



VALERO
MARKETING AND SUPPLY COMPANY



2017 Edition

Marine Provisions

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VALERO MARINE PROVISIONS

ARTICLE 1. GENERAL

Section 1.1. Applicability.

These Marine Provisions shall apply to any 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.

Section 1.2. Priority of Terms.

If there is a conflict between the Special Provisions and the General Terms and Conditions or between the Special Provisions and these Marine Provisions, the Special Provisions shall govern. If there is a conflict between these Marine Provisions and the General Terms and Conditions, the Marine Provisions shall govern. If one or more provisions of the Agreement are held unenforceable as a matter of law, the remainder of the governing provisions above shall remain in full force and effect.

Section 1.3. Rules of Construction.

The following rules of construction will govern the interpretation of these Marine Provisions, except where the context clearly requires otherwise: (a) references to “**days**,” “**months**,” and “**years**” mean calendar days, months, and years unless otherwise indicated; (b) the word “**including**” does not limit the preceding word or phrase; (c) any reference in these Marine Provisions to an “**Article**,” “**Section**,” or “**Subsection**” shall be to the corresponding Article, Section, or Subsection of these Marine Provisions, unless the context requires otherwise; (d) Article, Section, and Subsection headings are for convenience of reference only and do not affect interpretation; (e) the words “**hereof**,” “**herein**,” and “**hereunder**” and words of similar meaning refer to these Marine Provisions as a whole and not to any particular provision of these Marine Provisions; (f) no rule of construction interpreting these Marine Provisions against the drafter will apply; (g) words in the singular include the plural and vice versa; (h) words denoting gender include all genders; and (i) risk of loss includes risk of damage and/or contamination and/or deterioration.

ARTICLE 2. DEFINITIONS

“**ABS Load Line Certification**” means an International load line certificated vessel that meets the requirements of the International Maritime Organization’s International Convention on Load Lines.

“**Affiliate**” means any entity that, directly or indirectly, controls, is controlled by, or is under common control with the referenced entity, including the referenced entity’s parent. In this definition, “control” means the power to direct the management and policies of an entity, directly or indirectly, whether through the ownership of voting securities, by contract, or otherwise.

“**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 or incorporated by reference: (a) the Special Provisions (including amendments thereto); (b) these Marine Provisions; and (c) the General Terms and Conditions.

“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.

“API-MPMS” means the American Petroleum Institute Manual of Petroleum Measurement Standards, as such may be amended and/or updated from time to time.

“Applicable Law” means any applicable statute, law, regulation, ordinance, rule, judgment, rule of law, order, decree (including, without limitation, any consent decree), permit, approval, license, requirement, or other governmental restriction or any similar form of decision of, or any provision or condition of any permit, license or other operating authorization issued under any of the foregoing by, or any determination by any Governmental Authority having or asserting jurisdiction over the matter or matters in question, whether now or hereafter (unless otherwise specifically limited herein to those only in effect on the date of this Agreement) in effect and in each case as amended (including without limitation, all of the terms and provisions of the common law of such Governmental Authority), as interpreted and enforced at the time in question.

“Asdem Pumping Performance Formula” means the formula maintained by Asdem and used to assess underperformance by a tanker’s pumps during discharge of cargo. The formula can be found on Asdem’s website at: <http://www.asdem.co.uk/>.

“Barrel” and **“BBL”** means 42 US Gallons measured at 60 degrees Fahrenheit (60°F).

“Business Day” means a day on which banks are open for general commercial business in New York, New York.

“Buyer” means the Person obligated to buy the Cargo from Seller, or exchange the Cargo with Seller, under the terms of the Agreement.

“Cargo” means any Product 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 either loaded or discharged at the Cargo Transfer Point and that is specified in the Special Provisions.

“Cargo Transfer Point” means the location specified in the Special Provisions where custody of the Cargo is transferred from Seller to either Buyer or Buyer’s designee.

“CFR” means the US Code of Federal Regulations.

“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 Certificate of Compliance.

“**Customary Anchorage**” means the recognized anchorage for or within the designated port for the Cargo Transfer Point that is specified in the Special Provisions.

“**CP**” means charter party.

“**Delivery Window**” means the period 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 Special Provisions and is within the contract delivery date range set forth in the Agreement.

“**DHS**” means the US Department of Homeland Security, including any successor Government Authority.

“**DOS**” means a Declaration of Security as provided for under the ISPS Code.

“**D&A Policy**” means any applicable drug and alcohol abuse policy.

“**EPA**” means the US Environmental Protection Agency, and any successor Governmental Authority.

“**ETA**” means estimated time of arrival.

“**Force Majeure**” means any cause or event reasonably beyond the control of a Party, including (but without limiting the generality of such term): act(s) of god, perils of the sea, fire, delay of the performing vessel arising from latent defect, breakdown or adverse weather, accidents at, closing of, or restrictions upon the use of mooring facilities, docks, ports, pipelines, harbors, railroads, or other navigational or transportation mechanisms, natural disasters (such as violent storms, cyclones, earthquakes, tidal waves, floods, destruction by lightening), war (declared or undeclared), military operations, blockade, revolution, riots, acts of piracy, acts of sabotage, disruption or breakdown of or explosions or accidents to wells, storage plants, refineries, pipelines, terminals, machinery or other facilities, trade restrictions, strike, lockouts, or a dispute or difference with workers, labor shortage requests, good faith compliance with any orders or actions, whether voluntary or involuntary, of any Governmental Authority, or by any Person purporting to represent a government, any reduction in, failure or refusal to deliver supplies of Product or the raw materials or energy used to manufacture such Product from Seller’s sources of supply, whether lawful or otherwise, or any other cause of a similar nature as described herein not reasonably within the control of the Party claiming force majeure.

“**Gallon**” means a US gallon of 231 cubic inches at 60 degrees Fahrenheit (60°F).

“**General Terms and Conditions**” means, unless otherwise specified in the Special Provisions, Valero Marketing and Supply Company’s General Terms and Conditions for Petroleum Product Purchases and Sales in effect as of the date of the Agreement.

“**Governmental Authority**” means any federal, state, local, foreign government, any provincial, departmental or other political subdivision thereof, or any entity, body or authority exercising executive, legislative, judicial, regulatory, administrative or other governmental functions or any court, department, commission, board, bureau, agency, instrumentality or administrative body of any of the foregoing.

“**HMAA**” means Houston Maritime Arbitration Association.

“**HMAA Rules**” is defined in Section 12.3 of these Marine Provisions

“**IGS**” means inert gas system.

