

PetroSA Depot Throughput Agreement

entered into between

**THE PETROLEUM OIL and GAS CORPORATION
OF SA (SOC) LIMITED
(Registration No. 1970/008130/07)
("PETROSA")**

and

**TENANT (Pty) Ltd
(Registration No)
("TENANT ")**

TABLE OF CONTENTS

1	INTERPRETATION AND DEFINITIONS	4
1.1	INTERPRETATIONS.....	4
1.2	DEFINITIONS.....	6
2	AGREEMENT	8
2.1	INTRODUCTION.....	8
2.2	DURATION.....	8
2.3	SUPERSESSION	8
2.4	RELATIONSHIP OF THE PARTIES	8
2.5	REVIEW.....	8
2.6	ANNEXURES	
3	SCOPE OF AGREEMENT	10
3.1	IN SCOPE.....	10
3.2	OUT OF SCOPE	10
4	HEALTH, SAFETY, SECURITY AND ENVIRONMENT	11
4.1	STANDARDS.....	11
4.2	VEHICLES.....	11
4.3	DEPOT AND EQUIPMENT	11
4.4	OPERATIONS	11
4.5	PERSONNEL.....	11
4.6	INCIDENT REPORTING	11
4.7	CONTAMINATIONS AND SPILLAGES	12
5	OPERATING REQUIREMENTS	13
5.1	COMPLIANCE	13
5.2	OBLIGATIONS OF THE HOST	13
5.3	OBLIGATIONS OF THE TENANT.....	14
5.4	PRODUCT QUALITY CONTROL.....	14
5.5	ADDITIVES	15
5.6	NEW PRODUCTS	15
5.7	PRODUCT SUPPLY.....	15
5.8	DEMURRAGE AND FINES.....	16
6	PRODUCT MANAGEMENT MODELS	17
6.1	THROUGHPUT MODEL	17
6.2	BUY/SELL MODEL.....	18
7	PRODUCT OPERATIONS.....	19
7.1	PLANNING	19
7.2	CONFIDENTIALITY.....	19
8	PRODUCT RISK AND TRANSFER VOLUME	20
8.1	REPLENISHMENTS BY SEA.....	20
8.2	REPLENISHMENTS BY PIPELINE.....	20
8.3	REPLENISHMENTS BY RAIL.....	20
8.4	REPLENISHMENTS BY ROAD	20
8.5	UPLIFTS BY SEA.....	21
8.6	UPLIFTS BY PIPELINE.....	21
8.7	UPLIFTS BY RAIL	21
8.8	UPLIFTS BY ROAD.....	21
9	PRODUCT UNPLANNED MOVEMENTS.....	22
9.1	PRODUCT RETURN TO DEPOT	22
9.2	ILLUMINATING PARAFFIN FLUSHINGS.....	22
9.3	SIDE TANK FILLINGS.....	22
9.4	CONTAMINATIONS	22

**PETROSA THE NAME OF THE CUSTOMER DEPOT SUPPLY
AGREEMENT**

9.5 SHIPPING REPRORATIONS.....	23
10 PRODUCT LOSSES	24
10.1 REPLENISHMENT LOSSES	24
10.2 STORAGE LOSSES	24
10.3 DELIVERY LOSSES	24
11 STOCK ACCOUNTING.....	25
11.1 MEASUREMENT	25
11.2 IN-TANK TRANSACTIONS	25
12 STOCK RECONCILIATION	26
12.1 DAILY	26
12.2 MONTHLY	26
12.3 ANNUALLY	26
13 PRICING, CHARGES, EXCISE DUTIES, BILLING, AND PAYMENT.....	27
13.1 PRICING OF TRANSACTIONAL ITEMS OF A ROUTINE NATURE.....	27
13.2 PRICING OF IN-TANK PURCHASES AND SALES.....	27
13.3 CHARGES	27
13.4 EXCISE DUTIES.....	27
13.5 INVOICING	28
13.6 PAYMENT TERMS	28
14 IT SYSTEMS.....	30
14.1 EDI	30
15 AUDIT	31
15.1 HOST AUDIT	31
15.2 TENANT AUDIT.....	31
15.3 DOCUMENT RETENTION	31
16 LIABILITY.....	32
16.1 PERFORMANCE	32
16.2 PROPERTY	32
16.3 PERSONNEL	32
16.4 THIRD PARTY	32
17 FORCE MAJEURE	33
17.1 OBLIGATION	33
18 TERMINATION	35
18.1 BREACH	35
18.2 EFFECT OF TERMINATION	35
19 GENERAL	36
19.1 CONDITIONS.....	36
19.2 APPLICABLE LAW	36
19.3 SEVERABILITY.....	36
19.4 MEDIATION AND ARBITRATION	37
19.5 EXPERT	38
19.6 COSTS.....	38
20 NOTICES AND DOMICILIA	39
20.1 NOTICE.....	39
ANNEXURES	41

