

**ATLANTIC TRADING & MARKETING, INC.**

**GENERAL TERMS AND CONDITIONS  
FOR CFR/CIF/DELIVERED EX SHIP SALES OF  
CRUDE OIL**

**ATMI-CRUDE-CFR/CIF/DES  
2012 edition**

**(Includes supplement 2 for Offshore Loaded Crude Oil)**



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**These General Terms and Conditions may be referred to as ATMI-CRUDE-CFR/CIF/DES.**

## **SECTION I - DEFINITIONS**

In the Agreement (as hereinafter defined), the following terms shall have, unless the context otherwise requires, the following meanings:

- **Adequate Assurance** : Cash, an irrevocable standby L/C (as defined in sub-section IV.7) that is issued or confirmed by an L/C issuer acceptable to Seller and that is in a form and for a term that is acceptable to Seller, a guaranty, or another form of assurance acceptable to Seller.
- **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.
- **AFRA** : The Average Freight Rate Assessment, as published by the London Tanker Brokers' Panel Limited; the applicable rate shall be the rate published at the beginning of the month in which the Vessel loads, irrespective of the reference period mentioned in the publication.
- **Agreement** : The Special Terms and Conditions and the General Terms and Conditions together and any agreed amendment(s) thereto, the Special Terms and Conditions being that part of the Agreement other than the General Terms and Conditions, comprising the written communications evidencing an agreement between Seller and Buyer to a CFR or CIF or CFR Outturn or CIF Outturn or DELIVERED EX SHIP contract of sale and the General Terms and Conditions being these General Terms and Conditions for CFR/CIF/DELIVERED EX SHIP Sales of Crude, reference ATMI-CRUDE-CFR/CIF/DES as supplemented and amended, for deliveries of Oil loaded from offshore loading facilities, by the provisions set out in Appendix 2.
- **All Fast** : Vessel secured to berth and gangway in place.
- **Barrel** : U.S. Barrel of FORTY-TWO (42) U.S. standard gallons.
- **Buyer** : The party specified in the Special Terms and Conditions.
- **CFR and CIF** : As ascribed thereto in Incoterms 2010, except as modified by the Agreement. If there is any inconsistency or conflict between said Incoterms and the Agreement, the Agreement shall prevail.
- **CFR Outturn and CIF Outturn** : As ascribed to CFR and CIF respectively in this Section I, subject to the invoicing adjustment set out in sub-section IX.2(c).
- **Credit Support Provider** : The guarantor or other person providing credit support for Buyer.

- **Designated Event** : (i) The consolidation or amalgamation of a party with, the merger of a party with or into, or the transfer of all or substantially all of a party's assets to, another entity; (ii) the reorganization, reincorporation or reconstitution of a party into or as another entity; (iii) the acquisition by any person directly or indirectly of the majority of the beneficial ownership of the party such that such person may exercise control of the party; or (iv) a substantial change in the capital structure of a party by means of the issuance or guaranty of debt. For purposes of this definition, the term "**party**" includes Buyer's Credit Support Provider, if any.
- **Discharge Terminal** : The port or ports of discharge and/or the receiving facilities at which the Oil is discharged or is to be discharged.
- **ETA** : Estimated date and time of arrival.
- **Ex Ship (DES)** : As ascribed to DES in Incoterms 2000, except as modified by the Agreement. If there is any inconsistency or conflict between said Incoterms and the Agreement, the Agreement shall prevail.
- **FPA** : Free of Particular Average.
- **ICS** : The International Chamber of Shipping.
- **L/C** : Letter of credit.
- **Letter of Credit Default** : The occurrence of any of the following events as to any outstanding L/C: (i) the L/C issuer is no longer acceptable to Seller; (ii) the L/C issuer fails to comply with or perform its obligations under such L/C; (iii) the L/C issuer disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such L/C; (iv) the L/C expires or terminates, or fails or ceases to be in full force and effect at any time during the term of the Agreement or during any period when Seller requires that Buyer maintain the L/C; (v) Buyer fails to cause a renewal or replacement L/C to be delivered to Seller at least FIFTEEN (15) Working Days (or by such other date required by Seller) prior to the expiration of such L/C; or (vi) an event as described in sub-section XIII.1(a)(vi) occurs with respect to the L/C issuer.
- **Loading Date(s)** : The day (or range of days) when the Vessel is expected to load (as specified in the Special Terms and Conditions) or, if known, the bill of lading date.
- **Loading Terminal** : The loading port or ports and/or the loading facilities at which the Oil is loaded or is to be loaded.
- **Loading Terminal Operator** : Any legal entity that at the time of loading is the operator of the Loading Terminal.
- **LOI** : Letter of indemnity.
- **NOR** : The Notice of Readiness submitted by the Vessel's master or its agent when the Vessel arrives at the Loading Terminal and is in all respects ready, legally and physically, to proceed to the berth and commence

loading. The Vessel will be considered to have arrived at the Loading Terminal when it is at the customary berth, anchorage or fleeting area, and after the Vessel is anchored. If these conditions are not met, the NOR shall be considered invalid and the Vessel must re-tender NOR when the conditions for validity are met.

- **OCIMF** : The Oil Companies International Marine Forum.
- **Oil** : Such crude oil(s), and/or condensate(s) as more particularly described in the Special Terms and Conditions and sold or nominated to be sold under the Agreement.
- **Seller** : The party specified in the Special Terms and Conditions.
- **Seller's Supplier** : Any legal entity supplying or expected by Seller to supply to Seller directly or indirectly the Oil or services necessary to deliver the Oil to Buyer.
- **Shipment** : Any specific quantity of Oil delivered or to be delivered under the Agreement as one full or part cargo lot.
- **SOLAS** : The International Convention for the Safety of Life at Sea 1974 (as amended).
- **Taxes** : Any and all foreign, federal, state and local taxes, duties fees and charges of every description, including all excise, environmental, spill, gross earnings, gross receipts and sales and use taxes, however designated, paid or incurred with respect to the purchase, storage, exchange, use, transportation, resale, importation or handling of the Oil; provided, however, that Taxes shall not include: (i) any tax imposed on or measured by net profits, gross or net income, or gross receipts (excluding, for the avoidance of doubt, any transaction taxes such as sales, use, gross earnings or gross receipts or similar taxes that are based upon gross receipts, gross earnings or gross revenues received only from the sale of crude oil); (ii) any tax measured by capital value or net worth, whether denominated as franchise taxes, doing business taxes, capital stock taxes or the like; and (iii) business license or franchise taxes or registration fees.
- **TBN** : To be named.
- **Ton** : Metric ton or tonne. ONE THOUSAND (1,000) kilograms.
- **U.S. or United States** : Anywhere subject to the jurisdiction of the United States of America.
- **Vessel** : A tankship or barge or other vessel that is adapted for the carriage of Oil.
- **Working Day** : A day other than a Saturday or Sunday or a bank holiday in New York.
- **Worldscale** : The New Worldwide Tanker Nominal Freight Scale as current on the day of commencement of loading the Vessel in question at the Loading Terminal.

**SECTION II - DELIVERY TERMS AND PASSING OF RISK AND PROPERTY****II.1 In the case of CFR and CIF deliveries (including CFR Outturn and CIF Outturn deliveries):**

The Oil shall be delivered by Seller to Buyer in bulk at the Loading Terminal and shipped by Seller CFR or CIF (as applicable) to the agreed destination.

Notwithstanding any right of Seller to retain the shipping documents until payment, risk and property in the Oil and all liabilities with respect thereto shall pass to Buyer when the Oil passes the flange connection between the delivery hose and the permanent hose connection of the Vessel at the Loading Terminal.

If the Oil is sold or nominated to be sold afloat, then risk in the Oil and all liabilities with respect thereto shall pass to Buyer as from the time the Oil passes the flange connection between the delivery hose and the permanent hose connection of the Vessel at the Loading Terminal, and property in the Oil shall pass to Buyer upon acceptance of the nomination of the Vessel by Buyer.

**II.2 In the case of Ex Ship deliveries:**

The Oil shall be delivered by Seller to Buyer in bulk DES at the Discharge Terminal.

Risk and property in the Oil and all liabilities with respect thereto shall pass to Buyer when the Oil passes the permanent discharge manifold of the Vessel and the receiving hose at the Discharge Terminal.

Without limiting any other provision of the Agreement, any loss of, or damage to, the Oil occurring before, during or after the discharge operations, which is caused by Buyer or the receiver of the Oil or any of their respective contractors, agents or employees, or by the Discharge Terminal, shall be for the account of Buyer.

**II.3** Notwithstanding anything elsewhere in the Agreement to the contrary, if Buyer fails to take delivery (in whole or in part) of any Shipment, such Shipment shall, at Seller's option, cease to be deliverable to Buyer under the Agreement and, in such event, such Shipment shall be deducted from the total quantity of Oil to be delivered under the Agreement, without prejudice to any other rights or remedies that Seller may have against Buyer. In such case, Seller shall dispose freely of, and may sell or otherwise dispose of, such Shipment at its sole and absolute discretion. The provisions of this sub-section II.3 shall apply whether Buyer is to receive one, or more than one, Shipment hereunder.

**II.4** If, under the Agreement, Buyer is to receive more than one Shipment, then, unless otherwise provided for in the Agreement:

- (a) each Shipment shall constitute a separate contract; and
- (b) such Shipments shall be evenly spread.

