

DATED

2016

OPERATING AGREEMENT

- (1) THE MINISTER FOR INFRASTRUCTURE OF JERSEY**
- (2) LA COLLETTE TERMINAL LIMITED**

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BETWEEN

- (1) **THE MINISTER FOR INFRASTRUCTURE OF JERSEY** (the "**Minister**"); and
- (2) **LA COLLETTE TERMINAL LIMITED**, a company incorporated in Jersey under registered number 102353, whose registered office is situated at La Collette, St Helier, Jersey JE1 0FS (the "**Operator**");

each a "**Party**" and together the "**Parties**".

RECITALS:

- (A) The Minister hereby has the power to enter into this Agreement on the terms and conditions set out herein.
- (B) In recognition of the fact that the Parties have entered into the Lease, the Parties intend to enter into this Agreement to document the terms upon which the Site will be operated by the Operator.
- (C) For the avoidance of doubt, this Agreement does not actively seek to address price regulation. The Parties acknowledge that to the extent permitted by law now or in the future the proper guardians of such issues are (or will be) the Jersey Competition Regulatory Authority ("JCRA") and, where appropriate, the Assistant Chief Minister. The Parties further acknowledge that the JCRA's statutory powers maybe altered during the lifetime of this Agreement either by amendments to existing competition legislation or the introduction of new legislation. This may or may not result in a greater level of price regulation in specific sectors. Nothing in this Agreement should be interpreted as fettering or impairing such future legislation, or as conferring a legitimate expectation by either Party that such legislation may not occur.

1 Definitions and Interpretations

- 1.1 In this Agreement unless the context otherwise requires the following terms shall have the meanings given to them below:

Affected Party	shall have the meaning given to such term in clause 19.1 (Force Majeure);
Agreement	means this agreement as may be amended or restated from time to time in accordance with the terms set out herein;
CEDR	shall have the meaning given to such term in clause 30.4;
Change Analysis	shall have the meaning given to such term in annex 2, paragraph 3 (<i>Service Change Procedure</i>);

Change in Law	means the coming into effect after the Commencement Date of any statute, enactment, order, regulation or other similar instrument;
Change of Control	shall have the meaning given to such term in clause 12 (<i>Change of Control</i>);
Change Notice	shall have the meaning given to such term in annex 2, paragraph 1 (<i>Service Change Procedure</i>);
CICRA	means the Channel Islands Competition and Regulatory Authorities;
CICRA Decision	means the decision issued by CICRA on 19 September 2014 (document number: CICRA 14/51) in respect of the case M885/12F relating to the proposed acquisition by the Operator of the assets of Esso Petroleum Company Limited at La Collette fuel terminal;
Commencement Date	means the date of commencement of the Lease, i.e. the [•];
Confidential Information	shall have the meaning given to such term in clause 18.2;
Defaulting Party	shall have the meaning given to such term in clause 18.2;
Dispute Resolution Procedure	shall have the meaning given to such term in clause 30.2 (<i>Dispute Resolution</i>);
DPL	shall have the meaning given to such term in clause 15.1;
Duration	shall be the term of this Agreement as determined in accordance with the terms set out herein;
Emergency Event	means an exceptional event or set of circumstances which results in the temporary material disruption of Services such that it is not possible to maintain the supply of essential and critical items to Jersey;
Entrant(s)	means any person who provides the Services from time to time;
Final Deadline	

shall have the meaning given to such term in clause 8.2;

Financial Distress Event	shall have the meaning given to such term in clause 18.1 A) (<i>Termination</i>);
Fire Service	means the States of Jersey Fire and Rescue Service;
Fit and Proper Person	shall have the meaning given to such term in clause 12 (<i>Change of Control</i>);
FoI Requirements	means any freedom of information legislation or guidance applicable in Jersey from time to time, including (as at the Commencement Date) the States of Jersey's Code of Practice on Public Access to Official Information and the Freedom of Information (Jersey) Law 2011;
Force Majeure	means :- <ul style="list-style-type: none">i. war, civil war, or threat of or preparation for war or civil war, armed conflict or terrorism, political disturbance, rebellion, revolution, insurrection, invasion, sabotage, civil commotion or riot, criminal damage, government restraint or requisition or pre-emption of materials or services in connection with a public emergency or imposition of sanctions or embargo;ii. act of God, including but not limited to flood, drought, earthquake, storm, tempest, ash cloud or other disaster or extreme weather;iii. nuclear, chemical, biological, radioactive or ionizing explosion or contamination;iv. any viral outbreak, pandemic or epidemic (including but not limited to SARS or SARS-like events, any strain of influenza or Norwalk or similar type of virus or infection);v. fire, explosion or accident;vi. non-performance by suppliers or subcontractors that, in the case of the Operator, would be beyond the reasonable influence or control of a Prudent Operator;

- vii. any act, restriction, regulation, bylaw, refusal to grant any licence or permission, prohibition or other measure of any kind on the part of any government or regulatory authority;
- viii. any import or export regulation or embargo or quarantine restriction;
- ix. interruption or failure of utility service or other essential supply; or
- x. any other matter beyond the reasonable influence or control of a Party or beyond the reasonable influence or control of a Prudent Operator;

which is likely to cause a Party to be unable to comply with all or a material part of its obligations under this Agreement, except that where relevant if the event is caused by the negligence or default (by act or omission) of the Party claiming Force Majeure this shall not constitute Force Majeure;

Lease

the lease in respect of the Operator's occupation of the Site entered into between the Operator and The Public of the Island of Jersey on [], as the same may be amended, renewed or extended from time to time;

Mediation Notice

shall have the meaning given to such term in clause 30.4;

Minister

shall have the meaning given to such term in the introduction to this Agreement;

Operator

shall have the meaning given to such term in the introduction to this Agreement;

Party(ies)

shall have the meaning given to such term in the introduction to this Agreement;

Plant and Machinery

means all plant and machinery situated at the Site which is required by the Operator to provide the Services in accordance with this Agreement;

Prospective Entrant

means any person (including any body corporate or unincorporate) who wishes to provide any Services from time to time;

Provider	means the Operator and any Entrant from time to time;
Prudent Operator	means a prudent and competent operator of services similar to the Services, acting reasonably in good faith;
Prudent Operator Test	means a consideration of whether the Operator has acted as a Prudent Operator in any given situation;
Services	means the Services provided in accordance with the Service Requirements;
Service Change Procedure	means the procedure set out in clause 10 (<i>Service Change Procedure</i>);
Service Requirements	means the service requirements set out in annex 1, paragraph 2 (<i>Service Requirements</i>), as the same may be amended from time to time in accordance with this Agreement;
Site	the land and buildings situated at La Collette, St Helier, Jersey which are the subject of the Lease;
Specific Change in Law	means a Change in Law which has a material adverse effect on the ability of the Operator to provide the Services and which comes into effect after the Commencement Date, that relates specifically to the business of the Operator or the Services;
Termination Event	has the meaning given to such term in clause 18.1 (<i>Termination</i>);
Throughput Agreement	means a throughput agreement substantially in the form attached as annex 3, to be entered into between the Operator and each Throughputter (subject in each case to any variation permitted by schedule 3 of the CICRA Decision); and
Throughputter	means a third party wishing to throughput petroleum product(s) at the Site which, before entering into a Throughput Agreement, can satisfy the conditions outlined in schedule 2 of the CICRA Decision.

1.2 In this Agreement except where the context otherwise requires:

- 1.2.1 the terms and expressions set out in clause 1.1 shall have the meanings ascribed therein;
- 1.2.2 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.3 words importing the masculine include the feminine and the neuter;
- 1.2.4 reference to a clause or annex is to a clause or annex to this Agreement and is a reference to the whole of that clause or annex unless stated otherwise;
- 1.2.5 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 1.2.6 references to any person shall include natural persons and partnerships, firms and other incorporated bodies, government bodies and offices and all other persons of whatever kind and however constituted and their successors and permitted assignees or transferees;
- 1.2.7 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- 1.2.8 reference to a "subsidiary" or "holding company" shall be construed in accordance with Articles 2 and 2A of the Companies (Jersey) Law 1991;
- 1.2.9 headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
- 1.2.10 the annexes form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the annexes hereto.

2 Provision of Services

- 2.1 The Minister authorises the Operator, and the Operator agrees, to provide the Services for the Duration on the terms of this Agreement.
- 2.2 Notwithstanding anything to the contrary in this Agreement, neither Party shall be required to do anything that would put it in breach of any agreements to which it is a party as at the Commencement Date.

3 Statutory Obligations

Save as otherwise expressly provided, the obligations of the Minister under this Agreement are obligations of the Minister in his capacity as a contracting counterparty and nothing in the Agreement shall in any way fetter or constrain the Minister's statutory powers or be treated as restraining, fettering, constraining or prejudicing the Minister from acting in his

function as the Minister for Infrastructure or from exercising any statutory or regulatory function, right, power or obligation.

4 Duration

This Agreement shall take effect on the Commencement Date and shall, unless it is otherwise terminated in accordance with this Agreement, expire automatically upon termination or expiry of the Lease.

5 New Entrants

In the event that a Prospective Entrant wishes to provide the Services from time to time, the Minister agrees that it shall be a condition of granting any authorisation to such Potential Entrant to provide services similar to the Services that:

- 5.1 the Prospective Entrant shall be required to demonstrate that it is able and willing to commit to providing such services similar to Services on a long term basis in accordance with the Service Requirements; and
- 5.2 the Prospective Entrant shall be required to enter into an agreement in a substantially similar form to this Agreement,

provided that the foregoing requirements may be temporarily waived by the Minister where it is reasonably necessary for an Emergency Event.

6 Service Requirements

- 6.1 Subject to clauses 19 (*Force Majeure*) and 24 (*Industrial Action*), for the Duration of this Agreement, the Operator shall provide the Services in accordance with the Service Requirements, except that, during an Emergency Event, the Minister may suspend all or part of the Service Requirements for the duration of the Emergency Event. In particular, the Operator shall during the currency of this Agreement provide storage facilities which are appropriate to the minimum stockholding requirements, actively monitor stock levels and provide early and timely advance warning should stock levels be at risk of becoming critical.
- 6.2 Save as expressly provided herein, there shall be no change to the Service Requirements save pursuant to clauses 10 (*Service Change Procedure*) and 11 (*Specific Change of Law*).

7 Service Review

The Operator shall make itself available to meet with the Fire Service on a quarterly basis to review the Operator's compliance with:

- 7.1 any issued notices of the Fire Service; and
- 7.2 the provisions of clause 8 (*Capital Replacement and Maintenance*).

8 Capital Replacement and Maintenance

8.1 The Operator shall maintain, upkeep and, where necessary, repair or replace the Plant and Machinery in accordance with this clause 8.

8.2 The Operator, acting as a Prudent Operator, shall:

8.2.1 design and schedule a maintenance programme for the Plant and Machinery; and

8.2.2 invest sufficient capital in the Plant and Machinery

to ensure the sustained provision of the Services by the Operator on and subject to the terms of this Agreement, including the Service Requirements. The initial programme of works shall be as reasonably determined by the Fire Service and the Operator and shall be completed no later than 31 March 2017. In the event of such works not being completed by 30 June 2017 (the “**Final Deadline**”) and provided failure to comply with the Final Deadline is due solely to the Operator (excluding any actions or inactions on the part of any competent authority whose consent, supervision or approval may be required to carry out all or part of the initial programme of works), the Operator shall pay the Minister liquidated damages in the sum of £5,000.00 per day until such works are completed to the reasonable satisfaction of the Fire Service. For the avoidance of doubt, the Parties agree that the level of such liquidated damages is fair and reasonable and hereby waive any right to challenge these at a future date.