**PETROSA THE NAME OF THE CUSTOMER DEPOT SUPPLY
AGREEMENT**

1 INTERPRETATION AND DEFINITIONS

1.1 INTERPRETATIONS

- 1.1.1 In this Agreement, unless the context otherwise indicates:
- 1.1.2 "Agreement" means this Agreement and any annexures hereto;
- 1.1.3 "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 DoE website and as may be amended by DoE from time to time ("the Working Rules");
- 1.1.4 "PETROSA" means The Petroleum Oil and Gas Corporation of South Africa (SOC) Ltd (Registration No. 1970/008130/07), of 151 Frans Conradie Drive, Parow, Cape Town, South Africa (Contact: Supply and Logistics Manager);
- 1.1.5 "Business Day" means any day other than a Saturday, Sunday or Public Holiday officially gazetted as such in the Republic of South Africa;
- 1.1.6 "Buyer" means either TENANT or PETROSA whichever is applicable to the specific transaction;
- 1.1.7 "CEF" means CEF (Pty) Limited, which is the Government regulator responsible for the monitoring and implementation of product price adjustments for controlled petroleum products;
- 1.1.8 "Charge" means the charge charged by the Host to the Tenant for the Services as contemplated in clause and Annexure C (Storage and Handling Charges), hereto;
- 1.1.9 "Competition Act" means the Competition Act No. 89 of 1998;
- 1.1.10 "Customs and Excise Act" means the Customs and Excise Act, No. 91 of 1964, as amended from time to time;
- 1.1.11 "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 as specified in Annexure A & B (Depots) hereto;
- 1.1.12 "Depot Manager" means the person nominated by the Party to manage the operation of the Depot;
- 1.1.13 "EDI" means Electronic Data Interchange;
- 1.1.14 "Effective Date" means , notwithstanding the Signature Date;
- 1.1.15 "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 pumpable physical volume in the tank;
- 1.1.16 "Force Majeure" has the meaning given to that term in clause 17;

**PETROSA THE NAME OF THE CUSTOMER DEPOT SUPPLY
AGREEMENT**

- 1.1.17 "Host" means the Party operating the Depot;
- 1.1.18 "HSSE standards" means Health, Safety, Security and Environment standards;
- 1.1.19 "Incident" means an event or chain of events, which directly causes, or within a reasonably short time from the occurrence thereof, may cause injury and/or illness and/or loss and/or damage to any person, any property and/or the environment, including any spillage and/or contamination of the Products;
- 1.1.20 "Month" means a calendar month;
- (i) Month M-2 shall be two months prior to delivery month M
 - (ii) Month M-1 shall be one month prior to delivery month M
 - (iii) Month M shall be the delivery month
 - (iv) Month M+1 shall be the immediate next month after Month M
 - (v) Month M+2 shall be the immediate next month after Month M+1
 - (vi) Month M+3 shall be the immediate next month after Month M+2
- 1.1.21 "Non-performing Party" has the meaning given to that term in clause 17.1.1 below;
- 1.1.22 "Operating Requirements" means the Host's 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;
- 1.1.23 "Party" means TENANT or PETROSA and/or "Parties" mean TENANT and PETROSA collectively;
- 1.1.24 "Prime Rate" means the publicly quoted prime rate of interest of ABSA Bank, per annum, compounded Monthly in arrear and prima facie proven, in the event of there being a dispute in relation thereto and in the absence of manifest error, by a certificate by any general manager of ABSA Bank (whose qualification or authority need not be proven) or, in the absence of the prime rate of interest of ABSA Bank, the publicly quoted prime rate of interest of the largest domestic bank by market capitalization (excluding ABSA Bank) in South Africa;
- 1.1.25 "Product" means the petroleum products stored at a Depot from time to time;
- 1.1.26 "PoD" means the documentation confirming proof of delivery of Product to a Depot bearing the signature of the duly authorized representative of the Host to receive the Product, 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, the rail tank car number with a freight rail seal impressed on it and an order number. For deliveries out of the Depot proof of delivery shall be in the form of the bill of loading (BoL) bearing the signature of the Tenant's driver
- 1.1.27 "Seller" means either TENANT or PETROSA, whichever is applicable to the specific transaction;

**PETROSA THE NAME OF THE CUSTOMER DEPOT SUPPLY
AGREEMENT**

- 1.1.28 "Services" means the provision for replenishment, storage, and uplift of Product by a Tenant;
- 1.1.29 "TENANT " means; TENANT (Pty) Ltd of ...ADRESS
- 1.1.30 "Signature Date" means the date of signature of this Agreement by the last Party signing;
- 1.1.31 "Tenant" means a Party to whom the Services are provided at a Depot by the Host; and
- 1.1.32 "VAT" means value-added tax levied in terms of the Value-Added Tax Act, No. 89 of 1991

1.2 DEFINITIONS

- 1.2.1 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.
- 1.2.2 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.
- 1.2.3 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.
- 1.2.4 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.
- 1.2.5 If any provision in clauses 1 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.
- 1.2.6 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.
- 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.
- 1.2.8 Unless expressly provided otherwise in this Agreement, 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 last business day before the non business day.

PETROSA THE NAME OF THE CUSTOMER DEPOT SUPPLY
AGREEMENT

- 1.2.9 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.
- 1.2.10 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.
- 1.2.11 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.

EXAMPLE

2 AGREEMENT

2.1 INTRODUCTION

PETROSA and TENANT agree to enter into this Agreement in order to specify the terms and conditions upon which infrastructure Depots operated by one of the Parties may be used for replenishment, storage and uplift of bulk fuels by the other Party.

2.2 DURATION

2.2.1 This Agreement shall commence on the Effective Date and shall endure for a period of 5 years, provided that either Party may terminate this Agreement upon three (3) 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:

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

2.2.1.2 the Host may terminate the provision of the Services at one depot on three (3) months written notice to the Tenant to such effect.

