Consultation Paper
CP No. 07-003

Date
21 November 2007

Recipients
All DME Members

From
Gary King, Chief Executive Officer

Category
Business Development

Proposal
Proposed Rule changes: amendments to certain terms of the DME Oman Crude Oil Futures Contract.

Consultation Paper 07-003 is issued in accordance with Dubai Mercantile Exchange Limited (DME) Rule 4.21 and Section 9 of the Authorised Market Institutions Module of the Dubai Financial Services Authority (DFSA) Rulebook. This Consultation Paper seeks comments on proposals to amend the DME Rulebook:

- to make a number of amendments to Chapter 10 (the Oman Crude Oil Futures Contract).

To whom does this Consultation Paper apply?
Consultation Paper 07-003 is directed primarily at DME Members and other users or prospective users of DME's facilities. DME also welcomes any comments from any organisation which represents groups of such users or prospective users.

How is this structured?

New terms to DME Oman Crude Oil Futures Contract

DME proposes to make a number of amendments to the terms of its Oman Crude Oil Futures Contract, set out in Chapter 10 of the DME Rulebook. The amendments are set out in the Appendix to this Consultation Paper 07-003.

The new terms would:

- replace the existing fixed loading tolerance (+/-1000 barrels) with a more flexible percentage tolerance (+/- 0.2%)

- remove Clearing Members from the title chain, reinforcing their role as financial guarantors of the buyer and seller

- impose a time limit on the parties' right to agree an alternative delivery procedure

- remove the restriction on the buyer's preferred laydays.

Open DME Crude Oil Futures Contracts

The proposed amendments shall be valid and applicable retroactively to any DME Oman Crude Oil Futures Contacts which remain open/unsettled at the time of the implementation of the Rule changes.

Rationale for the Rule Changes

There are four principal changes to the Oman Crude Oil Futures Contract. DME believes, from market feedback, that the product has enjoyed excellent performance through its first five months. Nevertheless, through DME's continuing dialogue with its market participants, DME has identified areas where the Contract can be further improved. In addition, DME proposes a change to reflect new Oman Ministry of Oil and Gas policy with respect to end of month nominations. This would greatly facilitate the fungibility of the OTC market with the established and proven performance of the DME Futures Contract.

1. Rule 10.11(C)(3): DME proposes to amend the loading tolerance for all deliveries via the DME to plus or minus 0.2% instead of the fixed tolerance of plus or minus 1,000 barrels. This should avoid the potential for mismatching tolerances between matching multiple sellers to a single buyer (and vice versa) which may arise under the fixed tolerance provision. The change has been approved in principle by Petroleum Development of Oman.

2. Rule 10.12 and 10.15: The proposed amendments effect a change of title flow, to simplify the structure title and documentation flow, by removing the Clearing Member from the title chain, and instead, reasserting their role as financial guarantors of their customers. This is also the well-proven NYMEX model for physically deliverable contracts, and resembles the OTC title and documentation process. It is a logical and pragmatic way to simplify the process, yet still provides robust controls and oversight of the delivery process by the Exchange, its Clearing Members and customers of the Clearing Members.

3. Rule 10.14: The amendment imposes a final day and time by which customers can agree to adopt an alternative delivery procedure. This enhances clarity of understanding.

4. Chapter 10, Appendix A,3(2)(i): the need to restrict requested layday nominations for DME customers is no longer necessary. The Oman Ministry of Oil and Gas has adopted practice from other oil producers, and the DME, to determine prices for cargoes not on the Bill of Lading date but rather on the layday confirmation. This should prevent an OTC customer gaming its contract at the end of the month to seek a financial gain, by loading in one month rather another because of increases or decreases between the relative months' official selling prices. The proposed change should also eliminate any basis risk between an OTC contract and a DME contract and will therefore add both to liquidity and transparency of price for Oman crude oil.

How to provide comments?
The deadline for providing comments on the proposals in this Consultation Paper is twenty eight calendar days from the date of this Consultation Paper. All comments on the proposed changes should be addressed to:

Thomas Leaver, Chief Operating Officer
Dubai Mercantile Exchange Limited

DIFC Building 2, 3rd Floor
PO Box 66500
Dubai
United Arab Emirates
or thomas.leaver@dubaimerc.com

What is the next step?
Unless specifically requested otherwise, DME may publish on its website any comments it receives in this consultation.

As soon as practicable following the deadline for comments on the proposals in this Consultation Paper, DME will consider whether any amendment or revision to the proposed changes is appropriate. DME will then implement the changes to the DME Rulebook (including any amendment or revision, if appropriate). The amendments to the DME Rules will only take effect once approved by the DFSA. DME will issue a Member Notice on the DME website confirming the date upon which the changes to the DME Rules will become effective.

Appendix
Appendix 1 is below

Signed

Gary King
Chief Executive Officer

Please pass comments to:
Thomas Leaver, Chief Operating Officer
thomas.leaver@dubaimerc.com

APPENDIX TO CONSULATION PAPER 07-003

Chapter 10 DME Oman Crude Oil Futures Contract

Table of Contents

10.1	Scope	1
10.2	Definitions	1
10.3	Grade and Quality Specifications	3
10.4	Contract Value	3
10.5	Contract Months	3
10.6	Prices and Price Fluctuations	3
10.7	Trading Hours	3
10.8	Termination of Trading	~~4~~3
10.9	Final Settlement Price	~~4~~3
10.10	Availability for delivery	4
10.11	Procedures for Physical Delivery	4
10.12	Making and Taking Delivery, and Risk and Property	5
10.13	EFPs and EFSs	7
10.14	Alternative Delivery Procedures	7
10.15	Margins and Payment	8
10.16	Non-Performance of Delivery Obligations	9
10.17	The Delivery Committee	~~10~~9
10.18	Failure to Perform: Clearing House Action and Appeals	12
10.19	Arbitration Procedure	14
10.20	Taxes, Duties and Imposts	14
10.21	Applicable Law	14
10.22	Appointment of Experts	14
10.23	Limitation of Liability	15
10.24	Decisions with respect to the Loading Port	15

Appendix A – Physical Delivery Procedures **16**

Appendix B – Letter of Indemnity **24**

10.1 Scope

The provisions of Chapter 10 (which include the Appendices) shall apply to all contracts bought or sold on the Exchange for future delivery of Oman crude oil of normal export quality.

10.2 Definitions

For the avoidance of doubt, terms defined in Chapter 1 of these Rules that are used in this Chapter 10 shall have the meanings given to them in Chapter 1 of these Rules. For the purpose of this Chapter 10, the following terms shall have the following meanings, unless the context otherwise requires:

(1) **Barrel** means forty-two (42) US standard gallons of two hundred and thirty-one (231) cubic inches per gallon corrected for temperature to sixty (60) degrees Fahrenheit.

~~(2) **Buyer** means:~~

~~(a) in relation to a Contract to which the Clearing House is party, the Buyer Clearing Member; and~~

~~(b) in relation to a Contract between a Clearing Member and its customer, the party to that contract with a long position.~~

(2) ~~(3)~~ **Buyer Clearing Member** means in relation to a Contract to which the Clearing House is party, the long Clearing Member.

(3) ~~(4)~~ **Buying Customer** shall mean the customer of a Buyer Clearing Member or such Buyer Clearing Member if the Buyer Clearing Member is acting for its own account.

(4) ~~(5)~~ **Clearing Business Day** means a day on which the Clearing House is open for the processing and clearing of Exchange Contracts.

(5) ~~(6)~~ **Customer** means a Buying Customer or Selling Customer.

(6) **Delivery Contract** has the meaning given to it in Rule 10.12.

(7) **Delivery Month** means the month in which the Oil is to be delivered and received as specified by the Exchange.

(8) **Demurrage Rules** means the rules and procedures governing the charges paid for detaining a ship or other cargo carrier at the Loading Port for longer than the agreed laytime.

(9) **Failure to Perform** means in respect of a Buyer Clearing Member or Seller Clearing Member, its failure or that of its Customer to perform its obligations for the purposes of making or taking delivery of Oil in accordance with the terms of the Contract (and **Failed to Perform** shall be construed accordingly).

