

**INDEPENDENT TRADING & TRANSPORTATION, LLC**

**TERMINALLING SERVICES**

**GENERAL TERMS AND CONDITIONS**

These Terminalling Services General Terms and Conditions (“*GTCs*”) apply to each Terminalling Service Agreement and/or Request for Terminalling Services Agreement and/or any other Agreement that specifically reference these *GTCs* and is entered into by each of Independent Trading & Transportation, LLC (“*Owner*”) and the Customer named therein.

**Section 1. Definitions.**

In the Agreement and these *GTCs*, unless the context requires otherwise, the terms defined in the preamble have the meanings indicated and the following terms will have the meanings indicated below:

“*Affiliate*” means, in relation to a Party, any Person that (i) directly or indirectly controls such Party, (ii) is directly or indirectly controlled by such Party or (iii) is directly or indirectly controlled by a Person that directly or indirectly controls such Party. For this purpose, “control” of any Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of a majority of equity interests or voting power or control in fact of the entity or Person or otherwise.

“*Agreement*” means the Terminalling Services Agreement and/or Request for Terminalling Services Agreement entered into by Owner and Customer that specifically references and incorporates these *GTCs*.

“*Applicable Law*” means any federal, state, local, municipal, foreign, tribal, or other law, statute, legislation, constitution, principle of common law, resolution, ordinance, code, proclamation, treaty, convention, rule, regulation, or decree, whether legislative, municipal, administrative, or judicial in nature, enacted, adopted, passed, promulgated, made, or put into effect by or under the authority of any Governmental Authority.

“*Barrel*” means 42 U.S. Gallons.

“*Business Day*” means each calendar day, excluding Saturdays, Sundays, or other holidays observed by Owner.

“*Delivery Point(s)*” shall have the meaning given such term in the Agreement.

“*Force Majeure*” means acts of God; strikes, lockouts or industrial disputes or disturbances; arrests and restraints of rulers or people; interruptions or delays by government or court orders; present and future valid orders of any regulatory body having proper jurisdiction; acts of the public enemy, wars, acts of terrorism, riots, blockades and insurrections; inability to secure or delays in securing materials, supplies or equipment at reasonable cost; epidemics; landslides, lightning, earthquakes, fires, storms, floods and washouts; explosions, breakage or accident to machinery or lines of pipe; freezing of wells or pipelines; the making of repairs or alterations to pipelines or other facilities; inability to secure or delay in securing easements, rights of way or surface leases at reasonable cost, or any cause, not reasonably within the control of the party claiming “*Force Majeure*.”

“*Gallon*” means a U.S. gallon of 231 cubic inches corrected to 60 degrees Fahrenheit.

**“Governmental Authority”** means any foreign or U.S. federal, state, regional, local or municipal governmental body, agency, instrumentality, board, bureau, commission, department, authority or entity established or controlled by a government or subdivision thereof, including any legislative, administrative or judicial body, or any person purporting to act therefor.

**“Indemnified Party”** has the meaning assigned to such term in Section 14.1 of these GTCs.

**“Indemnifying Party”** has the meaning assigned to such term in Section 14.1 of these GTCs.

**“Independent Inspector”** means a licensed Person who performs sampling, quality analysis and quantity determination of the Product received or delivered.

**“Interest Rate”** means an annual rate (based on a 360-day year) equal to the lesser of (i) two percent (2%) over the prime rate as published under “Money Rates” in the Wall Street Journal in effect at the close of the Business Day on which payment was due and (ii) the maximum rate permitted by Applicable Law.

**“Liability”** means any obligation, liability, charge, deficiency, assessment, interest, penalty, judgment, award, cost or expense of any kind (including reasonable attorneys’ fees, other fees, court costs and other disbursements).

**“Month”** means a calendar month.

**“Party”** means either Customer or Owner as the context so requires, and **“Parties”** means collectively Customer and Owner.

**“Person”** means an individual or a corporation, firm, limited liability company, partnership, joint venture, trust, unincorporated organization, association, Governmental Authority or other entity.

**“Product”** means crude petroleum that meets the specifications provided for herein.

**“Product Loss”** means any loss of Product occurring as a result of any contamination, adulteration, mislabeling, misidentification or other loss of or damage to Product, in each case, caused by the failure of the Owner to use reasonable industry procedures in the handling, testing or storage of Product, *provided* Product Loss shall not include the result of loss of or damage to Product (i) associated with circumstances involving Force Majeure, or (ii) caused by the act or omission of Customer.