“**Inland Barge**” means a USCG, American Bureau of Shipping, or class society inspected and approved tank barge that is restricted to operations in the inland waterways of the US.

“**ISPS Code**” means the International Code for Security of Ships and Port Facilities, as set forth in Title 33, CFR 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.

“**LPG**” means liquefied petroleum gas.

“**Marine Claim**” means any dispute or claim arising under US maritime law or other Applicable Law, these Marine Provisions, including a demurrage claim dispute.

“**Marine Incident**” means any incident or event that delays the Vessel for a period of three (3) or more hours, including spills, personal injury, fire, grounding, allision, collision, security issue, vessel seizure, or significant media or governmental inquiry, but does not include delays during normal Vessel operations.

“**Marine Provisions**” means these Marine Provisions.

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

“**MTSA**” means the US Maritime Transportation Security Act of 2002, as codified under 46 US Code, 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 USCG, American Bureau of Shipping, or other class society inspected and approved tank barge that has an ABS or other class society Load Line Certification and is certified to operate in offshore waters.

“**Ocean Tanker**” means any ship, tanker, or combination carrier that is certified to operate in offshore waters.

“**OCIMF**” means the Oil Companies International Marine Forum.

“**OPA**” means the (US) Oil Pollution Act of 1990, as such may be amended from time to time.

“**P&I Insurance**” means Protection and Indemnity Insurance.

“**Parties**” means Buyer and Seller, collectively.

“**Party**” means either Buyer or Seller, as the context requires.

“**Person**” means an individual, corporation, limited liability company, partnership (general or limited), trust, business trust, unincorporated association, joint venture, joint-stock company, or any other entity of whatever nature.

“**PMU**” means portable measuring unit.

“**Pollution Damage**” has the meaning specified and is applicable as set forth in Section 3.6 of these Marine Provisions.

“**Product**” means the refined petroleum product, crude oil, condensate, LPG, feedstock, chemical, ethanol, renewable fuel or other substance or material of any nature that is identified in the Special Provisions as being the subject of the sale, purchase, exchange or other transaction between the Parties.

“**PSI**” means pounds per square inch.

“**Responsible Party**” has the meaning specified in §2701(32) of the OPA.

“**Running Hour(s)**” means time credited to laytime or demurrage, as applicable.

“**Running Sample**” means a Cargo sample collected for testing.

“**SBM**” means single buoy mooring.

“**Seller**” means the Person 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.

“**SOF**” means statement of facts.

“**Special Provisions**” means the specific terms for a particular Transaction agreed to between the Parties that incorporate the General Terms and Conditions and/or these Marine Provisions to form the Agreement for the Transaction.

“**SPM**” means single point mooring.

“**Spot (Voyage) Chartered Equipment**” means 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.

“**TVEL**” means tank vessel examination letter.

“**Term (Time) Chartered Equipment**” means when the owner of the Vessel charts or leases the Vessel and its crew to the Charterer for a stipulated period; provided, however, under any such charter or lease, 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 at which the Vessel will load and/or discharge under the terms of the Agreement. Depending upon the nature of the sale, the Terminal Party may be either the Buyer or Seller.

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

“**Transaction**” means an agreement to sell/purchase/exchange Product and/or for the waterborne delivery of Product between the Parties.

“**UK**” means the United Kingdom of Great Britain and Northern Ireland.

“**US**” means the United States of America.

“**USCG**” means the US Coast Guard.

“**USCBP**” means the US Customs and Border Protection agency, including any successor Governmental Authority.

“**Valero**” means without limitation Valero Marketing and Supply Company or any of its Affiliates.

“**Vessel**” includes any tug, 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.

“**VEF**” means vessel experience factor.

“**Vessel Party**” means the Party nominating and providing or otherwise making the arrangements for the Vessel that will carry the Cargo under the terms of the Agreement. Depending upon the nature of the sale, the Vessel Party may be either the Buyer or Seller.

“**Worldscale**” means the tanker nominal freight scale applying to the carriage of oil in bulk as promulgated by Worldscale Association (London) Limited or Worldscale Association (NYC) Inc. (as applicable) or any successor thereto, in effect as of the date of the Agreement.

ARTICLE 3. VESSEL-RELATED CONDITIONS

Section 3.1. Vessel Nominations and Acceptance.

- a) All Vessels nominated by the Vessel Party and each Vessel to be used in connection with the loading, discharging, or lightering of the Cargo under the Agreement shall meet all applicable Vessel requirements of the designated Shore Facilities receiving or delivering such Cargo, including (i) safety instructions and mooring equipment requirements, (ii) restrictions with respect to Vessel characteristics, such as maximum draft, length, deadweight, displacement, age, and flag, and (iii) restrictions with

respect to Vessel operations, such as bunkering or receiving provisions, stores or equipment. Vessel Party shall be responsible for compliance with the foregoing; all delays and attendant costs relating to failure to comply with the foregoing in this paragraph are for Vessel Party's account. If the Vessel does not comply with the requirements of the designated Shore Facility, then such Shore Facility may reject, expel or refuse to berth, load or discharge the Vessel. All attendant delays, damages and expenses are for Vessel Party's account. It is the responsibility and duty of the Vessel to contact the designated Shore Facilities to obtain any and all requirements related to berthing or docking at such facilities and 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 only involve a single voyage.

- b) 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.
- c) Notwithstanding anything to the contrary express or implied elsewhere herein, Valero shall have the right:
 - i) to reject any nomination made on any reasonable ground; and/or
 - ii) to refuse to accept for loading, on any reasonable ground, any Vessel nominated; and/or
 - iii) to reject the Vessel in question, notwithstanding any prior acceptance of such Vessel (whether named in the Special Provisions or nominated or substituted), on any reasonable ground if such Vessel is involved in any Marine Incident or casualty, or suffers a breakdown en route that results in a delay in the Vessel's scheduled arrival beyond the Delivery Window, or suffers a breakdown en route that results in the failure of a material Vessel component, system, or equipment, regardless of whether a delay occurs, or fails to comply with the requirements of Section 3.5, or more recent information regarding such Vessel becomes available to Valero that indicates that the information relied upon by Valero in previously accepting the Vessel was materially incorrect or incomplete.

Without derogating from any other reasonable grounds that may be available to Valero, it shall be a reasonable ground for Valero to reject or refuse a Vessel pursuant to this Section 3.1(c) if the Vessel, either at the time of nomination or at any time subsequently is not approved, or is determined to be unacceptable, by any vessel vetting system operated by or vetting policy adhered to by Valero, the designated Shore Facilities, or one of the oil majors.