(10) **Final Settlement Price** has the meaning given to it in Rule 10.9.

(11) **Force Majeure Event** shall mean any circumstance (including but not limited to a strike, lock-out, national emergency, governmental action, or act of God) which is beyond the control of the affected Clearing Member and its Customer, and which prevents such Clearing Member or Customer from performing its respective obligations for the purposes of making or taking delivery of Oil in accordance with the terms of the Contract or Delivery Contract.

(12) **ISPS Code** means the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS.

(13) **Laydays** means those days that are the accepted days for loading a Parcel.

(14) **Letter of Indemnity** shall mean a letter of indemnity in the form set out in Appendix B to this Chapter 10.

(15) **Loading Port** means the Mina Al Fahal Terminal, Oman.

(16) **Oil** means crude oil for delivery F.O.B. at the Loading Port pursuant to a Contract.

(17) **Oman Futures Contract** or **Contract** means the Oman crude oil futures contract to which this Chapter 10 applies.

(18) **Party** means~~ a Buyer or a Seller.~~:

(a) in the Physical Delivery Procedures, a Selling Customer or a Buying Customer; and

(b) in all other cases, a Seller Clearing Member or a Buyer Clearing Member.

(19) **Physical Delivery Procedures** means Appendix A to this Chapter 10.

(20) **Prior Month** means the month immediately prior to the Delivery Month.

~~(21) **Seller** means:~~

~~(a) in relation to a contract to which the Clearing House is party, the Seller Clearing Member; and~~

~~(b) in relation to a contract between a Clearing Member and its Customer, the party to that contract with a short position.~~

(21) ~~(22)~~ **Seller's Suppliers** means any person being a direct or indirect source of supply for the ~~Seller~~Selling Customer.

(22) ~~(23)~~ **Seller Clearing Member** means in relation to a Contract to which the Clearing House is party, the short Clearing Member.

(23) ~~(24)~~ **Selling Customer** shall mean the customer of a Seller Clearing Member or such Seller Clearing Member if the Seller Clearing Member is acting for its own account.

(24) ~~(25)~~ **Senior Clearing House Officer** means a senior officer of the Clearing House.

(25) ~~(26)~~ **Singapore Business Day** means a day (other than a Saturday or Sunday) on which banks in Singapore are open for the normal conduct of banking business.

(26) ~~(27)~~ **Terminal Operator** means Petroleum Development Oman L.L.C. or its successor as operator of the Loading Port.

(27) ~~(28)~~ **Vessel** means the tanker transporting the Oil.

10.3 Grade and Quality Specifications

The Oil must be the same quality as the oil generally being supplied at the Loading Port at the time of loading. This Rule 10.3 constitutes the whole of ~~Seller~~Selling Customer's and Selling Clearing Member's obligations with respect to the quality of Oil to be supplied and (to the extent permitted by law) all statutory or other conditions or warranties with respect to the description, merchantability or quality of the Oil or its fitness for any purpose are hereby excluded.

10.4 Contract Value

The contract value shall be the Final Settlement Price multiplied by one thousand (1,000) multiplied by the number of Contracts to be delivered.

10.5 Contract Months

Trading shall be conducted in such Contract Months as shall be determined by the Exchange. Trading in a Contract Month shall commence on the day fixed by the Exchange.

10.6 Prices and Price Fluctuations

Prices shall be quoted in US dollars and cents per Barrel. The minimum price fluctuation shall be 1 cent ($0.01) per Barrel. There shall be no maximum price fluctuation limits.

10.7 Trading Hours

The Exchange shall determine the trading hours from time to time.

10.8 Termination of Trading

Trading in the current Contract Month shall cease on the last Trading Day of the second month preceding the Delivery Month that is a Singapore Business Day and a Clearing Business Day.

10.9 Final Settlement Price

The final Settlement Price for a Contract Month shall be the Settlement Price for the last Trading Day of the Contract Month. The Settlement Price for the last Trading Day of the Contract Month shall be determined as at 16.30 (Singapore time) using the same procedures as those set out at Rule 6.26 (the **Final Settlement Price**). The Exchange shall publish the Final Settlement Price on the last day of trading in that Contract Month. The Final Settlement Price will be used for purposes of margins for delivery of the Oil.

10.10 Availability for delivery

A Seller Clearing Member shall for the purposes of Clearing House Rule 9.19, be regarded as in a position to fulfil its contractual obligation only if, prior to one (1) hour before the close of trading in the applicable Contract Month, such Seller Clearing Member has received from the Selling Customer a certification, in the form prescribed by the Clearing House, stating that the Selling Customer has or will have in position at the Loading Port, a quantity and quality of oil sufficient to meet the Seller Clearing Member's obligations to make delivery when and as prescribed by these Rules; provided, however, that the receipt of such certification shall not relieve the Seller Clearing Member of any obligations under any Rule of the Clearing House or the Exchange, other than Clearing House Rule 9.19.

10.11 Procedures for Physical Delivery

(A) **Notice Of Intention To Accept**

Clearing Members having open long positions after trading has ceased shall give the Clearing House a notice of intention to accept delivery (**Notice of Intention to Accept**) by 14.00 (New York time) on the first (1st) Clearing Business Day after the day trading ceases. The Notice of Intention to Accept shall be in the form prescribed by the Clearing House, shall be properly completed and signed, and shall indicate the name(s) of the Buying Customer(s), the number of contracts to be accepted, and such additional information as may be required by the Clearing House.

(B) **Notice Of Intention To Deliver**

Clearing Members having open short positions after trading has ceased shall give the Clearing House a notice of intention to deliver (**Notice of Intention to Deliver**) by 14.00 (New York time) on the first (1st) Clearing Business Day after the day trading ceases. The Notice of Intention to Deliver shall be in the form prescribed by the Clearing House, shall be properly completed and signed, and shall indicate the names of the Selling Customer(s), the number of contracts to be delivered and any additional information as may be required by the Clearing House.

(C) **Matching Procedures And Notification**

(1) The Clearing House will aggregate the positions held in respect of the same Customer by Buyer Clearing Members and Seller Clearing Members and then match the aggregate long position held in respect of a Customer by one or more Clearing Members with one or more aggregate short positions held in respect of one or more Customers by one or more Clearing Members. The criteria for matching will be determined by the Clearing House and shall take into account in respect of each aggregate position:

(i) the total quantity of Oil for which the Buying Customer or Selling Customer must make or take delivery; and

(ii) whether the total quantity of Oil for which the Buying Customer or Selling Customer must make or take delivery is greater than or equal to two hundred thousand (200,000) Barrels.

(2) The Clearing House shall carry out the following activities by 15.01 (New York time) on the first (1st) Clearing Business Day after the day trading ceases in the applicable Contract Month:

(i) the Clearing House shall notify each Buyer Clearing Member and Seller Clearing Member of the identity of each ~~Party~~Selling Clearing Member and Buying Clearing Member to which it has been matched and that of each such Party's corresponding Customer;

(ii) the Clearing House shall allocate Notices of Intention to Deliver and Notices of Intention to Accept (each a **Notice**) to the ~~Buyer or Seller~~Selling Clearing Member and Buying Clearing Member or Selling Clearing Member matched to the Party that gave the Notice; and

(iii) the Clearing House shall give copies of the Notices to the Exchange and the respective Customers of the Clearing Members.

(3) The Oil must be delivered within a loading tolerance of plus or minus ~~one thousand (1,000) Barrels~~0.2 percent.

10.12 Making and Taking Delivery, and Risk and Property

(A) The ~~Seller~~Selling Customer is obliged to:

(1) subject to the terms of this Chapter 10 and for each position that has been matched pursuant to Rule 10.11, make delivery to the delivery counterparty in respect of that match;

(2) give all notices and other communications and provide all documents required of it under this Chapter 10;

(3) make delivery in accordance with this Chapter 10 at the Loading Port on the actual Laydays determined in accordance with this Chapter 10;

(4) ~~subject to Rule 10.12(C),~~ insofar as delivery is not completed within the actual Laydays, pay any additional delivery fees and demurrage for which it is responsible under the Contract or in accordance with good industry practice;

(5) comply generally with the terms of this Chapter 10; and

(6) make delivery in accordance with applicable law.

