

## **Freepoint Commodities LLC Marine Provisions**

These Marine Provisions shall apply to the agreement, and subsequent performance, between Buyer and Seller in connection with the purchase/sale/exchange and waterborne delivery of the Cargo set forth in the Agreement.

### **I. Definitions as used in these Marine Provisions**

Agreement - means and includes the following documents in connection with each separate sale/purchase/exchange and waterborne delivery of Cargo entered into by and between Buyer and Seller to which these Marine Provisions are attached: (A) the Confirmation (including amendments thereto); (B) these Marine Provisions; and (C) the General Terms and Conditions (latest edition).

All Fast - means the time during which the Vessel is completely moored, which includes gangway down and secured (for all Vessels other than Inland Barges), at the Cargo Transfer Point.

Buyer - refers to the person or entity that is obligated to buy the Cargo from Seller, or exchange the Cargo with Seller, under the terms of the Agreement.

Cargo - means any substance, product (including crude oil or any other petroleum products), chemical, feedstock, or other material of any kind or nature whatsoever, whether in the form of a liquid, gas, or solid, that is being sold, purchased, or exchanged by and between Buyer and Seller and delivered via Vessel under the terms of the Agreement.

Cargo Quantity - means the volume or quantity of the Cargo that is specified in the Confirmation to which these Marine Provisions are attached or incorporated by reference and either loaded or discharged at the Cargo Transfer Point, Cargo Transfer Point - means the location specified in the Confirmation to which these Marine Provisions are attached or incorporated by reference where custody of the Cargo is transferred from Seller to either Buyer or Buyer's designee.

Charterer - means the person or entity hiring the performing Vessel.

CLC - means Civil Liability Convention of 1969, as such has been amended from time to time.

COC - means Certification of Compliance.

Confirmation - means a separate document that customarily sets forth certain specific contract terms, conditions, and provisions between a Buyer and Seller in connection with the sale/purchase/exchange of the Cargo via waterborne delivery including, without limitation, each of the following: (A) the name and business address of Buyer and Seller, (B) the transaction date of the Agreement, (C) the Agreement reference number, (D) a description of the Cargo being sold/purchased/exchanged and delivered under the Agreement, (E) the product specifications for the Cargo, (F) the volume/quantity of the Cargo being sold/purchased/exchanged and delivered under the Agreement, (G) the consideration, if any, to be provided for such Cargo, (H) the type, identity, or description of the Vessel nominated to receive, store, transport, and/or re-deliver the Cargo, (I) the Cargo Transfer Point, (J) the delivery date(s)/window for such Cargo, (K) the measurement terms for such Cargo, (L) the payment terms for such Cargo, and/or (M) any other terms and conditions.

Customary Anchorage - means the recognized anchorage for or within the designated port for the Cargo Transfer Point that is specified in the Confirmation and to which these Marine Provisions are attached, or incorporated by reference.

Delivery Window - means the period of time during which the Vessel nominated by or on behalf of Buyer or Seller under the Agreement is to present itself at the Cargo Transfer Point, as established by the Confirmation and is within the contract delivery date range set forth in the Agreement.

DHS - means the United States Department of Homeland Security, including any successor department or agency.

DOS - means a Declaration of Security as provided for under the ISPS Code. Excess Insurance - means Excess Pollution Liability Insurance.

General Terms and Condition - means Freeport Commodities LLC's designated General Terms and Conditions for the Sale, Purchase and Exchange of Crude Oil and Refined Products, as such may be amended, supplemented, or restated by Freeport Commodities LLC from time to time.

Inland Barge - means a United States Coast Guard-approved or American Bureau of Shipping-inspected tank barge that is restricted to operations in the inland waterways of the United States.

ISPS Code - refers to the International Code for Security of Ships and Port Facilities, as set forth in Title 33, C.F.R. Chapter I (Subchapter H) and relevant amendments to Chapter XI-2 of the International Convention for the Safety of Life at Sea, 1974 (SOLAS), as such may be amended from time to time.

Marine Incident - means any incident or event outside normal Vessel operation that delays the Vessel for a period of three (3) or more hours including, but not limited to, spill, personal injury, fire, grounding, collision, security issue, or significant media or governmental inquiry.

Marine Provisions - means these Marine Provisions, dated as of May 17, 2012, as such may be amended, supplemented, or restated by Freeport Commodities LLC from time to time.

Maritime Security Regulations - means, collectively, the ISPS Code and the MTSA, if and when such are applicable.

MTSA - refers to the U.S. Maritime Transportation Security Act of 2002, as codified under 46 U.S.C., Chapter 701, as such may be amended from time to time.

NOR - means Notice of Readiness.

NSV - means Net Standard Volume.

Ocean Barge or Ocean-Going Barge- means a United States Coast Guard-approved or American Bureau of Shipping-inspected tank barge that has an ABS Load Line Certification and is certified to operate in offshore waters.

Ocean Tanker- refers to any ship, tanker or combination carrier that is certified to operate in offshore waters.

OPA- means the (U.S.) Oil Pollution Act of 1990, as such may be amended from time to time.

P&I Insurance - means Protection and Indemnity Insurance.

Parties - means both Buyer and Seller.

Party - means either Buyer or Seller.

Policy - refers to any applicable drug and alcohol abuse policy.

Seller - refers to the person or entity that is obligated to sell the Cargo to, or exchange the Cargo with, Buyer under the terms of the Agreement.

Shore Facilities - means any refinery, terminal, storage, or port facility taking deliveries of the Cargo from, or making deliveries of the Cargo to, a Vessel.

Spot Chartered Equipment - refers to when the owner of the Vessel places the Vessel and its crew at the disposal of the Charterer for a single voyage, with such owner being responsible for the operation of the Vessel.

Term (Time) Chartered Equipment - refers to when the owner of the Vessel charters or leases the Vessel and its crew to the Charterer for a stipulated period of time; provided, however, under any such Term (Time) Charter, the Charterer pays for the bunkers and port charges in addition to the charter hire.

Terminal Party - refers to the Party nominating the designated Shore Facilities that are to perform under the terms of the Agreement.

Tow - means any combination of tugs, push boats, or barges with the ability to function as a single unit.

USCG - means the United States Coast Guard.

Vessel - any Tow, Inland Barge, Ocean-Going Barge, or Ocean Tanker, or other marine vessel carrying the Cargo under the Agreement. References herein to "Vessel(s) Account" and responsibilities, duties, rights and liabilities of the "Vessel" are intended to include not only the Vessel itself, but also the owner, operator, Master, or agent of such Vessel, where applicable.

