



## **FUELS AND LUBRICANTS SUPPLY AGREEMENT**

MEMORANDUM OF AGREEMENT made and entered into by and between

**ASTRON ENERGY (PTY) LIMITED**

Registration No.  
1911/001154/07 its  
successors or assigns  
(**"Astron Energy"**)

and

**[INSERT]**  
Registration No.  
[Insert]  
(**"Customer"**)

### **1. SALE AND PURCHASE**

- (a) Subject to the other provisions of this Agreement, Astron Energy hereby sells to the Customer who undertakes to purchase exclusively from Astron Energy the Customer's entire requirements of the following petroleum products ("**the Products**") throughout the Republic of South Africa:

[Insert]

- (b) Where Astron Energy sells and the Customer purchases diesel under this Agreement as per clause 1(a) above, the Astron Energy selling price for each particular grade of diesel ("**the Astron Energy C&I Diesel Price**") will for the time being be equivalent to the applicable prevailing non-binding diesel wholesale reference price, as at the time and place of delivery, published by or on behalf of DMRE from month to month.

- (c) For purposes of this Agreement the "**Diesel Wholesale Margin**" means the prevailing amount of the diesel wholesale margin as published by or on behalf of DMRE from time to time, and, in the event that the Diesel Wholesale Margin ceases to be published by or on behalf of DMRE, the "**Astron Energy Margin**" means the amount of the Diesel Wholesale Margin immediately prior to it ceasing to be published by or on behalf of DMRE, with such amount escalating annually on 1 February by a percentage which is equivalent to the annual average of CPI (i.e. the "**Consumer Price Index (CPI) Headline**" as published by Statistics South Africa) applicable in South Africa for the previous calendar year.

- (d) Where Astron Energy sells and the Customer purchases diesel under this Agreement as per clause 1(a) above, the Astron Energy selling price for each particular grade of diesel ("**the Astron Energy C&I Diesel Price**") will for the time being be equivalent to the applicable prevailing non-binding diesel wholesale reference price, as at the time and place of delivery, published by or on behalf of DMRE from month to month i.e. the Astron Energy C&I Diesel Price will for the time being be made up of the sum total of the prevailing amounts of the following as published by or on behalf of DMRE from month to month:

- (i) (contribution to) the basic fuel price of diesel;
- (ii) the various duties, taxes, levies and other such charges applicable in respect

- of the sale and purchase of diesel;
  - (iii) the diesel zone differential which applies to the place of delivery of the diesel in question;
  - (iv) the diesel secondary storage costs;
  - (v) the diesel secondary distribution costs; and
  - (vi) the Diesel Wholesale Margin.
- (e) In the event that:
- (i) the Diesel Wholesale Margin ceases to be published by or on behalf of DMRE, then, with effect from such date, the Astron Energy C&I Diesel Price build-up will be revised by the replacement of the Diesel Wholesale Margin with the Astron Energy Margin (as defined in clause 1(c) above);
  - (ii) the magisterial district zone differentials cease to be published by or on behalf of DMRE, then, with effect from such date, the Astron Energy C&I Diesel Price build-up will be revised by the replacement of the relevant diesel zone differential with the prevailing petrol district zone differential which applies to the place of delivery of the diesel in question;
  - (iii) the diesel secondary storage costs cease to be published by or on behalf of DMRE, then, with effect from such date, the Astron Energy C&I Diesel Price build-up will be revised by the replacement of the diesel secondary storage costs with the prevailing petrol secondary storage costs; and
  - (iv) the diesel secondary distribution costs cease to be published by or on behalf of DMRE, then, with effect from such date, the Astron Energy C&I Diesel Price build-up will be revised by the replacement of the diesel secondary distribution costs with the prevailing petrol secondary distribution costs.
- (f) Where Astron Energy sells and the Customer purchases illuminating paraffin under this Agreement as per clause 1(a) above, the Astron Energy selling price (“**the Astron Energy C&I IP Price**”) will for the time being be equivalent to the prevailing illuminating paraffin wholesale price as published by or on behalf of DMRE from month to month.
- (g) In the event that the wholesale price of illuminating paraffin ceases to be published by or on behalf of DMRE or the build-up of wholesale price of illuminating paraffin published by or on behalf of DMRE is changed as compared to what it is at the date of conclusion of this Agreement or the method of determining the amount of the wholesale price of illuminating paraffin published by or on behalf of DMRE (and/or the method of determining the amount of any component making up such price) is changed as compared to what it is at the date of conclusion of this Agreement (each an “**Event**”), then with effect from the date of the Event the Astron Energy C&I IP Price will be revised such that it is the sum total of the following:
- (i) the prevailing amounts of the following as published by or on behalf of DMRE from month to month:
    - 1) (contribution to) the basic fuel price of illuminating paraffin;
    - 2) the various duties, taxes, levies and other such charges, if any, applicable in respect of the sale and purchase of illuminating paraffin;
    - 3) the petrol zone differential which applies to the place of delivery of the illuminating paraffin in question; and
    - 4) the petrol secondary storage and secondary distribution costs; plus
  - (ii) the “IP Margin”, which is an amount equivalent to the sum total of the following:
    - 1) the amount of the illuminating paraffin wholesale margin as published by or on behalf of DMRE immediately prior to the Event;

- 2) the amount of the router differential margin as published by or on behalf of DMRE immediately prior to the Event; and
- 3) the difference (expressed as a positive number) between the Gauteng illuminating paraffin zone differential as published by or on behalf of DMRE immediately prior to the Event and the Gauteng magisterial district zone differential as published by or on behalf of DMRE immediately prior to the Event.

The amount of the IP Margin will escalate annually on 1 February by a percentage which is equivalent to the annual average of CPI (i.e. the **“Consumer Price Index (CPI) Headline”** as published by Statistics South Africa) applicable in South Africa for the previous calendar year.

- (h) By virtue of the discounts afforded to the Customer, the Customer undertakes to purchase the following minimum quantities of Products:

<u>Product</u>	<u>Minimum Quantity (in litres)</u>
[Insert]	[Insert] litres per month