(B) The ~~Buyer~~Buying Customer is obliged to:

(1) subject to the terms of this Chapter 10 and for each position that has been matched pursuant to Rule 10.11, take delivery from the delivery counterparty in respect of that match;

(2) give all notices and other communications and provide all documents required of it under this Chapter 10;

(3) take delivery in accordance with this Chapter 10 at the Loading Port on the Laydays determined in accordance with this Chapter 10;

(4) promptly take up documents and make payment in accordance with Rule 10.15;

(5) comply generally with the terms of this Chapter 10; and

(6) take delivery in accordance with applicable law.

(C) **Delivery Contract**

~~(C) The obligation set out at Rule 10.12(A)(4) and any other obligation of the Seller within the terms of this Chapter 10 to pay any additional delivery fees or demurrage in relation to delayed delivery shall not be borne by the Clearing House but shall be owed by the Seller directly to its Buyer. For the purpose of this paragraph,~~(1) For the purpose of this Rule 10.12, there shall be a contract between each ~~Buyer~~Selling Customer and ~~Seller~~Buying Customer (the ~~**Demurrage**~~**Delivery Contract**), which ~~shall have as consideration on either side the performance by the Buyer and Seller of the relevant Contract to which it is a Party,~~ shall be governed by and construed in accordance with English law and shall be subject to the Rules. ~~The Buyer and Seller~~ The terms of the Delivery Contract are those obligations specified to apply to the Selling Customer and Buying Customer in this Chapter 10.

(2) The Buying Customer and the Selling Customer each agree that it is familiar with the current Demurrage Rules issued by the Terminal Operator and agree that ~~these~~the Demurrage Rules as amended from time to time, shall govern the calculation of demurrage due under the ~~Demurrage~~Delivery Contract, except to the extent that ~~it~~the Demurrage Rules conflicts with the terms of this Chapter 10.

~~(D) The~~ (D) **Demurrage** ~~Contract shall include the terms set out below.~~

(1) Any costs or expenses in respect of the Vessel including demurrage or any additional charge, fee or duty levied on the Vessel at the Loading Port and actually incurred by the ~~Buyer~~Buying Customer resulting directly from the failure of the Loading Port to comply with the ISPS Code, shall be for the account of the ~~Seller~~Selling Customer, including but not limited to the time required or costs incurred by the Vessel in taking any action or any special or additional security measures required by the ISPS Code.

(2) Save where the Vessel has failed to comply with the requirements of the ISPS Code, the ~~Seller~~Selling Customer shall be responsible for any demurrage actually incurred by the ~~Buyer~~Buying Customer arising from the delay to the Vessel at the Loading Port resulting directly from the Vessel being required by the Terminal Operator to take any action or any special or additional security measures or undergo additional inspections by virtue of the Vessel's previous ports of call.

(3) The ~~Seller~~Selling Customer's liability to the ~~Buyer~~Buying Customer in respect of a matched delivery under this Chapter 10 for any costs, losses or expenses incurred by the Vessel, the charterers of the Vessel or the Vessel owners resulting from the failure of the Loading Port to comply with the ISPS Code shall exclude the payment of demurrage and costs not actually incurred by the

~~Buyer~~Buying Customer in accordance with the provisions of this Rule 10.12 and Paragraph 5 of the Physical Delivery Procedures.

(4) No claim under a Demurrage Contract shall be entertained unless the fully documented claim is received (or if not all documents are available to the ~~Buyer~~Buying Customer, notice of formal claim is advised by the ~~Buyer~~Buying Customer with an estimate of the amount of the claim) within 40 days from the date of the bill of lading.

(5) The documentation to be submitted with the claim shall include all information required by the Terminal Operator under ~~its~~the Demurrage ~~rules and procedures~~Rules. Any documents not available on the date of formal claim but which the Terminal Operator requires shall be provided to the ~~Seller~~Selling Customer within 80 days from the date of the bill of lading.

(6) The ~~Buyer~~Buying Customer shall not be entitled to recover demurrage from the ~~Seller~~Selling Customer except to the extent that the ~~Seller~~Selling Customer is able to recover such demurrage from the Seller's Suppliers and the ~~Seller~~Selling Customer shall not be obliged to pay any amounts in excess thereof. The ~~Seller~~Selling Customer shall however use reasonable endeavours to recover from the Seller's Suppliers any demurrage for which the Buyer has presented a claim in accordance with the terms of the ~~Demurrage~~Delivery Contract.

(7) If the Vessel concerned loads Oil under a Contract as well as other Oil at the Loading Port, the ~~Seller's~~Selling Customer liability to the ~~Buyer~~Buying Customer under the ~~Demurrage~~Delivery Contract in respect of that Contract shall be limited to that proportion of the total demurrage due that is equal to the ratio of the Oil loaded under the Contract in relation to the total quantity of Oil loaded on the Vessel concerned at the Loading Port.

(E) Any dispute arising from a ~~Demurrage~~Delivery Contract and any question whether a Seller or Buyer is party to a ~~Demurrage~~Delivery Contract shall be referred to arbitration under the Arbitration Rules as if the ~~Demurrage~~Delivery Contract were a Contract.

(~~E~~F) The risk and property in the Oil delivered under the terms of ~~this Chapter 10~~the Delivery Contract shall pass to the ~~Buyer~~Buying Customer at the Loading Port as the Oil passes the loading Vessel's permanent hose connection. Any loss of or damage to the Oil during loading, if caused by the Vessel or her officers or crew, shall be for the account of the ~~Buyer~~Buying Customer.

10.13 EFPs and EFSs

(A) An EFP or EFS must be posted before 23.00 (Singapore time) on the day during which the last Trading Day in the Contract Month ends otherwise it shall not be valid and effective. An EFP or EFS transaction must be posted into the appropriate NYMEX clearing system as advised by the Exchange from time to time.

(B) Any EFP or EFS shall be governed by the provisions of Rule 6.24.

(C) Each ~~Buyer and Seller~~Clearing Member must satisfy the Exchange at its request that the transaction is a legitimate EFP or EFS transaction. All documentary evidence relating to

the EFP or EFS, including (without limitation) evidence as to change of ownership of the physical commodity or swap commitment, shall be obtained by the Clearing Members from their Customers and made available by the Clearing Members for examination by the Exchange upon request.

10.14 Alternative Delivery Procedures

(A) Where the Clearing House has under Rule 10.11(C) matched a position of a Seller Clearing Member with a position of a Buyer Clearing Member, the Customers in respect of the matched positions may agree to make and take delivery under terms and conditions that differ from the Rules of this Chapter 10. In such a case, the Clearing Members shall execute an alternative notice of intention to deliver on the form prescribed by the Clearing House (an **Alternative Notice of Intention to Deliver**) and shall deliver a completed executed copy of such Alternative Notice of Intention to Deliver to the Clearing House by 18.00 (Singapore time) on the first actual Layday. Except where Clearing House agrees otherwise, no Alternative Notice of Intention to Deliver shall be effective unless a completed executed copy is delivered in accordance with the previous sentence.

(B) The delivery of an executed Alternative Notice of Intention to Deliver to the Clearing House in accordance with Rule 10.14(A) shall release the Seller Clearing Member and Buyer Clearing Member and the Clearing House from their respective obligations in respect of the Contracts relating to the matched position. Upon receipt of an executed Alternative Notice of Intention to Deliver, the Clearing House shall release any delivery margins it holds with respect to the Contracts to which the Clearing House is party.

(C) In executing an Alternative Notice of Intention to Deliver, Clearing Members shall indemnify the Clearing House against any liability, cost or expense it may incur for any reason in connection with a Contract to which the Alternative Notice of Intention to Deliver relates.

10.15 Margins and Payment

(A) By 11.00 (New York time) on the final Business Day of the Prior Month, the Buyer Clearing Member shall obtain from the Buying Customer margin equal to the full value of the product to be delivered. Such margin shall be in a form acceptable to the Clearing House.

(B) The Seller Clearing Member shall obtain from the Selling Customer margin in a form acceptable to the Clearing House in an amount fixed from time to time by the Clearing House. The Buyer Clearing Member shall obtain from the Buying Customer margin in a form acceptable to the Clearing House in an amount fixed from time to time by the Clearing House.

