

**THE PETROLEUM INDUSTRY BILL, 2020**

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**THE PETROLEUM INDUSTRY BILL, 2020**  
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**A BILL  
FOR  
AN ACT TO PROVIDE LEGAL, GOVERNANCE, REGULATORY AND FISCAL FRAMEWORK  
FOR THE NIGERIAN PETROLEUM INDUSTRY, THE DEVELOPMENT OF HOST  
COMMUNITIES AND FOR RELATED MATTERS**

ENACTED BY THE National Assembly of the Federal Republic of Nigeria as follows –

Commencement [            ]

**CHAPTER 1  
GOVERNANCE AND INSTITUTIONS**

**Part I  
VESTING AND OBJECTIVES**

**1. Vesting of petroleum**

The property and ownership of petroleum within Nigeria and its territorial waters, continental shelf and Exclusive Economic Zone is vested in the Government of the Federation of Nigeria.

**2. Objectives**

The objectives of this Chapter are to -

- (a) create efficient and effective governing institutions, with clear and separate roles for the petroleum industry;
- (b) establish a framework for the creation of a commercially oriented and profit-driven national petroleum company;
- (c) promote transparency, good governance and accountability in the administration of the petroleum resources of Nigeria; and
- (d) foster a business environment conducive for petroleum operations.

**Part II**

**MINISTER OF PETROLEUM**

**3. Powers of the Minister**

(1) The Minister shall -

- (a) formulate, monitor and administer government policy in the petroleum industry;
- (b) exercise general supervision over the affairs and operations of the

- petroleum industry in accordance with the provisions of this Act;
  - (c) report developments in the petroleum industry to the government;
  - (d) represent Nigeria at international organisations on petroleum matters;
  - (e) promote an enabling environment for investment in the Nigerian petroleum industry;
  - (f) negotiate treaties or other international agreements on matters pertaining to petroleum on behalf of the Government;
  - (g) upon the recommendation of the Commission, grant Petroleum Prospecting Licences and Petroleum Mining Leases through the processes established in this Act;
  - (h) upon the recommendation of the Commission and pursuant to the provisions of this Act and the Regulations, revoke and assign interests in Petroleum Prospecting Licences and Petroleum Mining Leases;
  - (i) delegate in writing to the Chief Executive of the Commission or Authority any power conferred on the Minister by or under this Act;
  - (j) upon the recommendation of the Commission or Authority approve the fees for services rendered by the Commission or Authority in Regulations;
  - (k) upon the recommendation of the Commission or the Authority, direct in writing the suspension of petroleum operations in any area -
    - (i) until arrangements to prevent danger to life or property have been made to his satisfaction, or
    - (ii) where in his opinion, a contravention of this Act or any Regulation made under this Act has occurred or is likely to occur.
- (2) The Minister may order a cutback of the levels of crude oil or condensate production in the context of international oil pricing agreements supported by Nigeria.
- (3) The Minister shall have rights of pre-emption of petroleum and petroleum products marketed under any licence or lease in the event of a national emergency under the First Schedule to this Act.
- (4) The Minister may give general policy directives to the commission on matters concerning upstream petroleum operations and to the authority on matters relating to midstream and downstream petroleum operations in line with the provisions of this Act and the Commission and the Authority shall comply with such directives.
- (5) The Minister shall cause the general policy directives issued pursuant to subsection (4) of this section to be published in the Gazette.

## Part III

### THE COMMISSION

#### 4. Establishment of the Nigerian Upstream Regulatory Commission

- (1) There is established the Nigerian Upstream Regulatory Commission (the "Commission") which shall be a body corporate with perpetual succession and a common seal.
- (2) The Commission shall have the power to acquire, hold and dispose of property, sue and be sued in its own name.
- (3) The Commission shall be responsible for the technical and commercial regulation of upstream petroleum operations.

#### 5. Application of this Part

The objects and functions of the Commission in this Part are limited to upstream petroleum operations.

#### 6. Objectives of the Commission

The objectives of the Commission shall be to -

- (a) regulate upstream petroleum operations including technical, operational and commercial activities;
- (b) ensure compliance with all applicable laws and Regulations governing upstream petroleum operations;
- (c) ensure that upstream petroleum operations are carried out in a manner to minimise waste and achieve optimal government revenues;
- (d) promote healthy, safe, efficient and effective conduct of upstream petroleum operations in an environmentally acceptable and sustainable manner;
- (e) ensure efficient, safe, effective and sustainable infrastructural development of upstream petroleum operations;
- (f) determine, administer and ensure the implementation and maintenance of technical standards, codes, practices and specifications applicable to upstream petroleum operations pursuant to good international petroleum industry practices;
- (g) implement government policies for upstream petroleum operations as directed by the minister of petroleum and in accordance with this act;
- (h) promote an enabling environment for investment in upstream petroleum operations;
- (i) ensure strict implementation of environmental policies, laws and regulations for upstream petroleum operations;
- (j) ensure the implementation of national policies for upstream petroleum



- operations; and
- (k) implement such other policies and objectives as are consistent with the provisions of this act.

## **7. Technical regulatory functions of the Commission**

The technical regulatory functions of the Commission include the following -

- (a) enforce, administer and implement laws, regulations and policies relating to upstream petroleum operations;
- (b) ensure compliance with applicable national and international petroleum industry policies, standards and practices for upstream petroleum operations;
- (c) establish, monitor, regulate and enforce health, safety and environmental measures and standards relating to upstream petroleum operations including –
  - (i) management of petroleum reserves and installations, and
  - (ii) exploration, development and production activities within the onshore, offshore and exclusive economic zone of Nigeria;
- (d) administer, monitor and enforce compliance with the terms and conditions of leases and licences granted and permits and authorisations issued to a company in respect of upstream petroleum operations;
- (e) set, define and enforce approved standards and regulations for design, construction, fabrication, operation and maintenance of plants, installations and facilities used or to be used in upstream petroleum operations including –
  - (i) crude oil and natural gas evaluation and management,
  - (ii) upstream natural gas gathering,
  - (iii) natural gas treatment, and
  - (iv) the elimination of natural gas flaring and venting;
- (f) keep public registers of –
  - (i) licences and leases granted by the Minister and permits and other authorisations issued by the Commission,
  - (ii) beneficial ownership, and
  - (iii) award, renewal, assignment, amendment, suspension and revocation thereof;
- (g) carry out enquiries, tests, audits or investigations and take other steps to monitor the activities of licensees, lessees or permit holders;
- (h) establish and enforce standards relating to upstream petroleum operations;
- (i) undertake evaluation of national reserves and develop policies for prudent reservoir management practices;
- (j) maintain a Nigerian petroleum industry data bank comprising of materials, information and data acquired by, or submitted to, the Commission in the exercise of its statutory and regulatory functions;

- (k) require lessees, licensees and permit holders to furnish and publish specified information relating to upstream petroleum operations in this Act and the National Data Repository Regulation, 2020;
- (l) supervise and ensure accurate calibration and certification of equipment used for metering upstream petroleum operations and issue certificates of quality and quantity for petroleum produced;
- (m) publish reports and statistics on upstream petroleum operations to promote the growth of the petroleum industry;
- (n) advise the Minister on fiscal, operational, technical and other matters to enhance the upstream petroleum operations;
- (o) issue permits and other authorisations as may be necessary for technical activities, including -
  - (i) seismic operations,
  - (ii) drilling operations, and
  - (iii) design, construction and operation of facilities for upstream petroleum operations;
- (p) establish special laboratories to provide data storage and testing, quality assurance and certification for upstream petroleum operations;
- (q) perform technical evaluation and assessments regarding submissions made to the Commission by licensees, lessees or permit holders involved in upstream petroleum operations;
- (r) keep records, data and reports obtained from upstream petroleum operations, as may be required under any Act or regulation and give directive to any person, company or entity in that regard;
- (s) manage and administer data regarding unallocated acreage;
- (t) conduct bidding rounds for the award of petroleum prospecting licences and petroleum mining leases pursuant to this act and applicable regulations;
- (u) when requested, provide assistance to parties conducting upstream petroleum operation, where in the sole opinion of the commission such assistance is merited;
- (v) approve field development plans and commercial terms for upstream petroleum operations;
- (w) compute, determine, assess and ensure payment of royalties, rents, fees, and other charges for upstream petroleum operations as stipulated under this Act and any Regulations;
- (x) establish parameters and codes of conduct for licensees, lessees or permit holders in the upstream petroleum operations;
- (y) monitor the financial viability of licensees, lessees or permit holders with respect to upstream petroleum operations;
- (z) develop, maintain and publish a database of upstream petroleum operations; and
- (aa) perform such other function as may be necessary to give effect to the

provisions of this Act.

## **8. Commercial regulatory functions of the Commission**

The commercial regulatory functions of the Commission shall be to -

- (a) review and approve the commercial aspects of field development plans and other related upstream petroleum operations;
- (b) supervise costs and cost control in upstream petroleum operations;
- (c) review and approve commercial aspects of work programmes and field development plans for all licensees, lessees or permit holders in upstream petroleum operations, including the NNPC and NNPC Limited;
- (d) develop cost studies and benchmarks for the evaluation of upstream petroleum operations taking into account petroleum industry specific issues, including field size, reservoir depth, location of operations, technology applied, production methods and petroleum quality;
- (e) implement cutbacks of crude oil or condensate production ordered by the Minister; and
- (f) make arrangements with NNPC Limited regarding any functions under section 64 of this Act.

## **9. Functions of the Commission for frontier basins**

- (1) The functions of the Commission with respect to Frontier Basins shall be to -
  - (a) promote the exploration of the frontier basins of Nigeria;
  - (b) develop exploration strategies and portfolio management for the exploration of unassigned frontier basins in Nigeria;
  - (c) identify opportunities and increase information about the petroleum resources base within frontier basins in Nigeria;
  - (d) undertake studies, analyse and evaluate unassigned frontier basins in Nigeria.
- (2) Where data acquired and interpreted under a Petroleum Exploration Licence is, in the judgment of the Commission, requires testing and drilling of identifiable prospects and leads, and no commercial entity has publicly expressed an intention of testing or drilling such prospects, the Commission may engage the services of a competent person to drill or test such prospect and leads on a service fee basis.
- (3) There shall be maintained, for the purpose of this section, a Frontier Exploration Fund.
- (4) The Frontier Exploration Fund shall be 10% of rents on petroleum prospecting licences and petroleum mining leases.
- (5) The Commission shall manage the Frontier Exploration Fund in accordance with regulations made under this Act.

## 10. Powers of the Commission

The Commission shall have power to -

- (a) enforce the provisions of any –
  - (i) regulation made pursuant hereto, with respect to upstream petroleum operations,
  - (ii) enactments with respect to the upstream petroleum industry made prior to the coming into force of this Act and any Regulations made pursuant to powers given under them; and
  - (ii) regulations, policies or guidelines formerly administered by the department of petroleum resources or the petroleum inspectorate, with respect to upstream petroleum operations;
- (b) seal up any premises, pursuant to section 217 of this Act, including any facility or plant engaged in upstream petroleum operations, where there has been a contravention of this Act or any regulations made under this Act.
- (c) issue guidelines on the generation, use, storage and transportation of radioactive sources and materials, in respect of upstream petroleum operations in consultation with the Nigerian Nuclear Regulatory Authority;
- (d) set standards to promote the adoption of new technologies for upstream petroleum operations;
- (e) require lessees, licensees and permit holders to publish specified and non-proprietary information relating to upstream petroleum operations;
- (f) issue guidelines in accordance with the provisions of this Act or any other regulation in respect of upstream petroleum operations;
- (g) with the approval of the Minister, renew and suspend licences and leases in accordance with provisions of this Act;
- (h) within the jurisdiction of the Commission, have access to -
  - (i) areas or rights of way regarding licences, leases or any related offices or buildings where information or data are available for inspection under this Act; and
  - (ii) all installations to which this Act applies, including plants and stations of every description, for the purpose of inspecting the operations conducted therein and enforcing the provisions of this Act and any regulations made under it.
- (i) impose on a petroleum prospecting licence, petroleum exploration licence or any petroleum mining lease to which this Act applies, special terms and conditions not inconsistent with this Act at the grant or renewal of the licence or lease;
- (j) subject to section 3(1)(j) of this Act, make regulations pertaining to operations, monitoring, lease management and any other matter in respect of upstream petroleum operations as the Commission may deem necessary after due stakeholder consultation pursuant to section 216 of this Act, including regulations related to dispute resolution; and

- (k) do such other things as are necessary and expedient for the effective and full discharge of any of its functions under this Act.

## **11. Governing Board of the Commission**

- (1) There is established a Governing Board (the “ Board of the Commission”) which shall be responsible for the policy and general administration of the Commission.
- (2) The Board of the Commission shall consist of the following members -
  - (a) one non-executive chairman;
  - (b) two non-executive commissioners;
  - (c) the chief executive of the Commission (the “Commission Chief Executive”);
  - (d) two other executive commissioners who are responsible for Finance and Accounts and Exploration and Acreage Management;
  - (e) one representative of the Authority not below the rank of director;
  - (f) one representative of the Ministry not below the rank of director; and
  - (g) one representative of the Ministry of Finance not below the rank of director.
- (3) Appointments to the Board of the Commission under subsection (2) of this section shall be made by the President and be subject to confirmation by the Senate, except for the appointments of ex-officio members under subsection (2) (e), (f) and (g) of this section.
- (4) A person appointed pursuant to sub-section (2) (a) and (b) of this section shall have at least 15 years post-qualification experience in petroleum or other relevant sector of the economy and shall hold office for a period of 5 years and may be re-appointed for a further term of 5 years, on such terms and conditions as may be specified in the letter of appointment.
- (5) Subject to subsection 0 of this section and section 18(7) of this Act, a commissioner shall hold office for 5 years and may be re-appointed for a further term of 5 years.
- (6) A non-executive commissioner shall hold office on part-time basis.
- (7) The Board of the Commission may authorise in writing any commissioner, committee of the Board of the Commission, the Commission Chief Executive or any other officer or employee of the Commission, to exercise any power or carry out any duty or function of the Commission under this Act or regulation made under this Act.
- (8) The proceedings of the Board of the Commission and other ancillary matters

shall be as prescribed by Regulation made under this Act.

## **12. Functions of the Board of the Commission**

The Board of the Commission shall -

- (a) be responsible for the formulation of policy, supervision and giving strategic direction to the Commission;
- (b) provide general guidance for the carrying out of the functions of the Commission;
- (c) review and approve the business, strategic and operating plans of the Commission;
- (d) consider and approve the annual budget of the Commission before submission to the National Assembly for appropriation;
- (e) approve the management accounts and audited accounts of the Commission and consider the management letter from the external auditors;
- (f) determine the terms and conditions of service of employees of the Commission;
- (g) recommend remuneration, allowances, benefits and pensions of employees of the Commission in consultation with the National Salaries, Incomes and Wages Commission, having regard to the -
  - (i) specialised nature of work to be performed by the Commission;
  - (ii) need to ensure the financial self-sufficiency of the Commission; and
  - (iii) remuneration and allowances paid in the private sector in upstream petroleum operations to individuals with equivalent responsibilities, expertise and skills;
- (h) structure the Commission into such number of departments as it deems fit for the effective discharge of the functions of the Commission; and
- (i) carry out such other functions as may be necessary for the efficient and effective administration of the Commission under this Act.

## **13. Remuneration and allowances of the Board of the Commission**

- (1) Commissioners shall be paid from the funds of the Commission such remuneration and allowances as applicable.
- (2) The Commission shall comply with the policy and guidelines of the National Salaries, Incomes and Wages Commission regarding remunerations.

## **14. Suspension or removal of members of the Board of the Commission**

A member of the Board of the Commission may be suspended or removed from office by the President, where the member -

- (a) is found to –
  - (i) be unqualified for appointment under section 11 of this Act,
  - (ii) have been unqualified subsequent to his appointment, or

- (iii) be in breach of conflict of interest provisions in the Companies and Allied Matters Act or any Regulation regarding conflicts of interest passed pursuant to this Act;
- (b) ceases to be an employee of the ministry or agency he represents on the Board of the Commission;
- (c) has demonstrated an inability to effectively perform the duties of his office;
- (d) has been absent from the meeting of the Board of the Commission for 3 consecutive times without the consent of the Chairman or in the case of the Chairman, without the consent of the President, except where good reason is shown for the absence;
- (e) is found guilty of serious misconduct by a Court or Tribunal of competent jurisdiction; or
- (f) has, under the law in force in any country -
  - (i) been adjudged or declared bankrupt or insolvent and has not been discharged,
  - (ii) made an assignment to or arrangement or composition with his creditors which has not been rescinded or set aside, or
  - (iii) been declared to be of unsound mind.

**15. Resignation of a Non-Executive Commissioner**

A non-executive commissioner may resign his appointment by giving two-months' written notice to the President.

**16. Vacancy on the Board of the Commission**

A vacancy on the Board of the Commission shall occur, where a commissioner -

- (a) dies;
- (b) is removed from office in accordance with section 14 of this Act;
- (c) resigns from office;
- (d) completes his tenure of office; or
- (e) is incapacitated.

**17. Filling of vacancy on the Board of the Commission**

A vacancy on the Board of the Commission shall be filled by the appointment of another person in accordance with section 11 of this Act.

**18. Commission Chief Executive and Executive Commissioners**

- (1) The Commission Chief Executive is the accounting officer and shall be responsible for the day-to-day running of the affairs of the Commission.
- (2) There shall be 6 executive commissioners for the Commission with each responsible for one of the following -
  - (a) Exploration and Acreage Management;
  - (b) Development and Production;

- (c) Health, Safety, Environment and Community;
  - (d) Economic Regulations and Strategic Planning;
  - (e) Corporate Services and Administration; and
  - (f) Finance and Accounts.
- (3) A person to be appointed as Commission Chief Executive and as an executive commissioner of the Commission shall have extensive managerial, technical or professional knowledge of the upstream petroleum operations with a minimum of 15 years post-qualification experience.
- (4) The Commission Chief Executive shall be appointed on such terms and conditions as may be set out in the letter of appointment, except as otherwise provided for in this Act.
- (5) An Executive Commissioner shall be appointed on such terms and conditions as may be set out in the letter of appointment, except as otherwise provided for in this Act.
- (6) The Commission Chief Executive shall be appointed for an initial term of five years and may be re-appointed for a further term of 5 years, subject to confirmation by the Senate.
- (7) The President may, not later than 14 days prior to the expiration of the tenure of the Commission Chief Executive or an Executive Commissioner, re-appoint the Commission Chief Executive or Executive Commissioner or appoint another qualified person.
- (8) A person shall not be appointed as a Commission Chief Executive or an Executive Commissioner, where the person -
- (a) is likely to be in breach of conflict of interest provisions under the Companies and Allied Matters Act or Regulation made under this Act;
  - (b) has a financial interest in any business connected, directly or indirectly with the petroleum industry;
  - (c) is engaged in any activity for remuneration or otherwise connected with the petroleum industry;
  - (d) is a relative of a person who has an interest or is engaged in any of the activities under paragraphs (a) – (c) of this sub-section, provided that
    - 
    - (i) such person may be appointed Commission Chief Executive or an executive commissioner if he declares his interest and makes appropriate arrangements to ensure the avoidance of a conflict of interest,
    - (ii) the President is satisfied that the interest or activity shall not



- interfere with the person's impartial discharge of his duties as the Commission Chief Executive or an executive commissioner, or
- (iii) the financial interest is terminated prior to the appointment taking effect; or
- (e) has, under the laws in force in any country, -
- (i) been adjudged or declared bankrupt or insolvent and has not been discharged,
  - (ii) made an assignment to or arrangement or composition with his creditors, which has not been rescinded or set aside,
  - (iii) been declared to be of unsound mind,
  - (iv) been convicted of any criminal offence by a court of competent jurisdiction except for traffic offences, or
  - (v) been disqualified or suspended from practising his profession by the order of a competent authority.

**19. Employees of the Commission**

The Board of the Commission shall determine the number of persons that shall be employees of the Commission.

**20. Terms and conditions of service in the Commission**

- (1) The employees of the Commission shall be subject to terms and conditions set out by the Board of the Commission.
- (2) The terms and conditions of service referred to in sub-section (1) of this section may provide for –
  - (a) the appointment, promotion, dismissal and discipline of employees;
  - (b) appeals by employees against dismissal or other disciplinary measures; and
  - (c) the grant of pensions, gratuities and other retirement benefits to employees.
- (3) In this section, the term “appointment” include secondment, transfer and contract appointments.
- (4) Employees of the Commission shall be “public officers” as defined in the Constitution.
- (5) Employment by the Commission shall be subject to the provisions of the Pension Reform Act and officers and employees of the Commission shall be entitled to pension and other retirement benefits as prescribed under the Pensions Reform Act.
- (6) Nothing in subsection (5) of this section shall prevent the Commission from

appointing a person to an office on terms that preclude the grant of pension or other retirement benefits in respect of that office.

**21. Remuneration and allowances of employees of the Commission**

The Board of the Commission, in consultation with the National Salaries, Incomes and Wages Commission, shall determine and periodically review the remuneration and allowances payable to the employees of the Commission, having regard to the

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- (a) specialised nature of work to be performed by the employees of the Commission;
- (b) need to ensure the financial self-sufficiency of the Commission; and
- (c) remuneration and allowances paid within the petroleum industry to individuals with equivalent responsibilities, expertise and skills.

**22. Statement of estimated income and expenditure of the Commission**

- (1) The Commission shall, not later than 30<sup>th</sup> of September of each year or such other date that the Minister responsible for Budget and National Planning may determine, prepare and present to the National Assembly, a statement of estimated income and expenditure of the Commission for the next financial year.
- (2) Notwithstanding the provisions of this section, the Commission may, in each financial year, submit to the National Assembly, supplementary or adjusted statements of estimated income and expenditure of the Commission.
- (3) The financial year of the Commission shall be a period of 12 calendar months commencing on the 1<sup>st</sup> of January in each year or such other date as the Minister of Finance may determine.

**23. Secretary to the Commission**

- (1) The Board of the Commission shall appoint a Secretary, who shall –
  - (a) be the Legal Adviser to the Commission;
  - (b) attend meetings of the Board of the Commission and keep minutes, corporate records and the common seal of the Commission; and
  - (c) carry out such administrative and other secretarial duties as the Commission Chief Executive and the Board of the Commission may direct.
- (2) The Secretary shall be a legal practitioner with a minimum of 10 years post-qualification experience.

**24. Fund of the Commission**

- (1) The Commission shall maintain a Fund (the “Commission Fund”) into which

money accruing to the Commission shall be paid.

