

THROUGHPUT AGREEMENT

entered into between

**SHELL SOUTH AFRICA MARKETING
(PROPRIETARY) LIMITED
(Registration No. 1961/000645/07)
("Shell")**

and

.....

TABLE OF CONTENTS

1	INTERPRETATIONS.....	4
2	DEFINITIONS.....	7
3	AGREEMENT.....	9
4	HEALTH, SAFETY, SECURITY AND ENVIRONMENT	11
5	OPERATING OBLIGATIONS	13
6	PRINCIPLES UNDER THE THROUGHPUT MODEL	16
7	PRODUCT RISK AND TRANSFER VOLUME.....	17
8	PRODUCT UNPLANNED MOVEMENTS.....	19
9	PRODUCT LOSSES	20
10	STOCK ACCOUNTING	21
11	STOCK RECONCILIATION.....	22
12	PRODUCT MOVEMENTS.....	23
13	INVOICING AND PAYMENT TERMS	24
14	AUDIT.....	25
15	LIABILITY	26
16	FORCE MAJEURE.....	27
17	GENERAL	29
18	NOTICES AND DOMICILIA.....	33
19	SIGNATURE.....	34

ANNEXURES

ANNEXURE 'A' : STORAGE & HANDLING CHARGES	35
ANNEXURE 'B' : BRIDGING CHARGES	36
ANNEXURE 'C' : DEPOT WITH TEMPERATURE COMPENSATED METERS .	37
ANNEXURE 'D' : DEPOT PLANNING PROCEDURE TEMPLATE	38

1. INTERPRETATIONS

In this Agreement, unless the context otherwise indicates:

- 1.1. "Agreement" means this Agreement and any annexures hereto;
- 1.2. BFP: means the basic fuel price, which is the official formula, prescribed and used by the South African Government to determine the prices of regulated petroleum products sold in the South African market. The BFP formula is as described in the document "Working Rules to Administer the Basic Fuels Price Methodology Effective Date: 2 March 2003 (Revised on 28 October 2005)" as further revised in January 2009, as published on the DME website and as may be amended by DME from time to time ("the Working Rules");
- 1.3. "Business Day" means any day other than a Saturday, Sunday or Public Holiday officially gazetted as such in the Republic of South Africa;
- 1.4. CEF: means CEF (Pty) Limited which is the Government regulator responsible for the monitoring and implementation of product price adjustments for controlled petroleum products;
- 1.5. "Competition Act" means the Competition Act No. 89 of 1998;
- 1.6. "Customs and Excise Act": means the Customs and Excise Act, No. 91 of 1964, as amended from time to time
- 1.7. "Depot" means the depots owned or leased by either Party from time to time at which the Services are provided from time to time pursuant to this Agreement;
- 1.8. "Depot Manager" means the person nominated by the Party to manage the operation of the Depot;
- 1.9. "Effective Date" means, notwithstanding the Signature Date;
- 1.10. "Entitlement Balance" means the quantity of product that a Host or a Tenant has entitlement to at a Depot, where the aggregate of the Entitlement Balances for all companies is equivalent to the physical volume in the tank;
- 1.11. "Charge" means the Charge charged by the Host to the Tenant for the Services;
- 1.12. "Force Majeure" has the meaning given to that term in clause 17;
- 1.13. "Host" means the Party operating the Depot;
- 1.14. "HSSE standards" means Health, Safety, Security and Environment standards;
- 1.15. "Month" means a calendar month;

Month M-2 shall be two months prior to delivery month M
Month M-1 shall be one month prior to delivery month M
Month M shall be the delivery month,
Month M+1 shall be the immediate next month after Month M.
Month M+2 shall be the immediate next month after Month M+1

- 1.16. "Non-performing Party" has the meaning given to that term in Force Majeure clause below;
- 1.17. "Operating Requirements" means the Hosts' standard operational procedures and processes relating to the handling of Product at a Depot from time to time, as advised by the Parties to each other in writing from time to time;
- 1.18. "Party" means Shell or Tenant respectively and/or "Parties" mean Shell and Tenant collectively;
- 1.19. Prime Rate: means the publicly quoted prime rate of interest of ABSA Bank, per annum, compounded Monthly in arrear and prima facie proven, in the event of there being a dispute in relation thereto and in the absence of manifest error, by a certificate by any general manager of ABSA Bank (whose qualification or authority need not be proven) or, in the absence of the prime rate of interest of ABSA Bank, the publicly quoted prime rate of interest of the largest domestic bank by market capitalization (excluding ABSA Bank) in South Africa
- 1.20. "Product" means the petroleum products stored at a Depot from time to time;
- 1.21. "PoD" means the documentation confirming proof of delivery of product to a Depot bearing the signature of the Host to receive the Product, or confirming receipt of product from a Depot bearing the signature of the Tenant, save in respect of deliveries of Product ex rail tank cars where the PoD shall be in the form of an Intac rail document bearing the description of the Product and the rail tank car number with a freight rail seal impressed on it;
- 1.22. "Services" means the provision for replenishment, storage, and uplift of Product by a Tenant;
- 1.23. "Shell" means Shell South Africa Marketing (Proprietary) Limited (Registration No. 1961/000645/07) of 57 Sloane Street, Twickenham Building, The Campus, Bryanston, 2021, Facsimile Number: (011) 996 7323, Telephone Number: (011) 996 7106; Contact Person: Supply & Distribution Manager);
- 1.24. "Signature Date" means the date of signature of this Agreement by the last Party signing; and
- 1.25. "Tenant" means