**“Receipt Point”** shall have the meaning set forth in the Agreement.

**“Services”** shall have the meaning assigned to such term in Section 2.1 of these GTCs.

**“Term”** shall have the meaning set forth in the Agreement.

**“Terminal”** shall have the meaning set forth in the Agreement.

**“Third Party”** means any entity other than Owner, Customer or their Affiliates.

## **Section 2. Services, Statements, Invoices, Documents and Records.**

2.1 Owner will provide to or for Customer the following terminalling services related to the receipt of Product at the Terminal from or on behalf of Customer and delivery of Product out of the Terminal to or for the account of Customer (collectively, the **“Services”**):

- (a) Receive Product at the Receipt Point and redeliver such Product to a Delivery Point from time to time during the Term;
- (b) Provide all pumping for performance of each of the foregoing services;
- (c) Keep records and accounts and make reports relating to Product delivered to and from the Terminal; and
- (d) Present all required Terminal documents and invoices to Customer which are suitably detailed for payment.

2.2 The Services will be performed in a manner consistent with the prior operating practices of the Terminal and in compliance with Applicable Law. Owner may adapt its performance of the Services in order to be consistent with industry practices, in order to meet the requirements of health and safety laws, rules and regulations and in order to achieve the efficient utilization of the Terminal.

2.3 Within fifteen (15) days following the end of each Month during the Term of the Agreement, Owner will submit to Customer statements setting forth the volume of Customer's Product received into and delivered from the Terminal during such Month calculated in accordance with the terms hereof together with an invoice for amounts due under the Agreement for Services provided during such Month.

2.4 With respect to the Services provided by Owner each Month, each Party will maintain a true and correct set of records pertaining to such Services and will retain copies of all such records for a period of not less than two (2) years following the Month in which Owner provided such Services to or for the account of Customer hereunder.

**Section 3. Fees, Charges and Taxes.**

3.1 Customer will pay Owner the fees, rates and charges set forth in the Agreement with respect to the Services. All such payments, as well as any taxes and other amounts to which Owner is entitled under the Agreement, shall be paid in accordance with the terms and conditions set forth in the Agreement and these GTCs.

3.2 All fees and charges reflected in Owner's invoices are due and payable on the twentieth (20<sup>th</sup>) calendar day of the Month in which Customer received Owner's invoice unless such twentieth (20<sup>th</sup>) calendar day of the Month is a Saturday in which event such fees and charges will be due and payable on the immediately preceding Business Day or is a Sunday in which event such fees and charges will be due and payable on the immediately following Business Day. Payment must be made by electronic wire transfer of same day available federal funds to Owner's account and bank, both as indicated on Owner's invoice. Invoices may be sent by electronic mail and telephone facsimile. If Customer disputes any portion of an invoice, Customer must pay the undisputed portion of the invoice. Overdue amounts or disputed amounts that are resolved in favor of the Owner will accrue interest at the Interest Rate from the date that payment is due until paid in full. Customer will pay all of Owner's costs (including reasonable attorney's fees and court costs) of collecting past due payments and late payment charges, whether or not suit is brought.

3.3 Customer will pay any and all taxes, fees or other charges and assessments imposed on the Services, including sales or other excise taxes on the Services. Customer will also pay any ad valorem or property ownership taxes, if any, on Customer's Product located at the Terminal and Customer's other property, if any. Owner shall be responsible for and pay all other applicable taxes levied upon Owner,

including its own income and franchise taxes and any property and ad valorem taxes levied on the Terminal.

#### **Section 4. Operations, Receipts and Deliveries.**

4.1 Receipts and deliveries of Product will be handled within the normal business hours of the Terminal. Owner may make temporary changes in the business hours of the Terminal or temporarily close the Terminal because of an extraordinary event or an emergency. Owner will notify Customer of such temporary changes or closure in advance, or as soon after implementation as is practicable. Owner will not be responsible for the payment of any costs incurred by Customer or its transportation carrier for any delay in receiving or delivering Product or any other costs or fees, except to the extent such delays are attributable to Owner's inability to provide the Services other than attributable to an event of Force Majeure covered by Section 10 of these GTCs.

