



**PETROLEUM BULK PROCUREMENT AGENCY  
[PBPA]**

**PETROLEUM BULK PROCUREMENT SYSTEM IMPLEMENTATION  
MANUAL, 2020**

**JULY 2020**



## BPS MANUAL



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## GLOSSARY OF TERMS

<b>"Agency"</b>	Petroleum Bulk Procurement Agency.
<b>"Authority"</b>	Energy and Water Utilities Regulatory Authority
<b>"Board"</b>	Ministerial Advisory Board which is the Board of Directors of the Petroleum Bulk Procurement Agency.
<b>"Bulk Procurement System (BPS)"</b>	Petroleum Bulk Procurement System established to ensure supply of petroleum products at the most competitive prices, by purchasing from a pool of imports obtained from suppliers selected through an international competitive bidding process to take the advantage of the economies of scale.
<b>"Charter Party"</b>	A contract between the charterer and the ship owner where the former hires from the latter for the use of the ship for a certain length of time or for a certain voyage.
<b>"CIF"</b>	A contract of sale whereby the seller bears all costs up to the time of loading of the goods aboard ship and pays for the freight and insurance of the goods for the voyage. Buyer assumes responsibility when the goods are loaded on the ship. He also bears customs duty, costs etc. at the port of destination. Seller nominates the ship; and the term Cost Insurance and Freight shall be construed accordingly.
<b>"Delivered at Place (DAP)"</b>	Delivered at Place means that the seller delivers when the goods are placed at the disposal of the buyer on the arriving means of transport ready for unloading at the named place of destination. The seller bears all risks involved in bringing the goods to the named place.
<b>"DAT"</b>	Delivery at Terminal. Seller bears cost, risk and responsibility until goods are unloaded (delivered) at named terminal at destination
<b>"EOP"</b>	A point at which the vessel is considered to have ended the sea voyage and commenced harbour steaming prior to berthing; and the term End of Passage shall be construed accordingly.



**"EWURA"**

Energy and Water Utilities Regulatory Authority established under the provisions of the Energy and Water Utilities Regulatory Authority Act, Cap. 414; and the term the Authority shall be construed accordingly.

**"FOB"**

A contract of sale whereby the seller delivers the goods free on board the ship nominated by the buyer and at the time stated by the buyer. Seller bears all costs up to and including the loading on the goods aboard the ship. The buyer then assumes responsibility and bears the costs of freight, insurance, landing charges etc. at the port of destination; and the term Free on Board shall be construed accordingly.

**"Gross Misconduct"**

An act or behaviour which endangers security of supply of petroleum product in the country.

**Marine Inspector**

PBPA employee assigned to perform marine operations under the Bulk Procurement system

"Marine Surveyor" Shall mean Independent Marine Inspection company, whose ownership is fully disclosed, and is member of IFIA and other international organizations that provide inspection, testing and certification of marine services

**"Minister"**

Minister responsible for petroleum affairs.

**"OMC"**

An Oil Marketing Company licensed by EWURA to undertake petroleum wholesale business.

**"PBPA"**

Petroleum Bulk Procurement Agency established under Executive Agencies Act Cap. 245 vested with mandates of coordinating and managing efficient procurement of petroleum products through Bulk Procurement System.

**"Safe Port"**

A port which is safe for a particular ship to enter, lie, load and discharge always afloat.



**"SPM"**

Single Point of Mooring is an offshore terminal owned and operated by the Tanzania Ports Authority that is used to offload petroleum products. and the term (SBM) Single Bouy Mooring shall be construed accordingly.

**"SRT"**

Single Receiving Terminal is the central receiving facility of all petroleum products from the delivery vessel for onward transfer to the OMCs facility.

**"SURVEYORS"**

An entity registered by EWURA to perform marine survey services.

**"TASAC"**

Tanzania Shipping Agencies Corporation established under the provisions of Tanzania Shipping Agencies Act, 2017.

**"TBS"**

The Tanzania Bureau of Standards established under the provisions of the Standards Act, Cap. 130.

**"TPA"**

The Tanzania Ports Authority established under the provisions of the Ports Act.

**"TRA"**

The Tanzania Revenue Authority established under the provisions of the Tanzania Revenue Authority Act, Cap. 339.

**"WMA"**

Weights and Measures Agency established under the Executive Agencies Act No. 30 of 1997, and is the calibrating authority.



## 1. INTRODUCTION

### 1.1. Preamble

This manual shall be referred as **Petroleum Bulk Procurement System Implementation Manual, 2020**.

The Petroleum Act, Cap 392 requires that petroleum products supply to Tanzania mainland is conducted through an efficient procurement system that shall be specified by the Minister responsible for petroleum affairs.

The Minister has exercised powers conferred to him under the Act, and directed that, petroleum products for the Tanzania Mainland market shall be procured through a Bulk Procurement System (BPS).

The BPS Manual gives an outline of implementation of the Petroleum Bulk Procurement System for Mainland Tanzania by providing the institutional framework and the procedures for procurement and importation of petroleum products.

This manual has been developed by the Petroleum Bulk Procurement Agency, vetted by the Authority and approved by the Minister responsible for petroleum affairs by virtue of the Petroleum (Bulk Procurement) Regulation, 2017. This Manual has been developed for effective operation of the Bulk Procurement System.

The Petroleum Bulk Procurement System Implementation Manual regulates all matters related to invitation to bid, bid evaluation, bid qualification and award of the bid to supply petroleum product in bulk and guide all operation matters related to procurement of petroleum products under BPS, including pre-arrival checks, single receiving operations which includes but not limited to pre-discharge operations, discharge operation, post discharge outturn, customs and warehousing.

The types of petroleum products covered under the Bulk Procurement System are as follows:

- (a) Automotive Gas Oil (AGO);
- (b) Unleaded Motor Spirit Premium (MSP);
- (c) Jet A-1;
- (d) Illuminating Kerosene (IK);
- (e) Liquefied Petroleum Gas (LPG); and
- (f) Heavy Furnace Oil (HFO).





The following documents are attached to this manual; specification for all products, shipping and supply contracts between the Agency and the supplier and between Agency and OMCs, Standard Operating Procedure. The referred documents might change from time to time as need shall arise.

The tenders for delivery of all petroleum products except Liquefied Petroleum Gas (LPG) and Heavy Furnace Oil (HFO) shall be on cargo by cargo basis or any other way as shall be prescribed by the Authority and shall be called on intervals agreed by all stakeholders. The mode of tendering may be changed whenever circumstances require. Tenders for delivery of LPG and HFO shall be as advised by the Authority in consultation with the Agency and other stakeholders.

## **1.2. Objective**

The main objectives of this manual are;

- a) to set guidelines for coordination of bulk importation of petroleum products in which all players will be assured of security of supply at the most competitive prices possible through international competitive bidding process by taking advantage of economies of scale;
- b) to ensure that the suppliers and buyers (OMCs) observe terms and conditions of the contracts and laws Governing importation of petroleum products in bulk;
- c) to serve as a reference tool in making decisions involving the management and operation of the Bulk Procurement System;
- d) to establish guidelines to be followed by key stakeholders in the petroleum industry;
- e) to provide to key stakeholder's information on Bulk Procurement System policies and procedures with respect to all key activities under the Bulk Procurement System; and
- f) To create a level playing field to all stakeholders involved in the petroleum product supply chain.

## **1.3. Functions of PBPA under BPS**

The following are the activities of the Agency under Bulk Procurement System;

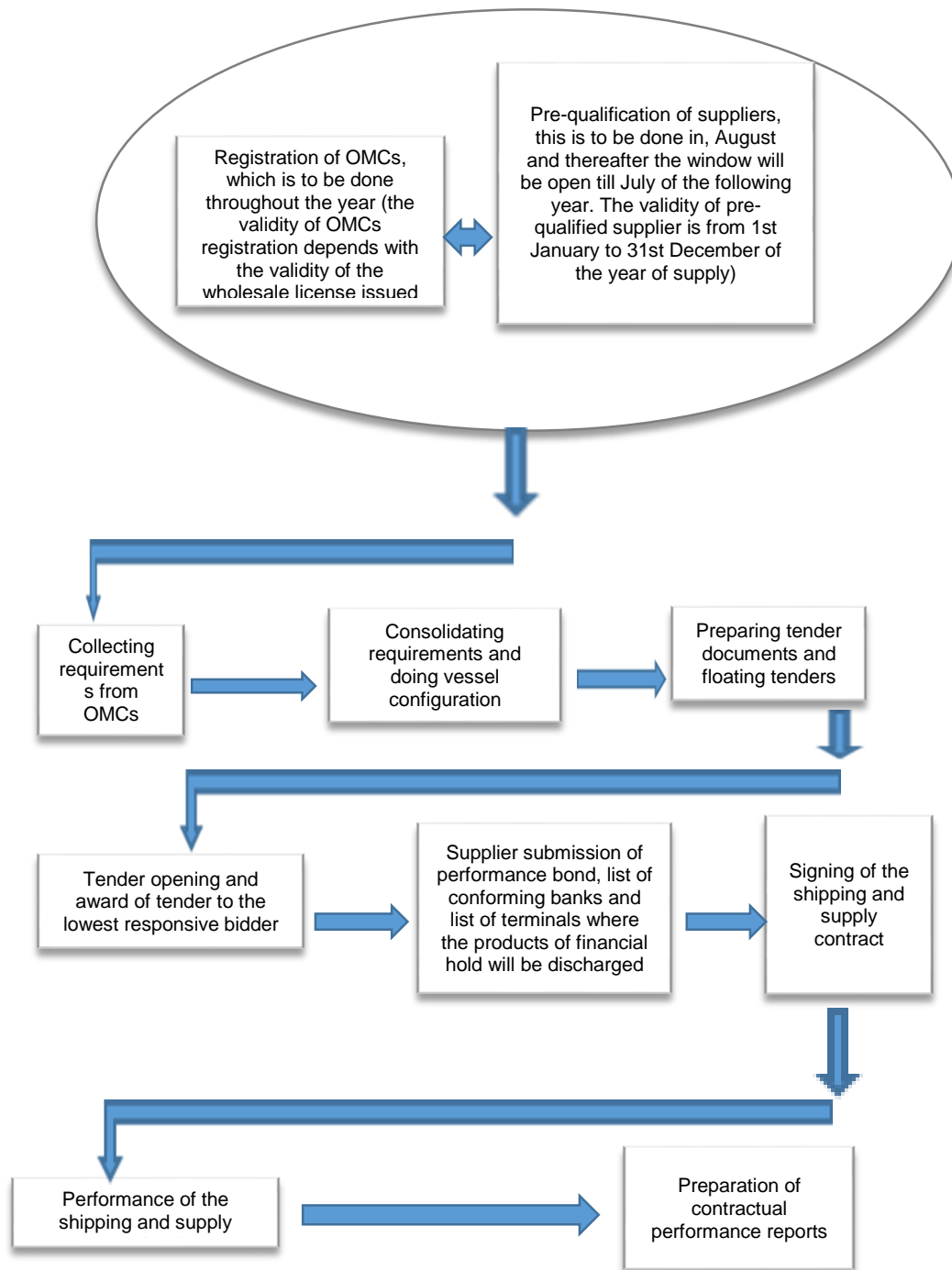
- i. Register OMCs; Registration of OMCs shall be done based on the validity of the Petroleum Wholesale License issued by EWURA. Upon expiring of wholesale license issued by EWURA the OMC shall be required to renew its registration with the Agency as the registration automatically ends with the expiring of the wholesale license;



- ii. Prequalify suppliers of Petroleum product; prequalification of suppliers shall be obtained by making application to the Agency as stipulated in this manual;
- iii. Conduct diligent forecasts of petroleum products requirements by collecting requirements for importation of petroleum products from OMCs and reconcile petroleum products forecasts with requirements submitted by OMCs and engage OMCs to adjust their orders where requirements submitted are less than the forecasts;
- iv. Consolidate the petroleum importation requirements and establish delivery schedules;
- v. Prepare petroleum supply tender documents, float tender, open tender, evaluate the same and award to the lowest responsive bidder;
- vi. Receive Supplier's performance bond, list of conforming banks and list of terminals where the product on financial hold will be discharged from the supplier who has been awarded the tender;
- vii. Enter into a contract (shipping and supply contract) with supplier who won the tender;
- viii. Enter into a contract with OMCs;
- ix. Manage performance of all contract entered under the Bulk Procurement system;
- x. Prepare contractual performance reports and take appropriate actions upon non-performing suppliers or service providers. Identify any inefficiency which adversely impacts the anticipated benefits of BPS implementation and eliminate all which falls under the mandate of the Agency and escalate to relevant authority's matters which fall outside the Agency mandate; and
- xi. Prepare and submit monthly, quarterly, annual BPS operations performance reports to the Ministry responsible for petroleum affairs and to the Authority.



## 1.4 System Outline (Framework).





## 2. LEGAL FRAMEWORK

The legal framework relevant for the Petroleum Bulk Procurement System is derived from, among others the National Energy Policy of 2015 and, the following legal instruments:

- (a) The Petroleum Act, CAP. 392; GN No. 21 of 2015
- (b) The Petroleum (General) Regulations, 2013;
- (c) The Petroleum (Bulk Procurement), Regulations 2017 GN No. 198 of 2017;
- (d) The Environment Management Act, CAP. 119 of 2004
- (e) The Energy and Water Utilities Regulatory Authority Act, CAP. 414;
- (f) Weights and Measures Act, CAP.340 (R.E.2002);
- (g) Standard's Act, Act No. 2 of 2009;
- (h) Customs Laws;
- (i) International Commercial Terms (Incoterms) are key instruments to the implementation to BPS;
- (j) The National Energy Policy of 2015;
- (k) Petroleum products specifications; and
- (l) Any other relevant laws.

## 3. INSTITUTIONAL FRAMEWORK

The Petroleum Bulk Procurement System shall be overseen by the undermentioned institutions which have a role to play in the system;

### 3.1. Energy and Water Utilities Regulatory Authority (EWURA)

The Energy and Water Utilities Regulatory Authority (EWURA) is a regulatory authority established by the Energy and Water Utilities Regulatory Authority Act, CAP. 414 of the laws of Tanzania. As the regulator in the downstream petroleum sub-sector, EWURA is responsible for overseeing all matters related to the supply of petroleum products in the country in accordance with the provision of the Petroleum Act of 2015.

### 3.2. Petroleum Bulk Procurement Agency (PBPA)

Petroleum Bulk Procurement Agency is an Executive Agency established under the Executive Agencies Act CAP.245 vested with mandate of coordinating and managing



efficient procurement of petroleum products through Bulk Procurement System. This mandate emanates from the Petroleum Act, CAP. 392 and is operationalised by the Petroleum (Bulk Procurement) Regulations, 2017 (GN No. 198).

### **3.3. Weights and Measure Agency (WMA)**

- (a) The Weights and Measures Agency is an Executive Agency, established under the Executive Agencies Act, CAP. 245, responsible for fair trade transactions through certification of weights and measures. The responsibilities of WMA are stipulated in the Weights and Measures Act, CAP. 340.
- (b) WMA is fully involved in determining the arrival quantity of petroleum products and the quantity of products discharged from delivery vessels and received in the respective nominated receiving terminals. Under the Bulk Procurement System, WMA is considered the final authority in dispute related to difference on measurement of arrival quantity and quantity discharged and received into shore tanks.

### **3.4. Tanzania Bureau of Standards (TBS)**

- (a) Tanzania Bureau of Standards (TBS) is mandated to oversee and set standards of imported and local made commodities. Pursuant to Section 4(1) of the Standards Act No. 2 of 2009, TBS has the following functions which are directly related to the Bulk Procurement System;
  - i. To prepare, frame, modify or amend National Standards;
  - ii. To undertake measures for quality control of commodities, services and environment of all descriptions and to promote standardization in industry and trade; and
  - iii. To provide for the inspection, sampling and testing of locally manufactured and imported commodities with a view to determining whether the commodities comply with the provisions of the Standards Act or any other law dealing with standards relevant to those commodities.
- (b) TBS is the final authority in determining the quality of imported petroleum product. Vessels bringing petroleum products are allowed to discharge the product only after receiving an approval from TBS that the product meets approved standards and specifications.



### **3.5. Tanzania Revenue Authority (TRA)**

- (a) Tanzania Revenue Authority (TRA) was established by the Tanzania Revenue Authority Act, CAP 399, as the central body for the assessment and collection of revenues which include taxes, duties, fees, fines and other monies imposed by or collected under various laws or provisions of laws set out in the First Schedule of TRA Act, CAP 399.
- (b) TRA is responsible for collecting all taxes associated with importation of petroleum products through BPS.
- (c) Under BPS, any change of cargo ownership (cargo manifest) and localization of petroleum products imported for transit use must be approved by TRA.

### **3.6. Tanzania Shipping Agencies Corporation**

Tanzania Shipping Agencies Corporation (TASAC) was established under the provisions of Tanzania Shipping Agencies Act, 2017. TASAC has exclusive mandate on clearance of petroleum products and managing all shipping operations as the sole Shipping Agent for petroleum products vessel.

### **3.7. Tanzania Ports Authority (TPA)**

- (a) The Tanzania Ports Authority (TPA) is established by the Ports Act No. 17 of 2004 as landlord port authority. It operates a system of ports serving the Tanzania hinterland and the landlocked countries of Malawi, Zambia, Democratic Republic of Congo (DRC), Burundi, Rwanda and Uganda.
- (b) The principal objectives of TPA which relates to the bulk procurement system are;
  - i. To establish and coordinate system of harbours; and
  - ii. To provide facilities relating to harbours and provide harbour services.
- (c) Moreover, under BPS, suppliers are supposed to send particulars intertanker or standard tanker chartering questionnaire 88 (Q 88) of the nominated vessels to TPA for approval before loading the vessel with petroleum products.



### **3.8. BPS Prequalified Supplier**

BPS prequalified suppliers are both international and local entities entitled to participate in tenders for the supply of petroleum products. Tenders for the supply of petroleum products under the Bulk Procurement System are floated to the pre-qualified suppliers only, participation in tenders is not open to the general public.

### **3.9. Oil Marketing Companies (OMCs)**

OMCs are the locally registered companies eligible to place requirements of petroleum products through Bulk Procurement System. The requirements may be for local use or transit. The eligibility of an OMC to participate in the BPS is to have a valid Petroleum Wholesale License issued by the Authority. Financing of petroleum products under BPS is done by the OMCs for local products and consignee for the transit product.

### **3.10. Single Receiving Terminal Operator**

Single Receiving Terminal Operator is the operator of the single receiving terminal which is the onshore tank farm owned or contracted by Government to receive petroleum products from the delivery vessel.

## **4. REGISTRATION AND DEREGISTRATION OF OMCs**

Registration and deregistration of OMCs shall be done in the manner provided below;

### **4.1. Registration of OMCs**

(a) Regulation 6(1) of the Petroleum (Bulk Procurement) Regulations, 2017 G.N. No. 198 of 2017 requires OMCs to register with the Agency in order to be eligible to import petroleum product. The Agency has been mandated to prepare procedures for registration of OMCs intending to import petroleum products under BPS. Below is the procedure and requirement for registrations: -

- 1) The following documents must be submitted by an OMC when making an application to be registered by the Agency;
  - a. Application letter;





- b. A certified true copy of the following;
    - i. Certificate of Incorporation;
    - ii. Petroleum Wholesale license issued by EWURA;
    - iii. Business Trading License;
    - iv. TRA Importation License;
    - v. TIN Certificate;
    - vi. VAT Certificate;
    - vii. Memorandum and Article of Association;
    - viii. Hospitality agreement(s) or proof of own storage facility;
  - c. Specimen signature of at least two representatives;
  - d. List of staff responsible in handling all operations related to receiving of petroleum products;
  - e. Three months' importation projections volume;
  - f. Letter from BRELA showing the current status of the company including;
    - i. Name of Shareholders (number of shares should be stated);
    - ii. Name of Directors;
    - iii. The last time the company filed returns;
  - g. Comfort letter from OMC's banker stating the OMCs financial position;
  - h. Tax clearance certificate;
  - i. Source of financing proved by letter from financier committing to finance the OMC;
- 2) An OMC applying to be registered by the Agency shall be required to pay registration fees of Tshs. 5,000,000/= (Five million shillings only) or as shall be approved by the Minister responsible for Petroleum affairs.
- 3) An OMC who will be aggrieved by the decision of PBPA may appeal to the Minister Responsible for petroleum affairs.

#### **4.2. Deregistering of OMCs**

- (a) OMCs registered with the Agency shall be deregistered and shall not be allowed to participate in tenders upon occurrence of either of the undermentioned incidences: -
- i. Upon expiration of OMCs petroleum wholesale license issued by EWURA;
  - ii. Revocation of OMCs petroleum wholesale license issued by EWURA;
  - iii. An OMC wishing to re-register with the Agency shall be required to pay Registration fee and submit all documents listed in items 4 (a) and (b) above;





- iv. An OMC who will be aggrieved by the decision of PBPA may appeal to the Minister Responsible for petroleum affairs.

## **5. BPS SUPPLIER PRE-QUALIFICATION**

- (a) Application for pre-qualification shall be advertised and companies meeting the requirements shall be pre-qualified and be invited to bid for supply of petroleum products under the Bulk Procurement System.
- (b) Advertisement for invitation for pre-qualification shall be done through;
- i. Local and international newspapers;
  - ii. Emails to past years prequalified suppliers;
  - iii. Emails to OMCs;
  - iv. Emails to international forums and institutions dealing with petroleum business; and
  - v. Emails to individual companies which showed interest to participate in BPS tenders;
  - vi. PBPA website;
  - vii. Tanzanian Embassies.
- (c) The prequalification criteria for a bidding entity shall be provided in the bidding document for application for pre-qualification.
- (d) Prequalification of suppliers shall be done in August after expiration of previous prequalification and thereafter pre-qualification will proceed as and when the applications will be received.
- (e) August prequalification shall be conducted as provided below;
- i) Advertisement for prequalification shall be issued between 5<sup>th</sup> and 10<sup>th</sup> August of the year of prequalification;
  - ii) The deadline for BPS Supplier submission of the documents as communicated by the Agency shall be at least twenty-one (21) days and not more than thirty (30) days from the date of the first advertisement in the local newspapers;
  - iii) Evaluation of submitted documents shall be done within ten (10) days from deadline for submission of prequalification documents followed by due diligence as and when required;
  - iv) Due diligence for new applicants is a must and shall be repeated after every three (3) years; Where due diligence for new applicants is not completed, they will be issued with provisional prequalification;



- v) Letters of award to the prequalified suppliers shall be issued on or before 15<sup>th</sup> November of each year;
- vi) Prequalified supplier will be eligible to participate in tenders for the supply of petroleum products from January to December the following year;
- vii) Prequalified supplier will be eligible to participate in tenders for the supply of petroleum product for three (3) years from the date of being pre-qualified subject to payment of validation fees of USD 1000 payable on second and third year;
- viii) During payment of validation fee under paragraph 5(e) (vii) above the applicant shall notify the Agency of any changes in office location, shareholding structure, joint venture arrangement, and source of financing etc;
- ix) Applicant for prequalification who will be aggrieved by the decision of PBPA may appeal to the Minister Responsible for petroleum affairs.

## **5.1. Pre-Qualification Criteria**

- (a) The prequalification criteria for a bidding entity will include the following minimum requirement.
- (b) The application for pre-qualification shall be by way of a letter addressed to Executive Director of the Agency.

### **5.1.1. Documents to be Enclosed in the Application Letter.**

- (a) The application letter should include the undermentioned documents:
  - 1) statement in precise terms explaining applicant's commitment to;
    - a. Provide credit of not less than sixty (60) calendar days to purchasers from the first day of delivery date range;
    - b. Undertake to comply with TBS standards in regards to the specifications of the products;
    - c. Undertake to deliver the cargoes in vessels that have been approved by TPA; and
    - d. Perform the contract in line with the terms and conditions stipulated in the Shipping and supply contract and the governing laws of Tanzania.



- 2) A warrant that there is no actual or threatened litigation that may affect its liability to comply with the performance of the contract under the Bulk Procurement System.
- 3) Assurance that the company is not insolvent, declared bankrupt by a competent court or be the subject of any winding up process.
- 4) valid tax clearance certificate issued by competent authority or as the case shall be a letter from competent Authority that the company has been exempted from paying tax or is operating in a tax free zone.
- 5) A statement explaining the modality of handling the responsibilities under the shipping and supply contract i.e. office where all operations will be performed. If some of the company obligations will be performed by an offshore office or Affiliate Company, the applicant must provide the address and the nature of activities which will be performed by those offices.
- 6) For companies wishing to form a joint venture, a joint venture agreement registered in Tanzania. The joint venture agreement should state:
  - i. Management of the joint venture operations;
  - ii. Rights and responsibilities of parties to the Joint venture agreement;
  - iii. Profit and loss sharing;
  - iv. Financial contribution to the joint venture; and
  - v. Technical support to the joint venture.
- 7) Details on source of financing of the obligation under the shipping and supply contract in the event they win the contracts.
- 8) Company profile containing, among other information, staff competency on international trading of petroleum.

### **5.1.2. Prequalification Criteria for BPS Supplier**

(a) The prequalification criterion for suppliers of petroleum products shall be as provided below;

- 1) That the application contains all the information required under paragraph 5.1.1.a (1-8) above;
- 2) The applicant must be a registered legal entity structured for the petroleum supply and trading business, proof of which will be sought from certified copies of the company's certificate of registration, memorandum/articles of association, tax payer's registration certificates and business license;
- 3) International companies must have a gross trading turnover of at least US\$ 100,000,000 per year and for local companies must have capitalization or asset base of at least thirty billion (30,000,000,000) Tanzania Shillings,



both shall be evidenced by a certified Audited Financial Statements for the past three consecutive years;

- 4) Proof of payment of pre-qualification processing fees of USD 5,000 for multinational companies and TZS 5,000,000/= for local companies. The fee is payable after every three (3) years from the date of pre-qualification;
- 5) The applicant must have a minimum experience of three (3) years in international trading of petroleum products with a minimum trading volume of 1,500,000MT for international companies. Local companies must have a minimum of five (5) years' experience in local marketing business of petroleum products. The aforementioned experience must be proved by any of the two items listed below;
  - (i) Letters from customers or supplier/refineries indicating annual volumes traded;
  - (ii) Certified copies of Bill Lading;
  - (iii) Certified copies of contract.
- 6) For local applicants they must not have defaulted to make payment as buyers of refined petroleum products for the period of twelve (12) consecutive months prior to invitation for pre-qualification;
- 7) Past performance of the contracts with the Agency. In ascertaining the past performance, regard shall be made to the following;
  - i. The Agency records on the supplier's performance in the previous tenders;
  - ii. Minutes of the stakeholder's meetings; and
  - iii. Correspondence from other parties in relation to the supplier's performance of the contract.

## **5.2. Pre-qualification Results**

- (a) Notice and validity of prequalification results shall be in the manner provided below;
  - 1) List of pre-qualified suppliers will be released to all applicants and all stakeholders in petroleum industry in Tanzania and will be maintained in the Agency register;
  - 2) The list of prequalified suppliers will be valid for three (3) years from the date of being prequalified up to the 31st December of year of supply; however, the list will be updated annually based on payment of validation fee;
  - 3) Upon consultation with Ministry responsible for petroleum affairs and EWURA the Agency might extend the validity of the prequalification of suppliers.



### **5.3. Due Diligence for Suppliers**

- (a) The Agency shall conduct a background check/due diligence of all prequalified suppliers as elaborated above under 5.1.
- (b) A pre-qualified supplier who is subsequently proven to be unqualified shall be removed from the register.

### **5.4. Dis-Qualification of Pre-Qualified Supplier**

- a) The Agency may disqualify a supplier who has been prequalified if it satisfies itself that such supplier has submitted false information that materially influence or intended to influence the Agency's decision;
- b) Prequalified supplier who will be aggrieved by the decision of PBPA shall appeal to the Minister Responsible for petroleum affairs.

## **6. IDENTIFICATION OF PETOLEUM PRODUCTS REQUIREMENTS**

- (a) Petroleum products procurement involves a series of operations whose sequence is critical for the proper functioning of the chain. A well planned Bulk Procurement System for petroleum products will enable cost effective access to petroleum products by improved procurement. Identification of requirements involves the under mentioned activities;
  - 1) Supply and Demand Forecast;
  - 2) Monitoring and controlling stocks levels and taking proactive actions to remedy any foreseen shortages and overstocking;
  - 3) Maximizing and protecting economies of scale of BPS imports including monitoring of re-order levels.

### **6.1. Supply and Demand Forecast**

Supply and demand forecast shall be managed as provided below;

- (a) Annual tendering calendar shall be established by the Agency and approved by the Board. The Annual Tender Calendar shall be shared to all stakeholders in the petroleum industry including prequalified suppliers;



- (b) On monthly basis the Agency shall consolidate monthly tender quantities and float tenders based on the monthly quantities submitted by OMCs. In arriving at the adequate importation requirement the Agency shall;
- i. Simulate petroleum stocks for each OMC and establish days covered based on respective market share as provided by EWURA;
  - ii. If the submitted requirements are not sufficient for specified period, the Agency shall write to all OMCs whose stocks are below buffer stock of 15 days pursuant to Regulations 6 of Petroleum General Regulations; requiring them to take necessary remedial measures.
- (c) Planning supply and forecasting of annual demands and importation and collections of monthly requirements shall be in the manner provided below;
- i. The Agency shall establish six months' importation and tendering schedule which will comprise;
    - a. Commencement date for OMCs to submit requirements;
    - b. Deadline for submission of requirements;
    - c. Delivery date range for each of the discharge point;
    - d. Dates for OMCs to submit nominations;
    - e. Date for establishment of delivery schedule;
    - f. Date to issue Bidding Document; and
    - g. Date to open the tender.
  - ii. For the purpose of making proper planning and scheduling of petroleum products imports;
    - a. All OMCs shall submit to the PBPA six months' petroleum products projections for each product type with clear assumption of driving factors used;
    - b. OMCs shall submit to the Agency such forecast requirements by the end of November of the year preceding the year of importation and May of the year of importation;
    - c. The Agency shall in consultation with TRA and EWURA review importation and sales history data for each individual OMC to identify patterns and trends and produce six months rolling importation forecast on monthly basis.
  - iii. Each OMC shall at the beginning (within 10 days) of the month (M) submit to the Agency monthly petroleum products imports requirements for both local market and transit (optional) for delivery month (M+2);



- a. Monthly nominations shall be checked if they are covered by bank guarantee;
    - b. Acceptance of nominations is subject to availability of valid and sufficient bank guarantee; clearance of obligations on previous cargos including but not limited to financial obligations; and
    - c. Acceptance of transit orders must be accompanied by credible evidence of orders/confirmation from the respective consignees in the destination or ordering countries. The same should be accompanied by contacts (e-mail address and telephone number) with proper physical and postal addresses which PBPA can use to contact the consignee when required;
  - iv. The Agency shall issue compliance order to all OMCs who submitted monthly requirements on (c) above, which are below their established local demand.
- (d) The Agency shall approve six months' procurement plans before they are implemented.

## **6.2. Monitoring and Controlling Stocks Levels**

In monitoring and controlling stock level the Agency shall take proactive actions to remedy any foreseen shortages and overstocking by doing the following: -

- (a) All OMCs are required by the Petroleum Act, Cap. 392 to maintain minimum operational stocks;
- (b) The level of minimum operational stocks shall be as prescribed by the Minister in the Petroleum (General) Regulations, 2011 GN No. 163 of 2011 or as shall be amended from time to time;
- (c) The Agency shall, on monthly basis analyse adequacy of petroleum stock in-tank and on shipment for local consumption based on established average consumption, simulating projected latest coverage date enough to suffice country consumption for at least two months ahead. The analysis shall take into account minimum operational stock level as shall be prescribed in the Petroleum (General) Regulations, 2011 GN No. 163 of 2011.





### **6.3. Re-Order Levels**

Re- order levels shall be managed as provided below;

- a) On quarterly basis the Agency in collaboration with the OMCs shall review the annual forecasts and determine re-order level, the optimal parcel sizes, lead time and the frequency of shipment;
- b) The Agency shall, every week, collect and review petroleum products stocks levels in order to monitor shifts in demand and in case of abnormal off-takes and stocks falling below the re-order level, PBPA shall trigger for the appropriate action to be taken.

## **7. TRANSIT ORDERS**

The use of Bulk Procurement System for transit products shall be optional. Moreover, financing of the transit cargoes shall be done by the consignee of the transit cargoes or any other company which is not locally registered. OMCs intending to place orders/requirements for transit shall be required to submit the following: -

- a) Details of the consignee of the transit parcel comprising of name, e-mail address, and telephone number and address (physical and postal);
- b) Agreement with the consignee of the transit cargo or any other document instructing the OMCs to place order on behalf of the consignee of the transit cargo;
- c) Evidence that at least 80% of the quantity imported through transit in the month (M-2) was evacuated to destination countries; and
- d) Evidence that taxes for the localized transit products have been paid and the consignees/financiers have been refunded their money for the localized product.
- e) As the case may be OMCs placing transit orders may be required to submit registration documents and provide shareholding details of the consignee of transit cargoes.





## 8. RECEIVING INFRASTRUCTURES

- a) All owners of storage facilities shall submit to the Agency available storage capacities in their terminals and expansion plan on annual basis.
- b) Only storage facilities approved by EWURA shall be allowed to receive products from petroleum importing vessels.
- c) All terminals should have valid calibration charts for all receiving tanks. Failure to comply, a storage tank will not be allowed to receive petroleum products from the vessel until the Agency receive certification from WMA

## 9. VESSEL NOMINATION AND PRODUCT SPECIFICATIONS

Vessel nomination and product specification shall be managed as elucidated below;

### 9.1. Vessel Nomination

Nomination of vessels to supply petroleum products under the bulk procurement system shall be managed as provided below;

- a) The Supplier shall nominate performing vessel at least 15 calendar days prior to the first day of delivery date range by providing Q88 of the vessel;
- b) The vessel carrying petroleum product calling Tanzania port shall be vetted and cleared by TPA and the Agency within 24 hours after receipt of Q88 of the nominated vessel;
- c) The Agency shall advice TPA on vessel performance during vessel nomination. Vessels which have been proved to have poor performances in terms of discharge rates and losses in their previous voyage in Tanzania will not be allowed to carry petroleum products under the BPS.



## **9.2. Product Specifications**

- a) Products specifications shall be as per TBS specifications.
- b) All petroleum products imported into Tanzania shall meet the approved product specifications.
- c) Petroleum products which do not meet the approved specifications shall not be allowed to discharge in Tanzania.

## **10. PRE -BIDDING PROCESS**

The pre-bidding process for importation of petroleum products shall include the following;

### **10.1. Pre -bidding Communication**

- (a) All importation order from OMCs to the Agency (advising requirement of import parcels) shall be done in writing by using standard forms which shall be provided by the Agency;
- (b) The Agency shall acknowledge receipt of the importation order within 24 hours and shall evaluate the same and communicate to the OMCs whether the order has been accepted or not;
- (c) In case of any complaints in regards to order placed from OMC to the Agency the same shall be in writing and the Agency shall be required to acknowledge receipt of the communication within 48 hours. The lodged complaint(s) shall be dealt upon with within the time limits provided in legal instruments and other working documents;
- d) Communication by phone followed by e-mail is acceptable provided that signed copies are delivered within 24 hours thereafter.

### **10.2. Approvals of Placed Orders**

Acceptance of OMCs order shall base on the undermentioned criterial;



- a) All OMCs placing order to the Agency shall instruct their bankers to remit 5% bank/cash guarantee in favour of the Agency on or prior to the date of submission of order. Any OMC failing to do so shall have its order removed from the tender volume;
- b) Acceptance of OMCs order placed with the Agency is subject to clearance of;
  - i. Payment of fees payable to the Agency and other Government institution e.g. TBS, TASAC, WMA, TPA and any other relevant government institution;
  - ii. Financial obligations of previous cargoes as per terms and conditions of the Shipping and Supply Contract.
- c) All order for import raised by an OMC shall be considered and acted on;
- d) If the aggregate parcels subscribed do not constitute an appropriate cargo sized as planned the Agency upon consultation with EWURA and the supplier(s) shall consider the possibility of asking the supplier to add additional cargoes in the won tender(s).

## **11. TENDER COMMITTEE**

Evaluation of the tenders under the Bulk Procurement System shall be done by the under mentioned committee.

### **11.1. BPS Tender Evaluation Committee**

- (a) The BPS Tender evaluation committee for the supply of petroleum product shall be comprised of a Chairman and other five members who shall be comprised of two (2) staff from the Agency and three (3) members from OMCs as may be appointed by the Agency Executive Director and approved by the Board;
- (b) The tenure of the chairman and members shall be three (3) years. Members can be reappointed for one more term;
- (c) Pre-qualified suppliers or their affiliates shall not be eligible to be appointed as members of the evaluation tender committee.



## **12. BIDDING PROCEDURES UNDER BPS.**

- a) The bidding will be conducted under an International Competitive Bidding process, whereby the Agency will facilitate the process. The bidding procedure shall be comprised of the below key activities;
  - i. Invitation to bid;
  - ii. Submission of bidding documents on the tender opening day;
  - iii. Tender opening and evaluation; and
  - iv. Award of the tender to the lowest responsive bidder.
  - v. Clearance form of previous tenders.

### **12.1. Invitation to Bid**

- a) An invitation to bid for tender to supply petroleum products will be sent to all pre – qualified suppliers not less than ten days (10) to the tender opening date.
- b) The Agency shall release notifications of tender quantities and delivery schedules as shall be prescribed in the annual importation calendar;
- c) The invitation shall contain tender quantities and delivery schedules;
- d) In the event unexpected offtakes and/or seasonal variations trigger necessity for change on BPS tender quantity the changes shall be processed not less than two working days before tender opening. An addendum to change the Bidding Document shall be prepared and appropriately communicated to all bidders.

### **12.2. Bid Documents**

All bids submitted shall be accompanied by the following;

- a) Bid security of value indicated in the bid data sheet which can either be in the form of a bank guarantee issued by a reputable bank in the form provided in the bid documents valid for 15 calendar days from the date of tender opening;
- b) Registered Power of attorney;
- c) Dully filled Price, quantity and delivery schedule.



### **12.3. Tender Opening and Evaluation**

- a) All submitted bids will be opened and evaluated the same day in public and all bidders will be invited to witness the opening.
- b) Bidders' price quotes will be projected or displayed for everyone to see it in public.
- c) Bidder's price quotes, will be circulated to attendees for their verification if what has been projected or displayed is actually what has been quoted by the bidders.
- d) Bids will be evaluated against pre-agreed criteria as specified in the bid documents and awarded to the lowest responsive evaluated bidder.
- e) Quarries on the evaluation processes shall be raised and resolved during tender evaluation process. If bidders are not satisfied with the manner in which the tender committee has resolved the dispute they shall refer the matter to the Executive director.
- f) The executive director shall resolve the matter within 24 hours. The decision of the executive director shall be final and binding.

### **12.4. Tender Award and Signing of the Shipping and Supply Contract**

- a) The lowest responsive bidder will be awarded the tender on the same day of the announcement of the tender results.
- b) In the event there is more than one (1) lowest responsive bids with equal quoted price, the lowest bidders will be required to submit fresh lower price bids on the following day before 11:00 hours.
- c) The successful bidder shall be given notice of award of contract and shall be required to make all arrangements for the delivery of the import(s).
- d) Within nine (9) calendar days after of receipt of the notice of Award, the successful bidder shall furnish to the Agency performance security bond of value stated in the bid data sheet in the form of a bank guarantee as per bid document, after which the Shipping and Supply Contract will be signed.
- e) In the event the winner fails to submit performance bond or performance of the contract the second ranked will be awarded the contract if the difference in



premiums with the lowest responsive bidder will not exceed ten percent (10%) of the premium quoted by the lowest responsive bidder. If the second lowest will not meet the conditions or accept the award, the 3<sup>rd</sup> lowest bidder will be considered for the award. The process will go on until the suitable bidder is obtained.

- f) If the difference between the 1<sup>st</sup> lowest evaluated bidder and the bidder to be considered for the award exceeds 10% as explained in paragraph (e) above a fresh tender shall be floated.
- g) Notwithstanding penalties provided under Petroleum Bulk Procurement Regulations bidder who failed to submit the performance bond shall be disqualified and its bid security bond cashed.

### **13. LEGAL RELATIONSHIPS UNDER THE BULK PROCUREMENT SYSTEM.**

Smooth implementation of importation of petroleum products under the Bulk Procurement System depends much on the legal relationship between the Agency and the supplier, the Agency and the OMCs and the OMCs and the supplier also relationship between Supplier, Agency, OMC and Single Receiving Terminal Operator where applicable is very crucial in management of Bulk Procurement System. The legal relationship shall be created in the following manner.

#### **13.1. Contract between the Agency and the OMCs;**

- a) The Agency shall sign Importation contracts with OMCs which replicate the Shipping and Supply Contract to be signed between the Agency and the Supplier.
- b) The contract between the Agency and OMCs, gives the Agency the mandate to act on behalf of OMCs in matters related to importation of petroleum products under Bulk Procurement System. Also it serves as a commitment from OMCs that they are bound by the terms and conditions of the shipping and supply contract between the Agency and the Supplier.
- c) The Importation contract between the Agency and OMCs is among the documents forming part of the shipping and supply contract between the Agency and the Supplier.



