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**THROUGHPUT AGREEMENT**

entered into between

[•]

Registration No. [•]

and

**BP SOUTHERN AFRICA (PROPRIETARY) LIMITED**

Registration No. 1924/002602/07

Generic

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## 1. INTERPRETATION AND DEFINITIONS

1.1. In this Agreement unless the context otherwise indicates:

- 1.1.1. "**Agreement**" means this Agreement and any annexures hereto;
- 1.1.2. "**BFP**" means the basic fuel price, which is the official formula prescribed and used by the South African Government to determine the prices of regulated petroleum products sold in the South African market. The BFP formula is as described in the document "*Working Rules to Administer the Basic Fuels Price Methodology Effective Date: 2 March 2003 (Revised on 28 October 2005)*" as further revised in January 2009, as published on the DE website and as may be amended by DE from time to time ("the Working Rules"); **<d/n: The definition used in the Sasol Throughput differs from this wording, and has the words "calculated as an average from the 1st day of month M to the last day of month M for month M" added to the end of the first sentence. BP to confirm which definition is preferable>**
- 1.1.3. "**BP**" means BP Southern Africa (Proprietary) Limited (Registration No.1924/002602/07), of 199 Oxford Road, Dunkel, 2196;
- 1.1.4. "**Business Day**" means any day other than a Saturday, Sunday or Public Holiday officially gazetted as such in South Africa;
- 1.1.5. "**Charge**" means the fee charged by the Host to the Tenant for the Services;
- 1.1.6. "**Depot**" means the depot owned or leased by either Party from time to time at which the Services are provided pursuant to this Agreement, as set out in Annexure [•] hereto, and "**Depots**" shall have the corresponding meaning;
- 1.1.7. "**EDI**" means Electronic Data Interchange;
- 1.1.8. "**Effective Date**" means [•], notwithstanding the Signature Date;
- 1.1.9. "**Entitlement Balance**" means the quantity of Product that a Host or a Tenant has entitlement to at a Depot;
- 1.1.10. "**Force Majeure**" has the meaning given to that term in clause 16;
- 1.1.11. "**Host**" means the Party operating the Depot;

- 1.1.12. "**HSSE Standards**" means Health, Safety, Security and Environment Standards;
- 1.1.13. "**Incident**" means an event or chain of events, which directly causes, or within a reasonably short time from the occurrence thereof, may cause injury and/or illness and/or loss and/or damage to any person, any property and/or the environment, including any spillage and/or contamination of the Products;
- 1.1.14. "**Month**" means a calendar month, and "**Month M-2**" means the calendar month immediately preceding Month M-1, "**Month M-1**" means the calendar month immediately preceding Month M, "**Month M**" means the delivery month, "**Month M+1**" means the calendar month immediately following Month M, and "**Month M+2**" means the calendar month following Month M+1;
- 1.1.15. "**Operating Requirements**" means the Host's standard operational procedures and processes relating to the handling of Product at a Depot, as advised by the Parties to each other in writing from time to time;
- 1.1.16. "**Party**" means [•] or BP respectively and "Parties" means [•] and BP;
- 1.1.17. "**Prime Rate**" means the publicly quoted prime rate of interest of ABSA Bank, per annum, compounded Monthly in arrear and prima facie proven, in the event of there being a dispute in relation thereto and in the absence of manifest error, by a certificate by any general manager of ABSA Bank (whose qualification or authority need not be proven) or, in the absence of the prime rate of interest of ABSA Bank, the publicly quoted prime rate of interest of the largest domestic bank by market capitalization (excluding ABSA Bank) in South Africa;
- 1.1.18. "**Product**" means the petroleum products stored at a Depot from time to time;
- 1.1.19. "**Services**" means the provision for replenishment, storage, and upliftment of Product by a Tenant;
- 1.1.20. "**Signature Date**" means the date of signature of this Agreement by the last Party signing;
- 1.1.21. "**Tenant**" means a Party to whom the Services are provided at a Depot by the Host; and
- 1.1.22. "**VAT**" means value-added tax levied in terms of the Value-Added Tax Act, No. 89 of 1991.

- 1.2. Words importing the singular shall include the plural and vice versa, and words importing the masculine gender shall include female and neuter genders and words importing persons shall include partnerships and bodies corporate.
- 1.3. Use of the word "including" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific examples/s.
- 1.4. The head notes to the clauses in this Agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 1.5. This Agreement shall be binding on and enforceable by the administrator, permitted assigns or liquidators of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party shall be deemed to include such Party's administrators, permitted assigns or liquidators, as the case may be.
- 1.6. If any provision in this clause 1 is a substantive provision conferring rights or imposing obligations on a Party, then notwithstanding that such provision is contained in such clause, effect shall be given thereto as if such provision were a substantive provision in the body of this Agreement.
- 1.7. If 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 to it for all purposes under this Agreement, notwithstanding that the term has not been defined in this clause 1.
- 1.8. When any number of days (including Business Days) is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day.
- 1.9. If the day for performance of any payment obligation under this Agreement falls on a day which is not a Business Day, such obligation shall be performed on the next day which is a Business Day.
- 1.10. Save for where clearly indicated to the contrary, expressions defined in this Agreement shall bear the same meanings in any schedule and/or annexure hereto unless such schedule and/or annexure contains an alternative definition for the expression.
- 1.11. The rules of interpretation that an agreement will be interpreted against the Party responsible for the drafting thereof, and any similar rules of interpretation, shall not apply to this Agreement and the Parties waive any rights they have to rely on such rules.

- 1.12. Any reference to any statute, regulation or other legislation shall be a reference to that statute, regulation or other legislation as at the Effective Date, and as amended or substituted from time to time.

## 2. **AGREEMENT**

### 2.1. **INTRODUCTION**

[•] and BP have entered into this Agreement in order to specify the terms and conditions upon which Depots operated by one Party may be used for replenishment, storage and upliftment of bulk Product by the other Party.