4.2 Customer must arrange for and pay all Third Party costs related to the delivery of Customer's Product to and from the Terminal. Owner is not responsible for such Third Party costs. Customer on or before the 20<sup>th</sup> calendar day of each Month must provide notice reasonably acceptable to Owner containing all the volumes of Product Customer intends to deliver to the Terminal at the Receipt Point and the Delivery Point where Customer desires Owner to redeliver such Product for the immediately succeeding Month (the "**Scheduling Notice**"). Each Scheduling Notice delivered hereunder by Customer for deliveries of Product to the Terminal shall be sent to those individuals that Owner has specified to Customer to receive such Scheduling Notice for the Terminal with respect to such Product delivery. Customer must arrange and is responsible for the receipt of all of its Product at the Delivery Points set forth in its Schedule Notice. Owner shall have no obligation to deliver Customer's Product to a Deliver Point unless such arrangement has been confirmed to the reasonable satisfaction of Owner. If a customer schedules volumes to the terminal that exceeds the historical average of volumes transported a written certification of availability of supply will be required. In the event a Delivery Point connected to an ITT Terminal receives scheduling notices in excess of ITT's capacity to deliver to that Delivery Point, all customers will received a pro-rata share of non-dedicated space based on customer's original scheduling notice received by ITT on or before the 20<sup>th</sup> of the preceding month.

4.3 Customer will deliver its volumes of Product set forth in the Scheduling Notice ratably to the Receipt Points over the applicable Month. Owner will deliver Product to Customer, or to such Third Parties as Customer may direct, at the Delivery Points set forth in the Scheduling Notice.

4.4 In the event that volumes of Product tendered by all customers, including Customer, for delivery to the Terminal exceed the then existing capacity of the Terminal, Owner will receive and deliver Product to and from the Terminal in a ratable manner, as determined by Owner, subject to the requirements of the upstream and downstream pipelines connected to the Terminal.

4.5 In the event Customer fails to deliver a Scheduling Notice for Product delivery for a Month, Owner will be under no obligation legal or otherwise to accept Customer's Product for such Month.

4.6 Owner will provide the Services to Customer only with respect to Product.

4.7 If any Governmental Authority requires installation of any improvement, alteration or addition to the Terminal for purposes of compliance with Applicable Law, and if the installation would require Owner to make any material capital expenditures, other than continued maintenance and capital expenditures not affected by such requirement, Owner will be entitled to impose a reasonable service surcharge (which surcharge may include the Owner's cost of capital) in addition to the fees set out in the Agreement.

4.8 A standard terminal loss allowance of one-tenth of one percent (.1%) has been established for Guernsey Terminal, Guernsey, Wyoming to cover evaporation, interface losses and other normal losses during handling of crude oil at the terminal.

## **Section 5. Product Quality Standards and Requirements.**

5.1 Customer warrants to Owner that all Product tendered by or for the account of Customer for receipt into the Terminal will conform to the specifications for such Product set forth in Section 5.2 of these GTCs, and will comply with industry standards and all Applicable Law. Owner may rely on these warranties of Customer. Owner will not be obligated to receive Product into the Terminal that is contaminated or that otherwise fails to meet the specifications set forth in Section 5.2 of these GTCs. Should Owner remove or dispose of or otherwise treat the Product for any water or other material or contaminants in or associated with the Product at any time or for the failure of the Product to meet the specifications as provided for in Section 5.2 if these GTCs, Customer shall pay or reimburse all costs and expense associated with such removal, disposal or treatment.

5.2 All Product delivered to the Terminal will meet the more stringent Product specification for Product of either: (i) the upstream pipelines delivering Product to the Terminal, (ii) the downstream pipelines receiving Product from the Terminal, or (iii) the specifications set forth in the Agreement.

5.3 The quality of Product tendered into the Terminal for Customer's account may be verified either by Owner's laboratory analysis, or by an Independent Inspector's analysis indicating that the Product so tendered meets minimum Product specifications set forth in Section 5.2 of the GTCs. Owner, at its expense, may sample any Product tendered to Owner for Customer's account for the purpose of confirming the accuracy of the analysis.