(C) For the avoidance of doubt, the forms of margin acceptable to the Clearing House include a letter of credit deposited with the Clearing House in a form approved by the Clearing House, that is issued or approved by a Clearing House approved original margin depository and is drawn in favour of the Clearing House.

(D) The Buyer Clearing Member and Seller Clearing Member shall provide delivery margins to the Clearing House in such amounts and in such form as required by the Clearing House.

(E) The ~~Buyer Clearing Member~~Buying Customer shall pay the ~~Seller Clearing Member~~Selling Customer in respect of a delivery of Oil and payment shall be due on the later of:

(1) the day thirty (30) days after the date of the bill of lading; and

(2) on the date of presentation of the following documents applicable to the delivery:

(i) a full set (original, duplicate and triplicate) of clean original bills of lading made out or enforced to the order of the ~~Buyer~~Buying Customer;

(ii) an invoice complying with the requirements of this Rule 10.15 (**Seller's Invoice**);

(iii) a certificate of quantity and quality;

(iv) a certificate of origin;

(v) a cargo manifest;

(vi) a ullage report;

(vii) a Vessel loading time sheet; and

(viii) a receipt for any sealed sample of the cargo provided by the ~~Seller~~Selling Customer,

(the **Delivery Documents**).

If any or all of the Delivery Documents are not presented, the ~~Buyer Clearing Member~~Buying Customer may agree to pay the ~~Seller Clearing Member~~Selling Customer for the delivery against presentation of those Delivery Documents that are presented and a Letter of Indemnity for the missing Delivery Documents duly executed by the ~~Seller Clearing Member~~Selling Customer or, if the ~~Buyer~~Buying Customer chooses, duly executed and given jointly and severally by the ~~Seller Clearing Member~~Selling Customer and the ~~Seller Clearing Member's settlement~~Selling Customer's bank. If the day on which payment would otherwise be due under this Rule 10.15(E) is not a Business Day, payment shall be due on the nearest preceding Business Day (the **Payment Date**).

(F) The Seller's Invoice shall be based on the quantity of Oil delivered under the Contract, determined so as to reflect the quantities determined in accordance with Paragraph 2 of the Physical Delivery Procedures. The amount payable on the Payment Date in respect of the delivery shall be the Contract Value adjusted for the quantity of Oil delivered under the Contract, determined so as to reflect the quantities determined in accordance with Paragraph 2 of the Physical Delivery Procedures.

(G) Unless otherwise agreed, the payment of any other costs, expenses or charges payable by the ~~Buyer Clearing Member~~Buying Customer that arise under this Chapter 10 shall be made against presentation of the Seller's Invoice (or any other invoice from the ~~Seller Clearing Member~~Selling Customer) and shall be for immediate settlement by the ~~Buyer Clearing Member~~Buying Customer on or by the date advised therein.

(H) Not later than 12:00 (New York time) on the third (3rd) Business Day prior to the Payment Date, the Selling Customer shall advise, by fax, the Seller Clearing Member of the bank account to which payment shall be made. The Seller Clearing Member shall advise the Buyer Clearing Member who shall advise Buying Customer.

(I) On the Payment Date, ~~on account of the Buyer Clearing Member's payment obligation under 10.15(E),~~ the Buying Customer shall pay the Selling Customer the amount payable under 10.15(F). Payment shall be made by bank transfer to the bank account nominated by the Selling Customer. Not later than 12:00 (New York time) the Buying Customer shall advise, by fax, the Buyer Clearing Member of the details of the transfer of funds. The Buyer Clearing Member shall advise, by fax, the Seller Clearing Member who shall similarly advise the Selling Customer.

(J) The Selling Customer shall notify the Seller Clearing Member that it has received payment not later than the Business Day following the date of receipt. Where payment has been received, the Seller Clearing Member shall deliver a notice of payment to the Buyer Clearing Member with a copy to the Clearing House not later than the Business Day following the date payment is made. Where the Selling Customer has not received payment on or before the Payment Date, it shall notify the Seller Clearing Member that payment has not been received.

(K) If the Seller Clearing Member receives notification that payment has not been received, it shall advise the Clearing House in writing. On the following Business Day, unless the Buyer Clearing Member or Buying Customer have notified the Clearing House that the Seller Clearing Member has Failed to Perform, the Clearing House shall liquidate the margins held and, when liquidation is complete, shall pay the Seller Clearing Member, which shall pay the Selling Customer.

(L) All payments to be made under this Chapter 10 shall be made in dollars and shall be made free of all charges and without asserting at the time for payment any set-off, counterclaim or right to withhold whatsoever.

10.16 Non-Performance of Delivery Obligations

(A) The Seller Clearing Member and the Buyer Clearing Member are each responsible to the Clearing House for their respective obligations and those of their respective Customers under the provisions of this Chapter ~~10 (except for the obligations of a Seller referred to in Rule 10.12(C) as being not borne by the Clearing House).~~10.

(B) When a Seller Clearing Member or a Buyer Clearing Member has Failed to Perform, the Buyer Clearing Member or Seller Clearing Member, as the case may be, shall be liable to the Clearing Member with which its position has been matched pursuant to Rule 10.11 for any damages awarded pursuant to Rule 10.19 and to the Clearing House for any assessments made pursuant to Rule 10.18.

10.17 The Delivery Committee

(A) If it appears to the Clearing House that a Seller Clearing Member or Buyer Clearing Member has Failed to Perform, or may have Failed to Perform the Clearing House will, as soon as is practicable, take such steps as it deems appropriate to help achieve an amicable settlement between the ~~Parties~~parties to the affected ~~Contracts~~Contract (including any affected Customer).

(B) The Clearing House may refer a Failure to Perform (or possible Failure to Perform) to the Oman Petroleum Delivery Committee (**OPDC**) if in the opinion of the Clearing House the Failure to Perform (or possible Failure to Perform):

(1) is by the Seller Clearing Member, concerns the quantity or quality of Oil that has been delivered, would not entitle the ~~Buyer~~Buying Customer to reject the delivery (a **minor quantity or quality issue**) and is not resolved within sixty (60) days of coming to the attention of the Clearing House;

(2) is a failure to make or take delivery that is not cured within ten (10) days of the last actual Layday determined in accordance with this Chapter 10;

(3) is not a minor quantity or quality issue and is not resolved amicably by the Parties within ten (10) days of coming to the attention of the Clearing House;

(4) urgently requires review in the interests of the Oman Futures Contract, the Exchange or the Clearing House.

(C) The Seller Clearing Member and Buyer Clearing Member may together refer a Failure to Perform (or possible Failure to Perform) to the OPDC by written request.

(D) The OPDC shall consist of a chairman and other members appointed by the Clearing House in consultation with the Exchange. In appointing a member to the OPDC the Clearing House shall have regard to the knowledge of oil trading and shipping of that member.

(E) Upon the OPDC receiving a reference under Rule 10.17(B) or (C), the chairman of the OPDC shall appoint a panel (the **Panel**), which shall consist of three (3) members of the OPDC (**Panel Members**), to determine the matter. If the matter is one deemed by the Clearing House to require urgent resolution (whether or not that was the reason for its referral to the OPDC), the Clearing House may appoint a Panel.

(F) Neither the chairman of the OPDC nor the Clearing House shall appoint to the Panel any person who has a direct or indirect interest in performance of the delivery obligations in question. Each Panel Member shall disclose to the chairman of the OPDC any such interest or any other interest that might preclude such Panel Member from rendering a fair and impartial decision. Any objection raised by a Seller Clearing Member or Buyer Clearing Member to any member of the OPDC being appointed to the Panel shall be determined by the Chairman or the Clearing House, as the case may be, at his discretion.

(G) Any Panel so appointed shall retain jurisdiction over the delivery obligations in question until they have been performed, a Buyer Clearing Member or Seller Clearing Member has been found to have Failed to Perform or the Parties have jointly notified the Panel that they have resolved the issue relating to delivery obligations and the Panel has accepted such resolution. The Clearing House legal counsel shall serve as legal advisor to the Panel or procure legal advice thereto.

