



Transnet Pipelines Standard Terms and Conditions

For

Conveyance of Products

VERSION/SERIES 1:

Approval date: 01 September 2024

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1. INTRODUCTION

1.1 The Transnet Pipelines Standard Terms and Conditions for the Conveyance of Products consists of the following:

Part 1 – “The Terms and Conditions” contained in this document, which sets out the legal framework delineating rights and duties relating to the transportation of Products in the pipeline system and,

Part 2 – “The Shipper’s Manual”, an annexure which sets out mainly the Operational and Technical aspects applicable to the pipeline system,

and shall include any and all annexures and other documents incorporated into this document and/or the Shipper's Manual.

1.2 The Carrier owns and operates the Pipeline System for the transportation of liquid hydrocarbon products from origins and to destinations in South Africa.

1.3 Shippers wish to have liquid hydrocarbon products transported in the Carrier's pipeline system and the Carrier is prepared to transport such products.

1.4 This document read with an accepted Order sets out the terms and conditions upon which the Carrier is prepared to transport such products.

2. GUIDING PRINCIPLES

The following guiding principles, which shall impose legal obligations on the Parties, will apply to the Agreement and the Terms and Conditions:

2.1 The Parties will at all times comply with all Applicable Laws;

2.2 The Terms and Conditions set out in the version of this document referenced in the Order, the Agreement and any credit agreements concluded as contemplated in clause 2.12 will supersede all previous conveyance terms and conditions and other contractual relationships between the Carrier and the Shippers for the transportation of Products in the Carrier's pipelines with effect from the Commencement Date;

- 2.3 Save for when maintenance requirements and/or unforeseeable circumstances dictate, the Carrier operates its Pipeline System on a 24 (twenty-four) hour, 7 (seven) days a week, 365 (three hundred and sixty five) days a year basis;
- 2.4 The Carrier's Pipeline System and its efficient operation are of strategic importance to the continuity and stability of supply of Products to various geographic locations within South Africa;
- 2.5 In order for the pipeline network to function it has to be continuously filled with a Product so that as Products are injected into the system at one location, Products are at the same time drawn out of the system at a different location;
- 2.6 The Pipeline System is designed to transport different types of Products in separate batches and it is accepted that there will be intermingling of Products at the interface between batches;
- 2.7 The intermingled Products shall either be blended directly or reprocessed and then blended by the Carrier and shall then be introduced back into the Pipeline System for delivery to Shippers;
- 2.8 By virtue of utilizing the multi-product pipeline network, the Shipper is required to take delivery of their share of intermixture generated during the conveyance of Product as determined in section 14 and clause 14.9 of the Shippers Manual.
- 2.9 Should the Shipper fail to collect their weekly intermixture allocation, then the Carrier shall be entitled not to receive nor inject the Shipper's Products into its Pipeline System. Should the intermixture remain uncollected by the Shipper within thirty days, the Carrier shall be entitled to terminate services to the Shipper, without any liability towards the Carrier, or to claim specific performance.
- 2.10 In the event the Carrier terminates service as set in section 2.9 above, the Carrier shall be entitled to enforce its remedies in terms of the Terms and Conditions including a claim for damages.
- 2.11 The functioning of the Pipeline System requires that the various types of Products transported in the Pipeline System are Fungible and the molecules of the Product supplied by the Shipper at the Intake Point to the Pipeline System will not necessarily be the same molecules which will be delivered at the

Delivery Point;

- 2.12 Due to the fact that the Pipeline System operates on the basis that the Products transported in the Pipeline System are Fungible, it is of fundamental importance that each type of Product the Shipper delivers for transportation is identical to the type of Product delivered by other Shippers for transportation and meets the specifications as set out in the SANS 1590, Specification for Pipeline Petroleum Products;
- 2.13 Upon acceptance of an Order received from a Shipper, the Carrier takes responsibility for efficiently and safely accepting Products for transportation, for transporting the Products in the Pipeline System and for delivering the Products to the Shipper or the Shipper's Consignee, within Product quality specifications as per SANS 1590, Specification for Pipeline Petroleum

Products, and in accordance with all Applicable Laws, including applicable Environmental Laws and Safety Laws;

2.14 The Shipper shall make available to the Carrier as per the planned Intake schedule, Product Grades that conform to SANS 1590. The Carrier shall Convey the Product Grades in the Pipeline System and Deliver as per the planned Delivery schedule. The Shipper will pay the Carrier for such Conveyance in accordance with the Tariff;

2.15 Prior to the Carrier being obliged to accept any Order from a Shipper for the transportation of the Shipper's Product, the Carrier and the Shipper shall conclude separate arrangements with respect to the granting of a credit facility by the Carrier to the Shipper and provision of security in that regard.

3. DEFINITIONS

3.1 In this document, the following words and expressions, unless otherwise stated or inconsistent with the context in which they appear, shall bear the following meanings:

3.1.1 **"Agreement"** means the agreement more fully described in clause 4.1;

3.1.2 **"Applicable Law(s)"** means:

3.1.2.1 All laws, statutes, ordinances, codes, regulations, rules, by-laws, orders, injunctions, decrees, writs, governmental approvals or directives and other requirements of government authorities having force of law and awards of any authority and proclamations applicable to the Product, the Pipeline System and the Conveyance of Product as amended from time to time and which includes Safety Laws, Environmental Laws, the Anti-Corruption Laws and the Sanctions; and

3.1.2.2 All authorisations, orders, approvals, grants, resolutions, exemptions, records of

decision, clearances, filings, licences, consents, permits, permissions, certificates, registrations, directives, compliance notices, and/or declarations required by or imposed in terms of any Applicable Law ("Authorisation(s)");

3.1.2.3

"Anti-Corruption Laws" including but not limited to:

3.1.2.3.1

the South African Prevention and Combatting of Corrupt Activities Act (2004);

3.1.2.3.2

the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997 ("OECD Convention");

3.1.2.3.3

the United Nations Convention against Corruption 2003;

3.1.2.3.4

the Foreign Corrupt Practices Act of 1977 of the United States of America ("FCPA");

3.1.2.3.5

the Bribery Act 2010 of the United Kingdom ("UK Bribery Act"); and

3.1.2.3.6

any other applicable law which:

- a) prohibits the offering of any gift, payment or other benefit to any Person or any officer, employee, agent or advisor of such Person; or
- b) is broadly equivalent to the FCPA or the UK Bribery Act, is

intended to enact the provisions of the OECD Convention or has as its objective the prevention of corruption;

- 3.1.3 **"Business Day"** means any day other than Saturdays, Sundays and gazetted public holidays in the Republic of South Africa,
- 3.1.4 **"Carrier"** means Transnet SOC Limited, represented by its Transnet Pipelines Division;
- 3.1.5 **"Carrier's Ordering System"** means the as the Enterprise Resource Planning Portal of the Carrier;
- 3.1.6 **"Commencement Date"** means the date of approval of this document as appearing on page 1 and the date of approval of each subsequent version/series as appearing on page 1 of each subsequent approval and as published on the Carriers website;
- 3.1.7 **"Confidential Information"** means any information of a confidential nature embodied in Product, data, technical knowledge, specifications, chemical and physical make-up, documents and/or other communications, in tangible or non-tangible form, relating to or useful in connection with the design, construction or operation of the facilities and/or feedstock and/or Products and/or business (including sales, administrative, financial and marketing data and plans) of the disclosing party, disclosed or provided by the disclosing party either directly or indirectly to the receiving Party;
- 3.1.8 **"Consignee"** means any party to whom the Carrier must Deliver Product at the specific instructions of a