5.4 Owner may commingle fungible Products received from or on behalf of Customer with those fungible products of other Third Parties using the Terminal. Owner will be liable to Customer by reason of contamination of Product occurring at the Terminal that causes the Product to fail to meet specifications, but only to the extent such contamination involves a Product Loss. In all other cases, Customer shall indemnify Owner for any Liability incurred by Owner to parties who purchase and/or receive Product from Customer.

## **Section 6. Title and Custody of Product.**

6.1 Title to the Product will remain with Customer at all times subject to any lien in favor of Owner created pursuant to the terms of the Agreement or under Applicable Law. Owner will assume custody and risk of loss of the Product beginning when such Product passes the inlet flange of the Receipt Point at the Terminal and custody and risk of loss will pass back to Customer when such Product passes the outlet flange of the Delivery Point at the Terminal.

6.2 Owner shall indemnify Customer for damages, losses, or injury caused by Owner's gross negligence or intentional misconduct. Owner shall otherwise have no responsibility for any loss, damage or injury to persons or property (including the Product) arising out of possession or use of the Product, except to the extent that such loss, damage or injury involves a Product Loss. Customer shall indemnify Owner for any Liability incurred by Owner to Third Parties or any other Person arising out of Owner's possession or use of the Product for which Owner is not liable under this paragraph and for any Liability to Third Parties or any other Person arising out of or pertaining to the Product before its delivery by Customer to the Terminal and after its receipt by Customer from the Terminal.

## **Section 7. Limitation of Liability and Damages.**

7.1 The maximum Liability of Owner for Product Loss will not exceed, and is strictly limited to, the market value of the Product at the time of the Product Loss or immediately prior to its contamination, plus the costs and expenses actually, reasonably and necessarily incurred by Customer or Customer's immediate purchaser in damage to equipment into which such Product was delivered from the Terminal, plus any fines and penalties actually levied or imposed by anyone including federal, state or local governments against Customer or Customer's immediate purchaser by reason of such fault on Owner's part. Owner may, in lieu of payment for Product, replace such Product with Product of like grade and quality.

7.2 EXCEPT FOR THE PARTIES' INDEMNIFICATION OBLIGATIONS WITH RESPECT TO CLAIMS OF THIRD PARTIES, THE PARTIES' LIABILITY FOR DAMAGES HEREUNDER IS LIMITED TO DIRECT, ACTUAL DAMAGES ONLY, AND NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR SPECIFIC PERFORMANCE, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, OR SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, IN TORT, CONTRACT OR OTHERWISE, OF ANY KIND, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE, THE SUSPENSION OF PERFORMANCE, THE FAILURE TO PERFORM, OR THE TERMINATION OF THE AGREEMENT. Each Party acknowledges its duty to mitigate damages hereunder.

#### **Section 8. Product Measurement.**

8.1 Quantities of Product delivered to the Terminal shall be measured by the Terminal tank gauges and meters. Unless indicated otherwise, quantity determinations will be based on a Barrel of Product and shall be determined in accordance with the latest established API/ASTM standards for the method of delivery. Measurement of Product received and delivered will be taken by Owner. Owner's measurement will be conclusive, absent fraud or manifest error.

8.2 Terminal gauges and meters will be certified and calibrated periodically and after each completion of a repair or replacement of a meter. Such repairs and replacements shall be at Owner's expense, unless such repairs and replacements was a result of Customer's actions. Such calibration shall be in accordance with the latest applicable API/ASTM standards. If a meter or gauge is determined to be defective or inoperative, Owner shall notify Customer, and it will be the responsibility of Owner to promptly make repairs or replacements. In the event that Product was received into the Terminal having a faulty meter or gauge, the Parties will determine the correct volume of Product received. If the Parties are unable to determine and agree on the correct volume of Product received, they will appoint a mutually acceptable Independent Inspector to determine the correct quantity, and the findings of the Independent Inspector shall be final and binding on the Parties except for fraud or manifest error. The Parties shall share equally the cost of the Independent Inspector under this Section 8.2 of these GTCs.

#### **Section 9. Product Loss.**

During such time as Owner has custody of the Product pursuant to Section 6 of these GTCs, Owner is responsible for, any Product Loss that occurs while the Product is located at the Terminal. In the event of the foregoing Product Loss, the total Barrels of net Product Loss will be determined and will be replaced by Owner, or Owner will reimburse Customer the cost of such Product, as provided for in Section 7 of these GTCs.