- (2) The source of the Commission Fund shall be as follows -
  - (a) money appropriated by the National Assembly for the Commission on a first-line charge;
  - (b) fees charged by the Commission for services rendered to licensees, lessees permit holders and other authorisations issued by the Commission;
  - (c) money derived from revenue collection in accordance with government policy;
  - (d) income derived from publications made by the Commission and other related activities, including data sales;
  - (e) fees paid to the Commission for using facilities owned or managed by the Commission; and
  - (f) money accruing to the Commission by way of grants, aids, gifts, testamentary dispositions, endowments and contributions.
- (3) The Commission Fund shall be applied -
  - (a) to meet approved budgetary obligations of the Commission;
  - (b) to meet administrative and operating cost of the Commission;
  - (c) to pay salaries, wages, fees or other remuneration or allowances, pensions and other retirement benefits payable to employees of the Commission;
  - (d) to acquire and maintain any property acquired by or vested in the Commission;
  - (e) for investments, as provided under the Trustee Investments Act or any other applicable legislation, subject to the approval of Minister responsible for Finance; and
  - (f) in connection with any of the functions of the Commission under this Act.
- (4) The Commission shall ensure that money accruing from royalties and rents charged under this Act or any subsidiary legislation made pursuant to this Act on royalties and rents are paid into the Federation Account.
- (5) At the end of each financial year, any money that accrued to the Commission Fund pursuant to subsection (2) of this section, which have not been utilised for the purposes provided under subsection (3) of this section, shall be paid into the Consolidated Revenue Fund.
- (6) The Commission may accept grants of money or property on such terms and conditions as may be specified by the person or organisation making the grant, provided that -

- (a) the terms and conditions of the grant are not inconsistent with the objectives and functions of the Commission; or
  - (b) no such grant is accepted from any person or organisation regulated by the Commission.
- (7) Nothing in subsection (6) of this section or under this Act shall be construed as authorising the Commission Chief Executive, Commissioners, officer or employee of the Commission to accept any grant for their personal use.
- (8) The Commission shall keep proper accounts of its income and expenditure for each financial year and cause it to be audited within 6 months after the end of each financial year by auditors appointed by the Commission from a list and in accordance with guidelines, supplied by the Auditor-General for the Federation.
- (9) The Commission shall submit to the Minister -
- (a) a mid-year report of its operations and finances not later than the 31<sup>st</sup> of August of each year;
  - (b) an annual report of its operations and performance; and
  - (c) an audited financial account for the year, not later than 31<sup>st</sup> of March of the following year.
- (10) The Commission shall, not later than the 31<sup>st</sup> of March of each year –
- (a) submit to the Minister a summary of its annual report and audited financial accounts; and
  - (b) publish the annual report and audited financial accounts on its website.
- (11) The provisions of any enactment relating to the taxation of companies or trust funds shall not apply to the Commission.

**25. Notice to the Commission**

A Government agency exercising any power or function or taking any action, which may have direct impact on upstream petroleum operations shall notify the Commission prior to -

- (a) issuing any Regulation, guideline, Enforcement Order or directive;
- (b) exercising any such power or function; or
- (c) taking any such action.

**26. Special powers of the Commission**

- (1) The Commission shall in carrying out its functions under this Act have special powers to -
- (a) inquire, inspect, examine or investigate any business or activity relating to upstream petroleum operations under this Act, where it

- believes that illegal upstream petroleum operations are going on;
  - (b) conduct surveillance on crude oil and natural gas installations, premises and vessels where it believes that illegal upstream petroleum operations are going on;
  - (c) enter any upstream wellsite, plant, facility or place –
    - (i) at which crude oil or natural gas is produced, handled or treated, or
    - (ii) that is used in connection with any upstream wellsite, plant, facility or place where crude oil or natural gas is produced, handled or treated;
  - (d) enter at any reasonable time premises containing any records or property required to be maintained pursuant to this Act or related to the administration of upstream petroleum operations under this Act for the purpose of inspecting those records or that property;
  - (e) require any person or his agent, representative, partner, director, officer or employee engaged in upstream petroleum operations to –
    - (i) answer any question that may be relevant to the inquiry, inspection, examination or investigation, and
    - (ii) provide any required information contained in a computer hardware or software or any other data storage, processing or retrieval device or system used in connection with the business or activities relating to upstream petroleum operations under this Act;
  - (f) take any sample or carry out any test or examination as it may consider necessary in the performance of its functions;
  - (g) use any machinery, equipment, appliance or thing as it may consider necessary in the performance of its functions;
  - (h) remove for examination and copy anything that may be relevant to the inquiry, inspection, examination or investigation, including removing any computer hardware or software or any other data storage, processing or retrieval device or system;
  - (i) in conjunction with the Nigeria Police or other law enforcement agencies, arrest with a warrant, any person reasonably believed to have committed an offence under this Act; and
  - (j) exercise any other power that may be conferred on it under any law or regulation.
- (2) An entity, person or agent, representative, partner, director, officer or employee of that entity or person under investigation by the Commission shall –
- (a) grant access to officers of the Commission with regard to any place, wellsite, plant, facility, upstream machinery, equipment, appliances or things that may be relevant to the investigation; and

- (b) provide on request, any book, account, record, document, voucher, information and explanation relating to upstream petroleum operations as the officers of the Commission may require;
- (3) An entity, person or agent, representative, partner, director, officer or employee of that entity or person who fails to comply with sub-section (2) of this section commits an offence and is liable on conviction to –
  - (a) a term of 5 years imprisonment or a minimum fine of N5,000,000; and
  - (b) in the case of a continuous offence, to an additional minimum fine of N100,000 for each day during which the offence continues.
- (4) The Commission shall in the exercise of its powers under this section avoid undue hindrance of entities and persons engaged in lawful upstream petroleum operations.

**27. Special investigation unit**

The special powers of the Commission under section 26 of this Act shall be performed by the Special Investigation Unit of the Commission or any person authorised by the Commission.

**28. Indemnity of officers of the Commission**

- (1) The Commission Chief Executive, a commissioner or any officer of the Commission shall each be indemnified out of the Commission Fund against any liability incurred in defending any proceeding against the Commission or brought against him in his official capacity.
- (2) Notwithstanding the provisions of subsection (1) of this section, the Commission shall not indemnify the Commission Chief Executive, a commissioner or any officer of the Commission for any liability incurred as a result of wilful misconduct or gross negligence.

## Part IV

### The Authority

#### 29. Establishment of the Nigerian Midstream and Downstream Petroleum Regulatory Authority

- (1) There is established the Nigerian Midstream and Downstream Petroleum Regulatory Authority (the “**Authority**”), which shall be a body corporate with perpetual succession and a common seal.
- (2) The Authority shall have the power to acquire, hold and dispose of property, sue and be sued in its own name.
- (3) The Authority shall be responsible for the technical and commercial regulation of midstream and downstream petroleum operations in the petroleum industry.

#### 30. Application of this Part

The objects and functions of the Authority in this Part are limited to midstream and downstream petroleum operations in the petroleum industry.

#### 31. Objectives of the Authority

The objectives of the Authority shall be to -

- (a) regulate midstream and downstream petroleum operations, including technical, operational, and commercial activities;
- (b) ensure efficient, safe, effective and sustainable infrastructural development of midstream and downstream petroleum operations;
- (c) promote healthy, safe, efficient and effective conduct of midstream and downstream petroleum operations in an environmentally acceptable and sustainable manner;
- (d) promote a competitive market for midstream and downstream petroleum operations;
- (e) promote the supply and distribution of natural gas and petroleum products in midstream and downstream petroleum operations and the security of natural gas supply for the domestic gas market;
- (f) ensure compliance with applicable laws and regulations governing midstream and downstream petroleum operations;
- (g) ensure the efficient, safe, effective and sustainable infrastructure development of midstream and downstream petroleum operations;
- (h) determine, administer and ensure the implementation and maintenance of technical standards, codes, practices and specifications applicable to midstream and downstream petroleum operations pursuant to good international petroleum practices;

- (i) implement Government policies for midstream and downstream petroleum operations as directed by the Minister and in accordance with this Act;
- (j) promote, establish and develop a positive environment for international and domestic investment in midstream and downstream petroleum operations;
- (k) ensure strict implementation of environmental policies, laws and regulations for midstream and downstream petroleum operations;
- (l) develop and enforce a framework on tariff and pricing for natural gas and petroleum products; and
- (m) implement such other policies and objectives as are consistent with the provisions of this Act.

### **32. Functions of the Authority**

The functions of the Authority shall be to -

- (a) regulate and monitor technical and commercial midstream and downstream petroleum operations in Nigeria;
- (b) regulate commercial midstream and downstream petroleum operations, including -
  - (i) petroleum liquids operations,
  - (ii) domestic natural gas operations, and
  - (iii) export natural gas operations;
- (c) determine appropriate tariff methodology for -
  - (i) processing of natural gas,
  - (ii) transportation and transmission of natural gas,
  - (iii) transportation of crude oil, and
  - (iv) bulk storage of crude oil and natural gas;
- (d) setting cost benchmarks for midstream and downstream petroleum operations;
- (e) provide pricing and tariff frameworks for natural gas in midstream and downstream gas operations and petroleum products based on the fair market value of the applicable petroleum products;
- (f) advise the Government, government agencies and other stakeholders on commercial matters relating to tariff and pricing frameworks;
- (g) develop open access rules applicable to petroleum liquids and natural gas transportation pipelines, terminal facilities and bulk storage facilities;
- (h) regulate the bulk storage, distribution, marketing and transportation pipelines of petroleum products;
- (i) grant, issue, modify, extend, renew, review, suspend, cancel, reissue or terminate licences, permits and authorisations for midstream and downstream petroleum operations;
- (j) monitor and enforce compliance with the terms and conditions of licences, permits and authorisations issued by the Authority;
- (k) keep public registers of –



- (i) licences, permits and other authorisations issued by the Authority, and
  - (ii) renewals, assignments, amendments, suspensions or revocations thereof;
- (l) set, define and enforce approved standards and regulations for design, construction, fabrication, operation and maintenance of plants, installations and facilities used or to be used in midstream and downstream petroleum operations;
  - (m) carry out enquiries, tests, audits or investigations and take other steps to monitor the midstream and downstream petroleum operations;
  - (n) ensure security of supply, development of the markets and competition in the markets for natural gas and petroleum products;
  - (o) ensure third party access to facilities under gas processing licences, transportation pipelines and transportation networks and midstream bulk storage facilities, where such facilities are operated for the own account of the owner;
  - (p) develop rules for trading in wholesale gas supplies to gas distributors;
  - (q) establish customer protection measures in accordance with the provisions of this Act;
  - (r) publish decisions, directions or determinations of the Authority that have implications for customers and industry participants, together with the reasons for such decisions, directions or determinations which, in the opinion of the Authority, should be published;
  - (s) promote the interests of customers with regard to midstream and downstream petroleum operations;
  - (t) promote the principles of economic development of infrastructure with regard to midstream and downstream petroleum operations;
  - (u) promote competition and private sector participation in midstream and downstream petroleum operations;
  - (v) determine the domestic gas demand requirement and the crude oil required for the domestic crude oil supply obligation and ensure that economic and strategic domestic demands are met;
  - (w) regulate the supply, distribution, marketing and retail of petroleum products;
  - (x) administer and monitor strategic stocks of petroleum products;
  - (y) monitor the application of petroleum product prices, pricing formulae and frameworks;
  - (z) monitor market behaviour with respect to midstream and downstream petroleum operations;
  - (aa) identify, investigate and prevent abuse of dominant positions and restrictive business practice with regard to midstream and downstream petroleum operations;
  - (bb) establish, monitor, regulate and enforce technical, health, environmental

- and safety measures relating to midstream and downstream petroleum operations;
- (cc) develop, specify and monitor technical and safety standards for wholesale marketing, processing plant, retail marketing and bunkering of petroleum products;
  - (dd) ensure the accuracy of metering pumps and related measurement facilities in midstream and downstream petroleum operations;
  - (ee) define and enforce approved standards and guidelines for the design, procurement, construction, operation and maintenance of plants, installations and facilities in the midstream and downstream petroleum operations;
  - (ff) establish laboratories to provide data storage and testing, quality assurance and certification of crude oil, natural gas and petroleum products and regulate the activities of third party laboratories used in midstream and downstream petroleum operations;
  - (gg) keep and classify records, data and reports as may be prescribed in regulations or guidelines;
  - (hh) ensure the promotion of safe and development of midstream and downstream petroleum operations;
  - (ii) issue certificates of quality and quantity to exporters of crude oil, LNG and petroleum products;
  - (jj) implement and enforce compliance with laws, regulations and policies relating to midstream and downstream petroleum operations;
  - (kk) establish parameters and codes of conduct for operators in the midstream and downstream petroleum operations;
  - (ll) monitor the financial viability of operators with respect to midstream and downstream petroleum operations;
  - (mm) develop, maintain and publish a database of midstream and downstream petroleum operations;
  - (nn) monitor and ensure that the quality of petroleum products sold in Nigeria conform to defined specifications;
  - (oo) establish, monitor and ensure compliance with the standards for the processing of petroleum products in Nigeria;
  - (pp) request information and documents relating to licenced activities, including pricing information and macro economic data from any licensee or permit holder in midstream and downstream petroleum operations;
  - (qq) publish or direct licensees, lessees and permit holders to publish, in the interest of the public, information relating to midstream and downstream petroleum operations in accordance with applicable law or regulation;
  - (rr) determine the domestic base price and the prices applicable to wholesale customers of the strategic sectors and gas distributors; and
  - (ss) perform such other function as may be necessary to give effect to the

provisions of this Act.

### **33. Regulations by the Authority**

Subject to section 216 of this Act, the Authority may make Regulations -

- (a) concerning the processing, refining, transmission, distribution, supply, sale and storage of petroleum and petroleum products as well as other midstream and downstream petroleum operations;
- (b) establishing those midstream and downstream petroleum operations to be subject to a licence or permit from the Authority;
- (c) establishing the application criteria and procedure for licences and permits for midstream and downstream petroleum operations;
- (d) establishing the procedure for review and approval of licence and permit applications for midstream and downstream petroleum operations;
- (e) establishing the duration and conditions of licences and permits for midstream and downstream petroleum operations;
- (f) concerning those licences and permits already in effect prior to the date of any regulations issued by the authority for midstream and downstream petroleum operations;
- (g) establishing the conditions and procedures for the transfer, surrender, suspension or revocation of licences and permits for midstream and downstream petroleum operations;
- (h) establishing the procedure for the modification of licences and permits for midstream and downstream petroleum operations;
- (i) establishing the penalties and enforcement mechanisms in respect of breaches of the regulations issued by the Authority;
- (j) monitoring processes for midstream and downstream petroleum operations;
- (k) concerning the construction and operation of, and third party access to, infrastructure for midstream and downstream petroleum operations;
- (l) concerning the production, transportation, and sale of petrochemicals and lubricants;
- (m) concerning the national strategic stock;
- (n) establishing tariffs for midstream and downstream petroleum operations;
- (o) concerning domestic natural gas supply and demand;
- (p) concerning natural gas trading and export;
- (q) ensuring the continuity and security of the supply of natural gas, crude oil, and petroleum products to customers;
- (r) concerning rights of way and pertaining to surface rights;
- (s) relating to the retail sale and distribution of petroleum products;
- (t) concerning dispute resolution and customer protection;
- (u) establishing pricing regimes for midstream and downstream petroleum operations;
- (v) establishing fees payable to the Authority subject to section 3(1)(j) of this

- Act;
- (w) concerning competition and anti-competitive behaviour;
  - (x) establishing public and non-public registries in respect of licences, permits and authorisations issued by the Authority, to be maintained by the Authority; and
  - (y) any other matters as may be determined by the Authority.

### **34. Governing Board of the Authority**

- (1) There is established a Governing Board (the “Board of the Authority”), which shall be responsible for the policy and general administration of the Authority.
- (2) The Board of the Authority shall consist of the following members -
  - (a) one non-executive chairman;
  - (b) two non-executive members;
  - (c) the Chief Executive of the Authority (the “Authority Chief Executive”);
  - (d) two other executive directors responsible for Finance and Accounts and Transportation and Distribution Infrastructure;
  - (e) one representative of the Commission not below the rank of executive commissioner;
  - (f) one representative of the Ministry not below the rank of director; and
  - (g) one representative of the Ministry of Finance not below the rank of director.
- (3) Appointments to the Board of the Authority under subsection (2) of this section shall be made by the President and be subject to confirmation by the Senate, except for the appointments of ex-officio members under subsection (2) (e), (f) and (g) of this section.
- (4) A person appointed pursuant to subsection (2) (a) and (b) of this section shall have at least 15 years post-qualification experience in Petroleum or other relevant sector of the economy and shall hold office for a period of 5 years and may be re-appointed for a further term of 5 years, on such terms and conditions as may be specified in the letter of appointment.
- (5) Subject to subsection (4) of this section and section 41(3) of this Act, a member of the Board of the Authority shall hold office for 5 years and may be re-appointed for a further term of 5 years.
- (6) A non-executive Board member shall hold office on part-time basis.
- (7) The Board of the Authority may authorise in writing any executive director, committee of the Board of the Authority, the Authority Chief Executive or

any other officer or employee of the Authority, to exercise any power or carry out any duty or function of the Authority under this Act or Regulation made under this Act.

- (8) The proceedings of the Board of the Authority and other ancillary matters shall be as prescribed by regulation made under this Act.

### **35. Functions of the Board of the Authority**

The Board of the Authority shall -

- (a) be responsible for the formulation of policy, supervision and giving strategic direction to the Authority;
- (b) provide general guidance for the carrying out of the functions of the Authority;
- (c) review and approve the business, strategic and operating plans of the Authority;
- (d) consider and approve the annual budget of the Authority before submission to the National Assembly for appropriation;
- (e) approve the management accounts and audited accounts of the Authority and consider the management letter from the external auditors;
- (f) determine the terms and conditions of service of employees of the Authority;
- (g) recommend remuneration, allowances, benefits and pensions of employees of the Authority in consultation with the National Salaries, Incomes and Wages Commission, having regard to the -
  - (i) specialised nature of work to be performed by the Authority,
  - (ii) need to ensure the financial self-sufficiency of the Authority, and
  - (iii) remuneration and allowances paid in the private sector in upstream petroleum operations to individuals with equivalent responsibilities, expertise and skills;
- (h) structure the Authority into such number of departments as it deems fit for the effective discharge of the functions of the Authority; and
- (i) carry out such other functions as may be necessary for the efficient and effective administration of the Authority under this Act.

### **36. Remuneration and allowances of members of the Board of the Authority**

Executive Directors of the Authority shall be paid from the funds of the Commission such remuneration and allowances as applicable.

The Authority shall comply with the policy and guidelines of the National Salaries, Incomes and Wages Commission regarding remunerations.

### **37. Suspension or removal of a member of the Board of the Authority**

A member of the Board of the Authority may be suspended or removed from office by the President where the member -

- (a) is found to –
  - (i) be unqualified for appointment under section 34 of this Act,
  - (ii) have been unqualified subsequent to his appointment,
  - (iii) be in breach of conflict of interest provisions in the Companies and Allied Matters Act or any regulation regarding conflicts of interest passed pursuant to this Act;
- (b) ceases to be an employee of the ministry or agency he represents on the Board of the Authority;
- (c) has demonstrated an inability to effectively perform the duties of his office;
- (d) has been absent from the meeting of the Board of the Authority for 3 consecutive times without the consent of the Chairman or in the case of the Chairman, without the consent of the President, except where good reason is shown for the absence;
- (e) is found guilty of serious misconduct by a Court or Tribunal of competent jurisdiction; or
- (f) has, under the law in force in any country -
  - (i) been adjudged or declared bankrupt or insolvent and has not been discharged,
  - (ii) made an assignment to or arrangement or composition with his creditors which has not been rescinded or set aside, or
  - (iii) been declared to be of unsound mind.

**38. Resignation of a Non-Executive member of the Board of the Authority**

A non-executive member of the Board of the Authority may resign his appointment by giving two-months' written notice to the President.

**39. Vacancy on the Board of the Authority**

A vacancy on the Board of the Authority shall occur, where a member of the Board -

- (a) dies;
- (b) is removed from office in accordance with section 37 of this Act;
- (c) resigns from office;
- (d) completes his tenure of office; or
- (e) is incapacitated.

**40. Filling of Vacancy on the Board of the Authority**

A vacancy on the Board of the Authority shall be filled by the appointment of another person in accordance with section 34 of this Act.

**41. Authority Chief Executive and Executive Directors of the Authority**

- (1) The Authority Chief Executive is the accounting officer and shall be responsible for the day-to-day running of the affairs of the Authority.
- (2) There shall be 7 Executive Directors for the Authority with each responsible for one of the following -
  - (a) Processing Systems and Plants;
  - (b) Transportation and Distribution Infrastructure;
  - (c) Health, Safety, Environment and Community;
  - (d) Economic Regulations and Strategic Planning;
  - (e) Corporate Services and Administration;
  - (f) Finance and Accounts; and
  - (g) Midstream Gas Infrastructure Fund.
- (3) A person to be appointed as Authority Chief Executive and as an Executive Director of the Authority shall have extensive managerial, technical or professional knowledge of the midstream and downstream petroleum operations with a minimum of 15 years post-qualification experience.
- (4) The Authority Chief Executive shall be appointed on such terms and conditions as may be set out in the letter of appointment, except as otherwise provided for in this Act.
- (5) An Executive Director shall be appointed on such terms and conditions as may be set out in the letter of appointment, except as otherwise provided for in this Act.
- (6) The Authority Chief Executive shall be appointed for an initial term of five years and may be re-appointed for a further term of 5 years, subject to confirmation by the Senate.
- (7) The President may, not later than 14 days prior to the expiration of the tenure of the Authority Chief Executive or an Executive Director, re-appoint the Authority Chief Executive or Executive Director or appoint another qualified person.
- (8) A person shall not be appointed as Authority Chief Executive, where the person -
  - (a) is likely to be in breach of conflict of interest provisions under the Companies and Allied Matters Act or Regulation made under this Act;
  - (b) has a financial interest in any business connected, directly or indirectly with the petroleum industry;
  - (c) is engaged in any activity for remuneration or otherwise connected with the petroleum industry;

- (d) is a relative of a person who has an interest or is engaged in any of the activities under paragraphs (a) – (c) of this subsection, provided that –
  - (i) such person may be appointed Authority Chief Executive or as an Executive Director if he declares his interest and makes appropriate arrangements to ensure the avoidance of a conflict of interest,
  - (ii) the President is satisfied that the interest or activity shall not interfere with the person’s impartial discharge of his duties as the Authority Chief Executive or as an executive director, or
  - (iii) the financial interest is terminated prior to the appointment taking effect; or
- (e) has, under the laws in force in any country, -
  - (i) been adjudged or declared bankrupt or insolvent and has not been discharged,
  - (ii) made an assignment to or arrangement or composition with his creditors, which has not been rescinded or set aside,
  - (iii) been declared to be of unsound mind,
  - (iv) been convicted of any criminal offence by a court of competent jurisdiction except for traffic offences, or
  - (v) been disqualified or suspended from practising his profession by the order of a competent authority.

#### **42. Employees of the Authority**

The Board of the Authority shall determine the number of persons that shall be employees of the Authority.

#### **43. Terms and conditions of service in the Authority**

- (1) The employees of the Authority shall be subject to terms and conditions set out by the Board of the Authority.
- (2) The terms and conditions of service referred to in subsection (1) of this section may provide for –
  - (a) the appointment, promotion, dismissal and discipline of employees;
  - (b) appeals by employees against dismissal or other disciplinary measures; and
  - (c) the grant of pensions, gratuities and other retirement benefits to employees.
- (3) In this section, the term “appointment” include secondment, transfer and contract appointments.
- (4) Employees of the Authority shall be “public officers” as defined in the Constitution.



- (5) Employment by the Authority shall be subject to the provisions of the Pensions Reform Act and officers and employees of the Authority shall be entitled to pension and other retirement benefits as prescribed under the Pensions Reform Act.
- (6) Nothing in subsection (5) of this section shall prevent the Authority from appointing a person to an office on terms that preclude the grant of pension or other retirement benefits in respect of that office.

**44. Remuneration and allowances of employees of the Authority**

The Board of the Authority, in consultation with the National Salaries, Incomes and Wages Commission, shall determine and periodically review the remuneration and allowances payable to the employees of the Authority, having regard to the -

- (a) specialised nature of work to be performed by the Authority;
- (b) need to ensure the financial self sufficiency of the Authority; and
- (c) remuneration and allowances paid within the petroleum industry to individuals with equivalent responsibilities, expertise and skills.

**45. Statement of estimated income and expenditure of the Authority**

- (1) The Authority shall, not later than 30th of September of each year or such other date that the Minister responsible for Budget and National Planning may determine, prepare and present to the National Assembly, a statement of estimated income and expenditure of the Authority for the next financial year.
- (2) Notwithstanding the provisions of this section, the Authority may also, in any financial year, submit to the National Assembly supplementary or adjusted statements of estimated income and expenditure of the Authority.
- (3) The financial year of the Authority shall be a period of 12 calendar months commencing on the 1st of January in each year or such other date as the Minister of Finance may determine.