### SECTION III - QUALITY

**III.1 THERE ARE NO REPRESENTATIONS, DUTIES (WHETHER IN NEGLIGENCE OR OTHERWISE), CONDITIONS, GUARANTEES, WARRANTIES OR TERMS, EXPRESS OR IMPLIED, WHETHER IMPLIED BY STATUTE OR OTHERWISE, AS TO THE DESCRIPTION OR SATISFACTORY QUALITY, MERCHANTABILITY, FITNESS OR SUITABILITY OF THE OIL FOR ANY PURPOSE WHATSOEVER, OR OTHERWISE RELATING TO THE QUALITY OF THE OIL, WHICH EXTEND BEYOND THE DESCRIPTION OF THE OIL APPEARING IN THE AGREEMENT.**

### SECTION IV - INVOICING AND PAYMENT

**IV.1** The price of the Oil and the due date for payment shall be as specified in the Special Terms and Conditions.

Payment of the full amount of Seller's invoice shall be made without any discount, deduction, withholding, abatement, set-off or counterclaim in U.S. Dollars (unless otherwise specified in the Special Terms and Conditions) by wire transfer of immediately available funds ("same day funds") on or before the due date (subject to sub-sections IV.3 and IV.6) to the bank and account designated by Seller, against presentation to Buyer by means of courier, facsimile transmission and/or electronic messaging system, of an invoice and the documents specified in Section X herein. Notwithstanding the foregoing, if transfer of Oil is made by book, stock or inventory transfer, payment shall be due on the effective date of such transfer.

**IV.2** Unless otherwise agreed, the payment of any other costs, expenses or charges that arise under the terms of the Agreement shall be made against presentation of Seller's invoice and shall be for immediate settlement by Buyer on or by the date advised thereon.

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 Oil and any other costs, expenses and charges have not been credited in full into Seller's bank account.

**IV.3** When the due date falls on a Saturday or on a weekday, other than a Monday, that is not a Working Day, then any such payment shall be made on the nearest preceding Working Day. When the due date falls on a Sunday or a Monday that is not a Working Day, then any such payment shall be made on the next following Working Day.

**IV.4** Any delay in effecting any payment by the due date shall entitle Seller to receive payment of interest for each day of delay at an annual rate (based on a 360-day year) equal to TWO (2) percentage points above the prime rate of interest effective for the payment due date as published in *The Wall Street Journal* under "Money Rates," such interest being in no circumstances to be construed as an agreement by Seller to provide extended credit, and is in addition to any other rights of Seller arising out of such delay.

In addition to any other rights of Seller, all expenses incurred by Seller, including but not limited to reasonable legal fees, court costs and collection agency fees, caused by delayed payment or non-payment by Buyer of the full amount of Seller's invoice for each Shipment shall be for the account of Buyer and payable upon demand with supporting documentation.

**IV.5** Where the pricing or quantity information available to Seller does not allow for the preparation of a final invoice, Seller may issue a provisional invoice, against which Buyer

shall make payment. The provisional price or quantity shall, unless otherwise agreed between the parties, be based upon the pricing or quantity information available to Seller at the time it issues such provisional invoice. Payment of any balance due by either party shall be made immediately upon receipt of Seller's final invoice, which shall be prepared as soon as practicable after all the relevant information becomes available to Seller.

**IV.6** If security for payment by means of an irrevocable standby L/C is not already provided for in the Special Terms and Conditions, Seller shall be entitled at any time before the due date to demand payment to be secured by an irrevocable standby L/C or by payment in advance notwithstanding the method of payment as described in the Special Terms and Conditions. Nothing in this sub-section IV.6 shall relieve Buyer of its obligation to pay the total price of each Shipment as and when due under the Agreement.

**IV.7** When, under the Agreement, or as a consequence of the provisions of sub-section IV.6, payment is to be made by means of an irrevocable standby L/C, the following provisions shall apply unless otherwise specified in the Special Terms and Conditions:

- (a) the L/C shall be issued and/or confirmed by a bank and in a format both of which must be acceptable to Seller, not later than TEN (10) days prior to the Loading Date (or the first day of the Loading Dates), or on such other date and at such time as Seller may in writing require;
- (b) all fees, commissions, costs and expenses incurred with respect to such payment or L/C shall be borne by Buyer;
- (c) the L/C shall cover the value of the Shipment at the contract price (including, if applicable, any Taxes or duty) plus TEN (10) per cent and shall at all times be valid:
  - (i) in the case of CFR/CIF deliveries, for shipment THREE (3) days before the Loading Date and SEVEN (7) Working Days after the payment due date;
  - (ii) in the case of DES deliveries, for delivery THREE (3) days before the contractual delivery range and SEVEN (7) Working Days after the payment due date or, in the absence of such contractual delivery range, THREE (3) days before the estimated date of discharge and SEVEN (7) Working Days after the payment due date.

If at the time of executing the L/C the price of the Shipment is not fixed, the L/C shall be opened with sufficient value to cover the aggregate contractual volume plus TEN (10) per cent times the estimated price calculated in accordance with sub-section IV.5. If, after the price of a Shipment is fixed, the value of the L/C is not sufficient to cover the aggregate contractual volume plus TEN (10) per cent times the aggregate price, then Seller may request that Buyer amend the L/C with sufficient value not later than the next Working Day following the date on which Seller requests the amended L/C.

- (d) if for any reason the loading or discharge, as the case may be, of the Vessel will not take place within the period for such loading or discharge 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; and

- (e) no term of the L/C (nor any agreed amendment thereto) shall amend, alter, add to, or in any way affect the terms of the Agreement (or any of them) unless Seller and Buyer expressly agree in writing to amend the Agreement accordingly.

**IV.8** It is a condition of the Agreement that Buyer complies with its payment obligations under the 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 Section IV) within the time prescribed by Seller and/or by the Agreement. Any failure either in whole or in part by Buyer to comply with any such obligation shall be a breach of condition.

In addition to any other remedies that may be available to Seller, on the occurrence of such breach and for so long as such breach is continuing:

- (a) if the Oil has been delivered to Buyer on board the Vessel, then, at Seller's option exercisable at any time by written notice of Seller to Buyer, title, but not risk, in the Oil shall revert to and/or remain with Seller; and
- (b) in all cases, 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:
  - (i) cancel delivery of all or any Shipments; or
  - (ii) without prejudice to any other rights of Seller, withhold delivery of Oil under the Agreement and/or release of shipping documents or LOI.

Seller may exercise the rights set out 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 Oil 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.

**IV.9** Seller may, in its sole discretion and upon notice to Buyer or its Credit Support Provider, if any, require that Buyer or its Credit Support Provider provide it with Adequate Assurance of Buyer's or its Credit Support Provider's ability to perform any of its obligations under the Agreement, under any guaranty or any credit support agreement, respectively, in an amount determined by Seller in a commercially reasonable manner. Unless Seller specifies a different time period, Buyer or its Credit Support Provider shall furnish Adequate Assurance within TWO (2) Working Days following receipt of Seller's written demand. If the security is cash, then Buyer shall deliver the cash to Seller as a deposit, which shall become the property of Seller once delivered.

**IV.10** Subject to prior mutual agreement and the provisions of this Section IV, the parties may agree to net the invoice or invoices resulting from the Agreement with invoices resulting from other contracts between the parties for amounts due to each other on the same date. Prior to the due date, the parties shall confirm the invoice amounts and the amount remaining, if any, after netout. Any remaining balance shall be paid by the party owing such amount to the other party on the date the gross amounts are due. Any such netout shall be effective upon receipt of the balance due after netout to the party owed such balance. The parties expressly agree that netting of invoices shall strictly apply only to the amounts due from the sale and purchase of commodities between the parties. Netting of other invoices, including but not limited to quality and demurrage claims, is strictly prohibited unless such netting is expressly set forth in the Agreement or otherwise agreed in writing.

## SECTION V - DESTINATION AND IMPORTER/EXPORTER OF RECORD

**V.1** Buyer undertakes, and it is a condition of the Agreement, that the Oil shall not:

- (a) be shipped directly or indirectly through; or
- (b) be disposed of, directly or indirectly and irrespective of means, by way of resale, exchange, loan or other arrangement for the supply of the Oil to any buyer and/or receiver in,

any country that is subject to a prohibition by the governmental authorities of the country in which the Oil has been produced or loaded or to any country or government to which such shipment or disposal would constitute a violation of U.S. law applicable to Seller or Buyer.

If Buyer is, or is likely to be, prevented by any law, policy, demand or request to which Buyer is subject or any governmental policy, demand or request by which Buyer is bound, from complying with the above, Seller and Buyer shall meet and discuss the implications for Buyer and Seller and, pending resolution of any difficulty that such event causes or is likely to cause, Seller may at its discretion suspend in whole or in part supplies hereunder.

At any time, Seller may require Buyer to provide any relevant documents for the purpose of verifying the final destination of the Oil, and Buyer undertakes to provide such documents upon request.

**V.2** Buyer undertakes that the Oil deliverable hereunder shall not:

- (a) be exported to any Restricted Jurisdiction (as defined below);
- (b) be sold or supplied to any natural or legal person in any Restricted Jurisdiction; or
- (c) be sold or supplied to any natural or legal person or entity for the purpose of any commercial activity carried out in or from any such Restricted Jurisdiction.

