

## NipeX Terms and Conditions (Supplier)

Nigerian Petroleum Exchange (NipeX), is a division of the NNPC Upstream Investment Management Services (NUIMS), a corporate services unit of the NNPC Limited (NNPC).

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NipeX consists of a Joint Qualification System (JQS) and an electronic marketplace that registers, pre-qualifies and provides an end-to-end solution in the contracting process to subscribing Buyers and Suppliers in the Nigerian Oil & Gas Industry.

These Terms and Conditions (T&C) govern the provision and uses of the Services provided through the NipeX System and are accepted by a Supplier on registration.

In recognition of the United Nations Convention against Corruption, the principles of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions which entered into force on February 15, 1999, the Nigerian Independent Corrupt Practices and Other Related Offences Act 2000, the Economic and Financial Crimes Commission Act 2004, the U.S. Foreign Corrupt Practices Act of 1977 (as amended), the UK Bribery Act 2010, and the other public and commercial anti-bribery laws that may apply (collectively referred to as “Anti-Bribery Laws and Obligations”), each Bidder responding to any bid in the NipeX Portal warrants that it, its Affiliates, directors, employees, or any person acting on its behalf, have not offered, authorized, received, solicited, or accepted, and will not make, offer, authorize, receive, solicit or accept, any payment gift, promise, or other advantage, directly or indirectly, in connection with the bid and the matters resulting therefrom to and fro the use or benefit of any Person, including Public Officials (NNPC Staff inclusive), or their family members, where such payment, gift, promise, or advantage is for the purpose of corruption or to improperly influence the act, decision, or omission of any such Person, or to illegally obtain or retain business or would violate applicable laws, including the Anti-Bribery Laws and Obligations

In addition any Bidder, with regard to operations and/or activities under the NipeX Portal, warrants that it, its Affiliates, directors, employees, or any person acting on behalf, have complied, and will comply, with the AntiBribery Laws and Obligations applicable to such Party.

A breach of the foregoing provisions shall attract automatic disqualification of the offending Bidder from the bid process and blacklisting from further participation in the NipeX portal as well as prosecution of the individuals and Companies involved in the breach under the relevant criminal laws applicable in Nigeria and other relevant jurisdictions.

### 1. Definitions.

The following terms shall have the definitions below when used in this T&C. These definitions shall apply to both the singular and the plural form of the entity so defined:

- 1.1. **“Affiliate”** means an entity that, directly or indirectly, controls or is controlled by, or is under common control with, the entity specified. Control means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any entity, whether through the ownership of voting securities, by contract, or otherwise.
- 1.2. **“Aggregate”** means to (a) combine, co-mingle, pool or aggregate any Data with other electronic data or information within an electronic file, electronic document, software program or similar tool or (b) subject Data to software tools or programs for the purpose of analyzing, organizing, “data mining” or extracting information contained therein
- 1.3. **“Portal”** means NipeX, a Nigerian Oil & Gas industry databank, comprising the Joint Qualification System (JQS) database and a web-based marketplace. It is accessible via the URL: [www.nipex-ng.com](http://www.nipex-ng.com). The supporting processes and products that are integrated through the JQS and the electronic marketplace form the operational portfolio of NipeX.
- 1.4. **“Buyer”** means Oil and Gas companies and/or contractors who use the System for procurement and supply chain management processes.
- 1.5. **“Content”** means all materials and information (including all text, data, graphics, photographs, audio, video and other mediums) delivered to NipeX by or on behalf of a Supplier to describe the goods or services sold by the Supplier including, without limitation, (i) all sales and catalog information regarding products and services, prices, attributes, terms and conditions, RFx templates or responses, parts

information, repair and maintenance information, HSE (Health, Safety and Environment) information provided with the foregoing, and other materials and information regarding products and services made available in electronic form, (ii) any blueprints, drawings, images, maps, photographs, manuals, processes, formulas, programs, configurations, geologic data, financial data, data bases, compilations, specifications and proprietary product or service descriptions, and (iii) all updates, revisions and corrections to any of the foregoing.