### 2.2. **DURATION**

This Agreement shall commence on the Effective Date and shall endure indefinitely, provided that either Party may terminate this Agreement upon 12 (twelve) months written notice to the other Party and provided further that in respect of the provision of the Services at any particular Depot(s) pursuant to this Agreement:

2.2.1. the Tenant may terminate the provision of the Services at the relevant Depot(s) on 3 (three) month's written notice to the Host to such effect;

2.2.2. the Host may terminate the provision of the Services at the relevant Depot(s) on 6 (six) month's written notice to the Tenant to such effect; and

2.2.3. neither Party shall be entitled to terminate this Agreement or the Services at a particular Depot(s) in terms of clause 2.2.1 or 2.2.2, whichever is applicable, unless the Agreement has been in force and effect for 3 (three) Months, as calculated from the Effective Date.

### 2.3. **SUPERSESSION**

This Agreement cancels and supersedes all prior negotiations and agreements entered into between the Parties relating to the matters set forth herein.

### 2.4. **RELATIONSHIP OF THE PARTIES**

The relationship of the Parties *inter se* shall be governed by the terms of this Agreement and nothing contained herein shall be deemed to constitute a partnership between the Parties or entitle or authorize either Party to incur liability on behalf of the other.

## 2.5. REVIEW

2.5.1. The Parties shall conduct an annual review of performance not later than October of each year. The reviews shall always include, but shall not be limited to:

2.5.1.1. HSSE reports;

2.5.1.2. Service standards;

2.5.1.3. Operational requirements and operational changes;

2.5.1.4. Charges and tariffs.

2.5.2. Both Parties shall ensure that:

2.5.2.1. an agenda is prepared for the aforesaid meetings;

2.5.2.2. discussions at the meetings shall be limited to those items on the agenda; and

2.5.2.3. the agenda is approved by each Party's legal counsel.

2.5.3. Parties may come together at any other time to revise terms and definitions if prompted by industry, market or regulatory changes.

## 3. HEALTH SAFETY SECURITY AND ENVIRONMENT (HSSE)

### 3.1. STANDARDS

3.1.1. The HSSE Standards of the Host shall be the applicable standard for each Depot, save where the prevailing industry norm is higher, in which case the industry norm shall be complied with. The Host shall make the relevant HSSE Standards available to the Tenant.

3.1.2. The Host shall be entitled at its sole discretion to amend and vary the relevant HSSE Standards from time to time. If there are any amendments to the Host's HSSE Standards, the Host shall notify the Tenant in writing of such amendment and shall make same available to the Tenant.

3.1.3. In addition, the Parties shall adhere to the HSSE standards set out below. If there is a conflict between any of the Host's HSSE Standards and the HSSE

standards set out in this clause 3, the standards set out in this clause shall prevail.

### 3.2. **VEHICLES**

The Tenant shall ensure that all its vehicles are compliant with the HSSE Standards in terms of the safe loading pass and if it is not so compliant, the Host may prohibit entry of such non-compliant vehicle at the Depot. A Party appointing a third-party contractor shall ensure that the contractor attends regular meetings and workshops in relation to the management and operation of the Depot and HSSE Standards.

### 3.3. **DEPOT AND EQUIPMENT**

The Host shall ensure that it complies with all relevant legal requirements, local oil industry practice and its own HSSE Standards in respect of the Depot(s) and equipment related thereto.

### 3.4. **OPERATIONS**

The Host shall ensure that all operations carried out in fulfilling the handling of bulk fuels are in accordance with all applicable legislative requirements, codes, standards and procedures relating to HSSE or where there is no applicable legislation, its own HSSE Standards and procedures.

### 3.5. **PERSONNEL**

The Host shall ensure that all its employees, the Tenant's employees, all contractor personnel and authorized agents are fully trained in the HSSE aspects in regard to the usage of all Depots and equipment. The Host shall maintain records of training and competence and produce such records if required during an inspection or audit.

### 3.6. **INCIDENT REPORTING**

In accordance with the incident reporting procedures implemented by the Host at the Depot (as advised by the Host to the Tenant in writing from time to time), any incidents shall be reported in the following time frames:

- 3.6.1. Fatalities – immediately;
- 3.6.2. Lost time injuries – within 24 (twenty-four) hours;
- 3.6.3. Medical treatment cases – within 24 (twenty-four) hours; and



3.6.4. Spillages – immediately.

3.7. **CONTAMINATION AND SPILLAGES**

Clean up costs and other liabilities resulting from the contamination of soil or ground water shall be borne by the Host, except where and to the extent that the contamination results from the wilful default or negligence of the Tenant or its authorized personnel or agents, in which case such cost or other liabilities shall be the sole responsibility of the Tenant.

4. **OPERATING REQUIREMENTS**

4.1. **COMPLIANCE**

4.1.1. The Parties shall comply with the Operating Requirements.

4.1.2. If there is a conflict between the Operating Requirements and this Agreement, the provisions of this Agreement shall prevail unless such requirement is an HSSE procedure, in which event the Host's HSSE procedure or requirement shall take precedence and be binding on the Parties.

4.1.3. If the Parties wish to deviate from any of the Operating Requirements, the representatives of each Party shall meet and decide whether such deviation shall be implemented, and once agreed, such deviation shall be recorded in writing.

4.1.4. The Parties record that, save as expressly provided for in this Agreement, the standards and procedures applicable in respect of the use and provision of the Services at each of the Depots shall be the standards and procedures of the Host. On commencement of the use of each Depot and not less than once every 12 (twelve) months thereafter, the Host shall advise the Tenant in writing of the said standards and procedures and provide the Tenant with copies thereof.

4.1.5. Whenever there is a major change to infrastructure or a change of road transport contractors, the Parties shall jointly sign a Management of Change.

4.1.6. The Parties shall ensure that load rack meters at the Depots comply with the Trade Metrology Act No. 77 of 1973 and regulations thereto.

#### 4.2. OPERATING HOURS

The Depot's operating hours shall be between [•] – [•], from Mondays to Fridays, provided that the Depot shall be closed on public holidays.