For the purposes of this sub-section V.2, “**Restricted Jurisdiction**” shall mean any country, state, territory or region against which there are economic sanctions imposed by the United Nations or the United States, and any other economic sanctions to which Seller or the performance of the Agreement is subject as may be specified in the Special Terms and Conditions.

**V.3** Should Buyer be in breach of any provisions of this Section V, Seller may at any time thereafter immediately terminate the Agreement, without being liable for any indemnity to Buyer.

Moreover, Buyer agrees to hold Seller harmless from, and indemnify Seller for, any losses, costs, damages, fines and/or penalties incurred by Seller resulting from any such breach.

**V.4** The party that is the importer of record of the Oil delivered under the Agreement agrees to fulfill all import arrangements and customs requirements applicable to the importer of record, including but not limited to, if shipping to the United States, those of the U.S. Customs and Border Protection and shall pay any applicable duties, Taxes or other fees, and fines, penalties or costs related to the importing and unloading of the Shipment at the Discharge Terminal. The other party hereto agrees to provide all information required to enable the importer of record to fulfill its obligation in a timely manner. Unless otherwise agreed, the importer of record shall be entitled to any duty drawback rights.

## SECTION VI - VESSEL

### VI.1 Contract of Carriage and Insurance

- (a) In the case of CFR, CIF, CFR Outturn or CIF Outturn deliveries:

Seller shall provide carriage of the Oil under bills of lading, which may incorporate charter party conditions.

- (b) In the case of CFR or CFR Outturn deliveries:

The responsibility for securing cargo insurance on any Shipment, whether against marine, war or other risks, and the costs resulting therefrom shall rest wholly with Buyer.

- (c) In the case of CIF or CIF Outturn deliveries:

Seller shall procure and pay for cargo insurance against marine risks for ONE HUNDRED AND TEN (110) per cent of the CIF value of the cargo. Such insurance shall: (i) operate from shore tank at the Loading Terminal to shore tank at the Discharge Terminal; (ii) be contracted with an insurance company of good repute; (iii) be in accordance with the minimum cover of the Institute Cargo Clauses (Institute of London Underwriters); (iv) be on an "FPA" basis; and (v) include any necessary war risk coverage if applicable.

- (d) For all deliveries (CFR, CIF, CFR Outturn, CIF Outturn, Ex Ship):

(i) Any and all costs in respect of war risk insurance for the Vessel's hull and machinery or for cargo or both in respect of the voyages to any of the ports of loading or discharge or any seas through which the Vessel has to travel in the performance of the Agreement, in excess of those prevailing at the date the Agreement is entered into, including any additional insurance or war risk insurance premium, as well as crew war bonuses or any other bonuses relating to the Shipment, shall be solely for the account of Buyer.

(ii) Seller reserves the right to refuse at any time:

1. to direct any Vessel to undertake or to complete the voyage to the Loading Terminal or Discharge Terminal if such Vessel is required in the performance of the Agreement:

- 1.1 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

- 1.2 to transit or to proceed or to remain in waters where there is war (de facto or de jure) or threat thereof; or

2. prior to the commencement of loading, to direct any Vessel to undertake the voyage to the intended Loading Terminal or Discharge Terminal if such Vessel is required in the performance of the terms of the Agreement to transit in waters that, in Seller's reasonably held opinion, would involve abnormal delay; or

3. to undertake any activity in furtherance of the voyage that in the opinion of the Vessel's master could place the Vessel, its cargo or its crew at risk.
- (iii) If Seller agrees to direct a Vessel to undertake or to complete a voyage as referred to in paragraph (ii) of this sub-section VI.1(d), Buyer undertakes to reimburse Seller, in addition to other amounts payable under the Agreement, for costs incurred by Seller in respect of any additional insurance premium (including those referred to in paragraph (i) of this sub-section VI.1(d)) and any other sums that Seller may be required to pay to the Vessel's owner, including but not limited to any sums in respect of any amounts deductible under such owner's insurance and any other costs and/or expenses incurred by Seller.

## **VI.2 Nomination of Vessel**

Unless otherwise specified in the Special Terms and Conditions, Seller shall notify Buyer in writing as far in advance as practically possible of the Vessel's name and the pertinent characteristics of the Vessel, the quantity and grade of the Oil to be delivered and, for CFR or CIF deliveries, the Loading Date(s) and Loading Terminal. Seller may mention "TBN" in place of the Vessel's name; in such a case, unless otherwise agreed, the Vessel's name and pertinent characteristics and the information described in this sub-section VI.2 shall be given by Seller to Buyer as soon as practicable.

## **VI.3 Substitution of Vessel**

Seller may, at any time prior to discharge, substitute for a Vessel previously nominated another Vessel whose size, capacity, loading quantity and, if the price of the Oil is determined by the bill of lading date, the bill of lading date itself, are equivalent to those of the Vessel originally nominated.

## **VI.4 Acceptance of Vessel**

Unless otherwise specified in the Special Terms and Conditions, Buyer shall notify Seller in writing within TWENTY-FOUR (24) hours of any Vessel's nomination whether Buyer accepts or refuses such nomination; Buyer's acceptance not to be unreasonably withheld.

## **VI.5 Nomination of Discharge Terminal**

Unless otherwise specified in the Special Terms and Conditions, Buyer shall within TWENTY-FOUR (24) hours after receipt of Seller's Vessel nomination notify Seller in writing of the Discharge Terminal and (in the case of CFR or CIF deliveries) full documentary instructions, including any instructions needed by Seller to issue documents in accordance with the regulations in force at the Loading Terminal (including but not limited to any export regulations). Any delay or costs (including but not limited to any demurrage incurred in respect of Seller's Vessel and any demurrage incurred by Seller or Seller's Supplier in respect of other Vessels waiting at the Loading Terminal) arising out of any failure by Buyer to comply with the foregoing shall be for Buyer's account. Seller shall have the right to issue its own instructions if such instructions are not so provided by Buyer. No change to the Discharge Terminal shall be made without Seller's prior consent.

Where under the Special Terms and Conditions Buyer has discharge port options, Buyer shall exercise any such discharge port options in accordance with the Special Terms and Conditions and the terms of the relevant charter party available to Seller. Whenever Buyer exercises such options, the price stated in the Special Terms and Conditions shall be adjusted by the freight differential calculated in accordance with the terms of such charter

party or as otherwise agreed between the parties. Buyer shall be liable for any additional costs incurred by Seller, including but not limited to any deviation costs and costs in respect of any additional bunker consumption.

In exercising its discharge port options, Buyer must take account of the dimensions and characteristics of the Vessel nominated by Seller.

#### **VI.6 Part Cargoes**

The discharge of part cargoes of Oil shall be deemed to be accepted by Buyer.

#### **VI.7 Requirements in respect of Vessel and Discharge Terminal**

- (a) For each Vessel specified in, or nominated under, the Agreement:
- (i) Seller warrants that the Vessel is owned or demise chartered throughout the entire period of the voyage to the Discharge Terminal by a member of the International Tanker Owners Pollution Federation Limited (ITOPF).
  - (ii) Seller shall exercise reasonable efforts to ensure that:
    1. the Vessel carries on board a valid certificate of insurance as described in the International Convention on Civil Liability for Oil Pollution Damage (“CLC”), 1969 or, if in force, the 1992 Protocol thereto, as amended;
    2. the Vessel is entered in and shall remain (throughout the entire period of the voyage to the Discharge Terminal and up to discharge of the Oil) in a P&I Club that is a member of the International Group of P&I Clubs;
    3. the Vessel has in place (throughout the entire period of the voyage to the Discharge Terminal and up to discharge of the Oil) insurance cover for oil pollution in an amount of no less than the highest standard oil pollution cover available under the rules of the International Group of P&I Clubs; and
    4. the Vessel shall comply with the requirements of the International Safety Management (“ISM”) Code and has on board a valid ISM Code Safety Management Certificate for the Vessel and a copy of the Vessel Manager’s Document of Compliance as required by the ISM Code and SOLAS.
  - (iii) Seller shall procure that:
    1. the Vessel shall comply with the requirements of the International Code for the Security of Ships and of Port Facilities (“ISPS Code”) and the relevant amendments to chapter XI of SOLAS or, if the Discharge Terminal is located within the United States, with the U.S. Maritime Transportation Security Act 2002 (“MTSA”) and shall have on board a valid International Ship Security Certificate as well as any other required valid certificates and documents, issued pursuant to the ISPS Code as well as, if applicable, the MTSA; and
    2. the Vessel shall when required submit a declaration of security to the appropriate authorities prior to arrival at the Discharge Terminal.

- (b) Notwithstanding any prior acceptance of the Vessel by Buyer, if at any time the Vessel fails to comply with any of the requirements set out in sub-section VI.7(a) above, then: (i) Buyer may at any time refuse to berth or discharge or continue to discharge the Vessel and all time lost or spent as a result thereof shall not count as used laytime, or if the Vessel is on demurrage, as demurrage; and (ii) Seller shall be obliged to substitute the Vessel with a Vessel whose size and capacity are equivalent to those of the Vessel originally nominated and complying with such requirements.
- (c) Buyer shall procure that the Discharge Terminal shall comply with the requirements of the ISPS Code and, if the Discharge Terminal is in the United States, with the MTSA.