- 1.6. **“Content Standards”** means the set of guidelines which specify the allowable format, naming convention, design, size and character type for each category of documents or schemas which may be uploaded by Suppliers on the NipeX portal either as company-specific data (company credentials) or transaction-specific data (bids and supporting documents).
- 1.7. **“Data”** means all data, messages or communications in whatever medium (including all text, data, graphics, code, photographs, audio, video and other mediums, whether tangible or intangible) that is transmitted, directly or indirectly, to or from or for the benefit of a User via the Portal or otherwise to NipeX, including, without limitation, (i) Content and Transactions, (ii) all information regarding products and services, sales, prices, attributes, terms and conditions, descriptions or depictions of products and services, or other materials and information regarding the User, its employees or operations or its products and services made available in electronic form, (iii) financial, banking and registration information, (iv) all bids, responses to Events and all pricing information, and all electronic attachments thereto (whether in Word, Excel, pdf, XML or other format) inputted or transmitted by a User or its agents, including data manually entered onto the Portal by User and its agents or sent to NipeX via an integrated, machine-to-machine connection, (v) all updates, revisions and corrections thereto, (vi) all emails to or from a User and NipeX, (vii) HSE (Health, Safety and Environment) information in electronic form, (viii) any blueprints, drawings, images, maps, photographs, manuals, processes, formulas, programs, configurations, geologic data, algorithms, data bases, compilations, ideas, know-how in electronic form, (ix) all “meta data”, headers, acknowledgements or other ancillary information transmitted with or in response to such data, (x) all derivative works created from the foregoing by NipeX or a Buyer using the Portal or related software or computer tools, including modifications to the data for purposes of integrating it for use in connection with the Portal, (xi) all worldwide Intellectual Property Rights in all of the foregoing, including trade secrets, copyrights and patents; and (xii) all illegal, immoral or offensive materials and content shall be excluded from this definition.
- 1.8. **“Event”** means electronic Request for Information (RFIs), electronic Request for Proposal (RFPs), electronic Request for Quotations (RFQs), electronic auctions, Transactions and other business conducted on or via the Portal from time to time.
- 1.9. **“Fees” means the registration, yearly renewal fee, re-auditing fee, reneging/cancellation of audit fee and contract winning fees payable for the use of the NipeX System.**
- 1.10. **“Intellectual Property Rights”** means the legal rights of, in, and to the following established under the laws of any jurisdiction: (i) patents, patent applications, know-how and inventions and invention disclosures; (ii) copyrights and works of authorship, including without limitation textual, mask, audiovisual works, “look and feel,” and derivative works; (iii) trademarks, service marks, trade names, and trade dress, together with all goodwill associated therewith; (iv) trade secrets, (v) all rights to control the disclosure, use or reproduction of any information, whether established by contract or otherwise; (vi) moral rights and design rights; (vii) data bases; (viii) domain names; (ix) any rights analogous to those set forth in the preceding clauses; and (x) any applications, registrations, divisions, combinations, continuations, renewals, reissues, extensions and translations of the foregoing (as applicable); whether existing on the Effective Date of this Agreement or thereafter filed, issued, or acquired.
- 1.11. **“Pre-qualification Questionnaire”** is the form which is completed by Suppliers, to provide information on their services and operations.
- 1.12. **“Services”** means the electronic data services provided by NipeX to Suppliers and Buyers from time to time to facilitate communication between a Supplier and Buyer, including but not limited to electronic auctions, requests for quotations, web-based services, the transmission of transaction documents whether via extensible mark-up language XML- communication bus- and similar services.
- 1.13. **“Stakeholder”** means a person, an organisation and/or a company that has interests in the Oil and Gas industry.
- 1.14. **“Steering Committee”** means the committee set up to provide guidance and strategic oversight in the operations of NipeX.

- 1.15. **“Transaction”** means a communication between a Supplier and a Buyer that results in the creation of a uniquely formatted electronic document or a related series of documents that are transmitted through use of or via the Services and collaborative communications and without regard to whether the communication was created by a Supplier or a Buyer.
- 1.16. **“Transaction Standards”** means the standards adopted and promulgated from time to time by NipeX with regard to business documents, routing protocols and implementation guidelines.
- 1.17. **“User”** means person or company that uses the system for procurement and supply chain management processes.
- 1.18. **“User Parties”** means a group of Users within a Buyer or Supplier company.
- 1.19. **“Supplier”** means any company, or its affiliates, that is providing goods or services in the Oil & Gas industry and is duly registered with NipeX.
- 1.20. **“System”** means the IT system and the supporting processes through which the Portal database operates and on which data is retained, and which is licensed to NipeX that allows Suppliers to access the services described by this Terms & Conditions. This includes:
  - a) The electronic marketplace provided in connection with the Portal used by NipeX and Buyers to search for details on Suppliers, to exchange information for online bidding and contracting activities and to otherwise engage in activities in relation to the Nigerian Oil & Gas industry.
  - b) The electronic marketplace software provided in connection with the Portal used by NipeX, Buyers and other Suppliers or Contractors who are or who wish to be Suppliers or Contractors to the Nigerian Oil & Gas industry.
  - c) Any proprietary systems used by NipeX to operate the Portal and not directly made available to the User Parties, but which are used in connection with the provision of the Service.
- 1.21. **“Assessment”** means the onsite inspection and verification, performed by NipeX, of a Supplier’s registration/assessment data and capability.
- 1.22. **“NNPC”** means Nigerian National Petroleum Corporation, a government/legal entity established by NNPC Act Cap 320 Laws of the Federation of Nigeria (effective 1 April, 1977) provides. NNPC is located at NNPC Towers, Herbert Macaulay Way, Central Business District, Abuja, Federal Capital Territory, Nigeria and shall have exclusive rights, ownership and responsibility for the development and operations of NipeX
- 1.23. **“Access Keys”** consists of a User’s ID and password to be issued by NipeX upon payment of the registration fee and at the point of access to a Buyer’s bid documents.

