

## TRANSPORTATION SERVICES AGREEMENT No. AZT-[•]

This Transportation Services Agreement (“Agreement”) is made on [•], 2015 by and between:

- 1) [•] , a company organized and operating under the laws of [•] with its registered address at [•], represented by [•], (hereinafter referred to as “Customer”)and
- 2) “**Azertrans Ltd**”, limited liability company organized and operating under the laws of Azerbaijan Republic with its registered address at Mirza Davud 2236, Baku Azerbaijan, represented by Mr. Parviz Aliyev, General Director, acting on the basis of Charter (hereinafter referred to as “Operator”).

In this Agreement, Customer and Operator may sometimes be referred to individually as a “Party” and collectively as the “Parties.”

### WHEREAS,

- 1) The Customer has the Cargo with quality specifications and in the quantity as per relevant Appendix to the present agreement, available to it on DAP position at Operator’s Terminal (“Terminal”);
- 2) The Operator has secured the rights to use the facilities and other rights, and has an expertise necessary for the transshipment of the Cargo;
- 3) The Customer is interested in attracting the Operator for transportation of the Cargo from Operator’s Terminal to Re-delivery point;

**NOW THEREFORE**, in consideration of the mutual covenants herein contained and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### 1. THE CONDITION PRECEDENTS TO THE VALIDITY OF THE AGREEMENT AND MAJOR REQUIREMENTS

1.1. Customer shall provide Operator with:

- 1.1.1. duly executed and valid purchase contract(s) confirming Customer’s title to the Cargo and allowing the Customer the right of way and the rights for further delivery of the Cargo from the Operator’s Terminal;
- 1.1.2. duly executed and valid power of attorney(ies) authorizing Operator or its subcontractor(s) to perform any required actions on behalf of Customer in connection with the transportation of the Cargo under present Agreement, if required with the right to delegate and substitute;

- 1.1.3. Customer's stamp or seal to be affixed to customs and cargo documentation on behalf of the Customer if required;
- 1.1.4. any other document that may be reasonably required by the Operator for the transportation of the Cargo.
- 1.2. In the event of any unresolved disputes, claims, unpaid services leading to cessation and/or suspension of the relevant transportation services for the Customer, or if the Customer fails to present to Operator any of the documents required under Articles 1.1 above the Operator shall have the right to immediately suspend and/or terminate the Agreement at its sole discretion.

## **2. THE CONDITION PRECEDENTS FOR VALIDITY OF APPENDIX**

- 2.1. Condition precedent for validity of the monthly Appendix (allowing monthly throughput of the Cargo/portion of the Cargo) is the advance payment of 100 % (hundred) of the expected services value or the Intended volumes of the Cargo to be transshipped during the following month.
- 2.2. Additional condition precedent for provision of BTC option services:
  - 2.2.1. Customer's accession in the form of executed and fully acknowledged Coordination Agreement Accession Deed to Delivery Point Coordination Agreement ("DPCA") entered into between The Baku-Tbilisi-Ceyhan Pipeline Company and Operator;
  - 2.2.2. Valid transportation agreement between Customer and The Baku-Tbilisi-Ceyhan Pipeline Company;
- 2.3. For avoidance of any doubt, the Operator shall have the right to revise any confirmed nomination and change allocations of the capacity, should there be a curtailment and/or lack of the capacity available for transshipment of the Cargo due to any of the following:
  - 2.3.1. Increase and/or any change in transshipment volumes of the cargoes related to the equity barrels/entitlement crude oil produced in the Caspian Region (such as but not limited to, volumes of BP, Exxon, SOCAR, TCO, Kashagan, other participants of PSAs, etc.) and transshipped under long term agreements, volumes of the refined products of SOCAR and its affiliates, any other or similar volumes transshipped under firm capacity commitments and/or intergovernmental agreements;
  - 2.3.2. decrease in available transshipment capacity due to curtailment of the shipping and/or rail capacity and/or curtailment of pipeline capacity of the major export pipelines (Baku-Tbilisi-Ceyhan (BTC) pipeline operated by BTC Co and etc.), actions and/or inactions of the state transportation companies/authorities;
- 2.4. Confirmation of any nominated quantity by the Operator is subject to providing of preliminary delivery and dispatch schedule for the Cargo from Redelivery point.
- 2.5. Prior to the execution of the monthly Appendix, the Customer shall present specifications of the cargo as well as documents proving its origin and availability for transshipment, including such documents as purchase contract for the Cargo.

Monthly Appendix shall be signed only upon presentation of such documents by the Customer to the Operator.