### **13.2. Contract between the Agency and the Supplier;**

The Agency shall enter in to the contract with the supplier on behalf of the OMCs. The contract between the Agency and the supplier;

- a) Guarantees that the OMCs will perform the obligations stipulated in the shipping and supply contract;
- b) Recognizes the OMCs responsibility of financing the petroleum products imported under the Bulk Procurement System;
- c) Recognizes the Agency role of coordinating importation of petroleum products through the Bulk Procurement System.

## **14. FINANCING OF THE PETROLEUM PRODUCTS**

- a) Individual OMCs shall separately be responsible for arranging own financing of the petroleum products purchased jointly through the bulk procurement system.
- b) OMCs shall open a letter of credit to the supplier's banker or facilitate pre-payment in respect of the local cargo imported through Bulk Procurement System.
- c) For transit cargos the OMCs shall ensure the consignees have opened letter of credits to the supplier's banker or facilitate pre-payment in respect of their imported cargos. OMCs are not allowed to open LC for transit cargos.
- d) Failure for OMC to fulfil contractual financial obligation as per provisions of Shipping and Supply Contract as well as Importation Contract between OMC (the Purchaser) and the Agency shall be dealt with as per terms and conditions of the shipping and supply contract and the Regulations in place.
- e) OMC shall be liable for all default made by the consignee of transit consignment. OMC liability shall be based on the principle agent relationship.



## **15. EMERGENCY SITUATIONS AND PUBLIC INTEREST**

- a) During emergency situations the procurement of Petroleum Products shall be as directed by the Minister responsible for petroleum affairs when exercising powers conferred to him/her by the Regulations governing bulk procurement of petroleum products.
- b) In the public interest the Minister may issue in writing directives of specific or general nature to the Agency.

## **16. SHORTAGES CAUSED BY OPERATION**

If there is need for additional requirements because of the shortage of petroleum products in the country which has been caused by contamination, demand change and force majeure events the Agency, with prior approval from the Authority, shall float an emergency tender. Floating of emergency tender shall be in the manner provided below:

- a) Depending on the prevailing situation the Agency may;
  - i. Float and open an emergency tender within a very shorter period as opposed to the normal tender.
  - ii. Waive the bidding conditions which cannot be met within a short period.

## **17. SINGLE RECEIVING OPERATIONS**

For Single Receiving Operations, all petroleum products procured through the Bulk Procurement System shall be discharged into single receiving terminal (SRT) and thereafter distributed to the OMCS nominated terminals.

## **18. DELIVERY PROCEDURES**

Delivery procedures shall be as guided by the Standard Operating Procedures but not limited to the following.





### **18.1. Lodging of Cargo Manifest**

The Supplier shall ensure vessel's manifest is lodged to TASAC with endorsed copy of bill of lading and proforma invoices for customs purpose) at least five (5) calendar days before the Notice of Readiness (NOR) date.

### **18.2. Pre-Arrival Checks**

The Agency shall arrange pre-arrival checks for the cargo which will comprise of the following.

#### **18.2.1. Cargo Documentations**

- a) Tanks clearance certificate issued after the last voyage/ before the vessel is loaded with petroleum products.
- b) Inspection of load-port certificates of quality to confirm product loaded is per TBS specifications. If loading is by Ship-to-Ship (STS) operation, then a Certificate of Quality of the berthing (daughter) vessel supplying product as well as mother vessel must be provided to the Agency. Any deviations in this respect shall be reported to the Agency and EWURA and shall result in Agency rejecting the cargo and supplier obliged to replace the cargo.
- c) For Jet A-1 all certificates of quality issued in the chain of supply from the refinery to the delivery vessel, including refinery quality certificate (RQC) that is produced at the point of manufacture and or acceptable certificate of quality (COQ) that come out from the downstream of refinery in the intermediated supply terminal or if the cargo has been shipped from another terminal. The two documents shall cover the batch showing the fuel grade and confirm that they meet all applicable and relevant specifications or the latest JIG Aviation Fuel Quality Requirements for Jointly Operated System (AFQRJOS) checklist;
- i) Copy of the latest recertification test certificate for JET A1, where applicable (for non-dedicated vessel, a multiple tank composite sample should be prepared for recertification test to confirm the condition of the product on board of the vessel). Release certificate(s), inventory of samples, inspectors report from the load port including previous cargo and cleaning procedure and loading plan (if available).



- ii) Copy of certificate of origin for Jet A-1 all certificates shall be issued in the chain of supply from refinery to the delivery vessel.
- iii) Copy of cargo manifest and valid calibration certificates for ullage temperature interface (UTI), ship-tanks and vessel shall be issued.
- iv) Availability of Bills of Lading. If no Bill of Lading has been delivered, The Supplier shall be obliged to issue a valid worded Letter of Indemnity.

### **18.2.2. Disport Operations upon Arrival of the Vessel**

- a) Confirmation of receiving facilities, the Agency shall communicate to receiving facilities (OMCs terminal) or with single receiving terminal operator in order to ensure that all shore tanks and receiving lines are prepared to receive the products and that the berth facilities (in consultation with TPA) have been evacuated in preparation for the arrival of the vessel.
- b) Receiving facilities shall not be allowed to receive products in empty tanks.
- c) The Agency shall also request vessels particulars and confirm arrival dates.
- d) The Agency shall ensure that it has deployed qualified marine inspectors to manage discharge operations.
- e) Each vessel shall carry three load port sample for each vessel compartment the sample shall be retained by the Agency, Supplier or Single Receiving Terminal operator where applicable.

### **18.3. Pre-Discharge Operations**

Pre discharge operations will be in the manner prescribed below.

#### **18.3.1. Pre- discharge meetings.**

- a) The Agency's marine Inspector shall conduct and chair Vessel Pre-Discharge Meeting attended by OMCs representative, supplier surveyor and Single Receiving Operator representative where applicable whose main agenda is to agree on product discharge sequence for a particular vessel before commencement of discharge.
- b) TPA, The Agency's marine Inspector, supplier's marine surveyor, Single Receiving Terminal operator where applicable and the master of the ship will



conduct key meeting to agree on the discharge plans before commencement of discharge.

### **18.3.2. Sampling and Testing of the Product before Discharge from Delivery Vessel**

- a) The procedure for sampling and testing of petroleum products shall be as prescribed by Tanzania Standard No. TZS 644 or as shall be amended from time to time.
- b) There shall be joint sampling between TBS, Agency's Marine Inspector, single receiving terminal operator's Marine surveyor where applicable and supplier's marine surveyor. The Joint sampling team shall take five (5) samples which shall be sealed by TBS, Agency's Marine Inspector, single receiving terminal operator's Marine surveyor and Supplier marine surveyor, each entity shall retain a single sample in case of quality dispute and the remaining sample shall be used for testing quality of the imported product by TBS.
- c) Sample taken from ship cargo tanks using appropriate method as per Manual of Petroleum Measurement Standard Chapter 17 will be analysed for quality parameters prior to discharge. Samples collected shall be analysed for quality in accordance with the TBS testing criteria and TBS shall issue a Quality Certificate to Agency, supplier, single receiving terminal operator and all concerned parties for every ship.
- d) In the event that the test results issued by petroleum independent surveyors are not equal with the results issued by TBS. The retained samples shall be tested at TBS lab and the results issued by TBS shall be final and binding.
- e) An OMC may appoint a surveyor to verify on quality and quantity of any petroleum products received in the nominated terminal.
- f) Supplier's Independent Surveyor shall take additional samples which shall be used by them in testing quality of petroleum product.
- g) The Surveyors and Marine Inspectors shall issue a test certificate for the tests conducted in verifying the quality of imported petroleum products.



### **18.3.3. Checking of Receiving Infrastructures**

- a) The Marine Inspectors and Surveyors shall verify and issue report on the status of the receiving infrastructures before commencement of discharge.
- b) If there is serious concern on the integrity of the receiving infrastructure the marine surveyors and Inspectors shall immediately report the incidence to the Agency. The Agency shall analyse the incidence and make decision whether the respective terminal should be used to receive petroleum products or not.
- c) Receiving pipeline(s) shall be packed/filled with products in case it is empty or partial prior to commencement of discharge.
- d) Any ullage restriction on the shore tanks shall be noted and reported to the Agency and the same shall be dealt with as provided in this manual, the contracts and relevant laws.

### **18.4. Discharge Operations**

#### **Discharge Operation from Vessel to Oil terminal or Single Receiving Terminal**

- a) Discharge operation must be discussed and agreed during pre-discharge key meeting. The decision reached by the Pre- discharge key meeting shall be final and binding. The Oil terminal or single receiving operator or any other person is not allowed to change the agreed discharge sequence without getting approval from the Agency.
- b) Discharge operations shall be witnessed by the Agency's marine Inspectors, supplier surveyor and single receiving operator surveyor where applicable who shall be required to prepare a transfer log on receiving terminal discharge performance, time logs and pump pressures at the manifold.
- c) The Agency's Marine Inspector upon entering into the contract shall also sign service level agreement with the Agency.
- d) The Agency's Marine Inspector shall lodge protest to any party that is party in the receiving process that frustrates the process in any way and may seek recovery of damages from the defaulting party (ies) on behalf of affected party (ies).



- e) During discharge operations (Marine Surveyors and Inspectors) of the Agency, supplier and single receiving operator where applicable shall:
- i. Take samples on board the vessel, jetty head and receiving terminal **before** and **after** completion of discharge to receiving terminal. The samples taken are for retention purposes. Samples shall be sealed by the surveyors and Inspectors and each shall retain two samples. Records of seal numbers for each retained samples shall be communicated to the Agency, the supplier and receiving terminal operator. Samples shall be retained for at least sixty (60) days.
  - ii. Additionally, running samples shall be taken at the jetty head after every **two** hours during the discharge operations for **Combi Cargoes**. The samples taken shall be used for testing/analysis of key parameters and retention. Samples shall be sealed by all surveyors and Inspectors and each surveyor shall retain two samples. Records of seal numbers for each retained samples shall be communicated to the Agency, Oil terminal or single receiving terminal operator where applicable and the supplier. Samples shall be retained for at least sixty (60) days. Testing of density and appearance should be done onsite and the results be issued immediately within fifteen (15) minutes.
  - iii. Results for the analysis on running samples should be communicated to the Agency, OMCs or single receiving terminal operator and the supplier within five (5) hours from the time the samples were taken. The Marine surveyors and Inspectors should take immediate actions to mitigate the risk of contamination of product immediately after they became aware that there is risk of contamination or the analysis done suggest that the product has been contaminated.
  - iv. **Specific procedure to be followed during discharge of JET A1.**
    - (a) During receipt of the product, samples shall be drawn from the single receiving terminal pipeline at a point as close to the ship as possible for a Control Check.
    - (b) For dedicated vessels line samples shall be drawn approximately five (5) minutes after beginning and immediately before the end of discharged to oil terminal or single receiving terminal.
    - (c) For receipt from a non-dedicated vessel, samples, should also be taken at least every two (2) hours during discharge.
    - (d) Automatic or continuous line monitoring systems that include calibrated densitometers/turbidity analyzers (or equivalent) may be considered as equivalent to the above monitoring.



- (e) Any observed contamination should be reported immediately to the Ship's Master, supplier, Agency and single receiving terminal operator where applicable.
- (f) If there is any indication of the product being contaminated or gross amount of water or dirty observed the discharge should be stopped and the situation should be investigated.
- f) In the event of any dispute in relation to contamination of product during discharge, samples taken under paragraph 21.4(e) shall be used to determine the point and cause of contamination. Samples taken under paragraph 21.4(e) shall be tested at an internationally accredited laboratory mutually agreed by the Agency, OMCs, receiving terminal.
- g) Before starting and after completion of discharge the petroleum Marine Inspectors shall jointly take samples from the receiving manifold the said samples shall be tested at TBS Laboratory. The results shall be used to determine liabilities in the event of proof of meter breakdown results from the product discharged from the delivery vessel.
- h) The Agency is mandated to intervene on the vessel discharge in case of any dispute arising from the shipping and supply contract.
- i) In absence or malfunctioning of flow meter at the inlet of single receiving terminal, the single receiving terminals shall not be allowed to transfer product to recipient when receiving petroleum products from delivery vessels unless approved by the Agency as per single receiving terminal procedure.
- j) If it will be proved that the receiving terminal infrastructures or seals have been tampered with the intention of stealing petroleum products during receipt, the respective terminal owner will be penalised pursuant to Petroleum Bulk Procurement Regulations in place. During such occasion the highest figure between arrival and outturn will be used as receipt figures for that terminal.

## **19. TRANSFER OPERATION FROM SRT TO OMCs OIL TERMINALS**

- a) The transfer sequence must be discussed and agreed during pre-transfer meeting. The decision reached by the Pre-transfer meeting shall be final and binding. The receiver, single receiving operator or any other person is not allowed to change the transfer sequence without getting approval from the Agency.





- b) Transfer operations shall be witnessed by the Agency Marine Inspector who shall be required to prepare a transfer log on single receiving terminal performance, time logs and pump pressures at the manifold.
- c) The Agency Marine Inspector shall lodge protest to any party that is party in the transfer process that frustrates the process in any way and may seek recovery of damages from the defaulting party (ies) on behalf of members affected.
- d) During transfer operations the Agency's Marine Inspector and single receiving operator's surveyor shall:
  - 1) Take samples from SRT tanks before and after the transfer process to receiving terminals.
  - 2) Take samples from receiving tanks **before** and **after** completion of receipt of product by respective terminal. The samples taken are for retention purposes. Samples shall be sealed by all petroleum Marine surveyors and Inspectors and each shall retain two samples. Records of seal numbers for each retained samples shall be communicated to the Agency and the single receiving terminal operator. Samples shall be retained for at least 90 days.
  - 3) Specific procedure to be followed during transfer of JET A1.
    - a. During transfer of the product, samples shall be drawn from the recipient pipeline at a point as close to the single receiving terminal as possible for a Control Check;
    - b. For all transfer operations transfer line samples shall be drawn approximately five (5) minutes after beginning and immediately before the end of transfer to nominated terminals;
    - c. Automatic or continuous line monitoring systems that include calibrated densitometers/turbidity analyzers (or equivalent) may be considered as equivalent to the above monitoring; and
    - d. If there are indication of the product being contaminated or gross amount of water or dirty are observed the transfer should be stopped and the situation should be investigated.
- e) In the event of any dispute in relation to contamination of product during transfer, samples taken under paragraph 18.4 (e) shall be used to determine the point and cause of contamination.
- f) Any observed contamination should be reported immediately to the single receiving terminal operator and the Agency.



- g) Samples taken under paragraph 18.4 (e) shall be tested at an internationally accredited laboratory mutually agreed by the Agency and the single receiving operator.
- h) Before starting and after completion of transfer from respective tanks at the single receiving operator terminal and nominated terminals the Marine surveyor shall jointly take samples from the said tanks. The said samples shall be retained for future reference and tested at TBS Laboratory. The results shall be used to determine liabilities in the event of dispute arising out of single receiving operations.
- i) The Agency is mandated to intervene on the transfer operation in case a recipient in the single receiving operations has defaulted as per the shipping and supply contract.
- j) In absence or malfunctioning of flow meter at the inlet of receiving terminals, the receiving terminals shall not be allowed to load trucks or conduct cross pumping when receiving petroleum products from SRT unless approved by the Agency as per single receiving terminal procedure.

## **19.1. Cargo Measurement**

Cargo measurement at single receiving facility will be as per the manner provided below.

### **19.1.1. Methods**

- a) All Petroleum products into and from the bulk storage facilities shall be measured in accordance with the relevant laws and procedures.
- b) Measurements to establish petroleum quantities on board the vessel shall be through Ullage Temperature Interface (UTI) and on shore tanks shall be by tank dips or other measurement system approved by Weights and Measures Agency.

### **19.1.2. Units**

- a) The accounting unit of measurement on board the vessel shall be in three decimal places corrected to 20°Celsius in MT
  - i. Automotive Gas Oil (AGO);
  - ii. Unleaded Motor Spirit Premium (MSP);





- iii. Jet A-1;
- iv. Illuminating Kerosene (IK);
- v. Liquefied Petroleum Gas (LPG); and
- vi. Heavy Furnace Oil (HFO).

b) Corrections shall be applied in accordance with the IP Measurement Table Ref IP 250 or any other measurement tables approved by the Weights and Measures Agency (WMA) and shall conform to the industry practice.

### **19.1.3. Quantities**

- a) The arrival quantity of each delivery under this contract shall be determined by WMA.
- b) Density determined by TBS shall provide the basis for determining the arrival quantity.
- c) In the event of any dispute on the arrival quantity, the quantity determined by WMA shall be final and binding to all parties.
- d) The quantity reports (on arrival quantity) issued WMA shall be shared to the industry before the product is discharged from the vessel.
- e) Losses due to line slackness (realized at the end of transfer operations through outturn report) will be handled in line with the standard Operating procedure as prepared by the Agency.
- f) Line loss from the vessel to the single receiving terminal due to line slackness will be on the account of single receiving terminal operator.
- g) All decisions relating to discharge operations (including but not limited to change of berthing schedule and suspension of discharge operations shall be communicated to the industry before being implemented.
- h) DAP quantity for the purpose of invoicing Oil marketing companies (purchasers of petroleum products) shall be the lower volume between BL figure and arrival quantity.



### **19.2. Receiving Terminals Responsibilities when Receiving Petroleum Products**

- a) Owners and operators of receiving terminals shall take all precautions and observe international and industry practices when receiving petroleum products from delivery vessels.
- b) Products received and stored in the receiving tanks should be within approved specifications.
- c) Terminal owners and operators are required to immediately (within two hours) report to the Agency and the Authority in the event they become aware that the product which is being discharged into their terminal is contaminated or there is spillage.

### **19.3. Customs Clearance**

- a) The Agency Marine Inspector shall notify all cargo owners of outturn quantities for reference during settlement of applicable bills.
- b) All taxes due on the product will be the responsibility of the individual OMC, and the Agency shall only be responsible for the communications between the OMCs and TRA in respect of quantities received whenever deemed necessary.

## **20. OUTTURN REPORTS**

- a) WMA shall issue Discharge Report within three (3) days from completion of final measurements of shore tanks
- b) The Agency shall make sure that the outturn report is issued within two (2) days after receipt of discharge report from WMA or from SRT to nominated OMCs terminals.
- c) Any complaint of the outturn report shall be lodged to the Agency within 48 hours from the time the outturn report has been issued. Failure any complaint received thereafter shall not be considered.
- d) Any warehoused product shall be accessed by the beneficiary as per the proration data given by the Agency's Marine Inspector. The beneficiary of



the prorated quantity is entitled to get access immediately after the outturn and warehousing report has been issued.

- e) OMCs warehousing prorated quantity shall be required to give the said product to the beneficiary within 24 hours from the time the beneficiary has lodged notice of intention to evacuate the product. Failure to that the bank guarantee or cash cover will be utilized to compensate the beneficiary.

## **21. BANK GUARANTEE**

- a) The OMC shall instruct his banker to issue a 5% bank guarantee or cash cover (equivalent to 5% of the value of the product to be ordered in that particular month) in favor of to the Agency prior to placing an order for importation of petroleum product.
- b) The bank guarantee shall be used to cover the under mentioned costs;
  - (i) Demurrage cost related to imported petroleum products under the Bulk Procurement System.
  - (ii) Fines and penalties charged by PBPA.
  - (iii) Contribution/fees for importation of petroleum products.
  - (iv) Cost of disposing the product on financial hold.
  - (v) Handling and storage charges.
  - (vi) Amount payable to other government institutions in relation to the importation of petroleum products through the bulk procurement system.
  - (vii) Compensate the beneficiary of the warehoused prorated petroleum product.
- c) If the bank guarantee is not sufficient to cover cost itemize in the paragraph above the Agency, the supplier and SRT operator shall have right to take other legal measures to recover the unpaid amount.
- d) Any OMC failing to submit the bank guarantee as required by the paragraph above to do so shall have its ordered quantity removed from the tender quantity.

## **22. INVESTIGATION OF DISCHARGE OPERATIONS**

- (a) Claims related to discharge operations shall be investigated by the neutral and independent investigator appointed by the Agency in consultation with the supplier, single receiving operator and receivers



and/or any other institution which is involved in the operations subject to investigation.

- (b) Payment to the investigator shall be on the account of the claimant and the defendant on equal basis.
- (c) If there shall be more than one claimant or defendant, the distribution of the portions shall be done prorata provided that half of the total cost is paid by the claimant and half by the defendant.
- (d) Cost of the investigations will be transferred to the identified defaulter after the report has been issued.
- (e) The Agency shall coordinate the investigation.
- (f) The investigation report will be used in line with the shipping and supply contracts and the laws governing importation of petroleum products.

## **23. INVOICING AND PAYMENT FOR THE PETROLEUM PRODUCT**

Detailed procedure on invoicing and payment of petroleum products are provided in the shipping and supply contract between the Agency and the Supplier and the importation contract between the Agency and OMCs. Below are key aspects in invoicing and payments.

### **23.1. Invoices (PFI and Final Invoice) to OMC**

- a) Supplier invoices will be in United States dollar based on FOB component plus DAP premium based on the lower volume between the arrival quantity and BL figure.
- b) All amounts shall be calculated to four (4) decimal places.
- c) The invoices should be sent to OMCs and the Agency within prescribed time as stated in the shipping and supply contract.



## **23.2. Payment to Suppliers**

- a) An OMC shall provide an irrevocable Letter of Credit (LC) opened by an OMC's Bank but confirmed by any Bank as provided by the Supplier latest five (5) calendar days before 1st day of delivery date range or latest five (5) calendar days upon receipt of Proforma Invoice (PFI) from supplier whichever is later.
- b) If the supplier will delay to submit proforma invoice the OMC shall be given additional days from the deadline of opening LC which is equivalent to the days delayed by the supplier.
- c) The Supplier shall provide to the Agency a list of minimum ten (10) confirming banks before signing the contract as provided in the Notice of Award.
- d) The LC shall be payable at the Supplier's bank, without offset, deduction or counter claim and free of all charges latest 60 calendar days from the first day of delivery window.
- e) Charges for establishing the LC will be borne by the OMC.
- f) LC advising charges, confirmation charges and any other charges shall be borne by the Supplier.

## **24. DEMURRAGE**

- a) Demurrage computations shall be done by the demurrage committee established by the Petroleum (Bulk Procurement) Regulations, 2017. GN. No. 198 of 2017.
- b) The demurrage committee shall be appointed by the Executive Director and shall be comprised of seven (7) members three (2) from OMCs and five (5) from the Agency (three from operations department (supply and logistics and planning), one from legal and one from finance department.
- c) In the event that a given vessel delays to deliver or discharge petroleum products resulting in a cascading effect, the Agency shall take measures to ensure the cascading effect does not escalate beyond three subsequent vessels.



## **24.1. Demurrage computation**

- a) Demurrage computations shall be in line with the terms and conditions specified in the contract.
- b) When need be during finalizing of the demurrage computations suppliers of respective tenders will be invited for the purpose of issuing clarifications and finalizing computations.

### **24.1.1. Delay of Vessels by OMCs**

- a) The Agency shall ensure that any person causing delay of vessel discharge due to either ullage constraints, unopened LCs, delays in issued quality results, fault in infrastructure or any other reasons, are held responsible for the respective demurrage charges for that vessel.
- b) Demurrage cost resulting from cascading effect caused by the delays by the any person shall be borne by the person who caused delay in discharge of petroleum products from the last delivery vessel. For the purpose of this clause the cascading effect shall be limited to three subsequent vessels which will discharge petroleum products through the same delivery point after the delivery vessel which has been affected by OMC delay.
- c) Evaluate demurrage claims by the supplier and isolate.
  - i) Demurrage charges to be shared by the industry; and
  - ii) Demurrage charges to be paid by causative party.

### **24.1.2. Delay of Vessel by the Supplier**

- a) Demurrage computation for vessels arriving after the delivery date range shall start from all fast.
- b) Demurrage cost resulting from cascading effect caused by the late delivery of the BPS vessel shall be borne by the supplier of the late delivery vessel. For the purpose of this manual the cascading effect shall be limited to three subsequent vessels which will discharge petroleum products through the same discharge point after the late delivery vessel.



## **25. CONSULTATIVE PROCESSES**

The consultative process in the bulk procurement system shall be in the manner provided below.

### **25.1. Aspects which Requires Board's Involvement**

- a) The Board may consider forming Board Sub-committees to deliberate on and ensure that all consultative processes are handled by the Board members with appropriate skills and competences.
- b) For better carrying of its responsibilities the Board may co-opt staff from the registered OMCs with the required expertise to advice on complex situations that may be beyond the expertise of the board members.
- c) In the event of a national crisis in the supply of petroleum persisting for more than a month a consultative meeting between the Ministerial Advisory Board and the stakeholders may be held at the invitation of the Minister.

### **25.2. Operational Issues**

- a) The Agency shall when need be and when it will be deemed appropriate form committee to perform any function as shall be directed by the Agency's Board or Authority.
- b) The Agency shall when need be facilitating negotiations between OMCs and other stakeholders on matters which fall under the Bulk Procurement System.
- c) The Agency shall conduct weekly stakeholders meeting for the purposes of discussing operational issues and updating stakeholders on-going or completed key activities under the Bulk Procurement System.

## **26. CORRESPONDENCES**

Correspondences between the Agency and other stakeholders shall be in the manner provided below.





### **26.1. Incoming Letters**

All incoming letters/documents will be registered and kept safely by the Agency's registry officer in a trackable manner.

### **26.2. Outgoing Letters**

- a) All outgoing letters/documents must get approval of the Executive Director, and have to be registered using the reference from the Agency.
- b) Correspondences from the Board shall be signed by the Chairman of the Board or any other director and the Executive Director.

### **26.3. Email correspondences**

- a) The Agency staff shall in their day to day operations communicate with other stakeholders via emails.
- b) Letter to be sent by the Agency or to the Agency can first be sent via email and hard copies to follow.
- c) Correspondences via email are binding.

## **27. CONFIDENTIALITY AND CONFLICT OF INTEREST**

Confidentiality and conflict of interest matters shall be handled in the manner provided below.

### **27.1. Confidentiality**

The Agency has an obligation to maintain confidentiality of all confidential information received by the Agency from stakeholders.

### **27.2. Conflict of interest**

- a) The personnel of the Agency shall not, without the prior consent and written approval of the Board, be directly or indirectly, commercially involved with or hold interest in any other business which competes with, a supplier and/or major customer of the company as per the general company policy.
- b) A member of the Board shall not participate in his advisory role, in the matter in which he/she has direct or indirect interest.



## **28. HANDLING OPERATIONAL COMPLAINTS**

All complaints lodged to the Agency shall be dealt with promptly and within the time limits provided in the working documents. However, complaints over and above PBPA mandate shall be escalated to the Authority.

## **29. MONITORING AND EVALUATION**

For smooth implementation and improvement of the bulk procurement of petroleum product, monitoring of the contractual performance and adherence of the law governing Bulk Procurement System by the significant parties will be carried as indicated below: -

- a) Monitoring of Contractual Performance goes hand in hand with taking appropriate measures as per the contract and other legal instruments. The Agency shall take appropriate action to safeguard BPS operations.
- b) The Agency shall compile a formal report at the end of every Supply Contract/ period evaluating performance of all contractual obligation and compliance with the laws governing bulk procurement of petroleum products by all concerned parties as provided below;
  - i. Supplier – Delivery Date Range, Volume losses, supply of documentation, quality, demurrage claims, and supply of product within approved specifications, delays during discharge (vessel operations).
  - ii. OMC (– e.g. LC opening, delays in discharge, payment of levies/ fees/contribution and penalties charged by the Government institutions operating under BPS”)
  - iii. PBPA performance – providing necessary information and taking appropriate actions as required by the contract.
  - iv. TBS- Issues related to testing and issuing quality certificates.
  - v. TPA- Management of discharge operations.
  - vi. WMA- Measuring and issuing certificate on imported quantities and quantities received by individual importers.
- c) After consultation with the Ministry responsible for Petroleum Affairs and the Authority any supplier or surveyor who is found to have contravened Petroleum Bulk Procurement Regulations and to have engaged in gross misconduct shall be dealt in line with the applicable laws.
- d) After the completion of performance of the contract with the supplier or the surveyor, the Agency with the respective parties shall sign a clearance form acknowledging



completion of performance of all obligation under the contract. In the event there are pending obligations it should be clearly stated which obligations are still pending.

### **30. REVISION AND AMENDMENT OF THE CONTRACTS**

- a) Revision and amendment of the key terms of the contract shall be done in consultation of all parties involved in the Petroleum Bulk Procurement System (TRA, EWURA, TBS, WMA, Suppliers, OMCs, Surveyors, and Banks and Financial Institutions etc). The agreed revised version of the contract shall be used until such other time when there will be need to revise and amend the contract.
- b) Amendment of the contracts based on the operational requirements such as change of delivery date range; increase or decrease of volumes shall be effected vide Addendum signed by both parties consenting the alterations.

### **31. PENALTY**

Any person or institution that distorts the functioning of the BPS or wilfully endangers the functioning of the competitive supply system or causes the Agency not to function as required shall be liable to a fine prescribed in the Schedule of the Petroleum (Bulk Procurement) Regulation, 2017 GN No. 198 of 2017 or as shall be amended from time to time.

### **32. DISPUTES SETTLEMENT AND GOVERNING LAW**

Disputes shall be settled in line with the guidelines provided below;

- a) All disputes will be resolved as stipulated in the contracts;
- b) Disputes between parties which are by law required to be handled in the first instance by EWURA shall be dealt with as such.
- c) In case of any dispute which is not subject to EWURA's jurisdiction, the parties may find redress with respect to such dispute as per the Arbitration Act 2020
- d) Based on the nature of the litigation, the Agency might be required to engage external lawyers. Any decision to engage external law firm shall be approved by the Solicitor General.
- e) The contracts entered as a result of this manual shall be constructed in accordance with the governing laws of Tanzania.



### **33. REVIEW AND AMENDMENT OF THE MANUAL**

- (a) Amendments to BPS operations manual are required whenever the contents no longer accurately reflect the operations requirement and the industry practices.
- (b) Amendments are necessary whenever changes occur in the following areas:
  - i. Operating conditions or procedures; or
  - ii. Change of law.
- (c) The review and amendment of the manual shall be done through a consultative process which will involve all stakeholders in the petroleum industry and shall be done after three years or earlier, provided there is a significant change in BPS implementation.
- (d) All amendments shall be vetted by EWURA and approved by the Minister responsible for petroleum affairs.



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### **34. APPENDIX 1 SPECIFICATIONS FOR THE PRODUCTS**

SPECIFICATIONS FOR THE PRODUCTS SHALL BE AS SHALL BE PROVIDED BY TBS



## **35. APPENDIX 2 SHIPPING AND SUPPLY CONTRACT FOR AGO**



**PETROLEUM BULK PROCUREMENT AGENCY**

**(PBPA)**

**SHIPPING AND SUPPLY CONTRACT**

**FOR**

**TENDER NO. PBPA/CPP/AGO/...../.../.....**

**FOR**

**SUPPLY OF AGO**

**FOR**

**THE MONTH OF .....**

**DELIVERY DATE RANGE**

**..... TO .....**



## PETROLEUM PRODUCTS BULK PROCUREMENT SYSTEM TANZANIA

### SHIPPING AND SUPPLY CONTRACT

This contract is made on this .....day of ..... (Hereinafter referred to as "**the Contract**")

#### BETWEEN

The **PETROLEUM BULK PROCUREMENT AGENCY** of P.O Box 2634, Dar es Salaam, the executive agency established by Government Notice No. 423 OF 2015, having its registered office at TPA- ONE STOP CENTER BUILDING, 11<sup>TH</sup> Floor, Plot no. 1/2, SOKOINE DRIVE, hereinafter referred to as "**the AGENCY**" acting on its own behalf and on behalf of Oil Marketing Companies, both herein referred to as "**OMCs**" / "**Purchasers**".

#### AND

..... Hereinafter referred to as "**the Supplier**" on the other part

**WHEREAS, Purchasers** are required by the Petroleum Act No. 21 of 2015, the Petroleum (Bulk Procurement) Regulations 2017 (GN No 198 of 2017), to import AGO through the Bulk Procurement System.

**WHEREAS, the AGENCY** plays a fundamental role in the operations of this Contract as coordinator of importation of petroleum product through the use of international competitive tender system on behalf of the **Purchaser**.

**WHEREAS, each Purchaser** signatory to the Shipping and Supply Agreement with the **AGENCY** (as specified in R. 5(C) And 17 (2) of The Petroleum (Bulk Procurement) Regulations 2017 GN. No. 198 Of 2017), Together with .....(name of the Supplier) obtained through competitive tendering process administered by the **AGENCY** for the considered period, irrevocably agree to abide by the terms of this contract.

**WHEREAS** OMCs procuring petroleum product under this agreement shall be (i) licensed by **EWURA** and registered by **AGENCY** (ii) at the time of placing their orders, there is no default payment on their shares of refined petroleum product from previous contracts.

#### AND WHEREAS

In consideration of the payment to be made by each Purchaser to the Supplier as hereinafter mentioned, the **Supplier** hereby covenants with the **AGENCY** (on behalf of the **Purchasers**) to supply AGO and to remedy defects therein in conformity with all aspects in respect with provisions of the contract.

Each **Purchaser** as expressed in this contract and the Shipping and Supply Agreement between the **Purchaser** and the **AGENCY** hereby covenants to be bound by this contract and to pay the **Supplier** in consideration of the supply of AGO and the remedying of defects therein, the contract price or such other sum as may become





payable under the provisions of this contract at the times and in the manner prescribed by this contract.

The **AGENCY** confirms that it has collected the procurement requirements of AGO from OMCs, and shall; (i) coordinate invoicing for the respective shares of AGO to be supplied to OMCs by the Supplier; (ii) coordinate diligent receipt by OMCs of AGO from the delivery vessel; (iii) maintain records of delivery and performance and ensure the product imported meet the prescribed specifications.

## **NOW THEREFORE IT IS AGREED AS FOLLOWS:**

### **1.0 EFFECTIVE DATE**

1.1 This Contract shall take effect on .....and shall continue until all obligations have been completed to be performed or terminated as provided hereinafter.

### **2.0 ABBREVIATIONS, DEFINITIONS AND CONSTRUCTION**

2.1 The following Abbreviations shall have the meanings provided:

AGO	Automotive Gasoil
Bbls @60°F	Barrels at 60° Fahrenheit
B/L	Bill of Lading
BPS	Bulk Procurement System
COD	Completion of Discharge
CPP	Clean Petroleum Product
DAP	Delivered at Place (incoterms 2010)
DISPORT	Discharge Port
EWURA	Energy and Water Utilities Regulatory Authority
FOB	Free on Board
ICC	International Chamber of Commerce
INCOTERMS	International Commercial Terms (Set by International Chamber of Commerce, U.K)
IFIA	International Federation of Inspection Agencies
KOJ	Kurasini Oil Jetty
L/C	Letter of Credit
LIBOR	London Inter-Bank Borrowing Official Rates
MT	Metric Tonnage in air



NOR	Notice of Readiness
OMC	Oil Marketing Company
SBM	Single Buoy Mooring
SHINC	Saturdays, Sundays, Holidays included
TASAC	Tanzania shipping Agency Corporation
TBS	Tanzania Bureau of Standards
TPA	Tanzania Ports Authority
TRA	Tanzania Revenue Authority
TT	Telegraphic Transfer
USD	United States Dollar
WMA	Weights and Measure Agency

2.2 The following terms shall have the meanings provided:

- 2.2.1. "Agency" shall mean the Petroleum Bulk Procurement Agency.
- 2.2.2. "Cargo" shall mean a specific delivery/shipment of refined product of Industry Import.
- 2.2.3. "Charter Party Terms" shall mean the terms of the Contract as shall be agreed between the SUPPLIER and the ship owner for a specific Cargo. This shall include any form of agreement.
- 2.2.4. "Cleared Funds" shall mean payments confirmed by Supplier's Bank as received either through Electronic Funds Transfers (EFT) or Letter of Credit.
- 2.2.5. "Delivery Date Range" shall mean the dates of delivery.
- 2.2.6. "Demurrage Committee" shall mean the demurrage validation and verification committee.
- 2.2.7. "Effective Date" shall mean the date of the execution of the contract.
- 2.2.8. "Financial hold product" shall mean a product which has not been secured by purchaser either by way of letter of credit or Electronic Funds Transfers (EFT).
- 2.2.9. "Full Cargo" shall mean total tendered parcel size, with operational tolerance of +/- 5% at Supplier's option, which will be allocated in full to all Purchasers prorata based on their placed orders.
- 2.2.10. "PBPA Marine Surveyor" shall mean Agency Employee assigned to perform marine operations under the Bulk Procurement System.



- 2.2.11. "OMC" shall mean an Oil Marketing Company signatory to this Contract as well as to the Shipping and Supply Agreement who is the Purchaser of petroleum product subject to this Contract.
- 2.2.12. "Purchaser" shall mean any person procuring petroleum products through Bulk Procurement System (BPS).
- 2.2.13. "Product" Shall mean AGO.
- 2.2.14. "Replacement cargo" shall mean a different product which is within the approved specification imported after the initial import has been declared off spec as provided in this contract.
- 2.2.15. "Safe berth" shall mean a berth which vessels so conforming, and having any beam, can at all times safely reach and leave and at which such vessels can lie at all times safely afloat.
- 2.2.16. "Supplier" shall mean an entity signatory to this contract and which has been awarded a tender to supply AGO through BPS.
- 2.2.17. "Tender" shall mean an invitation to treaty/contract to supply AGO under the Bulk Procurement System.
- 2.2.18. "Vessel pre-discharge Meeting" shall mean the meeting chaired by Agency Marine Inspector and attended by nominated Terminal Representatives and receivers, whose main agenda is to agree on product discharge sequence for a particular vessel.

### **3.0 TRANSIT PRODUCTS PROCURED UNDER BPS**

- 3.1 The OMC shall be a notifying party for the transit cargo and shall inform the Supplier the consignee(s) on whose name the product shall be manifested and warehoused under transit, and shall take full responsibility for performance this agreement. In addition, the Purchasers shall;
- a) Place orders /nominate the quantity of product on behalf of the transit consignees;
  - b) Eleven (11) days before the birthday of delivery date range the OMC shall notify the supplier copy PBPA on cargo splits and consignee details.
  - c) Ensure L/Cs are opened and payments are made and transmitted to the Supplier within the specified time; and
  - d) The supplier has the right to perform KYC
- 3.2 Any payment default by the consignee of the transit cargo shall be treated as default by the Purchaser that nominated the defaulting consignee.



#### **4.0 DOCUMENTS FORMING PART OF THE CONTRACT**

4.1 The following documents shall form, and be construed as part of this Contract:

- a) TBS product Specification,
- b) Shipping and Supply Agreement between Agency and OMCs,
- c) Price, Quantity and delivery Schedule.
- d) Bidding documents,
- e) LC and Invoice Formats.
- f) The Agency's Notice of Award to Successful Bidder,
- g) Supplier Performance Security Bond as per format included in the BPS Tender Document,
- h) Holding and release certificate for product under financial hold,
- i) Certified true copy of charter party terms and conditions. The charter party agreement shall not be tempered with.
- j) Bank guarantee from the OMCs
- k) Documents submitted by the Supplier during application for prequalification.
- l) Standard Operating Procedure for Petroleum products receipt/Discharge from the vessel

4.2 The Agency reserves the right to verify the authenticity of the submitted charter party agreement. In the event that it will be established that the supplier has submitted forged or tempered charter party agreement the suppliers shall be penalized in accordance with clause 18.6

#### **5.0 QUANTITY & CARGO NOMINATION**

5.1 The quantity to be supplied under this contract shall be a Full Cargo as per delivery date range in the price, quantity & delivery schedule, prorated to each Purchaser that has placed orders for product on the delivering vessel.

5.2 Minimum Batch per vessel for each Purchaser shall be 500 MT

5.3 Minimum Batch per receiving terminal shall be 1000 MT

5.4 Minimum order per delivery month shall be 1000 MT

5.5 Supplier is not allowed to deliver AGO below or above the tolerance (+/-5%). In the event the vessel has arrived with cargo outside tolerance level the supplier shall;

- i. Notify the Agency upon Purchasers willingness to purchase additional quantity. The product should be for transit only
- ii. Pay a penalty of USD 5 per MT for under delivered quantity.
- iii. Notwithstanding the provision of clause 5.5(a) the supplier shall be required to pay penalty of USD 5 per MT for the added arrival quantity.



- iv. Compute demurrage taking into account the added arrival quantity (Full cargo).
- 5.6 The Supplier request to use BPS vessel to load private transit cargo as stipulated in the price quantity and delivery schedule shall be lodged to the Agency not later than 15 days before the first day of delivery date range. Any request lodged out of time shall not be considered.
- 5.7 Notwithstanding the provision of clause 5.5 of this contract. Acceptance of the Supplier request to use BPS vessel to carry transit cargo shall be made under the following conditions.
  - i. Premium shall be diluted prorata to the added transit cargo. The formula for diluting premium is as provided below  
$$\text{Diluted Premium} = \frac{\text{Tendered Premium} \times \text{Tendered Quantity}}{(\text{Tendered Quantity} + \text{Additional Quantity})}$$
  - ii. Demurrage shall be computed by taking into account the added transit cargo

## **6.0 DELIVERY TIME, POINT AND DISCHARGE OF PRODUCTS**

- 6.1 The delivery date range as per Appendix 1 of the bid document purchased by the Supplier is to be strictly adhered to. PBPA in consultation with the Supplier can request change of delivery date range provided that such request is communicated in writing at least thirty (30) days before the first day of the original delivery date range or at least thirty (30) days before the first day of the revised delivery date range whichever comes first. Any request which will be made out of time will not be considered.
- 6.2 Full cargo shall be delivered DAP ONE SAFE BERTH ONE SAFE port SBM Dar es Salaam for AGO.
- 6.3 The cost of storing product into nominated terminals which can receive direct from SBM shall be borne by the individual Purchasers at the rate and terms agreed between individual Purchasers and terminal owners.
- 6.4 The vessel delivering AGO under the BPS must conform to TPA Shipping standards as well as minimum pressure at vessel discharge Manifold of 8 bars & Maximum pressure of 12 bars at vessel discharge manifold at SBM.
- 6.5 For any vessel not meeting the minimum specification specified in clause 6.4 above resulting in discharge delays; such additional time incurred due to delays shall not count as time on demurrage on that particular vessel as well as the vessels that have already tendered NOR during discharge of poor performing vessel.



