

**GENERAL TERMS AND CONDITIONS  
FOR THE SALE AND PURCHASE OF  
NIGERIAN CRUDE OIL**

**PART II OF THE CONTRACT  
2021 -2023**

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**GENERAL CONDITIONS FOR SALE AND PURCHASE OF  
NIGERIAN CRUDE OIL**

These general conditions shall constitute the standard and General Terms and Conditions applicable to the sale of Nigerian Crude Oil by the SELLER and together with Part I forms the Contract for the sale and purchase of Nigerian Crude Oil.

**ARTICLE 1  
QUANTITY MEASUREMENT**

- 1.1. The quantity of Crude Oil to be delivered by the SELLER under this Contract shall be determined by manual measurements of the shore tanks immediately before and after loading by the Terminal Operator and/or by mechanical gauging devices. The certificate(s) of quantity of the Crude Oil issued shall, except in cases of manifest error or fraud, be conclusive and binding on both SELLER and BUYER for invoicing purposes but without prejudice to the rights of either Party to make claims pursuant to Article 2.4. In the event of non-availability or failure of the mechanical devices, manual measurement shall suffice and shall be the final measurement.
  
- 1.2. The BUYER or its appointed agent and/or Master of the Nominated Vessel as notified to SELLER in writing shall have the right to participate in the volumetric and temperature measurements of Crude Oil sampling with the Terminal Operator or SELLER's representative at the loading Terminal. The signature of the Master of the Nominated Vessel on the bill of lading shall be conclusive evidence of the quantity of Crude Oil loaded into the Nominated Vessel unless the Master prior to the departure of the said vessel from the loading Terminal shall have registered a written protest with regard to the quantity and/or temperature of the Crude Oil loaded into the said vessel. The detailed particulars relating to such protest shall be furnished by BUYER to SELLER within thirty (30) Days after loading date. SELLER shall thereafter instruct the Terminal Operator to retain the sample for retest.

- 1.3. Only BS&W ascertained at the loading Terminal shall be deducted in computing the net quantity of the Crude Oil loaded and certified in the bill of lading.
- 1.4. Unless otherwise agreed, the measurements, sampling and testing of each delivery of Crude Oil shall be carried out at the loading Terminal at the time of shipment and in accordance with the methods from time to time prescribed, approved or accepted by the ASTM or IP or API. The ASTM or the IP Petroleum Measurement Tables, 1980 edition or the latest revised edition thereof, shall be used for the correction and calculation of volumes of Crude Oil at 60°F.

## **ARTICLE 2**

### **QUALITY**

- 2.1(a) The grade or quality of the Crude Oil which SELLER is obligated to deliver to the BUYER at the loading Terminal shall be Crude Oil conforming to the normal export quality as generally made available at the loading Terminal.
- 2.1(b) This Article 2 constitutes the whole of the SELLER's obligations with respect to the description, quality and fitness for purpose of the Crude Oil to be delivered and (save to the extent that exclusion thereof is not permitted or is ineffective by operation of law) all statutory or other conditions or warranties, express or implied, with respect to the description or satisfactory quality of the Crude Oil or its fitness for any particular purpose or otherwise are hereby excluded.
- 2.2 BUYER shall have the right to receive one gallon sealed representative sample of the Crude Oil quality to be placed on board the vessel if so requested. SELLER shall also retain representative sealed sample at the loading Terminal for a maximum period of sixty (60) Days after loading of the cargo of Crude Oil.
- 2.3 The Terminal Operator shall test for BS&W, specific gravity and temperature of all Crude Oil before shipment at the loading Terminal. The result of the test shall be binding upon BUYER and SELLER, and no claim shall be made by either Party

concerning the quality of the Crude Oil after delivery has been made by the SELLER except in the circumstances stated in Article 2.4 below.

**2.4. CLAIMS IN RESPECT OF QUALITY AND /OR QUANTITY**

- (i) Any complaint of difference in quantity or deficiency of quality or of variation of Crude Oil grade made by the BUYER after laboratory test of undischarged cargo of Crude Oil delivered at the loading Terminal shall be admissible only if notified in writing to the SELLER within forty-five (45) Days of the date of loading at the loading Terminal and accompanied by evidence fully supporting the complaint. Both the SELLER and the BUYER shall appoint their respective independent inspectors who shall jointly certify the quality and/or quantity of the Crude Oil (as the case may be) from representative samples taken at the loading Terminal, witnessed by representatives from the SELLER and BUYER and their findings shall be conclusive and binding on both the SELLER and the BUYER. The costs and expenses of the independent inspectors, witnesses including costs associated with the laboratory test(s) of the samples shall be borne solely by the BUYER.
  
- (ii) In the event that the report as duly certified by the independent inspectors shows that there is a difference in quantity or deficiency in the quality or grade of such Crude Oil, the SELLER shall only pay the amount equivalent to the differential in the quantity or quality of the delivered Crude Oil resulting from a retest carried out on a retained representative sample that exceeds the industry tolerance of 0.5% BS &W.
  
- (iii) Out-turn verification notice should be advised in writing to SELLER not later than fifteen (15) Banking Days prior to the exercise.  
BUYER shall in respect of every Crude Oil Loss claim, submit to the SELLER the report of the out-turn figure at the port of discharge not later than forty-five (45) Days after the discharge of the Crude Oil.

## **ARTICLE 3**

### **DELIVERY**

- 3.1 Delivery of Crude Oil by SELLER to BUYER shall be on the basis of FOB, subject to availability.

## **ARTICLE 4**

### **LIFTING SCHEDULES/ PROGRAMMES**

#### **4.1 LIFTING SCHEDULE**

Not later than thirty (30) Days before the commencement of the relevant Month that the BUYER is programmed to lift Crude Oil, the SELLER shall notify BUYER of the estimated quantities the BUYER shall have the right and obligation to lift during the relevant Month indicating the grades by crude names and the loading Terminals. Such notification of quantities, grades and/or estimated decades of the Month are subject to change depending on the availability of Crude Oil at the relevant time.

- 4.2 The SELLER may propose changes to the Lifting advice. The proposal shall be delivered to the BUYER within twenty-one (21) Days prior to the date the lifting shall be made by the BUYER.

- 4.3 Not later than five (5) Days, Saturday, Sundays and public holidays inclusive, from the date a lifting advice is given pursuant to Article 4.2 above, BUYER shall give SELLER notice in writing of its acceptance to lift the cargo of Crude Oil. Failure by BUYER to give such notice shall result in BUYER being in default and the provisions of Article 7.5 shall apply.

- 4.4 Where BUYER issues notice of acceptance to lift cargo pursuant to Article 4.3 above, and thereafter declines and returns the allocation to SELLER causing SELLER to dispose of the cargo through a third party, then, BUYER shall be liable to SELLER for any and all costs, damages, losses and liabilities which may arise from such act of BUYER and in the course of disposal of such distressed cargo by SELLER through a third party.

Without prejudice to indemnity obligation of BUYER hereof, SELLER reserves the right to suspend further allocation of cargoes to BUYER.

- 4.5 The SELLER shall not later than twenty (20) Days before the beginning of the decade of the Month in which the BUYER is programmed to lift, advise the BUYER of the acceptance date, implying a date-range as defined in Article 5.1 below.
- 4.6 In the event that BUYER has not received written notification of the acceptance date as provided in Article 4.5 above, BUYER shall notify SELLER in writing and by phone calls contact failing which such acceptance date shall be deemed to have been received by the SELLER.

## **ARTICLE 5 MONTHLY VESSEL SCHEDULE**

- 5.1 A date-range appearing on the agreed monthly lifting programme under Article 4.3 above shall mean a 2-Day period commencing from 0001 hours on the first Day of date-range and terminating at 2359 hours on the last Day of such date-range.

### **5.2 VESSEL VETTING/CLEARANCE**

- 5.2.1 Each vessel which is to load Crude Oil pursuant to this Contract shall be nominated in writing by the BUYER to the SELLER not later than thirty (30) Days before the first Day of the date-range in which the BUYER wishes to lift Crude Oil. Such notices shall specify the following:
- (a) The name of vessel, date built and flag.
  - (b) The vessel's dimensions and other specifications, which shall be within the maximum and/or minimum limits specified by the SELLER from time to time and shall satisfy the standards and regulations of the Terminal Operator at the relevant time.



- (c) The quantity and grade(s) of Crude Oil to be delivered, the co-loading date and crude stream of co-loads (if any). There shall be at least twenty – four (24) hours' time allowable between co-loads of different crude streams.

5.2.2 (A) With regards to any Nominated Vessel, the BUYER warrants to SELLER that the vessel shall:

- (i) be capable of receiving Crude Oil at hourly bulk loading rates of not less than 10% of the SDWT of the vessel or a maximum of 15,000 Tons whichever is lower;
- (ii) have hose handling derricks with a minimum lifting capacity as required by SELLER's Terminal Regulations;
- (iii) be safe and have adequate mooring arrangements which comply with accepted international standards;
- (iv) be maintained and operated to accepted international standards and shall comply with all Terminal and international safety precautions and regulations;
- (v) comply with the requirement of the ISPS Code and the relevant amendments thereof;
- (vi) be capable of receiving Crude Oil at the minimum rate specified at the loading Terminal;
- (vii) conform to the Terminal Regulations and any applicable local laws and regulations with respect to safety, size, vessel movement, navigation and operating standards, documentation on board, discharge of ballast and the like;

- (viii) have characteristics which shall comply in all material respects with the limits imposed by the Terminal Regulations;
- (ix) comply with applicable regulations concerning oil spill emergency prevention and response;
- (x) comply with the applicable requirements of those international conventions regarding the control of oil pollution to which the flag state of the vessel is a party;
- (xi) be a vessel entered in a P&I Club, which is a member of the International Group of P&I Clubs;
- (xii) have in place insurance coverage for oil pollution in an amount not less than the highest standard oil pollution coverage available under the rules of the International Group of P&I Clubs;
- (xiii) have the owners as member of the ITOPF and the vessel has on board a valid certificate issued pursuant to the Civil Liability Convention 1969, or the 1992 Protocol, as amended; and
- (xiii) comply with the International Safety Management Code which became effective 1<sup>st</sup> July 1998, and shall, upon request, provide a copy of the relevant valid safety management certificate and document of compliance as required under the SOLAS Convention 1974, as amended.

5.2.2 (B) The BUYER further warrants to the SELLER that it shall give preference to and charter vessels owned or leased by NIDAS (a subsidiary company of NNPC) for carriage of Crude Oil under this Contract whenever such vessels are available and are offered at competitive rates. Where NIDAS is unable to provide such

vessels, other Nigerian companies shall be used when offered at competitive rates.