## 2. General Conditions

- 2.1. This Contract of provision of Services (hereinafter referred to as the Terms and Conditions) governs the use of the Portal which the Nigeria Petroleum Exchange (hereinafter referred to as "NipeX") provides.
- 2.2. The acceptance of the Terms and Conditions in this contract establishes a legal obligation with the Portal's User and expresses the User's agreement with all the terms in this contract. These Terms and Conditions may only be amended by written agreement on paper by the User and NipeX. These Terms and Conditions control over and supersede any electronic terms and conditions that may appear from time to time on the Portal, even if the User's representative agrees to or accepts those terms. Thus the User, from the effective date of this Agreement, and/or upon accepting the terms and conditions thereof, states irrevocably - that it has read, understood, and especially, that he accepts all the terms in this Contract and is bound to this Contract on behalf of itself and all of its Affiliates.
- 2.3. The Portal has two access areas - a public area and a secure (or restricted access) area. The public area contains information regarding the Nigerian Oil and Gas industry and can be accessed directly by any person via the Internet. The secure area provides access to certain services and contents of the Portal, and can be accessed only by Users with **valid login details** (User-ID and Password). The utilization of this secure area is subject to specific conditions indicated in a special clause (hereinafter referred to as "Specific Conditions for Access to, and Utilization of the Portal" described in item 5 of this contract). The User, therefore, should read the respective Specific Conditions for Access to, and Utilization of the secure area of the Portal, prior to the User's initial access or utilization of these Services and the Contents thereof. Any access to the services and contents of the Portal shall express the unconditional acceptance by the User of such legal conditions for utilization on this agreement.

### 3. Services.

Services provided by NipeX may include, but shall not be limited to, the operation of the System, the recording of information and the provision of objective audits and/or assessments of Suppliers for online contract documents and bids and the recording, monitoring and measurement of the performance of Subscribers either through capability assessment reports and/or performance feedback. Facilitation of information and data interchange between stakeholders is available as well as sending and receiving quotations and purchasing offers, through services such as **eRFQ** (electronic Request for Quotation) and electronic auction. Reporting and other information based services are also carried out. Suppliers may request and NipeX shall consider any reasonable changes to the Services.

### 4. Specific Conditions for Access

- 4.1. NipeX reserves some of the Services and Contents offered on the Portal for the exclusive utilization of Users. Having accepted the Terms and Conditions of this contract, the User is required to utilize and protect its **login details** (hereinafter referred to as "Access Keys") in accordance with the provisions in item 2.3 and article 5 of this Contract.
- 4.2. The User shall utilize the Access Keys and is also required to protect them from any unauthorized third party access. The User is obligated to promptly notify NipeX of the loss or theft of the Access Keys, as well as any risk of access thereto by an unauthorized third party. NipeX shall not be liable for the loss or damage arising from the non-compliance with the provision for the protection of Access Keys, as set forth in these Terms and Conditions.
- 4.3. NipeX shall establish and maintain a secure machine-to-machine connection with a User that allows automatic transmission of Content and Transactions without substantive modification of the Data and without dual or manual entry of Data or other human intervention. Each Party shall bear its own professional costs in establishing and maintaining such a connection. NipeX shall operate and maintain its systems and services as necessary to:
  - (i) accept and provide private and/or public certificates, including certificates maintained by third party vendors, for each Transaction transmitted,
  - (ii) implement and operate (or require its third party providers to implement and operate) encryption, authentication, physical security or other reasonable technologies and business practices to ensure the security and privacy of Transactions as the industry and technology evolve, including compliance with then-recognized security standards, procedures or audit requirements, and
  - (iii) promptly transmit a functional acknowledgement in return upon receipt of a Transaction and to transmit the acknowledgment of its respective customer upon its receipt of a Transaction to allow for "end to end" (customer to customer) acknowledgments of Transactions.

### 5. Acceptance

NipeX may, upon approval of the Steering Committee, review this contract, at any time, making such available on the Portal and providing a minimum of thirty (30) working days notice to all Suppliers or Users. The effective date of this change shall be when the revision becomes available on the Portal.

- 5.1. NipeX shall notify the Users, by mail or e-mail, of the availability of such a review on the Portal. Upon receipt of the notification, Users shall print the review and forward the User's acceptance by mail, within 30 (thirty) working days as from the date of its availability on the Portal.
- 5.2. NipeX reserves the right to suspend temporarily the User's access to the System, and to interrupt the provision of goods or services, if the User's acceptance containing the party's agreement to the new Terms and Conditions of the Contract is not received by NipeX within the period established in item 5.2 of this Contract. If the delay continues, NipeX may terminate this instrument and indefinitely interrupt the provision of goods or services to the User, in which case there shall not be any kind of indemnity by NipeX. The User may unilaterally terminate the contract, upon written and/or electronic notification, incurring all obligations undertaken up to that time. Such notification shall be received by NipeX within thirty days of the effective date of termination.
- 5.3. NipeX, upon approval of the Steering Committee shall change or reduce, totally or partially, the Services offered through the System.
- 5.4. Supplier makes no guarantee or promise of the number of Transactions or amount of Data that will be transmitted by Supplier, the amount of Services that will be used by Supplier or the number of Events in which Supplier will participate. Supplier may cease transmitting Transactions or Data or cease

using all or a part of the Services or not participate in a given Event at any time without liability or penalty.