## **7.0 QUALITY, QUANTITY AND INSPECTION**

- 7.1 Quality of AGO delivered and discharged pursuant to this contract shall be as per the specifications provided by TBS included in BPS tender document.
- 7.2 The quality of Product delivered under this contract shall be determined by TBS.
- 7.3 The Agency shall reject any AGO that has been confirmed by TBS as not meeting specifications as per clause 7.1 above.
- 7.4 Representative samples of the cargo on arrival at discharge port shall be taken and sealed by the Agency Marine Inspector, Supplier Marine Surveyor PBPA Marine inspectors and TBS and the same shall be retained by all parties. Each party shall keep records of the numbered seals and sample reference number.
- 7.5 The Agency shall retain three sets of sealed samples for at least ninety (90) days.
- 7.6 Any product which has not met the approved TBS specification shall not be offloaded from the delivery vessel.
- 7.7 In the event of any dispute on quality of the cargo, the sealed representative samples taken and retained by Supplier Marine Surveyor Agency Marine Inspectors and TBS in accordance with clause 7.4 above shall be retested by TBS or any other laboratory contracted by TBS in the presence of representative of the Agency, and the Supplier. The results of which shall be the basis of resolving the dispute. Supplier Marine Surveyors shall be allowed to witness testing of all samples.
- 7.8 The arrival quantity under this contract shall be determined by WMA. Density determined by TBS shall provide the basis of determining the arrival quantity.
- 7.9 In the event of any dispute on arrival quantity, the quantity determined by WMA shall be final and binding.
- 7.10 During discharge operations PBPA and Supplier shall;
  - i. Take samples on board the vessel, at the jetty head and tanks of receiving terminals before and after completion of discharge to receiving terminals. The samples taken are for retention purposes.
  - ii. seal all samples and clear labelled them with the location and source, the date and time of sampling, a unique reference number, the sample type, the grade of fuel, the batch number and a means of identifying who drew the sample. The label shall be printed and filled in with ink that does not run when exposed to either water or hydrocarbon.
  - iii. Records of seals numbers for each retained samples.





iv. Retain samples taken under clause 7.10 (a) for at least ninety (90) days.

- 7.11 In the event of any dispute in relation to contamination of product during discharge, samples taken under clause 7.10 shall be used to determine the point and cause of contamination.
- 7.12 Samples taken under clause 7.10 shall be tested at an internationally accredited laboratory mutually agreed by the Agency, the Purchasers and the Supplier.
- 7.13 Each vessel shall carry three load port samples for each vessel compartment, the sample shall be retained by Agency and Supplier Marine Surveyor.

## **8.0 MANAGEMENT OF DISCHARGE OPERATIONS**

- 8.1 Discharge sequence of AGO shall be as agreed during Vessel pre-discharge meeting. Any deviation from the agreed discharge sequence shall be approved by the Agency and the Supplier after consultation with respective receiver.
- 8.2 Purchasers are required to issue ullage confirmation two (2) days before the berthing date at disport.

## **9.0 HANDLING OF REJECTED OFF SPEC CARGO AND REPLACEMENT CARGO**

- 9.1 Subject to clauses 7.1, 7.2, and 7.3 above, TBS shall guide the Agency in accordance with TBS standards and regulations on the way of handling the rejected off spec AGO and the Agency shall advise the Supplier accordingly.
- 9.2 If TBS has confirmed that the imported cargo does not meet AGO standards applicable in BPS tenders, the Agency shall reject the cargo and inform the Supplier to replace the cargo; the replaced cargo must meet required standards and it shall be authenticated by a new set of shipping documents. The new set of shipping documents shall be supplied by the Supplier within terms and conditions of the contract or terms and conditions which will be in place at the acceptable time of delivery whichever is favorable to the Purchasers.
- 9.3 Any such replaced AGO shall be treated as delayed product and shall be subject to late delivery penalties provided in this contract.
- 9.4 Purchasers shall be relieved from the late payment penalties accrued on the rejected cargo. Late payment penalty shall start to accrue upon arrival of the replaced cargo.
- 9.5 The Supplier shall be required to refund all money advanced or cancellation of any confirmed L/C from the Purchaser with compensation for any costs incurred in establishing the L/C once the cargo is rejected as off spec.





- 9.6 Subject to clause 9.4 Purchasers shall be required to open and confirm L/Cs as required by this contract based on the new delivery window to be communicated by the Agency.
- 9.7 In the event that the intended replacement cargo does not meet AGO standards applicable in BPS tenders, notwithstanding any other rights, the Agency shall have the right to immediately call for an emergency tender. All costs and expenses incurred by the Agency in arranging the delivery of a cargo in replacement of the cargo which is off spec shall be borne by the Supplier who supplied off spec product.
- 9.8 Subject to the laws governing the importation of AGO in Tanzania and terms of this contract, any Supplier who will deliver AGO that does not meet the approved specification, that Supplier shall be penalized as stipulated in the Petroleum Act.

## **10.0 PAYMENT OF MARINE SURVEYORS**

- 10.1 In the event the supplier has engaged Marine Surveyor charges for services rendered at discharge port shall be borne independently by supplier.

## **11.0 VESSEL NOMINATION**

- 11.1 Supplier shall nominate the Vessel to the Agency fifteen (15) days prior to the first day of delivery window. Consequently, after consultation with TPA, the Agency shall be required to revert to the Supplier with their acceptance or rejection of the said nominations within twenty-four (24) running hours of receipt of nomination from Supplier.
- 11.2 All vessels delivery product must have Double Hull, meet maximum age limit of fifteen (15) years and meet any other requirement issued by TPA.
- 11.3 The supplier is allowed to substitute the nominated vessel provided that the newly nominated vessel will undergo the vetting process as stipulated in clause 11.1. All cost resulting from substitution of vessels Will be on the account of the suppliers
- 11.4 Subject to clause 11.1 no nomination shall be rejected unreasonably and all rejections must be supported by relevant documentations.



## **12.0 PRICE**

- 12.1 The price of the product DAP SBM, Dar es Salaam shall be the Total of FOB component plus DAP tender premiums as quoted in the Price and Quantity Schedule of AGO herein attached to form part of this Contract.
- 12.2 The FOB component shall be according to the tender called and confirmed by the Agency, this shall be the arithmetic mean of Platt's high and low quotations for dates of pricing as follows:
- a) The applicable dates of pricing shall be as started in the Price and Quantity Schedule of Petroleum product attached to the BPS tender document which forms part of this Contract,
  - b) Any revision of delivery window shall not affect the pricing date range defined in this contract,
  - c) Supplier agrees to supply (transfer ownership of) the quantity (+/-5%) per vessel subject to L/C being established by the Purchaser within the agreed time.
- 12.3 The FOB price reference for AGO 50ppm for the month of delivery as per the price quantity and delivery schedule, shall be Platts Asia Pacific/Arab Gulf market scan under the heading FOB Arab Gulf for AGO 0.005% S' actual United States barrel.
- 12.4 Port Handling Charges as well as TASAC and Delivery order charges shall be on the Supplier's account and shall be part of the DAP premium.
- 12.5 Any published correction to any relevant assessment shall be notified to Purchasers within three (3) working days of the Platt's correction.

## **13.0 INVOICING**

- 13.1 Supplier's final invoices shall be in USD based on FOB Component with applicable pricing month as per clause 12.2 plus DAP premium as provided in the price and quantity schedule and ship's arrival quantity as determined pursuant to clause 13.2.
- 13.2 Notwithstanding provision of clause 12.1, quantity to be used for invoice purposes shall be the lower quantity between load port Bill of lading and ship's arrival quantity measured at discharge port in Tanzania
- 13.3 Final invoice shall contain the breakdown of prices as mentioned in clause 13.1 and 13.2 above, including (a) the detail of all considered quotations, expressed in their original unit, be in USD/MT or USD/Bbls as the case may be, (b) in connection with the quantity stipulated, the details of the two computations below shall be expressly stated in the final invoice to determine the quantity



based on the lower of the load port B/L quantity and the vessel arrival quantity measures at the DISPORT in Tanzania:

- i. for the computation of quantity utilizing the quantity measures at DISPORT, refer to clause 7.8; and
- ii. for the computation of quantity utilizing the quantity measured at load port, the B/L figures shall apply for the final quantity to be invoiced and for the conversion factor to be applied for the conversion of the unit price from USD/Bbls to US/MT.

13.4 The invoice should be as per ***annexure SSC 01.***

13.5 All amounts shall be calculated to 4 (four) decimal places.

13.6 Supplier to provide final commercial invoice to the receivers copied to the Agency within 10 working days from the date of completion of discharge.

13.7 Latest by the fifth (5<sup>th</sup>) day from the date of completion of discharge or by the fifth (5<sup>th</sup>) day from the end of the pricing month, which is later, the Supplier shall send to the Agency copy to all Purchasers the final unit price of the cargo detailing:

- i. The quotation used as published by Platts in actual defined units as per publications (USD/Bbl.
- ii. The detailed computation of the total cargo quantity to be invoiced for each of (i) quantities measured as DIPSORT, and (ii) quantities measured at the load port using the B/L figures.
- iii. Related premium and demurrage provision

13.8 The Agency shall revert within three (3) working days to the Supplier with a copy to all Purchasers to confirm or provide comments on the unit price for the purpose of the final invoice.

13.9 Supplier shall provide to PBPA table of summary of invoiced quantity per purchaser latest 10 calendar days from the date the vessel has completed to discharge. The table shall contain but not limited to name of the purchaser, premium, FOB price and quantity.

13.10 The supplier shall issue final invoice within fourteen (14) days from the date the vessel has completed discharge.

13.11 The final price shall be paid within time frame specified in this contract.

13.12 Profoma invoice to be used only for the purpose of opening L/C. Profoma invoice should not be used in lieu of Final invoice for payment under the Letter of credit. Only Final invoice shall be used for payment under the letter of credit through documentary presentation.



## **14.0 PAYMENT AND PENALTY FOR LATE PAYMENT**

### **14.1 Payment through L/C:**

- a) Purchaser shall latest five (5) calendar days before 1st day of delivery date range or latest five (5) calendar days after receipt of the needed documents from the Supplier provide an irrevocable L/C opened by the Purchaser's Bank but confirmed by any Bank as provided by the Supplier. The Supplier shall provide to the Agency a list of minimum ten (10) confirming banks before signing the contract as provided in the Notice of Award.
- b) L/C issued by any issuing bank shall be confirmed by any of the ten (10) listed banks by the supplier, supplier has a right to reject any issued L/C that has not been confirmed by the ten (10) listed banks.
- c) The L/C shall be payable at the Supplier's bank, without offset, deduction or counter claim and free of all charges latest sixty (60) calendar days from the first day of delivery window.
- d) Charges for establishing the L/C will be borne by the Purchaser.
- e) L/C advising charges and confirmation charges shall be borne by the Supplier.
- f) LC's shall be confirmed within three (3) working days from the date the LC has been issued as long as the purchaser has the acknowledgement from the confirming bank that the L/C has been received Any cost associated with delay of LC confirmation shall be on the account of the supplier.
- g) All commissions and charges from the issuing bank are for the applicant's (buyer's) account. All commissions and charges from the confirming and advising bank are for the beneficiary's (Supplier's) account.
- h) All cost resulting from L/C amendments shall be borne by the party which caused the amendments to be made. If the L/C amendment will be caused by factors which are neither caused by the Supplier nor the Purchaser L/C amendment cost will be shared equally between the Supplier and the Purchaser.
- i) For establishing of L/Cs by the Purchaser, the Supplier shall submit the PFI and all needed documents to the Purchaser and the Agency latest ten (10) calendar days before the first day of delivery window. For purpose of this clause and clause 14.1 and 14.4 of this contract the needed documents are;
  - i) copy of Bill of lading
  - ii) load port certificate of quality



iii) Certificate of origin.

j) In issuing PFI the supplier shall take into account the information provided by OMC in paragraph 3.1 (b) above.

14.2 The purchaser shall not be held responsible for any delays in opening the L/Cs if such delays have been caused by the Supplier's failure to send the needed documents (to enable Purchasers to open L/C) within the time bar stated in this contract. The Purchaser shall immediately upon receipt of the PFI notify the Supplier and the Agency on the intention to make bank transfer or any alternate payment as mutually agreed between Supplier and Purchaser

14.3 The Supplier shall notify the Agency on any alternate payment agreement (including but not limited to bank transfer, pre-payment, fixed payment dates or credit arrangement etc.) with the Purchaser not later than five (5) working days prior to first day of delivery date range.

14.4 Bank Transfer or pre-payment

- a) Any Purchaser who shall prefer to make payments by bank transfer or pre-payment shall effect payments latest three (3) calendar days before 1st day of delivery date range or latest five (5) calendar days upon receipt of proforma invoice (PFI) from Supplier whichever is later.
- b) The Supplier at his discretion may offer discount to bank transfer or pre-payment done by Purchasers.
- c) The purchaser shall not be held responsible for any delays in making bank transfer or prepayment, if such delays have been caused by the Supplier's failure to send the needed documents (to enable Purchasers to make bank transfer or prepayment) within the time bar stated in this contract.

14.5 Purchaser's parent / Affiliate companies shall have the option to establish L/C on behalf of Purchaser.

14.6 Transit parcels shall be paid by the consignees of the said parcels. Purchasers who placed orders shall make sure that the consignees of transit parcels pay for their cargoes within stipulated contractual duration. Any penalty resulting from consignee of transit cargo delays to open LC for the transit parcel shall be on account of the purchaser.

14.7 L/C and bank transfer or prepayment shall be made against presentation of Supplier's commercial invoice and certified copies of shipping documents as listed in clause 14.8 unless mutually agreed otherwise between Supplier and Purchaser.

14.8 For the purpose of this contract copies of shipping documents shall include:

- a) Certificate of origin,



- b) Certificate of Quality (COQ) on vessels ship tank composite sample on arrival at disport issued by TBS,
- c) Certificate on vessel's arrival quantity issued by WMA.

- 14.9 Supplier must ensure that cargo manifest is lodged to all relevant authorities including but not limited to the Agency and TASAC with endorsed copy of Bill of Lading (for customs purposes only) five (5) calendar days before the vessel has tendered NOR. The cargo manifest shall correspond to the PFI and endorsed BL provided to the Purchasers. Cost of lodging cargo manifest and issuing of Delivery order shall be borne by the Supplier.
- 14.10 Any and all costs or charges or penalties resulting from delays in berthing caused by any Purchaser not having settled or performed the required declarations with TRA, TASAC and TPA will be solely payable by Purchaser.
- 14.11 Any and all cost or charges or penalties resulting from delays in lodging of the cargo manifest caused by the Supplier and where such delays result in the Purchaser's delay to make necessary declaration to TRA, TASAC, and TPA will be solely payable by the Supplier.
- 14.12 Where there is any default in providing the L/C or making bank transfer or prepayment on due time, parties shall be guided by the provision of clauses 14.1(g & i), 14.4, 14.15 and 14.16,
- 14.13 Supplier's vessel shall only carry cargo ordered through the Agency or upon approval from the Agency as provided in clause 5.6 and 5.7
- 14.14 Invoices shall be raised for DAP i.e. FOB component plus DAP premiums as stipulated in this Contract and detailing the price computation (including the Platts quotes as published, the conversion factor utilized and its computation, quantity at load port and quantity at DISPORT, supported by documentation stipulated in clauses 14.8 and 14.9.
- 14.15 Purchaser who delays to open L/C or make pre-payment as stipulated in this contract shall be liable to penalties as stipulated in The Petroleum (Bulk Procurement) Regulations, 2017. This penalty is payable to the Agency for distortion of Bulk Procurement System
- 14.16 Purchaser who fails to pay for its share of a AGO at the due date as per the credit period sixty (60) days shall be charged a late payment penalty of LIBOR +2% per annum and be barred from participating in the following BPS tender or both, the payment shall be paid to an escrow account operated by the AGENCY for onward payment to the Supplier. For the purpose of this clause due date is 60 days after the first day of delivery date range.
- 14.17 Notwithstanding the provision of clause 14.15 and 14.16, the Purchaser who fails to pay or open L/C for the ordered product within five (5) days after COD and the product has been discharged as product on financial hold, shall be barred from participating in BPS until it has fulfilled all pending obligations.





- 14.18 All third party charges associated with late payment e.g. TRA Taxes and Penalties, TPA charges and penalties and storage charges, shall be on account of the defaulting party and will be recovered as per actual prevailing costs.
- 14.19 In the event of variation on the invoiced amount, the Purchasers shall pay the remaining unpaid amount within fourteen (14) days after the Supplier has issued the final invoice. Likewise, within fourteen (14) days after the Supplier has issued the final invoice, the Supplier shall refund to the Purchasers any amount over paid.
- 14.20 Subject to clause 14.1 and 14.4 above the Supplier shall notify the Agency on payment status for the vessel in the manner prescribed by the Agency.
- 14.21 In the event that the vessel will not be able to offload her cargo within delivery date range as a result of vessel congestion or any other reason, the Agency, Supplier and Purchaser may agree on payment reference dates and credit period.
- 14.22 LC format shall be as provided in ***annexure SSC 02.***

## **15.0 L/C DELAYED / DEFAULT**

- 15.1 Where there is a default in providing the L/C or making bank transfer or prepayment on due time, (if such delay and or default is not caused by the Supplier) then the Supplier in consultation with Agency has the right to dispose the batch elsewhere. For the purpose of this clause due date shall be five (5) days before first day of delivery date range or five (5) days after receipt of PFI and needed documents whichever is later.
- 15.2 In the event of the late provision of an LC or bank transfer or prepayment by a particular Purchaser the product shall be discharged into a terminal nominated by the Supplier as product on financial hold until payment has been done. Storage cost shall be on the account of the defaulting Purchaser.
- 15.3 When there are ullage constraints as a result of the Purchaser failure to create sufficient ullage to receive the ordered product, the purchaser shall nominate the alternative terminal failure to, the purchaser shall be deemed to have distorted BPS and shall attract penalties as prescribed in the Petroleum (Bulk Procurement) Regulations, 2017 (For the purpose of this provision penalty shall be 0.5 USD per MT per day) also shall be liable to pay demurrage for the delay.
- 15.4 Prior to signing the shipping and supply contract, the Supplier shall inform the Agency at least three acceptable terminals, which Supplier considers acceptable at the time, to discharge the product which would be on financial hold





- 15.5 Where product has been off-loaded as product on financial hold, the product shall be so offloaded as manifested, however, the Purchaser shall be liable to pay storage charges at the rate and terms provided by the receiving terminal.
- 15.6 Where the product has been offloaded on financial hold, the receiving terminal shall issue a holding certificate to the Supplier with copy to Agency. The Holding certificate shall state and guarantee that no product will be released without written confirmation from the Supplier and or its financier. Upon receipt of the funds or of the L/C the Supplier or its financier shall issue a release certificate to the terminal with a copy to the Agency.
- 15.7 The Supplier shall not prevent any vessel from berthing due to financial hold.
- 15.8 Failure to adhere to clause 14.1 and 14.4 above, the Purchaser shall not be allowed to participate in the next tender until such product has been fully paid to Supplier including all associated costs with Supplier, Agency and the receiving terminal.
- 15.9 The Agency guarantees that costs incurred by the Supplier or any receiving terminal resulting from the suppliers exercising right to dispose the product as stipulated in clause 15.1 shall be settled by cashing the bank guarantee provided to Agency by the Defaulting Purchaser, without prejudice to the Agency's rights and/or Supplier or receiving terminal further claims or damages from the Purchaser.
- 15.10 The Agency does not guarantee that the available bank guarantee shall be sufficient to cover all claims raised by the supplier. In the event that the available bank guarantee is not sufficient to cover all cost incurred by the supplier appropriate legal measures shall be taken against the defaulting purchaser.
- 15.11 Any payment from the cashed bank guarantee shall be made by the Agency to the Supplier or any terminal upon submission of relevant supporting claim documents
- 15.12 In the event that the Purchaser has paid taxes but has not opened L/C the Supplier shall continue to have rights (including right to dispose the product) over the product on financial hold until the time when the product has been paid for.
- 15.13 The Supplier shall, when disposing the product on financial hold take into account taxes, wharfage and other costs paid by the defaulting Purchaser. The Supplier, in consultation with the Agency, shall agree on modality to refund taxes, wharfage and other costs paid by the defaulting Purchaser. The refund thereof shall be subject to fulfillment of all obligations and liabilities resulting from failure to open L/C. Failure by Purchaser to fulfill all obligations and liabilities resulting from failure to open L/C the amount to be refunded shall be used to cover outstanding obligations.



- 15.14 The Supplier shall within 10 days after disposal of product on financial hold submit to the Agency all documents relating to selling of the product in question including detailed elaboration of the costing for the product this shall include but not limited to losses, and storage charges. Failure to submit all the needed documents implies that there was no cost incurred in disposing the product on financial hold.

## **16.0 DOCUMENTS**

- 16.1 Supplier shall forward to Purchaser and the Agency the following documents not later than eight (8) calendar days prior to the first day of delivery date range.
- a) Copy of bill of lading endorsed with the relevant quantity per Purchaser;
  - b) Copy of load port Certificates of Quality;
  - c) Copy of load port Certificates of Quantity.
  - d) Copy of Certificate of Origin;
  - e) Copy of load port cargo manifest
  - f) Valid calibration certificates of;
    - i. Ullage Temperature Interface (UTI)
    - ii. All vessel Tanks
  - g) Copy of certificate of quality for each vessel tank issued at load port.
- 16.2 Failure to submit document within three days from BL date the supplier shall be liable for penalty of 0.5 per MT per day payable to the purchasers.
- 16.3 Supplier shall forward to Purchasers and the Agency the following documents prior to discharge:
- a) Vessel ullage report issued at disport,
  - b) Certificate of Quantity at disport,
  - c) Certificate of Quality on representative Ship's tank composite sample taken and sealed on arrival at discharge port.
  - d) Tank cleanness certificate issued before loading.
- 16.4 For the purpose of clause 16.2 above, there shall be no discharge of cargo before receipt of the documents required prior to discharge.
- 16.5 Upon completion of discharge the Supplier shall within five (5) working days from the date of completion of discharge forward the following documents to the Agency:
- a) Copy of Charter Party Agreement or Fixture
  - b) Statement of facts at Disport,
  - c) Pumping Log at Disport,
  - d) Full Inspection Report after completion of discharge,



- e) Copy of list of representative ship's tank composite samples on arrival at disport retained by Marine Surveyor appointed by the Supplier.
- f) Copy of list of representative ship's tank composite samples on arrival at disport retained by TBS.
- g) Copy of list of load port ship's tank composite samples

16.6 Where the vessel has been allocated a berthing window and discharge is delayed due to Supplier's failure to submit the required documents prior to discharge any and all such costs incurred on either party shall be borne by the Supplier.

## **17.0 LAYTIME**

- 17.1 Lay time shall be 72 hours SHINC for a full cargo discharged at SBM Dar es Salaam, commencing 6 hours from tendering Notice of Readiness or upon vessel 'All Fast', whichever is earlier.
- 17.2 Time lost due to non-berthing of tankers during night time and/or awaiting daylight, high tide, shall not count as used laytime.

## **18.0 DEMURRAGE**

- 18.1 Supplier shall additionally be entitled to charge demurrage which shall be as stipulated in the charter party terms and conditions but subject to a maximum of USD 22, 000 per day pro rata based on actual discharged quantity at SBM Dar es salaam port, which may be higher but not lower than the tendered volume for specific cargo for pro rata computation purposes.
- 18.2 A provision for demurrage of US\$ 2 /MT to be covered under the L/C.
- 18.3 Supplier shall provide demurrage computation to the Agency within seven (7) working days from the COD date of each cargo. For the purpose of verification, Supplier shall also be required to avail to the Agency the relevant supporting documents. Failure to submit the claim within time and to submit necessary documents will render the claim null and void.
- 18.4 The Agency through its demurrage committee shall validate the submitted Demurrage computation and respective supporting documents within fourteen (14) working days after receipt of the demurrage computation from the Supplier. Failure to, the demurrage computation submitted by the Supplier shall be considered as final and binding save for fraud or manifest error.
- 18.5 Computation of demurrage shall be based on the demurrage charges as per the charter party agreement terms and conditions but subject to a maximum United States dollar twenty-two (USD 22, 000) per day.



- 18.6 In the event it will be established that the submitted charter party agreement is not genuine and the shown demurrage cost does not reflect the actual demurrage charged by the charterer the supplier shall be liable to a penalty of USD 50,000 payable to the Agency.
- 18.7 The final demurrage cost for that particular vessel shall be prorated to all Purchasers after excluding demurrage cost which shall be paid by the causative parties. The Supplier shall issue demurrage invoice to causative parties. Particulars of the causative parties shall be communicated to the Supplier by the Agency.
- 18.8 Based on clause 18.7 above the Supplier shall issue demurrage invoice within seven (7) calendar days after final cost has been concluded as per clause 18.5.
- 18.9 Purchaser shall pay prorated final Demurrage cost due within fourteen (14) calendar days of receipt of invoice from the Supplier. In case of any demurrage refund, the Supplier shall pay the Purchaser within fourteen (14) calendar days from date of invoice.
- 18.10 Supplier shall within thirty (30) days from the date of issuing invoice submit to the Agency a report of demurrage of payment by respective Purchasers'. Failure to it will be presumed that the Supplier has been fully paid and there is no pending demurrage claim.
- 18.11 In the event the provisional demurrage under clause 18.2 above does not suffice or the relevant Purchaser did not make payment within the time bar as stated in clause 18.9, the Agency guarantees to pay demurrage by cashing the same from relevant Purchaser's bank guarantees or utilizing cash cover latest ninety (90) days from issuance of the invoice. However, the Agency does not guarantee that the available bank guarantee shall be sufficient to cover all claims raised by the supplier. In the event that the available bank guarantee is not sufficient to cover all cost incurred by the supplier, appropriate legal measures shall be taken against the defaulting purchaser.
- 18.12 If the vessel arrives between 18:01 hrs. to 05:59 hrs., NOR tendered shall be considered at 06:00 am of the next day; and laytime shall apply as per clause 17.
- 18.13 For vessel arriving within the allocated delivery window, time will commence from the time when the NOR is tendered subject to terms and conditions of this contract.
- 18.14 For vessel arriving before the allocated delivery window, time will commence from 06:00 am of the first day of delivery window; and laytime shall apply as per clause 17.
- 18.15 For vessel arriving after the allocated delivery window, the demurrage will commence when the vessel is ALL FAST or commenced mooring.



18.16 For vessel arriving after 18:01 hrs. of the last date of the allocated delivery window shall be viewed as missing delivery date range and the demurrage will commence when the vessel is ALL FAST or commence mooring.

18.17 Demurrage invoice shall be as provided in annexure 03.

## **19.0 STATEMENT OF ACCOUNTS**

19.1 Supplier is obliged to issue statement of accounts to all receivers on monthly basis. The statement of account shall cover product and demurrage payments. If the supplier will not send the statements of accounts thirty (30) days after the initial reminder, the Agency and Purchaser shall not be held liable for any delays to settle the outstanding demurrage.

## **20.0 HOLDING PAID UP PARCELS AS SECURITY FOR UNPAID UP PARCELS**

20.1 The supplier shall not hold paid up parcels as security for un paid parcels in the same tender or different tenders.

20.2 For the purpose of this contracts parcels in the same tender shall be considered as separate parcels based on the below circumstances

- (a) Transit parcels
- (b) Separate PFI have being issued

## **21.0 TITLE AND RISK**

21.1 Title to the product shall pass to the buyer from the seller upon establishment of the L/C or pre-payment by the buyer.

21.2 Risk to the product (including product on financial hold) shall pass from the Supplier to the individual Purchaser as the product passes the vessel's permanent flange at disport SBM Dar Es Salaam.

21.3 As a separate and independent condition Purchasers agree that unless and until the full purchase price is tendered, the product shall be the Supplier's product

21.4 Until delivery and discharge of the product from the delivery vessel the Supplier shall insure the product against all risk to full replacement value and shall not re-sell, use or part with possession with them.



## 22.0 TERMINATIONS

22.1 Without prejudice to any other remedy for breach of this Contract, or by written notice of default sent to the concerned party, this Contract shall be terminated by either party upon the occurrence of any of the following:

- a) If the other party causes a fundamental breach of the Contract, fundamental breach of Contract shall include, but shall not be limited to the following:
  - i. The Supplier fails to deliver AGO within the period(s) specified in the contract, or within any extension thereof granted by the Agency, or
  - ii. The Supplier fails to perform any other obligation(s) which affect security of supply under the Contract, or
  - iii. The Supplier has decided to unilaterally repudiate the Contract, or
  - iv. The Supplier has been convicted of having engaged in corrupt or fraudulent practices in competing for or in executing the Contract, or
- b) Upon dissolution, bankruptcy, insolvency, or appointment of a receiver, liquidator, or trustee in bankruptcy for that party.
- c) Written notice to a party that a law has been introduced or amended by an Act of Parliament so that it is unlawful for that party to operate or perform its duties and obligations under this Contract or realize the benefits of this Contract.

22.2 Notice of termination under this Contract shall not discharge or relieve the withdrawing party of any rights, duties, obligations or liabilities arising prior to such termination, nor prejudice any rights or remedy accruing before, at or in consequence of such termination, or any proceeding with respect to any such right or remedy including any proceedings by way of arbitration provided for hereunder.

22.3 In the event the Agency terminates the Contract pursuant to this clause, the Agency shall make necessary arrangement in such manner as it deems appropriate, to supply petroleum products similar to the undelivered cargo, and the terminated Supplier shall be liable to the Agency for actual costs for such similar petroleum product as well as penalties as stipulated in this contract.

## 23.0 LATE DELIVERY

23.1 Late delivery default arising from causes other than a *force majeure* event shall attract a late delivery penalty of US\$ 0.5 per metric ton per day to be





paid by a Supplier to the Agency in order to compensate buyers for compromising their minimum stocks or for compelling them to procure AGO from other sources.

- 23.2 For this purpose, late delivery penalty shall accrue from the first day after the allocated delivery date range until the vessel arrives.
- 23.3 Supplier shall make payment for late delivery to the Agency within thirty (30) days from COD and the Agency shall make the payment to the purchaser fifteen (15) days after receipt of the funds from the supplier.
- 23.4 Penalty prescribed in clause 23.1 and 23.2 shall be paid to an escrow account operated by the Agency for onward payment to the purchaser within thirty days from the date of signing a settlement deed/minutes with the Agency.
- 23.5 Until such payment is affected in full and receipt of monies confirmed by Purchasers the Supplier shall not participate in any of the tenders for the supply of AGO under the BPS until confirmation of full payment
- 23.6 Notwithstanding the provisions of clause 23.1 the lay-time on late arriving vessel shall commence when the vessel berths.
- 23.7 Demurrage costs resulting from cascading effect caused by late delivery of the BPS vessel shall be borne by the Supplier of the late delivery vessel.
- 23.8 For purpose of this contract, the cascading effect shall be limited to a maximum of three subsequent vessels which will discharge products after the late delivery vessel. For the purpose of this clause vessels shall include non BPS vessels.
- 23.9 For purposes of ensuring efficient and effective BPS, the Agency shall take necessary measures to minimize cascading effects.
- 23.10 Priority on berthing for discharge shall be given to CPP vessels that shall arrive within the contracted delivery date range.
- 23.11 Any vessel arriving after the last date of the allocated delivery date range shall berth and discharge if at all she will not interfere with the next vessel. Otherwise she shall to wait on queue until when there is a window for berthing to discharge.
- 23.12 AGENCY reserves the right to allow priority berthing in consultation with other government authorities for national interest.

## **24.0 DELIVERY DEFAULT**

- 24.1 Delivery default shall be deemed to have occurred if vessel does not arrive and Tender Notice of Readiness to discharge at Dar es salaam within seven (7) consecutive calendar days after the last day of the delivery date range, in which case the Purchaser shall be relieved of its obligation to buy the cargo





and the Agency reserves the right to encash the Supplier's Performance Security Bond.

24.2 The Supplier can demonstrate that there is a planned delivery by providing copies of the undermentioned documents to the Agency on the first day of delivery date range:

- a) Bill of Lading,
- b) Certificate of quality and quantity,
- c) Vessel NOR at the load port, and
- d) Load port statement of facts.

Provided that submission of the above required documents shall not relieve the Supplier to pay late delivery penalty.

24.3 In the event that Supplier cannot provide the required documents as per clause 24.2 above to the Agency, the Agency may call an emergency tender to substitute the defaulted cargo. The Supplier shall be considered to have distorted BPS and shall be liable to the fines and penalties as provided by the laws governing importation of AGOs in Tanzania through Bulk procurement system

24.4 In addition to penalties provided in clause 24.3 the defaulting Supplier shall be barred from participating in Petroleum Bulk Procurement System as Supplier for three (3) consecutive tenders.

24.5 In addition, the Supplier shall be responsible for all direct cost associated with product delivery outside the allocated delivery date range. For purpose of clarification direct cost shall mean extra freight and premium for an emergency cargo.

## **25.0 PERFORMANCE SECURITY BOND**

25.1 Within nine (9) calendar days after receipt of the Notice of Award from the Agency, the Supplier shall issue a Performance Security Bond in the form of a bank guarantee as per format specified by the Agency in the tender documents and which shall be valid for the whole duration of the Contract period.

25.2 Failure to comply with the requirement to provide Performance Security Bond as stated in Clause 25.1 above, shall constitute sufficient grounds for withdrawing the Notice of Award and forfeiture of the bid bond in which case the Agency may call for an emergency tender or award the tender to the second lowest responsive bidder.

25.3 It is the responsibility of the Supplier to make sure that the performance bond is valid throughout the contractual period. For the purpose of this clause



contractual period means the whole duration when there are pending obligations to be performed by the Supplier.

- 25.4 If at the time when the Supplier's performance bond is supposed to be cashed it is established that the same has expired, the Supplier shall be required to make payment by way of bank transfer within five (5) calendar days to be computed from the date on which the performance security bond was supposed to be cashed.
- 25.5 If the supplier has refused to submit the performance bond as required by clause 25.1 the Agency has the right to use existing valid performance bond issued by the supplier for any other tender to cover cost associated with this contract.
- 25.6 Performance bond issued in relation to this contract can be used to cover cost related to the supplier's performance in other contracts.

## **26.0 GENERAL PENALTY FOR NON-PERFORMANCE**

- 26.1 Notwithstanding any provision of this contract the Supplier or Purchaser shall not be allowed to participate in the next tender, if there are pending obligations resulting from this tender or previous tender, provided that a proper notice has been issued asking the supplier or purchaser to fulfill the contractual obligation and has not acted based on the issued notice.
- 26.2 The supplier or purchaser shall be allowed to participate in the next tender upon fulfillment of the contractual obligations.

## **27.0 DISPUTE RESOLUTIONS**

- 27.1 Notwithstanding any dispute the Supplier shall be required to continue without delay to supply products in accordance with the terms of this agreement.
- 27.2 If at any time during the continuance of this Contract any dispute, difference or question relating to the construction, meaning or effect of this Contract or of any of the clauses herein shall arise between the parties, then the aggrieved or affected party shall give written notice of not less than seventy-two (72) hours to the other party of such dispute, difference or questions.
- 27.3 Parties shall be required to settle their dispute amicably within fifteen (15) days of the occurrence or commencement of the amicable dispute resolution, if the parties fail to settle the dispute amicably parties shall refer the disputes for arbitration.
- 27.4 If parties fail to settle the dispute amicably, such dispute shall be referred to arbitration within ninety (90) days from the date it has been established that parties have failed to resolve the dispute amicably.



- 27.5 The arbitration shall be resolved with its seat in Dar es Salaam Tanzania or any other place mutually agreed by both parties conducted in English language by three arbitrators pursuant to the rules of the ICC unless the parties agree otherwise.
- 27.6 Where a dispute between the Parties is solely of a technical nature, the Parties shall have the option of referring such dispute to an Expert in accordance with Clause 27.7 below.
- 27.7 If either Party gives notice in writing to the other of its intention to refer a dispute to an Expert for determination, the following shall apply:
- a) Parties shall seek to mutually agree in good faith on the appointment of such Expert. The Expert shall be an appropriately qualified and experienced professional who is knowledgeable regarding the international AGO industry and is technically competent in the area of the subject of the dispute to act as the Expert; and
  - b) Failing agreement by the Parties regarding the appointment of the Expert within fourteen (14) days of the above notice, the matter shall be referred to full process for the matter to be referred to arbitration
  - c) If the appointment of an Expert is agreed by the Parties:
    - i. the Parties shall provide their submissions and supporting information with respect to the dispute to the Expert within fourteen (14) days of the date of the appointment of the Expert;
    - ii. the Expert shall resolve or settle such dispute taking due and proper account of the submissions of the Parties and shall render his decision in respect thereof within twenty-eight (28) days following the date of the appointment of the Expert;
    - iii. the Expert shall be given all reasonable access to the relevant documents and information relating to the dispute, and access to the Delivery Point and sampling, weighing, measurements and other data as the Expert shall reasonably require;
- 27.8 Any decision of the Expert shall be final and binding on the Parties except in the case of fraud or manifest error, in which case such alleged fraud or manifest error by the Expert shall be dealt with in accordance with the law of United Republic of Tanzania.



- 27.9 The costs of the Expert in settling or determining a dispute shall be borne by the losing Party unless the Expert determines otherwise.
- 27.10 The Agency shall lodge claims and take legal measures against the supplier on behalf of the buyers, however on special circumstances the Agency may allow buyers to personally lodge claims or take legal measures against the supplier and shall notify the supplier accordingly.
- 27.11 The supplier may decide to lodge claims or take legal measures against individual buyers without including the Agency, however before doing so the Agency shall be notified and be given the option to be included in the dispute.

## **28.0 FORCE MAJEURE**

- 28.1 Neither Supplier nor Purchaser shall be liable for damages or penalties for any failure or delay in performance of any obligation (except the obligations to make payment of any money due under this Agreement), where such failure or delay is caused by force majeure, being any event, occurrence or circumstance reasonably beyond any control of that party.
- 28.2 For the purposes of this Agreement Force Majeure shall be limited to failure or delay caused by or resulting from: -
- a) piracy attacks, fires, wars (whether declared or undeclared), riots within the areas of operation, embargoes, accidents, restrictions imposed by any governmental authority independent of the Parties (including allocations, priorities, requisitions, quotas and price controls).
  - b) acts of God, earthquake, flood, fire or other natural physical disaster, named storms, hurricanes, typhoons and the like, but excluding other weather conditions, regardless of severity.
- 28.3 In the event that a Force Majeure situation exists and this is preventing or delaying performance of any obligations under this Agreement the Party giving the notice of the occurrence of force Majeure event shall use reasonable endeavors to minimize the effect of such Force Majeure and shall provide proof of efforts taken to minimize the effects of force Majeure in the performance of the contract. Failure to do so shall preclude the Party from subsequently claiming that the performance was prevented or delayed by such an occurrence.
- 28.4 If either of the Parties is prevented from, or delayed in, performing any of its obligations under this Agreement by Force Majeure (as defined above) and which, by the exercise of reasonable diligence, the said Party is unable to avoid, prevent or provide against, then it must promptly notify the other Party in writing of the circumstances constituting the Force Majeure ( with supporting evidence of the occurrence of force majeure event) and of the obligation the performance of which is thereby prevented or delayed and, to



the extent possible, inform the other party of the expected duration of the force majeure event. Failure to do so shall preclude the Party from subsequently claiming that the performance or progress of the Work or any part thereof was delayed by such an occurrence.

- 28.5 If either of the Parties is prevented from, or delayed in, performing any of its obligations under this Agreement by Force Majeure (as defined above), the time of Supplier to make, or Purchaser to receive, delivery hereunder shall be extended during any period in which delivery shall be delayed or prevented by reason of any of the foregoing causes up to a total of ten (10) days. If any delivery hereunder shall be so delayed or prevented for more than ten (10) days, either party may terminate this contract with respect to such delivery upon written notice to the other party.

## **29.0 WAIVER AND SEVERABILITY OF LIABILITY**

- 29.1 Any waiver or concession that may be granted by a party (ies) hereto in regard to any of terms and conditions of this Contract shall not in any way affect or prejudice that party's rights herein.
- 29.2 All such waivers or concessions may be withdrawn at any time without prior notice. No waiver by either party of any breach of this contract shall be considered as a waiver of any subsequent breach of the same or any provision.