#### 4.3. OBLIGATIONS OF THE HOST

The Host shall:

- 4.3.1. be responsible for the management and operation of the Depot;
- 4.3.2. test Product for quality, measure and receive Product into storage in the Depot;
- 4.3.3. in the case of any Product stock-out (being an unavailability of Product to the Tenant to which the Tenant is entitled) for a Tenant due to use of this Tenant's stock by the Host and not excused by the Force Majeure provisions of this Agreement, be responsible for alternate sourcing of the affected Product and all related costs. Should the Host fail to source the affected Product, the Tenant shall be entitled to procure the Product at its cost and recover direct incremental and reasonable costs from the Host on written request, provided that:
  - 4.3.3.1. the Tenant shall be entitled to recover from the Host any reasonable logistics costs relating to the transportation of such volume of Product that the Tenant may reasonably have incurred in excess of logistic costs that the Tenant would have incurred had the Host supplied the quantity of Product;
  - 4.3.3.2. the Host shall not be liable for any additional cost, expenses or losses, whether direct, indirect or consequential;
  - 4.3.3.3. notwithstanding any provisions in this Agreement to the contrary, but subject to any permission as contemplated in clause 5.9 below, if the Host is unable to supply the Tenant its Product requirements in terms of this Agreement, the Host shall have the first right to procure the Tenant's Product requirement from any other source and only upon the Host providing the Tenant written notice that the Host is unable to procure such Product from another source, shall the Tenant be entitled to procure the Product from such other sources as referred to in clause 4.3.3;

- 4.3.4. be responsible to ensure that the Product does not deteriorate or become contaminated as a result of storage and handling of the Product by the Host;
- 4.3.5. ensure that additive doping standards are met and that mandatory reporting takes place at the prescribed schedule;
- 4.3.6. after a formal handover process by the Tenant to the Host of the additive injection systems on completion of an agreed management of change, maintain and repair the additive injection systems in order to minimize downtime; and
- 4.3.7. ensure that no manual additive injection is allowed.

#### 4.4. OBLIGATIONS OF THE TENANT

The Tenant shall in respect of each Depot at which it receives the provision of the Services:

- 4.4.1. install the additive injection system/s at the Depot at its cost and follow a formal handover procedure;
- 4.4.2. ensure that all drivers and vehicles, either employed by the Tenant, its agents, sub-contractors or distributors, comply with and are trained in the Host's safe working procedures and safe loading requirements applicable at the Depot concerned, as notified in writing by the Host to the Tenant from time to time;
- 4.4.3. ensure the safety and health of its employees utilizing the Depot and protection of the environment, including compliance with the statutory requirements imposed by, but not limited to, the Occupational Health and Safety Act No. 85 of 1993; the Atmospheric Pollution Prevention Act No. 15 of 1973, the Environmental Conservation Act No. 73 of 1989, the National Environmental Management Act No. 107 of 1998, and all other applicable legislation, by-laws and regulations;
- 4.4.4. ensure that all of its vehicles and those of its agents, contractors and distributors together with the associated equipment meet all legislative requirements and the HSSE standards of the Host;
- 4.4.5. ensure that all drivers and vehicles, either employed by the Tenant, its agents, contractors or distributors are trained in accordance with the Host's HSSE standards;
- 4.4.6. attend monthly safety meetings and participate in emergency drills; and

- 4.4.7. ensure that vehicle, compartmentation changes on its TAS (Terminal Automation Systems) system are only made by its staff using the centralized data application process within [•] and that no changes to data are made without the approval of this channel Central scheduling TAS administration.

#### 4.5. **PRODUCT QUALITY CONTROL**

- 4.5.1. The Host shall have standard quality procedures at the Depot. The Products shall at the time of delivery comply with the relevant specifications as may be stipulated by the relevant institutions, including SAPIA (South African Petroleum Industry Association), which determines the SAPIA Oil Industry Product Exchange Specifications ("OIPES"); the Department of Energy, through the Petroleum Products Specifications and Standards promulgated in terms of the Petroleum Products Act, 1977 (as amended) and/or the South African Bureau of Standards' South African National Standards ("SANS"). To the extent that there is a conflict between the abovementioned Product specifications, then the OIPES specifications shall apply.
- 4.5.2. The Tenant shall only supply Product to the Depot that adheres to the specifications as required by OIPES. If it is suspected that a Product is not to specification before delivery to the Host, the Tenant shall provide a quality certificate for the Product to the Host. If the Product does not adhere to the specifications as required by OIPES, but still adheres to the SANS specifications, the Tenant may request a waiver by the Host for acceptance of the Product, which waiver shall be at the Host's sole and absolute discretion. The Host retains absolute rights in this regard, and its decision with regards to the acceptance of such waiver requests shall be final and binding on the Parties. Should the Host agree to a waiver request, the additional cost of handling the Product shall be for the Tenant's account.
- 4.5.3. The Host shall only supply Product that adheres to the OIPES specifications. It is hereby recorded that, while Product quality is tested on delivery to the Depot, the Host does not again test Product quality prior to delivery to the Tenant ex tank. If it is suspected that a Product is not to specification before delivery to the Tenant ex tank, the Host shall provide a quality certificate for the Product to the Tenant. If the Product does not adhere to the specifications as required by OIPES, but still adheres to the SANS specifications, the Host may request a waiver by the Tenant for acceptance of the Product. Should the Tenant agree

to a waiver request, the additional cost of handling the Product shall be for the Host's account.

4.5.4. Where Product which does not comply with the OIPES specifications is supplied to the Tenant, without a waiver as envisioned in clause 4.5.3 above, the Host's liability for such Product shall be limited to the removal of such Product, the rehabilitation of the facilities and the replacement of the Product with Product meeting the required specification, and shall not include a claim for damages.

4.5.5. Where Product which does not comply with the OIPES specifications is supplied to the Host, without a waiver as envisioned in clause 4.5.2 above, the Tenant's liability for such Product shall be limited to the removal of such Product, the rehabilitation of the facilities and the replacement of the Product with Product meeting the required specification, and shall not include a claim for damages.

#### 4.6. ADDITIVES

The Host shall be responsible for:

4.6.1. the storage and handling of the Tenant's additives and, where applicable, this shall include offloading drums;

4.6.2. injecting the additives into the Products as per the Tenant's instructions;

4.6.3. submitting a monthly spreadsheet showing the additive stocks and usage to the Tenant; and

4.6.4. submitting doped fuel samples as required by the Tenant to the Tenant's laboratory at the Tenant's cost.

