

**GENERAL CONDITIONS  
FOR SALE AND PURCHASE OF  
NIGERIAN CRUDE OIL  
PART II OF THE CONTRACT**

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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 Nigerian National Petroleum Corporation and together with Part I form the Contract for 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 and quality of the Crude Oil comprising the shipment 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 the absence 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. SELLER shall thereafter instruct the Terminal Operator to retain the sample for retest.

- 1.3 Only basic sediments and water (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 American Society for Testing and Materials (ASTM) or the Institute of Petroleum (IP) or the American Petroleum Institute (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.
- 1.5 BUYER shall in respect of every delivery of Crude Oil, 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. The report of the out-turn figure shall be duly signed by an independent inspector retained and paid for by the BUYER.

## **ARTICLE 2: QUALITY**

- 2.1(a) The grade or quality of the Crude Oil to be delivered under this Contract and which SELLER is obligated to deliver to the BUYER at the designated loading Terminal in Nigeria shall be Nigerian Crude Oil conforming to the normal export quality as generally made available at the time and place of loading.
- 2.1(b) This sub-section 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 aboard the tanker concerned if so requested. SELLER shall retain representative sealed sample at the loading Terminal for a maximum period of sixty (60) Days after loading of each cargo of Crude Oil.

2.3 The Terminal Operator shall test for basic sediments and water (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 Paragraph 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 in Nigeria shall be admissible only if notified in writing to the SELLER within forty-five (45) Days of the date of loading at the relevant 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 samples taken at the loading Terminal and their findings shall be conclusive and binding on both the SELLER and the BUYER. The costs and expenses of the independent inspectors including costs associated with the laboratory test(s) of the samples shall be born solely by the BUYER.
  
- (ii) In the event that the report as duly certified by the independent inspectors show that there is a difference in quantity or deficiency in the quality or grade of the 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 sample that exceeds the industry tolerance of 0.5% BS &W.

### **ARTICLE 3: DELIVERY**

- 3.1 Delivery by SELLER to BUYER shall be on the basis of F.O.B. Nigerian deep water Terminal.
- 3.2 Liftings by BUYER pursuant to this Contract shall commence not later than sixty (60) days from the Effective Date of this Contract, failing which SELLER shall be entitled to terminate this Contract.

### **ARTICLE 4: MONTHLY LIFTING SCHEDULES/ PROGRAMMES**

- 4.1 The quantities of Crude Oil to be delivered to the BUYER under this Contract shall be evenly spread through the calendar months.

#### **4.2 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.

- 4.3 The SELLER may propose changes to the Lifting Schedule for any relevant Month. The proposal must be delivered to the BUYER within twenty-one (21) days prior to the date the lifting shall be made by the BUYER.
- 4.4 Not later than five (5) days, Saturday, Sundays and public holidays inclusive, from the date a lifting advice is given pursuant to Article 4.3 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 deemed to be a Defaulting Buyer and the provisions of Article 7. 5 shall apply.

- 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 4.4 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 in all the Terminals commencing from 0001 hours on the first day of date-range and terminating at 2359 hours on the last day of such date-range.

#### **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 ("the nomination") 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 summer deadweight of the vessel or a maximum of 15,000 tones 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 International Code for Security of Ships and Port Facilities (ISPS CODE) and the relevant amendments thereof;
  - (vi) be capable of receiving Crude Oil at the minimum rate specified for each 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 International Tanker Owners Pollution Federation Limited (ITOPF) and the vessel has on board a valid certificate

issued pursuant to the Civil Liability Convention (CLC) 1969, or to 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 as additional warranty that BUYER shall give preference to vessels owned by Nigerian companies for the transportation of Crude Oil under this Contract whenever such vessels are available and are offered at competitive rates. The BUYER shall arrange its vessels nomination to ensure that a minimum of fifty per cent (50%) of Crude Oil lifting to be made by it during the term of this Contract shall be transported by Nigerian companies.

The SELLER shall have the right upon reasonable notice of not less than ninety (90) days to convert up to fifty percent (50%) of the Contract volume to C.I.F. or C&F sales provided it can offer reasonable competitive freight rates and other terms are mutually agreed upon.

In the event that BUYER fails to comply with this vessel nomination requirement, BUYER shall be liable to suspension of two consecutive Crude Oil liftings. SELLER shall 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.

- 5.3 BUYER shall not, except during the occurrence 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 consequential damages and expenses resulting from any such cancellation or postponement shall be for BUYER'S account.

#### 5.4 **DOCUMENTATION INSTRUCTIONS/COMMERCIAL CLEARANCE**

BUYER shall submit in writing to the SELLER documentation instructions not later than Ten (10) Days before the Day of the date –range in which the BUYER wishes to lift Crude Oil. Such documentation instructions (Notices) shall specify the following:

- a) Quantity to be loaded
- b) Crude Grade/Stream
- c) Vessel name
- d) Summer Dead weight of Vessel(SDWT)
- e) Draft
- f) Length Over-all (LOA)
- g) Beam
- h) Flag of Vessel
- i) Year Built
- j) The expected time of arrival (ETA) of the vessel. Any deviation exceeding six (6) hours from the original ETA or where vessel's delayed arrival would prevent her from being berthed 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 together with reasons for such deviation or delay.
- k) Agent
- l) Inspector
- m) Destination
- n) Consignor
- o) Consignee
- p) Co-loading Date and Crude Stream

#### 5.5 **DOCUMENTARY REQUIREMENTS**

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

Bill of lading (copies marked non-negotiable)  
Certificate of Quantity  
Certificate of Quality  
Certificate of Origin and Authenticity  
Terminal Time Sheets signed by the Master and Terminal Cargo Manifest  
Master's Receipt for Samples  
Master's Ullage Report  
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 practical after receipt of the vessel nomination but in no event more than forty-eight (48) hours after receipt of the vessel nomination, 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, for whatever reason, then the reason or reasons 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 or substitute vessel. Such alternate or substitute vessel nominated shall be made in writing to the SELLER and the Terminal Operator not later than three (3) days after the date of disclosure by the SELLER of the rejection of vessel under Article 5.4(b).

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

As soon as practical after receipt of the alternate or substitute vessel nomination but in no event more than twenty four (24) hours after receipt of such nomination, the SELLER shall advise the BUYER in writing if the alternate or substitute vessel is accepted as a Nominated Vessel or is rejected in accordance with the principles set out in Article 5.4.

- 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 existing Crude Oil transportation 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 tanker's scheduled arrival date and hour as follows:

- (a) Seven (7) days before Nominated Vessel's Expected Time of Arrival (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 under this Contract for any costs, losses or expenses incurred by the Nominated Vessel, the charterers or the Nominated Vessels' owners

resulting 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 relevant 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 and any Demurrage resulting there from shall be for BUYER's account and the SELLER hereby disclaims any liability arising there from.

## **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. In respect of loading Terminal as listed below, where the cargo to be loaded exceeds the relevant base cargo size of the designated 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.

For each loading Terminal below, the base cargo sizes shall, unless otherwise changed by the SELLER at any relevant time with appropriate notice to the BUYER, be as follows:

(a)	Bonny light	-	135,501	metric tonnes
(b)	Forcados Blend		131,579	" "
(c)	Escravos	-	129,437	" "
(d)	Qua Iboe	-	127,300	" "
(e)	Oso Condensate		119,562	- " "
(f)	Pennington	-	128,024	" "
(g)	Brass	-	126,804	" "
(h)	Erha	-	142,500	
(i)	Yoho	-	127,346	
(j)	Bonga	-	135,163	
(k)	E.A	-	127,963	
(l)	Amenam	-	123,661	

(m)	Akpo Condensate	-	126,689		
(n)	Agbami	-	124,456	“	“
(o)	Abo	-	93,789	“	“
(p)	Okono	-	116,994	“	“
(q)	Okwori	-	127,457	“	“
(r)	Antan	-	132,415	“	“

6.2.2 Lay time allowed for loading at any loading Terminal shall include Saturdays, Sundays and public holidays unless loading during such days is 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 Notice of Readiness (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 cargo 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 Notice of Readiness (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 hour 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 whatsoever. If NOR is given for the Nominated Vessel after the last day of the Lay time 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 with the advance notice of expected time of arrival at loading Terminal as follows: seven (7) Days, three (3) Days, forty-eight (48) hours and twenty-four (24) hours and also any changes made to the expected time of arrival by more than four (4) hours from the last notification given. Failure to give due notice twenty-four (24) hours prior to the expected time of arrival shall increase lay time allowed to SELLER by the difference between twenty-four (24) hours and the actual number of hours prior to the expected time of arrival that notice is received by the Terminal Operator and such increase in lay time shall not exceed twenty-four (24) hours. Upon arrival at the anchorage at the loading Terminal, the master of the Nominated Vessel shall give to the Terminal Operator notice of readiness (NOR) of the Nominated Vessel to load. Notice of readiness (NOR) may be tendered only between the hours of 06:00 and 16:00 local time. Notice of readiness (NOR) may not be tendered during any period when 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 conformity with 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 date of disconnection of loading hoses, 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 date of disconnection of loading hoses. If BUYER fails to submit such notice together with such documentation within the said 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 Average Freight Rate Assessment (A.F.R.A) 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.

No Demurrage shall be paid if a Nominated Vessel is VLCC or larger vessel classification in accordance with London Tanker Brokers Panel's A.F.R.A 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 taking by 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 BUYER shall not be entitled to make any claim whatsoever:

- (a) Delay of the Nominated Vessel in reaching its berth caused by conditions not reasonably within the control of SELLER or SELLER's agent;
- (b) Breakdown or inability of the Nominated Vessel's facilities to receive the cargo of 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 at the loading Terminal 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 stipulated in Article 21 herein;
- (g) Any delay to Nominated Vessel caused by SELLER's failure to load Crude Oil at the loading Terminal as a result of BUYER's non-fulfillment of a material term of the Contract;
- (h) Non-compliance of the Nominated Vessel with safety regulations;
- (i) Slow loading as requested by Nominated Vessel Master;
- (j) Suspension of loading at the loading Terminal due to electrical storms (Safety);
- (k) Ullaging and sampling;
- (l) Fault or failure of the Nominated Vessel which results in loading being suspended for Nominated Vessel's purposes;
- (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 larger vessels whose classification shall be in accordance with London Tanker Brokers Panel's A.F.R.A publications;
- (p) Inward passage to berth;
- (q) Discharge of slops or ballast when not concurrent with loading at the required rate;
- (r) Awaiting customs clearance, immigration clearance, free pratique, pilot, tugs, 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 Contract, if SELLER is, by any cause whatsoever reasonably beyond its control, prevented, delayed or hindered from or bringing to the loading Terminal the Crude Oil required for the 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 referred to in Article 21 shall, without limitation to the generality of the foregoing, each be deemed a cause reasonably beyond the control of 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 the consequential delay in berthing or mooring the next vessel awaiting its turn to load at such berth (but no other vessel), then the BUYER shall be liable for all the losses, damages and other cost.

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.

## 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 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, such documentation shall include but not limited to the following:

### **From Customer:**

Original invoice/Assessment

Letters of Protest

Notice of Readiness (NOR)  
Statement of Facts from Agent,  
Master Customer  
Copy of Ship owners claim upon which demurrage claim is based  
Charter Party or Braefoot Bay and Sullom Voe

**From Terminal Operator:**

Operators Assessment  
Tanker Time Sheet  
Mooring Master's Berthing  
Logbook

**From NNPC:**

Laycan Advice  
Bill of Lading  
Marketing Assessment  
S & T Assessment  
Force Majeure

If the BUYER fails to give such notice or documentation within the time specified then claim will be deemed automatically and irrevocably waived by the BUYER. The SELLER shall subject to the submission of the documents and verification, pay the BUYER such properly due Demurrage in United States dollars after determination of Demurrage 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 General Conditions. Except with the prior written consent of SELLER, BUYER shall during each Month lift the total volume of Crude Oil stipulated in the said notified monthly lifting programmes subject to the tolerance of plus or minus five per cent (5%).

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

If the BUYER fails to nominate a vessel in a timely manner in accordance with Articles 5.2 and 5.5, then the BUYER shall be in default of this Contract with respect to its Lifting Entitlements ("Defaulting Buyer"). If the default continues for more than three (3) days from the period required for the vessel nomination to be notified to the SELLER, then the Defaulting Buyer's cargo of Crude Oil shall be treated in accordance with the provisions of Article 7.5.

#### **7.3 FAILURE TO TENDER NOTICE OF READINESS (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 ("Defaulting Buyer"). BUYER 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 5.5 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 ("Defaulting Buyer").

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

(a) In the event of a default under Articles 4.4, 7.2, 7.3 or 7.4, the SELLER shall have authority to take all actions concerning the Defaulting Buyer's cargo, which are reasonably necessary to avoid having to direct the Terminal Operator or any other responsible entity to shutdown or reduce production from the area, including without limitation:

- (i) prohibiting the Defaulting Buyer from lifting such cargo of Crude Oil until the Defaulting Buyer provides a Nominated Vessel and/or provides assurances of willingness and ability to lift;
  - (ii) chartering a Nominated Vessel in order to place the Defaulting Buyer's cargo in storage for the account of the Defaulting Buyer;
  - (iii) selling the Defaulting Buyer's cargo of Crude Oil for the account of the Defaulting Buyer. Any such sale shall be treated for the purpose of obligations in respect of taxes, duties, levies and charges as if such sale were made by the Defaulting Buyer. In making any such sale the SELLER:
    - (a) shall be obligated to obtain only such price and conditions for the sale as are reasonable under the circumstances; and
    - (b) may make any such sale to its affiliate provided that such cargo is first offered to the other third party
- (b) For the purpose of this Contract and the provisions of this Article 7.5, the BUYER hereby:
- (1) grants to the SELLER a special power of attorney, and
  - (2) authorizes the SELLER under this Contract in each instance where BUYER is a Defaulting Buyer to charter a vessel or vessels to store the Defaulting Buyer's cargo of Crude Oil, to hold the Defaulting Buyer's cargo of Crude Oil as security for the payment of the costs, fees and losses attributable to the Defaulting Buyer under Article 7.5, and/or to effect a sale of the Defaulting Buyer's cargo of Crude Oil.
- (c) The SELLER may in the exercise of its discretion exercise the powers and/or authorizations set out in Article 7.5 (b), individually or in concert, in accordance with applicable laws and regulations in order to effect the actions specified in Articles 7.5 (a) (ii) and/or 7.5 (a) (iii).

- (d) The SELLER shall inform the BUYER as soon as possible after any such action is taken.

## 7.6 **LIABILITY AND INDEMNITY OF DEFAULTING LIFTER**

In the event of default, the Defaulting Buyer shall be responsible for, and shall indemnify and defend the SELLER and any person who purchases the Defaulting Buyer's cargo of Crude Oil pursuant to Article 7.5 from, 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 Nominated Vessel to store the Defaulting Buyer's cargo of Crude Oil, plus any administration fee by the SELLER for selling such cargo of Crude Oil;
- (b) any costs levied incurred or associated with the sale or disposition of the Defaulting Buyer's cargo of Crude Oil, plus 10% of the sales proceed as marketing fee;
- (c) any costs arising directly or indirectly from the reduction, shutdown and startup of the Crude Oil production but not including costs arising from foregone or lost production;
- (d) any costs incurred by any buyer lifting subsequent to such default which arise directly or indirectly from such default;
- (e) interest on any such costs, fees or losses at the agreed interest rate from the day such payments were made until the day they are reimbursed.

## **ARTICLE 8: DAMAGES FOR UNDERLIFTING**

- 8.1 Without prejudice to the provisions of Articles 7.2, 7.3, 7.4, 7.5 and 7.6, if the BUYER defaults in complying with its lifting obligations in accordance with Article 7 above (except in cases of Force Majeure) either by a total failure to lift or by lifting a quantity less than the BUYER is obligated to lift in that Month, BUYER shall be liable to pay to SELLER agreed liquidated damages being an amount equal to five percent (5%) of the value of the unlifted Crude Oil less five per cent (5%) tolerance stated in Article 7. Where BUYER lifts less than it is obligated to lift twice in any one quarter or three times in any calendar year during the period of this Contract, the liquidated damages

payable to SELLER for any subsequent under- lifting shall be ten percent (10%) of the value of the unlifted Crude Oil less five per cent (5%) tolerance stated in Article 7.

- 8.2 In determining the proper value for purpose of ascertaining the amount of liquidated damages under this provision the applicable price shall be the relevant Month's official selling price issued by SELLER with the pricing option chosen by BUYER for the particular grade of Crude Oil for which the BUYER under lifted its contractual volume, 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: DISPOSITION OF UNLIFTED/UNDERLIFTED CRUDE**

- 9.1 BUYER shall not have a right to lift any volume of Crude Oil unlifted or underlifted within any calendar quarter in subsequent Months.
- 9.2 Without prejudice to provisions of Articles 7 and 8.1 in respect of unlifted/underlifted Crude Oil by BUYER and provided that the SELLER has not exercised its right under Article 7.5 to dispose of the unlifted cargo of Crude Oil, SELLER may allow BUYER to lift the quarter's unlifted or underlifted Crude Oil subject to the payment of liquidated damages less the five per cent (5%) tolerance not later than fifteen (15) days after the end of the relevant quarter. The price applicable to such late liftings shall be the price derived from the prevailing or pricing option chosen by BUYER as at the time of bill of lading date in accordance with Article 15 hereof.

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

10. 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 have the right to lift such excess Crude Oil in respect of that Month in the notified monthly lifting programme inclusive of the five per cent (5%) tolerance provided that the price applicable to such over-lifting shall be as stated in the SELLER's 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: FIRST LIFTING UNDERTAKING**

11. At its absolute discretion SELLER may, at the time of signing this Contract require BUYER to present as a commitment to commence lifting, a certified bank swift confirming payment by telegraphic transfer a sum of Two Million Five hundred thousand United States Dollars (US\$2,500,000). This sum shall be treated as advance payment for the first lifting and shall be automatically forfeited by BUYER if BUYER fails to commence lifting in accordance with the terms of this Contract. Upon such forfeiture SELLER may at its discretion promptly terminate this Contract notwithstanding any other provisions to the contrary expressed or implied under this Contract, and the BUYER hereby agrees to waive any right to damages or other form of remedy against the SELLER for the Contract termination pursuant to this Article 11.

#### **ARTICLE 12: PRICE**

- 12.1 Subject to the provisions hereof, the BUYER shall pay to the SELLER the applicable price for the total quantity of each shipment as stated in the bill of lading as Dated Brent related basis and certificates of quantity and quality issued pursuant to the provisions of this Contract and such price shall be expressed in United States Dollars per barrel F.O.B. Nigerian loading Terminal. The applicable price shall be the official selling price derived from the pricing formula advised by the SELLER and notified by the SELLER to the BUYER as being the F.O.B. price per barrel at which Crude Oil shall be sold to buyers generally.
- 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 being made under this Contract.

12.4 Prior to the beginning of each relevant Month the SELLER shall inform the BUYER of the pricing formula for that relevant Month. In fixing the pricing formula 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 pricing formula as communicated by SELLER to the BUYER shall be the pricing basis for the relevant Month unless otherwise revised by the SELLER at its sole discretion.

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

12.5 If the BUYER fails to accept the pricing formula notified by the SELLER for the relevant Month, the Contract shall immediately terminate after a “phase-out” period of ninety (90) days from the date of SELLER’s notification of the applicable pricing formula to BUYER. The price applicable during the phase-out period shall be the official selling price derived from the pricing formula notified by SELLER generally to the buyers of the specified grade(s) of Nigerian Crude Oil during the period.

12.6 If, during the phase-out period and prior to the termination of this Contract on the expiration of the phase-out period, the BUYER submits a written demand to the SELLER to lift the BUYER’s Crude Oil Lifting Entitlements, the BUYER’s Crude Oil Lifting Entitlements during such phase-out period shall be limited to fifty per cent (50%) of the Contract quantity. Where the BUYER notifies the SELLER of its acceptance of the applicable pricing formula as notified by SELLER under Article 12.5 before the expiration of the phase-out period, the SELLER, may, at its sole discretion, allow the BUYER to lift its hundred per cent (100%) Contract quantity as if no phase-out period had occurred.

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

The SELLER and BUYER hereby agree to meet quarterly 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 to these meetings, and further agrees that its authorized representative(s) to the meetings shall be fully empowered to take decisions and grant relevant approval(s) that will be binding on the BUYER.

The SELLER shall host all such meetings and at no charge to BUYER, provided that attendance at such meetings by the BUYER's representatives shall be at BUYER's cost.

### **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 as stipulated under the terms of the Contract by Letter of Credit which shall be substantially in the form stated in Appendices 2 or 3A and 3B. The BUYER shall procure that such Letter of Credit shall be opened with and confirmed by a reputable first class Nigerian bank approved by the SELLER or a first class international bank acceptable to the SELLER. The provisions stated herein for payment by Letter of Credit shall not be construed as excluding the BUYER's basic responsibility for paying within the payment due date stated in the Part 1 and Part II of the Contract for Sale and Purchase of Crude Oil.

13.1(B) 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) but such terms (including any agreed amendment(s) thereto) shall not alter, add to, or in any way affect the provisions stipulated in this Contract.

13.1(C) Failure by the BUYER to comply with the requirements of this Article 13 shall be a fundamental breach of this Contract and the SELLER shall have the right to immediately terminate this Contract and shall be entitled to claim damages from BUYER for breach of the Contract.

13.2 The value of the Letter of Credit shall be as follows:

(a) Letter of Credit as per Appendix 2:

The value of sixty (60) days Crude Oil liftings based on the initial price as advised by the SELLER and the off-take rate (inclusive of Contract tolerance limit) applicable under this Contract plus any amount of claims that may arise under Articles 5, 8 and 14.3 of the General Conditions. BUYER shall

thereafter adjust the said value in conformity with changes in price and off-take rate during the period of the Contract; or

- (b) (i) Letter of Credit as per Appendix 3A  
The amount of anticipated claims as may be advised by SELLER under the terms of this Contract.
- (ii) Letter of Credit as per Appendix 3B  
The total value of the cargo of Crude Oil to which the Letter of Credit relates plus the tolerance limit and at the prevailing price confirmed by the SELLER.

13.3. The Letters of Credit as per Appendices 2 or 3A and 3B shall be opened with SELLER's approved reputable first class Nigerian bank or first class international bank and advised through a reputable first class Nigerian bank in a form (text and format) acceptable to SELLER not later than twenty-one (21) days after the date of signing of the Contract or five (5) Business Days before the accepted date range for the first lifting under the Contract whichever is earlier.

Subsequent Letters of Credit as per Appendix 3B shall be acceptable to SELLER and shall be opened not later than five (5) Business Days before the accepted date range for each lifting of Crude Oil under this Contract.

Letters of Credit as per Appendices 2 and 3A shall be irrevocable and automatically revolving with each drawing therefrom and in such manner that amounts withdrawn are immediately replaced to bring the total value back to its previous level.

The SELLER shall have the right to confirm any Letter of Credit by bankers of its choice at any time and shall also have the right to demand any amendment of any Letter of Credit as it deems appropriate subject to the provisions of Article 13.1.

The BUYER agrees to pay a penalty of US\$100,000 (One Hundred Thousand United States Dollars) for each time the BUYER fails to present an acceptable Letter of Credit to the SELLER within the time limit specified in this Article 13.3.

- 13.4. The letters of Credit referred to in Appendices 2 or 3A shall initially be valid for a period of fourteen (14) months and shall thereafter be renewed for further period of twelve (12) months in such manner that it shall remain valid and in full force and effect throughout the duration of the Contract. The Letter of Credit in Appendix 3B shall be valid for a period of ninety (90) days.
- 13.5. Each applicable Letter of Credit shall be issued in accordance with the Rules of the International Chamber of Commerce relating to documentary credits for the time being in force.
- 13.6. The payment through the Letters of Credit in Appendices 2 or 3B 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.
- 13.7 (a) The BUYER shall bear all expenses and bank charges in connection with the Letter of Credit opening, confirmation, extensions, agreed alterations and all commissions including those related to SELLER's banks.
- (b) BUYER shall also bear full liability for costs and expenses arising out of, or in connection with any of the Letters of Credit not reaching SELLER in time in an acceptable form for liftings to commence on schedule.

(c)BUYER shall have the responsibility of ensuring that all Letters of Credit are received by SELLER in an acceptable form 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.

13.8 The BUYER agrees that not less than 25% of the Letters of Credit for lifting the relevant Crude Oil quantity under this Contract will be opened directly to SELLER by Nigerian Banks. The SELLER reserves the right to suspend lifting by the BUYER if the BUYER fails to comply with the provisions of these Articles 13.7 and 13.8.

#### **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 on the bill of lading and upon presentation by SELLER of the documents stated in Article 13.6 above. Any payment falling due on a Saturday or New York Bank Holiday other than Monday shall be made immediately on the preceding Business Day. Payment falling due on a Sunday or Monday New York Bank Holiday shall be made immediately on the next succeeding Business 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 credit to apply 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 not later than two (2) Business Days after due date of such payments. If the BUYER does not pay for any cargo of Crude Oil delivered by SELLER within the prescribed period applicable to such lifting the delayed payment shall attract interest from

the first day after the due date of payment at the rate of two percent (2%) per annum above the rate at which U.S Dollar deposits for six months are bid in the London Interbank Deposit market (LIBOR) on the first day of default or if no LIBOR rate is quoted on that date, the first preceding rate so quoted, such rate to be certified by the National Westminster Bank, London as the rate at which such deposits are bid by it. Interest shall be payable for each day of default and the calculation shall be made on the amount of unpaid principal and interest outstanding.

14.3(b) Except in cases falling within the provisions of Article 21 (Force Majeure), if the BUYER fails to pay in full on payment due date to the SELLER, the SELLER shall have the right to immediately suspend any further deliveries of Crude Oil to the BUYER until full payment 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 it shall notify the SELLER of such occurrence not later than the 30<sup>th</sup> day after the bill of lading date of its inability to receive the shipping documents and SELLER shall immediately issue to BUYER a letter of indemnity which shall substantially be in the form attached hereto as Appendix 1 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 PLACE OF PAYMENT**

BUYER shall pay SELLER for all Crude Oil delivered under this Contract in such currency and at such place or places as shall be specified in the Contract or 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) Business 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 purchased at the rate quoted to BUYER by the nominated bank with an amount of Dollars equal to the U.S. Dollar amount of the relevant invoice.

## **ARTICLE 16: PAYMENT DURING CIVIL UNREST**

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 to the SELLER to the designated account stated in this Contract and to no other person whatsoever. 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 be required to make any payment(s) due to the SELLER under this Contract to any third party whatsoever.

## **ARTICLE 17: TAXES, DUTIES, FEES AND CHARGES.**

The BUYER shall be responsible for the payment of all amounts in respect of 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, in respect of any stage after risk in such Crude Oil has passed to the BUYER. All taxes, duties, imposts, fees, charges (including, without limitation, pilotage limitation, quay dues) in respect of the Nominated Vessel incurred at the loading Terminal shall be solely for the BUYER's account.

## **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 and policies and bye laws applicable and necessary 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 pertaining to completion and perfection of single goods declaration (SGD) documentations and any other requirement as may be directed by the Nigerian Customs Services from time to time.



- 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 fulfilled, 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 PROPERTY**

- 19.1 Notwithstanding any right of the SELLER to retain any document pursuant to the provisions of this Contract until payment, the risk and property 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 property for the Crude Oil delivered hereunder shall, for the purpose of enabling property in such Crude Oil pass to the BUYER, 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 (excluding facilities operated by the SELLER or an associate company of the SELLER) 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 they are strictly complied with. Without limiting the obligations of the BUYER herein, the SELLER will notify the BUYER of any changes made from time to time.
- 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, 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 so 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 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 Section 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 to SELLER's 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, 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
- II. Act of Government intervention, directive, or policy (whether war Federal or State Government)
- III. War (whether war is declared or not), act of public enemy;
- IV. Act of disorder, riot, civil unrest, rebellion, (except where it is solely restricted to the employees of the BUYER);
- V. Act of sabotage, terrorism, or foreign invasion
- VI. Explosion, fire, flood, earthquake, lightning, haze, storm, or other severe weather condition or other natural disaster.
- VII. Strike, boycott, labour unrest (whether direct or indirect, lawful or unlawful) excluding those limited to the employees of the BUYER.

- 21.2 Immediately on the occurrence of Force Majeure, the party claiming to be affected by the Force Majeure shall promptly notify the other party in writing stating the details of the event or act constituting Force Majeure, and stating also the measure being adopted by it to minimize or to remedy the consequences of the Force Majeure on the performance of 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 fourteen (14) days written notice of termination.
- 21.4 On the cessation of the Force Majeure before the expiration of the said period stated in Article 21.3 above, the party claiming to be so affected by the Force Majeure shall also 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, 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. Where there is failure to reach an amicable resolution either party shall have the right to refer the matter to arbitration under the provisions of the Arbitration and Conciliation Act Cap. 19 Laws of the Federation of Nigeria, 1990 and any amendment made thereto.
- 22.2 Within thirty (30) days of the matter being referred to arbitration, either 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 duly given in writing by the applicant party and when appointed (in the case of a third arbitrator) the third arbitrator shall convene meetings and acts as the chairman.

22.3 The award of the arbitrators shall, except where there is manifest error in law or fact or miscarriage of justice, be conclusive and binding on all the parties and may be entered as an award or judgment of a court of competent jurisdiction. The costs of arbitration shall be borne equally by both 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 of the arbitration shall be in Lagos and the applicable laws of the Federal Republic of Nigeria shall be the governing laws for the determination of the issues arising under the arbitration.

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, 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 delivery, or by any electronic means of transmitting written communications which provides written confirmation of complete transmission, and addressed to such parties as designated below:

**FOR SELLER:**

Nigerian National Petroleum Corporation  
NNPC Towers  
Herbert Macaulay Way, Central Business District,  
Garki, Abuja  
P. M. B. 190,  
Abuja.  
Nigeria.  
Tel No:           **+234 9 460 82500-1**  
Fax. No:         +234 9413 0198  
E-Mail:           comd\_div@nnpcgroup.com

**FOR BUYER:**

BUYER's address for notices and other communication shall be as stated in Article 15 of the Contract (Part 1).

- 23.2 Oral communication does not constitute notice for purposes of this Contract and telephone numbers for the parties are listed as a matter of convenience only.
- 23.3. The originating notice given under any provision of this Contract shall be deemed delivered only when received by the party to whom such notice is directed, and the time for such party to deliver any notice in response to such originating notice shall 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 to be notified and 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**

The performance of this Contract shall not be assigned in whole or in part by the BUYER to any person, company, firm, institution or others without the prior written

consent of the SELLER. Provided 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 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 value in Nigeria or outside Nigeria to any official, person or company to process 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 there from, offer, pay, offer to pay, promise to pay or authorize the giving of money or anything of 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 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 or in these General Conditions, SELLER (without prejudice to any other rights available to it hereunder) shall have the right to terminate this Contract immediately 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 in accordance with the terms stipulated in this Contract if the BUYER is in breach of any material term of this Contract.
- 26.3. SELLER shall have the right to terminate this Contract immediately 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 receiver and 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.
- 26.4 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.

#### **ARTICLE 27: GOVERNING LAW**

This Contract and the General Conditions 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 and the General Conditions, the parties agree that all information and data acquired or obtained by any party in respect of any lifting by any party shall be considered confidential and shall be kept confidential and not be disclosed during the term of this Contract to any person not a party to this Contract, except to:

- A an affiliate, provided such affiliate maintains confidentiality as provided herein;
- B its employees who have a need to know, subject to each party taking customary precautions to ensure such data and information is kept confidential;
- C prospective or actual contractors, consultants and attorneys employed by any 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 a party's cargo of Crude Oil to the extent appropriate to a party arranging a sale;
- E a bona fide prospective transferee of all or part of a party's participating 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 because of any order of any court or arbitration panel binding upon a party; or

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.

The terms of this Article shall not apply to any 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 disclosing party has obtained a written undertaking from the recipient party to keep the data and information strictly confidential for the duration of this Contract. 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 **CONTINUING OBLIGATIONS.**

Upon the termination or expiration of the duration of this Contract, each party shall nonetheless remain bound by the obligations of confidentiality in Article 28.1 and any disputes shall be resolved in accordance with the provisions of Article 22.

28.4 **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**

If any provision of this Contract or any part of such a term or provision of this Contract shall be held by any court of competent jurisdiction, or any competent authority in any jurisdiction, or State to be illegal, invalid or unenforceable under any enactment or

rule of law, neither the validity, legality nor enforceability of the remaining provisions under that jurisdiction or State, nor the validity, legality or enforceability of the entire provisions in any other jurisdiction or State 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
- iii) 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) BUYER is a duly registered company /corporation 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 and has taken all necessary corporate actions to

sign and deliver this Contract and perform its obligations under this Contract;

- 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 the terms stipulated herein;
- v) the signing and delivery of this Contract by the BUYER and the performance of this Contract 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.

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 this Contract;
- b) there are no suits, judicial or administrative actions, proceedings or investigations (including bankruptcy, reorganization, insolvency or similar actions, proceedings or investigations) 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 adversely 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 including the General Conditions and the Appendices to this Contract constitute the whole and entire agreement between the SELLER and BUYER relating to the subject matter of this Contract and supersede any other agreement, correspondence or pre-contractual statement relating to the same subject matter.
- 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 it is repeated in this Contract.
- 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, arrangement made at any time before the signing of this Contract (whether or not in writing) relating to the subject matter of this Contract and which is not repeated in this Contract.

## **ARTICLE 32: 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, 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**

Any existing 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 which is substantiated with valid supporting documents has been delivered to SELLER in respect of such claims, costs, expenses, fees or demands prior to or within fourteen (14) days of the expiration of the Contract period or the early termination of this Contract. Upon failure of the BUYER to deliver such notice within the period stated herein, BUYER shall be deemed to have waived its rights to such claims, costs, expenses, fees or demands.

## **ARTICLE 34: 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 35: WAIVER**

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

## ARTICLE 36: DEFINITIONS

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

**Business Day:** means a Day on which the banks in Lagos, Abuja, London, New York, Paris, and Geneva are customarily open for business. Excluding Saturdays, Sundays, and national or public holidays.

**Barrel:** means Forty-two (42) U.S Gallons at 60°F

**Contract:** means this Contract document identified as Part 1 of the Contract for Sale and Purchase of Nigerian Crude Oil and the General Conditions identified as Part II of this Contract together with the Appendices 1, 2, 3A and 3B attached thereto.

**Crude Oil:** means Crude Oil and condensate of the grade and quality stipulated in this Contract.

**Dated Brent:** means Platt's Quotations representing the price of physical or wet Brent-Forties-Oseberg loading not less than 10 days forward.

**Day or Days** means a calendar day or days (as the case may be) unless otherwise specifically provided.

- Delivery Point:** means the point at which quantities of Crude Oil to be delivered to BUYER under this Contract pass from the Terminal's loading hose into the inlet flange of the Nominated Vessel's intake pipe at the designated Terminal in Nigeria.
- Demurrage:** means the sum payable pursuant to Article 6.5.
- Effective Date:** means date of signature by the parties.
- ETA:** means the estimated date and time of arrival (local time) of a Nominated Vessel at the designated Terminal.
- Force Majeure:** means those acts and events set in Article 21
- Lay time:** means as to each BUYER for each lifting the amount of time used by the Terminal to complete the loading of the relevant Nominated Vessel determined pursuant to Article 6.2.
- Letter of Credit:** means the relevant Letter of Credit to be issued by a bank nominated by the BUYER in accordance with the terms stated in Article 13 of the General Conditions and shall be substantially in the form shown in Appendices 2, 3A and 3B attached to the General Conditions.
- LIBOR:** means London Interbank offered Rate for one Month Eurodollars as published on Reuters page "LIBOR" (or any successor thereto).



**Lifting Entitlement (or LE):** 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.

**Lifting Schedule:** means, in respect of a designated Terminal for a particular Month, the program of liftings prepared by the SELLER for the purpose of this Contract.

**MBD:** means Million barrels per day.

**Month:** means calendar month according to Gregorian calendar.

**NOR:** means the notice of readiness tendered by a Nominated Vessel which has arrived at the designated Terminal and is ready and able in all respect to commence berthing and loading.

**Nominated Vessel:** means a vessel nominated by a BUYER and approved pursuant to Article 5.

**Overlift:** means, in respect of the BUYER, the quantity by which such BUYER's actual Liftings for any Month exceed such BUYER's Lifting Entitlement for such Month.

**Prompt Option:** means the pricing period shall be five consecutive published quotations after the bill of lading date with the bill of lading date as day zero.

**Quarter:** means calendar quarter.

**Standard Cargo:** means as to a designated Terminal, the range of cargo sizes which is specified in Article 6.2.1

**Terminal:** means each and any (and if the context requires, all) of the transportation, storage, handling and/or loading facilities designated which the parties intend to use for the lifting of Crude Oil under this Contract. The SELLER will for each lifting

designate a particular Terminal for the delivery of any cargo of Crude Oil under this Contract.

**Terminal Operator:** means as to each Terminal the entity that operates the Terminal.

**Terminal Regulations:** means as to each Terminal the rules and procedures concerning operation of the Terminal and berthing and loading from the 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

**Underlift:** means as to a BUYER the quantity by which such BUYER's Lifting Entitlement for any Month exceeds such BUYER's actual Liftings for such Month.

**VLCC:** means very large Crude-Oil carriers.

**Interpretation:**

- A The term "Contract" includes Part 1 of the Contract and the General Conditions (Part II ) and Appendices 1, 2, 3A, and 3B attached to the General Conditions and any amendments to this Contract.
- B Except as otherwise stated, any reference to the Articles or Appendices shall be deemed a reference to the Articles of or Attachments to this Contract
- C Headings used in this Contract are inserted for convenience only and shall be ignored in construing this Contract.
- D 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.

- E Unless the context otherwise requires, the singular shall be deemed to include the plural and vice versa.
- F Except where expressly provided to the contrary or where the context otherwise requires, references in this Contract to:
  - 1 any law, decree or statutory provision shall be deemed to include references to any regulations and orders made thereunder; and
  - 2 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.
- G 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 1**  
**SELLER'S INDEMNITY FORMAT**

The indemnity referred to in Article 14.4 of the General Conditions shall be in the following format:

We refer to our contract dated the .....day of .....200... 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 .....US Dollars for .....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; we were entitled to possession of the Crude Oil; we had good title to such Crude oil; and that title in the Crude Oil has been 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

By:

Designation:

Date:

In the presence of:

Name:

Signature:

Address

**APPENDIX 2**  
**(SPECIMEN LETTER OF CREDIT UNDER**  
**ARTICLE 13 OF GENERAL CONDITIONS)**

.....BANK

Date of Issue:.....

To: NIGERIAN NATIONAL PETROLEUM CORPORATION

Irrevocable Letter of Credit

No:.....

In reference to the Contract made between NNPC (the "SELLER") and ..... (the "BUYER"), on the ..... day of ..... 20..... for sale and purchase of ..... barrels of Nigerian Crude Oil and by order and for the account of the said BUYER we hereby establish our clean, irrevocable and revolving Letter of Credit No:..... in your favour for an amount not exceeding in the aggregate U.S. \$..... (in words:.....).

The funds in this Letter of Credit are available for payment to you, thirty (30) days after the "On Board" date of the Bill of Lading, of all invoices upon the BUYER in respect of crude liftings under your above mentioned Contract, and upon demand in respect of any monies claimed by you under the terms of the said Contract.

Payment as stipulated in each invoice shall be effected against presentation of the underlisted documents detailed below at the Counter of this Bank situate at the Bank premises at .....

- (1) Original signed commercial invoice covering the value of each crude oil lifting at the current Contract Price in accordance with ..... (insert pricing basis);

(2) Full set of three (3) original clean on board ocean bills of lading issued or endorsed to the order of .....; evidencing shipment of crude oil from any of the Nigerian Crude Oil Terminals;

- (3) Certificate of Quantity - one original + ..... Copies
- (4) Certificate of Quality - one original + ..... Copies
- (5) Tanker Haullage Report - one original + ..... Copies
- (6) Tanker's Time Sheet - one original + ..... Copies
- (7) Certificate of Origin - one original + ..... Copies

Special Conditions:

- (1) 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 Agreement between SELLER and BUYER to which this Letter of Credit relates.
- (2) Charter party bills of lading/Vessels bill of lading and stale documents are acceptable.
- (3) Should the final price to be invoiced increase above the reference Base Price, the amount of this Letter of Credit shall automatically increase by the same proportion without necessity for further specific amendment.
- (4) Payment falling due on a Saturday or bank holiday other than Monday shall be made on the preceding business day. Payment due on a Sunday or Monday New York Bank Holiday shall be made on the next succeeding business day.
- (5) All bank charges and commissions are for account of the BUYER. This Letter of Credit is valid for period of one year and sixty (60) days from.....

provided that in the event of the Contract being terminated within one year of the opening of this Letter of Credit, it shall remain valid for a period of 60 days after the effective day of such termination.

- (6) Funds under this Letter of Credit shall be available to the SELLER against a copy of the SELLER's unpaid invoice to the BUYER accompanied by the SELLER's written statement stating the number of this Letter of Credit duly signed by SELLER's authorized representative certifying that the BUYER has failed to make any payment due to the SELLER and under the terms of this Letter of Credit. This shall constitute sufficient proof of such non-payments and shall be a demand upon us to pay under the terms of this Letter of Credit.
  
- (7) This Letter of Credit shall be subject to the Uniform Customs and Practice for Documentary Credit (2007 Revision) of the International Chamber of Commerce (Publication No. 600) and the parties hereby acknowledge and agree to be bound by the provisions contained therein.

.....

Authorised Signatories of Bank

Date:..... BANK:



**APPENDIX 3A  
(SPECIMEN LETTER OF CREDIT FOR UNDERLIFTING,  
CANCELLATION/POSTPONEMENT, UNDER- PAYMENT AND INTEREST CHARGES TO  
BE ISSUED AT THE SAME TIME WITH THE FIRST L/C IN APPENDIX 3B)**

.....BANK

Date of Issue:.....

To: NIGERIAN NATIONAL PETROLEUM CORPORATION

**IRREVOCABLE REVOLVING LETTER OF CREDIT NO \_\_\_\_\_**

In reference to the Contract made between NNPC (the "SELLER") and

.....

(the "BUYER"), on .....day of..... 20.....for the

sale and purchase of ..... barrels of Nigerian Crude oil per day and by order and

for the account of the BUYER we hereby establish our clean and irrevocable Letter of Credit

No:.....in your favour for an amount not exceeding in the

aggregate US\$..... + 5% (in

words: ..... plus five percent). The

purpose of this Letter of Credit is to indemnify you in the event that the BUYER fails to pay

for any crude oil lifted under the terms of the Contract or fails to pay any of the liquidated

damages provided for under the terms of the said Contract. We hereby undertake to pay

you on demand the said damages and/or the unpaid price of such Crude Oil and/or interest

for late payment, as the case may be provided however that the extent of our liability to you

under this Letter of Credit shall not exceed the sum of US\$.....or such other

sum as may be mutually agreed and duly specified in any amendment to this Letter of Credit

and notified to you in writing by us. The funds in this Letter of Credit are available for

payment to you against presentation of the underlisted documents detailed below at our

Bank's Office at .....

subject to the presentation of the following documents:

- (1) Your invoice for the amount claimed under the terms of the Contract

- (2) Your written statement signed by your authorized representative certifying that our client has committed any of the breaches above mentioned.

This Letter of Credit shall be valid for a period of one year and 60 days from .....provided however that in the event of the Contract being terminated within one year of its opening, this Letter of Credit shall remain valid for a period of sixty (60) days after date of such termination becoming effective.

We hereby irrevocably undertake and guarantee that payment will be duly made as stipulated above against documents presented in conformity with the terms of this Credit. This Letter of Credit shall be subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) of the International Chamber of Commerce (Publication No. 600) and the parties hereby acknowledge and agree to be bound by the provisions contained therein.

.....

Authorised Signature

..... BANK

Date:.....

**APPENDIX 3B**

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

In reference to the Contract between .....  
**and Nigerian National Petroleum Corporation** for the sale and purchase of Nigerian  
crude oil dated.....for.....MBD, we  
hereby open our Irrevocable Documentary Letter of Credit No:..... in  
favour of Nigerian National Petroleum Corporation, Abuja, Nigeria, by order and for account  
of.....available 30 days  
after Bill of Lading Date for an amount of  
US\$.....

(.....) plus/minus five per cent (5%) U.S. Dollars  
subject to the presentation of the following documents:

1. Nigerian National Petroleum Corporation’s signed Commercial Invoice covering  
.....U.S. barrels +/- 5 per cent 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.....evidencing a shipment of .....Crude Oil from.....  
Terminal not later than.....
  3. Original certificate of Quality plus - one original + ..... Copies
  4. Tanker Haullage 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
- 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 NNPC'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 .....and any agreed amendments made thereon. Any excess or short payment outside the NNPC's 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, NNPC 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 document listed under ARTICLE 2.5 above.

(C) If payment is not made on due date that is, thirty (30) days after Bill of Lading Date, after presentation of the said document.....NNPC shall be entitled to payment of interest on the unpaid amount at the rate of two per cent (2%) per annum above the rate at which U.S Dollar 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 for sale and purchase of Nigerian Crude Oil, and the amount shall be charged and drawn against this Letter of Credit.

(D) The base price for calculation of Letter of Credit opening amount only is for .....Crude Oil USD...../U.S. - Barrel. However, should the final price to be invoiced increase above the reference base Price, the amount of this Credit will automatically increase by same proportion without necessity for further specific amendment.

Covering .....plus/minus five per cent (5%) net U.S. barrels of .....Crude Oil, FOB.....at a unit price as per Crude Oil Purchase Contract dated ..... and the amendments thereon:

- Charter Party Bills of lading acceptable
- 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.
- Partial shipments are .....
- Transshipments are .....
- Any payment falling due on a Saturday or New York Bank Holiday other than Monday shall be made on the preceding business day. Any payment falling due on a Sunday or Monday New York Bank Holiday shall be made on the next succeeding business day.
- Please advise beneficiary without adding your confirmation.
- All bank's charges are for client's account.

(E) Where the net Bill of Lading volume is greater or less than the five percent (5%) 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.....  
Validity of Letter of Credit.....

(F) 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 Agreement between NNPC and BUYER to which this Letter of Credit relates.

(G) 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 credit shall be duly honoured upon presentation. This telex is the operative instrument and shall not be followed by a written confirmation.

.....BANK

.....  
Authorised Signature

Date:.....