- (i) Should the Customer at any time fail to purchase any minimum quantity of Products as set out in clause 1(h) above (or half of any such minimum quantity in the event that Astron Energy conducts a review of the first or the second half of a particular 6 (six) month period), then Astron Energy shall (in addition and without prejudice to any other rights that Astron Energy may have at law or in terms of this Agreement) be entitled to revise the discounts afforded to the Customer in terms of this Agreement as it sees fit (for the avoidance of doubt and notwithstanding anything to the contrary, the provisions of the last paragraph of clause 3(b) below with regard to the reduction of discounts shall not apply in the case of a reduction of discounts by Astron Energy in terms of this clause 1(i)) or to terminate this Agreement, while Astron Energy shall also specifically be entitled to claim and recover from the Customer any loss incurred or any damages suffered by Astron Energy as a result of the Customer failing to purchase the said minimum quantity (or half thereof in the case of a review of the first or the second half of a particular 12 (twelve) month period).
- (j) When placing an order with Astron Energy the Customer may be obliged to provide its account number and other account details to Astron Energy. The Customer is otherwise responsible for keeping its account details safe, secure and confidential, and the Customer shall be liable for any unauthorized, improper, fraudulent and/or other use by anyone whatsoever of such account number and/or other account details. Accordingly and without limitation, if anyone else apart from the Customer places an order with Astron Energy using such account number and/or account details, then the Customer will be deemed to have accepted liability for any and all transactions resulting from such third party's use of the Customer's account number and/or account details (notwithstanding that such third party may not have been authorized by the Customer to place orders for Products on behalf of the Customer) and the Customer shall not have any claims against Astron Energy in such regard.
- (k) Ownership in any Products sold and delivered to the Customer shall pass to the Customer only when all amounts due by the Customer to Astron Energy have been paid, notwithstanding delivery of the Products to the Customer. Risk in and to the Products shall however pass to the Customer on delivery.
- (l) Unless otherwise agreed by Astron Energy in writing, all Products ordered under this Agreement shall be transported to the agreed Customer premises by Astron Energy or a third party acting on behalf of Astron Energy (**“direct deliveries”**).
- (m) As far as direct deliveries are concerned:
- (i) any invoice reflecting the relevant premises address as per clause 1(l) above (or such other delivery address as agreed to by Astron Energy in writing) and a

signature for receipt of Products appearing in such invoice shall constitute *prima facie* proof of delivery of such Products to the Customer;

(ii) delivery of Products which are fuels will be deemed to take place at and when such Products pass the inlet flange connection of the Customer's storage tanks at the Customer premises;

(iii) all orders for fuel Products shall meet or exceed the following minimum order quantities:

[Insert]

(iv) if the Customer does not have adequate storage capacity to accept any delivery of the Products ordered and the delivery vehicle must leave the Premises without delivering all of the Products ordered, the Customer shall be subject to a handling fee in the amount of R 3 750 (three thousand seven hundred and fifty Rand). The Customer shall also reimburse Astron Energy on demand for any demurrage or like charges that Astron Energy may incur by reason of the Customer's failure to allow the unloading or the release of any delivery vehicle within the time required to avoid such charges.

(n) Where Astron Energy agrees in writing that Products ordered under this Agreement may be collected from certain terminals by the Customer or a third party acting on behalf of the Customer ("**customer own collection deliveries**"), Astron Energy shall specify in writing from which terminals Products may be collected and the Customer shall not be entitled to collect Products from any other terminals without Astron Energy's prior written consent. Astron Energy may from time to time in its sole discretion by written notice to the Customer add terminals to and/or remove terminals from the list of terminals from which Customer is entitled to collect Products under this Agreement.

(o) As far as customer own collection deliveries are concerned:

(i) the Customer shall bear all the costs thereof;

(ii) a signed receipt for Products on the relevant calling customers' schedule or similar document shall constitute *prima facie* proof of delivery to the Customer in respect of the Products appearing in such schedule;

(iii) Customer own collection deliveries of Products which are fuels will be deemed to take place at and when such Products pass the inlet flange connection of the collecting vehicle;

(iv) the Customer and those collecting Products on its behalf shall comply with the Product collection requirements, processes and procedures as notified and modified by Astron Energy from time to time in writing;

(v) without limiting the generality of the provisions of clause 1(o)(iv) above, the Customer shall comply (and shall procure that all those collecting Products on its behalf comply) with the Astron Energy loading requirements prevailing from time to time. The Customer shall furthermore ensure that all drivers (whether employed by the Customer or not) of vehicles which collect Products on behalf of the Customer successfully complete the prevailing Astron Energy driver certification to load process as required by Astron Energy from time to time. Drivers who are not certified to load by Astron Energy in its sole discretion will not be permitted to collect Products on behalf of the Customer and nor will drivers and/or vehicles which do not comply with the Astron Energy loading requirements. Details of the Astron Energy loading requirements as well as the Astron Energy driver certification to load process are available from Astron Energy upon request. Astron Energy reserves the right from time to time to revise the Astron Energy loading requirements and/or the Astron Energy driver certification to load process as it deems fit in its sole discretion;

(vi) the Customer agrees and shall procure that vehicles to be used for the collection of Product from the terminals are made available for inspection by Astron Energy staff so that safe loading passes may be issued to those vehicles

which qualify for such passes. In the event of a vehicle not meeting the requirements of Astron Energy to be issued with a safe loading pass, the Customer agrees to ensure that the shortcomings are corrected at the cost of the Customer or the owner/operator of the vehicle. No vehicle may enter a terminal without having been issued with a safe loading pass; and

(vii) upon Astron Energy accepting an order for Products placed by someone quoting the Customer's account number and/or other account details, Astron Energy shall issue the person placing the order with a sales order number. The Customer shall be responsible for keeping such sales order number safe, secure and confidential, and shall be liable for any unauthorized, improper, fraudulent and/or other use by anyone whatsoever of such sales order number. Astron Energy shall fulfil the said order by loading the Products in question onto the vehicle of the person who quotes the said sales order number at the terminal. If someone else apart from the Customer quotes the said sales order number to Astron Energy/the terminal operator at the terminal and Astron Energy/the terminal operator supplies the Products to such third party, then the Customer will be deemed to have accepted liability to pay Astron Energy for such Product supplied to the third party (notwithstanding that such third party may not have been authorized by the Customer to collect Products on behalf of the Customer) and the Customer shall not have any claims against Astron Energy in such regard.

(p) The Customer is an end user/consumer of petrol, diesel and/or other fuels and is not currently involved/does not have an interest in any business which deals with or is connected with the sale or disposal of petrol, diesel and/or any other fuels. Astron Energy is, in terms of this Agreement, supplying the Products to the Customer on this basis and accordingly should the Customer wish at any time during the period of this Agreement to become involved or have an interest in any business which deals with or is connected with the sale or disposal of petrol, diesel and/or any other fuels then it shall not do so without having first obtained Astron Energy's prior written consent.

## 2. TERM

This Agreement shall commence on [Insert] and shall continue for a period of [Insert] year ("**the initial period**"). Upon expiry of the initial period this Agreement shall be deemed to have been renewed on the same terms and conditions for a further period of [Insert] year unless Astron Energy informs the Customer in writing at least 3 (three) months prior to the expiry of the initial period that this Agreement shall not be renewed. Notwithstanding anything to the contrary contained in this Agreement, Astron Energy may terminate this Agreement at any time without cause on 3 (three) months written notice to the Customer.

## 3. PAYMENT

(a) The Customer agrees to pay to Astron Energy all amounts due promptly, without deduction, withholding or set-off. Subject to the following, payment terms will be strictly 30 days from statement.

Purchase and/or credit facilities may be withdrawn by Astron Energy at any time without prior notice, and Astron Energy reserves the right to review the extent, nature and duration of such facilities at all times.

