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<i>Short Title</i>	<i>Page</i>
Headquarters Agreement Between the Nigeria—Sao-Tome and Principe Joint Development Authority and the Government of the Federal Republic of Nigeria	300-306

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HEADQUARTERS AGREEMENT BETWEEN THE NIGERIA—SAO-TOME AND PRINCIPE JOINT DEVELOPMENT AUTHORITY AND THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA

In accordance with Article 9.4 of the Joint Development Zone (JDZ) Treaty between the Federal Republic of Nigeria and the Democratic Republic of Sao-Tome and Principe (DRSTP) on the joint development of petroleum and other resources in respect of areas of their Exclusive Economic Zone (EEZ), the two States established the Joint Development Authority (JDA) with its Headquarters in Abuja.

2. Having regard to Articles 9 and 12 of the JDZ Treaty, which provides that the privileges and immunities to be granted to the officials of the Authority at its Headquarters and in the State Parties shall be the same as are accorded to diplomatic persons at the Headquarters of the Authority and in the States Parties. Similarly, the privileges and immunities to the Secretariat at the Headquarters of the Authority shall be the same as granted to the Diplomatic Missions and International Organisations at the Headquarters of the Authority and in the State Parties.

3. NOW THEREFORE, the Federal Government of the Federal Republic of Nigeria duly represented by Dr Saidu Balarabe Samaila, and the JDA duly represented by Dr Tajudeen S. Umar, the Chairman of the Board of the Authority, have agreed as follows :

SECTION A

ARTICLE I

4. For the purpose of this Agreement, the following expressions shall have the meanings assigned to them hereunder :

(i) the "Treaty" means the Treaty of the Nigeria—Sao-Tome and Principe Joint Development Zone ;

(ii) the "Authority" means the Nigeria—Sao-Tome and Principe Joint Development Authority, including its Secretariat, as well as the institutions, technical and specialised agencies already created by the Treaty and any other institutions, technical and specialised agencies, which may subsequently be established under the Treaty ;

(iii) the "Headquarters" means the buildings, premises, structures or portions thereof which at any given moment are fact occupied or used by the JDA in Nigeria ;

(iv) the "Chairman" means the Chairman of the Board of the Authority and/or his authorised representative ;

(v) the "Board" means the Board of the Authority as established under the Treaty ;

(vi) the "Officials and other employees of the Authority" means all members of the staff of the Authority irrespective of nationality, with the exception of those who are recruited locally on hourly rates ;

(vii) the "Representatives" of State Parties" include resident representatives, leaders of delegations from State Parties and members thereof, including advisers, technical experts and secretariat personnel ;

(viii) the "General provision" means the provision on the Privileges and Immunities of the JDZ Treaty ;

(ix) the "Government" means the Federal Government of the Federal Republic of Nigeria ;

(x) the "Appropriate Nigerian Authorities" means the Federal Republic and such national, states local or other authorities in Nigeria, as may be appropriate within the laws of Nigeria ;

(xi) the "Laws of Nigeria" include legislative acts, decrees, orders or regulations issued by or under the authority of the Government or any appropriate Nigerian authorities ;

SECTION B

ARTICLE II

(PRIVILEGES, IMMUNITIES AND CONTROL OF THE JDA AND ITS ASSETS)

1. The Headquarters shall be inviolable and shall be under the control and authority of the JDA as provided in this Agreement

2. The JDA, and all its property shall enjoy immunity from every form of legal process except in so far as in any particular case the Treaty or the JDA has expressly waived such immunity in accordance with the provisions of this Agreement.

3. The premises of the JDA shall be inviolable and shall be immune from search, requisition, confiscation, expropriation or any other form of administrative or legislative action. Consequently, Government officers or officials, whether administrative, judicial, military or police, including officers or officials or Appropriate Nigerian Authorities, shall not enter the Headquarters to perform any official duties therein except with the knowledge and consent and under conditions agreed to by the Board or by the JDA official duly authorised to act on its behalf.

4. Without prejudice to the provisions of the Treaty or of this Agreement, the JDA shall have the power to make rules and regulations applicable within the Headquarters and to establish means for the application and enforcement of such rules and regulations.

