



FEDERAL REPUBLIC OF NIGERIA

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**THE PETROLEUM INDUSTRY  
ADMINISTRATION BILL 2018  
(SB. 540)**

*A Bill for an Act to Provide for the Administration of the Petroleum Industry in  
Nigeria and for other Related Matters.*

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# THE PETROLEUM INDUSTRY ADMINISTRATION BILL

## A Bill for

### An Act to Provide for the Establishment of the Administrative Framework for the Petroleum Industry in Nigeria and for other Related Matters.

#### PART I:

#### PRELIMINARY

##### 1. Objectives

(1) The objects of this Act are to:

- (a) promote the exploration and exploitation of petroleum resources in Nigeria for the benefit of the Nigerian people;
- (b) promote the efficient, effective and sustainable development of the operation of the Petroleum Industry;
- (c) promote the safe and efficient operation of transportation and distribution infrastructure;
- (d) provide the framework for developing third party access arrangements to petroleum infrastructure;
- (e) encourage and facilitate both local and foreign investment in the Petroleum Industry;
- (f) promote transparency and accountability in the administration of petroleum resources in Nigeria;
- (g) develop, where appropriate, competitive markets for the sale and distribution of Petroleum and Petroleum Products;
- (h) promote safe and affordable access to Petroleum and Petroleum Products in Nigeria;
- (i) create a conducive business environment for operations in the Petroleum Industry;
- (j) promote the liberalization of the downstream Petroleum Industry;
- (k) establish an orderly, fair and competitive system; and
- (l) ensure that Petroleum Operations are conducted in a manner that protects the health and safety of persons and the environment.

(2) The provisions of this Act shall apply to all activities within, or associated with the Petroleum Industry and to all persons conducting such activities.



## **2. Management of Petroleum Resources**

The management and administration of petroleum resources and their derivatives in Nigeria shall be conducted in accordance with this Act and the principles of good governance, transparency and sustainable development of Nigeria.

### **PART II**

#### **UPSTREAM OIL AND GAS SECTOR REGULATION**

### **3. Administration of Acreage**

- (1) All acreage for exploration, development and production of petroleum in Nigeria shall be administered by the Commission.
- (2) The Commission shall designate or re-designate by regulation any area or hydrocarbon formations over which there is limited knowledge of the geology, including unconventional plays, as a Frontier Basin.
- (3) The Commission may issue a permit for the conduct of field operations and collection of samples for scientific research.

### **4. National Grid System**

- (1) The Commission shall adopt a national grid system for petroleum acreage management. Boundaries of subsisting licences and leases shall remain unaltered until the expiration of such licences or leases after which they will be brought into the national grid system.
- (2) The Commission shall prescribe matters relating to the national grid system which shall include but are not limited to:
  - (a) a coordinate system;
  - (b) a numbering system;
  - (c) subdivisions and aggregation of parcels within the grid system;
  - (d) the delineation of licence areas; and
  - (e) such other regulatory and acreage management procedures as may be applicable.
- (3) The grid system shall be used for the definition of license and lease areas, relinquishments, bid procedures, identification of well locations, petroleum conservation measures and such other regulatory and acreage management procedures as are applicable.



## **5. Licences**

Subject to the provisions of this Act and any applicable Regulations, the Commission may grant:

- (1) a licence, to be known as an Exploration Licence, to explore for petroleum; and
- (2) a licence, to be known as a Petroleum Licence, to explore for, win, work, carry away and dispose of petroleum.
- (3) A Petroleum Licence with respect to acreage on land and shallow waters shall not be more than five hundred (500) square kilometres and with respect to deep water areas and Frontier Acreages, shall not be more than one thousand (1000) square kilometres.

## **6. Qualification of Licence Holders**

A license under this Part of the Act may be granted only to a company incorporated in Nigeria under the Companies and Allied Matters Act or any other applicable law.

## **7. Exploration Licences**

- (1) An Exploration Licence shall apply to the area specified therein which may be any area on which a premium has not been placed by the Commission, and shall authorise the licensee to undertake exploration for petroleum on a speculative basis in the area of the licence, excluding land in respect of which the grant of a Petroleum Licence is in force.
- (2) The term of an Exploration Licence shall not exceed 3 years during which the Licensee shall be required to:
  - (a) fulfil all obligations imposed upon him by this Act and the terms and conditions of the licence; and
  - (b) provide timely reports in pursuance of the licence.
- (3) The Exploration Licence may be renewable for a term to be determined by the Commission but of no more than three years in any instance, subject to the satisfactory performance of the terms and conditions of the license.
- (4) An Exploration Licence shall not confer any right to the grant of a Petroleum Licence and may be awarded on a discretionary basis.
- (5) The terms and conditions for the sale of any data acquired under the licence shall be contained in the Exploration Licence.
- (6) The ownership of the data acquired by a Licence holder shall at all time reside with the Commission.



## **8. Petroleum Licence - Bid and Award Process**

- (1) Petroleum Licences shall have a term of twenty-five (25) years with respect to acreages on land and shallow waters and thirty (30) years for Petroleum Licences granted over acreage on Deep Offshore and Frontier Acreages.
- (2) Subject to the provisions of this Act, all Petroleum Licences shall be awarded through an open, transparent and competitive bidding process conducted by the Commission pursuant to this Act.
- (3) For all bidding processes conducted pursuant to subsection (2) of this section, the Commission shall announce the process and call for bids in accordance with a process that shall be made available to the general public through publications on the website of the Inspectorate and in at least two newspapers with international coverage and two newspapers with national coverage.
- (4) Where the Commission calls for bids pursuant to subsection (3) of this section, the Commission shall establish the minimum required processes, rules, standards and criteria for the bidding process and shall describe and publish these in the Licensing Round Guidelines as set out in section 10 of this Act.
- (5) All bids for Petroleum Licenses shall be opened in public.
- (6) Assessment of all bidding companies and bids received shall take place in accordance with the procedures, rules, standards and criteria set out in the Licensing Round Guidelines and the provisions of this Act.
- (7) The President may direct the Commission to negotiate and award Petroleum Licences to qualified investors outside of the bidding process required in sub-section 2 of this section. Any such awards may only be for strategic and bilateral purposes.
- (8) For the purposes of sub-section 7 of this section, a qualified investor shall be one which meets the criteria set out in Regulations prescribed by the Commission.
- (9) Within thirty (30) days of all Petroleum License awards, the Commission shall publish the following information on its website and in at least two daily newspapers of general circulation:
  - a. the identification of all awarded blocks;
  - b. the identity of all winning bidders;
  - c. the terms of the winning bid, including but not limited to any signature bonus due;
  - d. a bid evaluation report justifying the winning bid according to the rules, criteria and processes set out in the Licensing Round Guidelines, including an explanation of any material deviations from the rules.
- (10) The size of any signature bonus payable in respect of any licence awarded pursuant to the provisions of this section shall be based on a transparent methodology for evaluating the acreage.



## **9. Bidding Process to Comply with Law, Regulations & Licensing Round Guidelines**

The bidding process to grant Petroleum Licences pursuant to section 8 shall comply with the provisions of this Act, Regulations prescribed by the Commission and the Licensing Round Guidelines to be issued for each licensing round.

## **10. Licensing Round Guidelines**

- (1) The Licensing Round Guidelines shall be accompanied by the Model Clauses for the Petroleum Licence for that bid round and shall indicate amongst others:
  - (a) the license acreages, the term for the Exploration Period and minimum work obligations;
  - (b) any pre-qualification processes, rules, standards and criteria for bidding companies;
  - (c) the bid parameters;
  - (d) the list of documents required and criteria to be followed for the evaluation of technical capacity, financial competence and legal status of interested parties, as well as for the technical and financial assessment of the bid;
  - (e) the details and cost for the acquisition of relevant data & studies;
  - (f) a description of the processes, rules standards and criteria the Commission will use to assess bids;
  - (g) the amounts of any other required fees for bidding;
  - (h) the minimum documentation and processes required for the Commission to identify a bidding company's directors, shareholders and Beneficial Owners.
- (2) For all bidding processes conducted pursuant to section 8 of this Act, the Commission shall publish the Licensing Round Guidelines and Model Clauses on its website and in at least two newspapers with international coverage and two newspapers with national coverage.

## **11. Model Clauses**

The Model Clauses for each bid round shall reflect the conditions of the Licensing Round Guidelines for that bid round and shall include the following essential clauses:

- (a) definition of the acreage;
- (b) term of the Exploration Period and conditions for extension, if any;
- (c) minimum work program and estimated level of investments;
- (d) details of guarantees to be provided by the licensee regarding the performance of its license obligations;
- (e) details of the rules regarding relinquishment and abandonment of areas, including removal of equipment and installations;
- (f) rules on the resolution of disputes related to the licence and its performance, including conciliation and international arbitration;
- (g) applicable sanctions in the event of failure by the licensee, to comply with the licence obligations; and
- (h) such other clauses as the Commission may deem necessary.



## **12. Specific Obligations of the Petroleum Licensee**

Each Petroleum License shall include the obligations to:

- (a) adopt, in every operation, necessary measures for the conservation of the reservoirs and other natural resources, for the safety of the people and equipment, and for the protection of the environment;
- (b) promptly communicate the discovery of any deposit of oil, natural gas or any other hydrocarbons or other minerals to the Commission;
- (c) appraise the discovery pursuant to the appraisal program approved by the Commission;
- (d) submit a field development plan for any Field which has been declared commercial to the Commission;
- (e) render timely reports to the Commission on its operations;
- (f) seek the consent of the Commission for the appointment of or change to the operator;
- (g) be liable for the actions of its agents and indemnify any and all damage arising out of exploration, development and production activities conducted, and the Commission or the Federal Government shall be reimbursed for any damages they may have to bear as a result of possible claims motivated by actions under the responsibility of the licensee; and
- (h) adopt global best practices of the oil industry and comply with all rules, Regulations and/or standards as well as applicable technical and scientific procedures, including proper recovery techniques, aiming at the maximisation of production and control of depletion of reserves.

## **13. Assessment of Bids**

- (2) The assessment of the bidding process shall determine the most advantageous proposal, based on objective bid parameters established in the Licensing Round Guidelines, and shall comply with the principles of openness, transparency and impartiality among bidders.
- (3) All bids received based on the bid parameters established in sub-section (1) of this section shall be processed in accordance with the published guidelines.

## **14. Exploration Period of the Petroleum Licence**

- (1) The term of the Exploration Period of the Petroleum Licence shall not exceed:
  - (a) 5 (five) years for Petroleum Licences granted over acreage on land, and shallow waters;
  - (b) 10 (ten) years for Petroleum Licences granted over acreage in the Deep Offshore & Frontier Acreages.

Provided that the Commission may grant a Petroleum Licence pursuant to section 8 which commences in the Production Period in the case of Brownfield Acreages or acreages over which holders of Oil Prospecting Licences granted under the Petroleum Act of 1969 have made a commercial discovery and obtained an approved field development plan.



- (2) A Petroleum Licence commencing in the Exploration Period shall contain the requirement for the licensee to commit to a minimum work programme in the Exploration Period of the Licence.
- (3) Where the licensee makes a petroleum discovery during the Exploration Period, it shall inform the Commission within one hundred and twenty days or within such extended time frame as granted by the Commission, after making such discovery whether the licensee considers that the petroleum discovery -
  - (a) merits appraisal of a crude oil or natural gas discovery or both; or
  - (b) permits the making of a declaration of a commercial discovery or significant gas discovery without further appraisal
- (4) Where the licensee considers that a discovery merits appraisal pursuant to paragraph (a) of sub-section (3) of this section, it shall submit an appraisal programme for the approval of the Commission. The Commission shall consider & approve or decline approval of the appraisal programme within thirty days after the submission of all necessary information. Where the Commission fails to communicate its approval or rejection of the programme within thirty days, such programme shall be deemed approved.
- (5) Upon the approval or deemed approval of the appraisal programme by the Commission, the licensee shall promptly carry out the appraisal programme.
- (6) Upon the completion of the appraisal programme, the licensee shall -
  - (a) declare a commercial discovery and submit a field development plan that provides a solution acceptable to the Commission in respect of any potential occurrence of gas flaring within the licence area; or
  - (b) declare a Significant Gas Discovery; or
  - (c) inform the Commission that the discovery is of no interest to the licensee and relinquish said area.
- (7) Where the licensee declares a commercial discovery and submits a field development plan pursuant to paragraph (a) of sub-section (6) of this section the Commission shall consider & approve or decline approval of the field development plan within 120 days provided the licensee submits all necessary information. Where the Commission fails to communicate its approval or rejection of the field development plan within one hundred and twenty days, such programme shall be deemed approved.
- (8) Where a Significant Gas Discovery has been declared, such area shall be carved out of the existing Petroleum License area and the licensee shall be entitled to retain such Retention Area for a Retention Period of an initial term of five years from the date of such declaration and may be renewed for a further term of two years.
- (9) Any Retention Area shall not be larger than the parcels covering the reasonable outer boundary of the discovery and shall be subject to approval by the Commission.





- (10) Prior to the end of the Retention Period, the licensee shall either
- (a) declare a commercial discovery and submit a field development plan over the Retention Area; or
  - (b) inform the Commission that the area is no longer of interest and relinquish said area.
- (11) Where the licensee fails to comply with the provisions of sub-section 10 (a) or (b) of this section at the end of the Retention Period, the Retention Area shall automatically revert to the Commission.
- (12) Upon the approval of a field development plan over a Retention Area, the licensee shall be granted a Petroleum Licence to cover said area under similar terms and conditions as the original licence from which the Retention Area was carved out.

## **15. The Production Period of the Petroleum Licence**

- (1) The holder of a Petroleum Licence shall have the option to continue to the Production Period of the Licence upon the receipt or deemed receipt, under sub-section (6) of section 14, of approval of a field development plan and the relinquishment of acreage in accordance with section 16.
- (2) The Production Period shall run until the earlier of the expiration of the term of the Licence, or the depletion of the reserve.
- (3) During the Production Period, the Licensee shall be obliged to:
- (a) Carry out further exploration over the acreage;
  - (b) Carry out an annual work programme as approved by the commission;
  - (c) Carry out development activities in accordance with the approved field development plan(s);
  - (d) Commence and continue production of petroleum in accordance with applicable laws and regulations.

## **16. Relinquishment of Acreage**

- (1) Subject to the provisions of sub-section (2) of this Section, one – half of the acreage covered by a Petroleum Licence shall be relinquished at the end of the Exploration Period. Acreages shall be relinquished in a north-south, east-west direction and should be defined by a rectangular or square shaped compact unit. Such area shall be proposed by the Licensee and subject to the approval of the Commission.
- (2) Where a licensee has made a discovery and secured FDP approval for more than one field and can establish coverage of more than 50% of the license area, the Commission may at the request of the licensee permit the retention of the balance or





a portion of the remaining area on terms and conditions to be agreed with the Commission.

(3) The Commission may approve the grant of a Petroleum Licence to the licensee in respect of the relinquished area on terms and conditions to be determined by the Commission.

(4) Ten (10) years after the commencement of the Production Period, a Licensee shall relinquish all areas which are not in production or over which there is no approved field development plan. Acreages shall be relinquished in a north-south, east-west direction and should be defined by a rectangular or square shaped compact unit. Such area shall be proposed by the Licensee and subject to the approval of the Commission.

(5) The proposed shape of the relinquished area shall conform with the grid based UTM acreage system prescribed in regulations by the Commission.

## **17. Surrender of Licences**

(1) Without prejudice to any provision relating to relinquishment in this Part, a licensee shall be entitled at any time to surrender part or whole of the licensed area provided that:

- (a) the licensee shall give at least three months' notice in writing to the Commission prior to such surrender;
- (b) the licensee has complied with all obligations under the licence including any surviving obligations.
- (c) the licensee shall be liable to pay all rents, royalties, taxes or any other payment due to the Government of the Federation;
- (d) no rent paid prior to the surrender shall be refundable; and
- (e) the surrender will not affect any liability incurred by the title holder before the surrender of the title, including environmental and abandonment obligations.

## **18. Assignment or Transfers of Licences**

(1) Subject to the provisions of section 163 of this Act and sub-sections (4) and (5) of this section, the prior written consent of the Commission shall be required in the following instances -

- (a) assignments and transfers of interests, whether in whole or in part, in any Petroleum Licence or any rights or obligations arising from such licence;
- (b) the farmout of a field or prospects within the licence;



- (c) the creation of a security interest in any such licence;
- (d) transfer of shares in a company that is a holder of any licence which would have any of the purpose and effect of:
  - i. granting beneficial ownership of more than one half of the issued share capital of the company; or
  - ii. vesting the right to a majority of the votes that may be cast at a general meeting of the company, or the ability of a person to control the voting of a majority of those votes, either directly or through a controlled entity of that person; or
  - iii. enabling the appointment or a veto of the appointment of a majority of the directors of the company.
- (e) transfer of majority shares in a holding company, where the holder of the licence is a subsidiary of that company as contemplated by the Companies and Allied Matters Act.
- (f) transfer of shares in a company that has the ability to control the majority of the votes of the trustees or to appoint the majority of the trustees or to appoint or change the majority of the beneficiaries of a trust that controls the holder of a licence.

(2) The rights arising from a licence that are transferable under sub-section (1) of this section can be wholly and partially assigned, sub-leased, pledged, mortgaged, charged, hypothecated or subject to any security interest. The Commission shall issue Regulations aimed at facilitating the approval of an application for the creation of a security interest over a licence.

(3) The licensee shall make an application for approval of the transfer of a licence to the Commission in the prescribed format and together with any other information that may be required by the Commission in Regulations published by it.

(4) The Commission shall grant its consent under sub-section (1) of this section if the transferee is a qualified and competent applicant, provided that the application for such transfer shall be deemed automatically approved if not acted upon by the Commission within sixty days from official receipt thereof.

(5) Upon the grant of an application for the consent of the Commission to a transfer, the Commission shall promptly record the transfer in the appropriate register.

(6) The Commission shall communicate its refusal or approval of an application for the assignment or transfer of a licence in writing to the applicant.

(7) The Commission shall advise the applicant of the reasons for its refusal of an application for an assignment or a transfer of a licence, and shall state a reasonable timescale within which further representations may be made by the applicant or by third parties in respect of the application.



(8) The Commission may grant its consent to an assignment or transfer of a licence, subject to such conditions as it may consider appropriate.

## **19. Grounds for Revocation of Licences**

The Commission may revoke a licence if the holder -

(1) is controlled directly or indirectly by a person who is a citizen of or subject of any country whose laws do not permit citizens of Nigeria or Nigerian companies to acquire, hold and operate petroleum concessions on conditions which the Commission finds to be reasonably comparable to the conditions upon which such concessions are granted to subjects of the country;

(2) fails to conduct operations continuously in a business-like manner and consistent with any work programme approved in respect of the licence;

(3) fails to act in compliance with applicable laws and regulations;

(4) fails to fulfil its obligations under the conditions of its licence;

(5) fails to pay fees, rent or royalties as they fall due and within the period specified by this Act or any regulations made pursuant to this Act, whether or not they have been demanded by the Commission;

(6) is declared by a court of competent jurisdiction to be insolvent or bankrupt, or goes into forced liquidation, except as part of a scheme of re-organisation, amalgamation or arrangement with its creditors;

(7) has continuously failed to furnish any report or data on its operations as required by the Commission or by this Act or any other Act in force within the stipulated time;

(8) has assigned or otherwise transferred its interest in the licence to any person or company without the prior written consent of the Commission pursuant to the provisions of section 18 of this Act;

(9) fails or neglects to conduct its operations in accordance with good oil field practice;

(10) has failed or neglected to comply with environmental obligations applicable to its licence or under this Act;

(11) has not complied with such other specific requirements for which revocation is a consequence of non-compliance under this Act;

(12) has obtained or acquired the licence on the basis of false representations or corrupt practices; or

(13) is owned, wholly or in part, directly or indirectly or is controlled by a former or serving public officer or a member of government who has obtained an interest in the licence through an abuse of public office. In case of a former public officer, this provision applies if the said interest was acquired while the person was in office.

## **20. Representation Permitted before Revocation**



(1) Prior to a decision by the Commission to revoke a licence pursuant to section 19 of this Act, the Commission shall inform the licensee in writing of the grounds on which a revocation is contemplated and shall invite the licensee to make a representation to the Commission thereto within 30 days, and if the Commission is satisfied with the explanation, the revocation process shall terminate forthwith.

(2) The Commission may upon review of the representation, require the licensee to rectify the matter complained of within a specified period; provided however, that if a licensee is unable to offer a satisfactory explanation or does not rectify the matter complained of within the specified period, the Commission shall revoke the license.

(3) Notice of revocation sent to the last known address of the licensee or his legal representative in Nigeria and published in the Gazette and on the website of the Commission, shall, for all purposes, be sufficient notice of the revocation of the licence.

(4) Revocation shall be without prejudice to any liabilities which the licensee may have incurred, or to any claim which may be made by the Federal Government against the licensee.

## **21. Power of Revocation of Partial Interest**

(1) This section applies in a case where two or more persons are the Licensee and an event mentioned in section 19 (1), (8) or (10) occurs in relation to one of those persons.

(2) Where this section applies, the Commission may exercise the power of revocation in section 19 to revoke the licence interest in so far as it applies to the person mentioned in sub-section 1 of this section.

(3) If the Commission exercises the power in sub-section (2) of this section, the rights granted to the person under this licence shall cease, but without prejudice to any obligation or liability incurred by the person or imposed under the terms and conditions of this licence.

(4) Where this licence is revoked in relation to one person under this section, it continues to have effect in respect of the other person who constitutes, or persons who together constitute, the Licensee and in relation to whom it is not revoked.

(5) The interest revoked in sub-section (2) of this section shall devolve in accordance with the terms of their joint operating agreement or in accordance with their participating interest.

## **22. Frustration of Licence**

A failure on the part of a licensee to fulfil a condition of a licence mainly as a result of an act of war, hostility, insurrection, storm, flood, earthquake or other natural phenomenon which is beyond the reasonable control of the licensee shall not constitute a breach of the licence, or the Act. The licensee shall immediately notify the Commission of the occurrence of the circumstances specified and give particulars of the failure and its cause, provided however that the licensee, shall



remain liable for requirements under a licence or the Act for the payment of royalty, annual charges, rent or fees.

### **23. Renewal of Petroleum Licences**

(1) Subject to the provisions of sub-section (2) of this section, all Petroleum Licences shall be eligible for renewal for a period not exceeding 20 years either in respect of the whole of the licensed area or any particular part thereof, by the Commission as from five years to the expiration of the term of the licence.

(2) The Commission shall within 6 months of the application for renewal in sub-section (1) of this section advise the licensee whether approval is granted or not.

(3) A Petroleum Licence shall be renewed if the Commission is satisfied that:

- (a) The licence holder has fulfilled the work programme obligation incidental to the development of the licence area;
- (b) The licence holder has fully met all statutory payments in respect of royalty, concession rents and any other taxes and fees incidental to the operations of the licence;
- (c) The licence holder is not in default of any obligation or condition relating to the licence; and
- (d) The licence holder has discharged all operational obligations in compliance with applicable rules and regulations.