Any costs or expenses in respect of the Vessel, including demurrage or any additional charge, fee or duty levied on the Vessel at the Discharge Terminal and actually incurred by Seller resulting directly from the failure of the Discharge Terminal to comply with the ISPS Code or the MTSA (if applicable), shall be for the account of Buyer, including but not limited to the time required or costs incurred by the Vessel in taking any action or any special or additional security measures required by the ISPS Code or the MTSA.

Save where the Vessel has failed to comply with the requirements of the ISPS Code or the MTSA (if applicable), Buyer shall be responsible for any demurrage actually incurred by Seller arising from delay to the Vessel at the Discharge Terminal resulting directly from the Vessel being required by the Discharge Terminal operator, the port authority or any relevant authority to take any action or any special or additional security measures or undergo additional inspections by virtue of the Vessel's previous ports of call.

Buyer's liability to Seller under the Agreement for any costs, losses or expenses incurred by the Vessel, the charterers or the Vessel owners resulting from the failure of the Discharge Terminal to comply with the ISPS Code or the MTSA (as applicable) shall be limited to the payment of demurrage and costs actually incurred by Seller in accordance with the provisions of this sub-section VI.7(c).

## **SECTION VII - ARRIVAL AND DISCHARGE OF VESSEL AT THE DISCHARGE TERMINAL**

**VII.1** For CFR or CIF deliveries, as soon as practicable after receipt of such information by Seller after the loading has been completed, Seller shall notify Buyer of the loaded quantities of Oil together with the ETA of the Vessel at the Discharge Terminal (or port specified by Buyer as destination for orders), and thereafter Seller will keep Buyer updated of changes to the ETA at the Discharge Terminal or destination for orders as soon as practicable after Seller receives such information. For Ex Ship deliveries, Seller shall notify Buyer of the ETA of the Vessel at the Discharge Terminal, and thereafter Seller will keep Buyer updated of changes to the ETA at the Discharge Terminal as soon as practicable after Seller receives such information.

**VII.2** For the discharge of each Vessel hereunder, Buyer shall provide to Seller, free of charge, a berth suitable for discharging the Oil that the Vessel nominated can, when fully laden, safely: reach on arrival, lie thereat and leave.

Buyer may require Seller to shift a Vessel at the Discharge Terminal from one safe berth to another safe berth and shall assume all risks and payment of all costs in connection therewith. Time used for shifting berth shall count as used laytime and, if on demurrage, as demurrage.

It is agreed that the Vessel shall not be compelled to lighter for the purpose of discharging at the Discharge Terminal. However, should any lightering be undertaken at the request of Buyer and such lightering is approved by Seller, the expenses and risks thereof shall be for Buyer's account and Buyer shall be liable to Seller in respect of any losses, costs, damages and proceedings arising therefrom and shall indemnify Seller in respect thereof. Any time spent or lost in such lightering, including additional steaming and/or any waiting time (weather or sea conditions permitting or not) shall count in full as used laytime or, if on demurrage, as demurrage, subject to sub-section VIII.4(b) but notwithstanding the other exceptions set out in sub-section VIII.4. Buyer shall ensure that any ship-to-ship cargo operations, including lightering, conform to standards not less than those set out in the latest ICS/OCIMF ship-to-ship transfer guides. The lightering Vessel shall be subject to Seller's prior acceptance.

Buyer shall arrange for each Vessel to be discharged as expeditiously as possible. Buyer shall at all material times and at its own expense provide and maintain or cause to be provided and maintained in good working order all necessary flexible hoses, connections, pipelines, tankage facilities and other accommodation for discharging the Vessel.

**VII.3** In case of CFR and CIF deliveries, all taxes, duties, imposts, fees, charges and dues (including, without limitation, pilotage, mooring, towage expenses and quay dues) in respect of the Vessel incurred at the Discharge Terminal, other than those that are for the account of the Vessel's owner according to Worldscale, shall be for the account of Buyer.

In case of Ex Ship deliveries, all taxes, duties, imposts, fees, charges and dues (including, without limitation, pilotage, mooring, towage expenses and quay dues) in respect of the Vessel incurred at the Discharge Terminal shall be for the account of Seller.

**VII.4** Save as otherwise provided under sub-section V.4, Buyer shall likewise assume and be responsible for payment of any Taxes, duties, imposts, fees, charges and dues of every description imposed or levied by any governmental, local or port authority on, or applicable, attributable or related to, the Oil or its export, delivery, transportation, ownership, sale or use, in respect of any stage after the risk in such Oil has passed to Buyer and/or arising in the country of importation, and the amount of the same shall be for the account of Buyer.

**VII.5** The Vessel shall vacate her berth as soon as discharging of Shipment and ballasting have been completed, provided the Vessel can safely do so.

## **SECTION VIII - LAYTIME AND DEMURRAGE**

**VIII.1** Upon arrival at the Discharge Terminal, the master or his representative shall tender NOR to Buyer or Buyer's representative, berth or no berth.

**VIII.2** The time allowed to Buyer for discharging each Vessel shall be THIRTY-SIX (36) running hours or, if different, the time set out in the Special Terms and Conditions, pro rata for part cargoes (i.e. based on that proportion of such time that the Shipment bears to the total quantity of cargo loaded on the Vessel at the loading port or ports), Sundays, holidays and nights included.

**VIII.3** Running hours shall commence:

- (a) berth or no berth, SIX (6) hours after NOR is tendered at the Discharge Terminal by Vessel to Buyer or its representative; or
- (b) upon the completion of berthing of the Vessel when Vessel is all fast, if this occurs less than SIX (6) hours after tendering NOR at the Discharge Terminal.

Laytime or, if on demurrage, demurrage shall end when the delivery hoses are disconnected after completion of discharging or, if the Vessel's departure is delayed for Buyer's purposes, until the termination of such delay.

**VIII.4** Any time spent and/or lost due to any of the following events (together with any of the events described in VI.7(b) and VIII.5 to the extent so specified in such section) shall not count as used laytime or, if on demurrage, as demurrage:

- (a) the inward passage to the discharge berth;
- (b) any delay due to fault, failure or inefficiency of the Vessel; and
- (c) handling of ballast or slops when not concurrent with discharge operations.

**VIII.5** Seller warrants that the Vessel shall be capable of discharging her full cargo within TWENTY-FOUR (24) hours from commencement of pumping, pro rata for part cargo, or that the Vessel shall maintain an average of discharge pressure at each Vessel's manifold in use of ONE HUNDRED (100) psi (7 bar), provided that reception facilities are capable of the same and the reception facilities' instructions so permit.

The above warranty excludes time associated with internal draining/stripping (for which maximum TWO (2) hours per grade of Oil are allowed).

Any delay due to the inability of the Vessel to fulfill the above warranty shall not count against laytime or, if the Vessel is on demurrage, as demurrage.

If crude oil washing is performed, time spent in crude oil washing up to a maximum of NINE (9) hours (such maximum to be reduced pro rata to the number of tanks washed compared with the total number of tanks of the Vessel) shall count as used laytime or, if on demurrage, as demurrage.

**VIII.6** If the Shipment is not discharged within the allowed laytime in the Agreement, Buyer shall pay to Seller demurrage in U.S. Dollars per running hour and pro rata for a part thereof for all time used in excess of the allowed laytime.

The applicable demurrage rate shall be (in order of priority):

- (a) the demurrage rate specified in the Special Terms and Conditions; or, in the absence of such rate,
- (b) the demurrage rate per day (or pro rata for part of a day) provided for in the charter party (or overtime rate/additional freight rate if a contract of affreightment) entered into regarding the carriage of the Oil hereunder; or, in the absence of such rate,

- (c) the demurrage rate per day, as published in Worldscale and corrected by AFRA, which applies for a Vessel of the same type, size and capacity.

**VIII.7** It is agreed that Buyer's obligation as to laytime and liability as to demurrage shall be absolute and not be subject to qualification by the provisions of Section XII. However, if demurrage shall be incurred at the Discharge Terminal by reason of fire, explosion, or by a strike, lockout, stoppage or restraint of labor or by breakdown of machinery or equipment in or about the receiving facilities of Buyer or its consignee, then, to the extent that a similar provision is in force in the charter party for the Vessel, such demurrage shall be calculated at one-half the rate stipulated above (but only to the extent that such conditions were not caused by the fault or neglect of Buyer, its consignee or the receiving facilities and Seller may benefit from such provision under the Charter party of the Vessel).

## **SECTION IX - QUANTITY AND QUALITY DETERMINATION**

### **IX.1 In the case of CFR and CIF deliveries:**

- (a) The quantity and quality of the Oil delivered at the Loading Terminal under the Agreement shall be determined for each Shipment in accordance with the standard practice in use at the Loading Terminal at the time of loading save if otherwise provided for specifically in the Special Terms and Conditions. For invoicing purposes, all volumes shall be net volumes with full deduction for all base sediment and water, and free water content shall be made according to the American Petroleum Institute ("API")/ASTM Standard Method then in effect. The quantity shall be adjusted to SIXTY (60) degrees Fahrenheit using the appropriate tables.
- (b) The quantity of Oil determined pursuant to sub-section IX.1(a) above (or, where applicable, the Special Terms and Conditions) shall be inserted in the certificate of quantity and bill of lading for the cargo as per the standard practice in use at the Loading Terminal at the time of loading and that quantity shall be used to calculate Seller's invoice.
- (c) Where the Special Terms and Conditions provide for the appointment of an independent inspector at the Loading Terminal, the quantity and/or the quality of the Oil as ascertained or witnessed by such independent inspector shall, except in case of fraud or manifest error, be final and binding on both parties. Unless otherwise provided for in the Special Terms and Conditions, the cost of services of the inspector shall be borne equally by both parties.
- (d) Where the Shipment is delivered as an unsegregated part cargo lot, the quantity determined above shall be adjusted following completion of discharge of all relevant part cargo lots in order that each of Buyer and the receiver(s) of the other lot(s) shall be allocated a percentage of the total quantity loaded equal to that percentage of the total outturn quantity corresponding to its outturn quantity of Oil.