8.3 In the event of a breakdown or maintenance, the Operator, acting as a Prudent Operator, may use alternative Plant and Machinery as temporary backup subject to normal Minister approvals, including health and safety requirements and the Operator shall use its reasonable endeavours to ensure that any such Plant and Machinery are capable of complying with the Service Requirements so far as reasonably practicable.

9 Throughput Agreement

The Operator shall offer to enter into a Throughput Agreement with each Throughputter. Such Throughput Agreement shall permit each Throughputter to have recourse to binding arbitration and shall, with the consent of the Throughputter(s), be amended accordingly to fully reflect this clause 9. For the avoidance of doubt, any such arbitrator or arbitration panel may make a determination as to the appropriateness of any rate of return or future capital expenditure and may apply a substitute rate of return or future capital expenditure as the arbitrator or arbitration panel thinks fit.

10 Service Change Procedure

10.1 Either Party may, upon notice to the other Party, make changes to or under this Agreement which:

10.1.1 are permitted under the terms of this Agreement;

10.1.2 have no material impact upon the provision of the Services in accordance with this Agreement and have no material adverse effect on the Operator; or

10.1.3 are reasonably necessary from time to time in order to comply with:

- (a) a Change in Law (subject to the provisions of clause 11 (*Specific Change of Law*)); or
- (b) the Service Requirements.

10.2 Where any Party wishes to introduce a variation, other than pursuant to clauses 10.1 and 11, it must comply with the procedures set out in annex 2 (*Service Change Procedure*).

11 Specific Change of Law

11.1 If a Specific Change in Law occurs or will occur during the Duration, the Operator shall as soon as reasonably practicable after becoming aware of the same notify the Minister of the likely effects of that change on the provision of the Services, including whether any change is required to the Specific Requirements or any other terms of this Agreement as a result of such change.

11.2 As soon as practicable after any notification in accordance with clause 11.1, the Parties shall discuss the matters referred to in that clause and any ways in which the Operator can reasonably mitigate the effect of the Specific Change of Law.

11.3 Following consultation in accordance with clause 11.2, the Operator shall be entitled to implement any necessary change for a Specific Change of Law in accordance with clause 10.1.3 (*Service Change Procedure*).

12 Change of Control

12.1 For the purposes of this clause:

Change of Control

means, in relation to a body corporate, that a person (whether corporate or otherwise) becomes beneficially interested (directly or indirectly) in more than fifty per cent (50%) of the voting shares and securities of such body corporate or acquires the right (directly or indirectly) to appoint a majority of the members of the board of directors of such body corporate or otherwise to direct the management of such body corporate; and

Fit and Proper Person

means a fit and proper person (whether corporate or otherwise), which shall include:

- (a) a financial investor or investors which, either directly or through a professional fund manager, is or are regularly engaged in making investments in infrastructure; or

(b) an industrial sponsor or sponsors for whom fuel trade is a key focus of activity,

and shall include the beneficial owner or owners of any transferee that is a holding company.

12.2 This Agreement shall continue in force following a Change of Control of the Operator provided that the Operator will after such Change of Control be controlled by a Fit and Proper Person that has expressed an intention to continue to support the Operator's provision of the Services and its obligations under this Agreement for the Duration in all material respects.

13 Information

13.1 All financial information and performance information shall be subject to the provisions of clause 14 (*Confidentiality*).

13.2 Subject to clause 14, the Parties will share data and information as reasonably appropriate to aid the provision by the Operator of the Services.

14 Confidentiality

14.1 Neither Party shall use the other Party's Confidential Information for any purpose other than for a reason related to its obligations under this Agreement. Each Party shall treat all Confidential Information belonging to the other as confidential and safeguard it accordingly.

14.2 Neither Party shall disclose any Confidential Information to a third party except:

14.2.1 to its employees, officers, representatives or advisers for the purposes of carrying out that Party's obligations under this Agreement, and each Party shall ensure that its employees, officers, representatives and advisers shall not disclose or use such Confidential Information save in accordance with this clause;

14.2.2 in the case of the Operator, to its lenders and their advisers provided that such disclosure is made subject to a written undertaking on the part of the recipient (and its employees, officers and advisers) to keep such information confidential;

14.2.3 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority;

14.2.4 where such information is or becomes public knowledge (otherwise than by breach of this clause);

14.2.5 where such information was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

14.2.6 where such information is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

14.2.7 where such information is independently developed without access to Confidential Information; or

14.2.8 subject to clause 16, information which must be disclosed pursuant to a statutory or legal obligation placed upon the Party making the disclosure, including any requirements for disclosure under the Fol Requirements pursuant to clause 16 (*Freedom of Information*).

14.3 Nothing in this clause 14 shall prevent the Minister disclosing any Confidential Information for the purpose of:

14.3.1 the examination and certification of the States of Jersey's accounts; or

14.3.2 any examination pursuant to Article 36 of the Public Finances (Jersey) Law 2005,

provided that in making such disclosure the Minister discloses only the information which is strictly necessary for the purpose concerned, informs the Operator in writing prior to such disclosure and requires that the information is treated in confidence and that a written confidentiality undertaking is given by the recipient of such information in such form as the Operator may require.

14.4 The provisions of this clause shall apply during the continuance of this Agreement and for twelve (12) years after its expiry or termination.

15 Data Protection

15.1 The Operator shall (and shall procure that any of its employees involved in the provision of the Services under this Agreement) comply with any notification requirements under the Data Protection (Jersey) Law 2005 (the "**DPL**") and all Parties will duly observe all their obligations to the extent applicable under the DPL which arise in connection with this Agreement.

15.2 The provisions of this clause shall apply during the continuance of this Agreement and for twelve (12) years after its expiry or termination.

16 Freedom of Information

16.1 The Operator acknowledges that the Minister is or may become subject to the Fol Requirements.

16.2 The Minister shall liaise with the Operator to determine whether Confidential Information:

16.2.1 is exempt from disclosure; or

16.2.2 is required to be disclosed,

in accordance with the Fol Requirements.

16.3 Notwithstanding the foregoing and to the extent permissible by law, the Minister shall not disclose Confidential Information save with the prior consent of the Operator or following a final and binding direction to do so by any court of competent jurisdiction.

17 Publicity, Media and Official Enquiries

17.1 Neither Party shall make any press announcements or publicise this Agreement or any part thereof in any way, without consulting the other Party.

17.2 Each Party shall take all reasonable steps to ensure the observance of the provisions of clause 17.1 by all their servants, employees, officers, agents, professional advisers and consultants. The Operator shall take all reasonable steps to ensure the observance of the provisions of clause 17.1 by its sub-contractors.

17.3 The provisions of this clause shall apply, subject to clause 14 (*Confidentiality*), during the continuance of this Agreement and indefinitely after its expiry or termination.

18 Termination

18.1 Upon the occurrence of a Termination Event, this Agreement may be terminated by written notice by the Party not in default (or, in the case of clause 18.1A) or clause 18.1C) by written notice by either Party) in accordance with the process below.

"**Termination Event**" means:

A) a "**Financial Distress Event**" in relation to the Operator has occurred, this being where:

1. the Operator is put into liquidation or becomes bankrupt, has a winding up order made (except for genuine amalgamation or reconstruction), becomes unable to pay its debts as they fall due, is in material unremedied breach (having regard to the provisions of clause 18.2) of any of its banking covenants or thresholds, or takes any informal or voluntary step in relation to the above or with its creditors related to such state of affairs;
2. the Operator suffers any distress or execution levied upon a material part of the Operator's property or assets (tangible and intangible);
3. the Operator appoints a receiver, administrator or administrative receiver or manager over the whole or any part of its assets, seeks to compound, compounds or makes any arrangement with its creditors; or
4. the Operator suffers or initiates any analogous process to clauses 18.1) A1 to A3 above in any jurisdiction;

B) there is a Change of Control of the Operator not in accordance with clause 12.2 (*Change of Control*);

- C) the Operator ceases to have any licence or other regulatory approval necessary to enable it to continue to provide the Services in accordance with this Agreement;
 - D) either Party commits a "Material Breach", being where there has been a material breach (having regard to the provisions of clause 18.2) of any of the provisions of this Agreement (expressly including clause 9), or a series of persistent breaches which (having regard to the provisions of clause 18.2) amounts to a material breach;
 - E) a Force Majeure event which is particular to the Operator and would not reasonably be expected to affect another operator of services similar to the Services continues for more than twenty (20) weeks;
 - F) the Operator is found by a competent authority to have breached (including in respect of behaviour or events antecedent to this Agreement) Article 8(1) and/or Article 16(1) of the Competition (Jersey) Law 2005 and/or any condition attached by the JCRA (which has not been the subject of successful appeal).
- 18.2 Following the occurrence of a Termination Event listed in clause 18.1 C) or E), the Party not under a Termination Event will allow a reasonable period of time (which shall not exceed six months) for the Party under a Termination Event (the "**Defaulting Party**") to remediate having regard to the nature of such Termination Event and by reference to the Prudent Operator Test.
- 18.3 Where a Termination Event has not been remedied in accordance with clause 18.2, this Agreement may be terminated with immediate effect in accordance with clause 18.1 and the necessary steps shall be taken by The Public of the Island of Jersey to cancel the Lease.
- 18.4 Termination shall be without prejudice to the rights that have accrued to each Party prior to termination save that in the event of a Force Majeure event costs shall fall where they lie.
- 18.5 For the avoidance of doubt and subject to the terms of the Lease if this Agreement is terminated pursuant to clause 18.3, the Parties will employ reasonable endeavours to facilitate a smooth handover during any handover period of reasonable duration. The Operator undertakes to co-operate with any prospective operator and its agents.

19 Force Majeure

- 19.1 If a Party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure event (the "**Affected Party**"), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 19.2 The Affected Party shall:

- 19.2.1 as soon as reasonably practicable after the start of the Force Majeure event, notify the other Party of the Force Majeure event, the date on which it started, the likely or potential duration, and the effect of the Force Majeure event on its ability to perform any of its obligations under this Agreement; and
- 19.2.2 use all reasonable endeavours to mitigate the effect of the Force Majeure event on the performance of its obligations under this Agreement.

20 Liability

- 20.1 Neither Party excludes or limits liability to the other Party to the extent that such liability may not be so limited under any applicable law including as a result of fraud, fraudulent misrepresentation and death or personal injury caused by a Party's negligence or that of its employees, contractors, agents or other persons for whom that Party is responsible.
- 20.2 The provisions of this Agreement have been negotiated and agreed on the basis that the Parties may limit their liability to each other as set out in this Agreement and the Parties each confirm that they will themselves bear, or insure against, any loss for which the other Party has limited its liability under this Agreement.
- 20.3 Subject always to clause 20.1, each Party's liability under or in connection with this Agreement (whether arising in contract, tort, negligence, breach of statutory duty or otherwise) shall not exceed the sum of one year's rental in the aggregate.
- 20.4 Notwithstanding the other rights or remedies that either Party may have under this Agreement (including clause 18.1D)), the Parties acknowledge that damages alone may not be an adequate remedy for a breach of this Agreement and that either Party shall be entitled to apply for injunctive or other equitable relief for any actual or threatened breach of this Agreement.
- 20.5 Subject always to clause 20.1, in no event shall any Party be liable to the other for indirect or consequential loss or damage.