The Tenant shall:

4.6.5. ensure that sufficient additives are available at the Depot at all times;

4.6.6. notify the Depot Owner in writing of the applicable dosage rates;

4.6.7. provide the material safety data sheets to the Depot Owner; and

4.6.8. notify the Host of any amendments or variations to Product specifications and the material safety data sheets within 14 (fourteen) days prior to such amendment or variation.

#### 4.7. **NEW PRODUCTS**

- 4.7.1. A Tenant introducing a Product not previously stored at a Depot may only do so with the prior written approval of the Host and shall, before doing so, provide full details in the form of material safety data sheets and other relevant documents in advance to the Host to enable the Host to comply with all legal obligations, HSSE procedures and codes of practice, including the Occupational Health and Safety Act No. 85 of 1993.
- 4.7.2. Both Parties agree that such new Products shall be subject to a management of change process covering systems and business processes.

#### 4.8. **PRODUCT VOLUMES**

- 4.8.1. The Host shall provide to the Tenant capacity at each Depot for the Products as set out in Annexure [•] hereto.
- 4.8.2. The Product grades and volumes for the purposes of this Agreement shall be as set out in terms of Annexure [•] hereto.

#### 4.9. **PRODUCT SUPPLY**

- 4.9.1. Subject to the Entitlement Balance of the Tenant, the Host shall supply the Tenant's requirements of Products from the Depot.
- 4.9.2. If a stock-out at a Depot occurs due to circumstances beyond the control of the Host or Tenant, or as a result of Force Majeure, the Host shall notify the Tenant of such stock-out as soon as reasonably possible.

### 5. **PRODUCT MANAGEMENT PRINCIPLES UNDER A THROUGHPUT MODEL**

Under the "Throughput Model":

- 5.1. The Host will operate all storage and handling activities at the Depot.
- 5.2. The Host and the Tenant may each replenish Product into the Depot.
- 5.3. The Host and the Tenant may each uplift Product from the Depot.

- 5.4. The Host and the Tenant will each retain title to their respective Product entitlements stored at the Depot.
- 5.5. The Host will assume responsibility for insurance risk for the full volume of Product stored at the Depot.
- 5.6. The Host will be accountable for the full loss/gain at the Depot, as measured during the Stock Count cycle.
- 5.7. There are neither excise duties nor bridging charges billed between the Parties.
- 5.8. The Tenant shall be obliged to have positive stocks at all Depots at all times to ensure availability of Product at the Depot for uplifting of such Product by Tenant at each Depot. This will also oblige the Host not to go negative and use Tenant stock except by agreement as this may constrain the Tenant.
- 5.9. In the event that a Party requires Product to be uplifted in excess of its entitlement to such Product at the Depot, it is hereby agreed that in order to accommodate such requirements, the Party needing Product shall do an in-tank Spot purchase. The in-tank Spot purchase should be done upfront to prevent the Party from going negative. However where, in exceptional cases, a temporary negative position is permitted for operational reasons, this negative position should be corrected within 3 (three) days, and also before month-end close of accounts.
- 5.10. If the Parties do not agree the Product entitlement balance, or if there are any un-reconciled volumes or disputes, it will then be assumed that the entitlement balance per the Host ERP is the correct balance for Product scheduling purposes.

6. **PRODUCT OPERATIONS**

6.1. **PLANNING**

For all Depots covered under this Agreement, the Parties shall abide by a planning procedure agreed between Host and Tenant on a Depot-by-Depot basis. Details of this procedure are as set out in the Annexures to this Agreement.

6.2. **CONFIDENTIALITY**

It is agreed that in undertaking the business processes referenced under clause 6.1 above both Parties shall comply in full with applicable confidentiality principles.

## 7. PRODUCT RISK AND TRANSFER VOLUME

### 7.1. REPLENISHMENTS BY PIPELINE

- 7.1.1. Where Tenant replenishes Product by pipeline, the risk in the Product passes from the Tenant to the Host at the designated pipeline entry point at the receiving Depot.
- 7.1.2. For Product movements by Transnet Pipelines, the transfer volume shall be the volume confirmed by the Transnet Pipelines docket showing the volume of Product received at the inlet flange.
- 7.1.3. For Product movements at the refinery supplied Depots, Cape Town and Mossel Bay terminals, the transfer volume shall be calculated from the difference between the before and after dip of the Depot receiving tanks. The transfer volume shall be the volume apportioned on the advice from the Host.

### 7.2. REPLENISHMENTS BY RAIL

- 7.2.1. If a Tenant replenishes Product by rail, the risk in the Product passes from the Tenant to the Host at the flange of the rail tank car at the receiving Depot.
- 7.2.2. The transfer volume shall be as per the bill of lading from the sending Depot [or the receipted volume at the receiving Depot].

### 7.3. REPLENISHMENTS BY ROAD

- 7.3.1. If a Tenant replenishes Product by road, the risk in the Product passes from the Tenant to the Host at the flange from bridging vehicle at the receiving Depot.
- 7.3.2. The transfer volume shall depend on the confirmation of installation of temperature compensated meters at the Depot. The list of Depots which have temperature compensated meters is set out in Annexure [•] hereto.
- 7.3.3. Metered Road Receipt: If the receiving Depot has temperature compensated meters at the discharge location, then the discharge volume shall be used as the transfer volume.
- 7.3.4. Meter-less Road Receipt (Seals Intact): If the receiving Depot does not have temperature compensated meters at the discharge location, and if the seals on the bridging vehicle are intact and the seal numbers correspond to the seal



numbers on the bill of lading, then the load volume on the bill of lading at the supply dispatch point shall be the transfer volume.

- 7.3.5. Meter-less Road Receipt (Seals Not Intact): If the receiving Depot does not have temperature compensated meters at the discharge location, and if the seals on the bridging vehicle are not intact, then the Product shall not be accepted by the receiving Depot. The Host shall immediately inform the replenishing party of the non-compliance, and the Tenant shall advise the relevant transporter what to do with the load.

#### 7.4. UPLIFTS BY ROAD

- 7.4.1. If a Tenant uplifts Product by road, the risk in the Product passes from the Host to the Tenant at the flange of vehicle.
- 7.4.2. The transfer volume shall be the volume loaded into the vehicle, as measured by the gantry meter.