Vessel Party - refers to the Party nominating the Vessel which holds, takes custody of, or takes title to the Cargo under the terms of the Agreement.

## **II. Conflicting Terms; Governing Provisions**

The following documents, all of which are part of the Agreement, will govern in the following order of priority: (a) the Confirmation (including amendments thereto); (b) these Marine Provisions; and (d) the General Terms (latest edition). In the event that one or more provisions of the Agreement are held unenforceable as a matter of law, the remainder of the governing provisions above remains in full force and effect.

## **III. Vessel-Related Conditions**

### *A. Vessel Nomination & Acceptance*

All Vessels nominated by the Vessel Party, including each Vessel to be used in connection with the loading, discharging, or lightering of the Cargo under the Agreement, shall meet the applicable, general Vessel requirements of the designated Shore Facilities which shall receive or deliver such Cargo, including all applicable published or posted requirements. It is the responsibility and duty of the Vessel to contact the designated Shore Facilities in order to obtain any and all requirements related to berthing or docking at such facilities, and it is further the responsibility of the Vessel to comply with such requirements. At the request of

the designated Shore Facilities or the Terminal Party, the nominated Vessel shall promptly complete a Vessel Questionnaire provided by such Shore Facilities or such Terminal Party. Acceptance of any Vessel by such Shore Facilities shall not constitute a continuing acceptance of such Vessel for any subsequent loading, discharging, or lightering. Unless otherwise agreed to by the Parties, all deliveries and loadings of the Cargo in accordance with the terms and conditions of the Agreement shall be on or from a single voyage. Once a nominated Vessel is accepted by the designated Shore Facilities in order to receive or deliver the Cargo, the use of any other Vessel(s), including lighters, carrying the Cargo under the Agreement shall only be permitted by prior, written mutual agreement, and all expense, risk of loss, or liability associated with such activity or activities shall be for the Vessel Party's Account. Any written permission or consent of or by such Shore Facilities allowing the use of such other Vessel(s) shall not be unreasonably withheld, delayed, or conditioned.

#### *B. Eligibility*

The Vessel Party will make best efforts to ensure that (1) the nominated Vessel is, in all respects, eligible under and in compliance with all applicable laws, rules, and regulations including, without limitation, the Maritime Security Regulations, with respect to entering, docking, hoteling, loading, and unloading at or within the designated port or other places specified in the Agreement, and (2) at all times the Vessel shall have on board and readily available for inspection all certificates, security plans, declarations, records, and other documents required by applicable law for such service.

#### *C. Estimated Time of Arrival ("ETA")*

Upon acceptance of the Vessel nomination by the Terminal Party under the Agreement, either the Vessel or Vessel Party shall immediately advise the designated Shore Facilities and other Party(ies) to the Agreement of the Vessel's current position/location in terms of latitude and longitude, operational status, and ETA, by telex, facsimile, letter, telegram, electronic mail, or any other means which is deemed necessary or appropriate under applicable law, including the Maritime Security Regulations. The ETA shall be further promptly updated by telex, facsimile, letter, telegram, or electronic means as follows:

1. Upon leaving the last port, terminal, or lightering site before sailing to the designated Shore Facilities or lightering site (including the Cargo Transfer Point), or at least seven (7) days in advance of tendering NOR, whichever is less.
2. Where applicable, at 72, 48, 24, and 12 hours before the Vessel's expected arrival at the designated Shore Facilities or lightering site specified in the Agreement; and
3. The Vessel shall promptly notify the designated Shore Facilities and Terminal Party of the new ETA if the ETA changes by plus or minus two (2) hours or more following the twelve (12) hour arrival notice. Failure to comply with these ETA notifications may result in delays in the acceptance of the NOR by the designated Shore Facilities as outlined in Article V of these Marine Provisions.

#### *D. Vessel Compliance with Shore Facilities Requirements*

Any Vessel that is not in compliance with the federal, state, or the designated Shore Facilities' applicable requirements with respect to any environmental, health, safety, financial responsibility, the Vessel's or such Shore Facilities' security, governmental security, or other liability concerns may not be permitted to dock or may be asked to vacate the berth at the designated Shore Facilities, and any resulting costs and/or delays shall

be for the Vessel's Account, Failure of any of a Vessel's safety or environmental systems, or the failure to possess or comply with the Vessel's own security plan, as mandated under applicable law, after initial acceptance by the designated Shore Facilities, is grounds for such facilities to immediately reject the Vessel, including notification to vacate the berth until either (1) suitable repairs are made in order to return the affected equipment to good working order, or (2) the Vessel and requirements for its crew are brought into compliance with its applicable security plan. Under such circumstances, the Vessel must be re-accepted by the designated Shore Facilities prior to the start or resumption of discharge or loading of the Cargo under the terms of the Agreement. Expenses incurred in making any such repairs or bringing the Vessel or its crew into compliance with the appropriate security plan shall be for the Vessel's Account, and delays resulting from said repairs shall not count as used laytime or as time on demurrage.

#### *E. Legal and Regulatory Compliance*

The Vessel Party and the Terminal Party shall require the Vessel to comply with all applicable federal, state, and local laws, rules, and regulations including, but not limited to, all federal and state oil spill response plans and financial responsibility requirements, as well as the Maritime Security Regulations, if and where such are applicable. If the Vessel fails to comply with any such law, rule, or regulation, the Vessel may be required to leave the designated Shore Facilities promptly. Any delay due to the Vessel's non-compliance with such law, rule, or regulation shall not count as used laytime or as time on demurrage. All expenses, losses, and delays incurred to obtain or maintain the necessary certificates, Vessel security plan, declaration(s), response plan(s) shall be for the Vessel's Account and any delay resulting from the Vessel's non-compliance shall not count as used laytime or as time on demurrage. Damages incurred by Terminal Party as a result of the Vessel's non-compliance with such laws, rules, regulations, plans, and requirements are for Vessel's Account.

#### *F. Pollution Prevention and Responsibility*

For the purpose of this Section F, the meaning of the term "Pollution Damage" shall include, without limitation, all damages which are compensate under the CLC, as well as any applicable U.S. federal, state, or local law, rule, or regulation.