21 Insurance

- 21.1 The Operator shall effect and maintain with a reputable insurance company a policy of insurance which, as a minimum, complies with the requirements set out in annex 1, paragraph 2.2.
- 21.2 The Operator shall produce to the Minister, on request, copies of all insurance policies referred to in this clause 21 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 21.3 If, for whatever reason, the Operator fails to give effect to and maintain the insurances required by this Agreement, the Minister may make alternative arrangements to protect its interests and may recover the reasonable costs of such arrangements from the Operator.

21.4 The terms of any insurance or the amount of cover shall not relieve the Operator of any liabilities under this Agreement.

22 Assignment and Sub-Contracting

Neither Party shall assign, sub-contract or in any other way dispose of this Agreement or any part of it without the prior written approval of the other Party.

23 Remedies, waivers, and consents

23.1 A waiver of any right or remedy under this Agreement or by law, or any consent given under this Agreement, is only effective if given in writing by the waiving or consenting Party and shall not be deemed a waiver of any other obligation, breach or default. It only applies in the circumstances for which it is given and shall not prevent the Party giving it from subsequently relying on the relevant provision.

23.2 A failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this Agreement. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

23.3 The rights and remedies provided under this Agreement are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

24 Industrial Action

24.1 The Operator shall immediately inform the Minister of any actual or potential industrial action of which it becomes aware, whether such action be by its own employees or others, which affects or might reasonably be expected to affect its ability at any time to perform the Operator's obligations under this Agreement. In the event of industrial action either by employees of the Operator or by the employees of the Operator's suppliers or service providers, the Operator shall keep the Minister fully informed as to negotiations and developments to the extent it becomes aware of the same.

24.2 If the Operator is temporarily unable to fulfil the requirements of this Agreement owing to disruption of normal business caused by industrial action and provided (in the case of such action by employees of the Operator) the Operator has used all reasonable endeavours to investigate the effect of and resolve such industrial action (to a standard expected of a Prudent Operator), the Operator shall not be in breach of any part of this Agreement as a result of such disruption and the provisions of clause 19 (*Force Majeure*) shall apply.

24.3 In the event that the Minister deems industrial action as an Emergency Event, he may solicit other operator(s) to provide the Services on a temporary basis and until such time as the industrial action ceases to the extent (if any) that the Operator is unable to make alternative provisions.

25 Entire Agreement

Except for the Lease, this Agreement constitutes the entire agreement between the Parties relating to the subject matter of this Agreement. This Agreement supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

26 Scope of Agreement

Nothing in this Agreement shall be construed as creating a partnership or a contract of employment between either of the Parties.

27 Notices

27.1 Except as otherwise expressly provided within this Agreement, no notice or other communication from one Party to the other shall have any validity under this Agreement unless made in writing by or on behalf of the Party concerned.

27.2 Any notice or other communication which is to be given by one Party to the another shall be given by letter (sent by hand, post, registered post or by recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed in the manner referred to below. The notice or communication shall be deemed to have been given two (2) business days after the day on which the letter was posted, or four hours after transmission in the case of electronic mail or facsimile transmission, or sooner where the other Party acknowledges receipt of such letter, facsimile transmission or item of electronic mail.

27.3 For the purposes of clause 27.2, the address of each Party shall be:

27.3.1 For the Minister:

For the attention of: Minister for Infrastructure

Fax: [•]

Email: [•]

27.3.2 For the Operator:

La Collette Terminal Limited

La Collette

JE1 0FS St Helier

Jersey

For the attention of: Mr Hervé Chrétien,

Director

Fax: + 33 1 47 68 91 39

Email: h.chretien@rubisenergie.com

27.4 Either Party may change its address for service by serving a notice in accordance with this clause.

28 Third Party Rights

Except as expressly provided in this Agreement and subject to CICRA Decision, the rights of the Parties to rescind or agree any amendment or waiver of this Agreement are not subject to the consent of any other person and no other persons may enforce this Agreement.

29 Governing Law and Jurisdiction

29.1 The law of Jersey shall govern the validity construction and performance of this Agreement.

29.2 All disputes, claims or proceedings between the Parties relating to the validity construction or performance of this Agreement shall, subject to clause 30 (*Dispute Resolution*), be subject to the exclusive jurisdiction of the Royal Court of Jersey.

30 Dispute Resolution

30.1 During any dispute, including a dispute as to the validity of this Agreement, and during any period of negotiation and/or mediation, it is mutually agreed that the Operator shall continue its performance of the provisions of this Agreement (unless the Parties agree otherwise).

30.2 Any dispute that arises between the Parties under or in connection with this Agreement or the performance of the Parties' respective obligations under this Agreement shall first be dealt with in accordance with the alternative dispute resolution procedure set out in clauses 30.3 to 30.6 inclusive (the "**Dispute Resolution Procedure**").

30.3 The Dispute Resolution Procedure shall be conducted in strict confidence and without prejudice to the rights of the Parties in any future legal proceedings. Except for each Party's rights to seek interlocutory relief in the courts, neither Party may commence legal proceedings under the jurisdiction of the courts until twenty-one (21) days after the Parties have failed to reach a binding settlement by mediation (at which point the Dispute Resolution Procedure shall be deemed to be exhausted).

30.4 The mediation shall be conducted in accordance with the Centre for Effective Dispute Resolution ("**CEDR**") latest Model Mediation Procedure. To initiate mediation either Party may give notice in writing (a "**Mediation Notice**") to the other requesting mediation of the dispute and shall send a copy to CEDR or an equivalent mediation organisation as agreed by the Parties asking them to nominate a mediator. The Parties shall use all reasonable endeavours to ensure that the mediation commences within twenty-eight (28) days of the

Mediation Notice being served. The Parties will co-operate with any person appointed as mediator providing him with such information and other assistance as he shall require and will pay his costs, as he shall determine or in the absence of such determination such costs will be shared equally.

- 30.5 If with the assistance of a mediator, the Parties reach a settlement, such settlement shall be reduced to writing and, once signed by the duly authorised representatives of the Parties, shall remain binding on the Parties in the absence of manifest error.
- 30.6 The Parties shall bear their own legal costs of the Dispute Resolution Procedure unless agreed in the mediation to the contrary.

31 Counterparts

- 31.1 This Agreement may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one (1) and the same instrument.
- 31.2 No counterparts shall be effective until each Party has executed at least one (1) counterpart.

IN WITNESS WHEREOF the Parties have signed this Agreement the day and year first above written.

**For and on behalf of the Minister for)
Infrastructure of Jersey)
)**

**For and on behalf of La Collette)
Terminal Limited)
)**

Director

ANNEX 1 – SERVICES AND SERVICE REQUIREMENTS

1. Services

The provision of a facility in Jersey for the receipt, storage and loading of petroleum products (known as “throughputting”) for Throughputters.

2. Service Requirements

2.1 Subject always to clauses 19 (*Force Majeure*) and 24 (*Industrial Action*), the Operator shall use all reasonable endeavours to:

- (a) provide the Services to the standard of a Prudent Operator;
- (b) comply with all applicable CICRA, Fire Service and health and safety requirements, including the CICRA Decision; and
- (b) comply with all other applicable laws in force from time to time.

2.2 The Operator shall maintain as a minimum £30 (thirty) million level of cover in respect of those risks which a Prudent Operator would in the usual course seek to insure against in connection with its provision of the Services, including but not limited to environmental risks that would reasonably be associated with the provision of the Services. Such a policy shall be maintained for a minimum of ten (10) years following the expiration or earlier termination of this Agreement.

3. Changes to Service Requirements

Any changes to the Service Requirements shall be made via the Service Change Procedure and such changes shall be deemed incorporated into the Service Requirements and shall apply to all Providers.

ANNEX 2 – SERVICE CHANGE PROCEDURE

- 1 Subject to clauses 10.1 and 11 of this Agreement, if either Party requires a variation to the terms of this Agreement or, save as otherwise set out in this Agreement, the provision of the Services pursuant to this Agreement (including the Service Requirements), it shall serve a written notice (a "**Change Notice**") on the other Party in accordance with clause 27 and the provisions of this annex 2.
- 2 The Change Notice shall:
 - 2.1 set out the proposed variation required in sufficient detail to enable the other Party to evaluate the proposed variation, and its implications;
 - 2.2 specify the reasons for the proposed variation; and
 - 2.3 specify any applicable time constraints or deadlines relating to the proposed variation.
- 3 Within a reasonable period of time following service of a Change Notice, the Operator shall set out a detailed analysis of the proposed variation (a "**Change Analysis**"), to contain:
 - 3.1 the anticipated impact of the proposed variation on the provision of the Services by the Operator;
 - 3.2 any impact of the proposed variation on the States of Jersey of which the Operator is actually aware as at the date of the Change Analysis;
 - 3.3 any other amendments required to this Agreement as a result of such proposed variation; and
 - 3.4 a proposed timetable for implementing the proposed variation.
- 4 As soon as practicable after delivery of a Change Analysis the Parties shall meet to consider the proposed variation. Neither Party shall unreasonably refuse or delay consent to a Change Notice where:
 - 4.1 the change requested is upon reasonable grounds and the Operator, the States of Jersey and Jersey customers are left in a no better no worse position on balance; or
 - 4.2 it is to meet a legal requirement or is to meet reasonable health and safety concerns.
- 5 The Parties shall not act unreasonably in the number or magnitude of Change Notices requested in any calendar year.
- 6 The Parties may agree a proposed variation in the form set out in a Change Notice or with such modifications (if any) as the Parties may agree.
- 7 If the Parties cannot agree on a proposed variation then the Party issuing the relevant Change Notice may either:

7.1 withdraw the Change Notice; or

7.2 refer the matter to be determined in accordance with clause 30 (*Dispute Resolution*).

8 The Parties shall as soon as reasonably practicable after joint approval of any proposed variation (or mediated determination in favour of the proposed variation in accordance with paragraph 7.2 above) execute all such documents and do all such things as may be necessary to amend the provisions of this Agreement and otherwise give effect to such proposed variation.

THROUGHPUT AGREEMENT

(1) LA COLLETTE TERMINAL LIMITED

and

(2) [•]

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THIS AGREEMENT is made on _____

BETWEEN:

- (1) **LA COLLETTE TERMINAL LIMITED**, a company incorporated in Jersey under number 102353, having its registered office situated at La Collette, St Helier JE1 0FS, Jersey (the "**Provider**"); and
- (2) [•], a company incorporated in [•] under number [•], having its registered office situated at [•] (the "**Customer**").