**46. Secretary to the Authority**

- (1) The Board of the Authority shall appoint a Secretary, who shall –
  - (a) be the Legal Adviser to the Authority;
  - (b) attend meetings of the Board of the Authority and keep minutes, corporate records and the common seal of the Authority; and
  - (c) carry out such administrative and other secretarial duties as the Authority Chief Executive and the Board of the Authority may direct.
- (2) The Secretary shall be a legal practitioner with a minimum of 10 years post-qualification experience.

**47. Fund of the Authority**

- (1) The Authority shall maintain a Fund (the “Authority Fund”) into which money accruing to the Commission shall be paid.
- (2) The source of the Authority Fund shall be as follows -
  - (a) money appropriated by the National Assembly for the Authority on a first-line charge;
  - (b) fees charged by the Authority for services rendered to licensees, lessees permit holders and other authorisations issued by the Authority;
  - (c) not more than 1% of the levy prescribed in a Regulation under this Act, derived from wholesale price of petroleum products sold in the country;
  - (d) income derived from publications made by the Authority and other related activities, including data sales;
  - (e) fees paid to the Authority for using facilities owned or managed by the Authority; and
  - (f) money accruing to the Authority by way of grants, aids, gifts, testamentary dispositions, endowments and contributions.
- (3) The Authority Fund shall be applied -
  - (a) to meet the approved budgetary obligations of the Authority;
  - (b) to meet the administrative and operating cost of the Authority;
  - (c) to pay salaries, wages, fees or other remuneration or allowances, pensions and other retirement benefits payable to employees of the Authority;
  - (d) to acquire and maintain any property acquired by or vested in the Authority;
  - (e) for investments, as provided under the Trustee Investments Act or any other applicable legislation, subject to the approval of Minister responsible for Finance; and
  - (f) in connection with any of the functions of the Authority under this Act.
- (4) At the end of each financial year, any money that accrued to the Authority Fund pursuant to subsection (2) of this section, which have not been utilised for the purposes provided under subsection (3) of this section of this section, shall be paid into the Consolidated Revenue Fund.
- (5) The Authority may accept grants of money or property on such terms and conditions as may be specified by the person or organisation making the grant, provided that -
  - (a) the terms and conditions of the grant are not inconsistent with the

- objectives and functions of the Authority; or
- (b) no such grant is accepted from any Person or organisation regulated by the Authority.
- (6) Nothing in subsection (6) of this section shall be construed as authorising the Authority Chief Executive, directors, officer or employee of the Authority to accept any grant for their personal use.
- (7) The Authority shall keep proper accounts of its income and expenditure for each financial year and cause it to be audited within 6 months after the end of each financial year by auditors appointed by the Authority from a list and in accordance with guidelines, supplied by the Auditor-General for the Federation.
- (8) The Authority shall submit to the Minister –
- (a) a mid-year report of its operations and finances not later than the 31st of August of each year;
  - (b) an annual report of its operations and performance; and
  - (c) an audited financial account for the year, not later than 31st of March of the following year.
- (9) The Authority shall, not later than the 31st of March of each year –
- (a) submit to the Minister a summary of its annual report and audited financial accounts; and
  - (b) publish the annual report and audited financial accounts on its website.
- (10) The provisions of any enactment relating to the taxation of companies or trust funds shall not apply to the Authority.

#### **48. Notice to the Authority**

A Government agency exercising any power or function or taking any action, which may have direct impact on upstream petroleum operations shall notify the Authority prior to -

- (a) issuing any regulation, guideline, enforcement order or directive;
- (b) exercising any such power or function; or
- (c) taking any such action.

#### **49. Special powers of the Authority**

- (1) The Authority shall in carrying out its functions under this Act have special powers to -
- (a) inquire, inspect, examine or investigate any business or activity relating to midstream or downstream petroleum operations under this Act, where it believes that illegal midstream or downstream

- petroleum operations are going on;
  - (b) conduct surveillance on crude oil and natural gas installations, premises and vessels where it believes that illegal midstream or downstream petroleum operations are going on;
  - (c) enter any midstream or downstream wellsite, plant, facility or place –
    - (i) at which crude oil or natural gas is refined, processed, handled or treated, or
    - (ii) that is used in connection with any midstream or downstream wellsite, plant, facility or place where crude oil or natural gas is refined, processed, handled or treated;
  - (d) enter at any reasonable time premises containing any records or property required to be maintained pursuant to this Act or related to the administration of midstream or downstream petroleum operations under this Act for the purpose of inspecting those records or that property;
  - (e) require any person or his agent, representative, partner, director, officer or employee engaged in midstream or downstream petroleum operations to –
    - (i) answer any question that may be relevant to the inquiry, inspection, examination or investigation, and
    - (ii) provide any required information contained in a computer hardware or software or any other data storage, processing or retrieval device or system used in connection with the business or activities relating to midstream or downstream petroleum operations under this Act;
  - (f) take any sample or carry out any test or examination as it may consider necessary in the performance of its functions;
  - (g) use any midstream or downstream machinery, equipment, appliance or thing as it may consider necessary in the performance of its functions;
  - (h) remove for examination and copy anything that may be relevant to the inquiry, inspection, examination or investigation, including removing any computer hardware or software or any other data storage, processing or retrieval device or system;
  - (i) in conjunction with the Nigeria Police or other law enforcement agencies, arrest with a warrant, any person reasonably believed to have committed an offence under this Act; and
  - (j) exercise any other power that may be conferred on it under any law or regulation.
- (2) An entity, person or agent, representative, partner, director, officer or employee of that entity or person under investigation by the Authority shall –

- (a) grant access to officers of the Authority with regard to any place, wellsite, plant, facility, midstream or downstream machinery, equipment, appliances or things that may be relevant to the investigation; and
  - (b) provide on request, any book, account, record, document, voucher, information and explanation relating to midstream or downstream petroleum operations as the officers of the Authority may require;
- (3) An entity, person or agent, representative, partner, director, officer or employee of that entity or person who fails to comply with subsection (2) of this section commits an offence and is liable on conviction to –
  - (a) a term of 5 years imprisonment or a minimum fine of N5,000,000; and
  - (b) in the case of a continuous offence, to an additional minimum fine of N100,000 for each day during which the offence continues.
- (4) The Authority shall in the exercise of its powers under this section avoid undue hindrance of entities and persons engaged in lawful midstream or downstream petroleum operations.

**50. Special investigation unit**

The special powers of the Authority under section 49 of this Act shall be performed by the Special Investigation Unit of the Authority or any person authorised by the Authority.

**51. Indemnity of officers of the Authority**

- (1) The Authority Chief Executive, a director or any officer of the Authority shall each be indemnified out of the Authority Fund against any liability incurred in defending any proceeding against the Authority or brought against him in his official capacity.
- (2) Notwithstanding the provisions of subsection (1) of this section, the Authority shall not indemnify the Authority Chief Executive, a director or any officer of the Authority for any liability incurred as a result of wilful misconduct or gross negligence.

**52. The midstream gas infrastructure fund**

- (1) There is established a fund to be known as the Midstream Gas Infrastructure Fund, which shall be
  - (a) a body corporate with perpetual succession and a common seal; and
  - (b) reside in the Authority as prescribed in accordance with this Act.
- (2) The Midstream Gas Infrastructure Fund shall have the power to acquire, hold and dispose of property, sue and be sued in its corporate name.

- (3) There shall be a Governing Council which shall supervise and make investment decisions for the Fund.
- (4) The Governing Council shall comprise the following members -
  - (a) the Minister, who shall be the Chairman of the Council;
  - (b) representative of the Central Bank of Nigeria not below the rank of a Director;
  - (c) representative of the Ministry of Finance not below the rank of a Director;
  - (d) the Authority Chief Executive;
  - (e) Executive Director Midstream Gas Infrastructure Fund;
  - (f) 2 independent members, who shall be appointed by the Minister of Finance for a period of 4 years and may be reappointed for another 4 years and no more; and
  - (g) the Legal Adviser of the Authority who shall serve as the Secretary to the Governing Council.
- (5) The Executive Director, Midstream Gas Infrastructure Fund shall –
  - (a) have extensive managerial, technical or professional knowledge of the midstream petroleum operations and or fund management or any other relevant industry with a minimum of 15 years’ post-qualification experience; and
  - (b) be responsible for project management and the day-to-day running of the affairs of the Midstream Gas Infrastructure Fund.
- (6) The members referred to in subsection (4) (f) of this section shall have extensive managerial, technical or professional knowledge of the midstream petroleum operations, fund management or any other relevant industry with a minimum of 15 years post-qualification experience.
- (7) The source of the Midstream Gas Infrastructure Fund shall be as follows –
  - (a) not more than 1% of the levy prescribed in a regulation under this Act, derived from wholesale price of petroleum products sold in Nigeria and natural gas produced and sold, which shall be collected on wholesale basis;
  - (b) funds and grants accruing from multilateral agencies, bilateral institutions and related sources dedicated partly or wholly for the development of infrastructure for midstream gas operations in Nigeria;
  - (c) interest, if any, payable in respect of money in the Midstream Gas Infrastructure Fund; and
  - (d) any other sum, freely donated or accruing to the Midstream Gas Infrastructure Fund for development of infrastructure in midstream

gas operations;

- (8) The Authority shall ensure the prompt payment of all such sums directly into the Midstream Gas Infrastructure Fund's Account.
- (9) The levy under subsection (6) (a) of this section shall become due within 21 days of the sale of petroleum products in Nigeria and natural gas produced and sold, and the Minister shall, after consultation with the Council, make regulations for –
  - (a) administration procedures; and
  - (b) penalties for –
    - (i) late payment of the levy,
    - (ii) non-payment of the levy, or
    - (iii) submission of false information in respect of the levy.
- (10) The purpose of the Fund shall be to make equity investments of Government owned participating or shareholder interests in infrastructure related to midstream gas operations aimed at –
  - (a) increasing the domestic consumption of Natural Gas in Nigeria in projects which are financed in part by private investment; and
  - (b) encouraging private investment.
- (11) There shall be a Transaction Advisor, who shall be responsible for providing transaction advisory services, including technical and commercial evaluation of proposals, defining project screening criteria and profitability target for projects and any other duty as may be assigned by the Council on behalf of the Fund.
- (12) The Transaction Advisor shall be selected on need basis through a competitive and transparent criteria specified by the Council and the selection process shall be managed by the Executive Director, Midstream Gas Infrastructure Fund subject to the approval of the Council.
- (13) The Transaction Advisor shall, in performing his duties under subsection (11) of this section, submit report of his findings and recommendations to the Council.
- (14) The Midstream Gas Infrastructure Fund shall be managed as follows –
  - (a) the Council shall at the beginning of every financial year, approve the Midstream Gas Infrastructure Fund's programme of action with its cost implications and the Accountant General of the Federation shall release the approved amount for that financial year;
  - (b) the money in the Midstream Gas Infrastructure Fund's Account that is not utilised as prescribed under this Act shall be held or invested as

- the Council may direct;
- (c) an annual statement of the Midstream Gas Infrastructure Fund shall be prepared and submitted to the Council and Minister of Finance after 3 months of the end of the financial year to which they relate; and
  - (d) a certified annual audited accounts of the Midstream Gas Infrastructure Fund, together with a report on the operations of the Midstream Gas Infrastructure Fund, shall be submitted to the Council within 6 months of the end of the financial year to which they relate.
- (15) Earnings, interest and other income accruing from the equity investment made pursuant to subsection (10) shall be paid directly to the Midstream Gas Infrastructure Fund's Account.
- (16) The Midstream Gas Infrastructure Fund shall not be subject to the provisions of the Fiscal Responsibility Act, Infrastructure Concession Regulatory Commission Act and the Public Procurement Act, but shall comply with the Midstream Gas Infrastructure Fund procurement and fiscal regulations made under this Act.

## **Part V**

### **THE NIGERIAN NATIONAL PETROLEUM COMPANY LIMITED**

#### **53. The Nigerian National Petroleum Company Limited**

- (1) The Minister shall within 6 months from the commencement of this Act, cause to be incorporated under the Companies and Allied Matters Act, a limited liability company, which shall be called Nigerian National Petroleum Company Limited (NNPC Limited).
- (2) The Minister shall at the incorporation of NNPC Limited, consult with the Minister of Finance to determine the number and nominal value of the shares to be allotted, which shall form the initial paid-up share capital of NNPC Limited and the Government shall subscribe and pay cash for the shares.
- (3) Ownership of all shares in NNPC Limited shall be vested in the Government at incorporation and held by the Ministry of Finance Incorporated on behalf of the Government.
- (4) The Ministry of Finance Incorporated in consultation with the Government, may increase the equity capital of NNPC Limited.
- (5) Shares held by the Government in NNPC Limited are not transferable,



including by way of sale, assignment, mortgage or pledge unless approved by the Government.

- (6) Notwithstanding any provision to the contrary in the Companies and Allied Matters Act and except by way of security, any sale or transfer of shares of NNPC Limited shall be at a fair market value and subject to an open, transparent and competitive bidding process.
- (7) NNPC Limited and any of its subsidiaries shall conduct their affairs on a commercial basis without recourse to government funds and their memorandum and articles of association shall state these restrictions.

**54. Transfer of assets and liabilities**

- (1) The Minister and the Minister of Finance shall determine the assets, interests and liabilities of NNPC to be transferred to NNPC Limited or its subsidiaries and upon the identification, the Minister shall cause such assets, interests and liabilities to be transferred to NNPC Limited.
- (2) Assets, interests and liabilities of NNPC not transferred to NNPC Limited or its subsidiary under subsection (1) of this section, shall remain the assets, interests and liabilities of NNPC until they become extinguished or transferred to the Government.
- (3) NNPC shall cease to exist after its remaining assets, interests and liabilities other than its assets, interests and liabilities transferred to NNPC Limited or its subsidiaries under subsection (1) of this section shall have been extinguished or transferred to the Government.
- (4) Bonds, hypothecations, securities, deeds, contracts, instruments, documents and working arrangements with regards to assets, interests or liabilities transferred to NNPC Limited or any of its subsidiary under subsection (1) of this section and which remains subsisting before the date of transfer shall, beginning from the date of transfer be effective and enforceable against or in favour of NNPC Limited.
- (5) Any pending action or proceeding brought by or against NNPC before the transfer date with regard to assets, interests or liabilities transferred to NNPC Limited under subsection (1) of this section may be enforced or continued by or against NNPC Limited as the successor of NNPC.
- (6) Notwithstanding the provisions of subsection (5) of this section -
  - (a) an action or proceeding shall not be commenced against NNPC Limited, its subsidiary, director, officer, employee or agent with regard to asset,

- interest or liability of NNPC Limited, where the time for commencing the action or proceeding would have expired had such asset, interest or liability not been transferred to NNPC Limited or its subsidiaries; and
- (b) the transfer of asset, interest and liability of NNPC to NNPC Limited under subsection (1) of this section shall not create or be deemed to have created a new cause of action in favour of a -
    - (i) creditor of NNPC, or
    - (ii) party to a contract, agreement or arrangement with NNPC that was entered into before the date of transfer.
- (7) For the purpose of this section and the Second Schedule to this Act, “assets, interests and liabilities” means tangible, intangible, real or personal property, rights and obligation, in each case of all types.

**55. Appointment of NNPC limited as agent of NNPC**

- (1) The Minister shall upon incorporation of NNPC Limited, consult with the Minister of Finance to appoint NNPC Limited as agent of NNPC for the purpose of managing the process of winding down the assets, interests and liabilities of NNPC.
- (2) Subject to the appointment under subsection (1) of this section, the NNPC Limited shall have the power to deal with the applicable assets, interests and liabilities of NNPC and may enter into contract with third parties on such assets, interests and liabilities.
- (3) Pursuant to the appointment under subsection (1) of this section, NNPC shall -
  - (a) not deal with the applicable assets, interests and liabilities;
  - (b) at the request of NNPC Limited execute and deliver any document and do such other acts or things as may be required by NNPC Limited with regard to any asset, interest or liability referred to under subsection (1) of this section; and
  - (c) pay a nominal fee of one United States Dollar (\$1) to NNPC Limited as administrative charges on the applicable assets, interests and liabilities to which NNPC Limited has been appointed under subsection (1) of this section.
- (4) The cost of winding down the assets, interests and liabilities of NNPC shall be borne by the Government.
- (5) A cause of action shall not arise in tort, contract or otherwise between NNPC and NNPC Limited in respect of the applicable assets, interests or liabilities to which NNPC Limited has been appointed as agent under subsection (1) of this section.

**56. Subsistence of guarantee**

Any guarantee granted or issued by the Government with regard to the transfer of liability of NNPC to NNPC Limited under section 54 of this Act shall be enforceable against the Government as if such liability was a liability of NNPC, provided that such guarantee was effective prior to such transfer.

**57. Transfer of employees and conditions of service**

- (1) Upon incorporation of NNPC Limited pursuant to section 53 of this Act, employees of NNPC shall be deemed to be employees of NNPC Limited on terms and condition not less favourable than that enjoyed prior to the transfer of service and shall be deemed to be service for employment related entitlements as specified under any applicable law.
- (2) NNPC Limited shall continue to fulfil the statutory obligations of NNPC in relation to the pension scheme of employees of NNPC prior to the date of incorporation of NNPC Limited.

**58. The Board of NNPC limited**

There shall be a Board of the NNPC Limited which shall perform its duties in accordance with the provisions of this Act, the Companies and Allied Matters Act and the articles of association of NNPC Limited.

**59. Composition of the Board of NNPC limited**

- (1) Except as set out in this section, the composition of the NNPC Limited Board shall be determined in accordance with the provisions of the Companies and Allied Matters Act and its Articles of Association.
- (2) The Board of NNPC Limited shall be appointed by the President and composed of the following members -
  - (a) a non-executive chairman;
  - (b) the Chief Executive of NNPC Limited;
  - (c) the Chief Financial Officer of NNPC Limited;
  - (d) a representative of the Ministry of Petroleum, not below the rank of a Director;
  - (e) a representative of the Ministry of Finance, not below the rank of a Director; and
  - (f) two non-executive members with at least 15 years post-qualification experience in Petroleum or any other relevant sector of the economy.
- (3) A person to be appointed as the Chief Executive of NNPC Limited shall have extensive managerial, technical and professional knowledge in the petroleum or other relevant industry with at least 15 years' post-

qualification experience.

- (4) In the absence of the chairman, the members of the Board of NNPC Limited may appoint a non-executive member of the Board to act as alternate Chairman.
- (5) The provisions of this section shall apply where NNPC Limited remains wholly-owned by the Government and where NNPC Limited is not wholly owned by Government, the composition of the Board of NNPC Limited shall be determined by the shareholders of NNPC Limited in accordance with the provisions of the Companies and Allied Matters Act and the articles of association of NNPC Limited.

#### **60. Committees of the Board of NNPC limited**

- (1) The Board of NNPC Limited shall, within 3 months of the incorporation of NNPC Limited, develop formal and transparent process for the creation of its committees and nomination of members of the Board to the committees.
- (2) The mandate, composition and procedures of each committee of the Board of NNPC Limited shall be comprehensive and open for inspection by the shareholders of NNPC Limited.
- (3) The Board of NNPC Limited shall nominate non-executive members of the Board capable of exercising independent judgement to its committees where there is likelihood of conflict of interest.
- (4) The Board of NNPC Limited shall have committees for -
  - (a) ensuring the integrity of financial and non-financial reporting;
  - (b) the nomination of Board members and key executives;
  - (c) remuneration of members of the Board of NNPC Limited; and
  - (d) any other committee as the Board of NNPC Limited may consider appropriate.

#### **61. Application of principle of corporate governance**

- (1) Members of the Board of NNPC Limited shall discharge their responsibilities in accordance with the highest standards, practices and principles of corporate governance.
- (2) The Board of NNPC Limited shall, upon request by one or more of shareholders holding not less than 10% of the voting interests in NNPC Limited, provide a comprehensive written explanation of any action or decision taken by the Board of NNPC Limited to its shareholders, provided that the Board of NNPC Limited may withhold the explanation if permitted under a duty of confidentiality NNPC Limited owed to any third party.

**62. Annual audit of NNPC limited**

- (1) NNPC Limited shall ensure that an annual audit of NNPC Limited is conducted by an independent, competent, experienced and qualified auditor.
- (2) The auditor of NNPC Limited shall provide an external and objective assurance to the Board and shareholders of NNPC Limited that the financial statements of NNPC Limited fairly represent the financial position and performance of NNPC Limited.
- (3) Where the auditor of NNPC Limited is unable to provide the assurance required under subsection (2) of this section, the Board shall immediately convene an extraordinary general meeting of the company to –
  - (a) notify the shareholders of NNPC Limited; and
  - (b) consider any action that may be necessary in that regard.

**63. Responsibilities of the Board of NNPC limited**

- (1) The Board of NNPC Limited shall, in addition to its responsibilities under the Companies and Allied Matters Act and its articles of association -
  - (a) be responsible for the strategic guidance and determining the business structure of NNPC Limited;
  - (b) be responsible for the approval of the annual budget of NNPC Limited;
  - (c) act in good faith and exercise due diligence and care in the best interests of NNPC Limited, the shareholders and the sustainable development of Nigeria;
  - (d) apply the highest ethical standards in performing its duties, taking into account the interests of its stakeholders and the fiduciary duty of the directors to NNPC Limited;
  - (e) make decisions guided by commercial and technical considerations that represents good international petroleum industry practices;
  - (f) determine and report to the shareholders of NNPC Limited on key performance indicators on at least annual basis;
  - (g) review and guide corporate strategy, major plan of action, risk policy and business plan;
  - (h) set performance objectives for NNPC Limited, the Board of NNPC Limited, members of NNPC Limited’s management and individual business units and subsidiaries of NNPC Limited;
  - (i) monitor NNPC Limited’s corporate performance;
  - (j) oversee major capital expenditures, acquisitions and divestitures;
  - (k) monitor the effectiveness of NNPC Limited’s governance practices and propose and implement changes;
  - (l) select, compensate, monitor and replace management executives and

- oversee succession plan;
  - (m) align key executive and Board of NNPC Limited remuneration with the longer term interests of NNPC Limited, its shareholders and stakeholders;
  - (n) monitor and address potential conflicts of interest of management and members of the Board of NNPC Limited and breach of fiduciary duty by members of the Board of NNPC Limited;
  - (o) ensure the integrity of NNPC Limited's accounting and financial reporting systems, including audit of NNPC Limited's accounts by independent third party;
  - (p) ensure that appropriate system of control is in place for risk management, financial and operational control and compliance with applicable law and relevant standards;
  - (q) oversee the process of disclosure and communications to shareholders and the public; and
  - (r) determine the dividend policy of NNPC Limited, ensure sustained growth and a sound financial base for NNPC Limited .
- (2) The provisions of this section shall be incorporated into the memorandum and articles of association of –
- (a) NNPC Limited at the time of its incorporation; and
  - (b) each of the NNPC Limited's wholly-owned subsidiaries as if references in this section to 'NNPC Limited' were references to such wholly-owned subsidiary.

#### **64. Objects of NNPC limited**

The objects of NNPC Limited shall include the following -

- (a) carry out petroleum operations on a commercial basis;
- (b) to lift and sell royalty oil and profit oil for commercial fees, payable by Government, at the request of the Commission and pay the corresponding revenue to accounts indicated by the Commission;
- (c) at the request of the Commission carry out test marketing to ascertain the value of crude oil and report to the Commission;
- (d) be vested with the rights to natural gas under production sharing contracts entered into prior to the effective date;
- (e) upon the request of the Commission, act as agent of the Commission for the management of production sharing contracts for a fee, based on the profit oil share or profit gas share to Government under such contracts between NNPC Limited and the Commission;
- (f) with respect to any joint operating agreement in which NNPC is a party on the effective date assume the working interest held by NNPC irrespective of whether such licence or lease is converted pursuant to section 92 of this Act;

- (g) engage in the development of renewable resources in competition with private investors;
- (h) promote the domestic use of natural gas through development and operation of large-scale gas utilization industries;
- (i) maintain the role of NNPC, where companies elect not to convert pursuant to Section 92 of this Act;
- (j) carry out task requested by the Commission or Authority on a fee basis; and
- (j) carry out such other tasks as may be determined by the Board of NNPC Limited.