		Shipper when Product is Delivered to its nominated Delivery Point;
3.1.9	"Day"	means any day of the week including weekends and public holidays in the Republic of South Africa;
3.1.10	"Delivery"	means when the Product is made available to the Shipper or the Shipper's Consignee at the Delivery Point;
3.1.11	"Delivery Point"	means the designated point along the Pipeline System equipped to permit Delivery of Products from the Pipeline System specified in an order;
3.1.12	"Environment"	means the "environment" as defined in section 1 of the National Environmental Management Act, No 107 of 1998, as may be amended from time to time;
3.1.13	"Environmental Claim"	means any liability relating to or arising from the ownership, use and/or possession of the Pipeline System, including any loss, damage and/or expense of any kind or nature (including but not limited to fines, penalties, investigation expenses, costs of Remediation, consequential or incidental damages, personal injury, death and property damage) relating to and/or resulting from a claim, complaint, dispute, investigation or other action from any third party, related party (as defined in the Companies Act, 2008) or governmental authority, arising out of or based on the actual or alleged acts or omissions of any Person with respect to any and all:
3.1.13.1		Authorisations held or required to be held by the Shipper or in respect of the Products

- or Injection of Products into the Pipeline System;
- 3.1.13.2 actual or alleged violation of any Environmental Law arising in respect of the Products or Injection of Products from or into the Pipeline System;
- 3.1.13.3 actual or alleged treatment, handling, use, generation, transportation, recycling, storage, disposal of a Hazardous Substance or Regulated Material arising in respect of the Products or Injection of Products from or into the Pipeline System; or
- 3.1.13.4 Environmental Contamination arising from or as a result of the Products or Injection of Products from or into the Pipeline System;
- 3.1.14 **"Environmental Contamination"** means any contamination of the Environment, including each of the following and their impacts or consequences:
- 3.1.14.1 the presence in or under any land, site, buildings or structures of a substance or micro-organism above the concentration that is normally present in or under that land, which substance or micro-organism directly or indirectly affects or may affect the quality of soil or the Environment adversely;
- 3.1.14.2 any Environmental Release at or from any site into any part of the Environment; or

- 3.1.14.3 any other pollution or degradation of the Environment, as defined under Environmental Laws;
- 3.1.15 **"Environmental Law"** means all statutes, ordinances, by-laws, common law duties, rules, regulations, codes, orders, directives, compliance notices, judicial precedents, Authorisations, standards and other lawful instructions given by a governmental authority regarding:
- 3.1.15.1 the protection of the Environment; or
- 3.1.15.2 the promotion of, or prevention or compensation of harm to, health or well-being including, but not limited to, health and safety of any Person, the prevention of pollution and ecological degradation or Remediation of damage to the Environment, the promotion of conservation and ecologically sustainable development in respect of the Environment and/or Persons; or
- 3.1.15.3 the regulation of Environmental Releases;
- 3.1.16 **"Environmental Release"** means any spilling, discharge, emitting, releasing, placing, leaking and seeping of any Hazardous Substance or Regulated Material into the Environment, except any release in compliance with Environmental Laws and specifically authorized by a current and valid Authorisation issued under Environmental Laws;
- 3.1.17 **"Fungible"** means a Product Grade that is freely exchangeable or replaceable, in whole or in part, for another similar Product Grade of substantially the same specification;

3.1.18	"Hazardous Substance"	means any natural or artificial substance (whether in a solid or liquid form or in the form of a gas or vapour and whether alone or in combination with any such other substance) capable of causing harm to any human or any other living organism supported by the Environment, or capable of damaging the Environment or public health or posing a threat to public safety or potentially causing a public nuisance, including any pollutants and any hazardous, toxic, poisonous, radioactive, noxious, offensive, harmful, corrosive or dangerous substances and all Regulated Materials, or for which liability or responsibility is imposed, or which are prohibited or restricted, under Environmental Law;
3.1.19	"Injection"	means the physical action by the Shipper of pumping the Product into the Pipeline System at the Carrier's Intake Point;
3.1.20	"Intake Point"	means the designated point along the Pipeline System equipped to permit the intake of Products into the Pipeline System, specified in an Order;
3.1.21	"Intellectual Property"	means all products of human intellect and shall include, without limitation, that which is contained or described in any trademarks, service marks, trade names, domain names, logos, get-up, patents, provisional patents, innovation patents, petty patents, inventions (whether patentable or not), know-how, (Including formulations, processes, technical information, confidential industrial and commercial information and techniques in any form), utility models, designs, copyrights, semi-conductor topographies,

databases, any new or existing compilation of any data or information not covered under any existing copyrights, as well as any confidential information relating to that subject matter;

- 3.1.22 **"Intermixture"** means a mixture of different Products;
- 3.1.23 **"JET IP"** means the Just Energy Transition Investment Plan (2023-2027) published by the Office of the President of the Republic of South Africa on 04 November 2022 in order to migrate South Africa towards a low carbon and climate resilient society;
- 3.1.24 **"NERSA"** means the National Energy Regulator of South Africa established in terms of National Energy Regulator Act, 40 of 2004 or its successor in title;
- 3.1.25 **"Order"** means an instruction from a Shipper or Consignee to the Carrier specifying the Product, the intake Point and Delivery Point utilising the Carrier's Ordering System and shall include the terms and conditions stipulated in the Carrier's acceptance of an Order;
- 3.1.26 **"Party"** means the **"Carrier"** or the **"Shipper"**, as the context may require, and **"Parties"** means both of them;
- 3.1.27 **"Person"** means any natural person and any entity with legal personality (including any company, partnership, association, limited liability company, joint venture (incorporated or unincorporated), corporation, trust, co-operative, unincorporated organisation or authority, or agency or sub-division thereof);
- 3.1.28 **"Pipeline System"** means the system operated by the Carrier for the transportation of Product between Intake Points

and Delivery Points, together with all accumulator, intermixture tanks, the refractionator, pumping equipment, meters and other appurtenances forming part of the system necessary to transport Product in terms of these Terms and Conditions;

3.1.29 **"Product(s)"** means any hydrocarbon specified according to SANS 1590 and Crude Oil and inclusive of any lawfully authorised product in line with the JET- IP;

3.1.30 **"Regulated Material"** means:

3.1.30.1 any material, substance, waste (including any solid, liquid, semisolid or gas or gaseous mixture), product, by-product, chemical, pesticide, fungicide, rodenticide, pollutant, hazardous material, hazardous substance, hazardous waste, solid waste, or non-hazardous waste as the foregoing terms are considered or defined as harmful, under, or regulated by, any applicable Environmental Laws, or known or suspected to pose a threat to health, safety or the Environment;

3.1.30.2 any petroleum (including the Crude Oil or any fraction thereof);

3.1.30.3 any asbestos, asbestos containing material, and presumed asbestos containing material;

3.1.30.4 any radioactive substance;

3.1.30.5 any polychlorinated biphenyl (PCB); and

- 3.1.30.6 any methylene chloride, trichloroethylene, 1.2-trans-dichloroethylene, dioxins or dibenzofurans;
- 3.1.31 **"Remediate or Remediation"** means the process (or any activity within the process, or associated with the process) of: -
- 3.1.31.1 identifying, investigating, assessing, evaluating and reporting the situation which exists, and the measures required;
- 3.1.31.2 taking any mitigation, containment, clean-up, rehabilitation, removal, control, treatment, emergency response or other measures required;
- 3.1.31.3 evaluating and monitoring the measures taken and their success and if necessary taking further measures; and
- 3.1.31.4 performing any related activities in accordance with Applicable Law and Safety Laws;
- to address Environmental Contamination or the potential of Environmental Contamination to a standard required by Applicable Law and reasonably acceptable to the Parties and relevant authorities;
- 3.1.32 **"Representatives"** means the Party's employees, and representatives such as agents, suppliers and contractors;
- 3.1.33 **"Safety Laws"** means all statutes, regulations, by-laws, common-law duties, codes of practice, SANS standards, incorporated international standards