### **IX.2 In the case of CFR Outturn and CIF Outturn deliveries:**

- (a) The quantity and quality of the Oil delivered at the Loading Terminal under the Agreement shall be determined for each Shipment in accordance with the standard practice in use at the Loading Terminal at the time of loading save if otherwise provided for specifically in the Special Terms and Conditions.
- (b) The quantity of the Oil delivered at the Discharge Terminal shall be determined for each Shipment in accordance with the latest applicable approved measurement

methods (at the time of measurement) in use at the Terminal as published by the API in the Manual of Petroleum Measurement Standards (“MPMS”), or as published by ASTM at the Discharge Terminal at the time of discharge save if otherwise provided for specifically in the Special Terms and Conditions. A mutually agreed independent inspector will be appointed at the Discharge Terminal to ascertain or witness such quantity determination. Buyer shall ensure that the independent inspector shall have full access to the facilities at the Discharge Terminal to perform his duties. Unless otherwise provided for in the Special Terms and Conditions, the cost of services of the inspector shall be borne equally by both parties.

- (c) The quantity of Oil determined pursuant to sub-section IX.2(a) above (or, where applicable, the Special Terms and Conditions) shall be inserted in the certificate of quantity and bill of lading for the cargo as per the standard practice in use at the Loading Terminal at the time of loading and that quantity shall be used to calculate Seller’s invoice. Seller’s invoice shall subsequently be adjusted in accordance with the quantity reported by the independent inspector at the Discharge Terminal.
- (d) Where the Special Terms and Conditions provide for the appointment of an independent inspector at the Loading Terminal, the cost of services of the inspector shall be borne equally by both parties (unless otherwise provided for in the Special Terms and Conditions).
- (e) Notwithstanding the provisions of this sub-section IX.2, Seller shall have the right to submit a claim to Buyer where there is a difference between the quantity loaded and discharged by Seller’s Vessel and where in Seller’s reasonable opinion, the most likely cause of such difference is due to events or the nature of operations at the Discharge Terminal during the discharge of the Oil.
- (f) If the quantity discharged and determined in accordance with the provisions of sub-section IX.2(b) is less than the bill of lading quantity, Seller shall be entitled to retain the bills of lading and (in the case of a CIF Outturn sale) the certificate of insurance. In circumstances where the bills of lading and/or the certificate of insurance have already been passed on to Buyer, Buyer shall forthwith upon Seller’s request endorse the bills of lading to the order of Seller and pass the above documents back to Seller. In the event that, as a result of the shortage, any proceedings are brought by Seller against the carrier under the bills of lading, Seller will, at the request of Buyer, join into such action any claim against the carrier relating to quality of the cargo (a “**Quality Claim**”), provided that Buyer shall indemnify Seller and, if requested, provide security to Seller, against all costs and liabilities incurred as a result of, or in connection with, the Quality Claim. If, for whatever reason, Seller resolves not to commence any proceedings against the carrier, Seller shall then be obliged to pass the bills of lading on to Buyer.

### **IX.3 In the case of Ex Ship deliveries:**

- (a) The quantity and quality of the Oil delivered at the Discharge Terminal under the Agreement shall be determined for each Shipment in accordance with the latest applicable approved measurement methods (at the time of measurement) in use at the Terminal as published by the API in the MPMS, or as published by ASTM, save if otherwise provided for specifically in the Special Terms and Conditions.
- (b) A mutually agreed independent inspector will be appointed at the Discharge Terminal to ascertain or witness the determination of the quantity and the quality of the Oil.

Unless otherwise provided for in the Special Terms and Conditions, the cost of services of the inspector shall be borne equally by both parties.

- (c) For the purpose of quality determination, the independent inspector will draw representative ship's composite samples prior to commencement of discharge of the Vessel. Notwithstanding any other term of the Agreement, no other sample taken at the Discharge Terminal shall be used for the purposes of determining the quality of the Oil delivered.
- (d) Unless otherwise provided for in the Special Terms and Conditions, the quantity of Oil reported by the independent inspector at the Discharge Terminal shall be used to calculate Seller's invoice.

**IX.4** In no event shall Seller be liable for any claim regarding the quantity and/or quality of any Shipment, unless such claim has been submitted by Buyer to Seller in writing, with full details of the specific facts on which the claim is based and supporting documentation, within THIRTY (30) days of the date of completion of discharge or SIXTY (60) days of the date of the relevant bill of lading, whichever is the earlier, or within such lesser number of days as imposed by Seller's Supplier.

Should 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 Seller shall be extinguished.

Buyer shall be entitled to recover quantity and/or quality costs, losses or damages from Seller only to the extent that Seller is able to recover, and does recover, such costs, losses or damages from Seller's Supplier, and Seller shall not be obliged to pay any amount to Buyer in excess thereof. Seller shall, however, use reasonable endeavors to recover from Seller's Supplier such costs, losses or damages for which Buyer has presented a claim in accordance herewith.

**IX.5** Buyer shall have no right to reject any Oil hereunder because it does not meet any minimum specifications set forth in the Special Terms and Conditions or for any other reason related to quality. Subject to sub-section IX.4 and sub-section XXII.3 hereunder, Buyer's exclusive remedy with respect to any material difference in the quality of any Shipment compared with the minimum specifications of the Oil set forth in the Agreement, shall be a quality adjustment payment due from Seller calculated in accordance with normal industry practice for any such material difference between the specification of the Oil and the minimum quality specification.

## **SECTION X - DOCUMENTS**

### **X.1 In the case of CFR deliveries:**

Except as provided in the Special Terms and Conditions, Seller shall deliver to Buyer:

- (a) an invoice, which may be by facsimile transmission or electronic messaging system (provisional invoice acceptable where the provisions of sub-section IV.5 apply);
- (b) original bills of lading issued or endorsed to the order of Buyer; and
- (c) original certificates of quantity, quality and origin (or equivalent documents issued at the Loading Terminal).

**X.2 In the case of CIF deliveries:**

Except as provided in the Special Terms and Conditions, Seller shall deliver to Buyer the documents referred to in sub-section X.1 and an original certificate of insurance.

**X.3 In the case of CFR Outturn or CIF Outturn deliveries:**

Except as provided in the Special Terms and Conditions, Seller shall deliver the documents as referred to in sub-section X.1, and, in the case of CIF Outturn deliveries, the document referred to in sub-section X.2, as well as a copy of the independent inspector's report at the Discharge Terminal.

**X.4 In the case of Ex Ship deliveries:**

Except as provided in the Special Terms and Conditions, Seller shall deliver a copy of the independent inspector's report at the Discharge Terminal and Seller's invoice, which may be by facsimile transmission or electronic messaging system (provisional invoice acceptable where the provisions of sub-section IV.5 apply).

**X.5** Notwithstanding any other term of the Agreement, in the event that the original bills of lading or other contractual shipping documents specified in sub-section X.1, X.2 or X.3 are not delivered to Buyer on or before the due date for payment, Buyer undertakes to pay Seller upon presentation, by means of courier, facsimile transmission or electronic messaging system, of an invoice and of Seller's LOI substantially in the form set out in Appendix 1.

**SECTION XI - GOVERNMENT TAKE, NEW OR CHANGED REGULATIONS****XI.1 Government Take:**

This sub-section XI.1 applies solely if Buyer is to receive more than one Shipment under the Agreement.

- (a) For the purpose of this Section XI, "**Government Take**" 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 Oil 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 Oil, royalties, rentals, duties, income and other Taxes, participation payments or benefits, whether in the form of dividends, crude oil payments or other rights.
- (b) Any amount equal to any and all new or increased Government Take (as defined below) directly or indirectly imposed on the price of, or attributable to, the Oil that occurs, whether prospectively or retrospectively, after the date of Seller's offer or from time to time during the term of the Agreement, shall be added to the price of the Oil pursuant to sub-section XI.1(c).
- (c) Seller shall give Buyer written notice of any and all new or increased Government Take and of its effective date (whether retroactive or not) and shall be entitled to add the amount thereof to the price per barrel of the Oil from such effective date, and Buyer shall pay the new adjusted price.

## **XI.2 New or Changed Regulations**

- (a) For the purpose of this sub-section XI.2, the term “**Regulations**” shall mean the 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 the Agreement is entered into, in respect of, or directly or indirectly affecting, the Oil, including, but without limitation, the production, acquisition, gathering, selling, transportation, supply and delivery thereof insofar as such Regulations affect Seller or Seller’s Supplier.
- (b) If, at any time after the date of Seller’s offer or from time to time during the term of the Agreement, any of such Regulations are changed or new Regulations become effective whether by law, decree or regulation or in response to the insistence or request of any government or any agency, instrumentality, authority or entity established or controlled by government(s) or any person purporting to act therefor and the effect of such new or changed Regulations:
- (i) is not covered by any other provision of the Agreement; and
  - (ii) has an adverse economic effect upon Seller and/or Seller’s Supplier,

then Seller shall have the option to request renegotiation of the terms and conditions provided for in the Agreement. Such option may be exercised by written notice from Seller to Buyer at any time after such new or changed Regulations are published.

