

**AGREEMENT**

**BETWEEN**

**PETROLEUM PRODUCTS PRICING REGULATORY  
AGENCY (PPPRA)**

**AND**

.....

## **AGREEMENT**

**THIS AGREEMENT** is made this..... day of ....., 2006 **BETWEEN PETROLEUM PRODUCTS PRICING REGULATORY AGENCY (PPPRA)** a statutory body duly established pursuant to the Petroleum Products Pricing Regulatory Agency (Establishment) Act No 8, of 2003, having its registered office at No 3, Sankuru Close, off Gurara/Rima Streets, Maitama Abuja (hereinafter referred to as “**the Regulator**” which expression shall wherever the context so admits include its successors-in-title and assigns) of the one part.

**AND**

..... a Public Limited Company incorporated under the laws of Nigeria having its registered office at .....  
.....(hereinafter referred to as “**the Operator**” which expressions shall where the context so admits include their successors-in-title and assigns) of the other part.

The Regulator and the Operator shall individually be referred to as “**the Party**” and collectively as “**the Parties**”

**WHEREAS**

1. The Federal Government of Nigeria has appropriated money in the 2006 budget, for the purpose of implementing a Fund to stabilize the domestic prices of petroleum products against volatility in international crude and products prices (hereinafter referred to as the “**Petroleum Support Fund**”).
2. The Regulator has been mandated by the Federal Government of Nigeria to administer the Fund in line with the approved guidelines.
3. The Operator is involved in the refining, marketing, distribution, sale and/or storage of petroleum products in Nigeria and is desirous of operating under the Fund.
4. The parties are desirous of giving effect to the Operational Modalities of the Fund to ensure its objectives are achieved.

**NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:**

**INTERPRETATION:**

“**Petroleum Products**” shall have the meaning ascribed to it under the PPPRA approved Guidelines for the Administration of the Petroleum Support Fund attached hereto as Schedule 1:

- I. Except where the context requires otherwise the singular includes the plural and vice versa; a reference to one gender includes all genders; words denoting persons include firms and corporations and vice versa.
- II. References to any statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment, modification or statutory extension of any of the above.
- III. Headings are included in this agreement for ease of reference only and shall not affect interpretation or construction.
- IV. References to clauses and schedules are, unless otherwise provided, references to clauses and schedules of this agreement.
- V. Any negative obligation imposed on any party shall be construed as if it were also an obligation not to permit or suffer the act or thing in question and any positive obligation imposed on any party shall be construed as if it were also an obligation to procure that act or thing in question to be done.
- VI. Definition of Terms:
  - a) **Regulator** refers to “the PPPRA”.
  - b) **Parties** refers to “ the PPPRA and the Operators”
  - c) **Operators** refer to “any Company/Person engaged in the refining, retailing, storage, sale, distribution and marketing of petroleum products”.
  - d) **Petroleum Products** refers to “Household Kerosene (HHK) and Petrol (PMS).
  - e) **Uniform or Fixed Ex-Depot Price** refers to “Current Ex-Depot Prices as approved by the PPPRA”.
  - f) **PPRA Ex-Depot Benchmark Price** refers to “Landing Cost of Products based on Import Parity Principle (IPP) as reflected in the published PPPRA Template during the Period under consideration.”.

- g) **Open Market Price (OMP)** refers to “the Price at which Petroleum Products are sold at the retail outlets as approved by the PPPRA”.
- h) **Over Recovery** refers to “the amount (difference) payable to the fund by the operator when the Ex-Depot Price of Products is higher than the PPPRA approved Benchmark Price”.
- i) **Under Recovery** refers to “the amount (difference) payable to the operator from the fund when the Ex-Depot Price of Products is less than the PPPRA Benchmark Price”.
- j) **Months** refer to “Calendar Month”.
- k) **Court** refers to “the Federal High Court which has exclusive Jurisdiction under this contract”.
- l) **Regulations** refer to “Rules and Regulations generally made by the PPPRA for the purpose of implementing the Petroleum Support Fund (PSF)”.