(4) In considering a renewal of a Petroleum Licence, the Commission may amend an existing licence condition, or may impose or add new license conditions to the Petroleum Licence in the public interest.

(5) At the renewal and conversion of any oil mining lease to a petroleum licence, the Commission may require the excision of any or all unattended parcels within the licence area.

(6) In determining the renewal bonus and fees, the Commission may consider the prevailing fair market value of the licence.

### **24. Dormant Fields**

(1) Within twelve months of the passage of this Act, and every year subsequently, the Commission shall compile and publish a list of Dormant Fields (the "Dormant Fields List") currently held under oil mining leases granted under the Petroleum Act 1969.

(2) Within two years of the publication of any Dormant Fields List, the holder of an oil mining lease within which a Dormant Field falls, may:

- (a) carry out Significant Activity on the Dormant Field; or



(b) with the consent of and on such terms and conditions as may be approved by the Commission, farm out any Dormant Field which lies within the leased area; or

(c) relinquish the Dormant Field in accordance with the provisions of this Act.

(3) The consent of the Commission to the farm-out of a Dormant Field under sub-section 2(b) of this section shall, amongst others, be subject to the commitment of the farmee to carrying out Significant Activity within a period of time agreed with the Commission.

(4) Failure of the Farmee to carry out such Significant Activity within the designated period shall be deemed to be an automatic relinquishment of the rights of such Farmee over the Dormant Field.

(5) Any Dormant Field relinquished under sub-sections 2(c) and 4 of this section shall be included in subsequent bidding rounds for Petroleum Licences to be conducted by the Commission.

(6) For the purposes of this section-

"Dormant Field" means a field in respect of which no Significant Activity or petroleum operations has been undertaken for a period of seven years or more from the date of the first discovery of the field.

"farm-out" means an agreement between the holder of an oil mining lease and a third party which permits the third party to explore, prospect, win, work and carry away any petroleum encountered in a specified area during the validity of the lease;

"Significant Activity" means drilling, recompletion, workover or any other development activity aimed at bringing the field into production.

## **25. Confidentiality Clauses**

(1) Save for payments made in respect of proprietary industrial property rights, confidentiality clauses or other clauses contained in agreements or contracts relating to Petroleum Operations that have the purpose and effect of preventing access to information and documents by third parties in respect of any payment of taxes, royalties, fees and bonuses of whatever nature shall be void and of no effect.

(2) The question as to whether information or documents relate to industrial property rights shall be decided by the owner of such information, and where the Commission disputes such decision, the matter shall be decided by a mutually acceptable independent expert appointed jointly by the Commission and the licensee and, failing an agreement on the appointment of the expert either the Commission and licensee may refer the dispute to arbitration in accordance with the provisions of the Arbitration and Conciliation Act.

(3) Every licensee, lessee or contractor shall, not later than 12 months after the expiration of each calendar year, provide a yearly summary of all revenues and costs upon which payments were made further to the provisions of sub-section (1) of this section.



(4) The Commission shall define the required detail and classification of the summary required in sub-section (3) of this section and such summaries shall be published on the website of the Commission.

(5) Sub-sections (1) and (3) of this section shall not apply to proprietary industrial property rights owned by any of the parties to a licence, lease, agreement or contract to which the said sub-sections (1) and (3) apply, and such rights shall be exempted from the scope of mandatory disclosure to the extent that confidentiality in such cases is protected by any law in force in Nigeria relating to the freedom of information, or by any treaty obligations of Nigeria under international law.

(6) The text of any agreement or contract entered into with any entity controlled by the Government and any amendments or side letters thereto shall not be confidential and may be published by the Commission.

(7) All geological, geophysical, geochemical and other technical data obtained by any licensee during Petroleum Operations shall be provided to the Commission within one month of the acquisition of the data.

(8) Failure to comply with the provisions of sub-sections (3) and (7) of this section shall constitute an offence punishable by a fine not exceeding ₦15,000,000 or twelve months' imprisonment, or both.

## **26. Unitisation**

(1) A Petroleum Licensee shall notify the Commission of any petroleum accumulation which extends beyond the boundaries of its licence area.

(2) Where a petroleum accumulation in the licence area extends beyond the boundaries of the licence area, and where at least one licensee has made a declaration of a commercial discovery, the Commission may for the purpose of ensuring optimum recovery of petroleum require that the Petroleum Operations related to such discovery shall be carried out on the basis of a unitized development of the discovery.

(3) Where the petroleum reservoir straddles two or more licence areas, the Commission shall direct the licensees to enter into an agreement in writing to develop the petroleum reservoir as a Unit in accordance with Regulations issued by the Commission.

(4) Where a petroleum deposit extends over more than one licence area with different licensees, the licensees shall reach an agreement on the most efficient co-ordination of the operations in connection with the petroleum deposit as well as on the apportionment of the petroleum deposit.

(5) For the purposes of the unit agreement, the licensees may include discoveries in areas contiguous to the straddling reservoir, subject to the approval of the Commission.

(6) Where the licensees are unable to reach an agreement in accordance with sub-section 3 of this section within any time limit imposed by the Commission, the Commission may impose a unit development arrangement, which shall be fair and equitable to the licensees.





(7) The Commission may by Regulations prescribe applicable rules where some or all of the area into which a discovery extends is not subject to any licence.

(8) Where a unitized field is able to continue in production after the expiration of one or more licences, the Commission may grant an extension of such licences so as to allow the unit to reach the end of production.

## **27. Rights of Way**

(1) Subject to the provisions of this Act and to such terms and conditions as may be approved by the Commission, the licensee shall be entitled to such rights of way for the laying, operation and maintenance of gathering lines, and the like through or across areas as the licensee may reasonably require for the carrying on of Petroleum Operations.

(2) There shall be reserved to the Commission over the retained part such way-leaves, easements or other rights as in its opinion are necessary or desirable for the laying, operation and maintenance of pipelines, telephone lines and power-lines; and any way-leaves or other rights so reserved shall enure for the benefit of any person or body to whom the Minister may subsequently grant the same to the extent that he may so grant them.

## **28. Surface Rights Reserved to the Commission**

The Commission may grant rights of way, easements or other rights over any surface or seabed areas subject to an existing licence, as in the opinion of the Commission, may be necessary or desirable for the laying, operation and maintenance of gathering lines, telephone lines and power lines and the like, and any rights of way or other rights so reserved shall continue for the benefit of any entity to whom the Commission may subsequently grant the same.

## **29. Right of Participation**

(1) Any licence awarded pursuant to section 8 of this Act, shall be granted subject to the right of the Government to a maximum participating interest of forty percent in such licence.

(2) The right reserved by Government further to sub-section (1) of this section shall be:

- (a) without obligation of upfront payment of share of all costs incurred under the licence in exploration phase; or
- (b) with the obligation to pay the proportionate share of all costs incurred under the licence in the development phase, if the right is exercised in the development phase; or
- (c) with the obligation to pay the proportionate share of costs incurred under the lease in the production phase; if the right is exercised in the production phase.





(3) If required by Government or the holder of the Licence, the nature, validity and quantum of the costs to be incurred shall be determined or verified by a mutually acceptable independent expert in the subject matter appointed jointly by the Government and the licensee and, failing an agreement on the appointment of the expert either the Government and licensee may refer the dispute to arbitration in accordance with the provisions of the Arbitration and Conciliation Act.

(4) Any payment obligation pursuant to sub-section 2(b) and 2(c) of this section may be in the form of:

- (a) cash or kind from the effective participation date: or
- (b) such other arrangement as may be approved by the Commission.

### **30. Fees and Royalties**

(1) There shall be paid in respect of licences under this Part, such royalties, fees and rentals as may be prescribed in the Schedule 1 of this Act and any regulations made under this Act.

(2) Without prejudice to other powers granted under this Act, in the event of a default of payment of royalty or applicable fees, the Commission may seal any premises or facility of a defaulting licensee or confiscate equivalent quantities of petroleum produced therein.

(3) Royalty not paid as at when due shall be considered to be debt which shall become due for payment with interest applicable at the LIBOR rate plus 3 basis points calculated with effect from the date that the payment was due.

(4) Under no circumstances shall applicable royalty rates in a Lease be waived or discounted in favour of the Licensee.

(5) Royalties in respect of oil or gas produced shall be paid on a monthly basis to the Commission by all holders of upstream licences.

### **31. Damage to Protected and Venerated Objects**

(1) The licensee shall not enter upon or occupy, or exercise any of the rights and powers conferred by his licence in relation to –

- (a) any area held to be sacred, the question whether any area is held to be sacred being decided, if necessary, by the Customary Court of the area; or
- (b) any of the following parts of the relevant area unless and until permission in writing to do so has been obtained by the licensee from the Commission, which permission shall be subject to such conditions as the Commission may deem fit to impose, that is to say-
  - i. any part set apart for or used or appropriated or dedicated to public purposes;



- ii. any part occupied for the purposes of the government of the Federation or a State;
  - iii. any part situate within a township, town, village, market, burial ground or cemetery;
  - iv. any part which is the site of or is within fifty yards of any building, installation, reservoir, dam, public road or tramway or which is appropriated for or situate within one hundred metres of any railway;
  - v. any land under cultivation;
- (c) any part consisting of private land other than private land coming within paragraph (b) of this sub-section unless and until permission in writing to do so has been obtained by the licensee from the Commission, who may grant permission if the licensee has-
- i. given previous notice in writing to the Commission specifying by name or other sufficient designation and by quantity the land proposed to be occupied and the purpose for which the land is required; and
  - ii. paid or tendered to the persons in lawful occupation of and to the owner or owners of the land fair and adequate compensation therefor.
- (d) In the event of any dispute under sub-paragraph (c) (ii) above as to who is in lawful occupation or the owner of any land, or as to the amount of any compensation payable, the licensee, pending the determination of the dispute, shall deposit with the High Court with jurisdiction over the matter such sum as shall be determined by the Court to be reasonable compensation payable to the rightful owner or occupier of the land.

(2) No person shall, in the course of Petroleum Operations:

- (a) injure or destroy any tree or object which is -
  - i. of commercial value;
  - ii. the object of veneration to the people resident within the licence area;
- (b) damage or destroy any building or property;
- (c) disturb or damage the surface of the land or any other rights to any person who owns or is in lawful occupation of the licensed lands.

(3) A licensee who causes damage pursuant to sub-section (2) of this section shall pay fair and adequate compensation to the persons or communities directly affected by the damage or injury.



(4) The amount of compensation payable under sub-section (3) of this section shall be determined by the Commission in consultation with designated persons and representatives of the person whose protected objects, property or land have been damaged and the licensees.

(5) Where a licensee fails to pay compensation as determined in sub-section (4) of this section, the Commission may order the licensee to make the payment within thirty (30) days.

(6) Where the licensee fails to make payment within thirty (30) days in accordance with sub-section (5) of this section, the Commission may suspend or revoke the licence.

## **32. Environmental Management**

(1) Every licensee engaged in Petroleum Operations shall:

- (a) within one year of the commencement of this Act, or
- (b) within six months after the grant of its licence;
- (c) submit an environmental management plan in respect of projects which require environmental impact assessment to the Commission for approval.

(2) The environmental management plan shall:

- (a) establish an initial baseline information and a programme for collecting further baseline information to determine necessary protective and remedial measures for potential impact on the environment deriving from Petroleum Operations;
- (b) investigate, assess and evaluate the impact of the proposed exploration and production activities on -
  - i. the environment; and
  - ii. the socio-economic conditions of any person who might be directly affected by the Petroleum Operations;
- (c) include an environmental awareness plan describing the manner in which the applicant intends to inform its employees of any environmental risks which may result from their work and the manner in which the risks may be dealt with in order to avoid pollution or the degradation of the environment;
- (d) describe the manner in which the licensee intends to -
  - i. modify, remedy, control or stop any action, activity or process which may cause pollution or environmental degradation;
  - ii. contain or remedy the cause of pollution or degradation and migration of pollutants; and



- iii. comply with any prescribed waste management standards or practices.
  - (e) The environmental management plan shall include a program of action to ensure the treatment and handling of produced water in accordance with applicable rules and regulation.
- (3) The Commission shall approve the environmental management plan if:
- (a) it complies with sub-section (2) of this section; and
  - (b) The applicant has the capacity or has provided for the capacity to rehabilitate and manage negative impacts on the environment.
- (4) In considering the environmental management plan, the Commission shall take into account the policy thrust of the Federal or relevant State Ministry of Environment regarding environmental protection and management practices.
- (5) The Commission may request additional information from the licensee and may direct that the environmental management plan in question be adjusted in such manner as the Commission may require.
- (6) The Commission may, at any time after it has approved an environmental management plan and after engagement with the operator of a licence, request an amendment of the environmental management plan.

### **33. Abandonment, Decommissioning and Disposal**

- (1) The decommissioning and abandonment of petroleum wells, installations, structures and other assets used in Petroleum Operations shall be conducted in accordance with regulations issued by the Commission.
- (2) No decommissioning or abandonment shall take place without the approval of the Commission.
- (3) The licensee, shall prior to any decommissioning or abandonment submit to the Commission for approval, a programme setting out:
- (a) an estimate of the cost of the proposed measures;
  - (b) details of measures proposed to be taken in connection with the shutdown of operations and decommissioning of disused installations, structures or other assets used in the Petroleum Operations as the case may be;
  - (c) clear descriptions of the methods to be employed to undertake the work programme, which shall be in line with best oil field practices, and environmental standards; and
  - (d) steps to be taken to ensure maintenance of and safeguard health, safety and the environment where any installations, structures or gathering lines are to remain disused and in position, or are to be partly removed.



- (e) assessment of the environmental and social impact of the decommissioning measures.
- (4) Except for the abandonment of wells, upon the submission of the decommissioning programme by the licensee to the Commission, consultations shall be made with interested parties and other relevant public authorities and bodies.
- (5) The programme referred to in sub-section (3) of this section shall not be approved unless all relevant environmental, technical and commercial regulations or standards are met.
- (6) Prior to the approval of a programme for decommissioning or abandonment, the Commission shall ensure that -
- (a) It gives consideration to relevant third-party recommendations;
  - (b) The potential for reuse of the facility or pipeline in connection with existing or further hydrocarbon developments is considered before decommissioning;
  - (c) all feasible decommissioning options have been considered and a comparative assessment made;
  - (d) any removal or partial removal of an installation, structure or gathering line is to be performed in a manner that guarantees the sustainability of the environment; and
  - (e) any recommendation to leave an installation, structure or gathering line in place is made with regard to its likely deterioration and to the present, possible, and future effects on the environment and, in the case of offshore installations and structures, consistent with the applicable international standards.
- (7) The Commission shall enforce compliance by any holder of a current licence, or a holder of an expired licence and who was responsible for the decommissioning or abandonment programme with respect to a licence that has expired, to carry out its remaining or unfulfilled decommissioning and abandonment obligations under this Act.
- (8) The Commission shall conduct an inventory of all petroleum facilities, structures and other major assets used in Petroleum Operations in Nigeria.
- (9) In archiving and maintaining the database of petroleum facilities, structures and assets as set out in sub-section (8) of this section, the Commission shall prescribe the manner and method in which such data shall be submitted by all operators.
- (10) The Commission shall require a licensee to establish an abandonment fund (the "Abandonment Fund") into which such licensee shall, in respect of each license, contribute a reasonable percentage of revenues from its operations (as may be agreed with the Commission) for the purpose of decommissioning. The Abandonment Fund shall be held in an interest-bearing escrow account maintained with a first class commercial bank.



(11) Any Abandonment Fund established pursuant to sub-section (10) of this section, including accrued interests in relation thereto, shall be used solely for the purposes of paying for the decommissioning of facilities. No Party shall mortgage, pledge, encumber or otherwise use the Abandonment Fund for any purpose whatsoever except as expressly provided herein.

(12) Any balance remaining in the Abandonment Fund after the discharge of the decommissioning obligations within the applicable licence shall revert to the licensee.

(13) The amounts to be contributed to the Abandonment Fund shall be based on the decommissioning programme approved by the Commission pursuant to this section. In the case of licences issued prior to the commencement of this Act, the amounts to be contributed shall be based on a reasonable estimate of abandonment and decommissioning costs as adjusted from time to time by the licensee on the approval of the Commission.

#### **34. Prohibition of Flaring or Venting of Gas**

(1) Notwithstanding the provisions of any other enactment, no licensee under this Act shall flare gas within its license area or from any facility within its control except in accordance with an authorisation granted by the Commission under this Act or as otherwise permitted in the First Schedule.

(2) The provisions of the First Schedule to this Act shall have effect in relation to flaring of Gas by any licensee under this Act.

#### **35. Domestic Gas Supply Obligations**

(1) The Commission shall determine and announce the Domestic Gas Demand Requirement at the beginning of each calendar year.

(2) The Commission shall determine and allocate Domestic Gas Supply Obligations to licensees with discovered and proven gas reserves, based on the Domestic Gas Demand Requirement determined or updated pursuant to sub-section (1) of this section and ensure compliance by all licensees with such Domestic Gas Supply Obligations.

(3) The Commission shall require licensees producing gas to carry out all such works and operations as may be required to increase production in order to dedicate specific volume of the gas produced towards the requirements of the domestic market.

(4) The volume of gas to be dedicated by each licensee towards the Domestic Gas Supply Obligation shall be based on an allocation system among licensees with consideration of supporting infrastructure availability as determined by the Commission from time to time.

(5) Subject to the provisions of sub-section (6) of this section, any licensee who fails to comply with the Domestic Gas Supply Obligation, without prejudice to any commercial obligation to the off-taker, shall incur penalties as prescribed by the Commission by Regulations.



(6) A licensee shall not incur penalties under sub-section (5) of this section, where it can demonstrate that its failure to comply is as a result of:

- a. Force Majeure; or
- b. Inability of the purchaser to accept allocated gas volumes; or
- c. Failure of purchaser to pay for the allocated gas volumes.

(7) The Commission shall set out the criteria for determining when the gas market has attained full market status and upon the attainment of such status, discontinue the imposition of Domestic Gas Supply Obligations.

### **36. Domestic Crude Oil Supply Obligations**

(1) Within 12 months of the passage of this Act, the Commission shall issue regulations which shall detail the mechanics for the imposition of a domestic crude oil supply obligation on upstream crude producers.

(2) Any domestic crude oil supply obligation shall only apply when the Commission determines that sufficient refinery capacity has been developed in the country.

(3) Crude oil supplied further to any domestic crude oil supply obligation may only be sold to holders of crude oil refining licences, whose refineries are in operation.

(4) The supply of crude oil further to any domestic crude oil supply obligation shall be commercially negotiated between the upstream producer and the crude oil refining licensee having regard to the prevailing international market price for similar grades of crude oil.

(5) Holders of crude oil refining licences shall provide the necessary payment guarantees and payment for crude oil purchased under the domestic crude oil supply obligation shall be denominated in US dollars.

## **PART III**

### **MIDSTREAM AND DOWNSTREAM LICENSING**

#### **37. Application of this Part**

The provisions of this Part shall apply with respect to Licences or Permits granted under Part IV & Part V of this Act.

#### **38. Matters Relating to Licence Applications**

(6) The Commission may grant, renew, modify or extend individual Licences or Permits.

(7) An application for the grant, renewal, modification or extension of a Licence or Permit shall be presented to the Commission in the form and manner prescribed by





Regulations, and shall be accompanied by the prescribed fee, if any, together with such information or documents as may be prescribed in Regulations.

(8) The Commission may furnish any person applying for the grant, renewal or extension of a Licence or Permit, such non-confidential information as the applicant may request which may facilitate the filing of the application.

(9) An applicant for a Licence or Permit who is an Affiliate of a body corporate that has applied for or holds any other Licence or Permit shall disclose such relationship to the Commission in its application.

(10) The Commission shall consider all information presented in respect of an application for a Licence or Permit including representations from interested parties in favour of or against the granting, modification, extension or renewal of the Licence or Permit and shall inform the applicant of its decision within 90 days of the application, failing which the License or Permit shall be deemed granted by default.

(11) Where the Commission has decided to grant a Licence or Permit it shall publish a notice of its decision in the form and in the manner prescribed in Regulations issued by the Commission.

(12) Where the Commission has decided to decline an application, it shall inform the applicant of its refusal of the application and its reasons for such refusal and shall state a reasonable timescale within which the applicant in respect of the application may make further representations.

(13) The Commission shall duly consider any representation made by an applicant for a Licence or Permit in respect of a refusal of an application.

(14) No further application or representation shall be made by an applicant or considered by the Commission in the event that representations in respect of a refusal of an application have been considered and rejected by the Commission.

(15) An applicant that is not satisfied with the reasons adduced for the Commission's refusal of an application may apply to the Federal High Court for a judicial review of the Commission's actions.

### **39. Advertisement of Licence Applications**

(1) When an application is made for a Licence as contemplated in Parts IV & V of this Act, the applicant shall publish a notification of the application in at least two newspapers in nationwide circulation, in the form and manner, for as many times, for such period or periods and in accordance with the timescale the Commission may prescribe in Regulations.

(2) Following the publication of the notification of the application, interested parties may comment on or make representations to the Commission in respect of the application in accordance with the timescale prescribed in Regulations, which timescale must be indicated in the published notification.

(3) Following the grant or renewal of a Licence, the applicant shall publish notification of the grant or renewal in the form and manner in at least two newspapers in nationwide circulation, for as many times, for such period or periods





and in accordance with such timescale as the Commission may prescribe in Regulations.

#### **40. Licensing Regulations**

The Commission shall make Regulations applicable to procedures for the grant of a Licence or Permit under Parts IV & V of this Act, such Regulations to include, but shall not be limited to -

- (a) the procedure, form, criteria, timescale and fees for Licence applications, including any criteria for the grant of the Licence or Permit, and the grounds on which Licences may be refused;
- (b) the duration of Licences or Permits and the procedure, form, criteria and timescale for their renewal;
- (c) the procedure, form and timescale for publishing notification of the application for renewal of a Licence or Permit;
- (d) the procedure, form, criteria and timescale for Licence or Permit modifications, including the process for changing standard and special conditions of a Licence or Permit and the public consultation process required as part of the modification procedures;
- (e) the procedure, form, criteria and timescale for the transfer or surrender or suspension or revocation of a Licence or Permit.