In the event that BUYER fails to comply with the vessel nomination requirement specified under this Contract, SELLER shall have the right to suspend BUYER for two consecutive Crude Oil Liftings. SELLER shall in addition to the above have the option to suspend further Crude Oil Liftings by BUYER until the BUYER demonstrates its readiness to comply with the provisions of this Article 5.2.2(B).

5.3 BUYER shall not, except in the event of Force Majeure, postpone or cancel without immediate substitution, any accepted vessel nomination less than four (4) Days before the first day of the agreed date-range. Any production loss and/or damages and expenses resulting from any such cancellation or postponement shall be for the sole account of BUYER.

5.4 **DOCUMENTATION INSTRUCTIONS**

BUYER shall submit in writing to the SELLER, documentation instructions not later than ten (10) Days before the first day of the date range in which the BUYER wishes to lift Crude Oil. Such documentation instructions shall specify the following:

- a) Vessel name
- b) Quantity to be loaded
- c) Crude Oil grade/stream
- d) SDWT
- e) IMO Number
- f) Draft

- g) LOA
- h) Beam
- i) Flag of vessel
- j) Year built
- k) The ETA of the vessel. Any deviation exceeding six (6) hours from the original ETA or where any delayed arrival of the vessel will prevent her from being berthed or moored the same day due to any night-time navigational or any other applicable restrictions shall immediately be advised by BUYER to SELLER and Terminal Operator supported with detailed reasons for such deviation or delay.
- l) Agent
- m) Inspector
- n) Destination: The destination must be precise and shall capture the actual place/country
- o) Consignor
- p) Consignee
- q) Co-loading date and crude stream

## 5.5 DOCUMENTARY REQUIREMENTS

Information required as documentary requirements shall include but not limited to the following:

- (i) Bill of lading (copies marked non-negotiable)

- (ii) Certificate of Quantity
- (iii) Certificate of Quality
- (iv) Certificate of Origin and Authenticity
- (v) Terminal Time Sheets signed by the Master and Terminal Cargo Manifest
- (vi) Master's Receipt for Samples
- (vii) Master's Ullage Report
- (viii) Master's Document Enclosure and/or Receipt Form.

BUYER shall submit in writing to the SELLER separate request for split bills of lading's Upward/Downward Tolerance, Additional Volumes etc at least ten (10) Days before the first day of the loading date-range.

## 5.6 **ACCEPTANCE OF VESSEL**

- (a) As soon as practicable after receipt of the vessel nomination but in no event more than forty-eight (48) hours after receipt thereof, the SELLER shall advise the BUYER in writing if the vessel is accepted as a Nominated Vessel, or is rejected. In the absence of a timely reply, the vessel shall be deemed to be rejected. The SELLER may reject the Nominated Vessel for reasons such as the following:
  - (1) the vessel does not comply with the specifications of this Contract, or the Terminal Regulations and/or applicable laws and regulations, including without limitation health, safety and/or environmental laws, regulations, or industry standards; or

- (2) the vessel in the reasonable belief of the SELLER or the Terminal Operator would endanger the Terminal, Terminal operations, the environment, or the health or safety of individuals; or
  - (3) legal restrictions including, but not limited to, international or national sanctions, to which the vessel is subject.
- (b) If the vessel nominated by the BUYER is rejected pursuant to this Article, then the reason(s) for such rejection will be disclosed to the BUYER.

#### **5.7 DUTY TO NOMINATE SUBSTITUTE VESSEL**

If a vessel nominated by the BUYER is rejected, the BUYER shall nominate an alternate/substitute vessel. The nomination of such alternate/ substitute vessel shall be made in writing to the SELLER and the Terminal Operator not later than three (3) Days after the date that the SELLER notifies the BUYER of such rejection pursuant to the provisions of Article 5.6(b).

#### **5.8 ACCEPTANCE OF ALTERNATE /SUBSTITUTE VESSEL**

As soon as practicable after receipt of the alternate/ substitute vessel nomination the SELLER shall, within twenty-four (24) hours after receipt of such nomination, advise the BUYER in writing if the alternate/ substitute vessel is accepted as a Nominated Vessel or is rejected in accordance with the provisions of Article 5.6.

5.9 Subject to SELLER being given not less than three (3) Days' notice prior to the first Day of the agreed date-range, the BUYER may substitute another vessel provided the vessel substituted is acceptable to SELLER and conforms with the Terminal Regulations and applicable laws and regulations and policies of the Federal Government of Nigeria.

5.10 BUYER shall cause any Nominated Vessel to report by radio/telex/fax to the Terminal Operator Each Nominated Vessel's scheduled arrival date and hour as follows:

- (a) Seven (7) Days before Nominated Vessel's ETA or immediately upon leaving last port (if the Nominated Vessel becomes available less than seven (7) Days steaming time before ETA).
- (b) Seventy-two (72) hours before Nominated Vessel's ETA.
- (c) Forty-eight (48) hours before Nominated Vessel/s ETA
- (d) Twenty-four (24) hours before Nominated Vessel's ETA.

5.11 The SELLER shall not be liable for any costs, losses or expenses incurred by the Nominated Vessel, the charterers or the Nominated Vessels' owners arising from the failure of any loading Terminal/installation to comply with the ISPS Code.

5.12 Notwithstanding any prior acceptance of Nominated Vessel by SELLER, if at any time prior to the passing of risk and title, the Nominated Vessel ceases to comply or is found to be non-compliant with the requirement of the ISPS Code, SELLER shall have the right not to berth such Nominated Vessel or discontinue the loading of Crude Oil where such Nominated Vessel has already berthed and any Demurrage resulting therefrom shall be for the sole account of the BUYER and the SELLER hereby repudiates any and all claims and liability arising therefrom.

## **ARTICLE 6**

### **LOADING CONDITIONS AND DEMURRAGE**

6.1 The BUYER shall ensure that Nominated Vessels shall have all the usual facilities for mooring on arrival and departure at the loading Terminal.

#### **6.2 LAYTIME**

6.2.1 Total Lay time allowed for loading Crude Oil at the loading Terminal shall be thirty-six (36) consecutive hours for cargoes up to the base cargo as specified by SELLER.

Where the cargo to be loaded exceeds the relevant base cargo size of the loading Terminal, the SELLER shall be allowed to pro-rate Lay time, and Lay time of thirty-six (36) consecutive hours shall be increased in direct proportion to the actual size.

The base cargo sizes shall, unless otherwise changed by the SELLER at any relevant time with appropriate notice to the BUYER, be 123,498Tonnes.

- 6.2.2 Lay time allowed for loading at the loading Terminal shall include Saturdays, Sundays and public holidays unless loading during such days shall be prohibited by applicable laws and/or regulations including the Terminal Regulations.
- 6.2.3 Lay time shall begin to run from six (6) hours after NOR has been tendered by the Nominated Vessel Master to the Terminal Operator of the Nominated Vessel's readiness to load, berth or no berth. Loading of Crude Oil at the loading Terminal shall be deemed to be completed upon disconnection of loading hoses.
- 6.2.4 Lay time shall run continuously from commencement until cessation and shall cease on the disconnection of the loading hose(s) after completion of loading at the loading Terminal.
- 6.3 Notwithstanding the provisions of Article 6.2 above, if the Nominated Vessel arrives and NOR to load at the loading Terminal has been tendered before its agreed date-range, Lay time shall not commence before 0600 hours on the first day of such date-range unless the Nominated Vessel actually commences loading prior to such time in which event Lay time shall begin to run from commencement of loading at the loading Terminal.
- 6.4 If the Nominated Vessel arrives later than 1600 hours on the last day of the agreed date-range, Lay time shall commence on commencement of loading at the loading Terminal and there shall be no Demurrage claim by the BUYER in respect thereof. If NOR is given for the Nominated Vessel after the last day of the agreed date range and is accepted by SELLER in its sole and absolute discretion, then, without prejudice to



any of the SELLER's other rights, Lay time shall commence only on commencement of loading.

For purposes of calculating running hours, loading shall be deemed to be completed upon disconnection of loading hoses.

- 6.5 BUYER or the Master of the Nominated Vessel shall deliver to the Terminal Operator the advance notice of ETA at loading Terminal as follows: seven (7) Days, three (3) Days, forty-eight (48) hours and twenty-four (24) hours and any other changes made to the ETA by more than four (4) hours from the last notification given. Failure to give due notice of twenty-four (24) hours prior to the ETA shall increase Lay time allowed to SELLER by the difference between twenty-four (24) hours and the actual number of hours the ETA notice is received by the Terminal Operator, provided, however that such increase in Lay time shall not exceed twenty-four (24) hours. Upon arrival at the anchorage, the Master of the Nominated Vessel shall give the Terminal Operator NOR of the Nominated Vessel to load. NOR shall only be tendered between the hours of 06:00 and 16:00 local time. NOR shall not be tendered during the period that the loading Terminal is closed.

#### **DEMURRAGE**

- 6.5.1 Except as stated in Article 6.5.2 below, Demurrage shall be paid to the BUYER in accordance with the provisions of Article 6.7 for Lay time in excess of the allowable Lay time specified in Article 6.2 above. In no event shall SELLER be liable for Demurrage hereunder unless the Demurrage claim has been submitted to SELLER by BUYER in writing within forty-five (45) Days of the bill of lading date, stating in reasonable detail the specific facts upon which the claim is based, provided that any supporting documentation which is not at that time available to BUYER shall be submitted to SELLER within ninety (90) Days of the bill of lading date. If BUYER fails to submit such notice together with such documentation within the said ninety (90) Days period, then any liability of SELLER for Demurrage shall be extinguished.

The payment of Demurrage shall be in accordance with the principles set out below:

- i) An average rate calculated by applying the London Tanker Brokers Panel's Monthly AFRA as published for the period of loading applicable to vessels of similar size; and
- ii) The average rate applicable to any relevant vessel size shall be determined in accordance with the current edition of the World-Wide Tanker Nominal Freight Scale (World scale) as amended from time to time, or such other freight scale as may be issued in replacement thereof.
- iii) Vessel size classification shall be in accordance with London Tanker Brokers Panel's AFRA publications.
- iv) Where more than one cargo of Crude Oil is loaded on the same Nominated Vessel at the loading Terminal by different buyers, then the Lay time and Demurrage shall be allocated between cargoes of Crude Oil pro-rata to the quantities loaded.
- v) No Demurrage shall be paid if a Nominated Vessel is VLCC or a larger vessel classification in accordance with London Tanker Brokers Panel's AFRA publications.