### **3. SUBJECT MATTER OF THE AGREEMENT**

- 3.1. Under the terms of this Agreement, the Customer shall inform Operator about purchase detail of the Cargo and the Operator shall review and revert with confirmation of available capacity for the Customer's Cargo within 7 (seven) working days after receipt of such nomination, upon which both parties shall sign monthly Appendix. Such confirmation shall be subject to availability of the capacity based on overall volumes planned for the following month, actual flow of the Cargo during the current month, availability of storage and subject to the priority rights over capacity as specified in Article 2 of the present Agreement, and/or any technical restrictions due to maintenance plans.
- 3.2. For avoidance of doubts, services performed hereunder by the Operator ("Services") shall include, but not limiting to:
  - 3.2.1. Receipt and discharge of the Cargo from Customer's vessels at Operator's Terminal defined in relevant Appendix ("Delivery point");
  - 3.2.2. Accumulation of the Cargo at the Delivery Point;
  - 3.2.3. Storage, blending and heating of the Cargo in accordance with relevant Appendix.
  - 3.2.4. Preparation, filing and processing of transportation documentation, and all other relevant filings, notices and registrations with reasonable assistance from Customer, in respect of the Services in order to assure the timely transportation and delivery of Cargoes in accordance with the terms of this Agreement, including all filings, notices and registrations with all governmental authorities in the Republic of Azerbaijan or Georgia. In providing such services, Operator will use best efforts at all times to expedite the filing and processing of such filings, notices and registrations for the benefit of Customer. Copies of any such filings, notices and registrations, or other relevant transportation documents shall be provided to Customer upon request.
  - 3.2.5. Loading of the Cargo into rail tank cars ("Black Sea Option");
  - 3.2.6. Delivery of the Cargo by pipeline to Baku-Tbilisi-Ceyhan facilities ("BTC option"). Subject to relevant addendum to present Agreement reflecting additional conditions for provision of BTC option services;
  - 3.2.7. In case Freight Forwarding services requested by the Customer for cargo delivery on CPT AzRW/GRW railway station or FOB Black Sea terminal, Georgia terms Parties will sign addendum to present Agreement in accordance with terms and conditions of relevant railway subcontractors for Azerbaijan and/or Georgia and relevant terminals in Georgia.
- 3.3. Responsibility for customs fees and customer broker service fee at the Delivery and Re-delivery point shall be agreed in the relevant Appendix to present Agreement.

- 3.4. Present Agreement is non-exclusive in respect of Operator's right to contract to provide similar services to other Shippers.
- 3.5. As between the Parties, title to all Cargoes transported by Operator hereunder shall always remain with Customer for the entire period of Services.
- 3.6. For avoidance of doubt, it is expressly agreed between the Parties that the Operator shall organize the transportation by entering into all and any required contracts (agreements) with relevant state and/or private companies in Azerbaijan Republic and Georgia to secure all and any components of the transportation.
- 3.7. This Agreement enters into force upon execution by both Parties and meeting the condition precedent state in clause 1.1 above and shall be valid for 12 (twelve) month unless terminated pursuant the terms of this Agreement or until all Cargo delivered by Customer have been re-delivered by Operator and all accounts are settled by the Parties.
- 3.8. Any party shall have the right to terminate this Agreement by providing 30 day advance notice in writing of its intention to terminate this Agreement. The Agreement may only be renewed with the written mutual consent of the Parties.

#### **4. TRANSPORTATION TERMS**

- 4.1. Transfer of custody and risk of loss over the Cargo from the Customer to the Operator occurs when the Cargo passes through the flange connection between the delivery hose and the vessel's cargo manifold at Delivery Point. Custody and risk of loss of Cargo re-delivered to the Customer shall pass from Operator to Customer when (for Black Sea Option) duly loaded and formed train unit leaves the territory of the Terminal or, for BTC Option, when Cargo is delivered at the BTC Entry Point in accordance with DPCA. When Freight Forwarding services are requested transfer of custody over the Cargo from the Operator to the Customer occurs at the applicable Re-Delivery Point.
- 4.2. The Customer shall provide the Operator with the Cargo that corresponds to the quality specifications as stated in the relevant Appendix. If the Cargo does not meet the requirements, Operator shall be free of any obligation to accept any Cargo not complying with such standard(s). Operator may accept such Cargo, provided the Customer guarantees in writing to accept such Cargo at Re-delivery point and compensate for all proven direct additional expenses related to acceptance, storage and loading of this Cargo, including but not limited to expenses incurred by necessary additional purging of the Terminal's pipelines and shore tanks.
- 4.3. A residual stock of the Cargo equivalent to the volume specified in the Appendix shall for the duration of this Agreement remain in the transportation system as unpumpable quantity. Any unpumpable quantity in the transportation system shall be returned to the Customer upon the termination of this Agreement or upon anticipated interruption of greater than three months of the transportation of particular type of Cargo. In such cases, Customer shall provide advance notice for intention to lift the residual stock. The parties shall mutually agree on the specific date of residual stock loading. Additional terms for distribution of cleaning and removal costs related with the return of residual stock shall be agreed in the Appendix.

## **5. GENERAL OBLIGATIONS OF THE PARTIES**

- 5.1. Customer will pay Operator the Service Fees and other applicable amounts under this Agreement and Appendix for the provision of Services.
- 5.2. Customer will ensure vessels' timely arrival and discharge in accordance with the agreed delivery schedule and confirmed delivery dates.
- 5.3. Customer will be responsible for timely supply of empty RTCs to Delivery Point and dispatch of loaded RTCs from the Re-Delivery point.
- 5.4. Customer will ensure that the actual quality and conditions of the delivered Cargo is suitable for discharge, storage and loading at Operator's Terminal. Customer shall assume responsibility for and shall fully indemnify and hold Operator harmless against any and all damages, losses, liabilities, actions, claims, suits, costs and expenses (including reasonable legal costs and expenses) arising out of or in connection with delivery of Customer Cargo which fails to meet the requirements of this Agreement.
- 5.5. It is expressly agreed that Customer shall be responsible and fully liable for all operational, legal, tax and other issues arising prior to delivery of Customer Cargo to Operator's custody at the Delivery Point or after taking custody of Customer Cargo at the Redelivery Point, and Customer shall ensure for its own account and without limitation the following:
  - 5.5.1. Appointment and co-ordination of Customer Cargo inspections prior to arrival at the Delivery Point including the port of origin, as applicable.
  - 5.5.2. Making or causing payment of port fees in connection with arranging vessel loadings at the port of origin, as well as for discharging the vessel at the discharge port.
  - 5.5.3. Providing Operator with evidence that Customer ensured relevant Agreement for transportation by rail and timely provision of railway orders in accordance the agreed dispatch schedule.
  - 5.5.4. Payment of all marine transportation costs, including but not limited to expenses and costs of towage, pilotage, shipping agency fees, demurrage, dead freight and issuing additional documentation at the port of origin, Delivery Point and/or Re-delivery Point upon written request of Operator.
  - 5.5.5. Payment for all railway transportation costs and customs fees and duties including but not limited to station expenses, customer broker services and etc.
- 5.6. Operator, at no additional cost or expense to Customer, shall (i) consult with and advise Customer with respect to any reasonable questions or concerns arising in connection with this Agreement and (ii) cooperate with Customer and its authorized representatives in respect of the activities contemplated hereunder.
- 5.7. Based on Cargo nominations made by Customer and confirmed by Operator, and except when Operator cannot provide Services because of Force Majeure or other