In the event an escape, release, or discharge of the Cargo occurs from the Vessel and causes or threatens to cause Pollution Damage, the Vessel and Vessel Owner will promptly take whatever measures are necessary to prevent or mitigate such damage or remove the threat. The Vessel hereby authorizes the designated Shore Facilities, or its nominee, upon notice to the Vessel, to undertake, at the option of such Shore Facilities, such measures as are reasonably necessary to prevent or mitigate the Pollution Damage or remove the threat. Under such circumstances, the designated Shore Facilities or its nominee shall keep the Vessel advised of the measures intended to be taken. Any of the aforementioned measures shall be for the Vessel's Account, provided that if the designated Shore Facilities caused or contributed to such escape, release, or discharge, the expense of the aforementioned measures shall be borne by the such facilities in proportion to its percentage of negligence in causing or contributing to the escape, release, or discharge. If the Vessel reasonably considers that said measures should be discontinued, the Vessel shall promptly notify the designated Shore Facilities or its nominee in writing and thereafter, such Shore Facilities or its nominee shall have no right to continue said measures at the Vessel's authority or expense unless directed to do so by a governmental entity, body, or agency having or purporting to have proper jurisdiction over (a) the Vessel or its crew, (b) the clean-up, remediation, mitigation, and/or disposal of any Pollution Damage, or (c) the repair, replacement, or removal of the designated Shore Facilities or any associated equipment being or needing to be undertaken. This provision shall be applicable only between the Parties and shall not affect any liability of the Vessel to third parties including, but not limited to, any governmental entity, body, or agency.

The Vessel Party will make best efforts to ensure that throughout the Vessel's service under the Agreement, the Vessel shall have on board the following certificates:

Certificates issued pursuant to the CLC, and pursuant to the 1992 protocols to the CLC, if and as amended, as and when in force;

Certificates issued pursuant to Section 1016(a) of OPA, and Section 108(a) of the Comprehensive Environmental Response, Compensation and Liability Act 1980, as amended in accordance with Part 138 of Coast Guard Regulations set forth in Title 33, U.S. Code of Federal Regulations; and

Certificates issued or required by any state and/or local environmental regulatory agency, authority, or body which has proper jurisdiction over the operation of the designated Shore Facilities.

The Vessel Party shall be responsible for immediately notifying the Terminal Party of any Marine Incident. In addition to all other reporting requirements the Parties and Vessel may have under the Agreement, all Parties and the Vessel are responsible for promptly notifying NuStar Central Monitoring for each Marine Incident by calling 800-433-4250. This monitoring system has been set up to accept calls twenty-four (24) hours per day, seven (7) days per week.

### *G. Insurance*

The provisions set forth in this section shall be applicable only between the Parties and shall not affect any liability of the Vessel to third parties, including but not limited to, any governmental entity, body, or agency.

#### 1. Ocean Tankers and Ocean Barges

The Vessel Party will make best efforts to ensure that throughout the Vessel's service under the Agreement, the Vessel shall have full and valid P&I Insurance and valid Excess Insurance, as described below, with the P&I Insurance placed with a P&I club that is a member of the International Group of P&I Clubs. The P&I Insurance (including P&I U.S. surcharges and Excess Insurance) shall be at no additional cost to the Terminal Party. The P&I Insurance must include coverage against liability for cargo loss/damage for the full value of the cargo. The P&I Insurance must also include coverage against liability for pollution, for the maximum on offer through the international group of P&I Clubs.

#### 2. Inland Barges

The Vessel Party will make best efforts to ensure that throughout the Vessel's service under the Agreement, the Vessel shall have full and valid insurance, including pollution liability insurance for an amount not less than:

a) 200 million U.S. dollars per incident for Vessels carrying a cargo of non-persistent oil as defined by OPA. This insurance shall be at no cost to the Terminal Party.

b) 200 million U.S. dollars per incident for the Vessels carrying a cargo of persistent oil as defined by OPA. This insurance shall be at no cost to the Terminal Party.

#### 3. Evidence of Insurance

With respect to the requirements of subsections III.G.1 and III.G.2, above, if requested at any time during the Agreement, the Vessel Party shall promptly furnish to the Terminal Party reasonable evidence of such P&I Insurance, Excess Insurance, and any other required pollution liability insurance. The warranties set forth in subsections III.G.1 and III.G.2, above, are an essential part of the Agreement, and the obligations of the other Party under this Agreement are conditional on the truth and performance of such warranty.

Any breach of the above referenced warranties shall entitle the other Party to whom any such warranty is given to terminate the Agreement and/or to recover damages allowable in law, admiralty, or equity.

#### *H. Drug and Alcohol*

The owners of the Vessel, which is nominated to load or discharge the specified Cargo as per the terms of the Agreement, shall have a Policy applicable to the Vessel which meets or exceeds the standards in the Oil Companies International Marine Forum Guidelines for the Control of Drugs and Alcohol Onboard Ship. Under the Policy, alcohol impairment shall be defined as a blood alcohol content of 40 mg/100 ml or greater; the appropriate seafarers to be tested shall be all Vessel officers; and the drug/alcohol testing and screening shall include unannounced testing in addition to routine medical examinations. An objective of the Policy must be that the frequency of the unannounced testing be adequate to act as an effective abuse deterrent, and that all officers be tested at least once a year through a combined program of unannounced testing and routine medical examinations. The Vessel Party will make best efforts to ensure that the Policy will remain in effect during the term of the Agreement and that the Vessel Party shall exercise due diligence to ensure compliance with the Policy. It is understood that an actual impairment or any test finding of impairment shall not in and of itself mean the Vessel Party has failed to make best efforts. Upon Terminal Party's request, Vessel Party shall arrange to provide Terminal Party with a copy of the Policy applicable to the Vessel. Absence of a Policy or failure to deliver a copy of the Policy within a reasonable time after Terminal Party's request, is grounds for Terminal Party to reject or withdraw acceptance of the Vessel.

#### *I. Vessel Systems*

##### *1. Inert Gas System*

All Vessels fitted with an Inert Gas System ("IGS"), regardless of the Cargo aboard or the Cargo to be loaded will not be permitted to berth at the designated Shore Facilities unless the IGS is fully operational. Any delay as a result of the Vessel not complying with this subsection III.I.1 shall not count as used laytime or as time on demurrage.

##### *2. Vessel Connection Construction*

All flanges, fittings, spool pieces and/or reducers used by each Vessel must be of steel construction.

##### *3. Vapor Recovery Units*

All Vessels loading the Cargo which has or possesses a vapor pressure greater than or equal to 1.5 psi must be fitted with vapor recovery equipment and have aboard a valid "Vapor Tightness Certificate". Vessels scheduled to load this material that are not fitted with vapor recovery equipment and/or fail to have aboard a valid "Vapor Tightness Certificate" will not be accepted at the designated Shore Facilities. Notwithstanding anything to the contrary set forth in this subsection III.I.3, all vapor recovery system operations shall be conducted pursuant to Part 39, Title 48 of the Code of Federal Regulations, as such may be amended from time to time.