## **30.0 ASSIGNMENT**

- 30.1 No party shall assign this contract in whole or in part without written consent to the other party except to an affiliate, however the assignor will remain liable for the assignee's full performance.
- 30.2 AGENCY shall represent/ act for and on behalf of the receivers in any dispute which shall arise under the importation of petroleum product through the bulk procurement system provided that the dispute shall involve all receivers participated in a particular tender. Any claim involving individual receiver or a group of receivers shall be handled by the respective receivers in person.
- 30.3 The AGENCY before instituting any legal proceeding shall consult the Solicitor General. The solicitor General may based on the powers conferred to him under order 4 (1) of the Office of the Solicitor General (Establishment) order, GN. No. 50 of 2018 intervene on any legal proceeding instituted or intended to be instituted by the Agency.



### **31.0 ENTIRE CONTRACT AND DURATION**

- 31.1 This Contract is the entire Agreement between the parties and supersedes all prior Agreements and understandings whether written or oral.
- 31.2 This Contract shall not be varied or amended in any way except in writing signed by representatives of all the parties' signatories herein. It shall remain enforceable on the day of its signature by all parties herein, and it shall remain in force and effect until amended or ended by a written signed by all the parties' signatory herein.
- 31.3 In case of any conflict and or difference between this Contract and any other document in the bid document, the provisions of this Contract shall prevail.

### **32.0 COMMUNICATIONS**

- 32.1 All communications shall be deemed having been made on the date on which they have been sent when using email which shall be the preferred mode of communication given the number of parties concerned.
- 32.2 The Supplier shall be required to have a local representative in Tanzania throughout the duration of the tender.
- 32.3 Communications to the Supplier shall be sent to the email addresses notified on the date of award.
- 32.4 Communications to the Agency shall be sent to the following addresses:

**EXECUTIVE DIRECTOR  
PETROLEUM BULK PROCUREMENT AGENCY**

P.O. Box 2634  
Dar es Salaam  
Tel. +255 22 2128 885  
Fax +255 22 2128 886  
[info@pbpa.go.tz](mailto:info@pbpa.go.tz)

### **33.0 GOVERNING LAW**

- 33.1 This contract shall be construed in accordance with and governed by the laws of Tanzania.
- 33.2 The arbitration shall be governed by the International Arbitration Rules (International Chamber of Commerce – Arbitration and ADR Rules).





## 34.0 GENERAL

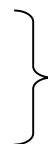
- 34.1 To the extent that the incoterms are not in conflict with the terms of this Contract, the parties hereby agree to be bound by the DAP Incoterms and amendments thereof.

## 35.0 DECLARATIONS

- 35.1 Parties signatory to this contract declare that, they will adhere to this contract as well as to The Petroleum Act No. 21 of 2015 and the Petroleum (Bulk Procurement) Regulation, 2017 (G.N. No. 198 of 2017)
- 35.2 We, the undersigned, duly authorized by our respective companies, hereby agree to the provisions of this contract:

**IN WITNESS WHEREOF**, the authorized representatives of the Parties hereto have executed these presents in the manner and on the dates hereafter appearing:

**SIGNED** and **SEALED** with the common  
Seal of PETROLEUM BULK PROCUREMENT AGENCY  
This .....



### **IN THE PRESENCE OF:**

NAME: .....  
SIGNATURE: .....  
POSTAL ADDRESS: 2634 DAR ES SALAAM  
QUALIFICATION: .....

NAME: .....  
SIGNATURE: .....  
POSTAL ADDRESS: 2634 DAR ES SALAAM  
QUALIFICATION: .....

SIGNED and SEALED with the common  
Seal of .....  
This .....



### **IN THE PRESENCE OF:**

NAME: .....  
SIGNATURE: .....  
POSTAL ADDRESS: .....  
QUALIFICATION: .....





NAME: .....  
SIGNATURE: .....  
POSTAL ADDRESS: .....  
QUALIFICATION: .....

### ***ANNEXURE SSC 01.***

#### Counterparty Details

P.O. Box  
Dar Es Salaam  
Tanzania

#### Commercial Invoice

Invoice No	(Invoice Reference)
Our Ref	(Tba)
Position	(Tba)
Geneva	(Date)
Trade Type	Physical
Book Month	(Month Of Booking)

Quality  
Quantity BI  
Quantity Ship Before Discharge  
Conv. Factor BI  
Conv. Factor Disport'  
Shipped Via  
Delivery  
Disport  
B/L Date  
Cod Date

Unit Price BI  
Unit Price Ship Fig

Premium

Final Unit Price BI  
Final Unit Price Ship Fig



Final Amount Bl  
Final Amount Ship Fig

Total Amount Due To (Company Name)

Usd

### ***ANNEXURE SSC 02.***

#### **PROPOSED LETTER OF CREDIT FORMAT**

AS PER YOUR REQUEST, PLEASE FIND HERE BELOW OUR LETTER OF CREDIT FORM

27: SEQUENCE OF TOTAL: 1/1

40A: FORM OF DOCUMENTARY CREDIT/ IRREVOCABLE

20: DOCUMENTARY CREDIT NUMBER

31C: DATE OF ISSUE

40E: APPLICABLE RULES / UCP LATEST VERSION

31D: DATE AND PLACE OF EXPIRY

51A: APPLICANT BANK  
(INSERT SWIFT CODE)

50: APPLICANT;

59: BENEFICIARY:

32B: CURRENCY CODE, AMOUNT:

39A: PERCENTAGE CREDIT AMOUNT TOLERANCE ON QUANTITY AND VALUE ARE  
ACCEPTABLEI: .....

41A: AVAILABLE WITH/BY: CONFIRMING BANK OR ADVISING BANK COUNTERS



42P: DEFERRED PAYMENT TERMS: BY DEFERRED PAYMENT 60 CALENDAR DAYS FROM THE FIRST DAY OF DELIVERY AGREED DELIVERY DATE RANGE (1ST DAY OF DELIVERY DATE RANGE TO COUNT AS DAY ONE)

43P: PARTIAL SHIPMENTS  
NOT ALLOWED

43T: TRANSHIPMENT  
ALLOWED

44E: PORT OF LOADING:

44F: PORT OF DISCHARGE:

44B: PLACE OF FINAL DELIVERY /DESTINATION:

45A: DESCRIPTION OF GOODS AND/OR SERVICE:

46A: DOCUMENTS REQUIRED: DOCUMENTS IN ONE ORIGINAL AND ONE COPY/PHOTOCOPY, UNLESS OTHERWISE STATED:

1. COMMERCIAL INVOICE
2. CERTIFICATE OF ORIGIN (COPY/ FAX COPY ACCEPTABLE)
3. CERTIFICATE OF QUALITY ISSUED ON ARRIVAL AT DISPORT BASED ON SHIP'S TANK'S COMPOSITE SAMPLE ISSUED BY INDEPENDENT INSPECTOR AND TBS (COPY/FAX COPY ACCEPTABLE)
4. CERTIFICATE OF QUANTITY ISSUED ON VESSELS ARRIVAL QUANTITY AT DISPORT ISSUED BY INDEPENDENT INSPECTOR (COPY /FAX COPY ACCEPTABLE)

IN THE EVENT THE ABOVE MENTIONED DOCUMENTS ARE NOT AVAILABLE AT TIME OF L/C UTILISATION, THEN PAYMENT IS TO BE MADE AGAINST PRESENTATION OF:

A. SIGNED COMMERCIAL INVOICE (FAX/PDF EMAIL COPY ACCEPTABLE)  
AND

B. SELLER'S LETTER OF INDEMNITY ISSUED BY THE BENEFICIARY IN THE FORMAT BELOW (FAX/PDF EMAIL COPY ACCEPTABLE)

-QUOTE-

FROM :

TO



DATE

## LETTER OF INDEMNITY

DEAR SIRs,

WE REFER TO A CARGO OF            METRIC TONS OF ... ("CARGO") ... SHIPPED ON BOARD THE TANKER... ("NAME") ... FOR DELIVERY AT ("DISCHARGE PORT")

ALTHOUGH WE HAVE SOLD AND TRANSFERRED TITLE OF SAID CARGO TO YOU, WE HAVE BEEN UNABLE TO PROVIDE YOU WITH THE FOLLOWING DOCUMENTS:

1. CERTIFICATE OF ORIGIN (COPY / FAX COPY ACCEPTABLE)
2. CERTIFICATE OF QUANTITY ISSUED ON VESSELS ARRIVAL QUANTITY AT DISPORT ISSUED BY INDEPENDENT INSPECTOR (COPY /FAX COPY ACCEPTABLE)
3. CERTIFICATE OF QUALITY ISSUED ON ARRIVAL AT DISPORT DISPORT BASED ON SHIP'S TANK'S COMPOSITE SAMPLE ISSUED BY INDEPENDENT INSPECTOR AND TBS (COPY / FAX COPY ACCEPTABLE)

('THE DOCUMENTS') COVERING THE SAID SALE

IN CONSIDERATION OF YOUR PAYING THE FULL PURCHASE PRICE OF U.S. DOLLARS ... ("INVOICED AMOUNT") ..., WE HEREBY EXPRESSLY WARRANT THAT WE HAVE GOOD AND MARKETABLE TITLE TO THE GOODS, AND THAT WE HAVE FULL RIGHT AND AUTHORITY TO TRANSFER SUCH TITLE TO YOU AND TO EFFECT DELIVERY OF THE SAID CARGO.

WE FURTHER AGREE TO MAKE ALL REASONABLE EFFORTS TO OBTAIN AND SURRENDER TO YOU AS SOON AS POSSIBLE THE DOCUMENTS. WE IRREVOCABLY UNDERTAKE TO PROTECT, INDEMNIFY AND SAVE YOU HARMLESS FROM AND AGAINST THE DAMAGES, COSTS AND EXPENSES WHICH YOU MAY SUFFER BY REASON OF THE DOCUMENTS REMAINING OUTSTANDING, OR BREACH OF THE WARRANTIES GIVEN ABOVE.

OUR OBLIGATION TO INDEMNIFY SHALL BE GOVERNED BY THE SHIPPING AND SUPPLY CONTRACT BETWEEN OURSELVES AND THE PETROLEUM BULK PROCUREMENT AGENCY HOWEVER YOU SHALL BE REQUIRED TO GIVE US NOTICE OF ASSERTION OF ANY CLAIM(S) AND FULL OPPORTUNITY TO CONDUCT THE DEFENCE THEREOF AND THAT YOU SHALL NOT SETTLE ANY SUCH CLAIM(S) WITHOUT OUR APPROVAL.

THIS LETTER OF INDEMNITY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW WHICH GOVERN THE SHIPPING AND SUPPLY CONTRACT BETWEEN OURSELVES AND PETROLEUM BULK PROCUREMENT AGENCY (THE LAWS OF TANZANIA). ANY DISPUTES, CONTROVERSIES OR CLAIMS ARISING OUT OF OR IN RELATION TO THIS LETTER OF INDEMNITY OR THE BREACH, TERMINATION OR INVALIDITY THEREOF SHALL BE SUBJECT TO DISPUTE RESOLUTION MECHANISM PROVIDED IN THE SHIPPING AND SUPPLY



CONTRACT BETWEEN OURSELVES AND THE PETROLEUM BULK PROCUREMENT AGENCY.

THIS LETTER OF INDEMNITY SHALL EXPIRE SIX MONTHS AFTER THE ISSUING DATE OR UPON OUR PRESENTATION OF THE SHIPPING DOCUMENTS TO YOU, OR UPON RECEIPT AND ACCEPTANCE OF THE PRODUCT WHICHEVER OCCURS FIRST.

... ..... ("COMPANY")

AUTHORISED SIGNATORY/IES

-UNQUOTE-

**47A: ADDITIONAL CONDITIONS:**

1. BENEFICIARY IS ALLOWED TO INVOICE WITHIN THE OVERALL LC AMOUNT, USD 1.00 PER METRIC TON TO COVER PROVISIONAL DEMURRAGES
2. THIRD PARTY DOCUMENTS ARE ACCEPTABLE, EXCEPT COMMERCIAL INVOICE AND LETTER OF INDEMNITY.
3. TYPOGRAPHICAL AND/OR SPELLING ERRORS, EXCEPT ON FIGURES AND AMOUNT, ARE NOT TO BE CONSIDERED AS DISCREPANCIES.
4. IF PAYMENT DUE DATE IS ON A SUNDAY OR A MONDAY BANK HOLIDAY IN NEW YORK, PAYMENT WILL BE EFFECTED ON THE FOLLOWING BANKING DAY. IF PAYMENT DUE DATE IS ON A SATURDAY OR A BANK HOLIDAY OTHER THAN A MONDAY IN NEW YORK, PAYMENT WILL BE EFFECTED ON THE PRECEDING BANKING DAY PRIOR TO DUE DATE.
5. DOCUMENTS DATED PRIOR TO LC ISSUANCE ARE ACCEPTABLE.
6. DOCUMENTS WITH A DIFFERENT NAME BUT SERVING THE SAME PURPOSES ARE ACCEPTABLE, EXCEPT SIGNED COMMERCIAL INVOICE AND LETTER OF INDEMNITY.
7. DOCUMENTS UNDER THIS L/C MAY BE DISCOUNTED AT BENEFICIARY'S REQUEST AND EXPENSE
8. IN CASE OF ANY AMOUNT IN FAVOUR OF THE APPLICANT, SUCH AMOUNT WILL BE SETTLED WITHIN THE LC
9. DOCUMENTS SHOWING DIFFERENT QUANTITIES OTHER THAN INVOICE ARE ACCEPTABLE PLUS OR MINUS 5 PERCENT TOLERANCE.



71B: CHARGES FOR ESTABLISHING THE LC ARE FOR THE ACCOUNT OF THE APPLICANT, LC ADVISING CHARGES, CONFIRMATION CHARGES AMENDMENT CHARGES, DISCREPANCIES CHARGES AND ANY OTHER CHARGES (IF ANY) ARE FOR THE ACCOUNT OF THE BENEFICIARY.

48: PERIOD FOR PRESENTATION: DOCUMENTS PRESENTED LATER THAN 21 DAYS AFTER DELIVERY DATE, BUT WITHIN VALIDITY OF THE CREDIT ARE ACCEPTABLE.

49: CONFIRMATION INSTRUCTION: CONFIRM / ()

53A: REIMBURSING BANK: (REIMBURSING BANK SWIFT CODE)

57A: ADVISE THROUGH' BANK: TO BE ADVISED CASE BY CASE (AS PER PFI)

78: INSTRUCTIONS TO PAYING/ACCEPTING/NEGOTIATING BANK: (TO BE INSERTED BY THE BANK) ...

UPON RECEIPT OF YOUR DULY AUTHENTICATED SWIFT CONFIRMING THAT YOU HAVE TAKEN UP COMPLIANT DOCUMENTS WITH L/C TERMS AND CONDITIONS, WE SHALL COVER YOU ACCORDING TO YOUR INSTRUCTIONS AT MATURITY DATE.

72: SENDER TO RECEIVER INFORMATION: DOCUMENTS TO BE SENT BY SPECIAL COURIER TO THE FOLLOWING ADDRESS ;( ISSUING BANK NAME+ ADDRESS TO BE INSERTED)

UNQUOTE



**36. APPENDIX 3 SHIPPING AND SUPPLY CONTRACT FOR MOGAS**



**PETROLEUM BULK PROCUREMENT AGENCY  
(PBPA)**

**SHIPPING AND SUPPLY CONTRACT  
FOR**

**TENDER NO. PBPA/CPP/MOGAS/...../.../.....  
FOR**

**SUPPLY OF MOGAS  
FOR**

**THE MONTH OF .....**

**DELIVERY DATE RANGE**

**..... TO .....**





## PETROLEUM PRODUCTS BULK PROCUREMENT SYSTEM TANZANIA

### SHIPPING AND SUPPLY CONTRACT

This contract is made on this .....day of ..... (Hereinafter referred to as "**the Contract**")

#### BETWEEN

The **PETROLEUM BULK PROCUREMENT AGENCY** of P.O Box 2634, Dar es Salaam, the executive agency established by Government Notice No. 423 OF 2015, having its registered office at TPA- ONE STOP CENTER BUILDING, 11<sup>TH</sup> Floor, Plot no. 1/2, SOKOINE DRIVE, hereinafter referred to as "**the AGENCY**" acting on its own behalf and on behalf of Oil Marketing Companies, both herein referred to as "**OMCs**" / "**Purchasers**".

#### AND

..... Hereinafter referred to as "**the Supplier**" on the other part

**WHEREAS, Purchasers** are required by the Petroleum Act No. 21 of 2015, the Petroleum (Bulk Procurement) Regulations 2017 (GN No 198 of 2017), to import Mogas through the Bulk Procurement System.

**WHEREAS, the AGENCY** plays a fundamental role in the operations of this Contract as coordinator of importation of petroleum product through the use of international competitive tender system on behalf of the **Purchaser**.

**WHEREAS, each Purchaser** signatory to the Shipping and Supply Agreement with the **AGENCY** (as specified in R. 5(C) And 17 (2) of The Petroleum (Bulk Procurement) Regulations 2017 GN. No. 198 Of 2017), Together with .....(name of the Supplier) obtained through competitive tendering process administered by the **AGENCY** for the considered period, irrevocably agree to abide by the terms of this contract.

**WHEREAS** OMCs procuring petroleum product under this agreement shall be (i) licensed by **EWURA** and registered by **AGENCY** (ii) at the time of placing their orders, there is no default payment on their shares of refined petroleum product from previous contracts.

#### AND WHEREAS

In consideration of the payment to be made by each Purchaser to the Supplier as hereinafter mentioned, the **Supplier** hereby covenants with the **AGENCY** (on behalf of the **Purchasers**) to supply MOGAS and to remedy defects therein in conformity with all aspects in respect with provisions of the contract.

Each **Purchaser** as expressed in this contract and the Shipping and Supply Agreement between the **Purchaser** and the **AGENCY** hereby covenants to be bound by this



contract and to pay the **Supplier** in consideration of the supply of MOGAS and the remedying of defects therein, the contract price or such other sum as may become payable under the provisions of this contract at the times and in the manner prescribed by this contract.

The **AGENCY** confirms that it has collected the procurement requirements of MOGAS from OMCs, and shall; (i) coordinate invoicing for the respective shares of MOGAS to be supplied to OMCs by the Supplier; (ii) coordinate diligent receipt by OMCs of MOGAS from the delivery vessel; (iii) maintain records of delivery and performance and ensure the product imported meet the prescribed specifications.

## **NOW THEREFORE IT IS AGREED AS FOLLOWS:**

### **1.0 EFFECTIVE DATE**

- 1.1 This Contract shall take effect on .....and shall continue until all obligations have been completed to be performed or terminated as provided hereinafter.

### **2.0 ABBREVIATIONS, DEFINITIONS AND CONSTRUCTION**

- 2.1 The following Abbreviations shall have the meanings provided:

Bbls @60°F	Barrels at 60° Fahrenheit
B/L	Bill of Lading
BPS	Bulk Procurement System
COD	Completion of Discharge
CPP	Clean Petroleum Product
DAP	Delivered at Place (incoterms 2010)
DISPORT	Discharge Port
EWURA	Energy and Water Utilities Regulatory Authority
FOB	Free on Board
ICC	International Chamber of Commerce
INCOTERMS	International Commercial Terms (Set by International Chamber of Commerce, U.K)
IFIA	International Federation of Inspection Agencies
KOJ	Kurasini Oil Jetty
L/C	Letter of Credit
LIBOR	London Inter-Bank Borrowing Official Rates



MT	Metric Tonnage in air
NOR	Notice of Readiness
OMC	Oil Marketing Company
MOGAS	Premium Motor Spirit
SBM	Single Buoy Mooring
SHINC	Saturdays, Sundays, Holidays included
TASAC	Tanzania shipping Agency Corporation
TBS	Tanzania Bureau of Standards
TPA	Tanzania Ports Authority
TRA	Tanzania Revenue Authority
TT	Telegraphic Transfer
USD	United States Dollar
WMA	Weights and Measure Agency

2.2 The following terms shall have the meanings provided:

- 2.2.1. "Agency" shall mean the Petroleum Bulk Procurement Agency.
- 2.2.2. "Cargo" shall mean a specific delivery/shipment of refined product of Industry Import.
- 2.2.3. "Charter Party Terms" shall mean the terms of the Contract as shall be agreed between the SUPPLIER and the ship owner for a specific Cargo. This shall include any form of agreement.
- 2.2.4. "Cleared Funds" shall mean payments confirmed by Supplier's Bank as received either through Electronic Funds Transfers (EFT) or Letter of Credit.
- 2.2.5. "Delivery Date Range" shall mean the dates of delivery.
- 2.2.6. "Demurrage Committee" shall mean the demurrage validation and verification committee.
- 2.2.7. "Effective Date" shall mean the date of the execution of the contract.
- 2.2.8. "Financial hold product" shall mean a product which has not been secured by purchaser either by way of letter of credit or Electronic Funds Transfers (EFT).



- 2.2.9. "Full Cargo" shall mean total tendered parcel size, with operational tolerance of +/- 5% at Supplier's option, which will be allocated in full to all Purchasers prorata based on their placed orders.
- 2.2.10. "PBPA Marine Surveyor" shall mean Agency Employee assigned to perform marine operations under the Bulk Procurement System.
- 2.2.11. "OMC" shall mean an Oil Marketing Company signatory to this Contract as well as to the Shipping and Supply Agreement who is the Purchaser of petroleum product subject to this Contract.
- 2.2.12. "Purchaser" shall mean any person procuring petroleum products through Bulk Procurement System (BPS).
- 2.2.13. "Product" Shall mean AGO.
- 2.2.14. "Replacement cargo" shall mean a different product which is within the approved specification imported after the initial import has been declared off spec as provided in this contract.
- 2.2.15. "Safe berth" shall mean a berth which vessels so conforming, and having any beam, can at all times safely reach and leave and at which such vessels can lie at all times safely afloat.
- 2.2.16. "Supplier" shall mean an entity signatory to this contract and which has been awarded a tender to supply AGO through BPS.
- 2.2.17. "Tender" shall mean an invitation to treaty/contract to supply AGO under the Bulk Procurement System.
- 2.2.18. "Vessel pre-discharge Meeting" shall mean the meeting chaired by Agency Marine Inspector and attended by nominated Terminal Representatives and receivers, whose main agenda is to agree on product discharge sequence for a particular vessel.

### **3.0 TRANSIT PRODUCTS PROCURED UNDER BPS**

- 3.1 The OMC shall be a notifying party for the transit cargo and shall inform the Supplier the consignee(s) on whose name the product shall be manifested and warehoused under transit, and shall take full responsibility for performance this agreement. In addition, the Purchasers shall;
- a) Place orders /nominate the quantity of product on behalf of the transit consignees;
  - b) Eleven (11) days before the birthday of delivery date range the OMC shall notify the supplier copy PBPA on cargo splits and consignee details.
  - c) Ensure L/Cs are opened and payments are made and transmitted to the Supplier within the specified time; and
  - d) The supplier has the right to perform KYC



35.3 Any payment default by the consignee of the transit cargo shall be treated as default by the Purchaser that nominated the defaulting consignee.

#### **4.0 DOCUMENTS FORMING PART OF THE CONTRACT**

4.1 The following documents shall form, and be construed as part of this Contract:

- a) TBS product Specification,
- b) Shipping and Supply Agreement between Agency and OMCs,
- c) Price, Quantity and delivery Schedule.
- d) Bidding documents,
- e) LC and Invoice Formats.
- f) The Agency's Notice of Award to Successful Bidder,
- g) Supplier Performance Security Bond as per format included in the BPS Tender Document,
- h) Holding and release certificate for product under financial hold,
- i) Certified true copy of charter party terms and conditions. The charter party agreement shall not be tempered with.
- j) Bank guarantee from the OMCs
- k) Documents submitted by the Supplier during application for prequalification.
- l) Standard Operating Procedure for Petroleum products receipt/Discharge from the vessel

4.2 The Agency reserves the right to verify the authenticity of the submitted charter party agreement. In the event that it will be established that the supplier has submitted forged or tempered charter party agreement the suppliers shall be penalized in accordance with clause 18.6

#### **5.0 QUANTITY & CARGO NOMINATION**

- 5.1 The quantity to be supplied under this contract shall be a Full Cargo as per delivery date range in the price, quantity & delivery schedule, prorated to each Purchaser that has placed orders for product on the delivering vessel.
- 5.2 Minimum Batch per vessel for each Purchaser shall be 500 MT
- 5.3 Minimum Batch per receiving terminal shall be 1000 MT
- 5.4 Minimum order per delivery month shall be 1000 MT
- 5.5 Supplier is not allowed to deliver Mogas below or above the tolerance (+/-5%). In the event the vessel has arrived with cargo outside tolerance level the supplier shall;



- (a) Notify the Agency upon Purchasers willingness to purchase additional quantity. The product should be for transit only
  - (b) Pay a penalty of USD 5 per MT for under delivered quantity.
  - (c) Notwithstanding the provision of clause 5.5(a) the supplier shall be required to pay penalty of USD 5 per MT for the added arrival quantity.
  - (d) Compute demurrage by considering the added arrival quantity (Full cargo).
- 5.6 The Supplier request to use BPS vessel to load private transit cargo as stipulated in the price quantity and delivery schedule shall be lodged to the Agency not later than 15 days before the first day of delivery date range. Any request lodged out of time shall not be considered.
- 5.7 Notwithstanding the provision of clause 5.5 of this contract. Acceptance of the Supplier request to use BPS vessel to carry transit cargo shall be made under the following conditions.
  - (a) Premium shall be diluted prorata to the added transit cargo. The formula for diluting premium is as provided below  
$$\text{Diluted Premium} = \frac{\text{Tendered Premium} \times \text{Tendered Quantity}}{(\text{Tendered Quantity} + \text{Additional Quantity})}$$
  - (b) Demurrage shall be computed by taking into account the added transit cargo

## 6.0 DELIVERY TIME, POINT AND DISCHARGE OF PRODUCTS

- 6.1 The delivery date range as per appendix 1 of the bid document purchased by the Supplier is to be strictly adhered to. PBPA in consultation with the Supplier can request change of delivery date range provided that such request is communicated in writing at least 30 days before the first day of the original delivery date range or at least 30 days before the first day of the revised delivery date range whichever comes first. Any request which will be made out of time will not be considered.
- 6.2 Full cargo shall be delivered DAP ONE SAFE BERTH ONE SAFE port KOJ1 Dar es Salaam for Mogas.
- 6.3 The cost of storing product into nominated terminals which can receive direct from KOJ1 shall be borne by the individual Purchasers at the rate and terms agreed between individual Purchasers and terminal owners.
- 6.4 The vessel delivering Mogas under the BPS must conform to TPA Shipping standards as well as minimum pressure at vessel discharge Manifold of 8 bars & Maximum pressure of 12 bars at vessel discharge manifold at KOJ1.
- 6.5 For any vessel not meeting the minimum specification specified in clause 6.4 above resulting in discharge delays; such additional time incurred due to delays





shall not count as time on demurrage on that particular vessel as well as the vessels that have already tendered NOR during discharge of poor performing vessel.

## **7.0 QUALITY, QUANTITY AND INSPECTION**

- 7.1 Quality of Mogas delivered and discharged pursuant to this contract shall be as per the specifications provided by TBS included in BPS tender document.
- 7.2 The quality of each Product delivered under this contract shall be determined by TBS.
- 7.3 The Agency shall reject any Mogas that has been confirmed by TBS as not meeting specifications as per clause 7.1 above.
- 7.4 Representative samples of the cargo on arrival at discharge port shall be taken and sealed by the Agency Marine inspector, Supplier Marine Surveyors and TBS and the same shall be retained by all parties. Each party shall keep records of the numbered seals and sample reference number.
- 7.5 The Agency shall retain three sets of sealed samples for at least ninety (90) days.
- 7.6 Any product which has not met the approved TBS specification shall not be offloaded from the delivery vessel.
- 7.7 In the event of any dispute on quality of the cargo, the sealed representative samples taken and retained by Supplier marine surveyors, Agency Marine Inspector and TBS in accordance with clause 7.4 above shall be retested by TBS or any other laboratory contracted by TBS in the presence of representative of the Agency, and the Supplier. The results of which shall be the basis of resolving the dispute. Supplier Marine surveyors shall be allowed to witness testing of all samples.
- 7.8 The arrival quantity under this contract shall be determined by WMA. Density determined by TBS shall provide the basis of determining the arrival quantity.
- 7.9 In the event of any dispute on arrival quantity, the quantity determined by WMA shall be final and binding.
- 7.10 During discharge operations PBPA and Supplier shall;
  - (a) Take samples on board the vessel, at the jetty head and tanks of receiving terminals before and after completion of discharge to receiving terminals. The samples taken are for retention purposes.
  - (b) Seal all samples and clear labelled them with the location and source, the date and time of sampling, a unique reference number, the sample type, the grade of fuel, the batch number





and a means of identifying who drew the sample. The label shall be printed and filled in with ink that does not run when exposed to either water or hydrocarbon.

- (c) Records of seals numbers for each retained samples.
- (d) Retain samples taken under clause 7.10 (a) for at least ninety (90) days.

7.11 In the event of any dispute in relation to contamination of product during discharge, samples taken under clause 7.10 shall be used to determine the point and cause of contamination.

7.12 Samples taken under clause 7.10 shall be tested at an internationally accredited laboratory mutually agreed by the Agency, the Purchasers and the Supplier.

7.13 Each vessel shall carry three load port samples for each vessel compartment, the sample shall be retained by Agency and Supplier Marine Surveyor.

## **8.0 MANAGEMENT OF DISCHARGE OPERATIONS**

8.1 Discharge sequence of Mogas shall be as agreed during pre-discharge meeting. Any deviation from the agreed discharge sequence shall be approved by the Agency and the Supplier after consultation with respective receiver.

8.2 Purchasers are required to issue ullage confirmation 2 days before the berthing date at disport.

## **9.0 HANDLING OF REJECTED OFF SPEC CARGO AND REPLACEMENT CARGO**

9.1 Subject to clauses 7.1, 7.2, and 7.3 above, TBS shall guide the Agency in accordance with TBS standards and regulations on the way of handling the rejected off spec Mogas and the Agency shall advice the Supplier accordingly.

9.2 If TBS has confirmed that the imported cargo does not meet Mogas standards applicable in BPS tenders, the Agency shall reject the cargo and inform the Supplier to replace the cargo; the replaced cargo must meet required standards and it shall be authenticated by a new set of shipping documents. The new set of shipping documents shall be supplied by the Supplier within terms and conditions of the contract or terms and conditions which will be in place at the acceptable time of delivery whichever is favorable to the Purchasers.

9.3 Any such replaced Mogas shall be treated as delayed product and shall be subject to late delivery penalties provided in this contract.

9.4 Purchasers shall be relieved from the late payment penalties accrued on the rejected cargo. Late payment penalty shall start to accrue upon arrival of the replaced cargo.



- 9.5 The Supplier shall be required to refund all money advanced or cancellation of any confirmed L/C from the Purchaser with compensation for any costs incurred in establishing the L/C once the cargo is rejected as off spec.
- 9.6 Subject to clause 9.4 Purchasers shall be required to open and confirm L/Cs as required by this contract based on the new delivery window to be communicated by the Agency.
- 9.7 In the event that the intended replacement cargo does not meet Mogas standards applicable in BPS tenders, notwithstanding any other rights, the Agency shall have the right to immediately call for an emergency tender. All costs and expenses incurred by the Agency in arranging the delivery of a cargo in replacement of the cargo which is off spec shall be borne by the Supplier who supplied off spec product.
- 9.8 Subject to the laws governing the importation of Mogas in Tanzania and terms of this contract, any Supplier who will deliver Mogas that does not meet the approved specification, that Supplier shall be penalized as stipulated in the Petroleum Act.

## **10.0 PAYMENT TO MARINE SURVEYORS**

- 10.1 In the event the supplier has engaged Marine Surveyor charges for services rendered at discharge port shall be borne independently by supplier.

## **11.0 VESSEL NOMINATION**

- 11.1 Supplier shall nominate the Vessel to the Agency 15 days prior to the first day of delivery window. Consequently, after consultation with TPA, the Agency shall be required to revert to the Supplier with their acceptance or rejection of the said nominations within 24 running hours of receipt of nomination from Supplier.
- 11.2 All vessels delivery product must have Double Hull, meet maximum age limit of 15 years and meet any other requirement issued by TPA.
- 11.3 The supplier is allowed to substitute the nominated vessel provided that the newly nominated vessel will undergo the vetting process as stipulated in clause 11.1. All cost resulting from substitution of vessels Will be on the account of the suppliers.
- 11.4 Subject to clause 11.1 no nomination shall be rejected unreasonably and all rejections must be supported by relevant documentations.



## **12.0 PRICE**

- 12.1 The price of the product DAP KOJ1, Dar es Salaam shall be the Total of FOB component plus DAP tender premiums as quoted in the Price and Quantity Schedule of Mogas herein attached to form part of this Contract.
- 12.2 The FOB component shall be according to the tender called and confirmed by the Agency, this shall be the arithmetic mean of Platt's high and low quotations for dates of pricing as follows:
- a) The applicable dates of pricing shall be as started in the Price and Quantity Schedule of Petroleum product attached to the BPS tender document which forms part of this Contract,
  - b) Any revision of delivery window shall not affect the pricing date range defined in this contract,
  - c) Supplier agrees to supply (transfer ownership of) the quantity (+/-5%) per vessel subject to L/C being established by the Purchaser within the agreed time.
- 12.3 For Mogas (Premium motor spirit), Platt's Mediterranean products cargo assessment under the heading 'FOB Med (Italy) Premium Unleaded 10ppm' to apply.
- 12.4 Port Handling Charges as well as TASAC and Delivery order charges shall be on the Supplier's account and shall be part of the DAP premium.
- 12.5 Any published correction to any relevant assessment shall be notified to Purchasers within three (3) working days of the Platt's correction.

## **13.0 INVOICING**

- 13.1 Supplier's final invoices shall be in USD based on FOB Component with applicable pricing month as per clause 12.2 plus DAP premium as provided in the price and quantity schedule and ship's arrival quantity as determined pursuant to clause 13.2.
- 13.2 Notwithstanding provision of clause 12.1, quantity to be used for invoice purposes shall be the lower quantity between load port Bill of lading and ship's arrival quantity measured at discharge port in Tanzania.
- 13.3 Final invoice shall contain the breakdown of prices as mentioned in clause 13.1 and 13.2 above, including (a) the detail of all considered quotations, expressed in their original unit, be in USD/MT or USD/Bbls as the case may be, (b) in connection with the quantity stipulated, the details of the two computations below shall be expressly stated in the final invoice to determine the quantity based on the lower of the load port B/L quantity and the vessel arrival quantity measures at the DISPORT in Tanzania:



- i. for the computation of quantity utilizing the quantity measures at DISPORT, refer to clause 7.8; and
  - ii. for the computation of quantity utilizing the quantity measured at load port, the B/L figures shall apply for the final quantity to be invoiced and for the conversion factor to be applied for the conversion of the unit price from USD/Bbls to US/MT.
- 13.4 The invoice should be as per **annexure 01**
- 13.5 All amounts shall be calculated to 4 (four) decimal places.
- 13.6 Supplier to provide final commercial invoice to the receivers copied to the Agency within 10 working days from the date of completion of discharge.
- 13.7 Latest by the fifth (5<sup>th</sup>) day from the date of completion of discharge or by the fifth (5<sup>th</sup>) day from the end of the pricing month, which is later, the Supplier shall send to the Agency copy to all Purchasers the final unit price of the cargo detailing:
  - (a) The quotation used as published by Platts in actual defined units as per publications (USD/Bbl for Mogas and Jet, USD/MT for MSP),
  - (b) The detailed computation of the total cargo quantity to be invoiced for each of (i) quantities measured as DIPSORT, and (ii) quantities measured at the load port using the B/L figures.
  - (c) Related premium and demurrage provision
- 13.8 The Agency shall revert within three working days to the Supplier with a copy to all Purchasers to confirm or provide comments on the unit price for the purpose of the final invoice.
- 13.9 Supplier shall provide to PBPA table of summary of invoiced quantity per purchaser latest 10 calendar days from the date the vessel has completed to discharge. The table shall contain but not limited to name of the purchaser, premium, FOB price and quantity.
- 13.10 The supplier shall issue final invoice within fourteen (14) days from the date the vessel has completed discharge.
- 13.11 The final price shall be paid within time frame specified in this contract.
- 13.12 Proforma invoice to be used only for the purpose of opening L/C. Proforma invoice should not be used in lieu of Final invoice for payment under the Letter of credit. Only Final invoice shall be used for payment under the letter of credit through documentary presentation.



## **14.0 PAYMENT AND PENALTY FOR LATE PAYMENT**

### **14.1 Payment through L/C:**

- a) Purchaser shall latest 5 calendar days before 1st day of delivery date range or latest 5 calendar days after receipt of the needed documents from the Supplier provide an irrevocable L/C opened by the Purchaser's Bank but confirmed by any Bank as provided by the Supplier. The Supplier shall provide to the Agency a list of minimum 10 confirming banks before signing the contract as provided in the Notice of Award.
- b) L/C issued by any issuing bank shall be confirmed by any of the 10 listed banks by the supplier, supplier has a right to reject any issued L/C that has not been confirmed by the 10 listed banks.
- c) The L/C shall be payable at the Supplier's bank, without offset, deduction or counter claim and free of all charges latest 60 calendar days from the first day of delivery window.
- d) Charges for establishing the L/C will be borne by the Purchaser.
- e) L/C advising charges and confirmation charges shall be borne by the Supplier.
- f) LC's shall be confirmed within 3 working days from the date the LC has been issued as long as the purchaser has the acknowledgement from the confirming bank that the L/C has been received Any cost associated with delay of LC confirmation shall be on the account of the supplier.
- g) All commissions and charges from the issuing bank are for the applicant's (buyer's) account. All commissions and charges from the confirming and advising bank are for the beneficiary's (Supplier's) account.
- h) All cost resulting from L/C amendments shall be borne by the party which caused the amendments to be made. If the L/C amendment will be caused by factors which are neither caused by the Supplier nor the Purchaser L/C amendment cost will be shared equally between the Supplier and the Purchaser.
- i) For establishing of L/Cs by the Purchaser, the Supplier shall submit the PFI and all needed documents to the Purchaser and the Agency latest 10 calendar days before the first day of delivery window. For purpose of this clause and clause 14.1 and 14.4 of this contract the needed documents are;
  - i) copy of Bill of lading
  - ii) load port certificate of quality
  - iii) Certificate of origin,



- j) In issuing PFI the supplier shall take into account the information provided by the OMC in paragraph 3.1 (b) above.
- 14.2 The purchaser shall not be held responsible for any delays in opening the L/Cs if such delays have been caused by the Supplier's failure to send the needed documents (to enable Purchasers to open L/C) within the time bar stated in this contract. The Purchaser shall immediately upon receipt of the PFI notify the Supplier and the Agency on the intention to make bank transfer or any alternate payment as mutually agreed between Supplier and Purchaser
- 14.3 The Supplier shall notify the Agency on any alternate payment agreement (including but not limited to bank transfer, pre-payment, fixed payment dates or credit arrangement etc.) with the Purchaser not later than 5 working days prior to first day of delivery date range.
- 14.4 Bank Transfer or pre-payment
- a) Any Purchaser who shall prefer to make payments by bank transfer or pre-payment shall effect payments latest 3 calendar days before 1st day of delivery date range or latest 5 calendar days upon receipt of proforma invoice (PFI) from Supplier whichever is later.
  - b) The Supplier at his discretion may offer discount to bank transfer or pre-payment done by Purchasers.
  - c) The purchaser shall not be held responsible for any delays in making bank transfer or prepayment, if such delays have been caused by the Supplier's failure to send the needed documents (to enable Purchasers to make bank transfer or prepayment) within the time bar stated in this contract.
- 14.5 Purchaser's parent / Affiliate companies shall have the option to establish L/C on behalf of Purchaser.
- 14.6 Transit parcels shall be paid by the consignees of the said parcels. Purchasers who placed orders shall make sure that the consignees of transit parcels pay for their cargoes within stipulated contractual duration. Any penalty resulting from consignee of transit cargo delays to open LC for the transit parcel shall be on account of the purchaser.
- 14.7 L/C and bank transfer or prepayment shall be made against presentation of Supplier's commercial invoice and certified copies of shipping documents as listed in clause 14.8 unless mutually agreed otherwise between Supplier and Purchaser.
- 14.8 For the purpose of this contract copies of shipping documents shall include:
- a) Certificate of origin,
  - b) Certificate of Quality (COQ) on vessels ship tank composite sample on arrival at disport issued by TBS,
  - c) Certificate on vessel's arrival quantity issued by WMA.
- 14.9 Supplier must ensure that cargo manifest is lodged to all relevant authorities including but not limited to the Agency and TASAC with endorsed copy of Bill of Lading (for customs purposes only) 5 calendar days before the vessel has tendered NOR. The cargo manifest shall correspond to the PFI and endorsed BL





provided to the Purchasers. Cost of lodging cargo manifest and issuing of Delivery order shall be borne by the Supplier.