(Registration No.....)
Address

1.26. VAT: means value-added tax levied in terms of the Value-Added Tax Act, No. 89 of 1991.

2. DEFINITIONS

- 2.1. Words importing the singular shall include the plural and vice versa, and words importing the masculine gender shall include female and neuter genders and words importing persons shall include partnerships and bodies corporate.
- 2.2. Use of the word “including” followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the eiusdem generis rule shall not be applied in the interpretation of such general wording or such specific example/s.
- 2.3. The head notes to the clauses in this Agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 2.4. This Agreement shall be binding on and enforceable by the administrators, permitted assigns or liquidators of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party shall be deemed to include such Party's administrators, permitted assigns or liquidators, as the case may be.
- 2.5. If any provision in clauses 1 and 2 is a substantive provision conferring rights or imposing obligations on any Party, then notwithstanding that such provision is contained in such clauses, effect shall be given thereto as if such provision were a substantive provision in the body of this Agreement.
- 2.6. Where any term is defined within the context of any particular clause in this Agreement, the term so defined shall, unless it appears clearly from the clause in question that such term has limited application to the relevant clause, bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that such term has not been defined in this clause 1.
- 2.7. When any number of days (including Business Days) is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day.
- 2.8. Should the day for the performance of any payment obligation in terms of this Agreement fall on a day, which is not a Business Day, then such obligation shall be performed on the next day, which is a Business Day.
- 2.9. Save where clearly indicated to the contrary, expressions defined in this Agreement shall bear the same meanings in any schedule and/or annexure hereto unless such schedule and/or annexure contains an alternative definition for the expression.
- 2.10. The rule of interpretation that an agreement will be interpreted against the Party responsible for the drafting thereof, and any similar rules of

interpretation, shall not apply to this Agreement and the Parties waive any rights they have to rely on such rules.

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

3. AGREEMENT

3.1. INTRODUCTION

Shell and Tenant agree to enter into this Agreement in order to specify the terms and conditions upon which infrastructure Depots operated by Shell may be used for replenishment, storage and uplift of bulk fuels by the Tenant.

3.2. DURATION

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

The Tenant may terminate the provision of the Services on 3 (three) months written notice to the Host to such effect; and

The Host may terminate the provision of the Services on 6 (six) months written notice to the Tenant to such effect.

3.3. RELATIONSHIP OF THE PARTIES

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

The Parties shall be obliged to obtain competition law compliance training, on an annual basis, so as to ensure that the conduct of the Parties in terms of this Agreement complies with the Competition Act.

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

3.4. AGREEMENT REVIEW

The Parties shall conduct an annual review not later than October of each year and agreement reached no later than by the end of the calendar year. The reviews shall always include, but will not be limited to:

HSSE reports;

Service Standards;

Operational Requirements and operational changes; and

Charges and Tariffs.

Both Parties shall ensure that:

an agenda is prepared in respect of the aforesaid meetings;

Discussions at the meetings shall be limited to those items on the agenda; and

The agenda is approved by each Party's legal counsel.

4. HEALTH SAFETY SECURITY AND ENVIRONMENT

4.1. STANDARDS

The HSSE standards of the Host will be the applicable standard in respect of each Depot, save where the prevailing industry norm is higher, in which case the same will instead be complied with and be preferred, and the Host shall make available to the Tenant the relevant HSSE standards.

The Host shall be entitled at its sole discretion to amend and vary the HSSE standards from time to time. In the event that there are any amendments to or variations of the Host's HSSE standards, the Host shall notify the Tenant in writing of such amendment and/or variation and such amendment and/or variation will be available to the Tenant.

In addition, the Parties will adhere to the HSSE standards set out below. Should there be a conflict between any of the HSSE standards of the Host and the HSSE standards set out in this clause, the standards set out below shall prevail.

4.2. VEHICLES

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

4.3. DEPOT AND EQUIPMENT

The Host shall ensure that it will comply with all relevant legal requirements, local oil industry practice and its own HSSE standards.

4.4. OPERATIONS

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

4.5. PERSONNEL

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

4.6. INCIDENT REPORTING

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

Fatalities – immediately;

Lost time injuries – within 24 hours;

Medical treatment cases – within 24 hours; and

Spillages – within 24 hours.