The Customer shall provide Astron Energy with written notice of any claims against Astron Energy or any disputed amounts arising from this Agreement within 30 (thirty) days from date that the Customer should have first known of such claim and/or dispute. However, the Customer shall not withhold payment of any amount due to Astron Energy or seek to withhold payment pending resolution of a claim and/or a dispute. The parties shall endeavour to ensure that any claim and/dispute is resolved as soon as reasonably possible.

Without derogating from any other right that the Astron Energy may have in accordance with the provisions of this Agreement or in law, in the event that the Customer fails to make payment, in full, of any amount owing by it in terms of this Agreement on the due date for payment thereof, Astron Energy shall be entitled to levy interest on the

outstanding balance of such amount owing, as certified in writing by any Representative of Astron Energy whose authority and appointment it shall not be necessary to prove, from the due date thereof until the date of final payment. Such interest levied shall be levied at a rate of 1% (one percent) above the publicly quoted prime overdraft rate of interest per annum from time to time charged by First National Bank or its successor-in-title, as certified by any manager of such bank whose appointment and designation need not be proved, calculated on a 365-day year (irrespective of whether or not the year is a leap year) and compounded monthly in arrears. Any interest levied in accordance with this clause shall be payable by the Customer within (5) days of the date of the invoice for such interest.

(b) DIESEL DISCOUNTS:

Subject to the terms and conditions of this Agreement, Astron Energy hereby grants the Customer the following discounts:

<u>Product</u>	<u>Discounts (in cents per litre)</u>
[Insert]	[Insert]

The Customer acknowledges that the discounts set out in this clause 3(b) are granted solely on the basis that the Customer complies with its obligations in terms of this Agreement, including without limitation the Customer's obligation to purchase the minimum quantity of Product as specified in this Agreement as the discounts are linked to such purchase.

Discount arrangements may be varied by Astron Energy from time to time in the sole discretion of Astron Energy. Astron Energy reserves the right to alter the prices of its Products from time to time and the Customer agrees to be bound by the prices appearing on Astron Energy's invoices which will be the price ruling at the date and place of any sale by Astron Energy to the Customer.

Discounts may only be granted when accounts granted credit, or point of sale discounts, are paid within the agreed credit term or are paid at the point of sale.

Astron Energy shall at all times during the currency of this Agreement enjoy the right, pursuant to the following provisions of this clause 3(b) but subject to the provisions of clause 1(i) above, to revise any discounts granted in terms of this Agreement.

In the event of Astron Energy increasing such a discount, such increase shall be effective from the date stipulated by Astron Energy in its written notice to the Customer advising of such increase and this Agreement shall continue subject to the increase of such discount in terms of the Astron Energy written notice.

In the event of Astron Energy decreasing such a discount in respect of a particular Product as collected/delivered from a particular terminal ("**the revision**") it shall give the Customer 60 (sixty) days written notice of such revision (which notice shall also specify the corresponding net selling price of the Product in question in the light of the revision i.e. the gross selling price less any discount). The Customer may thereupon accept such revision and shall be deemed to have done so unless the Customer shall have given Astron Energy notice in writing to the contrary within a period of 60 (sixty) days from the date of the Astron Energy notice to the Customer. In the event that during the said 60 (sixty) day period, the Customer receives a *bona fide* written offer from a competitor of Astron Energy to endure for a minimum period of 3 (three) years and which offers, in respect of the Product in question as collected/delivered from the terminal in question, a lower net selling price (i.e. gross selling price less any discount) than that stated in the written notice given by Astron Energy, the Customer shall submit such written offer to Astron Energy who shall then within a period of 30 (thirty) days from date of receipt of such offer have the right to match the lower net selling price and the credit terms as may be contained in such offer. In the event that Astron Energy does exercise its said right to match, this Agreement shall continue in accordance with its terms subject to the lower net selling price and the credit terms as matched by Astron Energy in respect of the Product in question as

collected/delivered from the terminal in question. Should Astron Energy not so exercise its said right to match, then, with effect from the expiry of the period of 30 (thirty) days, the Customer shall no longer be obliged to purchase from Astron Energy under this Agreement the Product in question as collected/delivered from the terminal in question (for the avoidance of doubt, the Customer shall, however, be obliged to continue purchasing all other Products from Astron Energy under this Agreement and shall also be obliged to continue purchasing the Product in question from Astron Energy under this Agreement as collected/delivered from terminals other than the terminal in question). In the event the Customer does not during the said 60 (sixty) day period receive an offer, in respect of the Product in question, of a lower net selling price, this Agreement shall continue subject to the decrease of such discount in terms of the Astron Energy written notice.

(c) **DEFAULT:**

Should the Customer at any time:

- (i) breach any term of this Agreement; or
- (ii) fail to pay any instalment on due date; or
- (iii) suffer any judgment taken against him to remain unsatisfied for 7 (seven) days; or
- (iv) being a juristic person, commit any act of insolvency, be placed in judicial management, take steps/have steps taken against it to place it in business rescue, take any steps for its voluntary winding-up or have steps taken against it to liquidate it provisionally or finally; or
- (v) being a natural person, be sequestrated either provisionally or finally, or be placed under curatorship or surrender or assign his estate or any order be made for the administration of his estate under the Magistrates' Courts Act or depart permanently or temporarily from the Republic of South Africa, or die;

the balance of the total amount then outstanding shall immediately become due and payable.

The acceptance by Astron Energy of any payment after the occurrence of any event specified in (i) to (v) above shall not be deemed to be a waiver of Astron Energy's rights or a novation of this Agreement and such payment shall be deemed to be an amount paid by the Customer towards any amount due by the Customer under this clause.

#### **4. EQUIPMENT**

The Customer undertakes to utilize Product dispensing and/or storage equipment at its premises solely for the purposes of Astron Energy supplied Products. The Customer shall, at its cost, be responsible for acquiring, erecting, installing, maintaining, repairing and/or replacing such equipment (and equipment ancillary thereto) as and when required and shall bear all risk in such regard.

#### **5. CUSTOMER UNDERTAKINGS**

The Customer hereby agrees:

- (a) not to store, handle or use any petroleum products, including lubricating oils and greases or any liquid fuels, other than those supplied by Astron Energy. This clause is fundamental to this Agreement and any breach hereof will entitle Astron Energy to (without prejudice to its other rights in terms of this Agreement or in law), immediately cancel this Agreement;
- (b) not to, without the prior written consent of Astron Energy, sell or dispose of the business, and should the Customer do so without Astron Energy's prior knowledge and written consent, Astron Energy shall (without prejudice to Astron Energy's other rights in terms of this Agreement or in law) have the right to hold the Customer liable for the payment of all amounts due by the new owners of the business to Astron Energy, arising

from any cause whatsoever;