5. The JDA shall be entitled to display the Nigerian and DRSTP flags in its Headquarters.

6. Without prejudice to the provisions of the General Convention or of this Agreement, the JDA shall prevent the Headquarters from becoming a refuge for persons who are avoiding arrest under any law of Nigeria or who are required by the Government for extradition to another country or who are endeavouring to avoid service of legal process.

7. The Appropriate Nigerian Authorities shall exercise due diligence to ensure that the tranquillity of the Headquarters is not disturbed by unauthorised entry of person or groups of persons from outside or by disturbance in its immediate vicinity, and shall cause to be provided on the boundaries of the Headquarters such police protection as is required for these purposes.

8. If and when so requested by the Board or by the JDA official duly authorised to act on its behalf, the Appropriate Nigerian Authorities shall provide a sufficient number of police for the preservation of law and order in the Headquarters and for the removal thereof of the persons as requested under the authority of the Board or of the JDA official duly authorised to act on its behalf.

9. The JDA, its assets, income and other property shall enjoy tax duty and other related exemptions and privileges in accordance with Article 12.1 of the Treaty.

ARTICLE III—(COMMUNICATION AND TRANSPORT)

1. For its official communications and the transfer of all its documents, the JDA shall enjoy in Nigeria the treatment granted by the Government to any other international organisation as well as to foreign diplomatic missions in Nigeria.

2. The archives and documents of the JDA shall be inviolable. The official correspondence of the JDA shall also be inviolable. "Official Correspondence" means all correspondence relating to its functions.

3. Without limitation by reason of this enumeration, the JDA shall have the right to use codes and to dispatch and receive its official correspondence, publications, documents, still and moving pictures, films and sound recordings, either by courier or in sealed bags, having the same immunities and privileges as diplomatic couriers and bags.

4. The JDA shall have the right to establish and operate at the Headquarters for its exclusive use an all-purpose radio station or stations and such additional broadcasting facilities as may be required by the JDA provided however that the operation of such a station or stations shall be subject to the provisions of Articles 45 and 46 of the International Convention relating to the rational use of frequencies and spectrum space and harmful interference. It is further provided that the frequencies on which any such station may be operated shall be as agreed upon between the JDA and the Ministry of Communications, Nigeria, which agreement shall be fully communicated by the JDA to the International Frequency Registration Board.

5. For its official purpose, the JDA shall be entitled to use transportation operated by the Government at the same rates and treatment as may be granted to resident diplomatic missions or any other international organisation.

6. Aircraft operated by or for the JDA shall be exempted from all charges except those for actual service rendered, and from fees or taxes incidental to the landing at, parking on or taking off from any aerodrome in Nigeria. Likewise, any vessel operated by or for the JDA shall be exempt from all charges, except those for actual service rendered, and from fees or taxes incidental to the docking at, or sailing away from any port in Nigeria. Except as provided for in the two preceding sentences, nothing herein shall be construed as exempting such aircraft or vessel from full compliance with all applicable laws of Nigeria governing the operation of flights and shipping into, within and out of the territory and territorial waters of Nigeria.

7. No provision of this Article shall be interpreted as forbidding the adoption of the necessary security measures, particularly in case of emergency in the Federal Republic of Nigeria, which shall be mutually determined between the JDA and the Government and aimed at hindering or avoiding the abuse of, the immunities, exemptions and privileges stipulated under this Article.

ARTICLE IV—(THE LAWS OF NIGERIA)

Subject to the provisions of the General Convention and of this Agreement, in particular paragraph 3 of Article II :

- (i) the Laws of Nigeria shall apply within the Headquarters of the JDA ;
- (ii) the Nigerian Courts have jurisdiction over acts done and transactions taking place within the Headquarters as provided in applicable Laws of Nigeria ;
- (iii) the Nigeria Courts, when dealing with cases arising out of or relating to acts done or transactions taking place within the Headquarters, shall take into account the rules and regulations made by the JDA under Articles 12, 21, 22, 23, 24 and other relevant provisions of the Treaty ;

ARTICLE V—(ACCESS)

1. The Appropriation Nigeria Authorities shall not impede the transit to or from the Headquarters of the following persons :

(i) officials of the JDA together with their families and relatives residing with and dependent on them ;

(ii) persons other than officials of the JDA performing mission for the JDA together with their spouses and the members of their immediate families residing with and dependent on them ;

(iii) other persons invited to the Headquarters on official business, whose names shall be communicated to the Government by the Board or the JDA official duly authorised to act on its behalf.