grounds stipulated herein, Operator shall promptly and diligently perform to completion and to the reasonable satisfaction of Customer all Services requested hereunder.

- 5.8. Operator shall be responsible to ask for and request from Customer any data and information necessary for operations, and Customer shall be responsible for timely provision of such data as per this Agreement. Customer shall be responsible to make nominations and provide such other data and information as requested or required herein that Operator may reasonably need to provide Services.
- 5.9. Without limiting its obligations hereunder to provide Services, upon the occurrence of the events which are not the liability of Operator and have caused or are about to cause delays, stoppage or other impediments to the Transportation of the Cargo through the Corridor, Operator shall immediately inform Customer by e-mail, fax, or telephone with subsequent confirmation in writing and the Parties shall cooperate to remove such circumstances and resume transportation of Customer's Cargo.

## **6. RTC SUPPLY, DOCUMENTATION, SCHEDULING AND INFORMATION FLOW**

- 6.1. Instruction on filling railway bills and railway orders
- 6.2. Customer shall ensure provision of correct instruction to Operator on filling the railway bills and duly issued railway orders for supply of empty RTC at least 5 (five) working days before start of the agreed RTC loading. Any possible delays or additional costs due to incorrect instruction or lack of duly issued railway orders shall be for Customer's account.
- 6.3. Daily planning
- 6.4. Customer shall provide or procure the technically sound and suitable RTCs for loading of Customer's Cargo to Operator's Terminal in accordance with the agreed daily plan of RTCs supply and loading. In case the Operator supplies owned or rented RTC for transportation of the Customer's Cargo, the Customer shall pay the Operator additional fee to be mutually agreed by the Parties.
- 6.5. Every day, by 10:00 hours of Baku time, the Customer shall provide Operator with monthly and daily plan of empty RTCs supply to Operator's Terminal and respective loading and dispatch plan. Daily supply plan shall specify estimated time of arrival, daily and monthly quantity of empty RTCs supply.
- 6.6. Every day, by 12:00 hours of Baku time, Operator shall provide the Customer with updated monthly and daily plan of RTCs supply and loading.
- 6.7. Daily supply, loading and dispatch plans, which runs from 8:00 to 8:00 hours Baku time of the current day, agreed by the Parties shall be final. The Operator shall be responsible for the fulfillment of agreed loading plan, and Customer shall be responsible for the fulfillment of daily supply plan and dispatch plan.
- 6.8. Daily information exchange

- 6.9. Every day, by 12:00 hours Baku time, the Operator shall provide the following information on RTCs dispatched from Operator's Terminal, over 24 hour period ending at 08:00 hours of Baku time of the current day: copies of railway bills, railway bills numbers, Cargo type, Cargo owner, weight per RTC and number of RTCs.

## **7. VESSEL NOMINATION AND DELIVERY SCHEDULE AT THE DELIVERY POINT**

- 7.1. The Customer shall provide the monthly delivery program and dispatch schedule ("Monthly plan") for next month to the Operator with the Cargo quantity for transportation from the Delivery Point indicating of +/- five (5) percent of operational tolerance latest by the fifth (5) day of the current month.
- 7.2. The Customer's Monthly plan as per Sub-Clause 7.1 shall include information on expected quality, quantity, country of origin, Cargo's type, vessels' DWT, vessels' delivery dates at the Delivery Point, quantity of RTC to be supplied to the Terminal and other information reasonably requested by the Operator.
- 7.3. The Operator shall give its consent or demand changes of the monthly plan given by the Customer based on sub Clauses 2.2 and 3.1.
- 7.4. The Customer shall advise each vessel nomination 3 (three) calendar days before the nomination for each vessel at the Delivery Point.
- 7.5. The Operator shall give its consent or demand changes of the vessel nomination given by the Customer within one (1) business day of its receipt of such nomination. If such consent is given The Operator shall advise to the Customer the name and location of the nominated vessel; until such consent has been given, the Operator shall have no obligation hereunder with regard to such nomination
- 7.6. The Customer shall ensure that the Operator is advised of the ETA of the vessel at the Delivery Point on regular basis.
- 7.7. All vessels arranged for discharge at the Delivery Point by the Customer shall be the vessels customarily used for cross-Caspian transportation of Cargos similar to Cargo and otherwise fit for the purposes of the transportation, including berthing and discharge of Cargo at the Delivery Point.