(H) The Panel may meet at any time in person, by telephone or otherwise.

(I) The Panel may choose to require a ~~Party~~party to an affected Contract (including any relevant Customer) to present written submissions and evidence in support of their claim, by such time as the Panel may choose. Such submissions and evidence shall be provided in the timescales and the form required by the Panel. Where the Panel considers it to be necessary, it may direct that an oral hearing shall take place. A ~~Party~~party to an affected Contract (including any relevant Customer) may appear personally and may be represented by counsel or other representative of his choice at such hearing. The Panel will determine the matter on such evidence as it thinks is relevant, even where such evidence may not be admissible in a court of law.

(J) The Panel may obtain expert advice from any person it deems as having expertise in the matter in question including, without limitation, the Terminal Operator and any relevant Ministry of the Oman Government.

(K) Following its determination of any matter referred to it under Rule 10.17(B) or (C), the Panel shall report its findings (which shall include, as appropriate, whether a Buyer Clearing Member or Seller Clearing Member has Failed to Perform and whether there has been a Force Majeure Event that has affected a ~~Party~~party to an affected Contract (including any relevant Customer)) and directions to the Clearing House's compliance department, the Exchange and each of the Parties to the affected Contracts and their Customer.

(L) Upon finding a Clearing Member has Failed to Perform other than as a result of a Force Majeure Event, the Panel shall:

(1) in the case of a failure to perform by a Seller Clearing Member: (a) notify a Senior Clearing House Officer of its findings, who shall instruct the Clearing House to retain all delivery margins deposited by the Seller Clearing Member for the delivery until any amounts determined to be due to the Clearing House or the Buyer Clearing Member pursuant to Rules 10.18 and 10.19 have been paid; and (b) apprise the Buyer Clearing Member of the remedies provided pursuant to Rule 10.19; and

(2) in the case of a failure to perform by a Buyer Clearing Member: (a) notify a Senior Clearing House Officer of its findings, who shall instruct the Clearing House to retain all delivery margins deposited by the Buyer Clearing Member until any amounts determined to be due to the Clearing House or the Seller Clearing Member pursuant to Rules 10.18 and 10.19 have been paid; and (b) apprise the Seller Clearing Member of the remedies provided pursuant to Rule 10.19.

(M) Upon finding a Clearing Member has Failed to Perform other than as a result of a Force Majeure Event, the Panel may take any one or combinations of the following actions as it deems suitable:

(1) direct the Buyer Clearing Member or Seller Clearing Member as to how the delivery should proceed;

(2) direct the Buyer Clearing Member or Seller Clearing Member to pay to the Clearing House its reasonable costs and those of the Exchange, the OPDC and the Delivery Committee. Such costs may include: the fees and expenses of the Chairman of the OPDC; the fees and expenses of any member of the Delivery Panel; any legal costs; and the expenses which the Clearing House or the Exchange may incur or be subjected to in respect of the matter.

(N) Upon finding a Force Majeure Event, the Panel may take any one or combination of the following actions as it deems suitable:

(1) direct the Clearing House to reverse one or more of the affected Contracts at a price to be set by the Panel taking into account any information it considers relevant for this purpose including information supplied by the Clearing House or the Exchange;

(2) refer the matter to the Board of the Clearing House for consideration of emergency action pursuant to Article 7 of the Bylaws of the Clearing House.

(O) A Party and its Customer shall comply with any finding, determination or direction made by the Panel under this Rule 10.17. The determination of a matter by the Panel shall be without prejudice to the powers of the Clearing House or the Exchange under the Rules or the Clearing House Rules.

10.18 Failure to Perform: Clearing House Action and Appeals

(A) Whenever a Seller Clearing Member or Buyer Clearing Member is found by the Panel to have Failed to Perform other than as a result of a Force Majeure Event, the Clearing House's compliance department shall issue to such failing Party a notice of assessment specifying the findings of the Panel (**Notice of Assessment**) with respect to such failure. A Seller Clearing Member or Buyer Clearing Member found by the Panel to have Failed to Perform other than as a result of a Force Majeure Event may be assessed a fine to be paid to the Clearing House, the amount of which will not be less than one thousand dollars ($1,000) and no more than twenty percent (20%) of the Contract Value of the Contracts in respect of which it has Failed to Perform.

(B) A Buyer Clearing Member or Seller Clearing Member may appeal against a Notice of Assessment by filing a Notice of Appeal with the Hearing Registrar of the Clearing House and by serving a copy of the same on the Clearing House's compliance department, within fourteen (14) Business Days of receipt of the Notice of Assessment from the Clearing House's compliance department on the grounds that the fine set out in the Notice of Assessment was inappropriate on the basis that:

(1) the finding, determination or direction of the Panel upon which the Notice of Assessment was based was one which no reasonable Panel could have reached;

(2) the finding, determination or direction of the Panel upon which the Notice of Assessment was based was based on a misinterpretation of the Rules or an error of law;

(3) the amount of the fine levied under the Notice of Assessment was excessive or insufficient; or

(4) new evidence is available which, had it been before the Panel, could have caused the Panel to make a different finding, determination or direction provided that the appealing Clearing Member could not have produced the evidence to the Panel had he made reasonable endeavours to obtain it.

(C) In the event of an appeal by a Party, the chairman of the Clearing House, or his designee, shall appoint an assessment appeal panel (**Assessment Appeal Panel**) to hear and decide the appeal. The Assessment Appeal Panel shall be composed of three (3) members of the Clearing House, at least one of whom shall be a member of the board of the Clearing House. No member of the Assessment Appeal Panel may have a direct or indirect interest in the matter under appeal. Each Assessment Appeal Panel member shall disclose to the chairman of the Clearing House, or his designee, any such interest or any other interest that might preclude such member from rendering a fair and impartial determination. Any objection raised by a Seller Clearing Member or Buyer Clearing Member to any member of the Assessment Appeal Panel shall be determined by the Clearing House.

(D) The Clearing Member filing the appeal (**Appellant**) shall file, within twenty (20) days after filing the Notice of Appeal, a memorandum of appeal (a **Memorandum of Appeal**) setting out the factual and legal basis for the appeal. The Memorandum of Appeal must be filed with the Hearing Registrar and a copy of the same served upon the Clearing House's compliance department.

(E) The Clearing House's compliance department may file with the Appellant and the Hearing Registrar an answering memorandum to the Memorandum of Appeal (an **Answering Memorandum**) within ten (10) days of receipt of the Memorandum of Appeal.

(F) Unless the Assessment Appeal Panel determines otherwise, failure by the Party to file a Notice of Appeal or a Memorandum of Appeal in the time specified in this Rule 10.18 shall constitute a waiver of its rights to appeal in respect of the Notice of Assessment, and the fines set out in the Notice of Assessment shall be paid within five (5) days to the Clearing House. Failure to pay such fines in accordance with this Rule 10.18 shall subject the Party to the sanctions set out in Bylaw 107 of the Clearing House. In the event a Party fails to appeal, or waives the opportunity to appeal a Notice of Assessment, the assessment and findings and actions of the OPDC shall constitute a final disciplinary action of the Clearing House.

(G) Within ten (10) days after receipt of the Clearing House's compliance department's Answering Memorandum, the Appellant shall be entitled to examine all books, documents and other tangible evidence in possession or under the control of the Clearing House that are to be relied on by the Clearing House's compliance department or are otherwise relevant to the matter.

(H) Subject to the requirements of this Rule 10.18 the Assessment Appeal Panel may determine its own procedure provided that in conducting such appeal it shall comply with the requirements of natural justice. The Assessment Appeal Panel shall be the sole judge with respect to the evidence presented to it. Outside counsel instructed by the Clearing House shall advise the Assessment Appeal Panel. The Assessment Appeal Panel may obtain expert advice from any person it deems as having expertise in the matter in question including, without limitation, the Terminal Operator and any relevant Ministry of the Government of Oman.

(I) The procedures for the hearing of the appeal before the Assessment Appeal Panel shall be as follows.

(1) At a date to be set by order of the Assessment Appeal Panel, and prior to such hearing, the Appellant and the Clearing House's compliance department shall furnish each other with a list of witnesses expected to be called at the hearing, and a list of documents and copies thereof expected to be introduced at the hearing.