#### 6.5.2 **EXCLUSION FROM LAYTIME AND DEMURRAGE**

Any delay arising out of or in connection with or any time used for any of the under-listed events shall not be counted or included in calculating the time taken by the SELLER to load the shipment or the time in respect of which SELLER is liable for Demurrage (whether or not the Nominated Vessel is already on Demurrage) and the BUYER shall not be entitled to make any form of claim whatsoever:

- (a) delay of the Nominated Vessel in reaching its berth caused by conditions not within the control of SELLER or SELLER's agent;

- (b) breakdown or inability of the Nominated Vessel's facilities to receive Crude Oil within the time allowed;
- (c) tank cleaning aboard the Nominated Vessel;
- (d) prohibition of loading by the BUYER, Nominated Vessel owners, Nominated Vessel operators or the Nigerian Port Authorities or agents of the Federal Government of Nigeria at any time;
- (e) delay or interruptions of loading due to bad weather condition, discharge of ballast or slop, awaiting clearance by Nigerian Port Authorities or any other reason beyond SELLER's control;
- (f) any Force Majeure occurrence as provided under Article 21 herein;
- (g) any delay caused by SELLER's failure to load Crude Oil on the Nominated Vessel as a result of BUYER's non-fulfillment of a material term of this Contract;
- (h) non-compliance of the Nominated Vessel with safety regulations;
- (i) slow loading as requested by the Master of the Nominated Vessel;
- (j) suspension of loading due to electrical storms;
- (k) ullaging, sampling and connecting hoses;
- (l) fault or failure of the Nominated Vessel which results in loading being suspended;
- (m) in the event that more than one grade of Crude Oil is co-loaded on a Nominated Vessel;

- (n) grade switching (Sandwich loading);
- (o) if Nominated Vessel is VLCC or a larger vessel whose classification shall be in accordance with London Tanker Brokers Panel's AFRA publications;
- (p) inward passage to berth;
- (q) discharge of slops or ballast when not concurrent with loading at the required rate;
- (r) awaiting customs or other relevant government agencies' clearance, free pratique, daylight or local administrative requirements; and
- (s) time loss caused by fire or explosion in or about the loading facilities.

6.5.3 If the total Lay time is exceeded as a result of breakdown of machinery provided by SELLER, the rate of Demurrage shall be one-half of the stipulated rate for the period of delay directly attributable to such breakdown.

6.5.4 Notwithstanding anything contained elsewhere in this Agreement, if SELLER is, by any cause reasonably beyond its control, prevented, delayed or hindered from or bringing to the loading Terminal the Crude Oil required for shipment hereunder or any part thereof, or from or in loading the same, any time lost, whether in the commencement, carrying out or completion of the loading, shall not be counted or included in calculating the time taken by SELLER to load such shipment; and any time so lost after the Lay time shall have expired shall not be counted or included in calculating the time for which SELLER is liable for Demurrage. For purposes of the foregoing, the Force Majeure events specified under Article 21 hereunder shall, without limitation to the generality of the foregoing, in each case be deemed a cause reasonably beyond the control of the SELLER.

## 6.6 CLAIMS FOR FAILURE OF NOMINATED VESSEL TO VACATE BERTH

6.6.1 If the Nominated Vessel fails to vacate berth within three (3) hours after disconnection of the loading hose(s) and the SELLER incurs losses, damages and/or other costs as a result of such failure to vacate, including Demurrage payable as a result of such delay in berthing or mooring the next vessel awaiting its turn to load at such berth, then the BUYER shall be liable for all the losses, damages and other cost including Demurrage payable as a result of the delay in berthing or mooring the next vessel.

6.6.2 Where SELLER becomes liable to third parties as a result of:

- (i) Failure of Nominated Vessel to vacate the berth promptly; or
- (ii) Damage caused to Terminal facilities by BUYER's Nominated Vessel, the BUYER shall reimburse the SELLER for all monies paid by SELLER in settlement of such liability to third parties.

## 6.7 CLAIMS FOR DEMURRAGE

To make a claim for Demurrage the BUYER shall promptly give notice to the SELLER within forty-five (45) Days of the bill of lading date stating in reasonable details the specific facts upon which the claim is based and supported with appropriate documents to substantiate the claim, provided that any supporting document which is not at that time available to BUYER shall be submitted to SELLER within ninety (90) Days of the bill of lading date. The supporting documents shall include but not limited to the following:

- (i) BUYER's invoice (Original),
- (ii) BUYER's Assessment (Original),
- (iii) NOR,

- (iv) latest Lay can Advise,
- (v) Tanker Time Sheet, and
- (vi) Vessel Master's written notification of Demurrage.

If the BUYER fails to give such notice or documentation within the time specified herein, then the claim shall be deemed automatically and irrevocably waived by the BUYER.

The SELLER shall subject to the receipt of the documents specified herein above and after verification thereof, pay the BUYER such verified Demurrage in United States Dollars in accordance with the calculation method set out in Article 6.5.1.

- 6.8 If the SELLER shall become liable to BUYER for Demurrage in respect of any delivery made, SELLER shall not be liable for any other damages or loss arising from Demurrage claim whether direct or indirect.

## **ARTICLE 7**

### **BUYER'S LIFTING OBLIGATION AND REMEDIES FOR FAILURE TO LIFT OR NOMINATE VESSEL**

- 7.1 The lifting obligations of the BUYER under this Contract shall be determined with reference to the total quantity of Crude Oil that the BUYER is obligated to lift in the notified monthly lifting programme pursuant to the provisions of Article 4 of the GT&C. Except with the prior written consent of SELLER, BUYER shall during each relevant Month lift the total volume of Crude Oil stipulated in the notified lifting programmes subject to the tolerance of plus or minus five (5) percent.

## **7.2 FAILURE TO NOMINATE A VESSEL**

If the BUYER fails to nominate a vessel within the time specified under Articles 5.2 and 5.7, then the BUYER shall be in default of this Contract with respect to its Lifting Entitlements. If such default continues for more than three (3) Days from the period required for the vessel nomination to be notified to the SELLER, then the BUYER's cargo of Crude Oil shall be treated in accordance with the provisions of Article 7.5.

## **7.3 FAILURE TO TENDER NOR**

If the BUYER fails to cause a NOR to be tendered by a Nominated Vessel within the specified period, the BUYER shall be in default of this Contract with respect to such lifting and the BUYER's cargo of Crude Oil shall be treated in accordance with the provisions of Article 7.5.

## **7.4 REFUSAL TO LIFT**

If after the relevant date for vessel nominations pursuant to Articles 5.2 and 5.7 above, the BUYER or the Terminal Operator notifies the SELLER that the BUYER has failed or refused to lift its cargo of Crude Oil, the BUYER shall be in default of this Contract with respect to such lifting.

## **7.5 AUTHORITY TO ACT IN DEFAULT**

In the event of any default by the BUYER under the provisions of Articles 4.4, 7.2, 7.3 or 7.4, the SELLER shall have the right to take all actions concerning the BUYER's cargo to avoid shut-down or reduction in production. Such action shall include but not be limited to the following:

- (i) prohibiting the BUYER from lifting such cargo of Crude Oil except if the BUYER demonstrates commitment to lift to the satisfaction of NNPC;
- (ii) chartering a vessel in order to place the BUYER's cargo of Crude Oil in storage. All costs associated with such charter shall be to the account of the BUYER;
- (iii) selling the BUYER's cargo of Crude Oil and all costs associated with such sale shall be to the account of the BUYER.

## 7.6 **LIABILITY AND INDEMNITY FOR DEFAULT**

The BUYER shall be responsible for, and shall indemnify and defend the SELLER and any person who purchases the BUYER's cargo of Crude Oil pursuant to Article 7.5 from and against any and all costs of whatever nature arising from, or related to, such default and action taken under Article 7.5 (a), including without limitation:

- (a) any costs incurred or associated with the chartering of a vessel to store the BUYER's cargo of Crude Oil, plus any administrative fee(s) by the SELLER for selling such cargo of Crude Oil;
- (b) any costs levied, incurred or associated with the sale or disposal of the BUYER's cargo of Crude Oil, plus 10% of the sales proceed as marketing fee;
- (c) any costs arising from the reduction, shutdown and start-up of the Crude Oil production excluding costs arising from deferred or lost production;
- (d) any costs incurred by any buyer which arise from such default;
- (e) interest on any such costs, fees or losses at the agreed interest rate commencing from the date such payments were made until the date such costs, fees or losses are fully reimbursed.
- (f) any losses incurred or associated with the sale or disposal of the BUYER's cargo of Crude Oil.
- (g) If the value realised from the sale of the cargo is less than the amount which would have been realised using the default option, BUYER shall be liable for such loss.



**ARTICLE 8**  
**DAMAGES FOR UNDERLIFTING**

- 8.1 BUYER shall be liable to pay SELLER liquidated damages in an amount equal to five (5) percent of the value of the under-lifted Crude Oil, where BUYER lifts less than it is obligated to lift twice in any one Quarter or three times in any calendar year. The liquidated damages payable to SELLER for any subsequent under- lifting shall be ten (10) percent of the value of the under-lifted Crude Oil.
- 8.2 In determining the value of liquidated damages payable under this Article, the applicable price shall be the relevant Month's official selling price (Official Selling Price) issued by SELLER with the pricing option chosen by BUYER for the Crude Oil under lifted with the last Day of the issued lay can being the deemed bill of lading date.
- 8.3 Where the BUYER selects no pricing option within the applicable period allowed, the Prompt Option shall apply.

**ARTICLE 9**  
**DISPOSAL OF UNLIFTED/UNDERLIFTED CRUDE**

- 9.1 BUYER shall not have the right to lift any volume of Crude Oil un-lifted or under-lifted within any calendar Quarter in subsequent Months.
- 9.2 Without prejudice to the provisions of Articles 7 and 9.1 in respect of un-lifted/under-lifted Crude Oil by BUYER, and provided that the SELLER has not exercised its right under Article 7.5 to dispose of the un-lifted cargo of Crude Oil, SELLER may allow BUYER to lift such Quarter's un-lifted or under-lifted Crude Oil not later than fifteen (15) Days after the end of the relevant Quarter subject to payment of five (5) percent of the value of such unlifted or under-lifted volume as liquidated damages. The price for such late lifting shall be the pricing option chosen by BUYER as at the time of bill of lading date in accordance with Article 12 hereof.