Such notice shall contain the effective date of such new or changed Regulations and the terms and conditions under which Seller is prepared to continue delivering the Oil under the Agreement.

If the parties do not reach agreement within FIFTEEN (15) days after the date of Seller’s renegotiation request, Seller shall have the right to terminate the Agreement, without any liability whatsoever, by giving to Buyer at least FIFTEEN (15) days’ prior written notice thereof.

Any Oil that 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 under the terms and conditions specified by Seller in its renegotiation request to Buyer. However, upon receipt of Seller’s request, Buyer has the right by written notice to Seller to refuse the loading of any Shipment.

## **SECTION XII - EXCEPTIONS - FORCE MAJEURE**

- XII.1** Neither party shall be deemed in breach of the Agreement as a result of, or be liable to the other for, any failure, omission or delay in its performance in whole or in part of any of the terms or conditions of the Agreement (except in relation to obligations to make payments or provide security for payment under the Agreement) if such failure, omission or delay arises or results from any cause whether foreseeable or unforeseeable reasonably beyond, or to be treated as reasonably beyond, the control of that party (any such event being hereinafter referred to as “**Force Majeure**”).

**XII.2** For the purposes of this Section XII, and without limitation to the generality of sub-section XII.1, a cause shall be treated as being reasonably beyond the control of Seller if it arises or results from, or in connection with:

- (a) compliance, voluntary or involuntary, with a direction 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, local government or other authority or person purporting to act with such authority; or
- (b) any natural calamity, earthquake, storm, flood, fire, explosion or other Act of God; or
- (c) any war, hostilities declared or undeclared, embargo, blockade, riots, terrorism, civil unrest and any consequence thereof; or
- (d) any strike, lockout, stoppage, restraint of work or other labor difficulty from whatever cause arising, even in the event that the same could be settled by acceding to the demands of a labor group; or
- (e) any curtailment of, hindrance to, interference with, or delay to the availability, delivery or transportation of:
  - (i) the Oil 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;

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 the Agreement or such country is referred to in the Agreement).

For the purposes of this sub-section XII.2, the availability to Seller on the spot market of any quantity of crude oil, whether or not of the grade deliverable under the Agreement, shall not be taken into account in determining whether or not a Force Majeure event has occurred.

**XII.3** 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.

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.

- XII.4** 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.
- XII.5** If any failure, omission or delay in performance in relation to a Shipment under this Section XII 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 Section XII.
- XII.6** Where, under the Agreement, Buyer is to receive more than one Shipment:
- (a) no withholding, suspension, delay, reduction or cancellation of delivery shall operate to extend the duration of the Agreement; and
  - (b) any quantities of Oil deliverable under the Agreement that would, but for any reduction or cancellation pursuant to this Section XII, have been delivered during the period of the Agreement shall cease to be deliverable by Seller.

### **SECTION XIII - DEFAULT AND TERMINATION**

- XIII.1** (a) An "**Event of Default**" shall be deemed to occur upon one or more of the following events:
- (i) Buyer fails to make payment when due under the Agreement within ONE (1) Working Day following receipt of the other party's demand for payment.
  - (ii) Buyer: (1) fails to take receipt, during a period or at an agreed date, of any quantity of Oil as provided for in the Agreement; or (2) breaches any representation, covenant or warranty in any material respect under the Agreement that, if capable of being cured, is not cured to the satisfaction of Seller in its sole discretion, within FIVE (5) Working Days following receipt of notice of Seller that corrective action is needed.
  - (iii) Either party, or Buyer's Credit Support Provider, if any, files a petition or otherwise commences or authorizes the commencement of a proceeding or case under any bankruptcy, reorganization or similar law for the protection of creditors or relief of debtors or has any such petition filed or proceeding commenced against it, or otherwise becomes bankrupt or insolvent (however evidenced), or is unable to pay its debts as such debts become due.
  - (iv) A Designated Event occurs with respect to a party, Buyer's Credit Support Provider, and the creditworthiness of the party or Buyer's Credit Support Provider or, if applicable, the successor, surviving or transferee entity of such party or Buyer's Credit Support Provider (as applicable) is materially weaker than that of the party or Buyer's Credit Support Provider immediately prior to such Designated Event.

- (b) If an Event of Default occurs in respect of Buyer, then, notwithstanding any other provision of the Agreement to the contrary, including any provision of Section XIV 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:
- (i) any and all rights to require the due and punctual observance, discharge and performance by Buyer of all its obligations and liabilities under the Agreement;
  - (ii) all rights to moneys received or receivable by Seller from Buyer under the Agreement, whether as a payment, compensation, damages or an indemnity; and
  - (iii) the right to claim for any sums payable or that become payable under the Agreement.

**XIII.2** (a) Upon an Event of Default with respect to a party ("**Defaulting Party**"), the other party ("**Performing Party**") may, in addition to any other rights it may have, whether by agreement, operation of law or otherwise, withhold or suspend performance under the Agreement and/or, upon ONE (1) Working Day's notice (which shall not be required for an Event of Default described in clause XIII.1(a)(iii)) to the Defaulting Party, immediately terminate, liquidate and accelerate all transactions under the Agreement. The Performing Party shall notify the Defaulting Party of the date ("**Early Termination Date**") on which all such transactions shall terminate and shall calculate the final amount due between the parties ("**Termination Payment**") as of the Early Termination Date by closing out all transactions at an amount equal to the difference between the then prevailing market value and the value specified in the Special Terms and Conditions, determining any damages or costs resulting from such early termination, and netting or aggregating the foregoing into a single amount. The Performing Party shall notify the Defaulting Party of the termination payment due to or from the Defaulting Party, which shall be paid within ONE (1) Working Day after delivery or receipt of the calculation, as applicable.

- (b) If the Performing Party elects to designate an Early Termination Date under subsection XIII.2(a), if Seller is the Performing Party, upon the occurrence and continuance of an Event of Default in respect of Buyer, the Performing Party shall be entitled, at its option and in its discretion (and without prior notice to the Defaulting Party), to set off any or all amounts that the Defaulting Party owes to the Performing Party or any of its Affiliates under any agreements between the Defaulting Party and the Performing Party (whether or not arising under the Agreement, matured or contingent and irrespective of the currency, place of payment or place of booking of the obligation) against any amounts payable by the Defaulting Party to the Performing Party or any of its Affiliates under any agreements between the Defaulting Party and the Performing Party (whether or not arising under the Agreement, matured or contingent and irrespective of the currency, place of payment or place of booking of the obligation); provided that any amount not then due that is included in such set-off shall be discounted to present value as at the time of set-off (to take account of the period between the date of set-off and the date on which such amount would have otherwise been due). For this purpose, any amounts may be converted by the Performing Party into the currency in which the other is denominated at the rate of exchange at which the Performing Party would be able, acting in a reasonable manner and in good faith, to purchase the relevant amount of such currency. If an obligation is unascertained, the Performing Party may, in good faith, estimate that obligation and set off in respect of the estimate, subject to the

relevant party accounting to the other when the obligation is ascertained. To the extent that any amounts are so set off, those amounts will be discharged promptly and in all respects. The Performing Party will give notice to the other party of any set-off effected under this sub-section XIII.2(b).

- (c) The Performing Party's rights under this sub-section XIII.2 are in addition to, and not in limitation or exclusion of, any other rights of set-off, recoupment, combination of accounts, lien or other right that it may have, whether by agreement, operation of law or otherwise. No delay or failure on the part of a Performing Party to exercise any right or remedy shall constitute an abandonment of such right or remedy and the Performing Party shall be entitled to exercise such right or remedy at any time after an Event of Default has occurred and is continuing. The Defaulting Party shall reimburse the Performing Party for its costs and expenses, including reasonable attorneys' fees, incurred in connection with the enforcement of, suing for or collecting any amounts payable by the Defaulting Party under the Agreement. The Defaulting Party shall indemnify and hold harmless the Performing Party for any damages, losses and expenses incurred by the Performing Party as a result of the Event of Default, including any damages, losses and expenses incurred in connection with the liquidation of hedges related to Oil sold hereunder.
- (d) The parties intend that the Agreement constitutes a forward contract under Section 101(25) and a swap agreement under Section 101(53B) of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq., as amended from time to time (the "**Bankruptcy Code**") protected by, inter alia, Sections 556 and 560 of the Bankruptcy Code, and a master netting agreement under Section 101(38A) of the Bankruptcy Code, and that the rights in this Section XIII include the rights referred to in Section 561(a) of the Bankruptcy Code (and any other applicable sections therein).

#### **SECTION XIV - ASSIGNMENT**

- XIV.1** Neither party shall assign its rights and obligations under the Agreement, in whole or in part, without the prior written consent of the other party, provided, however, that Seller shall be free to assign its rights and obligations under the Agreement to any of its Affiliates.
- XIV.2** If such written consent is given and wherever the assignment is made, the assigning party shall remain jointly and severally liable with the assignee for the full performance of its obligations under the Agreement.