4.7. CONTAMINATION AND SPILLAGES

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

5. OPERATING OBLIGATIONS

5.1. OBLIGATIONS OF THE HOST

The Host shall:

- 5.1.1. Be responsible for the management and operation of the Depot;
- 5.1.2. Test Product for quality, measure and receive Product into storage in the Depot;
- 5.1.3. In the case of any Product stock-out (being an unavailability of Product to the Tenant to which the Tenant is entitled pursuant to the application of the Banking Principle) for a Tenant due to use of this Tenant's stock by the Host and not excused by the Force Majeure provisions of this Agreement, the Host shall be responsible for alternate sourcing of the affected Product and all related costs. Should the Host fail to source the affected Product, the Tenant will be entitled to procure the Product at its cost and recover direct incremental and reasonable costs from the Host on written request;
- 5.1.4. Be responsible to ensure that the Product does not deteriorate or become contaminated as a result of storage and handling of the Product by the Host;
- 5.1.5. Ensure that additive doping standards are met and that mandatory reporting takes place at the prescribed schedule;
- 5.1.6. After a formal handover process by the Tenant to the Host of the additive injection systems on completion of an agreed Management of Change, maintain and repair the additive injection systems in order to minimize downtime; and
- 5.1.7. No manual additive injection will be allowed.
- 5.1.8. The Parties shall ensure that load rack meters at the Depots meet the requirements of the regulations framed under the Trade Metrology Act No 77 of 1973, as amended.

5.2. OBLIGATIONS OF THE TENANT

- 5.2.1. The Tenant shall in respect of each Depot at which it receives the provision of the Services:
- 5.2.2. Install the additive injection system/s at the Depot at its cost, and follow a formal handover procedure;
- 5.2.3. Ensure that all drivers and vehicles, either employed by the Tenant, its agents, sub-contractors or distributors comply with and are trained in the Host's Safe Working Procedures and Safe Loading requirements in

respect of the Depot concerned applicable from time to time, as notified in writing by the Host to the Tenant from time to time;

- 5.2.4. Ensure the safety and health of its employees utilizing the Depot and protection of the environment, including compliance with the statutory requirements imposed by, but not limited to, the Occupational Health and Safety Act No.85 of 1993; the Atmospheric Pollution Prevention Act No. 15 of 1973, the Environmental Conservation Act No. 73 of 1989, the National Environmental Management Act No. 107 of 1998, and all other applicable legislation, by-laws and regulations;
- 5.2.5. Ensure that all of its vehicles and that of its agents, contractors and distributors together with the associated equipment meet all legislative requirements and the HSSE standards of the Host;
- 5.2.6. Ensure that all drivers and vehicles, either employed by the Tenant, its agents, contractors or distributors are trained in accordance with the HSSE standards of the Host;
- 5.2.7. Attend monthly safety meetings and participate in emergency drills;
and
- 5.2.8. Ensure that vehicle, compartmentation changes on their TAS system are only made by their staff using the centralized data application process within Shell and that no changes to data are to be made without the approval of this channel. - Central scheduling TAS administration.

5.3. PRODUCT QUALITY CONTROL

- 5.3.1. Both Parties will have standard quality procedures at Depots.
- 5.3.2. In the case of aviation Products, the Host will adhere to provisions of its own aviation quality control, save where the prevailing industry norm is higher, in which case the same will instead be complied with and be preferred, and will be responsible for ensuring that on-specification Products are handed over to the aviation depot, agent or customer handling the airfield storage arrangement.
- 5.3.3. Both Parties will implement similar safety procedures for illuminating paraffin. On request, a Party will provide these procedures for scrutiny to the other Party. If either Party does additional testing in relation to the other this procedure should be performed if found to be necessary.
- 5.3.4. If it is suspected that a Product is not to specification, the Host will provide a quality certificate for this product to the Tenant.

5.4. ADDITIVES

The Host will be responsible for:

- 5.4.1. The storage and handling of the Tenant's additives and, where applicable, this includes offloading drums;
- 5.4.2. Injecting the additives into the Products as per the Tenant's instructions;
- 5.4.3. Submitting a monthly spreadsheet showing the additive stocks and usage to the Tenant; and
- 5.4.4. Submitting doped fuel samples as required by the Tenant to the Tenant's laboratory at the Tenant's cost.

The Tenant shall:

- 5.4.5. Ensure that sufficient additives are available at the Depot at all times;
- 5.4.6. Notify the Depot Owner in writing of the applicable dosage rates; and
- 5.4.7. Provide the Material Safety Data Sheets to the Depot Owner.
- 5.4.8. Notify the Depot Owner of any amendments or variations to Product specifications and the Material Safety Data Sheets within 14 (fourteen) days prior to such amendment or variation.

5.5. NEW PRODUCTS

- 5.5.1. A Tenant introducing a Product not previously stored at a Depot shall only do so with the prior written approval of the Host and shall furthermore before so introducing such Product, provide full details in the form of Material Safety Data Sheets and other relevant documents where applicable in advance to the Host in order for the Host to comply with all legal obligations and other agreed HSSE procedures and codes of practice with particular attention to the Occupational Health and Safety Act No. 85 of 1993.
- 5.5.2. Both Parties agree that such new products are subject to a management of change process covering systems and business processes.