**65. Establishment of incorporated joint venture companies**

- (1) NNPC Limited and other parties to joint operating agreements in respect of upstream petroleum operations, may on a voluntary basis restructure their joint operating agreement as a joint venture carried out by way of a limited liability company, each referred to as an “incorporated joint venture company” (IJV), based on the principles established in the Second Schedule to this Act.
- (2) The incorporated joint venture companies referred to in subsection (1) of this section shall not be subject to the provisions of the Fiscal Responsibility Act and the Public Procurement Act.

## CHAPTER TWO

### ADMINISTRATION

#### Part I

#### General Administration

#### 66. Objectives

- (1) The objectives of Chapter 2 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 petroleum industry;
  - (c) promote the safe and efficient operation of the transportation and distribution infrastructure for the petroleum industry;
  - (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) promote the processing of petroleum within Nigeria and the development of fuel and chemical industry and other related value-added products and activities;
  - (j) create a conducive business environment for operations in the petroleum industry;
  - (k) promote the liberalisation of the downstream petroleum industry;
  - (l) establish an orderly, fair and competitive commercial environment within the petroleum industry; and
  - (m) ensure that petroleum operations are conducted in a manner that protects the health and safety of persons, property and the environment.
  
- (2) The provisions of Chapter 2 of this Act shall apply to –
  - (a) activities within or associated with petroleum operations and the petroleum industry; and
  - (b) persons conducting such activities.



**67. Management of petroleum resources**

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

**Part II**

**Administration of Upstream Petroleum Operations**

**68. Administration of acreage and vesting of data**

- (1) Title to any data and its interpretation relating to upstream petroleum operations are vested in the Government of the Federation of Nigeria and shall be administered by the Commission.
- (2) The Commission shall administer any acreage for upstream petroleum operations in Nigeria.
- (3) Where a significant petroleum discovery is made in a frontier basin, the Minister may, on the recommendation of the Commission, reclassify all or part of the basin from frontier acreages to a general onshore area and the fiscal terms applicable to onshore under this Act shall apply to –
  - (a) new licences and leases in the basin after reclassification; and
  - (b) any existing lease upon renewal, provided that it shall not be applied to Licences and Leases existing at the moment of reclassification.
- (4) The Commission may issue a permit for the collection of geological samples for scientific research.

**69. National grid system**

- (1) The Commission shall, after consultation with the Surveyor-General of the Federation, adopt a national grid system for acreage management.
- (2) The grid system referred to under subsection (1) of this section shall be based on the UTM system or any other projection system in use by the office of the Surveyor-General of the Federation.
- (3) The Commission shall establish a system for numbering of parcels, which shall allow for subdivision and aggregation of the parcels.
- (4) The basic unit of the grid system shall be a parcel of one square kilometer, subject to adjustment of the zones and national boundary.
- (5) The Commission may further subdivide parcels into equal units of one hectare or such sub-units as the Commission may deem appropriate.

- (6) The national grid system referred to under subsection (1) of this section shall be used for the administration of upstream petroleum operations, including –
- (a) the definition of licence and lease areas;
  - (b) relinquishments;
  - (c) bid procedures;
  - (d) identification of well locations;
  - (e) petroleum conservation measures; and
  - (f) other regulatory and acreage management procedures.
- (7) Any current boundary of a licence or lease, which does not conform with the new national grid system shall remain unaltered and be apportioned in parcels.

## **70. Licences and leases**

- (1) There shall be the following Licences and Leases under this Act –
- (a) petroleum exploration licence, which may be granted to qualified applicants to explore petroleum on a speculative and non-exclusive basis;
  - (b) petroleum prospecting licence, which may be granted to qualified applicants to carry out petroleum exploration operations on an exclusive basis; and
  - (c) petroleum mining lease, which may be granted to qualified applicants to search for, win, work, carry away and dispose of crude oil, condensates and natural gas.
- (2) A licence or lease may be granted under this Act only to a company incorporated and validly existing in Nigeria under the Companies and Allied Matters Act.

## **71. Petroleum exploration licence**

- (1) The Commission shall be responsible for granting of petroleum exploration licences.
- (2) The holder of a petroleum exploration licence shall have non-exclusive right to carry out petroleum exploration operations within the area provided for in the licence.
- (3) A petroleum exploration licence shall be for 3 years and may be renewable for additional period of 3 years subject to fulfilment of prescribed conditions, but shall not include any right to win, extract, work, store, carry away, transport, export or otherwise treat petroleum discovered in or under the licence area.

- (4) A Petroleum Exploration Licence may cover an area that includes Petroleum Prospecting Licence or Petroleum Mining Lease, provided that the holders of such licences or leases, shall have no obligation to purchase the results of any survey conducted under the petroleum exploration licence.
- (5) A petroleum exploration licence granted in respect of frontier acreages may include a provision permitting the Licensee to select, based on the result of his exploration work and be granted one or more petroleum prospecting licences prior to the termination of the Licence containing the fiscal provisions stipulated in Chapter Four of this Act.
- (6) The Commission shall have sole right and title over any acquired raw and interpreted data obtained by a licensee pursuant to a petroleum exploration licence, provided that the licensee shall be entitled to grant a data use licence to a third party subject to a written authorisation by the Commission, which shall not be unreasonably withheld.
- (7) A Licensee is entitled to a fee from a third party for data use licence granted under subsection (6) of this section and shall remit to the Commission any agreed portion of the fee due to the Commission.
- (8) Exploration activities conducted pursuant to a petroleum exploration licence shall be monitored and administered by the Commission in accordance with regulations made under this Act.
- (9) The Commission shall have sole right and title over all acquired and interpreted data from existing speculative survey agreements entered into with the Department of Petroleum Resources on behalf of the Government prior to the effective date.

## **72. Petroleum prospecting licence**

- (1) The holder of a petroleum prospecting licence shall, subject to the fulfilment of obligations imposed by this Act, have -
  - (a) exclusive right to drill exploration wells and non-exclusive right to carry out petroleum exploration operations within the area provided for in the Licence; and
  - (b) right to carry away and dispose of crude oil or natural gas won or extracted during the drilling of exploration wells as a result of production tests,

subject to the fulfilment of obligations imposed by this Act.

- (2) A holder of the petroleum prospecting licence shall not be granted an extension except as prescribed under sections 78(4), 78(9) and 79(6) of this

Act.

- (3) Where a holder of a petroleum prospecting licence fails to fulfil any term or condition of the licence, it shall not, except as provided in the Licence, give the Minister a right of claim against the Licensee or be deemed a breach of the Licence, if the failure arises from *force majeure*.
- (4) Where there is any delay by a Licensee in the fulfilment of any term or condition of a petroleum prospecting licence caused by *force majeure*, the period of such *force majeure* shall be added to the period fixed for the fulfilment of the applicable term or condition, provided that such period shall not exceed 3 years in total after which, the licence may be terminated by the Commission or the licensee.
- (5) The Minister shall, on the recommendations of the Commission, grant a petroleum prospecting licences to a qualified applicant.

### **73. Bidding process**

- (1) Subject to the provisions of sections 71(5), 74(3), 81(1) and 93(2) of this Act, petroleum prospecting licence or petroleum mining lease shall only be granted –
  - (a) based on a fair, transparent and competitive bidding process; and
  - (b) in compliance with the provisions of this Act, regulations made under this Act and licensing round guidelines issued by the Commission for each licensing round.
- (2) The Commission may periodically publish a licensing round plan.
- (3) Subject to the provisions of this Act, the Minister may, on the recommendation of the Commission, grant a petroleum prospecting licence or petroleum mining lease to a winning bidder in accordance with section 74 of this Act, provided that the winning bidder has complied with the requirements of the bid invitation.
- (4) The Minister shall inform the Commission of his decision within 90 days of the application for licence or lease and where he fails to inform the Commission within the stipulated time, the licence or lease shall be deemed granted.

### **74. Award process**

- (1) The grant of a petroleum prospecting licence or a petroleum mining lease on a previously appraised area of a petroleum prospecting licence or a surrendered, relinquished or revoked petroleum mining lease in, under or upon the territory of Nigeria, shall be by an open, transparent, competitive

and non-discriminatory bidding process conducted by the Commission pursuant to section 73(3) of this Act.

- (2) The winning bidder shall be determined on the basis of the following bid parameters -
  - (a) a single bid parameter, which shall be based on any one of the following parameters -
    - (i) a signature bonus to be paid in full prior to the granting of the licence or lease by or on behalf of the winning bidder;
    - (ii) a royalty interest;
    - (iii) a profit split or profit oil split;
    - (iv) a work programme commitment during the initial exploration period; or
    - (v) any other parameter as may be defined specific to a bid round; and
  - (b) a combination of the bid parameters specified in paragraph (a) of this subsection, based on a points system assessable by the bidder in such a manner that the bidder with the highest aggregate number of points shall be the winning bidder.
- (3) Notwithstanding the bidding parameters prescribed in subsection (2) of this section, where there is a bilateral or multi-lateral agreement between Nigeria and another country, the Government may, for strategic purposes and in return for substantive benefits to the nation, direct the Commission to negotiate and award a petroleum prospecting licence or petroleum mining lease to a qualified investor identified in the agreement or treaty.
- (4) A signature bonus payable in respect of any licence or lease awarded pursuant to sub-section (3) of this section shall be based on a transparent method for evaluating the acreage.
- (5) The Commission shall call for bids in accordance with a procedure published on its website and in at least two international financial newspapers and two national newspapers with wide coverage.
- (6) Where the Commission calls for bids pursuant to this section, it shall prescribe a technical, legal, social, economic and financial requirement, including the minimum experience and capacity for an applicant in a regulation or guideline, and the applicant shall be chosen in accordance with the regulation or guideline.
- (7) The bids received based on the bid parameters prescribed in subsection (2) of this section through an open, transparent and competitive bidding

process, shall include an electronic bidding process, open to public and conducted in the presence of representatives of the Nigerian Extractive Industry Transparency Initiative, the Ministry of Finance and the Ministry of Petroleum Resources

**75. Licensing round guidelines**

The licensing round guidelines shall be accompanied with the model licence for the petroleum prospecting licence or model lease for the petroleum mining lease for the bid round and shall include the -

- (a) licence or lease acreages, the term and minimum work obligations;
- (b) requirements to be fulfilled by the bidders and the pre-qualification criteria, as the case may be;
- (c) bid parameter;
- (d) list of documents required and criteria for the evaluation of technical capacity, financial competence and legal status of interested parties, including technical and financial assessment of the bid; and
- (e) details and cost for the acquisition of relevant data and studies.

**76. Model licence and model lease**

The model licence or model lease for each bid round shall reflect the conditions of the licensing round guidelines for the bid round and shall in all circumstances include the following clauses -

- (a) description of the acreage;
- (b) term of the licence or lease;
- (c) minimum work programme and minimum level of investment;
- (d) details of guarantees to be provided by the Licensee or Lessee regarding the performance of its licence or lease obligations;
- (e) details of obligations regarding relinquishment, decommissioning and abandonment;
- (f) rules for the resolution of disputes, including arbitration, mediation, conciliation or expert determination;
- (g) applicable sanctions in the event of failure by the Licensee or Lessee to comply with the terms and conditions of the licence or lease; and
- (h) such other clauses as the Commission may deem necessary.

**77. Duration and area of petroleum prospecting licence**

- (1) A petroleum prospecting licence for onshore and shallow water acreages shall be for a duration of not more than 6 years, comprising of an initial exploration period of 3 years and an optional extension period of 3 years.
- (2) A petroleum prospecting licence for deep offshore and frontier acreages shall be for a duration of not more than 10 years, comprising of an initial exploration period of 5 years and an optional extension period of 5 years.

- (3) The area provided for in a petroleum prospecting licence shall not exceed –
  - (a) 350 square kilometres for any onshore or shallow water acreages;
  - (b) 1,000 square kilometres for any deep offshore acreages; and
  - (c) 1,500 square kilometres for any frontier acreages.

**78. Work commitment, commercial discovery and significant gas discovery**

- (1) A petroleum prospecting licence shall contain a requirement that the Licensee commit to a work programme and such other terms and conditions as the Commission shall determine.
- (2) A licensee shall, during the initial exploration period and the optional extension period provided for in a petroleum prospecting licence, commit to drill at least one exploration well to a minimum depth specified in the licence for each period, except for frontier acreages, where the work program during the initial exploration period may only consist of geophysical work.
- (3) Where a licensee makes a discovery during the initial exploration period or the optional extension period provided for in the applicable petroleum prospecting licence, the licensee shall inform the Commission within 90 days of the discovery if he considers that the discovery merits appraisal or is of no interest to him.
- (4) Where a licensee considers that a discovery merits appraisal, the Licensee shall submit to the Commission within 180 days for approval -
  - (a) a commitment to an appraisal programme of not more than 2 years with a scope and nature permitting the licensee to declare a commercial discovery, where the result of the appraisal is positive; and
  - (b) the appraisal area, not larger than the outer boundary of the discovery, as determined by the licensee and a zone of not more than 2 kilometres surrounding the outer boundary; provided that the appraisal area does not extend beyond the area provided for in the applicable petroleum prospecting licence.
- (5) A licensee shall, upon the approval of the appraisal programme and appraisal area by the Commission, promptly carry out the committed appraisal programme and the Commission shall act on the appraisal programme within 60 days after its submission.
- (6) Where the Commission fails to act on the appraisal programme referred to under subsection (5) of this section within 60 days, the appraisal shall be deemed approved.

- (7) The provisions of section 88(3) of this Act shall apply to any appraisal area under subsections (5) and (6) of this section.
- (8) The licensee shall, upon the completion of the appraisal program -
  - (c) declare a commercial discovery;
  - (d) declare a significant gas discovery; or
  - (e) inform the Commission that the discovery is of no interest to the licensee.
- (9) Where a significant gas discovery has been declared, the licensee shall be entitled to retain the area of such significant gas discovery for a retention period as may be determined by the Commission, which shall not be more than 10 years from the day the declaration was made.
- (10) The retention area of a significant gas discovery shall continue to subsist pursuant to a petroleum prospecting licence until the expiration of the period under subsection (9) of this section or declaration of a commercial discovery by the licensee.
- (11) The Commission shall approve an area of a significant gas discovery which shall not be larger than the outer boundary of the discovery declared by the licensee, including a zone of not more than 2 kilometres surrounding the outer boundary; provided that such area shall not extend beyond the area described in the applicable petroleum prospecting licence.
- (12) The provisions of section 88(3) of this Act shall apply to any Retention Area.
- (13) Where, upon the expiry of the Retention Period determined pursuant to subsection (9) of this section, the licensee has not declared a Commercial Discovery, the area declared pursuant to subsection (9) of this section shall be immediately relinquished by the Licensee.
- (14) Upon the relinquishment of the retention area with the latest expiry date referred to in subsection (13) of this section, the applicable petroleum prospecting licence shall expire.
- (15) Where a Licensee declare a discovery of no interest pursuant to subsection (3) or (8) of this section, the Commission may require the relinquishment of the parcels that cover the structure of such discovery.
- (16) A commitment by a licensee under this section shall be supported by a bank guarantee, letter of credit or performance bond issued by a bank acceptable to the Commission for an amount determined by the Commission.
- (17) The licensee shall in each calendar year present an annual work program



and status report as prescribed by regulations for approval by the Commission and such program shall as a minimum, contain the committed work.

**79. Commercial discovery and field development plan**

- (1) Where a licensee under a petroleum prospecting licence declares a commercial discovery under section 78(8)(a) of this act, the licensee shall within 2 years of the declaration, submit to the Commission a field development plan with regard to the commercial discovery together with a commitment to carry out the work described in the field development plan.
- (2) The Commission shall evaluate the technical and commercial terms of the field development plan and shall only approve the field development plan where -
  - (a) it meets the technical standards required for petroleum operations based on good international petroleum industry practices;
  - (b) the location of the measurement point, measurement processes and equipment are acceptable to the Commission;
  - (c) it results in the maximum recovery of crude oil, natural gas and condensates from the applicable reservoirs;
  - (d) it meets the health, safety and environmental standards, as determined by the Commission;
  - (e) it provides for the efficient and commercial use of facilities for midstream petroleum operations;
  - (f) it does not involve excessive capital or operating expenditures;
  - (g) it includes an approved Nigerian content plan pursuant to the Nigerian Oil and Gas Industry Content Development Act, 2010;
  - (h) it includes an environmental management plan in a form that complies with section 102 of this Act;
  - (i) it includes a decommissioning and abandonment plan and a decommissioning and abandonment fund that complies with sections 232 and 233 of this Act;
  - (j) it provides for the elimination of routine natural gas flaring;
  - (k) it does not relate to upstream petroleum operations that are in conflict with domestic gas delivery obligation;
  - (l) it includes -
    - (i) a detailed programme for the recruitment and training of Nigerians in all phases of petroleum operations handled directly by the licensee or through agents and contractors of the licensee; and
    - (ii) provision for scholarship schemes, internships, continuous professional development and other training requirements;

- (m) it complies with the obligations to host communities under Chapter 3 of this Act; and
  - (n) it includes a development period sufficient to construct any required infrastructure and the development of the Field
- (3) Where the development of a commercial discovery requires construction of facilities for midstream petroleum operations in a manner integrated with the upstream petroleum operations, a licensee may submit the development plan as a single integrated project, which may be reviewed by the Commission and the Authority.
- (4) Where a single project is submitted, the Commission and Authority shall –
  - (a) review the project based on their regulatory responsibilities; and
  - (b) cooperate to review and decide on the project.
- (5) Where a Licensee does not submit a field development plan and work commitment within the period set forth in subsection (1) of this section, the area containing the commercial discovery shall be relinquished.
- (6) Where the licensee has submitted a field development plan for the field, the licence shall continue until the process for the grant of a Lease has been completed or the Commission has decided not to grant the Lease.
- (7) Where the licensee establishes and secures approval for an appraisal area or declares a commercial discovery, a petroleum prospecting licence shall, where required, be extended until the –
  - (a) grant of the petroleum mining lease; or
  - (b) decline of the approval for the appraisal area or commercial discovery.
- (8) Notwithstanding the provisions of section 78(10) of this Act, the holder of the retention area shall within 2 years after declaring a commercial discovery, submit to the Commission a field development plan that complies with the requirements in subsection (2) of this section.
- (9) The Commission shall give its final decision to approve or disapprove a Field development plan within 180 days after the submission of the Field development plan in compliance with the requirements in subsection (2) of this section and a Lease shall be granted upon the approval of the Field development plan.
- (10) Where the Commission fails to respond to the field development plan within 180 days, the plan shall be deemed approved.
- (11) A commitment by a Licensee under this section shall be supported by a bank

guarantee, letter of credit or performance bond issued by a bank acceptable to the Commission for an amount determined by the Commission.

- (12) Upon approval of a field development plan, no material modification shall be made except in accordance with the approval provisions set out in subsection (2) of this section and the submission and approval of an amended Field development plan.
- (13) Upon the granting of one or more petroleum mining leases, the annual work program and status report referred to under section 78(17) of this Act shall include the program and report for each Lease.

## **80. Unitisation**

- (1) A licensee or lessee shall promptly notify the Commission of any petroleum reservoir which extends beyond the boundaries of its licence or lease area.
- (2) The Commission may, for the purpose of ensuring optimum recovery of petroleum from a petroleum reservoir, require all petroleum operations relating to commercial discovery to be carried out by a licensee or lessee on the basis of a unitised development of the applicable commercial discovery, where -
  - (a) the petroleum reservoir covered by an area to which a licence or lease relates extends beyond the boundaries of such area into an area to which another licence or lease relates and in respect of which a different person is the licensee or lessee; and
  - (b) at least one licensee or lessee has made a declaration of a commercial discovery.
- (3) The Commission may, upon receipt of a notification under subsection (1) of this section direct the applicable Licensee or Lessee to enter into a unit agreement to develop the petroleum reservoir as a unit, within a period of time to be determined by the commission, which shall not be less than 2 years.
- (4) The unit agreement referred to in subsection (3) of this section shall be approved by the Commission and shall –
  - (a) be based on terms agreed by the parties and in a form that conforms with good international petroleum industry practices; and
  - (b) contain terms and conditions as may be required by a Regulation issued by the Commission pursuant to subsection (9).
- (5) A unit agreement shall, in addition to the requirements of subsections (3) and (4) of this section –
  - (a) be based on reliable technical, operational and economic

considerations;

- (b) set out the proposed operator of the applicable unit; and
  - (c) set out technical information regarding the petroleum reservoir subject to unitisation, including structure mapping, net pay and such other engineering and geophysical information as may be required by a regulation issued by the Commission pursuant to subsection (9) of this section.
- (6) Where the applicable Licensees or Lessees are unable to reach agreement within the time limit imposed by the Commission pursuant to subsection (3) of this section, the Commission may, in compliance with subsections (4) and (5) of this section, impose a fair and equitable terms and conditions of a unit agreement to the licensees or lessees.
- (7) Where a petroleum reservoir extends beyond the boundaries of the licence or lease into an adjacent area which is not covered by a licence or lease, the Commission may -
- (a) extend the boundaries of the licence or lease to include the entire petroleum reservoir within such licence or lease, provided that the licensee or lessee submits to the commission a field development plan that includes the additional adjacent area acceptable to the Commission; or
  - (b) conduct a bid round for the adjacent area in accordance with the licensing round guidelines and the provisions of this Act.
- (8) Where a petroleum reservoir unitised pursuant to this section is able to continue in production after the expiration of one or more licences or leases relating to the petroleum reservoir, the Commission may grant an extension of the term of the licence or lease.
- (9) The Commission may from time to time issue regulations in relation to unitisation.

## **81. Petroleum mining leases**

- (1) A petroleum mining lease shall be granted for each commercial discovery of crude oil or natural gas or both, to the licensee of a petroleum prospecting licence who has -
- (a) satisfied the conditions imposed on the licence or the licensee under this act; and
  - (b) received approval for the applicable field development plan from the Commission.
- (2) A petroleum mining lease shall be granted pursuant to the provisions of

sections 70(2) and 74 of this act, where a prospective lease area contains petroleum field with suspended wells or continuing commercial production, where the corresponding petroleum mining lease has been revoked or has expired.

- (3) A petroleum mining lease granted pursuant to subsection (2) of this section may include an appraisal phase.
- (4) A licensee shall subject to subsection (7) of this section, propose that a separate petroleum mining lease be granted for each commercial discovery to which a petroleum prospecting licence relates prior to the expiration of the applicable petroleum prospecting licence.
- (5) Notwithstanding any grant of a petroleum mining lease pursuant to subsection (4) of this section, the applicable petroleum prospecting licence shall continue for the remaining area to which that licence relates for the duration provided for in that licence.
- (6) The area to which a petroleum mining lease relates and derived from a petroleum prospecting licence shall be proposed by the licensee, based on an independent engineering report, which shall not be binding on the Commission.
- (7) The Commission shall approve the proposed area, which shall contain every parcel within the outer boundary of the field based on oil-water contacts or other reservoir limits, including a zone surrounding the boundary consisting of all parcels that are in whole or in part within one kilometre of such outer boundary; provided that such area shall not contain parcels -
  - (a) outside the original licence area from which the lease is derived;
  - (b) in areas relinquished by the licensee; or
  - (c) in an existing petroleum mining lease.
- (8) The Commission may approve modification of an area of a petroleum mining lease to include further parcels as are appropriate, based on the criteria prescribed under subsections (6) and (7) of this section, where during the period provided for in a petroleum prospecting licence, the outer boundary of the commercial discovery changes due to further –
  - (a) drilling or other exploration activities; or
  - (b) petroleum discoveries in deeper or shallower formations.
- (9) Where two or more petroleum mining leases derived from the same petroleum prospecting licence constitute a single field based on an interpretation by the Commission of geological or petroleum engineering data showing that the field is a single field, the leases shall be considered as

a single lease, notwithstanding that their boundaries do not join with another lease, provided the granting date of the single lease shall be the date of the first lease that was granted.