(when applicable), instructions and directives issued by a governmental authority and includes international best practice and reasonably practicable measures to ensure that all persons working on, near or in any way associated with the Pipeline System and members of the public who may be impacted by the operation of the Pipeline System will be safe and not exposed to hazards to their health or safety;

- 3.1.34 **"SANS"** means South African National Standards latest edition;
- 3.1.35 **"SANS 1590"** means South African National Standard Supply Chain Specifications for White Petroleum Products Pipeline Specification 2017 Edition;
- 3.1.36 **"Shipper's Manual"** means the manual which sets out the Operational and Technical details i.e. rules, procedures and specifications, pertaining to the transportation of Product in the Pipeline System which forms part of these Terms and Conditions;
- 3.1.37 **"Shipper"** means the party which placed an Order with the Carrier for the transportation of Products in the Pipeline System;
- 3.1.38 **"Tariff"** means the published rates and charges for Conveyance of Product by the Carrier in the Pipeline System, as determined by NERSA from time to time;
- 3.1.39 **"Terms and Conditions"** means the version of this document referenced in an Order, and includes the Shipper's Manual and any and all annexes and other documents incorporated into this document and/or the Shipper's Manual in accordance with their terms.

- 3.2 In these Terms and Conditions:
- 3.2.1 references to a statutory provision include any subordinate legislation made from time to time under that provision and include that provision as modified or re-enacted from time to time;
- 3.2.2 words importing the masculine gender include the feminine and neuter genders and vice versa, the singular includes the plural and vice versa, and natural persons include artificial persons and *vice versa*;
- 3.2.3 references to a "person" include a natural person, company, close corporation or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons;
- 3.2.4 if a definition imposes substantive rights and obligations on a Party, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition;
- 3.2.5 any definition, wherever it appears in these Terms and Conditions meaning and apply throughout this document unless otherwise stated or inconsistent with the context in which it appears;
- 3.2.6 if there is any conflict between any definitions in these Terms and Conditions then, for purposes of interpreting any clause hereof or paragraph of any Annex, the definition appearing in that clause or paragraph shall prevail over any other conflicting definition appearing elsewhere in these Terms and Conditions;
- 3.2.7 where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which event last day shall be the next succeeding Business Day;
- 3.2.8 save as otherwise expressly provided elsewhere in these Terms and Conditions, where the day upon or by which any act is required to be performed is not a Business Day, the Parties shall be deemed to have intended such act to be performed upon or by the next succeeding Business Day;

- 3.2.9 references to any amount shall mean that amount inclusive of VAT, unless the amount expressly excludes VAT;
- 3.2.10 the rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class (i.e. the *esiusdem generis* rule) shall not apply, and whenever the word "including" is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus as the examples given; and
- 3.2.11 the headings to the clauses of the Terms and Conditions are for reference purposes only and shall not govern their interpretation.

4. **TRANSPORT OF PRODUCTS AND AGREEMENT**

- 4.1 Upon acceptance by the Carrier of an Order from a Shipper for the transportation of Products (the "Acceptance"), an agreement shall be deemed to have been concluded between the Carrier and the Shipper in respect of such Order on the terms and conditions set out in the agreement to which these Terms and Conditions and the Shipper's Manual are attached, and on the terms and conditions set out in the Order read with the provisions of the Acceptance. The Order and Acceptance will form part of the Agreement as Annexes thereto.
- 4.2 The Carrier shall transport Products for Shippers on the terms and conditions contained in the Agreement.

5. **COMMENCEMENT DATE AND AMENDMENTS**

- 5.1 These Terms and Conditions are of force and effect from the Commencement Date appearing on page 1 of this document or any subsequent Commencement Date appearing on page 1 of each subsequent version/series.
- 5.2 The Carrier may from time to time after the Commencement Date amend and/or substitute any of the provisions of these Terms and Conditions, of

which the Carrier shall notify the Shippers by the publication thereof on its website.

6. SHIPPER'S MANUAL

- 6.1.1 The Provisions applicable to the Operational and Technical aspects of transporting the Products are set out in the Shipper's Manual. The Shipper's Manual is incorporated in and forms an integral part of the Terms and Conditions and may also be amended and/or substituted in the manner provided for in clause 5.2.
- 6.1.2 The Parties shall be bound strictly by the Terms and Conditions and by the terms of the Shipper's Manual. It is agreed however, that if any provisions of the Shipper's Manual conflict with or differ from the provisions of the Terms and Conditions, then the provisions of the Terms and Conditions shall prevail and such conflicting, contradictory or differing provisions in the Shipper's Manual shall be deemed to have been amended to conform with the provisions of the Terms and Conditions.
- 6.1.3 The Shipper's Manual may be amended from time to time. Such amendments shall be effected in consultation with Shippers, but at the sole discretion of the Carrier.

7. CONSULTATION BY THE PARTIES

- 7.1 Shippers shall at all times be required to consult with the Carrier in advance of the Shippers placing any Orders with the Carrier for the transport and delivery of any Products, it being hereby agreed that the Carrier shall not be obliged to accept or to execute any Orders so placed by the Shippers.
- 7.2 To the extent that a Shipper's Order which has been accepted by the Carrier specifies the volume of Product to be delivered (the "Full Order Quantity") and the date by which such Full Order Quantity is to be Delivered (the "Prescribed Period"), the Carrier undertakes to use its best endeavours to Deliver the Full Order Quantity within the Prescribed Period, notwithstanding any provision to the contrary in the Agreement. For the avoidance of doubt, the Carrier shall not be obliged to Deliver the Full Order Quantities within the Prescribed Period despite its commitment to do so in its acceptance of an Order.

8. ACCEPTANCE FREE FROM LIENS

The Shipper shall deliver Products to the Carrier free from any liens and all other rights in favour of third parties, including security rights. In the event that a Product is subject to a lien, the Carrier shall be entitled to refuse to transport such Product and to require the Shipper to retake possession of such Product. In the event that a Product tendered for transportation is subject to a lien, or is the subject of legal action, then the Carrier has the right, not an obligation, to require the Shipper to furnish a guarantee on terms and for an amount to the satisfaction of the Carrier sufficient to indemnify the Carrier against losses which may arise as a result.

9. TRANSPORTATION CHARGES (PIPELINE TARIFFS)

- 9.1 The costs to be charged by the Carrier to the Shipper for transporting Products in the Pipeline System shall be the tariffs determined by NERSA from time to time. For Products, other than Crude Oil, the tariffs to be charged shall be the tariff ruling at the time that the Product is delivered to the destination. For Crude Oil, the tariff ruling shall be at the date of intake of the Crude Oil into the Pipeline System.
- 9.2 Any increases or decreases in the tariffs shall be effective as from the date that NERSA stipulates that such tariffs shall apply. In the event that a tariff decision of NERSA only comes to the attention of the Carrier after the date on which NERSA determines the new tariffs shall apply, then the Carrier shall issue invoices or credit notes, as the case may be, to the Shipper to take account of any difference between the amount the Carrier actually invoiced and the amount the Carrier should have invoiced.
- 9.3 In the event that there is a challenge to the NERSA determined tariff (the "Challenged Tariff"), the Parties agree that the Challenged Tariff shall be charged by the Carrier and paid by the Shipper until such time as the challenged tariff is overturned by NERSA.
- 9.4 In the event that the Challenged Tariff is overturned by NERSA and a new tariff is put into place which is lower than the Challenged Tariff, the Carrier shall reimburse the Shipper the difference between the Challenged Tariff and the new tariff and *vice versa*. The Party which is liable to reimburse the other pursuant to this clause shall pay all amounts due within thirty (30) Days from the date on which the new tariff is published by NERSA.