2.3 SUPERSESION

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

2.4 RELATIONSHIP OF THE PARTIES

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

2.5 REVIEW

2.5.1 The Parties shall conduct an annual review 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:

2.5.1.1 HSSE reports;

2.5.1.2 Service standards;

2.5.1.3 Operational requirements and operational changes; and

2.5.1.4 Charges and tariffs as per Annexures C & D.

2.5.2 Both Parties shall ensure that:

2.5.2.1 an agenda is prepared in respect of the aforesaid meetings;

**PETROSA THE NAME OF THE CUSTOMER DEPOT SUPPLY
AGREEMENT**

- 2.5.2.2 discussions at the meetings shall be limited to those items on the agenda; and
- 2.5.2.3 the agenda is approved by each Party's legal counsel.
- 2.5.3 The Parties shall be obliged to obtain competition law compliance training so as to ensure that the conduct of the Parties in terms of this Agreement complies with the Competition Act.
- 2.5.4 Parties may come together at any other time to revise terms and definitions if prompted by industry market or regulatory changes. In particular, the following events shall necessitate a meeting between the Parties:
 - 2.5.4.1 changes in tank capacities at any of the Host Depots that may have an impact on the Tenant's throughput;
 - 2.5.4.2 any other maintenance or operational change or requirement by the Host that may have an impact on the Tenant's throughput.

2.6 ANNEXURES

- 2.6.1 The Parties record that certain of the Annexures to this Agreement shall be revised and agreed from time to time as contemplated in the Agreement. The Parties agree that any such revised Annexure shall, upon signature by both Parties, and unless otherwise expressly agreed, be deemed to be incorporated into this Agreement and be deemed to replace the previous Annexure which previous Annexure shall, on the effective date of the revised Annexure, be of no further force and effect,
- 2.6.2 In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of any Annexure hereto, the provisions of this Agreement shall prevail to the extent of such conflict or inconsistency.

3 **SCOPE OF AGREEMENT**

3.1 **IN SCOPE**

3.1.1 The scope of the Agreement includes:

3.1.1.1 Tzaneen Depot.

3.1.2 A detailed statement of the Depots is listed in the annexure A & B.

3.2 **OUT OF SCOPE**

The scope of the Agreement excludes the following Locations/Depots:

3.2.1 Any other Depots not listed in Annexure A hereto.

EXAMPLE

4 HEALTH SAFETY SECURITY AND ENVIRONMENT (HSSE)

4.1 STANDARDS

- 4.1.1 The HSSE standards of the Host will be the applicable standard in respect of each Depot, save where the prevailing industry best practice 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.
- 4.1.2 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.
- 4.1.3 Should there be a conflict between any of the HSSE standards of the Host and the HSSE standards set out below, the standards set out below shall prevail.

4.2 VEHICLES

The Tenant shall ensure that all its transport systems are compliant with the HSSE standards in terms of the safe off loading and 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

- 4.6.1 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:
- 4.6.1.1 Fatalities – immediately;
- 4.6.1.2 Lost time injuries – within twenty four (24) hours;

- 4.6.1.3 Medical treatment cases – within twenty four (24) hours; and
- 4.6.1.4 Spillages – within twenty four (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.

EXAMPLE

5 OPERATING REQUIREMENTS

5.1 COMPLIANCE

- 5.1.1 The Parties shall comply with the Operating Requirements.
- 5.1.2 In the event of any conflict between the Operating Requirements and this Agreement, the provisions of this Agreement shall prevail.
- 5.1.3 In the event that the Parties wish to deviate from any of the Operating Requirements, the representatives of each Party shall meet and decide whether such deviation shall be implemented, and once agreed, such deviation shall be recorded in writing.
- 5.1.4 The Parties record that, save as expressly provided for in this Agreement, the standards and procedures applicable in respect of the use and provision of the Services at each of the Depots shall be the standards and procedures of the Host. On commencement of the use of each Depot and not less than once every twelve (12) months thereafter, the Host shall advise the Tenant in writing of the said standards and procedures and provide the Tenant with copies thereof.
- 5.1.5 Whenever there is a major change to infrastructure or a change of road transport contractors, the Tenant shall sign the Host's "management of change" document reflecting the agreed changes and actions as applicable

5.2 OBLIGATIONS OF THE HOST

- 5.2.1 The Host shall:
 - 5.2.1.1 be responsible for the management and operation of the Depot;
 - 5.2.1.2 test Product for quality, measure and receive Product into storage in the Depot;
 - 5.2.1.3 in the case of any Product stock-out (being an unavailability of Product to the Tenant to which the Tenant is entitled) for a Tenant due to use of this Tenant's stock by the Host and not excused by the Force Majeure provisions of this Agreement, 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: provided that:
 - 5.2.1.3.1 the Tenant shall be entitled to recover from the Host any reasonable logistics costs relating to the transportation of such volume of Product that the Tenant may reasonably have incurred in excess of logistic costs that the Tenant would have incurred had the Host supplied the quantity of Product;
 - 5.2.1.3.2 the Host shall not be liable for any additional cost, expenses or losses, whether direct, indirect or consequential;

**PETROSA THE NAME OF THE CUSTOMER DEPOT SUPPLY
AGREEMENT**

5.2.1.3.3 only upon the Host providing the Tenant written notice that it is unable to procure the Product from another source, shall the Tenant be entitled to procure the Product. If the Host fails to provide such written notice within twenty four (24) hours of the Product stock-out, the Host shall be deemed to be unable to procure the Product and Tenant shall be entitled to procure the Product itself as contemplated in clause 5.2.1.3 above.

5.2.1.4 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;

5.2.1.5 no manual additive injection will be allowed.

5.2.2 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.