RECITALS

- (A) The Provider owns and operates fuel storage facilities in a terminal situated at La Collette, St Helier JE1 0FS, Jersey (the "**Terminal**") for the receipt, storage and delivery of petroleum fuels.
- (B) The Customer wishes to utilise the Services (as this term is defined below) of the Provider at the Terminal.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following words and expressions shall have the following meanings, unless the context otherwise requires:

"**Additivation Fee**" has the meaning ascribed to it in paragraph 6 of Schedule 1;

"**Affiliate**" means with respect to any specified person, any other person that controls, is controlled by or is under common control with such person (it being understood that a person will be deemed to "control" another person, for purposes of this definition, if such person directly or indirectly has the power to direct or cause the direction of the management and policies of such other person, whether through the ownership of voting securities of such other person, through contract or otherwise);

"**Agreement**" means this throughput agreement;

"**Business Day**" means a day (other than a Saturday, Sunday or public holiday) when commercial banks are open in London, United Kingdom, and in Jersey, Channel Islands;

"**Confidential Information**" has the meaning ascribed to it in clause 27.3;

"**Court**" has the meaning ascribed to it in clause 37.2 b) (ii);

"**Customers of the Terminal**" means all persons provided with Services at the Terminal;

"**Discharge Fee**" has the meaning ascribed to it in paragraph 2 of Schedule 1;

"**ETA**" means estimated time of arrival in respect of a vessel;

"**Force Majeure**" has the meaning ascribed to it in clause 21.1;

“**ICC**” has the meaning ascribed to it in clause 37.2 b);

“**Marking Fee**” has the meaning ascribed to it in paragraph 7.2 of Schedule 1;

“**Normal Working Hours**” means the normal working hours at the Terminal, i.e. between 8:00 a.m. and 5:00 p.m. from Monday to Thursday and between 8:00 a.m. and 4:00 p.m. on Friday, as may be amended from time to time by the Provider;

“**Parties**” means, together, the Provider and the Customer, and each of them is referred to, individually, as a “**Party**”;

“**Product Quality Waiver**” has the meaning ascribed to it in clause 6.4;

“**Product(s)**” means the petroleum product(s), the list of which is set out in paragraph 4 of Schedule 1 and may be amended from time to time by the Parties;

“**Rack**” means the road vehicle gantry dedicated to the loading of trucks at the Terminal;

“**Related Products**” means the additives used in conjunction with the Products, the list of which is set out in paragraph 5 of Schedule 1 and may be amended from time to time by the Parties;

“**Services**” has the meaning ascribed to it in clause 2.1;

“**Storage Losses / Gains**” means the difference between the physical opening stock plus receipts, less issues, and the physical closing stock at the end of a calendar month, measured at fifteen degrees Celsius (15°C);

“**Terminal**” has the meaning ascribed to it in the recitals to this Agreement;

“**Terminal Operations Manual**” means the manual relating to the procedures and instructions for all operational procedures at the Terminal;

“**Third Party Dispute**” has the meaning ascribed to it in clause 37.2 b) (vii);

“**Throughput Fee**” has the meaning ascribed to it in paragraph 1 of Schedule 1.

1.2 Interpretation

In this Agreement unless otherwise specified, reference to:

- (a) “**includes**” and “**including**” shall mean including without limitation;
- (b) a person includes any person, individual, company, firm, corporation, government, state or agency of a state or any undertaking or organisation (whether or not having separate legal personality and irrespective of the jurisdiction in or under the law of which it was incorporated or exists);
- (c) a statute or statutory instrument or accounting standard or any of their provisions is to be construed as a reference to that statute or statutory instrument or accounting standard or such provision as the same may have been before the date of this Agreement amended or re-enacted;

- (d) recitals, clauses, paragraphs or Schedules are to recitals, clauses and paragraphs of and schedules to this Agreement. The Schedules form part of the operative provisions of this Agreement and references to this Agreement shall, unless the context otherwise requires, include references to the recitals and the Schedules; and
- (e) words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders.

1.3 The index to and the headings in this Agreement are for information only and are to be ignored in construing the same.

2. SERVICES

2.1 The Provider will provide the Customer with, and the Customer will pay for, the following services (the “**Services**”) throughout the duration of this Agreement in accordance with the terms of this Agreement:

- (a) the receipt of the Customer’s Products by ship at the Terminal;
- (b) the provision of tank space for the Customer’s Products;
- (c) the receipt and storage of the Related Products delivered by road by the Customer at the Terminal;
- (d) the provision of the Customer’s Products at the Rack for loading in trucks by the Customer’s employees, contractors, sub-contractors and/or agents;
- (e) the management of the stock replenishment programme in accordance with clause 13; and
- (f) the provision of such other ancillary services as set out in this Agreement (or as may otherwise be agreed in writing by the Parties from time to time).

2.2 The Provider shall treat all the Customers of the Terminal on an equitable basis.

3. TERM

3.1 The obligations under this Agreement shall commence on [the date hereof **OR** [•]] and shall continue until [•], subject to the prior termination of this Agreement by either Party in accordance with the terms of clauses 6.2, 18 or 21.2 of this Agreement.

3.2 Any further extension of the term of this Agreement shall be on terms and conditions to be agreed in writing by the Parties.

4. CHARGES AND PAYMENTS

4.1 The Customer shall deliver the Products and the Related Products to the Terminal and shall pay the fees and charges for the Services (as applicable) to the Provider in accordance with the provisions set out in Schedule 1 (Charges and Payment).

4.2 The Parties agree that the Services shall be provided by the Provider to the Customer during Normal Working Hours. Any Services provided by the Provider to the Customer outside Normal Working Hours (except ship discharge) shall be subject to prior agreement from the

Provider, such agreement not to be unreasonably withheld, and shall be charged in accordance with the provisions of Schedule 1 (Charges and Payment).

- 4.3 If the laws, rules and/or regulations of any governmental or other regulatory body and/or the Provider's safety standards require that the Provider should alter and/or make additions to its physical assets and/or operational methods and/or effect changes to prevent, reduce, control or monitor emissions into the environment of any nature in relation to the storage or handling of the Products and/or the Related Products under this Agreement, the Provider shall have the right to recoup from the Customer via an increased Throughput Fee all reasonable costs incurred in complying with these requirements.
- 4.4 The Customer may request that the Provider equips the Terminal with any additional, different or special equipment dedicated to its own usage. The Provider's consent in relation to the installation of such equipment at the Terminal shall then be required and the corresponding investment shall be subject to specific agreement between the Parties.

5. STORAGE FACILITIES

- 5.1 The Provider has a global storage capacity of seventeen thousand two hundred cubic meters (17,200 m³) at the Terminal. This storage capacity must be shared between the various Customers of the Terminal and no guarantee of allocated capacities may be given to the Customer. The Customer's Products will be stored with products of other Customers of the Terminal.
- 5.2 The Provider reserves the right at any time and for any reason to remove the Products from any tank to any other tank or tanks at the Terminal. The Provider shall also retain the right, at any time and for any reason, to change the total storage capacity and/or the general tank allocation, providing that the reallocation does not unreasonably prejudice the Customer's operations. Unless such removals are carried out at the Customer's request or under any other terms of this Agreement, they shall be at the Provider's cost.
- 5.3 Unless otherwise specifically agreed in writing between the Parties, the Provider shall provide at the Terminal storage tanks and pipelines with normal pumps, valves and accessories as required in general for the storage of petroleum products, and the Customer agrees that these facilities as available at the Terminal on the date of this Agreement, are suitable for the storage of its Products and Related Products.

6. PRODUCT QUALITY

- 6.1 The Customer warrants that the Products delivered by the Customer to the Terminal shall at all times comply with legal requirements and with the Product specifications agreed between the Parties as set out in Schedule 3.

Product delivered by the Customer to the Terminal shall be free from water and other impurities in an amount in excess of those typical for such product. Products shall be a homogeneous blend of components from petroleum processing. Small amounts of additives (less than or equal to zero point five percent (0.5%)) may be present to improve Product performance.

- 6.2 The Provider shall be responsible for ensuring that Product re-delivered to the Customer at the Rack meets legal requirements and the Product specifications agreed between the Parties as specified in Schedule 3.

Product re-delivered to the Customer at the Terminal shall be free from water and other impurities in an amount in excess of those typical for such product. Product shall be a homogeneous blend of components from petroleum processing. Small amounts of additives (less than or equal to zero point five percent (0.5%) may be present to improve Product performance.

When the Product(s) at point of re-delivery does/do not meet the Product specifications including agreed additive injection rate(s), the Provider shall notify the Customer as soon as possible and the Customer may then decide to suspend liftings until the Provider confirms that Product(s) is/are meeting the specification.

A Party may propose to the other to modify one or more Product specifications (including conversion to ethanol based grades). Such modification(s) can only be introduced by mutual consent, which shall not be unreasonably withheld. In such case, the requesting Party shall give to the other Party at least three (3) months' notice prior to the planned change, such notice to be made in accordance with clause 29. If after a reasonable consideration no agreement can be reached on specification modifications, either Party may terminate this Agreement with two (2) months' notice, such notice to be made in accordance with clause 29.

The Provider shall report Product Quality Assurance (PQA) inspection results to the Customer on request.

- 6.3 Products which do not meet the specifications set out in Schedule 3 shall not be delivered to the Terminal receipt points by or at the request of the Customer without the prior written agreement of the Provider.
- 6.4 In the event that the Customer wishes to deliver Product which does not fully meet the Product specifications set out in Schedule 3, then the Customer shall request a "Product Quality Waiver". Any request for a Product Quality Waiver shall be made in writing (by telex, facsimile or e-mail). The approval of the Product Quality Waiver by the Provider shall be confirmed in writing before the Product can be delivered at the Terminal.

The request shall specify:

- (a) the specific Product for which the Product Quality Waiver is requested;
- (b) the characteristics of the Product which varies from the parameters given in the Product specifications set out in Schedule 3;
- (c) the date range over which the Product Quality Waiver is required; and
- (d) the quantity to be delivered (where appropriate).

In that case, all costs incurred by the Provider in respect of the Product(s) covered by the Product Quality Waiver shall be automatically charged to the Customer.

- 6.5 In case of doubt regarding the quality of the Product(s) delivered by the Customer (based on the results of tests/analysis and/or the procedures/methods used to conduct these tests/analysis), the Provider shall designate an internationally recognised independent

expert who shall issue a report about the quality of the delivered Product(s). The conclusion of the report issued by the expert shall be final and binding on the Parties.

In case of doubt regarding the quality of the Product(s) re-delivered by the Provider (based on the results of tests/analysis and/or the procedures/methods used to conduct these tests/analysis), the Customer shall designate an internationally recognised independent expert who shall issue a report about the quality of the re-delivered Product(s). The conclusion of the report issued by the expert shall be final and binding on the Parties.

On reasonable notice, each Party shall have the right to take samples at the Terminal and test Product(s) at any time at its own expense.

Sampling and testing shall be in accordance with the latest approved methods as published in the Institute of Petroleum Standard Methods. In the event of any claimed defects in quality of the Product, either Party may cause the portion of the sample retained at the Terminal to be retested by an inspector agreed upon by the Customer and the Provider. If the result of the test of the retained sample differs from the Terminal's test result by an amount:

- less than the reproducibility per the applicable standards, the original test result shall stand;
- more than the reproducibility per the applicable standards, the sample will be retested by a second jointly appointed inspector in order to determine which of the two previous results is confirmed by this test.

In the event of dispute between the Parties relating to conflicting data from multiple laboratory analysis of product quality, the protocol outlined in ISO4259 shall be applied to resolve the differences between the Provider's quality test results and the Customer's quality determination, unless otherwise agreed between the Parties.