## **1.0 OBLIGATIONS OF THE REGULATOR**

- 1.1 The Regulator shall, in addition to its obligations outlined in the Approved Guidelines attached as Schedule 1 hereto:
  - 1.1.1 Be responsible for the day to day administration of the Fund.
  - 1.1.2 Effect payment based on the volume of products supplied, distributed and verified by the Regulator.
  - 1.1.3 Reimburse the Operator for any under-recovery for the sale of products at uniform or fixed ex-depot prices.**
  - 1.1.4 Liaise constantly with the Operators for the purpose of data collection, collation, verification and maintenance of the downstream information data bank.
  - 1.1.5 Determine at intervals the amounts reimbursable if any to the Operator
  - 1.1.6 Make payment of all disbursements authorized under the Approved Guidelines in Schedule 1 hereto
  - 1.1.7 Set all necessary guidelines and regulations on the effective administration of the Fund
  - 1.1.8 Establish the criteria for eligibility to operate and benefit under the Fund

- 1.1.9 Establish the methodology for the operation of the Fund.
- 1.1.10 Determine the volume of petroleum products required for importation based on the national demand and supply gap.
- 1.1.11 Determine the volume of the products that shall benefit from time to time from the Fund.
- 1.1.12 Where there is a dispute as to the amount to be paid to the Operator under this agreement, the regulator shall settle the undisputed portion of any such amount and shall thereafter settle the disputed portion within 30 (thirty) days after necessary verification and reconciliation.
- 1.1.13 Carry out such other duties as may be required from time to time for the effective administration of the Fund.
- 1.1.14 Publish monthly returns and statement of affairs of the Fund in both its website and at least one national daily newspaper, on the utilization of the Fund and may require the Operator or any other organization connected with the supply and distribution of petroleum products to furnish such returns and keep such records and produce them for examination by or on behalf of the PPPRA as it may deem it necessary for the effective administration of the Fund

## **2.0 OBLIGATIONS OF THE OPERATOR**

- 2.1 The Operator shall in addition to its obligations outlined in the Approved Guidelines in Schedule 1 hereto:
  - 2.2.1 Make payments for **over recovery** into the Fund as outlined in this Agreement.
  - 2.2.2 Furnish such returns and keep such records and produce them for examination by, or on behalf of the **Regulator** as appear to be necessary for the carrying out of its functions under this Agreement.
  - 2.2.3 Remit money realized during the period of over recovery (the period at which the **PPPRA benchmark** price is less than the Ex-Depot Price”).
  - 2.2.4 Ensure that any record required to be kept and produced under this Agreement is true and accurate and no false information is furnished.
  - 2.2.5 Ensure that it complies with all **directives and regulations** made by the Regulator.
  - 2.2.6 Ensure that none of its officials or employees makes any false misrepresentation or engages in any fraudulent activity, deception or any other act with the intent to wrongfully benefit under the Fund.

2.2.7 Ensure that it does not connive or consent to the commission of any offence or fraudulent act in respect of the operations of the Fund.

2.2.8 Where there is dispute as to the amount to be paid into the Fund under this agreement, the operator shall immediately settle the undisputed portion of any such amount and shall thereafter settle the disputed portion within 30 (thirty) days after necessary verification and reconciliation.

### **3.0 METHOD OF CALCULATION AND RELATED MATTERS**

3.1 The parties hereby agree that the net amount due to the **Operator (under-recovery)** from the Fund shall be calculated by reference to the volume of the products **delivered and distributed by the Operator, which shall be verified by the Regulator** and the amount by which the uniform ex-depot price of the products purchased is less than the approved import parity price as determined by the Regulator at the relevant period.

3.2 The parties further agree that the net amount due to the **Fund (over-recovery)** from the Operator shall be calculated by reference to the volume of the products **delivered and distributed by the Operator, which shall be verified by the Regulator** and the amount by which the uniform ex depot price of the products purchased is higher than the approved import parity price as determined by the Regulator at the relevant period.

3.3 Payment under Clause 3.1 shall be on a **monthly basis** payable fifteen days after receipt of invoice and relevant documents for reconciliation.

3.4 Payment under Clause 3.2 shall be **within two months** after the submission of relevant documentation in respect thereof.

3.5 The Regulator shall keep proper accounts and proper records in relation to disbursements and shall not later than six months from the end of the financial year to which the accounts relate cause the accounts to be audited by auditors appointed by the Regulator.

3.6 The auditors shall on completion of the audit of the accounts of each financial year prepare and submit to the Regulator a report setting out their observations and recommendations on all aspects of the Fund.

### **4.0 BREACH AND CONSEQUENCES**

4.1 Where the Operator fails to make payment within the specified date in clause 3.4 above, the Operator shall be liable to pay a sum equal to **2 1/2 percent (Two and half percent)** of the amount unpaid, which shall be added to the sum due for each month or part thereof after the date on which payment should have been made.