- (10) A petroleum mining lease shall not consist of an area that is less than one parcel or where a parcel has been subdivided pursuant to section 69(5) of this act, less than one subdivision of such parcel.

## **82. Exclusive right to conduct operations**

- (1) A lessee under a petroleum mining lease shall have the exclusive right to carry out upstream petroleum operations with respect to the formations under the lease area as defined in the lease.
- (2) A lessee under a petroleum mining lease shall have the right to continue to explore in the lease area.
- (3) A petroleum mining lease for conducting upstream petroleum operations shall only be granted on the basis of a commitment from the applicable lessee to -
  - (a) develop and produce the commercial discovery of crude oil or natural gas in the area to which the lease relates in accordance with the applicable development plan; or
  - (b) restart or continue petroleum production in the area to which such lease relates.
- (4) The Commission shall, during the term of a petroleum mining lease, -
  - (a) verify the implementation of the work commitments by the applicable lessee and its compliance with the applicable development plan;
  - (b) monitor capital and operating costs incurred by the applicable lessee; and
  - (c) ensure that upstream petroleum operations at all times are carried out to conform with the standards required by this Act and by regulation made under this Act.

## **83. Confidentiality**

- (1) A licensee or lessee shall for each petroleum prospecting licence or petroleum mining lease provide a yearly summary of royalties, fees, taxes, profit oil shares and other payments to Government within 6 months after each calendar year to the Commission and the Accountant General of the Federation.
- (2) The Commission shall define the required detail and classification of the summary under subsection (1) of this section and the summaries shall be non-confidential and published on the website of the Commission.

- (3) The text of any existing contract, Licence or Lease and any amendment or side letter with NNPC shall –
  - (a) not be confidential;
  - (b) be published on the website of the Commission within one year after the effective date; and
  - (c) be provided to the Commission by a contractor of NNPC, licensee or lessee within 1 year after the Effective Date.
- (4) A contractor, licensee or lessee who does not or partially provides the Commission with the required information referred to in subsection (3) of this section, within the stipulated time contravenes the provisions of this Act and is liable to an administrative penalty of the sum of US \$10,000 for every day the default subsists.
- (5) The text of any new licence, lease or contract or amendment to it shall not be confidential and shall be published by the Commission immediately following the granting or signing of such texts.
- (6) A licensee or lessee who obtained geological, geophysical, geochemical and other technical petroleum data during upstream petroleum operations as determined by the Commission shall immediately provide the data to the National Data Repository of the Commission.
- (7) The data referred to in subsection (6) of this section shall not be confidential, except for a period of confidentiality of exploration data, which shall not exceed –
  - (a) 5 years or the period until the relinquishment date of the area, whichever is lower; or
  - (b) such other period as prescribed in the National Data Repository Regulations, 2020.
- (8) Data in the National Data Repository of the Commission shall be accessible to any interested person under such terms as may be determined by the Commission.

#### **84. Power to enter into contracts**

- (1) Unless prohibited by this Act or regulation under this Act, where the Commission grants a licence or lease, a licensee or lessee may enter into a contract with a third party for the exploration, prospecting, production or development of crude oil or natural gas or both, in respect of any licence or lease held by the licensee or lessee.
- (2) The Commission shall develop a model licence and model lease, which may contain an obligation to comply with contractual provisions in a model

contract attached to the licence or lease.

- (3) The model licence and model lease referred to under subsection (2) of this section shall comply with the provisions of this Act and may contain the following additional contractual provisions -
  - (a) a production sharing contract for the exploration, development and production of petroleum on terms under which the financial risk-bearing party shall recover costs from a share of production as established in the contract from the applicable area;
  - (b) a profit sharing contract which is a production sharing contract whereby the profit oil is provided in cash to Government;
  - (c) a risk service contract for the exploration, development and production of petroleum on terms under which the financial risk-bearing party shall recover costs by a payment in cash or in kind from petroleum produced from the applicable area;
  - (d) a concession agreement for exploration, development and production of petroleum, which may include an incorporated or unincorporated joint venture with NNPC Limited; and
  - (e) any contract being a variation of the contracts pursuant to paragraphs (a), (b) (c) or (d), of this subsection or a contract which, at the time, is an internationally recognised form of contract for the exploration and production of petroleum.
- (4) The power to enter into contracts pursuant to subsection (1) of this section shall not confer on any licensee or lessee the right to assign an interest in any licence or lease, except in accordance with the provisions of this Act.

#### **85. Model contracts**

A licence or Lease described under section 84(2) of this Act shall not be granted by the Commission unless the appropriate model contract is attached to the licence or lease and the licensee or lessee is the contractor.

#### **86. Duration and renewal of leases and licences**

- (1) A petroleum mining lease granted under section 81 of this Act shall be for a maximum period of 20 years, which term shall include the development period prescribed pursuant to subsection (4) of this section.
- (2) Where a petroleum mining lease does not initiate regular commercial production within the development period prescribed pursuant to subsection (4) of this section, the Lease may be revoked by the Commission at the end of the development period.
- (3) Where a petroleum mining lease is revoked under subsection (2) of this



section, the applicable acreage shall vest in the Government and be controlled and administered by the Commission, which may be subject to a new petroleum mining lease granted in accordance with section 81 of this Act.

- (4) The development period for a petroleum mining lease granted pursuant to section 81 of this Act shall be the period established in the Field development plan under section 79(2)(n) of this Act and where development period is not stipulated, the development period shall be -
  - (a) 5 years for an onshore lease; and
  - (b) 7 years for a Lease in shallow water or deep offshore or a lease in a frontier acreage.
- (5) An acreage in respect of an expired or revoked petroleum mining lease under this Act shall be subject to a new bidding process pursuant to section 73 of this Act, unless the term of the petroleum mining lease is extended under this Act.
- (6) A petroleum mining lease which continues to produce in paying quantities may be renewed by the Commission in accordance with section 87 of this Act for one or more successive additional terms, of not more than 20 years each, provided that –
  - (a) the field continues to produce in paying quantities; and
  - (b) all rents, royalties, taxes and other applicable fiscal obligations stipulated under this Act shall continue, subject to section 87 of this Act.
- (7) a petroleum mining lease which ceases to produce in paying quantities for a period of not less than 180 days may, except for *force majeure* or any other reason acceptable to the Commission, be revoked by the Commission.
- (8) A lessee of a petroleum mining lease who intends to suspend production for more than 180 days and to resume production at a later date, shall submit to the Commission a specific shut-in plan and a commitment to restart production in accordance with the shut-in plan/

#### **87. Conditions for renewal of petroleum mining leases**

- (1) A lessee of a petroleum mining lease may, not less than 12 months before the expiration of the lease, apply in writing to the Commission for a renewal, of leased area or any part of it.
- (2) A petroleum mining lease shall be renewed by the Commission where it is satisfied that the Lessee -
  - (a) has fulfilled its obligations relating to the development of the Lease

- area;
  - (b) has fully met all payments requirement under this Act or any other enactment in respect of royalties, rents, taxes and fees relating to the petroleum mining lease;
  - (c) is not in default of any obligation or condition relating to the Lease; and
  - (d) has discharged all operational obligations in compliance with applicable rules and regulations.
- (3) The renewal referred to under subsection (2) of this section shall be on terms and conditions determined by the Commission and the Lessee shall pay a renewal bonus of an amount specified by the Commission based on the percentage of the market value on the renewal date prescribed in the regulation made under this Act.
- (4) The Commission may, in public interest, change, impose or add new lease conditions, which shall be published in the Official Gazette.

## **88. Relinquishment**

- (1) Prior to the expiration of the initial exploration period of 3 years or of the optional extension period of 3 years under section 77(1) of this Act, a licensee shall relinquish every area that is not an appraisal area, retention area or lease area based on parcels or sub-parcel under section 69 of this Act.
- (2) Prior to the expiration of the initial exploration period of 5 years or of the optional extension period of 5 years under section 77(2) of this Act, a licensee shall relinquish every area that is not an appraisal area, retention area or lease area on parcel or sub-parcel under section 69 of this Act.
- (3) Every appraisal area or retention area shall be retained as provided for under this act and the petroleum prospecting licence shall be extended until the related petroleum mining lease has been granted or denied.
- (4) A Licensee of a petroleum prospecting licence may voluntarily relinquish parcels and sub-parcels under section 69 of this Act, provided that the –
- (a) licensee has complied with the obligation in the petroleum prospecting licence; and
  - (b) shape of a relinquished block shall be approved by the Commission to maintain acreage of shape that is viable for award in future licensing round.
- (5) After 10 years of the commencement of a petroleum mining lease –
- (a) the applicable Lessee shall relinquish all parcels which do not fall

within the boundary of a producing field under this Act; and

- (b) any formation deeper than the deepest producing formation shall be relinquished, and the deep rights shall vest in the Government.
- (6) Upon the expiration of any significant gas discovery retention period in respect of a petroleum prospecting licence, every area relating to the significant gas discovery retention area shall be relinquished, unless the applicable licensee has declared a commercial discovery in such significant gas discovery retention area.
- (7) An area or zone relinquished pursuant to this section, shall be vested in the Government and administered by the Commission and the relinquishments shall be in a north-south, east-west direction and defined in a rectangular or square shaped compact unit.
- (8) Any rent paid in respect of an area or zone that is relinquished pursuant to this section shall not be refundable and such relinquishment shall be without prejudice to any obligation or liability imposed by or incurred under the applicable Licence or Lease.

#### **89. Surrender of licence or lease**

- (1) Notwithstanding the provisions of this Act on relinquishment, a holder of a petroleum prospecting licence, petroleum exploration licence or petroleum mining lease may surrender part or the whole of the licenced or leased area or any zone, provided that the licensee or lessee has –
  - (a) complied with obligations imposed by or incurred under the applicable licence or lease; and
  - (b) given 3 months' notice in writing to the Commission prior to the surrender.
- (2) Any rent or fee paid prior to a surrender pursuant to subsection (1) of this section shall not be refundable and the licence or lease surrendered shall be without prejudice to any obligation or liability imposed by or incurred under the applicable Licence or Lease.

#### **90. Rights of way relating to upstream petroleum operations**

Subject to applicable law and terms and conditions prescribed by the Commission, a holder of a petroleum prospecting licence, petroleum exploration licence or petroleum mining lease is entitled with the approval of the Commission to a right of way for the laying, operation and maintenance of gathering lines, telephone lines, power lines and other similar lines through or across the areas the holder may require.

#### **91. Rights of way reserved for the Commission**

- (1) Subject to subsection (2) of this section, the Commission may reserve in accordance with applicable law, a right of way, easement or other right over an area to which a petroleum prospecting licence, a petroleum exploration licence or a petroleum mining lease, which the Commission considers necessary for the laying, operation and maintenance of pipelines, telephone lines and power lines and any right of way or other right reserved shall continue for the benefit of any person to whom the Commission may subsequently grant the same.
- (2) Where a holder of a petroleum prospecting licence, petroleum exploration licence or petroleum mining lease is of the opinion that a reservation made by the Commission pursuant to subsection (1) of this section affects the health, safety or environment of a person, the licensee or lessee may object to the reservation in writing and the Commission shall reconsider the reservation in light of the objection.
- (3) The holder of a petroleum prospecting licence, a petroleum exploration licence or a petroleum mining lease shall -
  - (a) be entitled to enter and remain on the land that is the subject of the Licence or Lease and do such things that are not prohibited by applicable law or under the Licence or Lease; and
  - (b) comply with applicable law relating to town or country planning or regulating the construction, alteration, repair or demolition of buildings, or providing for similar matters, which relates to the carrying out of operations authorised by the Licence or Lease.

**92. Voluntary conversion of an oil prospecting licence to a petroleum prospecting licence or oil mining lease to petroleum mining lease**

- (1) A holder of an existing oil prospecting licence or oil mining lease may enter into a voluntarily conversion contract under this Act.
- (2) A licensee or lessee under a conversion contract shall benefit from applicable fiscal incentives where the licensee or lessee complies with the provisions of this Act.
- (3) Where a holder of an existing oil prospecting licence or oil mining lease who wishes to enter into a voluntarily conversion contract under this Act, the conversion contract shall contain a termination clause of all outstanding arbitration and court cases related to the respective oil prospecting licence or oil mining lease and for the avoidance of doubt -
  - (a) any stability provisions or guarantees provided by NNPC in respect of oil prospecting licences or oil mining leases to be converted shall be

- null and void; and
  - (b) the incentive provisions contained in sections 11 and 12 of the Petroleum Profit Tax Act shall not apply.
- (4) A conversion contract shall be concluded at a date (“Conversion Date”) which is the earlier of -
- (a) 18 months from the effective date; and
  - (b) the expiration date of the oil mining lease or date of conversion of the oil prospecting licence to an oil mining lease.
- (5) Prior to the conversion date, the terms applicable to the oil prospecting licence or oil mining lease prior to the effective date shall continue to apply.
- (6) Where a holder of an existing oil prospecting licence or oil mining lease does not enter into a conversion contract prior to the conversion date, the terms and conditions applicable to the oil prospecting licence or oil mining lease prior to the effective date of this Act shall continue to apply to the oil prospecting licence or oil mining lease, subject to the provisions of section 311(2)(b) and 303(1) of this Act.
- (7) Where an oil prospecting licence is converted, the term of years included in such licence shall apply to the converted petroleum prospecting licence.

**93. Relinquishment upon renewal or conversion of an oil mining lease**

- (1) A holder of oil mining lease, including oil mining lease that is subject to production sharing contract, shall at the renewal date applicable to the oil mining lease or at the conversion date, designate each area and zone of the oil mining lease as areas and zones -
- (a) which, in the opinion of the holder, merit appraisal and for which the holder of the oil mining lease is prepared to present an appraisal program pursuant to section 78 of this Act;
  - (b) in respect of which the holder is prepared to make a declaration of a commercial discovery pursuant to section 78 of this Act and submit a field development plan to the Commission pursuant to section 79 of this Act;
  - (c) in respect of which the holder is prepared to make a declaration of a significant gas discovery pursuant to section 78 of this Act and submit an application for approval of a retention area;
  - (d) in respect of which development is underway based on prior approvals; and
  - (e) in respect of which regular commercial production is occurring.
- (2) Where the total acreage selected pursuant to subsection (1) of this section is

less than 40% of the area to which the applicable oil mining lease applies, the holder may select additional areas covered by the oil mining lease for conversion to a petroleum prospecting licence in such a manner that the total of all areas selected shall not be more than 40% of the oil mining lease area.

- (3) Any selected area pursuant to subsection (2) of this section shall be based on parcels.
- (4) Areas and zones subject to an oil mining lease and not selected by the holder pursuant to subsections (1) and (2) of this section shall be relinquished by the holder.
- (5) The relinquishment date for the purpose of subsection (4) of this section shall be the renewal date or the conversion date.
- (6) Subject to section 94 of this Act on the applicable relinquishment date, the Commission shall convert the applicable oil mining lease in respect of each area and zone -
  - (a) designated by a holder pursuant to subsection (a), (b), (c) or (2) of this section into a petroleum prospecting licence in accordance with section 78 of this Act, with fiscal terms as applicable under Chapter Four of this Act for new acreage and with the relinquishment date being the effective date for such petroleum prospecting licence.
  - (b) selected pursuant to subsection (c) and (e) of this section, into petroleum mining leases, with fiscal terms as applicable under section 267(1)(a), (b) and (e) of this Act to the lease, provided that for –
    - (i) production sharing contracts for the determination of the profit oil sliding scale based on cumulative production, the total production from all petroleum mining leases shall be applicable, and
    - (ii) Royalty purposes, the production of each petroleum mining lease shall be the basis.
- (7) Where a Licensee of an oil prospecting licence, including any oil prospecting licence that is subject to a production sharing contract, voluntarily opts to convert its Licence to a petroleum prospecting licence pursuant to Section 92 of this Act, it shall select as provided in subsection (1) of this section the areas and zones indicated in this subsection upon the conversion date and the Commission shall convert the applicable oil prospecting licence of the areas and zones -
  - (a) designated by a holder pursuant to subsection (a), (b) and (c) of this section as areas to be continued under the petroleum prospecting

- licence pursuant to the provisions of this Act, with fiscal terms as applicable under Chapter Four of this Act for new acreage.
- (b) selected pursuant to subsection (c) and (e) of this section shall be converted into petroleum mining leases with fiscal terms as applicable under section 267(1)(a), (b) and (e) of this Act, applicable to these leases, provided that –
    - (i) with respect to production sharing contracts for the determination of the profit oil sliding scale based on cumulative production, the total production from all petroleum mining leases shall be applicable, and
    - (ii) Royalty purposes, the production of each petroleum mining lease shall be the basis; and
  - (c) the remaining area shall continue as exploration area under the petroleum prospecting licence.

#### **94. Marginal field**

- (1) Notwithstanding the rights and obligations conferred under the applicable farm-out agreement, an existing and producing marginal field shall be granted a separate petroleum mining lease, which shall benefit from the terms for new acreage under Chapter Four of this Act.
- (2) A discovery declared as a marginal field prior to 1<sup>st</sup> January, 2020 and is not producing shall be converted to petroleum prospecting licence and shall benefit from the terms for new acreage under Chapter Four of this Act.
- (3) Where the discovery has been transferred to Government, the Commission is entitled to offer the petroleum prospecting licence in a bid round pursuant to section 74 of this Act.
- (4) Within 3 years of the effective date, any discovery of marginal field that has not been transferred to Government, shall be subject to the following process and the holder of the oil mining lease –
  - (a) present a development plan for the field; or
  - (b) with the consent of the Commission and on terms and conditions as the Commission may approve under regulations, farm out the discovery; or
  - (c) relinquish the field in accordance with the provisions of this Act.
- (5) The consent of the Commission to the farm-out of a marginal field under subsection (b)(b) of this section shall, amongst others, be subject to the farmee presenting a field development plan over a period of time agreed with the Commission and a regulation made under this Act.

- (6) The failure of the farmee to present a field development plan to the Commission within the prescribed period shall attract a penalty prescribed in the Regulations.
- (7) A discovery relinquished under subsection (c) of this section shall be vested in the Government and be administered by the Commission.
- (8) For the purposes of this section -
  - (a) “marginal field” means a Field or discovery which has been declared a Marginal Field prior to 1<sup>st</sup> January 2020; and
  - (b) “farm-out” means an agreement between the holder of a petroleum mining lease or petroleum prospecting licence and a third party, which permits the third party to explore, prospect, win, work and carry away any petroleum encountered in a licence or lease area during the validity of the licence or lease.

**95. Assignments, mergers, transfers and acquisitions**

- (1) A holder of a petroleum prospecting licence or petroleum mining lease shall not assign, novate or transfer his licence or lease or any right, power or interest without prior written consent of the Minister.
- (2) The consent of the Minister under subsection (1) of this section shall be granted upon the recommendation of the Commission.
- (3) For the purpose of subsection (1) of this section, a change of control in the holder of a Licence or lease under subsection (1) of this section shall be deemed to be an assignment.
- (4) A licensee or lessee wishing to assign, novate or otherwise transfer its interest pursuant to subsection (1) of this section, shall make an application for approval of the transfer of a licence or lease to the Commission in the format prescribed by the Commission, and be accompanied with any other information that may be pursuant to any regulations published by the Commission hereunder
- (5) Notwithstanding the provisions of subsection (1) of this section, a holder of a licence or lease under subsection (1) of this section, may by way of security, wholly or partly assign, pledge, mortgage, charge or hypothecate its interests under the applicable licence, lease or grant a security interest in respect of the interest, provided that the consent of the Commission shall be obtained.
- (6) The Commission shall within 60 days of the receipt, act on the application of the licensee or lessee.



- (7) Where no response on the application has been received within 60 working days from the receipt of the recommendation of the Commission, the consent of the Minister under subsection (1) of this section shall be deemed to have been granted.
- (8) Where the consent of the Minister is granted in respect of the application for a transfer, the Commission shall promptly record the transfer in the appropriate register.
- (9) The Commission shall communicate the refusal or approval of an application for an assignment, novation or transfer of a licence or lease in writing to the applicant.
- (10) Where the application for an assignment or a transfer of a petroleum prospecting licence or petroleum mining lease is refused, the Commission shall inform the applicant of the reasons for the refusal and may give reasonable time within which further representations may be made by the applicant or by third parties in respect of the application.
- (11) The Minister may grant consent to an assignment, novation or transfer of a petroleum prospecting licence or petroleum mining lease, subject to the following terms and conditions the Commission may consider appropriate, that the proposed transferee -
  - (a) is a company incorporated in Nigeria;
  - (b) is of good reputation and standing;
  - (c) has sufficient technical knowledge, experience and financial resources to enable it effectively carry out all responsibilities of a licensee or lessee under the licence or lease; and
  - (d) shall comply with the Federal Competition and Consumer Protection Act, 2018.
- (12) The Commission shall make regulation to prescribe for payment of fees as a condition for any transaction under subsection (1) of this section, which fee shall be based on a percentage of the value of the transaction and shall not be taxable.
- (13) The consummation and details of any transaction to which subsection (1) of this section applies shall be -
  - (a) fully disclosed to the Federal Inland Revenue Service by the parties to the transaction; and
  - (b) published in the gazette by the Commission.
- (14) For the purposes of this section, “change of control” means any person or persons acting jointly or in concert, to acquire direct or indirect beneficial

ownership of a percentage of the voting power of the outstanding voting securities of the holder, by contract or otherwise, that exceeds 50% at any time.

- (15) A holder of a petroleum exploration licence shall not assign, novate or transfer his licence or lease or any right, power or interest without prior written consent of the Commission.

**96. Grounds for revocation of licence or lease**

- (1) Upon receipt of the written recommendation of the Commission for revocation, the Minister may revoke a petroleum prospecting licence, petroleum exploration licence or petroleum mining lease, where the applicable licensee or lessee -
- (a) fails to conduct petroleum operations in accordance with good international petroleum industry practices, the provisions of this Act and any other relevant legislation;
  - (b) interrupts production for a period of over 180 consecutive days without justification or as provided for in the applicable licence, lease or approved development plan, provided that an event of *force majeure* shall be an acceptable justification for interruption;
  - (c) fails to fulfil the terms and conditions of the applicable licence or lease or the approved field development plan;
  - (d) fails to pay to Government, as they become due, rents, royalties, taxes or other payments or production shares under this Act;
  - (e) fails to furnish any reports or data on operations as required by law;
  - (f) assigns, novates or otherwise transfers any interest in the applicable licence or lease other than in accordance with section 95 of this Act;
  - (g) has obtained an interest, in the applicable licence or lease based on false representation or contrary to corrupt practices and money laundering Laws;
  - (h) is declared by a court of competent jurisdiction to be insolvent, bankrupt or is liquidated, in each case except as part of a solvent plan or scheme of re-organisation, amalgamation or arrangement;
  - (i) has failed to comply with environmental obligations required by applicable law or by the provisions of the applicable Licence or Lease;
  - (j) is owned wholly or in part, directly or indirectly or is controlled by a former or serving public official or member of the Government, who obtained his interest in the applicable licence or lease other than as permitted by applicable law;
  - (k) where the applicable licensee or lessee does not submit and advance a field development plan and work commitment pursuant to sections 78 and 79 of this Act;

- (l) fails to abide by any expert determination, arbitration award or judgment arising from the dispute resolution provisions set forth in a licence, lease or this Act;
  - (m) fails to comply with domestic crude oil supply or domestic gas delivery obligations under this Act and any subsidiary regulation; or
  - (n) fails to comply with the host communities obligations under this Act.
- (2) Subsection (j)(j) of this section shall apply to a former public official or member of Government only where the applicable interest was acquired while the public official was in office or was a member of the Government.