Section 3.2. Eligibility.

The Vessel Party represents and warrants that (a) the nominated Vessel is, in all respects, eligible under and in compliance with all Applicable Law, including 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 (b) 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.

Section 3.3. Estimated Time of Arrival.

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 facsimile, letter, telegram, electronic mail, or any other means 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:

- i) 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;
- ii) at seventy-two (72), forty-eight (48), twenty-four (24), and twelve (12) hours before the Vessel's expected arrival at the designated Shore Facilities or lightering site specified in the Agreement; and
- iii) 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 5 of these Marine Provisions.

Section 3.4. Delivery Window.

The Vessel Party shall provide a three (3)-day Delivery Window no later than ten (10) days after the voyage commences, or for voyages of less than ten (10) days' duration, no later than two (2) days after such voyage commences. If such Delivery Window is not provided, the three (3)-day Delivery Window shall commence on the eleventh (11th) day following commencement of a voyage with a duration of ten (10) days or more, and on the third (3rd) day for shorter voyages.

Section 3.5. Vessel Compliance Matters.

- a) Any Vessel that is not in compliance with federal, state or local port or other Governmental Authority requirements with respect to any environmental, health, safety, financial responsibility rule or regulation, or that presents an environmental, health or safety hazard may not be permitted to dock

or may be asked to vacate the berth at the designated Shore Facilities. The Vessel Party warrants compliance and shall require the Vessel to comply with all Applicable Laws, including all federal and state oil spill response plans and financial responsibility requirements, as well as applicable Maritime Security Regulations, failing which the Vessel may be required to promptly vacate the designated Shore Facilities' berth.

- b) Failure of any of the Vessel's operational, safety or environmental systems or equipment, or the failure to possess or comply with the Shore Facilities or Vessel's own security plan, even if after initial acceptance by the designated Shore Facilities, or the failure to comply with other Shore Facility requirements constitutes grounds for such facilities to immediately reject the Vessel, including notification to vacate the berth until either (i) suitable repairs are made to return the affected systems or equipment to good working order, or (ii) the Vessel and requirements for its crew are brought into compliance with the applicable Vessel or Shore Facility requirements. 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.
- c) In the event the Vessel fails to comply with Sections 3.5(a) or (b) above, any resulting delays shall not count as used laytime or as time on demurrage, and any attendant costs, expenses, losses or damages, including those suffered by Terminal Party and delays incurred to obtain or rectify the necessary certificates, Vessel security plan, declaration(s), response plan(s), etc., are for Vessel Party's account. Expenses incurred in making any necessary repairs or bringing the Vessel or its crew into compliance with the applicable requirements shall be for the Vessel Party's account.

Section 3.6. Pollution Prevention and Responsibility.

- a) For the purpose of this Section 3.6, the term "Pollution Damage" includes all damages that are compensable under the CLC, as well as any Applicable Law in the US.
- b) 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 will promptly take whatever measures are necessary to prevent or mitigate such damage or remove the threat. The Vessel and the Vessel Party hereby authorize 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 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, save for demobilization expenses, unless directed to do so by a Governmental Authority having or purporting to have proper jurisdiction over (i) the Vessel or its crew, (ii) the clean-up, remediation, mitigation, and/or disposal of any Pollution Damage, or (iii) 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 any Governmental Authority. The Vessel will be responsible to satisfy all obligations of the Responsible Party under the OPA in the event of a pollution discharge emanating or threatened from the Vessel.

- c) The Vessel Party warrants that throughout the Vessel's service under the Agreement, the Vessel shall have on board the following applicable certificates:
 - i) (certificates issued pursuant to the CLC, and pursuant to the 1992 protocols to the CLC, if and as amended, as and when in force;
 - ii) 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, US Code of Federal Regulations; and
 - iii) certificates issued or required by any Governmental Authority having proper jurisdiction over the operation of the designated Shore Facilities.
- d) 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 Valero Central Monitoring for each Marine Incident by calling 800-964-2210 (+1-210-736-2210). This monitoring system has been setup to accept calls twenty-four (24) hours per day, seven (7) days per week.
- e) Should a pollution discharge emanate from the Shore Facilities, the Shore Facilities will be responsible to satisfy all obligations of the Responsible Party. If the Vessel causes or contributes to such actual or potential discharge, release or escape, the Vessel shall contribute in proportion to the percentage of fault attributable to the Vessel in causing or contributing to such escape, release or discharge.

Section 3.7. 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 any Governmental Authority.

- a) Ocean Tankers and Ocean Barges. If the Vessel is an Ocean Tanker or an Ocean Barge, the Vessel Party warrants that throughout the Vessel's service under the Agreement, the Vessel shall have full and valid P&I Insurance, 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 US surcharges) shall be at no additional cost

to the Terminal Party. The P&I Insurance must also include coverage against liability for pollution, for the maximum amount available through the International Group of P&I Clubs.

- b) Inland Barges. If the Vessel is an Inland Barge, the Vessel Party warrants 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:
- i) one hundred million US dollars (\$100,000,000) 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; or
 - ii) two hundred million US dollars (\$200,000,000) 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.
- c) Evidence of Insurance. With respect to the requirements of Subsections (a) and (b) of this Section 3.7, 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 and any other required insurance. The warranties set forth in Subsections (a) and (b) of this Section 3.7, 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 warranties. 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.

Section 3.8. Drug and Alcohol.

The owners of the Vessel shall have a D&A Policy applicable to the Vessel that meets or exceeds the standards in the Oil Companies International Marine Forum Guidelines for the Control of Drugs and Alcohol Onboard Ship. Vessel Party is responsible for ensuring such D&A Policy is in place. Under the D&A 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 crew; and the drug/alcohol testing and screening shall include unannounced testing in addition to routine medical examinations. An objective of the D&A Policy must be that the frequency of the unannounced testing be adequate to act as an effective abuse deterrent, and that all Vessel officers be tested at least once a year through a combined program of unannounced testing and routine medical examinations. The Vessel Party further warrants that the D&A 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 D&A Policy. Upon Terminal Party's request, Vessel Party shall provide Terminal Party with a copy of the D&A Policy applicable to the Vessel. Absence of a D&A Policy or failure to deliver a copy of the D&A Policy within a reasonable time after Terminal Party's request is grounds for Terminal Party to reject or withdraw acceptance of the Vessel.

Section 3.9. Vessel Systems.