**ARTICLE 10**  
**OVER-LIFTING OF CRUDE OIL**

Subject to availability of excess Crude Oil and the satisfaction of all contractual commitments to other buyers' lifting, the SELLER may notify the BUYER at any relevant time of any additional Crude Oil quantity in excess of the BUYER's Crude Oil Lifting Entitlements and the BUYER shall lift such excess Crude Oil in respect of that Month in the notified lifting programme plus or minus five (5) percent provided that the price applicable to such over-lifting shall be as stated in a written notice duly signed by the SELLER and shall not be less than the price usually offered by SELLER for Crude Oil delivered under this Contract.

**ARTICLE 11**  
**CAPACITY DEVELOPMENT**

BUYER shall at its sole cost, carry out the training and capacity development of COMD staff during the Contract period as may be advised by COMD.

**ARTICLE 12**  
**PRICE**

12.1(a) Subject to the provisions hereof, BUYER shall pay SELLER the applicable price for the total quantity of each shipment as stated in the bill of lading on Dated Brent related basis and certificates of quantity and quality issued pursuant to the provisions of this Agreement. Such price shall be expressed in United States Dollars per Barrel. The applicable price shall be the Official Selling Price derived from the pricing formula advised by the SELLER as being the FOB price per barrel at which Crude Oil shall be sold to buyers generally.

12.1(b) **Valuation**

i) Valuation of each cargo of Crude Oil delivered under this Contract shall either be on Prompt Option, Advance Option or Deferred Option basis at the election of the BUYER. Any option elected by the BUYER shall be

indicated in the Letter of Credit which shall reach the SELLER not later than six (6) Banking Days prior to the first Day of laycan.

- ii) Where the BUYER fails to elect an option in the Letter of Credit, the Prompt Option shall automatically apply.
- iii) Where the Letter of Credit is submitted to the office of the GGM COMD later than six (6) Banking Days prior to the first Day of laycan, the SELLER shall have the discretion to apply either the Prompt Option or the elected Option, whichever is higher.
- iv) Where there is a change of laycan date at the request of the BUYER and that change is made within six (6) Banking Days of the initial laycan, either the Prompt Option or the elected Option shall be applied whichever is higher, subject to the discretion of the SELLER.
- v) Where the BUYER requests for a split cargo, pricing option can only be elected on the parcel with the initial laycan while the remaining parcel(s) shall be priced on either the Prompt Option or elected Option basis whichever is higher, subject to the discretion of the SELLER.
- vi) Where the initial laycan specified in paragraph (v) is changed, then, the pricing option for both parcels of the split cargo shall be based on either the Prompt Option or elected Option whichever is higher, subject to the discretion of the SELLER.
- vii) Where the BUYER varies the text/definition of a pricing option in the Letter of Credit, making it ambiguous or inconsistent with the relevant option, the SELLER shall disregard such option and apply its discretion by electing any of the three (3) pricing options for the valuation purpose, whichever is higher.

For the avoidance of doubt, the BUYER is advised to indicate only the name of the preferred Option under the relevant paragraph in the Letter of Credit eg. PROMPT OPTION, ADVANCED OPTION OR DEFERRED OPTION to avoid ambiguity.

- viii) If due to operational constraints the laycan date is changed by the SELLER with prior written notice to the BUYER within six (6) Banking Days of the initial laycan date, then the BUYER shall have the right of electing any of the three (3) pricing options provided the BUYER submits the pricing option within one (1) Banking Day from the date of advice of change in laycan.
- ix) In the event of an injection cargo, the BUYER shall have the right of electing an option if the cargo injection is advised to the BUYER within six (6) Banking Days of the laycan, the BUYER shall have the right of electing any of the three (3) pricing options provided the BUYER specifies the elected pricing option on the Letter of Credit and submits same within one (1) Banking Day from the date of advice of the cargo injection.

12.2 The Official Selling Price set out in any invoice or in any document delivered pursuant to this Contract shall refer only to a Barrel of Crude Oil of the grade to be delivered by the SELLER at the relevant Month.

12.3 The Official Selling Price for each relevant Month shall be subject to change at any time and shall be communicated to the BUYER prior to any delivery of Crude Oil under this Contract.

The determination of the value of each Barrel of Crude Oil stream shall be the average of Platt's mid-range quotations for Dated Brent as published by Platt's Crude Oil Market-wire plus or minus NNPC monthly published Official Selling Price differential per Barrel for the applicable period. The NNPC monthly Official

Selling Price differential shall be advised in writing by the SELLER to the BUYER on a monthly basis.

- 12.4 In fixing the Official Selling Price differential at any relevant time, the SELLER shall be guided by prevailing prices in the international oil market and other relevant factors. Any written notification on Official Selling Price differential as communicated by SELLER to the BUYER shall be the pricing basis for the relevant Month unless otherwise revised in writing by the SELLER at its sole discretion.

#### **PHASE-OUT AND APPLICABLE PRICES**

- 12.5 If the BUYER fails to accept the pricing formula advised by the SELLER for the relevant Month, this Contract shall terminate after a phase-out period of ninety (90) Days commencing from the date of SELLER's notification of the applicable pricing formula to BUYER. The applicable price during the phase-out period shall be the Official Selling Price derived from the pricing formula notified by SELLER generally to other buyers of the Crude Oil during the period.

- 12.6 The BUYER's Lifting Entitlements during the phase-out period shall be limited to fifty (50) percent of the Contract quantity. If the BUYER notifies the SELLER of its acceptance of the applicable pricing formula as notified by SELLER under Article 12.5 prior to the expiration of the phase-out period, the SELLER, may, at its sole discretion, allow the BUYER to lift hundred (100) percent of the Contract quantity as if no phase-out period had occurred.

#### **12.7 MARKET REVIEW MEETINGS**

The SELLER and BUYER hereby agree to meet quarterly in SELLER's offices in Abuja or London on alternate basis, to review developments in the global oil and gas markets that impact on the pricing and performance of Nigerian crude oil grades. The BUYER hereby agrees to prepare and present up-to-date detailed reports at these meetings, and further agrees to empower its authorized representative(s) at such meetings to take decisions and grant relevant approval(s) that will be binding on the BUYER.

**ARTICLE 13**  
**PAYMENT BY LETTER OF CREDIT**

13.1(a) The BUYER shall pay for all Crude Oil delivered by SELLER and any liquidated damages stipulated under this Contract through a documentary irrevocable Letter of Credit not later than thirty (30) Days after the date on the bill of lading. The Letter of Credit shall be in the form set out in Appendix 1 of this GT&C. The Letter of Credit shall be issued on Shipment by Shipment basis and shall be established with a confirmed and reputable first class Nigerian bank approved by the SELLER or a first class international bank acceptable to the SELLER. The Letter of Credit shall be submitted to the office of the GGM, COMD on or before six (6) Banking Days prior to the first day of lay can.

The provisions of this Article shall not relieve the BUYER of its obligations for paying all invoices on or before the due date as stated in Part 1 and Part II of this Contract.

(b) The value of the Letter of Credit shall be sufficient to cover the contractual mean value of Crude Oil deliveries at the price specified in writing by the SELLER, and shall take effect in accordance with its terms (including any agreed amendments thereto) provided however that such terms (including any agreed amendment(s) thereto) shall not alter, add to, or in any way affect the provisions specified in this Contract.

13.1(c) Failure by the BUYER to comply with the requirements of this Article shall amount to a fundamental breach of this Contract and the SELLER shall have the right to terminate this Contract forthwith and claim damages from BUYER for breach of contract.

13.2 The BUYER shall pay a surcharge of US\$100,000 (One Hundred Thousand United States Dollars) each time the BUYER fails to present an acceptable Letter of Credit to the SELLER within the time specified in Article 13.1(a). The surcharge shall be paid at the time of payment for the cargo by adjusting the Letter of Credit.

Failure to pay the surcharge within thirty (30) days of notification thereof shall attract interest at LIBOR plus 2%.

Without prejudice to the provision of this Article, the SELLER reserves the right to suspend further allocation of cargoes to the BUYER.

13.3. Every Letter of Credit shall be issued in accordance with the Rules of the International Chamber of Commerce (UCP 600 or latest version) relating to documentary letter of credits for the time being in force.

13.4. The payment through the Letter of Credit as described in Appendix 1 shall be made by the BUYER to the SELLER upon presentation by SELLER of the following documents:

- (i) Commercial Invoice
- (ii) Bill of Lading
- (iii) Certificate of Quantity
- (iv) Certificate of Quality
- (v) Certificate of Origin
- (vi) Tanker's Ullage Report
- (vii) Tanker's Time Sheet
- (viii) Any other document to be advised by SELLER from time to time.

13.5 (a) The BUYER shall bear all expenses and bank charges in connection with the opening of the Letters of Credit, including other expenses relating to confirmation,

extensions, agreed alterations, commissions and those related to SELLER's banks.

- (b) BUYER shall be solely liable for all costs and expenses arising out of, or in connection with any Letter of Credit not reaching SELLER in time, and/or not in an acceptable form for liftings to commence on schedule.
- (c) BUYER shall be responsible for ensuring that all Letters of Credit are received by SELLER in an acceptable form and in time for liftings to commence on schedule. SELLER hereby reserves the right to refuse any liftings by the BUYER until the appropriate Letters of Credit are delivered and acceptable to SELLER.

13.5 The BUYER agrees that it shall open not less than 25% of the Letters of Credit for lifting under this Contract in favour of the SELLER with Nigerian Banks. The SELLER reserves the right to suspend lifting of Crude Oil if the BUYER fails to comply with the provisions of this Article.

#### **ARTICLE 14**

#### **TIME OF PAYMENT**

14.1 All Crude Oil delivered to the BUYER shall be paid for at the price applicable as at the date of the bill of lading and upon presentation by SELLER of the documents specified in Article 13.4 above. Any payment falling due on a Saturday or New York Bank Holiday other than Monday shall be made immediately on the preceding Banking Day. Payment falling due on a Sunday or Monday New York Bank Holiday shall be made immediately on the next succeeding Banking Day.

14.2 BUYER shall pay for all Crude Oil delivered under this Contract not later than thirty (30) Days after the bill of lading date. Any period of credit permitted by the SELLER shall be the standard period of credit applying generally to buyers of Nigerian Crude Oil which shall be notified in writing by SELLER to BUYER if the SELLER has specifically granted any such credit period to the BUYER under this Contract.