10. INVOICING

- 10.1 The Carrier shall invoice the Shipper the transportation charges once the volume of the Product has been determined upon Delivery (and for Crude Oil, on intake volume) and based upon actual volume of the Product delivered by the Carrier to the Shipper or the Shipper's Consignee.
- 10.2 The Carrier shall issue tax invoices to the Shipper on a weekly basis and such tax invoices shall serve as an account of the volume of the Product transported by the Carrier for the Shipper.
- 10.3 The Carrier shall issue statements to the Shipper on a monthly basis and such statements shall include amounts invoiced to the Shipper and any other charges not subject to VAT, such as interest on overdue amounts. The monthly statements shall serve as a summary of all transactions on the Shipper's account.
- 10.4 Unless otherwise agreed by the Carrier and permitted by law, invoices and statements shall be denominated in South African Rand and shall be payable in South African Rands.
- 10.5 The Shipper shall be entitled to query any invoice in writing within 30 (thirty) Calendar Days of the invoice date. The process following receipt of such query shall be as follows:
- 10.5.1 The authorized representatives of the Carrier shall consider the query and provide a written response to such query within (5) five Business Days of receipt of the query;
- 10.5.2 Should the Shipper be unsatisfied with the response received in terms of clause 10.5.1 above or should the parties be unable to resolve the query within (10) ten Business Days' following receipt of the query, the parties must proceed in terms of clause 16.
- 10.6 If no query is received in the said period, then the invoice shall be deemed to be correct and accepted by the Shipper. Queries on any invoice made after the 30 (thirty) Day period may only be considered based on reasonable and substantiated grounds.

11. PAYMENT

- 11.1 Payment shall be made by the Shipper to the Carrier by means of electronic funds transfer into the Carrier's bank account, details of which shall be furnished separately upon request to the Carrier's accounts department, and which may be changed from time to time by the Carrier upon 30 (thirty) Calendar days' written notice to the Shipper.
- 11.2 The Shipper shall pay the amount reflected as being due on the Carrier's monthly statement by no later than the 25th of the month following the month in respect of which the statement applies, save that if the 25th of the month following the month in respect of which the statement applies does not fall on a Business Day, then payment shall be made by no later than the immediately preceding Business Day.
- 11.3 Shippers that do not have a credit facility with the Carrier, shall pay the estimated amount three Business Days prior to planned injection of the product.
- 11.4 The Shipper shall be liable for and shall pay on demand interest at a rate above prime rate, depending on the credit risk profile of the Shipper, of the Carrier's bank from time to time, compounded monthly, from the due date until date of payment, both days inclusive, on any money not paid by the due date for such payment in terms of the Agreement. A certificate issued under the hand of any manager of the Carrier's bank (whose appointment and designation it shall not be necessary to prove), certifying the prime rate of such bank applicable to the relevant period, shall be proof of the correctness of the information contained therein, and may be used for the purpose of obtaining summary judgment against the Shipper or for any other purpose arising under the Agreement or under the Terms and Conditions. Any changes to the aforesaid prime rate shall result in the interest rate charged being altered on the first (1st) day of the month following such change.
- 11.5 The Carrier shall be entitled to exercise a lien over the Shipper's Product in the Carrier's possession for purposes of securing any amount overdue for payment by the Shipper to the Carrier and the Shipper agrees that the Carrier may exercise such lien whether or not the overdue amount relates to the Product which will be the subject of the lien. In this event the Carrier shall be

entitled, without prejudice, to any other rights which it may have, and without further notice to the Shipper, at the option of the Carrier, to sell the whole or any part of the Product subject to the lien and to apply the proceeds of such sale, after deducting expenses, in payment of or towards any sum due by the Shipper to the Carrier. The Carrier shall pay over the surplus (if any) of the proceeds of such sale to the Shipper, but shall otherwise be released from all liability whatsoever in respect of the Product sold. The Shipper indemnifies the Carrier against any claims or losses of whatsoever nature which may be instituted or levied against the Carrier arising out of or as a result of the sale of any Product subject to a lien in terms of this clause.

12. LIMITATION OF LIABILITY

- 12.1 Notwithstanding anything to the contrary contained in the Agreement or in the Terms and Conditions, the Carrier's liability to the Shipper, whether arising there, or from any other cause whatsoever, is limited to an amount equivalent to the total transportation charges invoiced by the Carrier to the Shipper in the 6 (six) months preceding the event which gave rise to the liability or the value of the value of the Product to which the claim relates, whichever is the lower.
- 12.2 The Shipper indemnifies the Carrier against, and holds the Carrier harmless from, any loss suffered by or claims made against the Carrier as a result of or in connection with any negligent or wilful act or omission of the Shipper and/or any of the Shipper's employees, agents or representatives.
- 12.3 The Shipper indemnifies the Carrier against, and holds the Carrier harmless from, all and any losses of whatsoever nature and howsoever and wheresoever arising and howsoever incurred and/or suffered by the Carrier arising out of or from, as a result of or in connection with any Environmental Claims.
- 12.4 The Shipper indemnifies the Carrier against, and holds the Carrier harmless from all and any losses arising in connection with any inspection and related instructions issued, investigation, inquiry (and associated findings), inquiry, criminal trial or litigation of any nature in any way connected to compliance with Safety Laws or related to any injury or risk to harm to which any Person alleges they were exposed as a result of the use of the Pipeline System including the actual reasonable costs of any remedial action necessary.

- 12.5 The Shipper indemnifies the Carrier against, and holds the Carrier harmless from, all Claims made against the Carrier by any third Party arising out of loss of or deterioration in the quality of the third Party's Product caused by any negligent or wilful act or omission of the Shipper and/or the Shipper's employees, agents or representatives.
- 12.6 If any legal action is brought or claim (including an Environmental Claim) is made against the Carrier and the Carrier is entitled to be indemnified pursuant to the above sub-clauses, the Shipper shall be entitled at its own expense to defend, have conduct of, or settle any such action or claim and the Carrier shall notify the Shipper promptly of any such claims or any such threatened claims and take such action as the Shipper reasonably directs. The Carrier shall be entitled to engage its own legal counsel and the Shipper shall co- ordinate the defence with the Carrier. If the Shipper fails to defend, or deal with any such action or claim diligently, the Carrier may, after first giving the Shipper reasonable notice so to act, on reasonable grounds defend or settle the claim, without the Shipper's consent and without relieving the Shipper of the obligation to indemnify the Carrier.
- 12.7 Insofar as any obligation or duty by either of the Parties in accordance with the Terms and Conditions is performed by any of the Parties' respective responsible persons, clauses limiting and/or excluding the liability of the Party concerned are stipulated for the benefit of such responsible persons as well, and their liability shall be limited and/or excluded and they shall be indemnified accordingly.
- 12.8 For the purposes of this clause "responsible persons" means any contractor, subcontractor, agent, servant, officer or employee representative of the Party concerned as appointed officially by the Party.
- 12.9 The Carrier shall not be liable to the Shipper, whether in terms of any indemnity or otherwise, for any loss arising in whole or in part from any act or omission of the Shipper.
- 12.10 The Shipper indemnifies the Carrier against, and holds the Carrier harmless from, any and all losses the Carrier may suffer, or costs which it may be obliged to incur, as a result of negligent or wilful acts of the Shipper, including:

- 12.10.1 any consequential or economic loss whatsoever, including but not limited to loss of profit, whether arising out of such loss or not;
- 12.10.2 any direct or indirect, incidental, consequential damages, or loss of revenue, incurred by the Carrier or any third Party, even if the Carrier had been reasonably advised of the possibility of such damages arising from the injection by the Shipper into the Pipeline of any Product which is not, in quality and/or substance, in conformity with the Product intended for injection at the time and the Shipper agrees, moreover, to take Delivery at a point notified by the Carrier, of such unacceptable Product and/or mixture of Products together with the interfaces generated at either side thereof.
- 12.11 Without derogating from the generality of the foregoing, the Shipper indemnifies the Carrier against, and holds the Carrier harmless from, any and all losses the Carrier may suffer, or costs which it may be obliged to incur, due to negligent or wilful acts or omissions of the Shipper, whether directly or indirectly, including:
- 12.11.1 any consequential or economic loss whatsoever, including but not limited to loss of profit, whether arising out of such loss or not;
- 12.11.2 any direct or indirect, incidental, special or consequential damages, loss of revenue, incurred by the Shipper or any third Party, even if the Carrier had been advised of the possibility of such damages;

which arise from the Delivery, into any of the Carrier's Accumulator Tanks, of any Product or Intermixture of Products which has the effect of contaminating the Product contained in such tanks beyond the permissible limits, as per applicable edition of SANS 1590, of contamination for such last mentioned Product as specified in the Shipper's Manual, to such a degree as, in the opinion of the Carrier, to render such last mentioned Product unusable for its intended purpose and the Shipper agrees, moreover, to take delivery at a depot notified by the Carrier to the Shipper, of such unacceptable Product and/or mixture of Products together with the total contents of the contaminated tanks and interfaces generated and to re-supply said Product; provided that the Shipper shall incur no liability under this clause in any case where the proximate cause of the contamination complained of is an act or omission

amounting to wilful misconduct or negligence on the part of the Carrier or an employee of the Carrier.

12.12 The Shipper indemnifies the Carrier against, and holds the Carrier harmless from, any and all losses the Carrier may suffer, or costs which it may incur directly or indirectly arising from the Delivery, into any of the Carrier's storage tanks situated at Delivery Points, of any Product or Intermixture of Products which has had the effect of contaminating the Product contained in such tanks beyond the permissible SANS 1590 pipeline product specification limits of contamination for such Product as specified in the Shipper's Manual and to such a degree as to render the Product unusable for its original purpose as determined by an independent third Party laboratory. The Shipper shall incur no liability under this clause in any case where the proximate cause of the contamination complained of is an act or omission amounting to wilful misconduct or negligence on the part of the Carrier or an employee of the Carrier.

12.13 Without prejudice to any other legal claims the Shipper may have in law, the Carrier hereby indemnifies the Shipper against, and holds it harmless from, any and all claims in respect of:

12.13.1 the death of or injury to any person, including an employee of the Carrier or of the Shipper;

12.13.2 the destruction of or damage to the property of any third Party, against all costs and expenses incidental thereto;

where such death, injury, destruction or damage has resulted from or arisen out of any incident connected with or attributable to the operation of the Pipeline; provided that the Carrier shall not be obliged to indemnify the Shipper as aforesaid, nor shall the Shipper be released from its ordinary common law liabilities, in any case where the proximate cause of the death, injury or destruction or damage forming the subject matter of the claim is an act or omission amounting to negligence or wilful misconduct on the part of any of the Shipper's employees.

12.14 As soon as reasonably possible after being notified of any claim against which the Carrier is prima facie liable to indemnify the Shipper in terms of the Terms and Conditions, the Shipper shall furnish the Carrier with full particulars of

such claim and shall thereafter, as and when from time to time requested, render the Carrier all assistance reasonably within its power to come to terms with the claimant or, if thought fit, to contest such claim in the name of the Shipper but at the sole risk and expense of the Carrier. If the Carrier so elects and the Shipper agrees, the Shipper shall itself take steps to settle or contest such claims subject to such terms and conditions as may be agreed upon between Shipper and the Carrier.

13. CLAIMS

13.1 If the Shipper wishes to proceed with any claim against the Carrier the Shipper must report any loss to the Carrier and obtain an incident number from the Carrier and vice-versa. The provision of such incident number shall not be refused or unreasonably delayed.

13.2 If a claim of any nature is lodged for any reason (excluding any meter dip claim) it must be lodged with the Carrier within 6 (six) calendar months from the date the Product, which is the subject of the claim, was delivered, or ought to have been delivered, failing which the claim shall irrevocably lapse and be of no further effect, and vice-versa.

13.3 Legal action must be instituted against the Carrier within 36 (thirty six) calendar months from the date when notice in writing is given by the Carrier to the Shipper that the Carrier has disallowed the claim or any part or parts thereof, failing which, the claim shall irrevocably lapse and be of no further effect.

14. FORCE MAJEURE

14.1 For the purposes of the Agreement, the expression "Force Majeure Event" means, in respect of either Party, any event or circumstance, or combination of events or circumstances, occurring whilst the Agreement is of force and effect, the occurrence of which is beyond the reasonable control, directly or indirectly, of the Party seeking relief (the "affected Party"), and which the affected Party was unable to prevent by the exercise of reasonable diligence.

14.2 Subject to the provisions herein, if the affected Party is delayed in performing or fails to perform any of its obligations under the Agreement as a consequence of a Force Majeure Event, the affected Party will be relieved of

the liability for the delay or failure to perform its obligations under the Agreement, and the consequences of such delay or failure to perform its obligations, for the period of the delay.

- 14.3 During the period of a Force Majeure Event:
- 14.3.1 the affected Party shall without delay give written notice of the occurrence of the Force Majeure Event to the other Party, and such notice shall include information about the circumstances, the likely duration of such circumstances (if known), the extent (including duration) to which the affected Party will be prevented from or impeded in carrying out any of its obligations under the Agreement and a statement of the steps necessary to remedy such occurrence;
- 14.3.2 the Parties shall then promptly meet with a view to discussing the affected Party's plans to reduce and/or mitigate the effects of the Force Majeure Event; and
- 14.3.3 the affected Party shall take all reasonable steps to remedy the Force Majeure Event and to mitigate the effect of its failure or omission to perform in full and shall continue to perform its obligations as far as possible and practical.
- 14.4 The affected Party shall have the burden of proving the existence of such Force Majeure Event.
- 14.5 The affected Party shall upon cessation of the Force Majeure Event, without delay in writing, notify the other Party of such cessation.
- 14.6 If for reasons of the Force Majeure Event, the affected Party is unable, notwithstanding that Party's efforts to remove the causes of the Force Majeure Event, to perform all or any of its obligations under the Agreement, and such non-performance continues for more than a period of 12 (twelve) months after the Force Majeure Event has been notified in terms of clause 14.3.1, then either of the Parties may terminate this Agreement upon written notice to the other of them, and neither Party will have any claim against the other arising out of such termination.

