31.4 Any order or award that may be made by the arbitrator -
- 31.4.1 will be final and binding on the Parties in the absence of clerical or manifest error; and
- 31.4.2 may be made an order of any competent court by any of the Parties to the dispute.
- 31.5 Notwithstanding anything to the contrary contained anywhere else in this clause 31, any Party will be entitled to apply for an interdict or other urgent relief from the High Court of the Republic of South Africa.
- 31.6 The fact that any dispute has been referred to or is the subject of arbitration in terms of this clause 31, as well as any information submitted or furnished to the arbitrators or in any other manner forming part of the record of any arbitration proceedings, shall be kept confidential by the Parties to such arbitration proceedings, and the Parties to such proceedings shall use their reasonable endeavours to procure that all their employees, agents or advisers who are involved in or who obtain knowledge of any confidential information disclosed during such proceedings,

shall be made aware of, and shall undertake in writing to be bound by, and to comply with, the provisions of this clause 31.

- 31.7 This clause 31 is severable from the rest of this Agreement and will remain in full force and effect notwithstanding any cancellation or termination of this Agreement.

32 SEVERABILITY AND ILLEGALITY

- 32.1 If any provision or part of this Agreement is found by a court or other competent authority, or agreed by the Parties, to be void or unenforceable, such provision or part shall be deemed to be deleted from this Agreement and the remaining provisions or parts of this Agreement shall continue in full force and effect. Notwithstanding the foregoing, the Parties shall thereupon negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the provision so found to be void or unenforceable.

- 32.2 Insofar as any of the provisions contained in this Agreement are in conflict with any laws in the Republic of South Africa for the time being in force, such provisions shall be deemed to be amended only to the extent necessary to comply with the provisions of such laws.

33 ASSIGNMENT, CESSION AND DELEGATION

Save as expressly set out in this Agreement, neither Party shall be entitled to cede, assign or transfer or purport to cede, assign or transfer to any person any of its rights or obligations in terms of this Agreement without the prior written consent of the other Party. In the event of an assignment in accordance with the terms of this clause, the assignor shall nevertheless remain jointly and severally liable with the assignee for the full and proper performance of its obligations under this Agreement. Any assignment not made in accordance with the terms of this section shall be void.

34 GOVERNING LAW

The validity of this Agreement, its interpretation, the respective rights and obligations of the Parties and all other matters arising in any way out of or pursuant to it, or its expiration or termination for any reason shall be governed by and construed in accordance with the Laws of the Republic of South Africa.

35 WAIVER, VARIATION AND EXERCISE OF RIGHTS

- 35.1 The rights of each Party shall not be prejudiced or restricted by any indulgence extended by such Party to another Party and no waiver by any Party in respect of any breach shall operate as a waiver in respect of any subsequent breach.
- 35.2 No failure or delay on the part of any of the Parties in exercising any right, power or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right,

power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

35.3 Delay in exercising or non-exercise of any right provided for in this Agreement shall not constitute a waiver of that right.

35.4 This Agreement shall not be varied or consensually cancelled, unless such variation or consensual cancellation shall be expressly agreed in writing by all the Parties and no waiver by any Party of any of its rights under this clause shall be of force and effect unless reduced to writing and expressly agreed in writing by all the Parties.

36 **WHOLE AGREEMENT**

36.1 This Agreement constitutes the entire agreement between the Parties in relation to the subject matter of this Agreement and cancels or supersedes all prior negotiations, representations or agreements, whether written or oral, between the Parties prior to the date of this Agreement except as may be otherwise provided in this Agreement. Accordingly, the Schedule and the provisions set out in this Agreement together form the entire agreement between the Parties, and no additional terms, conditions, representations or warranties shall be incorporated in the Agreement in the absence of express written consent of each party.

36.2 For the avoidance of doubt, any repetition in the Schedule of any clause or sub-clause of this Agreement or any part of the same shall be for emphasis only and shall not, by reason of such repetition, exclude any other provision of these general terms of the Agreement.

37 **ADDRESSES FOR LEGAL PROCESSES AND NOTICES**

37.1 The Parties choose *domicilium citandi et executandi* ("**Domicilium**") for all purposes relating to this Agreement, including the giving of any notice and the serving of any process, at the physical addresses and email addresses set out below -

37.1.1	Seller:	SFF Association NPC
	Physical:	151 Frans Conradie Drive Parrow Republic of South Africa 7500
	Email:	
	Contractual:	<u>mfanon@strategicfuelfund.co.za</u>
	Finance:	<u>aminaa@strategicfuelfund.co.za</u>

37.1.2 **Buyer:**

Physical:

Email: xxxxx.xxxxx@xxxxx.com**Cc** xxxxx.xxxxx@xxxxx.com

Cc

37.2 Any Party will be entitled, from time to time, by giving written notice to the other, to vary its physical *Domicilium* to any other physical address (not being a post office box or *poste restante*) and to vary its facsimile *Domicilium* to any other email address.

37.3 Any notice given by any Party to any other ("**Addressee**"), which is delivered by hand between the hours of 09:00 and 17:00 on any Business Day to the Addressee's physical *Domicilium* for the time being, will be deemed (unless the contrary is proved by the Addressee) to have been received by the Addressee at the time of delivery.

37.4 Any notice given by any Party to any other, which is successfully transmitted by email to the Addressee's email *Domicilium* for the time being, will be deemed (unless the contrary is proved by the Addressee) to have been received by the Addressee on the Business Day immediately succeeding the date of successful transmission thereof.

37.5 This clause 37 will not operate so as to invalidate the giving or receipt of any written notice, which is actually received by the Addressee other than by a method referred to in this clause 37.

37.6 Any notice in terms of, or in connection with, this Agreement will be valid and effective only if in writing (which shall include email) and if received or deemed to have been received by the Addressee.

38 **COUNTERPARTS**

This Agreement is signed by the Parties on the dates and at the places indicated below. The Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.

39 **COSTS**

39.1 The legal and other costs incurred by each Party in connection with the drafting and negotiation of this Agreement shall be for such Party's account.

SIGNED at _____ on _____ 2024.

As Witnesses:

For: **SFF Association NPC (Seller)**

1 _____

2 _____

Godfrey Moagi

Chief Executive Officer

Who warrants that he is duly

Authorised thereto

SIGNED at _____ on _____ 2024.

As Witnesses:

For:

1 _____

2 _____

NAME SURNAME

Title

Who warrants that he is duly

Authorised thereto:

SCHEDULE (ACCEPTED OFFER TERM SHEET)

The Term sheet is enclosed herein below.