#### *J. U.S. Customs and Border Protection*

The Vessel Party will make best efforts to ensure that the Vessel and any discharges there from at the contract port and/or designated Shore Facilities shall fully comply with, and it possesses or shall timely secure and submit all necessary waivers required under, all applicable U.S. Customs and Border Protection rules and regulations in effect as of the date the Vessel berths at such Shore Facilities. Any delay resulting from the

Vessel's non-compliance with such regulations shall not count as used laytime or as time on demurrage. The Vessel Party shall provide all information required for importation of the Cargo being sold/purchased/exchanged and delivered under the Agreement to the other Party at least five (5) business days prior to the Vessel's arrival at the designated Shore Facilities or lightering site. Any delay resulting from lack of information required for importation of the Cargo shall not count as used laytime or as time on demurrage unless such delay is the result of information required to be provided by such Shore Facilities hereunder.

*K. U.S. Department of Homeland Security: U.S. Coast Guard*

The Vessel Party will make best efforts to ensure that the Vessel shall fully comply with, or possess all necessary waivers, certificates, or other documents that are required under, each applicable law, rule, or regulation implemented and enforced by the DHS, the USCG, and any applicable port authority and/or the designated Shore Facilities including, without limitation, the Maritime Security Regulations, which is in effect when the Vessel (1) navigates within any waters that are subject to the jurisdiction of the United States, as well as (2) berths and remains All Fast at such Shore Facilities. Upon request, the Vessel Party shall promptly provide to the designated Shore Facilities and/or Terminal Party complete copies of all certificates, declarations, letters of approval or acknowledgment, and other compliance documentation (excluding the Vessel's security assessment and security plan) that are required under the Maritime Security Regulations. Any delay resulting from the Vessel's non-compliance shall not count as used laytime or as time on demurrage against the designated Shore Facilities or Terminal Party.

**IV. Related Conditions at Shore Facilities**

*A. Berth Availability*

The designated Shore Facilities shall provide a berth for the nominated Vessel free of a wharfage fee for normal Cargo transfer. All dockage and service fees, including mooring, fresh water, steam, and oil slops receipts, will be for the Vessel's Account. In addition, all duties and other charges on the Vessel, including, without limitation, those incurred for Tows and pilots, and other port costs, including fleeting, and taxes on freight, shall be for the Vessel's Account. The designated Shore Facilities do not warrant the safety, draft, or clearance of public channels, fairways, approaches thereto, anchorages, or other publicly maintained areas, either inside or outside the port area, where the Vessel may be directed. The designated Shore Facilities shall not be liable for any loss, damage, injury, or delay to the Vessel resulting from the use of such public waterways. If hold-in tugs are required for the Vessel, any charges for such hold-in tugs shall be for the Vessel's Account.

*B. Vacating of Berth*

The designated Shore Facilities may order any Vessel to vacate its berth at such facilities if (1) it appears that the Vessel will not be able to complete loading or discharging of the Cargo that has been sold/purchased/exchanged under the terms of the Agreement within twenty-four (24) hours (pro-rata for part Cargo) of the Vessel's commencement of loading/discharging, or vessel cannot maintain 100 PSI at manifold during discharge, unless loading/discharging rates are restricted by Shore Facilities, or (2) the Vessel has entered such Shore Facilities, or docked/hotelled at the facilities, in violation of any applicable law, rule, or regulation. Unless mandated by the DHS, USCG, or any other law enforcement authority or agency having proper jurisdiction over the designated Shore Facilities, or the Vessel or its crew, the Vessel shall not be required to vacate a berth as a result of the inability to complete loading or discharging operations under this clause, unless that berth is needed to accommodate another Vessel. Upon disconnecting the hoses, used laytime shall cease. After tendering NOR to recommence loading or discharging at the designated Shore Facilities in accordance with the Agreement, the Vessel shall be re-berthed in order of rotation, unless otherwise agreed by such Shore Facilities, and used laytime shall resume upon the Vessel's reconnection of hoses. Under any such

circumstances, the expenses incurred for vacating the berth or re-berthing within the applicable Shore Facilities shall be for the Vessel's Account.

#### *C. Shifting of Vessels*

The designated Shore Facilities shall have the right to shift the Vessel from one berth to another within its facility, or to anchorage. Any expenses incurred in such shifting or anchoring of Vessel shall be for the account of the designated Shore Facilities, with the time consumed in shifting counted as used laytime or as time on demurrage. Any expenses incurred where the shifting of the Vessel within a designated port is directed or mandated by any person, entity, or authority (included, but not limited to, the USCG, U.S. Customs Service, applicable port authority, or other government authority or agency having proper jurisdiction over either the Vessel or its crew) other than the designated Shore Facilities or Terminal Party shall be for the Vessel's Account. Any time consumed in shifting shall not be counted as used laytime or as time on demurrage.

#### *D. Ballast Water and/or Cargo Slop*

Any designated Shore Facilities having reception facilities for oil or noxious liquid substances may agree to receive the Vessel's oil ballast water and/or Cargo slops up to the maximum available capacity at the specified Cargo Transfer Point.

At least five (5) business days prior to the Vessel's arrival at the specified Cargo Transfer Point, the Vessel shall notify the designated Shore Facilities, in writing, of the Vessel's intention to discharge any ballast or slops, and the volume of such ballast or slop to be discharged. The designated Shore Facilities will confirm ballast or slop availability within two (2) working days after receiving such notification. All charges for this service are for the Vessel's Account. Any expenses of a delivery Vessel taking on ballast shall be for the Vessel's Account unless concurrently performed with Cargo operations.

#### *E. Foreign Cargo Slop*

At least five (5) business days in advance of Vessel's intention to discharge any Cargo slops, the Vessel shall notify, in writing, the designated Shore Facilities of its intent to discharge slops. Acceptance of any Cargo slop is subject to the prior written approval of such Shore Facilities. Notification shall include, at a minimum, the contents of the Cargo slop material, country of origin, estimated value of the Cargo slop, and an estimated quantity of the Cargo slop. If the slops are from finished products, the notification must also identify what additive(s), if any, are in the slop and the Material Safety Data Sheet(s) for the additive(s) must be promptly provided. Any delay caused by Vessel's failure to notify the designated Shore Facilities in a timely manner shall not count as used laytime or as time on demurrage. All expenses, including but not limited to, applicable U.S. Customs' fees, fines, or penalties associated with the clearing of foreign Cargo slop through U.S. Customs, the testing of the Cargo slop materials, and the removal and proper disposal of the Cargo slop shall be for the Vessel's Account. The title for Cargo slops shall pass to the Terminal Party at the first permanent flange on shore. The Vessel Party will make best efforts to ensure that the foreign Cargo slop shall not contain any Vessel-generated waste.