- a) Inert Gas Systems. All Vessels fitted with an IGS, regardless of the Cargo aboard or the Cargo to be loaded will not be permitted to berth or, if already berthed, to carry out cargo operations at the designated Shore Facilities unless the IGS is fully operational. Any delay as a result of the Vessel not complying with this Section 3.9(a) shall not count as used laytime or as time on demurrage.
- b) Vessel Connection Construction. All flanges, fittings, spool pieces and/or reducers used by each Vessel must be of steel construction.
- c) Vapor Recovery Units. All Vessels loading the Cargo that have or possess a vapor pressure greater than or equal to one and one-half (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 (c), all vapor recovery system operations shall be conducted pursuant to Part 39, Title 46 of the CFR, as such may be amended from time to time.
- d) Measurement and Sampling. All Vessels loading or discharging cargoes that are required to be gauged and/or sampled using closed systems shall have available, on board, a PMU (compatible with the Vessel's vapor lock fittings) that has been calibrated in accordance with the applicable API-MPMS. There must also be on board a sampler (compatible with Vessel's vapor lock fittings) that will allow running and upper, middle, lower samples to be taken.
- e) Calibration Tables. All Vessels shall maintain on board legible copies of calibration tables for all Cargo, fuel, slops and ballast tanks. Wedge tables or data to calculate wedge formula should be maintained for all Cargo and slops tanks.
- f) Vessel Experience Factor. Vessels shall maintain, on board, information for VEF calculation in accordance with API-MPMS 17.9, such as, two (2) separate sequential voyage logs, one (1) for loading and one (1) for discharging covering the past twenty (20) voyages. Supporting documents for these twenty (20) voyages shall also be maintained on board for review of cargo inspectors as needed.

Section 3.10. US Customs and Border Protection.

The Vessel Party represents and warrants that the Vessel and any discharges therefrom at the designated Shore Facilities shall fully comply with, or the Vessel Party shall timely secure and submit, all necessary waivers required under all applicable USCBP 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.

Section 3.11. DHS; USCG.

The Vessel Party represents and warrants that the Vessel shall fully comply with, or possess all necessary waivers, certificates, or other documents that are required under, each Applicable Law implemented and enforced by a Governmental Authority, the DHS, the USCG, and any applicable port authority and/or the designated Shore Facilities, including the Maritime Security Regulations, which in all cases are in effect when the Vessel (a) navigates within any waters that are subject to the jurisdiction of the Governmental Authority or the US, as applicable, and (b) 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, and any and all direct costs, expenses and damages related thereto are for Vessel Party's account.

ARTICLE 4. RELATED CONDITIONS AT SHORE FACILITIES

Section 4.1. Port Charges.

- a) The designated Terminal Party shall provide a berth for the nominated Vessel free of port charges, except for those provided in WorldScale as being for Vessel Party's account. All dockage and service fees, including mooring, fresh water, steam, and oil slops receipts, will be for the Vessel Party's account. In addition, all duties and other charges assigned to the Vessel, including, without limitation, those incurred for Tows, pilots, and other port costs, including fleeting and taxes on freight, shall be for the Vessel Party's account.
- b) The designated Shore Facilities do not warrant the safety, draft, or clearance of any berth, port, or place; or 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 private or 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.

Section 4.2. Vacating of Berth.

- a) The designated Shore Facilities may order any Vessel to vacate its berth at such facilities as deemed reasonably necessary. For the purposes of this Section 4.2(a), "reasonably necessary" includes the following circumstances:

- i) the Vessel has entered such Shore Facilities, or docked/hotelled at the facilities, in violation of any Applicable Law and/or requirement of the Shore Facilities, or is in violation of the requirements of Section 3.5;
- ii) severe weather dictates the need to vacate the berth; or
- iii) it appears that the Vessel will not be able to complete loading or discharging of the Cargo within twenty-four (24) hours (pro rata for part Cargo) of the Vessel's arrival in berth, provided, however, that 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
 - 1) that berth is needed to accommodate another Vessel, or
 - 2) the Vessel, its crew, or the DHS, USCG, or any other law enforcement authority or agency having proper jurisdiction over the designated Shore Facilities mandates that the Vessel vacate such berth.
- b) 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 delays encountered and expenses incurred for vacating the berth or re-berthing within the applicable Shore Facilities shall be for the Vessel Party's account.

Section 4.3. Shifting of Vessels; Failure to Berth When Berth Available.

- a) 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 and Terminal Party, with the time consumed in shifting counted as used laytime or as time on demurrage.
- b) Any expenses incurred where the shifting of the Vessel within a designated port is directed or mandated by any Person or Governmental Authority (including the USCG, USCBP, applicable port authority, or other Governmental Authority having proper jurisdiction over either the Vessel or its crew) other than the designated Shore Facilities or Terminal Party shall be for the Vessel and Vessel Party's account. Any time consumed in shifting shall not be counted as used laytime or as time on demurrage.
- c) In the event the Vessel fails to berth when given an order to proceed to berth as a result of the failure to have a proper COC, or due to equipment or machinery failure, or other cause attributable to the Vessel or its personnel, laytime/demurrage shall not accrue until the Vessel meets its next available berthing window and makes All Fast at the berth.

Section 4.4. Ballast Water and/or Cargo Slops.

- a) 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.
- b) 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 slops to be discharged.
- c) The designated Shore Facilities will confirm ballast or slops availability within two (2) Business 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. Charges that the Vessel fails to pay to the Shore Facilities are for Vessel Party's account.

Section 4.5. Foreign Cargo Slops.

- a) At least five (5) Business Days in advance of Vessel's intention to discharge any Cargo slops, the Vessel and Vessel Party shall notify, in writing, the designated Shore Facilities of its intent to discharge slops. Acceptance of any Cargo slops is subject to the prior written approval of such Shore Facilities.
- b) Notification under Subsection (a) immediately above shall include, at a minimum, the contents of the Cargo slops material, country of origin, estimated value of the Cargo slops, and an estimated quantity of the Cargo slops. If the slops are from finished products, the notification must also identify what additive(s), if any, are in the slops and the Material Safety Data Sheet(s) for the additive(s) must be promptly provided.
- c) Any delay caused by Vessel's failure to notify the designated Shore Facilities in a timely manner as set forth above in this Section shall not count as used laytime or as time on demurrage.
- d) All expenses, including applicable USCBP's duties, fees, fines, or penalties associated with the clearing of foreign Cargo slops through USCBP, the testing of the Cargo slops materials, and the removal and proper disposal of the Cargo slops shall be for the Vessel's Account.
- e) The title for Cargo slops shall pass to the Terminal Party at the first permanent flange on shore.
- f) The Vessel Party warrants that the foreign Cargo slops shall not contain any Vessel-generated waste.