## **8. STORAGE TERMS**

- 8.1. Maximum allowed storage capacity shall be agreed in the monthly Appendix, but in no event the Operator shall allocate storage at Delivery Point exceeding 50 % of the monthly nominated and accepted volumes.
- 8.2. Maximum storage period for discharged Caspian vessel lots shall not exceed free storage period specified in the relevant Appendix, unless storing of such lot for a longer period was accepted by the Operator or was a result of the Operator's direct failure to load RTC on time as per schedule confirmed by the Operator.
- 8.3. For each vessel lot kept in storage in excess of storage period defined in sub clause 8.2, the Operator shall have the right to charge the Customer extra storage fee in

accordance with the rate specified in the Appendix to the Agreement for each metric ton per day based on FIFO rule for the quantity stored at the Operator's Terminal.

- 8.4. The Operator shall have the right not to discharge Customer's vessels as per the delivery schedule provided by Customer and confirmed by Operator for cargo that is above allowed storage capacity and is not responsible for any claims that may arise at the Delivery Point, provided that the Operator has duly performed its obligations on loading of RTC in accordance with the agreed dispatch plan.
- 8.5. In the case of arrest or detainment of RTCs loaded with Customer's Cargo at any point en-route, due to any dispute between Azerbaijan authorities and the Customer, all railway claims and demurrage shall be at the Customer's cost/account. The Operator shall provide the written notification of such incidents if any. In Such case Customer is liable for storage fees as per Clause 8 in this Agreement
- 8.6. Should the Cargo remain in the custody of the Operator due to the Customer's failure beyond the term specified in the Agreement, the Customer shall indemnify and hold the Operator harmless against all costs and damages in connection with storage of such Cargo, including but not limited to rail tank car demurrages, vessel demurrages and storage fees including those of third parties. The Operator shall inform the Customer in writing to lift the aforementioned Cargo upon expiry or termination of the Agreement. In case Customer fails to lift the aforementioned Cargo within 30 days after such notice, the Operator shall have the right to approach customs and/or other authorities as applicable to transfer the title of the Cargo inventory remaining in custody of the Operator. The Operator shall afterwards have the right to offer such Cargo to at least 3 (three) international oil trading companies, take the best offer and sell the Cargo. The received amount less any outstanding costs and/or damages due to the Operator arising thereof shall be transferred to the Customer.

## **9. PAYMENT TERMS**

- 9.1. Customer shall remunerate Operator for the rendered Services in the United States Dollars per gross MT of the Cargo nominated in accordance with Appendix to the Agreement (and any other monthly Appendices) which amount shall be net of any applicable taxes.
- 9.2. The Service fees shall be specified monthly for each Cargo type in the relevant Appendices for services.
- 9.3. Upon signing of Monthly Appendix, the Operator shall issue an advance invoice for 100 % (hundred percent) of the service fee for the current month as per Clause 2.
- 9.4. Actual volumes of the Cargo shipped under Agreement shall be reconciled on the monthly basis versus prepayment.
- 9.5. In case the Customer prepaid amount for the Services but failed to deliver the Cargo during the relevant period of the Agreement, the Operator will withhold 10 % of such amount as a compensation for the reservation of the respective transshipment capacity.



- 9.6. In case the Operator cannot allocate any transshipment capacity for the Customer's Cargo during period of the Agreement, the Operator shall fully reimburse the Customer all prepaid amounts.
- 9.7. Invoices shall be paid within 5 (five) banking days from the date of receipt of each invoice to the Operator's bank account.
- 9.8. Customer and Operator shall perform quarterly reconciliations which shall include service fee, storage and other confirmed demurrage fee. Operator should provide the initial reconciliation act not later than the 15th (fifteenth) day of the month following the final month of the quarter for approval by the Customer.
- 9.9. The Customer shall pay the Operator for excess storage, as well as other payments due from it to the Operator under this Agreement within ten (10) banking days of receipt of the Operator's respective invoices or, if invoices are not necessary, demands, failing which 0.10% per day pro-rata rate of interest may be charged by the Operator for each day of delay.
- 9.10. The Customer shall undertake at the expense of its own to pay all obligations and demands on taxes, which is Customer's obligations as per legislation of applicable jurisdiction.
- 9.11. The Operator shall undertake at the expense of its own to pay all obligations and demands on taxes, which can occur as the result of Operator's activity under the Agreement according to the legislation of Azerbaijan Republic.
- 9.12. Operator and Customer will cooperate to achieve the lowest available State Fees for Service under this Agreement. However, if during the term of this Agreement State Fees directly applicable to transporting Customer's Cargo are added, eliminated or changed by the relevant governmental authority, Operator shall notify Customer of any such increase in State Fees and shall provide verifiable documentation of increases to Operator's costs.
- 9.13. Operator keeps the right to suspend the performance of all type of Services due to the Customer's failure to promptly perform the payment according with this Clause 9 and shall not accept any responsibility for any claims provided by the Customer in this case. A fine of 0.5% per day, pro rata, from the total amount due from the Customer to Operator will be added to the Customer's debt for each day of payment delay.