**97. Notice of default prior to revocation**

- (1) Prior to the revocation of a petroleum prospecting licence or Petroleum Mining Lease by the Minister pursuant to section 96 of this Act, the Commission shall –
- (a) serve a notice of default on the applicable licensee or lessee stating the grounds upon which the Commission may recommend a revocation of the licence or lease to the Minister; and
  - (b) provide the licensee or lessee with a remediation period of not less than 60 days within which to remedy the default.
- (2) Where the Commission is satisfied with the remedy provided by the licensee or lessee pursuant to subsection (1)(b) of this section, the revocation process shall terminate.
- (3) Where, at expiration of the remediation period provided under subsection (1)(b) of this section, the default persists, the licence or lease may subject to the provisions of section 99 of this Act, be revoked in accordance with section 96 of this Act.
- (4) A notice of default shall be –
- (a) sent by the Commission to the last known address of the licensee or lessee or its legal representative in Nigeria; or
  - (b) published in the gazette or on the website of the Commission,
  - (c) each of which shall constitute sufficient notice to the Licensee or Lessee of the notice of default.
- (5) Revocation of a petroleum prospecting licence or petroleum mining lease shall be without prejudice to any –
- (a) liability or obligation which the licensee or lessee may have incurred in favour of the Commission, the Government or any third party; or
  - (b) claim, which the Commission, the Government or any third party may make against the licensee or lessee.

- (6) A revocation decision shall be published in the gazette and the Commission shall amend relevant registers maintained by it to reflect the revocation.

**98. Administration of a revoked producing lease**

- (1) Within 30 days of the revocation of a petroleum mining lease or any partial interest in the lease which is producing in paying quantities, the Minister shall, on the recommendation of the Commission, appoint an interim operator to ensure petroleum operations continue from the areas and zones subject to the petroleum mining lease based on good international oil field practices.
- (2) The interim operator appointed pursuant to subsection (1) of this section shall serve for a period to be determined by the Commission and the related contract shall be on a service fee basis.
- (3) During the tenure of an interim operator, the Commission may conduct a fair, transparent and competitive bidding process for the grant of one or more petroleum mining leases in respect of the areas and zones subject to the revoked petroleum mining lease or any partial interest in the petroleum mining lease.

**99. Power of revocation of participating or shareholders interest**

- (1) Where two or more persons are holders of a petroleum prospecting licence or petroleum mining lease and one or more of the grounds for revocation set forth in section 96 of this Act applies to not all of the holders, the Minister –
  - (a) may, in accordance with section 96 of this Act, revoke the participating or shareholders interest of the holder or holders to which the grounds apply; and
  - (b) shall not revoke the interests of the other holder or holders to which the grounds do not apply.
- (2) A holder to which the grounds apply under subsection (1) (a) of this section is referred to as a “defaulting holder” and a holder to which the grounds do not apply under subsection (1) (b) of this section is referred to as a “non-defaulting holder”.
- (3) Upon a revocation of an interest pursuant to subsection (1) (a) of this section, the rights of the defaulting holder shall cease without prejudice to any obligation or liability incurred or imposed on the defaulting holder under the terms and conditions of the licence or lease prior to the time of the revocation.
- (4) The interests of each non-defaulting holder shall not be affected by a revocation of the interest pursuant to subsection (1) (b) of this section and

the non-defaulting holders shall take such measures as provided for under the joint operating agreement or shareholder agreement to redistribute the revoked participating or shareholder interest to the non-defaulting holders or third parties.

- (5) Where subsection (1) of this section applies, an assignment to a third party may require the approvals stipulated under this Act and any replacement of the operator will require the approval of the Commission.
- (6) The Minister may revoke a licence or lease, where a non-defaulting holder under subsection (1) (b) of this section, fails to –
  - (c) take responsibility for the payment of rents, royalties, taxes, production shares, profit shares or other contractual payments to Government of the defaulting holder under the licence or lease; or
  - (d) comply with any other obligation under the licence or lease in a manner that may result in the revocation of the licence or Lease pursuant to section 96 of this Act.

#### **100. Fees**

- (1) A holder of a petroleum prospecting licence, petroleum exploration licence or petroleum mining lease shall pay to the Government royalties, fees, rents and production or profit shares in the amount and time as prescribed under this Act and regulations made by the Commission.
- (2) Where royalties, fees, rents, production or profit shares or other required payment to Government due under this section remains unpaid for a period of 30 days after the date when it becomes due for payment, it shall be considered as a debt to the Commission with interest accruing at a daily rate to be provided for in a regulation issued by the Commission.
- (3) The Commission may, after the 30 days period referred to under subsection (2) of this section and until the debt is repaid, together with accrued and unpaid interest -
  - (a) enter into and upon any land, property or premises owned, possessed or occupied by the holder of the licence or lease;
  - (b) seize, distrain and sell any petroleum, petroleum products, engines, machinery, tools, implements or other effects belonging to the holder of the Licence or Lease, and the costs incurred by the Commission in connection with the seizure, distress and sale shall be added to the debt; and
  - (c) out of money arising from the sale of any item referred to in subsection (b) of this section, pay off the debt and any surplus shall be paid by the Commission to the holder of the licence or lease.

- (4) Payment to Government referred to under this section shall not be waived or discounted.

**101. Damage to protected and venerated objects**

- (1) A licensee or lessee shall not enter upon, occupy or exercise any of the rights or powers conferred by its licence or lease in relation to any -
- (a) area held to be sacred, the question as to whether the area is sacred or not shall be decided by the customary court of the area, where necessary;
  - (b) part of the following relevant areas, except it obtains a written permission from and subject to conditions as may be imposed by the Commission, any part -
    - (i) set apart for, used or appropriated or dedicated to public purposes;
    - (ii) occupied for the purposes of the government of the Federation or a State;
    - (iii) situate within a township, town, village, market, burial ground or cemetery;
    - (iv) which is the site of or is within 50 yards of any building, installation, water reservoir, dam, public road or tramway or which is appropriated for or situate within 100 metres of any railway; or
    - (v) of the land under cultivation;
  - (c) any part consisting of privately owned or legally occupied land other than private land falling under paragraph (b) except permission in writing to do so has been obtained by the licensee or lessee from the Commission, which may grant permission if the licensee or lessee 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 it is required; and
    - (ii) paid or tendered to the person in lawful occupation or and the owner or owners of the land fair and adequate compensation; and
  - (d) dispute under sub-paragraph 0 of this subsection as to who is in lawful occupation or the owner of any land or as to the amount of any compensation payable, the Licensee or Lessee, pending the determination of the dispute, shall deposit with the Federal High Court with jurisdiction over the matter such sum as shall be determined by the Federal High Court to be reasonable compensation payable to the rightful owner or occupier of the land.

- (2) A person shall not, in the course of petroleum operations -
  - (a) injure or destroy any tree or object which is -
    - (i) of commercial value, or
    - (ii) the object of veneration to the people resident within the Licence or Lease area;
  - (b) damage or destroy any building or property; or
  - (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 surface area covered by the Licence or Lease.
- (3) A licensee or lessee who causes damage pursuant to subsection (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 subsection (2) of this section shall be determined by the Commission and prescribed by regulation made under this Act.
- (5) Where a licensee or lessee fails to pay compensation pursuant to subsections (3) and (2) of this section within 30 days, the Commission may apply sanctions in accordance with regulations made under this Act.

## **102. Environmental management**

- (1) A licensee or lessee who engages in upstream and midstream petroleum operations shall within -
  - (a) 1 year of the effective date; or
  - (b) 6 months after the grant of the applicable Licence or Lease,submit for approval an environmental management plan in respect of projects which require environmental impact assessment to the Commission or Authority, as the case may be.
- (2) The environmental management plan under subsection (1) of this section shall be in accordance with the regulations made under this Act.
- (3) The Commission or Authority, as the case may be, shall approve the environmental management plan, where -
  - (a) it complies with subsection (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) The Commission or Authority, as the case may be, shall in considering the environmental management plan, take into account the policy thrust of the Government regarding environmental protection and management

practices.

- (5) The Commission or Authority, as the case may be, may request for additional information from the licensee or lessee and may direct that the environmental management plan be adjusted in a manner the Commission or Authority may require.
- (6) The Commission or Authority, as the case may be, may after its approval of an environmental management plan and after engagement with the operator of a licence or lease, call for an amendment of the environmental management plan.
- (7) Chemicals shall not be utilised for upstream petroleum operations, except the Commission grants an applicable permit and approval.

**103. Financial contribution for remediation of environmental damage**

- (1) As a condition for the grant of a licence or lease and prior to the approval of the environmental management plan by the Commission or Authority, a licensee or lessee shall pay a prescribed financial contribution to an environmental remediation fund established by the Commission or Authority, as the case may be, for the rehabilitation or management of negative environmental impacts with respect to the licence or lease.
- (2) In determining the amount of the financial contribution the Commission or Authority, as the case may be, shall take into consideration the size of the operations and the level of environmental risk that may exist.
- (3) The financial contribution to an environmental remediation fund under subsection (1) of this section shall be subject to audit by the licensee or lessee, in accordance with guidelines that the Commission or Authority may, as the case may be, issue.
- (4) Where licensee or lessee fails to rehabilitate or manage or is unable to undertake the rehabilitation or management of any negative impact on the environment, the Commission or Authority, as the case may be, may, upon written notice to the holder, apply the fund under subsection (1) of this section to rehabilitate or manage the negative environmental impact.
- (5) A licensee or lessee shall, pursuant to subsections (1) and (2) of this section assess its environmental liability annually and increase its financial contribution to the satisfaction of the Commission or Authority, as the case may be.
- (6) Where the Commission or Authority, as the case may be, is not satisfied with



the assessment and financial contribution referred to in this section, the Commission or Authority, as the case may be, may appoint an independent assessor to conduct the assessment and determine the financial contribution.

#### **104. Gas flaring penalties**

- (1) A licensee, lessee or operator that flares or vents natural gas, except –
  - (a) in the case of an emergency;
  - (b) pursuant to an exemption granted by the Commission; or
  - (c) as an acceptable safety practice under established regulations,

commits an offence under this Act and shall be liable to a fine as prescribed by the Commission in regulations under this Act.

- (2) A fine due under this section shall be paid in the same manner and be subject to the same procedure for the payment of royalties to the Government by companies engaged in the production of petroleum.
- (3) A fine paid pursuant to this section shall not be eligible for cost recovery or be tax deductible.

#### **105. Prohibition of flaring or venting of natural gas**

A Licensee or Lessee shall pay a penalty prescribed pursuant to the Flare Gas (Prevention of Waste and Pollution) Regulations.

#### **106. Measurement of flared natural gas**

- (1) A licensee shall, prior to the commencement of petroleum production, install metering equipment conforming to the specifications prescribed on every facility from which natural gas may be flared or vented as the Commission or the Authority may prescribe in a regulation.
- (2) A licensee or lessee who fails or refuses to install metering equipment pursuant to subsection (1) of this section commits an offence under this Act and is liable to a fine as the Commission or the Authority may prescribe under a regulation.

#### **107. Exemption**

The Commission or the Authority may grant a permit to a Licensee or Lessee to allow the flaring or venting of natural gas for a specific period -

- (a) where it is required for facility start-up; or
- (b) for strategic operational reasons, including testing.

#### **108. Natural gas flare elimination plan**

Notwithstanding any provision to the contrary under this Act, a licensee or lessee

producing natural gas shall, within 12 months of the effective date, submit a natural gas flare elimination and monetisation plan to the Commission, which shall be prepared in accordance with regulations made by the Commission under this Act.

**109. Domestic crude oil supply obligations**

- (1) The supply of crude oil and condensates for the domestic market shall, subject to subsection (2) of this section, be on a willing supplier and willing buyer basis.
- (2) The Commission may issue regulations or guidelines on the mechanism for the imposition of a domestic crude oil supply obligation on lessees of upstream petroleum operations, where in its opinion, the domestic market results in shortages or inadequate supplies of crude oil and condensates for holders of crude oil refining licences.
- (3) The Authority shall, upon request by the Commission, promptly supply to the Commission the crude oil requirements of refineries in operation.
- (4) The Commission shall ensure that the domestic crude oil supply obligation contains the following -
  - (a) crude oil may only be sold to holders of crude oil refining licences, whose refineries are in operation;
  - (b) the supply of crude oil shall be commercially negotiated between the lessee and the crude oil refining licensee, having regard to the prevailing international market price for similar grades of crude oil; and
  - (c) holders of crude oil refining licences shall provide payment guarantees as required by the applicable lessee and payment for crude oil purchased pursuant to obligations shall be in US dollars.

**110. Domestic gas delivery obligations**

- (1) Subject to subsection (2) of this section, the Commission shall, by a Regulation or guideline made under this Act, –
  - (a) prescribe and allocate the domestic gas delivery obligation on a lessee before 1st March of each year based on the domestic gas demand requirements determined or updated pursuant to section 173 of this Act; and
  - (b) ensure compliance by every Lessee with a domestic gas delivery obligation.
- (2) A lessee may, on a voluntary basis, conclude contracts with wholesale

- customers of the strategic sectors or with wholesale gas suppliers supplying the sectors for delivery of marketable natural gas to the customers or suppliers and notify the Commission of the contracts, provided that where the volume of the contract is equal to or higher than the domestic gas delivery obligation for the lessee, the lessee shall –
- (a) be deemed to have fulfilled its domestic gas delivery obligation;
  - (b) not be a producer client of the gas aggregator; and
  - (c) inform the gas aggregator.
- (3) A lessee who has complied with its domestic gas delivery obligation or may wish to supply wholesale customers who are not part of the strategic sectors may deliver further supplies of marketable natural gas to the domestic market on a willing seller and willing buyer basis.
  - (4) A wholesale gas supplier may, on a voluntary basis and following the procedure stipulated under subsection (2) of this section –
    - (a) enter into a contract with a lessee or wholesale customer of the strategic sectors for the delivery of marketable natural gas to the customers; and
    - (b) inform the Commission of the contracts.
  - (5) The Commission shall require a lessee producing natural gas to carry out works and operations which may be required to increase production and to dedicate specific volume of the natural gas produced towards the requirements of the domestic market.
  - (6) The volume of natural gas to be dedicated by a lessee towards the domestic gas delivery obligation shall be based on an allocation system among lessees as determined by the Commission upon consultation with the Authority with consideration of supporting infrastructure availability.
  - (7) A lessee shall be obliged to deliver the volume of natural gas prescribed under subsection (6) of this section to a wholesale customer determined by the domestic gas aggregator and at a location indicated by the domestic gas aggregator pursuant to section 156 of this Act.
  - (8) Subject to the provisions of subsection (7) of this section, a lessee who fails to comply with the domestic gas delivery obligation shall incur a penalty of US\$ 3.50 per MMBtu not delivered, provided that, where the lessee has signed a gas purchase and sale agreement with a wholesale supplier of the strategic sectors, the penalty for failure to deliver shall be as stated in that agreement.
  - (9) The penalty amount of US\$ 3.50 per MMBtu referred to under subsection (8)

of this section may be adjusted as the Commission may prescribe in a regulation made under this Act.

- (10) A lessee shall not incur a penalty prescribed under subsection (8) of this section, where it can establish that its failure to comply is as a result of -
  - (a) *force majeure*;
  - (b) the inability of a purchaser to accept allocated natural gas volumes;
  - (c) the inability to transport the allocated natural gas for reasons beyond the control of the lessee; or
  - (d) the failure of a purchaser to pay for allocated natural gas volumes.
- (11) The Commission shall discontinue the imposition of domestic gas delivery obligations, where the Authority has determined that the natural gas market has attained full market status.
- (12) Upon being allocated the volumes to be supplied under the domestic gas supply obligation pursuant to subsection (1) of this section, the lessee shall submit a marketable natural gas production and supply plan consistent with these obligations to the Authority.
- (13) A producer-customer of the domestic gas aggregator shall pay compensation to customer-client for any loss suffered as a result of default to supply marketable natural gas in accordance with a gas purchase order issued by the domestic gas aggregator.
- (14) A Lessee who does not comply with the domestic gas delivery obligation as directed by the Commission shall –
  - (a) in addition to the penalties provided under subsection (8) of this section, not be entitled to supply natural gas to any midstream gas export operations; and
  - (b) where the lessee is supplying natural gas to midstream gas export operations, the Commission may impose other sanctions as are prescribed in the Regulation made under this Act.
- (15) An approval for the supply of natural gas for export projects shall, from the effective date, be subject to prior compliance by the lessee with its domestic gas delivery obligation.

### **Part III**

## **General Administration of Midstream and Downstream Petroleum Operations**

### **111. Matters relating to licence applications**

- (1) The Authority may grant, renew, modify or extend individual Licences or permits, provided that, where it relates to the establishment of refineries

the licence shall be issued by the Minister on the recommendation of the Authority.

- (2) The Authority shall only grant a licence for midstream or downstream petroleum operations, where -
  - (a) it meets the technical standards required for petroleum operations based on good international petroleum industry practices;
  - (b) the location and size of the area occupied by the facilities or right of way is acceptable to the Authority;
  - (c) it meets the health, safety and environmental standards, as determined by the Authority; and
  - (d) it provides for the efficient and economic use of facilities and pipelines.
- (3) The Authority shall only grant a licence for midstream petroleum operations where -
  - (a) it does not involve excessive capital or operating expenditures;
  - (b) it includes an acceptable environmental management plan pursuant to section 102 of this Act;
  - (c) it includes a decommissioning and abandonment plan and a decommissioning and abandonment fund that complies with sections 232 and 233 of this Act;
  - (d) it provides for the elimination of routine natural gas flaring;
  - (e) it does not relate to midstream petroleum operations that would conflict with a licence already granted; and
  - (f) it includes –
    - (i) a detailed programme for the recruitment and training of Nigerians in all phases of petroleum operations handled directly by the licensee or through agents and contractors of the licensee; and
    - (ii) provision for scholarship schemes, internships, continuous professional development and other training requirements;
- (4) An application for the grant, renewal or extension of a licence or permit shall –
  - (a) be made to the Authority in the form and manner prescribed by regulation;
  - (b) be accompanied by the payment of a prescribed fee, where applicable, together with information or documents as prescribed in the regulations under this Act; and
  - (c) include a decommissioning and abandonment plan, where the licence contemplates the construction of pipelines, storage tanks, processing or other facilities.

- (5) The Authority may furnish an applicant for the grant, renewal or extension of a licence or permit, with non-confidential information as may necessary to facilitate the filing of the application.
- (6) 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 Authority in its application.
- (7) The Authority shall consider information presented in respect of an application for a licence or permit, including representations from interested parties in favour of or against the granting, extension or renewal of the licence or permit and shall inform the applicant of its decision within 90 days of the application.
- (8) Where the Authority has decided to grant a licence or permit, it shall publish a notice of its decision in the form and manner prescribed in regulations issued by the Authority.
- (9) Where the Authority decline an application, it shall inform the applicant of its refusal of the application, reasons for the refusal and may state a reasonable time within which the applicant may make further representations.
- (10) The Authority shall consider any representation made by an applicant for a licence or permit on the refusal of an application.
- (11) The Authority shall not consider further application or representation made by an applicant in respect of a refusal of an application previously considered and rejected by the Authority.
- (12) An applicant that is not satisfied with the reasons given by the Authority for refusal of an application may apply to the Federal High Court for a judicial review.

## **112. Advertisement of licence applications**

- (1) The Authority shall publish a notification of any application made for the grant of a licence or renewal under this Part in a manner prescribed by a regulation under this Act.
- (2) Upon the publication of the notification of the application referred to under subsection (1) of this section, interested parties may comment or make representations to the Authority in respect of the application in accordance with the time prescribed by regulation under this Act.
- (3) Upon the grant or renewal of a Licence, the Authority shall publish

notification of the grant or renewal in the form and manner prescribed by regulation under this Act.

### **113. Licensing regulations**

- (1) The Authority shall make regulations and guidelines for the grant or renewal of licence under Chapter Two.
- (2) The Authority shall in consultation with the Commission ensure the implementation of the domestic crude oil supply obligation and domestic gas delivery obligation.
- (3) The Authority shall ensure third party access to facilities and pipelines for midstream and downstream petroleum operations.
- (4) The Authority shall encourage third party investment in facilities and pipelines for midstream and downstream petroleum operations.
- (5) The Authority may make regulations on tariffs, which shall be consistent with the tariff methodology set out in this Act.

### **114. Conditions in licences or permits**

- (1) Conditions in a licence or permit issued pursuant to this Act may require the holder of a licence or permit to -
  - (a) comply with any directions of the Authority in relation to matters specified in the licence or permit;
  - (b) undertake or refrain from anything specified in the licence or permit;
  - (c) secure the approval of the Authority prior to undertaking anything specified in the licence or permit;
  - (d) comply with relevant industry codes, standards and market rules;
  - (e) undertake its activities subject to the prescribed tariffs or tariff methodology;
  - (f) provide relevant information to the Authority;
  - (g) prepare and submit to the Authority true, fair and sufficient annual statements in such form, and particulars as the Authority may require;
  - (h) make available to the Authority such books as may be requested by authorised officers of the Authority;
  - (i) impose restrictions on the disposal of assets;
  - (j) adhere to undertakings made within a business plan submitted as part of the application process;
  - (k) prepare and submit to the Authority such information and periodical reports as the Authority may require;
  - (l) publish terms of access to its transportation or distribution pipeline or petroleum liquids or gas transportation networks as the case may be;

or

- (m) operate its licence or permit and related facilities, if any, according to the standard of a reasonable and prudent operator.
- (2) The duration of a licence or permit shall be specified by regulations made under this Act and the conditions applicable to the licence or permit may cease to have effect or be modified in accordance with terms specified in the licence or permit.
- (3) A licence or permit of the same class granted by the Authority, shall contain similar conditions representing standard conditions for that class and any difference in the conditions in the licence or permit shall only be for good reasons, which shall be published in the gazette.
- (4) Subject to the provisions of this Act, the Authority shall have power to include special conditions specific to a particular licence or permit or to a holder of the licence or permit, provided that the special conditions are designed to meet specific circumstances and shall not be a disadvantage to another holder of a licence or permit.
- (5) The Authority may specify in a licence or permit a date on which activities shall commence.
- (6) The Authority may provide that an activity be exclusive for all or part of the period of the licence or permit for a -
  - (a) specific purpose;
  - (b) specified geographical area and route; or
  - (c) combination of paragraphs (a) and (b) of this subsection.

#### **115. Compensation for acquisition of land**

- (1) A Licence or Permit shall be issued subject to compliance by the applicant with the provisions of the Land Use Act Cap L5 Laws of the Federation of Nigeria 2004 in respect of compensation for acquisition of land for midstream and downstream petroleum operations.
- (2) The Governor of a State of which land is required for carrying out operations or activities subject to a licence or permit may issue a certificate of occupancy pursuant to the Land Use Act in respect of the land and in accordance with existing state law.

#### **116. General non-discrimination provisions**

A holder of a licence or permit shall not discriminate against customers, classes of customers or their related undertakings in respect of access, Tariffs, prices, conditions or standards of service, except for justifiable and identifiable differences



regarding matters such as quantity, transmission distance, length of contract, load profile, interruptible supply or other distinguishing features approved by the Authority.