Section 4.6. Shore Facilities' 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.

Section 4.7. 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 Shore Facilities' 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.

Section 4.8. Wharf Damage; Indemnity.

The Vessel Party assumes full responsibility for any loss, destruction, or damage sustained to wharves, berths, or docks owned or maintained by the designated Shore Facilities if and to the extent such damage 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; even if caused by the concurrent negligence of the Shore Facilities or Terminal 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.

ARTICLE 5. NOTICE OF READINESS

Section 5.1. Tendering a Valid NOR.

- a) If the Vessel is ordered to anchor, an NOR shall only be considered valid from the time such Vessel is anchored at the Customary Anchorage and in accordance with the following in this Section 5.1. 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 an NOR by electronic mail, facsimile, letter, telegraph, any form of wireless radio or satellite communication available, or telephone. For Ocean Tankers, if an NOR is given verbally, confirmation in writing shall be made within twelve (12) hours after any such verbal notification is given. For voyages to or from the US, an NOR tendered before the Vessel holds a valid COC is ineffective and does not constitute Vessel readiness for loading or discharging the Cargo. Even if a valid COC exists, if the Vessel is delayed as a result of an annual COC examination, the NOR tender is ineffective until the examination is complete, unless the USCG grants the Vessel a waiver to commence loading or discharging the Cargo prior to COC examination.

- b) Any NOR submitted before the applicable Delivery Window will become effective as set forth below in Article 7. If NOR is tendered prior to meeting all of the above criteria in this Section 5.1, the date and effective time of the NOR will not be deemed properly tendered.

Section 5.2. Pricing Based on NOR.

If the Vessel tenders an NOR prior to the commencement of the Delivery Window, then the official NOR date for pricing shall be the first day of such Delivery Window. If the Vessel tenders NOR after the applicable Delivery 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.

ARTICLE 6. ALLOWED AND USED LAYTIME

Section 6.1. Public Dock Clause.

Unless expressly included in the Agreement, a public dock clause shall not apply. Where, however, a public dock clause is included in the Agreement, the docks listed in the Leadership for Energy Automated Processing (“LEAP”) Public Dock List at the time of the Agreement, the docks included in Exhibit B to these Marine Provisions, and/or the dock facility specified in the Agreement shall be considered a public dock subject to the public dock clause.

Section 6.2. Cargo Sampling and Analysis.

- a) 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 re-sampling and/or analysis, shall be for the account:
 - i) of the Seller, should the Cargo in question fail to meet the applicable specifications as per the Agreement; or
 - ii) of the Buyer, should the Cargo in question be in compliance with the applicable specifications as per the Agreement.
- b) Any delay attributed to additional sampling and/or testing (other than to resolve a quality dispute as contemplated above) shall be for the Party requesting same, and time will count as laytime or demurrage, if on demurrage.
- c) Any delay attributed to sampling and/or testing required by reason of Applicable Law or Governmental Authority, including the EPA and/or the USCG, shall be shared 50/50 between Vessel Party and Terminal Party.

Section 6.3. Tows and Inland Barge(s).

- a) Laytime.

For purposes of this Subsection 6.3(a), clauses (i) through (iii) below, the term “arrives” or “arrival” means when the Tow for the Inland Barge nominated by the Vessel Party has placed itself at the designated waiting area for the 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.

- i) 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.
 - ii) If the Tow arrives within the applicable Delivery Window, laytime shall commence upon such arrival.
 - iii) 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.
 - iv) Laytime shall cease when the Tow is released by the designated Shore Facilities representative or at hose disconnect, whichever is later.
- b) Allowed Laytime.
- i) Inland Barge(s) with 24,999 BBLs or Fewer. Allowed laytime for any Inland Barges having or containing a Cargo Quantity of twenty four thousand nine hundred ninety-nine (24,999) Barrels or fewer shall be twelve (12) hours.
 - ii) Inland Barge(s) with 25,000 BBLs or More. Allowed laytime for any Inland Barges having or containing a Cargo Quantity of twenty five thousand (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 (1) hour for each three thousand (3,000) Barrels loaded and/or one (1) 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.
 - iii) If more than one (1) barge is utilized, barges will be expected to load and/or discharge simultaneously in accordance with USCG requirements.
 - 1) If the designated Shore Facilities require barges to berth individually, the shifting of the barges during operations, after the arrival at berth of the first barge until the last barge is released, is for the Terminal Party’s account.
 - 2) 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) For the avoidance of doubt, no pumping allowance deduction shall be allowed for a Tow or Inland Barge.

Section 6.4. Ocean-Going Barge(s).

- a) Laytime. For this Section 6.4(a), clauses (i) through (iii) below, the term “arrives” or “arrival” means when the applicable Ocean-Going Barge has placed itself at the customary anchorage and/or the closest available waiting area for the Cargo Transfer Point, and is in all respects ready to proceed to the berth to commence loading or discharging the Cargo.
- i) 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.
 - ii) If the Ocean-Going Barge arrives within the applicable Delivery Window, laytime shall commence upon such arrival.
 - iii) 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.
 - iv) Laytime shall cease when the Ocean-Going Barge is released by the designated Shore Facilities representative.
- b) Allowed Laytime.
- i) Allowed laytime for any Ocean Going Barge nominated under the Agreement shall be one-half (1/2) of the allowed laytime under the charter party terms for the Vessel, prorated for part cargo (as provided below) with a minimum of twelve (12) hours allowed. In the absence of such charter party terms, laytime shall be the number of hours as specified in the table below:

<u>Cargo Quantity (NSV)</u>	<u>Laytime</u>
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 Barrels	24 hours

- ii) In the event of a partial delivery of Cargo under the Agreement, allowed laytime shall be based on this Subsection (b) 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.
- c) For the avoidance of doubt, no pumping allowance deduction shall be allowed for an Ocean-Going Barge.

Section 6.5. Ocean Tanker(s).

a) Laytime.

- i) 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 otherwise specifically agreed and documented in advance of docking at the designated Shore Facilities.
- ii) 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.
- iii) If the Ocean Tanker tenders NOR after the end of the applicable Delivery Window, laytime shall commence at All Fast to the dock that is associated with the designated Shore Facilities.
- iv) Laytime shall cease when the Ocean Tanker's last cargo hose has been disconnected.

b) Allowed Laytime.