- 14.10 Any and all costs or charges or penalties resulting from delays in berthing caused by any Purchaser not having settled or performed the required declarations with TRA, TASAC and TPA will be solely payable by Purchaser.
- 14.11 Any and all cost or charges or penalties resulting from delays in lodging of the cargo manifest caused by the Supplier and where such delays result in the Purchaser's delay to make necessary declaration to TRA, TASAC, and TPA will be solely payable by the Supplier.
- 14.12 Where there is any default in providing the L/C or making bank transfer or prepayment on due time, parties shall be guided by the provision of clauses 14.1(g & i), 14.4, 14.15 and 14.16,
- 14.13 Supplier's vessel shall only carry cargo ordered through the Agency or upon approval from the Agency as provided in clause 5.6 and 5.7
- 14.14 Invoices shall be raised for DAP i.e. FOB component plus DAP premiums as stipulated in this Contract and detailing the price computation (including the Platts quotes as published, the conversion factor utilized and its computation, quantity at load port and quantity at DISPORT, supported by documentation stipulated in clauses 14.8 and 14.9.
- 14.15 Purchaser who delays to open L/C or make pre-payment as stipulated in this contract shall be liable to penalties as stipulated in The Petroleum (Bulk Procurement) Regulations, 2017. This penalty is payable to the Agency for distortion of Bulk Procurement System.
- 14.16 Purchaser who fails to pay for its share of a Mogas at the due date as per the credit period (60 days) shall be charged a late payment penalty of LIBOR +2% per annum and be barred from participating in the following BPS tender or both, the payment shall be paid to an escrow account operated by the AGENCY for onward payment to the Supplier. For the purpose of this clause due date is 60 days after the first day of delivery date range.
- 14.17 Notwithstanding the provision of clause 14.15 and 14.16, the Purchaser who fails to pay or open L/C for the ordered product within 5 days after COD and the product has been discharged as product on financial hold, shall be barred from participating in BPS until it has fulfilled all pending obligations.
- 14.18 All third party charges associated with late payment e.g. TRA Taxes and Penalties, TPA charges and penalties and storage charges, shall be on account of the defaulting party and will be recovered as per actual prevailing costs.
- 14.19 In the event of variation on the invoiced amount, the Purchasers shall pay the remaining unpaid amount within 14 days after the Supplier has issued the final





invoice. Likewise, within 14 days after the Supplier has issued the final invoice, the Supplier shall refund to the Purchasers any amount over paid.

- 14.20 Subject to clause 14.1 and 14.4 above the Supplier shall notify the Agency on payment status for the vessel in the manner prescribed by the Agency.
- 14.21 In the event that the vessel will not be able to offload her cargo within delivery date range as a result of vessel congestion or any other reason, the Agency, Supplier and Purchaser may agree on payment reference dates and credit period.
- 14.22 LC format shall be as provided in **annexure 02**

## **15.0 L/C DELAYED / DEFAULT**

- 15.1 Where there is a default in providing the L/C or making bank transfer or prepayment on due time, (if such delay and or default is not caused by the Supplier) then the Supplier in consultation with Agency has the right to dispose the batch elsewhere. For the purpose of this clause due date shall be five (5) days before first day of delivery date range or five (5) days after receipt of PFI and needed documents whichever is later.
- 15.2 In the event of the late provision of an LC or bank transfer or prepayment by a particular Purchaser the product shall be discharged into a terminal nominated by the Supplier as product on financial hold until payment has been done. Storage cost shall be on the account of the defaulting Purchaser.
- 15.3 When there are ullage constraints as a result of the Purchaser failure to create sufficient ullage to receive the ordered product, the purchaser shall nominate the alternative terminal failure to shall be deemed to have distorted BPS, and shall attract penalties as prescribed in the Petroleum (Bulk Procurement) Regulations, 2017(For the purpose of this provision penalty shall be 0.5 USD per MT per day) also shall be liable to pay demurrage for the delay.
- 15.4 Prior to signing the shipping and supply contract, the Supplier shall inform the Agency at least three acceptable terminals, which Supplier considers acceptable at the time, to discharge the product which would be on financial hold
- 15.5 Where product has been off-loaded as product on financial hold, the product shall be so offloaded as manifested, however, the Purchaser shall be liable to pay storage charges at the rate and terms provided by the receiving terminal.
- 15.6 Where the product has been offloaded on financial hold, the receiving terminal shall issue a holding certificate to the Supplier with copy to Agency. The Holding certificate shall state and guarantee that no product will be released without written confirmation from the Supplier and or its financier. Upon receipt of the funds or of the L/C the Supplier or its financier shall issue a release certificate to the terminal with a copy to the Agency.



- 15.7 The Supplier shall not prevent any vessel from berthing due to financial hold.
- 15.8 Failure to adhere to clause 14.1 and 14.4 above, the Purchaser shall not be allowed to participate in the next tender until such product has been fully paid to Supplier including all associated costs with Supplier, Agency and the receiving terminal.
- 15.9 The Agency guarantees that costs incurred by the Supplier or any receiving terminal resulting from the suppliers exercising right to dispose the product as stipulated in clause 15. 1 shall be settled by cashing the bank guarantee provided to Agency by the Defaulting Purchaser, without prejudice to the Agency's rights and/or Supplier or receiving terminal further claims or damages from the Purchaser.
- 15.10 The Agency does not guarantee that the available bank guarantee shall be sufficient to cover all claims raised by the supplier. In the event that the available bank guarantee is not sufficient to cover all cost incurred by the supplier appropriate legal measures shall be taken against the defaulting purchaser.
- 15.11 Any payment from the cashed bank guarantee shall be made by the Agency to the Supplier or any terminal upon submission of relevant supporting claim documents
- 15.12 In the event that the Purchaser has paid taxes but has not opened L/C the Supplier shall continue to have rights (including right to dispose the product) over the product on financial hold until the time when the product has been paid for.
- 15.13 The Supplier shall, when disposing the product on financial hold take into account taxes, wharfage and other costs paid by the defaulting Purchaser. The Supplier, in consultation with the Agency, shall agree on modality to refund taxes, wharfage and other costs paid by the defaulting Purchaser. The refund thereof shall be subject to fulfillment of all obligations and liabilities resulting from failure to open L/C. Failure by Purchaser to fulfill all obligations and liabilities resulting from failure to open L/C the amount to be refunded shall be used to cover outstanding obligations.
- 15.14 The Supplier shall within 10 days after disposal of product on financial hold submit to the Agency all documents relating to selling of the product in question including detailed elaboration of the costing for the product this shall include but not limited to losses, and storage charges. Failure to submit all the needed documents implies that there was no cost incurred in disposing the product on financial hold.

## **16.0 DOCUMENTS**

- 16.1 Supplier shall forward to Purchaser and the Agency the following documents not later than eight (8) calendar days prior to the first day of delivery date range.
- a) Copy of bill of lading endorsed with the relevant quantity per Purchaser;
  - b) Copy of load port Certificates of Quality;



- c) Copy of load port Certificates of Quantity.
  - d) Copy of Certificate of Origin;
  - e) Copy of load port cargo manifest
  - f) Valid calibration certificates of;
    - iii. Ullage Temperature Interface (UTI)
    - iv. All vessel Tanks
  - g) Copy of certificate of quality for each vessel tank issued at load port.
- 16.2 Failure to submit document within three days from BL date the supplier shall be liable for penalty of 0.5 per MT per day payable to the purchasers.
- 16.3 Supplier shall forward to Purchasers and the Agency the following documents prior to discharge:
- a) Vessel ullage report issued at disport,
  - b) Certificate of Quantity at disport,
  - c) Certificate of Quality on representative Ship's tank composite sample taken and sealed on arrival at discharge port.
  - d) Tank cleanness certificate issued before loading.
- 16.4 For the purpose of clause 16.2 above, there shall be no discharge of cargo before receipt of the documents required prior to discharge.
- 16.5 Upon completion of discharge the Supplier shall within 5 working days from the date of completion of discharge forward the following documents to the Agency:
- a) Copy of Charter Party Agreement or Fixture
  - b) Statement of facts at Disport,
  - c) Pumping Log at Disport,
  - d) Full Inspection Report after completion of discharge,
  - e) Copy of list of representative ship's tank composite samples on arrival at disport retained by Marine Surveyor appointed by the Supplier.
  - f) Copy of list of representative ship's tank composite samples on arrival at disport retained by TBS.
  - g) Copy of list of load port ship's tank composite samples
- 16.6 Where the vessel has been allocated a berthing window and discharge is delayed due to Supplier's failure to submit the required documents prior to discharge any and all such costs incurred on either party shall be borne by the Supplier.

## **17.0 LAYTIME**

- 17.1 Lay time shall be 36 hours SHINC for a full cargo discharged at KOJ1 Dar es Salaam, commencing 6 hours from tendering Notice of Readiness or upon vessel 'All Fast', whichever is earlier.
- 17.2 Time lost due to non-berthing of tankers during night time and/or awaiting daylight, high tide, shall not count as used laytime.



## **18.0 DEMURRAGE**

- 18.1 Supplier shall additionally be entitled to charge demurrage which shall be as stipulated in the charter party terms and conditions but subject to a maximum of USD 18, 000 per day pro rata based on actual discharged quantity at KOJ1 Dar es salaam port, which may be higher but not lower than the tendered volume for specific cargo for pro rata computation purposes.
- 18.2 A provision for demurrage of US\$ 2 /MT to be covered under the L/C.
- 18.3 Supplier shall provide demurrage computation to the Agency within seven (7) working days from the COD date of each cargo. For the purpose of verification, Supplier shall also be required to avail to the Agency the relevant supporting documents. Failure to submit the claim within time and to submit necessary documents will render the claim null and void.
- 18.4 The Agency through its demurrage committee shall validate the submitted Demurrage computation and respective supporting documents within fourteen (14) working days after receipt of the demurrage computation from the Supplier. Failure to, the demurrage computation submitted by the Supplier shall be considered as final and binding save for fraud or manifest error
- 18.5 Computation of demurrage shall be based on the demurrage charges as per the charter party agreement terms and conditions but subject to a maximum United States dollar eighteen (USD 18, 000) per day.
- 18.6 In the event it will be established that the submitted charter party agreement is not genuine and the shown demurrage cost does not reflect the actual demurrage charged by the charterer the supplier shall be liable to a penalty of USD 50,000 payable to the Agency.
- 18.7 The final demurrage cost for that particular vessel shall be prorated to all Purchasers after excluding demurrage cost which shall be paid by the causative parties. The Supplier shall issue demurrage invoice to causative parties. Particulars of the causative parties shall be communicated to the Supplier by the Agency.
- 18.8 Based on clause 18.7 above the Supplier shall issue demurrage invoice within seven (7) calendar days after final cost has been concluded as per clause 18.5.
- 18.9 Purchaser shall pay prorated final Demurrage cost due within fourteen (14) calendar days of receipt of invoice from the Supplier. In case of any demurrage refund, the Supplier shall pay the Purchaser within fourteen (14) calendar days from date of invoice.



- 18.10 Supplier shall within 30 days from the date of issuing invoice submit to the Agency a report of demurrage of payment by respective Purchasers'. Failure to it will be presumed that the Supplier has been fully paid and there is no pending demurrage claim.
- 18.11 In the event the provisional demurrage under clause 18.2 above does not suffice or the relevant Purchaser did not make payment within the time bar as stated in clause 18.9, the Agency guarantees to pay demurrage by cashing the same from relevant Purchaser's bank guarantees or utilizing cash cover latest ninety (90) days from issuance of the invoice. However, the Agency does not guarantee that the available bank guarantee shall be sufficient to cover all claims raised by the supplier. In the event that the available bank guarantee is not sufficient to cover all cost incurred by the supplier, appropriate legal measures shall be taken against the defaulting purchaser.
- 18.12 If the vessel arrives between 18:01 hrs. to 05:59 hrs., NOR tendered shall be considered at 06:00 am of the next day; and laytime shall apply as per clause 17
- 18.13 For vessel arriving within the allocated delivery window, time will commence from the time when the NOR is tendered subject to terms and conditions of this contract.
- 18.14 For vessel arriving before the allocated delivery window, time will commence from 06:00 am of the first day of delivery window; and laytime shall apply as per clause 17.
- 18.15 For vessel arriving after the allocated delivery window, the demurrage will commence when the vessel is ALL FAST or commenced mooring.
- 18.16 For vessel arriving after 18:01 hrs. of the last date of the allocated delivery window shall be viewed as missing delivery date range and the demurrage will commence when the vessel is ALL FAST or commence mooring.
- 18.17 Demurrage invoice shall be as provided in annexure 03

## **19.0 STATEMENT OF ACCOUNTS**

- 19.1 Supplier is obliged to issue statement of accounts to all receivers on monthly basis. If the supplier will not send the statements of accounts thirty (30) days after the initial reminder, the Agency and Purchaser shall not be held liable for any delays to settle the outstanding demurrage.

## **20.0 HOLDING PAID UP PARCELS AS SECURITY FOR UNPAID UP PARCELS**

- 20.1 The supplier shall not hold paid up parcels as security for un paid parcels in the same tender or different tenders.
- 20.2 For the purpose of this contracts parcels in the same tender shall be considered as separate parcels based on the below circumstances



- (a) Transit parcels
- (b) Separate PFI have being issued

## **21.0 TITLE AND RISK**

- 21.1 Title to the product shall pass to the buyer from the seller upon establishment of the L/C or pre-payment by the buyer.
- 21.2 Risk to the product (including product on financial hold) shall pass from the Supplier to the individual Purchaser as the product passes the vessel's permanent flange at disport KOJ1 Dar Es Salaam.
- 21.3 As a separate and independent condition Purchasers agree that unless and until the full purchase price is tendered, the product shall be the Supplier's product
- 21.4 Until delivery and discharge of the product the Supplier shall insure the product against all risk to full replacement value and shall not re-sell, use or part with possession with them.

## **22.0 TERMINATIONS**

- 22.1 Without prejudice to any other remedy for breach of this Contract, or by written notice of default sent to the concerned party, this Contract shall be terminated by either party upon the occurrence of any of the following:
  - a) If the other party causes a fundamental breach of the Contract, fundamental breach of Contract shall include, but shall not be limited to the following:
    - i. The Supplier fails to deliver Mogas within the period(s) specified in the contract, or within any extension thereof granted by the Agency, or
    - ii. The Supplier fails to perform any other obligation(s) which affect security of supply under the Contract, or
    - iii. The Supplier has decided to unilaterally repudiate the Contract, or
    - iv. The Supplier has been convicted of having engaged in corrupt or fraudulent practices in competing for or in executing the Contract, or
  - b) Upon dissolution, bankruptcy, insolvency, or appointment of a receiver, liquidator, or trustee in bankruptcy for that party.
  - c) Written notice to a party that a law has been introduced or amended by an Act of Parliament so that it is unlawful for that party to operate or perform its duties and obligations under this Contract or realize the benefits of this Contract.





- 22.2 Notice of termination under this Contract shall not discharge or relieve the withdrawing party of any rights, duties, obligations or liabilities arising prior to such termination, nor prejudice any rights or remedy accruing before, at or in consequence of such termination, or any proceeding with respect to any such right or remedy including any proceedings by way of arbitration provided for hereunder.
- 22.3 In the event the Agency terminates the Contract pursuant to this clause, the Agency shall make necessary arrangement in such manner as it deems appropriate, to supply petroleum products similar to the undelivered cargo, and the terminated Supplier shall be liable to the Agency for actual costs for such similar petroleum product as well as penalties as stipulated in this contract.

### **23.0 LATE DELIVERY**

- 23.1 Late delivery default arising from causes other than a *force majeure* event shall attract a late delivery penalty of US\$ 0.5 per metric ton per day to be paid by a Supplier to the Agency in order to compensate buyers for compromising their minimum stocks or for compelling them to procure Mogas from other sources.
- 23.2 For this purpose, late delivery penalty shall accrue from the first day after the allocated delivery date range until the vessel arrives.
- 23.3 Supplier shall make payment for late delivery to the Agency within thirty (30) days from COD and the Agency shall make the payment to the purchaser fifteen (15) days after receipt of the funds from the supplier.
- 23.4 Penalty prescribed in clause 22.1 and 22.2 shall be paid to an escrow account operated by the Agency for onward payment to the purchaser within thirty days from the date of signing a settlement deed/minutes with the Agency.
- 23.5 Until such payment is affected in full and receipt of monies confirmed by Purchasers the Supplier shall not participate in any of the tenders for the supply of Mogas as under the BPS until confirmation of full payment.
- 23.6 Notwithstanding the provisions of clause 23.1 the lay-time on late arriving vessel shall commence when the vessel berths.
- 23.7 Demurrage costs resulting from cascading effect caused by late delivery of the BPS vessel shall be borne by the Supplier of the late delivery vessel.
- 23.8 For purpose of this contract, the cascading effect shall be limited to a maximum of three subsequent vessels which have to discharge Mogas after the late delivery vessel.
- 23.9 For purposes of ensuring efficient and effective BPS, the Agency shall take necessary measures to minimize cascading effects.





- 23.10 Priority on berthing for discharge shall be given to CPP vessels that shall arrive within the contracted delivery date range.
- 23.11 Any vessel arriving after the last date of the allocated delivery date range shall berth and discharge if at all she will not interfere with the next vessel. Otherwise she shall wait on queue until when there is a window for berthing to discharge.
- 23.12 AGENCY reserves the right to allow priority berthing in consultation with other government authorities for national interest.

## **24.0 DELIVERY DEFAULT**

- 24.1 Delivery default shall be deemed to have occurred if vessel does not arrive and Tender Notice of Readiness to discharge at Dar es salaam within seven (7) consecutive calendar days after the last day of the delivery date range, in which case the Purchaser shall be relieved of its obligation to buy the cargo and the Agency reserves the right to encash the Supplier's Performance Security Bond.
- 24.2 The Supplier can demonstrate that there is a planned delivery by providing copies of the undermentioned documents to the Agency on the first day of delivery date range:
- a) Bill of Lading,
  - b) Certificate of quality and quantity,
  - c) Vessel NOR at the load port, and
  - d) Load port statement of facts.

Provided that submission of the above required documents shall not relieve the Supplier to pay late delivery penalty.

- 24.3 In the event that Supplier cannot provide the required documents as per clause 24.2 above to the Agency, the Agency may call an emergency tender to substitute the defaulted cargo. The Supplier shall be considered to have distorted BPS and shall be liable to the fines and penalties as provided by the laws governing importation of Mogas in Tanzania through Bulk procurement system.
- 24.4 In addition to penalties provided in clause 24.3 the defaulting Supplier shall be barred from participating in Petroleum Bulk Procurement System as Supplier for three (3) consecutive tenders.
- 24.5 In addition, the Supplier shall be responsible for all direct cost associated with product delivery outside the allocated delivery date range. For purpose of clarification direct cost shall mean extra freight and premium for an emergency cargo.



## **25.0 PERFORMANCE SECURITY BOND**

- 25.1 Within nine (9) calendar days after receipt of the Notice of Award from the Agency, the Supplier shall issue a Performance Security Bond in the form of a bank guarantee as per format specified by the Agency in the tender documents and which shall be valid for the whole duration of the Contract period.
- 25.2 Failure to comply with the requirement to provide Performance Security Bond as stated in Clause 25.1 above, shall constitute sufficient grounds for withdrawing the Notice of Award and forfeiture of the bid bond in which case the Agency may call for an emergency tender or award the tender to the second lowest responsive bidder.
- 25.3 It is the responsibility of the Supplier to make sure that the performance bond is valid throughout the contractual period. For the purpose of this clause contractual period means the whole duration when there are pending obligations to be performed by the Supplier.
- 25.4 If at the time when the Supplier's performance bond is supposed to be cashed it is established that the same has expired, the Supplier shall be required to make payment by way of bank transfer within five (5) calendar days to be computed from the date on which the performance security bond was supposed to be cashed.
- 25.5 If the supplier has refused to submit the performance bond as required by clause 25.1 the Agency has the right to use existing valid performance bond issued by the supplier for any other tender to cover cost associated with this contract
- 25.6 Performance bond issued in relation to this contract can be used to cover cost related to the supplier's performance in other contracts.

## **26.0 GENERAL PENALTY FOR NON-PERFORMANCE**

- 26.1 Notwithstanding any provision of this contract the Supplier or Purchaser shall not be allowed to participate in the next tender, if there are pending obligations resulting from this tender or previous tender, provided that a proper notice has been issued asking the supplier or purchaser to fulfill the contractual obligation and has not acted based on the issued notice.
- 26.2 The supplier or purchaser shall be allowed to participate in the next tender upon fulfillment of the contractual obligations.

## **27.0 DISPUTE RESOLUTIONS**

- 27.1 Notwithstanding any dispute the Supplier shall be required to continue without delay to supply products in accordance with the terms of this agreement.



- 27.2 If at any time during the continuance of this Contract any dispute, difference or question relating to the construction, meaning or effect of this Contract or of any of the clauses herein shall arise between the parties, then the aggrieved or affected party shall give written notice of not less than 72 hours to the other party of such dispute, difference or questions.
- 27.3 Parties shall be required to settle their dispute amicably within fifteen (15) days of the occurrence or commencement of the amicable dispute resolution, if the parties fail to settle the dispute amicably parties shall refer the disputes for arbitration.
- 27.4 If parties fail to settle the dispute amicably, such dispute shall be referred to arbitration within ninety (90) days from the date it has been established that parties have failed to resolve the dispute amicably.
- 27.5 The arbitration shall be resolved with its seat in Dar es Salaam Tanzania or any other place mutually agreed by both parties conducted in English language by three arbitrators pursuant to the rules of the ICC unless the parties agree otherwise.
- 27.6 Where a dispute between the Parties is solely of a technical nature, the Parties shall have the option of referring such dispute to an Expert in accordance with Clause 27.7 below.
- 27.7 If either Party gives notice in writing to the other of its intention to refer a dispute to an Expert for determination, the following shall apply:
- a) Parties shall seek to mutually agree in good faith on the appointment of such Expert. The Expert shall be an appropriately qualified and experienced professional who is knowledgeable regarding the international Mogas industry and is technically competent in the area of the subject of the dispute to act as the Expert; and
  - b) Failing agreement by the Parties regarding the appointment of the Expert within fourteen (14) days of the above notice, the matter shall be referred to full process for the matter to be referred to arbitration
  - c) If the appointment of an Expert is agreed by the Parties:
    - i. the Parties shall provide their submissions and supporting information with respect to the dispute to the Expert within fourteen (14) days of the date of the appointment of the Expert;
    - ii. the Expert shall resolve or settle such dispute taking due and proper account of the submissions of the Parties and shall render his decision in respect thereof within twenty-eight (28) days following the date of the appointment of the Expert;



- iii. the Expert shall be given all reasonable access to the relevant documents and information relating to the dispute, and access to the Delivery Point and sampling, weighing, measurements and other data as the Expert shall reasonably require;

- 27.8 Any decision of the Expert shall be final and binding on the Parties except in the case of fraud or manifest error, in which case such alleged fraud or manifest error by the Expert shall be dealt with in accordance with the law of United republic of Tanzania.
- 27.9 The costs of the Expert in settling or determining a dispute shall be borne by the losing Party unless the Expert determines otherwise.
- 27.10 The Agency shall lodge claims and take legal measures against the supplier on behalf of buyers, however on special circumstances the Agency may allow buyers to personally lodge claims or take legal measures against the supplier and shall notify the supplier accordingly.
- 27.11 The supplier may decide to lodge claims or take legal measures against individual buyers without including the Agency, however before doing so the Agency shall be notified and be given the option to be included in the contract.

## **28.0 FORCE MAJEURE**

- 28.1 Neither Supplier nor Purchaser shall be liable for damages or penalties for any failure or delay in performance of any obligation (except the obligations to make payment of any money due under this Agreement), where such failure or delay is caused by force majeure, being any event, occurrence or circumstance reasonably beyond any control of that party.
- 28.2 For the purposes of this Agreement Force Majeure shall be limited to failure or delay caused by or resulting from: -
  - a) piracy attacks, fires, wars (whether declared or undeclared), riots within the areas of operation, embargoes, accidents, restrictions imposed by any governmental authority independent of the Parties (including allocations, priorities, requisitions, quotas and price controls).
  - b) acts of God, earthquake, flood, fire or other natural physical disaster, named storms, hurricanes, typhoons and the like, but excluding other weather conditions, regardless of severity.
- 28.3 In the event that a Force Majeure situation exists and this is preventing or delaying performance of any obligations under this Agreement the Party giving the notice of the occurrence of force Majeure event shall use reasonable endeavors to minimize the effect of such Force Majeure and shall provide proof



of efforts taken to minimize the effects of force Majeure in the performance of the contract. Failure to do so shall preclude the Party from subsequently claiming that the performance was prevented or delayed by such an occurrence.

- 28.4 If either of the Parties is prevented from, or delayed in, performing any of its obligations under this Agreement by Force Majeure (as defined above) and which, by the exercise of reasonable diligence, the said Party is unable to avoid, prevent or provide against, then it must promptly notify the other Party in writing of the circumstances constituting the Force Majeure (with supporting evidence of the occurrence of force majeure event) and of the obligation the performance of which is thereby prevented or delayed and, to the extent possible, inform the other party of the expected duration of the force majeure event. Failure to do so shall preclude the Party from subsequently claiming that the performance or progress of the Work or any part thereof was delayed by such an occurrence.
- 28.5 If either of the Parties is prevented from, or delayed in, performing any of its obligations under this Agreement by Force Majeure (as defined above), the time of Supplier to make, or Purchaser to receive, delivery hereunder shall be extended during any period in which delivery shall be delayed or prevented by reason of any of the foregoing causes up to a total of ten (10) days. If any delivery hereunder shall be so delayed or prevented for more than ten (10) days, either party may terminate this contract with respect to such delivery upon written notice to the other party.

## **29.0 WAIVER AND SEVERABILITY OF LIABILITY**

- 29.1 Any waiver or concession that may be granted by a party (ies) hereto in regard to any of terms and conditions of this Contract shall not in any way affect or prejudice that party's rights herein.
- 29.2 All such waivers or concessions may be withdrawn at any time without prior notice. No waiver by either party of any breach of this contract shall be considered as a waiver of any subsequent breach of the same or any provision.

## **30.0 ASSIGNMENT**

- 30.1 No party shall assign this contract in whole or in part without written consent to the other party except to an affiliate, however the assignor will remain liable for the assignee's full performance.
- 30.2 AGENCY shall represent/ act for and on behalf of the receivers in any dispute which shall arise under the importation of petroleum product through the bulk procurement system provided that the dispute shall involve all receivers participated in a particular tender. Any claim involving individual receiver or a group of receivers shall be handled by the respective receivers in person.
- 30.3 The AGENCY before instituting any legal proceeding shall consult the Solicitor General. The solicitor General may based on the powers conferred to him under order 4 (1) of the Office of the Solicitor General (Establishment) order, GN. No.



50 of 2018 intervene on any legal proceeding instituted or intended to be instituted by the Agency.

### **31.0 ENTIRE CONTRACT AND DURATION**

- 31.1 This Contract is the entire Agreement between the parties and supersedes all prior Agreements and understandings whether written or oral.
- 31.2 This Contract shall not be varied or amended in any way except in writing signed by representatives of all the parties' signatories herein. It shall remain enforceable on the day of its signature by all parties herein, and it shall remain in force and effect until amended or ended by a written signed by all the parties' signatory herein.
- 31.3 In case of any conflict and or difference between this Contract and any other document in the bid document, the provisions of this Contract shall prevail.

### **32.0 COMMUNICATIONS**

- 32.1 All communications shall be deemed having been made on the date on which they have been sent when using email which shall be the preferred mode of communication given the number of parties concerned.
- 32.2 The Supplier shall be required to have a local representative in Tanzania throughout the duration of the tender.
- 32.3 Communications to the Supplier shall be sent to the email addresses notified on the date of award.
- 32.4 Communications to the Agency shall be sent to the following addresses:

**EXECUTIVE DIRECTOR**  
**PETROLEUM BULK PROCUREMENT AGENCY**  
P.O. Box 2634  
Dar es Salaam  
Tel. +255 22 2128 885  
Fax +255 22 2128 886  
[info@pbpa.go.tz](mailto:info@pbpa.go.tz)

### **33.0 GOVERNING LAW**

- 33.1 This contract shall be construed in accordance with and governed by the laws of Tanzania.
- 33.2 The arbitration shall be governed by the International Arbitration Rules (International Chamber of Commerce – Arbitration and ADR Rules).





### 34.0 GENERAL

- 34.1 To the extent that the incoterms are not in conflict with the terms of this Contract, the parties hereby agree to be bound by the DAP Incoterms and amendments thereof.

### 35.0 DECLARATIONS

- 35.1 Parties signatory to this contract declare that, they will adhere to this contract as well as to The Petroleum Act No. 21 of 2015 and the Petroleum (Bulk Procurement) Regulation, 2017 (G.N. No. 198 of 2017)
- 35.2 We, the undersigned, duly authorized by our respective companies, hereby agree to the provisions of this contract:

**IN WITNESS WHEREOF**, the authorized representatives of the Parties hereto have executed these presents in the manner and on the dates hereafter appearing:

**SIGNED** and **SEALED** with the common  
Seal of PETROLEUM BULK PROCUREMENT AGENCY  
This .....



#### **IN THE PRESENCE OF:**

NAME: .....  
SIGNATURE: .....  
POSTAL ADDRESS: 2634 DAR ES SALAAM  
QUALIFICATION: .....

NAME: .....  
SIGNATURE: .....  
POSTAL ADDRESS: 2634 DAR ES SALAAM  
QUALIFICATION: .....

SIGNED and SEALED with the common  
Seal of .....  
This .....



#### **IN THE PRESENCE OF:**

NAME: .....  
SIGNATURE: .....  
POSTAL ADDRESS: .....





QUALIFICATION: .....

NAME: .....

SIGNATURE: .....

POSTAL ADDRESS: .....

QUALIFICATION: .....

### ***ANNEXURE SSC 01.***

#### **Counterparty Details**

**P.O. Box  
Dar Es Salaam  
Tanzania**

#### **Commercial Invoice**

Invoice No	(Invoice Reference)
Our Ref	(Tba)
Position	(Tba)
Geneva	(Date)
Trade Type	Physical
Book Month	(Month Of Booking)

Quality  
Quantity BI  
Quantity Ship Before  
Discharge  
Conv Factor BI  
Conv Factor Disport'  
Shipped Via  
Delivery  
Disport  
B/L Date  
Cod Date

Unit Price BI  
Unit Price Ship Fig

Premium

Final Unit Price BI



Final Unit Price Ship  
Fig

Final Amount Bl  
Final Amount Ship Fig

**Total Amount Due To (Company Name)**

**Usd**

### ***ANNEXURE SSC 02.***

#### **PROPOSED LETTER OF CREDIT FORMAT**

AS PER YOUR REQUEST, PLEASE FIND HERE BELOW OUR LETTER OF CREDIT FORM

27: SEQUENCE OF TOTAL: 1/1

40A: FORM OF DOCUMENTARY CREDIT/ IRREVOCABLE

20: DOCUMENTARY CREDIT NUMBER

31C: DATE OF ISSUE

40E: APPLICABLE RULES / UCP LATEST VERSION

31D: DATE AND PLACE OF EXPIRY

51A: APPLICANT BANK  
(INSERT SWIFT CODE)

50: APPLICANT;

59: BENEFICIARY:

32B: CURRENCY CODE, AMOUNT:

39A: PERCENTAGE CREDIT AMOUNT TOLERANCE ON QUANTITY AND VALUE ARE  
ACCEPTABLEI: .....



- 41A: AVAILABLE WITH/BY: CONFIRMING BANK OR ADVISING BANK COUNTERS
- 42P: DEFERRED PAYMENT TERMS: BY DEFERRED PAYMENT 60 CALENDAR DAYS FROM THE FIRST DAY OF DELIVERY AGREED DELIVERY DATE RANGE (1ST DAY OF DELIVERY DATE RANGE TO COUNT AS DAY ONE)
- 43P: PARTIAL SHIPMENTS  
NOT ALLOWED
- 43T: TRANSHIPMENT  
ALLOWED
- 44E: PORT OF LOADING:
- 44F: PORT OF DISCHARGE:
- 44B: PLACE OF FINAL DELIVERY /DESTITATION:
- 45A: DESCRIPTION OF GOODS AND/OR SERVICE:
- 46A: DOCUMENTS REQUIRED: DOCUMENTS IN ONE ORIGINAL AND ONE COPY/PHOTOCOPY, UNLESS OTHERWISE STATED:
1. COMMERCIAL INVOICE
  2. CERTIFICATE OF ORIGIN (COPY/ FAX COPY ACCEPTABLE)
  3. CERTIFICATE OF QUALITY ISSUED ON ARRIVAL AT DISPORT BASED ON SHIP'S TANK'S COMPOSITE SAMPLE ISSUED BY INDEPENDENT INSPECTOR AND TBS (COPY/FAX COPY ACCEPTABLE)
  4. CERTIFICATE OF QUANTITY ISSUED ON VESSELS ARRIVAL QUANTITY AT DISPORT ISSUED BY INDEPENDENT INSPECTOR (COPY /FAX COPY ACCEPTABLE)

IN THE EVENT THE ABOVE MENTIONED DOCUMENTS ARE NOT AVAILABLE AT TIME OF L/C UTILISATION, THEN PAYMENT IS TO BE MADE AGAINST PRESENTATION OF:

- A. SIGNED COMMERCIAL INVOICE (FAX/PDF EMAIL COPY ACCEPTABLE)  
AND
- B. SELLER'S LETTER OF INDEMNITY ISSUED BY THE BENEFICIARY IN THE FORMAT BELOW (FAX/PDF EMAIL COPY ACCEPTABLE)

-QUOTE-

FROM :



TO

DATE

### **LETTER OF INDEMNITY**

DEAR SIRs,

WE REFER TO A CARGO OF                    METRIC TONS OF ... ("CARGO") ... SHIPPED ON BOARD THE TANKER... ("NAME") ... FOR DELIVERY AT ("DISCHARGE PORT")

ALTHOUGH WE HAVE SOLD AND TRANSFERRED TITLE OF SAID CARGO TO YOU, WE HAVE BEEN UNABLE TO PROVIDE YOU WITH THE FOLLOWING DOCUMENTS:

1. CERTIFICATE OF ORIGIN (COPY / FAX COPY ACCEPTABLE)
2. CERTIFICATE OF QUANTITY ISSUED ON VESSELS ARRIVAL QUANTITY AT DISPORT ISSUED BY INDEPENDENT INSPECTOR (COPY /FAX COPY ACCEPTABLE)
3. CERTIFICATE OF QUALITY ISSUED ON ARRIVAL AT DISPORT DISPORT BASED ON SHIP'S TANK'S COMPOSITE SAMPLE ISSUED BY INDEPENDENT INSPECTOR AND TBS (COPY / FAX COPY ACCEPTABLE)

('THE DOCUMENTS') COVERING THE SAID SALE

IN CONSIDERATION OF YOUR PAYING THE FULL PURCHASE PRICE OF U.S. DOLLARS ... ("INVOICED AMOUNT") ..., WE HEREBY EXPRESSLY WARRANT THAT WE HAVE GOOD AND MARKETABLE TITLE TO THE GOODS, AND THAT WE HAVE FULL RIGHT AND AUTHORITY TO TRANSFER SUCH TITLE TO YOU AND TO EFFECT DELIVERY OF THE SAID CARGO.

WE FURTHER AGREE TO MAKE ALL REASONABLE EFFORTS TO OBTAIN AND SURRENDER TO YOU AS SOON AS POSSIBLE THE DOCUMENTS. WE IRREVOCABLY UNDERTAKE TO PROTECT, INDEMNIFY AND SAVE YOU HARMLESS FROM AND AGAINST THE DAMAGES, COSTS AND EXPENSES WHICH YOU MAY SUFFER BY REASON OF THE DOCUMENTS REMAINING OUTSTANDING, OR BREACH OF THE WARRANTIES GIVEN ABOVE.

OUR OBLIGATION TO INDEMNIFY SHALL BE GOVERNED BY THE SHIPPING AND SUPPLY CONTRACT BETWEEN OURSELVES AND THE PETROLEUM BULK PROCUREMENT AGENCY HOWEVER YOU SHALL BE REQUIRED TO GIVE US NOTICE OF ASSERTION OF ANY CLAIM(S) AND FULL OPPORTUNITY TO CONDUCT THE DEFENCE THEREOF AND THAT YOU SHALL NOT SETTLE ANY SUCH CLAIM(S) WITHOUT OUR APPROVAL.

THIS LETTER OF INDEMNITY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW WHICH GOVERN THE SHIPPING AND SUPPLY CONTRACT BETWEEN OURSELVES AND PETROLEUM BULK PROCUREMENT AGENCY (THE LAWS OF TANZANIA). ANY DISPUTES, CONTROVERSIES OR



CLAIMS ARISING OUT OF OR IN RELATION TO THIS LETTER OF INDEMNITY OR THE BREACH, TERMINATION OR INVALIDITY THEREOF SHALL BE SUBJECT TO DISPUTE RESOLUTION MECHANISM PROVIDED IN THE SHIPPING AND SUPPLY CONTRACT BETWEEN OURSELVES AND THE PETROLEUM BULK PROCUREMENT AGENCY.

THIS LETTER OF INDEMNITY SHALL EXPIRE SIX MONTHS AFTER THE ISSUING DATE OR UPON OUR PRESENTATION OF THE SHIPPING DOCUMENTS TO YOU, OR UPON RECEIPT AND ACCEPTANCE OF THE PRODUCT WHICHEVER OCCURS FIRST.

... ("COMPANY")

...

AUTHORISED SIGNATORY/IES

-UNQUOTE-

#### **47A: ADDITIONAL CONDITIONS:**

1. BENEFICIARY IS ALLOWED TO INVOICE WITHIN THE OVERALL LC AMOUNT, USD 1.00 PER METRIC TON TO COVER PROVISIONAL DEMURRAGES
2. THIRD PARTY DOCUMENTS ARE ACCEPTABLE, EXCEPT COMMERCIAL INVOICE AND LETTER OF INDEMNITY.
3. TYPOGRAPHICAL AND/OR SPELLING ERRORS, EXCEPT ON FIGURES AND AMOUNT, ARE NOT TO BE CONSIDERED AS DISCREPANCIES.
4. IF PAYMENT DUE DATE IS ON A SUNDAY OR A MONDAY BANK HOLIDAY IN NEW YORK, PAYMENT WILL BE EFFECTED ON THE FOLLOWING BANKING DAY. IF PAYMENT DUE DATE IS ON A SATURDAY OR A BANK HOLIDAY OTHER THAN A MONDAY IN NEW YORK, PAYMENT WILL BE EFFECTED ON THE PRECEDING BANKING DAY PRIOR TO DUE DATE.
5. DOCUMENTS DATED PRIOR TO LC ISSUANCE ARE ACCEPTABLE.
6. DOCUMENTS WITH A DIFFERENT NAME BUT SERVING THE SAME PURPOSES ARE ACCEPTABLE, EXCEPT SIGNED COMMERCIAL INVOICE AND LETTER OF INDEMNITY.
7. DOCUMENTS UNDER THIS L/C MAY BE DISCOUNTED AT BENEFICIARY'S REQUEST AND EXPENSE
8. IN CASE OF ANY AMOUNT IN FAVOUR OF THE APPLICANT, SUCH AMOUNT WILL BE SETTLED WITHIN THE LC
9. DOCUMENTS SHOWING DIFFERENT QUANTITIES OTHER THAN INVOICE ARE ACCEPTABLE PLUS OR MINUS 5 PERCENT TOLERANCE.



71B: CHARGES FOR ESTABLISHING THE LC ARE FOR THE ACCOUNT OF THE APPLICANT, LC ADVISING CHARGES, CONFIRMATION CHARGES AMENDMENT CHARGES, DISCREPANCIES CHARGES AND ANY OTHER CHARGES (IF ANY) ARE FOR THE ACCOUNT OF THE BENEFICIARY.

48: PERIOD FOR PRESENTATION: DOCUMENTS PRESENTED LATER THAN 21 DAYS AFTER DELIVERY DATE, BUT WITHIN VALIDITY OF THE CREDIT ARE ACCEPTABLE.

49: CONFIRMATION INSTRUCTION: CONFIRM / ( )

53A: REIMBURSING BANK: (REIMBURSING BANK SWIFT CODE)

57A: ADVISE THROUGH' BANK: TO BE ADVISED CASE BY CASE (AS PER PFI)

78: INSTRUCTIONS TO PAYING/ACCEPTING/NEGOTIATING BANK: (TO BE INSERTED BY THE BANK) ...

UPON RECEIPT OF YOUR DULY AUTHENTICATED SWIFT CONFIRMING THAT YOU HAVE TAKEN UP COMPLIANT DOCUMENTS WITH L/C TERMS AND CONDITIONS, WE SHALL COVER YOU ACCORDING TO YOUR INSTRUCTIONS AT MATURITY DATE.

72: SENDER TO RECEIVER INFORMATION: DOCUMENTS TO BE SENT BY SPECIAL COURIER TO THE FOLLOWING ADDRESS ;( ISSUING BANK NAME+ ADDRESS TO BE INSERTED)

UNQUOTE



**37. APPENDIX 4 SHIPPING AND SUPPLY CONTRACT FOR JET A1 AND KEROSENE**



**PETROLEUM BULK PROCUREMENT AGENCY  
(PBPA)**

**SHIPPING AND SUPPLY CONTRACT  
FOR**

**TENDER NO. PBPA/CPP/JET A-1 & IK/...../.../.....  
FOR**

**SUPPLY OF JET A-1 & IK  
FOR**

**THE MONTH OF .....**

**DELIVERY DATE RANGE**

**..... TO .....**





## PETROLEUM PRODUCTS BULK PROCUREMENT SYSTEM TANZANIA

### SHIPPING AND SUPPLY CONTRACT

This contract is made on this .....day of ..... (Hereinafter referred to as "**the Contract**")

#### BETWEEN

The **PETROLEUM BULK PROCUREMENT AGENCY** of P.O Box 2634, Dar es Salaam, the executive agency established by Government Notice No. 423 OF 2015, having its registered office at TPA- ONE STOP CENTER BUILDING, 11<sup>TH</sup> Floor, Plot no. 1/2, SOKOINE DRIVE, hereinafter referred to as "**the AGENCY**" acting on its own behalf and on behalf of Oil Marketing Companies, both herein referred to as "**OMCs**" / "**Purchasers**".