5.3 OBLIGATIONS OF THE TENANT

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

5.3.1.1 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;

5.3.1.2 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;

5.3.1.3 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;

**PETROSA THE NAME OF THE CUSTOMER DEPOT SUPPLY
AGREEMENT**

- 5.3.1.4 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;
- 5.3.1.5 ensure at all times positive stock entitlement of own Product grades. In the case of any Product stock-out (being an unavailability of Product to the Host to which the Host is entitled) for the Host due to use of this Host's stock by the Tenant and not excused by the Force Majeure provisions of this Agreement, the Tenant shall be responsible for alternate sourcing of the affected Product and all related costs. Should the Tenant fail to source the affected Product, the Host will be entitled to procure the Product at its cost and recover direct incremental and reasonable costs from the Tenant on written request, provided that:
- 5.3.1.5.1 the Host shall be entitled to recover from the Tenant any reasonable logistics costs relating to the transportation of such volume of Product that the Host may reasonably have incurred in excess of logistic costs that the Host would have incurred had the Tenant not used the Host's Product;
- 5.3.1.5.2 the Tenant shall not be liable for any additional cost, expenses or losses, whether direct, indirect or consequential;
- 5.3.1.5.3 only upon the Tenant providing the Host written notice that it is unable to procure such Product from another source, shall the Host be entitled to procure the Product. If the Tenant fails to provide such written notice within twenty four (24) hours of the Product stock-out, the Tenant shall be deemed to be unable to procure the Product and Host shall be entitled to procure the Product itself as contemplated in clause 5.3.1.8 above.

5.4 PRODUCT QUALITY CONTROL

- 5.4.1 The Host shall have standard quality procedures at each Depot. The Products shall at the time of delivery comply with the relevant specifications as stipulated by SAPIA (South African Petroleum Industry Association), which determines the SAPIA Oil Industry Product Exchange Specifications ("OIPES").
- 5.4.2 The Tenant shall only supply Product to the Depot that adheres to the specifications as required by OIPES. If it is suspected that a Product is not to specification before delivery to the Host, the Tenant shall provide a quality certificate for the Product to the Host. If the Product does not adhere to the specifications as required by OIPES, but still adheres to the SANS specifications, the Tenant may request a waiver by the Host for acceptance of the Product, which waiver shall be at the Host's sole and absolute discretion. The Host retains absolute rights in this regard, and its decision with regards to the acceptance of such waiver requests shall be final and binding on the Parties. Should the Host agree to a waiver request, the additional cost of handling the Product shall be for the Tenant's account.

**PETROSA THE NAME OF THE CUSTOMER DEPOT SUPPLY
AGREEMENT**

- 5.4.3 The Host shall only supply Product that adheres to the OIPES specifications. It is hereby recorded that, while Product quality is tested on delivery to each Depot, the Host does not again test Product quality prior to delivery to the Tenant ex tank. If it is suspected that a Product is not to specification before delivery to the Tenant ex tank, the Host shall provide a quality certificate for the Product to the Tenant. If the Product does not adhere to the specifications as required by OIPES, but still adheres to the SANS specifications, the Host may request a waiver by the Tenant for acceptance of the Product. Should the Tenant agree to a waiver request, the additional cost of handling the Product shall be for the Host's account.
- 5.4.4 Where Product which does not comply with the OIPES specifications is supplied to the Tenant, without a waiver as envisioned in clause 5.4.3, the Host's liability for such Product shall be limited to the removal of such Product, the rehabilitation of the facilities and the replacement of the Product with Product meeting the required specification, and shall not include a claim for damages.
- 5.4.5 Where Product which does not comply with the OIPES specifications is supplied to the Host, without a waiver as envisioned in clause 5.4.2, the Tenant's liability for such Product shall be limited to the removal of such Product, the rehabilitation of the facilities and the replacement of the Product with Product meeting the required specification, and shall not include a claim for damages.

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.
- 5.5.3 Where the introduction of a new product by the Host may affect the Tenant, the Host shall inform the Tenant in writing and agree on a mutually acceptable way forward with the Tenant.

5.6 PRODUCT SUPPLY

- 5.6.1 Subject to the entitlement balance of the Tenant, the Host shall supply the Tenant's requirements of Products from the Depot.
- 5.6.2 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.

5.7 DEMURRAGE AND FINES

- 5.7.1 Rail Tank Car and Road Demurrage

PETROSA THE NAME OF THE CUSTOMER DEPOT SUPPLY
AGREEMENT

Each party is responsible for their own demurrage charged by
Transnet or road haulier for such delays

EXAMPLE

6 PRODUCT MANAGEMENT PRINCIPLES UNDER A THROUGHPUT MODEL

6.1 STANDARD OPERATING MODEL

The "Throughput Model" is the standard operating model for the Depot. The list of Depot where the "Throughput Model" is applicable and the associated operating hours are provided in Annexure A (Depots) hereto.

6.2 PRINCIPLES

Under the "Throughput Model":

- 6.2.1 The Host will operate all storage and handling activities at the Depot.
- 6.2.2 The Host and the Tenant may each replenish product into the Depot.
- 6.2.3 The Host and the Tenant may each uplift product from the Depot.
- 6.2.4 The Host and the Tenant will each retain Title to their respective product entitlements stored at the Depot.
- 6.2.5 The Host will assume responsibility for insurance risk for the full volume of product stored at the Depot.
- 6.2.6 The Host will be accountable for the losses greater than 0.25% at the Depot, as measured during the Stock Count cycle.
- 6.2.7 Storage and handling charges must be billed based upon a schedule of uplifts by the Tenant reported by the Host. The charges billed for storage and handling are set out in the Annexure B.
- 6.2.8 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.
- 6.2.9 The Parties will bill the recovery of excise duties as provided for at clause 13.4, as applicable. Furthermore, the Parties will provide such excise rebate and acquittal documentation as called upon by either Party.
- 6.2.10 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, unless the Tenant is able to prove otherwise in which case the Tenant's figure shall be used for Product scheduling purposes and the ERP system of the Host shall be corrected.