- i) Allowed laytime for any Ocean Tanker nominated under the Agreement shall be one-half (1/2) of the allowed laytime under the CP terms for the Vessel, but never less than thirty-six (36) Running Hours for either loading or discharging of a full Cargo.
- ii) In the event of a partial delivery of the Cargo under the Agreement, one-half (1/2) of the allowed laytime under the CP terms for the Ocean Tanker shall be allocated pro rata by dividing the Cargo Quantity delivered to Buyer by the entire volume of Cargo loaded on the Ocean Tanker for the voyage as determined by the bill(s) 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) Pumping (Excluding Inland and Ocean Going Barges).

- i) 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 one hundred (100) PSI, at the Ocean Tanker's manifold, during the bulk discharge provided the applicable Shore Facilities are capable of receiving same.
- ii) Time lost by reason of failure to pump or maintain the average pressure, as set forth in Subsection (c)(i) of this Section 6.5 above shall not count as used laytime or demurrage. Time lost shall be calculated using the Asdem Pumping Performance Formula to determine the difference between the actual time taken to discharge and the time the Vessel would have taken had an average of one hundred (100) PSI been maintained.
- iii) If for any reason, other than safety, the Ocean Tanker is required to load or discharge the Cargo separately at the same terminal, the Party requiring separate load or discharge shall be responsible for laytime or demurrage, if on demurrage.

ARTICLE 7. USED LAYTIME EXCLUSIONS (EXCLUDING LIGHTERING)

In addition to exclusions to laytime and time on demurrage mentioned in prior Sections of these Marine Provisions, the following shall not count as used laytime or as time on demurrage:

- a) Time during inward passage from anchorage or another waiting place, even if lightering has taken place at the anchorage or other waiting place, until Vessel is All Fast.
- b) Delays in berthing due to waiting on pilots, tugs, tide, or daylight; provided, however, the Terminal Party shall be permitted to exclude time waiting on tide or daylight only for the tide and/or daylight immediately preceding berthing.
- c) 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, the Vessel's failure to comply with any applicable published or posted requirement for the designated Shore Facilities, including safety and mooring requirements, or as a result of the Vessel Party's request(s) for line fill checks by comparing intermediate ship and shore gauges.
- d) Any delay caused by strike, lockout, stoppage or restraint of labor of the master, officers and crew of the Vessel or towboat, or pilot or subcontractor to the Vessel Party.
- e) 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, but only to the extent any of the preceding events prevent officers and crew of the Vessel from performing cargo operations (examples of cargo operations include tank gauging/tank inspection, cargo calculations, pre-cargo transfer meeting, and hose connection).

- f) Any delay caused by the Vessel Party's failure to comply with all financial and/or credit responsibilities of the Agreement.
- g) Delay due to prohibition of any cargo transfer at any time by the Vessel, Vessel Party, or the owner of the Vessel.
- h) Any delay caused by Vessel's failure to have the required certificate of financial responsibility, or failure to be in compliance with applicable USCG regulations, or the failure to have other legally required documentation.
- i) Any delay by reason of local law or regulations, action or inaction by local authorities (including port, USCG, naval, USCBP, immigration and/or health authorities, including effective one-way traffic restrictions due to the application of pilot guidelines or local regulations) with the exception of port closures due to strikes, weather, and/or sea conditions.
- j) Any delay for which the Vessel, the Vessel's master, or crew is responsible.
- k) Any delay caused by an actual or threatened pollution incident or bunker contamination, or other Marine Incident.

Notwithstanding the foregoing appearing to the contrary, the provisions of this Article 7 shall not apply to lightering, which is specifically addressed in Article 9 below.

ARTICLE 8. SHARED DELAYS (EXCLUDING LIGHTERING)

In addition to exclusions to laytime (or time on demurrage if the Vessel is on demurrage) mentioned in prior Sections of these Marine Provisions, laytime (or time on demurrage if Vessel is on demurrage) shall be reduced to one-half (1/2) for the following conditions:

- a) delays due to weather and/or sea conditions shall include lightning, ice, fog, storm, wind, waves and/or swells;
- b) channel blockage (unrelated to berth congestion or traffic) 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) in the event of Force Majeure, laytime/demurrage and/or deviation do not accrue or recommence, as the case may be, until such time as the Shore Facilities and/or Vessel are again ready to undertake loading or discharging operations.

Notwithstanding the foregoing appearing to the contrary, the provisions of this Article 8 shall not apply to lightering, which is specifically addressed in Article 9 below.

ARTICLE 9. LIGHTERING

Section 9.1. Lightering - Generally.

- a) 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 OCIMF guidelines for ship-to-ship transfers and, if applicable, with port authority approval.
- b) Any lightering Vessel required by either Buyer or Seller shall be subject to the prior written approval of the other Party.
- c) 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.
- d) 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 the lightering area.

Section 9.2. Lightering - Laytime.

- a) If the Vessel tenders NOR prior to the commencement of the applicable Delivery Window, laytime shall commence at 0001 hours, local time, at the specified location on the commencement date of such Delivery Window or All Fast, whichever occurs first, unless otherwise specifically agreed and documented by the Parties in advance of docking.
- b) If the Vessel tenders NOR within the applicable Delivery Window, laytime shall commence upon tender of NOR.
- c) If the Vessel tenders NOR after the end of the applicable Delivery Window, laytime shall commence at All Fast alongside the lightering Vessel.
- d) Laytime shall cease when all applicable lightering equipment and fenders have been removed.

Section 9.3. Lightering – Allowed Laytime.

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

- c) 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.

ARTICLE 10. MARINE SECURITY REGULATIONS (ISPS AND MTSA)

- a) The Vessel Party shall procure and provide reasonable documentation that the Vessel nominated under the terms of the Agreement is operating in compliance with the applicable requirements of the Marine Security Regulations.
- b) The Vessel Party shall instruct the Vessel, when required, to submit a DOS to the appropriate authorities prior to arrival at the Cargo Transfer Point.
- c) Despite any prior acceptance of the Vessel by the Terminal Party, if at any time prior to the berthing of the Vessel at the designated Shore Facility the Vessel fails to comply with applicable requirements of the Marine Security Regulations:
 - i) the Terminal Party shall have the right not to berth such nominated Vessel and any delays resulting shall be for the account of the Vessel Party; and
 - ii) the Vessel Party shall be obligated to substitute a Vessel complying with the requirements of the Marine Security Regulations.
- d) The Terminal Party shall assure that the designated Shore Facilities and its owner/operator are operating in compliance with the applicable requirements of the Marine Security Regulations.
- e) Any delays, costs or expenses to the Vessel at ports of loading or discharge due to the failure of the Vessel to comply with or timely provide information required by the Marine Security Regulations shall be for the account of the Vessel Party. Where delays are solely and directly attributable to the Terminal Party's failure to comply with or timely provide information required by the Marine Security Regulations, the delays shall count as laytime or, if the Vessel is on demurrage, as time on demurrage. The Terminal Party's liability to the Vessel Party hereunder for any cost, losses or expenses incurred by Vessel or Vessel Party, resulting from the failure of the load/discharge port to comply with the Marine Security Regulations shall be limited to the payment of demurrage and direct costs actually incurred by the Vessel Party in accordance with the provisions of this Article 10(e).