2. Visas for persons referred to in paragraph 1 above, when required, shall be granted free of charge, provided however that the provisions of the said paragraph 1 shall not imply exemption from obligation to produce reasonable evidence to establish that persons claiming the rights granted under the relevant article of the Treaty.

3. The authorities of the Federal Republic of Nigeria shall not take any measures that will restrain or make illegal the residence in Nigeria of any of these persons when their residence in Nigeria is for official purposes. However, in the event that any of the persons referred to in the preceding paragraphs of this Article, abuses the privileges granted under this Agreement, appropriate measures restraining or making illegal his further residence in Nigeria may be taken by the Government of the Federal Republic of Nigeria.

SECTION C

ARTICLE VI—(PRIVILEGES AND IMMUNITIES OF GOVERNMENT REPRESENTATIVES)

1. Representatives of State Parties participating in the work of the JDA or in any conference, which may be convened by the JDA at the Headquarters, shall be entitled in the territory of Nigeria while exercising their functions and during their travel to and from the Headquarters, to the same privileges and immunities as are accorded to diplomatic envoys of comparable rank under international law, including but not limited to those provided in the Treaty.

2. Resident as well as temporary accredited representatives of States Parties to the JDA shall be entitled in the territory of Nigeria to the same privileges and immunities as the Government accords to diplomatic envoys accredited to Nigeria.

SECTION D

ARTICLE VII—(PRIVILEGES AND IMMUNITIES OF OFFICIALS AND OTHER EMPLOYEES OF THE JDA)

1. The Board shall specify the categories of officials to which the provisions of this Article shall apply. He shall submit those categories to the Ministry of Foreign Affairs, Abuja.

2. The officials of the JDA have the same privileges and immunities as diplomatic persons at the Headquarters of the Authority.

3. In keeping with paragraph 2 of this Article, the officials of the JDA particularly have the following privileges and immunities :

(i) The person of the JDA official is inviolable. He shall not be liable to any form of arrest and detention, and the Appropriate Nigerian Authorities shall treat him with due respect and shall take all appropriate steps to prevent any attack on his personal freedom or dignity. This provision shall apply in respect of a Nigerian national only in the course of the performance of his official duties ;

(ii) The private residence of the JDA officials enjoys the same inviolability and protection as the protection as the premises of Headquarters of the JDA.

(iii) The JDA officials shall enjoy immunity from criminal jurisdiction. He shall also enjoy immunity from Civil and Administrative jurisdiction except in the case of :

(a) a real action relating to private immovable property situated in the territory of Nigeria, unless he holds it on behalf of the Authority for the purposes of the Secretariat or any institutions of the Authority ;

(b) an action relating to succession in which the official is involved as executor, administrator, heir or legatee as a private person and not on behalf of the JDA or any of its institutions ;

(c) an action relating to any professional or commercial activity exercised by the official outside his official functions. This provision shall not apply to a Nigerian national or a foreigner with permanent residence in Nigeria ;

(iv) The JDA official shall not be obliged to give evidence as a witness in any legal proceedings. This provision shall not apply to a Nigerian national employed by the JDA ;

(v) He shall be immune together with his spouse and relatives residing with and dependent on him from immigration restrictions and all formalities of registering foreigners ;

(vi) The immunities and privileges under this Agreement are granted to the JDA officials in the interest of the Authority only and not for their personal benefit. The Board shall however have the right and duty to waive the immunity of any official in any case where the immunity would impede the course of justice and could be waived without prejudice to the interest of the State Parties ;

(vii) The initiation of proceedings by a JDA official shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim ;

(viii) Waiver of immunity from jurisdiction in respect of Civil or Administrative proceedings shall not be held to imply waiver to immunity in, respect of the execution of the judgement for which a separate waiver shall be necessary.

4. The officials of the JDA are members of staff of the State Parties entitled to privileges and immunities. They shall be the professional international civil servants as defined in the Staff Rules and Regulations of the Authority and such other persons as the Board may designate from time to time.

5. All officials of the JDA and such other persons as the Board may designate as entitled to the privileges and immunities shall be provided with a special identity card issued by the relevant Nigerian Authority, certifying the fact that they are JDA officials or persons so entitled to the privileges and immunities specified in this Agreement.