7. DAMAGE TO PROVIDER'S FACILITIES

- 7.1 The Customer warrants that any Product which it delivers and/or arranges to be delivered to the Provider shall comply with the requirements set out in clause 6.1 and shall not contain any substances and/or be in such a state which may cause loss of or damage to other Products or to the Provider's storage facilities or to any person when stored in normal conditions.
- 7.2 The Customer warrants that any Related Product which it delivers and/or arranges to be delivered to the Provider shall correspond to the description provided to the Provider prior to delivery at the Terminal and shall not contain any component which infringes any applicable laws and/or regulations and/or any Provider's standards, as released by the Provider from time to time, which shall *inter alia* insure that Related Products do not contain any substances and/or be in such a state which may cause loss of or damage to other Products or to the Provider's storage facilities or to any person when stored in normal conditions.
- 7.3 Should the Customer cause any tank, pipe, pump, valve or other facility, equipment or machinery at the Terminal to suffer any damage or become encrusted or contaminated by

the Product(s) and/or the Related Products whilst the Product(s) and/or the Related Products are being delivered into store, stored or being redelivered (other than due to the negligence or wilful misconduct of the Provider) the Customer shall be liable for the reasonable expenses incurred in respect of any repair or cleaning as may be required in order to restore such tank, pipe, valve, pump or other facility, equipment or machinery to its former condition. Prior to the payment of any reasonable repair and cleaning expenses incurred, the Provider shall allow the Customer to conduct its own investigation into the cause of the alleged damage, encrustation, or contamination and shall provide the Customer with supporting documentation, Product samples, and any other information needed for the Customer to conduct its investigation.

8. PRODUCT INFORMATION AND DOCUMENTATION

- 8.1 The Customer agrees to provide in its name, pay for and supply the Provider with all information, documentation, data and any other material that may be required by any official, government and/or regulatory authority relating to the description, receipt, handling, storage, disposal and delivery of any of the Customer's Products, Related Products or waste to or from the Terminal together with written instructions as to the use and composition of the Products and/or the Related Products.
- 8.2 The Customer agrees that the Provider may report to any governmental and/or regulatory authority as required by law with regard to the Products, Related Products and waste and activities and the Customer agrees to provide such information to the Provider as necessary to comply with such legal requirements.
- 8.3 The Provider is also entitled to provide part of or the whole of the information referred to in clause 8.1 to its employees, contractors, sub-contractors and/or agents handling or exposed to the Products and/or the Related Products. The Customer therefore agrees to provide the relevant information to the Provider prior to the Products and/or the Related Products entering the Terminal so that the Provider may comply with such obligations.

9. REMOVAL OF PRODUCTS AND/OR RELATED PRODUCTS

- 9.1 Notwithstanding any agreement to the contrary, the Provider reserves the right to refuse to accept or store or continue to store the Products and/or the Related Products or any part thereof if, in the opinion of the Provider, the condition of the Products and/or the Related Products gives reasonable ground for apprehension of loss or damage to other Products, Related Products or to the Provider's storage facilities or to any person or property or the likelihood of economic loss. In such an event and if the Products and/or the Related Products are already in store the Provider shall be entitled to give notice to the Customer to remove the Products and/or the Related Products in question. If the Customer fails to remove such Products and/or Related Products as soon as reasonably practicable after receiving such a notice (and in any event no later than fourteen (14) days from the date of receipt by the Customer of the Provider's notification of removal), the Provider shall be entitled to dispose of the same in a reasonable manner and upon reasonable terms as it shall in its absolute discretion think fit.
- 9.2 The Provider may defray any reasonable charges and expenses incurred to which it is entitled under this Agreement (including the cost of cleaning tanks) out of the proceeds of sale of the Products and/or the Related Products, provided that in exercising this power of sale the Provider shall generally endeavour to mitigate its damages, which shall include seeking what the Provider regards as the best price reasonably obtainable for the Products

and/or the Related Products. Any charges or expenses not so defrayed out of the proceeds of sale of the Products and/or the Related Products shall be paid by the Customer. Any surplus on such sale of the Products and/or the Related Products after payment of all charges and expenses of the Provider shall be applied in satisfaction or reduction of the indebtedness of the Customer to the Provider. Any balance remaining thereafter shall be paid to the Customer without delay but shall not generate interest.

10. DUES, TOLLS, TAXES AND REGULATIONS

- 10.1 This Agreement is subject to the conditions of the relevant port authority and any dues or tolls levied are the responsibility of the Customer. Likewise any tariffs or duties levied by any tax authorities are the responsibility of the Customer.
- 10.2 The Customer shall be responsible for and shall indemnify the Provider against all taxes, assessments, duties or other charges or impositions whatsoever at any time levied against or in connection with the Products and/or the Related Products or any part or parts thereof.
- 10.3 The Customer shall indemnify and hold the Provider, its agents, contractors, sub-contractors, employees, officers and directors indemnified from and against any fines, losses, damages or expenses, including without limitation reasonable legal fees, resulting from violation of any official government and/or regulatory authority's regulations, except when caused by the Provider's wilful misconduct or negligence in the handling and storage of the Products and/or the Related Products.

11. INSURANCE

- 11.1 The Customer shall effect and maintain throughout the duration of this Agreement adequate insurance for its obligations under this Agreement. The Provider agrees that the Customer may self insure such obligations.
- 11.2 The Provider shall effect and maintain throughout the duration of this Agreement adequate insurance for its operations at the Terminal including without limitation employer's liability insurance and public liability insurance, and for the obligations it has under this Agreement.
- 11.3 The Provider shall also effect and maintain throughout the duration of this Agreement adequate insurance in respect of the Products and the Related Products against risks of fire, explosion, theft and moulding. Such insurance shall be in an amount not exceeding the market value of the Customer's Products and/or Related Products stored at the Terminal.
- 11.4 The cost borne by the Provider in respect of such insurance and the insurance contemplated in clause 11.2 shall be included in the calculation of the Throughput Fee as set out in Schedule 1 to this Agreement.

12. STOCK MANAGEMENT

12.1 Reconciliations

All reconciliations of volumes made in accordance with the provisions of this clause 12.1 shall be calculated in standard litres at fifteen degrees Celsius (15°C). Calculation of quantities from measured litres shall use the calculation procedures specified for each Product in the American Petroleum Institute (API) standards (API-ASTM 54B table).

Any measured volumes shall be converted to standard litres taking temperature and density differences into account in accordance with the Terminal Operations Manual.

With respect to Related Products, all reconciliations will be made in litres at ambient temperature.

12.2 Measurement of Products delivered into the Terminal

The provisions detailed below shall have effect with regard to the measurement of Products when delivered by the Customer at the Terminal.

Product delivered by the Customer at the Terminal shall be measured by the Provider by shore tank dips and calibration tables, tank dip temperatures and tank content's density corrected to fifteen degrees Celsius (15°C) before and after discharge of the vessel. The Provider shall have the right to measure Products by meter.

The dip calibration tables and meter calibration certificates (if any) shall be made available to the Customer.

The quantity determined by the Provider in accordance with the Terminal Operations Manual shall be final and binding on the Customer, save in case of fraud or manifest error.

12.3 Measurement of Products drawn from the Terminal

The provisions below shall have effect with regard to the measurement of Products when loaded from the Terminal into the Customer's trucks.

Product loaded from the Terminal shall be measured by electronic and mechanical positive displacement meters at the road loading Rack.

12.4 Measuring instruments

Measuring instruments used for the purposes of this Agreement shall be calibrated periodically and, in any event, every six (6) months by a certified contractor approved by the competent local authorities. The calibration has to be conducted according to the Institute of Petroleum standards and local legal requirements, if they are more stringent and/or in contradiction. Calibration certificates shall be kept by the Provider and copies shall be provided to the Customer upon request.

12.5 Attendance of an independent inspector or representative

Unless otherwise provided for under this Agreement, the Customer shall be entitled to have a representative present at the point at which the Products are measured. The representative may be an independent inspector or an employee of the Customer requesting the inspection. The cost of the representative shall be borne by the Customer requesting the inspection.

The Customer shall have the right of access (during any Business Day on giving reasonable notice) to the relevant records relating to the measurement of Products throughput under this Agreement for the purpose of verifying compliance with the applicable laws and standards.

13. STOCK REPLENISHMENT PROGRAMME

13.1 The Provider shall define the stock replenishment programme and shall use reasonable endeavours to ensure that:

- (a) the Customer does not run out of Products;
- (b) dead freight and demurrage costs incurred by the Customer are minimised;
- (c) the Customer is able to deliver Products rateably at the Terminal unless it has been agreed between the Parties that positive and negative stockholding is acceptable to them.

13.2 To determine the stock replenishment programme and to be able to manage the Terminal, the Customer will send by facsimile or e-mail to the Provider's operational contact person as designated in Schedule 2 to this Agreement the following information:

- (a) by 31st October of each year (year N), the projected draws for year N+1 split per grade and per month;
- (b) by the 8th day of each month (month N), the projected draws (+/- five percent (5%)) for months N+1 and N+2 per grade; and
- (c) by Thursday 12:00 a.m. of each week (week N), the planning (days, timing, quantities, grades, trucks) of draws for week N+1.

13.3 The Provider shall send (by facsimile or e-mail) to the Customer by the 18th day of each month the stock replenishment programme for the following month. This programme will define:

- (a) a three (3) days laycan to deliver the Products; and
- (b) a tonnage per grade.

The Provider will take into account the Customer's volumes to determine the tonnage to be imported per grade to make sure the tanks turnaround ratios remain reasonable and the Customer's imports do not affect the other Customers of the Terminal. The Customer shall be responsible for finding adequate vessels to import Products according to the programme.

13.4 The Customer or its agents shall provide an ETA for every vessel required to discharge Products to the Provider at least seventy two (72) hours prior to the ETA at the berth or jetty and shall subsequently provide the Provider with confirmation of the arrival of the vessel between forty eight (48) hours and twenty four (24) hours of the vessel's scheduled arrival at the berth or jetty.

13.5 The Provider shall in ordinary circumstances discharge the vessels in the order of arrival at the berth or jetty. The Provider shall nevertheless be entitled to depart from such order for the purpose of complying with the regulations or directions of the customs, harbour or other authorities or for ensuring the safety or smooth or economic working of the Provider's operations or for any other reasonable purpose.

13.6 In making deliveries by sea to the Terminal, the Customer shall ensure that its employees, contractors, sub-contractors and agents comply with all laws, regulations and practices

applicable at the Terminal. The Customer shall also ensure that any vessel reaching the berth or jetty of the Terminal on its behalf complies with statutory safety standards and the Provider's own standards applicable to the operations of the Terminal as set out in the Terminal Operations Manual. The Provider may at any time inspect and refuse to discharge any vessel which does not comply with such laws, regulations, practices and/or standards.

- 13.7 The Provider accepts no responsibility whatsoever for any consequential loss arising from any delay whether the same shall result from the negligence of the Provider, its employees, agents, contractors, sub-contractors and/or nominees or otherwise howsoever.
- 13.8 As part of the stock replenishment programme and for operational reasons, the Provider may request from time to time the Customer's consent and/or the consent of any other Customers of the Terminal to downgrade, exchange, sell and/or lend some of its Products and/or Related Products. Any such operational stock replenishment optimisation shall be subject to the prior written consent of the Customer or the prior written consent of the Customer(s) of the Terminal, as the case may be.

14. STOCK ACCOUNTING

- 14.1 The Provider is responsible for maintaining all legally required records and documents relating to the storage of the Customer's Products and shall keep those documents reasonably required by the Customer.
- 14.2 For reconciliation purposes, information on Products delivered to the Customer as specified in paragraph 2.1 of Schedule 2 to this Agreement shall be communicated on a daily basis by facsimile or e-mail by the Provider to the Customer's operational contact person as designated in Schedule 2 to this Agreement .
- 14.3 As soon as practicable after the end of each month and in any event by the second Business Day after the end of that month, the Provider shall provide by facsimile or e-mail to the Customer's operational contact person as designated in Schedule 2 to this Agreement the details of the Customer's stock broken down by Product as further set out in clause 14.4. The Provider shall also provide to the Customer details of the Customer's stock of Related Products.
- 14.4 The details required for each Product in clause 14.3 shall be set out as follows:
- (i) opening stock
 - plus
 - quantity supplied by the Customer during the relevant period
 - minus
 - (ii) quantity outloaded by the Customer during the relevant period
 - plus or minus as the case may be
 - (iii) the Storage Losses / Gains allocated to the Customer for the relevant period.