- (c) to notify Astron Energy in writing of any change in status of the Customer or of any change to the information given in any credit application submitted by the Customer, within 7 (seven) days of the Customer becoming aware of the change;
- (d) to notify Astron Energy in writing of any intended change in ownership of the Customer (such notification shall be delivered to Astron Energy, at its domicilium address set out in clause 17 below, not less than 7 [seven] days prior to the effective date of the intended transfer of ownership);
- (e) that purchase facilities granted are such facilities as notified in writing by Astron Energy to the Customer from time to time;
- (f) not to, without the prior written consent of Astron Energy, cede, assign or dispose of this Agreement;
- (g) that in the event of the Customer breaching any condition contained in these conditions, the Customer failing to pay any amount due and payable on due date, the Customer suffering any civil judgment to be taken or entered against it, the Customer being the subject of any business rescue proceedings, the Customer causing a notice of surrender of its estate to be published in terms of the Insolvency Act No. 24 of 1936 (as amended), the Customer dying, and/or the Customer's estate being placed under any order of provisional or final sequestration/liquidation, provisional or final winding-up, or provisional or final judicial management, as the case may be, then in any of the foregoing events Astron Energy shall, without detracting from any other remedies which may be available to it, be entitled to summarily cancel the sale of any goods to the Customer without notice to the Customer and to rely on the provisions of clause 1(k) above to repossess those goods sold and delivered by Astron Energy to the Customer, or to claim specific performance of all the Customer's obligations whether or not such obligations would otherwise then have fallen due for performance, in either event without prejudice to Astron Energy's right to claim damages; and
- (h) that the Customer shall periodically provide to Astron Energy that financial information or security deemed necessary by Astron Energy to support any credit extension. If during the life of this Agreement, the financial capacity of the Customer becomes impaired or unsatisfactory to Astron Energy in the sole judgment of Astron Energy, advance cash payment or security satisfactory to Astron Energy shall be given by the Customer on demand by Astron Energy and deliveries may be withheld until such payment or security is received.

## **6. INDEMNITY**

The Customer hereby indemnifies Astron Energy against all actions, proceedings, liability, claims, damages, losses, costs (including without limitation legal costs on the scale as between attorney and own client) and expenses arising out of or in connection with the supply of Products by Astron Energy to the Customer and/or arising out of or in connection with the acquisition, erection, installation, maintenance, repair, replacement and/or use (at any time whether prior to, during or after this Agreement) of any petroleum product dispensing and/or storage equipment (and/or ancillary or other equipment) on the Customer's property and/or arising out of or in connection with the failure of the Customer (and/or any of its Representatives) to comply with any of its obligations in terms of this Agreement and/or with any legal requirement and/or arising out of or in connection with any matter incidental to any of the foregoing, except where and to the extent that Astron Energy is at fault and the direct cause of the relevant action, proceeding, liability, claim, damage, loss, cost or expense.

The security and proper use of the equipment referred to above is the Customer's sole responsibility. The Customer bears all risk in such regard and any loss resulting from the exercise of improper control by the Customer will be for the Customer's account.

## **7. STOCK CONTROL**

The Customer shall institute and maintain a system of stock control in respect of Product supplied. Astron Energy shall not be responsible for any loss of Product howsoever sustained by the Customer except where and to the extent Astron Energy was at fault and the



direct cause of such loss.

## **8. HOUSEKEEPING AND HEALTH, SAFETY AND ENVIRONMENT**

The Customer will, where applicable, ensure that adequate housekeeping and routine maintenance procedures are carried out in order to minimize environmental, health and safety risks to employees, the public or the environment. Astron Energy may provide recommendations to the Customer in this regard on request. The Customer relies on any such recommendations entirely at its own risk and in all instances the Customer should confirm that the housekeeping and maintenance procedures adopted are consistent and compliant with applicable laws, other legal requirements and its duty of care obligations. It is the Customer's sole responsibility to verify that the housekeeping and maintenance procedures adopted are suitable and adequate in the circumstances and, to the fullest extent permitted by law, neither Astron Energy nor any of its Representatives shall (notwithstanding any recommendations in this regard made by or on behalf of Astron Energy) have any liability to the Customer should such procedures not be suitable or adequate.

The Customer acknowledges that due to the nature of the Products supplied by Astron Energy certain legislation affects the operation of the equipment and the business conducted by him particularly in relation to the environment, fire and safety measures and the storage, handling, use and/or transport of the Products. The Customer declares himself to be familiar with all applicable legislation, in particular the Petroleum Product Act 120 of 1977, the Occupational Health and Safety Act 85 of 1993, the National Environmental Management Act 107 of 1998, the Environment Conservation Act 73 of 1989, the National Water Act 36 of 1998, the Road Transportation Act 74 of 1977, the Road Traffic Act 29 of 1989, the Hazardous Substances Act 15 of 1973 and the National Road Traffic Act 93 of 1996 (including the SABS Codes incorporated there under), and all regulations under such legislation.

The Customer acknowledges that it is his responsibility to:

- (a) comply with the provisions of all applicable legislation (as amended from time to time); and
- (b) ensure that all its Representatives also comply therewith.

The Customer shall at all times during the operation of this Agreement (and in particular, but without limitation, during the purchase, storage, handling, use and any collection of the Products) take reasonable care and reasonably practicable precautions for the purposes of preventing the exposure of any Person or property to any hazard or pollution.

The Customer shall comply (and shall procure that all those who may collect Products on its behalf comply) with the operating, health, environment and safety procedures and rules of each and every terminal at which Products may be uplifted under this Agreement.

## **9. FORCE MAJEURE**

If either party is rendered unable, wholly or in part, by an Impediment to perform or comply with any obligation or condition of this Agreement (the "Affected Party"), upon giving written notice to the other party (the "Unaffected Party"), such obligation (except where it is a payment obligation) or condition (the "Affected Obligation") shall be suspended during the continuance of the inability so caused and the Affected Party shall be relieved of any liability for failing to perform or comply with the Affected Obligation during such period.

The term "Impediment" means any other cause reasonably beyond the control of the Affected Party (whether foreseeable or not) and includes, without limitation by the following enumeration, acts of God, acts of war or public enemy, strikes, lock-outs or other disturbances, riots, sabotage, terrorism, vandalism, hurricanes, floods, earthquakes, national/provincial/municipal orders, rules, legislation, by-laws and/or regulations, compliance with any orders, requests or directives of any governmental authority or Persons purporting to act therefor, existing or future epidemic and/or pandemic, subsidence, fire, explosion or destruction from any involuntary causes of any character similar to the foregoing.

The Affected Party shall use all reasonable endeavours and employ all reasonable means to overcome or minimise the effect of the Impediment as quickly as possible, shall promptly take reasonable steps to remedy its inability to perform and shall keep the Unaffected Party informed

with regard to progress in this regard; provided, however, that the settlement of strikes, lockouts or other labour or industrial disturbances which qualify as an Impediment shall be considered to be within the discretion of the Affected Party.

The Affected Party shall resume the Affected Obligations as soon as it is able to do so. Written notice of the date from which the cessation of the Impediment takes place shall be given by the Affected Party within 10 (ten) days after such cessation.

Save for any payment obligations, the Affected Party shall not subsequently be obliged to comply with the Affected Obligations after the cessation of the Impediment.