ARTICLE VIII

The privileges and immunities provided for in this Agreement are granted for the officials and other functionaries of the JDA and not for the personal benefit of the individuals themselves but in order to safeguard the independent exercise of their functions in connection with the JDA. Hence the Board shall have the right and duty to waive the immunity granted to an official or a functionary in any case where, in the opinion of the Board, the waiver of such immunity is in the interest of justice and it is not against the interest of the JDA. In the case of members of the Board, the Authority of Heads of State and Government of State Parties on the recommendation of the Joint Ministerial Council shall have the right to waive his immunity.

ARTICLE IX—(CO-OPERATION BETWEEN THE JDA AND THE GOVERNMENT)

1. The JDA shall co-operate at all times, with the Appropriate Nigerian Authorities, to facilitate the proper administration of justice, ensure observance of police regulations and prevent any abuses in connection with the privileges, immunities and facilities specified in this Agreement.

2. If the Government considers that there has been an abuse of any privilege or immunity granted by or under this Agreement, consultations shall be held between the Government and the JDA to determine whether any such abuse has occurred and to formulate such steps as may be necessary to deal with such an occurrence.

ARTICLE X—(PUBLIC SERVICE AND UTILITIES)

The Appropriate Nigerian Authorities will exercise to the extent requested by the Board or the JDA official in charge, the powers, which they possess with respect to the supplying of public services to ensure that the Headquarters shall be supplied on equitable terms with the necessary public services, including electricity, water, post, telephone, telegraph, transportation, drainage, collection of refuse and fire protection. In case of any interruption of any such services, the Appropriate Nigerian Authorities will consider the needs of the JDA as being of equal importance with similar needs of essential agencies of the Government, and will take steps accordingly to ensure that the work of the JDA is not prejudiced.

ARTICLE XI—(BUILDING AND RESIDENTIAL FACILITIES FOR HEADQUARTERS STATUTORY OFFICERS)

The Government shall continue to designate Plot 1101 Aminu Kano Crescent, Wuse II, Abuja, as Headquarters of the JDA.

ARTICLE XII—(INTERPRETATION AND APPLICATION)

1. The provisions of the Treaty and of this Agreement shall where they relate to the same subject matter, be treated whenever possible as complementary, so that the provisions of both shall be applicable and neither shall narrow the effect of the other; but in any case of absolute conflict, the provisions of this Agreement shall prevail.

2. The Government and the JDA may enter into such supplementary agreement as may be necessary to fulfil the purposes of this Agreement.

3. Whenever this Agreement imposes obligations on the Appropriate Nigerian Authorities, the ultimate responsibilities for the fulfilment of such obligations shall rest with the Government.

4. The provisions of this and any supplementary agreements shall be interpreted and applied in the light of its or their primary purpose to enable the JDA to discharge its responsibilities and fulfil its objectives fully and efficiently.

ARTICLE XIII—(SETTLEMENT OF DISPUTES)

Any dispute which may arise between the Government and the JDA with respect to the interpretation and/or application of this Agreement or of any supplementary agreement, failing settlement by negotiation or any other agreed method of settlement shall be referred for arbitration to the JMC for solution and as a last resort to the Heads of State of State Parties.

ARTICLE XIV—(AMENDMENT)

The Government or the JDA may request in writing a consultation for the purpose of modification or amendment of this or any supplementary agreement and any such modification or amendment shall be subject to mutual consent.

ARTICLE XV—(FINAL PROVISIONS)

1. This Agreement and any supplementary agreement entered into by the Government and the JDA within the scope of its terms of reference, shall cease to be in force twelve months after either of the parties shall have given notice in writing to the other of its decision to terminate the

Agreement and any other supplementary agreement, except, as regards the provisions which may apply to the normal cessation of the activities of the JDA in Nigeria and the disposal of its property.

2. This Agreement shall enter into force on the date of signature by the representatives of the Government of the Federal Republic of Nigeria and the JDA.

DONE and SIGNED in Abuja on the 10th of October, 2003, in duplicate original in the English Language.

Signed

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*For the Federal Government
of the Federal Republic of
Nigeria.*

Signed

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*For the Nigeria—Sao-Tome
and Principe Joint
Development Authority.*