

AGREEMENT

FOR

THE SALE AND PURCHASE OF

CRUDE OIL

PART 1
(2021 – 2023)

THIS Agreement is made this day of 20....

BETWEEN

....., a Company registered under the laws of the Federal Republic of Nigeria having its head office at (hereinafter called “SELLER” which expression, where the context so admits, include its successors-in-title and assigns) of the one part;

AND

....., a company registered under the laws of Nigeria and having its office at (hereinafter called “BUYER” which expression shall, where the context so admits or requires include its successors-in-title, and assigns) of the other part.

WHEREAS:

- (1) SELLER is willing to enter into crude oil sales and purchase contract with BUYER for the sale of Barrels per day of specified Nigerian crude oil for a period of subject to the terms and conditions specified under Part I and Part II of this Contract.
- (2) BUYER represents that it has the financial resources and necessary skills to enter into this Agreement and has agreed with the SELLER to be bound by all the terms and conditions specified under this Agreement as set out in Part I hereof and Part II of this Contract.

Capitalised terms used herein but not otherwise defined hereunder shall have the meanings ascribed to them in Part II.

NOW THEREFORE, the Parties hereby agree as follows:

**ARTICLE 1
SALE AND PURCHASE**

BUYER hereby agrees to buy, lift and pay for, and SELLER hereby agrees to sell and deliver to BUYER on FOB basis, the agreed quantity of Crude Oil subject to the terms and conditions set out herein and in Part II.

In the event of sale to a refinery, such Crude Oil cargo shall be applied by BUYER for refinery processing and the BUYER hereby undertakes to submit to the SELLER on a quarterly basis, copies of the refinery processing sheet evidencing the processing of the Crude Oil.

**ARTICLE 2
DURATION OF CONTRACT**

This Contract shall come into force on and shall remain in full force and effect for a period of Unless otherwise terminated pursuant to Article 12 hereunder, this Contract shall terminate on

**ARTICLE 3
DELIVERY OF CRUDE OIL**

Delivery of Crude Oil by SELLER to BUYER shall be on the basis of FOB, subject to availability and allocations are made Sixty (60) days (M+2) in advance of the lifting date.

ARTICLE 4
QUANTITY

- 4.1 The quantity of Crude Oil for sale under this Contract shall be Barrels per day. Such quantity shall be specified in the Lifting Schedule for each relevant Month, subject to availability.
- 4.2 Notwithstanding the provisions of Article 4.1 above, the SELLER shall have the right at any relevant time to adjust the quantity with prior notice to the BUYER.
- 4.3 Except with the prior written consent of the SELLER, the BUYER shall during the relevant Month lift the total volume of Crude Oil specified in the Lifting Schedule subject to the tolerance of plus or minus five (5) percent.

ARTICLE 5
QUALITY/GRADE

- 5.1 The quality or grade of Crude Oil which SELLER shall deliver to BUYER at the loading Terminal shall be Crude Oil conforming to the normal export quality as generally made available at the loading Terminal.
- 5.2 The provision of this Article 5 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, satisfactory quality, fitness for any particular purpose or otherwise of the Crude Oil are hereby excluded.

ARTICLE 6

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

6.1 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 Lifting Schedule pursuant to the provisions of Article 4 of Part II.

6.2 FAILURE TO NOMINATE A VESSEL AND CHARTER NIDAS VESSEL

i) If the BUYER fails to nominate a vessel in accordance with Articles 5.4 and 5.7 of Part II, then the BUYER shall be in default with respect to its Lifting Entitlements. If the default continues for a period exceeding three (3) Days from the period required for the vessel nomination, then the BUYER's cargo of Crude Oil shall be treated in accordance with the provisions of Article 6.5 below.

ii) Where BUYER fails to charter NIDAS vessels as warranted under this Agreement in Article 16.3 of this Part 1 and Article 5.2.2 of Part 2 respectively, SELLER shall have the right to suspend subsequent Crude Oil allocations to BUYER until BUYER demonstrates its readiness to comply with its warranty hereof.

6.3 FAILURE TO TENDER NOTICE OF READINESS

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 with respect to such lifting and the BUYER's cargo of Crude Oil shall be treated in accordance with the provisions of Article 6.5 below.

6.4 REFUSAL TO LIFT

If after the relevant date for vessel nominations pursuant to Articles 5.4 and 5.7 of Part II, 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 with respect to such lifting.

6.5 AUTHORITY TO ACT IN DEFAULT

In the event of a default under Article 4.4 of Part II and the provisions of Articles 6.2, 6.3 or 6.4 above, the SELLER shall have the right to take all actions which are reasonably necessary concerning the BUYER's cargo, to avoid shut down or reduction of production. Such action shall include but not limited to the following:

- (i) prohibiting the BUYER from lifting such cargo of Crude Oil until the BUYER demonstrates commitment to lift to the satisfaction of the SELLER;
- (ii) chartering a vessel 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. All costs associated with such sale shall be to the account of the BUYER.