#### **10. CERTIFICATE OF INDEBTEDNESS**

A certificate under the hand of any director or manager of Astron Energy as to the existence and the amount of the Customer's indebtedness to Astron Energy at any time, as to the fact that such amount is due and payable and as to any other fact, matter or thing relating to the Customer's indebtedness to Astron Energy, shall be sufficient and satisfactory prima facie proof of the contents and the correctness thereof and of the amount of the Customer's indebtedness for the purpose of provisional sentence or summary judgment or any other proceedings of whatsoever nature against the Customer in any competent court, and shall be valid as a liquid document for such purpose. It shall not be necessary to prove the appointment of the Person signing such certificate and such certificate shall be binding on the Customer.

#### **11. GOVERNING LAW AND ARBITRATION**

This Agreement shall be governed by and construed in accordance with the laws of South Africa. Any dispute arising out of or in connection with this Agreement or its performance or the breach hereof, including the validity, scope meaning, construction, interpretation or application hereof, shall, to the extent possible, be settled amicably by negotiation and discussion between the parties.

All unresolved disputes arising in connection with this Agreement shall be finally settled in Cape Town or another mutually agreed location in accordance with the Rules of the Arbitration Foundation of Southern Africa by an arbitrator or arbitrators appointed by the said Foundation.

Any arbitration award may be made an order of Court and enforced against the defaulting party.

The provisions of this clause shall not prevent either party from seeking urgent relief from any competent court.

In the event of either party (the "plaintiff") instituting legal collection proceedings out of a court of law against the other party (the "defendant") and the defendant entering an appearance to defend such proceedings and/or opposing a summary judgment application, the plaintiff shall be entitled to apply to such court for a stay of such proceedings pending resolution of the dispute by means of arbitration as envisaged in this clause.

The parties agree that if a debt is confirmed by an arbitration award, neither party is entitled to raise the defence of prescription of the debt for a period of 30 (thirty) years from the date of the arbitration award.

#### **12. JURISDICTION**

The Customer hereby consents in terms of Section 45 of the Magistrates' Court Act No. 32 of 1944 (as amended) to the jurisdiction of the Magistrate's Court having jurisdiction under Section 28 of the said Act, notwithstanding that the claim by Astron Energy exceeds the normal jurisdiction of the Magistrate's Court as to the amount. Astron Energy shall, in its discretion, be entitled to proceed against the Customer in any other court of competent jurisdiction, notwithstanding the foregoing.

#### **13. NON-VARIATION**

This Agreement constitutes the entire contract between the parties regarding the subject matter

of this Agreement, and supersedes and cancels all previous communications, negotiations and agreements between them in that regard. Save to the extent expressly otherwise provided in this Agreement, no undertaking, warranty, representation, statement, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on either of the parties.

Neither party has been induced to enter, or been influenced in entering, into this Agreement by any undertaking, warranty, representation, statement, term or condition not recorded herein.

No addition to or variation, deletion or consensual termination of all or any clauses or provisions of this Agreement and no waiver of any of the terms and conditions of this Agreement shall be of any force or effect unless expressly recorded in writing in a formal addendum to this Agreement and such addendum is signed (manually or electronically) by or on behalf of the parties. Any such waiver will be effective only in the specific instance and for the purpose given.

Failure or delay on the part of either party in exercising any right, power or privilege hereunder will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

The Customer renounces the benefits of the legal exceptions *non numeratae pecuniae* (no monies received), *non causa debiti* (absence of a cause of debt), *errore calculi* (error in calculation) and revision of accounts. The Customer acknowledges that he is acquainted with the full meaning and effect of these exceptions.

#### **14. CONFIDENTIALITY**

The parties shall keep secret and confidential all confidential information relating to the affairs of the other received or obtained as a result of the operation of this Agreement as well as all commercial terms of this Agreement (including without limitation prices, discounts and payment terms). Either party shall be entitled to pass on such information to its employees or sub-contractors where reasonably necessary to enable such party to perform provided that the party takes appropriate measures to ensure that its confidentiality obligations arising from this clause 14 are observed.

#### **15. SET OFF**

Astron Energy may, insofar as it may be permitted by law to do so, deduct any money due by Astron Energy to the Customer from any monies due to Astron Energy by the Customer under this Agreement.

#### **16. GENERAL**

- (a) In this Agreement reference to a Person shall, where the context so requires, be read as reference to a corporate body.
- (b) Astron Energy shall not be liable for any failure to sell and deliver any Products ordered by the Customer if such failure is due to any cause beyond Astron Energy's control or to the failure of the Customer to pay for Products supplied or to other conduct of the Customer which in Astron Energy's opinion constitutes improper practice.
- (c) The Customer hereby warrants as a material term of this Agreement that it has the power to execute, deliver and perform its obligations under this Agreement and all necessary corporate and other action has been taken to authorise that execution, delivery and performance.
- (d) Notwithstanding the provisions of clauses 1 and 5 hereof, the Customer may, upon receiving written notice from Astron Energy of its inability to supply any Products, obtain such supplies from any other source. The inability of Astron Energy to furnish such supplies shall, however, not release the Customer from any obligations under this Agreement and immediately upon Astron Energy notifying the Customer in writing that it is able to resume supplies, the Customer shall forthwith discontinue obtaining Products from such other source or sources and shall again be bound to purchase from Astron Energy its Products in accordance with the provisions of this Agreement.

- (e) If at any time Astron Energy believes in its reasonable opinion that there may be a shortage of Products for any reason whatsoever and as a result that it may be unable to meet the requirements of all its customers or if at any time there is in fact a shortage of Products for any reason whatsoever and as a result it is unable to meet the requirements of all its customers, any failure (in whole or in part) by Astron Energy to supply Products to the Customer while supplying to other customers will not constitute a breach of this Agreement by Astron Energy. In such event, Astron Energy may allocate supplies of available Products among the Customer, its other customers and Astron Energy for its own use on any basis which in Astron Energy's sole judgment is fair and reasonable allowing for such priorities as Astron Energy in its absolute discretion deems appropriate. In connection with any such situation, Astron Energy shall not be obligated to acquire additional Products or to sell the Customer any additional Products which Astron Energy may acquire, and Astron Energy has no obligation to make-up any reduction in supply or short or non-supply of Products to the Customer.
- (f) This Agreement shall be binding upon the heirs, executors, administrators, assigns or successors in title, of whatsoever nature whether by operation of law or otherwise, of the Customer; and further in addition on the nominees and on any partnership or company in which the Customer might acquire a share as well as the purchasers and/or lessees of any of the Customer's business concerns or part thereof.
- (g) Any indulgence or relaxation in respect of any of the terms and conditions of this Agreement which Astron Energy may grant to the Customer shall be without prejudice to the rights of Astron Energy and may be withdrawn at any time.
- (h) Should the Customer breach any of the terms and conditions of this Agreement, be sequestrated or liquidated (whether provisionally or finally), commit any act of insolvency, make any compromise with creditors, be placed under judicial management or business rescue, or change ownership, Astron Energy shall (without prejudice to its other rights in terms of this Agreement and/or under law, including without limitation its rights to recover any damages it may have suffered) have the right to terminate this Agreement forthwith.
- (i) The Customer hereby acknowledges to be bound by the terms and conditions hereof, as from the date of the Customer's signature, for a period of 60 (sixty) days, to allow of Astron Energy affixing its signature. In the event of Astron Energy's signature not being affixed within said period the Customer shall nevertheless continue to be bound by the terms and conditions hereof unless the Customer notifies Astron Energy, by registered letter, that the Customer resiles herefrom and such notice is received by Astron Energy before its signature is affixed hereto.
- (j) For the purposes of this Agreement, unless the context otherwise indicates:
- (i) "**Affiliate**" means, in relation to a party, any company or legal entity that directly or indirectly controls, or is controlled by, or is under common control with that party (in this regard, "control", and each variation of that term, means direct or indirect beneficial ownership of at least fifty percent (50%) of the voting stock interest in a company or entity, or such other relationship as, in fact, constitutes actual control);
  - (ii) "**Anti-Corruption Laws**" means any law, rule, regulation or otherwise relating to and including, without limitation, sanctions, anti-bribery and corruption, anti-money laundering and tax laws in any jurisdiction in which the Parties carry on business;
  - (iii) "**Astron Energy Group**" means, individually and collectively, Astron Energy, Astron Energy's Affiliates, Joint Interest Owners and their Affiliates, and any Representative of any of them, and the successors and assigns of any of the foregoing but excludes Astron Energy's contractors and their subsuppliers, and the Representatives of those contractors and Subsuppliers;
  - (iv) "**Applicable Law**" means laws, regulations, statutes, by-laws, ordinances, policies, guidelines, codes, rules, orders, licenses, certifications, decrees, standards or interpretations (as they are amended, updated or replaced from time