The excess or shortage in quantity (in litres at fifteen degrees Celsius (15°C)) ("**Storage Gains / Losses**") occurring for each of the Products during any one (1) month period

referred to in clause 14.3 above shall be calculated by the Provider on a cumulative basis and the Customer's share of any excess or shortage in quantity registered at the end of any such one (1) month period shall be reflected in the book stocks accordingly. The Customer's share of the excess or shortage in quantity shall be equal to the quantity of Product loaded by the Customer at the Rack divided by the quantity of Product loaded by all the Customers of the Terminal during the relevant one (1) month period. The book stock shall be amended accordingly. The Provider shall provide to the Customer the Storage Losses / Gains per grade (in absolute figure and in percentage of the total volume throughput) on a monthly basis. The Provider shall be liable for Storage Losses exceeding in aggregate for all the Products combined in one (1) calendar year an operational level of zero point four percent (0.4%) in volume at fifteen degrees Celsius (15°C).

14.5 In addition, the Customer shall have the right to arrange the performance, at its own expense, of an annual independent verification of the stocks, by a party agreed upon by the Provider.

14.6 All stocks of Products and Related Products at the Terminal owned by the Customer immediately prior to this Agreement shall remain owned by the Customer once this Agreement is entered into force.

15. AUDIT - RIGHTS OF ACCESS

15.1 The Provider shall allow the Customer to pay regular SHE (Safety, Health, and Environment) and Product control (both quantity and quality assurance) inspection visits by authorised representatives of the Customer or any other independent auditor provided written notice of such visits is given to the Provider at least forty eight (48) hours in advance. Any recommendation relating to equipment or procedural modifications shall be discussed between the Parties in good faith and in all reasonableness. Any decision reached by the Parties shall be properly documented.

15.2 The Provider shall allow the Customer or his authorised representatives, including any independent auditor appointed by the Customer, to enter the Terminal upon 48 hours' notice and inspect the relevant records and supportive documentation in relation to any of the following items:

- a) Product quality including additive volumes injected;
- b) financial settlement;
- c) Product measurement;
- d) meter calibration certificates; and/or
- e) Throughput Fee calculation and calculation of fees relating to any other Services provided hereunder.

15.3 Any errors or omissions found as a result of such inspections in the accounts of the operations of the Provider in relation to the Services provided at the Terminal and agreed upon between the Customer and the Provider shall be rectified promptly by the Provider.

- 15.4 Each Party shall keep information on the other Party's own data confidential and such information shall not be retained or analysed by such Party.
- 15.5 Administrative records mentioned in clause 15.2 in respect of year N shall remain subject to audit up to year N+3.

16. LIEN

The Provider shall have a general lien on the Products and the Related Products or any part or parts thereof in respect of all sums due (whether or not relating to the Products or the Related Products) from the Customer or from any person claiming delivery of the Products or the Related Products or such part or parts thereof and in respect of all other sums whatsoever due or to become due to the Provider from the Customer or any such person whether under or by virtue of this Agreement or any other agreement or otherwise howsoever. Without prejudice to the generality of the foregoing the Provider shall be entitled to withhold redelivery of any Products and/or Related Products if any sums aforesaid are over five (5) days past due the time for payment and the Provider shall incur no liability in respect of such withholding of redelivery.

17. POWER OF SALE

On the expiration or termination of this Agreement howsoever arising, the Provider may require the Products and/or the Related Products (or any part or parts thereof) to be removed and may at any time require such removal if any payment due to the Provider is unpaid for thirty (30) days following the date of receipt by the Customer of the corresponding invoice. If the Products and/or the Related Products, or any part or parts thereof, are not removed within thirty (30) days of the service of notice by the Provider requiring such removal, the Provider may sell the same in such manner and upon such terms as it shall in its absolute discretion think fit. The Provider may defray any reasonable charges and expenses incurred to which it is entitled under this Agreement (including the cost of cleaning tanks) out of the proceeds of sale, provided that in exercising this power of sale the Provider shall generally endeavour to mitigate its damages, which shall include seeking what the Provider regards as the best price reasonably obtainable for the Products and/or the Related Products. Any charges or expenses not so defrayed out of the proceeds of sale shall be paid by the Customer. Any surplus on such sale after payment of all charges and expenses of the Provider shall be applied in satisfaction or reduction of the indebtedness of the Customer to the Provider. Any balance remaining thereafter shall be paid to the Customer without delay but shall not carry interest.

18. TERMINATION

If either Party fails for any reason to make any payment which may be due to the other Party in breach of any of its obligations to the other Party under this Agreement, which failure or breach remains unremedied for a period of fourteen (14) days after service of notice thereof from the non-defaulting Party or if any distress or execution shall be levied upon its property or assets or if it ceases or threatens to cease to carry on its business or stops or threatens or is unable to pay its debts or makes any arrangement or composition with or for the benefit of its creditors or commits any act of insolvency or makes application to the court for a voluntary arrangement or if any resolution to wind up shall be proposed or passed (save for the purposes of reconstruction or amalgamation) or if a winding-up petition is advertised or if a receiver or manager or administrative receiver or like person of its undertaking, property

or assets or of any part thereof shall be appointed, or should there be any change in the control of the Customer, the other Party shall have the right upon seven (7) days' notice in writing to terminate the whole or any unfulfilled part of this Agreement. Such termination shall be without prejudice to any claims or rights which either Party may have against the other in respect of this Agreement.

19. LIABILITY

- 19.1 The Provider shall be liable for the operation of the Terminal save only to the extent that any loss or damage arises from the negligence of the Customer or its employee, agent, contractor, sub-contractor or nominee.
- 19.2 The Provider shall not be responsible for chemical deterioration or compositional changes in the Products or the Related Products resulting from stagnant storage unless caused by the negligence or wilful misconduct of the Provider or its employees, agents, contractors, sub-contractors and/or nominees.
- 19.3 Each of the Provider and the Customer shall be liable for Products and Related Products and for any environmental pollution that such Products or Related Products may cause whilst they bear the risk of such Products and Related Products in accordance with clause 20, save only to the extent that the other Party is guilty of negligence or wilful misconduct.
- 19.4 The Provider shall not in any event be liable in respect of loss or damage occurring before delivery to the Provider or after redelivery to the Customer, except in cases of redelivery, if loss or damage is caused by the negligence or wilful misconduct of the Provider. Unless otherwise expressly agreed in writing, the Products and the Related Products shall for the purposes of this Agreement be deemed to have been delivered to the Provider or redelivered to the Customer (as the case may be):
- (a) in the case of Products pumped from or to tank vessels - upon passing the connection (ship manifold) to the Provider's unloading arm; and
 - (b) in the case of Products and/or Related Products delivered from or to rail or road vehicles - after the Products and/or the Related Products have passed the connection to the vehicles at the Rack.
- 19.5 In the event that the Provider provides additional services to the Customer other than the Services, the terms of this Agreement shall apply during the period the Products and the Related Products are actually under the control of the Provider or its employees, agents, contractors, sub-contractors or nominees but the Provider shall not otherwise be under any liability in respect of such part or parts of the Products and/or Related Products as are concerned with such additional services.
- 19.6 Neither Party shall be liable in contract, tort or otherwise, for prospective profits or for special, indirect or consequential damages in relation to performance or non-performance under this Agreement.

20. TITLE AND RISK

- 20.1 Title for any Product and Related Product of the Customer that is stored separately at the Terminal shall remain with the Customer at all times. Title with regard to co-mingled Product or Related Product shall be deemed to remain with the Customer in proportion to the

Customer's actual book stock according to the records of the Provider at the relevant time subject to audit by the Customer and correction of any discrepancies found.

- 20.2 Risk for any Product stored at the Terminal shall pass from the Customer to the Provider at the point where such product passes into the jetty loading arm from the ship's manifold and risk for any Related Products shall pass from the Customer to the Provider at the point of delivery. Risk in any Product drawn from Terminal shall pass from the Provider to the Customer at the point where the same is loaded onto road vehicles from the loading arm at Rack.

21. FORCE MAJEURE

- 21.1 No failure, delay or omission by any Party to carry out or observe any of the stipulations or conditions of this Agreement shall, except in relation to obligations to make payments hereunder and except as herein expressly provided to the contrary, give rise to any claim against the Party in question or be deemed a breach of this Agreement if such failure, delay or omission arises from any cause reasonably beyond the control of that Party (herein referred to as "**Force Majeure**").

In the event that a Party is unable to fulfil its obligations as a result of Force Majeure, the obligations of such Party shall be suspended. The Party whose obligations have been suspended as aforesaid shall give prompt notice of such suspension to the other Party stating the date and extent of such suspension and cause thereof.

Any Party whose obligations have been suspended due to Force Majeure shall resume the performance of such obligations as soon as reasonably possible after the removal of the Force Majeure event and shall so notify the other Party. Prior to the resumption of normal performance, the Parties shall continue to perform their obligations pursuant to this Agreement to the extent not prevented by such Force Majeure event. For the avoidance of doubt, during any period of Force Majeure resulting in the obligations of the Provider being suspended as aforesaid, the Customer shall continue to be liable to make payments for Services actually provided by the Provider in accordance with Schedule 1.

- 21.2 If while this Agreement is in effect the Provider's use of all or part of its facilities for the storage and handling of Products and/or Related Products shall be restrained by any governmental and/or regulatory authority and/or the owner of leased land, the Provider shall notify the Customer and the Provider may terminate this Agreement on the effective date of restraint or provide the Customer with alternative tanks at the Provider's discretion.

22. DISPOSAL OF WASTE SUBSTANCES

- 22.1 The Customer shall be responsible for the removal from the Terminal of any waste residues (such as sludge) which may arise as a result of the storage of its Products and/or Related Products (other than those coming from the normal regular cleaning of tank(s) for maintenance purposes) and/or its Related Products. The Customer shall permit the Provider to arrange for the removal and treatment or destruction of such waste on behalf of the Customer from time to time during the term of this Agreement and to pay all reasonable costs properly incurred in relation thereto (including cleaning the Provider's tanks at cost, any handling, treatment or destruction costs incurred, any related costs associated with regulatory compliance and/or the preparation of necessary documents).

- 22.2 All liquid substances containing residues and mixtures arising from the handling by the Provider of the Customer's Products and/or Related Products which are accepted by the Provider by virtue of its obligations under any control of pollution regulation shall remain the property of the Customer. All reasonable costs properly incurred by the Provider in connection with the receipt, storage, handling and disposal by whatever method of such liquid substances shall be payable by the Customer.
- 22.3 The Customer is responsible for any solids accumulation of the Products (other than those coming from the normal cleaning of tank(s) for maintenance purposes) and/or the Related Products, if any, upon termination of this Agreement for whatever reason. The Customer shall agree to remove additional solids accumulated, if any, within seven (7) days of termination. If removal has not occurred within seven (7) days of termination of this Agreement, the Provider shall have the option, at the Customer's expense, to commence removal and salvage of such solids accumulations. Salvage income, less cleaning expenses, will be remitted to the Customer. If cleaning costs exceed the salvage value, the difference will be paid by the Customer within twenty eight (28) days of the date of issue of the corresponding invoice by the Provider.
- 22.4 The Customer's liability under this clause 22 shall continue until such time as the liquid substances are disposed of to the satisfaction of all interested parties and in accordance with all applicable legislation and regulations and neither the passage of time and/or cost nor the termination of this Agreement shall limit the Customer's liability.