## **10. INSPECTION and IN-TRANSIT LOSSES**

- 10.1. The Customer shall appoint an international reputable independent inspector (the "Inspector") to carry out quality and quantity measurements according to the applicable standards at Delivery Point and Redelivery Point and at such other locations during transportation as it may from time to time require. All inspection fees charged by the independent inspector shall be 100% at Customer's cost.
- 10.2. The Operator shall have no liability for variation in quality if such variation is within the reproducibility limits as per applicable standard. Operator shall be responsible for quantity and quality claims which only caused due to the proven and properly documented fault of the Operator.
- 10.3. Quantity of the Cargos delivered to the Operator shall be determined as per the gross outturn figure of the vessel measured by the Meter installed at the Delivery Point

terminal. In the event Meter at the Delivery Point Terminal is not available gross outturn figure of the vessel shall be determined as per shore tank measurement. Quality of the Cargos delivered to the Operator shall be determined as per the certificate of quality issued or countersigned by the Inspector at the Delivery Point based on shore tank sample, upon the completion of the discharge of the Caspian vessel.

- 10.4. For Black Sea option: Quantity of the Cargos re-delivered to the Customer shall be determined as per the gross railway bill figure (in vac) at Re-Delivery Point confirmed by the Inspector. Quality of the Cargos re-delivered to the Customer shall be determined on sample from RTCs at Re-Delivery Point.
- 10.5. For BTC option: Quantity of the Cargos re-delivered to the Customer shall be determined as per Adjusted Original Crude Quantity in accordance with DPCA. Quality of the Cargo re-delivered to the Customer shall be determined as per monthly assay data for Customer's cargo provided by Measuring and Sampling Coordinator in accordance with DPCA.
- 10.6. The difference determined on the basis of measurements as per Sub-Clauses 10.3 and 10.4 shall be calculated when all the delivery and re-delivery obligations of the Parties are fulfilled or upon termination of the present Agreement whichever is earlier. At the end of the term of the Agreement, or renewal thereof, the Parties shall perform a reconciliation of quantity shortage and quality variation statements, via e-mail or fax. The Customer accepts that there will be operational and natural losses during transshipment of the cargo to the destination, and therefore shall indemnify the Operator from all losses and quantity shortage that are within the accepted loss tolerance figures agreed by both Parties in the Appendix to the Agreement. The custody of the quantity of cargo equivalent the agreed loss tolerance limit shall pass to the Operator without further consent of the Customer.
- 10.7. For the avoidance of doubts, the inspection of the Cargo's quality and quantity shall be carried out: (a) onboard of the vessel (b) in the shore tanks at the Delivery Point; (c) upon loading of RTCs at the Re-Delivery Point.
- 10.8. The Inspector shall take sealed samples of the Customer's Cargo from shore tanks and RTCs and such other points of inspection between the Delivery Point and Re-Delivery Point as may be requested by Customer. The Inspector shall seal and maintain such samples in their storage for a minimum period of ninety (90) days following the day of sample taking or for such longer period as otherwise advised by Customer. Customer shall provide Operator with documents on quality and quantity determination carried out as per Sub-Clause 8.8.
- 10.9. The Customer shall provide Operator with documents on quality and quantity determination carried out as per Sub-Clause 10.8.
- 10.10. Quantity and quality measurements of the Cargos as determined by the Inspector shall be final and binding for both Parties, except in the case of fraud or manifest error. Each Party shall receive a copy of the Inspector's report(s) in respect of all inspections carried out on the Cargos from the Delivery Point to the Re-Delivery Point and the results of inspections shall be disclosed and available to each Party at the same time. The quality of the product throughout the transportation route must be maintained by the Operator within applicable standard specification. The Parties shall

accept test methods deviation tolerances (repeatability & reproducibility) based on the parameters agreed in writing beforehand.

- 10.11. The Operator shall ensure that Inspectors are allowed full access to all points at the Delivery and Re-Delivery Points in order to carry out physical measurements of shore tanks and pipelines or at other locations, where the Customer's Cargo are being stored as may from time to time be required by the Customer.
- 10.12. The Operator shall ensure that Inspectors appointed by the Customer will be timely in a position to attend on loading/discharge operations of the vessels, the rail cars and the shore tanks, including but not limited to checking of cleanliness of vessels' tanks, rail tank cars as well as of storage tanks at the Delivery and Re-Delivery Points.

## **11. LAYTIME AND DEMURRAGE AT DELIVERY POINT**

- 11.1. Discharge of vessels shall be performed at a berth at the Delivery Point. The relevant vessel must arrive at the pilot boarding area at the Delivery Point and tender Notice of Readiness (NOR) no later than 16:00 hours on the Confirmed Delivery Date.
- 11.2. In the event the relevant vessel arrives earlier than the Confirmed Delivery Date, OPERATOR shall not be responsible for the relevant vessel's resulting demurrage and/or berthing prior to commencement of the Confirmed Delivery Date, however OPERATOR shall make best endeavors to berth the relevant vessel as soon as is practical. In the event of the relevant vessel's arrival later than the Confirmed Delivery Date, OPERATOR shall make best endeavors to berth vessel as soon as is practical but shall not be responsible for the vessel's demurrage.
- 11.3. In the event of the late arrival of the relevant vessel, the discharge of such vessel may be delayed, as other vessel(s) arriving timely on their respective confirmed discharge dates will have priority. OPERATOR will endeavor to promptly position the late arriving vessels as soon as practically possible.
- 11.4. In the event the relevant vessel arrives on time, laytime shall commence six (6) hours after receipt of NOR or once the hoses have been connected, whichever occurs earlier.
- 11.5. In the event the relevant vessel arrives before the Confirmed Delivery Date, laytime shall commence at 06:00 hours on the Confirmed Delivery Date, or once the hoses have been connected, whichever occurs earlier.
- 11.6. In the event of vessel's late arrival, laytime shall commence once the hoses have been connected, as recorded in the statement of facts (SOF) of the vessel and countersigned by the operator of the Terminal.
- 11.7. Laytime, or if the vessel is on demurrage, demurrage, shall continue until the hoses and/or connections have been disconnected, as recorded in the statement of facts (SOF) of the vessel and countersigned by the operator of the Terminal.
- 11.8. Maximum laytimes, as follows, shall be allowed in which the COMPANY or its customer shall complete discharge and other customary port and vessel procedures of a vessel scheduled to discharge at a single berth at the Delivery Point shall be 24 hours.