#### 7.5. PROOF OF DELIVERY

- 7.5.1. Proof of delivery shall refer to the documentation confirming proof of delivery of Product to the Depot bearing the signature of the duly authorised representative of the Host to receive the Product, save in respect of deliveries of Product ex rail tank cars, where the proof of delivery shall be in the form of an Intac rail document bearing the description of the Product and the rail tank car number with a freight rail seal impressed on it.

- 7.5.2. The following documents constitute proof of delivery for the purposes of this Agreement:

Type	Document
Road Uplift (Automated Gantry)	Bill of Lading (BoL) (To be titled and signed by authorised signatory)
Road Uplift (Non-Automated Gantry)	Meter Ticket (To be titled and signed by authorised signatory)
Road Uplift	Meter Ticket

(Side Tank Filling)	(To be titled and signed by authorised signatory)
Road Returns  (Slops and main fuels)	Meter Ticket  (To be titled and signed by authorised signatory)
Road Receipt  (Where temperature-compensated meter installed)	Meter Ticket indicating standard volume.  (To be titled and signed by authorised signatory delivering product)
Road Receipt  (Where temperature compensated meter not installed)	Bill of Lading (BoL) from load point
Rail Uplifts	Consignment Note (Rail Intac Document) as prepared by the load host.
Rail Receipts	Consignment Note (Rail Intac Document) as prepared by the load host
Crosspump Receipts	External Surveyors P201 Document
Pipeline Receipts	Petronet Docket
Shipping Uplifts	External Surveyors P201 Document
Shipping Receipts	External Surveyors P201 Document

8. **PRODUCT UNPLANNED MOVEMENTS**

- 8.1. Under certain circumstances, a Tenant may require to return Product to a Host Depot from a vehicle.
- 8.2. This should only be done if all other means of solution have been exhausted, and there are no further options to consider. For example, vehicles should be re-routed to another site, or vehicle scheduling should be adjusted so that compartments can be optimally loaded on successive loads, before this may be considered as an option.
- 8.3. The Tenant must obtain permission from the Host before such Product may be returned to the Host Depot.

8.4. The Product return to Depot is limited to [•] litres per trip for Products.

8.5. The volume of Product returned must be credited to the Tenant account at the Depot.

9. **PRODUCT LOSSES**

9.1. **REPLENISHMENT LOSSES**

All Product replenishment losses shall be borne by the Party responsible for arranging or contracting the Product replenishment transport.

9.2. **STORAGE LOSSES**

Product tank storage losses and gains are for the Host's account.

9.3. **DELIVERY LOSSES**

All Product delivery transport losses and gains are for the Party responsible for arranging or contracting the delivery transport.

10. **STOCK ACCOUNTING**

10.1. **MEASUREMENT**

10.1.1. All road gantry Product pick-ups shall be measured at 20°C (twenty degrees Celsius) at automated gantries and at ambient temperature at non-automated gantries.

10.1.2. All metered sales for customer own collections where there is no automated gantry shall be processed at ambient temperature.

10.1.3. All non-metered vehicles' (SPD) measurement procedures shall be based on vehicle compliance.

10.1.4. The gantry meters through which Product is supplied to the Tenant shall be calibrated according to Trade Metrology Act, No 77 of 1973 or applicable SABS code.

## 10.2. SPOT IN-TANK TRANSACTIONS

10.2.1. The Parties agree that certain "spot in-tank" transactions may take place from time to time as contemplated in clause 5.9 above, in order to prevent a Party from going into negative entitlement.

10.2.2. A spot in-tank transaction between the Parties must be recorded against the Depot for which the transaction is intended and must show the following:

10.2.2.1. in the Host book of accounts, these transactions shall be:

10.2.2.1.1. a Sale/Purchase for a volume of Product;

10.2.2.1.2. a Throughput Receipt/Issue for an equivalent volume of Product.

10.2.2.2. in the Tenant book of accounts, these transactions shall be:

10.2.2.2.1. a Purchase/Sale for a volume of Product;

10.2.2.2.2. a Throughput Issue/Receipt for an equivalent volume of Product.

## 11. STOCK RECONCILIATION

### 11.1. DAILY

11.1.1. The Host shall provide an electronic data file and a pdf type report to the Tenant specifying the movements of the Tenant for day-1, for each Depot, detailing Product grade, volumes and method of transport. This report shall be delivered by the Host to the Tenant by 12h00 on the day following the transactions. Transactions for the week-end shall be included in the Monday report.

11.1.2. The Host shall ensure that all pick ups are recorded daily on the report, based on liftings at gantry. There shall be accurate and timely recording of transactions for Tenant's account by the Host, and timely corrective actions taken on errant transactions when identified.

### 11.2. MONTHLY

11.2.1. The Host and the Tenant shall submit a computer transaction file to the SOMSYS programme for matching to take place.

11.2.2. The monthly SOMSYS reconciliation shall be signed off by both Parties as agreement of monthly balances. The sign-off shall meet audit requirements at quarter ends.

11.2.3. Both Parties undertake to clear unmatched transactions arising out of the monthly matching process within the Month following the Month in which it appeared (Month M + 1). Both Parties undertake to process a transaction in their respective ERPs to match off an unmatched transaction of the other Party where it is proven that same should be done, and both Parties undertake to reverse an unmatched transaction which cannot be proven. All transactions / reversals must be processed in Month M + 1, to be matched off in the Month M + 1 matching process.

11.2.4. Entitlement Balances

11.2.4.1. Provisional Entitlement Balances

Both Parties agree to sign Provisional Entitlement Balances by the 15<sup>th</sup> (fifteenth) Business Day of the Month following the matching process for Month M. These balances should be by Product grade and should include both matched and unmatched transactions and a calculated Entitlement Balance.

11.2.4.2. Final Entitlement Balances

Both Parties agree to sign Final Entitlement Balances by the last Business Day of the second Month following the matching process for Month M. These will be adjusted for any transactions / reversals not processed as per clause 11.2.3 above. The Parties then undertake to ensure that their respective ERP balances and these signed balances are aligned.