**117. Assignment or transfer of licence or permit**

- (1) A holder of a licence or permit shall not, without the prior written consent of the Authority, assign or transfer its Licence or Permit or any right or obligation arising from the licence or permit.
- (2) An application for assignment or transfer of a licence or permit shall be made to the Authority, which may require the applicant to publish a notice of the application in the form, manner and time prescribed by regulation under this Act.
- (3) The Authority shall, in the determination of whether a licence or permit is to be assigned or transferred, –
  - (a) follow the same procedure with appropriate modifications;
  - (b) apply the same rules and criteria;
  - (c) consider the same issues as if the party to whom the Licence or Permit is being assigned or transferred is applying for a new Licence; and
  - (d) consider the representations made to it by third parties in respect of the application.
- (4) The Authority shall, subject to subsection (3) of this section, communicate in writing, its approval or refusal of an application for assignment or transfer of a licence or permit within the time prescribed by regulation under this Act.
- (5) Where the Authority does not approve or refuse an application and fails to communicate its decision to an applicant for the assignment or transfer of a licence or permit within the prescribed time, the application shall be deemed to be approved.
- (6) Where the Authority refuses the grant of an application for an assignment or a transfer of a licence or permit, it shall communicate to the applicant the reason for the refusal and shall give reasonable time within which further representation may be made by the applicant or by a third party in respect of the application.
- (7) Where the Authority grant consent to an assignment or transfer of a licence or permit, it shall notify the applicant in writing, subject to any condition it may consider appropriate.

**118. Suspension and amendment of conditions in a licence or permit**

- (1) The Authority may suspend or amend the conditions applicable to a licence

or permit or include additional conditions subject to subsection (2) of this section.

- (2) The Authority shall not suspend or amend any condition applicable to a licence or permit or include additional conditions to a licence or permit unless it gives the holder –
  - (a) a written notice of its intention and a draft copy of the proposed suspension or amendment; and
  - (b) an opportunity to make a written submissions to the Authority within the time specified by regulation.
- (3) The procedure for the suspension or amendment of a condition in a licence or permit shall be as prescribed by the Authority in a regulation under this Act.
- (4) A holder of a licence or permit who is dissatisfied with the decision of the Authority to suspend or amend a condition in a licence or permit may apply to the Federal High Court against the decision.

#### **119. Surrender of licence or permit**

- (1) The holder of a licence or permit may, upon an application in the form, manner and meeting any conditions prescribed by the Authority in a regulation made under this Act surrender the licence or permit, where -
  - (a) the licenced or permitted activity is no longer required;
  - (b) the licenced or permitted activity is not economically justifiable;
  - (c) another qualified person is willing and able to assume the rights and obligations of the holder of the licence or permit in accordance with the requirements and objectives of this Act; and
  - (d) applicable, the holder of the licence or permit has complied with the requirements of the law in respect of relinquishment, decommissioning and abandonment of installations and reclamation of land.
- (2) A holder of the licence or permit who has commenced activities and has ongoing operations shall, except a shorter period is stipulated in the licence or permit, give the Authority a minimum of 12 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 subsection (2) of this section shall be as prescribed by regulation.

#### **120. Grounds for the revocation of a licence or permit**

- (1) Notwithstanding the provisions of Chapter Two of this Act, a licence or

permit may be revoked, where -

- (a) the holder becomes insolvent, bankrupt, enters into an agreement or composition with its creditors or takes advantage of any enactment for the benefit of the 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, except it is for the purpose of amalgamation or reconstruction, provided that the prior written consent of the Authority has been obtained;
  - (c) a holder of a licence or permit fails to commence activity within the timeframe prescribed in the licence or permit;
  - (d) the holder of a licence or permit fails to comply with applicable laws and Regulations on terms and conditions of its licence or permit;
  - (e) the holder interrupts midstream or downstream petroleum operations for a period of more than 180 consecutive days without justification as provided for in the licence or permit, the acknowledgement of an event of *force majeure*, shall be an acceptable justification for interruption;
  - (f) the holder assigns or transfers any interest in the licence or permit without obtaining the prior written consent of the Authority;
  - (g) the holder has acquired the licence or permit based on false representation or contrary to corrupt practices and money laundering Laws;
  - (h) the holder has failed to comply with environmental obligations as required by law or the provisions of the licence or permit;
  - (i) the holder is owned wholly or in part, directly or indirectly or is controlled by a former or serving public official or member of the Government, who obtained his interest in the applicable licence or lease other than as permitted by applicable law; and
  - (j) the holder fails to abide by any expert determination, arbitration award or judgment arising from the dispute resolution provisions set forth in a licence or this Act.
- (2) Subsection (1)96(j) of this section shall apply to a former public official or member of Government only where the applicable interest was acquired while the public official was in office or was a member of the Government.

#### **121. Notice of default prior to revocation**

- (1) Prior to a decision by the Authority to revoke a licence or permit pursuant to section 120 of this Act, the Authority shall –
  - (a) serve a notice of default on the holder setting forth in reasonable detail the default of the holder; and

- (b) give the holder 60 days within which to remedy the default.
- (2) Where the Authority is satisfied with the remedy of the holder pursuant to subsection (1)(b) of this section, the revocation process shall terminate.
- (3) Where, at the expiration of 60 days, the holder fails to remedy the default, the licence or permit shall be terminated.
- (4) A notice of default shall be –
  - (a) sent by the Authority to the last known address of the holder of licence or permit or its legal representative in Nigeria; or
  - (b) published in the gazette or on the website of the Authority,each of which shall constitute sufficient notice to the holder of licence or permit of the notice of default.
- (5) Revocation shall be without prejudice to any –
  - (a) liabilities which the holder may have incurred, or
  - (b) claim, which the Authority, the Government or any third party may make against the holder of licence or permit.
- (6) A revocation decision shall be published in the gazette and the Authority shall amend relevant registers maintained by it to reflect the revocation.

## **122. Tariff principles**

- (1) The Authority shall, in exercising its powers of commercial regulations, be guided by the following principles in designing a pricing framework for transportation, distribution and processing petroleum -
  - (a) tariffs for transportation, distribution and processing of petroleum shall be on a cost-reflective basis;
  - (b) tariffs charged shall permit a reasonable return for licensees on their investments;
  - (c) tariffs shall not discriminate between customers with similar characteristics pursuant to section 116 of this Act; and
  - (d) tariffs shall be determined in US Dollars or other foreign currency as applicable with a view to attracting foreign investment to midstream and downstream petroleum operations, provided that payments of the tariffs may be made in the respective foreign currency or equivalent value of naira at the open market rate published by the Central Bank of Nigeria as applicable under the regulations.
- (2) The tariff methodology for tariffs related to new gas transportation pipelines, gas distribution networks and facilities requiring a gas processing licence shall include the following -

- (a) tariffs shall be determined in US dollars, but may be paid in naira, where the applicable exchange rate shall be based on the Securities and Exchange Commission over the counter market rate or any successor rate;
  - (b) the capital costs may be recovered in equal installments over a period as determined by the Authority;
  - (c) the after tax rate of return on equity shall be 20% on a nominal basis and the rate of return shall apply during construction;
  - (d) where short pipelines connecting producers or consumers to a gas transport pipeline or gas transport pipeline network and in other justified cases, the Authority may approve that capital costs be based on 100% equity, otherwise a reasonable debt or equity ratio shall apply;
  - (e) where a debt or equity ratio applies pursuant to paragraph (d) of this subsection, the cost of any interest and financing charges shall be recovered;
  - (f) operating costs, including allocation for overhead and profit margin on operating costs, shall be recovered and the costs shall be adjusted for inflation;
  - (g) line losses and gas energy use shall be taken into account;
  - (h) any applicable tax, levy and duty shall be recovered;
  - (i) where capital costs have been fully recovered, the Tariff shall no longer include the items under paragraphs (b), (c) and (d) of this subsection; and
  - (j) Tariffs shall be based on the estimated actual throughput as estimated by the Authority, notwithstanding the capacity of the gas transportation pipeline, gas distribution network or processing plant.
- (3) The Authority may by regulation modify or provide further detail on the provisions of subsection (2) of this section and establish more favorable tariffs for credit worthy shippers willing to commit to long term ship-or-pay agreements facilitating the financing of the respective pipelines or plants.
- (4) The Authority may approve negotiated tariffs where one or more wholesale customers connect with a pipeline to a transportation network or transportation pipeline or in other cases where justified in the opinion of the Authority.

### **123. Tariff methodology**

- (1) Tariffs charged by licensees for the use of any facility or infrastructure licenced by the Authority for use in midstream and downstream petroleum operations shall be set according to one or more tariff methodologies adopted by the Authority for a particular set of licences, in conformity with

- the applicable fiscal regime, provided that the tariff methodologies shall -
- (a) allow an operator to recover reasonable cost incurred, benchmarked against industry best practice and a reasonable return on the capital invested in the 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 similar consumption profile pursuant to section 116 of this Act ;
  - (e) in case of distribution licences, ensure efficient charges relating to petroleum product or natural gas supply covering billing, metering and other services;
  - (f) avoid economic distortions and ensure a competitive market for the sale and distribution of petroleum products and natural gas in Nigeria; and
  - (g) avoid cross-subsidies among different categories of consumers.
- (2) Tariffs may differentiate between credit worthy shippers willing to make long term ship-or-pay agreements facilitating the financing of the pipeline or plant and other shippers or users.
  - (3) Except for the tariff methodology established in section 122 (2) of this Act, the Authority shall, prior to establishing a tariff methodology, initiate and conduct a stakeholders' consultation in the manner specified in subsection (5) of this section to consult applicants, operators, consumers, prospective customers, consumers associations, associations of prospective customers and any other persons with interest in the subject matter of the proposed tariff methodology.
  - (4) The Authority may, in establishing a Tariff methodology, take into consideration the submissions of the stakeholders' consultation referred to in subsection (3) of this section.
  - (5) Prior to holding a stakeholders' consultation referred to in subsection (3) of this section, the Authority shall publish in at least two national newspapers with wide coverage and on its website, notice of -
    - (a) the stakeholders' consultation;
    - (b) its invitation to licensees and stakeholders to participate in the stakeholders' consultation;
    - (c) the venue and period during which the stakeholders' consultation is to be held;
    - (d) the nature of the matter to which the stakeholders' consultation relates;
    - (e) the matters upon which the Authority would require submissions;

- (f) the form in which licensees and stakeholders are to make submissions to the Authority on the subject matter of the stakeholders' consultation;
  - (g) the period of notice for the commencement of the stakeholders' consultation, which shall not be less than 21 days; and
  - (h) the address or addresses to which the submissions may be sent.
- (6) Notwithstanding the requirements under subsection (3) of this section, the Authority may, due to the exigency of the circumstances, establish a tariff methodology without conducting a stakeholders' consultation, where it considers it necessary to do so.
- (7) A tariff methodology made pursuant to subsection (6) of this section shall be valid for 6 months with effect from its commencement date, except it is confirmed following a stakeholders' consultation conducted in accordance with subsections (4) and (5) of this section.
- (8) The Authority shall fix a date for which the determined tariff methodology shall come into effect and shall cause the notice of the commencement date to be published in at least two national newspapers with wide coverage and its website.
- (9) Where the Authority considers it necessary that an existing tariff methodology or tariff should be amended, the Authority shall conduct a stakeholders' consultation on the proposed amendment in accordance with the provisions of subsections (4) and (5) of this section.
- (10) A person under obligation to set tariffs shall be bound by operative tariff methodology adopted through the method prescribed in this section.
- (11) A holder of a licence engaged in the sale of petroleum products to retail customers or who is subject to third party access or open access obligations under this Act, shall display at its office a current copy of the tariffs applicable to the services provided by the holder.
- (12) A holder of a licence shall not pass the costs of any fine or penalty incurred under this Act or any other law to a consumer.

#### **124. Approval and publication of charging structures**

- (1) A licensee subject to tariff Regulation by the authority shall -
- (a) propose tariffs and tariff methodologies for the approval of the Authority prior to the application of the charges;
  - (b) impose tariffs in accordance with the approval referred to under paragraph (a) of this subsection; and

- (c) publish the tariffs as required by the Authority in a manner that ensures that the customers of the licensees are able to identify and calculate the charges for which they will become liable.
- (2) The Authority shall, within one year after the effective date, review, confirm or modify all applicable tariffs.

#### **Part IV**

#### **Administration of Midstream and Downstream Gas Operations**

#### **125. Activities requiring a licence for midstream and downstream gas operations**

- (1) Except in accordance with an appropriate Licence issued by the Authority, a person shall not undertake the following activities with respect to midstream gas operations -
- (a) establish, construct or operate a facility for the processing of natural gas;
  - (b) establish, construct or operate a facility for the storage of natural gas;
  - (c) establish, construct or operate a gas transportation pipeline;
  - (d) engage in bulk transportation of natural gas by rail, barge or other means of transportation;
  - (e) operate a gas transportation network;
  - (f) establish, construct or operate a terminal, jetty, or other facility for the export or importation of natural gas;
  - (g) engage in wholesale gas supply; or
  - (h) engage in the construction or operation of petrochemical or fertilizer plants.
- (2) Except in accordance with an appropriate licence issued by the Authority, a person shall not undertake the following activities with respect to downstream gas operations -
- (a) retail trading of natural gas;
  - (b) establishment, construction or operation of a gas distribution network; or
  - (c) establishment, construction or operation of a facility for the supply or trading of natural gas.
- (3) The Authority may, by regulation, prescribe additional activities to be undertaken only on the basis of a licence or permit and shall have power to issue licences or permits for the activities in accordance with this Act.
- (4) Where a person engages in any of the activities set out in subsection (1), (2) or (3) of this section without a licence or permit, the Authority shall -
- (a) seal the premises where the activity is undertaken;



- (b) seize the facilities by which the activities were undertaken;
  - (c) confiscate and dispose of equipment or materials employed by the person in the activity in a manner prescribed by regulations under this Act;
  - (d) impose penalties as prescribed by regulations under this Act; or
  - (e) impose any combination of the penalties prescribed under paragraphs (a), (b), (c) and (d) of this subsection.
- (5) Notwithstanding any provision of this Act, a person who engages in any of the activities set out in subsection (1), (2) or (3) of this section without a licence or permit, commits an offence and is liable to imprisonment for a term of –
- (a) 1 year or to a fine prescribed by regulation, in the case of an activity requiring a licence; or
  - (b) 6 months or to a fine prescribed by regulation, in the case of an activity requiring a permit.
- (6) A holder of a subsisting lease, licence or permit who is engaged in activities in midstream or downstream gas operations prior to the effective date shall, within 24 months from the effective date, apply to the Authority and the Authority may issue the appropriate licence or permit, where applicable.
- (7) The provisions of subsection (4) of this section shall not apply to any person who has made an application contemplated under subsection (6) of this section until the Authority has considered the application given a decision.
- (8) Where any person, in applying for a Licence or Permit, knowingly makes a false or misleading statement, the Authority may –
- (a) suspend or revoke the licence or permit; or
  - (b) impose a fine on the licensee or permit holder on the basis of the false or misleading information.

## **126. Special regulations for midstream and downstream gas operations**

In addition to any matter provided under section 113 of this Act, the Authority may issue regulations with respect to midstream and downstream gas operations, which shall include -

- (a) the operation of gas processing plants, gas transportation pipelines and gas transportation networks, gas distribution pipelines, natural gas storage plants, liquefied petroleum gas depots and liquefied natural gas;
- (b) the establishment and operation of a wholesale natural gas market scheme to ensure continuity of supply of natural gas to customers, which will apply to the owners and operators of gas transportation pipelines, shippers of natural gas, holders of natural gas storage and distribution licences and

retailers; and

- (c) matters ancillary to or consequential on the activities set out in paragraphs (a) and (b) of this section.

**127. Rights of way relating to midstream and downstream gas operations**

Subject to applicable law and the terms and conditions prescribed by the Authority, a licensee or permit holder is entitled to a right of way for the laying, operation and maintenance of pipelines, communication lines and other similar lines through or across the areas the licensee or permit holder may require for carrying on midstream or downstream gas operations under the Licence or permit.

**128. Surface rights reserved for the Authority relating to midstream and downstream gas operations**

The Authority may for the purpose of efficiency, grant rights of way, easements or other rights over any surface or seabed areas subject to an existing licence or permit, which may be necessary for the laying, operation and maintenance of transportation pipelines, communication lines, power lines and other similar lines and any right of way or other rights reserved shall continue for the benefit of any entity to whom the authority may subsequently grant the same licence or permit.

**129. Grant of a gas processing licence**

- (1) Subject to sections 111 and 125 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person a gas processing licence, which shall permit the person to install and operate the following facilities, on its own account or on the basis of open access for customers as stipulated in the Licence, –

- (a) gas conditioning plants, to condition natural gas removing CO<sub>2</sub>, H<sub>2</sub>S or other impurities;
- (b) gas processing plants, to produce ethane, propane, butane, other natural gas liquids and marketable natural gas;
- (c) gas to liquids plants;
- (d) liquefied natural gas plants;
- (e) ethane extraction plants; and
- (f) other plants, which in the opinion of the Authority, require a gas processing licence.

- (2) The Authority shall, in considering an application for a gas processing licence, take into account the economic case for the specific facility as provided under subsection (1) of this section, including the potential demand for its use.

**130. 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 that complies 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 Authority;
- (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 that is likely to prejudice the public interest or the integrity of network operations;
- (e) operate the facilities in a manner that results in output of products with specifications as determined by the Authority;
- (f) to operate its facilities subject to open access commitments as stipulated in the licence or where the licence is issued for operations on its own account, provide third party access in an equitable manner;
- (g) treat all customers in a non-discriminatory manner pursuant to section 116 of this Act, where the licence is issued on an open access basis; and
- (h) abstain from activities, which in the opinion of the Authority may prevent, restrict or distort competition.

**131. Conditions applicable to a gas processing licence**

A gas processing licence shall, in addition to the conditions that may be imposed by the Authority pursuant to section 114 of this Act, be deemed to be granted subject to the condition that -

- (a) the holder shall not process natural gas on its own account, where the licence is issued on an open access basis;
- (b) a lessee, operating on its own account, may own the natural gas in a gas conditioning plant or gas processing plant for the purpose of conditioning or processing natural gas from its fields in order to deliver marketable natural gas for domestic or export purposes, subject to such third party access provisions as may be included in the licence;
- (c) a wholesale customer, operating on its own account, may own the natural gas in a gas processing plant, ethane extraction plant or other plant requiring a gas processing licence, where the principal user of the natural gas is the wholesale customer, subject to any third party access provisions as may be included in the licence;
- (d) the holder shall conduct its licenced activities safely and reliably in compliance with any law in force and any prescribed health and safety regulations, standards and operating procedures made pursuant to this or any other Act;
- (e) the holder shall have due regard to the effect of its licenced activities on the environment and comply with the requirements for environmental

- protection, management and restoration under this Act and any law in force;  
and
- (f) the holder shall mark, maintain and secure the boundaries of its facilities and associated infrastructure constructed under the terms of its licence and any law in force.

### **132. Grant of a bulk gas storage licence**

- (1) Subject to sections 111 and 125 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person a bulk gas storage licence authorising the holder to undertake the bulk storage of natural gas either for its own account or on behalf of customers as stipulated in the licence.
- (2) The Authority shall, in considering an application for a bulk gas storage licence, take into account the economic case for a bulk gas storage facility, including the potential demand for its use.

### **133. 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 that complies with the following general obligations -

- (a) establish and make available to the public at its offices, the -
  - (i) procedure and terms for obtaining third party access or throughput services, and
  - (ii) method of response to the request for its services;
- (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 Authority;
- (c) shut down its facilities in emergencies and in order to carry out maintenance or in response to curtailment directives issued by the Authority;
- (d) grant to third parties the right to use or have access to capacity within its facilities for the purpose of ensuring competitive gas supply;
- (e) consult with and obtain from the Authority written permission prior to any modification of technical and operational rule of practice concerning the operation of its facilities;
- (f) conduct its licenced activities in a non-discriminatory manner pursuant to section 116 of this Act, where the Licence is issued on an open access basis;
- (g) manage its facilities as a reasonable and prudent operator; and
- (h) abstain from activities, which in the opinion of the Authority may prevent, restrict or distort competition.

### **134. Conditions applicable to a bulk gas storage licence**

In addition to conditions the Authority may impose pursuant to section 114 of this Act, a bulk gas storage licence shall be deemed to be granted subject to the

conditions that the holder shall -

- (a) conduct its licenced activities safely and reliably in compliance with any law in force and prescribed health and safety regulations issued pursuant to this or any other Act;
- (b) have regard to the effect of its licenced activities on the environment and comply with the requirements for environmental protection, management, and restoration under this Act and any law 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 in force.

**135. Grant of gas transportation pipeline licence**

- (1) Subject to sections 111 and 125 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person a gas 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 for its own account with third party access provisions or as common carrier as stipulated in the licence.
- (2) The Authority shall, in considering an application for a gas transportation pipeline licence, take into account the economic case for a gas transportation pipeline, including the potential demand for its use.

**136. 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 that complies with the following general obligations -

- (a) establish and make available to the public at its offices, the -
  - (i) procedure for obtaining and terminating transmission and interconnection services for natural gas for the tariffs established by the Authority, and
  - (ii) method of response to the request for its service;
- (b) construct, operate and maintain its gas transportation pipeline in a safe, economical, and reliable manner taking into account any strategic plans formulated by the Authority;
- (c) manage supplies and demand and meet on a reasonable endeavours basis requests for transportation above contractual volumes;
- (d) shut down its gas transportation pipeline in emergencies and in order to carry out maintenance or in response to curtailment directives issued by the Authority;
- (e) provide access on a non-discriminatory basis pursuant to section 116 of this Act, where the Licence is granted on a common carrier basis;
- (f) consult with and obtain from the Authority written permission prior to any modification of technical and operational rule of practice concerning the

- operation of its pipeline;
- (g) manage its gas transportation pipeline as a reasonable and prudent operator;
- (h) where the pipeline is operated on a common carrier basis, ensure development and operation of terms for access to the gas transportation pipeline in conjunction with the natural gas shipping community and where applicable comply with the relevant network code;
- (i) where the pipeline is operated for its own account, operate its facilities subject to third party access obligations under this Act and regulations prescribed by the Authority; and
- (j) abstain from activities, which in the opinion of the Authority may prevent, restrict or distort competition.

**137. Conditions applicable to a gas transportation pipeline licence**

A gas transportation pipeline licence shall, in addition to the conditions that may be imposed by the Authority pursuant to section 114 of this Act, be deemed to be granted subject to the condition that -

- (a) the holder shall not supply natural gas to customers on its own account where the licence is granted on a common carrier basis;
- (b) a lessee, operating on its own account, may own the Natural Gas in a gas transportation pipeline, for the purpose of –
  - (i) connecting marketable natural gas produced in a field to another gas transportation pipeline or gas transportation network, and
  - (ii) transporting natural gas to a plant for conditioning or processing natural gas from its fields in order to deliver marketable natural gas for domestic or export purposes,
- (c) subject to third party access provisions as may be included in the licence;
- (d) a wholesale customer, operating on its own account, may own the natural gas in a gas transportation pipeline, where it is the principal user of the natural gas, subject to any third party access provisions as may be included in the licence;
- (e) a wholesale gas supplier operating on its own account, may own the natural gas in a gas transportation pipeline, for the purpose of connecting a lessee or wholesale customer to or from a gas transportation network or gas transportation pipeline, subject to such third party access provisions as may be included in the licence;
- (f) the holder shall conduct its licenced activities safely and reliably in compliance with any law in force and prescribed health and safety Regulations issued pursuant to this or any other Act;
- (g) the holder shall have regard to the effect of its licenced activities on the environment and comply with the requirements of environmental protection, management and restoration under this Act and any law in force;

- (h) the holder shall mark, maintain and secure the boundaries of the pipelines and associated infrastructure constructed under the terms of its licence and any law in force; and
- (i) a pipeline transporting un-processed gas to a gas processing plant or gas conditioning plant shall require a gas transportation pipeline licence and the Commission shall –
  - (i) determine and advise the Authority on the characteristics of the gas to be transported,
  - (ii) cooperate with the Authority in determining possible third party access to the pipeline; and
- (j) the gas transportation pipeline may, with the approval of the Authority, be in whole or in part, a low-pressure pipeline at the request of the licensee.