#### AND

..... Hereinafter referred to as "**the Supplier**" on the other part

**WHEREAS, Purchasers** are required by the Petroleum Act No. 21 of 2015, the Petroleum (Bulk Procurement) Regulations 2017 (GN No 198 of 2017), to import JET A-1 & IK through the Bulk Procurement System.

**WHEREAS, the AGENCY** plays a fundamental role in the operations of this Contract as coordinator of importation of petroleum product through the use of international competitive tender system on behalf of the **Purchaser**.

**WHEREAS, each Purchaser** signatory to the Shipping and Supply Agreement with the **AGENCY** (as specified in R. 5(C) And 17 (2) of The Petroleum (Bulk Procurement) Regulations 2017 GN. No. 198 Of 2017), Together with .....(name of the Supplier) obtained through competitive tendering process administered by the **AGENCY** for the considered period, irrevocably agree to abide by the terms of this contract.

**WHEREAS** OMCs procuring petroleum product under this agreement shall be (i) licensed by **EWURA** and registered by **AGENCY** (ii) at the time of placing their orders, there is no default payment on their shares of refined petroleum product from previous contracts.

#### AND WHEREAS

In consideration of the payment to be made by each Purchaser to the Supplier as hereinafter mentioned, the **Supplier** hereby covenants with the **AGENCY** (on behalf of the **Purchasers**) to supply JET A-1 & IK and to remedy defects therein in conformity with all aspects in respect with provisions of the contract.

Each **Purchaser** as expressed in this contract and the Shipping and Supply Agreement between the **Purchaser** and the **AGENCY** hereby covenants to be bound by this contract and to pay the **Supplier** in consideration of the supply of JET A-1 & IK and the remedying of defects therein, the contract price or such other sum as may become



payable under the provisions of this contract at the times and in the manner prescribed by this contract.

The **AGENCY** confirms that it has collected the procurement requirements of JET A-1 & IK from OMCs, and shall; (i) coordinate invoicing for the respective shares of JET A-1 & IK to be supplied to OMCs by the Supplier; (ii) coordinate diligent receipt by OMCs of JET A-1 & IK from the delivery vessel; (iii) maintain records of delivery and performance and ensure the product imported meet the prescribed specifications.

## **NOW THEREFORE IT IS AGREED AS FOLLOWS:**

### **1.0 EFFECTIVE DATE**

- 1.1 This Contract shall take effect on .....and shall continue until all obligations have been completed to be performed or terminated as provided hereinafter.

### **2.0 ABBREVIATIONS, DEFINITIONS AND CONSTRUCTION**

- 2.1 The following Abbreviations shall have the meanings provided:

Bbls @60°F	Barrels at 60° Fahrenheit
B/L	Bill of Lading
BPS	Bulk Procurement System
COD	Completion of Discharge
CPP	Clean Petroleum Product
DAP	Delivered at Place (incoterms 2010)
DISPORT	Discharge Port
EWURA	Energy and Water Utilities Regulatory Authority
FOB	Free on Board
ICC	International Chamber of Commerce
IK	Illuminating Kerosene
INCOTERMS	International Commercial Terms (Set by International Chamber of Commerce, U.K)
IFIA	International Federation of Inspection Agencies
KOJ	Kurasini Oil Jetty
L/C	Letter of Credit
LIBOR	London Inter-Bank Borrowing Official Rates
MT	Metric Tonnage in air
NOR	Notice of Readiness



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OMC	Oil Marketing Company
SBM	Single Buoy Mooring
SHINC	Saturdays, Sundays, Holidays included
TASAC	Tanzania shipping Agency Corporation
TBS	Tanzania Bureau of Standards
TPA	Tanzania Ports Authority
TRA	Tanzania Revenue Authority
TT	Telegraphic Transfer
USD	United States Dollar
WMA	Weights and Measure Agency

2.2 The following terms shall have the meanings provided:

- 2.2.1. "Agency" shall mean the Petroleum Bulk Procurement Agency
- 2.2.2. "Cargo" shall mean a specific delivery/shipment of refined product of Industry Import.
- 2.2.3. "Charter Party Terms" shall mean the terms of the Contract as shall be agreed between the SUPPLIER and the ship owner for a specific Cargo. This shall include any form of agreement.
- 2.2.4. "Cleared Funds" shall mean payments confirmed by Supplier's Bank as received either through Electronic Funds Transfers (EFT) or Letter of Credit.
- 2.2.5. "Delivery Date Range" shall mean the dates of delivery.
- 2.2.6. "Demurrage Committee" shall mean the demurrage validation and verification committee.
- 2.2.7. "Effective Date" shall mean the date of the execution of the contract.
- 2.2.8. "Financial hold product" shall mean a product which has not been secured by purchaser either by way of letter of credit or Electronic Funds Transfers (EFT).
- 2.2.9. "Full Cargo" shall mean total tendered parcel size, with operational tolerance of +/- 5% at Supplier's option, which will be allocated in full to all Purchasers prorata based on their placed orders.
- 2.2.10. "Marine Inspector" PBPA employee assigned to perform marine operations under the Bulk Procurement system



- 2.2.11. "Marine Surveyor" Shall mean Independent Marine Inspection company, whose ownership is fully disclosed, and is member of IFIA and other international organizations that provide inspection, testing and certification of marine services.
- 2.2.12. "OMC" shall mean an Oil Marketing Company signatory to this Contract as well as to the Shipping and Supply Agreement who is the Purchaser of petroleum product subject to this Contract.
- 2.2.13. "Purchaser" shall mean any person procuring petroleum products through Bulk Procurement System (BPS)
- 2.2.14. "Product" Shall mean JET A-1 & IK
- 2.2.15. "Replacement cargo" shall mean a different product which is within the approved specification imported after the initial import has been declared off spec as provided in this contract
- 2.2.16. "Safe berth" shall mean a berth which vessels so conforming, and having any beam, can at all times safely reach and leave and at which such vessels can lie at all times safely afloat.
- 2.2.17. "Supplier" shall mean an entity signatory to this contract and which has been awarded a tender to supply JET A-1 & IK through BPS
- 2.2.18. "Tender" shall mean an invitation to treaty/contract to supply JET A-1 & IK under the Bulk Procurement System. "Vessel pre-discharge Meeting" shall mean the meeting chaired by Agency Marine Inspector and attended by nominated Terminal Representatives and receivers, whose main agenda is to agree on product discharge sequence for a particular vessel.

### **3.0 TRANSIT PRODUCTS PROCURED UNDER BPS**

- 3.1 The OMC shall be a notifying party for the transit cargo duct and shall inform the Supplier the consignee(s) on whose name the product shall be manifested and warehoused under transit, and shall take full responsibility for performance this agreement. In addition, the Purchasers shall;
- a) Place orders /nominate the quantity of product on behalf of the transit consignees;
  - b) Eleven (11) days before the birthday of delivery date range the OMC shall notify the supplier copy PBPA on cargo splits and consignee details.
  - c) Ensure L/Cs are opened and payments are made and transmitted to the Supplier within the specified time; and
  - d) The supplier has the right to perform KYC



- 3.2 Any payment default by the consignee of the transit cargo shall be treated as default by the Purchaser that nominated the defaulting consignee.

#### **4.0 DOCUMENTS FORMING PART OF THE CONTRACT**

- 4.1 The following documents shall form, and be construed as part of this Contract:

- a) TBS product Specification,
- b) Shipping and Supply Agreement between Agency and OMCs,
- c) Price, Quantity and delivery Schedule.
- d) Bidding documents,
- e) LC and Invoice Formats.
- f) The Agency's Notice of Award to Successful Bidder,
- g) Supplier Performance Security Bond as per format included in the BPS Tender Document,
- h) Holding and release certificate for product under financial hold,
- i) Certified true copy of charter party terms and conditions. The charter party agreement shall not be tempered with.
- j) Bank guarantee from the OMCs
- k) Documents submitted by the Supplier during application for prequalification.
- l) Standard Operating Procedure for Petroleum products receipt/Discharge from the vessel

- 4.2 The Agency reserves the right to verify the authenticity of the submitted charter party agreement. In the event that it will be established that the supplier has submitted forged or tempered charter party agreement the suppliers shall be penalized in accordance with clause 18.6

#### **5.0 QUANTITY & CARGO NOMINATION**

- 5.1 The quantity to be supplied under this contract shall be a Full Cargo as per delivery date range in the price, quantity & delivery schedule, prorated to each Purchaser that has placed orders for product on the delivering vessel.
- 5.2 Minimum Batch per vessel for each Purchaser shall be 500 MT
- 5.3 Minimum Batch per receiving terminal shall be 1000 MT
- 5.4 Minimum order per delivery month shall be 1000 MT
- 5.5 Supplier is not allowed to deliver JET A-1 & IK below or above the tolerance (+/-5%). In the event the vessel has arrived with cargo outside tolerance level the supplier shall;
- (a) Notify the Agency upon Purchasers willingness to purchase additional quantity. The product should be for transit only



- (b) Pay a penalty of USD 5 per MT for under delivered quantity.
  - (c) Notwithstanding the provision of clause 5.5(a) the supplier shall be required to pay penalty of USD 5 per MT for the added arrival quantity.
  - (d) Compute demurrage taking into account the added arrival quantity (Full cargo).
- 5.6 The Supplier request to use BPS vessel to load private transit cargo as stipulated in the price quantity and delivery schedule shall be lodged to the Agency not later than fifteen (15) days before the first day of delivery date range. Any request lodged out of time shall not be considered.
- 5.7 Notwithstanding the provision of clause 5.5 of this contract. Acceptance of the Supplier request to use BPS vessel to carry transit cargo shall be made under the following conditions.
  - (a) Premium shall be diluted prorata to the added transit cargo. The formula for diluting premium is as provided below  
$$\text{Diluted Premium} = \frac{\text{Tendered Premium} \times \text{Tendered Quantity}}{(\text{Tendered Quantity} + \text{Additional Quantity})}$$
  - (b) Demurrage shall be computed by taking into account the added transit cargo

## **6.0 DELIVERY TIME, POINT AND DISCHARGE OF PRODUCTS**

- 6.1 The delivery date range as per Appendix 1 of the bid document purchased by the Supplier is to be strictly adhered to. PBPA in consultation with the Supplier can request change of delivery date range provided that such request is communicated in writing at least thirty (30) days before the first day of the original delivery date range or at least thirty (30) days before the first day of the revised delivery date range whichever comes first. Any request which will be made out of time will not be considered.
- 6.2 Full cargo shall be delivered DAP ONE SAFE BERTH ONE SAFE port SBM Dar es Salaam for JET A-1 & IK.
- 6.3 The cost of storing product into nominated terminals which can receive direct from SBM shall be borne by the individual Purchasers at the rate and terms agreed between individual Purchasers and terminal owners.
- 6.4 The vessel delivering JET A-1 & IK under the BPS must conform to TPA Shipping standards as well as minimum pressure at vessel discharge Manifold of 8 bars & Maximum pressure of 12 bars at vessel discharge manifold at SBM.
- 6.5 For any vessel not meeting the minimum specification specified in clause 6.4 above resulting in discharge delays; such additional time incurred due to delays shall not count as time on demurrage on that particular vessel as well as the





vessels that have already tendered NOR during discharge of poor performing vessel.

## **7.0 QUALITY, QUANTITY AND INSPECTION**

- 7.1 Quality of JET A-1 & IK delivered and discharged pursuant to this contract shall be as per the specifications provided by TBS included in BPS tender document.
- 7.2 The quality of Product delivered under this contract shall be determined by TBS.
- 7.3 The Agency shall reject any JET A-1 & IK that has been confirmed by TBS as not meeting specifications as per clause 7.1 above.
- 7.4 Representative samples of the cargo on arrival at discharge port shall be taken and sealed by the Agency Marine inspector, Supplier Marine Surveyors and TBS and the same shall be retained by all parties. Each party shall keep records of the numbered seals and sample reference number.
- 7.5 The Agency shall retain three sets of sealed samples for at least ninety (90) days.
- 7.6 Any product which has not met the approved TBS specification shall not be offloaded from the delivery vessel.
- 7.7 In the event of any dispute on quality of the cargo, the sealed representative samples taken and retained by AGENCY, Supplier marine surveyors and TBS in accordance with clause 7.4 above shall be retested by TBS or any other laboratory contracted by TBS in the presence of representative of the Agency, and the Supplier. The results of which shall be the basis of resolving the dispute. Supplier Marine surveyors shall be allowed to witness testing of all samples.
- 7.8 The arrival quantity under this contract shall be determined by WMA. Density determined by TBS shall provide the basis of determining the arrival quantity.
- 7.9 In the event of any dispute on arrival quantity, the quantity determined by WMA shall be final and binding.
- 7.10 During discharge operations Agency and Supplier shall;
  - (a) Take samples on board the vessel, at the jetty head and tanks of receiving terminals before and after completion of discharge to receiving terminals. The samples taken are for retention purposes.
  - (b) Seal all samples and clear labelled them with the location and source, the date and time of sampling, a unique reference number, the sample type, the grade of fuel, the batch number and a means of identifying who drew the sample. The label shall be printed and filled in with ink that does not run when exposed to either water or hydrocarbon.





- (c) Records of seals numbers for each retained samples.
- (d) Retain samples taken under clause 7.10 (a) for at least ninety (90) days.

- 7.11 In the event of any dispute in relation to contamination of product during discharge, samples taken under clause 7.10 shall be used to determine the point and cause of contamination.
- 7.12 Samples taken under clause 7.10 shall be tested at an internationally accredited laboratory mutually agreed by the Agency, the Purchasers and the Supplier.
- 7.13 Each vessel shall carry three load port samples for each vessel compartment, the sample shall be retained by Agency and Supplier Marine Surveyor.

## **8.0 MANAGEMENT OF DISCHARGE OPERATIONS**

- 8.1 Discharge sequence of JET A-1 & IK shall be as agreed during Vessel pre-discharge meeting. Any deviation from the agreed discharge sequence shall be approved by the Agency and the Supplier after consultation with respective receiver.
- 8.2 Purchasers are required to issue ullage confirmation two (2) days before the berthing date at disport.

## **9.0 HANDLING OF REJECTED OFF SPEC CARGO AND REPLACEMENT CARGO**

- 9.1 Subject to clauses 7.1, 7.2, and 7.3 above, TBS shall guide the Agency in accordance with TBS standards and regulations on the way of handling the rejected off spec JET A-1 & IK and the Agency shall advice the Supplier accordingly.
- 9.2 If TBS has confirmed that the imported cargo does not meet JET A-1 & IK standards applicable in BPS tenders, the Agency shall reject the cargo and inform the Supplier to replace the cargo; the replaced cargo must meet required standards and it shall be authenticated by a new set of shipping documents. The new set of shipping documents shall be supplied by the Supplier within terms and conditions of the contract or terms and conditions which will be in place at the acceptable time of delivery whichever is favorable to the Purchasers.
- 9.3 Any such replaced JET A-1 & IK shall be treated as delayed product and shall be subject to late delivery penalties provided in this contract.
- 9.4 Purchasers shall be relieved from the late payment penalties accrued on the rejected cargo. Late payment penalty shall start to accrue upon arrival of the replaced cargo.



- 9.5 The Supplier shall be required to refund all money advanced or cancellation of any confirmed L/C from the Purchaser with compensation for any costs incurred in establishing the L/C once the cargo is rejected as off spec.
- 9.6 Subject to clause 9.4 Purchasers shall be required to open and confirm L/Cs as required by this contract based on the new delivery window to be communicated by the Agency.
- 9.7 In the event that the intended replacement cargo does not meet JET A-1 & IK standards applicable in BPS tenders, notwithstanding any other rights, the Agency shall have the right to immediately call for an emergency tender. All costs and expenses incurred by the Agency in arranging the delivery of a cargo in replacement of the cargo which is off spec shall be borne by the Supplier who supplied off spec product.
- 9.8 Subject to the laws governing the importation of JET A-1 & IK in Tanzania and terms of this contract, any Supplier who will deliver JET A-1 & IK that does not meet the approved specification, that Supplier shall be penalized as stipulated in the Petroleum Act.

## **10.0 PAYMENT TO MARINE SURVEYORS**

- 10.1 In the event supplier has engaged Marine Surveyor charges for services rendered at discharge port shall be borne independently by supplier.

## **11.0 VESSEL NOMINATION**

- 11.1 Supplier shall nominate the Vessel to the Agency fifteen (15) days prior to the first day of delivery window. Consequently, after consultation with TPA, the Agency shall be required to revert to the Supplier with their acceptance or rejection of the said nominations within twenty (24) running hours of receipt of nomination from Supplier.
- 11.2 All vessels delivery product must have Double Hull, meet maximum age limit of fifteen (15) years and meet any other requirement issued by TPA.
- 11.3 The supplier is allowed to substitute the nominated vessel provided that the newly nominated vessel will undergo the vetting process as stipulated in clause 11.1. All cost resulting from substitution of vessels Will be on the account of the suppliers.
- 11.4 Subject to clause 11.1 no nomination shall be rejected unreasonably and all rejections must be supported by relevant documentations.



## 12.0 PRICE

- 12.1 The price of the product DAP SBM, Dar es Salaam shall be the Total of FOB component plus DAP tender premiums as quoted in the Price and Quantity Schedule of JET A-1 & IK herein attached to form part of this Contract.
- 12.2 The FOB component shall be according to the tender called and confirmed by the Agency, this shall be the arithmetic mean of Platt's high and low quotations for dates of pricing as follows:
- a) The applicable dates of pricing shall be as started in the Price and Quantity Schedule of Petroleum product attached to the BPS tender document which forms part of this Contract,
  - b) Any revision of delivery window shall not affect the pricing date range defined in this contract,
  - c) Supplier agrees to supply (transfer ownership of) the quantity (+/-5%) per vessel subject to L/C being established by the Purchaser within the agreed time.
- 12.3 For Jet A-1, Platt's Asia Pacific/Arab Gulf Market scan under the heading '**FOB Arab Gulf for Kero**' to apply. Actual united states Barrel to Metric Ton conversion per certificate of quality issued by WMA on arrival
- 12.4 Port Handling Charges as well as TASAC and Delivery order charges shall be on the Supplier's account and shall be part of the DAP premium.
- 12.5 Any published correction to any relevant assessment shall be notified to Purchasers within three (3) working days of the Platt's correction.

## 13.0 INVOICING

- 13.1 Supplier's final invoices shall be in USD based on FOB Component with applicable pricing month as per clause 12.2 plus DAP premium as provided in the price and quantity schedule and ship's arrival quantity as determined pursuant to clause 13.2.
- 13.2 Notwithstanding provision of clause 12.1, quantity to be used for invoice purposes shall be the lower quantity between load port Bill of lading and ship's arrival quantity measured at discharge port in Tanzania
- 13.3 Final invoice shall contain the breakdown of prices as mentioned in clause 13.1 and 13.2 above, including (a) the detail of all considered quotations, expressed in their original unit, be in USD/MT or USD/Bbls as the case may be, (b) in connection with the quantity stipulated, the details of the two computations below shall be expressly stated in the final invoice to determine the quantity based on the lower of the load port B/L quantity and the vessel arrival quantity measures at the DISPORT in Tanzania:



- i. for the computation of quantity utilizing the quantity measures at DISPORT, refer to clause 7.8; and
- ii. for the computation of quantity utilizing the quantity measured at load port, the B/L figures shall apply for the final quantity to be invoiced and for the conversion factor to be applied for the conversion of the unit price from USD/Bbls to US/MT.

13.4 The invoice should be as per ***annexure SSC 01***.

13.5 All amounts shall be calculated to 4 (four) decimal places.

13.6 Supplier to provide final commercial invoice to the receivers copied to the Agency within 10 working days from the date of completion of discharge.

13.7 Latest by the fifth (5<sup>th</sup>) day from the date of completion of discharge or by the fifth (5<sup>th</sup>) day from the end of the pricing month, which is later, the Supplier shall send to the Agency copy to all Purchasers the final unit price of the cargo detailing:

- (a) The quotation used as published by Platts in actual defined units as per publications (USD/Bbl.
- (b) The detailed computation of the total cargo quantity to be invoiced for each of (i) quantities measured as DIPSORT, and (ii) quantities measured at the load port using the B/L figures.
- (c) Related premium and demurrage provision

13.8 The Agency shall revert within three (3) working days to the Supplier with a copy to all Purchasers to confirm or provide comments on the unit price for the purpose of the final invoice.

13.9 Supplier shall provide to PBPA table of summary of invoiced quantity per purchaser latest ten (10) calendar days from the date the vessel has completed to discharge. The table shall contain but not limited to name of the purchaser, premium, FOB price and quantity.

13.10 The supplier shall issue final invoice within fourteen (14) days from the date the vessel has completed discharge.

13.11 The final price shall be paid within time frame specified in this contract.

13.12 Profoma invoice to be used only for the purpose of opening L/C. Profoma invoice should not be used in lieu of Final invoice for payment under the Letter of credit. Only Final invoice shall be used for payment under the letter of credit through documentary presentation.



## **14.0 PAYMENT AND PENALTY FOR LATE PAYMENT**

### **14.1 Payment through L/C:**

- a) Purchaser shall latest five (5) calendar days before 1st day of delivery date range or latest five (5) calendar days after receipt of the needed documents from the Supplier provide an irrevocable L/C opened by the Purchaser's Bank but confirmed by any Bank as provided by the Supplier. The Supplier shall provide to the Agency a list of minimum ten (10) confirming banks before signing the contract as provided in the Notice of Award.
- b) L/C issued by any issuing bank shall be confirmed by any of the ten (10) listed banks by the supplier, supplier has a right to reject any issued L/C that has not been confirmed by the ten (10) listed banks.
- c) The L/C shall be payable at the Supplier's bank, without offset, deduction or counter claim and free of all charges latest sixty (60) calendar days from the first day of delivery window.
- d) Charges for establishing the L/C will be borne by the Purchaser.
- e) L/C advising charges and confirmation charges shall be borne by the Supplier.
- f) LC's shall be confirmed within three (3) working days from the date the LC has been issued as long as the purchaser has the acknowledgement from the confirming bank that the L/C has been received. Any cost associated with delay of LC confirmation shall be on the account of the supplier.
- g) All commissions and charges from the issuing bank are for the applicant's (buyer's) account. All commissions and charges from the confirming and advising bank are for the beneficiary's (Supplier's) account.
- h) All cost resulting from L/C amendments shall be borne by the party which caused the amendments to be made. If the L/C amendment will be caused by factors which are neither caused by the Supplier nor the Purchaser L/C amendment cost will be shared equally between the Supplier and the Purchaser.
- i) For establishing of L/Cs by the Purchaser, the Supplier shall submit the PFI and all needed documents to the Purchaser and the Agency latest 10 calendar days before the first day of delivery window. For purpose of this clause and clause 14.1 and 14.4 of this contract the needed documents are;
  - i) copy of Bill of lading
  - ii) load port certificate of quality



iii) Certificate of origin.

j) In issuing PFI the supplier shall take into account the information provided by OMC in paragraph 3.1 (b) above.

14.2 The purchaser shall not be held responsible for any delays in opening the L/Cs if such delays have been caused by the Supplier's failure to send the needed documents (to enable Purchasers to open L/C) within the time bar stated in this contract. The Purchaser shall immediately upon receipt of the PFI notify the Supplier and the Agency on the intention to make bank transfer or any alternate payment as mutually agreed between Supplier and Purchaser

14.3 The Supplier shall notify the Agency on any alternate payment agreement (including but not limited to bank transfer, pre-payment, fixed payment dates or credit arrangement etc.) with the Purchaser not later than five (5) working days prior to first day of delivery date range.

14.4 Bank Transfer or pre-payment

- a) Any Purchaser who shall prefer to make payments by bank transfer or pre-payment shall effect payments latest three (3) calendar days before 1st day of delivery date range or latest five (5) calendar days upon receipt of proforma invoice (PFI) from Supplier whichever is later.
- b) The Supplier at his discretion may offer discount to bank transfer or pre-payment done by Purchasers.
- c) The purchaser shall not be held responsible for any delays in making bank transfer or prepayment, if such delays have been caused by the Supplier's failure to send the needed documents (to enable Purchasers to make bank transfer or prepayment) within the time bar stated in this contract.

14.5 Purchaser's parent / Affiliate companies shall have the option to establish L/C on behalf of Purchaser.

14.6 Transit parcels shall be paid by the consignees of the said parcels. Purchasers who placed orders shall make sure that the consignees of transit parcels pay for their cargoes within stipulated contractual duration. Any penalty resulting from consignee of transit cargo delays to open LC for the transit parcel shall be on account of the purchaser.

14.7 L/C and bank transfer or prepayment shall be made against presentation of Supplier's commercial invoice and certified copies of shipping documents as listed in clause 14.8 unless mutually agreed otherwise between Supplier and Purchaser.

14.8 For the purpose of this contract copies of shipping documents shall include:

- a) Certificate of origin,





- b) Certificate of Quality (COQ) on vessels ship tank composite sample on arrival at disport issued by TBS,
  - c) Certificate on vessel's arrival quantity issued by WMA.
- 14.9 Supplier must ensure that cargo manifest is lodged to all relevant authorities including but not limited to the Agency and TASAC with endorsed copy of Bill of Lading (for customs purposes only) five (5) calendar days before the vessel has tendered NOR. The cargo manifest shall correspond to the PFI and endorsed BL provided to the Purchasers. Cost of lodging cargo manifest and issuing of Delivery order shall be borne by the Supplier.
- 14.10 Any and all costs or charges or penalties resulting from delays in berthing caused by any Purchaser not having settled or performed the required declarations with TRA, TASAC and TPA will be solely payable by Purchaser.
- 14.11 Any and all cost or charges or penalties resulting from delays in lodging of the cargo manifest caused by the Supplier and where such delays result in the Purchaser's delay to make necessary declaration to TRA, TASAC, and TPA will be solely payable by the Supplier.
- 14.12 Where there is any default in providing the L/C or making bank transfer or prepayment on due time, parties shall be guided by the provision of clauses 14.1(g & i), 14.4, 14.15 and 14.16,
- 14.13 Supplier's vessel shall only carry cargo ordered through the Agency or upon approval from the Agency as provided in clause 5.6 and 5.7
- 14.14 Invoices shall be raised for DAP i.e. FOB component plus DAP premiums as stipulated in this Contract and detailing the price computation (including the Platts quotes as published, the conversion factor utilized and its computation, quantity at load port and quantity at DISPORT, supported by documentation stipulated in clauses 14.8 and 14.9.
- 14.15 Purchaser who delays to open L/C or make pre-payment as stipulated in this contract shall be liable to penalties as stipulated in The Petroleum (Bulk Procurement) Regulations, 2017. This penalty is payable to the Agency for distortion of Bulk Procurement System
- 14.16 Purchaser who fails to pay for its share of a JET A-1 & IK at the due date as per the credit period sixty (60) days shall be charged a late payment penalty of LIBOR +2% per annum and be barred from participating in the following BPS tender or both, the payment shall be paid to an escrow account operated by the AGENCY for onward payment to the Supplier. For the purpose of this clause due date is 60 days after the first day of delivery date range.
- 14.17 Notwithstanding the provision of clause 14.15 and 14.16, the Purchaser who fails to pay or open L/C for the ordered product within five (5) days after COD and the product has been discharged as product on financial hold, shall be barred from participating in BPS until it has fulfilled all pending obligations.





- 14.18 All third party charges associated with late payment e.g. TRA Taxes and Penalties, TPA charges and penalties and storage charges, shall be on account of the defaulting party and will be recovered as per actual prevailing costs.
- 14.19 In the event of variation on the invoiced amount, the Purchasers shall pay the remaining unpaid amount within fourteen (14) days after the Supplier has issued the final invoice. Likewise, within fourteen (14) days after the Supplier has issued the final invoice, the Supplier shall refund to the Purchasers any amount over paid.
- 14.20 Subject to clause 14.1 and 14.4 above the Supplier shall notify the Agency on payment status for the vessel in the manner prescribed by the Agency.
- 14.21 In the event that the vessel will not be able to offload her cargo within delivery date range as a result of vessel congestion or any other reason, the Agency, Supplier and Purchaser may agree on payment reference dates and credit period.
- 14.22 LC format shall be as provided in ***annexure SSC 02***.

## **15.0 L/C DELAYED / DEFAULT**

- 15.1 Where there is a default in providing the L/C or making bank transfer or prepayment on due time, (if such delay and or default is not caused by the Supplier) then the Supplier in consultation with Agency has the right to dispose the batch elsewhere. For the purpose of this clause due date shall be five (5) days before first day of delivery date range or five (5) days after receipt of PFI and needed documents whichever is later.
- 15.2 In the event of the late provision of an LC or bank transfer or prepayment by a particular Purchaser the product shall be discharged into a terminal nominated by the Supplier as product on financial hold until payment has been done. Storage cost shall be on the account of the defaulting Purchaser.
- 15.3 When there are ullage constraints as a result of the Purchaser failure to create sufficient ullage to receive the ordered product, the purchaser shall nominate the alternative terminal failure to, the purchaser shall be deemed to have distorted BPS, and shall attract penalties as prescribed in the Petroleum (Bulk Procurement) Regulations, 2017 (For the purpose of this provision penalty shall be 0.5 USD per MT per day) also shall be liable to pay demurrage for the delay.
- 15.4 Prior to signing the shipping and supply contract, the Supplier shall inform the Agency at least three acceptable terminals, which Supplier considers acceptable at the time, to discharge the product which would be on financial hold.
- 15.5 Where product has been off-loaded as product on financial hold, the product shall be so offloaded as manifested, however, the Purchaser shall be liable to pay storage charges at the rate and terms provided by the receiving terminal.



- 15.6 Where the product has been offloaded on financial hold, the receiving terminal shall issue a holding certificate to the Supplier with copy to Agency. The Holding certificate shall state and guarantee that no product will be released without written confirmation from the Supplier and or its financier. Upon receipt of the funds or of the L/C the Supplier or its financier shall issue a release certificate to the terminal with a copy to the Agency.
- 15.7 The Supplier shall not prevent any vessel from berthing due to financial hold.
- 15.8 Failure to adhere to clause 14.1 and 14.4 above, the Purchaser shall not be allowed to participate in the next tender until such product has been fully paid to Supplier including all associated costs with Supplier, Agency and the receiving terminal.
- 15.9 The Agency guarantees that costs incurred by the Supplier or any receiving terminal resulting from the suppliers exercising right to dispose the product as stipulated in clause 15.1 shall be settled by cashing the bank guarantee provided to Agency by the Defaulting Purchaser, without prejudice to the Agency's rights and/or Supplier or receiving terminal further claims or damages from the Purchaser.
- 15.10 The Agency does not guarantee that the available bank guarantee shall be sufficient to cover all claims raised by the supplier. In the event that the available bank guarantee is not sufficient to cover all cost incurred by the supplier appropriate legal measures shall be taken against the defaulting purchaser.
- 15.11 Any payment from the cashed bank guarantee shall be made by the Agency to the Supplier or any terminal upon submission of relevant supporting claim documents
- 15.12 In the event that the Purchaser has paid taxes but has not opened L/C the Supplier shall continue to have rights (including right to dispose the product) over the product on financial hold until the time when the product has been paid for.
- 15.13 The Supplier shall, when disposing the product on financial hold take into account taxes, wharfage and other costs paid by the defaulting Purchaser. The Supplier, in consultation with the Agency, shall agree on modality to refund taxes, wharfage and other costs paid by the defaulting Purchaser. The refund thereof shall be subject to fulfillment of all obligations and liabilities resulting from failure to open L/C. Failure by Purchaser to fulfill all obligations and liabilities resulting from failure to open L/C the amount to be refunded shall be used to cover outstanding obligations.
- 15.14 The Supplier shall within 10 days after disposal of product on financial hold submit to the Agency all documents relating to selling of the product in question including detailed elaboration of the costing for the product this shall include but not limited to losses, and storage charges. Failure to submit all the needed



documents implies that there was no cost incurred in disposing the product on financial hold.

## 16.0 DOCUMENTS

16.1 Supplier shall forward to Purchaser and the Agency the following documents not later than eight (8) calendar days prior to the first day of delivery date range.

- a) Copy of bill of lading endorsed with the relevant quantity per Purchaser;
- b) Copy of load port Certificates of Quality;
- c) Copy of bill of lading endorsed with the relevant quantity per Purchaser;
- d) Copy of load port Certificates of Quality;
  - i. For Jet A-1 all certificates of quality issued in the chain of supply from the refinery to the delivery vessel; including refinery quality certificate (RQC) that is produced at the point of manufacture and or acceptable certificated of quality (COQ) that come out from the downstream of refinery in the intermediated supply terminal or if the cargo has been shipped from another terminal. The two documents shall cover the batch showing the fuel grade and confirm that they meet all applicable and relevant specifications or the latest JIG Aviation Fuel Quality Requirements for Jointly Operated System (AFQRJOS) checklist.
  - ii. A copy of the latest recertification test certificate for JET A-1, where applicable (for non-dedicated vessel, a multiple tank composite sample should be prepared for recertification test to confirm the condition of the product on board of the vessel).
  - iii. Release certificate(s),
  - iv. inventory of samples,
  - v. Inspectors report from the load port including previous cargo and cleaning procedure and loading plan (if available).
- e) Copy of load port Certificates of Quantity.
- f) Copy of certificate of Origin; for Jet A-1 all certificates shall be issued in the chain of supply from refinery to the delivery vessel.
- g) Copy of load port cargo manifest
- h) Valid calibration certificates of;
  - II. Ullage Temperature Interface (UTI)
  - III. All vessel Tanks

16.2 Failure to submit document within three days from BL date the supplier shall be liable for penalty of 0.5 per MT per day payable to the purchasers.



16.3 Supplier shall forward to Purchasers and the Agency the following documents prior to discharge:

- a) Vessel ullage report issued at disport,
- b) Certificate of Quantity at disport,
- c) Certificate of Quality on representative Ship's tank composite sample taken and sealed on arrival at discharge port.
- d) Tank cleanness certificate issued before loading.

16.4 For the purpose of clause 16.2 above, there shall be no discharge of cargo before receipt of the documents required prior to discharge.

16.5 Upon completion of discharge the Supplier shall within five (5) working days from the date of completion of discharge forward the following documents to the Agency:

- a) Copy of Charter Party Agreement or Fixture
- b) Statement of facts at Disport,
- c) Pumping Log at Disport,
- d) Full Inspection Report after completion of discharge,
- e) Copy of list of representative ship's tank composite samples on arrival at disport retained by Agency, Marine Surveyor appointed by the Supplier.
- f) Copy of list of representative ship's tank composite samples on arrival at disport retained by TBS.
- g) Copy of list of load port ship's tank composite samples

16.6 Where the vessel has been allocated a berthing window and discharge is delayed due to Supplier's failure to submit the required documents prior to discharge any and all such costs incurred on either party shall be borne by the Supplier.

## **17.0 LAYTIME**

17.1 Lay time shall be 36 hours SHINC for a full cargo discharged at KOJ1 Dar es Salaam, commencing 6 hours from tendering Notice of Readiness or upon vessel 'All Fast', whichever is earlier.

17.2 Time lost due to non-berthing of tankers during night time and/or awaiting daylight, high tide, shall not count as used laytime.

## **18.0 DEMURRAGE**

18.1 Supplier shall additionally be entitled to charge demurrage which shall be as stipulated in the charter party terms and conditions but subject to a maximum of USD 18, 000 per day pro rata based on actual discharged quantity at SBM



Dar es salaam port, which may be higher but not lower than the tendered volume for specific cargo for pro rata computation purposes.

- 18.2 A provision for demurrage of US\$ 2 /MT to be covered under the L/C.
- 18.3 Supplier shall provide demurrage computation to the Agency within seven (7) working days from the COD date of each cargo. For the purpose of verification, Supplier shall also be required to avail to the Agency the relevant supporting documents. Failure to submit the claim within time and to submit necessary documents will render the claim null and void.
- 18.4 The Agency through its demurrage committee shall validate the submitted Demurrage computation and respective supporting documents within fourteen (14) working days after receipt of the demurrage computation from the Supplier. Failure to, the demurrage computation submitted by the Supplier shall be considered as final and binding save for fraud or manifest error
- 18.5 Computation of demurrage shall be based on the demurrage charges as per the charter party agreement terms and conditions but subject to a maximum United States dollar eighteen (USD 18, 000) per day.
- 18.6 In the event it will be established that the submitted charter party agreement is not genuine and the shown demurrage cost does not reflect the actual demurrage charged by the charterer the supplier shall be liable to a penalty of USD 50,000 payable to the Agency.
- 18.7 The final demurrage cost for that particular vessel shall be prorated to all Purchasers after excluding demurrage cost which shall be paid by the causative parties. The Supplier shall issue demurrage invoice to causative parties. Particulars of the causative parties shall be communicated to the Supplier by the Agency.
- 18.8 Based on clause 18.7 above the Supplier shall issue demurrage invoice within seven (7) calendar days after final cost has been concluded as per clause 18.5.
- 18.9 Purchaser shall pay prorated final Demurrage cost due within fourteen (14) calendar days of receipt of invoice from the Supplier. In case of any demurrage refund, the Supplier shall pay the Purchaser within fourteen (14) calendar days from date of invoice.
- 18.10 Supplier shall within thirty (30) days from the date of issuing invoice submit to the Agency a report of demurrage of payment by respective Purchasers'. Failure to it will be presumed that the Supplier has been fully paid and there is no pending demurrage claim.
- 18.11 In the event the provisional demurrage under clause 18.2 above does not suffice or the relevant Purchaser did not make payment within the time bar as stated in clause 18.9, the Agency guarantees to pay demurrage by cashing the same from relevant Purchaser's bank guarantees or utilizing cash cover latest ninety (90) days from issuance of the invoice. However, the Agency does not



guarantee that the available bank guarantee shall be sufficient to cover all claims raised by the supplier. In the event that the available bank guarantee is not sufficient to cover all cost incurred by the supplier, appropriate legal measures shall be taken against the defaulting purchaser.

18.12 If the vessel arrives between 18:01 hrs. to 05:59 hrs., NOR tendered shall be considered at 06:00 am of the next day; and laytime shall apply as per clause 17

18.13 For vessel arriving within the allocated delivery window, time will commence from the time when the NOR is tendered subject to terms and conditions of this contract.

18.14 For vessel arriving before the allocated delivery window, time will commence from 06:00 am of the first day of delivery window; and laytime shall apply as per clause 17.

18.15 For vessel arriving after the allocated delivery window, the demurrage will commence when the vessel is ALL FAST or commenced mooring.

18.16 For vessel arriving after 18:01 hrs. of the last date of the allocated delivery window shall be viewed as missing delivery date range and the demurrage will commence when the vessel is ALL FAST or commence mooring.

18.17 Demurrage invoice shall be as provided in annexure 03

## **19.0 STATEMENT OF ACCOUNTS**

19.1 Supplier is obliged to issue statement of accounts to all receivers on monthly basis. The statement of account shall cover product and demurrage payments. If the supplier will not send the statements of accounts thirty (30) days after the initial reminder, the Agency and Purchaser shall not be held liable for any delays to settle the outstanding demurrage.

## **20.0 HOLDING PAID UP PARCELS AS SECURITY FOR UNPAID UP PARCELS**

20.1 The supplier shall not hold paid up parcels as security for un paid parcels in the same tender or different tenders.

20.2 For the purpose of this contracts parcels in the same tender shall be considered as separate parcels based on the below circumstances

(c) Transit parcels

(d) Separate PFI have being issued





## **21.0 TITLE AND RISK**

- 21.1 Title to the product shall pass to the buyer from the seller upon establishment of the L/C or pre-payment by the buyer.
- 21.2 Risk to the product (including product on financial hold) shall pass from the Supplier to the individual Purchaser as the product passes the vessel's permanent flange at disport KOJ1 Dar Es Salaam.
- 21.3 As a separate and independent condition Purchasers agree that unless and until the full purchase price is tendered, the product shall be the Supplier's product
- 21.4 Until delivery and discharge of the product the Supplier shall insure the product against all risk to full replacement value and shall not re-sell, use or part with possession with them.

## **22.0 TERMINATIONS**

- 22.1 Without prejudice to any other remedy for breach of this Contract, or by written notice of default sent to the concerned party, this Contract shall be terminated by either party upon the occurrence of any of the following:
  - a) If the other party causes a fundamental breach of the Contract, fundamental breach of Contract shall include, but shall not be limited to the following:
    - i. The Supplier fails to deliver JET A-1 & IK within the period(s) specified in the contract, or within any extension thereof granted by the Agency, or
    - ii. The Supplier fails to perform any other obligation(s) which affect security of supply under the Contract, or
    - iii. The Supplier has decided to unilaterally repudiate the Contract, or
    - iv. The Supplier has been convicted of having engaged in corrupt or fraudulent practices in competing for or in executing the Contract, or
  - b) Upon dissolution, bankruptcy, insolvency, or appointment of a receiver, liquidator, or trustee in bankruptcy for that party.
  - c) Written notice to a party that a law has been introduced or amended by an Act of Parliament so that it is unlawful for that party to operate or perform its duties and obligations under this Contract or realize the benefits of this Contract.
- 22.2 Notice of termination under this Contract shall not discharge or relieve the withdrawing party of any rights, duties, obligations or liabilities arising prior to such termination, nor prejudice any rights or remedy accruing before, at or in





consequence of such termination, or any proceeding with respect to any such right or remedy including any proceedings by way of arbitration provided for hereunder.