#### *F. Terminal's Environmental/Safety Observer*

The designated Shore Facilities may, at its/their option, place an observer on board the Vessel to observe loading and/or discharging of the Cargo, and related operations, during the period the Vessel is in port. The responsibility and liability for any pollution, unsafe act, or violation of the requirements of such Shore Facilities remains with the Vessel and its master.

## *G. Hoses*

Hoses and cargo arms furnished by the designated Shore Facilities shall be connected and disconnected shoreside by the personnel for such facilities. Such equipment used aboard the Vessel shall be connected and disconnected by the Vessel's personnel. Unless the requirements of the designated Shore Facilities provide otherwise, or at the option of such facilities, the connection and disconnection of hoses and/or cargo arms may be performed by the Vessel, at the Terminal's risk and expense. Flanges for the hose connections shall be at the Vessel's dockside rail. Crossover hoses between Inland Barges shall be furnished and connected by the Inland Barge at its risk and expense.

## *H. Wharf Damage: Indemnity*

Provided the Vessel Party is negligent, then the Vessel Party assumes full responsibility for any loss, destruction, or damage sustained by wharves, berths, or docks owned or maintained by the designated Shore Facilities if and to the extent such results from, arises out of, or is caused by the negligent or improper operation of any waterborne craft, either owned or operated by the Vessel Party, or being operated by subcontractors of the Vessel Party. The Vessel Party will fully and completely release, defend (upon the request of the designated Shore Facilities), indemnify, and hold such Shore Facilities, the owner and operator of such Shore Facilities, as well as the parent entity, subsidiaries, affiliates, officers, directors, employees, agents, contractors, subcontractors, and other representatives of such entity or entities, harmless from and against any such damages. This provision between the Parties is without prejudice to any other rights, remedies, claims, causes of action, or defenses thereto which may exist.

## **V. Notice of Readiness ("NOR")**

### *A. Tendering a Valid NOR*

After the Vessel has arrived at the Customary Anchorage or other place of waiting as required by the designated Shore Facilities, and is in all respects ready to proceed to the berth to commence loading or discharging the Cargo in accordance with terms of the Agreement, the Master, Captain, Master's agent, or Barge representative shall promptly give such Shore Facilities and the other Parties hereto notice by electronic mail, facsimile, letter, telegraph, any form of wireless radio or satellite communication available, or telephone. For Ocean Tankers, when notice is given verbally, confirmation in writing shall be made within twelve (12) hours after any such verbal notification is given. Any NOR submitted before the applicable Delivery Window will become effective as set forth below in Article VI. If NOR is tendered prior to meeting all of the above criteria, the date and effective time of the NOR will not be deemed tendered until said requirements have been met.

### *B. Pricing Based on NOR*

If the Vessel tenders a NOR prior to the commencement of the layday window that is provided for under the Agreement, then the official NOR date for pricing shall be the first day of such layday window. If the Vessel tenders NOR after the applicable layday window, then the official NOR date for pricing shall be the date when the Vessel is All Fast to the dock within the designated Shore Facilities.

## **VI. Allowed and Used Laytime**

Unless negotiated and documented in the Agreement, the public dock clause shall not apply.

### *A. Cargo Sampling and Analysis*

If the quality of the Cargo is called into question (for example, quality is evaluated as not meeting the applicable specifications for the Cargo as stated in the Agreement) prior to delivery, any delays, including but not limited to, resampling and/or analysis, shall be for the account:

1. of the Seller, should the Cargo in question fail to meet the applicable specifications as per the Agreement; or
2. of the Buyer, should the Cargo in question be in compliance with the applicable specifications as per the Agreement. Any delay attributed to additional sampling and/or testing shall be for the Party requesting same, and will count as laytime or demurrage, if on demurrage.

### *B. Tows and Inland Barge(s)*

1. Laytime For this subsection VI.B.1, clauses a through c, below, the term "arrives" or "arrival" means when the Tow for the Inland Barge nominated by the Vessel Party has placed itself in the designated Cargo Transfer Point, and is in all respects ready to proceed to the berth to commence loading or discharging of the Cargo in accordance with the Agreement.

a) If the Tow arrives prior to the commencement of the applicable Delivery Window, laytime shall commence at 0001 hours, local time, on the commencement date of such Delivery Window, or All Fast, whichever occurs first, unless specifically agreed and documented by the Parties in advance of docking at the designated Shore Facilities.

b) If the Tow arrives within the applicable Delivery Window, laytime shall commence upon such arrival.

c) If the Tow arrives after the end of the applicable Delivery Window, laytime shall commence when the Tow is All Fast to the dock that is associated with the designated Shore Facilities.

d) Laytime shall cease when the Tow is released by the designated Shore Facilities representative.

#### 2. Allowed Laytime

a) Inland Barge(s) with 24,999 bbls or less: Allowed laytime for any Inland Barges having or containing a Cargo Quantity of 24,999 barrels or less shall be twelve (12) hours.

b) Inland Barge(s) with 25,000 bbls or more: Allowed laytime for any Inland Barges having or containing a Cargo Quantity of 25,000 barrels or more shall be based on the applicable charter party terms for such Inland Barge. In the absence of any such applicable charter party terms, allowed laytime shall be one hour for each three-thousand (3,000) barrels loaded and/or one hour for each two-thousand-five-hundred (2,500) barrels discharged. Three (3) hours of free time shall be given at load and/or discharge. In no event shall allowed laytime be less than twelve (12) hours, which includes three (3) hours of free time.

c) Any time consumed due to the inability of the Inland Barge to discharge the Cargo within the allowed laytime or to maintain an average discharge pressure of 100 psi at the Inland Barge's manifold

throughout the bulk discharge shall not count as laytime or demurrage, provided that the designated Shore Facilities are capable of receiving same.

- d) If more than one barge is utilized, barges will be expected to load and/or discharge simultaneously.
  - i. If the designated Shore Facilities require barges to berth individually, time consumed in shifting the barges shall count as used laytime or demurrage, if on demurrage.
  - ii. If the Tow requires barges to berth individually, time consumed in shifting the barges shall not count as used laytime or demurrage, if on demurrage.