#### 11.2.4.3. No Recourse

Once Final Entitlement Balances are signed by both Parties, then neither Party has any claim over the other Party for a transaction relating to the period for which the Final Entitlement Balances are signed, save for manifest error. Each Party undertakes to notify the other immediately upon discovery of any such manifest error.

#### 11.3. ANNUALLY

The annual sign-off for December Product movements shall be concluded in time for the audit review of both Parties.

### 12. **PRICING, CHARGES, EXCISE DUTIES, BILLING AND PAYMENT**

#### 12.1. **PRICING OF TRANSACTIONAL ITEMS OF A ROUTINE NATURE**

12.1.1. Pricing of Product for transactional items of a routine nature shall be done based on the average BFP for the Month of the transactions.

12.1.2. If the BFP is not published for a particular Product, the Parties shall negotiate an agreed pricing basis based on a formula price.

12.1.3. The following transactions are defined as transactional items of a routine nature:

12.1.3.1. Shipping reparation Buy/Sell transactions.

#### 12.2. **PRICING OF SPOT IN-TANK PURCHASES AND SALES**

Pricing of Product for in-tank purchases and sales transactions shall be negotiated on a spot basis by mandated deal negotiators under separate terms and conditions to be agreed between the Parties.

#### 12.3. **CHARGES**

12.3.1. In consideration for the throughput Services, the Tenant shall pay the storage and handling charges to the Host, as indicated in the Annexures hereto.

12.3.2. Bridging charges, as set out in the Annexures hereto, shall be payable on transactional items of a routine nature, as contemplated in clause 12.1 above.

#### 12.4. **EXCISE DUTIES**

- 12.4.1. Transactional items of a routine nature, as contemplated in clause 12.1 above, are subject to applicable excise duties.
- 12.4.2. Spot in-tank purchases and sales are subject to applicable excise duties.

#### 12.5. **INVOICING**

- 12.5.1. By the 5th (fifth) Business Day of each Month, the Host shall issue to the Tenant a tax invoice in respect of the spot in-tank transactions and Services rendered during the immediately preceding Month.
- 12.5.2. Each spot in-tank transaction from the selling Party to the buying Party shall contain the following information:
  - 12.5.2.1. Depot name;
  - 12.5.2.2. Product volume, price and applicable excise duties;
  - 12.5.2.3. customer purchase order number; and
  - 12.5.2.4. VAT owing for such Products.
- 12.5.3. Each Service invoice shall contain the following information:
  - 12.5.3.1. Depot name;
  - 12.5.3.2. Service rendered;
  - 12.5.3.3. the amount for the Service rendered;
  - 12.5.3.4. customer purchase order number; and
  - 12.5.3.5. VAT owing for such Services.
- 12.5.4. Each tax invoice shall be supported by a detailed calculation based on actual transactions during the period. This calculation shall serve as the basis to validate the Charges by the Tenant.

**12.6. PAYMENT TERMS**

- 12.6.1. The Tenant shall pay the invoiced amounts due on the 15<sup>th</sup> (fifteenth) calendar day of the Month following the Month of delivery.
- 12.6.2. Payment of all amounts due under this Agreement shall be made in South African currency, without any set-off, deduction or counter claim, by electronic bank transfer directly into an account nominated by the Host.
- 12.6.3. Any amount falling due for payment by any Party pursuant to this Agreement and not paid on due date, including any amount which may be payable as damages, shall bear interest at the Prime Rate.
- 12.6.4. The Tenant shall not withhold payment of any amount due to Host or claim set-off, or seek to withhold payment pending resolution of a counterclaim, on any ground other than in the case of a spot in-tank transaction where the Host has failed to deliver Product or has failed to deliver Product to specification, and then only to the extent of the amount of the price for the Product not delivered, or for Product which is claimed to be not to specification, to the extent of the price which would have been payable in respect of such Product had it been to specification.

**13. IT SYSTEMS**

- 13.1. The Parties shall use the EDI system or any future replacement system to communicate with one another, including but not limited to, for ordering Product and for confirming receipt and dispatch of such Product. In the event of the EDI system not functioning, the Parties shall ensure that manual communications are maintained through the in-house support structures referred to at Annexure [•] attached hereto.
- 13.2. **SOMSYS**
- 13.2.1. The Parties hereby agree that the SOMSYS system will be used for matching of transactions.
- 13.2.2. Each Party must provide a file to the SOMSYS program on a weekly and monthly basis, extracted from the ERP system.



**14. AUDIT****14.1. HOST AUDIT**

The Host shall audit its own Depots. Such audits shall comply with the Host company requirements, and shall cover subjects including HSSE, Product quality procedures, vehicle inspections, and stock reconciliations.

**14.2. TENANT AUDIT**

The Host shall allow HSSE and Product Quality audits to be conducted by the Tenant from time to time. The Tenant's internal audit unit may inspect the Depot and visit Depots accompanied by the Host's internal audit unit, or other authorized personnel of the Host.

**14.3. DOCUMENT RETENTION**

The Host shall retain all relevant documentation relating to this Agreement for a period of 3 (three) years, unless a longer retention period is prescribed by any law, regulation or policy. This shall include all documents relating to the replenishment or upliftment of Product, including;

- 14.3.1. Product receipt documents;
- 14.3.2. Product uplift documents;
- 14.3.3. customer proof of collection documents; and
- 14.3.4. Services rendered.

**15. LIMITATION OF LIABILITY AND INDEMNITY**

15.1. Notwithstanding anything to the contrary contained in this Agreement, the liability of either Party (the "Defaulting Party") to the other in respect of any claim arising out of or in connection with this Agreement, whether founded in contract or otherwise in law, shall be limited to:

- 15.1.1. the actual loss suffered and shall not include any liability for any indirect damages or loss of production or profit or any other like consequential damages; and
- 15.1.2. claims arising by reason of the intentional or negligent acts or omissions of the Defaulting Party.