#### **Section 10. Force Majeure.**

Owner and Customer shall be excused from the performance of their obligations hereunder, except the obligation to make monetary payments, when and to the extent that such performance is delayed or

prevented by Force Majeure, provided that such Party shall give notice to the other Party, stating particulars of such event, as soon as reasonably possible after the occurrence thereof, and shall as far as reasonably possible, remedy such situation with all reasonable dispatch, provided that nothing herein shall be construed to require a Party to settle a labor dispute.

**Section 11. Compliance with Law and Safety.**

Customer warrants that the Product tendered by it has been produced, transported and handled in full compliance with all Applicable Law. Owner warrants that the services provided by it under the Agreement and these GTCs are in compliance with all Applicable Law. Each Party also warrants that it may lawfully receive and handle the Product, and it will furnish to the other Party any evidence required to provide compliance with Applicable Law and to file with applicable Governmental Authorities reports evidencing such compliance with Applicable Law.

**Section 12. Default, Waiver and Remedies.**

12.1 The occurrence of any of the following events shall constitute an “*Event of Default*” hereunder:

(a) either Party fails to pay any sum owed by it to the other Party under the Agreement and these GTCs;

(b) either Party fails to satisfy any obligation or render any performance to the other Party or breaches any covenant made to the Party under the Agreement or these GTCs, which breach of obligation, performance or covenant, if capable of being cured, is not cured to the reasonable satisfaction of the other Party within fifteen (15) Business Days from the date that such Party receives notice that corrective action is needed;

(c) either Party files a petition in bankruptcy or otherwise becomes subject to the jurisdiction of a bankruptcy court;

(d) either Party to the Agreement shall repudiate, deny or disaffirm its obligations under the Agreement or these GTCs;

(e) the Agreement is cancelled, terminated, revoked or rescinded without the express prior consent of the other Party, or any proceeding shall have been commenced by any person (other than either Party) seeking to cancel, revoke, rescind or disaffirm the obligations of any Party to the Agreement and these GTCs (unless such Party is contesting the proceeding in good faith and such proceeding is withdrawn or dismissed with prejudice within 15 days); or

(f) the failure of Customer to provide an assurance of future performance under Section 13 of these GTCs.

12.2 The waiver by the non-defaulting Party of any right under the Agreement or these GTCs will not operate to waive any other such right nor operate as waiver of that right at any future date upon another default by either Party under the Agreement, and a single or partial exercise of any right, power or privilege by one Party in the event of the other Party’s default will not preclude any subsequent or further exercise of that right, power, or privilege or the exercise of any other right, power, or privilege. Nothing in this Section 12.2 of these GTCs is intended in any way to limit or prejudice any other rights or remedies the non-defaulting Party may have under the Agreement, these GTCs, Applicable Law or in equity. The remedies provided in the Agreement and these GTCs are not exclusive and, except as otherwise expressly limited by the Agreement and these GTCs, are in addition to all other remedies of the non-defaulting Party

at law or in equity. Acceptance by Owner of any payment from Customer for any charge or service after termination of the Agreement and these GTCs shall not be deemed a renewal of the Agreement or these GTCs under any circumstances.

12.3 Upon the occurrence and during the continuance of an Event of Default, and at any time thereafter, the non-defaulting Party may, by delivery of written notice to the defaulting Party, take any or all of the following actions, without prejudice to the rights of the non-defaulting Party to enforce its claims against the defaulting Party and to enforce any other remedies provided by law: (a) withhold or suspend its performance under the Agreement and these GTCs without prior notice; (b) immediately terminate the Agreement and these GTCs in whole or in part; and (c) enforce any and all rights and interests created and existing under the Agreement and these GTCs or arising under Applicable Law, including, without limitation, all rights and remedies existing under any security documents and all rights of setoff. The enumeration of the foregoing rights is not intended to be exhaustive and the exercise of any right shall not preclude the exercise of any other rights, all of which shall be cumulative.