11.9. Should laytime used by vessel exceed the laytime allowed due to any default acts or omissions by Customer's marine subcontractor, Customer agrees to indemnify and reimburse the Operator in respect of any additional documented expenses directly resulting therefrom, including but not limited to demurrage on other customer's vessel. Such demurrage shall be payable at the agreed rate for vessel's chartered by other company. This includes, but is not limited to, slow pumping and related delays of the Customer's vessel.

11.10. Should laytime used by vessel exceed the laytime allowed, for reasons other than those resulting from any default acts or omissions by Customer or Customer's marine subcontractor, OPERATOR agrees to reimburse demurrage on Customer's vessel.

11.11. Any time expended due to any of the following shall not count as used laytime or, if on demurrage, as time on demurrage:

- Awaiting the Inspector, inspection on board the relevant vessel, customs, immigration clearance, pratique, or other local administrative requirements;
- The relevant vessel's proceeding from anchorage to all fast at discharge berth and the relevant vessel's lining up;
- Restrictions imposed at the Delivery Point by authorities in Azerbaijan prohibiting, restricting or delaying unloading at any time, or any reasonable technical restrictions by OPERATOR resulting from the necessity to comply with the best industry practices;
- Cargo measurement and inspection on board a vessel and on shore tanks;
- Ballast operations including non-merchantable by-product if not conducted simultaneously to cargo operations
- Adverse weather or seas, either of which affects the Customer's vessel directly, including such caused delays commencing during laytime of the immediately previous vessels, which was delayed prior to Customer's vessel.
- Breakdown or inability of the relevant vessel's facilities to discharge cargo.

11.12. Vessel demurrage claims shall be presented no later than thirty (30) calendar days from the date of discharge of the Caspian vessel to which delivery operation the claim is referred. Otherwise it shall be considered that the claims are withdrawn. All the claims shall be presented together with the confirming documentation explaining all the constituent elements of the claim. Payment of demurrage claims shall be carried out within 10 working days after acceptance of the demurrage claim by a party.

## **12. RTCS DEMURRAGES, CUSTOMS PENALTIES**

12.1. RTC demurrage shall be calculated in accordance with the Agreement on International Goods Transport by Rail and relevant railways rules.

- 12.2. Customer shall be responsible for RTCs Demurrage and Customs penalties, unless RTC Demurrage and Customs penalties (where applicable) are caused by proven negligent acts or omissions of the Operator.
- 12.3. Operator shall exercise reasonable endeavors in minimizing RTCs demurrage whether accruing on its own account or on the account of Customer.
- 12.4. Parties shall negotiate in good faith any RTC demurrage and Customs penalties under this Clause. In case of Customer's disagreement with RTCs demurrage and Customs penalties claims presented by Operator, Customer shall have 30 (thirty) days from claim's receipt to substantiate their disagreement, otherwise RTCs Demurrage and Customs penalties claims shall be deemed as accepted.
- 12.5. In the case of arrest or detainment of Customer Cargo at any point en-route, due to any dispute between Azerbaijan and Georgia authorities and the Customer, all possible claims and demurrages, including, but not limited to the storage fees, shall be on Customer's account.

### **13. LIABILITY OF THE PARTIES. FORCE MAJEURE**

- 13.1. General principles of the Parties' liability hereunder shall be as follows:
  - 13.1.1. The Parties shall be liable for non-performance or unduly performance of their obligations under this Agreement in accordance with the applicable law and this Agreement.
  - 13.1.2. Each Party shall perform its obligations in a proper manner providing possible assistance to another Party
  - 13.1.3. The Party breaching its obligations under the present Agreement shall cure such breach immediately
  - 13.1.4. Any damage caused by the unduly performance or delay in performance of the present Agreement must be compensated by the Party at fault in the amount of actual losses incurred provided that, in no event shall Operator be liable to the Customer for any or all of the following:
    - (a) loss of business;
    - (b) loss of production;
    - (c) loss of revenue;
    - (d) loss of contract;
    - (e) indirect or consequential loss or damages;
    - (f) loss of reputation.
  - 13.1.5. The Operator shall be liable for inadequate performance of its obligations to the extent that such relates to its own performance under the present Agreement that shall be determined by the amount of direct losses incurred by the Customer.
  - 13.1.6. In case of delay or failure to comply with the delivery schedule of the Cargo at the Delivery Point through the Customer's fault (e.g. failing to settle port,

Terminal and customs formalities at the Delivery Point), the Customer shall be liable for the damage, inflicted on the Operator, including, but not limited to, demurrage of the oil tanker of the Caspian Shipping at the Delivery Point.

13.2. Neither Party shall be liable for damages incurred by non-fulfillment or untimely fulfillment of any obligations under this Agreement, with the exception of payment obligations, if this non-fulfillment or untimely fulfillment is a result of Force Majeure circumstances described below.