### *C. Ocean-Going Barges*

#### 1. Laytime

For this subsection VI.C.1, clauses a through c, below, the term "arrives" or "arrival" means when the applicable Ocean-Going Barge has placed itself in the designated Cargo Transfer Point, and is in all respects ready to proceed to the berth to commence loading or discharging the Cargo.

- a) If the Ocean-Going Barge arrives prior to the commencement of the applicable Delivery Window, laytime shall commence at 0001 hours, local time, on the commencement date of such Delivery Window, or All Fast, whichever occurs first, unless specifically agreed and documented by the Parties in advance of docking at the designated Shore Facilities.
- b) If the Ocean-Going Barge arrives within the applicable Delivery Window laytime shall commence upon such arrival.
- c) If the Ocean-Going Barge arrives after the end of the applicable Delivery Window, laytime shall commence when the Ocean-Going Barge is All Fast to the dock that is associated with the designated Shore Facilities.
- d) Laytime shall cease when the Ocean-Going Barge is released by the designated Shore Facilities representative.

#### 2. Allowed Laytime

- a) Allowed laytime for any Ocean Going Barge nominated under the Agreement shall be based on the charter party terms for the Vessel. In the absence of such charter party terms, laytime shall be the number of hours as specified in the table below:

##### Cargo Quantity (Net Standard Volume) Laytime

Up to 39,999 barrels:	12 hours
40,000 - 49,999 barrels:	13 hours
50,000 - 59,999 barrels:	14 hours
60,000 - 69,999 barrels:	15 hours
70,000 - 79,999 barrels:	16 hours
80,000 - 89,999 barrels:	17 hours
90,000 - 99,999 barrels:	18 hours
100,000 - 109,999 barrels:	19 hours
110,000 - 119,999 barrels:	20 hours

120,000 or more: 24 hours

b) In the event of a partial delivery of Cargo under the Agreement, allowed laytime shall be based on clause a, above, of this subsection VI.C.2 and allocated pro rata by dividing the Cargo Quantity delivered to Buyer by the Vessel's full Cargo volume as determined by the bills of lading for the voyage. If the bills of lading are not available, the total NSV outturn volume shall be used. In any case, the minimum allowed laytime for a partial delivery of the Cargo shall never be less than twelve (12) hours Ocean Tankers

### 1. Laytime

a) If the Ocean Tanker tenders NOR prior to the commencement of the applicable Delivery Window, laytime shall commence at 0600 hours, local time, at the specified location on the commencement date of such Delivery Window, or All Fast, whichever occurs first, unless specifically agreed and documented in advance of docking at the designated Shore Facilities.

b) If the Ocean Tanker tenders NOR within the applicable Delivery Window, laytime shall commence upon the expiration of six (6) hours after NOR is tendered or All Fast to the dock that is associated with the designated Shore Facilities, whichever occurs first.

c) If the Ocean Tanker tenders NOR after the end of the applicable Delivery Window, laytime shall commence when the Ocean Tanker is All Fast to the dock that is associated with the designated Shore Facilities.

d) Laytime shall cease when the Ocean Tanker's last cargo hose has been disconnected.

### 2. Allowed Laytime

a) The Vessel shall be permitted thirty-six (36) running hours as allowed laytime for either loading or discharging for a full Cargo.

b) In the event of a partial delivery of the Cargo under the Agreement, allowed laytime shall be based on thirty-six (36) hours and allocated pro rata by dividing the Cargo Quantity delivered to Buyer by the Ocean Tanker's full Cargo volume for the voyage as determined by the bills of lading. If the bills of lading are not available, the total NSV outturn volume shall be used. In any case, the minimum allowed laytime for a partial delivery of the Cargo shall never be less than twelve (12) hours.

c) If for any reason, other than safety, the Ocean Tanker is required to load or discharge the Cargo separately, the Party requiring separate load or discharge shall be responsible for laytime or demurrage, if on demurrage.

### 3. Pumping

a) The Vessel Party certifies that the Ocean Tanker is capable of discharging a full Cargo at a single terminal within twenty-four (24) hours, or maintaining an average discharge pressure of 100 psi, at the Ocean Tanker's manifold, during the bulk discharge provided the applicable Shore Facilities are capable of receiving same and excluding maximum two (2) hours for Vessel tank stripping or internal stripping. An additional three (3) hours shall be added to the pumping time warranty for each additional discharge terminal or product (including the Cargo) discharged.

b) Time lost by reason of failure to pump or maintain the average pressure, as set forth in clause a, above, of this subsection VI.D.3, shall not count as used laytime or demurrage. Time lost shall be calculated using the ASDEM Pumping Performance Formula (a copy of which is attached hereto as

Attachment "A") to determine the difference between the actual time taken to discharge and the time the Vessel would have taken had an average of 100 psi been maintained.

## **VII. Used Laytime Exclusions (Excluding Lightering)**

In addition to exclusions mentioned in prior sections of this document, the following shall not count as used laytime or as time on demurrage:

A. Inward passage of the Vessel from a lightering or waiting area to the Customary Anchorage or Shore Facilities, even if lightering has taken place; and/or the Vessel proceeding from the Customary Anchorage to the Shore Facilities, such time commencing at the earlier of the pilot being placed on board the Vessel or anchor aweigh and ending at All Fast.

B. Any time consumed in the interruption of transfer operations of the Cargo due to the Vessel's requiring separate and/or additional shore tank gauges for any reason or the Vessel's failure to comply with any applicable, published or posted requirements for the designated Shore Facilities. This would include interruption of transfer operations as a result of the Vessel Party's request(s) for line fill checks by comparing intermediate ship and shore gauges.

C. Any delay caused by strike, lockout, stoppage or restraint of labor of the Master, officers and crew of the Vessel.

D. Cleaning of tanks and/or pumps, lining up and/or draining of pumps, ballasting and/or de-ballasting, bunkering, or for any other purpose of the Vessel and only to the extent Vessel's officers and crew are prevented from performing cargo operations (i.e., tank gauging/tank inspection, cargo calculations, pre-cargo transfer meeting, and hose connection).

E. Any delay caused by the Vessel Party's failure to comply with all financial and/or credit responsibilities of the Agreement.

F. Delay due to prohibition of any cargo transfer at any time by the Vessel, Vessel Party, or the owner of the Vessel, or by any governmental agency or authority, unless such prohibition is caused by the failure of the designated Shore Facilities to comply with applicable laws, rules, or regulations.