23. SAFETY SECURITY AND ENVIRONMENTAL STANDARDS

- 23.1 The Terminal shall be operated, maintained and developed in accordance with the general health, safety and environmental policies and standards of the Provider and standards of safety, security, environmental and operational integrity normally applicable within the petroleum industry.
- 23.2 Without limitation to any other obligations imposed under this Agreement, the Provider shall comply with all safety, security and environmental standards set out in the Terminal Operations Manual as may be amended from time to time.
- 23.3 The Provider shall provide to the Customer on an annual basis the key performance indicators followed to track safety performance.
- 23.4 In making or taking deliveries to or from the Terminal, the Customer shall ensure that its employees, contractors, sub-contractors and agents comply with all regulations and practices applicable at the Terminal. The Customer shall also ensure that any vehicle entering the Terminal on its behalf complies with applicable laws and/or statutory safety standards and the Provider's own standards relating to the operations of the Terminal as set out in the Terminal Operations Manual and are road worthy and where applicable are in a fit and safe condition for loading or unloading. The Provider may at any time inspect and refuse entry or the right to load and unload as the case may be to any vehicle which does not comply with such regulations practices and/or standards.

24. DRUG AND ALCOHOL POLICY

- 24.1 In the performance of this Agreement, each Party shall maintain strict discipline and order at all times amongst its employees, agents, contractors and customers involved in activities relevant to or connected with this Agreement and shall not permit any of them to engage in

activities which it deems contrary or detrimental to the other Party's interests under this Agreement. Further, each Party will ensure that such employees, agents, contractors and customers shall not:

- (a) perform the Services or any activities under this Agreement while under the influence of alcohol or any controlled substance;
- (b) misuse legitimate drugs or possess, use, distribute or sell illicit or unprescribed controlled substances at the Terminal, or whilst performing activities under this Agreement;
- (c) possess, use, distribute or sell alcoholic beverages at the Terminal or whilst performing activities under this Agreement.

24.2 Each Party shall, and shall procure that its agents contractors and customers shall, have written work rules and policies in order to ensure compliance with the obligations set out in clause 24.1 above.

24.3 Either Party may, subject to applicable law, conduct unannounced searches for drugs and alcohol upon the Terminal. Either Party may also require employees, agents and/or contractors of the other to alcohol or drug testing where cause exists to suspect alcohol or drug use, including workplace incidents.

25. BUSINESS ETHICS - CONFLICT OF INTEREST

25.1 The Parties agree that the performance of the obligations contained herein and the operations at the Terminal shall be conducted in accordance with the business principles publicly promulgated by each of the Parties or their affiliates. [The business principles of the Customer are set out in [•]].

25.2 The Parties agree that all financial settlements, billings and reports rendered to the other Party, as provided for under the terms of this Agreement and/or any amendments to it, will properly reflect the facts, as being complete and accurate.

25.3 Each Party's efforts shall include, but shall not be limited to, establishing precautions to prevent its employees, their families and/or agents from receiving substantial gifts, entertainment, payments, loans or other considerations for the purpose of influencing individuals to act contrary to the other Party's best interests.

26. POWERS, COMPLIANCE WITH LAWS AND CONSENTS

Each Party undertakes to the other as follows:

26.1 that it has power to execute this Agreement and to perform its obligations under this Agreement and has taken all necessary actions to authorise such execution and performance;

26.2 such execution and performance does not breach or conflict with any law applicable to it, any order of any governmental or regulatory body or any contractual restrictions binding on it; and

26.3 that it has obtained all governmental and other consents that are required for the entry into and the performance of its obligations under this Agreement and that such consents are in full force and effect and all conditions of any such consents have been complied with.

27. CONFIDENTIALITY

27.1 Each Party undertakes that for the duration of this Agreement it will:

- (a) preserve and cause its personnel to preserve the secrecy of any Confidential Information and records received from the other Party;
- (b) not disclose to any third party any Confidential Information or records received from the other Party except with its prior written consent or to the extent required by law provided that a Party may disclose Confidential Information to *bona fide* third party purchasers as long as they otherwise comply with the obligations in this clause 27 as if a Party hereto;
- (c) not disclose any Confidential Information received from the other Party to any of its own or its Affiliates' employees, agents, contractors or sub-contractors who do not need such Confidential Information for the carrying out of the Party's obligations hereunder;
- (d) use Confidential Information only in relation to that Party's obligations hereunder.

27.2 Upon termination of this Agreement, each Party undertakes that it will:

- (a) return to the other Party any Confidential Information received from such other Party to the extent that such Confidential Information still exists whether electronically stored or otherwise; and
- (b) impose upon its own and its Affiliates' officers, employees, contractors, sub-contractors and agents a continuing requirement to keep confidential any information within the terms defined below as being Confidential Information.

27.3 "**Confidential Information**" shall mean any knowledge or information disclosed at any time to a Party by the other Party or on behalf of such other Party verbally or in writing, in drawings, in computer programmes and developed systems or in any other form whatsoever as well as data derived therefrom to the extent that at the time of such disclosure the knowledge or information in question is not:

- (a) already in free possession of the receiving Party; or
- (b) part of the public knowledge or disclosed in literature available to the public.

27.4 The foregoing undertakings shall continue in force for as long as the Confidential Information has not:

- (a) become part of the public knowledge or literature otherwise than through any act or default on the part of the Party having acquired the information, or
- (b) been disclosed to the receiving Party without an obligation to maintain secrecy by a third party who could lawfully do so.

28. TRADE MARKS

Nothing contained in this Agreement whether expressed or implied shall be deemed to confer any right upon either Party to apply or otherwise use any trade mark owned by or licensed to the other Party.

29. NOTICES

29.1 Save as otherwise provided in this Agreement, any notice, demand or other communication given or made under or in connection with the matters contemplated by this Agreement shall only be effective if made in writing and sent by international express courier (for instance by DHL), or by facsimile confirmed on the same day by international express courier (for instance by DHL), and addressed:

If to the Provider:

To:	La Collette Terminal Limited
For the attention of	Mr. Adrian Barker
Position:	Terminal Manager
Address:	La Collette St Helier JE1 0FS JERSEY Channel Islands
Fax number:	+44 1534 709801

If to the Customer:

To:	[]
For the attention of	[]
Position:	[]
Address:	[]
Fax number:	[]

29.2 Each Party shall notify the other Party without delay of any change of address or fax number by notification made as indicated above.

29.3 Any notice, demand or other communication shall be deemed to have been duly given or made as follows:

- (a) if sent by international express courier, upon delivery at the address of the relevant Party as evidenced by the acknowledgment of receipt of the international express courier; and
- (b) if sent by facsimile confirmed on the same day by international express courier, the next Business Day following such facsimile despatch as evidenced by a successful facsimile transmission report.

30. WAIVERS

No delay, omission or forbearance by either Party hereunder to exercise or enforce any right, power or remedy shall operate as a waiver thereof, and any single or partial exercise or enforcement thereof shall not preclude any other or further exercise or enforcement thereof or the exercise or enforcement of any other right, power or other remedy.

31. SEVERANCE

31.1 Each clause in this Agreement shall where the context allows be read separately and if any clause of this Agreement shall be adjudged to be void as going beyond what is reasonable in all the circumstances but would be valid if part of the wording were deleted or the scope of the clause reduced the clause shall apply with such modifications as may be necessary to make them valid and effective.

31.2 The invalidity or unenforceability of any clause of this Agreement shall not affect the validity or enforceability of the remainder of this Agreement and the invalidity or unenforceability of any provision of any clause of this Agreement shall not affect the validity or enforceability of the remaining provisions of such clause.

32. ENTIRE AGREEMENT

32.1 This Agreement constitutes the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof and there are no representations, promises or warranties (written or oral) affecting the same other than as expressly provided in this Agreement and accordingly any implied conditions, representations, warranties or other terms are hereby excluded to the fullest extent permitted by law.

32.2 The terms of this Agreement shall apply to the supply of all Services by the Provider. The Customer accepts that these terms will govern all relations between it and the Provider to the exclusion of any terms and conditions contained in any of the Customer's documents even if the same purport to provide that the Customer's own or some other terms shall prevail.

33. ASSIGNMENT

The Customer shall have the right to fully assign its rights and obligations under this Agreement, but shall not assign these rights and/or obligations in whole or part to any third party without the prior written consent of the Provider, such consent not to be unreasonably withheld.

34. NOTWITHSTANDING

Notwithstanding anything to the contrary, this Agreement shall not be interpreted or applied so as to require either Party to do, or refrain from doing, anything which could constitute a violation or result in a loss of economic benefit under the United States, European Union or Jersey trade restrictions, anti-boycott laws or regulations.

35. THIRD PARTIES

This Agreement is exclusively for the benefit of the Parties and shall not be construed as conferring, either directly or indirectly, any rights or causes of action upon third parties. A

person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

36. NOTICE OF CLAIM

The Provider shall have no liability under or in connection with this Agreement (whether for loss of or damage to the Products and/or to the Related Products or otherwise whatsoever) unless written notice of claim is received by the Provider at its registered office within one (1) calendar month following redelivery of the Products and/or of the Related Products in question (or in the case of loss or destruction of the Products and/or the Related Products) within one (1) calendar month following the date when the Products and/or the Related Products should have been redelivered.

37. LAW AND JURISDICTION

37.1 Law

This Agreement is governed by and shall be construed in accordance with English law.

37.2 Arbitration

- a) In the event of any dispute arising out of or in connection with this Agreement, the Parties shall use their best endeavors to settle the dispute by negotiation and/or mediation within thirty (30) days from the date of service of written notice by either Party on the other Party of the existence of such a dispute.
- b) In the event that the Parties shall fail to settle any dispute by negotiation and/or mediation within the said thirty (30) day period, the Parties shall forthwith refer the dispute to the International Chamber of Commerce (« **ICC** ») and the dispute shall be finally settled by arbitration. The arbitration shall be resolved pursuant to and in accordance with the Rules of Arbitration of the International Chamber of Commerce, as modified by the following:
 - (i) the number of arbitrators shall be one;
 - (ii) the arbitrator shall be appointed by the ICC International Court of Arbitration (the "**Court**");
 - (iii) the seat of the arbitration shall be in Jersey;
 - (iv) the law governing the arbitration agreement shall be Jersey;
 - (v) the language of the arbitration shall be English;
 - (vi) the pre-arbitration conduct of the Parties in attempting to settle their dispute by negotiation and/or mediation, is a factor which the arbitrator may take into account when making any decision as to costs;
 - (vii) should either of the Parties be or become aware of a dispute or an ongoing arbitration between one of the Parties and any other users of the Terminal, which raises a similar or identical issue of law and/or fact to that which arises in the dispute between the Parties and which is subject to an arbitration

provision on the same or substantially the same terms as this clause 37.2 (the "**Third Party Dispute**"), then:

- (x) that Party shall notify the other of the Third Party Dispute; and
 - (y) the Parties shall issue a request forthwith to the Court agreeing to and inviting the Court to order the consolidation of the arbitration of their dispute with the arbitration of the Third Party Dispute into a single arbitration which shall determine finally each dispute at the same time.
- c) For the avoidance of doubt, the final decision as to whether the dispute and the Third Party Dispute should be consolidated remains that of the Court. The Parties agree that a key determinant for the Court in reaching that final decision on whether to consolidate the disputes shall be the importance of resolving disputes which raise a similar or identical issue of law and/or fact in a consistent way.