6. PRINCIPLES UNDER THE THROUGHPUT MODEL

Under the “Throughput Model”:

- 6.1. The Host will operate all Storage and Handling activities at the Depot.
- 6.2. The Host and the Tenant may each replenish product into the Depot.
- 6.3. The Host and the Tenant may each uplift product from the Depot.
- 6.4. The Host and the Tenant will each retain Title to their respective product entitlements stored at the Depot.
- 6.5. The Host will assume responsibility for insurance risk for the full volume of product stored at the Depot.
- 6.6. The Host will be accountable for the full loss/gain at the Depot, as measured during the Stock Count cycle.
- 6.7. Storage & Handling charges must be billed based upon a schedule of Uplifts by the Tenant reported by the Host. The charges billed for Storage & Handling are set out in the Annexures.
- 6.8. Tenants will be obliged to have positive stocks at all Depots at all times to ensure availability of product at the Depot for uplifting of such product by Tenant at each Depot. This will also oblige the Host not to go negative and use Tenant stock except by agreement as this may constrain the Tenant.
- 6.9. In the event that a Party requires Product to be uplifted in excess of its entitlement to such Product at the Depot, it is hereby agreed that in order to accommodate such requirements, the Party needing product shall do an in-tank purchase. The in-tank purchase should be done upfront to prevent the Party from going negative. However, where in exceptional cases, a temporary negative position is permitted for operational reasons, this negative position should be corrected within three (3) days, and also before month-end close of accounts.
- 6.10. In the event that the Parties do not agree the Product Entitlement balance, or if there are any un-reconciled volumes or disputes, it will then be assumed that the entitlement balance per the Host ERP is the correct balance for product scheduling purposes.
- 6.11. Subject to the entitlement balance of the Tenant, the Host shall supply the Tenant's requirements of Products from the Depot.
- 6.12. In the event where a stock-out at a Depot occurs due to circumstances beyond the control of the Host or Tenant, or a Force Majeure event, the Host shall notify the Tenant of such stock-out as soon as reasonably possible.

7. PRODUCT RISK AND TRANSFER VOLUME

7.1. REPLENISHMENTS BY SEA

- 7.1.1. Where a Tenant replenishes by Sea the risk passes from the Tenant at the vessels flange.
- 7.1.2. The transfer volume will be the volume receipted into the tanks, as confirmed by the surveyors on the P201 document.

7.2. REPLENISHMENTS BY PIPELINE

- 7.2.1. Where a Tenant replenishes by Pipeline, the Risk passes from the Tenant at the designated pipeline entry point.
- 7.2.2. For product movements by Transnet Pipelines, the transfer volume will be the volume confirmed by the Transnet Pipelines docket showing the volume received at the inlet flange.
- 7.2.3. For product movements at the refinery supplied Depots, Cape Town and Mossel Bay terminals, the transfer volume will be calculated from the difference between the before and after dip of the Depot receiving tanks. The transfer volume will be the volume apportioned on the advice from the Host Party.

7.3. REPLENISHMENTS BY RAIL

- 7.3.1. Where a Tenant replenishes by Rail, the Risk passes from the Tenant at the flange of the rail tank car.
- 7.3.2. The transfer volume will be as per the bill of lading from the sending Depot.

7.4. REPLENISHMENTS BY ROAD

- 7.4.1. Where a Tenant replenishes by Road, the Risk passes from the Tenant at the flange from bridging vehicle.
- 7.4.2. The transfer volume will depend on the confirmation of installation of temperature compensated meters at the Depot. The list where the Depot does have temperature compensated meters is set out in the Annexures hereto.
- 7.4.3. Metered Road Receipt: If the receiving Depot does have temperature compensated meters at the discharge location, then the discharge volume is to be used as the transfer volume.
- 7.4.4. Meter-less Road Receipt: Seals Intact: If the receiving Depot does not have temperature compensated meters at the discharge location, and if the seals on the bridging vehicle are intact and the seal numbers

correspond to the seal numbers on the bill of lading, then the load volume on the bill of lading at the supply dispatch point is to be used as the transfer volume.

7.4.5. Meter-less Road Receipt: Seals Not Intact: If the receiving Depot does not have temperature compensated meters at the discharge location, and if the seals on the bridging vehicle are not intact, then the product is not to be received by the receiving Depot. The Host must immediately inform the replenishing Party of the non-compliance, and the Tenant must advise the Transporter what to do with the load.

7.5. UPLIFTS BY SEA

7.5.1. Where a Tenant uplifts by Sea, the Risk passes to the Tenant at the flange of the vessel.

7.5.2. The transfer volume will be the volume loaded onto the vessel, as confirmed by the Surveyors.

7.6. UPLIFTS BY PIPELINE

7.6.1. Where a Tenant uplifts by Pipeline, the Risk passes to the Tenant at the flange of the designated pipeline entry point.