#### **SECTION XV - WAIVER**

- XV.1** Except as expressly provided herein, no delay or omission by either party to exercise any right or privilege herein conferred or to enforce any of the terms and conditions of the Agreement shall be construed as a waiver of any such right, privilege, terms or conditions.
- XV.2** No waiver or omission by either party to require performance by the other party of any of the terms and conditions of the Agreement and no forbearance or indulgence granted or shown by either party to the other shall release, discharge or in any manner affect or prejudice the right of a party at any time to require strict and full performance by the other of any or all of the terms and conditions of the Agreement to be performed subsequent to any such waiver, omission, forbearance or indulgence.

## **SECTION XVI - NOTICES**

- XVI.1** Any notice or other communication or document in respect of the Agreement may be given in any manner set forth below (except for the NOR in respect of any Vessel) to the address details provided in the Special Terms and Conditions or otherwise previously communicated by the other party and will be deemed effective as indicated below:
- (a) if in writing and delivered in person or by courier, on the date it is delivered and, if a particular department or officer is specified as part of its address details, if addressed to that department or officer;
  - (b) if sent by facsimile transmission, on the date that transmission is received by the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender) and, if a particular department or officer is specified as part of its address details, if addressed to that department or officer;
  - (c) if sent by electronic messaging system, on the date that transmission is received by the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender) at the electronic address specified by the recipient and, if a particular department or officer is specified as part of its address details, if addressed to that department or officer; or
  - (d) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted and, if a particular department or officer is specified as part of its address details, if addressed to that department or officer.
- XVI.2** Either party, by giving not less than FIFTEEN (15) days' notice as per the provisions of this Section XVI to the other party, may from time to time change its address.

## **SECTION XVII - HEALTH, SAFETY AND ENVIRONMENTAL INFORMATION**

- XVII.1** Seller has provided or shall provide Buyer upon Buyer's request with copies of, or website links to, Material Safety Data Sheets ("MSDS") for the Oil to be delivered hereunder. Nothing herein shall excuse Buyer from complying with applicable law that may require Buyer to provide its employees, agents, contractors, users and customers who may come into contact with the Oil with a copy of the MSDS and any other safety information provided to it by Seller or that require Buyer to ensure that the recommendations relating to the handling of the Oil are followed. Compliance with any recommendation contained in the MSDS or other safety information shall not excuse Buyer from complying with all applicable law.

## **SECTION XVIII - APPLICABLE LAW AND ARBITRATION**

- XVIII.1** The Agreement (and Seller's offer) is made under, and shall be governed by, and be construed in all respects in accordance with, the laws of the State of New York, to the exclusion of any other legal system and excluding any conflicts of law rules that may direct the particular application of the laws of another jurisdiction.
- XVIII.2** The parties expressly agree that all disputes and claims arising out of or relating to the Agreement or the alleged breach thereof shall be settled by arbitration conducted in the

English language in the Borough of Manhattan, New York, in accordance with the commercial arbitration rules of the American Arbitration Association (“AAA”).

**XVIII.3** The arbitration panel shall be composed of THREE (3) arbitrators, TWO (2) of whom shall be nominated by the respective parties, and the remaining arbitrator, who shall be the chairman, to be appointed by the AAA in accordance with its commercial arbitration rules. All three arbitrators shall be lawyers with significant experience in the oil trading activity. Notice of appointment and the name and address of the arbitrators, except any arbitrator appointed by the AAA, shall be filed with the AAA. None of the arbitrators shall have been previously employed by either party or have any direct pecuniary interest in either party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by both parties.

**XVIII.4** Any arbitration award by the majority of the panel of three arbitrators may include costs, including reasonable attorney fees, and shall be final and binding upon the parties. Judgment upon any arbitration award rendered may be entered in any court of any country having jurisdiction. The arbitrators shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. Each party shall bear the compensation, costs and expenses of its own arbitrator and the parties shall split equally the compensation, costs and expenses of the third arbitrator. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this Section XVIII shall be governed by the Federal Arbitration Act. The parties agree that all information exchanged in connection with of any proceeding as described herein shall be deemed confidential.

**XVIII.5** With respect to all other matters relating to any arbitration hereunder (and with respect to any claim or controversy arising or relating to the Agreement or the breach thereof, in the event this Section XVIII is alleged to be invalid or unenforceable for any reason), the parties expressly submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York or, if such court declines to exercise or does not have jurisdiction, the Supreme Court of the State of New York, County of New York, and to the personal jurisdiction by any such court and to the service of process by registered mail.

Moreover, the parties hereto expressly agree that the application of the United Nations Convention on Contracts for the International Sale of Goods 1980 is hereby excluded pursuant to article 6 of the Convention.

**XVIII.6** Each party hereby warrants that it has entered into the Agreement in a commercial capacity and each party hereby warrants that it is, in all respects relevant to the Agreement, subject to civil and commercial law. Each party hereby irrevocably waives any immunity from suit, execution or attachment in respect of itself or its assets to the fullest extent permitted by law.

## **SECTION XIX - REPRESENTATIONS**

**XIX.1** Each party represents and warrants to the other party, as of the date of the Agreement and as of the date of each transaction under the Agreement, that:

- (a) It is: (i) an “eligible commercial entity” and an “eligible contract participant” as defined in Sections 1a(11) and 1a(12) of the Commodity Exchange Act, as amended; and (ii) a “forward contract merchant,” a “commodity broker” or a “financial

participant” and a “master netting agreement participant” each as defined under the Bankruptcy Code.

- (b) It has the corporate, governmental or other legal capacity, authority and power to execute, deliver and perform the Agreement, and each transaction under the Agreement, and has taken all necessary action to duly authorize the foregoing.
- (c) Its obligations pursuant to the Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors’ rights generally and subject, as to enforceability, to equitable principles of general application regardless of whether enforcement is sought in a proceeding in equity or at law).

**XIX.2** Seller represents and warrants to Buyer that, as of the date of delivery of Oil under the Agreement, it has marketable title to the Oil sold and delivered pursuant to the Agreement, free and clear of any liens or encumbrances, and that it has full right and authority to transfer such title and effect delivery of such Oil to Buyer.

## **SECTION XX - ANTI-CORRUPTION**

**XX.1** Buyer and Seller each warrant and undertake to the other that in connection with the Agreement and the performance thereof, they will each respectively comply with all applicable laws, regulations, rules and requirements of the United States or any other relevant jurisdiction relating to anti-bribery or anti-money laundering and that they shall each respectively take no action that would subject the other to fines or penalties under such laws, regulations, rules or requirements.

**XX.2** Buyer and Seller each represent, warrant and undertake to the other that they shall not, directly or indirectly: pay, offer, give or promise to pay or authorize the payment of, any monies or other things of value to: (i) a government official or an officer or employee of a government or any department, agency or instrumentality of any government; (ii) an officer or employee of a public international organization; (iii) any person acting in an official capacity for or on behalf of any government or department, agency or instrumentality of such government or of any public international organization; (iv) any political party or official thereof, or any candidate for political office; or (v) any other person, individual or entity at the suggestion, request or direction or for the benefit of any of the above-described persons and entities.

**XX.3** In particular, Seller represents and warrants to Buyer that it has not made any payments or given anything of value to officials, officers or employees of the government of the country in which the Oil originated or any agency, department or instrumentality of such government in connection with the Oil that is the subject of the Agreement that would be inconsistent with or contravene any of the above-referenced legislation.

**XX.4** Buyer or Seller may terminate the Agreement forthwith upon written notice to the other at any time, if in their reasonable judgment the other is in breach of any of the above representations, warranties or undertakings.

## **SECTION XXI - TAXES**

**XXI.1** Except as provided in Section VII, Buyer shall reimburse and indemnify Seller for all Taxes paid or incurred by Seller, together with all penalties and interest thereon, upon receipt of

Seller's invoice. If Buyer is entitled to any exemption, Buyer shall provide Seller with the appropriate evidence thereof as required or permitted by applicable law prior to the time of transfer of title to the Oil. Buyer's obligation to reimburse Seller includes any Taxes that Seller is assessed due to subsequent discovery of taxability or under audit by any taxing authority until expiration of the relevant statute of limitations.

- XXI.2** If applicable, each party shall provide to the other party a properly executed IRS Form W-9, W-8BEN or W-8ECI (or successor form), as appropriate, upon the execution of the Agreement and subsequently if the information in such form becomes materially inaccurate or such form expires or becomes obsolete. Each party further agrees to promptly deliver to the other party any other tax form or certificate reasonably requested by such other party.

## **SECTION XXII - GENERAL**

- XXII.1** Buyer undertakes to comply with all applicable laws and regulations insofar as these affect the implementation of the Agreement. However, neither Buyer nor Seller shall be required, as a result of the Agreement, to participate in, or co-operate with, any boycott, or to take any related action that would violate the provisions of any applicable law or result in penalties of any kind under such law.

Notwithstanding anything to the contrary herein, nothing in the Agreement is intended, and nothing herein should be interpreted or construed, to induce or require either party hereto to act in any manner (including failing to take any actions in connection with a transaction under the Agreement) that is inconsistent with, penalized or prohibited under any applicable law, including any U.S. laws, regulations or rules or requirements applicable to such party that relate to foreign trade controls, export controls, embargoes or international boycotts of any type.

- XXII.2** Buyer shall be responsible for obtaining all consents, authorizations, approvals and assurances of whatsoever nature to give effect to the provisions of the Agreement.