- 14.3(a) BUYER or its bankers shall directly advise the SELLER by bank swift, letter or fax immediately upon the payment of each invoice amount. The advice specified herein shall reach the SELLER not later than two (2) Banking Days after making such payments. If the BUYER fails to pay for any cargo by the due date, the delayed amount shall attract interest at LIBOR plus 2% from the first Day of default. The interest shall be payable for each Day of default and the calculation shall be made on the amount of unpaid principal and interest.
- 14.3(b) If the BUYER fails to pay in full by due date, the SELLER shall have the right to immediately suspend any further deliveries of Crude Oil to the BUYER until full payment including accrued interest is received by the SELLER.
- 14.4 If the BUYER is unable to pay for the Crude Oil delivered because it has not received the shipping documents from SELLER, it shall notify the SELLER of such occurrence not later than the 30<sup>th</sup> Day after the bill of lading date and SELLER shall immediately issue to BUYER, a letter of indemnity which shall substantially be in the form attached hereto as Appendix 2, against which payment shall be made to SELLER with a value date of 30<sup>th</sup> Day after bill of lading date.

## **ARTICLE 15**

### **CURRENCY AND PAYMENT DETAILS**

15. BUYER shall pay SELLER for all Crude Oil delivered under this Contract in such currency and into the NNPC designated bank account specified in Article 8.2 of Part I of this Contract or into such other account as SELLER may from time to time designate to the BUYER in writing.

The date of currency conversion (where applicable), which shall not be more than three (3) Banking Days before the due-date of payment, shall be specified in the relevant invoice. On conversion date, BUYER shall purchase for value on the due date of the applicable invoice, that amount of the preferred currency which shall be at the rate

quoted to BUYER by the nominated bank with an amount of the preferred currency equal to the United States Dollar amount of the relevant invoice.

## **ARTICLE 16**

### **PAYMENT DURING CIVIL UNREST**

16. In the event of civil unrest or war in any part of Nigeria, all payments due for Crude Oil delivered to the BUYER under this Contract shall be validly made, if paid into the designated bank account specified in Article 8.2 of Part I of this Contract. Notwithstanding any demands, threats and other pressures from any other claimants, whether claiming through, under or on behalf of SELLER, in no event shall the BUYER make any payment(s) due to the SELLER under this Contract to any third party whatsoever.

## **ARTICLE 17**

### **TAXES, DUTIES, FEES AND CHARGES**

17. The BUYER shall be responsible for the payment of all taxes, duties, imposts, fees, charges and dues of every description imposed or levied by any governmental, local or port authority on the Crude Oil delivered hereunder, or on its export, delivery, transportation, ownership, sale or use after risk in such Crude Oil has passed to the BUYER. All taxes, duties, imposts, fees, charges (including, without limitation, pilotage limitation, quay dues) incurred in respect of the Nominated Vessel at the loading Terminal shall be for the sole account of the BUYER.

## **ARTICLE 18**

### **COMPLIANCE WITH LAWS, REGULATIONS AND FURTHER ASSURANCE**

- 18.1(a) Each Party hereby agrees to comply and to procure its personnel, directors, agents, contractors, representatives and permitted assigns to comply with all laws, rules, regulations, valid directives, policies and bye laws applicable for the performance by each Party of its obligations under this Contract.

- 18.1(b) The BUYER shall at its sole cost take necessary steps for complying with all Nigerian statutory requirements relating to completion and perfection of SGD documentations and any other requirement as may be directed from time to time by the Nigerian Customs Services.
- 18.2(a) So far as it is legally able under any applicable law, each Party agrees to do all things required to give effect to this Contract including executing all required documents, and exercising all rights and powers (direct or indirect) available to it in relation to any person to ensure that the terms of this Contract are completely and punctually enforced, observed and performed and generally that full effect is given to the terms and conditions of this Contract.
- 18.2(b) The liability of any Party under this Article 18 shall not be discharged or impaired by any release of, or granting of time or other indulgence to any person acting on its behalf or any third party or any other act, event or omission which but for this Article 18 would operate to impair or discharge the liability of such Party under this Article.

## **ARTICLE 19**

### **TRANSFER OF RISK AND TITLE**

- 19.1 Notwithstanding any right of the SELLER to retain any document pursuant to the provisions of this Contract until payment is made, the risk and title in the Crude Oil delivered under this Contract shall pass to the BUYER as the Crude Oil passes the Nominated Vessels permanent hose connection at the loading Terminal. If the Crude Oil delivered hereunder forms an unascertained part of a larger bulk, risk and title for the Crude Oil delivered hereunder shall pass as such Crude Oil passes the Nominated Vessel's permanent hose connection at the loading Terminal.
- 19.2 Any loss of or damage to the Crude Oil during loading, if caused by the Nominated Vessel or its officers or crew, shall be for the account of the BUYER. Any claim

made against the SELLER in respect of damage to any facilities at the loading Terminal caused by the BUYER's Nominated Vessel shall be borne by the BUYER.

## **ARTICLE 20**

### **PROHIBITED DESTINATIONS**

20.1 It is a condition of sale of Crude Oil by the SELLER to the BUYER that the Crude Oil shall not be exported by the BUYER or its agents, either directly or indirectly and irrespective of means, to any destination which is at the time of such export either prohibited under the Nigerian laws or is contrary to any regulation, rule, directive or guideline applied by the Federal Government of Nigeria or any relevant Government agency. The BUYER shall keep itself informed as to such laws, regulations, rules, directive or guidelines and shall ensure that such laws, regulations, rules, directive or guidelines are strictly complied with. Without limiting the obligations of the BUYER herein, the SELLER will from time to time notify the BUYER of any changes to such destinations.

20.2. The BUYER hereby undertakes that the Crude Oil delivered hereunder shall not:

- i) be exported to any prohibited jurisdiction;
- ii) be sold or supplied to any natural or legal person in any prohibited jurisdiction;  
or
- iii) be sold or supplied to any natural or legal person for the purposes of any commercial activity carried out in, or from any such prohibited jurisdiction.

20.3. The BUYER shall at its cost and expense, if the SELLER so requires, provide the SELLER with appropriate documentation for the purposes of verifying the final destination of any delivery hereunder. Such documentation shall be provided within ninety (90) Days of the date of discharge of the shipment or within such lesser period as will enable the SELLER to comply with any requirement or request of the

government or any governmental authority in question and shall include the name of the port(s) of discharge, the date(s) of discharge and the grade and quantity discharged. The obligations of the BUYER to comply with such requirement shall not be affected by any sale or disposal of the Crude Oil in question by the BUYER.

- 20.4. Without prejudice to the foregoing provisions of this Article 20, in the event of any failure to comply with such undertakings, or if the SELLER has reasonable grounds for believing that such undertakings will not be complied with, the SELLER may (without prejudice to its other rights) at its sole discretion terminate this Contract forthwith or suspend delivery under this Contract until further notice or decline to commence or complete loading hereunder on notifying the BUYER either in writing or orally (with written confirmation to follow).

## **ARTICLE 21**

### **FORCE MAJEURE**

21. Neither the SELLER nor BUYER shall be held liable for failure or delay in the performance of its obligations under this Contract, including without limitation the obligations to deliver the agreed quantities and grade of Crude Oil under this Contract, if such performance is delayed or hindered by the occurrence of an unforeseeable act or event which is beyond the reasonable control of the affected Party ("Force Majeure"). No party shall be entitled to claim any costs or expenses including Demurrage or any form of compensation whatsoever arising from the effect of Force Majeure. Force Majeure shall not affect any payments due to the SELLER under this Contract.

- 21.1 The act or event constituting Force Majeure shall include, but not limited to:

- i) act of God (including fire, explosion, flood, lightning, haze, earthquake, storm, hurricane, hail, cyclone or other severe weather condition or other natural disaster which could not be foreseen and was beyond the control of such party);

- ii) government sanction or embargo, decisions, intervention, directive, or policy and restrictions (including the denial or cancellation of any export or other necessary license);
- iii) act of war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, confiscation, nationalization, sabotage and terrorist activities;
- iv) act of public disorder, riot, civil unrest, rebellion, strike, blockage, vandalism, boycott, lock-out, labour unrest (whether direct or indirect, lawful or unlawful) except where it is limited to the employees of the BUYER);
- v) act of sabotage, terrorism, or foreign invasion;
- vi) strike, boycott, labour unrest (whether direct or indirect, lawful or unlawful) excluding those limited to the employees of the BUYER.
- vii) any other event, condition or circumstance which adversely affects the supply of Crude Oil to the SELLER or SELLER's ability to receive Crude Oil at any time.

21.2 Immediately on the occurrence of Force Majeure, the Party claiming to be affected by Force Majeure shall promptly notify the other Party in writing stating the details of the event or act constituting Force Majeure, and stating the measure being adopted by it to minimize or to remedy the consequences of the Force Majeure on the performance of its obligations under this Contract. The affected Party shall use all reasonable diligence to remove or overcome the Force Majeure situation as quickly as possible in an economic manner.

21.3 Where the Force Majeure continues for a consecutive period of thirty (30) Days, either Party shall have the right to terminate this Contract by serving the other Party seven (7) Days written notice.

21.4 If the Force Majeure ceases before the expiration of the thirty (30) Day period specified in Article 21.3 above, the Party affected by the Force Majeure shall promptly notify the other Party in writing of such cessation, and shall thereafter commence the performance of its obligations under this Contract.

## **ARTICLE 22 ARBITRATION**

22.1 Any dispute, conflict, difference or claims, that may arise out of or in connection with the performance of this Contract including any dispute as to the construction, validity, interpretation, enforceability or breach of this Contract shall first be resolved amicably by SELLER and the BUYER. If the Parties fail to resolve the dispute amicably, either Party shall have the right to refer the matter to arbitration under the provisions of the Arbitration and Conciliation Act, Cap. A18, LFN 2004 and any amendment made thereto.

22.2 Within thirty (30) Days of the matter being referred to arbitration, each Party shall appoint an arbitrator and the two arbitrators thus appointed shall within fifteen (15) Days appoint a third arbitrator. If the arbitrators do not agree on the appointment of such third arbitrator, or if either Party fails to appoint the arbitrator to be appointed by it, such arbitrator shall be appointed by the Federal High Court, Abuja on the application of either Party to the Chief Judge of the Federal High Court. The notice of the intention to apply to the Court shall be given in writing by the applicant Party and when appointed (in the case of a third arbitrator) the third arbitrator shall convene meetings and act as the chairman.

22.3 The award rendered by the arbitrators shall, except where there is manifest error in law or fact or miscarriage of justice, be conclusive and binding on the Parties and may be entered as judgment of a court of competent jurisdiction. The costs of arbitration shall be borne equally by the Parties and each Party shall solely bear its own cost of attendance at the proceedings including its attorney fees and cost of procuring its own

witnesses. The arbitral award shall not include any indirect, consequential, punitive, exemplary, incidental, multiple or any similar damages other than direct damages.