- 22.3 In the event the Agency terminates the Contract pursuant to this clause, the Agency shall make necessary arrangement in such manner as it deems appropriate, to supply petroleum products similar to the undelivered cargo, and the terminated Supplier shall be liable to the Agency for actual costs for such similar petroleum product as well as penalties as stipulated in this contract.

### **23.0 LATE DELIVERY**

- 23.1 Late delivery default arising from causes other than a *force majeure* event shall attract a late delivery penalty of US\$ 0.5 per metric ton per day to be paid by a Supplier to the Agency in order to compensate buyers for compromising their minimum stocks or for compelling them to procure JET A-1 & IK from other sources.
- 23.2 For this purpose, late delivery penalty shall accrue from the first day after the allocated delivery date range until the vessel arrives.
- 23.3 Supplier shall make payment for late delivery to the Agency within thirty (30) days from COD and the Agency shall make the payment to the purchaser fifteen (15) days after receipt of the funds from the supplier.
- 23.4 Penalty prescribed in clause 23.1 and 23.2 shall be paid to an escrow account operated by the Agency for onward payment to the purchaser within thirty days from the date of signing a settlement deed/minutes with the Agency.
- 23.5 Until such payment is affected in full and receipt of monies confirmed by Purchasers the Supplier shall not participate in any of the tenders for the supply of JET A-1 & IK under the BPS until confirmation of full payment
- 23.6 Notwithstanding the provisions of clause 23.1 the lay-time on late arriving vessel shall commence when the vessel berths.
- 23.7 Demurrage costs resulting from cascading effect caused by late delivery of the BPS vessel shall be borne by the Supplier of the late delivery vessel.
- 23.8 For purpose of this contract, the cascading effect shall be limited to a maximum of three subsequent vessels which will discharge products after the late delivery vessel. For the purpose of this clause vessels shall include non BPS vessels.
- 23.9 For purposes of ensuring efficient and effective BPS, the Agency shall take necessary measures to minimize cascading effects.
- 23.10 Priority on berthing for discharge shall be given to CPP vessels that shall arrive within the contracted delivery date range.



23.11 Any vessel arriving after the last date of the allocated delivery date range shall berth and discharge if at all she will not interfere with the next vessel. Otherwise she shall wait on queue until when there is a window for berthing to discharge.

23.12 AGENCY reserves the right to allow priority berthing in consultation with other government authorities for national interest.

## **24.0 DELIVERY DEFAULT**

24.1 Delivery default shall be deemed to have occurred if vessel does not arrive and Tender Notice of Readiness to discharge at Dar es salaam within seven (7) consecutive calendar days after the last day of the delivery date range, in which case the Purchaser shall be relieved of its obligation to buy the cargo and the Agency reserves the right to encash the Supplier's Performance Security Bond.

24.2 The Supplier can demonstrate that there is a planned delivery by providing copies of the undermentioned documents to the Agency on the first day of delivery date range:

- a) Bill of Lading,
- b) Certificate of quality and quantity,
- c) Vessel NOR at the load port, and
- d) Load port statement of facts.

Provided that submission of the above required documents shall not relieve the Supplier to pay late delivery penalty.

24.3 In the event that Supplier cannot provide the required documents as per clause 24.2 above to the Agency, the Agency may call an emergency tender to substitute the defaulted cargo. The Supplier shall be considered to have defaulted BPS and shall be liable to the fines and penalties as provided by the laws governing importation of JET A-1 & IK in Tanzania through Bulk procurement system

24.4 In addition to penalties provided in clause 24.3 the defaulting Supplier shall be barred from participating in Petroleum Bulk Procurement System as Supplier for three (3) consecutive tenders.

24.5 In addition, the Supplier shall be responsible for all direct cost associated with product delivery outside the allocated delivery date range. For purpose of clarification direct cost shall mean extra freight and premium for an emergency cargo.



## **25.0 PERFORMANCE SECURITY BOND**

- 25.1 Within nine (9) calendar days after receipt of the Notice of Award from the Agency, the Supplier shall issue a Performance Security Bond in the form of a bank guarantee as per format specified by the Agency in the tender documents and which shall be valid for the whole duration of the Contract period.
- 25.2 Failure to comply with the requirement to provide Performance Security Bond as stated in Clause 24.1 above, shall constitute sufficient grounds for withdrawing the Notice of Award and forfeiture of the bid bond in which case the Agency may call for an emergency tender or award the tender to the second lowest responsive bidder.
- 25.3 It is the responsibility of the Supplier to make sure that the performance bond is valid throughout the contractual period. For the purpose of this clause contractual period means the whole duration when there are pending obligations to be performed by the Supplier.
- 25.4 If at the time when the Supplier's performance bond is supposed to be cashed it is established that the same has expired, the Supplier shall be required to make payment by way of bank transfer within five (5) calendar days to be computed from the date on which the performance security bond was supposed to be cashed.
- 25.5 If the supplier has refused to submit the performance bond as required by clause 25.4 the Agency has the right to use existing valid performance bond issued by the supplier for any other tender to cover cost associated with this contract.
- 25.6 Performance bond issued in relation to this contract can be used to cover cost related to the supplier's performance in other contracts.

## **26.0 GENERAL PENALTY FOR NON-PERFORMANCE**

- 26.1 Notwithstanding any provision of this contract the Supplier or Purchaser shall not be allowed to participate in the next tender, if there are pending obligations resulting from this tender or previous tender, provided that a proper notice has been issued asking the supplier or purchaser to fulfill the contractual obligation and has not acted based on the issued notice.
- 26.2 The supplier or purchaser shall be allowed to participate in the next tender upon fulfillment of the contractual obligations.

## **27.0 DISPUTE RESOLUTIONS**

- 27.1 Notwithstanding any dispute the Supplier shall be required to continue without delay to supply products in accordance with the terms of this agreement.



- 27.2 If at any time during the continuance of this Contract any dispute, difference or question relating to the construction, meaning or effect of this Contract or of any of the clauses herein shall arise between the parties, then the aggrieved or affected party shall give written notice of not less than 72 hours to the other party of such dispute, difference or questions.
- 27.3 Parties shall be required to settle their dispute amicably within 15 days of the occurrence or commencement of the amicable dispute resolution, if the parties fail to settle the dispute amicably parties shall refer the disputes for arbitration.
- 27.4 If parties fail to settle the dispute amicably, such dispute shall be referred to arbitration within ninety (90) days from the date it has been established that parties have failed to resolve the dispute amicably
- 27.5 The arbitration shall be resolved with its seat in Dar es Salaam Tanzania or any other place mutually agreed by both parties conducted in English language by three arbitrators pursuant to the rules of the ICC unless the parties agree otherwise.
- 27.6 Where a dispute between the Parties is solely of a technical nature, the Parties shall have the option of referring such dispute to an Expert in accordance with Clause 27.7 below.
- 27.7 If either Party gives notice in writing to the other of its intention to refer a dispute to an Expert for determination, the following shall apply:
- a) Parties shall seek to mutually agree in good faith on the appointment of such Expert. The Expert shall be an appropriately qualified and experienced professional who is knowledgeable regarding the international JET A-1 & IK industry and is technically competent in the area of the subject of the dispute to act as the Expert; and
  - b) Failing agreement by the Parties regarding the appointment of the Expert within fourteen (14) days of the above notice, the matter shall be referred to full process for the matter to be referred to arbitration
  - c) If the appointment of an Expert is agreed by the Parties:
    - i. the Parties shall provide their submissions and supporting information with respect to the dispute to the Expert within fourteen (14) days of the date of the appointment of the Expert;
    - ii. the Expert shall resolve or settle such dispute taking due and proper account of the submissions of the Parties and shall render his decision in respect thereof within twenty-eight (28) days following the date of the appointment of the Expert;



- iii. the Expert shall be given all reasonable access to the relevant documents and information relating to the dispute, and access to the Delivery Point and sampling, weighing, measurements and other data as the Expert shall reasonably require;

27.8 Any decision of the Expert shall be final and binding on the Parties except in the case of fraud or manifest error, in which case such alleged fraud or manifest error by the Expert shall be dealt with in accordance with the law of United republic of Tanzania.

27.9 The costs of the Expert in settling or determining a dispute shall be borne by the losing Party unless the Expert determines otherwise.

27.10 The Agency shall lodge claims and take legal measures against the supplier on behalf of the buyers, however on special circumstances the Agency may allow buyers to personally lodge claims or take legal measures against the supplier and shall notify the supplier accordingly.

27.11 The supplier may decide to lodge claims or take legal measures against individual buyers without including the Agency, however before doing so the Agency shall be notified and be given the option to be included in the dispute.

## 28.0 **FORCE MAJEURE**

28.1 Neither Supplier nor Purchaser shall be liable for damages or penalties for any failure or delay in performance of any obligation (except the obligations to make payment of any money due under this Agreement), where such failure or delay is caused by force majeure, being any event, occurrence or circumstance reasonably beyond any control of that party.

28.2 For the purposes of this Agreement Force Majeure shall be limited to failure or delay caused by or resulting from: -

- a) piracy attacks, fires, wars (whether declared or undeclared), riots within the areas of operation, embargoes, accidents, restrictions imposed by any governmental authority independent of the Parties (including allocations, priorities, requisitions, quotas and price controls).
- b) acts of God, earthquake, flood, fire or other natural physical disaster, named storms, hurricanes, typhoons and the like, but excluding other weather conditions, regardless of severity.

28.3 In the event that a Force Majeure situation exists and this is preventing or delaying performance of any obligations under this Agreement the Party giving the notice of the occurrence of force Majeure event shall use reasonable endeavors to minimize the effect of such Force Majeure and shall provide proof



of efforts taken to minimize the effects of force Majeure in the performance of the contract. Failure to do so shall preclude the Party from subsequently claiming that the performance was prevented or delayed by such an occurrence.

- 28.4 If either of the Parties is prevented from, or delayed in, performing any of its obligations under this Agreement by Force Majeure (as defined above) and which, by the exercise of reasonable diligence, the said Party is unable to avoid, prevent or provide against, then it must promptly notify the other Party in writing of the circumstances constituting the Force Majeure ( with supporting evidence of the occurrence of force majeure event) and of the obligation the performance of which is thereby prevented or delayed and, to the extent possible, inform the other party of the expected duration of the force majeure event. Failure to do so shall preclude the Party from subsequently claiming that the performance or progress of the Work or any part thereof was delayed by such an occurrence.
- 28.5 If either of the Parties is prevented from, or delayed in, performing any of its obligations under this Agreement by Force Majeure (as defined above), the time of Supplier to make, or Purchaser to receive, delivery hereunder shall be extended during any period in which delivery shall be delayed or prevented by reason of any of the foregoing causes up to a total of ten (10) days. If any delivery hereunder shall be so delayed or prevented for more than ten (10) days, either party may terminate this contract with respect to such delivery upon written notice to the other party.

## **29.0 WAIVER AND SEVERABILITY OF LIABILITY**

- 29.1 Any waiver or concession that may be granted by a party (ies) hereto in regard to any of terms and conditions of this Contract shall not in any way affect or prejudice that party's rights herein.
- 29.2 All such waivers or concessions may be withdrawn at any time without prior notice. No waiver by either party of any breach of this contract shall be considered as a waiver of any subsequent breach of the same or any provision.

## **30.0 ASSIGNMENT**

- 30.1 No party shall assign this contract in whole or in part without written consent to the other party except to an affiliate, however, the assignor will remain liable for the assignee's full performance.
- 30.2 AGENCY shall represent/ act for and on behalf of the receivers in any dispute which shall arise under the importation of petroleum product through the bulk procurement system provided that the dispute shall involve all receivers participated in a particular tender. Any claim involving individual receiver or a group of receivers shall be handled by the respective receivers in person.





- 30.3 The AGENCY before instituting any legal proceeding shall consult the Solicitor General. The solicitor General my based on the powers conferred to him under order 4 (1) of the Office of the Solicitor General (Establishment) order, GN. No. 50 of 2018 intervene on any legal proceeding instituted or intended to be instituted by the Agency.

### **31.0 ENTIRE CONTRACT AND DURATION**

- 31.1 This Contract is the entire Agreement between the parties and supersedes all prior Agreements and understandings whether written or oral.
- 31.2 This Contract shall not be varied or amended in any way except in writing signed by representatives of all the parties' signatories herein. It shall remain enforceable on the day of its signature by all parties herein, and it shall remain in force and effect until amended or ended by a written signed by all the parties' signatory herein.
- 31.3 In case of any conflict and or difference between this Contract and any other document in the bid document, the provisions of this Contract shall prevail.

### **32.0 COMMUNICATIONS**

- 32.1 All communications shall be deemed having been made on the date on which they have been sent when using email which shall be the preferred mode of communication given the number of parties concerned.
- 32.2 The Supplier shall be required to have a local representative in Tanzania throughout the duration of the tender.
- 32.3 Communications to the Supplier shall be sent to the email addresses notified on the date of award.
- 32.4 Communications to the Agency shall be sent to the following addresses:

**EXECUTIVE DIRECTOR**  
**PETROLEUM BULK PROCUREMENT AGENCY**  
P.O. Box 2634  
Dar es Salaam  
Tel. +255 22 2128 885  
Fax +255 22 2128 886  
[info@pbpa.go.tz](mailto:info@pbpa.go.tz)

### **33.0 GOVERNING LAW**

- 33.1 This contract shall be construed in accordance with and governed by the laws of Tanzania.





33.2 The arbitration shall be governed by the International Arbitration Rules (International Chamber of Commerce – Arbitration and ADR Rules).

### 34.0 GENERAL

34.1 To the extent that the incoterms are not in conflict with the terms of this Contract, the parties hereby agree to be bound by the DAP Incoterms and amendments thereof.

### 35.0 DECLARATIONS

35.1 Parties signatory to this contract declare that, they will adhere to this contract as well as to The Petroleum Act No. 21 of 2015 and the Petroleum (Bulk Procurement) Regulation, 2017 (G.N. No. 198 of 2017)

35.2 We, the undersigned, duly authorized by our respective companies, hereby agree to the provisions of this contract:

**IN WITNESS WHEREOF**, the authorized representatives of the Parties hereto have executed these presents in the manner and on the dates hereafter appearing:

**SIGNED** and **SEALED** with the common  
Seal of PETROLEUM BULK PROCUREMENT AGENCY  
This .....



### IN THE PRESENCE OF:

NAME: .....  
SIGNATURE: .....  
POSTAL ADDRESS: 2634 DAR ES SALAAM  
QUALIFICATION: .....

NAME: .....  
SIGNATURE: .....  
POSTAL ADDRESS: 2634 DAR ES SALAAM  
QUALIFICATION: .....

SIGNED and SEALED with the common  
Seal of .....  
This .....



### IN THE PRESENCE OF:



NAME: .....  
SIGNATURE: .....  
POSTAL ADDRESS: .....  
QUALIFICATION: .....

NAME: .....  
SIGNATURE: .....  
POSTAL ADDRESS: .....  
QUALIFICATION: .....

### ***ANNEXURE SSC 01.***

#### **Counterparty Details**

**P.O. Box**  
**Dar Es Salaam**  
**Tanzania**

#### **Commercial Invoice**

Invoice No	(Invoice Reference)
Our Ref	(Tba)
Position	(Tba)
Geneva	(Date)
Trade Type	Physical
Book Month	(Month Of Booking)

Quality  
Quantity BI  
Quantity Ship Before  
Discharge  
Conv Factor BI  
Conv Factor Disport'  
Shipped Via  
Delivery  
Disport  
B/L Date  
Cod Date

Unit Price BI  
Unit Price Ship Fig

Premium



Final Unit Price BI  
Final Unit Price Ship  
Fig

Final Amount BI  
Final Amount Ship Fig

**Total Amount Due To (Company Name)**

**Usd**

## ***ANNEXURE SSC 02***

### **PROPOSED LETTER OF CREDIT FORMAT**

AS PER YOUR REQUEST, PLEASE FIND HERE BELOW OUR LETTER OF CREDIT FORM

27: SEQUENCE OF TOTAL: 1/1

40A: FORM OF DOCUMENTARY CREDIT/ IRREVOCABLE

20: DOCUMENTARY CREDIT NUMBER

31C: DATE OF ISSUE

40E: APPLICABLE RULES / UCP LATEST VERSION

31D: DATE AND PLACE OF EXPIRY

51A: APPLICANT BANK  
(INSERT SWIFT CODE)

50: APPLICANT;

59: BENEFICIARY:

32B: CURRENCY CODE, AMOUNT:



39A: PERCENTAGE CREDIT AMOUNT TOLERANCE ON QUANTITY AND VALUE ARE ACCEPTABLEI: .....

41A: AVAILABLE WITH/BY: CONFIRMING BANK OR ADVISING BANK COUNTERS

42P: DEFERRED PAYMENT TERMS: BY DEFERRED PAYMENT 60 CALENDAR DAYS FROM THE FIRST DAY OF DELIVERY AGREED DELIVERY DATE RANGE (1ST DAY OF DELIVERY DATE RANGE TO COUNT AS DAY ONE)

43P: PARTIAL SHIPMENTS  
NOT ALLOWED

43T: TRANSHIPMENT  
ALLOWED

44E: PORT OF LOADING:

44F: PORT OF DISCHARGE:

44B: PLACE OF FINAL DELIVERY /DESTITATION:

45A: DESCRIPTION OF GOODS AND/OR SERVICE:

46A: DOCUMENTS REQUIRED: DOCUMENTS IN ONE ORIGINAL AND ONE COPY/PHOTOCOPY, UNLESS OTHERWISE STATED:

1. COMMERCIAL INVOICE
2. CERTIFICATE OF ORIGIN (COPY/ FAX COPY ACCEPTABLE)
3. CERTIFICATE OF QUALITY ISSUED ON ARRIVAL AT DISPORT BASED ON SHIP'S TANK'S COMPOSITE SAMPLE ISSUED BY INDEPENDENT INSPECTOR AND TBS (COPY/FAX COPY ACCEPTABLE)
4. CERTIFICATE OF QUANTITY ISSUED ON VESSELS ARRIVAL QUANTITY AT DISPORT ISSUED BY INDEPENDENT INSPECTOR (COPY /FAX COPY ACCEPTABLE)

IN THE EVENT THE ABOVE MENTIONED DOCUMENTS ARE NOT AVAILABLE AT TIME OF L/C UTILISATION, THEN PAYMENT IS TO BE MADE AGAINST PRESENTATION OF:

A. SIGNED COMMERCIAL INVOICE (FAX/PDF EMAIL COPY ACCEPTABLE)  
AND

B. SELLER'S LETTER OF INDEMNITY ISSUED BY THE BENEFICIARY IN THE FORMAT BELOW (FAX/PDF EMAIL COPY ACCEPTABLE)

-QUOTE-



FROM :

TO

DATE

### **LETTER OF INDEMNITY**

DEAR SIRs,

WE REFER TO A CARGO OF                METRIC TONS OF ... ("CARGO") ... SHIPPED ON BOARD THE TANKER... ("NAME") ... FOR DELIVERY AT ("DISCHARGE PORT")

ALTHOUGH WE HAVE SOLD AND TRANSFERRED TITLE OF SAID CARGO TO YOU, WE HAVE BEEN UNABLE TO PROVIDE YOU WITH THE FOLLOWING DOCUMENTS:

1. CERTIFICATE OF ORIGIN (COPY / FAX COPY ACCEPTABLE)
2. CERTIFICATE OF QUANTITY ISSUED ON VESSELS ARRIVAL QUANTITY AT DISPORT ISSUED BY INDEPENDENT INSPECTOR (COPY /FAX COPY ACCEPTABLE)
3. CERTIFICATE OF QUALITY ISSUED ON ARRIVAL AT DISPORT DISPORT BASED ON SHIP'S TANK'S COMPOSITE SAMPLE ISSUED BY INDEPENDENT INSPECTOR AND TBS (COPY / FAX COPY ACCEPTABLE)

('THE DOCUMENTS') COVERING THE SAID SALE

IN CONSIDERATION OF YOUR PAYING THE FULL PURCHASE PRICE OF U.S. DOLLARS ... ("INVOICED AMOUNT") ..., WE HEREBY EXPRESSLY WARRANT THAT WE HAVE GOOD AND MARKETABLE TITLE TO THE GOODS, AND THAT WE HAVE FULL RIGHT AND AUTHORITY TO TRANSFER SUCH TITLE TO YOU AND TO EFFECT DELIVERY OF THE SAID CARGO.

WE FURTHER AGREE TO MAKE ALL REASONABLE EFFORTS TO OBTAIN AND SURRENDER TO YOU AS SOON AS POSSIBLE THE DOCUMENTS. WE IRREVOCABLY UNDERTAKE TO PROTECT, INDEMNIFY AND SAVE YOU HARMLESS FROM AND AGAINST THE DAMAGES, COSTS AND EXPENSES WHICH YOU MAY SUFFER BY REASON OF THE DOCUMENTS REMAINING OUTSTANDING, OR BREACH OF THE WARRANTIES GIVEN ABOVE.

OUR OBLIGATION TO INDEMNIFY SHALL BE GOVERNED BY THE SHIPPING AND SUPPLY CONTRACT BETWEEN OURSELVES AND THE PETROLEUM BULK PROCUREMENT AGENCY HOWEVER YOU SHALL BE REQUIRED TO GIVE US NOTICE OF ASSERTION OF ANY CLAIM(S) AND FULL OPPORTUNITY TO CONDUCT THE DEFENCE THEREOF AND THAT YOU SHALL NOT SETTLE ANY SUCH CLAIM(S) WITHOUT OUR APPROVAL.

THIS LETTER OF INDEMNITY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW WHICH GOVERN THE SHIPPING AND SUPPLY



CONTRACT BETWEEN OURSELVES AND PETROLEUM BULK PROCUREMENT AGENCY (THE LAWS OF TANZANIA). ANY DISPUTES, CONTROVERSIES OR CLAIMS ARISING OUT OF OR IN RELATION TO THIS LETTER OF INDEMNITY OR THE BREACH, TERMINATION OR INVALIDITY THEREOF SHALL BE SUBJECT TO DISPUTE RESOLUTION MECHANISM PROVIDED IN THE SHIPPING AND SUPPLY CONTRACT BETWEEN OURSELVES AND THE PETROLEUM BULK PROCUREMENT AGENCY.

THIS LETTER OF INDEMNITY SHALL EXPIRE SIX MONTHS AFTER THE ISSUING DATE OR UPON OUR PRESENTATION OF THE SHIPPING DOCUMENTS TO YOU, OR UPON RECEIPT AND ACCEPTANCE OF THE PRODUCT WHICHEVER OCCURS FIRST.

... ..... ("COMPANY")

...

AUTHORISED SIGNATORY/IES

-UNQUOTE-

#### **47A: ADDITIONAL CONDITIONS:**

1. BENEFICIARY IS ALLOWED TO INVOICE WITHIN THE OVERALL LC AMOUNT, USD 1.00 PER METRIC TON TO COVER PROVISIONAL DEMURRAGES
2. THIRD PARTY DOCUMENTS ARE ACCEPTABLE, EXCEPT COMMERCIAL INVOICE AND LETTER OF INDEMNITY.
3. TYPOGRAPHICAL AND/OR SPELLING ERRORS, EXCEPT ON FIGURES AND AMOUNT, ARE NOT TO BE CONSIDERED AS DISCREPANCIES.
4. IF PAYMENT DUE DATE IS ON A SUNDAY OR A MONDAY BANK HOLIDAY IN NEW YORK, PAYMENT WILL BE EFFECTED ON THE FOLLOWING BANKING DAY. IF PAYMENT DUE DATE IS ON A SATURDAY OR A BANK HOLIDAY OTHER THAN A MONDAY IN NEW YORK, PAYMENT WILL BE EFFECTED ON THE PRECEDING BANKING DAY PRIOR TO DUE DATE.
5. DOCUMENTS DATED PRIOR TO LC ISSUANCE ARE ACCEPTABLE.
6. DOCUMENTS WITH A DIFFERENT NAME BUT SERVING THE SAME PURPOSES ARE ACCEPTABLE, EXCEPT SIGNED COMMERCIAL INVOICE AND LETTER OF INDEMNITY.
7. DOCUMENTS UNDER THIS L/C MAY BE DISCOUNTED AT BENEFICIARY'S REQUEST AND EXPENSE



8. IN CASE OF ANY AMOUNT IN FAVOUR OF THE APPLICANT, SUCH AMOUNT WILL BE SETTLED WITHIN THE LC

9. DOCUMENTS SHOWING DIFFERENT QUANTITIES OTHER THAN INVOICE ARE ACCEPTABLE PLUS OR MINUS 5 PERCENT TOLERANCE.

71B: CHARGES FOR ESTABLISHING THE LC ARE FOR THE ACCOUNT OF THE APPLICANT, LC ADVISING CHARGES, CONFIRMATION CHARGES AMENDMENT CHARGES, DISCREPANCIES CHARGES AND ANY OTHER CHARGES (IF ANY) ARE FOR THE ACCOUNT OF THE BENEFICIARY.

48: PERIOD FOR PRESENTATION: DOCUMENTS PRESENTED LATER THAN 21 DAYS AFTER DELIVERY DATE, BUT WITHIN VALIDITY OF THE CREDIT ARE ACCEPTABLE.

49: CONFIRMATION INSTRUCTION: CONFIRM / ( )

53A: REIMBURSING BANK: (REIMBURSING BANK SWIFT CODE)

57A: ADVISE THROUGH' BANK: TO BE ADVISED CASE BY CASE (AS PER PFI)

78: INSTRUCTIONS TO PAYING/ACCEPTING/NEGOTIATING BANK: (TO BE INSERTED BY THE BANK) ...

UPON RECEIPT OF YOUR DULY AUTHENTICATED SWIFT CONFIRMING THAT YOU HAVE TAKEN UP COMPLIANT DOCUMENTS WITH L/C TERMS AND CONDITIONS, WE SHALL COVER YOU ACCORDING TO YOUR INSTRUCTIONS AT MATURITY DATE.

72: SENDER TO RECEIVER INFORMATION: DOCUMENTS TO BE SENT BY SPECIAL COURIER TO THE FOLLOWING ADDRESS ;( ISSUING BANK NAME+ ADDRESS TO BE INSERTED)

UNQUOTE





## 38. APPENDIX 5 IMPORTATION AGREEMENT BETWEEN THE AGENCY AND OMC



**IMPORTATION CONTRACT**

**BETWEEN**

**PETROLEUM BULK PROCUREMENT AGENCY (PBPA)**

**AND**

.....



## IMPORTATION CONTRACT

Made under Regulation 5 (C) and 17(2) of the Petroleum (Bulk Procurement) Regulations, 2017 (Government Notice No. 198

This Agreement is made this..... day of ..... 2019

### BETWEEN

**PETROLEUM BULK PROCUREMENT AGENCY** of P.O Box 2634, Dar es Salaam, the executive agency established by Government Notice No. 423 OF 2015, having its registered office at TPA- ONE STOP CENTER BUILDING, 11<sup>TH</sup> Floor, Plot no. 1/2, SOKOINE DRIVE, hereinafter referred to as "the **AGENCY**."

### AND

..... Dar es Salaam Tanzania. (Hereinafter to be referred to as "OMC").

### WHEREAS

The Oil Marketing companies (OMCs) are required by Government Notice Number NO. 198 of 2017 and Petroleum Act No. 21 of 2015 to import petroleum products through the Bulk Procurement System.

### WHEREAS

PBPA under Regulation 5 of the petroleum (Bulk Procurement) Regulations, 2017 GN No. 198 is mandated to:

- (a) collect the procurement requirements of petroleum products from OMCs;
- (b) ensure that before accepting the procurement requirement by OMCs, all levies and fees charged by the Government institutions are fully paid;
- (c) conclude and administer contracts with suppliers and between the Agency and OMCs;
- (d) conduct an International Competitive Bidding for the procurement of petroleum products in bulk;
- (e) report to the Ministry and on Agency's activities on a monthly basis or as may be required by a Ministry;
- (f) prepare plans and a budget to cover its operations;
- (g) relay information, in a timely manner, related to the petroleum business to the Authority, OMCs, ministry responsible for petroleum affairs, TRA, TPA, TBS, WMA and other relevant parties when requested;
- (h) forecast supply and demand of petroleum products;
- (i) coordinate diligent receipts by OMCs of petroleum products from the delivery vessels;



- (j) maintain records of the shipments and performance;
- (k) coordinate invoicing and collection of payments for the respective shares of petroleum products imported by an OMC;
- (l) appoint, an independent inspector to ensure delivery of acceptable quantity and quality of a petroleum product;
- (m) issue directives and undertake any function that aims at improving efficiency procurement of petroleum products;
- (n) Liaise with the Authority on issues related to the importation of petroleum products;
- (o) Report to the minister and the Authority on Agency's activities on monthly basis or as may be required.

## WHEREAS

An OMC intending to buy petroleum or petroleum product is required by Regulation 5 (C) and 17 (2) of the Petroleum (Bulk Procurement) Regulations, 2017 GN No. 198 to conclude with PBPA, a importation and supply of petroleum product contract, a contract which shall regulate the relationship between the OMC and PBPA.

**BOTH PARTIES AGREE THAT**, OMC and PBPA shall be bound by the terms and conditions of the Shipping and Supply contract, entered between PBPA and the Supplier.

**NOW, THEREFORE** in consideration to the mutual agreement, promises and covenants and conditions herein contained, and the other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties hereby agree as follows:

### 1. EFFECTIVE DATE

- 1.1 The Agreement shall come into effect on and shall remain in force throughout the Execution of the Bulk Procurement System (BPS) unless the OMC can no longer participate in the BPS because that OMC has been disqualified by the PBPA, the relevant license has been revoked by the Authority, has been wound up or has been terminated as per the terms of this contract.

### 2. ABBREVIATION, DEFINITION AND INTERPRETATION

- 2.1 The following abbreviation shall have the meanings provided hereunder

Bbls @60°F	Barrels at 60° Fahrenheit
B/L	Bill of Lading
BPS	Bulk Procurement System
COD	Completion of Discharge
CPP	Clean Petroleum Product
COQ	Certificate of Quality
DAP	Delivery at Port (SPM Dar, KOJ 1 Dar, Tanga, Mtwara)



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DISPORT	Discharge Port
EWURA	Energy and Water Utilities Regulatory Authority
FOB	Free on Board
ICC	International Chamber of Commerce
INCOTERMS	International Commercial Terms (Set by International Chamber of Commerce, U.K)
IFIA	International Federation of Inspection
KOJ	Kurasini Oil Jetty
L/C	Letter of Credit
LIBOR	London Inter-Bank Borrowing Official Rates
MT	Metric Tonnes
NOR	Notice of Readiness
OMC	Oil Marketing Company
SBM	Single Buoy Mooring
SHINC	Saturday, Sunday, Holidays Included
PFI	Pro Forma Invoice
TASAC	Tanzania Shipping Agency Corporation
TBS	Tanzania Bureau of Standards
TPA	Tanzania Port Authority
TRA	Tanzania Revenue Authority
TT	Telegraphic Transfer
USD	United States Dollar
WMA	Weights and Measure Agency

2.2 The following terms shall have the meaning provided below:

2.2.1. "AGENCY" shall mean the Petroleum Bulk Procurement Agency

2.2.2. "Applicable law" means any principal law, convention or treaty that is customarily treated in Tanzania as having legally binding force relevant to matters pertaining to the procurement and supply of a Bulk Petroleum and Petroleum Products in Tanzania.



- 2.2.3. "Approved specification" means any specification or standard issued by TBS
- 2.2.4. "Authority" means the Energy and Water Utilities Regulatory Authority.
- 2.2.5. "Bulk Procurement System" means a system established to govern importation of a Bulk Petroleum Products into Tanzania.
- 2.2.6. "Cargo" shall mean a specific delivery/shipment of refined product of Industry Import.
- 2.2.7. "Cleared Funds" shall mean payments confirmed by Supplier's Bank as received either through Electronic Funds Transfers (EFT) or Letter of Credit.
- 2.2.8. "Commitment Agreement" means a commitment to procure the requested volume of petroleum products under the BPS by the OMC as per terms of this contract and the contract between the supplier and PBPA.
- 2.2.9. "Delivery Date Range" shall mean the dates of delivery.
- 2.2.10. "Effective Date" shall mean the date of the execution of the contract.
- 2.2.11. "Financial hold product" shall mean a product which has not been secured by purchaser either by way of letter of credit or Electronic Funds Transfers (EFT).
- 2.2.12. "Full Cargo" shall mean total tendered parcel size, with operational tolerance of +/- 5% at Supplier's option, which will be allocated in full to Purchasers prorata based on their placed orders.
- 2.2.13. "Marine Surveyor" Shall mean Independent Marine Inspection company, whose ownership is fully disclosed, and is member of IFIA and other international organizations that provide inspection, testing and certification of marine services
- 2.2.14. "OMC" shall mean an Oil Marketing Company signatory to this Contract as well as Purchaser of petroleum product subject to this Contract.
- 2.2.15. "Purchaser" shall mean OMC procuring petroleum product under the terms and condition of this contract, on its own behalf or as bona-fide nominated agent registered and operating on transit market.
- 2.2.16. "Product" Shall mean Petroleum Products
- 2.2.17. "Relevant Authorities" means Government Institution mandated by Law to administer Government policies and laws governing the operations of the OMC and/or PBPA.
- 2.2.18. "Replacement cargo" shall mean a different product which is within the approved specification imported after the initial import has been declared off spec as provided in this contract
- 2.2.19. "Safe berth" shall mean a berth which vessels so conforming, and having any beam, can at all times safely reach and leave and at which such vessels can lie at all times safely afloat.



2.2.20. "Supplier" shall mean an entity selected by PBPA to import petroleum products in bulk quantity.

2.2.21. "Supplies Contract" means the contract between PBPA and the Supplier for the supplies of Bulk Petroleum Products under the BPS.

2.2.22. "Tender" shall mean an invitation to tender/contract to supply Petroleum Products under the Bulk Procurement System.

## 2.3 Interpretations

### (a) General rules of Interpretation

- (i) This contract is to be interpreted according to the common intention of the parties even if this differs from the normal meaning of the expressions used in it.
- (ii) Where one party intended an expression used in the contract to have a particular meaning, and at the time of the conclusion of the contract the other party was aware, or could be expected to have been aware, of this intention, the expression is to be interpreted in the way intended by the first party.
- (iii) Unless otherwise provided in paragraphs (1) and (2), the contract is to be interpreted according to the meaning which a reasonable person would give to it in the circumstances of the same nature.
- (iv) This contract is to be interpreted autonomously and in accordance with its objectives and the principles underlying it.
- (v) Issues within the scope of this contract but not expressly settled by it are to be settled in accordance with the principles underlying it with recourse to the law that would be applicable in the absence of an agreement to use this instrument or to any other law.
- (vi) Where there is a general rule and a special rule applying to a particular situation within the scope of the general rule, the special rule prevails in any case of conflict.
- (vii) Where the contents so requires, words in this agreement importing the singular shall also include the plural and vice versa, words importing the masculine gender shall include the feminine and persons shall include firms or corporations and vice versa.
- (viii) As the content requires, words such as person, entities and parties may refer to individuals, PBPA, companies, service providers, joint ventures, corporate bodies, government organisations, or institutions having a legal capacity.
- (ix) Wherever in the contract, provision is made for the giving or issuing any notice, consent, approvals, certifications or determinations by any person, unless otherwise specified,



- such notice, consent, approval, certification, determination, or request shall be in writing and the words "notify", "no objection", "approve", "certify", "determine", or "request" shall be construed accordingly.
- (x) Index headings and sub-headings to Articles and sub-articles in this agreement are inserted for convenience only and shall not be taken into consideration in the interpretation of this agreement.
  - (xi) The Agreement has been written in and shall be interpreted and construed in accordance with the English language.
  - (xii) All communication and documentation between the OMC and PBPA whether written or oral related to this agreement shall be in English Language.
  - (xiii) All requests, instructions, notifications, agreements, authorisations and acknowledgements hereunder shall be in writing, by an Authorised Representative of the applicable Party.
  - (xiv) Any review, Approval or acknowledgements by the OMC or PBPA shall not relieve the other party from any liability or obligation under this Agreement unless clearly stated to the contrary herein.
  - (xv) Reference to any statute, statutory provision or statutory instrument shall include a reference to that statute, statutory provision or statutory instrument as from time to time amended, extended or re-enacted.
  - (xvi) The several documents comprising this Agreement are to be taken as mutually explanatory, however in the event of any conflict or ambiguity in any of the requirements or in the interpretation of this Agreement, the order of precedence shall prevail.
  - (xvii) The words "agreement" and "contract" shall be used interchangeably unless otherwise where the content so requires.
- (b) Relevant matters; in interpreting this contract regard may be had, in particular, to:
- (i) the circumstances in which it was concluded, including the preliminary negotiations and correspondences (letters and emails) in relation to this agreement.
  - (ii) the conduct of the parties prior and subsequent to the conclusion of the contract.
  - (iii) the interpretation which has already been given by the parties to expressions which are similar to those used in the contract.
  - (iv) practices which the parties have established between themselves.
  - (v) the meaning commonly given to expressions in the branch of activity concerned.





- (vi) the nature and purpose of the Agreement.
  - (vii) usages, good faith and fair dealing.
- (c) Reference to Agreement as a whole; expressions used in the Agreement are to be interpreted in the light of the Agreement as a whole.

### **3. REGISTRATION AND DEREGISTRATION OF OMCS**

- 3.1 By entering into this agreement the OMC has been registered with the Agency in accordance with Regulation 6(1) of the Petroleum (Bulk Procurement) Regulations, 2017 G.N. No. 198 of 2017.
- 3.2 The OMC shall be deregistered and shall not be allowed to participate in tenders upon occurrence of either of the undermentioned incidences: -
- (a) Upon expiration of OMCs petroleum wholesale license issued by EWURA; or
  - (b) revocation of OMCs petroleum wholesale license issued by EWURA
- 3.3 If the OMC wish to re-register with the Agency it shall be required to pay Registration fee and submit all documents as stipulated in the BPS Implementation manual.

### **4. WARRANTIES BY OMC**

- 4.1 The OMC represents warranties and covenants to PBPA that:
- (a) General
    - (i) It is a company duly organized and validly existing and in good standing under the laws of United Republic of Tanzania,
    - (ii) It is qualified and licensed to do wholesale petroleum business in good standing by the relevant authorities,
    - (iii) It has the corporate power and authority to negotiate, execute, deliver and perform its obligation under this agreement.
    - (iv) It has the financial capabilities to meet all the contractual obligations as per the ordered quantities of petroleum products.
  - (b) Law Compliance  
It complies with all applicable Laws in the United Republic of Tanzania.
  - (c) Warranty Length



Throughout the existence of this Agreement the OMC confirms to abide and or adhere to the terms of this Agreement and the Shipping and Supply Contract entered between PBPA and the Supplier.

- (d) **Infringement**  
The OMC participating in this Agreement and the Shipping and Supply Contract between PBPA and the Supplier do not violate any patent, trade secret, or other intellectual property or proprietary rights of any third party.
- (e) **No Litigation**  
There is no actual or threatened litigation that affects its ability to comply with:
  - (i) this Agreement, or
  - (ii) The Shipping and Supply Contract between PBPA and the Supplier.

## **5. QUANTITY**

- 5.1 The quantity to be supplied under the Shipping and Supply Contract shall be a full cargo as per delivery date range in the price, quantity & delivery schedule, prorated to each OMC that has placed orders for product on the delivering vessel.
- 5.2 Minimum Batch per vessel for each OMC shall be 500 MT
- 5.3 Minimum Batch per receiving terminal shall be 1000 MT
- 5.4 Minimum order per delivery month shall be 1000 MT for Mogas and Gasoil and 500 MT for JET A1& IK.

## **6. PAYMENT IN RELATION TO THE PROCURED PRODUCTS AS PER THE SHIPPING AND SUPPLY CONTRACT BETWEEN PBPA AND THE SUPPLIER.**

- 6.1 The OMC shall be responsible for arranging its own financing of the petroleum products purchased through the bulk procurement system;
- 6.2 The OMC shall open a letter of credit to the supplier's banker or facilitate pre-payment in respect of the local cargo imported through Bulk Procurement System;
- 6.3 For transit cargos the OMC shall ensure the consignee(s) has/have opened letter(s) of credit to the supplier's banker or facilitate pre-payment in respect of their imported cargos;
- 6.4 The OMC is not allowed to open LC for transit cargoes however the OMC shall be liable for any default made by the consignee of transit



consignment. OMC liability shall be based on the principle agent relationship

- 6.5 Failure for OMC to fulfil contractual financial obligation as per provisions of Shipping and Supply Contract as well as Importation Contract between OMC (the Purchaser) and the Agency, OMC shall be dealt with as per terms and conditions of the Shipping and Supply Contract and the Regulations in place;
- 6.6 The OMC and PBPA agree to be bound by the terms of the Shipping and Supply Contract between PBPA and the Supplier in the following manner:
- (a) OMC shall latest five (5) calendar days before 1st day of delivery date range or latest five (5) calendar days after receipt of the needed documents from the Supplier provide an irrevocable L/C opened by the OMC's Bank but confirmed by Bank provided by the Supplier. The Supplier shall provide to the Agency a list of minimum 10 confirming banks before signing the contract as provided in the Notice of Award;
  - (b) Charges for establishing the L/C will be borne by the OMC;
  - (c) All commissions and charges from the issuing bank shall be borne by applicant (OMC). All commissions and charges from the confirming and advising bank shall be borne by beneficiary's (Supplier's).
  - (d) All cost resulting from L/C amendments shall be borne by the party which caused the amendments to be made. If the L/C amendment will be caused by factors not caused by the Supplier or the OMC L/C amendment cost will be shared equally between the Supplier and the OMC.
  - (e) OMC who shall prefer to make payments by bank transfer or prepayment, the OMC shall effect payments latest three (3) calendar days before 1st day of delivery date range or latest three (3) calendar days upon receipt of proforma invoice (PFI) from Supplier whichever is later.
  - (f) PBPA shall make sure, the Supplier shall submit the PFI and all needed documents to the OMC and the Agency latest ten (10) calendar days before the first day of delivery window to enable the OMC to open LC or make cash payment within contractual duration. For purpose of this clause needed documents are;
    - i. copy of Endorsed Bill of lading
    - ii. load port certificate of quality
    - iii. Certificate of origin,
  - (g) The OMC shall not be held responsible for any delays in opening the L/Cs or bank transfer or prepayment if such delays have been caused by the Supplier's failure to submit the needed documents (to enable OMCs to open L/C or bank transfer or prepayment) within the time frame stipulated in this contract.