SCHEDULE 1

Charges and Payment

1. STORAGE AND THROUGHPUT FEE

The Customer shall pay the Provider a throughput fee for all the volumes drawn from the Terminal (the “**Throughput Fee**”). This Throughput Fee shall be calculated in accordance with the following formula:

$$TF = (OC + DEP + ROI + PROV) / V$$

Where:

TF= Throughput Fee in pounds Sterling per cubic metre at fifteen degrees Celsius (15°C);

OC= total annual operating, financial and exceptional costs of the Terminal (rental, service agreement fee, wages, insurance premium, maintenance & repair expenses, etc.) in pounds Sterling; operating costs will not include the costs associated with “Out of Normal Working Hours rates”+ “Discharge Fees” + “Additivation Fees” and “Marking Fees”.

DEP= total annual depreciation costs in pounds Sterling; depreciation costs will not include the costs associated with “Additivation Fees” and “Marking Fees”.

ROI= annual return on capital investment at percent (%) after tax in pounds Sterling;

PROV= annual provisions (environmental, demolition costs, stock, bad debts, etc.) in pounds Sterling; and

V= total annual volumes throughputted at the Terminal in cubic metre at fifteen degrees Celsius (15°C). A projected Throughput Fee determined on the basis of the Provider’s budget for the year shall be invoiced to the Customer and the balance between this projected Throughput Fee and the final Throughput Fee shall be invoiced by the Provider to the Customer by 15th January of the following year. The Provider shall advise the Customer of its best estimate of the balance by no later than 15th December of each year.

2. SHIP DISCHARGE

The Customer shall pay to the Provider a fee in respect of each ship discharged amounting to [•] pounds Sterling (£[•]) (the “**Discharge Fee**”). This Discharge Fee shall not depend on the quantity discharged/time spent.

This Discharge Fee (covering exclusively labour costs) has been calculated on the basis of operations carried out during and/or outside of Normal Working Hours.

The Discharge Fee shall be reviewed annually on 1st January in accordance with the variation of the Retail Price Index Jersey (RPI). The new Discharge Fee shall be calculated in accordance with the following formula:

$$P = P0 * (RPI / RPI0)$$

Where:

P= new Discharge Fee in Pounds Sterling;

P0= initial Discharge Fee in Pounds Sterling;

RPI= latest RPI published at the date of the review; and

RPI0= RPI relating to September [•].

In case of a negative variation of the RPI between two (2) or more annual reviews, no adjustment will be applied to the then applicable Discharge Fee.

3. OUT OF NORMAL WORKING HOURS

Out of the Normal Working Hours, the following rates (covering exclusively labour costs) will apply (any hour started shall be due entirely):

Manager/Supervisor:

[•] pounds Sterling (£[•]) per hour.

Operator:

[•] pounds Sterling (£[•]) per hour.

These rates shall be reviewed annually on 1st January in accordance with the variation of the

Retail Price Index Jersey (RPI). The new rate will be calculated according to the following formula:

$$P = P0 * (RPI / RPI0)$$

Where:

P= new rate in Pounds Sterling;

P0= initial rate in Pounds Sterling;

RPI= latest RPI published at the date of the review; and

RPI0= RPI relating to September [•].

In case of a negative variation of the RPI between two (2) or more annual reviews, no adjustment will be applied to the then existing rate.

The above rates will be charged between:

- 08:00 a.m. Saturday and 08:00 a.m. Monday; and
- 05:00 p.m. every day and 08:00 a.m. the day after.

On a bank holiday in Jersey an additional charge of eight (8) times the above rates will be applicable.

4. **PRODUCTS [TO BE AMENDED IF NECESSARY]**

Grades	Reception	Delivery
Ultra Low Sulphur Diesel	Receipt by sea	Re-delivered at rack
Premium Unleaded 10	Receipt by sea	Re-delivered at rack
Super Unleaded 10	Receipt by sea	Re-delivered at rack
Gas Oil, dyed as required by regulation	ULSD Receipt by sea	Re-delivered at rack
Kerosene, dyed as required by regulation	Receipt by sea	Re-delivered at rack

Any changes of Product grade required by applicable laws and/or regulations shall be automatically followed by the Customer.

5. **RELATED PRODUCTS**

DIESEL performance additive (Afton Hitec 4679)	Receipt by road injected into ULSD at loading Rack (Dosage ratio: 210 ppm)
MOGAS performance additive (BASF Kerofluid ES9 K18)	Receipt by road injected into Premium Unleaded (Dosage ratio: 284 ppm) and Super Unleaded at loading Rack (Dosage ratio: 568 ppm)

6. **ADDITIVATION**

For the duration of this Agreement, the Provider shall retain the Customer's Related Products to be injected in the Products at the Rack. These Related Products shall be supplied by the Customer and used by the Provider. These Related Products shall remain for the sole use of the Customer.

The Customer shall inform the Provider of any change in the additivation ratio to be used.

The Customer shall pay the Provider a fee per cubic metre at fifteen degrees Celsius (15°C) of additivated Products amounting to [•] pounds Sterling (£[•]) (the “**Additivation Fee**”) for the additivation process (covering *inter alia* the depreciation and maintenance costs of the additivation unit).

The Additivation Fee shall be reviewed annually on 1st January in accordance with the variation of the Retail Price Index Jersey (RPI). The new Additivation Fee will be calculated in accordance with the following formula:

$$P=P0 * (RPI / RPI0)$$

Where:

P= new Additivation Fee in pounds Sterling;

P0= initial Additivation Fee in pounds Sterling;

RPI= latest RPI published at the date of the review; and

RPI0= RPI relating to September [•].

In case of a negative variation of the RPI between two (2) or more annual reviews, no adjustment will be applied to the then applicable Additivation Fee.

7. MARKING

7.1 For the duration of this Agreement, the Provider shall retain its markers to be injected in the Products at the Rack.

7.2 The Customer shall pay the Provider a fee per cubic metre at fifteen degrees Celsius (15°C) of marked Products amounting to [•] pounds Sterling (£[•]) (the “**Marking Fee**”) for the marking process (covering *inter alia* the depreciation and maintenance costs of the marking unit), plus the price of the marker used, charged at cost.

The Marking Fee shall be reviewed annually on 1st January in accordance with the variation of the Retail Price Index Jersey (RPI). The new Marking Fee will be calculated in accordance with the following formula:

$$P = P0 * (RPI / RPI0)$$

where:

P= new Marking Fee in pounds Sterling;

P0= initial Marking Fee in pounds Sterling;

RPI= latest RPI published at the date of the review; and

RPI0= RPI relating to September [•].

In case of a negative variation of the RPI between two (2) or more annual reviews, no adjustment will be applied to the then applicable existing Marking Fee.

8. PAYMENT

8.1 Save as otherwise provided in this Agreement, all amounts payable by the Customer will be charged on a monthly basis and payable by the Customer within ten (10) calendar days of invoicing by the Provider.

Where the last day for payment falls on a Saturday or on a weekday other than a Monday which is not a banking day in London or at such other place as may be designated by the Provider for payment, then any such payment shall be made on the nearest preceding banking day. Where the last day for payment falls on a Sunday or a Monday which is not a banking day in London or at such other place so designated, then any such payment shall be made on the next following banking day.

8.2 The invoice shall be sent by facsimile or e-mail by the Provider to the Customer’s operational contacts as designated in Schedule 2 to this Agreement.

The Provider shall invoice the Customer at least three (3) full Business Days before the amount is due under the terms of paragraph 8.1 of this Schedule 1. If necessary the Customer shall accept an electronic or facsimile invoice from the Provider which will be followed by the original invoice as soon as practicable.

For reconciliation purposes, the Provider's invoice shall make reference to the purchase order number (if any) supplied by the Customer to the Provider.

- 8.3 Goods and Services Tax will be applicable to all charges in accordance with Jersey tax law.
- 8.4 Unless otherwise agreed in writing any amount due to the Customer which is not paid within the above credit period shall bear interest on the Business Days commencing on the Business Day immediately after the date on which it became due up to and including the date it is received by the Provider at a rate calculated as an annual rate (three hundred and sixty five (365) day year basis) of three (3) percent plus one (1) month London Interbank Offered Rate as published by Reuters at the 11:00 a.m. fixing on the first London banking day for each month in which the overdue amount exists. The foregoing shall not be construed as an indication of any willingness on the part of the Provider to provide extended credit as a matter of course and shall be without prejudice of any rights and remedies which the Provider may have under this Agreement or otherwise. Any invoice issued by the Provider for payment of interest pursuant to this paragraph 8.4 shall be payable within thirty (30) days of receipt by the Customer, allowing time to check it and get information from the Provider, if necessary.
- 8.5 All payments shall be made in full without deduction or withholding, and the Customer hereby expressly waives its right to set-off any amount owing by it to the Provider under this Agreement against any amount owing by the Provider to the Customer (whether arising in contract or in tort and in relation to this Agreement or otherwise).

SCHEDULE 2

Operational Contacts

1. PROVIDER'S OPERATIONAL CONTACTS

1.1 Stock accounting and replenishment programme

d.fox@lacolletteterminal.co.uk

Tel: +44 1534 709 844

Fax: +44 1534 709 801

Mobile: +44 7797 717 048

1.2 Terminal management and operational difficulties

a.barker@lacolletteterminal.co.uk

Tel: +44 1534 709 843

Fax: +44 1534 709 801

Mobile: +44 7797 754 716

1.3 Accounting department

suppliers-financedpt@lacolletteterminal.co.uk

Fax: +44 1534 709 801

1.4 Or any other operational contact persons designated by the Provider from time to time whose contact details shall be provided by the Provider to the Customer in accordance with clause 29 of this Agreement.

2. CUSTOMER'S OPERATIONAL CONTACTS

2.1 Stock accounting:-

[]

Tel: []

Fax: []

The daily lifting report will contain the following information (Customer's data) :

Loading date

Product code

Volume @15°C (in litres)

Vehicle ID

Loading ID (unique sequential number)

+ daily report (volume @15°C) per product

+ daily downgrade (volume @15°C) per product (if any).

2.2 Operational difficulties and replenishment programme

[•]

Tel: [•]

Fax: [•]

2.3 Accounting department

[•]

Tel: [•]

Fax: [•]

2.4 Or any other operational contact persons designated by the Customer from time to time whose contact details shall be provided by the Customer to the Provider in accordance with clause 29 of this Agreement.

SCHEDULE 3

Product specifications

Imported Products:

[Premium Unleaded: EN 228 (RON 95)

Super Unleaded: EN 228 (RON 97+)

Ultra Low Sulphur Diesel: BS or NF or DIN EN 590

Kerosene: BS 2869 Class C2][**To be amended if necessary**]

Re-delivered Products:

[Premium Unleaded: EN 228 (RON 95)

Super Unleaded: EN 228 (RON 97+)

Ultra Low Sulphur Diesel: BS or NF or DIN EN 590

Kerosene: BS 2869 Class C2, dyed as per legal requirement

Gas Oil: ULSD BS or NF or DIN EN 590, dyed as per the legal requirement][**To be amended if necessary**]

Signed on behalf of

LA COLLETTE TERMINAL LIMITED

Name Hervé CHRETIEN

Signature

Date

Signed on behalf of

[•]

Name

Signature

Date