(2) At such hearing the Appellant may appear personally and may be represented by counsel or other representative of his choice.

(3) The Clearing House's compliance department shall be entitled to offer evidence relating to the delivery obligations and shall be entitled to call witnesses and introduce documents in support thereof.

(4) The burden of proof shall be on the Clearing House's compliance department to demonstrate, by the weight of the evidence, that the fine set out in the Notice of Assessment is not inappropriate on the grounds alleged by the Appellant.

(5) The Appellant shall be entitled to rebut the Clearing House compliance department's evidence and shall be entitled to call witnesses and introduce documents in support thereof.

(6) The Clearing House's compliance department and the Appellant shall each be entitled to cross-examine any witness called by the other at the hearing.

(7) The Notice of Assessment, the Notice of Appeal, the Memorandum of Appeal, any Answering Memorandum, the stenographic transcript of the appeal, any documentary evidence or other material presented to and accepted by the Assessment Appeal Panel shall constitute the record of the hearing. The decision of the Assessment Appeal Panel shall be based upon the record of the hearing.

(8) The Assessment Appeal Panel shall have the power to impose a fine on any person who is within the jurisdiction of the Clearing House and whose actions impede the progress of a hearing.

(9) The Assessment Appeal Panel shall issue a written decision in which it may affirm, reduce, or waive the fine assessed against the Appellant and shall state the reasons therefore.

the Buying Customer, or, in default of such agreement, by the President for the time being of the Energy Institute in the United Kingdom.

(B) The ~~Parties~~Selling Customer and the Buying Customer shall furnish the expert with all written or oral information that the expert may reasonably require for his determination.

(C) The cost of the services of the expert, if appointed, shall be shared equally between the ~~Parties~~Selling Customer and the Buying Customer.

10.23 Limitation of Liability

Pursuant to this Chapter 10, neither the Clearing House nor the Exchange shall have any liability in respect of or in connection with placing of oil in Vessels and the transport of oil in Vessels, howsoever caused. Accordingly, no claim can be made against either the Clearing House or the Exchange for any loss or damage incurred or suffered by any person in connection with the placing of oil in Vessels or the taking delivery of the same, whether or not such loss or damage results from any delay in connection with the loading of any Vessel, any spillage of oil or any other pollution or any other cause whatsoever, and whether or not as a result of the negligence of the Exchange or Clearing House. Nothing in this Rule 10.23 excludes or limits the liability of the Exchange or Clearing House for death or personal injury caused by its negligence.

10.24 Decisions with respect to the Loading Port

Any confirmation in writing received from the Oman Ministry of Oil and Gas confirming any decision or action taken by that Ministry or the Terminal Operator shall be conclusive as to the taking of that decision or action by that Ministry or the Terminal Operator as the case may be.

Appendix A – Physical Delivery Procedures

In these Physical Delivery Procedures, the following additional definitions shall apply.

Buyer means the Buying Customer.

Cargo means the total quantity of Oil to be lifted by a Vessel, whether or not it is all for the Buyer.

Layday Notice means a notice of the actual Laydays that is to be given by the Seller as provided in Paragraph 3(3).

Lifting Instructions means the latest edition from time to time of the Terminal Operator's Crude Lifting Procedures.

Loading Schedule means the schedule prepared by the Terminal Operator specifying the date on which each Parcel is intended to be made available for delivery at the Loading Port during the Delivery Month and the Parcel Reference Number allocated to each Parcel.

NOR means a notice of readiness given by a Vessel that it is ready to take a Parcel from the Loading Port.

Parcel means a specified volume of Oil intended to be made available for loading at the Loading Port during the Delivery Month in accordance with the Loading Schedule.

Parcel Reference Number means, in relation to each Parcel, the number allocated by the Terminal Operator to that Parcel as shown by the Loading Schedule.

Primary Supplier means any person to whom, in relation to a particular Delivery Month, Oil is allocated as that person's equity entitlement under the applicable crude oil production allocation.

Scheduled Day means, in relation to each Parcel, the day shown in the Loading Schedule as the day on which that Parcel is intended to be made available for loading.

Seller means the Selling Customer.

Any reference to a Paragraph is, unless the context otherwise requires, a reference to a paragraph of these Physical Delivery Procedures.

1. METHOD AND RATE OF SUPPLY

The Oil shall be supplied by the Seller to the Buyer, free of any expense, in bulk F.O.B. Vessels provided or procured by the Buyer at the Loading Port.

2. MEASUREMENT, SAMPLING AND TESTING

(1) The quantity and quality of the Oil in each Cargo shall be determined by measurement, sampling and testing in the manner customary at the Loading Port and shall include testing that enables a net quantity to be calculated. The Seller shall request the Seller's Suppliers to prepare and sign certificates as to the quantity and quality of the Oil loaded upon completion of loading of the Cargo. The Seller shall advise the Buyer by telex, cable or facsimile of the quantity and quality recorded on such certificates as soon as possible after completion of loading of the Cargo.

The results of measurement, sampling and testing shall, for the purposes of this Chapter 10, be treated as conclusive as to the quantity and quality loaded. However, the conclusiveness of the results so far as they relate to the quantity and quality loaded may be displaced to the extent that it can be reasonably shown that the results are incorrect.

(2) Where permitted by the Seller's Suppliers, the Buyer may appoint a representative (the **Representative**) acceptable to the Seller and the Seller's Suppliers to assist in the supervision of and to inspect the loading of each Cargo. If such representative is appointed, the quantity and quality of the Oil as jointly ascertained by the Representative and the Seller's Suppliers shall be the quantity and quality for the purpose of the certificate(s). If any difference arises between the Representative and the Seller's Suppliers with regard to the loaded quantity and quality, it shall be settled by an expert appointed under Rule 10.22. The decision of such expert shall be final and binding upon the Parties save for fraud and manifest error; but pending such decision, the quantity and quality as ascertained by the Seller's Suppliers shall be used for the purpose of the telex, cable or facsimile referred to in Paragraph 2(1).

(3) Unless otherwise specifically agreed, all costs incurred by the Buyer in respect of the Representative shall be borne by the Buyer and demurrage resulting from any delays occasioned by such inspection shall be for the sole account of the Buyer.

(4) A sufficient quantity of the relevant representative samples shall be correctly taken at the Loading Port and kept in accordance with internationally recognised methodology and practice.

3. LAYDAYS AND TANKER NOMINATION PROCEDURE

(1) **Fixing Laydays**

The Laydays applicable to each quantity of Oil which the Seller is to deliver as one Parcel shall be determined as provided under this Paragraph 3. Unless this Paragraph 3 provides otherwise the Laydays shall be:

(i) the Scheduled Day; and

(ii) the day after the Scheduled Day.

(2) **Buyer's preferred Laydays**

(i) From the first (1st) Singapore Business Day of the Prior Month, but no later than the tenth (10th) day of the Prior Month (or if the 10th day falls on a non-Singapore Business Day, then by 17.00 (Singapore time) on the preceding Singapore Business Day), the Buyer shall notify the Seller of the dates preferred by the Buyer as Laydays. Thereafter the Buyer may revise its previous notification of preferred dates by so notifying the Seller by not later than the tenth (10th) day of the Prior Month (or if the tenth (10th) day falls on a non-Singapore Business Day, then by 17.00 (Singapore time) on the preceding Singapore Business Day). ~~No preferred dates notified by the Buyer under this Paragraph 3(2)(i) shall include any date after the twenty-fifth (25th) day of the Delivery Month.~~

(ii) If the Buyer intends to co-load the Oil and other crude oil at the Loading Port into the same Vessel, the Buyer shall notify the Seller of this when giving notice under Paragraph 3(2)(i) above.

(iii) The Seller must promptly notify the Seller's Suppliers of the dates notified by the Buyer under Paragraph 3(2)(i) above and any notification given to the Seller under Paragraph 3(2)(ii) above. However, the Seller is not obliged to accept any of the dates notified by the Buyer.