7 PRODUCT OPERATIONS

7.1 PLANNING

For the depot covered under this Agreement, the Parties shall abide by a planning procedure agreed between Host and Tenant on a depot-by-depot basis. Details of this procedure are covered under the Annexure B “Depots where the Throughput model is applicable”.

7.2 CONFIDENTIALITY

It is agreed that in undertaking the business processes referenced under 7.1 both Parties shall comply in full with applicable confidentiality principles.

EXAMPLE

8 PRODUCT RISK AND TRANSFER VOLUME

8.1 REPLENISHMENTS BY RAIL

- 8.1.1 Where a Tenant replenishes Product by rail, the risk in the Product passes from the Tenant to the Host at the flange of the rail tank car at the receiving Depot.
- 8.1.2 The transfer volume will be as per the meter reading at the Depot.
- 8.1.3 If the tankcars seals are not intact the Host shall advise the Tenant whose responsibility it is to query with Transnet Freight Rail. The volume recorded in this instance will be determined by the before and after dips of the receipting tank.

8.2 REPLENISHMENTS BY ROAD

- 8.2.1 Where a Tenant replenishes Product by road, the risk in the Product passes from the Tenant to the Host at the flange from the bridging vehicle at the receiving Depot.

The transfer volume will depend on the confirmation of installation of temperature compensated meters at the Depot.

- 8.2.2 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.

- 8.2.3 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.

- 8.2.4 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.

8.3 UPLIFTS BY RAIL

- 8.3.1 Where a Tenant uplifts Product by rail, the risk in the Product passes from the Host to the Tenant at the flange of the rail tank car through meters reading.
- 8.3.2 The transfer volume will be the volume loaded into the rail tank car, as measured by the loading meters where installed, or by the before and after dips of the discharging depot tank if no loading meters installed.

8.4 UPLIFTS BY ROAD

PETROSA THE NAME OF THE CUSTOMER DEPOT SUPPLY
AGREEMENT

- 8.4.1 Where a Tenant uplifts Product by road, the risk in the Product passes from the Host to the Tenant at the inlet flange of vehicle.
- 8.4.2 The transfer volume will be the volume loaded into the vehicle, as measured by the gantry meter.

EXAMPLE

9 PRODUCT UNPLANNED MOVEMENTS

9.1 PRODUCT RETURN TO DEPOT

9.1.1 Under no certain circumstances, a Tenant may require to return Product to a Host Depot from a vehicle.

9.1.2 The Tenant must obtain permission from a Host before such product may be returned to a Host Depot. The Product return to Depot excludes Illuminating Paraffin, which may not be returned to a Depot as contemplated by this clause.

9.1.3 The volume that is returned to the Depot will be recorded as the volume receipted into the Depot tanks through before and after tank dips or Depot temperature compensated meters and will be credited to the entitlement of the Tenant if the Tenant is returning the Product.

9.2 ILLUMINATING PARAFFIN FLUSHINGS n/a

9.2.1 Illuminating Paraffin flushing may be performed on condition that the Depot is able to flush product.

9.2.2 Risk will pass from the Host to the Tenant once the Product is loaded into the vehicle.

9.2.3 The transfer volume will be the volume loaded into the vehicle, as measured by the gantry meter. Risk will pass from the Tenant to the Host again once the Product is returned to the Depot tank.

9.2.4 The transfer volume will be the volume returned to the Depot tank.

9.2.5 The volume of Product loaded and returned must be debited and credited to the Tenant account at the Depot.

9.3 SIDE TANK FILLINGS

9.3.1 Side tank fillings will not be supported.

9.4 CONTAMINATIONS

9.4.1 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.

9.4.2 The Tenant must obtain permission from a Host before such contaminated Product may be returned to a Host Depot. Such

PETROSA THE NAME OF THE CUSTOMER DEPOT SUPPLY
AGREEMENT

permission should be obtained from the Parties' respective Depot
Manager (Site) and Distribution Depot Managers respectively

- 9.4.3 The volume of Product transferred must be credited to the Tenant
account at the Depot.

EXAMPLE

10 **PRODUCT LOSSES**

10.1 REPLENISHMENT LOSSES

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

10.2 STORAGE LOSSES

Tank storage losses and gains are for the Host's account volume exceeding 0.25%

10.3 DELIVERY LOSSES

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

EXAMPLE

11 STOCK ACCOUNTING

11.1 MEASUREMENT

- 11.1.1 All road gantry pick-ups will be at 20°C at automated gantries and ambient at non-automated gantries.
- 11.1.2 All metered sales in respect of customer own collections (i.e. where the Tenant's customer collects Product directly from the Host Depot) will be processed at ambient temperature.
- 11.1.3 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.

11.2 IN-TANK TRANSACTIONS

- 11.2.1 The parties agree that certain "In-tank" transactions may take place from time to time.
- 11.2.2 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.
- 11.2.3 In the Host book of accounts, these transactions are:
 - 11.2.3.1 A Sale/Purchase for a volume of product
 - 11.2.3.2 A Throughput Receipt/Issue for an equivalent volume of product.
- 11.2.4 In the Tenant book of accounts, these transactions are:
 - 11.2.4.1 A Purchase/Sale for a volume of product
 - 11.2.4.2 A Throughput Issue/Receipt for an equivalent volume of product.

12 STOCK RECONCILIATION

12.1 DAILY

12.1.1 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 weekend should be included on the Monday report. The Tenant will by 12h00 on the day after receiving the report raise any queries that it may have regarding the report, failing which the Tenant will be deemed to have confirmed the correctness of the report.

12.1.2 The Host must ensure that all picks up are recoded daily on the report, based on lifting's 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.

12.2 MONTHLY

12.2.1 All un-matched transactions must be resolved by 25th day 12h00 of the following month. Any un-matched transactions that cannot be proven by verifiable documentation must be reversed.

12.2.2 A report detailing number of un-matched and subsequently reversed entries must be produced and forwarded to a nominated Supply manager of each party each month for performance tracking purposes.

12.3 ANNUALLY

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

13 CHARGES, EXCISE DUTIES, INVOICING AND PAYMENT

13.1 CHARGES

13.1.1 The Parties agree that in consideration for the throughput Services, the Tenant shall pay the Charges to the Host. These Charges are as indicated in Annexure B (Storage and Handling Charges) hereto and as may be adjusted from time to time as contemplated by this Agreement and Annexure B (Storage and Handling Charges) hereto.

13.2 CUSTOMS AND EXCISE DUTIES

13.2.1 Transactional items of a routine nature will be subject to applicable excise duties in accordance with the customs and excise laws.

13.3 INVOICING

13.3.1 By the fifth (5th) 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.

13.3.2 Each Purchase/Sale Invoice, from the selling Party to the buying Party shall contain the following information at a minimum:

13.3.2.1 Depot name;

13.3.2.2 Product volume, grade, total price, inclusive of applicable excise duties;

13.3.2.3 customer purchase order number; and

13.3.2.4 the amount of value added tax owing in relation to such Products.

13.3.3 Each Service invoice shall contain the following information:

13.3.3.1 Depot name;

13.3.3.2 Service rendered;

13.3.3.3 The amount for the service rendered;

13.3.3.4 Customer purchase order number; and

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

13.3.4 Each Product and Service invoice shall be supported, where not on the face of the invoice, by an electronic supplementary schedule based on actual transactions during the period, containing: Depot, Product Volume, Product Price (or Service charge, as applicable), applicable Excise Duties shown separately, PO number and VAT. This calculation will serve as the basis to validate the Charges by the Tenant.

**PETROSA THE NAME OF THE CUSTOMER DEPOT SUPPLY
AGREEMENT**

13.3.5 Where a need would arise for the Tenant to invoice the Host, the same as above will apply.

13.3.6 Vatable services rendered (such as storage costs) in the context of this Agreement are stated exclusive of VAT.

13.4 PAYMENT TERMS

13.4.1 The Tenant shall pay the invoiced amounts by the 15th calendar day of the Month following the Month of delivery; provided that if the 15th calendar day falls on a weekend or public holiday, payment shall be due on the last Business Day prior to the 15th calendar day of that Month.

13.4.2 Payment of all amounts due shall be made by the Buyer to Seller in South African currency, without out any set-off, deduction or counter claim, by electronic bank transfer directly into an account nominated by the Host.

13.4.3 Any amount falling due for payment by any Party to any other in terms of or pursuant to this Agreement and not paid on due date, including any amount which may be payable as damages, shall bear interest at the Prime Rate.

13.4.4 The Buyer shall not withhold payment of any amount due to Seller or claim set-off, or seek to withhold payment pending resolution of a counterclaim, on any ground other than that Seller has failed to make delivery of Product Grades falling within the specifications, and then only to the extent of the amount of the price for the Product Grades not delivered, or in the case of it being claimed that the Product Grades did not fall within the specifications, to the extent of the price which would have been payable in respect of such Product Grades.

13.4.5 Where a need would arise for the Host to pay the Tenant, the same as above will apply.

EXAMPLE

14 **AUDIT**

14.1 **HOST AUDIT**

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**

The Host shall allow HSSE and Product Quality audits to be conducted by the Tenant from time to time, on reasonable notification by the Tenant. 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 five (5) 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:

14.3.2.1 Product receipt documentation;

14.3.2.2 Product uplift documentation;

14.3.2.3 customer proof of collection documentation; and

14.3.2.4 Services rendered.

15 **LIABILITY**

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

15.1.1.1 the actual loss suffered and shall not include any liability for any indirect damages or loss of production or profit or any other like consequential damages; and

15.1.1.2 claims arising by reason of the intentional or negligent acts or omissions of the Defaulting Party.

15.1.2 Each of the Parties (the "indemnitor") agrees to indemnify and to hold the other Party (the "indemnitee") harmless against claims arising out of or as a result of performance under this Agreement, brought against the indemnitee by third parties in respect of any damage to property, bodily injury, death or any other cause arising out of any wilful or negligent act or omission of the indemnitor.

15.1.3 The right to be indemnified against any claim brought by a third party shall be conditional on the indemnitee giving prompt notification to the indemnitor of the third party claim in respect of which indemnification is sought.

15.1.4 An indemnitee shall not be entitled to be indemnified against any claim brought by a third party that arises out of an admission made by the indemnitee unless such liability would have existed even in the absence of such admission.

15.1.5 The indemnitor shall have the right to take control of the litigation or other dispute resolution procedure in respect of any third party claim at its own cost, but shall conduct the proceedings in full consultation with the indemnitee and shall give due and proper consideration to the views of the indemnitee. The right of the indemnitee to be indemnified shall be conditional on its proper co-operation with the indemnitor in the conduct of the proceedings.

15.1.6 Notwithstanding anything to the contrary contained in this Agreement, the Parties shall not be liable to each other for any indirect or consequential loss or damage, including without limitation, loss of profit, revenue, anticipated savings, business transactions or goodwill or other contracts whether arising from negligence or breach of contract.