22.4 The venue and seat of the arbitration shall be in Abuja and the applicable laws of the Federal Republic of Nigeria shall be the governing laws for the determination of the issues in dispute.

22.5. The language of the arbitration shall be English.

22.6. Nothing in this Article 22 shall be construed as preventing any Party from seeking conservatory or similar interim relief from any court of competent jurisdiction.

**ARTICLE 23**  
**NOTICES**

23.1 Except as otherwise specifically provided under this Contract, all notices, reports and other forms of communications authorized or required between the Parties by any of the provisions of this Contract, shall be in writing, in the English language, and delivered in person  
or by courier service or registered mail, or by any electronic means of transmitting written communications with written confirmation of complete transmission, and addressed to such Parties as designated below:

IF TO SELLER:

.....  
.....  
.....  
.....

IF TO BUYER:



.....  
.....  
.....  
.....

Telephone .....

E-mail: .....

- 23.2 Oral communication does not constitute notice for purposes of this Contract and telephone numbers of the Parties are listed as a matter of convenience only.
- 23.3. Any originating notice required to be given under any provision of this Contract shall be deemed delivered when received by the Party to whom such notice is directed, and the time for the receiving Party to respond to such originating notice shall begin to run from the time and date the originating notice is received.
- 23.4. The second or any responsive notice shall be deemed delivered when received. For purposes of this Article 23 “received” shall mean actual delivery of the notice to the address of the Party as notified or specified in accordance with this Article 23.
- 23.5. Each Party shall have the right to change its address at any time and /or designate that copies of all such notices be directed to another person at another address, by giving notice thereof to the other Party.

**ARTICLE 24**  
**NON-ASSIGNMENT**

- 24. This Contract shall not be assigned in whole or in part by the BUYER to any person, company, firm, institution or any other third party without the prior written consent of the SELLER, provided however, that the BUYER’s obligations to make payments in accordance with the terms of this Contract shall not be assigned to any third party. In case of an assignment of the BUYER’s rights and obligations in accordance with this

provision, the BUYER and the assignee shall remain jointly and severally liable to the SELLER for the discharge or performance of the BUYER's obligations under this Contract and it is hereby agreed that the giving of consent by SELLER shall not relieve the BUYER from any liabilities whatsoever arising out of or under this Contract including third party liability.

## **ARTICLE 25 AFFIRMATION**

- 25.1. The BUYER hereby declares and affirms that it has not paid, offered to pay or promised to pay directly or indirectly, any bribe, pay-off, kick-back or unlawful commission and that it has not in any other way or manner paid any sums, whether in Nigerian currency or foreign currency and whether in Nigeria or outside Nigeria, or in any other manner given or offered to give any gifts, presents or other items of significant value in Nigeria or outside Nigeria to any official, person or company to procure the entry into and/or execution of this Contract, and the BUYER further undertakes not to engage in any of the said or similar acts during the term of and relative to this Contract.
- 25.2. In recognition of the principles of the OECD Convention on Combating of Bribery of Foreign Public Officials in International Business Transaction, the BUYER hereby warrants that it or any other person acting on its behalf has not and covenants that it and any such person will not, directly or indirectly in connection with this Contract and the matter resulting therefrom, offer, pay, offer to pay, promise to pay or authorize the giving of money or anything of significant value to any official, or to any other person while knowing or being aware of a high probability that all or a portion of such money or thing of significant value will be offered, given or promised, directly or indirectly to an official, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business for, or to direct business to, any person, or to obtain any other improper advantage or benefit.

For purposes of this Article 25 the word 'official' shall mean any officer or representative engaged or holding a position in any office of the Federal Government of Nigeria or State or Local government or any official or representative of any foreign government.

**ARTICLE 26**  
**TERMINATION**

26.1 Notwithstanding anything to the contrary expressed or implied elsewhere in this Contract, SELLER (without prejudice to any other rights available to it hereunder)

shall have the right to terminate this Contract forthwith if BUYER's financial credibility is not satisfactory to the SELLER or the BUYER's commitment in making due payments under this Contract becomes delinquent.

- 26.2 SELLER shall have the right to terminate this Contract forthwith if a case of corruption, fraud or national security infringement is established against the BUYER.
- 26.3 SELLER shall have the right to terminate this Contract in accordance with the terms stipulated herein if the BUYER is in breach of any material term of this Contract.
- 26.4 SELLER shall have the right to terminate this Contract forthwith if BUYER becomes insolvent, or goes into liquidation or bankruptcy or has a proceeding commenced against it for insolvency, liquidation or bankruptcy or a receiver, manager or trustee in bankruptcy is appointed in respect of the BUYER's assets and/or undertaking, or the BUYER enters into an arrangement or composition with its creditors or any similar appointment, arrangement or composition is made against BUYER under any applicable law.
- 26.5 Notwithstanding anything to the contrary stated elsewhere in this Contract, either Party may terminate this Contract by giving the other not less than ninety (90) Days' notice in writing.
- 26.6 The SELLER shall have the right to terminate this Contract without cause by giving the BUYER thirty (30) Days written notice.
- 26.7 This Contract shall automatically terminate upon the expiration of the Contract period stated in Article 2 of Part 1 of this Crude Oil Sales and Purchase Agreement without further notice to the BUYER.
- 26.8 Either Party shall have the right to terminate this Contract in the event of Force Majeure in accordance with the provisions of Article 21.3 of this Agreement.

## **ARTICLE 27**

### **GOVERNING LAW**

27. This Contract shall be governed by and construed in accordance with the laws of the Federal Republic of Nigeria, excluding any choice of law provision which will require the application of the law of another jurisdiction.

## **ARTICLE 28**

### **CONFIDENTIAL INFORMATION**

- 28.1 Subject to the provisions of this Contract, the Parties agree that all information and data acquired or obtained by any Party arising out of or relating to this Contract shall be kept confidential and shall not be disclosed to any person not being a Party to this Contract, except to:
- a) an affiliate, provided such affiliate maintains the information divulged to it strictly confidential as provided herein;
  - b) its employees who have a need to know, subject to the receiving Party taking customary precautions to ensure such data and information is kept confidential;
  - c) prospective or actual contractors, consultants and attorneys employed by the receiving Party where disclosure of such data or information is essential to such contractor's, consultant's or attorney's work;
  - d) a direct or indirect bona fide purchaser(s) of BUYER's cargo of Crude Oil to the extent appropriate for arranging such sale;
  - e) a bona fide prospective transferee of all or part of a Party's interest (including an entity with whom a Party or its affiliates are conducting bona fide negotiations directed toward a merger, consolidation or the sale of a majority of its or an affiliate's shares);
  - f) a bank or other financial institution to the extent appropriate to a Party arranging for funding;

- g) a governmental agency or other entity when required by applicable law;
- h) the extent such data and information is required to be furnished in compliance with any applicable laws or regulations, or pursuant to any dispute resolution proceedings or any order of any court or arbitration panel binding upon a Party;  
or
- i) the extent such data and information must be disclosed pursuant to any rules or requirements of any government or stock exchange having jurisdiction over such Party, or its affiliates; provided that if any Party or its affiliate desires to disclose information in an annual or periodic report to its or its affiliates' shareholders and to the public and such disclosure is not required pursuant to any rules or requirements of any government or stock exchange, then such Party shall comply with the provisions of this Article.
- j) any such data or information which, through no fault of a Party, becomes a part of the public domain.

28.2 Disclosure pursuant to Articles 28.1(c), (d), (e), (f), shall not be made unless prior to such disclosure, the Party disclosing the information has entered into non-disclosure agreement with the recipients to keep the data and information strictly confidential and not to use or disclose any such data and information except for the express purpose for which disclosure is to be made.

28.3 **NON-DISCLOSURE OF MARKETING INFORMATION.**

Nothing in this Agreement shall require a Party to divulge quantity nominations, vessel nominations, transferees, sales price or other market related information to any person who is not a Party to this Contract.

**ARTICLE 29**  
**SEVERABILITY**

29. If any provision of this Agreement or any part thereto shall be held by any court of competent jurisdiction, or any competent authority in any jurisdiction, to be illegal, invalid or unenforceable under any enactment or rule of law, neither the validity, legality or enforceability of the remaining provisions under that jurisdiction nor the validity, legality or enforceability of the entire provisions in any other jurisdiction shall be affected or impaired.

**ARTICLE 30**  
**REPRESENTATIONS AND WARRANTIES**

**30.1 SELLER'S WARRANTIES AS TO AUTHORITY AND TITLE**

- 30.1.1 SELLER represents and warrants to BUYER, that as of the Effective Date:
- i) SELLER is a corporation validly existing under the laws of Nigeria;
  - ii) SELLER has power, authority, and legal title to the Crude Oil to be delivered and has taken all necessary action to sign and deliver this Contract and perform its obligations under this Contract; and
  - ii) this Contract has been duly signed and delivered by SELLER and forms a valid and binding obligation of SELLER, enforceable against SELLER in accordance with its terms.

**30.2 BUYER'S WARRANTIES AS TO AUTHORITY AND CREDITWORTHINESS**

- 30.2.1 BUYER represents and warrants to SELLER that as of the Effective Date:

- i) It is duly organized and validly existing in accordance with the terms of its constitutional documents or enabling statutes and the laws of its place of incorporation;
- ii) It is duly qualified and in good standing in all jurisdictions where required for performance of its obligations under this Contract;
- iii) It has power, authority and legal rights to own assets and conduct its business and has taken all necessary corporate actions to sign and deliver this Contract and to perform its obligations hereunder;
- iv) This Contract has been duly signed and delivered by BUYER and forms a valid and binding obligation of BUYER, enforceable against BUYER in accordance with its terms;
- v) It has the power to enter into and to exercise its rights and to perform all its obligations under this Contract and to execute and deliver this Contract in accordance with the terms stated herein;
- vi) The signing and delivery of this Contract by the BUYER and the performance of its obligations hereunder will not:
  - a) violate any provision of its governing documents or any laws applicable to it or its properties or assets;
  - b) result in a breach of or constitute a default under any credit agreement or other agreement or instrument to or by which it or its properties or assets may be presently bound or affected; or
  - c) result in or require the creation or imposition of any encumbrance upon or of any of its properties or assets under any credit agreement, or other agreement or instrument.



30.2.2. BUYER further represents and warrants to SELLER that:

- a) BUYER has furnished to SELLER certified resolutions, authenticated power-of-attorney, or other corporate instruments necessary to authorize its signing, delivery and performance of its obligations under this Contract;
- b) there are no suits, judicial or administrative actions, proceedings or investigations (including bankruptcy, reorganization, insolvency or similar actions) pending, or to its knowledge, threatened against it before any court or by or before any governmental authority (whether in Nigeria or elsewhere) that if decided adversely to its interest could materially affect its ability to perform its obligations under this Contract; and
- c) all necessary approvals and all other consents, permits or permissions of, and notifications or filings with, any person necessary for the BUYER's valid signing, delivery and performance of this Contract have been obtained, are in full force and effect and are final and not subject to any condition(s).

**30.3 DURATION OF THE REPRESENTATIONS AND WARRANTIES**

Each representation and warranty made herein by the SELLER or the BUYER shall be true and accurate in all material respects when made and shall remain actionable for the duration of this Contract.

**ARTICLE 31  
ENTIRE AGREEMENT**

31.1 This Contract and the Appendices to this Contract constitute the whole and entire agreement between the SELLER and BUYER relating to the subject matter thereof and

supersede any other agreement, correspondence or pre-contractual statement relating thereto.

- 31.2 Each Party hereby acknowledges that it has not relied upon and has not been influenced by any pre-contractual statement in agreeing to enter into this Contract.
- 31.3 Except in the case of fraud, no Party shall have any right of action against any other Party arising out of or in connection with any pre-contractual statement except to the extent that such pre-contractual statement is repeated herein.
- 31.4 For the purposes of this Article, "pre-contractual statement" includes but is not limited to any agreement, (written or oral), undertaking, representation, warranty, promise, assurance or arrangement made at any time before the signing of this Contract (whether or not in writing) relating to the subject matter thereof and which is not repeated in this Agreement.

## **ARTICLE 32**

### **DISCLAIMER OF AGENCY, TRUSTEE OR OTHER SIMILAR RELATIONSHIP**

32. Nothing in this Contract shall be deemed to constitute an association, joint venture, trustee, agency or any form of partnership between the SELLER and the BUYER or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any form of agreement, undertaking for, or to act on behalf of, or to act as, or be an agent or representative of, or to otherwise bind or commit the other Party in any manner whatsoever and howsoever arising.

## **ARTICLE 33**

### **CESSATION OF SELLER'S LIABILITY**

33. Any claims, costs, expenses, fees or demands arising in connection with this Contract which have not been notified in writing to SELLER with supporting documents shall not be accepted by SELLER and SELLER hereby expressly disclaims any liability for such

claims, costs, expenses, fees or demands unless notice in writing with supporting documents has been delivered to SELLER in respect of such claims, costs, expenses, fees or demands within the period specified under this Contract. Upon failure of the BUYER to deliver such notice within such period, BUYER shall be deemed to have waived its rights to such claims, costs, expenses, fees or demands.

**ARTICLE 34**  
**NO THIRD PARTY RIGHTS**

34. Except as expressly provided under the provisions of this Contract, no term of this Contract shall be enforceable by any person who is not a Party hereto, nor shall any such person have any rights under this Contract.

**ARTICLE 35**  
**WAIVER**

35. Waiver of any breach or the non-enforcement of any obligation by either Party to this Contract shall not be deemed as waiver of any subsequent or continuing breach of such provision or of the breach of any other provision of this Contract.

**ARTICLE 36**  
**CONTINUING OBLIGATIONS**

36. The provisions of Articles 22 and 28 shall continue to be in force notwithstanding the termination or expiration of this Contract.

**ARTICLE 37**  
**LIABILITY AND INDEMNITY**

37. BUYER shall be liable and shall indemnify, save harmless and defend SELLER, its employees, directors, agents and representatives from and against any and all losses, claims, liabilities, in respect of injuries or damage to any person or property or expenses, costs or compensation which may arise out of or in consequence of any

litigation, proceedings, fees, costs and expenses in connection with the execution of this Contract or in relation thereto. Where such losses, claims, liabilities in respect of damage or injuries arise as a result of gross negligence or willful misconduct on the part of SELLER, its employees, directors, agents or representatives, SELLER shall be liable and shall indemnify BUYER from and against such losses, claims and liabilities.

### **ARTICLE 38**

#### **NO LIABILITY FOR CONSEQUENTIAL DAMAGES**

38. Neither SELLER nor BUYER shall be liable for any consequential or indirect damages, losses and claims arising out of or in connection with this Contract.

For purposes of this Contract, consequential or indirect damages, losses or claims shall mean any deferments of revenue, loss of profit, economic loss, loss of opportunity or use.

### **ARTICLE 39**

#### **DEFINITIONS**

39. As used in this Contract, the following words and expressions shall unless otherwise stated, have the following meanings:

**“Advanced Option”** means, in relation to a pricing period five (5) consecutive published quotations, with the fifth day before the bill of lading day as day one i.e. the bill of lading day is day six.

**“AFRA”** means, Average Freight Rate Assessment.

**“ASTM”** means, the American Society for Testing and Materials.

<b>“API”</b>	means, the American Petroleum Institute
<b>“Barrel”</b>	means, Forty-two (42) U.S Gallons at 60°F.
<b>“BS&amp;W”</b>	means, basic sediments and water.
<b>“Banking Days”</b>	means, the Days on which the banks in Abuja, London and New York are open for business (New York being for payment purposes only)
<b>“Contract” or “Agreement”</b>	means, the Contract document identified as Part 1 and Part II together with Appendices 1 and 2 attached hereto.
<b>“Crude Oil”</b>	means, Nigerian crude oil and condensate of the grade and quality stipulated under this Contract.
<b>“Dated Brent”</b>	means, Platt’s Quotations representing the price of physical or wet Brent-Forties-Oseberg loading not less than 10 Days forward.
<b>“Day or Days”</b>	means, a calendar day or days (as the case may be) unless otherwise specifically provided under this Contract.
<b>“Deferred Option”</b>	means, in relation to the pricing period five consecutive published quotations, with the sixth quotation day after the bill of lading date as day one.
<b>“Demurrage”</b>	means, the sum payable pursuant to Article 6.5.1
<b>“Effective Date”</b>	means the .....

<b>“ETA”</b>	means, the estimated date and time of arrival (local time) of a Nominated Vessel at the loading Terminal.
<b>“Force Majeure”</b>	means, those acts and events set in Article 21.
<b>“GGM, COMD”</b>	means, the Group General Manager, Crude Oil and Marketing Division of NNPC.
<b>“IMO Number”</b>	means, International Maritime Organisation Number.
<b>“IP”</b>	means, the Institute of Petroleum.
<b>“ISPS Code”</b>	means, the International Code for Security of Ships and Port Facilities.
<b>“ITOPF”</b>	means, the International Tanker Owners Pollution Federation Limited.
<b>“Lay time”</b>	means, as to each BUYER and for each lifting the amount of time used by the Terminal Operator to complete the loading of the relevant Nominated Vessel determined pursuant to Article 6.2.
<b>“Letter of Credit”</b>	means, the Letter of Credit to be issued by a bank nominated by the BUYER in accordance with the terms specified in Article 13 of this Part II and shall be substantially in the form set out in Appendix 1, attached to this Contract.

<b>“LIBOR”</b>	means, London Interbank Offered Rate for one Month Eurodollars as published on Reuters page “LIBOR” (or any successor thereto).
<b>“Lifting Entitlement”</b>	means, as to the BUYER for a particular Month, the total quantity of Crude Oil, which the BUYER has the right to lift pursuant to the agreed Lifting Schedule for such Month.
<b>“Lifting Schedule”</b>	means, in respect of the loading Terminal for a particular Month, the program of lifting prepared by the SELLER for the purpose of this Contract.
<b>“Month”</b>	means, calendar month according to Gregorian calendar.
<b>“NNPC”</b>	means, Nigerian National Petroleum Company Limited.
<b>“NOR”</b>	means, the notice of readiness tendered by a Nominated Vessel which has arrived at the loading Terminal and is ready and able in all respect to commence berthing and loading.
<b>“Nominated Vessel”</b>	means, a vessel nominated by a BUYER and accepted pursuant to Article 5.
<b>“Over-lift”</b>	means, in respect of the BUYER, the quantity by which BUYER’s actual lifting for any Month exceed BUYER’s Lifting Entitlement for such Month. The

phrase “Over-lifted” or “Over-lifting” shall be construed accordingly.

**“Part I”** means, the special conditions of contract for the sale and purchase of Nigerian crude oil.

**“Part II”** means, the general terms and conditions for the sale and purchase of Nigerian crude oil.

**“Party”** means, the SELLER or BUYER individually, and “Parties” shall mean, SELLER and BUYER collectively.

**“Prompt Option”** means, in relation to the pricing period five consecutive published quotations after the bill of lading date with the bill of lading date as Day zero.

**“Quarter”** means, calendar quarter.

**“SDWT”** means, Summer Dead Weight of Vessel.

**“SGD”** means, single goods declaration.

**“Terminal”** means, each and any (and if the context requires, all) of the transportation, storage, handling and/or loading facilities designated by SELLER for the lifting of Crude Oil under this Contract.

**“Terminal Operator”** means, the entity that operates the loading Terminal.

**“Terminal Regulations”** means, the rules and procedures concerning operation of the loading Terminal and berthing and



loading from the loading Terminal, as amended from time to time by the Terminal Operator and communicated to the Parties.

**“Ton”**

means, metric ton of one thousand (1000) Kilogram's according to metric system of measurement.

**“Under-lift”**

means, the quantity by which BUYER's Lifting Entitlement for any Month exceeds BUYER's actual lifting for such Month. The phrase “Under-lifted” or “Under-lifting” shall be construed accordingly.

**“VLCC”**

means, very large Crude-Oil carriers.

### **Interpretation:**

- A Except as otherwise stated any reference to the Articles or Appendices shall be deemed a reference to the Articles of or Appendixes to this Contract.
- B Headings used in this Contract are inserted for convenience only and shall be used in construing this Contract.
- C Reference to person shall be deemed to include any natural person, corporation, company, partnership (general and limited), limited liability company, joint stock company (open or closed), joint venture, trust, governmental authority, or other incorporated or unincorporated entity or association.
- D Unless the context otherwise requires, the singular shall be deemed to include the plural and vice versa.
- E Except where expressly provided to the contrary or where the context otherwise requires, references in this Contract to:
  - i. any law, decree or statutory provision shall be deemed to include references to any regulations and orders made thereunder; and
  - ii. any law, decree, statutory provision, regulation or order shall be deemed to include references to that law, decree, statutory provision, regulation or order, as amended, modified, re-enacted or replaced from time to time whether before or after the date of this Contract.
- F Where any representation or warranty is qualified by any reference to the knowledge or awareness of any Party, that Party shall be deemed to have made reasonable inquiries concerning the subject matter of that representation or warranty.