#### **41. Conditions in Licences or Permits**

(1) Conditions included in a Licence or Permit issued pursuant to this Part may require the holder of a License or Permit:

- (a) to comply with any Directions given by the Commission in relation to matters specified in the Licence or Permit;
- (b) to undertake or refrain from undertaking anything specified in the Licence or Permit;
- (c) to comply with relevant industry codes, standards and market rules;
- (d) to undertake its activities subject to the prescribed tariffs or tariff methodology;
- (e) to provide information to the Commission when lawfully required;
- (f) to restrict the use of certain types of sensitive information;



- (g) to prepare and submit to the Commission true and sufficient annual statements in such form, and containing such particulars as the Commission may require and produce such books upon the request of duly authorised officers of the Commission;
- (h) to impose restrictions on the disposal of assets;
- (i) to adhere to undertakings made within a business plan submitted as part of the application process;
- (j) to prepare and submit to the Commission such information and periodical reports as the Commission may require;
- (k) publish terms of access to its Transportation or Distribution pipeline or network as the case may be; and
- (l) to operate its Licence or Permit and related facilities, if any, according to the standard of a reasonable and prudent operator.

(2) Conditions applicable to a Licence or Permit may cease to have effect or may be modified under circumstances specified in the Licence or Permit or pursuant to the provisions of section 45 of this Act.

(3) Licences or Permits granted by the Commission to Licensees of the same class shall contain similar conditions, which shall be standard conditions for that class. Any differences in conditions contained in Licences or Permits issued to Licences or Permits of the same class shall only be for objectively justifiable reasons and such differences shall be published in the Gazette.

(4) Subject to the provisions of this Act, the Commission shall have the power to include special conditions specific to a particular Licence or Permit or to holders of Licences or Permits provided, however, that such special conditions shall be designed to meet specific circumstances and shall not disadvantage one holder of a Licence or Permit in relation to another.

(5) The Commission may specify a date after the grant of a Licence or Permit on which activities shall commence.

(6) The Commission may provide that an activity be exclusive for all or part of the period of the Licence or Permit, for a specific purpose, for a specified geographical area, route or for any combination of the foregoing.

## **42. Compensation for Acquisition of Land**

(1) Licences or Permits shall be issued subject to compliance by the applicant with the provisions of the Land Use Act in respect of compensation for acquisition of land for Petroleum Operations.

(2) The Governor of a State in respect of which land is required for the conduct of operation of activities subject to a Licence or Permit shall promptly issue an appropriate Certificate of Occupancy in respect of the said land within a period of 3



months from the date of submission by the applicant of an application for a Certificate of Occupancy in respect of the said land.

#### **43. Non-discrimination**

Holders of Licences or Permits shall not discriminate between Customers or classes of Customers or their related undertakings or Network users in respect of access, tariffs, prices, conditions or standards of service.

#### **44. Assignment or Transfer of Licences or Permits**

(1) No holder of a Licence or Permit shall, without the prior written consent of the Commission, directly or indirectly assign or transfer its Licence or Permit or any rights or obligations arising from such Licence or Permit.

(2) An application for the assignment or transfer of a Licence or Permit shall be made to the Commission, which may require the applicant to publish a notice of the application in such form and in the manner and timescale prescribed in Regulations issued pursuant to this Act.

(3) In determining whether a Licence or Permit may be assigned or transferred, the Commission shall follow the same procedures with such modifications as may be appropriate in the circumstances and apply the same rules and criteria and consider the same issues as if the party to whom the Licence or Permit is being assigned or transferred is itself applying for a new Licence, and shall, in so doing, duly consider the representations made to it by third parties in respect of the application.

(4) The Commission shall, subject to sub-section (3) of this section, communicate its refusal or approval of an application for the assignment or transfer of a Licence or Permit in writing within such timescale as prescribed by Regulations.

(5) Failure of the Commission to either refuse or grant an approval of an application for the assignment or transfer of a Licence or Permit within the prescribed timescale shall be deemed to be an approval by default.

(6) The Commission shall advise the applicant of the reasons for its refusal of an application for an assignment or a transfer of a Licence or Permit, and shall state a reasonable timescale within which further representations may be made by the applicant or by third parties in respect of the application.

(7) The Commission shall grant its consent to an assignment or transfer of a Licence or Permit, subject to such conditions as it may consider appropriate.

#### **45. Amendment of Licences or Permits**

(1) The Commission may, suspend, amend or revoke any condition applicable to a Licence or Permit or include additional conditions only in accordance with this Act or any Regulations prescribed hereunder.

(2) The Commission shall not suspend, amend or revoke any condition applicable to a Licence or Permit or include additional conditions to a Licence or Permit unless it has given the affected holder written notice of its intention to do so together with a



draft copy of the proposed amendment, and giving the holder an opportunity to make written submissions to the Commission thereon within a time period specified in Regulations issued pursuant to this Act.

(3) The procedure to be followed in suspending, amending, revoking or adding any condition of any Licence or Permit shall be as prescribed by the Commission in Regulations issued pursuant to this Act.

(4) A holder of a Licence or Permit who is dissatisfied by a proposed suspension, amendment, revocation or addition of any condition may appeal to the Federal High Court against the decision of the Commission.

#### **46. Contravention and Enforcement of Conditions of Licences or Permits**

(1) Where it appears to the Commission that the holder of a Licence or Permit is contravening, has contravened or is likely to contravene, any of the conditions of the Licence or Permit, the Commission may publish a notice in such manner as it considers appropriate to draw the attention of other persons affected or likely to be affected by the contravention or threatened contravention of the Licence or Permit:

- (a) specifying the actual or potential contravention;
- (b) directing the holder to do, or not to do, such things as it may specify;
- (c) specifying the remedy and the timescale for compliance;
- (d) notifying the holder of the Licence or Permit of its intention to issue an Enforcement Order.

(2) The holder of the Licence or Permit and any other interested party shall be entitled to make representations against or in support of a notice published pursuant to sub-section (1) of this section by a date specified in the notice.

(3) If a holder of the Licence or Permit fails to comply with a notice published pursuant to sub-section (1) of this section, the Commission may issue an Enforcement Order. Failure to comply with an Enforcement Order shall constitute an offence.

(4) The Commission may not issue an Enforcement Order if the holder of the Licence or Permit:

- (a) is able to demonstrate to the satisfaction of the Commission that it is not contravening or about to contravene a condition of a Licence or Permit; or
- (b) has ceased to contravene a condition of the Licence or Permit provided that if the earlier contravention was deliberate, the Commission may, at its discretion, impose an appropriate penalty as determined by Regulations issued by it pursuant to this Act.

(5) If the holder of the Licence or Permit fails to comply with the Enforcement Order the Commission may take any steps prescribed by Regulations including the institution of legal proceedings against the holder of the Licence or Permit to enforce



the Enforcement Order. Appeals in respect of such legal proceedings shall be brought before the Court of Appeal.

(6) The Commission may, from time to time adjust the penalty referred to in sub-section (4) (b) of this section by Regulation, in order to reflect current rates of inflation.

#### **47. Surrender of Licence or Permit**

(1) The holder of the Licence or Permit may, upon application in the form and manner and upon meeting conditions prescribed by Regulations issued by the Commission surrender the Licence or Permit, if -

- (a) the licensed or permitted activity is no longer required;
- (b) the licensed or permitted activity is not economically justifiable;
- (c) the holder of the Licence or Permit has failed to commence the licensed or permitted activity within the time frame specified in the Licence or Permit; or
- (d) another Qualified Person is willing and able to assume the rights and obligations of the holder of the Licence or Permit concerned in accordance with the requirements and objectives of this Act; and
- (e) where applicable, the holder of the Licence or Permit has complied with all requirements of the law in respect of relinquishment and decommissioning of installations and reclamation of land.

(2) Where the holder of the Licence or Permit has commenced activities and has ongoing operations, he shall, unless a shorter period is stipulated in the Licence or Permit, give the Commission at least twelve months' notice in writing of its intention to cease its activities.

(3) The form and procedure to be followed in surrendering a Licence or Permit under sub-section (1) shall be as prescribed in Regulations issued pursuant to this Act.

#### **48. Revocation or Suspension of Licences or Permits**

The Commission may after giving sixty days' notice of its intention, suspend or revoke a Licence or Permit if the holder has breached or continues to breach a condition of the Licence or Permit or a Regulation or a provision of this Act, where such condition or provision stipulates that a breach thereof shall make the Licence or Permit liable to revocation or suspension as the case may be. Provided that where the breach is related to environmental, safety or the discharge of hazardous substances, the Commission may impose the immediate suspension of a Licence or Permit.

#### **49. Grounds for the Revocation of a Licence or Permit**

Without prejudice to the generality of the provisions of this Part of the Act, a Licence or Permit may be revoked:



- (a) if the holder becomes insolvent or bankrupt or it enters into an agreement or composition with its creditors or takes advantage of any enactment for the benefit of its debtors or goes into liquidation, except as part of a scheme for an arrangement or amalgamation;
- (b) upon the transformation or dissolution of the company or corporation unless it is for the purpose of amalgamation or reconstruction and provided the prior consent of the Commission has been obtained;
- (c) if a holder of a Licence or Permit fails to commence activities within the timescale prescribed in the Licence or Permit; or
- (d) if the holder of a Licence or Permit fails to comply with applicable laws and regulations on terms and conditions of its Licence or Permit.

## **PART IV**

### **MIDSTREAM AND DOWNSTREAM GAS SECTOR REGULATION**

#### **50. Activities Requiring a Licence**

(1) No person shall, except in accordance with an appropriate Licence issued by the Commission, undertake the following activities in the Midstream Gas Sector:

- (a) establish, construct and operate a facility for the processing of Gas;
- (b) establish, construct and operate a facility for the storage of Gas;
- (c) establish, construct and operate a pipeline for the transmission of Gas;
- (d) engage in bulk transportation of Gas by rail, barge or other means of transportation;
- (e) operate a Transportation Network;
- (f) establish, construct and operate a terminal, jetty, or other facility for the export or importation of Gas;
- (g) engage in Wholesale Gas Supply.

(2) No person shall, except in accordance with an appropriate Licence or Permit issued by the Commission, undertake the following activities in the Downstream Gas Sector:

- (a) the retail trading of Gas; or
- (b) the establishment, construction and operation of a gas Distribution Network;
- (c) the establishment, construction and operation of a facility for the supply or trading of Gas.



(3) The Commission may, by Regulations issued pursuant to this Act, prescribe additional activities to be undertaken only on the basis of a Licence or Permit, and the Commission shall have the power to issue Licences or Permits for such activities in accordance with this Act.

(4) Where any person:

- (a) engages in any of the activities set out in sub-sections (1) (2) and (3) of this section without a Licence or Permit as the case may be, the Commission shall have the power to:
- i. seal the premises in which the activity is undertaken, or
  - ii. seize the facilities by which the activities are undertaken, or
  - iii. confiscate and dispose of equipment or materials employed by the person in such activity in a manner prescribed by Regulations, or
  - iv. impose penalties as prescribed in Regulations issued by the Commission.
  - v. Any combination of (i) to (iv) above.
- (b) Notwithstanding the provisions of this Part of the Act, any person that engages in the activities listed in sub-sections (1)(2) and (3) above without a License or a Permit or continues to engage in the said activities in contravention of sub-section (4)(a) above, shall be guilty of an offence and may be liable:
- i. in the case of an activity requiring a License, to imprisonment for a term of one (1) year or to a fine which shall be determined by Regulations to be prescribed by the Commission.
  - ii. in the case of an activity requiring a Permit, to imprisonment for a term of six (6) months or to a fine which shall be determined by Regulations to be prescribed by the Commission.

Provided that proceedings in respect of any such offence shall be initiated only by the Commission.

(5) Within eighteen months from the commencement of this Act, any person who was engaged under a licence or permit in any activity in the Midstream or Downstream Gas Sectors respectively prior to the commencement of this Act shall apply to the Commission for the issuance of an appropriate License or Permit, as the case may be, to such person, and the Commission shall issues the Licence or Permit to such person without any charge.

(6) Sub section (4) of this section shall not have effect on any Person to which sub section (5) of this section is applicable until the Commission issues the appropriate License or Permit.





(7) Any person, who, in applying for a Licence or Permit knowingly makes a statement which is false or misleading in any material particular shall be guilty of an offence, and the Commission may suspend or revoke any Licence or Permit issued on the basis of the false or misleading information.

## **51. Special Regulations**

The Commission may issue Regulations for or with respect to midstream and downstream gas operations which includes but not limited to:

- (a) the operation of Gas processing plants, Gas Transmission Pipelines and networks, Gas distribution pipelines, Gas storage plants, LPG depots, and mini LNG;
- (b) the establishment and operation of a wholesale natural gas market scheme, to ensure the continuity of supply of natural gas to customers, that will apply to the owners and operators of Gas Transmission Pipelines, shippers of natural gas, holders of Gas Storage and Distribution Licences and retailers;
- (c) tariff regulation;
- (d) matters ancillary to or consequential on the matters set out in paragraphs (a) (b) and (c).

## **52. Rights of Way**

Subject to the provisions of this Act and to such terms and conditions as may be approved by the Commission, the licensee or permit holder shall be entitled to such rights of way for the laying, operation and maintenance of pipelines, communication lines and the like through or across areas as the licensee or permit holder may reasonably require for the carrying on of operations in the Midstream and Downstream Gas Sector under the Licence or Permit.

## **53. Surface Rights Reserved to the Commission**

The Commission may for purposes of efficiency grant rights of way, easements or other rights over any surface or seabed areas subject to an existing Licence or Permit, as in the opinion of the Commission, may be necessary or desirable for the laying, operation and maintenance of pipelines, communication lines and power lines and the like, and any rights of way or other rights so reserved shall continue for the benefit of any entity to whom the Commission may subsequently grant the same.

## **GAS PROCESSING LICENCE**

### **54. Grant of a Gas Processing Licence**

Subject to sections 38 and 50 of this Act, and upon the approval of the Commission of an application by a Qualified Person and the payment by such person of the prescribed fee, the Commission may grant and issue to that person a Gas Processing Licence which shall permit the Licensee to install and operate facilities,





downstream of the Measurement Points of a Petroleum Licence or unrelated to a Petroleum Licence to produce ethane, propane, butane and natural gas liquids and marketable natural gas compounds, including compressed natural gas (“CNG”) plants, gas to liquids (“GTL”) plants and liquefied natural gas (“LNG”) plants.

#### **55. General Duties of the Holder of a Gas Processing Licence**

The holder of a Gas Processing Licence shall undertake the activities contemplated by the Licence in a manner best calculated to comply with the following general obligations -

- (a) to construct, operate and maintain its gas processing equipment and facilities in an economical, safe, reliable, and environmentally sustainable manner;
- (b) shut down its facilities in emergencies and in order to carry out maintenance or in accordance with curtailment directives issued by the Commission;
- (c) manage its facilities as a responsible and prudent operator;
- (d) avoid any act or omission that may affect the compatibility of the processing facility with any natural gas facility or network or in any manner that is likely to prejudice the public interest or the integrity of network operations;
- (e) process natural gas to a quality suitable for the gas transportation network as specified in the licence;
- (f) to operate its facilities subject to open access requirements in the Gas Network Code;
- (g) to treat all Customers in a non-discriminatory manner; and
- (h) to do nothing that may, in the opinion of the Commission, prevent, restrict or distort competition.

#### **56. Conditions Applicable to a Gas Processing Licence**

In addition to such conditions as may be imposed by the Commission pursuant to section 41 of this Act, a Gas Processing Licence shall be deemed to be granted subject to the condition that the holder shall -

- (a) not supply gas to Customers on its own account;
- (b) conduct its licensed activities safely and reliably in compliance with any law then in force and any prescribed health and safety Regulations, standards and operating procedures made pursuant to this or any other Act;
- (c) have due regard for the effect of its licensed activities on the environment and complying with the requirements for environmental



protection, management, and restoration under this Act and any law then in force; and

- (d) mark, maintain and secure the boundaries of its facilities and associated infrastructure constructed under the terms of its Licence and any law then in force.

## **BULK GAS STORAGE LICENCE**

### **57. Grant of a Bulk Gas Storage Licence**

(1) Subject to sections 38 and 50 of this Act, and upon the approval by the Commission of an application made by a Qualified Person and the payment of the prescribed fee, the Commission may grant and issue to that person, a Bulk Gas Storage Licence authorising the holder to undertake the bulk storage of Gas whether for its own account or on behalf of Customers.

(2) In considering an application for a Bulk Gas Storage Licence, the Commission shall consider the economic case for a Bulk Gas Storage facility including the potential demand for its use.

### **58. General Duties of a Bulk Gas Storage Licensee**

The holder of a Bulk Gas Storage Licence shall undertake the activities contemplated by the Licence in a manner best calculated to comply with the following general obligations -

- (a) establish and make available to the public at its offices:
  - i. the procedure for obtaining its services for natural gas, and
  - ii. the method of response to the request for its service;
- (b) construct, operate and maintain its facilities in a safe, economical, reliable, and environmentally sustainable manner taking into account any strategic plans formulated by the Commission;
- (c) shut down its facilities in emergencies and in order to carry out maintenance or in response to curtailment directives issued by the Commission;
- (d) grant to third parties the rights to use or have access to capacity within its facilities for the purpose of ensuring competitive gas supply;
- (e) consult with the Commission and obtain written permission prior to any modification of any technical and operational rules of practice concerning the operation of its facilities;
- (f) conduct its licensed activities in a non-discriminatory manner between all classes of customers;
- (g) manage its facilities as a reasonable and prudent operator; and



- (h) to do nothing that may, in the opinion of the Commission, prevent, restrict or distort competition.

## **59. Conditions Applicable to a Bulk Gas Storage Licence**

In addition to such conditions as may be imposed by the Commission pursuant to section 41 of this Act, a holder of a Bulk Gas Storage Licence shall be deemed to be granted such licence subject to the condition that the holder shall -

- (a) conduct its licensed activities safely and reliably in compliance with any law then in force and prescribed health and safety Regulations made pursuant to this or any other Act;
- (b) have due regard for the effect of its licensed activities on the environment and complying with the requirements for environmental protection, management, and restoration under this Act and any law then in force; and
- (c) mark, maintain and secure the boundaries of its facilities and associated infrastructure constructed under the terms of its Licence and any law then in force.

## **GAS TRANSPORTATION PIPELINE LICENCE**

### **60. Grant of Transportation Pipeline Licence**

(1) Subject to sections 38 and 50 of this Act, and upon the approval of the Commission of an application by a qualified person and the payment by such person of the prescribed fee, the Commission may grant and issue to that person a Transportation Pipeline Licence with the exclusive right to own, construct, operate and maintain a Gas Transportation Pipeline within a route as defined in the Licence.

(2) In considering an application for a Transportation Pipeline Licence, the Commission shall consider the economic case for a Transportation Pipeline including the potential demand for its use.

### **61. General Duties of a Transportation Pipeline Owner**

The holder of a Transportation Pipeline Licence shall undertake the activities contemplated by the Licence in a manner best calculated to comply with the following general obligations:

- (a) establish and make available to the public at its offices -
  - i. the procedure for obtaining and terminating transmission and interconnection services for natural gas, and
  - ii. the method of response to the request for its service;
- (b) construct, operate and maintain its Transportation Pipeline in a safe, economical, and reliable manner taking into account any strategic plans formulated by the Commission;



- (c) manage supplies and demand and meet on a reasonable endeavours basis requests for transportation above contractual volumes;
- (d) shut down its Transportation Pipeline in emergencies and in order to carry out maintenance or in response to curtailment directives issued by the Commission;
- (e) grant to each Wholesale Supply Licensee the rights to use or have access to those parts of its Transportation Pipelines that are necessary for the purpose of ensuring the proper integrated operation of the natural gas network and competitive gas supply;
- (f) consult with the Commission and obtain written permission prior to any modification of any technical and operational rules of practice concerning the operation of its Pipeline;
- (g) manage its Transportation Pipeline as a reasonable and prudent operator;
- (h) ensure development and operation of a network code and terms for access to the transportation network in conjunction with the gas shipping community;
- (i) to operate its facilities subject to third party access obligations under the network code and under this Act and Regulations prescribed by the Commission; and
- (j) to do nothing that, in the opinion of the Commission, prevents, restricts or distorts competition.

## **62. Conditions Applicable to a Transportation Pipeline Licence**

In addition to such conditions as may be imposed by the Commission pursuant to section 41 of this Act, a Transportation Pipeline Licence shall be deemed to be granted subject to the condition that the holder shall:

- (a) not supply gas to Customers on its own account;
- (b) conduct its licensed activities safely and reliably in compliance with any law then in force and prescribed health and safety Regulations made pursuant to this or any other Act;
- (c) have due regard for the effect of its licensed activities on the environment and comply with the requirements for environmental protection, management, and restoration under this Act and any law then in force; and
- (d) mark, maintain and secure the boundaries of the Pipelines and associated infrastructure constructed under the terms of its Licence and any law then in force.

## **TRANSPORTATION NETWORK OPERATOR LICENCE**



### **63. Grant of Transportation Network Operator Licence**

(1) Subject to sections 38 and 50 of this Act, and upon the approval by the Commission of an application by a Qualified Person and the payment by such person of the prescribed fee, the Commission may grant and issue to that person a Transportation Network Operator Licence authorising the conduct of activities specified in the Licence, including the following -

- (a) conveyance of Gas through the Transportation Network;
- (b) balancing the inputs and off takes from the Transportation Network;
- (c) providing Third Party Access to the Transportation Network; and
- (d) charging for the use of the Transportation Network.

(2) The Commission shall grant only one Transportation Network Operator Licence within a geographically defined area to a single Network operator; provided however, that the Commission may, at its discretion, issue similar Licences to other parties for the operation of isolated or dedicated pipelines.

### **64. General Duties of a Transportation Network Operator**

The Transportation Network Operator shall exercise the rights and obligations imposed on it in a manner best calculated to meet the following general duties:

- (a) establish and make available to the public at its offices:
  - i. the procedure, terms and conditions for obtaining and terminating access and interconnection services to the Transportation Network, and
  - ii. the method of response to the request for its service;
- (b) operate an efficient and economical Transportation Network for the safe and reliable conveyance of Gas in such a manner as is designed to meet all reasonable demands for Gas;
- (c) operate a nominations and balancing mechanism and an equitable curtailment of gas transportation whenever technical or operational expediencies so require;
- (d) consult with the Commission and obtain written permission prior to any modification of any technical and operational rules of practice concerning the operation of its Pipeline;
- (e) in collaboration with the Commission, gas shippers, all licensees and permit holders operating essential infrastructure, ensure the development and operation of a network code and terms for access into the transportation network;
- (f) ensure equitable and transparent access to the Transportation Network;



- (g) manage the Transportation Network as a reasonable and prudent operator;
- (h) do nothing that, in the opinion of the Commission, prevents, restricts or distorts competition; and
- (i) enter into agreements with Transportation Pipeline Owners, Distributors, and, where appropriate, Wholesale Customers for connection to, and operation of, the Transportation Network.

#### **65. Powers of a Transportation Network Operator**

Subject to the provisions of this Act, the Commission may grant the following special powers or authority to a Transportation Network Operator to facilitate the conduct of its licensed activities:

- (a) the power to request for and obtain from the relevant Licensees, information required to operate the nominations and balancing mechanism, to operate the Network or to facilitate competition;
- (b) subject to any restrictions or conditions imposed by the Commission with respect to both the level and structure of its charges, the right to recover, on the basis of an invoice, expenses reasonably incurred in undertaking its Licensed activities; and
- (c) to purchase gas for its own operations for purposes such as testing and commissioning of facilities, for compression purposes and for line fill.