- 15.2. The liability of the Host to the Tenant in respect of the performance or non-performance of the Host's duties hereunder shall be limited to the performance or re-performance thereof together with a claim for damages but shall exclude an entitlement to terminate this Agreement other than pursuant to clause 17 below.
- 15.3. Each of the Parties (the "indemnitor") agrees to indemnify and to hold the other Party (the "indemnitee") harmless against claims arising out of or as a result of performance under this Agreement, brought against the indemnitee by third parties in respect of any damage to property, bodily injury, death or any other cause arising out of any wilful or negligent act or omission of the indemnitor.
- 15.4. The right to be indemnified against any claim brought by a third party shall be conditional on the indemnitee giving prompt notification to the indemnitor of the third party claim in respect of which indemnification is sought.
- 15.5. An indemnitee shall not be entitled to be indemnified against any claim brought by a third party that arises out of an admission made by the indemnitee unless such liability would have existed even in the absence of such admission.
- 15.6. The indemnitor shall have the right to take control of the litigation or other dispute resolution procedure in respect of any third party claim at its own cost, but shall conduct the proceedings in full consultation with the indemnitee and shall give due and proper consideration to the views of the indemnitee. The right of the indemnitee to be indemnified shall be conditional on its proper co-operation with the indemnitor in the conduct of the proceedings.

16. **FORCE MAJEURE**

- 16.1. "Force Majeure" for the purposes of this Agreement means any event or condition (whether affecting a Party or any other person), which has prevented or delayed or will prevent or delay a Party from performing any obligation hereunder (except obligations to make payments when due, to which obligations in respect of Force Majeure shall not apply), in whole or in part, if such event or condition and such prevention or delay, is beyond the reasonable control of the Party relying thereon as justification for not performing any such obligations (the "Non-Performing Party") and such event or condition, and such prevention or delay, could not have been prevented or overcome by exercise of reasonable care by the Non-Performing Party.
- 16.2. Such events or conditions shall, provided always that they meet the requirements set forth in this clause, include but shall not be limited to circumstances of the following kind:

- 16.2.1. acts of governments(s), acts of public or foreign enemy, war declared or undeclared, hostilities (whether or not war has been declared), blockades, embargoes, military action, civil disturbances, public demonstrations, insurrection, riots, acts of terrorism, acts of sabotage, vandalism, aircraft crashes, chemical or biological contamination, nuclear incidents or similar occurrences;
  - 16.2.2. acts of God, landslides, lightning, earthquakes, fires, explosions, storms or storm warnings, floods, extreme weather conditions, washouts, epidemics or similar occurrences;
  - 16.2.3. strikes, boycotts, lockouts, and other similar industrial or labour disputes and disturbances; and
  - 16.2.4. inability to obtain the grant or renewal of any licence or approval necessary for operation of a refinery, the necessity for compliance with any court order, law, statute, ordinance or regulation promulgated by a governmental entity having jurisdiction.
- 16.3. If the Non-Performing Party is prevented, hindered or delayed from performing any of its obligations under this Agreement by reason of Force Majeure, the Non-Performing Party shall be relieved from performance of such obligations to the extent that it is unable to deliver or receive the agreed quantities of Products or to perform any of its other obligations under this Agreement. Such obligations of the Non-Performing Party and any corresponding or related obligations of the other Party shall be of no effect, without liability, for a period equal to the duration of the Force Majeure event. The Non-Performing Party shall notify the other Party of the nature, extent, effect and the likely duration of the circumstances constituting Force Majeure or expected to constitute Force Majeure as soon as reasonably possible.
- 16.4. As soon as reasonably practical after the end of the event or condition of Force Majeure the Non-Performing Party shall notify the other Party in writing that the event or condition of Force Majeure has ended and it shall resume performance of its obligations under this Agreement.
- 16.5. Neither Party shall be released from its obligations or liabilities under this Agreement arising prior to an event or condition of Force Majeure, and this Agreement shall remain in effect for the duration of the event or condition of Force Majeure.
- 16.6. The Non-Performing Party shall use all reasonable efforts to mitigate the impact of Force Majeure and to remedy its inability to perform as quickly as is reasonably possible.

16.7. If such impediment has not been overcome or its effect so nullified within a period of 6 (six) Months, then the affected Party shall be entitled (as its sole remedy therefor) to terminate this Agreement at the end of five (5) Business Days written notice to this effect given to the Non-Performing Party.

17. **TERMINATION**

17.1. If either Party commits a material breach of this Agreement and fails to remedy such breach within 14 (fourteen) days of notice being given to it by the other Party requiring the same to be remedied, then the other Party may, by notice in writing, terminate this Agreement without prejudice to any other rights or remedies available to such Party.

17.2. Notwithstanding anything to the contrary herein contained, this Agreement may be terminated forthwith by notice in writing by a Party if:

17.2.1. the other Party commits a material breach of the Agreement which is not capable of being remedied on notice as contemplated in clause 17.1;

17.2.2. an order is made by any Court of competent jurisdiction whether provisional or final, for the winding up or the judicial management of the other Party;

17.2.3. the other Party passes a resolution for the voluntary winding up of such Party;

17.2.4. the other Party ceases to carry on business or disposes of its business or changes the fundamental nature of its business and/or disposes of the major portion of its assets other than for value;

17.2.5. the other Party compromises generally with its creditors otherwise than in the course of the re-structuring of its capital or the merger of such Party with a third party; or

17.2.6. the business of the other Party is nationalized.

17.3. The termination of this Agreement shall not affect any rights of either Party, which accrued prior to the date of termination.

18. **GENERAL**

18.1. **CONDITIONS**

18.1.1. This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and save to the extent otherwise

provided herein no undertaking representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on the Parties.

18.1.2. No variation, addition, deletion, or agreed cancellation of this Agreement shall be of any force or effect unless agreed in writing between the Parties.

18.1.3. No waiver of any of the terms and conditions of this Agreement shall be binding or effectual for any purpose unless in writing and signed by the Party giving the same. Any such waiver shall be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party in exercising any right, power or privilege hereunder shall constitute or be deemed to be 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.

18.1.4. Neither this Agreement nor any part, share or interest therein nor any rights or obligations hereunder may be ceded, assigned, or otherwise transferred by either Party without the prior written consent of the other, provided that such consent shall not be required in the event that the rights and obligations of either Party are ceded, assigned or otherwise transferred to any affiliate company of such Party.

18.1.5. Any consent or approval required to be given by any Party under this Agreement shall not be unreasonably withheld or delayed.

18.1.6. This Agreement may be executed in one or more 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. The Parties undertake to take whatever steps may be necessary to ensure that both counterparts are duly signed by each of them.