7.6.2. The transfer volume will be the volume filled into the pipeline, as confirmed by the docket.

7.7. UPLIFTS BY RAIL

7.7.1. Where a Tenant uplifts by Rail, the Risk passes to the Tenant at the flange of rail tank car.

7.7.2. The transfer volume will be the volume loaded into the rail tank car, as measured by the ullage.

7.8. UPLIFTS BY ROAD

7.8.1. Where a Tenant uplifts by Road, the Risk passes to the Tenant at the flange of vehicle.

7.8.2. The transfer volume will be the volume loaded into the vehicle, as measured by the gantry meter.

8. PRODUCT UNPLANNED MOVEMENTS

8.1. PRODUCT RETURN TO DEPOT

- 8.1.1. Under certain circumstances, a Tenant may require to return Product to a Host Depot from a vehicle.
- 8.1.2. This should only be done if all other means of solution have been exhausted, and there are no further options to consider. For example, vehicles should be re-routed to another customer site, or vehicle scheduling should be adjusted so that compartments can be optimally loaded on successive loads, before this may be considered as an option.
- 8.1.3. The Tenant must obtain permission from a Host before such product may be returned to a Host Depot.
- 8.1.4. The Product return to Depot excludes Illuminating Paraffin.
- 8.1.5. The Product return to Depot is limited to 2,000 litres per trip for other Products.
- 8.1.6. The volume of Product returned must be credited to the Tenant account at the Depot.

8.2. ILLUMINATING PARAFFIN FLUSHINGS

- 8.2.1. Illuminating Paraffin flushing may be performed on condition that the Depot is able to flush product.
- 8.2.2. Risk will change once the Product is loaded into the vehicle.
- 8.2.3. The transfer volume will be the volume loaded into the vehicle, as measured by the gantry meter.
- 8.2.4. Risk will change again once the Product is returned to the Depot tank.
- 8.2.5. The transfer volume will be the volume returned to the Tank.
- 8.2.6. The volume of Product loaded and returned must be debited and credited to the Tenant account at the Depot.

8.3. CONTAMINATIONS

- 8.3.1. Where possible, the Depot Owner will accept contaminated Product to the extent that such Product can be taken into the storage tank without compromising the quality of the contents of the tank.
- 8.3.2. The Tenant must obtain permission from a Host before such contaminated product may be returned to a Host Depot. Such permission should be obtained from the respective Supply Management teams.

9. PRODUCT LOSSES

9.1. REPLENISHMENT LOSSES

9.1.1. All replenishment losses are borne by the Party responsible for arranging or contracting the replenishment transport.

9.2. STORAGE LOSSES

9.2.1. Tank storage losses and gains are for the Host account.

9.3. DELIVERY LOSSES

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

10. STOCK ACCOUNTING

10.1. MEASUREMENT

- 10.1.1. All road gantry pick-ups will be at 20° C at automated gantries and ambient at non - automated gantries.
- 10.1.2. All metered sales in respect of Customer Own Collections will be processed at ambient temperature.
- 10.1.3. All non-metered vehicles' (SPD) measurement procedures shall be based on vehicle compliance.
- 10.1.4. The gantry meters through which Product is supplied to the Tenant will be calibrated according to Trade Metrology Act, No 77 of 1973 or applicable SABS code.

11. STOCK RECONCILIATION

11.1. DAILY

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

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

11.2. ANNUALLY

11.2.1. The annual sign-off for December movements must be concluded in time for the Audit Review of both Parties.

12. PRODUCT MOVEMENTS

12.1. IN-TANK PURCHASES AND SALES

- 12.1.1. The parties agree that certain “In-tank” transactions may take place from time to time.
- 12.1.2. An In-Tank transaction between the Parties will always be treated as two separate transactions, and will be recorded at the Depot of the Host.
- 12.1.3. In the Host book of accounts, these transactions are:
- 12.1.4. A Sale/Purchase for a volume of product
- 12.1.5. A Throughput Receipt/Issue for an equivalent volume of product.
- 12.1.6. In the Tenant book of accounts, these transactions are:
- 12.1.7. Purchase/Sale for a volume of product
- 12.1.8. A Throughput Issue/Receipt for an equivalent volume of product.
- 12.1.9. The Parties agree that Pricing of Product for In-Tank Purchases and Sales transactions should be negotiated on a Spot basis.
- 12.1.10. The Parties agree that Bridging Charges as indicated in the Annexure B is applicable to the in-tank purchases and sales.
- 12.1.11. The Parties agree that Excise Duties are applicable to the in-tank purchases and sales.

12.2. THROUGHPUT MOVEMENTS

- 12.2.1. The Parties agree that in consideration for the Throughput Services, the Tenant shall pay the charges to the Host. These charges are Storage & Handling Charges as indicated in Annexure A.

13. INVOICING AND PAYMENT TERMS

13.1. INVOICING

13.1.1. By the 5th (fifth) Business Day of each month, the Host shall issue to the Tenant a tax invoice in respect of the Buy/Sell transactions and Services rendered during the immediately preceding month.

13.1.2. Each Purchase/Sale transaction from the selling Party to the buying Party shall contain the following information:

13.1.3. Depot name;

13.1.4. Product volume, price, and applicable excise duties;

13.1.5. The amount of value added tax owing in relation to such products.

13.1.6. Each Throughput Movement invoice shall contain the following information:

13.1.7. Depot name;

13.1.8. Throughput Volume

13.1.9. The amount for the service rendered;

13.1.10. The amount of value added tax owing in relation to such Services.

13.2. PAYMENT TERMS

13.2.1. The Tenant shall pay the invoiced amounts due on the 15th day of month following the month of delivery.

13.2.2. All payments made by the Tenant to the Host in terms of this Agreement shall be made by electronic funds transfer, free of exchange, deduction or set-off into an account nominated by the Host.