- XXII.3** **EXCEPT AS EXPRESSLY PROVIDED FOR IN THE AGREEMENT, NEITHER SELLER NOR BUYER SHALL IN ANY EVENT, INCLUDING BUT NOT LIMITED TO ANY NEGLIGENT ACT OR OMISSION ON ITS PART, BE LIABLE IN CONTRACT, TORT, BREACH OF STATUTORY DUTY OR OTHERWISE, IN RESPECT OF ANY CONSEQUENTIAL, INDIRECT OR SPECIAL LOSSES, EXPENSES OR DAMAGES OF ANY KIND, ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THE CONCLUSION, THE PERFORMANCE, THE FAILURE TO PERFORM OR THE TERMINATION OF THE AGREEMENT. IN ADDITION, SELLER SHALL IN NO CIRCUMSTANCES BE LIABLE FOR MORE THAN THE DIFFERENCE BETWEEN THE MARKET PRICE AND THE CONTRACT PRICE WITH RESPECT TO THE RELEVANT QUANTITY OF OIL, NOR 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 OF THE RECEIVER OF THE OIL, WHETHER OR NOT FORESEEABLE. EACH PARTY ACKNOWLEDGES THE DUTY TO MITIGATE DAMAGES.**

Without prejudice to the provisions of sub-section IX.4 above, any claim of Buyer shall be deemed to be waived and any liability of Seller shall be extinguished unless a claim accompanied with evidence fully supporting the claim is received by Seller within ONE (1) year after the date of the occurrence giving rise to the claim.

- XXII.4** Buyer agrees to indemnify, defend and hold Seller and its Affiliates harmless from liability for any and all demands or claims arising from injuries sustained or damages suffered following the passage of risk and property in the Oil as hereinabove provided, and that may arise in connection with the transportation, use or handling of any Oil or admixture thereof, whether delivery is made to Buyer, its assigns or nominees.
- XXII.5** For the avoidance of doubt, any repetition in the Special Terms and Conditions of any section or sub-section of these General Terms and Conditions 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 and Conditions.
- XXII.6** The Special Terms and Conditions and these General Terms and Conditions together form the entire agreement between the parties, and no additional terms, conditions, representations or warranties shall be incorporated into the Agreement in the absence of express written consent of each party. In the event of a conflict between the terms of the Special Terms and Conditions and these General Terms and Conditions, the Special Terms and Conditions shall prevail.
- XXII.7** Where not used to identify the provisions applicable to each type of delivery (e.g. CFR, CIF, etc.), the section headings are for convenience only and shall not be interpreted in any way to limit or change the subject matter of the Agreement.
- XXII.8** These General Terms and Conditions shall apply from the date of Seller's offer.
- XXII.9** Except as otherwise expressly stated, nothing expressed or implied in the Agreement is intended to create any rights, interests, obligations or benefits under the Agreement in any person other than Buyer, Seller and their successors and permitted assigns.
- XXII.10** Termination or expiration of the Agreement shall not affect any rights or obligations that may have accrued prior to termination, including any in respect of antecedent breaches. The obligations of each party that expressly survive termination are required to take effect on or give effect to termination or the consequences of termination or that by their very nature must survive termination, shall continue in full force and effect notwithstanding termination of the Agreement.
- XXII.11** Should any court of competent jurisdiction hold any terms or condition of the Agreement invalid or enforceable, the remaining terms and conditions shall remain in full force and effect.
- XXII.12** Unless provided otherwise, when a party's response is required hereunder within a specific time period following receipt of notice or documentation, as applicable, the day of receipt thereof by such party shall be considered day zero.
- XXII.13** Each party consents to the monitoring or recording, at any time and from time to time, by the other party of any and all communications between officers or employees of the parties, waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording.

**-o-o-o-O-o-o-o-**

**APPENDIX 1**

**Letter of Indemnity**

From: (Seller)  
To: (Consignee or Buyer of Shipment)

We refer to our contract dated ..... in respect of our sale to (Buyer) of a Shipment of ..... net U.S. barrels/metric tons of (grade) shipped on board the Vessel ..... at the port of ..... with bills of lading dated .....

To date we are unable to provide you with the requisite shipping documents in relation to the said sale, which consist of:

In consideration of your making payment of the full invoiced price of USD ..... for the Shipment at the due date for payment under the terms of the above contract without having been provided with the above documents, we hereby expressly warrant that at the time property passed under the above contract we had marketable title to such Shipment, free and clear of any lien or encumbrance, and that we had full right and authority to transfer such title to you, and that we are entitled to receive these documents from our supplier and transfer them to you.

We further agree to protect, indemnify and save you harmless from and against any and all damages, costs and expenses (including reasonable legal fees) that you may suffer or incur by reason of the original bills of lading and other documents remaining outstanding or breach of warranties given above including but without prejudice to the generality of the foregoing, any claims and demands that may be made by a holder or transferee of the original bills of lading, or by any third party claiming an interest in or lien on the Shipment or the proceeds thereof.

This Letter of Indemnity shall be governed by and be construed in all respects in accordance with the laws of the State of New York, to the exclusion of any other legal system and excluding any conflicts of law rules that may direct the particular application of the laws of another jurisdiction.

The parties expressly agree that all disputes and claims arising out of or relating hereto or the alleged breach hereof shall be settled by arbitration conducted in the English language in the City of New York, in accordance with the commercial arbitration rules of the American Arbitration Association (“AAA”) as per the terms of the above mentioned contract.

The validity of this Letter of Indemnity shall expire upon our presentation to you of the aforesaid shipping documents.

For and on behalf of (Seller)

Name  
Title  
Authorized signature

## APPENDIX 2

### Offshore Loaded Crude Oil

Where the Loading Terminal consists of offshore loading facilities and the Vessel is dedicated to transporting Oil from the Loading Terminal, the provisions of the General Terms and Conditions shall apply, subject to the additions and amendments set out below.

#### A - CHANGES TO DELIVERY SCHEDULE

Sub-section VII.1 shall be completed with the addition of a paragraph as follows:

“Notwithstanding any other provision of the Agreement, Seller shall be entitled at any time to amend or modify any previously notified Loading Date(s) or arrival dates of the Vessel at the Discharge Terminal, or delivery dates or quantity for the Shipment, whether or not such dates or quantity have already been agreed by the parties, to the extent such amendment or modification is the consequence of production changes, any change of Seller Supplier’s or Loading Terminal Operator’s delivery program, weather or any operational matters involving the Loading Terminal or the Vessel; Seller shall promptly notify Buyer of any such amendment or modification. Any changes in quantity, Loading Date(s) and/or arrival dates and/or delivery dates shall be deemed accepted by Buyer and shall replace any quantity, Loading Date(s) and/or arrival and/or delivery dates previously notified by Seller or agreed by the parties.”

#### B - PRIORITY OF VESSELS

Section VII shall be completed with the addition of a sub-section VII.6 as follows:

“**VII.6** Without prejudice to any other rights of Seller under the Agreement, if a situation arises whereby the Vessel is urgently required to return to the Loading Terminal:

- (a) Seller may, by written notice to Buyer, require that the Vessel is given priority to discharge at the Discharge Terminal ahead of other Vessels, irrespective of whether or not such Vessels have commenced discharging; upon receipt of Seller’s request, Buyer shall forthwith procure that the Vessel may proceed directly and without waiting to a berth provided by Buyer, pursuant to sub-section VII.2 above, and that the Vessel may connect hoses and commence discharging immediately upon arrival thereat;
- (b) Seller shall indemnify Buyer for any liability for additional port dues and demurrage incurred by Vessels that have given valid NORs to discharge prior to Seller’s Vessel, provided that: (i) Buyer’s claim for the same is accompanied with full supporting documentation, together with any other documentation that Seller may reasonably require; and (ii) such dues and demurrage are the direct result of priority being given to Seller’s Vessel by previously arrived Vessels; any liability for demurrage arising hereunder shall be limited to the same amount of time actually used by Seller’s Vessel to discharge the Shipment; and
- (c) if the time allowed to Buyer to discharge the Vessel pursuant to sub-section VIII.2 below has expired and a situation arises whereby the Vessel is urgently required to

return to the Loading Terminal then, irrespective of whether the Vessel has or has not completed discharge of the Shipment, Seller may at its sole discretion forthwith instruct the Vessel to stop discharging and leave the Discharge Terminal. If Seller exercises this right and the delivery in question is CFR or CIF, then Seller's invoice shall be adjusted in accordance with the discharged quantity as determined in accordance with the standard practice in use at the Discharge Terminal; in the event that the parties have mutually appointed an independent inspector to attend the discharge then Seller's invoice shall be adjusted in accordance with the discharged quantity reported by the independent inspector at the Discharge Terminal. If risk and/or property in the cargo loaded at the Loading Terminal have already passed to Buyer, risk and/or property in the Oil remaining on board the Vessel shall revert to Seller upon disconnection of discharge hoses."

### **C - DEMURRAGE RATE**

Sub-section VIII.6 shall be replaced by the wording set out below such that it reads as follows:

**"VIII.6** If the Shipment is not discharged within the allowed laytime provided for in the Agreement, Buyer shall pay to Seller demurrage in U.S. Dollars per running hour and pro rata for a part thereof for all time used in excess of the allowed laytime. The applicable demurrage rate shall be the daily hire rate specified in the contract of affreightment for the transportation of the Oil."