#### **66. Conditions Applicable to a Transportation Network Operator Licence**

In addition to such conditions as may be imposed by the Commission pursuant to section 44 of this Act, a Transportation Network Operator Licence may include an obligation to develop market rules in accordance with the provisions of this Act.

### **WHOLESALE GAS SUPPLY LICENCE**

#### **67. Grant of a Wholesale Gas Supply Licence**

(1) Subject to sections 38 and 50 of this Act, and upon the approval by the Commission of an application made by a Qualified Person and the payment of the prescribed fee, the Commission may grant and issue to that person a Wholesale Gas Supply Licence.

(2) An Upstream Gas Producer or any person intending to supply Wholesale Gas to Bulk Customers or to holders of Gas Distribution Licences shall be a Qualified Person within the meaning of the provisions of this Part and shall be entitled to apply for and be issued a Wholesale Supply Licence by the Commission.

(3) A Wholesale Gas Supply Licence, whilst it has effect, authorises the Supplier to sell and deliver Wholesale Gas to Bulk Customers or holders of Gas Distribution Licences at any location in Nigeria.



## **68. General Duties of a Wholesale Gas Supplier**

A Supplier shall undertake the activities contemplated by the Wholesale Gas Supply Licence in a manner best calculated to comply with the following general obligations:

- (a) to provide a reliable supply of Wholesale Gas to purchasers on request, provided that it is economically feasible to do so; and
- (b) to do nothing that, in the opinion of the Commission, may prevent, restrict or distort competition.

## **69. Rights of a Wholesale Gas Supplier**

Subject to the provisions of this Act, the Wholesale Gas Supplier shall have the the following specific powers or authority to facilitate the conduct of its licensed activities:

- (a) the right to terminate Wholesale Gas supply to a Customer in the event of non-payment, following a notice period;
- (b) the right to recover from a Customer, on the basis of an invoice, and subject to any restrictions or conditions imposed by the Commission with respect to both the level and structure of a Licensee's charges, costs reasonably incurred in the supply of Wholesale Gas, inclusive of the cost of gas, the cost of transportation and distribution of gas; provided always that the sale of Wholesale Gas to Wholesale Customers by the holder of a Wholesale Gas Supply Licence shall be subject to the provisions of this Part of the Act; and
- (c) the right to enter a premises to remove its meters, for the purpose of reading meters, to test metering equipment and to disconnect Customers; such entry to be undertaken in accordance with a metering code issued by the Commission.

## **70. Conditions Applicable to a Wholesale Gas Supply Licence**

(1) In addition to such conditions as may be imposed by the Commission pursuant to section 41 of this Act, a Wholesale Gas Supply Licence shall be deemed to be granted subject to the Supplier:

- (a) ensuring a reliable and efficient supply of Gas to Customers on request, provided that it is economical to do so;
- (b) requesting security or applying a credit scoring methodology approved by the Commission in deciding whether supply is economical;
- (c) subject to safety and Network capacity constraints, supplying Wholesale Gas on request to a Customer who is willing and able to pay for connection to the Transportation Network;
- (d) conducting licensed activities safely and reliably in compliance with any law then in force and any health and safety Regulations issued by the Commission pursuant to this or any other Act; and





- (e) complying with Customer Protection measures in accordance with sections 89, 90 and 91 of this Act.

(2) A Wholesale Gas Supplier shall be obliged to undertake its licensed activities in a manner that is best calculated to meet the covenants and conditions of the licence.

## **RETAIL GAS SUPPLY PERMIT**

### **71. Grant of Retail Gas Supply Permit**

Subject to sections 38 and 50 of this Act, and upon the approval by the Commission of an application made by a Qualified Person and the payment of the prescribed fee, the Commission may grant and issue to that person, a Gas Retail Permit authorising the holder to sell or retail Gas to Customers.

### **72. General Duties of Gas Retailer**

In addition to such conditions as may be imposed by the Commission pursuant to section 41 of this Act, or that may be prescribed by Regulations issued pursuant to this Act, each Retail Gas Supply Permit shall be deemed to be granted subject to the duty of the holder:

- (a) to develop and maintain a safe, efficient, reliable and economical service for the retailing of gas; and
- (b) to carry on its business at all times in such manner so as not to prevent, restrict or otherwise hinder the development of competition in any gas market in Nigeria.
- (c) to conduct its activities to a safe and reliable standard in compliance with prescribed environmental, health and safety Regulations issued pursuant to this or any other Act;
- (d) to publish the prices to be charged and to be paid by a person to whom the gas retailer sells gas in such manner as to ensure adequate publicity unless the Commission otherwise directs;
- (e) not to show undue preference as between persons or any class of persons nor exercise undue discrimination as between persons or any class of persons in establishing prices;
- (f) to comply with Customer Protection measures set out in sections 89, 90 and 91 of this Act.

## **DISTRIBUTION LICENCE**

### **73. Grant of Distribution Licence**

(1) Subject to sections 38 and 50 of this Act, and upon the approval by the Commission of an application made by a Qualified Person and the payment of the prescribed fee, the Commission may grant and issue to that person a Gas Distribution Licence granting the right to establish, construct, and operate a Gas



distribution system and to Distribute Gas without discrimination to consumers within a Local Distribution Zone.

(2) Without prejudice to the right of any person to distribute or retail gas by any other method, the holder of a Distribution Licence shall be entitled to apply for, hold and operate a License for the distribution of Gas within the Local Distribution Zone to Customers that are not Wholesale Customers.

(3) In considering an application for a Distribution Licence, the Commission shall consider the economic case for the Licence including the likelihood of a demand for its use.

(4) The geographical limits of each Local Distribution Zone shall be defined in the relevant Distribution Licence.

(5) The rights and duties under a Distribution Licence shall be exclusive to the Distributor for the validity period of the Distribution Licence.

#### **74. General Duties of the Distributor**

A Distributor shall undertake the activities contemplated by the Distribution Licence in a manner best calculated to comply with the following general obligations:

- (a) to develop, operate and maintain an economical Distribution Network for the safe and reliable conveyance of Gas;
- (b) to ensure a reliable and efficient Distribution of Gas to Customers on request, provided that it is economical to do so;
- (c) subject to safety and Network capacity constraints, to distribute Gas on request to a Customer who is willing and able to pay for connection to the Distribution Network;
- (d) to conduct licensed activities safely and reliably in compliance with any law then in force and any health and safety Regulations issued by the Commission pursuant to this or any other Act;
- (e) to connect all Customers within its Local Distribution Zone in accordance with Regulations if economically practicable to do so;
- (f) to offer and publish terms and conditions of access to its Distribution Network as required;
- (g) to comply with Customer Protection measures in accordance with sections 89, 90 and 91 of this Act;
- (h) to prepare a development plan for connecting Customers within its Local Distribution Zone for the consideration of the Commission; and
- (i) to do nothing to prevent, restrict or distort competition.

#### **75. Rights of the Distributor**



Subject to the provisions of this Act, the Commission may, in order to facilitate the conduct of its licensed activities, grant the Distributor;

- (a) the right to enter the premises of a Customer in order to read meters, to test metering equipment, to disconnect Customers and remove meters;
- (b) the right to recover, on the basis of an invoice, costs reasonably incurred in the provision of appropriate infrastructure, subject to any restriction or conditions imposed by the Commission with respect to both the level and structure of a Distributor's charges.

## **76. Conditions Applicable to a Distribution Licence**

(1) In addition to such conditions as may be imposed by the Commission pursuant to section 41 of this Act, or that may be prescribed by Regulations issued pursuant to this Act, each Distribution Licence shall be deemed to be granted subject to the Distributor –

- (a) conducting its licensed activities to a safe and reliable standard in compliance with prescribed management, health, and safety Regulations issued pursuant to this or any other Act;
- (b) having due regard for the effect of its licensed activities on the environment and complying with the requirements for environmental protection, management, and restoration under this Act and any law then in force;
- (c) marking, maintaining and securing the boundaries of the Pipelines constructed as prescribed.

(2) A Distributor shall connect Customers within its Local Distribution Zone in the manner prescribed by Regulations issued pursuant to this Act, provided that it is economical and practical to do so.

(3) The Commission shall settle disputes in relation to the Distribution Network.

## **77. Arrangements for Gas Distribution**

The Distributor shall consult stakeholders on proposed development projects within its Local Distribution Zone and duly consider all representations received.

### **PERMIT TO ESTABLISH, CONSTRUCT AND OPERATE A FACILITY FOR RETAIL SUPPLY OR DISTRIBUTION OF GAS**

## **78. Grant of a Permit to Construct and Operate a Facility for Retail Supply of Gas**

(1) Subject to sections 38 and 50 of this Act, and upon the approval by the Commission of an application made by a Qualified Person and the payment of the prescribed fee, the Commission may grant and issue to that person, a Permit



authorising the holder to establish, construct and operate a facility to be employed for retail gas supply or distribution of gas.

(2) The Commission shall issue guidelines in respect of the process for the establishment, construction and operation of a facility.

## **DOMESTIC GAS AGGREGATION LICENCE**

### **79. Domestic Gas Aggregator Licence**

(1) Upon the approval of the Commission of an application by a Qualified Person, and the payment by such person of the prescribed fee, the Commission may grant and issue to that person a Domestic Gas Aggregator Licence.

(2) The duration of the Domestic Gas Aggregator Licence shall be for a period of two years effective from the commencement of this Act.

(3) The Gas Aggregator Licence may be renewed by the Commission for further periods of two years in each instance until the attainment of liquidity in the domestic gas market, whereupon gas aggregation shall cease and the Domestic Gas Aggregator Licence shall be revoked by the Commission.

### **80. Functions of the Domestic Gas Aggregator**

The Domestic Gas Aggregator shall -

- (a) act as an intermediary between suppliers and purchasers of gas in the domestic gas market and shall ensure the supply of gas to strategic sectors in accordance with the approved national gas pricing framework;
- (b) support the implementation of the Domestic Gas Supply Obligation;
- (c) enable a balanced growth of gas projects by facilitating the availability of adequate volumes of gas to strategic sectors; and
- (d) do all such things as are necessary for or incidental to the carrying out of its functions and duties under this Act.

### **81. Domestic Gas Demand Requirement**

Every holder of a Petroleum Licence, OML shall -

- (a) submit a gas production and supply plan consistent with its obligations under the Domestic Gas Demand Requirement to the Commission;
- (b) when required, supply a specific volume of gas to a purchaser in accordance with a Gas Purchase Order issued by the Domestic Gas Aggregator.

### **82. Conditions for the Supply of Gas to Export Projects**



As from the commencement of this Act, where applicable, approval for the supply of gas for export projects shall be subject to prior compliance by the supplier of gas with its Domestic Gas Supply Obligation.

## **WHOLESALE GAS MARKET**

### **83. Wholesale Customers**

(1) The Commission shall, following consultations with interested stakeholders, issue Regulations:

- (a) defining the class or classes of Customers that, from time to time, shall constitute eligible Wholesale Customers under this Act; and
- (b) specifying the qualifying criteria for such classification;

provided that such Regulations may be amended from time to time to facilitate the introduction of competition in Supply and, provided further that any amendment of the Regulations resulting in a change of the class of Customers shall not affect the rights and obligations of parties under gas Supply contracts entered into prior to such amendment.

(2) Wholesale Customers shall be entitled to secure Gas from any Supplier authorised by a Licence to Supply Gas.

### **84. Trading and Settlement of Wholesale Gas**

(1) If the Commission determines that there is a need for formal arrangements for the trading of Wholesale Gas, the Commission shall develop arrangements for the safe and efficient trading of Wholesale Gas.

(2) If required pursuant to sub-section (1) of this section, the Commission shall make arrangements for the trading and settlement of Wholesale Gas in consultation with industry participants and interested stakeholders.

(3) The arrangements for the trading of Wholesale Gas may include, but shall not be limited to:

- (a) the designation of a Market Operator by the Commission to facilitate Gas trading;
- (b) the levying of charges on market participants to recover the costs of market operation, and the level of charges to be subject to the approval of the Commission;
- (c) arrangements by which the purchasers of Wholesale Gas have access to offers to sell, and the sellers of Wholesale Gas have access to offers to purchase Gas;
- (d) arrangements for settling the volumetric or monetary accounts for purchases and sales of Gas between parties;
- (e) the issuance of a Domestic Gas Supply Obligation on holders of gas reserves; and



- (f) rules of participation in the Wholesale Gas market and governance arrangements for overseeing their implementation and amendment.
- (4) The Wholesale Gas trading arrangements:
- (a) may be compulsory or optional; and
  - (b) may be incorporated into the network code developed in accordance with the provisions of section 88 of this Act.
- (5) Once the arrangements and applicable rules have been approved, the Commission shall
- (a) publish a notification in the form and manner prescribed by Regulations issued by the Commission indicating that the Wholesale Gas trading arrangements have been approved and stating the date on which they will be implemented;
  - (b) make copies available to members of the public upon payment of the prescribed fee.

## **GAS NETWORK CODE**

### **85. The Gas Network Code**

- (1) The Commission shall in conjunction with Licensees and other stakeholders in the midstream gas sub-sector and holders of gas Distribution Licences, develop a Gas Network Code governing the operation of the Gas Network.
- (2) The Gas Network Code may include, but shall not be limited to the following arrangements:
- (a) a connection policy, standard terms for connection to the Transportation Network and Distribution Network and a statement of the connection charging methodology;
  - (b) a mechanism by which users reserve capacity in the Transportation Network or Distribution Network, and in the event that at any time there is a greater demand for access than there is available capacity, a mechanism for allocating capacity between users;
  - (c) the nomination of any one of the following parties to take responsibility for matters that may arise with respect to Gas in transit through the Network, such matters to include but not be limited to the amount of Gas injected into or withdrawn from the Network, nominating volumes, payment for the use of the Network and payment for overruns and shortfalls of Gas:
    - i. the seller of the Wholesale Gas being conveyed;
    - ii. the purchaser of the Wholesale Gas being conveyed; or
    - iii. a willing third party;



- (d) requirements for the provision of information to the Transportation Network Operator and the Distributor about the volume, timing and flow-rate of injections into and withdrawals from the Transportation Network or Distribution Network as the case may be;
  - (e) the structure of charges and the applicable tariffs charged for using the Transportation Network and Distribution Networks;
  - (f) as required, arrangements for balancing the Wholesale Gas being conveyed;
  - (g) registration arrangements;
  - (h) metering, allocation and settlement arrangements;
  - (i) governance arrangements;
  - (j) register of Customers and Suppliers which is kept updated.
- (3) The Commission shall make copies of the Network Code available to interested parties upon payment of a prescribed fee.

### **THIRD PARTY ACCESS**

#### **86. Third Party Access**

- (1) Any person shall be permitted access to a Transportation Pipeline, a Transportation Network or a Distribution Network, as the case may be, for the purpose of having Gas transported to points of consumption subject to compliance with the prescribed terms and conditions for access stated in the Network Code.
- (2) Third party access under sub-section 1 of this section shall commence only after the development of the Gas Network Code in accordance with section 85 of this Act.
- (3) The Gas Network Code shall set out standard terms and conditions for access and use of the Transportation Network and Distribution Networks, including terms and conditions for connection, and interconnection.
- (4) Where a Transportation or Distribution Pipeline is isolated from the main Transportation Network or Distribution Network, the Commission shall develop separate terms of access for such isolated Transportation or Distribution Pipeline.

#### **87. Conditions for the Provision of Third Party Access**

- (1) Third Party Access to the Transportation Network and Distribution Network shall be -
- (a) provided on a non-discriminatory basis between system users with similar characteristics;





- (b) provided in respect of any available capacity provided such capacity is not subject to a previous contractual commitment;
  - (c) provided in accordance with and governed by the terms and conditions of the Network Code(s) approved by the Commission;
  - (d) provided on the condition that the applicant for access is or becomes a party to and undertakes to comply with the applicable Network Code; and
  - (e) be subject to the pricing principles set out in section 93 of this Act.
- (2) Connection Agreements may be entered into between:
- (a) a Customer and a Distributor; or
  - (b) Transportation Pipeline Owners and Transportation Network Operator, or
  - (c) a Distributor and the Transportation Network Operator, when a Distribution Network connects to the main Transportation Network, or
  - (d) a Supplier and a Transportation Pipeline Owner or Transportation Network Operator; or
  - (e) any other party as may be specified by the Commission.

## **88. Disputes in Respect of Third Party Access**

- (1) Disputes in respect of Third Party Access shall be resolved by a Determination of the Commission.
- (2) Notwithstanding any contrary provisions of section 148 of this Act, appeals against Determinations made by the Commission in connection with Third Party Access shall be referred to arbitration in accordance with the procedure specified in the Arbitration and Conciliation Act Cap 19 Vol. I 1990 Laws of the Federation of Nigeria.

## **CUSTOMER PROTECTION**

### **89. Customer Protection**

- (1) In order to protect the interests of Customers, the Commission may issue Regulations requiring Suppliers or Distributors, as the case may be, and by such means as the Commission may specify:
- (a) to publish their terms of Supply or Distribution including tariffs;
  - (b) to establish or to facilitate the establishment of a forum at which Customers are able to express their views and to raise concerns;
  - (c) to formulate and adhere to such standards of performance as are, in its opinion, necessary to ensure the safety, reliability and quality of Supply



and Distribution services to Customers; and set penalties for failure to comply;

- (d) to prepare and submit reports to the Commission indicating their performance levels and the status of their operations in respect of licensed activities at such times as the Commission may by Regulation or in their respective Licences prescribe, and at least on an annual basis;
- (e) to develop and adhere to Customer service codes, setting out the practices and procedures to be followed in the conduct of specified licensed activities. Such codes may include, but shall not be limited to, practices and procedures for:
  - i. the installation, testing, maintenance and reading of meters;
  - ii. fault repairs and response to Customer emergencies;
  - iii. the connection and disconnection of Customers;
  - iv. responding to Customer complaints and complaint resolution;
  - v. billing and invoicing;
  - vi. the extension of payment and credit facilities;
  - vii. the provision of information to Customers and the use and protection of Customer information;
  - viii. the establishment of special services for economically or socially disadvantaged Customers.

(2) All Customer service codes must be approved by the Commission prior to publication and may be reviewed at intervals as may be considered necessary by the Commission. The codes shall be made available to all Customers upon request.

(3) The Commission shall notify or by Regulation require Licensees to notify Customers of Customer service codes that must be adhered to by Licensees.

(4) In developing Customer Protection Regulations, the Commission shall:

- (a) consult with Suppliers and Distributors and interested stakeholders; and
- (b) take into account existing procedures, practices and standards.

## **90. Provision of Service to Customers**

The Commission shall have the power, at its discretion and at such time or times as it deems appropriate, to designate Distributors and Suppliers of Last Resort to provide services to Customers-



- (a) in the event that an existing Distributor for a Local Distribution Zone or a Supplier becomes insolvent, is unable to provide licensed services, or has had its Licence suspended or revoked;
- (b) in the event that the Distributor for a Local Distribution Zone or Supplier refuses or fails to fulfil the terms of its Licence to Distribute or Supply Gas to Customers; and
- (c) in such other circumstances as the Commission may, deem appropriate.

provided that any reasonable additional costs associated with the obligation to act as Distributor or Supplier of Last Resort will be recoverable through appropriate charging arrangements agreed with the Commission.

### **91. Transfer of Customers**

Where the designation of a Supplier of Last Resort requires the transfer of Customers from one Licensee to another, the Commission shall prepare, or require the Supplier of Last Resort to prepare:

- (a) procedures to secure the effective transfer of Customers; and
- (b) a statement of any costs reasonably incurred in undertaking the transfer. Such costs, if approved by the Commission, shall be recoverable through regulated charges.

## **THE PRICING REGIME**

### **92. Power to Regulate and Review Tariffs**

(1) Where the Commission determines:

- (a) that a particular licensed activity is a monopoly service; or
- (b) that competition has not yet developed in the market to such an extent as to protect the interests of Customers; or
- (c) that a particular Licensee is a dominant provider,

then the Commission shall have the power to regulate the tariffs charged by Licensees in respect of such activities or by such Licensee, in a manner consistent with the Commission's duties under the Petroleum Industry Governance Act and with the pricing principles set out in section 93.

(2) The Commission shall have the power to undertake periodic pricing methodology reviews.

(3) The Commission shall consult with Licensees, industry participants and stakeholders before undertaking a pricing review or establishing a methodology for regulating prices and revenues earned by Licensees providing monopoly or dominant services.

### **93. Pricing Principles**



Subject to the provisions of this Part of the Act, the Commission shall, in the exercise of its powers to regulate tariffs charged by Licensees, be guided by the following principles:

- (a) gas prices shall be disaggregated into the component elements of the supply chain including the costs of Wholesale Gas, Transportation, Distribution and Supply;
- (b) the prices charged for each licensed activity shall reflect the costs incurred in the efficient provision of that activity;
- (c) prices charged shall permit a reasonable return for Licensees on their investments; and
- (d) prices shall not discriminate between Customers with similar characteristics, such as similar size or a similar consumption profile.

#### **94. Approval and Publication of Charging Structures**

Licensees subject to tariff regulation by the Commission under this Part of the Act, shall:

- (a) propose tariffs and tariff methodologies for the consideration and prior approval of the Commission;
- (b) impose tariffs only in accordance with the approval of the Commission; and
- (c) publish such tariffs, as required by the Commission in a manner that ensures that the Customers of such Licensees are able to identify and calculate the full extent of all charges for which they will become liable.

#### **95. Regulation of Transportation Tariffs**

The Tariffs charged for the use of the Transportation Network shall reflect:

- (a) efficient investment and capital costs;
- (b) efficient operating and maintenance expenses; and
- (c) a reasonable return to Licensees on their investments.

#### **96. Regulation of Distribution Tariffs**

The Tariff charged for the use of the Distribution Network shall reflect:

- (a) efficient investment and capital costs;
- (b) efficient operating and Maintenance expenses; and
- (c) a reasonable return to Licensees on their investments.

#### **97. End-User Prices**



End-User prices shall reflect:

- (a) the pass-through incurred in the purchase of Wholesale Gas;
- (b) the Transportation Tariff;
- (c) the Distribution Tariff, if the Customer is connected to a Distribution Network;
- (d) efficient Supply charges covering billing, metering and other services relating to Gas Supply; and
- (e) a reasonable return for the Supplier.

## **98. Wholesale Gas Prices**

(1) Subject to the provisions of this Part of the Act, Wholesale Gas Supply between a Supplier and a Customer shall be negotiated directly between the parties on an arm's length basis; provided however, that the Gas transfer price between an Upstream Gas Producer and a Downstream purchaser shall be transparent and reflect the transfer price between the parties.