to time) imposed by any government, governmental or regulatory authority or statutory body that apply to or relate in any way to Astron Energy, Customer, this Agreement or the Republic of South Africa;

- (v) "**Applicable Privacy Laws**" means all laws and regulations applicable to the Processing of Personal Information under this Agreement and includes POPIA;
- (vi) "**Business Day**" means any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;
- (vii) "**Business Hours**" means the hours between 08h00 and 17h00 on any Business Day (any reference to time shall be based upon South African standard time);
- (viii) "**Customer Group**" means Customer, Customer's Affiliates and the Representatives of all of them, and any individual, corporation, company or other Person acting on behalf of any of them, in connection with any subject matter of this Agreement;
- (ix) "**Data Breach**" has the meaning given in clause 21(c)(v) below;
- (x) "**DMRE**" means the Department of Mineral Resources and Energy (or such other government department which may in the future deal with and/or be responsible for matters pertaining to petroleum products);
- (xi) "**OFAC**" means the U.S. Department of the Treasury's Office of Foreign Assets Control;
- (xii) "**Person**" means an individual, corporation, company, association, partnership, trust, joint venture, syndicate, state, statutory corporation, government entity or any other legal entity;
- (xiii) "**Personal Information**" means all information relating to individuals that is Processed in terms of this Agreement and where applicable, information relating to an identifiable, existing juristic person, and also has the meaning given to an equivalent term under Applicable Privacy Laws;
- (xiv) "**POPIA**" means the Protection of Personal Information Act, 2013 and its regulations;
- (xv) "**Process**" (in any form) means any operation or activity or any set of operations, whether or not by automatic means, concerning Personal Information, including (a) the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use; (b) dissemination by means of transmission, distribution or making available in any other form; or (c) merging, linking, as well as restriction, degradation, erasure or destruction of information, and "Processing" and "Processed" have corresponding meanings, and also has the meaning given to an equivalent term under Applicable Privacy Laws;
- (xvi) "**Representative**" means in respect of a Person, any director, officer, employee, agent or subcontractor of that Person;
- (xvii) "**Sanctioned Country**" means a country or territory that is the subject of comprehensive (i.e., country-wide or territory-wide) Sanctions (including, as of the commencement date hereof, Crimea, Cuba, Donetsk People's Republic, Iran, Luhansk People's Republic, North Korea and Syria);
- (xviii) "**Sanctioned Person**" means a Person that is, or is Controlled by a Person (or Persons) that is:
  - (1) the subject of any Sanctions; or
  - (2) based, organised or resident in a Sanctioned Country;

- (xix) **“Sanctions”** means economic or financial sanctions or trade embargoes administered or enforced by OFAC, the U.S. Departments of State or Commerce, the United Nations Security Council, the European Union, Switzerland or any other applicable sanctions authority;
  - (xx) **“Sectoral Sanctions”** means any Sanctions that do not freeze or block the assets and/or economic resources of a Person or comprehensively freeze or block making available funds or economic resources to such Person, but merely restrict the ability of certain Persons to access financing or export or import equipment, goods, technology or services, including, for the avoidance of doubt, the Sanctions imposed under the Sectoral Sanctions Identification List maintained by OFAC;
  - (xxi) words referring to one gender shall include a reference to the other two genders;
  - (xxii) words importing the singular shall include the plural and vice versa; and
  - (xxiii) the headings have been inserted for convenience purposes only and should not affect the interpretation of the content of each clause.
- 
- (k) If at any time during the currency of this Agreement any of its provisions should, due to unforeseen circumstances beyond the parties’ direct control, cause undue hardship, the aggrieved party shall be entitled to require the other party by notification in writing to attend a meeting, at a time and venue reasonably convenient to both parties, to discuss the provisions in question and the circumstances giving rise to such hardship. The parties shall attempt in good faith to agree on the steps to be taken, which may include the cancellation or amendment of this Agreement, to resolve the hardship.
  - (l) To the fullest extent permitted by law and notwithstanding anything to the contrary contained in this Agreement, Astron Energy shall under no circumstances whatsoever be liable for any indirect, extrinsic, special, penal, punitive, exemplary or consequential loss or damage of any kind whatsoever or howsoever caused.
  - (m) Astron Energy may cede, delegate or assign any of its rights and/or obligations under this Agreement upon prior notice to the Customer.
  - (n) Each party will bear and pay its own legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this Agreement.
  - (o) This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument.
  - (p) If any provision of this Agreement is held to be illegal, invalid or un-enforceable under any law effective during the term hereof, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision never comprised a part hereof, and the remaining provisions of the Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance.
  - (q) No provision in this Agreement shall be construed against or interpreted to the disadvantage of a party by reason of such party having or being deemed to have structured, drafted or introduced such provision (any such rule of interpretation shall not apply to this Agreement and the parties waive any rights they have to rely on such rule).
  - (r) The expiration or termination of this Agreement shall not affect the provisions of this Agreement which expressly provide that they will operate after any such expiration or termination, which contemplate performance or observance subsequent to any expiration or termination of this Agreement or which of necessity must continue to have effect after such expiration or termination notwithstanding that the clauses themselves do not expressly provide for this. Any such provision of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect.