13.3. Notwithstanding anything to the contrary herein, nothing in this Agreement is intended, and nothing herein should be interpreted or construed, to induce or require either party hereto to act in any manner (including failing to take any actions in connection with a transaction) which is inconsistent with, penalized or prohibited under any laws, regulations applicable to such party which relate to foreign trade controls, export controls, embargoes or international boycotts of any type.

13.4. For the purposes of this Agreement Force Majeure means:

13.4.1. Any event or circumstance (whether caused by forces of nature, human activities or other reasons), being outside control of either Party affecting the Parties performance under this Agreement;

13.4.2. Interruptions in electric power supply by electricity provider

13.4.3. Natural disasters or anti-public actions, fires, explosions, earthquakes, marine risks, floods, strong wind, typhoons, droughts, declared or non-declared wars, mutinies, sabotages, public unrest, revolutions, accidents, suspensions or delays in transportation or construction, blockades, boycotts, strikes and other labor conflicts, embargoes, discontinuation or halts in performance of conventional means of freight transportation;

13.4.4. Interruption to transshipment services due to compulsory compliance with any laws, orders, resolutions, decrees, requirements, requisitions or requests of Customs authorities, transportation ministry, Rail road authorities, state transportation companies or service providers directly appointed by either state transportation companies or state transportation authority's of the Republic of Azerbaijan, or other government institutions, any international, national, port, local or other agencies or bodies of power, or any entities or individuals acting in the name of such agencies of borders of power, or any legal entities being under direct or indirect control of any of the above listed

13.5. The Party experiencing the influence of Force Majeure circumstances, shall immediately notify the other Party, providing necessary description of emerging circumstances and, where possible, evaluating the extent to which these circumstances may affect the business and possible duration of these circumstances. A Party so affected by Force Majeure shall use reasonable efforts to minimize the effect of Force Majeure upon the performance of this Agreement and shall resume performance as soon as reasonably possible after removal of the circumstances of Force Majeure.

13.6. In case the Force Majeure event lasts for more than 60 (sixty) days, each of the Party shall have the right to early terminate the present Agreement.

#### **14. CLAIMS, ARBITRATION AND GOVERNING LAW**

14.1. All the claims arising out of, in connection with or under the present Agreement, including claims on demurrage, shall be presented within 30 (thirty) days after the Cargo loading, as to demurrage claims, or when the Cargo delivery to Customer was completed, as to other claims; otherwise all the claims shall be denied.

14.2. The date of letter or fax message receipt (confirmed by receipt from the final mail office on the delivery of the letter) by the Party to which the claim is presented shall be the date of claim presentation

14.3. The Party receiving the claim shall consider it and respond in essence – either to confirm full or partial acceptance of the claim or to inform about full or partial rejection thereof not later than within 30 (thirty) days after actual receipt of the claim

14.4. All the claims shall be presented together with the confirming and supporting documentation that shall explain all the constituents of the claim

14.5. The responsibility of the Parties for breach or improper performance of their contractual obligations and this entire Agreement (including the matters of its effectiveness) shall be governed and construed by applicable English law excluding any choice of law rules that would transfer the matter in question to the laws of another jurisdiction

14.6. The Parties will attempt to amicably solve all disputes and controversies arising out or in regard to this Agreement. If the dispute is not settled within thirty (30) days after a Party notifies the other Party of the dispute, any Party shall have the right to transfer the dispute to arbitration in accordance with the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules as at present in force which Rules are deemed to be incorporated by reference into this Clause; provided, however, that to the extent that there are any conflicts between the UNCITRAL Rules and the provisions of this Agreement, the provisions of this Agreement shall govern

14.7. The language to be used in the arbitration proceedings shall be English. The place of arbitration shall be London, England. The arbitration court shall consist of three arbitrators: each Party shall appoint one arbitrator and the appointed two arbitrators shall jointly appoint the third arbitrator, who shall be the chairman of the court

14.8. The arbitral award shall contain the reasons upon which the award is based. The judgment upon the award of the arbitrator may be entered in any court having jurisdiction over the award or the Parties or any of them. The Parties acknowledge and agree that this Agreement and all awards rendered pursuant to it shall be governed by the 1958 United Nations Convention on Recognition and Enforcement of Foreign Arbitration Awards

14.9. The right to arbitrate disputes arising from this Agreement shall survive the termination of this Agreement

14.10. The Parties undertake to enforce the arbitral decision within time-frame specified therein and in compliance with the UNCITRAL Arbitration Rules

## 15. NOTICES

15.1. Any notice shall be in writing and sent with the personal delivery, telex or other means of communication (including facsimile messages).

15.2. Personal delivery notices shall be considered as presented and received on the date of practical receipt. Notices by telex or by other means of communication shall be considered as presented on the date of sending and received on the date following the date of its sending. In any case if the Party shall or is allowed to respond to the notice within the agreed period, such period shall start from the date of receipt and the response is considered to be timely given if it is sent until the last day of this period

15.3. The Party that has changed its address and bank details shall present a written notice to this effect to the other Party within three days

15.4. Contact details of the Parties (for coordination of operational matters only)

“Azertrans Ltd” LLC

Address: Boyuk Gala 37, Baku, Azerbaijan

Fax: +994 12 437 28 27

Tel: +994 12 497 63 11

E-mail: office@azertrans.az

Customer: \_\_\_\_\_

Address:

Fax:

Tel:

E-mail:

15.5. The Customer shall represent and warrants that it has not dealt and will not deal with the parties and/or cargos subject directly or indirectly to any applicable sanctions and/or restrictions imposed by Azerbaijan Republic, Republic of Georgia, the US, the EU and/or by international bodies. The Customer shall hold the Operator fully indemnified and harmless in connection with the breach of such representation by the Customer. In the event of such breach the Operator shall have the right to unilaterally terminate this Agreement at no cost to the Operator

15.6. The Customer shall have no right to perform in-tank transfers or any other title transfers while the Cargo is in-transit mode as it is required by the applicable laws and custom rules and regulations.

15.7. Additional Representations and Covenants: On the basis of the laws and international treaties of the Republic of Azerbaijan (e.g. the Law of the Azerbaijan Republic No 535IQ of 1998) Operator requires the Customer to make certain representations and covenants and accordingly, the Customer agrees that transshipment of Customer's



Cargo transported under the terms of the this Agreement through the territories of Azerbaijan and/or Georgia to the Redelivery Point and onwards to its final destination shall be expressly subject to the following representations and covenants:

- 15.8. The Customer has not and shall not knowingly transport, ship, sell or otherwise dispose of the Customer's Cargo transported under the terms of this Agreement to the Republic of Armenia or, to the best of its knowledge and belief, to any person of the Republic of Armenia or to any person who is likely to transport, export or dispose such cargo to the Republic of Armenia or any person of the Republic of Armenia; and
- 15.9. The Customer has not and shall not knowingly transport, sell or otherwise dispose of the Customer's Cargo transported under the terms of this Agreement to any person or legal entity incorporated in or doing business in Georgia, which in the Customer's judgment is likely to transport, ship, sell or otherwise dispose of the Customer's Cargo to the Republic of Armenia or to any entity or person of the Republic of Armenia, or otherwise breach the transit customs regime under laws of the Azerbaijan Republic or Georgia.

## **16. TERMINATION OF THE AGREEMENT**

- 16.1. The present Agreement shall be terminated on the following grounds:
- 16.2. Complete fulfillment by the Parties of their obligations under the present Agreement, including Annexes and Addendums to it;
- 16.3. Termination upon the mutual consents of the Parties in writing and signed by authorized representatives of the Parties.
- 16.4. Other grounds stipulated in this Agreement

## **17. INTERPRETATION**

- 17.1. The Parties acknowledge that the present Agreement presents an entire agreement and mutual understanding between the Parties in regards with the subject of the Agreement.
- 17.2. The titles of the Clauses in the present Agreement are used for the convenience of reference and shall not be regarded as constituent elements of the present Agreement.

## **18. CLOSING AND TRANSITIONAL STATEMENTS**

- 18.1. Confidentiality
  - 18.1.1. The Parties acknowledge that the contents of the present Agreement shall be strictly confidential and the Parties undertake to keep confidential from the moment of signing the Agreement.
  - 18.1.2. The content of all the Appendices and supplements to the present Agreement shall also be confidential. The duty of keeping confidentiality in respect of Appendices and supplements arises from the moment of signature of the corresponding Appendix, Annexes and supplements

- 18.2. The Parties are entitled to disclose the confidential information to third parties without consent of the other Party in the following cases
- If such an information is used in the course of dispute resolution process in the manner prescribed by the applicable law;
  - When the information is tendered to third parties rendering services to a Party on condition that this third person undertakes to consider such information as confidential and use it only for the purposes determined by the Parties;
  - On the demand of the state authorities of the countries of the Parties, as may be required by the jurisdiction of either Party.
  - The Customer shall not reproduce, present, refer, publish, share (all such actions individually or in any combination) unless a writing consent of the Operator on a per case basis is obtained for only such agreed case and in the agreed scope. Shall the Customer fail to obtain the Operator's consent to reproduce, present, refer, publish, share (all such actions individually or in any combination) on per case basis either because of (i) rejection by the Operator of Customer's request, (ii) ignoring by the Operator of Customer's request, (iii) the Customer not requesting the Operator's consent, then at all times the Customer shall be responsible for all losses, damages, expenses, fines, penalties, lost revenues and/or profits, loss of reputation, loss of other client (all individually or in any combination) of the Operator directly or indirectly arising of such action or inaction by the Customer.
- 18.3. After expiration of the Agreement's validity and/or its termination, liabilities of the Parties regarding confidentiality observance shall be in force for the following 3 (three) years
- 18.4. Neither Party may transfer any of its rights under this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld
- 18.5. This Agreement constitutes a waiver of and replacement for all previous memoranda or Agreements concluded between the Parties earlier whether in verbal or in written form, pertaining to subject of this Agreement
- 18.6. All the Appendices, amendments and supplements to the present Agreement accepted upon mutual agreement of the Parties and put in the written form shall constitute an integral part of the present Agreement
- 18.7. If any provision of this Agreement is held to be invalid or unenforceable, then such provision shall be given no effect and shall be deemed not to be included in this Agreement without invalidating any of the remaining provisions of this Agreement. The Parties shall then use their best efforts to replace each invalid or unenforceable provision by a valid and enforceable substitute provision
- 18.8. The matters not provided for under the present Agreement shall be resolved in accordance with provisions of the applicable law
- 18.9. This Agreement is signed in 2 (two) original copies in English language, one copy for each Party, and all originals shall have the same legal force.

**IN WITNESS THEREOF**, the Parties caused this Agreement to be executed on the date set forth in the first page of the Agreement.

**OPERATOR:**

**CUSTOMER:**

**Azertrans Ltd**

\_\_\_\_\_

By : \_\_\_\_\_

By : \_\_\_\_\_

Name : Mr. Parviz Aliyev  
Title : General Director

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