13.2.3. In the event of any payment not being made on due date, the amount due and owing shall bear interest at Prime Rate and shall be calculated from the day that such amount is due until the date of payment.

14. AUDIT

14.1. HOST AUDIT

- 14.1.1. The Host will be responsible for auditing of their own Depots. Such audits should be in accordance with the respective Host company requirements, and should cover subjects including HSSE, product quality, procedures, vehicle inspections, and stock reconciliations.

14.2. TENANT AUDIT

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

14.3. DOCUMENT RETENTION

- 14.3.1. The Host agrees to retain all documentation for the duration of three years.
- 14.3.2. The documentation referred includes all documents where the Parties have replenished or uplifted product from/to the other Party's location, including:
- 14.3.3. Product receipt documentation;
- 14.3.4. Product uplift documentation;
- 14.3.5. Customer proof of collection documentation; and
- 14.3.6. Services rendered.

15. LIABILITY

15.1. PERFORMANCE

15.1.1. The liability of the Host to the Tenant in respect of the performance or non-performance of the Host's duties hereunder shall be limited to the performance or re-performance thereof together with a claim for damages but shall exclude an entitlement to terminate this Agreement other than pursuant to clause 18.

15.1.2. Save as may arise pursuant to a breach of an obligation imposed on either Party in terms of this Agreement, no Party shall have any claim for damages against the other pursuant to the terms of this Agreement. Neither Party shall have any liability to the other Party at any time for indirect losses, consequential damages and/or loss of profit and/or loss of market share.

15.1.3. Other liabilities relating to the Services and the implementation of this Agreement shall be borne as follows:

15.2. PROPERTY

15.2.1. A Party shall not be liable for any loss or damage to the property of the other Party except where such loss or damage results from the negligence or willful default of the first-mentioned Party or its authorized personnel or agents.

15.2.2. Each Party shall assume responsibility for insurance for loss or damages to its own property and where jointly owned property exists, their portion of such property.

15.3. PERSONNEL

15.3.1. Liabilities in respect of claims arising as a result of death, injury or disease to personnel shall be borne:

15.3.2. In the case of a Party's own employees or sub-contractors, by that Party; and

15.3.3. In the case of other personnel, by the Host or alternatively equally by both Parties.

15.4. THIRD PARTY

15.4.1. Liabilities to any Third Party shall be borne by the Host, however, if the damage / injury is caused by a Tenants vehicle or Tenants personnel inside the Depot property then this liability should then be borne by the Tenant.

16. FORCE MAJEURE

16.1. FORCE MAJEURE CONDITIONS

- 16.1.1. "Force Majeure" for the purposes of this Agreement means any event or condition (whether affecting a Party or any other person), which has prevented or delayed or will prevent or delay a Party from performing any obligation hereunder (except obligations to make payments when due, to which obligations in respect of Force Majeure shall not apply), in whole or in part, if such event or condition, and such prevention or delay, is beyond the reasonable control of the Party relying thereon as justification for not performing any such obligation (the "Non-Performing Party") and such event or condition, and such prevention or delay, could not have been prevented or overcome by exercise of reasonable care by the Non-Performing Party.
- 16.1.2. Such events or conditions shall, provided always that they meet the requirements set forth in this clause, include but shall not be limited to circumstances of the following kind:
- 16.1.3. Acts of government(s), acts of the public or foreign enemy, war declared or undeclared, hostilities (whether or not war has been declared), blockades, embargoes, military action, civil disturbances, public demonstrations, insurrection, riots, acts of terrorism, acts of sabotage, vandalism, aircraft crashes, chemical or biological contamination, nuclear incidents or similar occurrences;
- 16.1.4. Acts of God, landslides, lightning, earthquakes, fires, explosions, storms or storm warnings, floods, extreme weather conditions, washouts, epidemics or similar occurrences;
- 16.1.5. Strikes, boycotts, lockouts, and other similar industrial or labour disputes and disturbances; and
- 16.1.6. Inability to obtain the grant or renewal of any license or approval necessary for operation of the Refinery, the necessity for compliance with any court order, law, statute, ordinance or regulation promulgated by a governmental entity having jurisdiction.
- 16.1.7. If the Non-Performing Party is prevented, hindered or delayed from performing any of its obligations under this Agreement by reason of Force Majeure, the Non-Performing Party shall be relieved from performance of its obligations under this Agreement to the extent that the Non-Performing Party is unable to deliver or receive the agreed quantities of Products or to perform any of its other obligations under this Agreement. Such obligations of the Non-Performing Party and any corresponding or related obligations of the other Party shall be of no effect, without liability, for a period equal to the duration of the event or condition of Force Majeure, provided that the Non-Performing Party shall notify the other Party of the nature, extent, effect and the likely duration of

the circumstances constituting Force Majeure or expected to constitute Force Majeure as soon as reasonably possible.