(2) The Commission shall have the power to monitor Wholesale Gas Supply transactions and may publish prices in order to ensure that Wholesale Gas transactions are undertaken in a manner that ensures the transfer pricing between the Gas Supplier and the Customer are at a transparent arm's length basis.

(3) The Supplier, if an Upstream Gas Producer, shall, within 14 days of the consummation of a Wholesale Gas transaction, provide the Commission with information relating to the transaction including, where applicable, the cost incurred by the Upstream Gas Producer in the production and Supply of the Gas and all other information relevant to the price at which the gas is sold.

(4) The information provided to the Commission by the Supplier in compliance with the provisions of sub-section (3) of this section shall be confidential information and shall not be disclosed to the Public.

(5) The Supplier shall be guilty of an offence and liable to a fine not exceeding ~~N~~50,000,000 if he knowingly provides information which is false or misleading in any material particular with respect to the information required in sub-section (3) of this section.

## **99. Transitional Pricing Arrangements**

(1) A transitional pricing plan setting out temporary or transitional pricing arrangements allowing for a gradual transition towards pricing arrangements that comply with the pricing principles outlined in section 93 shall be introduced through Regulations prescribed by the Commission.

(2) The transitional pricing plan shall:

- (a) address cross-subsidies existing within the Downstream Gas Sector between Customers, between classes of Customers and between the



Gas sector and the power and other industrial sectors at the date of the coming into force of this Act;

- (b) include, but not be limited to, such matters as:
- i. arrangements for eradicating the cross-subsidies referred to in sub-section (3)(a) of this section;
  - ii. the prescription of the period(s) during which transitional pricing arrangements will apply, which shall not exceed twelve months;
  - iii. implications for other parties and sectors;
  - iv. actions required to implement the plan; and
  - v. identification of the parties responsible for particular actions.

(3) Where the Commission considers it necessary in order to facilitate the implementation of the transitional pricing plan, the Commission may impose special temporary Licence conditions on Licensees during the transitional period. Any such conditions shall not disadvantage any Licensee in relation to another Licensee of the same class.

#### **100. Determinations**

(1) The Commission shall investigate any case of suspected anti-competitive behaviour and make necessary Determinations thereon. The Commission may impose penalties if the Licensee is adjudged to have conducted its activities in a non-competitive manner; and

(2) A Determination made by the Commission in respect of any matter within this Part shall be legally binding and subject to appeal before the Federal High Court in the manner prescribed in section 148 of this Act.

### **PUBLIC SERVICE OBLIGATIONS**

#### **101. Public Service Obligations**

The Commission may, issue Regulations imposing Public Service Obligations on Licensees in relation to matters including but not limited to the following:

- (a) security of supply;
- (b) economic development and the achievement of wider economic policy objectives;
- (c) environmental protection;
- (d) health and safety.

#### **102. Public Service Levy**



(1) The Commission shall, by Regulation, provide for the recovery of any additional costs incurred in complying with the Public Service Obligations through a public service levy, which may be imposed on Customers, provided that it would, in the opinion of the Commission, be in the wider public interest.

(2) The amount of and mechanism for the collection and remittance of the public service levy imposed on each Customer shall be set out in the Regulations contemplated in sub-section (1) of this section.

## **PART V**

### **MIDSTREAM AND DOWNSTREAM (PETROLEUM LIQUIDS) REGULATION**

#### **103. Activities Requiring a Licence**

(1) No person shall undertake the following activities in the Midstream Petroleum Liquids Sector except in accordance with an appropriate Licence issued by the Commission:

- (a) establish, construct or operate a crude oil refinery;
- (b) establish, construct or operate a pipeline for the bulk transportation of crude oil or Petroleum Products;
- (c) engage in bulk transportation of crude oil or Petroleum Products by rail, barge or other means within Nigeria;
- (d) establish, construct or operate a facility for the bulk storage of crude oil or Petroleum Products;
- (e) establish, construct or operate a Transportation Network;
- (f) engage in the bulk sale of crude oil or Petroleum Products.

(2) No person shall undertake the following activities in the Downstream Petroleum Liquids Sector except in accordance with an appropriate Licence or Permit issued by the Commission:

- (a) establish, construct or operate a terminal or other facility for the export or importation of crude oil or Petroleum Products;
- (b) construct or operate any facility for the distribution or sale of petroleum products to retail customers;
- (c) establish, construct or operate a depot for the storage of Petroleum Products;
- (d) undertake distribution, marketing or retail trading of petroleum products;
- (e) undertake construction or operation of any facility for the production of petrochemicals.

(3) The Commission may, by Regulations issued pursuant to this Act, prescribe additional activities to be undertaken only on the basis of a Licence or Permit and the





Commission shall have the power to issue such Licences or Permits in accordance with the provisions of this Act.

(4) Where any person:

- (a) engages in any of the activities set out in sub-sections (1) (2) and (3) of this section without a Licence or Permit, as the case may be, the Commission shall:
- i seal the premises in which the activity is undertaken, or
  - ii seize the facilities by which the activities are undertaken, or
  - iii confiscate equipment or materials employed by the person in such activity, or
  - iv impose penalties as prescribed in Regulations made by it.
- (b) Notwithstanding the provisions of this Part V of the Act, any person that engages in the activities listed in sub-sections (1), (2) and (3) of this section without a Licence or a Permit or continues to engage in the said activities in contravention of sub-section (4)(a) of this section, shall be guilty of an offence and may be liable -
- i in the case of an activity requiring a Licence, to imprisonment for a term of one (1) year or to a fine which shall be determined by Regulations to be prescribed by the Commission.
  - ii in the case of an activity requiring a Permit, to imprisonment for a term of six (6) months or to a fine which shall be determined by Regulations to be prescribed by the Commission;

Provided that proceedings in respect of any such offence shall be initiated only by the Commission.

(5) Within twenty four months from the commencement of this Act, existing licence and permit holders shall apply and the Commission shall issue the appropriate Licence or Permit, as the case may be, to any Person who, with the knowledge and approval of the Federal Government, was engaged in any activity in the Midstream and Downstream Petroleum Liquids Sector respectively prior to the commencement of this Act.

(6) Sub section (4) of this section shall not have effect on any Person to which sub section (5) of this section is applicable until the Commission issues the appropriate License or Permit.

(7) Where any person, in applying for a Licence or Permit knowingly makes a statement which is false or misleading in any material particular; the Commission may suspend or revoke any Licence or Permit issued on the basis of the false or misleading information.

#### **104. Special Regulations**



The Commission may issue Regulations which includes but shall not be limited to:

- (a) the operation of crude oil refineries, lube plants, pipelines for the bulk transportation of crude oil or Petroleum Products, bulk storage facilities for crude oil or Petroleum Products, and terminals and outlets for retail trading of petroleum products;
- (b) the establishment and operation of a wholesale market, to ensure the continuity of supply of Petroleum Products to customers, that will apply to the owners and operators of crude oil refineries, pipelines and other facilities or vessels for the bulk transportation of crude oil or Petroleum Products, bulk storage facilities for crude oil or Petroleum Products and terminals and outlets for retail trading of petroleum products;
- (c) matters ancillary to or consequential on the matters set out in paragraphs (a) and (b) of this section.

### **105. Rights of Way**

Subject to the provisions of this Act and to such terms and conditions as may be approved by the Commission, the licensee or permit holder shall be entitled to such rights of way for the laying, operation and maintenance of pipelines, telephone lines, powerlines and the like through or across areas as the licensee or permit holder may reasonably require for the carrying on of operations in the Midstream and Downstream Petroleum Sector under the Licence or Permit.

### **106. Surface Rights Reserved to the Commission**

The Commission may for purposes of efficiency grant rights of way, easements or other rights over any surface or seabed areas subject to an existing License or Permit, as in the opinion of the Commission, may be necessary or desirable for the laying, operation and maintenance of gathering lines, telephone lines and power lines and the like, and any rights of way or other rights so reserved shall continue for the benefit of any entity to whom the Commission may subsequently grant the same.

## **PETROLEUM LIQUIDS MIDSTREAM NETWORK CODE**

### **107. Petroleum Liquids Midstream Network Code**

(1) The Commission shall in conjunction with Licensees and other stakeholders develop a Network Code governing the terms of access into facilities and infrastructure used in the Midstream Petroleum Liquids Sector;

(2) The Network Code may include, but shall not be limited to the following arrangements:

- (a) a connection and interconnection policy, standard terms for connection to a pipeline or Transportation Network and a statement of the connection charging methodology;



- (b) a mechanism by which users reserve capacity in facilities and infrastructure, and, in the event that at any time there is a greater demand for access than there is available capacity, a mechanism for allocating capacity between users;
- (c) the nomination of any one of the following parties to take responsibility for matters that may arise with respect to crude oil or Petroleum Products in transit through the Network, such matters to include but not be limited to the amount of crude oil or Petroleum Products injected into or withdrawn from the Network, nominating volumes, payment for the use of the Network and payment for overruns and shortfalls of crude oil or Petroleum Products transported:
  - i. the seller of the crude oil or Petroleum Products being conveyed;
  - ii. the purchaser of the crude oil or Petroleum Products being conveyed; or
  - iii. a willing third party;
- (d) requirements for the provision of information to the Transportation Network Operator about the volume, timing and flow-rate of injections into and withdrawals from the Transportation Network;
- (e) the structure of charges and the applicable tariffs charged for using the Transportation Network;
- (f) as required, arrangements for balancing the crude oil or Petroleum Products being conveyed;
- (g) registration arrangements;
- (h) metering, allocation and settlement arrangements;
- (i) governance arrangements;
- (j) register of Customers and Suppliers which is kept updated.

(3) The Network Code shall be published on the website of the Commission and physical copies shall be made available to interested persons upon payment of a prescribed fee.

### **108. Third Party Access**

(1) Any person licensed under the provisions of this Act to produce and supply crude oil and Petroleum Products shall be permitted access to facilities and infrastructure used for refining, supply, transportation, storage, import and export of



crude oil and Petroleum Products by owners and operators of such facilities and infrastructure:

- (a) in the manner prescribed by this Act, the regulations, codes and other guidelines issued by the Commission subject to the provisions of this Act;
- (b) on commercially viable terms based on a cost reflective pricing basis.

(2) Third party access under sub-section 1 of this section shall commence only after the development of the Petroleum Liquids Midstream Network Code in accordance with section 107.

### **109. Conditions for the Provision of Third Party Access**

(1) Third Party Access into facilities and infrastructure used in the Midstream Petroleum Liquids Sector shall be:

- (a) undertaken on a non-discriminatory basis between system users with similar characteristics;
- (b) provided in respect of any available capacity provided such capacity is not subject to a previous contractual commitment;
- (c) provided in accordance with and governed by the terms and conditions of the Network Code(s) approved by the Commission;
- (d) provided on the condition that the applicant for access is or becomes a party to and undertakes to comply with the applicable Network Code; and
- (e) be subject to the pricing principles set out in section 138 this Act.

Provided however, and notwithstanding any provision of this Act, that facilities and infrastructure which are specifically designated by the Federal Government for the storage of National Strategic Stocks shall be exempt entirely from the provisions of this Act relating to third party access.

(2) Disputes in respect of third party access shall be resolved by the Commission in accordance with the provisions of Part VI this Act.

(3) Any person not satisfied with the Determination made by the Commission in connection with third party access may institute legal proceedings at the Federal High Court.

### **110. National Strategic Stocks**

The Commission shall:

- (a) establish, administer and ensure the storage and distribution of the National Strategic Stocks of petroleum products in accordance with regulations made by the Commission;



- (b) determine the amount to be charged as a levy for the financing of the national strategic stock, which shall form part of the retail price of each petroleum product; and
- (c) designate, in conjunction with the appropriate authorities and national security agencies, the strategic points across the country where the National Strategic Stocks shall be distributed and maintained.

## **CRUDE OIL REFINING LICENCE**

### **111. Grant of a Crude Oil Refining Licence**

Subject to sections 38 and 103 of this Act, and upon the approval of the Commission of an application by a Qualified Person and the payment by such person of the prescribed fee, the Commission may grant and issue to that person a crude oil refining licence which shall permit the Licensee to install and operate facilities to process crude oil into derivative chemicals and products.

### **112. General Duties of the Holder of a Crude Oil Refining Licence**

The holder of a crude oil refining licence shall undertake the activities contemplated by the Licence in a manner best calculated to comply with the following general obligations:

- (a) to construct, operate and maintain its refinery and associated facilities in an economical, safe and reliable manner;
- (b) shut down its facilities in emergencies and in order to carry out maintenance or in accordance to curtailment directives issued by the Commission;
- (c) manage its facilities as a reasonable and prudent operator;
- (d) avoid any act or omission that may affect the compatibility of the refinery with any facility or network that is likely to prejudice the public interest or the integrity of network operations;
- (e) process crude oil to a quality suitable for the transportation system as specified in the licence;
- (f) process crude oil to a quality suitable for use in accordance to the specifications approved by the Commission;
- (g) to operate its facilities subject to the Network Code and the provisions of this Act relating to open access;
- (h) to treat all Customers in a non-discriminatory manner; and
- (i) to do nothing that, in the opinion of the Commission, prevents, restricts or distorts competition.

### **113. Access Rights**



Every holder of a refining licence shall have the right of access to facilities such as harbours, petroleum bulk storage and transportation facilities and pumping installations, in accordance with the open access requirements and the tariff methodology approved by the Commission.

#### **114. Conditions Applicable to a Crude Oil Refining Licence**

In addition to such conditions as may be imposed by the Commission, a crude oil refining licence shall be deemed to be granted subject to the condition that the holder shall:

- (a) not supply crude oil or Petroleum Products to Customers on its own account;
- (b) conduct its licensed activities safely and reliably in compliance with any law then in force and prescribed health and safety Regulations, standards and operating procedures made pursuant to this or any other Act;
- (c) have due regard for the effect of its licensed activities on the environment and complying with the requirements for environmental protection, management, and restoration under this Act and any law then in force; and
- (d) mark, maintain and secure the boundaries of its facilities and associated infrastructure constructed under the terms of its Licence and any law then in force.

### **LICENCE FOR THE BULK STORAGE OF CRUDE OIL AND PETROLEUM PRODUCTS**

#### **115. Grant of a Bulk Storage Licence**

(1) Subject to sections 38 and 103 of this Act, and upon the approval by the Commission of an application made by a Qualified Person and the payment of the prescribed fee, the Commission may grant and issue to that person, a Bulk Storage Licence authorising the holder to undertake the bulk storage of crude oil and Petroleum Products whether for its own account or on behalf of Customers.

(2) In considering an application for a Bulk Storage Licence, the Commission shall consider the economic case for Bulk Storage facility including the potential demand for its use.

#### **116. General Duties of a Bulk Storage Licensee**

The holder of a Bulk Storage Licence shall undertake the activities contemplated by the Licence in a manner best calculated to comply with the following general obligations:

- (a) establish and make available to the public at its offices:



- i the procedure for obtaining and terminating its services, and
  - ii the method of response to the request for its service;
- (b) construct, operate and maintain its facilities in a safe, economical, and reliable manner taking into account any strategic plans formulated by the Commission;
- (c) manage supply shortfalls and meet on a reasonable endeavour basis requests for transportation above contractual volumes;
- (d) shut down its facilities in emergencies and in order to carry out maintenance or in response to curtailment directives issued by the Commission;
- (e) grant to third parties the rights to use or have access to capacity within its facilities for the purpose of ensuring competitive supply of crude oil and Petroleum Products;
- (f) consult with the Commission and obtain written permission prior to any modification of any technical and operational rules of practice concerning the operation of its facilities;
- (g) conduct its licensed activities in a non-discriminatory manner between all classes of customers;
- (h) manage its facilities as a reasonable and prudent operator; and
- (i) to do nothing that, in the opinion of the Commission, prevents, restricts or distorts competition.

#### **117. Conditions Applicable to a Bulk Storage Licence**

In addition to such conditions as may be imposed by the Commission pursuant to section 41 of this Act, a holder of a Bulk Storage Licence shall be deemed to be granted subject to the condition that the holder shall:

- (a) conduct its licensed activities safely and reliably in compliance with any law then in force and prescribed health and safety Regulations made pursuant to this or any other Act;
- (b) have due regard for the effect of its licensed activities on the environment and complying with the requirements for environmental protection, management, and restoration under this Act and any law then in force; and
- (c) mark, maintain and secure the boundaries of its facilities and associated infrastructure constructed under the terms of its Licence and any law then in force.

### **LICENCE FOR THE BULK TRANSPORTATION OF CRUDE OIL AND PETROLEUM PRODUCTS**





## **118. Grant of Transportation Pipeline Licence**

(1) Subject to section 41 of this Act, and upon the approval of the Commission of an application by a qualified person and the payment by such person of the prescribed fee, the Commission may grant and issue to that person a Transportation Pipeline Licence with the exclusive right to own, construct, operate and maintain a Transportation Pipeline for the bulk transportation of crude oil or Petroleum Products within a route as defined in the Licence.

(2) In considering an application for a Transportation Pipeline Licence, the Commission shall consider the economic case for a Transportation Pipeline including the potential demand for its use.

## **119. General Duties of a Transportation Pipeline Owner**

The holder of a Transportation Pipeline Licence shall undertake the activities contemplated by the Licence in a manner best calculated to comply with the following general obligations:

- (a) establish and make available to the public at its offices the procedure for obtaining and terminating transmission and interconnection services;
- (b) the method of response to the request for its service;
- (c) construct, operate and maintain its Transportation Pipeline in a safe, economical, and reliable manner taking into account any strategic plans formulated by the Commission;
- (d) manage supply shortfalls and meet on a reasonable endeavours basis requests for transportation above contractual volumes;
- (e) shut down its Transportation Pipeline in emergencies and in order to carry out maintenance or in response to curtailment directives issued by the Commission;
- (f) grant to each Wholesale Supply Licensee the right to use or have access to those parts of its Transportation Pipelines that are necessary for the purpose of ensuring the proper integrated operation of the network and competitive supply in a competitive manner;
- (g) consult with the Commission and obtain written permission prior to any modification of any technical and operational rules of practice concerning the operation of its Pipeline;
- (h) manage its Transportation Pipeline as a reasonable and prudent operator;
- (i) to do nothing that may, in the opinion of the Commission, prevent, restrict or distort competition.

## **120. Conditions Applicable to a Transportation Pipeline Licence**



In addition to such conditions as may be imposed by the Commission pursuant to section 41 of this Act, a Transportation Pipeline Licence shall be deemed to be granted subject to the condition that the holder shall:

- (a) not supply crude oil or Petroleum Products to Customers on its own account except by means of a separate licence issued by the Commission to an Affiliate for bulk supply of crude oil or Petroleum Products;
- (b) conduct its licensed activities safely and reliably in compliance with any law then in force and prescribed health and safety Regulations made pursuant to this or any other Act;
- (c) have due regard for the effect of its licensed activities on the environment and comply with the requirements for environmental protection, management, and restoration under this Act and any law then in force; and
- (d) mark, maintain and secure the boundaries of the Pipelines and associated infrastructure constructed under the terms of its Licence and any law then in force.



## LICENCE FOR THE OPERATION OF A PIPELINE NETWORK FOR THE TRANSPORTATION OF PETROLEUM LIQUIDS

### 121. Grant of Transportation Network Operator Licence

(1) Subject to sections 38 and 103 of this Act, and upon the approval by the Commission of an application by a Qualified Person and the payment by such person of the prescribed fee, the Commission may grant and issue to that person a Transportation Network Operator Licence authorising the conduct of activities specified in the Licence, including the following:

- (a) conveyance of crude oil or Petroleum Products through the Transportation Network;
- (b) balancing the inputs and off takes from the Transportation Network;
- (c) providing Third Party Access to the Transportation Network; and
- (d) charging for the use of the Transportation Network.

(2) The Commission shall grant only one Transportation Network Operator Licence within a geographically defined area to a single Network operator; provided however, that the Commission may, at its discretion, issue similar Licences to other parties for the operation of isolated or dedicated pipelines.

### 122. General Duties of a Transportation Network Operator

The Transportation Network Operator shall exercise the rights and obligations imposed on it in a manner best calculated to meet the following general duties:

- (a) make available to the public at its offices the procedure, terms and conditions for obtaining and terminating access and interconnection services to the Transportation Network, and the method of response to the request for its service;
- (b) operate an efficient and economical Transportation Network for the safe and reliable conveyance of crude oil or Petroleum Products in such a manner that is designed to meet all reasonable demands for crude oil or Petroleum Products;
- (c) operate a nominations and balancing mechanism and an equitable curtailment of transportation whenever technical or operational expediencies so require;
- (d) consult with the Commission and obtain written permission prior to any modification of any technical and operational rules of practice concerning the operation of its Pipeline;
- (e) in collaboration with the Commission and shippers and all licensees and permit holders operating essential infrastructure, ensure the



development and operation of a network code and terms for access into the transportation network;

- (f) ensure equitable and transparent access by third parties to the Transportation Network in accordance with the network code;
- (g) manage the Transportation Network as a reasonable and prudent operator;
- (h) do nothing that, in the opinion of the Commission, prevents, restricts or distorts competition; and
- (i) enter into agreements with Transportation Pipeline Owners, Distributors, and, where appropriate, Wholesale Customers for connection to, and operation of, the Transportation Network.

### **123. Powers of a Transportation Network Operator**

Subject to the provisions of this Act, the Commission may grant the following special powers or authority to a Transportation Network Operator to facilitate the conduct of its licensed activities:

- (a) the power to request for and obtain from all Licensees, information required to operate the nominations and balancing mechanism, to operate the Network or to facilitate competition;
- (b) subject to any restrictions or conditions imposed by the Commission with respect to both the level and structure of its charges, the right to recover, on the basis of an invoice, expenses reasonably incurred in undertaking its Licensed activities; and
- (c) to purchase crude oil or Petroleum Products for its own operations for purposes such as testing and commissioning of facilities, for compression purposes and for line fill.

### **124. Conditions Applicable to a Transportation Network Operator Licence**

In addition to such conditions as may be imposed by the Commission pursuant to section 41 of this Act, a Transportation Network Operator Licence may include an obligation to develop market rules in accordance with the provisions of this Act.

## **LICENCE FOR THE WHOLESALE SUPPLY OF CRUDE OIL OR PETROLEUM PRODUCTS**

### **125. Grant of a Licence for Wholesale Supply of Petroleum Products**

(1) Subject to sections 38 and 103 of this Act, and upon the approval by the Commission of an application made by a Qualified Person and the payment of the prescribed fee, the Commission may grant and issue to that person a Licence for Wholesale Supply of crude oil or Petroleum Products.



(2) A producer of crude oil shall be a Qualified Person within the meaning of the provisions of this Part and shall be entitled to apply for and be issued a Licence for Wholesale Supply of crude oil by the Commission.

(3) A Licence for wholesale supply of crude oil or Petroleum Products, whilst it has effect, authorises the Supplier to sell and deliver crude oil or Petroleum Products to bulk customers at any location in Nigeria.