15. BREACH

- 15.1 If either Party commits a breach of any provision of the Agreement or of the Terms and Conditions and the breach is capable of being remedied, the other Party may in writing call on the Party in breach to remedy the breach within a period of 20 (twenty) Calendar days or such longer period as may be reasonable in the circumstances.
- 15.2 If the breach remains unresolved after the aforesaid notice period has expired, the Party calling on the Party in breach to remedy will be entitled, but not compelled, to terminate the Agreement with immediate effect on further written notice to the Party in breach, without prejudice to other rights in law it may have.
- 15.3 In addition, either Party may withdraw from the Agreement with immediate effect on written notice to the other Party in the event that the other Party:
- 15.3.1 commits an act which would be an act of insolvency under the Insolvency Act, No. 24 of 1936, (if such other Party were a natural person); or
 - 15.3.2 is liquidated, whether voluntarily or compulsorily and, in either case, whether provisionally or finally; or
 - 15.3.3 any application is made for the liquidation of such other Party, whether voluntarily or compulsorily and, in either case, whether provisionally or finally; or
 - 15.3.4 the directors and / or members of such other Party propose a resolution for the winding up of such other Party, as the case may be; or
 - 15.3.5 is placed in business rescue, or proceedings are instituted to place such Party in business rescue, or the directors propose a resolution to place the Party in business rescue; or
 - 15.3.6 enters into any compromise, composition or arrangement with all or any class of creditors, or attempts to do so; or
 - 15.3.7 is deemed to be unable to pay its debts in accordance with the provisions of the Companies Act, No. 61 of 1973, which still apply by

virtue of the provisions of the Companies Act, No. 71 of 2008, or otherwise defaults generally in the payment of its liabilities; or

15.3.8 commits a material breach of this Agreement which cannot be remedied.

16. DISPUTE RESOLUTION

16.1 separate, divisible agreement

This clause 16 is a separate, divisible agreement from the rest of the Agreement and shall:

16.1.1 not be or become void, voidable or unenforceable by reason only of any alleged misrepresentation, mistake, duress, undue influence, impossibility (initial or supervening), illegality, immorality, absence of consensus, lack of authority or other cause relating in substance to the rest of the Agreement and not to this clause. The Parties intend that all disputes, including the issues set forth above, be and remain subject to arbitration in terms of this clause; and

16.1.2 remain in effect even if the Agreement expires or terminates for any reason whatsoever.

16.2 disputes subject to arbitration

Save as may be expressly provided for elsewhere in this Agreement for the resolution of particular disputes, any dispute arising out of or in connection with this Agreement or the subject matter of this Agreement, including without limitation, any dispute concerning:

16.2.1 the existence of the Agreement apart from this clause;

16.2.2 any claims relating to intentional misconduct, including fraud or fraudulent misrepresentations;

16.2.3 any claim relating to the enforceability and enforcement of this Agreement;

16.2.4 the interpretation, application and effect of any provisions in the Agreement;

- 16.2.5 the Parties' respective rights or obligations under the Agreement;
- 16.2.6 the rectification of the Agreement;
- 16.2.7 any alleged misrepresentation, mistake, duress, undue influence, impossibility (initial or supervening), illegality, immorality, absence of consensus, lack of authority or other cause relating to or in any way connected with the Agreement or any part or portion thereof;
- 16.2.8 the breach, expiry, termination or cancellation of the Agreement or any matter arising out of the breach, expiry, termination or cancellation; and;
- 16.2.9 any claims in delict, compensation for unjust enrichment or any other claim,

whether or not the rest of the Agreement apart from this clause is valid and enforceable, shall be referred to arbitration as set out in 16.3.

16.3 **Arbitration**

- 16.3.1 All disputes shall be administered and finally determined in accordance with the Commercial Arbitration Rules of the Arbitration Foundation of Southern Africa ("AFSA") without recourse to the ordinary courts of law, except as explicitly provided for in clause 16.10.
- 16.3.2 Any Party to this Agreement may, either separately or together with any other Party to this Agreement, initiate arbitration proceedings pursuant to this clause by sending a request for arbitration to all other Parties to this Agreement and to AFSA.
- 16.3.3 Any Party to this Agreement named as respondent in a request for arbitration, or a notice of claim, counterclaim or cross-claim, may join any other Party to this Agreement in any arbitration proceedings hereunder (provided that such other Party has an interest in such proceedings) by submitting a written notice of claim, counterclaim or cross-claim to that Party, provided that such notice is also sent to all other Parties to this Agreement and AFSA within ten (10) days from the receipt by such respondent of the relevant request for arbitration or notice of claim, counterclaim or cross-claim.

16.4 **Confidentiality**

The existence and content of arbitration proceedings as well as any ruling, award or outcome shall be treated as confidential by the Parties as well as the members of the arbitral tribunal. This will apply unless:

- 16.4.1 the Parties will require disclosure to the extent that it is required by a Party to fulfil a legal duty, protect or pursue a legal right, or enforce or challenge an award in bona fide legal proceedings before a court, forum or tribunal;
- 16.4.2 the Parties consent in writing to the disclosure of certain information;
- 16.4.3 the information is needed for the preparation or presentation of a claim or defence in the arbitration;
- 16.4.4 the information is already in the public domain without any Party breaching this clause; or
- 16.4.5 the arbitral tribunal has ordered that it be disclosed upon application by a Party.

16.5 **Appointment of arbitrator**

- 16.5.1 The Parties to the dispute shall agree on the arbitrator who shall be an attorney, senior advocate or retired judge with at least 10 years' experience in commercial legal practice. If agreement is not reached within 10 Business Days after any Party calls in writing for such agreement, the arbitrator shall be an attorney, senior advocate or retired judge with at least 10 years' experience in commercial legal practice and who need not be on the panel of arbitrators of AFSA nominated by the Chairman of AFSA for the time being.
- 16.5.2 The request to nominate an arbitrator shall be in writing outlining the claim and any counterclaim of which the Party concerned is aware and, if desired, suggesting suitable nominees for appointment as arbitrator, and a copy shall be furnished to the other Parties who may, within seven (7) days, submit written comments on the request to the addressee of the request with a copy to the first Party.

16.6 Venue and period for completion of arbitration

The arbitration shall be held in Johannesburg and the Parties shall endeavour to ensure that it is completed as expeditiously as possible after notice requiring the claim to be referred to arbitration is given.

16.7 Binding nature of arbitration

The Parties irrevocably agree that, subject to clause 16.9, any decisions and awards of the arbitrator:

16.7.1 shall be binding on them;

16.7.2 shall be carried into effect; and

16.7.3 may be made an order of any court of competent jurisdiction.

16.8 Powers of the arbitrator

In addition to any other powers that an arbitrator might have, the arbitrator shall have the power to:

16.8.1 grant any remedy or relief permissible in law, whether provisional or final, including but not limited to conservatory relief and injunctive relief; and

16.8.2 rule on his or her own jurisdiction, including any objections with respect to the existence, validity or effectiveness of the arbitration agreement. The arbitrator may make such ruling in a separate award on jurisdiction or in an award on the merits, as he or she considers appropriate in the circumstances.

16.9 Appeal

16.9.1 The Parties agree that there shall be an appeal against any award or any decision of the arbitrator. Any Party to the dispute may appeal the award or the decision of the arbitrator to an appeal panel of three arbitrators (being practising advocates or retired judges with at least 10 years' experience in commercial legal practice) appointed by agreement between the Parties to the dispute, failing which any places on the

arbitral tribunal which are not filled by agreement shall be filled by appointment made by the Chairman of AFSA.

16.9.2 The appeal arbitrators shall be required to give written reasons for their award on appeal.

16.10 **Application to Court for Urgent Interim Relief**

Nothing contained in this clause 16 shall prohibit a Party from approaching any court of competent jurisdiction for urgent interim relief pending the determination of the dispute by arbitration. In respect of such proceedings, each of the Parties specifically consents to the non-exclusive jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg).

17. **DOMICILIA**

17.1 The Parties choose *domicilium citandi et executandi* for all purposes in connection with the Agreement and the Terms and Conditions as follows:

The Carrier: 202 Anton Lembede Street
Durban
4001

Marked for the Attention of:

THE CHIEF EXECUTIVE:

Transnet Pipelines

E-mail: [...]