## 18.2. **APPLICABLE LAW**

This Agreement shall in all respects be governed by and construed under the laws of South Africa.

### 18.3. SEVERABILITY

Each provision of this Agreement is severable from the other provisions. Should any provision be found by a court of competent jurisdiction to be invalid or unenforceable for any reason, the Parties shall consult with one another in good faith in order to agree, if possible, an alternative provision in accordance with the intent and tenor of this Agreement. The remaining provisions of this Agreement shall nevertheless remain binding and continue with full force and effect.

### 18.4. DISPUTE RESOLUTION: NEGOTIATION, MEDIATION THEN ARBITRATION

18.4.1. Save as provided for herein, should any dispute, disagreement or claim arise between the Parties ("the dispute") concerning this Agreement, including its terms and/or the rectification hereof and/or its termination, the Parties shall first endeavour to resolve the dispute by negotiation.

18.4.2. This entails one of the Parties inviting the other Party in writing to attempt to resolve the dispute within twenty eight (28) Business Days from date of written invitation, which resolution must then be recorded in writing as soon as it is reached. To the extent reasonably possible, each of the Party's chief executive officers (or equivalents) must be involved in the attempts to resolve the dispute.

18.4.3. If the dispute has not been resolved by such negotiation within twenty eight (28) Business Days of the commencement thereof by written agreement between the Parties, then :

18.4.3.1. the dispute must be submitted by the Parties to mediation to be administered by the Arbitration Foundation of Southern Africa ("the Foundation"), upon such terms as agreed between the Host, the Tenant and the secretariat of the Foundation; and

18.4.3.2. failing resolution of the dispute by mediation within twenty eight (28) Business Days of the dispute being submitted to mediation either Party may refer the dispute to arbitration as provided in sub-clause 18.4.4 below.

18.4.4. Failing resolution of the dispute as referred to in sub-clause 18.4.3.2 above, the dispute shall be submitted to arbitration for resolution in accordance with the rules of the Foundation by an arbitrator or arbitrators appointed by the

Foundation utilising such expedited proceedings as may be available in terms of such rules.

18.4.5. Unless otherwise agreed in writing by all the Parties, any such negotiation, mediation or arbitration shall be held in Johannesburg.

18.4.6. Notwithstanding anything to the contrary contained in this clause 18.4, either Party shall be entitled to, apply for, and if successful, be granted, urgent or interim relief from any competent court having jurisdiction.

18.4.7. The arbitrator's decision shall be final and binding on the Parties.

18.4.8. For the purposes of this clause 18.4 and for the purposes of having any award made by the arbitrator/s being made an order of court, each of the Parties hereby submit to the jurisdiction of Witwatersrand Local Division of the High Court of South Africa.

18.5. **EXPERT**

18.5.1. If under this Agreement any matter is to be referred to an expert, and if during the term of the Agreement the Parties agree that a point of difference between them shall be resolved by an expert, the provisions of this clause shall apply unless modified by any other express provision.

18.5.2. The procedure for the appointment of an expert shall be as follows:

18.5.2.1. the Party wishing the appointment to be made shall give notice to that effect to the other Party and such notice shall give details of the matter which it is proposed shall be resolved by the expert;

18.5.2.2. the Parties shall meet in order to agree upon an expert; and

18.5.2.3. if within 5 (five) Business Days from the service of the said notice the Parties have failed to meet or failed to agree upon an expert, then the matter may forthwith be referred by either Party to the chairman of the South African Petroleum Industry Association ("SAPIA") who shall be requested to select an expert within 5 (five) Business Days and in so doing take such independent advice as he or she thinks fit.

- 18.5.3. The expert shall specify the procedure to be adopted by the Parties in the hearing of the dispute.
- 18.5.4. The expert shall be entitled to obtain such independent-professional and/or technical advice as he or she may reasonably require.
- 18.5.5. The expert shall give full written reasons for his/her determination and shall furnish the Parties therewith within 5 (five) Business Days after the conclusion of the hearing.
- 18.5.6. The expert shall be deemed not be an arbitrator but shall render his/her determination as an expert and any law relating to arbitration shall not apply to such expert or his/her determination or the procedure by which the expert reaches his/her determination.
- 18.5.7. The final determination of the expert shall be conclusive and binding upon the Parties, save in the event of fraud, manifest error, or failure by the expert to disclose any relevant interest.
- 18.5.8. Unless otherwise agreed by the Parties in writing, the costs of the expert shall be borne equally by the Parties.

19. **NOTICES AND DOMICILIA**

- 19.1. Each Party chooses *domicilium citandi et executandi* ("*domicilium*") for the purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purposes arising from this Agreement at their addresses set forth in clause 1 hereof.
- 19.2. Each Party shall be entitled from time to time, by written notice to the other, to vary its *domicilium* to any other address within South Africa which is not a post office box or *poste restante*.
- 19.3. Any notice given and any payment made by a Party to the other ("the addressee") which:
  - 19.3.1. is delivered by hand during the normal business hours of the addressee at the addressee's *domicilium* for the time being shall be presumed, unless the contrary is proven by the addressee, to have been received by the addressee at the time of delivery;
  - 19.3.2. is posted by prepaid registered post from an address within South Africa to the addressee at the addressee's *domicilium* for the time being shall be presumed,



unless the contrary is proven by the addressee, to have been received by the addressee on the 10th (tenth) day after the date of posting.

19.4. Where, in terms of this Agreement any communication is required to be in writing, the term "writing" shall include communications by facsimile or electronic mail. Communications by facsimile shall, unless the contrary is proven by the addressee, be deemed to have been received by the addressee 24 (twenty-four) hours after the time of transmission. Communications by electronic mail shall, unless the contrary is proven by the addressee, be deemed to have been received by the addressee 24 (twenty four) hours after the time of transmission.

[•]

Signature: \_\_\_\_\_  
who warrants that he / she is duly authorised thereto

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

Date: \_\_\_\_\_

Place: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

**BP Southern Africa (Proprietary) Limited**

Signature: \_\_\_\_\_  
who warrants that he / she is duly authorised thereto

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

Date: \_\_\_\_\_

Place: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

Generic