4.2 Subject to clause 4.1 above if the operator fails to make the payment within the period of four-months, the regulator may commence debt recovery procedure at any Court having jurisdiction over such matters.

4.3 Any net amount due to the fund from the Operators shall be recoverable by action as a debt owing to the company or the Board of the company at the time when payment of the sum became due.

## 5.0 NOTICES

5.1 The **Regulator** shall in line with this agreement from time to time by notice served on the **Operator** specify the date on which any form of payment due from the Operator shall be paid to the Fund with the Central Bank of Nigeria.

5.2 Any notice, request or consent made pursuant to this contract shall be in writing and shall be deemed to have been made when delivered in person to an authorised representative of the party to whom the communication is addressed or when sent by registered mail, telex, facsimile or e-mail to such party at the address specified in the contract.

## 6.0 DURATION AND TERMINATION

6.1 This Agreement shall become effective from the day it is executed and remain in force until terminated by three month's notice given by either of the parties hereto.

6.2 Except as otherwise expressly provided herein upon the termination of this Agreement all rights and obligations contained herein shall forthwith cease except for accrued obligations.

## 7.0. ASSIGNMENT

7.1 No party shall assign its rights or obligations hereunder without the prior written consent of the other party.

## 8.0. WAIVER

8.1 No neglect indulgence or failure on the part of any party hereto in enforcing any of the terms or condition of this Agreement and no forbearance or relaxation or allowance by the said party to require the full performance by any other party hereto of the terms and obligations herein shall in any way affect, diminish, restrict or prejudice the rights and powers of the parties under this Agreement or operate as or be deemed to be a waiver of any breach by any party of the terms and conditions of this Agreement.

## **9.0. FORCE MAJEURE**

9.1 If at anytime during the currency of this Agreement any party is unable to perform its obligations herein provided and such inability is caused by strikes, lockouts, compliance with any Federal, State or Municipal law or with any regulation, order, rule, recommendation or suggestion from governmental agencies or representatives of any government, act of God, act of piracy, rebellion, civil commotion, riot, labour disturbance or military action or other circumstances comprehended within the term force majeure or by restrictions or prohibition of export or import or other circumstances beyond the immediate control of any party, the other party hereto shall not thereby be entitled to claim compensation from the said party as a result of the non-compliance of the obligation hereinbefore mentioned.

## **10.0 GOVERNING LAW AND JURISDICTION**

10.1 The validity, construction and performance of this Agreement shall be governed by the Laws of the Federal Republic of Nigeria and subject to the jurisdiction of the **“Federal High Court”**.

## **11.0 ARBITRATION**

11.1 Any differences or dispute arising between the parties as to the interpretation of any of the clauses of this Agreement or pertaining to or connected with or arising out of the duties and obligations of any of the parties hereto which cannot be mutually resolved by amicable discussions shall at the instance of the Parties be referred to Arbitration under the provisions of the Arbitration and Conciliation Act or any statutory modification or re-enactment of the same for the time being in force shall apply to such arbitration.

## **12.0 CONFLICT OF INTEREST**

- a) Where a party has a special interest on a particular matter under this contract, such interest shall be disclosed to the other party.
- b) No director, employee, agent, contractor, subcontractor and vendor of either parties shall give to or receive from any director, employee, agent or affiliate of either party any commission, fee, rebate and gift of any value in connection with this contract.

## **13.0 IT IS HEREBY MUTUALLY AGREED THAT:**

- a) The parties to this agreement shall promptly notify the other party of the violation of any clause (s) or consideration received by either party or its representative under this contract.
- b) The violations of any clause (s) of this contract either knowingly or unknowingly by either of the parties may result in the termination of the contract by either party at its discretion notwithstanding any other provision in this contract.

**IN WITNESS WHEREOF** the parties have hereunto caused their Common Seals to be hereunto affixed the day and year first above written

The Common Seal of the Within Named **PETROLEUM PRODUCTS PRICING REGULATORY AGENCY (PPPRA)** was hereunto Affixed **in the presence of:-**

\_\_\_\_\_  
**Executive Secretary**

\_\_\_\_\_  
**Counsel**

The Common Seal of the Within Named ..... was hereunto Affixed **in the presence of:-**

\_\_\_\_\_  
**Director**

\_\_\_\_\_  
**Secretary**