16 **FORCE MAJEURE**

16.1 **OBLIGATION**

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

**PETROSA THE NAME OF THE CUSTOMER DEPOT SUPPLY
AGREEMENT**

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:

16.1.2.1 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;

16.1.2.2 acts of God, landslides, lightning, earthquakes, fires, explosions, storms or storm warnings, floods, extreme weather conditions, washouts, epidemics or similar occurrences;

16.1.2.3 strikes, boycotts, lockouts, and other similar industrial or labour disputes and disturbances; and

16.1.2.4 inability to obtain the grant or renewal of any license or approval necessary for operation of the Depot and/or Terminal, the necessity for compliance with any court order, law, statute, ordinance or regulation promulgated by a governmental entity having jurisdiction.

16.1.3 If the Non-Performing Party is prevented, hindered or delayed from performing any of its obligations under this Agreement by reason of Force Majeure, the Non-Performing Party shall be relieved from performance of 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.

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

16.1.5 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.

16.1.6 A Party claiming Force Majeure is excused from proper performance in terms of this Agreement for as long as Force Majeure exists and to the extent that such Party is unable to fulfill its obligations in terms of this Agreement. Should Force Majeure exist for a period of more than sixty (60) days, either Party may terminate this Agreement by means of written notice of thirty (30) days to the other.

16.1.7 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.

EXAMPLE

17 BREACH AND TERMINATION

17.1.1 If either Party commits a material breach of this Agreement and fails to remedy such breach within seven (7) days given to it by the other Party requiring the same to be remedied, then the other Party may, by notice in writing, terminate this Agreement without prejudice to any other rights or remedies available to such Party.

17.1.2 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:

17.1.2.1 the other Party commits a material breach of the Agreement which is not capable of being remedied on notice as contemplated in clause 18.1.1:

17.1.2.2 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;

17.1.2.3 either Party passes a resolution for the voluntary winding up of such Party;

17.1.2.4 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;

17.1.2.5 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

17.1.2.6 business rescue proceedings in terms of Chapter 6 of the Companies Act;

17.1.2.7 the business of either Party is nationalized.

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

18.2 EFFECT OF TERMINATION

18.2.1 Removal of Product after the termination of this Agreement

The Tenant shall be obliged to remove its Product on or before the termination of this Agreement, or, if this Agreement is terminated without notice as soon as practically possible after such termination, and after payment of all that is owed by the Tenant, without prejudice to the other provisions of this Agreement.

18.2.1 Failure to remove Product

If the Tenant fails to remove Product when obliged to do so in terms of this Agreement, Host shall have the right to take all such measures as may be necessary for vacating the Depot in question, including removing the Product to another Depot for the account and risk of Tenant, without prejudice to the right of the Host to claim

compensation for all direct damage and reasonable costs incurred, and to apply any other remedies provided for this Agreement.

18.2.3 Intermediate withdrawal /removal of Product

Subject to the provisions of this Agreement, the Tenant or its Nominee (if Tenant has so informed the Host in writing within a reasonable time period) shall be entitled against payment of all that is due by it to the Host at any time to withdraw / remove Product from the Depot.

EXAMPLE

18 GENERAL

18.1 CONDITIONS

- 18.1.1 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.
- 18.1.2 No variation, addition, deletion, or agreed cancellation will be of any force or effect unless agreed in writing between the Parties hereto.
- 18.1.3 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.
- 18.1.4 Neither this Agreement nor any part, share or interest therein nor any rights or obligations hereunder may be ceded, assigned, or otherwise transferred by either Party without the prior written consent of the other, provided that such consent shall not be required in the event that the rights and obligations of either Party are ceded, assigned or otherwise transferred to any Affiliate.
- 18.1.5 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.
- 18.1.6 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts. The Parties undertake to take whatever steps may be necessary to ensure that both counterparts are duly signed by each of them.

18.2 APPLICABLE LAW

- 18.2.1 This Agreement will in all respects be governed by and construed under the laws of the Republic of South Africa.
- 18.2.2 Subject to the provisions of this Agreement, the Parties hereto hereby consent and submit to the non-exclusive jurisdiction of the Western Cape High Court, Cape Town 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.

18.3 SEVERABILITY

18.3.1 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.

18.4 MEDIATION AND ARBITRATION

18.4.1 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/general managers for urgent mediation.

18.4.2 If no resolution is reached and recorded in writing within twenty (20) 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.

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

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

18.4.5 Any Party to the arbitration may appeal the decision of the arbitrator within a period of twenty (20) 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.

18.4.6 The decision of the arbitrator shall be final and binding on the Parties to the arbitration after the expiry of the period of twenty (20) 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 may be made an order of court at the instance of any Party to the arbitration.

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

18.4.8 The provisions of this clause 19 shall continue to be binding on the Parties notwithstanding any termination or cancellation of the Agreement.

19.5 EXPERT

**PETROSA THE NAME OF THE CUSTOMER DEPOT SUPPLY
AGREEMENT**

19.5.1 Whenever in this Agreement it is provided that any person is to be appointed an expert or any matter is to be referred to an expert and whenever during the Agreement the Parties agree that a point of deference between them shall be resolved by an expert, the provisions of this clause 19.5 shall apply.