(iv) In the event that the Buyer fails to notify the Seller of any preferred Laydays under Paragraph 3(2)(i) above, the Seller will advise the Buyer of his failure to do so, and the Seller will notify the Seller's Suppliers of the preferred Laydays as decided by the Seller, in order to fulfil the Seller's obligations to the Seller's Suppliers. Failure of the Buyer to notify any preferred Laydays to the Seller shall not excuse or reduce any of the Buyer's obligations under the Rules.

(3) **Notification or agreement of actual Laydays**

If the Seller is a Primary Supplier and the Contract is the Seller's first sale of the Oil (a **First Primary Sale**) then the Seller must give the Buyer the Layday Notice by 17.00 (Singapore time) on the next Singapore Business Day following after the Loading Schedule publication date. If the Seller is not a Primary Supplier and the contract is not a First Primary Sale, then the Seller must give the Buyer the Layday Notice within one (1) business hour after the time the Seller received notice of the Laydays from Seller's Suppliers and by no later than 18.00 (Singapore time) on the fifteenth (15th) day of Prior Month (or, if that day is not a Singapore Business Day then by 18.00 (Singapore time), on the preceding Singapore Business Day). The Seller must give the Buyer the Layday Notice irrespective of whether the dates to be notified as the actual Laydays are the same as any of the preferred dates notified by the Buyer under Paragraph 3(2)(i) above. If the Seller does not give a Layday Notice in accordance with this Clause, then the Seller must give the Layday Notice within 1 (one) business hour after the time the Seller received notice of the Laydays from Seller's Suppliers.

(4) **Late Layday Notice(s): Limitation of Seller's remedies**

If the Layday Notice is received by the Buyer later than the time provided for under Paragraph 3(3), no such losses, costs and expenses as are described in Paragraph 3(10) below shall be reimbursable by or otherwise recoverable from the Buyer (and shall be borne and paid exclusively by the Seller) unless and to the extent that they result from failure by the Buyer to comply with the requirements of the proviso to Paragraph 3(5)(iii) below.

(5) **Continuance of Buyer's Obligations despite late Layday Notice(s)**

This Paragraph 3(5) applies if any Layday Notice is received by the Buyer later than the time provided for under Paragraph 3(3) above.

(i) Late receipt by the Buyer of the Seller's Layday Notice shall not constitute or be treated as a breach of the Seller's obligations entitling the Buyer to treat any ~~Oman Futures~~Delivery Contract as having been repudiated by the Seller, and the Buyer expressly waives, relinquishes and foregoes any such entitlement.

(ii) The Buyer further agrees expressly that, subject as provided below, the Buyer will continue to observe and perform all of the Buyer's duties and obligations under this Chapter 10 in the like manner and to the like extent as would be applicable if the Layday Notice had not been given later than required under Paragraph 3(3).

(iii) For the purpose of sub-Paragraph (ii) above, any failure by the Buyer to nominate a Vessel within any of the times provided for under this Paragraph 3, or to procure the Vessel to arrive or tender an NOR within the Laydays shall not constitute and shall not be treated as a breach of the Buyer's duties and obligations in relation to such matters, provided that the Buyer shall have (a) complied with the requirements of Paragraph 3(6) below; (b) nominated a Vessel in the least time reasonably practicable after receipt of the Seller's notification of the Laydays; and (c) taken all steps reasonably practicable in the circumstances to cause the Vessel to proceed to and arrive at Loading Port within, or as close as reasonably practicable to, the time at which it ought to have done so if the Layday Notice had been given within the time provided for under Paragraph 3(3) and thereafter proceed diligently with the receipt and loading of the Oil as provided in sub-Paragraph (iv) below but in any event within the Delivery Month.

(iv) The provisions of sub-Paragraphs (i) and (ii) above shall apply subject to and without prejudice to the Buyer's right and entitlement to exercise all such remedies (if any) as may be or become exercisable by the Buyer in all the circumstances (with the exception of any right or entitlement which may have been available to the Buyer but for the foregoing provisions of this Paragraph 3(5)).

(6) **Duty of Buyer in absence of Layday Notice**

If, by 18.00 (Singapore time) on the fifteenth (15th) day of Prior Month, the Buyer has not received notification from the Seller of Laydays, the Buyer shall forthwith;

(a) notify the Seller; (b) notify the Terminal Operator and furnish the Terminal Operator with the name of the Seller and Selling Customer (if known).

(7) **Contents of Layday Notices**

Each Layday Notice must specify the following:

(i) the Parcel Reference Number(s) applicable to the Parcel(s) intended to comprise the Oil;

(ii) the quantity of each Parcel;

(iii) the Laydays applicable to each Parcel;

(iv) except in the case of a First Primary Sale, the date and time of day when the Seller received notice from Seller's Suppliers; and

(v) the date and time of day when the Seller's notice was given to the Buyer.

(8) **Communication of Layday Notices, etc.**

(i) All Layday Notices must first be given orally by the Seller to the Buyer and promptly confirmed by facsimile.

(ii) Each Party must ensure that appropriate facilities and sufficient authorized personnel are available and ready to receive and pass Layday Notices and all other pertinent information during business hours on Singapore Business Days.

(iii) Additionally, if the Seller is purchasing the Oil from, or the Buyer is selling the Oil to, a third party, each Party must pass on as expeditiously as possible any communication received by it under this Chapter 10 and which it is contractually bound to communicate to such third party.

(9) **Large Cargoes**

In respect of Cargoes of one million, five hundred thousand and one (1,500,001) Barrels or more, the Parties understand that the Terminal Operator may impose a shorter range of Laydays than Paragraph 3(1) provides and such other special conditions as the Terminal Operator may reasonably require given the size of the Cargo and the loading facilities and conditions at Loading Port, and the Buyer agrees to comply with such shorter range of Laydays and such other special conditions imposed by the Terminal Operator.

(10) **Buyer's responsibility**

Once a lifting programme has been determined in accordance with Paragraphs 3(1) to 3(9), the Buyer shall be held fully responsible for any problems arising from its failure to take a Parcel on the Laydays or otherwise failing to fulfil its programme or any of these nomination procedures, and shall be liable to compensate the Seller for any loss, cost or expense arising thereby.

(11) **Delivery Month**

~~In the event a Parcel of Oil for delivery in the Delivery Month is not loaded within the Delivery Month for reasons beyond the Buyer's control, then such volume as is subsequently loaded in lieu of such Parcel shall be counted against the Delivery Month, and the pricing terms applicable to such Parcel shall apply unchanged.~~

For the avoidance of doubt, no change in the price payable for a Parcel of Oil shall result if either the date of the bill of lading is outside the Delivery Month or if any of the Oil in a Parcel is loaded outside the Delivery Month.

(12) **Right to refuse nominated tankers**

The Buyer understands and agrees that the Terminal Operator shall have the right to refuse to accept nominated tankers if, at the Terminal Operator's sole discretion, the Terminal Operator determines that such nominated tanker:

(i) does not comply with the Terminal Operator's tanker safety regulations; or

(ii) is not suitable to load at the Loading Port.

(13) **Buyer's nomination**

The Buyer's nomination shall be consistent with the Loading Port authority requirements and shall include, but shall not be limited to, the Vessel's name, flag, crew nationality, capacity, length, beam, summer deadweight and draught together with the quantity and quality of the grade(s) of Oil to be loaded inclusive of the operational tolerance requirement, estimated date of arrival of the Vessel at Loading Port, the Vessel’s agent, the Parcel Reference Number notified by the Seller to the Buyer as being applicable to the Oil, full instructions regarding the Vessel, the makeup and disposition of bills of lading and other documents and orders for port(s) of discharge, and the destination of the crude oil Cargo nominated.

(14) **Firm tanker nominations**

Nominations quoted (to be nominated) shall be replaced by firm tanker nominations for the same quantities with the same accepted date range not less than five (5) days before the beginning of the first day of the accepted date range (or if the fifth (5th) day falls on a non-Singapore Business Day, then by 17.01 (Singapore time) on the preceding Singapore Business Day).