- f) If demurrage is incurred and the Vessel has been delayed in berthing, loading, and/or discharging for any reason attributable to security regulations other than stipulated in Article 10(e) immediately above, such delay shall be paid at one-half (1/2) the demurrage rate. If the Vessel is on laytime, one-half (1/2) of the period of delay shall count as laytime. Cost and expenses attributable to such delay shall be shared equally.

ARTICLE 11. DEMURRAGE

Section 11.1. Demurrage – Generally.

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

Section 11.2. Rate Determination.

Unless otherwise stated in the Special Provisions:

- a) Spot Charter Equipment. For Spot (Voyage) 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 tugs, push boats, and/or barges operating as a unit shall be considered collectively as one barge or Tow.
- b) Term Chartered or Owned Equipment. For Term-Chartered Equipment or owned equipment that is used in connection with the Agreement, the rate shall reflect a daily hire rate, plus daily fuel consumption cost. For Inland Barges, the rate shall be as specified in the Vessel nomination, but if no such rate is specified in the Vessel nomination then the rate shall be the rate as mutually agreed in writing by each Party's scheduler. For Ocean-Going Barges and Ocean Tankers, the rate will be determined by an average of the broker rate assessment of the market for a similar Vessel and voyage.

Section 11.3. Claims.

- a) Demurrage Claims Processing.
 - i) Demurrage claims arising at the designated Shore Facilities must be submitted in writing with supporting documentation and received by Terminal Party within ninety (90) days from the date when hoses are disconnected after loading or discharging of the Cargo is completed. When Valero is the Terminal Party, claims shall be sent by one or more of the following means:
 - 1) For US/Canada claims: E-mail address of Demurrage@Valero.com;
For UK claims: E-mail address of UKNewclaims@valero.com
 - 2) Facsimile number of (210) 345-5932;

- 3) Federal Express to:
Valero Marketing and Supply Company
Demurrage Department
One Valero Way
San Antonio, Texas 78249-1112

- 4) United States Postal Service to:
Valero Marketing and Supply Company
Demurrage Department
P.O. Box 696000
San Antonio, Texas 78269-6000

When Valero is the Terminal Party, for the avoidance of doubt, a demurrage claim sent to any address other than those set forth in this Section 11.3(a)(i) will not be considered received for the purposes of this Section 11.3.

- ii) 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 (90)-day time deadline, written documentation of the receipt of the demurrage claim in question will be required before the claim will be considered. When Valero is the Terminal Party, the only acceptable written documentation of receipt is the e-mail confirmation received from Valero's demurrage department confirming receipt of the demurrage claim within the ninety (90)-day time deadline.

- iii) Payment shall not be withheld due to the fact that the owing party has not collected demurrage from a third party.

- iv) Terminal Party shall promptly notify the Vessel Party of any objections to any demurrage claim under the Agreement. Unless the Vessel Party has received such notification together with details of the grounds for the objections within one hundred eighty (180) days after the Terminal Party's receipt of the claim, the Terminal Party shall be deemed to have waived objection to the claim and the Terminal Party shall be liable to pay the claim in the amount claimed without deduction or set off.

- v) The Parties agree to waive the right to recover against each other any consequential, incidental, indirect, exemplary or punitive damages of any kind whatsoever relating to demurrage, including without limitation, lost profits (whether direct or indirect), lost revenue, lost business opportunities, lost contracts, lost production, loss of goodwill, and loss of use.

b) Demurrage Documentation.

- i) Tows and Inland Barges. Claims shall include laytime calculation and daily boat logs. The demurrage rate shall be supported by the nomination or, if there is no rate specified in the nomination, then by mutual agreement of each Party's scheduler documented in writing.
 - ii) Ocean-Going Barges. Claims shall include laytime calculation and daily boat logs. The demurrage rate shall be supported by, as applicable, the nomination, the broker rate assessments, or the CP. Part Cargo calculations shall be supported by bill of lading, if available, or inspector reports reflecting NSV outturn volume.
 - iii) Ocean Tankers. Claims shall include laytime calculation, copy of the Vessel's NOR, agent's port log, Vessel's SOF, any letters of protest, and if a claim is for discharge of Cargo then the Vessel pumping logs. Part Cargo calculations shall be supported by bill(s) of lading, if available, or inspector reports reflecting NSV outturn volume. The demurrage rate shall be supported by, as applicable, the CP or the broker rate assessments.
- c) Other Claims. Claims for other operations, including shifting, deviation, detention, bunker charges, port charges or any other expense must be submitted in writing with supporting documentation within ninety (90) days from the date when hoses are disconnected after loading or discharging of the Cargo is completed. When Valero is the Terminal Party, claims must be sent to operations e-mail VMSCClean@Valero.com or VMSCFeeds@Valero.com. 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 claim within the ninety (90)-day time deadline, written documentation of the receipt of the claim in question will be required before the claim will be considered.

ARTICLE 12. OTHER ITEMS

Section 12.1. 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.

Section 12.2. Choice of Law.

This Agreement shall be interpreted in accordance with US General Maritime Law and Texas law if and where US 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 Law of the US.

Section 12.3. Arbitration.

Notwithstanding anything to the contrary contained in any other Section of these Marine Provisions or the General Terms and Conditions, but subject to the provisions of Section 11.3 above and the remaining provisions of this Section 12.3, any and all Marine Claims shall be referred to arbitration in the City of Houston, Texas, pursuant to US General Maritime Law, the Federal Arbitration Act, and the Rules of the Houston Maritime Arbitration Association (“**HMAA Rules**”) in effect at the commencement of the arbitration.