Facsimile: [...]

The Shipper: The addresses provided in the Shipper's Order to the Carrier

18. **GOOD FAITH**

The Parties undertake to observe good faith in dealing with each other and in implementing the provisions of the Agreement and the Terms and Conditions.

19. SUPERSESSION

The Parties agree that the Agreement (which) includes the Terms and Conditions shall supersede and cancel any other prior Terms and Conditions or arrangements in relation to the matters regulated therein between the Parties, unless there are exceptional arrangements in place and as agreed in writing between the Shipper and the Carrier.

20. CESSION

Neither Party shall cede any of its rights or delegate any of its obligations under the Terms and Conditions without the prior written consent of the other Party, which shall not be withheld unreasonably.

21. CONFIDENTIALITY AND NON-CIRCUMVENTION

21.1 Each of the Parties to this Agreement agrees that the terms of this Agreement and all confidential and proprietary information of the Parties communicated to them in connection with this Agreement and of the Company and/or its clients will be received in strict confidence and be used only for the purposes of this Agreement. Each party will use the same means as it uses to protect its own confidential information, but in no event less than reasonable means, to prevent the disclosure and to protect the confidentiality of such information. No such information will be disclosed by the recipient party, its agents, representatives or employees without the prior written consent of the other Parties.

21.2 The foregoing provisions do not apply to information which is:

21.2.1 publicly known or becomes publicly known through no unauthorised act of the recipient party;

21.2.2 rightfully received by the recipient party from a third party;

21.2.3 independently developed by the recipient party without use of the other party's information;

21.2.4 disclosed by the other party to a third party without similar restrictions; or

21.2.5 required to be disclosed pursuant to a requirement of a governmental agency or any applicable law, so long as the party required to disclose

the information provides the other party with prior notice of such disclosure;

21.2.6 publicly disclosed with the other Party's written consent.

21.3 All media releases, public announcements and public disclosures by any Party or their respective employees or agents relating to these Terms and Conditions or its subject matter, including without limitation promotional marketing material, will be co-ordinated with and approved by each Party prior to the release thereof. The foregoing will not apply to any announcement intended solely for internal distribution by any Party or to any disclosure required by legal, accounting or regulatory requirements beyond the reasonable control of the party in question.

22. GOVERNING LAW

The interpretation and enforcement of the Terms and Conditions shall be governed by the law of South Africa.

23. GENERAL PROVISIONS

23.1 The provisions of this clause 23, as with any other clause in this document, are incorporated in and shall form an integral part of the Terms and Conditions.

23.2 No indulgence granted by a Party shall constitute a waiver of any of that Party's rights under the Terms and Conditions. Accordingly, that Party shall not be precluded, as a consequence of having granted such indulgence, from exercising any rights against the other.

23.3 No agreement varying, adding to, deleting from or cancelling the Agreement or the Terms and Conditions shall be effective unless reduced to writing and signed by or on behalf of the Parties.

23.4 Any costs, including attorney and own client costs and Value-Added Tax, incurred by a Party arising out of a breach by any other Party shall be borne by the Party in breach.

23.5 If any provisions of or the Terms and Conditions are held to be invalid under any legal or other requirement then such provisions shall to that extent be deemed *pro non scripto*, and the validity and enforceability of the remainder of the Agreement or the Terms and Conditions shall not be affected.

24. REASONABLE AND PRUDENT OPERATOR

24.1 The Carrier will perform its obligations under this Agreement as a reasonable and prudent operator.

24.2 The Carrier warrants that it shall convey the Products and operate and maintain the Pipeline System as a reasonable and prudent operator in compliance with all Applicable Laws, applicable standards, policies, procedures and industry best practices in order but not limited to:

24.2.1 taking reasonably practicable measures to prevent the occurrence of Incidents inclusive of Environmental Releases;

24.2.2 taking reasonably practicable measures to minimise inherent risk to people, Environment, equipment etc;

24.2.3 ensuring reasonable compliance with required pro-active maintenance, including corrosion protection, leak detection intelligent inspections;

24.2.4 ensure optimal conveyance of Product through the Pipeline System;

24.2.5 ensure adherence to pipeline schedules through proper planning, optimisation and scheduling tools;

24.2.6 ensure acceptable Pipeline System Product losses or gains; and

24.2.7 ensure confidentiality of Parties' information.

24.3 The Carrier undertakes that it shall use its best endeavours, as far as reasonably practicable, to:

24.3.1 minimise losses of Product throughout the Pipeline System;

24.3.2 minimise Product contamination;

24.3.3 minimise Intermixture generation;

- 24.3.4 minimise non-conformance of Product;
- 24.3.5 enable timeous reconciliation of gains and losses; and enable timeous reconciliation of over and under Deliveries; and
- 24.3.6 use adequate and up to date technology in the operation of the Pipeline System.

25. COMPLIANCE WITH APPLICABLE LAWS

- 25.1 The Parties will, in performing their obligations under this Agreement, comply with the Applicable Laws and the relevant Authorisations.
- 25.2 The Carrier will, in complying with the Applicable Laws and the relevant Authorisations, do so as a reasonable and prudent operator.

26. OWNERSHIP AND RISK

- 26.1 Ownership of and benefit to the Products shall remain with the Shipper.
- 26.2 Notwithstanding the contents of clause 26.1 above, all risk in the Product shall pass from the Shipper to the Carrier on Injection at the Injection point at the Shipper's Maintenance Valve as defined in the Shipper's Manual; and the Carrier to the Consignee on Delivery at the Delivery Point at the Consignee's Valve as defined in the Shipper's Manual.

27. SAFETY, HEALTH AND ENVIRONMENT

- 27.1 The Shipper is not a mandatary of the Carrier, as defined and contemplated in the Occupational Health and Safety Act. The provisions of section 37(2) of the Occupational Health and Safety Act regulating vicarious liability do not apply between the Parties.

27.2 Warranties

- 27.2.1 The Carrier warrants that it shall convey the Products and operate and maintain the Pipeline System as a reasonable and prudent operator in compliance with all applicable Environmental Laws.
- 27.2.2 The Shipper warrants that:

- 27.2.2.1 it has the necessary skills, knowledge, expertise and qualifications to perform its obligations in respect of this Agreement;
- 27.2.2.2 it and its responsible persons are familiar with the duties and obligations imposed on them by all Applicable Laws (including Environmental Laws);
- 27.2.2.3 it will take all necessary measure to ensure compliance with Safety Laws and prevent harm to any person arising from its operations, activities and use of the Pipeline; and
- 27.2.2.4 it will take all reasonable measures to prevent pollution or degradation of the Environment occurring on or emanating from its use of the Pipeline System, and to minimise or rectify any such pollution or degradation that has arisen.