#### **126. General Duties of a Wholesale Supplier of Crude Oil or Petroleum Products**

A holder of the Licence for wholesale supply of crude oil or Petroleum Products shall undertake the activities contemplated by the Licence in a manner best calculated to comply with the following general obligations -

- (a) to provide a reliable supply of crude oil or Petroleum Products to purchasers on request, provided that it is economically feasible to do so; and
- (b) to do nothing that, in the opinion of the Commission, may prevent, restrict or distort competition.

#### **127. Rights of a Wholesale Supplier of Crude Oil or Petroleum Products**

Subject to the provisions of this Act, the Commission may grant the following specific powers or authority to the holder of a Licence for wholesale supply of crude oil or Petroleum Products to facilitate the conduct of its licensed activities:

- (a) the right to terminate wholesale supply to a Customer in the event of non-payment, following a notice period;
- (b) the right to recover from a Customer, on the basis of an invoice, and subject to any restrictions or conditions imposed by the Commission with respect to both the level and structure of a Licensee's charges, costs reasonably incurred in the supply of crude oil or Petroleum Products, provided always that the sale of crude oil or Petroleum Products to Customers by the holder of a Licence for wholesale supply of crude oil or Petroleum Products shall be subject to the provisions of this Part of the Act; and
- (c) the right to enter a premises to remove its meters, for the purpose of reading meters, to test metering equipment and to disconnect Customers; such entry to be undertaken in accordance with a metering code issued by the Commission.

#### **128. Conditions Applicable to a Licence for Wholesale Supply of Crude Oil or Petroleum Products**

(1) In addition to such conditions as may be imposed by the Commission pursuant to section 41 of this Act, a Licence for wholesale supply of crude oil or Petroleum Products shall be deemed to be granted subject to the Supplier:



- (a) ensuring a reliable and efficient supply of crude oil or Petroleum Products to Customers on request, provided that it is economical to do so;
- (b) subject to safety and Network capacity constraints, supplying crude oil or Petroleum Products on request to a Customer who is willing and able to pay for connection to the Transportation Network;
- (c) conducting licensed activities safely and reliably in compliance with any law then in force and any health and safety Regulations issued by the Commission pursuant to this or any other Act; and

(2) A holder of a Licence for Wholesale Supply of crude oil or Petroleum Products shall be obliged to undertake its licensed activities in a manner that is best calculated to meet the covenants and conditions of the licence.

## **LICENCE FOR RETAIL OF PETROLEUM PRODUCTS**

### **129. Grant of Licence for Retail Supply of Petroleum Products**

Subject to sections 38 and 103 of this Act, and upon the approval by the Commission of an application made by a Qualified Person and the payment of the prescribed fee, the Commission may grant and issue to that person, a Retail Licence authorising the holder to sell or retail Petroleum Products to Customers.

### **130. General Duties of Retailer**

In addition to such conditions as may be imposed by the Commission pursuant to section 41 of this Act, or that may be prescribed by Regulations issued pursuant to this Act, a Retail Licence shall be deemed to be granted subject to the duty of the holder:

- (a) to develop and maintain a safe, efficient, reliable and economical service for the retailing of Petroleum Products;
- (b) to carry on its business at all times in such manner so as not to prevent, restrict or otherwise hinder the development of competition in any market in Nigeria;
- (c) to conduct its activities to a safe and reliable standard in compliance with prescribed environmental, health and safety Regulations issued pursuant to this or any other Act;
- (d) to publish the prices to be charged and to be paid by a person to whom the retailer sells Petroleum Products in such manner as to ensure adequate publicity unless the Commission otherwise directs;
- (e) not to show undue preference as between persons or any class of persons nor exercise undue discrimination as between persons or any class of persons in establishing prices; and



- (f) to comply with Customer Protection measures approved by the Commission.

### **PERMIT TO ESTABLISH, CONSTRUCT AND OPERATE A FACILITY FOR RETAIL OF PETROLEUM PRODUCTS**

#### **131. Grant of a Permit to Construct and Operate a Facility for Retail Supply and Distribution of Petroleum Products**

(1) Subject to sections 38 and 103 of this Act, and upon the approval by the Commission of an application made by a Qualified Person and the payment of the prescribed fee, the Commission may grant and issue to that person, a Permit authorising the holder to establish, construct and operate a facility to be employed for retail sale or distribution of Petroleum Products.

(2) The Commission shall issue guidelines in respect of the process for the establishment, construction and operation of facilities to be employed for retail sale or distribution of Petroleum Products.

### **PERMIT TO ESTABLISH, CONSTRUCT AND OPERATE A FACILITY FOR THE PRODUCTION OF PETROCHEMICALS**

#### **132. Grant of a Permit to Construct and Operate a Facility for the Production of Petrochemicals**

(1) Subject to sections 38 and 103 of this Act, and upon the approval by the Commission of an application made by a Qualified Person and the payment of the prescribed fee, the Commission may grant and issue to that person, a Permit authorising the holder to establish, construct and operate a facility for the production of petrochemicals.

(2) The Commission shall issue guidelines in respect of the process for the establishment, construction and operation of facilities for the production of petrochemicals.

### **THE PRICING REGIME**

#### **133. Power to Regulate Tariffs**

(1) Where the Commission determines:

- (a) that a particular licensed activity is a monopoly service; or
- (b) that competition has not yet developed in the market for any Petroleum Product to such an extent as to protect the interests of Customers; or
- (c) that a particular Licensee is a dominant provider of services,

then the Commission shall have the power to regulate the tariffs and prices charged by Licensees in respect of such activities, in a manner consistent with the Commission's duties under the Petroleum Industry Governance Act and with the pricing principles set out in section 139 of this Act.





(2) The Commission shall have the power to undertake periodic pricing methodology reviews.

(3) The Commission shall consult with Licensees, industry participants and stakeholders before undertaking a pricing review or establishing a methodology for regulating prices and tariffs by Licensees providing monopoly or dominant services.

### **134. Tariff methodology**

(1) Tariffs charged by licensees for the use of any facility or infrastructure licensed by the Commission for use in the Midstream Petroleum Liquids Sector such as refineries, pipelines, bulk storage facilities, terminals, jetties shall be set according to one or more tariff methodologies adopted by the Commission, provided that such tariff methodologies shall:

- (a) allow an operator to recover reasonably and prudently incurred costs including a reasonable return on the capital invested in such business;
- (b) ensure the efficiency of the business;
- (c) ensure the continued improvement of the quality of services;
- (d) avoid discrimination between Customers with similar characteristics, such as similar size or a similar consumption profile;
- (e) ensure efficient charges relating to product supply covering billing, metering and other services;
- (f) avoid economic distortions and ensure a competitive market for the sale and distribution of Petroleum Products in Nigeria;
- (g) avoid cross-subsidies among different categories of consumers.

(2) Prior to establishing a tariff methodology, the Commission shall conduct a public hearing in the manner specified in sub-section (4) of this section to consult applicants, operators, consumers, prospective customers, consumers associations, associations of prospective customers and such other persons reasonably interested on the subject matter of the proposed tariff methodology.

(3) In establishing a tariff methodology, the Commission shall take into consideration the findings of the public hearing conducted in pursuance of sub-section (2) of this section.

(4) Before holding a public hearing in pursuance of sub-section (2) of this section, the Commission shall publish in at least two national newspapers and its website, notice of:

- (a) the public hearing;
- (b) invitation to licensees and members of the public to participate in the public hearing;



- (c) the venue and period during which the public hearing is to be held;
- (d) the nature of the matter to which the public hearing relates;
- (e) the matters upon which the Commission would require submissions;
- (f) the form in which licensees and members of the public are to make submissions to the Commission on the subject matter of the public hearing;
- (g) the period of public notice for the commencement of the public hearing, which shall not be less than twenty-one days; and
- (h) the address or addresses to which the submissions may be sent.

(5) The Commission shall fix a date upon which the determined tariff methodology shall come into effect and it shall cause the notice of that commencement date to be published in at least two national newspapers and its website.

(6) If it appears to the Commission that an existing tariff methodology or tariff should be amended, it shall conduct a public hearing on the proposal for the amendment in accordance with the provisions of sub-section (3) of this section.

(7) Every person upon whom any duty has been imposed in connection with setting tariffs shall be so bound by the operative tariff methodology adopted through the method prescribed in this section.

(8) Every holder of a Licence or Permit engaged in the sale of Petroleum Products to retail customers or subject to third party access obligations under this Act shall display at its office a current copy of the tariff methodology and tariff methodology applicable to the services provided by such person.

(9) No holder of a Licence or Permit shall pass the costs of any fines or penalties incurred under this Act or any other law on to the consumers.

### **135. Approval and Publication of Charging Structures**

Licensees subject to tariff regulation by the Commission shall:

- (a) propose tariffs and tariff methodologies for the approval of the Commission prior to the application of such charges;
- (b) impose tariffs only in accordance with such approval; and
- (c) publish tariffs approved by the Commission in a manner that ensures that the Customers of such Licensees are able to identify and calculate the full extent of all charges for which they will become liable.

### **136. Wholesale Prices for Petroleum Products**

(1) Subject to the provisions of this Part of the Act, Wholesale product supply between a Supplier and a Customer shall be negotiated directly between the parties



on an arm's length basis; provided however, that the transaction shall be transparent and reflect the transfer price between the parties.

(2) The Commission shall have the power to monitor bulk sale of Petroleum Products and may publish prices in order to ensure that such transactions are undertaken in a manner that ensures that the transfer pricing between the Supplier and the Customer are undertaken at a transparent arm's length basis.

(3) The Supplier shall, within 14 days of the consummation of a transaction relating to the bulk sale of Petroleum Products, provide the Commission with information relating to the transaction including, where applicable, the cost incurred by the Supplier in the production and or supply of the product and all other information relevant to the price at which the product is sold.

(4) The Supplier shall be guilty of an offence and liable to a fine not exceeding ₦50,000,000 if he does not provide the information required in sub-section (3) of this section or knowingly provides information which is false or misleading in any material particular with respect to the information required in sub-section (3) of this section.

### **137. Transitional Pricing Arrangements**

(1) A model pricing template setting out temporary or transitional arrangements for the pricing of Petroleum Products allowing for a short transition towards full market pricing shall be introduced through Regulations prescribed by the Commission.

(2) The transitional pricing plan shall -

- (a) address cross-subsidies existing within the Downstream Petroleum Sector between Customers, between classes of Customers and between the midstream and downstream Petroleum Products sectors and other industrial sectors at the date of the coming into force of this Act;
- (b) include, but not be limited to, such matters as:
  - i arrangements for eradicating the cross-subsidies referred to in sub-section (2)(a) of this section;
  - ii the prescription of the period(s) during which transitional pricing arrangements will apply;
  - iii implications for other parties and sectors;
  - iv actions required to implement the plan; and
  - v identification of the parties or classes of Licensees responsible for particular actions.

(3) The Commission may impose special temporary licence conditions on Licensees during the transitional period in order to facilitate the implementation of the transitional pricing plan. Any such conditions shall not disadvantage any Licensee in relation to another Licensee of the same class.



(4) The Minister shall at any time within twelve months from the commencement of this Act declare that the transitional pricing arrangement under this section has come to an end.

### **138. Petroleum Product Pricing After Transitional Pricing Arrangements**

(1) At the earlier of twelve months or the declaration of the end of the transitional pricing arrangements in accordance with sub-section 4 of section 137, the transitional pricing arrangement governing prices charged to retail customers by downstream Licensees shall terminate and petroleum product prices shall be fully deregulated.

(2) When petroleum product prices have been fully deregulated in accordance with sub-section (1) of this section, the Minister shall take the required actions to ensure that the Petroleum Equalization Fund ceases to exist and its assets and liabilities transferred to the Government to be managed and controlled by the Ministry, and at such time the provisions of the Petroleum Industry Governance Act relating to the Petroleum Equalization Fund shall stand repealed.

### **139. Pricing Principles**

Subject to the provisions of this Part of the Act, the Commission shall, in the exercise of its powers to regulate prices charged by Licensees, be guided by the following principles:

- (a) prices of Petroleum Products shall be disaggregated into the component elements of the supply chain, including the costs of wholesale supply, transportation and retail distribution;
- (b) the prices charged for each licensed activity shall reflect the costs incurred for the efficient provision of that activity and the Licensee shall disclose all relevant commercial information related to its pricing to the Commission insofar as the Commission shall treat such information with utmost confidentiality;
- (c) prices shall not discriminate between customers with similar characteristics, such as similar size or a similar consumption profile;
- (d) ensure efficient charges relating to product supply covering billing, metering and other services;
- (e) ensure the avoidance of economic distortions and a competitive market for the sale and distribution of Petroleum Products in Nigeria;
- (f) avoid cross-subsidies among different categories of consumers.
- (g) allow the seller to recover reasonably and prudently incurred costs including a reasonable return on the capital invested in such business.



#### **140. Approval and Publication of Prices**

Licensees subject to price regulation by the Commission shall:

- (a) propose prices and methodologies for the approval of the Commission prior to the application of such prices;
- (b) impose prices in accordance with such approval; and
- (c) publish such prices, as required by the Commission in a manner that ensures that the Customers of such Licensees are able to identify and calculate the full extent of all charges for which they will become liable.

### **PUBLIC SERVICE OBLIGATIONS**

#### **141. Public Service Obligations**

The Commission may issue Regulations imposing Public Service Obligations on Licensees or a class of Licensees in relation to matters including but not limited to the following:

- (a) security of supply;
- (b) economic development and the achievement of wider economic policy objectives;
- (c) maintenance of an equalization system for the transportation of Petroleum Products within Nigeria;
- (d) environmental protection;
- (e) health and safety.

#### **142. Public Service Levy**

(1) The Commission shall, by Regulation, provide for the recovery of any additional costs incurred in complying with the Public Service Obligations through a public service levy, which may be imposed on retail customers, provided that it would, in the opinion of the Commission, be in the wider public interest.

(2) The amount of and mechanism for the collection and remittance of the public service levy imposed on each Customer shall be set out in the Regulations contemplated in sub-section (1) of this section.

### **PART VI:**

### **DISPUTE RESOLUTION**

#### **143. Dispute Resolution**

(1) The Commission shall have the power to resolve disputes between persons who are subject to this Act and between such persons and other parties regarding



any matter under this Act or its subsidiary legislation provided that no dispute shall be referred to the Commission unless:

- (a) an attempt has been made by the parties concerned to resolve the dispute through negotiation;
- (b) a resolution cannot be reached under any other relevant or applicable dispute resolution procedure prescribed by this Act, including but not limited to those pertaining to the Wholesale market and the Network Code; and
- (c) both parties are granted the opportunity to present their respective positions to the Commission.

(2) The provisions of sub-section (1) of this section shall not apply, where there is a prior agreed dispute resolution mechanism in the agreements between the parties.

(3) The Commission shall, in resolving disputes, have the same rights and powers to make orders, call witnesses and take evidence in the same manner as the High Court of a State or the Federal High Court.

#### **144. Publication of Guidelines for Dispute Resolution by Commission**

(1) The Commission may publish guidelines setting out the principles that it may take into account in resolving disputes.

(2) The Commission shall convene to resolve a dispute if it is satisfied that –

- (a) an agreement may not be reached, or will not be reached between the parties to the dispute within a reasonable time; and
- (b) the resolution of the dispute would promote the objects of this Act or its subsidiary legislations.

(3) The Commission shall be entitled to convene to resolve a dispute at its headquarters or at any other place in Nigeria.

#### **145. Terms and Conditions for the Resolution of Disputes**

(1) Subject to the objects of this Act and any guidelines issued by the Commission under this Part, the Commission or, if the Commission deems fit, an arbitrator, may resolve a dispute referred to it under section 148(1), in accordance with the Arbitration and Conciliation Act provided that the Commission shall have the discretion to require either party to the dispute to pay any costs incurred by the Commission in appointing an arbitrator.

(2) The Commission, in carrying out its functions under sub-section (1) of this section, shall be guided by the objective of establishing a sustained dispute resolution process that is fair, just, economical and effective and that shall at all times act according to the ethics of justice and the merits of each case.

(3) The Determination of the Commission under this Part shall:



- (a) be properly recorded in writing; and
- (b) state the basis or bases for the Determination; and
- (c) be provided to the parties to the dispute as soon as practicable.

**146. Registration of Determinations**

(1) The Commission shall create a register in which it shall register all Determinations that it makes pursuant to the provisions of this Part .

(2) The register referred to in this section shall contain:

- (a) the names of the parties to the dispute;
- (b) a general description of the matter pertaining to the Determination; and
- (c) the date of the Determination.

**147. Enforcement of Determinations**

(1) A Determination by the Commission shall be final and binding on the parties.

(2) A Determination of the Commission may be enforced by the Federal High Court as if the Determination is a judgment of such Court provided that the Commission has issued a certificate to the complainant for leave to proceed to the Federal High Court for the enforcement of the decision.

(3) No certificate under sub-section (2) of this section is required if an action is taken by the Commission pursuant to this section.

**148. Judicial Review**

(1) An aggrieved person may only appeal to the Federal High Court for a judicial review of questions of law and process pertaining to a Determination or other action of the Commission.

(2) The Determination or Direction of the Commission that is the subject matter of the application for judicial review shall subsist and remain binding and valid until it is expressly reversed in a final judgment or order of the Federal High Court.

(3) A person shall not apply to the Federal High Court for judicial review on matters of law and process pertaining to a Determination or other action of the Commission unless that person has first exhausted all other remedies under this Act.

**149. Referrals of Questions of Law to the Federal High Court**

(1) If any question of law arises from a Determination of the Commission, the Commission may, at its discretion, request any person directly affected by such Determination to reserve that question for the decision of the Federal High Court.





(2) Where a question has been reserved in terms of sub-section (1), the Commission shall state the question in the form of a special case and file it with the Registrar of the Federal High Court.

## **PART VII: COMPETITION MONITORING**

### **150. Competition and Market Regulation**

(1) Notwithstanding the provisions of any other law, the Commission shall have the responsibility to:

- (a) monitor the state of the markets regulated by the Commission;
- (b) administer, monitor, and ensure compliance by all persons, with the provisions of this Act and any related regulations issued in respect of competition and market regulation;
- (c) monitor market behaviour including the development and maintenance of competitive markets;
- (d) arrest situations of abuse of dominant power and restrictive business practices;
- (e) assess whether the Petroleum Industry is operating efficiently or whether the existing market arrangements may constitute barriers to entry into the market for new players;
- (f) determine whether there is any anti-competitive activity being carried on, and exercise its powers under this section to prevent the continuance of such activity;
- (g) determine any pre-conditions and any transitional arrangements required for any services to be offered competitively.

(2) In performing its functions under the Act with respect to the Gas Sector, the Commission shall collaborate with the Nigerian Electricity Regulatory Commission to protect the interests of consumers with respect to reliability and quality of natural gas supply services.

(3) The Commission shall issue Regulations in relation to anti-competitive behaviour. The penalties proposed under this Part may only be utilised after the issuance of said Regulations.

### **151. Power to Prevent Anti-Competitive Behaviour**

(1) Notwithstanding the provisions of any other law, the Commission shall have the power to prevent anti-competitive behaviour in the Petroleum Industry, and for this purpose may take any or a combination of the following actions -



- (a) monitor and determine whether any conduct by a Licensee or any other person operating or intending to operate in the Petroleum Industry:
- i. has the purpose or effect of substantially lessening competition in any segment of the Petroleum Industry;
  - ii. would likely result in anti-competitive or discriminatory conduct, including but not limited to an unlawful exercise of market power that may prevent Customers from obtaining the benefits of a properly functioning and competitive market;
  - iii. would amount to practices which have a negative economic effect on the economy or cause economic loss to another licensee;
  - iv. which reflect an apparent or probable effect of, excluding or deterring the entry of another person into the petroleum sector;
  - v. which is indicative of an abuse of dominant position in respect of the provision of any service;
- (b) consider, in its Decisions and Determinations regarding matters including, but not limited to, Licence applications, the grant of Licences, Licence terms and conditions and the regulation of prices in respect of services in competitive markets, how best to prevent or mitigate abuses of market power.
- (c) where, in the opinion of the Commission there is, or may be, anti-competitive behaviour and in particular an abuse of market power the Commission shall:
- i. issue cease and desist orders as may be required;
  - ii. require and compel the disclosure of information from Licensees;
  - iii. undertake inquiries and investigations;
  - iv. levy fines which shall be set out in Regulations issued by the Commission from time to time, and which fines shall not exceed 10% of the annual turnover of the company for the preceding year.

(2) A Determination made by the Commission pursuant to sub-section (1) of this section shall be legally binding and subject to appeal before the Federal High Court in the manner prescribed in Part VI of this Act.

(3) Notwithstanding the provisions of this section, and upon the application for an approval by a Licensee or other person with the ability to influence the price of products, and where the Commission deems that it would be in the national interest or that it would be necessary to preserve or promote the benefits of a properly functional and effectively competitive market -



- (a) give written approval for such conduct upon such terms and conditions as the Commission shall deem appropriate;
- (b) in issuing the approval, impose such requirements as it deems fit and require such undertakings as it deems appropriate from the applicant as a condition precedent to the issuance of the said approval;
- (c) withdraw an approval that it has granted subject to such terms and conditions as it may, in its absolute discretion, designate; and
- (d) issue Directions to prevent or mitigate any conduct that shall or is likely to lead to the unlawful exercise of market power that will prevent Customers from obtaining the benefits of a properly functioning and competitive market.

#### **152. Separation of Certain Licensed or Permitted Activities**

(1) The Commission may require the holder of a Licence or Permit to separate, either in management, accounting or legal entities, of its licensed or permitted activities, which may prohibit the holder of the Licence or Permit from directly holding Licences or Permits of another type.

(2) Licensed or permitted activities between a holder of a Licence or Permit and an Affiliate shall be undertaken in a manner that ensures that the transfer pricing between both entities is undertaken on a transparent arm's length basis and in a manner that reflects the pricing principles contained in sections 93 and 139 of this Act.

(3) No holder of a Licence or Permit shall, without the prior written consent of the Commission, directly or indirectly acquire an interest in, purchase, or otherwise affiliate with another holder of a Licence or Permit or an Affiliate of a holder of a Licence or Permit.

#### **153. Non-discrimination**

Holders of Licences or Permits shall not discriminate between Customers or classes of Customers or their related undertakings or Network users in respect of access, tariffs, prices, conditions or standards of service.

#### **154. Right to seek Court Injunction**

Nothing in this Act shall be construed to preclude or restrict the right of the Commission or any person to seek an injunction against any conduct prohibited in this Act provided that the Commission must be notified by any person who wishes to proceed to court or to arbitration for the enforcement of any of the provisions of this Part.