## 6. Obligations

### Service Provider (NNPC)

- 6.1. NipeX shall provide the Services and operate the System in compliance with applicable law and in accordance with the highest ethical standards and principles of fairness, equality of opportunity, non discrimination and strict confidentiality. NipeX will not add or amend any information submitted by the Supplier and contained in their record without the prior written or System submitted authorisation receipt from the Supplier. NipeX shall not be liable for any failure to perform its obligations hereunder to the extent that such performance has been delayed, hindered or prevented by any circumstances reasonably beyond its control.
- 6.2. NipeX shall use, transmit and display all Content and Transactions provided by Users without substantive modification and in accordance with the Content or Transaction Standards, as applicable, and in a manner that permits the recipient to view all mandatory and supplementary fields and correctly display all data contained therein, without truncation. NipeX agrees that if NipeX or NipeX's software tools do not display the Content or Transactions in the intended manner (i.e., if NipeX's software tools do not display all mandatory and supplementary fields of data, or the information contained therein), or if NipeX does not use Content or Transactions in the intended manner, then NipeX uses and displays the Content and Transactions at its own risk and NipeX shall be solely responsible for, and shall hold the Users harmless from, all liability, damage or expense arising from such use or display of **Content and Transactions**. NipeX shall not display or use Content in a manner contrary to its intended uses and displays which may lead to a Buyer (including NNPC) ordering or purchasing an incorrect or improper product. NipeX shall immediately notify the applicable Supplier in the event NipeX receives incomplete Content or NipeX discovers errors in the transmission or substance of the Content. Content is not intended to be used beyond its applicable expiration date and may not be relied upon following such expiration date.

### Users

Users of the NipeX System:

- 6.3. Shall observe and comply with all laws and regulations (including tax and fiscal) applicable to the goods and services that the Users offer.
- 6.4. Shall not cause any damage or destruction, total or partial, to the System or the software, and shall not practice, to the detriment of other User parties, any of the following actions: input, transmittal or make available inside the System or the software, any material containing a virus or any other kind of computer program that may cause loss or damage to the System or to the software.
- 6.5. Shall not intercept, interfere, manipulate or expropriate from the System or the software any information, record or data, that is protected by copyright and by the legislation on intellectual property.

### Specific Obligations of Suppliers:

Suppliers on the NipeX System:

- 6.6. Shall use the System in accordance with these Terms and Conditions.
- 6.7. Shall be responsible for the accuracy of the information supplied to NipeX. Each Supplier shall ensure that the data and information provided in the completed questionnaires are to the best of their knowledge as accurate, complete and current as possible. This information should reflect the present status of the company as well as the specific products, equipment and/or services offered by them at the time of completion of the questionnaires.
- 6.8. Shall utilise the System to update their record in a timely manner whenever there is a change in the aforementioned information.
- 6.9. Shall participate proactively in all aspects of the System, including Assessment, Verification and Performance Feedback, as part of the registration obligations, subject to and in accordance with the terms of this Agreement.



## 7. Payment

- 7.1. A non-refundable registration fee, as approved by the NipeX Steering Committee, shall be paid by each Supplier.
- 7.2. A yearly renewal fee, as approved by the NipeX Steering Committee, shall be paid by each Supplier
- 7.3. A re-auditing fee, as approved by the NipeX Steering Committee, shall apply to addition of new Product/Service codes after audit.
- 7.4. A cancellation fee, as approved by the NipeX Steering Committee, shall apply to reneging/cancellation of audit after a mutually agreed date.
- 7.5. A contract winning fee of 0.05% of total contract value (or as otherwise approved by the Steering Committee) shall apply to all contracts processed through the NipeX System.
- 7.6. Invoices shall be issued upon notification of contract approval.
- 7.7. Contract winners shall present evidence of payment of the contract winning fee to NipeX prior to receipt of contract award.
- 7.8. During the term of this Agreement, NipeX will not charge Suppliers any other fees for the Services other than the registration fee, yearly renewal fee, re-auditing fee, reneging/cancellation of audit fee and the contract winning fee specified herein.

## 8. Record Quality

NipeX shall conduct an annual review of Supplier's records on the System and may suspend a Supplier or classify his record as dormant if the record of such a Supplier is considered incomplete or out-of-date as assessed against NipeX written record quality requirements, where such Supplier fails to respond or comply after a minimum of 3 quarterly written update requests are issued by NipeX within a period of one year.

## 9. Appraisals & Verification

NipeX is entitled, at its own discretion, to assess Suppliers for verification of information which is placed on the NipeX System for registration and /or updating the information on the System. The result of an assessment hereunder shall be presented to the Supplier. If an assessment is refused by a Supplier or if material errors are detected or if misrepresentations are repeatedly found in the information provided by a Supplier, NipeX may upon approval of the Steering Committee require the Supplier to withdraw from the System by written notice with immediate effect or the Supplier may be made to pay the cost of any additional assessments.

## 10. Ownership Rights

### 10.1. The System:

The copyright and all intellectual property rights whatsoever relating to all computer programmes, User manuals, diskettes, product coding systems and other documentation in connection with the Services and the System will remain vested in and be the property of NipeX or its contractors. These Terms and Conditions will operate to grant Suppliers a non-exclusive, non-transferable royalty free licence to use and copy such of NipeX's materials as are required for their own business purposes strictly upon these Terms and Conditions only, and for the period for which Suppliers have paid the fee for the use of the System. Thereafter, if requested by NipeX, Suppliers must return forthwith all property requested by NipeX including but not limited to computer programmes, User manuals, diskettes, product coding systems and other related documentation unless agreed by NipeX in writing. In addition, any NipeX supplied information held by Suppliers in their own computer systems must be deleted and confirmation of so doing must be provided. Suppliers shall not perform any activity that infringes or may be deemed to infringe on the rights and operations of NipeX.

### 10.2. Content:

The Supplier is the exclusive owner of Content and all Intellectual Property Rights associated with Content. Neither the delivery of Content to NipeX, nor the incorporation of Content into a Transaction by a Buyer, nor anything else in this Agreement transfers to NipeX any ownership or other interest in a User's Content other than the limited license rights contained in this Agreement. User grants NipeX a revocable, non-exclusive, non-transferable, worldwide, limited license to use the Content in accordance with this Agreement for the following purposes and none other: (a) with respect to the operation of the Portal, performing the Services and initiating and executing Transactions between the User owning the Content and its authorized Buyers and (b) with respect to NNPC's role as a Buyer, for NNPC's internal purposes relating to the consummation

of Transactions with a User. Content may not be used for other purposes or for the benefit of any other party or in a manner contrary to this Agreement. NipeX may not decompile, disassemble or otherwise reverse engineer the Content or any software tools or computer programs embedded therein or allow any third party to frame or link to the Content. Upon expiration of this Agreement, NipeX must return all Content in its possession to the applicable User.

### 10.3. Transactions:

The User and Buyer who are parties to the Transaction are the co-owners of the Transaction and Transaction Information and retain all related Intellectual Property Rights in the Transaction. Each may use the Transaction in accordance with this Agreement without accounting to the other. Nothing in this Agreement or any other document, course of dealing or oral agreements confers any Intellectual Property Rights in Transactions or Transaction Information to the Portal or its licensors or owners other than the limited license rights expressly set forth in this Agreement. NipeX may use Transactions only for (i) for the purpose of performing the Services and facilitating a Transaction between a User and a Buyer (ii) customary internal testing or technical support purposes relating to the operation of the Portal, (iii) as authorized in writing by a Buyer or a Supplier who is a party to the applicable Transaction (but subject to this Paragraph) and (iv) with respect to NNPC's role as a Buyer, for NNPC's internal purposes relating to the consummation of Transactions with the User.

## 11. Log On Details

NipeX shall issue to Suppliers passwords enabling them to enter, view and/or amend their information on the System. It is the responsibility of Suppliers to control access to, use and withdrawal of such passwords. NipeX accepts no liability for misuse of such access keys occasioned by a Supplier.

## 12. Data Protection & Security

- 12.1. NipeX shall adhere to applicable International Data Protection Regulations as contained in the Data Protection Act 1998 to the extent applicable under this terms and conditions. When this usage agreement is concluded, the Supplier shall allow NipeX to collect, process, use and provide required business data to relevant Users.
- 12.2. NipeX shall maintain strict confidentiality of Suppliers' data and information and of the other parties who make use of the System. It shall not disclose any information or release any data available on the System other than that which is necessary for the Services to be performed that is, negotiations between Buyers and Suppliers. This confidentiality agreement shall apply to Aggregated Data, even if the identity of the Buyer or Suppliers is not revealed by the release of such Aggregated Data.
- 12.3. NipeX shall ensure that the use of Suppliers' confidential and proprietary data and information will only be made within the scope of activities to be performed on the System.
- 12.4. NipeX hereby represents and warrants that the use of the User Parties' data and information shall only occur pursuant to and under these terms and conditions.
- 12.5. NipeX shall deliver Transactions to only the Buyer and Supplier who are parties to the Transaction. NipeX shall deliver Content only to the Buyer authorized to receive it by the applicable Supplier.
- 12.6. NipeX may Aggregate Data only for the benefit of a party who is authorized to receive all of the Data Aggregated and if such Aggregation does not violate the immediately succeeding sentence. NipeX may not:
  - Aggregate Data, or permit the Data to be Aggregated with, other data or information if the person or entity (or its Affiliates) receiving or viewing the resulting Aggregated Data is not a party to all Transactions from which the Aggregated data or information is derived or based;
  - Sell, trade, disclose or license Aggregated Data, or permit Aggregated Data to be sold, traded, disclosed or licensed, to any party other than the party authorized to receive all of the Transactions from which the Aggregated Data is derived or based; or
  - Sell, trade, disclose or license, or permit the selling, trading, disclosing or licensing of, the results, analysis, reports, trends, surveys or other information learned, extracted or created from the Aggregation of the Data, except to the Supplier or Buyer who is a party to all of the Transactions from which the underlying Data is derived or based.

- 12.7. NipeX will preserve the security and privacy of the Services and the transmission of Data so that only those authorized under this Agreement may view the Data. NipeX will provide appropriate physical, administrative and technological security measures for the computer systems on which Data is stored to assure privacy of the Data. NipeX will use and maintain security measures that equal or exceed those of similar electronic network or application service providers, but no less than the security measures used by NipeX to protect its own data.
- 12.8. NipeX agrees to test operate and maintain its systems and services as necessary to (i) provide for the routing of all Transactions in accordance with the Transaction Standards, (ii) accept and provide private and/or public certificates, including certificates maintained by third party vendors, for each Transaction transmitted, (iii) implement and operate (or require its third party providers to implement and operate) encryption, authentication, physical security or other reasonable technologies and business practices to ensure the security and privacy of Transactions as the industry and technology evolve, including compliance with then-recognized security standards, procedures or audit requirements, and (iv) promptly transmit a functional acknowledgement in return upon receipt of a Transaction and to transmit the acknowledgment of its respective customer upon its receipt of a Transaction to allow for “end to end” (customer to customer) acknowledgments of Transactions. NipeX will recognize and transmit electronic signatures, or electronic identification consisting of symbols or codes signatures, by the party originating or sending a Transaction so that the signature of such party may be relied upon to verify that such party originated the Transaction. NipeX will cooperate with the other as reasonably necessary to verify the receipt and transmission of a Transaction and to investigate any failed transmissions.

### **13. Confidentiality**

NipeX is committed to ensuring confidentiality of matters in connection with the Services and the System. Each User undertakes to treat such information as strictly confidential, and only communicate or disclose any part of such information to those permitted persons (Buyers, NUIMS, National Content Development Monitoring Board (NCDMB) who are directly involved in the purchase and supply of goods and services, or have a statutory or legal right or duty to have access to or knowledge of the confidential information in connection with the business of the recipient for the purpose of the recipient's own procurement activities.

NipeX and Users may disclose Data to service providers hired by NipeX or Users to assist them in their respective use, transmission or storage of the Data or in their fulfilment of their respective obligations under this Agreement so long as such third party service providers enter into a written agreement that provides protection of the Data that is no less protective than the provisions contained in this Agreement. A party disclosing Data to such a service provider shall be responsible for the acts or omission of such third party service providers, including any breach of this Agreement, as if they were the party's own acts or omissions.

### **14. Trademarks**

NipeX may not use the trademarks, service marks, logos or name (collectively “Marks”) of a User except as necessary to perform the Services. In no event may NipeX use a User's Marks or name in its advertisements, marketing materials or press releases, or alter the User's Marks, without the User's written consent.

### **15. Rules of Conduct.**

- 15.1. NipeX and each User agree not to do the following when using the Portal or any web-based domain or site operated by NipeX or User or engaging in electronic communications:
- 15.2. Modify, translate, reverse engineer, decompile, disassemble, attempt to derive the source code, hack into, create derivative works based on any Party's software or system (whether owned or licensed), Data or any software tools or computer programs embedded therein (except for the purposes consistent with this Agreement) or allow any third party to link or frame to any portion of a Party's software or systems, or the Data;
- 15.3. Remove any proprietary notice labels or marks from data received from a Party unless authorized in writing by the owner thereof;
- 15.4. Knowingly send illegal, immoral or offensive material through the Services;
- 15.5. Use the Services for any communication purpose other than those anticipated by this Agreement, including but not limited to spamming, advertising, bulk e-mails, solicitations, and the like;
- 15.6. Require a User to use a particular functionality of the Services, be a participant in a particular commercial event or to transmit Personal Data, unless agreed in advance;



- 15.7. Gain access to information that such person or entity has not been properly authorized to access or to continue using information that such person or entity knows, or reasonably should know, it is not authorized to use or access;
- 15.8. Knowingly transmit any Data, message, email, electronic file or other data containing a virus, timebomb, trojan horse, worms, any electronic "self-help" programming device or other computer programming routines that may damage or interfere with the operations of the Services or the systems of the recipient of the transmission;
- 15.9. Knowingly transmit any Data, message, email, electronic file or other data in which the sender does not hold all necessary Intellectual Property Rights or whose transmission or disclosure violates or infringes on the Intellectual Property Rights of any third party; or Aggregate Data except as allowed in this Agreement

## **16. Specific Online Bidding and RFx Rules.**

- 16.1. All Events will be conducted in accordance with applicable law. In relation to an RFx, a Supplier participating in the event as a bidder (the "Bidder") may submit alternative proposals. If the Event guidelines allows for subcontracting, Bidder may share and disclose the Event information with a proposed subcontractor. No Bidder will be required to participate in one Event as a condition to participating in other, unrelated Events.
- 16.2. NipeX will enforce uniform rules on Buyers and Bidders requiring that all shall observe commercial standards of fair dealing and honesty in participating in Events, including but not limited to the following:
  - a) Event rules must clearly specify the acceptance criteria as being either "best price" or "best package of specified criteria" or other basis;
  - b) Event rules must clearly specify pre-qualification requirements, which may not be waived without notice to other bidders;
  - c) Additional price negotiations following an auction award will be prohibited;
  - d) "shill" or decoy bids will be prohibited;
  - e) Upon a Bidder's written request to NipeX which is received by NipeX within one hundred eighty (180) days following the date of an Event, NipeX shall provide the record of an Event to an independent external auditor of international reputation for evaluation and such auditor shall be obligated, in the event of any inconsistency with the Agreement or Event guidelines, to inform the Bidder of such inconsistency. The record shall include information related to the Bidder's Data, the RFx and the responses or submissions of other Bidders in the Event, provided, however, that all confidential information belonging to NipeX, a Buyer or other Bidders shall be redacted from the record. NipeX shall preserve such record for one hundred and eighty (180) days following the Event and make it available in accordance with this paragraph within twenty (20) calendar days of receipt of the written request therefore.
- 16.3. Bids may be conditioned on acceptance of specified terms and conditions, unless published Event Rules clearly prohibit such bids.
- 16.4. NipeX will provide technology allowing users to withdraw or make corrections to bids up until the Event closes or, with respect to auctions, a subsequent bid is made.
- 16.5. Bidders may submit, and Buyers will consider, proposals or bids submitted by means other than the Portal if, prior to the closing of the Event, the Portal for any reason fails to accept, transmit or confirm delivery of Bidder's bid or RFx proposal (this includes, without limitation, the Portal not having sufficient capacity to transmit an RFx proposal, the Portal crashing or experiencing inordinate downtime, the Portal experiencing delays that are not reasonably acceptable to a Bidder or access to the Portal not being reliable or available due to no fault of the Bidder).

## **17. Material Breach of Agreement & Contractual Termination**

### **Material Breach of Contract**

- 17.1. In the event of serious default, NipeX shall be entitled to suspend the User Party concerned from participating in the contracting process for an initial period of three months. After due verification is performed and if such default is not corrected within the period set by NipeX, the breach or default shall be reported to the NipeX Steering Committee, who shall review the incident and may impose further sanctions including fines, extension of the suspension period, blacklisting or outright

termination of the User Party from use of the NipeX System. Such sanctions shall be communicated by means of a written notification or email. A serious default shall include any of the following:

- a) deliberate transmission of false and deceitful information, inducing the Users to error with respect to the nature and essential characteristics of the services or products offered;
- b) deliberate transmission of any kind of information, data, software, that may totally or partially damage the NipeX system and its data and information;
- c) breach of the commitment with respect to the confidentiality of the information relating to the NipeX system, such as, Users' private password; User's name, personal data of other User parties, etc.

#### Rescission and Contractual Termination

- 17.2. A User causing any material breach as stated herein shall be included in the list of parties prohibited from conducting business through the System, after due verification is performed.
- 17.3. The contract termination shall be characterized by any of the following circumstances: rescission (by fault of one of the parties), unilateral cancellation and mutual convenience.
- 17.4. Under circumstances not involving serious default, this instrument may be rescinded by either party, without justification, upon written notification, or by email, observing the following conditions: a) if the rescission originates from the User party, it should not be involved in an uncompleted negotiation; and b) the cancellation of registration shall be effective as on the first working day in the subsequent month.
- 17.5. NipeX reserves the right to recover possible losses or indemnities that may become due as a result of the User party's fault.

### 18. Indemnity

- 18.1. Except as otherwise provided elsewhere in this Agreement, NipeX is not responsible for the quality of the services and products offered by the User parties in the System, the veracity of the information and data provided, as well as the business transactions or trade actions of the User parties.
- 18.2. Except as otherwise provided elsewhere in this Agreement, NipeX is not responsible for paying any indemnities, at any title whatsoever, in favour of any third parties and User parties, with respect to any defect in the products offered by the User parties, or the quality of the Services, or further the disclosure of inaccurate or false data or information. Such responsibility rests exclusively upon the parties directly involved in the business transactions or trade actions. NipeX also reserves the right of being indemnified for possible actions that may be instituted with respect to actions by the User parties on the Portal.
- 18.3. Under no circumstance shall NipeX be liable for any losses or damages whatsoever, arising from or relating to the utilization of the Portal, in violation of this Agreement by User, User's error in the transmission of information, interruption or suspension of the availability of access to the Portal due to internet failure, undue utilization of the User party's password due to negligence or fault of the User including without limitation direct and indirect damages or losses, lost profits, or any other kind of indemnity. Except as expressly anticipated in this instrument, NipeX provides no warranty as to the results that may be obtained from the System's utilization.
- 18.4. NipeX agrees to indemnify and hold harmless Suppliers from direct losses and expenses that may be attributable to NipeX breach of confidentiality.
- 18.5. Suppliers agree that they will utilise the Services at their own risk. NipeX will use all reasonable endeavours to ensure the accuracy, completeness and confidentiality of any information provided as part of the Services. NipeX shall have no liability whatsoever to Suppliers in any circumstances in connection with the provision of the Services irrespective of NipeX's negligence and/or breach of duty (statutory or otherwise) or breach of confidence arising out of its negligence. Without limitation to the foregoing, NipeX excludes liability for any loss of profit, loss of opportunity or any consequential or indirect loss arising out of the provision of the Services.
- 18.6. The terms and conditions of any commercial agreement regarding the purchase and sale of goods or services (a "Commercial Agreement") between a Supplier and a Buyer control over the terms and conditions of this Agreement as between the User and Buyer. All sales consummated though or in connection with the use of the Services are governed exclusively by separate terms and conditions to be agreed upon by the Supplier and Buyer. The use of the Portal shall not affect the terms and conditions relating to the sales of goods or services in any way, including the taxation thereof.

18.7. Notwithstanding the outcome of any capability assessment report and/or performance feedback in the conduct of its obligations under this agreement, neither NNPC nor Buyers shall be held liable for any consequences thereof, and is hereby indemnified against and for all liabilities arising from the use of such reports.

## 19. Force Majeure

Neither the User parties nor NNPC shall be held liable for failure or delay in the performance of any of its obligations under this Agreement, if such performance is hindered or delayed by the occurrence of an unforeseeable act or event beyond the reasonable control of either Party ("Force Majeure") The act or event constituting Force Majeure shall include, but shall not be limited to, the following:

- 19.1. Act of God, explosion, fire, flood, epidemic, earthquake, lightening, haze, hail, storm or other adverse weather condition or other natural calamity
- 19.2. Expropriation, confiscation, requisitioning of or commandeering of any or part of the reports and/or documents by any government or governmental directive, or order (except NNPC);
- 19.3. An act or directive of the Federal Government of Nigeria (FGN);
- 19.4. War (whether war to be declared or not), act of public enemy or foreign enemy;
- 19.5. Act of public disorder, insurrection, rebellion, sabotage or terrorist (except where it is limited to the employees of NNPC);
- 19.6. Riot or violent demonstration;
- 19.7. Strike, boycott, labour unrest (whether direct or indirect, lawful or unlawful) excluding those limited to the employees of the Company.

## 20. Arbitration and Governing Laws Arbitration

20.1. Any dispute, conflict or claim which shall arise out of or in relation to this Contract or the interpretation or implementation of this Contract shall first be settled amicably through direct discussions of NNPC and the User party and if there is any failure in reaching settlement, the matter shall upon written notice by one party to the other, be determined by arbitration in accordance with and subject to the Arbitration and Conciliation Act, Cap 19, Laws of the Federation of Nigeria 1990, and any amendments thereto. The venue of the arbitration shall be in Abuja or any other location in Nigeria as agreed by the Parties. The applicable laws of the Federal Republic of Nigeria shall be the governing laws for the determination of the issues arising under the arbitration.

### Governing Law

- 20.2. This Agreement and any amendments or review made thereto shall be governed by, interpreted and constructed in accordance with the Laws of the Federal Republic of Nigeria.
- 20.3. NipeX agrees not to contest the validity or enforceability of Transactions or other Data under the provisions of any applicable law relating to whether certain agreements are to be in writing or signed by a party to be bound thereby. Data transmitted pursuant to this Agreement, if introduced in evidence on paper in any judicial, arbitration, mediation or administrative proceedings will be admissible as between the NipeX and a User to the same extent and under the same conditions as other business records originated and maintained in documentary form. The foregoing expressly applies to Transactions or other Data exchanged by electronic agents without human action or intervention. NipeX shall not contest the admissibility or copies of such Data under the Evidence Act or any applicable laws relating to evidence, or under any business records exception to the hearsay rule or the best evidence rule, or any evidence rule on the basis that such Data were not originated or maintained in documentary form.
- 20.4. NipeX absolutely, unconditionally and irrevocably waives any defense of sovereign immunity or the application of the Act of State doctrine in relation to any dispute arising from or related to this Agreement with a Supplier or Buyer. NipeX represents and warrants that this Agreement relates solely to proprietary, non-governmental functions of NipeX in which the Act of State doctrine and sovereign immunity are not applicable. To the extent the Act of State or sovereign immunity doctrines are ever found applicable to this Agreement, NipeX agrees to obtain, and upon execution of this Agreement represents that it has obtained, all necessary authorizations and permission to give effect to the waiver of sovereign immunity and application of the Act of State doctrine by NipeX and its Affiliates.

## **21. Notices**

Unless expressly provided to the contrary, all notifications shall be made by email between the parties. Email messages shall be deemed as delivered 24 hours after having been sent (provided a proof of delivery report is received by the sender), except if the message's addressee communicates that the electronic address to which the message had been sent is invalid. In this event, the communication shall be made again by registered mail, and shall be deemed delivered seven days after having been mailed, except if it occurs herein.

## **22. General**

These Terms and Conditions governing the provision and use of the services provided on the NipeX System can only be amended by revised Terms and Conditions issued by NipeX. If any provision hereof becomes illegal or unenforceable, the remaining provisions shall not be affected and failure of NipeX or the Suppliers to enforce it or their rights hereunder shall not constitute a waiver of such rights.