27.3 Undertakings

- 27.3.1 The Parties acknowledge the importance of health, safety and the preservation of the environment. The Parties confirm that they both maintain and implement a comprehensive health, safety and environmental policy and reasonable care principles in accordance with best industry practice and binding industry standards (collectively the “HSE Policies”) and compliance with Safety Laws and Environmental Laws in relation to this Agreement.
- 27.3.2 The Parties undertake to conduct themselves generally, and in particular in relation to these Terms and Conditions, strictly in accordance with their respective HSE Polices and in terms of Safety Laws and Environmental Laws. The Parties also undertake to act with reasonable care and in accordance with best industry practices.
- 27.3.3 The Parties shall at all times, in undertaking their respective obligations in terms of these Terms and Conditions, ensure that these are undertaken in a manner that:
 - 27.3.3.1 is safe and in compliance with the HSE Policies;
 - 27.3.3.2 is compliant with all Applicable Law (including Environmental Law);

- 27.3.3.3 Minimises Incidents as defined in clause 27.3.4;
- 27.3.3.4 Prevents the exposure of persons or property to any hazards related to the Product; and
- 27.3.3.5 prevents Environmental Contamination, and where this has occurred, to Remediate the Environmental Contamination as provided for in clause 27.3.6 to 27.3.7 below.
- 27.3.4 The risk owner (as provided for in clause 26, Ownership and Risk) (the ("**responsible Party**") shall be liable and responsible for the management of any incident(s), which includes Environmental Contamination, damage as a result thereof and subsequent Remediation ("**an Incident**"). In this regard, the responsible Party agrees to indemnify and hold the other Party harmless from and against the entirety of any damages, Environmental Claims and any subsequent Remediation, which such Party may suffer resulting from, arising out of, or relating to the Incident(s) (which includes Environmental Contamination).
- 27.3.5 In managing any Incident(s) (which includes Environmental Contamination) and carrying out Remediation, the responsible Party will, at its cost, implement Remediation measures, based on Applicable Law (including Environmental Law), reasonably acceptable to the other Party and any relevant authority/ies. Should the responsible Party fail to comply with this clause and clause 27.3.6, the responsible Party unequivocally acknowledges and agrees that the other Party may initiate or undertake the required measures and recover the costs associated in so doing from the responsible Party.
- 27.3.6 The responsible Party will, in relation to the said Incident(s) (which includes Environmental Contamination), at its cost:
- 27.3.6.1 report it to the other Party;
- 27.3.6.2 report it to the relevant authorities and/or regulatory body/ies, as required by Applicable Law;
- 27.3.6.3 prior to any report being filed in accordance with clause 27.3.6.2 above, provide copies of all such reports to the other Party;

- 27.3.6.4 provide the other Party with reasonable assistance (including access to documentation and the responsible Party's and any subcontractor's employees) in investigating such Incident; and
- 27.3.6.5 undertake an investigation of the Incident jointly with the other Party, if the other Party so requests, as soon as reasonably possible after the occurrence of such Incident.
- 27.3.7 The Carrier, as the responsible Party, undertakes:
- 27.3.7.1 to institute a pro-active detection and maintenance program conforming to Applicable Laws and prevailing industry standards in order to prevent an Incident, including Environmental Contamination;
- 27.3.7.2 to institute an emergency response plan conforming to Applicable Laws and prevailing industry standards in order to minimize the impact of an Incident, including an Environmental Contamination, and to mitigate the consequences and damages should such an Incident occur. The Carrier will provide a copy of such plan to The Shipper for review upon request; and
- 27.3.7.3 to review at regular intervals of 24 (twenty four) months the aforementioned plans conforming to Applicable Laws and prevailing industry standards as a precautionary measure.
- 27.3.8 Either Party shall have the right to undertake audits regarding the other Party's obligations in terms of these Terms and Conditions.
- 27.3.9 The Carrier undertakes that:
- 27.3.9.1 it shall immediately inform the Shipper about any non-compliance with the above clauses 27.3.1 to 27.3.8; and
- 27.3.9.2 in the event of any non-compliance with clauses 27.3.1 to 27.3.8 it will immediately take appropriate remedial action to ensure strict compliance with the said clauses.

28. ANTI-CORRUPTION LAWS

- 28.1 Without taking away from the general applicability of clause 2.1, each Party represents that it is familiar with the applicable Anti-Corruption Laws.
- 28.2 Each Party represents that the performance under these Terms and Conditions will be made in compliance with the applicable Anti-Corruption Laws.
- 28.3 Each Party warrants that it and its affiliates have not made, offered, or authorised and will not make, offer, or authorise, with respect to the matters which are the subject of these Terms and Conditions, any payment, gift, promise or other advantage, whether directly or through any other person or entity, to any person (including a Public Official) where such payment, gift, promise or advantage would violate the applicable Anti-Corruption Laws.
- 28.4 Each Party agrees to maintain adequate internal controls and to keep accurate and complete records that support the payments due and all transactions under these Terms and Conditions.
- 28.5 Each Party agrees to notify the other Party immediately upon receipt of any solicitation, demand or other request for anything of value relating to the subject matter of this agreement where such payment, gift, promise or advantage would violate the applicable Anti-Corruption Laws.
- 28.6 Each Party further covenants that should it be notified by the other Party of its concerns that it is investigating a violation of the applicable Anti-Corruption Laws, it will cooperate in good faith with that Party and its representatives in determining whether such violation has occurred and will respond promptly and in reasonable detail to any notice from that Party and will furnish documentary support for such response upon that Party's request.
- 28.7 Each Party may request that the other Party provide certification to the effect that neither it nor any of its affiliates, directors, officers, agents or other representatives acting on its behalf in connection with the performance under this Agreement, have engaged in any transaction or activity in violation of the applicable Anti-Corruption Laws. Upon request a Party will deliver such certification within 10 (ten) Business Days.

- 28.8 Each Party (the "**Indemnifying Party**") will be liable for and will indemnify, defend and hold the other (the "**Indemnified Party**") harmless to the maximum extent provided in law from and against any reasonable claims, losses, costs, fees, payment of interest, fines or other liabilities incurred in connection with or arising from the investigation of, or defence against, any litigation or other judicial, administrative, or other legal proceedings brought against the Indemnified Party by a regulator or governmental enforcement agency as a result of acts or omissions by the Indemnifying Party or its affiliates, subcontractors or agents in violation of, or alleged to be in violation of, any applicable Anti-Corruption Laws.
- 28.9 Any breach of, or failure to comply with, the provisions in this clause will be deemed material and will entitle the non-breaching Party to terminate this Agreement forthwith.
- 28.10 The indemnity contained in this clause will survive the termination of this Agreement.
- 28.11 Unless otherwise provided for in this Agreement, no Party will have the right to represent or make decisions on behalf of the other Party.

29. PROTECTION OF PERSONAL INFORMATION

- 29.1 Each Party undertakes to comply at all times with the provisions of any applicable laws regulating the processing of personal information, including without limitation the Protection of Personal Information Act, No. 4 of 2013 ("**Data Protection Laws**") in connection with the performance of its obligations and the exercise of its rights under this Agreement.
- 29.2 It is recorded that, pursuant to their obligations under this Agreement, the Parties are required to process each other's personal information in connection with and for the purposes of exercising their rights and complying with their obligations in terms of this Agreement. Each Party will process the personal information only in compliance with Data Protection Laws and solely to give effect to the terms of this Agreement.
- 29.3 Each Party warrants that it shall secure the integrity of the personal information in its possession or under its control by taking appropriate, reasonable technical and organisational measures to prevent –

- 29.3.1 loss of, or damage to, or unauthorised destruction of the personal information; and/or
- 29.3.2 unlawful access to or unlawful processing of the personal information.
- 29.4 In order to give effect to the terms of this clause 29, each Party shall take reasonable measures to:
- 29.4.1 identify all reasonably foreseeable internal and external risks to the personal information in its possession or under its control;
- 29.4.2 establish and maintain appropriate safeguards against the risks identified;
- 29.4.3 regularly verify that these safeguards are effectively implemented; and
- 29.4.4 ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.
- 29.5 The Parties will notify each other without delay if any personal information has been or is reasonably believed to have been accessed or acquired by an unauthorised person or if a breach has occurred with reference to its use of the personal information under the Agreement.
- 29.6 A Party shall not be entitled to transfer the relevant personal information to a foreign country or share or disclose the personal information with or to a third party located in a foreign country unless such transfer is done in compliance with the terms of Data Protection Laws.
- 29.7 The provisions of this clause 29 will survive the termination or expiration of this Agreement.