#### **155. Considerations for Exercise of the Commission's Powers**

In the exercise of its powers under this Part of the Act, the Commission may consider:

- (a) the relevant economic market;



- (b) global trends in the relevant economic market;
- (c) the effect on the number of competitors in the market and their respective market shares;
- (d) the effect of the activity as a potential barrier to entry into the market;
- (e) the effect of any activity on the range of services in the market;
- (f) the effect of the conduct on the cost and profit structures in the market;
- (g) the ability of any independent Licensee or operator to make price or Tariff regulating decisions; and
- (h) any other matters which the Commission deems relevant.

**156. Power to Serve Notice, Issue Cease and Desist Order, etc.**

(1) If in the opinion of the Commission any act contemplated by the provisions of this Part VII has been undertaken or is threatened to be undertaken by a person, the Commission may serve a notice on such person specifying the activity and of its intention to issue a cease and desist order or may direct the person to whom the notice is issued to do, or not to do, such things as it may specify and the time frame for compliance with the order.

(2) If the person to whom the notice or directive issued pursuant to sub-section (1) of this section fails to comply, the Commission may issue a cease and desist order.

(3) The Commission may levy a fine which shall not exceed 10 percent of the annual turnover of the company for the preceding year or the revocation of the Licence of any person, where that person is a Licensee, who fails to comply with a cease and desist order or a direction issued under sub-section (1) of this section.

(4) Notwithstanding the provisions of sub-sections (1) (2) and (3) above, if in the opinion of the Commission, any act contemplated by the provisions of this Part VII has been undertaken or is threatened to be undertaken by a person, the Commission may publish a notice in the form and manner specified in Regulations to be made by the Commission inviting the person in respect of whom the notice is addressed and any other interested parties to make representations in relation to the subject-matter of the notice within a specified date.

**157. Hearings on Anti-competitive Behaviour**

A cease and desist order may not be issued nor a fine imposed if -

- (a) the person to whom the notice is issued is able to demonstrate to the satisfaction of the Commission that it has not undertaken or threatened to undertake any act contemplated by the provisions of this Act.
- (b) the Commission has made a determination upon consideration of the representations received from relevant persons pursuant to this Act that the person to whom the notice is issued has not undertaken or threatened to undertake any act contemplated by the provisions of this Act.



## **PART VIII:**

### **THE REGISTRY OF THE COMMISSION**

#### **158. Mandatory Registration with the Commission**

Any person engaged in activities within the Petroleum Industry, which activities are required to be licensed by the Commission pursuant to this Act shall register its undertaking with the Commission and provide such information concerning the activities of the undertaking as may be prescribed by Regulations issued by the Commission pursuant to this Act.

#### **159. Register of Licences, Permits and Authorisations**

(1) The Commission shall establish, maintain and make publicly available a register of all licences, permits and authorisations, issued, revoked, suspended, surrendered or withdrawn and all modifications and exemptions granted for the purposes of this Act.

(2) The officer registering the issuance of any instrument as contemplated under sub-section (1) of this section shall require an acknowledgement of the receipt of a copy of such instrument from the person accepting it in such form as may be prescribed by Regulations issued by the Commission.

(3) The Register shall include all existing licences or leases previously issued by the Department of Petroleum Resources and shall include any petroleum development agreements under which the Nigerian National Petroleum Corporation, its subsidiaries or successor entities is the concessionaire such as Production Sharing Contracts and Risk Service Contracts.

#### **160. Preparation of Licences, Permits and Authorisations**

(1) All licences, permits and authorisations or exemptions granted under this Act shall be prepared in duplicate, one copy being delivered by the Commission to the holder of a lease, licence, permit or authorisation and the other retained by the Commission to be bound up in a book of the appropriate series within its register and serially numbered therein.

(2) The Commission shall cause a licence, permit and authorisation to be prepared upon payment of the requisite fees.

(3) The officer registering a licence, permit and authorisation or exemption under sub-section 1 of this section shall require an acknowledgement of the receipt of the copy of the licence, permit, authorisation or exemption from the person accepting such licence, permit, authorisation or exemption in such form as may be prescribed.

#### **161. Effective Date and Authentication of Licences, Permits and Authorisations**

(1) The licences, permits and authorisations or any exemption shall be authenticated under the seal of the Commission; and the validity of the licences,



permits and authorisations or exemption shall commence from the date of its issuance.

(2) The date of issuance of any licence, permit or authorisation or exemption shall be inscribed thereon.

#### **162. Register of Memorials**

The Commission shall enter in the appropriate register a memorial of any extension, transfer, surrender, revocation, exemption, relinquishment, changes of address, changes of name or any other matter affecting the status of or any interest in any licences, permits and authorisations registered under this Act together with the date of such entry.

#### **163. Register of Interests**

The Commission shall establish and maintain a register in which particulars of any interest or shares transferred or assigned are noted by the Commission. The register shall be updated from time to time to record any change in the status of such interest or shares transferred or assigned.

#### **164. Effect of Registration**

The due registration of any licences, permits and authorisations duly registered under this Part shall, subject to the provisions of this Act, be conclusive evidence-

- (a) that the rights described therein are vested in the person for the time being named as the holder of the licence, permit or authorisation; and
- (b) of the conditions and other provisions to which the holder of a licence, permit or authorisation is subject, so far as the same are required by any provision of this Act to be specified in the document.

#### **165. Public Access to the Registry**

(1) The registry and the registers required under sections 159, 162 and 163 shall be readily accessible to the public during the hours and upon the days designated by the Commission.

(2) The Commission shall maintain an up to date electronic form of the registers required under sections 159, 162 and 163 on its website, which may be accessed for free by any member of the public.

(3) Upon the payment of the prescribed fee, a member of the public shall be entitled to obtain a certified true copy of any document or record contained in the registers referred to in sections 159, 162 and 163 of this Act.

#### **166. Default Approvals**



- (1) Any matter which requires the Commission's approval under this Act or under any regulations, shall be approved or rejected within the time limit specified within this Act or under Regulations issued by the Commission.
- (2) Where no time limit has been specified under this Act or under any Regulations issued by the Commission, the default time limit shall be 60 days.
- (3) Where applications are rejected within the stipulated time limit, all rejections shall be given with reasons. Rejections of applications shall be tracked and accurate records kept at all times.
- (4) Default approvals shall be recorded in the appropriate register by the Commission.

#### **167. Disclosure of Confidential or Other Information**

(1) If any Commissioner or employee of the Commission in the course of his duties, acquires information relating to the financial affairs of any person, or to any commercial secret, or if any other person indirectly acquires such or other information required to be kept confidential under the provisions of this Act from any Commissioner or employee of the Commission, he shall not for personal gain make use of such information, nor disclose it to any other person except:

- (a) for the purpose of legal proceedings under this Act or any other law;
- (b) to the extent that it may be necessary to do so for the purpose of this Act or any other law; and
- (c) to another Commissioner or employee of the Commission.

(2) No Commissioner or employee of the Commission shall, for personal gain, make use of any information acquired by him in the course of his duties for a period of five years after the date on which he ceased to be a Commissioner or employee.

(3) Any person who contravenes sub-section (1) or (2) commits an offence and is liable on conviction to the forfeiture of any proceeds accruing to him on account of the contravention and to a fine not exceeding Ten Million Naira or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

### **PART IX OFFENCES AND PENALTIES**

#### **168. Offences**

- (1) (1) No person shall –
  - (a) obstruct or assault any officer of the Commission or any person authorized by the Commission in the exercise of the powers conferred on to the Commission under this Act;
  - (b) refuse any officer of the Commission or any person authorized by the Commission access to any premises, facilities or retail outlets, or refuse





to submit to a search of any premises, facilities or retail outlets by any authorised officer or agent of the Commission;

- (c) refuse to acknowledge the receipt of any summons by the Commission issued and duly delivered to any person; or
- (d) fail to comply with any lawful demand, notice, order or requirement of an officer or authorised person of the Commission in the execution of the officer's duties under this Act.

(2) A person or company shall not -

- (a) engage in any Petroleum Operations without a valid licence or permit where such licence or permit is required under this Act;
- (b) unlawfully remove, destroy or damage any facilities used for Petroleum Operations;
- (c) furnish a statement or incomplete information calculated to mislead or wilfully delay or obstruct the Commission and its officers in the exercise of their duties;
- (d) obstruct or fail to cooperate with the Commission in its investigation of any suspected crime or corrupt practice;
- (e) act in breach of any relevant network code where applicable to such person or in violation of the provisions of this Act in relation to the allocation of available capacity, access and payment of tariffs in respect of the use of facilities or infrastructure; or
- (f) use or permit its facilities, infrastructure or equipment to be used for or in relation to the commission of any criminal or civil offence.

### **169. Penalty**

(1) Any person who violates the provisions of section 168 of this Act shall be guilty of an offence liable upon conviction to payment of a fine which shall be as prescribed by the Commission in regulations made pursuant to this Act.

(2) Where an offence has been committed under the provisions of paragraph (b) of sub-section (2) of section 168 of this Act, the company or person who committed the offence shall discontinue the operations pertaining to the affected infrastructure, facility or equipment until any damage, alteration, malfunction or loss has been rectified and all safety issues have been resolved.

### **170. Penalty not prescribed**

(1) Where no specific penalty is prescribed for any offence under this Act, a person who contravenes any of the provisions of this Act or any regulations issued pursuant to this Act commits of an offence and shall be liable on conviction -



- (a) as a first offender, to:
  - i. a fine not exceeding ~~N~~2,000,000.00 or to such other amount as may be prescribed in regulations issued pursuant to this Part;
  - ii. imprisonment for a period not exceeding two years; or
  - iii. both fine and imprisonment.
- (b) for subsequent convictions, to:
  - i. a fine not exceeding ~~N~~10,000,000.00 or such other amount as may be prescribed in regulations issued pursuant to this Part;
  - ii. imprisonment for a period not exceeding five years; or
  - iii. to both fine and imprisonment.

(2) The Commission may, where necessary, adjust the amount of the penalty stipulated in sub-section (1) of this section through Regulations, to reflect current rates of inflation.

#### **171. Penalty for refusal to furnish return or supply information**

Any person who:

- (a) fails or refuses to furnish a return or to supply information to the Commission or any other duly empowered lawful authority at the time and in the manner prescribed;
- (b) who furnishes a false or incomplete return;
- (c) supplies false or incomplete information; or
- (d) wilfully delays or obstructs the Commission, its officers, an inspector or police officer in the exercise of the powers or duties conferred or imposed on the Commission under this Act; or
- (e) conceals, fails or refuses, without reasonable cause, to supply information required by the Commission or any duly empowered lawful authority at the time and in the manner prescribed or when required to do so, commits an offence and liable to a fine not exceeding ~~N~~20,000,000.00 or to imprisonment for a period not exceeding one year or to both fine and imprisonment.

#### **172. Power to issue administrative fines**



Nothing in this Part shall derogate from the power of the Commission to issue administrative fines or to take other corrective actions, where a licensee breaches the provisions of this Act or the Terms and Conditions of its License or Permit.

## **PART X: INTERPRETATION**

### **173. Interpretation**

In this Act unless the context otherwise requires –

**“Act”** means the Petroleum Industry Administration Act;

**“Affiliate”** means the relationship that exists between two persons when one controls or is controlled by, an entity which controls, the other person, where ‘control’ means the direct or indirect ownership of 10 percent or more of the voting rights in a company, partnership or legal entity;

**“Arbitration and Conciliation Act”** means the Arbitration and Conciliation Act Cap A18 Laws of the Federation of Nigeria 2004.

**“Authorisation”** means any authorisation issued by the Commission for any activity in the petroleum industry;

**“Beneficial Owners”** means those persons who exercise ultimate effective control over a bidder or licensee;

**“Brownfield Acreages”** means any or all licences located in an area where an oil or gas accumulation that has matured to a production plateau or even progressed to a stage of declining production.

**“Certificate of Occupancy”** means a certificate of occupancy issued pursuant to the Land Use Act Cap L5 Laws of the Federation of Nigeria 2004;

**“Commercial Discovery”** means a discovery of crude oil, tar sands, heavy oils, extra heavy oils, natural gas or condensates within a petroleum prospecting licence which can be economically developed in the opinion of the licensee after consideration of all relevant economic factors normally applied for the evaluation of crude oil natural gas or condensate and development;

**“Commission”** means the “Nigeria Petroleum Regulatory Commission” as provided for in the Petroleum Industry Governance Act;

**“Company”** means any entity incorporated under any law in force in Nigeria or elsewhere;

**“Companies and Allied Matters Act”** means the Companies and Allied Matters Act CAP C20, Laws of the Federation of Nigeria, 2004;

**“Connection Agreement”** means an agreement setting out the terms on which individual, physical connections to the Transportation Network will be effected and



matters such as the configuration, pressure, technical parameters and cost of the connection;

“**Constitution**” means the Constitution of the Federal Republic of Nigeria 1999 (as amended);

“**Customary Court**” means the Customary Courts established by section 6(5) of the Constitution;

“**Customer**” means any ultimate purchaser of Gas or Petroleum Products for end-use consumption;

“**Customer Protection**” means the standards, practices and service protections for Customers including, but not limited to, those relating to pricing, service quality and standards, billing practices, performance reporting and any Regulations of the Commission that provide such protections;

“**Decommissioning**” or “**Abandonment**” refers to the approved process of cessation of operations of oil and gas wells, installations and structures, including shutting down installation’s operation and production, total or partial removal of installations and structures where applicable, chemicals, radioactive and all such other materials handling, removal and disposal of debris and removed items, environmental monitoring of the area after removal of installations and structures;

“**Department of Petroleum Resources**” means the Department of Petroleum Resources under the Ministry of Petroleum Resources;

“**Determination**” means a formal written decision of the Commission settling a dispute referred to it for resolution pursuant to Part VI of this Act;

“**Deep Offshore**” means areas offshore Nigeria within a water depth in excess of 200 meters;

“**Direction**” means a charge or instruction issued by the Commission to a Licensee or other person in the exercise of its powers or for other purposes connected with this Act;

“**Distribution**” or “**Distribute**” means the activity of conveying Petroleum Products or Gas to customers through low-pressure Pipelines;

“**Distribution Licence**” means a Licence granted pursuant to Part IV of this Act;

“**Distribution Network**” means a set of interconnected gas Distribution Pipelines;

“**Distribution Pipeline**” means a low-pressure Pipeline for the purposes of conveying Gas;

“**Distributor**” means the holder of a Distribution Licence;



**“Distributor of Last Resort”** means a person designated by the Commission to Distribute Gas within a specified area in the event that another Distributor is unable to do so, for whatever reason;

**“Downstream Gas Sector”** comprises the activities of marketing and distribution of processed natural Gas to Customers and comprises the activities of Transportation, Distribution and Supply of Gas to Customers. It includes the commercial extraction of liquefied petroleum gas and the sale and purchase of gas for industrial uses such as the production of compressed natural gas, electric power, gas to liquids, liquefied natural gas, methanol and fertilizer, but excludes Pipelines for the transportation of gas from Gas producing wells to facilities producing pipeline specification gas;

**“Domestic Gas Demand Requirement”** means an aggregate of the volume of gas required to meet the gas demand for strategic sectors within the domestic economy for a specified period;

**“Domestic Gas Supply Obligation”** means the obligations of an upstream gas producer to dedicate a specific volume of gas towards the Domestic Gas Demand Requirement as stipulated in section 35 of this Act and to deliver gas to a purchaser;

**“Domestic Crude Oil Supply Obligation”** means the obligations of an upstream crude oil producer to dedicate a specific volume of crude oil towards the domestic refineries as stipulated in section 36 of this Act;

**“Effective Date”** means the commencement date on which this Act comes into force;

**“Enforcement Order”** means an order issued by the Commission;

**“Exploration Licence”** means a licence issued under Section 5(1) of this Act;

**“Federal High Court”** means the Federal High Court established by section 249 of the Constitution;

**“Field”** includes an area consisting of a single reservoir or multiple reservoirs all grouped on, or related to, the same individual geological structural feature or stratigraphic condition, the surface area, although it may refer to both the surface and the underground productive formations;

**“Frontier Acreages”** means any or all licences located in an area defined as frontier in a Regulation issued by the Commission;

**“Frontier Basin”** means a potential petroleum province or area where the potential is unproven or only indicated by existing data.

**“Gas”** means lean gas and natural gas liquid compounds recovered after processing of natural gas, liquefied natural gas, compressed natural gas and natural gas liquid products.

**“Gazette”** means the Official Gazette of the Federal Government of Nigeria;



**“Government”** means the Federal Government of Nigeria;

**“Land Use Act”** means the Land Use Act, CAP L5, Laws of the Federation of Nigeria, 2004;

**“Licensing Round Guidelines”** means guidelines that are established by the Commission to govern the process of issuing licences during a licensing round;

**“Local Distribution Zone”** means an authorized area as specified in the Regulations, within which one Distributor may operate;

**“Market Operator”** means a person engaged in the organisation and administration of the trading of Wholesale Gas;

**“Measurement Point”** means a point or points in the Petroleum License, where crude oil, condensates or natural gas are being measured prior to transportation from the Petroleum License and shall generally be downstream of any upstream petroleum operations;

**“Midstream Crude Oil Operations”** means activities downstream of the Measurement Point(s) of Petroleum Licenses, or unrelated to Petroleum Licenses, with respect to the construction and operation of facilities for heavy oil; construction and operation of crude oil transport pipelines, including the related pumping stations; acquisition, operation, leasing, rental or chartering of barges, coastal or ocean going tankers, rail cars and trucks for the transport of crude oil; construction, leasing and operation of crude oil tank farms and other storage facilities; construction and operation of refineries; other construction and activities incidental thereto and related administration and overhead;

**“Midstream Gas Operations”** means activities downstream of the Measurement Point(s) of Petroleum Licenses or unrelated to Petroleum Licenses, with respect to the construction and operation of facilities for the processing, bulk storage, bulk transportation and bulk sale of Natural Gas;

**“Midstream Petroleum Liquids Sector”** means operations and activities relating to Midstream Crude Oil Operations and Midstream Petroleum Product Operations;

**“Midstream Petroleum Product Operations”** means activities downstream of the Measurement Point(s) Petroleum Licenses, or unrelated Petroleum Licenses with respect to the construction and operation of facilities for the refining, bulk storage, bulk transportation, terminalling and bulk sale of Petroleum Products;

**“Midstream Sector”** means operations and activities relating to Midstream Crude Oil Operations, Midstream Petroleum Product Operations and Midstream Gas Operations;

**“Minister”** means the Minister in charge of Petroleum Resources or any person designated as having responsibility for overseeing the Petroleum Industry in Nigeria;

**“Ministry”** means the Ministry of Petroleum Resources;



**“Model Clauses”** means standard Petroleum License terms and conditions adopted for a specific licensing round;

**“National Strategic Stock”** means the reserve of petroleum products kept in certain storage depots and facilities by the Government or on behalf of the Government to provide for emergency;

**“Network”** means a system of interconnected Transportation and/or Distribution Pipelines;

**“Nigeria”** means the territory of the Federal Republic of Nigeria inclusive of its land borders, territorial waters, continental shelf and exclusive economic zone;

**“Person”** means an individual, a firm, an unincorporated association or a body corporate;

**“Permit”** means an official certificate of permission to undertake an activity issued by the Commission;

**“Petroleum”** means hydrocarbons and associated substances as exist in its natural state in strata, and includes crude oil, natural gas, condensate, and mixtures of any of them, but does not include coal, bitumen and tar sands;

**“Petroleum Industry”** means the upstream, midstream and downstream petroleum industry in Nigeria;

**“Petroleum Licence”** means a licence issued under Section 5(2) of this Act;

**“Petroleum Liquids”** means crude oil, condensates and Petroleum Products;

**“Petroleum Operations”** means operations and activities conducted or undertaken by permit holders, licensees and, lessees in the Petroleum Industry;

**“Petroleum Products”** means materials derived from crude oil and natural gas processing such as Liquefied Petroleum Gas (LPG), asphalts, transportation fuels, fuel oils for heating and electricity generation and such other derivatives;

**“Pipeline”** means all parts of any tubular infrastructure through which petroleum is conveyed, including pipes, valves, and other equipment appurtenant to pipes;

**“President”** means President of the Federal Republic of Nigeria;

**“Production Period”** means the period commencing after the Exploration Period, or in the case of Brownfield Acreages and Oil Prospecting Licences, commencing on the date which a Petroleum Licence is granted, and ending on the expiry or earlier termination of the Petroleum License;

**“Public Service Obligations”** means specific obligations imposed by the Commission on Licensees and Lessees in relation to security of supply, social





service, economic development, environmental protection or the use of indigenous materials;

**“Qualified Person”** in respect of the issuance of a Licence, Lease or Permit to any Person for activities in the Upstream Petroleum Sector, Midstream and Downstream Gas Sector and Midstream and Downstream Petroleum Sector is such person as is designated by Regulations issued pursuant to this Act;

**“Regulations”** mean rules or order having force of law issued by the Commission or any competent authority in accordance with the provisions of this Act or any other enactment;

**“Retention Period”** means the period not exceeding five (5) years, in the first instance, granted by the Commission to the holder of a Petroleum License to retain rights to develop an area over which a Significant Gas Discovery has been made;

**“Retention Area”** means the area approved by the Commission under section 14(8) & (9);

**“Significant Gas Discovery”** means a discovery of natural gas that is substantial in terms of reserves and is potentially commercial, but cannot be declared commercial for one or more of the following reasons:

- (a) no markets for natural gas within Nigeria;
- (b) export markets need to be identified and developed;
- (c) no pipeline, processing or liquefaction capacity is available in existing systems where commercial conditions indicate that the best option for development is based on the future expansion of such systems or the use of such systems when capacity will become available in the future;  
or
- (d) where the natural gas discovery would only be commercial when jointly developed with other existing natural gas discoveries or potential future natural gas discoveries;

**“Supply”** in the context of Gas, means the sale of Gas by a Supplier to a purchaser of Gas;

**“Supplier”** means the holder of a Supply Licence;

**“Supplier of Last Resort”** means a person designated by the Commission to Supply specified purchasers in the event that another Supplier is, for whatever reason, unable to do so;

**“Supply Licence”** means a Licence granted pursuant to Part IV of this Act

**“Shipper of Natural Gas”** means a person that purchases services with respect to the transportation of natural gas by way of a Transportation Pipeline from the owner



or operator of the pipeline, whether or not the gas is transported for the person's own use.