- a) Where the total amount claimed by either Party for one or more Marine Claims is equal to or is less than one hundred thousand US dollars (\$100,000), exclusive of interest on the sum claimed, costs of arbitration, and legal expenses, arbitration will be governed by the HMAA Rules for Fast Track Arbitration.
- b) Where the total amount claimed by either Party for one or more Marine Claims exceeds one hundred thousand US dollars (\$100,000), exclusive of interest on the sum claimed, costs of arbitration, and legal expenses, arbitration will be before a panel of three (3) arbitrators, consisting of one (1) arbitrator to be appointed by each of the Parties and a third (3rd) arbitrator, who will be a lawyer and who will serve as chair of the arbitration panel, appointed by the two (2) so chosen.
- c) Subject to Section 11.3(a)(v) of these Marine Provisions, the arbitrator(s) may grant any relief that the arbitrator(s), or a majority of them in the case of a panel of arbitrators, deem(s) just and equitable and within the scope of the Agreement as it relates to the Marine Claims, including specific performance. An arbitration award made pursuant to this Section 12.3 may include reasonable costs and expenses, including attorneys’ fees and/or arbitrators’ fees.
- d) In each matter arbitrated under this Section 12.3, any decision of the arbitrator(s), or a majority of them in the case of a panel of arbitrators, shall be final and binding. Judgment upon any arbitration award may be entered by any court of competent jurisdiction. Any Party may bring a legal action to compel arbitration of any claim to which this arbitration clause applies in any court of competent jurisdiction.

Exhibit A

DATE: _____
TO: _____
FROM: VALERO MARKETING AND SUPPLY COMPANY
ONE VALERO WAY
SAN ANTONIO, TEXAS 78249

LETTER OF INDEMNITY

DEAR SIRS,

WE REFER TO OUR CONTRACT DATED _____ IN RESPECT OF OUR SALE TO _____ OF A SHIPMENT OF _____ BARRELS OF _____ SHIPPED ON BOARD THE VESSEL _____ AT THE PORT OF _____ (THE "CARGO") WITH BILLS OF LADING DATED _____ .

TO DATE, WE ARE UNABLE TO PROVIDE _____ WITH THE FULL SET OF BILLS OF LADING IN RELATION TO THE ABOVE TRANSACTION, WHICH CONSISTS OF 2/3 ORIGINAL BILLS OF LADING PLUS A MASTERS RECEIPT FOR 1/3 ORIGINAL BILLS OF LADING ENDORSED TO THE ORDER OF _____ .

IN CONSIDERATION OF YOUR PAYING TO US THE FINAL PURCHASE PRICE OF US DOLLARS \$_____ WE HEREBY WARRANT THAT WE HAVE FULL TITLE FREE AND CLEAR OF ANY LIEN OR ENCUMBRANCE TO SUCH MATERIAL, AND HAVING THE FULL RIGHT AND AUTHORITY, AND IN CONSIDERATION OF SAID PAYMENT, WE HEREWITH TRANSFER SUCH TITLE AND EFFECT DELIVERY OF SUCH MATERIAL TO YOU.

WE FURTHER AGREE TO CONTINUE TO MAKE ALL REASONABLE EFFORTS TO OBTAIN AND SURRENDER TO _____ AS SOON AS POSSIBLE 2/3 ORIGINAL BILLS OF LADING PLUS A MASTERS RECEIPT FOR 1/3 ORIGINAL BILLS OF LADING ISSUED OR DULY ENDORSED TO THE ORDER OF _____ AND IN THE EVENT THAT SAID BILLS OF LADING CANNOT BE OBTAINED THROUGH THE EXERCISE OF ALL SUCH REASONABLE EFFORTS, THEN IN THAT CIRCUMSTANCE, WE AGREE TO PROTECT, INDEMNIFY, AND SAVE YOU HARMLESS FROM AND AGAINST ANY AND ALL DAMAGES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEY FEES) WHICH YOU MAY SUFFER BY REASON OF THE MISSING ORIGINAL BILLS OF LADING PLUS A MASTERS RECEIPT FOR 1/3 ORIGINAL BILLS OF LADING REMAINING OUTSTANDING, INCLUDING BUT NOT LIMITED TO ANY CLAIMS AND DEMANDS WHICH MAY BE MADE BY A HOLDER OR TRANSFEREE OF THE ORIGINAL BILLS OF LADING OR ANY OTHER THIRD PARTY CLAIMING AN INTEREST IN OR LIEN ON THE CARGO OR PROCEEDS THEREOF.

OUR OBLIGATION TO INDEMNIFY YOU IS, OF COURSE, SUBJECT TO THE CONDITIONS THAT YOU GIVE US IMMEDIATE NOTICE OF THE ASSERTION OF ANY CLAIM(S) AND FULL OPPORTUNITY TO CONDUCT DEFENSE THEREOF WITHOUT YOUR APPROVAL. THIS INDEMNITY SHALL IN ALL CASES, INCLUSIVE OF ANY AND ALL DAMAGES, COSTS, EXPENSES AND ATTORNEY FEES, BE LIMITED TO AN AMOUNT NOT EXCEEDING 100% OF THE CIF VALUE OF THE CARGO THAT IS THE SUBJECT OF THIS TRANSACTION.

THIS LETTER OF INDEMNITY SHALL AUTOMATICALLY BECOME NULL AND VOID UPON OUR TENDERING TO _____ THE ORIGINAL BILLS OF LADING PLUS A MASTERS RECEIPT FOR 1/3 ORIGINAL BILLS OF LADING AS ABOVE OR UPON OF THE EXPIRATION OF 24 MONTHS AFTER COMPLETION OF DISCHARGE, WHICHEVER OCCURS FIRST; PROVIDED, THAT NO LEGAL PROCEEDINGS ARISING FROM DELIVERY OF THE CARGO HAVE BEEN INSTITUTED WITHIN SUCH 24 MONTH PERIOD.

THE LETTER OF INDEMNITY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ANY DISPUTES, CONTROVERSIES OR CLAIMS ARISING OUT OF OR IN RELATION TO THIS INDEMNITY OR THE BREACH, TERMINATION OR INVALIDITY THEREOF SHALL BE SUBJECT TO THE EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS LOCATED IN HARRIS COUNTY, TEXAS.

Exhibit B

VALERO PUBLIC DOCK LIST

Terminal	State	City
Buckeye	NY	Albany
TransMontaigne	TX	Brownsville
Nustar North Beach	TX	Corpus Christi
South Florida Materials	FL	Fort Lauderdale
Oiltanking	TX	Houston
Citgo	NJ	Linden
Kinder Morgan	NJ	Linden
South Florida Materials	FL	Port Everglades
Vecenergy	FL	Port Everglades
Nustar	CA	Selby
Motiva	NJ	Sewaren
Texas City Term Railway - Dock 16	TX	Texas City
Shell Morman Island	CA	Los Angeles