### **Section 13. Security and Credit.**

13.1 If at any time Owner believes in good faith that the ability of the Customer to perform under the Agreement and these GTCs has been impaired or is unsatisfactory, advance cash payment or other assurance of future performance acceptable to Owner, including letters of credit, performance bonds, guaranties and cash pre-payments, will be given by Customer upon demand by Owner to cover fees that are reasonably anticipated to become due under the Agreement over the remaining Term. Failure to provide an assurance of future performance pursuant to this paragraph shall be deemed an Event of Default under Section 12.1.

13.2 If any insolvency, bankruptcy, receivership, or similar proceedings are initiated by or against Customer, on the day immediately before such event, any fees for services rendered or to be rendered under the Agreement and any fees required to be paid for the remaining Term of the Agreement, will become immediately due and payable, and the Agreement will terminate, without prejudice to any other rights or remedies it may have under the Agreement or the law.

### **Section 14. Indemnity.**

Subject to Section 7, each Party (the “*Indemnifying Party*”) shall indemnify and hold the other Party, its Affiliates, and their employees, directors, officers, representatives, agents and contractors (collectively, the “*Indemnified Party*”) harmless from and against any and all Liabilities arising from the Indemnifying Party’s (i) breach of the Agreement or these GTCs, (ii) gross negligence or willful misconduct of it, its Affiliates and their employees, directors, officers, representatives, agents or contractors in connection with the performance of such Party’s obligations under the Agreement, or (iii) failure to comply with Applicable Law with respect to the sale, transportation, storage, handling or disposal of the Product, unless and to such extent that such Liability results from the Indemnified Party’s breach of the Agreement, gross negligence or willful misconduct, or failure to comply with Applicable Law.

### **Section 15. Miscellaneous**

15.1 Any notice to be given under the Agreement and these GTCs shall be in writing and shall be deemed to have been given to the Party to whom it is addressed on the date presented in person; or five (5) days following the date of mailing if sent by prepaid first class mail certified mail, return receipt requested; or, if delivered via facsimile or electronic mail transmission, four (4) hours following the time of transmission of such facsimile (as evidenced by answerback confirmation of such transmission) provided such deemed receipt is within normal business hours of the recipient Party, failing which such notice will



be deemed to have been received at the commencement of the next following Business Day. Any notice to be given shall be given in accordance with the particulars of such Party set forth in the Agreement or such other particulars of which a Party shall have notified the other Party in accordance with this Section.

15.2 If any provision of the Agreement or these GTCs is found to be invalid or unenforceable under any applicable statute or rule of law, the remainder of the Agreement or these GTCs, as applicable, shall continue to be binding upon the parties hereto, and the invalid or unenforceable provision shall be modified to comply with such statute or rule of law, while maintaining to the maximum extent possible the original intent of the Parties.

15.3 No Party may assign the Agreement or these GTCs as they pertain to the Agreement without the prior written consent of the other Party. Such consent will not be unreasonable withheld, conditioned or delayed.

15.4 The Agreement and these GTCs as they pertain to the Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of each Party.

15.5 The Agreement and these GTCs shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Oklahoma without giving effect to the principles of conflicts of laws thereof. The substantially prevailing Party in any such controversy, claim, dispute or action arising out of or related to this Agreement or these GTCs shall be entitled to recover reasonable attorneys' and expert witness' fees.

15.6 The Agreement and these GTCs shall be only for the benefit of the Parties hereto and their respective legal representatives, successors and permitted assigns, it being the intention of the Parties hereto that no third party shall be deemed a third party beneficiary of the Agreement or these GTCs, except as provided for in Section 14 of these GTCs.

15.7 The captions in the Agreement and these GTCs have been inserted for convenience of reference only and shall not define or limit any of the terms and provisions thereof or hereof.

15.8 The Parties stipulate and agree that the Agreement and these GTCs shall be deemed and considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one party or the other as a result of the preparation, submittal or other event of negotiation.

15.9 This Agreement and these GTCs constitutes the entire agreement between the Parties pertaining to the subject matter thereof and hereof. The Agreement and these GTCs shall govern in respect of all matters referred to therein and herein and wholly replaces and supersedes any and all previous agreements, understandings, negotiations and discussions, whether oral or written, of the Parties hereto pertaining to the subject matter thereof and hereof. In the event of a conflict between the terms and provisions of these GTCs and the Agreement, the terms and provisions of these GTCs will control.