**"Tariff"** means the price charged for the provision of a particular service, or group of services, in the Midstream Sector;

**"Third Party Access"** means the right of any person to have Gas or Petroleum Liquids conveyed by a Transportation Pipeline Owner, or a Transportation Network Operator or a Distributor from a point of entry into the Transportation or Distribution Network, as the case may be, to a point of exit from the Transportation or Distribution Network subject to the terms and conditions of the Network Code(s);

**"Transport"** or **"Transportation"** in the context of the midstream sector means the bulk transportation of Petroleum Liquids and Gas through a Transportation Pipeline or other form of conveyance;

**"Transportation Network"** means a system of interconnected high-pressure Transportation pipelines and other facilities required to carry out the function of Transportation;

**"Transportation Network Operation"** means the activities carried out by a Transportation Network Operator;

**"Transportation Network Operator"** means the holder of a Transportation Network Operator Licence;

**"Transportation Network Operator Licence"** means a Licence granted pursuant to Part IV or Part V of this Act;

**"Transportation Pipeline"** means a Pipeline used for the bulk conveyance of Petroleum Liquids and Gas under high-pressure;

**"Transportation Pipeline Owner"** means the holder of a Transportation Pipeline Owner Licence;

**"Transportation Pipeline Owner Licence"** means a Licence issued pursuant to Part IV or Part V of this Act that authorises the holder of the Licence to own, construct and maintain Pipelines for the Transportation of Petroleum Liquids or Gas;

**"Upstream Sector"** means the segment of the Petroleum Industry involving upstream crude oil operations and upstream gas operations;

**"Upstream Crude Oil Operations"** means activities upstream of the Measurement Points of a Petroleum License, related to the winning of crude oil and associated gas through wells or mining from petroleum reservoirs; drilling, completing and operation of wells producing crude oil and associated gas; construction and operation of gathering lines and manifolds for crude oil, associated gas and water; construction and operation of high and low pressure separators, separating crude oil, associated natural gas and water; construction and operation of facilities to treat or condition crude oil, associated natural gas and water; flaring of natural gas; compression and reinjection of associated natural gas in reservoirs of the petroleum prospecting and



production license; construction and operation of facilities for the production of electricity or heat from associated natural gas or other fuels as energy source for the winning of crude oil; injection or re-injection of water into the reservoirs of the petroleum prospecting and production license; construction and operation of fixed or floating platforms or other vessels required for the winning of crude oil from the petroleum prospecting and production license; construction and operation of fixed or floating storage facilities of crude oil in the lease area; transportation to and from the petroleum prospecting and production license of personnel, goods and equipment; metering of well stream fluids; metering of crude oil at the Measurement Point prior to transportation from the petroleum prospecting and production license; other construction and activities incidental thereto and related administration and overhead;

**“Upstream Gas Operations”** means activities upstream of the Measurement Points of a Petroleum License related to the winning of non-associated gas and condensates through wells from petroleum reservoirs; drilling, completing and operation of wells, producing natural gas and condensates; construction and operation of gathering lines and manifolds for natural gas, condensates and water; construction and operation of separators or condensers, separating natural gas, condensates and water; construction and operation of facilities to treat or condition natural gas, condensates and water; construction and operation of facilities for the production of electricity or heat from natural gas or other fuels exclusively for the purpose of serving as energy source for the winning of natural gas; injection or re-injection of water into the reservoirs of the petroleum prospecting and production license incidental to the winning of natural gas; construction and operation of fixed or floating platforms or other vessels required for the winning of natural gas from the petroleum prospecting and production license; transportation to and from the petroleum prospecting and production license of personnel, goods and equipment incidental to the winning of natural gas; metering of well stream fluids; metering of natural gas and condensates at the Measurement Point prior to transportation from the petroleum prospecting and production license; other construction and activities incidental thereto and related administration and overhead;

**“Upstream Gas Producer”** means the holder of a license or other legal authorisation permitting the extraction of Gas, whether or not in association with any other hydrocarbon;

**“Upstream Petroleum Operations”** means upstream crude oil operations, upstream gas operations and petroleum exploration operations;

**“UTM”** means the **Universal Transverse Mercator (UTM)** a conformal projection which uses a 2-dimensional Cartesian coordinate system to give locations on the surface of the Earth;

**“Wholesale Customer”** means a class of Customer designated in Regulations issued pursuant to this Act with the right to contract for and purchase a Supply of Wholesale Gas, crude oil or Petroleum Products within the prescribed volumetric threshold for wholesale or bulk purchase from any Supplier;

**“Wholesale Gas”** means Gas purchased by a Wholesale Customer or by a Supplier for resale.



## PART XI

### SHORT TITLE AND COMMENCEMENT

#### 174. Short Title and Commencement

- (1) This Act may be cited as the **Petroleum Industry Administration Act, 2018.**
- (2) The provisions of this Act shall commence on the Effective Date.

## PART XII

### REPEALS, CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL AND SAVINGS PROVISIONS

#### 175. Consequential Amendments

- (1) Upon the coming into force of this Act, if the provisions of any other enactment or law, including but not limited to the enactments specified in sub-section (a) of this section, are inconsistent with the provisions of this Act, the provisions of this Act shall prevail and the provisions of that other enactment or law shall, to the extent of that inconsistency, be void in relation to matters provided for in this Act.

#### 176. Repeals

- (1) From the Effective Date, the following enactments are repealed –
  - (a) Hydrocarbon Oil Refineries Act No. 17 of 1965, CAP H5 Laws of the Federation of Nigeria 2004
  - (b) Associated Gas Re-injection Act, CAP A25 Laws of the Federation of Nigeria, 2004;
  - (c) Motor Spirits (Returns) Act, CAP M20 Laws of the Federation of Nigeria, 2004;
  - (d) Petroleum Act, CAP P10, Laws of the Federation of Nigeria, 2004;
  - (e) Petroleum (Amendment) Decree No. 23 of 1996;
  - (f) Petroleum (Amendment) Decree No. 22 of 1998; and
  - (g) Petroleum (Special) Trust Fund Act, CAP P14 Laws of the Federation of Nigeria, 2004.
  - (h) Petroleum Production and Distribution (Anti-Sabotage) Act CAP P12 Laws of the Federation of Nigeria, 2004
- (2) From the Effective Date, section 7(1) of the Oil Terminals Dues Act, CAP O8 Laws of the Federation of Nigeria 2004 is hereby repealed

#### 177. Savings Provisions



(1) Any subsidiary legislation or Regulation, guideline, directive and order made pursuant to any principal legislation repealed or amended by this Act, shall, in so far as it is not inconsistent with this Act, continue in force *mutatis mutandis* as if they had been issued by the Commission under this Act until revoked or replaced by an amendment to this Act or by subsidiary legislation made under this Act, and shall be deemed for all purposes to have been made under this Act.

(2) Any oil prospecting licence, oil mining lease or marginal field granted or awarded under or pursuant to the Petroleum Act 1969 shall continue to have effect, notwithstanding the repeal of the Petroleum Act 1969, but subject to the provisions of this Act and to any regulations made thereunder, except as regards the duration of the licence, lease or marginal field, relinquishment provisions, and any agreed work programme with respect to an Oil Prospecting Licence.

(3) At the end of the term of an oil prospecting licence granted under the Petroleum Act 1969, the holder of the licence may seek to convert its licence to a Petroleum Licence, where it has fulfilled the terms and conditions for conversion to an Oil Mining Lease under the Petroleum Act 1969. Any Petroleum Licence issued pursuant to this provision shall commence in the Production Period.

(4) Any other licence, lease, certificate, authority or permit which was issued by the Department of Petroleum Resources or the Petroleum Products Pricing and Regulatory Authority, as the case may be, and which had effect immediately before the commencement of this Act shall continue to have effect, *mutatis mutandis*, for the remainder of its period of validity as if it had been issued by the Commission.

(5) Any tariff, price, levy, or surcharge which was payable to the Department of Petroleum Resources or the Petroleum Products Pricing and Regulatory Authority prior to the Effective Date shall continue in force until the expiration of the term of the said tariff, price, levy, or surcharge, or until alternative provisions are made pursuant to the provisions of this Act or any regulations made under it, whichever is earlier.

(6) Within three months from the Effective Date, the Minister on the advice of the Commission may make any further transitional and savings provisions as are consistent with the transitional and savings provisions in this Act.



## **First Schedule**

### **[Section 34]**

#### **Prohibition of Gas Flaring**

##### **1. Producing Fields**

(1) Notwithstanding any provision to the contrary under this Act, every licensee engaged in the production of oil and gas in Nigeria as of the date of commencement of this Act shall, within six months of the commencement of this Act submit to the Commission for approval -

(a) a viable scheme for the sustainable utilisation of all associated gas produced within its licence area;

(b) a plan for re-injection of associated gas produced within its licence area:

Provided that such scheme shall exclude any Flare Gas Volume that is being offered in a bid process conducted by the Federal Government or has been assigned for commercialisation by the Federal Government to a third party.

(2) The Commission may request a licensee to provide all data relating to the gas resources within its licence area including Flare Gas Data.

(3) Where a request is made pursuant to the provisions of Paragraph 5(1) of this Schedule, every licensee shall provide such data and in the format required within 30 calendar days of the date of the request.

##### **2. Supply of inaccurate data**

Any person who, acting on behalf of a licensee supplies inaccurate or incomplete data to the Commission or to any other person duly empowered by a lawful authority, commits an offence and shall be liable upon conviction to a fine of N50,000.00 or to imprisonment for a maximum term of six months or to both fine and imprisonment.

##### **3. Daily record of gas produced**

(1) Each licensee shall maintain a daily record of all natural gas produced in association with crude oil from the licence area.

(2) Each licensee shall submit the records gathered in respect of all natural gas produced in association with crude oil from the licence area within twenty-one (21) days following the end of each month to the Commission.

(3) The format and manner of all logs shall be in conformity to the Metering and Data Collection Standards issued by the Commission.

##### **4. Maintenance of daily logs of gas flaring**

(1) Each licensee shall maintain a daily log of the flaring and venting of natural gas produced in association with crude oil and shall submit the logs to the Commission within twenty-one (21) days following the end of each month.

(2) All logs shall be based on data retrieved from metering equipment that shall be installed by each licensee in its respective facilities and shall include the date, time, duration, rates, volumes, and gas source or type, such as sour inlet gas or acid gas, for each flaring.





- (3) The format and manner of all logs shall be in conformity to the Metering and Data Collection Standards issued by Commission.
- (4) Each licensee shall keep copies of logs in safe custody for no less than thirty-six (36) months.

#### **5. Submission of annual report**

Each licensee shall prepare and submit to the Commission an annual report, which shall be submitted each year by March 31 for the previous year. Such annual report shall include information regarding the volume of Flare Gas utilised at the Flare Site, the volume of all such Flare Gas flared by the Permit Holder, and the volume of all natural gas vented by the Permit Holder.

#### **6. Preparation and release of annual report on the Commission's website**

The Commission shall prepare and release on its website each year by June 30 an annual report for the previous year, describing:

- (a) flaring and venting by licensees, including the total volume of Flare Gas and the volume of Flare Gas as a percentage of all natural gas produced for each of the prior two years;
- (b) associated gas produced in association with crude oil in order to calculate the Gas Oil Ratio for each of the prior two years;
- (c) associated gas consumed by the lessee or licensee for own consumption for each of the prior two years;
- (d) a comparison of upstream petroleum industry flaring and venting performance by licensees against data from previous years, if available;
- (e) a ranking of licensees by the Associated Gas Utilisation Factor;
- (f) a comparison of volume of Flare Gas utilised and gas flared and vented by licensees against data from previous years, if available; and
- (g) the payments received in relation to the flaring of natural gas produced in association with crude oil by each lessee or licensee.

#### **7. Authorisation for continued flaring**

- (1) No operator shall establish a Gas facility in Nigeria without obtaining authorisation from the Commission under this Act.
- (2) Every licensee shall submit to the Commission for authorisation, a Field Development Program that provides a solution acceptable to the Commission in respect of any potential occurrence of gas flaring within the licence area.
- (3) The Commission may refuse authorisation where the project may have a significant negative environmental impact or the Commission may impose conditions to mitigate the adverse effect imposed in the field development authorisation.
- (4) The authorisation mentioned under subparagraph (2) of this Paragraph shall specify the maximum volume of gas to be flared on an auditable program prepared by the licensee.
- (5) In the event that an authorisation is granted, such authorisation shall allow flaring for no longer than a period of three months.





(6) Every licensee shall apply to the Commission for authorisation to flare gas in the third quarter of the preceding year. Such application for consent shall include a forecast of volumes for the following flare and vent categories;

- (a) Base load flare;
- (b) Flaring from operational or mode changes;
- (c) Emergency shutdown/process trip flares; and
- (d) Un-ignited vents including an estimated annual average composition of vented streams.

(7) The Commission may grant an authorisation to any Licensee –

- (a) to allow the flaring or venting gas for a period of not more than ninety (90) days –
  - (i) where the flaring is required to safeguard the health and safety of persons in the exploration or production area; or
  - (ii) to prevent damage to the property of any person in the exploration or development area; or

(b) to allow the flaring or venting of gas for a period of not more than thirty (30) days to allow for the commissioning of a facility;

(8) A licensee may flare gas without an authorisation granted pursuant to subparagraph (1) of this Paragraph –

(a) in the case of an emergency, provided that the licensee shall –

(i) not flare gas for more than forty-eight (48) continuous hours unless the Commission approves. The Commission may specify a limit of less than forty-eight (48) hours to prevent air quality degradation;

(ii) not flare gas from a facility for more than one hundred and forty-four (144) hours during any calendar month unless the Commission approves;

(iii) not flare gas beyond the time required to eliminate an emergency;

(iv) within seven (7) days from the occurrence of the emergency, submit to the Commission a report in the prescribed form detailing the nature and circumstances that caused the emergency situation and the actions taken or required to eliminate the emergency;

(b) during the unloading or cleaning of a well, drill-stem testing, production testing or other well evaluation testing for no more than forty-eight (48) cumulative hours per testing operation on a single completion. The Commission may allow less time to prevent air quality degradation or more time if the Licensee requires additional time to evaluate reservoir parameters;

(c) if it is necessary in connection with the start-up or shut down of a facility.

## **8. Gas Flaring Fees**

(1) Where 10,000 barrels or more of oil is produced per day in any licence area, the licensee shall be liable to the Federal Government for a minimum flare payment of \$2.00 (two United States Dollars) or its equivalent in naira at the prevailing exchange rate. per one thousand standard cubic feet of gas flared within such licence area, irrespective of whether the flaring is routine or non- routine Flaring; provided however, that there shall be no liability for the payment where the flaring was caused by an act of war, community disturbance, insurrection, storm, flood, earthquake or other natural phenomenon which is beyond the reasonable control of the licensee.

(2) Where less than 10,000 barrels or more of oil is produced per day in any licence area, the licensee shall be liable to the Federal Government for a minimum flare



payment of \$0.50 (fifty United States Cents) or its equivalent in naira at the prevailing exchange rate. per thousand standard cubic feet of gas flared irrespective of whether the flaring is routine or non-routine Flaring; provided however, that there shall be no liability for the payment where the flaring was caused by an act of war, community disturbance, insurrection, storm, flood, earthquake or other natural phenomenon which is beyond the reasonable control of the lessee or licensee.

(3) Notwithstanding the provisions of subparagraphs (1) and (2) of this Paragraph, no flare payment shall become due in respect of an agreed volume of flare gas that the licensee is committed to supply to a third party in a deliver or pay agreement, except to the extent that the licensee does not comply with the requirements of those arrangements.

Provided that, any fee due under this Paragraph shall be subject to the same procedure as for payment of royalties to the Federal Government under the Petroleum Industry Fiscal Act.

(4) Where the Commission grants an extension to any authorisation granted under Paragraph 7 of this Schedule, the fee payable by the lessee or licensee under subparagraph (1) of this Paragraph shall attract a surcharge on the total volume of gas flared as follows:

- (a) 10% during the first year;
- (b) 15% during the second year;
- (c) 20% during the third year; and
- (d) 25% during the fourth year and for every subsequent year.

## **9. Measurement of Gas Flaring**

(1) Prior to the commencement of hydrocarbon production, every licensee shall on every facility from which gas may be flared or vented, install metering equipment which shall be manufactured, operated calibrated and inspected in conformity to the Metering and Data Collection Standards issued by the Commission.

(2) Licensees already engaged in the production of oil and gas in Nigeria as of the date of commencement of this Act shall comply with sub-paragraph (1) of this paragraph within six (6) months of the commencement of this Act.

(3) An officer of the Commission shall at all times be present when a metering equipment for measuring flared or vented gas volumes is being calibrated, re-calibrated, tested, compared, measured, or weighed against a standard approved by the Commission; and any such calibration shall be in accordance with accepted methods and procedures previously agreed to by the Commission.

(4) If any metering equipment is at any time found to be false or unjust or inaccurate to the extent of more than [one percent] –

- (a) the metering equipment shall be deemed to have existed in that condition during the period of three (3) months prior to the discovery unless the Licensee can prove to the reasonable satisfaction of the Commission that such error could not have possibly occurred over that period or that the period that has elapsed since the last occasion upon which the appliance was examined or tested, whichever is less; and
- (b) the amount payable pursuant to Paragraph 5 of this Schedule or any liability arising pursuant to Paragraph 9 of this Schedule in respect of the period during which the appliance is deemed to have so existed shall be adjusted accordingly.



(5) The Licensee shall not repair, maintain, or make any alterations in the metering equipment or in the method or methods of measurement approved by the Commission without first informing the Commission and in every case, any such repairs, maintenance or alterations shall be carried out in the presence of an officer of the Commission.

(6) The Commission shall have the right to specify the frequency at which all metering equipment shall be calibrated or tested, and notwithstanding any such specification, may test or demonstrate the accuracy of any appliance or equipment at any time, with or without prior notice to the Licensee.

## **10. Reporting**

(1) A licensee shall in respect of each field within its licence area, in a format from-time to time approved by the Commission, keep full and accurate records of:

(a) daily volumes of gas flared or vented;

(b) number of hours of flaring and venting;

(c) gas composition or the average flared/vented gas density;

(d) reasons for flaring or venting;

(e) a list of the wells contributing to flaring or venting along with the gas-oil ratio data; and

(f) such further particulars and statistics relating to gas flaring or venting as the Commission may from time to time require.

(2) Licensees must keep the records required under sub-paragraph 1 of this Paragraph for at least five (5) years.

(3) Licensee shall furnish within twenty-one (21) days after the end of each month to the Director, in a form from time to time approved by the Commission, a report containing the information required under with sub-paragraph (1) of this Paragraph that is relevant to the preceding [quarter].

## **11. Power to enter to carry out investigations**

Any person or persons authorised by the Commission shall be entitled at all reasonable times to enter into and upon any part of the relevant area (or any other location, premises, structure or business place occupied by the licensee for the purpose of facilitating or carrying out its operations in the relevant area) –

(a) to carry out investigations and inspections necessary to ensure that the requirements of this Schedule are complied with; and

(b) to inspect and make abstract or copies of any logs or records which the Licensee is required to make or keep in accordance with the provisions of this Schedule.

## **12. Penalty for flaring or venting of gas without a permit**

(1) Any licensee that flares or vents gas other than as permitted under Paragraph 7 of this Schedule commits an offence under this Act and shall be liable on conviction to a fine equal to two hundred percent (200%) of the fee payable under Paragraph 8 of this Schedule for every thousand standard cubic feet of gas flared in violation of this Act. For subsequent offences, the licensee shall, in addition to any fine imposed



under this Paragraph, be liable on conviction to forfeiture of the licence covering the field or fields in relation to which the offence was committed.

(2) In addition to the penalty specified in sub-paragraph (1) of this Paragraph, the Commission may order the withholding of all or part of any entitlements of any offending person towards the cost of completion or implementation of a desirable gas utilization scheme, or the repair or restoration of any reservoir in the field in accordance with good oil-field practice.

### **13. Penalty for failure to install metering equipment**

(1) Where a licensee fails to:

(a) provide flare gas data in response to a request made under Paragraph 1(3) of this Schedule,

(b) Supply accurate or complete flare gas data in response to a request made under Paragraph 3 of this Schedule,

(c) prepare, maintain or submit the logs, records or reports required under Paragraph 4 of this Schedule within the time stipulated to do so by the Commission, or

(d) install metering equipment within the time required to do so by the Commission under Paragraph 9 of this Schedule, the licensee shall, subject to Paragraph 8(1) of this Schedule, be required to pay an additional sum of \$2.50 per thousand standard cubic feet of gas flared within the licence area above the payment required to be made in paragraph 8(1) for each day that the licensee fails to comply with any requirement under this Schedule.

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### **14. Power to make regulations**

(1) The Commission may make regulations-

(a) prescribing anything requiring to be prescribed for the purposes of this Schedule; and

(b) as are necessary to give proper effect to the provisions of this Schedule.

### **15. Provisions to Apply in the Exclusive Economic Zone**

The provisions of this Schedule shall apply to all lands covered by water which forms part of the the Exclusive Economic Zone of Nigeria.

### **16. Miscellaneous Provisions**

The National Assembly shall exercise its constitutional powers to deal with failure of the Commission to comply with the provisions of this Act.

### **17. Power to review**

The Commission's powers granted under this Schedule may be reviewed and re-appraised after every two years.

### **18. Interpretation**

In this Schedule unless the context otherwise requires –



"Exclusive Economic Zone" has the same meaning assigned thereto in the Exclusive Economic Zone Act Cap. E17 Laws of the Federation of Nigeria 2004;

"Flare Gas" means any natural gas produced in association with crude oil by a Producer and finally diverted toward a Flare Site by the Producer with the intent that the natural gas will be flared;

"Flare Gas Data" means the dynamic pressure, volume and temperature (PVT) data, and other logs and records generated in the activities which shall include:

- (a) gas volumes;
- (b) oil volumes;
- (c) flow rates;
- (d) gas oil ratio;
- (e) flow pressure & temperature;
- (f) data in relation to a Flare Site, including field name; Producer(s); field operator; Flare Site location; terrain; coordinates; Oil Mining Lease number or Marginal Field License details; available infrastructure; and geophysical maps, models, interpretations, and reports relating to the above data;
- (g) historical Flare Gas data per field or facility, separated into Routine and Non-Routine Flaring;
- (h) historical Flare Gas data per flare stack, separated into Routine Flaring and Non-Routine Flaring;
- (i) historical oil production data per field or facility;
- (j) historical gas production data per field or facility;
- (k) historical gas utilisation data per field or facility;
- (l) historical water production per field facility;
- (m) forecast oil production scenarios per field or facility;
- (n) forecast gas production scenarios per field or facility;
- (o) forecast water production scenarios per field or facility;
- (p) oil reserve data per field;
- (q) oil reserve data aggregated for each flaring facility;
- (r) gas reserve data per field;
- (s) gas reserve data aggregated for each flaring facility;
- (t) flared gas composition by stack; and
- (u) any other data that may be required by the Commission;

"Flare Site" means a location where natural gas produced in association with crude oil is flared, commencing at a flare header and going to the point of the flare within a license area or within an oil terminal or refinery;

"Gas Facility" encompasses the equipment between the gas wells and the pipeline or other transportation method;

"Gas Flaring" means any flaring of natural gas associated with the process of oil production and includes continuous production flaring, non-continuous flaring routine flaring, safety flaring,

"Metering and Data Collection Standards" means the associated gas and Flare Gas metering and data collection standards and requirements issued by the Commission;



“Projects” means gas related projects; and

"Returns" means the returns on the volume of gas flared or vented for the period under review.