G. Failure to have the required certificate of financial responsibility, or failure to be in compliance with applicable USCG regulations (or hold the necessary waiver if not in compliance), or the failure to have other legally required documentation, including the COC.

H. Awaiting applicable U.S. Customs and Immigration clearance and free pratique.

I. Any delay for which the Vessel, the Vessel's Master, or crew is responsible.

J. Force majeure events and conditions as outlined in the General Terms and Conditions.

K. Any delay at the designated ports of loading or discharging resulting from measures imposed by such port facility or by any relevant authority for purposes of port security, including but not limited to, measures imposed under any of the Maritime Security Regulations.

## **VIII. Shared Delays (Excluding Lightering)**

Laytime shall be reduced to one-half for the following conditions:

A. Delays due to weather and/or sea conditions shall include, but not be limited to, lightning, ice, fog, storm, wind, waves and/or swells;

B. Channel blockage and/or port closure associated with the designated Shore Facilities;

C. Breakdown or failure of equipment or machinery in or about the designated Shore Facilities; and

D. Random security inspection pursuant to any of the Maritime Security Regulations.

## **IX. Lightering**

Any partial lightering or lightering to extinction, at sea or at a place outside a designated port, shall be conducted in accordance with the latest Oil Companies International Marine Forum, or OCIMF, guidelines for ship-to-ship transfers and with port authority approval, if applicable. Any lightering Vessel required by either Buyer or Seller shall be subject to the prior written approval of the other Party. The Party requiring lightering, under the Agreement, is responsible for all expenses related to the lightering. Unless lightering is performed at Vessel's request or as a result of any fault that is attributable to the Vessel, any time used for lightering shall count as used laytime or as time on demurrage, if on demurrage. The lightering point shall not be considered a second discharge berth or port under the terms of the Agreement. No deductions shall be considered for weather or shifting within lightering area.

### *A. Laytime*

1. If the Vessel tenders NOR prior to the commencement of the applicable Delivery Window, laytime shall commence at 0600 hours, local time, at the specified location on the commencement date of such Delivery Window or All Fast, whichever occurs first, unless specifically agreed and documented by the Parties in advance of docking.
2. If the Vessel tenders NOR within the applicable Delivery Window, laytime shall commence upon the expiration of six (6) hours after NOR is tendered or All Fast, whichever occurs first.
3. If the Vessel tenders NOR after the end of the applicable Delivery Window, laytime shall begin upon All Fast.
4. Laytime shall cease when all applicable lightering equipment and fenders have been removed.

### *B. Allowed Laytime*

1. The Vessel shall be permitted thirty-six (36) running hours as allowed laytime for either loading or discharging a full Cargo.
2. In the event of a partial delivery of Cargo, allowed laytime shall be based on thirty-six (36) hours and allocated pro rata by dividing the Cargo Quantity delivered by the mother Vessel's full Cargo volume which shall be determined by the bill of lading. If the bill of lading is not available, then the total NSV

outturn volume shall be used. In any case, the minimum allowed laytime for a partial delivery of Cargo shall never be less than twelve (12) hours.

3. Any delay during the lightering operation for which the Vessel is responsible shall not count as used laytime or as time on demurrage, if on demurrage.

## **X. ISPS and MTSA**

### *A. Seller's Duties and Obligations*

1. Upon Buyer's request, Seller shall promptly provide documentation to Buyer's reasonable satisfaction for the purpose of verifying that the Vessel nominated to deliver at the designated Shore Facilities under the terms of the Agreement is operating in compliance (a) with the applicable requirements of the ISPS Code, and (b) where any of the designated Shore Facilities are located within the United States or any of its territories or waters, with the applicable requirements of the MTSA.

2. As between Buyer and Seller, Seller shall be responsible for any delays, detentions, restriction of Vessel operations, denial of port entry, and expulsion from the port with respect to any non-compliance with any of the Maritime Security Regulations by the Vessel or the Vessel's owner/operator. Except where any of the designated Shore Facilities and/or its owner/operator has failed or refused to comply with the Maritime Security Regulations, any cost, expense, demurrage, loss, liability, fine, penalty, judgment, order, or assessment of any kind or nature which is actually incurred by either Buyer or Seller and that is related to, or otherwise associated or connected with, the nominated Vessel and/or the Vessel's owner/operator in regard to the application and enforcement of the Maritime Security Regulations (including, without limitation, any and all costs and expenses which are necessary to review and/or verify applicable compliance documents, or impose any additional security and/or security measures on or in close proximity to the Vessel, its crew, operations, and/or Cargo as mandated by any federal, state, or local governmental authority, agency, or department which has the power to implement and enforce any of the Maritime Security Regulations) shall be for the account of the Seller. Any delays, detentions, or loss of time in loading or unloading any portion of the Cargo as provided for under the Agreement as a direct or indirect result of the implementation and enforcement of the Maritime Security Regulations as set forth under this subsection XI.A.1 shall not count as used laytime or time on demurrage against Buyer.

3. Notwithstanding anything else provided for in this clause, Seller's liability to the Buyer under the Agreement for any costs, losses, or expenses incurred by Buyer resulting from or associated with the failure, refusal, or inability of the Vessel and/or the Vessel's owner/operator to comply with any of the applicable requirements of the Maritime Security Regulations shall be limited to the payment of demurrage and any costs actually and necessarily incurred by the Buyer in accordance with the provisions of this Section XI.A.

4. Notwithstanding any prior acceptance of the nominated Vessel by Buyer, if at any time prior to the passing of risk of loss for and title to the Cargo covered by the Agreement, the nominated Vessel ceases to comply with the applicable requirements of the Maritime Security Regulations, then:

a) Buyer shall have the right not to allow such nominated Vessel to dock at the designated Shore Facilities, and any demurrage resulting from such failure, refusal, or inability of the Vessel and/or the Vessel's owner/operator shall not be for the account of the Buyer; and

5. Seller shall be obliged to substitute such nominated Vessel with a Vessel complying with the applicable requirements of the Maritime Security Regulations.

6. Seller shall exercise commercially reasonable efforts to ensure that the Vessel and the Vessel's owner/operator shall (a) reasonably cooperate with Buyer and the designated Shore Facilities in order to complete a DOS promptly after the execution of the Agreement, and (b) when required or requested, submit a fully executed copy of the DOS to the appropriate governmental or law enforcement authorities and Buyer prior to the Vessel's arrival at such Shore Facilities.