## 17. DOMICILIUM

- (a) The parties select as their respective *domicilia citandi et executandi* the following physical addresses, and for the purposes of giving or sending any notice provided for or required under this Agreement, the said physical addresses as well as the following email addresses:

<u>Party</u>	<u>Physical Address</u>	<u>Email</u>
[Insert]	[Insert]	[Insert]
	[Insert]	
	[Insert]	

Marked for the attention of [Insert]

<u>Party</u>	<u>Physical Address</u>	<u>Email</u>
Astron Energy	5 Century Boulevard Century City Cape Town 7441	<a href="mailto:zaservice@astronenergy.co.za">zaservice@astronenergy.co.za</a>

Marked for the attention of the General Manager: Commercial & Industrial

provided that a party may change its *domicilium* or its address for the purposes of notices to any other physical address or email address by written notice to the other party to that effect. Such change will be effective 5 (five) Business Days after receipt of the notice of the change.

- (b) All notices to be given in terms of this Agreement will be given in writing, in English, and will:
- (i) be delivered by hand or sent by email;
  - (ii) if delivered by hand during Business Hours, be presumed to have been received on the date of delivery; any notice delivered after Business Hours or on a day which is not a Business Day will be presumed to have been received on the following Business Day; and
  - (iii) if sent by email during Business Hours, be presumed to have been received on the date of successful delivery of the email; any email sent after Business Hours or on a day which is not a Business Day will be presumed to have been received on the following Business Day.
- (c) Any notice given in writing in English, and actually received by the party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause 17.

## 18. RECORDS

The Customer shall ensure that it and its Representatives shall:

- (a) maintain true and correct records in connection with the Products to be supplied under this Agreement and all related transactions and retain all such records for at least 24 (twenty four) months after termination of this Agreement for any reason or for such longer period as may be required by law; and
- (b) permit and assist any Astron Energy Representative (at any time during the term of the Agreement and for a period of 24 (twenty four) months following termination for any reason or for such longer period as contemplated in terms of clause 18(a) above) to audit any and all records of the Customer and its Representatives for the purpose of determining whether there has been compliance with this Agreement.
- (c) Customer shall:

- (i) procure that its Representatives and any other Person acting on its or their behalf in connection with this Agreement shall:
  - (1) co-operate with, and provide any information and assistance reasonably requested by Astron Energy in connection with any monitoring, review and/or audit that Astron Energy may undertake; and
  - (2) if requested by Astron Energy, participate in any training Astron Energy may wish to provide in connection with any of the matters referred to in this clause 18. or Customer's obligations under this Agreement.
- (d) Upon completion of any audit concerning payments, the relevant Party shall pay to the other any compensation due as shown by the audit. Items of compensation such as fixed lump sums shall not be subject to audit under this clause 18.

## **19. CONFLICT OF INTEREST AND ANTI-CORRUPTION**

- (a) Customer undertakes that it shall not enter into any other business arrangement related to this Agreement with any Representative of Astron Energy without the prior consent of Astron Energy to such business arrangement ("Conflict of Interest").
- (b) With respect to any of the matters related to this Agreement, Customer undertakes that its Representatives shall comply with all applicable Anti-Corruption Laws.
- (c) Customer undertakes that neither it nor its Representatives, either in private business dealings or in dealings with the public or government sector and whether directly or indirectly:
  - (i) have given, made, offered, or received (or agreed to give, make, offer or receive); and
  - (ii) will give, make, offer or receive (nor agree to give, make, offer or receive) payment, any commission, fee, rebate, or gift or entertainment of value in connection with the obligations to be performed by either of the Parties under this Agreement or which:
    - (1) would breach any applicable Anti-Corruption Laws;
    - (2) was intended to, or did, constitute an inducement or reward for the improper performance of a Person's relevant function;
    - (3) constitutes a facilitation payment; or
    - (4) the receipt of which in itself would constitute improper conduct
 (all of the above constituting a Corrupt Act).
- (d) In the event of a violation of clauses 19(a) or 19(b), or any part of clause 19(c) above, Customer shall:
  - (i) promptly notify Astron Energy of the Conflict of Interest and/or Corrupt Act; and
  - (ii) repay or credit to Astron Energy any consideration received as a result of the Conflict of Interest and/or Corrupt Act.
- (e) In addition to the rights Astron Energy has under clause 19(d) above, if any violation of this clause 19 occurring prior to the date of this Agreement resulted directly or indirectly in Astron Energy's consent to enter into this Agreement, Astron Energy may at its option terminate this Agreement at any time and (despite any other provision of this Agreement) pay no compensation or reimbursement to the Customer whatsoever.
- (f) Customer represents that, except where already disclosed in writing to Astron Energy, that neither Customer nor any of its Representatives:



- (i) have been investigated (or is being investigated or is subject to a pending or threatened investigation) or is involved in an investigation (as a witness or suspect) in relation to any Corrupt Act by any law enforcement, regulatory agency, authority or any customer or supplier;
  - (ii) has admitted to or has been found by a court in any jurisdiction to have engaged in, any Corrupt Act; or
  - (iii) are government officials.
- (g) Customer shall notify Astron Energy in writing should it or any of its Representatives become the subject of any investigation referred to in clause 19(f) or any event which will impact the integrity of Astron Energy by reason of the relationship in terms of this Agreement.

## **20. SANCTIONS**

- (a) Customer represents and warrants to Astron Energy as at the date of this Agreement and represents and undertakes that throughout its duration that:
- (i) neither it nor any part of Customer Group or any Person on whose behalf Customer is acting in connection with the subject matter of the Agreement, is a Sanctioned Person;
  - (ii) no Sanctioned Person has any beneficial or other property interest in the Agreement nor will have any participation in or derive any other financial or economic benefit from the Agreement; and
  - (iii) it will not use, or make available, any funds, products, specifications, designs, plans, information, models, scripts, manuals, documents, materials and/or content (as applicable) provided by Astron Energy in terms of the Agreement:
    - (1) to fund or facilitate any activities or business of, with or related to any Sanctioned Country or Sanctioned Person;
    - (2) in any manner that would result in a violation of Sanctions; or
    - (3) for any activities or business that could result in the designation of Astron Energy as a Sanctioned Person.
- (b) Customer will not be in breach of this clause 20 in respect of a Sanctioned Person where the relevant Sanctions are exclusively Sectoral Sanctions, and where the relevant activity or business is permitted by those Sectoral Sanctions.
- (c) If Customer becomes a Sanctioned Person or if Astron Energy is of the reasonable opinion that Customer has breached or will breach this clause 20, Astron Energy may (without incurring any liability of any nature whatsoever) terminate or suspend all or any part of the Agreement with immediate effect by notice to Customer or take any other action it deems necessary in order for Astron Energy to comply with applicable Sanctions or avoid becoming a Sanctioned Person. Customer shall reimburse Astron Energy for any and all costs, liabilities and expenses whatsoever incurred by Astron Energy due to Astron Energy exercising its rights under this clause 20(c) or any breach of this clause 20 by Customer. Any exercise by Astron Energy of its rights under this clause 20 shall be without prejudice to any other rights or remedies of Astron Energy under the Agreement.