16.1.8. As soon as reasonably practical after the end of the event or condition of Force Majeure the Non-Performing Party shall notify the other Party in writing that the event or condition of Force Majeure has ended and shall resume performance of its obligations under this Agreement.

16.1.9. For the avoidance of doubt, neither Party shall be released from any of its obligations or liabilities under this Agreement arising prior to an event or condition of Force Majeure, and this Agreement shall remain in effect for the duration of the event or condition of Force Majeure.

16.1.10. The Non-Performing Party shall use all reasonable efforts to mitigate the impact of Force Majeure and to remedy its inability to perform as quickly as is reasonably possible.

17. GENERAL

17.1. CONDITIONS

17.1.1. This Agreement constitutes the whole of the agreement between the Parties hereto relating to the matters dealt with in this Agreement and save to the extent otherwise provided herein no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on any of the Parties.

17.1.2. No variation, addition, deletion, or agreed cancellation will be of any force or effect unless agreed in writing between the Parties hereto.

17.1.3. No waiver of any of the terms and conditions of this Agreement will be binding or effectual for any purpose unless in writing and signed by or on behalf of the Party giving the same. Any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party hereto in exercising any right, power or privilege hereunder will constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

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

17.1.5. Any consent or approval required to be given by any Party in terms of this Agreement will, unless specifically otherwise stated, not be unreasonably withheld or delayed.

17.1.6. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts. The Parties undertake to take whatever steps may be necessary to ensure that both counterparts are duly signed by each of them.

17.2. APPLICABLE LAW

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

17.2.2. Subject to the provisions of this Agreement, the Parties hereto hereby consent and submit to the non-exclusive jurisdiction of the Cape of Good Hope Provincial Division of the High Court of the Republic of

South Africa in respect of any dispute arising from or in connection with this Agreement. The Parties agree that any costs awarded will be recoverable in accordance with the High Court tariff, determined on an attorney-and-own-client scale.

17.3. SEVERABILITY

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

17.4. MEDIATION AND ARBITRATION

17.4.1. In the event of any dispute or difference arising between the Parties hereto relating to or arising out of this Agreement, including the validity, implementation, execution, interpretation, rectification, termination or cancellation of this Agreement, the said dispute or difference shall be referred to the Party's Supply Managers for urgent mediation.

17.4.2. If no resolution is reached and recorded in writing within 20 (twenty) Business Days of referral to the Supply Managers, such dispute may on written demand by any Party to the dispute be submitted to arbitration in accordance with the rules of the Arbitration Foundation of Southern Africa ("AFSA") by an arbitrator or arbitrators appointed by AFSA and agreed to by the Parties.

17.4.3. Should the Parties fail to agree on an arbitrator within 10 (ten) Business Days after arbitration has been demanded, the arbitrator shall be nominated at the request of any Party to the dispute by AFSA.

17.4.4. The Parties irrevocably agree that the submission to arbitration in terms of this clause 31 is subject to the Parties' rights of appeal set out hereunder.

17.4.5. Any Party to the arbitration may appeal the decision of the arbitrator within a period of 20 (twenty) Business Days after the arbitrator's ruling has been handed down by giving written notice to that effect to the other Party or Parties to the arbitration. The appeal shall be dealt with in accordance with the rules of AFSA by a panel of three arbitrators appointed by AFSA.

17.4.6. The decision of the arbitrator shall be final and binding on the Parties to the arbitration after the expiry of the period of 20 (twenty) Business Days from the date of the arbitrator's ruling if no appeal has been lodged by any Party. A decision, which becomes final and binding

in terms of this clause 31 may be made an order of court at the instance of any Party to the arbitration.

17.4.7. Nothing herein contained shall be deemed to prevent or prohibit any Party from applying to the appropriate court for urgent relief.

17.4.8. The provisions of this clause 31 will continue to be binding on the Parties notwithstanding any termination or cancellation of the Agreement.

17.5. EXPERT

17.5.1. Whenever under this Agreement any matter is to be referred to an expert, and whenever during the term of the Agreement, the Parties agree that a point of difference between them shall be resolved by an expert, the provisions of this clause 32 shall apply unless modified by any other express provision.

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

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

17.5.4. The Parties shall meet in order to agree upon an expert; and

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

17.5.6. The expert shall specify the procedure to be adopted by the Parties in the hearing of the dispute.

17.5.7. The expert shall be entitled to obtain such independent, professional and/or technical advice as he may reasonably require.

17.5.8. The expert shall give full written reasons for his determination and shall furnish the Parties therewith within 5 (five) Business Days after the conclusion of the hearing.

17.5.9. The expert shall be deemed not be an arbitrator but shall render his determination as an expert and any law relating to arbitration shall not apply to such expert or his determination or the procedure by which the expert reaches his determination.

17.5.10. The final determination of the expert shall be conclusive and binding upon the Parties, save in the event of fraud, manifest error, or failure by the expert to disclose any relevant interest.