#### *B. Buyer's Duties and Obligations*

1. Upon Seller's request, Buyer shall promptly provide documentation to Seller's reasonable satisfaction for the purpose of verifying that any of the designated Shore Facilities and its owner/operator are operating in compliance with the applicable requirements of the Maritime Security Regulations.

2. As between Buyer and Seller, Buyer shall be responsible for any delays, detentions, restriction of Vessel operations, denial of port entry, and expulsion of the Vessel from any of the designated Shore Facilities with respect to any non-compliance with any of the Maritime Security Regulations by such Shore Facilities and/or its owner/operator. Except where the Vessel and/or vessel owner/operator has failed or refused to comply with the Maritime Security Regulations, any cost, expense, demurrage, loss, liability, fine, penalty, judgment, order, or assessment of any kind or nature which is incurred by either Buyer or Seller and that is related to, or otherwise associated or connected with, any of the designated Shore Facilities and/or its owner/operator in regard to the application of the Maritime Security Regulations (including, without limitation, any and all costs and expenses which are necessary to review and/or verify applicable compliance documents, or impose any additional security and/or security measures on or in close proximity to such Shore Facilities as mandated by any federal, state, or local governmental authority, agency, or department which has the power to implement and enforce any of the Maritime Security Regulations) shall be for the account of the Buyer. Any delays, detentions, or loss of time in loading or unloading any portion of the Cargo as provided for under the Agreement as a direct or indirect result of the implementation and enforcement of the Maritime Security Regulations as set forth under this subsection XI.B.2 shall not count as laytime or time on demurrage against Seller.

3. Notwithstanding anything else provided for in this clause, Buyer's liability to the Seller under the Agreement for any costs, losses, or expenses incurred by Seller resulting from or associated with the failure, refusal, or inability of any of the designated Shore Facilities and/or its owner/operator to comply with any of the applicable requirements of the Maritime Security Regulations shall be limited to the

payment of demurrage and any cost(s) actually and necessarily incurred by the Seller in accordance with the provisions of this Section XI.B.

4. Buyer shall exercise commercially reasonable efforts to ensure that the designated Shore Facilities and its

5. owner/operator shall (a) reasonably cooperate with Seller, the Vessel, and the Vessel's owner/operator in order to complete a DOS as provided for under the ISPS Code promptly after the execution of the Agreement, and (b) when required or requested, submit a fully executed copy of the DOS to the appropriate governmental or law enforcement authorities and Seller prior to the Vessel's arrival at such Shore Facilities.

## **XI. Demurrage**

Demurrage shall be payable for each running hour and pro rata for each part of an hour that used laytime exceeds the allowed laytime.

### *A. Rate Determination (If not stated in the Confirmation)*

1. Spot Chartered Equipment - For spot chartered equipment that is used in connection with the Agreement, the rate shall be based on the rate specified in the Vessel's charter party. For demurrage purposes, all Tows operating as a unit shall be considered collectively as one barge or tow.

2. Term Chartered or Owned Equipment - For term-chartered or owned equipment that is used in connection with the Agreement the rate shall be based on a current market rates for similar size vessels on a similar voyage, and will be specified in the Vessel nomination and agreement indicated by the Vessel's acceptance.

### *B. Demurrage Claims*

Claims Processing - Demurrage claims arising at the designated Shore Facilities must be submitted in writing with supporting documentation within ninety (90) calendar days from the date when hoses are disconnected after loading or discharging of the Cargo is completed. Claims shall be sent by one or more of the following means:

- a) E-mail address of DL-demurrage@freepoint.com:
- b) Facsimile number of (203) 987-4849;
- c) Federal Express and United States Postal Service to:  
Freepoint Commodities LLC

Operations  
599 West Putnam Ave., 3<sup>rd</sup> Floor  
Greenwich, CT 06830

Claims received after 1700 hours, New York City time, will be deemed to have been received on the next business day. If the claim and supporting documentation are not provided within the specified time, the claim will be deemed to be waived for all purposes. If a dispute arises as to the receipt of the demurrage claim within the ninety-day time deadline, written documentation of the receipt of the demurrage claim in question will be required before the claim will be considered. Demurrage payment is due upon receipt. The fact that the owing party has not collected demurrage from a third party shall not be an excuse or defense to a claim or for payment to the owed party. No claims for special, indirect, incidental, exemplary, punitive, or consequential damages of any nature, including any loss of revenue, profit, or goodwill, shall be made by either party relating to demurrage.

#### 1. Documentation

##### a) Tows and Inland Barges

Claims shall include and invoice, laytime calculation, copy of the nomination, and boat logs, as well as such other supporting documentation as reasonably may be requested by the Terminal Party.

##### b) Ocean-Going Barges

Claims shall include an invoice, laytime calculation, copy of the nomination, and boat logs, as well as such other supporting documentation as reasonably may be requested by the Terminal Party.

##### c) Ocean Tankers

Claims shall include an invoice, laytime calculation, copy of the Vessel's NOR, agent's port log, Vessel's statement of facts (SOF), Vessel pumping logs if claim is for a discharge, charter party if applicable, as well as such other supporting documentation as reasonably may be requested by the Terminal Party.

## **XII. Other Items**

### *A. American Tanker Rate Schedule / Worldscale Reference*

All terms, conditions, and differentials as set forth in the current revised American Tanker Rate Schedule / Worldscale Reference on the date of the Vessel loading or discharging, as applicable, and amendments thereto, shall apply insofar as they are not in conflict with any of the above written provisions.

### *B. Applicable Law*

This Agreement shall be interpreted in accordance with the General Maritime Law of the United States, and Texas Law if and where U.S. General Maritime Law is not applicable, in either case, without regard to any choice of law rules. Notwithstanding anything to the contrary, the Agreement shall not be interpreted or applied so as to require either party to do, or to refrain from doing, anything which would constitute a violation of any applicable U.S. Laws or Regulations. Venue or any dispute shall be the U.S. District Court for the Southern District of Texas, Houston Division. The prevailing party in any dispute hereunder is entitled to recover its reasonable costs, expenses and attorney's fees.

ASDEM PUMPING FORMULA  $Q2 = Q1 \times v (H2 / H1)$

Q1 = Average discharge rate achieved by the vessel during bulk discharge.  
H1 = The average pumping pressure achieved by the vessel during bulk discharge as measured  
H2 = The pumping pressure warranted in the charter party or lower maximum pressure required by the terminal.  
Q2 = The discharge rate that would be achieved at the pumping pressure, H2.