## **21. DATA PROTECTION**

- (a) Each Party must comply with its obligations under the Applicable Privacy Laws in relation to Personal Information in respect of which it is the Responsible Party.
- (b) Customer acknowledges that it may from time to time receive, transfer or otherwise Process Personal Information disclosed to it by Astron Energy under this Agreement. Customer will Process all Personal Information it Processes in connection with its

performance of this Agreement in accordance with all Applicable Privacy Laws, this clause 21 and Astron Energy's reasonable requests from time to time with respect to protecting Personal Information, including restricting employee and agent/subcontractor access to Personal Information.

- (c) To the extent that Customer Processes Personal Information as an Operator of Astron Energy or in performing the Customer's obligations under this Agreement, the Customer must:
- (i) only Process Personal Information for the purposes of performing its obligations under this Agreement or as otherwise authorised by Astron Energy in writing;
  - (ii) treat all Personal Information which comes to its knowledge as confidential and not disclose such information without Astron Energy's prior written consent, except as required by Applicable Law;
  - (iii) not subcontract the Processing of Personal Information to a third party, or transfer the Personal Information outside of South Africa, without Astron Energy's prior written authorisation;
  - (iv) secure the integrity and confidentiality of Personal Information in its possession or under its control by taking appropriate and reasonable technical and organisational measures to protect Personal Information against loss, damage, unauthorised destruction and unlawful access or Processing;
  - (v) immediately notify Astron Energy where there are reasonable grounds to believe that Personal Information has been lost, damaged, accessed or acquired by any unauthorised person ("Data Breach");
  - (vi) assist Astron Energy to comply with its privacy policy, as it is from time to time, as well as any of its obligations under all Applicable Privacy Laws in relation to Personal Information Processed by Customer, including notification of Data Breaches, requests by Data Subjects for access to, or correction or deletion of, their Personal Information and any investigation or assessment conducted, or direction given by, the Data Protection Authority; and
  - (vii) except as required by law or agreement between the Parties, Customer must return or destroy (at Astron Energy's direction) all Personal Information when it is no longer required for purposes of this Agreement, on termination of this Agreement for any reason, if required by law; or at Astron Energy's request at any time.
- (d) Unless otherwise agreed by the Parties in writing, the obligations of this clause 21 shall survive expiration and termination of this Agreement for any reason.
- (e) The Parties Process the Personal Information of each other pursuant to concluding the Agreement and performing their obligations.
- (f) Astron Energy's privacy policy can be found at <https://www.astronenergy.co.za/privacy-policy>.
- (g) Customer shall include and shall require its Representatives to include, in all contracts in connection with this Agreement, their agreement to the provisions of clauses 18 to 21.

## **22. MANDATORY LAW CHANGE**

- (a) Subject to the provisions of clause 22(e) below, where:
- (i) an adjustment in the then prevailing pricing methodology utilised by or on behalf of DMRE to determine regulated and/or reference prices and/or margins and/or components of margins and/or pricing elements as far as petroleum product fuels are concerned (such regulated and/or reference prices and/or margins and/or components of margins and/or pricing elements as far as

petroleum product fuels are concerned are hereinafter collectively referred to as "DMRE Pricing");

- (ii) a decision by or on behalf of DMRE to stop publishing/communicating one or more parts of the DMRE Pricing; and/or
- (iii) the application and/or interpretation of any existing, amended or new law and/or regulation,

in a party's reasonable opinion materially and substantially changes or does away with (aa) the basis of the pricing of any Products supplied by Astron Energy in terms of this Agreement and/or (bb) the commercial basis upon which the terms of this Agreement have been established ("the Change"), then such party shall have the right to propose alterations to the terms of this Agreement (to be effective from the date of the Change) having regard to the impact on it of the Change which has occurred.

- (b) Where a party proposes alterations to the terms of this Agreement pursuant to clause 22(a) above, such party shall give the other party notice thereof and shall invite the other party to accept such changes or to have discussions with it with a view to engaging in good faith negotiations with a view to reaching agreement on such alterations.
- (c) Should the parties reach agreement on such alterations, such agreement shall be documented in writing and signed by the parties, in which case this Agreement shall continue in accordance with its terms subject to such alterations.
- (d) Should the parties fail within 30 (thirty) days of the date of the notice referred to in clause 22(b) above to reach agreement on such alterations, then the party who proposed the alterations shall be entitled to terminate this Agreement by way of written notice to the other party.
- (e) Notwithstanding anything to the contrary in clauses 22(a) to 22(d) above, the provisions of clauses 22(a) to 22(d) above shall not apply to:
  - (i) the Diesel Wholesale Margin (as defined in clause 1(c) above), the diesel zone differentials, the diesel secondary storage costs and/or the diesel secondary distribution costs ceasing to be published by or on behalf of DMRE since the parties have, in anticipation thereof, already agreed, as per clause 1 above, applicable pricing provisions which will address this; nor
  - (ii) an Event (as defined in clause 1(g) above) since the parties have, in anticipation thereof, already agreed, as per clause 1(g) above, applicable pricing provisions which will address this.
- (f) For the avoidance of doubt, the adjustments referred to in clause 22(a)(i) do not include adjustments solely to the values (as opposed to the methodology) of DMRE Pricing where such adjustments occur in accordance with the then prevailing pricing methodology utilised by or on behalf of DMRE to determine DMRE Pricing, but rather (subject to clauses 22(e)(i) and 22(e)(ii) above) only include adjustments in the then prevailing pricing methodology itself and associated adjustments to DMRE Pricing resulting from such adjustments in the then prevailing pricing methodology.

## 23. DECLARATION AND WARRANTY

**The Customer hereby declares and warrants that it is a juristic person whose:**

- (a) **asset value or annual turnover (calculated in accordance with the prevailing method of calculation prescribed pursuant to the provisions of section 6 of the Consumer Protection Act, No. 68 of 2008), at the time that it enters into this Agreement, equals or exceeds R2 000 000,00 (two million Rand) which is the prevailing threshold value determined by the Minister in terms of the said section 6; and**
- (b) **asset value or annual turnover (together with the combined asset value or annual turnover of all related juristic persons), at the time that it enters into this Agreement, equals or exceeds R1 000 000,00 (one million Rand) which is the**

**prevailing threshold value determined by the Minister in terms of section 7(1) of the National Credit Act No. 34 of 2005.**

\_\_\_\_\_  
**Signature of the Customer**

DATED AT \_\_\_\_\_ ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_

**AS WITNESSES:**

1. \_\_\_\_\_

Name: \_\_\_\_\_

\_\_\_\_\_  
**THE CUSTOMER**  
(duly authorised)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

2. \_\_\_\_\_

Name: \_\_\_\_\_

DATED AT \_\_\_\_\_ ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_

**AS WITNESSES:**

1. \_\_\_\_\_

Name: \_\_\_\_\_

\_\_\_\_\_

**ASTRON ENERGY (PTY) LTD**  
(duly authorised)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

2. \_\_\_\_\_

Name: \_\_\_\_\_