17.6. COSTS

17.6.1. Save as may be otherwise provided herein, each Party will bear and pay its own costs of and incidental to the negotiation, drafting and preparation of this Agreement.

17.7. BREACH

17.7.1. If either Party commits any material breach of its obligations and fails to remedy such breach within 14 (fourteen) days of notice being given to it by the other Party requiring the same to be remedied, then the other Party shall be at liberty in every such case by notice in writing to terminate this Agreement without prejudice to the rights of either Party hereto in respect of any breach of any of the terms herein contained, save as provided for in clause 1.1 above.

17.7.2. Notwithstanding anything to the contrary herein contained and save as provided for in clause 1.1 above, this Agreement may be terminated by either Party in the event that:

17.7.3. A order is made by any Court of competent jurisdiction, whether provisional or final, for the winding up or the judicial management of either Party;

17.7.4. Either Party passes a resolution for the voluntary winding up of such Party;

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

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

17.7.7. The business of either Party is nationalized.

17.8. EFFECT OF TERMINATION

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

18. NOTICES AND DOMICILIA

18.1. NOTICE

- 18.1.1. Each of the Parties chooses domicilium citandi et executandi ("domicilium") for the purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purposes arising from this Agreement at their respective addresses set forth in clause 1 hereof.
- 18.1.2. Each of the Parties shall be entitled from time to time, by written notice to the other, to vary its domicilium to any other address within the Republic of South Africa which is not a post office box or poste restante.
- 18.1.3. Any notice given and any payment made by a Party to any of the others ("the addressee") which:
 - 18.1.4. Is delivered by hand during the normal business hours of the addressee at the addressee's domicilium for the time being shall be presumed, until the contrary is proved by the addressee to have been received by the addressee at the time of delivery;
 - 18.1.5. Is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's domicilium for the time being shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee on the 10th (tenth) day after the date of posting.
- 18.1.6. Where, in terms of this Agreement any communication is required to be in writing, the term "writing" shall include communications by facsimile or electronic mail. Communications by facsimile shall, unless the contrary is proved by the addressee, be deemed to have been received by the addressee 24 (twenty-four) hours after the time of transmission. Communications by way of electronic mail shall, unless the contrary is proved by the addressee, be deemed to have been received by the addressee 24 (twenty four) hours after the time of transmission.

SIGNATURE

FOR: SHELL SOUTH AFRICA MARKETING (PROPRIETARY) LIMITED

DATED AT _____ ON THIS THE ____ DAY OF _____ 20xx.

NAME: _____

SIGNATURE: _____

CAPACITY OF SIGNATORY: _____

Who warrants that he is duly authorised thereto

AS WITNESSES:

1. NAME: _____ SIGNATURE: _____

2. NAME: _____ SIGNATURE: _____

FOR: Tenant

DATED AT _____ ON THIS THE ____ DAY OF _____ 20xx.

NAME: _____

SIGNATURE: _____

CAPACITY OF SIGNATORY: _____

Who warrants that he is duly authorised thereto

AS WITNESSES:

1. NAME: _____ SIGNATURE: _____

2. NAME: _____ SIGNATURE: _____

Annexure 'A'

Version 1

Date

STORAGE & HANDLING CHARGES

The following Storage & Handling Charges are applicable effective 01 January 20.. :

SHELL DEPOTS	STORAGE & HANDLING CHARGE
Alberton	Xxx c/l
Island View	Xxx c/l
Kimberley	Xxx c/l
Kroonstad	Xxx c/l
Ladysmith	Xxx c/l
Mossel Bay	Xxx c/l
Polokwane	Xxx c/l
Port Elizabeth	Xxx c/l
Rockydrift	Xxx c/l
Witbank	Xxx c/l

Annexure 'B'

Version 1

Date

BRIDGING CHARGES

The following Bridging Charges are applicable effective 01 January 20.. :

SHELL DEPOTS	BRIDGING CHARGE
Alberton	Xxx c/l
Island View	Xxx c/l
Kimberley	Xxx c/l
Kroonstad	Xxx c/l
Ladysmith	Xxx c/l
Mossel Bay	Xxx c/l
Polokwane	Xxx c/l
Port Elizabeth	Xxx c/l
Rockydrift	Xxx c/l
Witbank	Xxx c/l

Annexure 'C'

Version 1

Date

DEPOT WITH TEMPERATURE COMPENSATED METERS

The following Depots have temperature compensated meters for road receipts:

SHELL DEPOTS	Meters
Alberton	Yes
Island View	No
Kimberley	Yes
Kroonstad	Yes
Ladysmith	Yes
Mossel Bay	No
Polokwane	Yes
Port Elizabeth	No
Rockydrift	Yes
Witbank	Yes

Annexure 'D'

Version 1

Date

DEPOT PLANNING PROCEDURE TEMPLATE

DEPOT

HOST

TENANT

Products	Replenishment Logistics Mode (Sea/Pipe/Rail/Road)	Throughput Sales Average Volume (Monthly)	Comment
Paraffin			
ULP95			
Petrol Additive			
LRP95			
LSDiesel			
ULSDiesel			
Diesel Additive			