- (h) The OMC shall immediately upon receipt of the PFI notify the Supplier and the Agency on the intention to make bank transfer or any alternate payment as mutually agreed between Supplier and OMC.
- (i) Payments shall be settled by the OMC or the OMCs parent / Affiliate companies or any other party duly advised by the OMC.
- (j) L/C and bank transfer or prepayment shall be made against presentation of Supplier's commercial invoice and certified copies of shipping documents as provided in the Shipping and Supply Contract unless mutually agreed otherwise between Supplier and OMC, the agreement between the supplier and the OMC shall be approved by PBPA.
- (k) PBPA shall ensure the Supplier has lodged the cargo manifest to all relevant authorities including but not limited to the Agency and TASAC with endorsed copy of Bill of Lading (for customs purposes only) five (5) calendar days before the vessel has tendered NOR. The cargo manifest shall correspond to the PFI and endorsed BL provided to the Purchasers. Cost of lodging cargo manifest and issuing of Delivery order shall be borne by the Supplier
- (l) Any and all costs or charges or penalties including demurrage resulting from delays in berthing caused by OMC shall be solely payable by the OMC.
- (m) PBPA shall make sure that any and all cost, charges or penalties resulting from delays in lodging of the cargo manifest caused by the Supplier and where such delays result in the OMC's delay to make necessary declaration to TRA, TASAC and TPA will be solely payable by the Supplier.
- (n) Invoices issued by supplier shall be raised based on FOB component plus DAP premiums as stipulated in the Shipping and Supply Contract and detailing the price computation (including the Platts quotes as published, the conversion factor utilized and its computation, quantity at load port and quantity at DISPORT, supported by documentation stipulated in Shipping and Supply Contract
- (o) Penalty for late payments and any default by the OMCs will be computed as expressed in the petroleum (Bulk Procurement) Regulations, 2017 GN. No. 198 of 2017.
- (p) All third party charges associated with late payment e.g. TRA Taxes and Penalties, TPA charges and penalties and storage charges, shall be on account of the defaulting OMC and will be recovered as per actual prevailing costs.
- (q) The OMC shall be bound by all terms and conditions of the Shipping and Supply Contract between PBPA and the supplier.



## **7. DELAYS IN MAKING PAYMENTS AND OPENING LETTER OF CREDIT (LC)**

7.1 PBPA and the OMC agree to be bound by the terms of the Shipping and Supply Contract in the following manner:

- (a) If the OMC delays to open LC as stipulated in the Shipping and Supply Contract between PBPA and the suppliers, the OMC shall be liable to penalties as stipulated in the Petroleum (Bulk Procurement) Regulations, 2017 GN. No. 198 of 2017. The penalty is payable to the Agency for distortion of Bulk Procurement System.
- (b) If the OMC fails to pay for its share of a petroleum product at the due date as per the credit period stipulated in the shipping and supply contract between PBPA and the supplier, the OMC shall be charged a late payment penalty of LIBOR +2% per annum be barred from participating in the following BPS tender or both, the payment shall be paid to an escrow account operated by the PBPA for onward payment to the supplier. For the purpose of this clause due date is 60 days after the first day of delivery date range
- (c) Notwithstanding other provisions of this agreement the OMC who fails to pay or open L/C for the ordered product within five (5) days after COD and the product has been discharged as product on financial hold, the OMC shall be barred from participating in BPS until the OMC has fulfilled all pending obligations.

## **8. PRODUCT DISCHARGED IN THIRD PARTY FACILITY ON INSTRUCTION FROM PBPA**

8.1 The OMC and PBPA mutually agree that;

- (a) Where at the time of discharge of petroleum products from the delivery vessel there is a default in providing the L/C or making bank transfer or prepayment, (if such delay and or default is not caused by the Supplier) then the Supplier in consultation with PBPA has the right to discharge the batch elsewhere as product on financial hold.
- (b) In the event the product has been discharged as product on financial hold, the terminal in which the product has been discharged shall issue a holding certificate guaranteeing that product will not be accessible by the OMC until full payment has been done and the supplier has issued a release certificate.
- (c) Storage cost relating from product being discharged as product on financial hold shall be borne by the defaulting OMC.
- (d) When there are ullage constraints as a result of the OMC's failure to create sufficient ullage to receive the ordered product, the OMC's shall nominate alternative terminal, failure to the OMC shall be deemed to have distorted BPS, and shall be penalized as prescribed below;
  - i. pay penalty of 0.5 USD per MT per day);



- ii. pay demurrage caused by the OMC delay to open LC.
- (e) Product on financial hold shall be discharged to a terminal nominated by the supplier.
- (f) Where product has been off-loaded as product on financial hold, the product shall be so offloaded as manifested, however, the OMC shall be liable to pay storage charges at the rate and terms provided by the receiving terminal.
- (g) Where the product has been offloaded as product on financial hold, the receiving terminal shall issue a holding certificate to the supplier with copy to PBPA, the Holding Certificate shall state and guarantee that no product will be released without written confirmation from the Supplier and or its financier. Upon receipt of the funds or of the L/C the supplier or its financier shall issue a release certificate to the terminal with copy to PBPA.
- (h) PBPA shall make sure the Supplier does not prevent from berthing any vessel due to financial hold or ullage problem to few terminals. The OMC is required to issue ullage confirmation five (5) days before the first day of delivery date range. The decision to prevent the vessel to berth shall be issued by PBPA based on global ullage situation.
- (i) Where the OMC's product has been offloaded to terminal acceptable by the Supplier for delay to open LC or making cash payments, the OMC shall be required to make necessary payments or open LC and take possession of his product within five (5) calendar days from the date when the product was discharged into any terminal acceptable by the Supplier.
- (j) Failure to adhere to sub clause 8.1 (i) above, the OMC shall not be allowed to participate in the next tender until such product has been fully paid to Supplier including all associated costs with Supplier, PBPA and the receiving terminal.
- (k) If the OMC will not settle his dues within five calendar days from the date the product was discharged as product on financial hold, the OMC shall be considered to have distorted BPS and shall be liable to the fines and penalties as provided by the laws governing importation of petroleum products in Tanzania through Bulk Procurement System.
- (l) The Agency guarantees that costs incurred by the Supplier or any receiving terminal resulting from the supplier exercising right to dispose the product on financial hold shall be settled by cashing the bank guarantee provided to Agency by the OMC, without prejudice to the Agency's, Supplier or receiving terminal's rights to further claims or damages from the Purchaser.
- (m) In the event that the available bank guarantee is not sufficient to cover all cost incurred, the supplier or receiving terminal shall be at liberty to take appropriate legal measures against the OMC.
- (n) Payment out of the encashed bank guarantee shall be made to the beneficiary upon submission of relevant supporting documents.





- (o) PBPA shall before cashing the bank guarantee make critical analysis of the submitted documents and nature of the claim and notify the OMC of its intention to cash the bank guarantee and the claims to be covered.
- (p) Upon receipt of the notice to cash the bank guarantee the OMCs shall make payment within seven (7) days, failure to the OMC bank guarantee shall be cashed without further notice.
- (q) In the event that the OMC has paid taxes but has not opened LC the supplier shall continue to have rights (including right to dispose the product) over the product on financial hold until the time when the product has been paid for.
- (r) The Supplier shall, when disposing the product on financial hold take into account taxes and other costs paid by the defaulting Purchaser. The Supplier in consultation with the Agency shall agree on modality to refund taxes and other costs paid by the defaulting OMC. The refund thereof shall be subject to fulfillment of all obligations and liabilities resulting from failure to open L/C.
- (s) In the event the OMC fails to fulfill all obligations and liabilities resulting from failure to open L/C the amount to be refunded shall be used to cover all outstanding obligations
- (t) The Supplier shall within ten (10) days after disposal of product on financial hold submit to the Agency all documents relating to selling of the product in question including detailed elaboration of the costing for the product this shall include but not limited to, storage charges, price difference, MIL and operational losses. Failure to submit all the needed documents implies that there was no cost incurred in disposing the product on financial hold.

## **9. INVOICING**

### **9.1 PBPA shall ensure that**

- (a) Supplier's final invoices shall be in USD based on FOB Component with applicable pricing month plus DAP premium as provided in the price and quantity schedule and ship's arrival quantity.
- (b) Quantity to be used for invoice purposes shall be the lower quantity between load port Bill of lading and ship's arrival quantity measured at discharge port in Tanzania.
- (c) final invoice issued by supplier contain the breakdown of prices as mentioned in clause 9.1 (a) and (b) above, including the detail of all considered quotations, expressed in their original unit, be in USD/MT or USD/Bbls as the case may be, and in connection with the quantity stipulated, the details of the two computations below shall be expressly stated in the final invoice to determine the quantity based on which will be lower of the load port B/L quantity and the vessel arrival quantity measured at the DISPORT in Tanzania:
  - i. for the computation of quantity utilizing the quantity measured at DISPORT, refer to clause 9.1 (a); and
  - ii. for the computation of quantity utilizing the quantity measured at load port, the B/L figures shall apply for





- the final quantity to be invoiced however, taking in consideration conversion factor to be applied for the conversion of the unit price from USD/Bbls to USD/MT.
- (d) All amounts are calculated to four (4) decimal places.
  - (e) Supplier provide final commercial invoice to the receivers within ten (10) working days from the date of completion of discharge.
  - (f) Latest by the fifth (5<sup>th</sup>) day from the date of completion of discharge or by the fifth (5<sup>th</sup>) day from the end of the pricing month, which is later, the Supplier shall send to the OMC the final unit price of the cargo detailing:
    - i. The quotation used as published by Platts in actual defined units as per publications (USD/Bbls for AGO and Jet, USD/MT for MSP),
    - ii. The detailed computation of the total cargo quantity to be invoiced for each of (i) quantities measured as DIPSORT, and (ii) quantities measured at the load port using the B/L figures.
    - iii. Related premium and demurrage provision
  - (g) the unit price has been approved by PBPA before the final invoice has been issued
  - (h) Supplier shall provide to PBPA table of summary of invoiced quantity per purchaser latest ten (10) calendar days from the date the vessel has completed to discharge. The table shall contain but not limited to name of the purchaser, premium, FOB price and quantity.
  - (i) Profoma invoice are only used for the purpose of opening L/C. Profoma invoice should not be used in lieu of Final invoice for payment under the Letter of credit.
  - (j) Only Final invoice shall be used for payment under the letter of credit through documentary presentation.

## **10. TRANSIT RODUCTS PROCURED UNDER BPS**

- 10.1 The use of Bulk Procurement System for transit products shall be optional.
- 10.2 Financing of the transit cargoes shall be done by the consignee of the transit cargoes or any other company which is not locally registered.
- 10.3 OMCs intending to place orders/requirements for transit shall be required to submit the following: -
  - (a) Details of the consignee of the transit parcel comprising of name, e-mail address, and telephone number and address (physical and postal);
  - (b) Agreement with the consignee of the transit cargo or any other document instructing the OMCs to place order on behalf of the consignee of the transit cargo;
  - (c) Evidence that at least 80% of the quantity imported through transit in the month (M-2) was evacuated to destination countries;



- (d) Evidence that taxes for the localized transit products have been paid and the consignees/financiers have been refunded their money for the localized product.
  - (e) As the case may be OMCs placing transit orders may be required to submit registration documents and provide shareholding details of the consignee of transit cargoes.
- 10.4 OMC who placed orders for transit parcel shall notify Supplier the consignee(s) on whose name the product shall be manifested and warehoused under transit, and shall take full responsibility for performance this agreement. In addition, the OMCs shall;
- a) Issue discharge instructions to the Supplier, specifying cargo splits and consignee details within 24 hours after receipt of PFI;
  - b) Ensure L/Cs are opened and payments are made and transmitted to the Supplier within the specified time; and
- 10.5 Any payment default by the consignee of the transit cargo shall be treated as default by the OMCs that nominated the defaulting consignee.

## **11. BANK GUARANTEE**

- 11.1 The OMC shall instruct his banker to issue a 5% bank guarantee or cash cover (equivalent to 5% of the value of the product to be ordered in that particular month) in favor of to the Agency prior to placing an order for importation of petroleum product. (format of bank guarantee is provided in annexure 1)
- 11.2 For the purpose of simplifying the process of issuing bank guarantee the OMC may opt to issue a bank guarantee equivalent to 5% of the value of products to be ordered in three (3) months. The bank guarantee can be valid for a period of three (3) to twelve (12) months.
- 11.3 If the OMC will fail to issue bank guarantee the OMC order of petroleum product will not be accepted.
- 11.4 The bank guarantee shall be used to cover the under mentioned costs;
- a) Demurrage cost related to imported petroleum products under the Bulk Procurement System.
  - b) Fines and penalties charged by PBPA.
  - c) Contribution/fees for importation of petroleum products.
  - d) Cost of disposing the product on financial hold.
  - e) Handling and storage charges.
  - f) Amount payable to other government institutions in relation to the importation of petroleum products through the bulk procurement system.
  - g) Compensate the beneficiary of the warehoused prorated petroleum product.



- 11.5 If the bank guarantee is not sufficient to cover cost itemize in the paragraph 11.4 above the Agency and parties entitled to recover cost from the bank guarantee shall have right to take other legal measures to recover the unpaid amount;
- 11.6 Any OMC who fails to submit the bank guarantee as provided by clause 11.1& 11.2 above shall have its ordered quantity removed from the tender quantity.

## **12. DEMURRAGE**

- 12.1 The OMC and PBPA agree to be bound by the terms of the Shipping and Supply Contract between PBPA and Supplier in the following manner;
- a) OMC shall pay a provision for demurrage as per Shipping and Supply Contract between PBPA and the supplier;
  - b) Supplier shall provide demurrage computation to the Agency within seven (7) working days from the COD date of each cargo.
  - c) The final demurrage cost for a particular vessel shall be prorated to all OMCs after excluding demurrage cost which shall be paid by the causative parties.
  - d) OMC shall pay prorated final Demurrage cost due within fourteen (14) calendar days of receipt of invoice from the Supplier. In case of any demurrage refund, the Supplier shall pay the OMC within fourteen (14) calendar days from date of invoice;
  - e) Demurrage costs which has been caused by the OMC's, failure to create sufficient ullage, failure to open LC or make pre-payment within contractual duration, or operational failure shall be paid by the OMC. Such demurrage cost shall not be shared by all receivers;
  - f) The demurrage cost resulting from cascading effect caused by the failure of the OMC to perform its obligation under the Bulk Procurement System or breach of any law shall be borne by the OMC. For the purpose of this clause cascading effect shall be limited to three subsequent vessels which will discharge products after the vessel which OMCs defaulted in performing its legal obligation. The affected vessels shall include both BPS and non BPS vessels.
  - g) In the event the provisional demurrage provided by the Shipping and Supply Contract does not suffice or the relevant OMC did not make payment within the time bar, the Agency guarantees to pay demurrage by cashing the same from relevant OMC's bank guarantee.
  - h) In the event that the available bank guarantee is not sufficient to cover all cost incurred by the supplier, appropriate legal measures shall be taken against the OMC.



### **13. RECEIVING PRODUCTS FROM DELIVERY VESSELS**

- 13.1 The OMC is required to create sufficient ullage or make arrangements to receive the ordered quantity.
- 13.2 If the OMC fails to create sufficient ullage or make arrangements to receive the ordered quantity all cost associated with such failure shall be on account of the OMC. All payments shall be made within seven (7) days from the date of receipt of invoice, demand note or any form of notification of requirement to make payment.
- 13.3 In case of failure to pay as stipulated in clause 13.2 PBPA shall encash the bank guarantee and make necessary payments.
- 13.4 Losses occurred at the time of discharge of petroleum products to OMC receiving terminal shall be on account of the OMCs. Losses occurred to specific OMC terminal and which do not involve the shared line shall not be shared by all receivers.
- 13.5 The OMC is required to conduct its affairs (when receiving petroleum products (under the Bulk Procurement System)) by observing and acting as per acceptable industry practices, standard operating procedures, industry agreed procedure (as shall be agreed during the stakeholder's meetings organized by PBPA) and Laws governing petroleum business in Tanzania.

### **14. MANAGEMENT OF PRORATED QUANTITIES AS PER OUTTURN**

- 14.1 The Agency shall make sure that the appointed petroleum independent surveyor issues outturn report within two (2) days after receipt of discharge report from WMA.
- 14.2 All complaint on the outturn report shall be lodged to the Agency within 48 hours from the time the outturn report has been issued. Failure to do so, any complaint received thereafter shall not be considered.
- 14.3 Any warehoused product shall be accessed by the beneficiary as per the prorated data given by the surveyor. The beneficiary of the prorated quantity is entitled to get access immediately after the outturn and warehousing report has been issued.
- 14.4 OMCs warehousing prorated quantity shall be required to give the said product to the beneficiary within 24 hours from the time the beneficiary has lodged notice of intention to evacuate the product. Failure to that the bank guarantees will be utilized to compensate the beneficiary.
- 14.5 OMCS shall have an obligation to share and exchange statements of stocks on prorated volumes on monthly basis.
- 14.6 Prorated quantity shall not be used as security or setoff for any claim or dispute between OMCs.



## **15. GENERAL PENALTY FOR NON-PERFORMANCE**

- 15.1 Notwithstanding any provision of this contract the Supplier or Purchaser shall not be allowed to participate in the next tender, if there are pending obligations resulting from this tender or previous tender, provided that a proper notice has been issued asking the supplier or purchaser to fulfill the contractual obligation and has not acted based on the issued notice.
- 15.2 The supplier or purchaser shall be allowed to participate in the next tender upon fulfillment of the contractual obligations.

## **16. TITLE AND RISK**

- 16.1 Title to the product procured by the OMC as per placed order of petroleum product shall pass to the OMC from the supplier upon establishment of the L/C or pre-payment by the OMC.
- 16.2 Risk to the product (including product on financial hold) shall pass from the supplier to the OMC as the product passes the vessel's permanent flange at disport (i.e., KOJ1, SPM, Tanga and Mtwara Ports).

## **17. CHANGE OF CIRCUMSTANCES**

- 17.1 The OMC must perform its obligations even if performance has become more onerous, whether because the cost of performance has increased or because the value of what is to be received in return has diminished.
- 17.2 Where performance becomes excessively onerous because of an exceptional change of circumstances, PBPA and the OMC have a duty to enter into negotiations in accordance with good faith and fair dealing with a view to adapting or terminating the contract.
- 17.3 Negotiating as provided by clause 17.2 parties should take into account what the parties would reasonably have agreed at the time of contracting if they had taken the change of circumstances into account.
- 17.4 If the PBPA or OMC fails to agree they may terminate the contract at a date and on terms to be agreed by both parties.
- 17.5 Paragraphs 17.2 and 17.3 apply only if:
- (a) the change of circumstances occurred after the time when the contract was concluded;
  - (b) the aggrieved party did not at that time take into account, and could not be expected to have taken into account, the possibility or scale of that change of circumstances; and
  - (c) the aggrieved party did not assume, and cannot reasonably be regarded as having assumed, the risk of that change of circumstances.



## **18. MISTAKE**

- 18.1 Any party to this agreement may avoid this contract for mistake of fact or law existing when the contract was concluded if:
- (a) the party, but for the mistake, would not have concluded the contract or would have done so only on fundamentally different contract terms and the other party knew or could be expected to have known this; and
  - (b) the other party:
    - i. caused the mistake;
    - ii. caused the contract to be concluded in mistake by failing to comply with a pre-contractual information duty which includes but not limited to information submitted during pre-qualifications or tendering process or any documents submitted before signing of the contract.
    - iii. knew or could be expected to have known of the mistake and caused the contract to be concluded under a mistake by not pointing out the relevant information, provided that good faith and fair dealing would have required a party aware of the mistake to point it out; or
    - iv. made the same mistake.

## **19. FRAUD**

- 19.1 Any party to this agreement may avoid a contract if the other party has induced the conclusion or performance of the contract by:
- (a) fraudulent misrepresentation, whether by words or conduct, or
  - (b) fraudulent non-disclosure of any information, required to be disclosed, or
  - (c) by submission of any document which is not genuine or which contains false information.
- 19.2 Misrepresentation is fraudulent if it is made with knowledge or belief that the representation is false, or recklessly whether it is true or false and is intended to induce the recipient to make a mistake. Non-disclosure is fraudulent if it is intended to induce the person from whom the information is withheld to make a mistake.
- 19.3 The duty to disclose accurate and genuine information shall be based on the contractual obligation or good faith and fair dealing.
- 19.4 In determining whether good faith and fair dealing require a party to disclose particular information, regard should be made to all the circumstances, including;
- (a) whether the party required to disclose the information had special expertise;
  - (b) the cost to the party of acquiring the relevant information;





- (c) the ease with which the other party could have acquired the information by other means;
- (d) the nature of the information;
- (e) the apparent importance of the information to the other party; and
- (f) in contracts between supplier and PIC good commercial practice in the situation concerned.

## **20. NOTICE OF AVOIDANCE**

- 20.1 Avoidance is affected by notice to the other party.
- 20.2 A notice of avoidance is effective only if it is given within:
  - (a) ten (10) days in case of mistake; and
  - (b) fifteen (15) days in case of fraud, after the avoiding party becomes aware of the relevant circumstances or becomes capable of acting freely.

## **21. EFFECTS OF AVOIDANCE**

- 21.1 This contract shall be valid until avoided but, once avoided, it shall retrospectively be invalid from the beginning.
- 21.2 Where a ground of avoidance affects only certain contract terms, the effect of avoidance is limited to those terms unless it is unreasonable to uphold the remainder of the contract.
- 21.3 The question whether either party has a right to the return of whatever has been transferred or supplied under a contract which has been avoided, or to a monetary equivalent, shall be regulated by the rules on restitution.

## **22. FORCE MAJEURE**

- 22.1 Neither PBPA nor OMC shall be liable for damages or penalties for any failure or delay in performance of any obligation (except the obligations to make payment of any money due under this Agreement), where such failure or delay is caused by force majeure, being any event, occurrence or circumstance reasonably beyond any control of that party.
- 22.2 For the purposes of this Agreement Force Majeure shall be limited to failure or delay caused by or resulting from: -
  - (a) piracy attacks, fires, wars (whether declared or undeclared), riots, embargoes, accidents, restrictions imposed by any governmental authority independent of the Parties (including allocations, priorities, requisitions, quotas and price controls).
  - (b) acts of God, earthquake, flood, fire or other natural physical disaster, named storms, hurricanes, typhoons and the like, but excluding other weather conditions, regardless of severity.
- 22.3 In the event that a Force Majeure situation exists and this is preventing or delaying performance of any obligations under this Agreement the





Party giving the notice of the occurrence of force Majeure event shall use reasonable endeavours to minimize the effect of such Force Majeure and shall provide proof of efforts taken to minimize the effects of force Majeure in the performance of the contract. Failure to do so shall preclude the Parties from subsequently claiming that the performance was prevented or delayed by such an occurrence.

- 22.4 If either of the Parties is prevented from, or delayed in, performing any of its obligations under this Agreement by Force Majeure (as defined above) and which, by the exercise of reasonable diligence, the said Party is unable to avoid, prevent or provide against, then it must promptly notify the other Party in writing of the circumstances constituting the Force Majeure (with supporting evidence of the occurrence of force majeure event) and of the obligation the performance of which is thereby prevented or delayed and, to the extent possible, inform the other party of the expected duration of the force majeure event. Failure to do so shall preclude the Parties from subsequently claiming that the performance or progress of the Work or any part thereof was delayed by such an occurrence.
- 22.5 If either of the Parties is prevented from, or delayed in, performing any of its obligations under this Agreement by Force Majeure (as defined above), the time of Supplier to make, or Purchaser to receive, delivery hereunder shall be extended during any period in which delivery shall be delayed or prevented by reason of any of the foregoing causes up to a total of ten (10) days. If any delivery hereunder shall be so delayed or prevented for more than ten (10) days, either party may terminate this contract with respect to such delivery upon written notice to the other party.

## **23. GOVERNING LAW AND ARBITRATION**

- 23.1 The Parties hereto agree to endeavour to resolve any dispute, controversy or claim (collectively, a "dispute") arising out of or in relation to or in connection with this Agreement, or the work carried out under this Agreement, including, without limitation, any dispute as to the validity, interpretation, enforceability or breach of this Agreement, first through negotiation between the respective representatives of the Parties. If such dispute is not resolved between the respective representatives by mutual agreement in writing within 14 (fourteen) Days after notice thereof has been given in writing by either Party to the other, such dispute can be referred by any of the representatives to the respective Chief Executives of the Parties for resolution. If such dispute is not resolved between the respective Chief Executives in writing within 14 (fourteen) Days after notice thereof has been given in writing, such dispute shall upon mutual agreement by both parties, be adjudicated by an arbitrators)
- 23.2 In the event that the Parties are unable to agree on the arbitrator to adjudicate the dispute, the dispute shall be adjudicated in normal courts.



- 23.3 This Agreement shall be construed, governed by and take effect in accordance with the laws of United Republic of Tanzania.

## **24. ENTIRE AGREEMENT AND AMENDMENTS**

- 24.1 This Agreement is the entire agreement between the parties and supersedes all earlier and simultaneous agreements regarding the subject matter.
- 24.2 This Agreement may be amended only in a written document, signed by both parties.
- 24.3 The parties acknowledge that they are Independent parties under this Agreement, and except as expressed in this contract when making reference to the supplies contract, none of the parties, or any of their employees or agents, have the power or authority to bind or obligate another party. Except as expressly stated in this contract, the supplier of petroleum product under the shipping and supply contract shall be the beneficiary of this Agreement.
- 24.4 The OMC shall not subcontract any obligation under this Agreement without PBPA prior written consent.

## **25. NOTICES**

- 25.1 Unless otherwise specifically provided, all notices shall be given in writing and in the English language and shall be delivered in person or sent by courier service or by email attaching scanned letter to each Party at the addresses by each party.
- 25.2 The notice shall be deemed given only when received by the Party to whom such notice is directed; provided, however, that if any Party shall refuse or frustrate delivery of any such notice, such notice shall be deemed given on the date delivery is attempted.
- 25.3 This Article applies in relation to the giving of notice for any purpose under the rules of this contract. 'Notice' includes the communication of any statement which is intended to have legal effect or to convey information for a legal purpose.
- 25.4 The notice may be given by any means appropriate to the circumstances.
- 25.5 The notice shall become effective when it reaches the addressee, unless it provides for a delayed effect.
- 25.6 The notice shall be regarded to have been reached the addressee;
- (a) when it is delivered to the addressee,
  - (b) when it is delivered to the addressee's place of business or, where there is no such place of business or the notice is addressed to an agreed place or, to the addressee's habitual place of residence;



- (c) in the case of a notice transmitted by electronic means, when it can be accessed by the addressee; or
  - (d) when it is otherwise made available to the addressee at such a place and in such a way that the addressee could be expected to obtain access to it without undue delay.
- 25.7 The notice is considered to have reached the addressee after one of the requirements under 25.6 (a), (b), (c) or (d) above is fulfilled, whichever is the earliest.
- 25.8 The notice shall have no effect if a revocation of it reaches the addressee before or at the same time as the notice.

## **26. PBPA RESPONSIBILITY TO OMC IN RELATION TO THE SHIPPING AND SUPPLY CONTRACT BETWEEN PBPA AND SUPPLIER**

- 26.1 Administer competitive tenders and enter into the contract (for the shipping and supply of petroleum product) with the supplier on behalf of the OMC.
- 26.2 All queries by OMC pertaining to the performance of the Supplier under the Shipping and Supply contract shall be addressed to PBPA.
- 26.3 PBPA shall within two (2) working days respond to the OMC's queries and/or initiate correspondence with the supplier where necessary.
- 26.4 PBPA shall make sure that all products procured through BPS are within approved specifications.
- 26.5 PBPA shall promptly notify the OMC on any matter which need OMC's attention and actions.

## **27. GENERAL OMC's OBLIGATIONS UNDER THE RELATIONSHIP BETWEEN OMC AND PBPA**

- 27.1 Abide to all terms and conditions of the shipping and supply contract between the Agency and the supplier.
- 27.2 Abide to any order and/or agreement resulting from the shipping and supply contract between the Agency and the supplier.
- 27.3 Provide petroleum products importation projections as per the format provided by PBPA
- 27.4 Provide to PBPA not later than 10<sup>th</sup> day of each calendar month its requirement of products specifying grade/type and volume for supplies for one month. The products stipulated for the month shall constitute a firm order for that month.
- 27.5 Ensure compliance of all the requirements by third parties for the smooth discharge of BPS cargo.
- 27.6 Within seven (7) days upon receipt of an invoice pay PBPA for the coordination and administration of the OMC's cargo/share received from the vessel.



27.7 Pay for its ordered time within contractual duration as specified in the shipping and supply contract between the Agency and the supply.

27.8 Participate in BPS operational meetings or activities as shall be advised by PBPA.

**28. MANAGEMENT OF DISPUTES RESULTING FROM IMPORTATION OF PETROLEUM PRODUCTS THROUGH BULK PROCUREMENT SYSTEM.**

28.1 PBPA shall represent/ act for and on behalf of the OMC in any dispute which shall arise from the Shipping and Supply Contract. The OMC shall be required to finance all cost associated with PBPA representation.

28.2 In special circumstances the Agency shall give mandate to the OMC to lodge claims against the supplier.

28.3 Claims related to discharge operations shall be investigated by the neutral and independent investigator appointed by the Agency in consultation with the supplier, single receiving operator and receivers and/or any other institution which is involved in the operations subject to investigation;

28.4 Payment to the investigator shall be on the account of the claimant and the defendant on equal basis;

28.5 If there shall be more than one claimant or defendant, the distribution of the portions shall be done prorata provided that half of the total cost is paid by the claimant and half by the defendant;

28.6 Cost of the investigations will be transferred to the identified defaulter after the report has been issued;

28.7 The Agency shall coordinate the investigation; and

28.8 The investigation report will be used in line with the shipping and supply contracts and the laws governing importation of petroleum products.

**29. PAYMENT OF CONTRIBUTION/SERVICE FEE.**

29.1 The fees to be charged by the Agency shall be determined in accordance with the provisions under the Petroleum (Bulk Procurement) Regulations, 2017, GN. No. 198 of 2017 and the Executive Agencies (The Petroleum Bulk Procurement Agency) (Establishment) Order 2015, GN. No. 423 of 2015.

29.2 PBPA shall charge the OMC for the coordination of procurement of petroleum products in bulk.

29.3 PBPA shall at the end of each month invoice the OMC for the administration of the OMC's cargo/share procured through BPS.

29.4 Transit products procured through BPS shall be subject to Payment of contribution/service fee.



- 29.5 OMCs shall pay service contribution/ fee for the service rendered by PBPA. Payment of service fee shall be made within 30 days from the date of receipt of invoice.

### **30. CONFIDENTIALITY**

- 30.1 PBPA shall keep confidential all information connected with the Work or the business of OMC which comes to PBPA's knowledge under or as a result of this Agreement and shall not disclose it or use it other than for performance of this agreement and on the need to know basis, except:

- (a) with the prior written consent of OMC; or
- (b) by requirement of law, provided that to the extent permitted by such law or regulations, PBPA shall, before making such disclosure, notify OMC of his intention to do so and to whom and of the law or regulation concerned.

- 30.2 The provisions of clause 30.1 shall not apply to information:

- (a) In the public domain otherwise than by failure of PBPA to comply with the provision of this contract.
- (b) Obtained from a third party who is free to disclose the same.

- 30.3 PBPA shall not advertise or publicly announce that it is not performing the work for OMC nor shall it issue or make any statements to press, television or other media relating to the agreement, without the prior written consent of OMC.

- 30.4 OMC shall keep confidential all information connected with the Work or the business of PBPA which comes to OMC's knowledge under or as a result of this Agreement and shall not disclose it or use it other than for performance of this agreement and on a need-to-know basis, except

- (a) with the prior written consent of PBPA; or
- (b) by requirement of law to the extent permitted by such law or regulations, OMC shall, before making such disclosure, notify PBPA of his intention to do so and to whom and of the law or regulation concerned.

### **31. CONFLICT OF INTEREST**

- 31.1 OMC and PBPA shall maintain throughout the duration of the Agreement such high business standards, procedures, and controls that are normal and expected business practices in the interest of avoiding any real or apparent impropriety or adverse impact on the interests of PBPA or OMC. This shall include exercising care and diligence to prevent any of the respective Party's personnel from making, receiving, providing or offering any gifts of more than nominal value, entertainments other than infrequent meals or entertainment which does not continue beyond one Day, payments, loans or other consideration for the purpose of performing any obligation under this contract.





### **32. DEFAULT AND NON-WAIVER**

- 32.1 No indulgence, extension of time granted by a Party, or failure of a Party to exercise any of its rights in terms of this Agreement shall release the other from any of its obligations in terms of this Agreement nor constitute a waiver by a Party of any rights.

### **33. SEVERABILITY**

- 33.1 If any portion of this Agreement is held to be unenforceable, the unenforceable portion must be construed as nearly as possible to reflect the original intent of the parties, the remaining portions remain in full force and effect, and the unenforceable portion remains enforceable in all other contexts and jurisdictions.

### **34. TERMINATION OF AN AGREEMENT**

- 34.1 To 'terminate this contract' means to bring to an end the rights and obligations of the parties under this contract with the exception of those arising under any contract term providing for the settlement of disputes or any other contract term which is to operate even after termination.
- 34.2 Payments due and damages for any non-performance before the time of termination remain payable.
- 34.3 Termination for insolvency: if OMC is adjudged insolvent or bankrupt, or upon the institution of any proceedings by it seeking relief, reorganization or arrangement under any Laws relating to insolvency, or if any involuntary petition in bankrupt is filed against a party and the petition is not discharged within sixty (60) days after filling, or upon any assignment for the benefit of a OMC's creditors, or upon any assignment for the best of a party's creditors, or upon the appointment of a receiver, liquidator or trustee of any of a party's assets, or upon the liquidation, dissolution or winding up of its business (each, an "Event of Bankruptcy"), then the OMC affected by any Event of Bankruptcy must immediately give notice of the Event of Bankruptcy to PBPA, and PBPA may terminate this Agreement by notice to the affected party.
- 34.4 Termination for Breach. If OMC breaches any provision contained in this Agreement or the breach is not cured within thirty (30) days after the OMC receives notice of the breach from PBPA, PBPA may then deliver a second notice to the breaching party immediately terminating this Agreement.
- 34.5 Upon termination.
- (a) The rights and obligation of the parties accrued before the termination shall not be affected/ prejudice. Save for the contentious matters the accrued rights and obligations shall be settled within the agreed contractual time from the date of termination.

### **35. GOVERNING LAW**

- 35.1 This contract shall be construed in accordance with and governed by the laws of Tanzania.



**36. GENERAL**

- 36.1 To the extent that the incoterms are not in conflict with the terms of this Contract and the laws of Tanzania, the parties hereby agree to be bound by the latest version of DAP Incoterms and amendments thereof.

**37. DECLARATIONS**

- 37.1 Parties signatory to this contract declare that, they will adhere to this contract as well as to The Petroleum Act No. 21 of 2015 and the Petroleum (Bulk Procurement) Regulation, 2017 (G.N. No. 198 of 2017)
- 37.2 We, the undersigned, duly authorized by our respective companies, hereby agree to the provisions of this contract.

**38. ASSIGNMENT**

- 38.1 No party shall assign this Contract in whole or in part without written consent to the other party except to an affiliate, however the assignor will remain liable for the assignee's full performance.

**39. ENTIRE CONTRACT AND DURATION**

- 39.1 This Contract is the entire Agreement between the parties and supersedes all prior Agreements and understandings whether written or oral.
- 39.2 This Contract shall not be varied or amended in any way except in writing signed by representatives of all the parties' signatories herein. It shall remain enforceable on the day of its signature by all parties herein, and it shall remain in force and effect until amended or ended by a written signed by all the parties signatory herein.
- 39.3 In case of any conflict and or difference between this Contract and any other document communicated between parties, the provisions of this Contract shall prevail.

**IN WITNESS WHEREOF** the parties hereto have caused this agreement to be executed on the day and year as hereinabove in below stated: -

SEALED with the COMMON SEAL of the said in the presence of the said

NAME : \_\_\_\_\_

DESIGNATION : \_\_\_\_\_

SIGNATURE : \_\_\_\_\_

POSTAL ADDRESSES: \_\_\_\_\_

NAME : \_\_\_\_\_

DESIGNATION : \_\_\_\_\_

SIGNATURE : \_\_\_\_\_

POSTAL ADDRESSES: \_\_\_\_\_





SEALED with the COMMON SEAL of the said **PETROLEUM BULK PROCUREMENT AGENCY**

in the presence of: -

NAME .....  
DESIGNATION .....  
SIGNATURE .....  
POSTAL ADDRESS P.O BOX 2634 Dar es Salaam

NAME .....  
DESIGNATION .....  
SIGNATURE .....  
POSTAL ADDRESS P.O BOX 2634 Dar es Salaam

## ANNEXURE 1

**Date:** .....,

**Ref. No.:** .....

The Executive Director,  
Petroleum Bulk procurement Agency,  
P.O. Box .....,  
Dar Es Salaam,  
**TANZANIA.**

## PERFORMANCE BANK GUARANTEE

**No.:** .....

**WHEREAS Petroleum Bulk Procurement Agency** has been mandated to conduct competitive tenders for the supply of petroleum products under bulk procurement system and to sign the shipping and supply contract for the supply of petroleum products on behalf of Oil Marketing Companies in Tanzania including ..... (Name of the OMCs) ("Hereby called the purchaser").

**WHEREAS** the appointed supplier shall deliver petroleum products as per the requirements of each Oil Marketing company as specified in the Bid documents and the shipping and supply contract

**WHEREAS** It has been stipulated in the PETROLEUM (BULK PROCUREMENT) SYSTEM IMPLEMENTATION MANUAL JULY 2020 of and the Supply and Shipping contract ("the



Contract”) between PETROLEUM BULK PROCUREMENT AGENCY and ..... (hereinafter the “Purchaser”) that the security for compliance with the purchaser’s performance obligations under the contract shall be a guarantee for **5%** of the order value of the three month’s fuel requirements that has been ordered by the Purchaser.

Whereas the guarantee shall cover all order placed by..... during the duration of this bank guarantee.

**AND WHEREAS** we have agreed to give purchaser such guarantee:

**NOW THEREFORE** We ....., having our registered office at ....., Dar es Salaam, Tanzania(hereinafter “the Bank/We”) hereby affirm that;

1. we are guarantors and responsible to you, on behalf of the Purchaser, up to a **USD ..... (United States Dollars .....)** and we undertake to pay you, upon your first written demand declaring the Purchaser to be in default under the Contract and without cavil or argument, any sum or sums within the limits of **USD ..... (United States Dollars .....), as** aforesaid, without you needing to prove or to show grounds or reasons for your demand or the sum specified therein. As per URDG Article 15c, no supporting statement in respect of the breach is required.
2. This guarantee is valid from ....., **20..** until ....., **20..**
3. Consequently, any demand for payment under this Guarantee must be received by the Bank at the office specified above on or before the expiry date, i.e. ....., **20..** before close of business at 3.00 PM and any demand in respect thereof should reach the bank not later than the expiry date at which time Bank’s liability will cease and the Guarantee should accordingly be returned to the Bank.
4. All claims under this guarantee should be lodged with and are payable only at the counters of the Bank at the above stated office.
5. This Guarantee is subject to the Uniform Rules for Demand Guarantees, ICC publication No. 758.
6. This Guarantee is irrevocable and cannot be transferable or assigned the other party without written consent to the other party except to an affiliate, however the assignor will remain liable for the assignee’s full performance.
7. This guarantee is governed by and shall be construed in accordance with the Laws of the United Republic of Tanzania.



8. Notwithstanding the above, this Guarantee once expired is considered null and void irrespective of whether or not the Guarantee is returned for cancellation.

**DATED AT DAR ES SALAAM, THIS ....., 20..  
SIGNED AND SEALED BY THE AUTHORISED SIGNATORIES  
OF .....**

\_\_\_\_\_

\_\_\_\_\_

.....

**COMPANY SECRETARY**

**HEAD, DOMESTIC BANKING**