6.6 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 6.5 herein above from any and all costs of whatever nature arising out of or related to, such default and any action taken under Article 6.5, 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 administration fee levied by the SELLER for selling such cargo of Crude Oil;
- (b) any costs incurred or associated with the sale or disposal of the BUYER's cargo of Crude Oil, plus ten (10) percent of the sales proceed as marketing fee;

- (c) any costs arising from the reduction, shutdown and startup 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 Day such payments were made until the Day 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 7

PRICE

- 7.1 BUYER shall pay SELLER for the quantity of each cargo of Crude Oil delivered by SELLER as stated in the bill of lading on Dated Brent related basis as determined and advised by the SELLER on a monthly basis.
- 7.2 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 applicable NNPC monthly published official selling price (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.
- 7.3 The base price for the opening of the Letter of Credit shall be advised by the SELLER. Where the final price to be invoiced becomes higher than the base price,

the value of the Letter of Credit shall automatically assume the final price without further amendment of the Letter of Credit.

- 7.4 The BUYER shall pay for the value of each cargo of Crude Oil in accordance with the provision of Article 14 of Part II not later than thirty (30) Days after the bill of lading date. If the SELLER's commercial invoice does not reach BUYER by the 30th Day after the bill of lading date, BUYER shall effect provisional payment based on the provisions of Article 7.2 and any agreed amendments made thereto.
- 7.5 If the SELLER's calculation is higher than that of the BUYER, the BUYER's bank shall immediately pay the balance due to the SELLER under the relevant Letter of Credit. If the BUYER's calculation is higher than that of the SELLER, the BUYER shall deliver to the SELLER a written notification indicating any variance in the price and the SELLER shall refund the amount by which the price paid by the BUYER for the relevant cargo exceeds the Official Selling Price as determined by the SELLER. Such refund shall be settled by an official credit note to be processed by the SELLER which shall be deemed a supplementary payment to the invoice to which it relates.
- 7.6 The pricing formula stated in this Article 7 shall apply to the relevant Month in which any delivery of Crude Oil is made and shall be subject to review as provided in Article 12 of Part II.

7.7 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 and shall reach the office of the GGM, COMD 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 apply either the Prompt Option or the elected option at its discretion, 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.

ARTICLE 8

PAYMENT TERMS AND CURRENCY

- 8.1 Payment for each cargo of Crude Oil delivered by the SELLER shall be made by BUYER or its bankers not later than thirty (30) Days after the date on the bill of lading. BUYER shall pay interest for any delayed or unpaid amount after the due date at LIBOR plus 2% and such interest shall run from due date until the date

payment is fully received by the SELLER's bank. The interest shall be grossed up with withholding or other tax such that the net amount received by the SELLER after deduction of any such tax shall be equal to the full amount of interest due. The interest shall continue to accrue in accordance with the provisions of Article 14 of Part II notwithstanding the termination of this Contract for any cause whatsoever or the expiration of the Contract duration.

8.2 The place and currency of payment shall be made to the bank account designated below:

Currency of payment:

Beneficiary:

Bank:

Address:

Account Number:

SWIFT:

8.3 Every payment shall be made into the specified bank account unless otherwise advised in writing by the GGM, COMD through a duly signed payment instruction.

8.4 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 charges related to SELLER's bank.

ARTICLE 9
LETTER OF CREDIT

- (a) Payments for Crude Oil delivered to the BUYER and monies required to be paid under this Contract shall be made by Letter of Credit opened by BUYER in accordance with the provisions of Article 13 of Part II and shall be in the form of Appendix I attached to Part II.

- (b) All payments confirmation/swift shall be sent by BUYER to SELLER not later than two (2) Banking Days after due date.

ARTICLE 10
PHASE-OUT PERIOD AFTER PRICE DISAGREEMENT

If the BUYER fails to accept the pricing formula notified by SELLER at any relevant time, this Contract shall phase-out in accordance with the provisions of Articles 12.5 and 12.6 of Part II.

ARTICLE 11
TAXES, DUTIES, FEES, CHARGES

The BUYER shall be responsible for 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, at any stage after risk and title in such Crude Oil has passed to the BUYER. All taxes, duties, imposts, fees, charges (including, without limitation, pilotage limitation, quay dues) incurred by the Nominated Vessel at the loading Terminal shall be for the sole account of the BUYER.