**APPENDIX I**

**SPECIMEN OF SHIPMENT- BY- SHIPMENT LETTER OF CREDIT**

In consideration of the Contract between (insert name of company) and Nigerian National Petroleum Corporation for the sale and purchase of Nigerian Crude Oil dated....., 20.... for..... barrels per day, we (insert name of Bank) hereby open our Documentary Irrevocable Letter of Credit No: .....in favour of Nigerian National Petroleum Company Limited by order and for account of ... (insert name of Company) available 30 days after bill of lading date for an amount of US\$(.....) plus/minus five (5) percent United States Dollars subject to the presentation of the following documents:

1. Nigerian National Petroleum Corporation's signed Commercial Invoice covering...950,000 ..U.S. barrels +/- 5 percent of. Crude Oil
  
2. Full set (three negotiable plus three non-negotiable bills of lading to be prepared and presented) clean "on board" ocean bill of lading issued or endorsed to order of...CONSIGNEE.....evidencing a shipment of .....+/-5% .....Crude Oil from.....terminal not later than..... (TEN DAYS AFTER 2<sup>ND</sup> DAY OF LAYCAN).....
  
3. Original Certificate of Quality plus - one original + ..... Copies
  
4. Tanker Haulage Report Plus - one original + .....Copies
  
5. Original Certificate of Quantity - one original + .....Copies
  
6. Original Certificate of Origin plus - one original + .....Copies
  
7. Tanker Time Sheet - one original + ..... Copies
  
8. Original Masters Receipt for Documents Plus ..... Copies
  
9. Original Masters Receipt for Samples Plus ..... Copies

**Others.....**

**SPECIAL CONDITIONS:**

- (A) We shall effect payment for the Crude Oil on the 30th day after bill of lading date against Nigerian National Petroleum Corporation's final commercial invoice. In the event that Nigerian National Petroleum Corporation's commercial invoice does not reach us by the 30th day after bill of lading date, we shall effect provisional payment based on calculation ascertained as per the Crude Oil Contract dated ....., 20... and any agreed amendments made thereon.

Any excess or short payment outside the Nigerian National Petroleum Corporation's commercial invoice shall be settled by means of credit or debit notes or supplementary invoice as the case may be.

In the case of credit note, Nigerian National Petroleum Corporation will either reduce the value of the next available invoice by the amount overpaid or advise the bank to utilize the credit note against the next available invoice. In the case of debit note or a supplementary invoice, the total amount shall be drawn against this Letter of Credit.

- (B) The making of any relevant payment to you shall be conditioned upon the submission of the documents listed above.
- (C) If payment is not made in full on due date that is, thirty (30) days after bill of lading date, after presentation of the said document, provisional and/or final invoices Nigerian National Petroleum Corporation shall be entitled to payment of interest on the unpaid amount at the rate of two (2) percent per annum above the rate at which United States Dollars deposits for six months are bid in the Inter-Bank Deposit Market from the first day of default in accordance with the terms of the Contract and the amount shall be charged and drawn against this Letter of Credit.
- (D) Each relevant cargo of Crude Oil delivered shall be priced either by Prompt Option, Advance Option or Deferred Option basis:

PROMPT OPTION OR PROMPT PRICING OPTION

THE AVERAGE OF THE MEAN OF DATED BRENT QUOTATIONS AS PUBLISHED IN PLATTS CRUDE OIL MARKETWIRE FOR THE FIVE CONSECUTIVE PUBLICATIONS ISSUED AFTER THE BILL OF LADING DATE (BILL OF LADING DATE TO COUNT AS DAY ZERO) PLUS NNPC'S PROMPT PRICING DIFFERENTIAL FOR THE MONTH OF BILL OF LADING DATE PER NET US BARRELS FOR (INSERT ALLOCATED CRUDE NAME),

DEFERRED OPTION OR DEFERRED PRICING OPTION

THE AVERAGE OF THE MEAN OF DATED BRENT QUOTATIONS AS PUBLISHED IN PLATTS CRUDE OIL MARKETWIRE FOR THE FIVE CONSECUTIVE PUBLICATIONS COMMENCING WITH THE 6TH DAY AFTER THE BILL OF LADING DATE WHERE THE BILL OF LADING IS DAY ZERO PLUS NNPC'S DEFERRED PRICING DIFFERENTIAL FOR THE MONTH OF THE BILL OF LADING PER NET US BARRELS FOR (INSERT ALLOCATED CRUDE NAME) ADVANCED OPTION OR

ADVANCED PRICING OPTION

THE AVERAGE OF THE MEAN OF DATED BRENT QUOTATIONS AS PUBLISHED IN PLATTS CRUDE OIL MARKETWIRE FOR THE FIVE CONSECUTIVE PUBLICATIONS COMMENCING WITH THE 5TH DAY BEFORE THE BILL OF LADING DATE (I.E. THE BILL OF LADING DATE IS DAY SIX) PLUS NNPC'S ADVANCED PRICING DIFFERENTIAL FOR THE MONTH OF THE BILL OF LADING PER NET US BARRELS FOR (INSERT ALLOCATED CRUDE NAME)

Any option elected shall be stated in the Letter of Credit by deleting the inapplicable option from the Letter of Credit.

- (E) Where your Company varies the text/definition of a Pricing Option in the Letter of Credit, making it ambiguous or inconsistent with the principles of the Option, NNPC

shall disregard the contradicted Option and apply its discretion in electing any of the three (3) pricing options for valuation purpose, whichever is higher.

To avoid confusion, your Company is advised to indicate only the name of the preferred Option under the relevant paragraph e.g. PROMPT OPTION, ADVANCED OPTION OR DEFERRED OPTION.

- (F) Where the letter of credit is submitted to the office of the GGM COMD later than six (6) banking days prior to the first day of laycan, NNPC shall have the discretion to apply either the prompt option or the elected option, whichever is higher.
- (G) The base price for calculation of Letter of Credit opening amount only is for ..... However, should the final price to be invoiced increase above the reference base price, the amount of this Letter of Credit will automatically increase by same proportion without the necessity for further specific amendment covering ..... (5) percent net U.S. barrels of ....., FOB at a unit price as per the Contract and the amendments thereon.

**ADDITIONAL CONDITIONS**

- A - Charter Party bills of lading acceptable
- B - Documents presented later than twenty one (21) days after bills of lading, provided they are within the validity of this Letter of Credit shall be acceptable for payment.
- C - Partial shipments are .....
- D - Transshipments are .....
- E - Any payment falling due on a Saturday or New York Bank Holiday other than Monday shall be made on the preceding Banking Day. Any payment falling due on a Sunday or Monday New York Bank Holiday shall be made on the next succeeding Banking Day.

- F - Please advise beneficiary without adding your confirmation.
- G - All bank's charges are for the company's account.
- H - This Letter of Credit shall take effect in accordance with its terms but such term shall not alter, add to or in any way effect the provisions of the Contract to which this Letter of Credit relates.

I **Payment Terms:**

We hereby engage with the Nigerian National Petroleum Corporation that documents called for under this Letter of Credit will be duly honoured on due date upon presentation as specified (i.e. not later than 30 days after bill of lading date) provided that they strictly comply with the terms of this Letter of Credit, and that payment under this Letter of Credit will be made on or before the due date by default to the account below unless otherwise advised by the GGM, COMD in writing through a duly signed payment instruction.

**PAYMENT DETAILS TO BE ADVISED**

J Documents must be presented to:

(insert bank name and address)

swift: insert bank swift

fax: insert bank fax number

quoting our ref insert LC ref number

K Where the net bill of lading volume is greater or less than the five (5) percent contractual tolerance, payment shall nevertheless be made hereunder based on the actual net bill of lading volume. Documents must be presented at the counters of the bank at: ..... Quoting our ref.....not later than. **90 DAYS AFTER 2<sup>ND</sup> DAY OF LAYCAN**..... (Validity of Letter of Credit No.....

L This Letter of Credit shall take effect in accordance with its terms but such term shall

not alter, add to or in any way effect the provisions of the contract to which this Letter of Credit relates.

M This Letter of Credit is subject to the uniform customs and practice for documentary credits (2007 revision) international chamber of commerce (publication no. 600) and the parties hereby acknowledge and agree to be bound by the provisions contained therein.

We hereby undertake and guarantee that the original shipping documents as specified under the terms of this Letter of Credit shall be duly honoured upon presentation.

This telex is the operative instrument and shall not be followed by a written confirmation.

.....

Authorised signature

.....bank

Date: .....



**APPENDIX 2**  
**SELLER'S INDEMNITY FORMAT**

The indemnity referred to in Article 14.4 of Part II shall be in the following format:

We refer to the contract dated the ..... day of ....20.... in respect of your purchase from us of ..... Barrels of Crude Oil FOB ("the Contract") on Nominated Vessel....., bill of lading dated .....

In consideration of your making payment of ...(insert amount).....United States Dollars for ...(insert number).....barrels of the said Crude Oil in accordance with the Contract and having agreed to accept delivery of the cargo without having been provided with the required documents, we hereby represent and warrant the existence and validity of the documents; that we are entitled to possession of the documents; that we were entitled to possession of the Crude Oil; that we had good title to such Crude Oil; and that title in the Crude Oil has passed as provided in the Contract to you free of all liens, charges or encumbrances of whatever kind and you will have the benefit of the warranty as to enjoyment of quiet possession implied by law in the Contract but without prejudice to any other warranty so implied.

Without prejudice to your rights under the Contract we hereby agree to protect, indemnify and hold you harmless from and against any and all damages, losses, liability, costs, and reasonable expenses which you may suffer by reason of:

- (a) Failure on our part to present to you in accordance with the Contract the documents;
- (b) Any action or proceedings brought or threatened against you in connection with questions of title to or the right to possession of the documents or the cargo or the proceeds of either; or any liens, charges or encumbrances asserted on the documents or the cargo or any other claims arising out of or in connection with the documents.

This indemnity shall be governed by and construed in accordance with Nigerian Law; shall be subject to the exclusive jurisdiction of the Nigerian courts and shall cease to have effect upon the documents being provided to you.

Signed for and on behalf of:  
Nigerian National Petroleum Corporation

Name:.....  
Signature:.....  
Designation:.....  
Date:.....

In the presence of:  
Name:.....  
Signature:.....  
Designation:.....  
Date:.....