19.5.2 The procedure for appointing an expert shall be the following:

- (i) The Party wishing the appointment of an expert to be made shall give notice in writing to that effect to the other Party and in such notice shall give details of the matter which it propose shall be resolved by the expert.
- (ii) The Parties shall meet in an endeavour to agree upon a single expert to whom the matter in dispute shall be referred to for determination.
- (iii) If within twenty one (21) days from the service of the said notice the Parties have either failed to meet or failed to agree upon an expert, then the matter shall forthwith be referred by the Party wishing the appointment to be made to the chairman of the South African Petroleum Industry Association ("SAPIA"), who shall be requested to make the appointment of the said expert within thirty (30) days and may in so doing take such independent advice as he thinks fit.
- (iv) Upon an expert being agreed or selected under the foregoing provisions of this clause, the Parties shall forthwith notify such expert of his selection and shall request him within fourteen (14) days whether or not he is willing and able to accept the appointment.
- (v) If such expert shall be either unwilling or unable to accept such appointment or shall not have accepted within the said fourteen (14) days, then unless the Parties are able to agree on the appointment of another expert who is willing and able to act, the matter shall again be referred to the chairman South African Petroleum Industry Association ("SAPIA"), who shall be requested to make a further appointment and the process be repeated until an expert is found who accepts the appointment.

19.5.3 No person shall be appointed to act as the expert under this clause unless he shall be qualified by education, experience and training to determine the matter in dispute.

19.5.4 No person shall be appointed an expert who at the time of appointment is an employee of either Party.

19.5.5 The expert appointed shall make his decision on data, information and submissions supplied and made to him by the Parties not later than thirty (30) days after his acceptance of appointment and shall ignore data, information and submissions supplied and made after such thirty (30) days unless the same are furnished in response to a specific request from him.

19.5.6 If within a reasonable period, which shall not exceed one hundred and eighty (180) days or in any case ninety (90) days after the acceptance by an expert of the appointment, such expert shall not have rendered a decision then at the request of either Party, a new expert shall be

**PETROSA THE NAME OF THE CUSTOMER DEPOT SUPPLY
AGREEMENT**

appointed under the provisions of this clause and upon the acceptance of the appointment by such new expert, the appointment of the previous expert shall cease. Provided that if the previous expert shall have rendered a decision prior to the date upon which the new expert accepts his appointment, then such decision shall be binding upon the Parties and the instructions to the new expert shall be withdrawn.

19.5.7 The said expert shall be deemed not to be an arbitrator but shall render his decision as an expert. The report of the expert shall be in writing and shall set forth his decision and reasons therefore.

19.5.8 The decision of the expert shall be final and binding upon the Parties save in the event of fraud, mistake or failure by the expert to disclose any relevant interest. A Party acting in compliance with a decision of the expert shall not be liable for loss or damage suffered by the other Party resulting from the acts or omissions committed by the first mentioned Party which are necessary for compliance with the expert's decision.

19.5.9 Each Party shall bear the costs and expenses of all counsel, witnesses and employees retained by it but the cost and expenses of the expert shall be apportioned equally between the Parties.

19.6 COSTS

19.6.1 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.

EXAMPLE

19 **NOTICES AND DOMICILIA**

19.1 **NOTICE**

19.1.1 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.

19.1.2 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.

19.1.3 Any notice given and any payment made by a Party to any of the others ("the addressee") which:

20.1.3.1 is delivered by hand during the normal business hours of the addressee at the addressee's domicilium for the time being shall be presumed, until the contrary is proved by the addressee to have been received by the addressee at the time of delivery;

20.1.3.2 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 tenth (10th) day after the date of posting.

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

**PETROSA THE NAME OF THE CUSTOMER DEPOT SUPPLY
AGREEMENT**

SIGNATURE

FOR: **TENANT (Pty) Ltd**

DATED AT _____ ON THIS THE ____ DAY OF _____ 2019.

NAME: _____

SIGNATURE: _____

CAPACITY OF SIGNATORY: _____

Who warrants that he/she is duly authorised thereto

AS WITNESSES:

1. NAME: _____ SIGNATURE: _____

2. NAME: _____ SIGNATURE: _____

FOR: **THE PETROLEUM OIL AND GAS CORPORATION OF SOUTH AFRICA (SOC) LTD**

DATED AT _____ ON THIS THE ____ DAY OF _____ 2019.

NAME: _____

SIGNATURE: _____

CAPACITY OF SIGNATORY: _____

Who warrants that he/she is duly authorised thereto

AS WITNESSES:

1. NAME: _____ SIGNATURE: _____

2. NAME: _____ SIGNATURE: _____

ANNEXURES

ANNEXURE 'A': DEPOTS WHERE THE "THROUGHPUT MODEL" IS APPLICABLE

ANNEXURE 'B': STORAGE & HANDLING CHARGES

ANNEXURE 'C': DEPOT PLANNING PROCEDURE TEMPLATE

EXAMPLE

PETROSA THE NAME OF THE CUSTOMER DEPOT SUPPLY AGREEMENT

Annexure 'A'

Date June 2019

DEPOTS WHERE THE "THROUGHPUT MODEL" IS APPLICABLE

The following Throughput Model Depots are applicable effective:

PETROSA DEPOTS	Operating hours for Replenishments & Uplifts by Rail and Road
TZANEEN	08:00 – 17:00 (Monday to Friday)

EXAMPLE

PETROSA THE NAME OF THE CUSTOMER DEPOT SUPPLY AGREEMENT

Annexure 'B'

Date xxxxxxxxxxxx

Throughput fee to be charged to the Tenant for tank turns \ Throughput are as follows:

Fee Type	Effective Date	Gross Capacity Million litres	Product	South African Cent / litre rate	Monthly Throughput Allowance Million litres
Storage	FIXED: Valid as at 1 xxxx 2020	xxxxxx	Diesel 50		
Throughput	VARIABLE: Valid as at 1 xxxxxx 2020	xxxxxxxx	Diesel 50		

Storage & Handling charges are applicable for a calendar year.

EXAMPLE