(15) **Vessel substitution**

The Buyer, with the Seller's prior agreement, may, or if necessary to perform their obligations hereunder must, substitute any Vessel by another Vessel which is similar in all material respects to the Vessel so replaced and otherwise complies with all requirements of the current tanker nomination procedures issued by the Terminal Operator relating to the lifting of the Cargo. The notice of

the substitution and of the estimated time of arrival of the substitute tanker shall be given not less than five (5) days prior to the first day of the accepted date range for the originally nominated tanker (or if five (5) days prior falls on a non-Singapore Business Day, then by 17.01 (Singapore time) on the preceding Singapore Business Day). The Buyer may also, with the Seller's prior written agreement and by giving the Seller reasonable notice, amend in other respects any Vessel nomination or series of Vessel nominations provided that the expected date of arrival of the Vessel remains within the Laydays allocated to the Buyer's nomination in accordance with this Paragraph 3 and such nominations otherwise comply with all requirements of the current tanker nomination procedures issued by the Terminal Operator relating to the lifting of this Cargo. If such amendment is rejected by the Seller, the Parties shall negotiate a mutually acceptable alternative Vessel nomination. The Buyer shall not, unless otherwise agreed, be relieved of their responsibility to perform the agreed lifting within the accepted loading date range.

(16) Any substitution other than as described above shall be considered a new nomination and require fresh acceptance by the Seller. Cancellation of a Vessel shall be notified to the Seller in writing or by telex not less than five (5) days before such Vessel's first day of the accepted date range at Loading Port (or if the fifth (5th) day falls on a non-Singapore Business Day, then by 17.01 (Singapore time) on the preceding Singapore Business Day). Cancellation will require that the Buyer nominate a substitute Vessel. In case of cancellation, if the Buyer fails to nominate a substitute Vessel and, for operational reasons, the Seller has to make alternative arrangements for disposal of the nominated volume, all direct associated costs will be for the Buyer's account provided Seller has made all reasonable efforts to mitigate such costs.

(17) Documentation requirements for each Vessel shall be notified to the Seller in writing or by telex at least five (5) days in advance of the date of arrival (or if the fifth (5th) day falls on a non-Singapore Business Day, then by 17.01 (Singapore time) on the preceding Singapore Business Day) and not later than five (5) days prior to the start of the first day of the accepted date range.

(18) **Buyer's warranties**

The Buyer hereby warrants and undertakes that:

(i) they are familiar with the latest vessel size restrictions, including but not limited to, deadweight, draught, beam and overall length limitations of the Loading Port and will not nominate a Vessel exceeding such limitations;

(ii) they are familiar with, and shall cause the Vessel to comply with, all applicable regulations in force at the loading port, including, but without limitation, those relating to fires on board vessels; and

(iii) they shall procure that each Vessel nominated hereunder shall, at the time of loading:

(a) comply with all applicable rules, regulations and directions of governmental, local and port authorities (and of the Loading

Port) and shall conform in all respects to all relevant international regulations and agreements;

(b) have hull, machinery, boilers, tanks, equipment and facilities which are in good order and condition, in every way fit for the service required and fit to load and carry the Cargo specified; and

(c) have a full and efficient complement of master, officers and crew.

If the Buyer's Vessel does not meet any of the requirements set out in (a), (b) and (c) above, the Buyer recognises that the Terminal Operator may refuse to berth or load or continue to load the Vessel with the scheduled loading.

(19) Should the Buyer fail to load the contractual quantity of the scheduled loading, due to (i) the Buyer's withdrawal of any Vessel, (ii) the arrival of any Vessel at the Loading Port after the last Layday or (iii) rejection of a Vessel by the Terminal Operator as a result of it not meeting the requirements of Paragraph 3(18), the Seller shall be indemnified by the Buyer for any and all costs, damages or expenses incurred by the Seller as a result of the Buyer's failure to load the contractual quantity due to any of the above reasons and for all payments required to be made by the Seller to the Seller's Suppliers for failing to take delivery of the volume of Oil due to any of the above reasons and for all additional costs, damages or expenses incurred by Seller in defending any such claims or in avoiding the requirement to make such payments.

(20) The Buyer warrants and undertakes to the Seller that (for each Vessel nominated to carry a Cargo) the Vessel is owned or demise chartered by a member of the International Tanker Owners Pollution Federation Limited. The Buyer shall exercise reasonable efforts to ensure that:

(a) the Vessel carries on board a valid certificate of insurance as described in the 1969 Civil Liability Convention for Oil Pollution Damage and the International Convention on Civil Liability for Oil Pollution Damage 1992; and

(b) the Vessel has in place insurance cover for oil pollution no less in scope and amounts than the highest available under the Rules of P&I Clubs entered into the International Group of P&I Clubs.

4. LOADING CONDITIONS

(1) The Buyer shall give the Seller, not less than five (5) days before the Scheduled Day with respect to the Parcel, full instructions consistent with the Loading Port regulations regarding the loading of each Vessel and the making up and destination of documentation covering the Cargo(s). The Seller shall use reasonable endeavours to arrange for such instructions to be carried out but they shall not be obliged to arrange for an instruction to be carried out which is inconsistent with any provision, expressed or implied, in this Chapter 10.

(2) The Buyer shall arrange for each Vessel to give to the Seller, and to any other person nominated by the Seller, its estimated time of arrival at the Loading Port in such manner and at such intervals prior to arrival as required by the Loading Port authorities and the Seller.

(3) The Seller shall provide or shall cause to be provided, free of charge, a berth or berths which the Vessel can safely reach and leave and at which she can lie and load always safely afloat. All port costs, including the expense, if any, of shifting berth at the Loading Port (unless such shift is for the Seller's purposes), shall be for the Buyer's account.

(4) The Buying Customer agrees that it is familiar with the current lifting instructions issued by Terminal Operator (**Lifting Instructions**) relating to the lifting of this Cargo and agrees that these Lifting Instructions, including any subsequent amendments relevant to this Cargo, shall govern the lifting of the Cargo. The Buyer agrees to comply with all of the obligations under the Lifting Instructions related to the Vessel or the obligations of the Buyer thereunder.

5. ISPS COMPLIANCE

(1) The Buyer shall procure that the Vessel shall comply with the requirements of the ISPS Code.

(2) The Buyer shall procure that the Vessel shall when required submit a Declaration of Security (DoS) to the appropriate authorities prior to arrival at the Loading Port.

(3) Notwithstanding any prior acceptance of the Vessel by the Terminal Operator, if at any time before the passing of risk and title the Vessel ceases to comply with the requirements of the ISPS Code:

(i) the Terminal Operator shall have the right not to berth such nominated Vessel and no demurrage resulting thereby shall be for the account of the Seller; and

(ii) the Buyer shall be obliged to substitute such nominated Vessel with a Vessel complying with the requirements of the ISPS Code.

(4) The Seller shall procure that the Loading Port shall comply with the requirements of the ISPS Code.

6. DESTINATION RESTRICTIONS

The Buyer recognises that the Seller cannot cooperate with, agree to or comply with any terms or requests, including documentary requests, which are prohibited under the laws applicable to the Seller or under United Nations decisions.

Appendix B – Letter of Indemnity

FROM: (Seller) [and (Seller's Bank)]

TO: (Buyer)

IN CONSIDERATION of your agreeing to pay for the cargo of

..... Barrels of

..... (type of crude oil and/or product)

which sailed from (Port)
.....
..

on (vessel and date)
.....

loaded with such cargo when the (required document(s))
……
……
…

for all required documents in relation to such cargo have not been delivered to you at the time payment is due under our agreements.

The Seller hereby warrants to you that at the time property passed as specified under the terms of the above contract we had the right to sell the said cargo to you and we have unencumbered title to the said cargo.

We [jointly and severally] hereby irrevocably and unconditionally undertake to indemnify you and hold you harmless against any claim made against you by anyone as a result of breach by us of any of our warranties as set out above, and all losses, costs (including, but not limited to costs as between attorney or solicitor and own client), damages, and expenses which you may suffer, incur or be put to which are not too remote as a result of our failure to deliver the above document(s) in accordance with the contract.

This indemnity shall terminate on delivery by the Seller of the aforesaid document(s) and their acceptance by you.

This indemnity shall be governed by and construed in accordance with English law and all disputes, controversies or claims arising out of or in relation to this indemnity or the breach, termination or validity hereof shall be decided by the English courts.