ARTICLE 12
TERMINATION

- 12.1 This Contract shall automatically terminate upon the expiration of the Contract duration stated in Article 2 above.
- 12.2 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.
- 12.3. SELLER 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 become delinquent and unreliable.
- 12.4 SELLER shall have the right to terminate this Contract, if the BUYER is in breach of any material term of this Contract.
- 12.5 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, or 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 under any applicable law.
- 12.6 Notwithstanding anything to the contrary contained elsewhere in this Contract, either Party shall have the right to terminate this Contract by giving the other Party not less than ninety (90) Days' notice in writing.

ARTICLE 13
TRANSFER OF RISK AND PROPERTY

- 13.1 Notwithstanding the rights 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 Vessel's permanent hose connection at the loading Terminal. If the Crude Oil delivered hereunder forms an unascertained part of a larger bulk, risk and title of such Crude Oil shall be deemed to pass as the Crude Oil passes the Nominated Vessel's permanent hose connection at the loading Terminal.

- 13.2 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 14
NOTICES

For all Notices and other communications in respect of this Contract, the provisions of Article 23 of Part II shall apply and the Parties' addresses shall, unless otherwise notified in writing, be the following:

SELLER'S Address:
.....
.....

BUYER'S Address:
.....
.....

ARTICLE 15
AFFIRMATION

- 15.1 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.
- 15.2 In recognition of the principles of the OECD Convention on Combating of Bribery of Foreign Public Officials in International Business Transactions, 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 15 the word 'official' shall mean any officer, engaged or occupying a position in any office of the Federal Government of Nigeria or State or Local government or any office of any official of any foreign government.

ARTICLE 16
REPRESENTATION AND WARRANTIES

16.1. SELLER'S WARRANTIES AS TO AUTHORITY AND TITLE

16.1.1 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 hereunder; and
- iii) This Contract has been duly signed and delivered by SELLER and forms a valid and binding obligation on SELLER, enforceable against SELLER in accordance with its terms.

16.2. BUYER'S WARRANTIES AS TO AUTHORITY AND CREDIT WORTHINESS

16.2.1 BUYER represents and warrants to SELLER, that as of the Effective Date:

- i) BUYER is a duly registered company and validly existing under the laws of its jurisdiction.
- ii) BUYER is duly qualified and in good standing in all jurisdictions where required for performance of its obligations under this Contract;
- iii) BUYER has power, authority and legal rights to own assets and conduct its business as currently conducted and has taken all necessary corporate actions to sign and deliver this Contract and perform its obligations hereunder;
- iv) this Contract has been duly signed and delivered by BUYER and forms a valid and binding obligation on the BUYER, enforceable against BUYER in accordance with its terms;
- v) 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 presently in effect 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 asset 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.

16.3 BUYER'S WARRANTIES TO CHARTER NIDAS VESSELS

16.3.1 BUYER warrants to SELLER that it shall give preference to and charter vessels owned or leased by NIDAS (a subsidiary company of NNPC) for the carriage of Crude Oil purchased pursuant to this Contract whenever such vessels are available and offered at competitive prices. Where NIDAS is unable to provide vessels at a particular time, other Nigerian owned / leased vessels shall be chartered where offered at competitive prices.

16.3.2 Where BUYER fails to charter NIDAS vessels as represented herein, SELLER shall have the right to suspend subsequent Crude Oil allocations to BUYER until BUYER demonstrates its readiness to comply with its warranty hereof.

16.4 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).

16.5 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 enforceable for the duration of this Contract.

ARTICLE 17

DISCLAIMER OF AGENCY, TRUSTEE OR OTHER SIMILAR RELATIONSHIP

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.

**ARTICLE 18
NO THIRD PARTY RIGHTS**

Except as expressly stipulated under the provisions of this Contract, no term of this Contract shall be enforceable by any person who is not a Party to this Contract, nor shall any such person have any rights under this Contract. This Contract may be amended or modified without the consent of any person having any third party rights as may be expressly permitted under this Contract.

**ARTICLE 19
AMENDMENT & MODIFICATION**

This Contract may be modified from time to time by written instrument duly executed by authorized representatives of the Parties.

**ARTICLE 20
COMPLIANCE WITH LAWS, REGULATIONS AND FURTHER ASSURANCE**

20.1. 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 and necessary for the performance of its obligations under this Contract.

20.2 (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.

- (b) The liability of either Party under this Article 20 shall not be 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 20 would operate to impair or discharge the liability of such Party under this Article.

IN WITNESS WHEREOF the duly authorized representatives of the Parties hereto have executed this Agreement the day and year first above written:

SIGNED for and on behalf of:

.....

Signature.....

Name:

Designation:

In the presence of:

Signature:

Name:

Designation:

SIGNED for and on behalf of:

.....

Signature:

Name.....

Designation:

In the presence of:

Signature:

Name:

Designation: