

NipeX Terms and Conditions

Supplier

Nigerian Petroleum Exchange (NipeX), is a division of the Nigerian Petroleum Investment Management Services), a corporate service unit of the Nigerian National Petroleum Corporation (NNPC).

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 and procurement processes 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 subscription.

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. **"Portal"** means the NipeX Joint Qualification System, a Nigerian Oil & Gas industry databank, comprising the Joint Qualification System ("JQS") database and a web-based marketplace. The supporting processes and products that are integrated through the JQS and the electronic marketplace form the operational portfolio of NipeX.
- 1.2. **"Buyer"** means oil and gas companies and/or contractors who use the System for procurement and supply chain management processes.
- 1.3. **"Registration Questionnaire"** is the form which is completed by suppliers, to provide information on their services and operations.
- 1.4. **"Stakeholder"** means a person, an organisation and/or a company that has interests in the Oil and Gas industry.
- 1.5. **"Steering Committee"** means the committee set up to provide guidance and strategic oversight in the operations of NipeX
- 1.6. **"User"** means person or company that uses the system for procurement and supply chain management processes..
- 1.7. **"Supplier"** means a contractor, a supplier or a service provider who registers on NipeX's Portal.
- 1.8. **"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 participants, but which are used in connection with the provision of the Service to the Users.
- 1.9. **"Verification"** means the onsite audit, performed by NipeX, of a Supplier's registration/assessment data and capability.

2. General Conditions

- 2.1. This Contract of Provision of Services (hereinafter referred to as the Terms and Conditions) governs the utilization of the services of the electronic business via the URL: www.nipex.com.ng (hereinafter referred to generically as the "Portal"), which the Nigeria Petroleum Exchange (hereinafter referred to as "NipeX"), a division of NNPC NAPIMS - 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, FCT.
- 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, and on the version that is published on the Portal, where a specific link exists for access to this document and all of its terms. Thus the User, upon connecting to the Portal, states beforehand – and irrevocably - that he has read, understood, and especially, that he accepts all the terms in this Contract.
- 2.3. The Portal has two access areas, one public, which can be accessed directly by any person via the Internet, containing information regarding the Nigerian oil and gas industry, and another secure area,

providing 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 the version published by NNPC (NAPIMS) at the time when the access and/or utilization occur.

2. Duration

The duration of this Contract shall commence on the Effective Date – January 01 2007 and shall remain in force for an initial period of one (1) year, and shall thereafter be automatically renewed for an additional period of time if required.

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. NNPC (NAPIMS) 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. NNPC (NAPIMS) 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.

5. Acceptance

5.1. NNPC (NAPIMS) may introduce an addendum to this contract, at any time, making such available on the Portal, the effective date of which shall be when the content became available at the Portal.

5.2. NNPC (NAPIMS) shall notify the Users, by mail or e-mail, of the availability of such an addendum on the Portal. Upon receipt of the notification, Users shall print the addendum and forward the User's acceptance by mail, duly signed, within 30 (thirty) working days as from the date of its availability on the Portal.

5.3. NNPC (NAPIMS) 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 NNPC (NAPIMS) within the period established in item 5.2 of this Contract. If the delay continues, NNPC (NAPIMS) might 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 NNPC (NAPIMS). The User might unilaterally terminate the contract, upon written/ electronic notification, incurring all obligations undertaken up to that time.

5.4. NNPC (NAPIMS) might, at its own discretion, change or reduce, totally or partially, the Services offered through the System.

6. Specific Obligations of NNPC.

NipeX agrees to 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 released for access record without the prior written or System submitted

authorisation receipt from the Supplier. NNPC (NAPIMS) 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.

7. Obligations

Users of the NipeX System:

- 7.1. Shall observe and comply with all laws and regulations, including tax and fiscal, applicable to the goods and services that it offers.
- 7.2. 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 might cause loss or damage to the System or to the software.
- 7.3. Users shall not intercept, interfere 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:

- 7.4. Suppliers shall use the System in accordance with these Terms and Conditions.
- 7.5. Suppliers 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.
- 7.6. Suppliers shall utilise the System to update their record in a timely manner whenever there is a change in the aforementioned information.
- 7.7. Suppliers are expected to participate proactively in all aspects of the System, including Assessment, Verification and Performance Feedback, as part of the registration obligations.

8. Indemnity and Exclusion of Liability.

Suppliers agree that they will utilise the Services at their own risk. NNPC (NAPIMS) will use all reasonable endeavours to ensure the accuracy, completeness and confidentiality of any information provided as part of the Services. NNPC (NAPIMS) 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. To the extent permitted by law, NNPC (NAPIMS)'s liability is limited under any circumstances to the unexpired value of the fees payable for the service. For the purposes of this Clause 5 only all references to NipeX shall be deemed to refer to NNPC (NAPIMS), its agents or sub-contractors.

9. Payment

- 8.1 The subscription fee shall be paid upon the approval of the NipeX budget at the beginning of the year. It shall also be paid bi-annually
- 8.2 Invoices shall be issued once the final budget has been approved
- 8.3 The subscription fee covers services herein
- 8.4 Access is prohibited until fees are paid
- 8.5 Transaction fee is effective at start of contract processing and is billed quarterly in arrears
- 8.6 Invoices will be payable within 30 days of receipt of the invoice

10. Record Quality.

NNPC (NAPIMS), at its sole discretion, may suspend or delete the record of a Supplier if such record is considered incomplete or out-of-date as assessed against NipeX's standards or record quality and the Supplier has failed to comply with update requests issued by NNPC (NAPIMS). Where such deletion or suspension occurs, the Supplier shall not be entitled to a refund in part or in whole of the paid fee(s).

11. Audits, Appraisals & Verification.

NipeX is entitled, at its own discretion to audit Suppliers for verification of information which is placed on NipeX for registration and /or updating the information on the System. The result of an audit hereunder may be presented to the Supplier at his request. If an audit is refused by a Supplier or if material errors are detected or if misrepresentations are repeatedly found in the information provided by Suppliers, NNPC (NAPIMS) may at its discretion require a Supplier to withdraw from the System by written notice with immediate effect or may be made to pay the cost of any additional audits.

12. Ownership Rights.

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 NNPC (NAPIMS) 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 NNPC (NAPIMS), Suppliers must return forthwith all property requested by NNPC (NAPIMS) including but not limited to computer programmes, user manuals, diskettes, product coding systems and other related documentation unless agreed by NNPC (NAPIMS) 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. Supplier will not perform any activity that infringes or may be deemed to infringe on the rights and operations of NipeX Portal, or contractors of the JQS.

13. Log On Details.

NNPC (NAPIMS) 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 logon details

14. Data Protection

- 14.1. NNPC (NAPIMS) shall adhere to applicable International Data Protection Regulations as contained in the Data Protection Act 1998. When this usage agreement is concluded, the Buyer shall allow NNPC to collect, process, use and provide required business data to relevant users.
- 14.2. NNPC (NAPIMS) shall maintain the strictest 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.
- 14.3. NNPC (NAPIMS) 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.
- 14.4. NNPC (NAPIMS) reserves the right to share the information it receives from Suppliers only with its partner companies. These companies shall have access to Users' information in the NipeX System only in order to carry out their functions, and shall not be allowed to use it for any other purpose.
- 14.5. NNPC (NAPIMS) 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.

15. Confidentiality.

NNPC (NAPIMS) 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 on a 'need to know' basis who are directly involved in the purchase and supply of goods and services, or have a 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.

16. Intellectual Property

Access to the Portal's data and information and business transactions ensured to the User parties in NipeX shall terminate simultaneously with the termination of the contractual relationship established between the parties by this instrument, upon its rescission.

17. Material Breach of Agreement & Contractual Termination

Material Breach of Contract

- 17.1. In the event of serious default, NNPC (NAPIMS) shall be entitled to prohibit and/or terminate this contract upon written notification or e-mail. A serious default shall include any of the following:
- a) Transmission of false and deceitful information.
 - b) Transmission of any kind of information, data, software that might totally or partially damage the system.
 - c) Breach of commitment with respect to confidentiality of information relating to the system.
 - d) Other circumstances deemed as such by NNPC (NAPIMS). The Buyer causing the breach might be prohibited from conducting business through the System after due verification is performed and if such default is not corrected within the period set out by NNPC.

Rescission and Contractual Termination

- 17.2. The trade transaction shall be deemed as failed, implying the cancellation of the transaction, when so deemed by the User party and formally notified to NNPC (NAPIMS). The User causing the breach or cancellation might be included in the listing 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: a) expiration of the subscription; b) rescission (by fault of one of the parties); (c) unilateral cancellation; and d) mutual convenience.
- 17.4. Under circumstances not involving serious default, this instrument might 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 the subscription shall be effective as on the first working day in the subsequent month.
- 17.5. In the event of serious default, NNPC (NAPIMS) shall be entitled to terminate this instrument immediately, upon written notification or e-mail. A serious default shall include any of the following circumstances:
- a) 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) transmission of any kind of information, data, software, that might 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;
 - d) other circumstances deemed as such by NNPC (NAPIMS) if, upon notification to the User party, the User party does not correct the infringement within the period set out by NNPC (NAPIMS).
- 17.6. NNPC (NAPIMS) reserves the right to recover possible losses or indemnities that it may pay due to the User party's fault.

18. Indemnity

- 18.1. NNPC (NAPIMS) 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. NNPC (NAPIMS) 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. NNPC (NAPIMS) also reserves the right of being indemnified for possible actions that might be instituted with respect to actions by the User parties in the portal.
- 18.3. The user parties undertake the responsibility of indemnifying NNPC (NAPIMS) for losses incurred, including without limitation the failures in any and all products and services traded at NNPC (NAPIMS), which do not present the legal specifications relating to the technical features or their warranties.

18.4. Under no circumstance shall NNPC (NAPIMS) be liable for any losses or damages whatsoever, arising from or relating to the utilization of the portal, 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, including without limitation direct and indirect damages or losses, lost profits, or any other kind of indemnity. Except as expressly anticipated in this instrument, NNPC (NAPIMS) provides no warranty as to the results that may be obtained from the system's utilization.

19. Force Majeure

The Parties shall not be liable for any default in performance under the Contract due to acts of God (including war, fire, strikes flood, drought, tempest or other like event beyond the reasonable control of either party).

20. Arbitration and Governing Laws

Arbitration

20.1. Any claims, disputes and controversies arising from or relating to this Contract, which cannot be resolved by mutual agreement 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, Nigeria, 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.

Governing Law

20.2. The laws of the Federal Republic of Nigeria, excluding any conflict of laws that would require otherwise, shall apply to and govern the interpretation, performance and enforcement of this Contract.

20.3. Unless expressly provided to the contrary, all Notifications shall be made by e-mail between the parties. E-mail messages shall be deemed as delivered 24 hours after having been sent, 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 as under item 5.3 in this contract.

20.4. This instrument becomes effective as of the acceptance of the Enrolled party.

21. 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 NNPC. If any provision hereof becomes illegal or unenforceable, the remaining provisions shall not be affected and failure of NNPC (NAPIMS) or the Suppliers to enforce it or their rights hereunder shall not constitute a waiver of such rights.