**138. Grant of gas transportation network operator licence**

- (1) Subject to sections 111 and 125 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person a gas transportation network operator licence authorising the conduct of activities specified in the licence, which shall include -
  - (a) conveyance of natural gas through the gas transportation network;
  - (b) balancing the inputs and off takes from the gas transportation network;
  - (c) providing access to shippers based on the gas network code pursuant to section 160 of this Act to the gas transportation network; and
  - (d) charging for the use of the gas transportation network based on tariffs established by the Authority.
- (2) The Authority shall grant only one gas transportation network operator licence within a geographically defined area to a single network operator, provided that the Authority may at its discretion, issue licences to other parties for the operation of isolated or dedicated gas transportation pipelines and for connecting to the gas transportation network.

**139. General duties of a gas transportation network operator**

The gas transportation network operator shall exercise the rights and obligations imposed on it in a manner that complies with the following general obligations -

- (a) establish and make available to the public at its offices, the -
  - (i) procedure, terms and conditions for obtaining and terminating access and interconnection services to the transportation network, and
  - (ii) method of response to the request for its service;
- (b) operate an efficient and economical gas transportation network for the safe and reliable conveyance of natural gas in such a manner that is designed to meet all reasonable demands for natural gas;
- (c) operate a nomination and balancing mechanism and an equitable

- curtailment of natural gas transportation whenever technical or operational expediencies requires;
- (d) consult with and obtain from the Authority written permission prior to any modification of technical and operational rule of practice concerning the operation of its gas transportation network;
  - (e) ensure the development and operation of the network code and terms for access into the gas transportation network in collaboration with the Authority, natural gas shippers, all licensees and permit holders operating essential infrastructure;
  - (f) ensure equitable and transparent access to the transportation network;
  - (g) manage the gas transportation network as a reasonable and prudent operator;
  - (h) abstain from activities, which in the opinion of the Authority may prevent, restrict or distort competition; and
  - (i) enter into agreements with gas transportation pipeline owners, gas distributors and wholesale customers for connection to and operation of the gas transportation network.

**140. Powers of a transportation network operator**

Subject to the provisions of this Act, the Authority may grant the following special powers or authority to a gas transportation network operator to facilitate the conduct of its licenced 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) the right to recover on the basis of an invoice, expenses reasonably incurred in undertaking its licenced activities, subject to any restrictions or conditions imposed by the Authority with respect to both the level and structure of its charges; and
- (c) to purchase natural gas for its own operations for purposes such as testing and commissioning of facilities, compression and line fill, but shall not supply natural gas to customers on its own account.

**141. Conditions applicable to a gas transportation network operator licence**

- (1) In addition to the conditions as may be imposed by the Authority pursuant to section 114 of this Act, a transportation network operator licence may include an obligation to develop market rules in accordance with the provisions of this Act.
- (2) A gas transportation network operator may be an owner of any or all of a gas transportation pipelines in a gas transportation network.
- (3) Where a third party is the owner of a gas transportation pipelines in a gas



transportation network, the owner shall be paid the tariffs determined by the Authority for non-operating owners of the pipelines by the gas transportation network operator.

- (4) A gas transportation network operator shall not misuse its monopoly position in the geographical area to charge franchise of other access charges for providing access to the gas transport network, other than the charges specifically permitted under this Act and regulations made under this Act.

#### **142. Grant of a wholesale gas supply licence**

- (1) Subject to sections 111 and 125 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a wholesale gas supply licence to a qualified person.
- (2) A lessee producing natural gas is a qualified person for the purpose of subsection (1) of this section and shall be entitled to apply for and be issued with a wholesale gas supply licence by the Authority.
- (3) A wholesale gas supply licence authorises the supplier to -
  - (a) purchase natural gas directly from any lessee or third party; and
  - (b) sell and deliver wholesale gas to wholesale customers and gas distributors at any location in Nigeria.

#### **143. General duties of a wholesale gas supplier**

A wholesale gas supplier shall undertake the activities contemplated by the wholesale gas supply licence in a manner that complies with the following general obligations, to -

- (a) provide a reliable supply of wholesale gas to wholesale customers who have entered into a gas purchase and sale agreement with the supplier; and
- (b) abstain from activities, which in the opinion of the Authority may prevent, restrict or distort competition.

#### **144. Rights of a wholesale gas supplier**

Subject to the provisions of this Act, the Authority may grant the following specific powers or authority to a wholesale gas supplier to facilitate the conduct of its licenced activities the right to -

- (a) terminate wholesale gas supply to a wholesale customer in the event of non-payment, following a notice period;
- (b) recover from a customer, on the basis of an invoice and subject to any conditions imposed by the Authority on the level and structure of a licensee's charges and costs reasonably incurred in the supply of wholesale gas, including the cost of natural gas incurred by the supplier, the cost of transportation of natural gas; and

- (c) enter a premises, in accordance with a metering code issued by the Authority, to remove its meters for the purpose of reading the meters, testing and maintaining metering equipment and disconnecting customers.

**145. Conditions applicable to a wholesale gas supply licence**

- (1) In addition to conditions the Authority may impose pursuant to section 114 of this Act, a wholesale gas supply licence shall be deemed to be granted subject to the supplier -
  - (a) requesting security or applying a credit scoring methodology approved by the Authority in deciding whether supply is economical;
  - (b) supplying marketable natural gas to a wholesale customer with whom the supplier has entered into a gas purchase and sale agreement and who in order to connect to a gas transportation network or gas transportation pipeline is willing and able to –
    - (i) pay for the connection,
    - (ii) construct its own gas transportation pipeline pursuant to section 137 (c) of this Act, or
    - (iii) pay the respective Tariff to the Supplier for the gas transportation pipeline owned by the supplier,subject to safety and network capacity constraints;
  - (c) conducting its licenced activities safely and reliably in compliance with any law in force and prescribed health and safety regulations issued pursuant to this or any other Act; and
  - (d) complying with customer protection measures in accordance with sections 164, 165 and 166 of this Act.
- (2) A wholesale gas supplier shall undertake its licenced activities in a manner that complies with the conditions of the licence.

**146. Grant of retail gas supply licence**

- (1) Subject to sections 111 and 125 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person a retail gas supply licence authorising the holder to –
  - (a) sell or retail marketable natural gas to customers based on being a wholesale customer or third party access to gas distribution systems of gas distributors; and
  - (b) establish, construct and operate facilities to deliver compressed natural gas and small scale facilities for liquefied natural gas, not requiring a gas processing licence, for transportation by truck, railcar or marine vessel to customers in compressed or liquified form, including customers using LNG as marine bunker fuel.

- (2) A lessee producing natural gas is a qualified person for the purpose of subsection (1) of this section and shall be entitled to apply for and be issued with a retail gas supply licence by the Authority.
- (3) A retail gas supply licence authorises the gas retailer, to -
  - (a) purchase marketable natural gas directly from a lessee, wholesale gas supplier or third party on a free market basis; and
  - (b) sell and deliver natural gas to customers at any location in Nigeria.

**147. General duties of gas retailer**

In addition to conditions the Authority may impose pursuant to section 114 of this Act or that may be prescribed by regulation, a retail gas supply licence shall be deemed to be granted subject to the duty of the holder to -

- (a) develop and maintain a safe, efficient, reliable and economical service for the retailing of marketable natural gas;
- (b) carry on its business in a manner that shall promote competition and avoid monopoly in the natural gas market in Nigeria;
- (c) construct, operate and maintain its gas compression and liquefaction facilities in a safe, economical, and reliable manner taking into account any strategic plans formulated by the Authority;
- (d) shut down its gas compression and liquefaction facilities in emergencies in order to carry out maintenance or respond to curtailment directives issued by the Authority;
- (e) conduct its activities in a safe and reliable standard in compliance with prescribed environmental, health and safety-related regulations issued pursuant to this or any other Act;
- (f) publish the prices to be charged and to be paid by a person to whom the gas retailer sells natural gas in a manner to ensure adequate publicity unless the Authority direct otherwise; and
- (g) comply with customer protection measures set out in sections 164, 165 and 166 of this Act.

**148. Grant of gas distribution licence**

- (1) Subject to sections 111 and 125 of this Act or regulations made under this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person gas distribution licence with rights to establish, construct, and operate a gas distribution system and to distribute and sell its natural gas without discrimination to consumers in a local distribution zone.
- (2) Notwithstanding the rights of a gas retailer under this Act, the holder of a gas distribution licence shall be entitled to sell natural gas to customers that are not wholesale customers.

- (3) The Authority shall, in considering an application for a gas distribution licence, take into account the economic case for the licence, including the potential demand for its use.
- (4) The geographical limit of a local distribution zone shall be defined in the relevant gas distribution licence.
- (5) The rights and duties under a gas distribution licence shall be exclusive to the gas distributor for the validity period of the distribution Licence.
- (6) A gas distribution licence may include provisions for providing Third Party access to the gas distribution network to a gas retailer or gas distributor on its own initiative, may permit access to a gas retailer to the gas distribution network under terms and conditions agreed to by the parties.
- (7) Subject to the provisions of subsection (6) of this section, the gas distributor shall own the marketable natural gas in the gas distribution network.

**149. General duties of a gas distributor**

A gas distributor shall undertake the activities contemplated by the gas distribution licence in a manner that complies with the following general obligations, to -

- (a) develop, operate and maintain an economical gas distribution network for the safe and reliable conveyance of natural gas;
- (b) ensure a reliable and efficient distribution of natural gas to customers on request, provided that it is economical to do so;
- (c) distribute and sell natural gas on request to a customer who is willing and able to pay for connection to the gas distribution network, subject to safety and network capacity constraints;
- (d) conduct licenced activities safely and reliably in compliance with any law in force and any health and safety-related regulations issued by the Authority pursuant to this or any other Act;
- (e) connect all customers within its local distribution zone in accordance with regulations if economically practicable to do so;
- (f) offer and publish terms and conditions of access to its gas distribution network as required and publish gas prices applicable to different classes of customers, which have been approved by the Authority;
- (g) comply with customer protection measures set out in sections 164, 165 and 166 of this Act;
- (h) prepare a development plan for connecting customers within its local distribution zone for the consideration of the Authority; and
- (i) abstain from activities, which in the opinion of the Authority may prevent, restrict or distort competition.

**150. Rights of the gas distributor**

Subject to the provisions of this Act, the Authority may, in order to facilitate the conduct of its licenced activities, grant the gas distributor the right to -

- (a) enter a premises to remove its meters for the purpose of reading the meters, testing and maintaining metering equipment and disconnecting customers; and
- (b) recover, on the basis of an invoice, costs reasonably incurred in the provision of appropriate infrastructure, subject to any conditions imposed by the Authority to both the level and structure of a distributor's charge, provided that reasonably incurred costs shall include any amount paid to the Authority as a licence fee.

**151. Conditions applicable to a gas distribution licence**

In addition to conditions the Authority may impose pursuant to section 114 of this Act or that may be prescribed by regulation, a distribution Licence shall be deemed to be granted subject to the distributor -

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

**152. Arrangements for gas distribution**

A gas distributor shall consult stakeholders on proposed development projects within its local distribution zone and consider all representations received.

**153. Domestic gas aggregation licence**

- (1) Subject to sections 111 and 125 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person a domestic gas aggregation licence.
- (2) The duration of the domestic gas aggregation licence shall be for a period of 2 years effective from the date of the grant of the Licence.
- (3) The domestic gas aggregation licence may be renewed by the authority for further period of 2 years in each instance until the attainment of liquidity in the domestic gas market, whereupon gas aggregation shall cease and the domestic gas aggregation licence shall be terminated by the Authority.
- (4) The board of domestic gas aggregator shall determine the fees for the

services of the domestic gas aggregator and the fees shall be paid by the producer clients and customer clients in order to ensure self-financing of the domestic gas aggregator.

#### **154. Functions of the domestic gas aggregator**

The domestic gas aggregator shall -

- (a) support the implementation of the domestic gas delivery obligation;
- (b) implement a natural gas management model, through which the demand and supply of natural gas for use in the strategic sectors shall be monitored;
- (c) operate a nomination and balancing mechanism for equitable curtailment of natural gas deliveries in cooperation with the Authority, whenever demand and supply expediencies requires;
- (d) ensure transparency of dealing between natural gas suppliers and wholesale customers of the strategic sectors;
- (e) conduct its operations in a business-like and transparent manner and shall not engage in any anti-competitive behaviour and practices;
- (f) abstain from activities, which in the opinion of the Authority may prevent, restrict or distort competition;
- (g) establish an escrow account into which customer clients shall contribute their payments for the marketable natural gas received and from which the domestic gas aggregator shall pay the producer clients for their supplies of natural gas pursuant to the provisions of this Act; and
- (h) do other things as are necessary or incidental to the carrying out of its functions and duties under this Act.

#### **155. Establishment of the aggregator**

- (1) The domestic gas aggregator shall be a not for profit limited by guarantee company established under the Companies and Allied Matters Act.
- (2) For the purposes of section 153 of this Act, a qualified person shall not be a person who is controlled by licensees or lessees of upstream petroleum operations or by wholesale customers or is an affiliate of such entities, provided that ownership of the aggregator may be by a combination of licensees or lessees, wholesale customers and other interested parties, such as licensees of gas transportation pipelines and gas transportation networks.

#### **156. Gas purchase orders**

The domestic gas aggregator shall issue a gas purchase order to a producer client where a customer client requires a specific volume of marketable natural gas, which is included in the domestic gas demand requirement pursuant to section 173 of this Act.

#### **157. Price conditions of gas purchase orders**

The gas purchase order pursuant to section 156 of this Act shall be based on the prices for marketable natural gas established by the Authority pursuant to section 167 of this Act.

**158. Wholesale customers**

- (1) The Authority shall, following consultations with interested stakeholders, issue regulations -
  - (a) defining the class or classes of customers that shall constitute eligible wholesale customers under this Act; and
  - (b) specifying the qualifying criteria for the classification;

provided that the regulations may be amended from time to time to facilitate the introduction of competition in supply and any amendment of the regulations resulting in a change of the class of customers shall not affect the rights and obligations of parties under natural gas supply contracts entered into prior to such amendment.

- (2) wholesale customers shall be entitled to secure marketable natural gas from any wholesale gas supplier or lessee, subject to section 173 (3) of this Act.

**159. Trading and settlement of wholesale gas**

- (1) The Authority shall develop arrangements for the safe and efficient trading of wholesale gas, where it determines that there is need for formal arrangements for the trading of wholesale gas.
- (2) The Authority shall, where required, make regulations pursuant to subsection (1) of this section for the trading and settlement of wholesale gas in consultation with industry participants and interested stakeholders.

**160. Gas network code**

- (1) The operation of a gas transportation network shall be in accordance with the existing network code issued by the Government.
- (2) The Authority may in consultation with stakeholders in midstream gas operations modify the network code or create other network codes for common carrier operations.
- (3) The Authority shall make copies of the gas network code available to interested parties upon payment of prescribed fees.

**161. Third party access relating to midstream and downstream gas operations**

- (1) A person shall be permitted access to an open access gas transportation pipeline or a gas transportation network for the purpose of having marketable natural gas transported to points of consumption subject to

compliance with the prescribed terms and conditions for access stated in the gas network code.

- (2) The gas network code shall set out standard terms and conditions for connection to, interconnection with access and use of the gas transportation network.
- (3) Where a gas transportation pipeline is isolated from the main gas transportation network, the Authority shall develop separate terms of access for the isolated gas transportation pipeline.
- (4) The Authority may develop special terms for third party access to a gas distribution network.

#### **162. Conditions for the provision of open access in relation to gas operations**

- (1) Where open access applies, open access to the gas transportation pipeline or gas transportation network shall be -
  - (a) provided on a non-discriminatory basis between system users with similar characteristics pursuant to section 116 of this Act;
  - (b) provided in respect of any available capacity, where the 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 approved by the Authority, where applicable;
  - (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) subject to the pricing principles set out in section 170 of this Act.
- (2) connection agreements may be entered into between -
  - (a) gas transportation pipeline owners and gas transportation network operator;
  - (b) a gas distributor and the gas transportation network operator, where a gas distribution network connects to the main transportation network; or
  - (c) a supplier and a transportation pipeline owner or transportation network operator.

#### **163. Disputes in respect of third party access**

The Authority may mediate in disputes in respect of third party access.

#### **164. Customer protection**

- (1) The Authority may, to protect the interests of customers, issue regulations requiring suppliers, gas distributors and petroleum product distributors to -



- (a) publish their terms of supply or distribution including tariffs, other than for negotiated tariffs pursuant to section 122(4) of this Act;
  - (b) establish or to facilitate the establishment of a forum at which customers are able to express their views and raise concerns;
  - (c) formulate and adhere to 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) prepare and submit reports to the Authority, at least on an annual basis, indicating their performance levels and status of their operations in respect of licenced activities at such times as the Authority may by regulation or in their respective licences prescribe; and
  - (e) develop and adhere to customer service codes, setting out the practices and procedures to be followed in the conduct of specified licenced activities, which may include -
    - (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, and
    - (viii) the establishment of special services for economically or socially disadvantaged customers.
- (2) The customer service codes shall be approved by the Authority prior to publication and may be reviewed at intervals as may be considered necessary by the Authority.
- (3) The customer service codes shall be made available to all customers upon request and published on the website of the Authority.
- (4) The Authority shall notify or by regulation require licensees to notify customers of the customer service codes that shall be adhered to by licensees.
- (5) The Authority shall, in developing customer protection regulations, -
- (a) consult with suppliers gas distributors, petroleum distributors and interested stakeholders; and
  - (b) take into account existing procedures, practices and standards issued by the Federal Competition and Consumer Protection Commission.

**165. Provision of service to customers**

The Authority shall, at its discretion and at such time or times as it deems appropriate, designate distributors of last resort and suppliers of last resort to provide services to customers -

- (a) where an existing gas distributor for a local distribution zone, a petroleum product distributor or a supplier becomes insolvent, is unable to provide licenced services or has had its licence suspended or revoked;
- (b) where the gas distributor for a local distribution zone or supplier refuses or fails to fulfil the terms of its licence to distribute or supply natural gas or petroleum product to customers; and
- (c) in such other circumstances as the Authority may deem appropriate;

provided that, in each case, any reasonable additional costs associated with the obligation to act as distributor or supplier of last resort shall be recoverable through appropriate charging arrangements agreed with the Authority.

**166. Transfer of customers**

Where the designation of a supplier or distributor of last resort requires the transfer of customers from one licensee to another, the Authority shall prepare, or require the applicable supplier or distributor 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, which if approved by the Authority, shall be recoverable through regulated charges.

**167. Natural gas prices for the strategic sector, gas distributors and retailers**

- (1) The Authority shall, in accordance with this section and for each year, determine the domestic base price pursuant to the Third Schedule to this Act, including the prices for the power sector, commercial sector and gas based industries.
- (2) The Authority shall continue to determine the prices referred to under subsection (1) of this section, if in its opinion, the control of prices for natural gas for the strategic sector is required.
- (3) The price control and the corresponding role of the domestic gas aggregator shall not be required, where the domestic market for natural gas is largely characterized by free market based contracting for natural gas between willing buyers and willing sellers and the transactions of the producer clients and consumer clients represent less than 20% of the total transactions.
- (4) The aggregate gas price for a month shall be the price calculated based on the procedures established by the domestic gas aggregator on the basis of

the prices determined by the Authority pursuant to subsection (1) of this section.

- (5) The price of marketable natural gas applicable to the power sector shall be the domestic base price at the marketable natural gas delivery point.
- (6) The price of marketable natural gas applicable to the commercial sector shall be the domestic base price at the marketable natural gas delivery point plus \$ 0.50 per MMBtu.
- (7) Gas distributors and gas retailers shall not be part of the strategic sectors and shall negotiate the supply and pricing of their natural gas directly, provided that the applicable price for gas distributors for the marketable natural gas at the marketable gas delivery point shall not exceed that of the commercial sector pursuant to subsection (6) of this section.
- (8) The wholesale customers of the strategic sectors, gas distributors and gas retailers shall pay for the transportation cost of the marketable natural gas from the marketable natural gas delivery point to their facilities.
- (9) The wholesale customers of the strategic sectors shall, for the purpose of transportation, have the option to -
  - (a) use the gas transportation network applicable to their geographical areas; or
  - (b) obtain a gas transportation licence in order to transport their natural gas connecting to the gas transportation network, another existing gas transportation pipeline or directly to a marketable natural gas delivery point.
- (10) Each producer client shall, for any month, receive from the escrow account of the domestic gas aggregator an amount that is equal to the aggregate gas price multiplied by the customer client volume that was paid for such producer client in such month by the customer client.

**168. Gas based industries gas price**

- (1) The gas price for the gas based industries shall be determined by the pricing formula specified in the Fourth Schedule to this Act.
- (2) The floor price for the gas based industries shall be \$ 0.90 per MMBtu.
- (3) The ceiling price shall be the domestic base price applicable for any particular year.
- (4) The Authority may by regulation adjust or modify the provisions of this section and add other gas based industries.

**169. Power to regulate and review prices**

- (1) Where the Authority determines that -
  - (a) a particular licenced activity is a monopoly service;
  - (b) competition has not yet developed in the market to such an extent as to protect the interests of customers; or
  - (c) a particular licensee is a dominant provider,

the Authority shall regulate the prices charged by licensees in respect of the activities, in a manner consistent with its functions under this Act and with the pricing principles set out in section 170 of this Act.

- (2) The Authority shall undertake periodic pricing methodology reviews, provided that the pricing methodology review shall not affect arrangements entered into or approvals given for the development of a gas infrastructure or utilisation project prior to the effective date.
- (3) The Authority 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.

**170. Pricing principles in relation to gas**

Subject to the provisions of this Chapter, the Authority shall, in the exercise of its powers to regulate prices charged by Licensees, be guided by the following principles -

- (a) marketable natural gas prices shall be disaggregated into the component elements of the supply chain including the costs of wholesale gas, tariffs for gas processing, tariffs for transportation pipelines for natural gas, distribution and supply;
- (b) the prices charged for each licenced 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.

**171. Public service obligations related to policy issues**

The Authority may issue regulations imposing public service obligations on licensees in relation to matters including -

- (a) security of supply;
- (b) economic development and the achievement of wider economic policy

- objectives;
- (c) environmental protection; and
- (d) health and safety.

**172. Public service levy**

- (1) The Authority 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 authority, 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 by subsection (1) of this section.

**173. Domestic Gas Demand Requirement**

- (1) The Authority shall, prior to the 1<sup>st</sup> day of March of each calendar year, determine the domestic gas demand requirement and inform the Commission of this requirement.
- (2) Subject to subsection (3) of this section, the domestic gas demand requirement shall be the total amount of marketable natural gas required for all wholesale customers of the strategic sectors.
- (3) Each wholesale customer of the strategic sectors shall have the right to negotiate its own supply contracts directly with lessees or suppliers and where the wholesale customer is of the view that the contracts are satisfactory for its requirements, it shall inform the –
  - (a) Authority that there is no need to be a customer client of the domestic gas aggregator; and
  - (b) Commission of the lessees from which the required marketable natural gas has been obtained.

**Part V**

**Administration of Midstream and Downstream Petroleum Liquids Operations**

**174. Activities requiring a licence for midstream and downstream petroleum liquids operations**

- (1) Except in accordance with an appropriate licence issued by the Authority, a person shall not undertake the following activities with respect to midstream petroleum liquids operations -
  - (a) establish, construct or operate a terminal or other facility for the export or importation of crude oil or petroleum products;
  - (b) establish, construct or operate a crude oil refinery;
  - (c) establish, construct or operate a pipeline for the bulk transportation

- of petroleum liquids;
  - (d) engage in bulk transportation of petroleum liquids by rail, barge or other means within Nigeria;
  - (e) establish, construct or operate a facility for the bulk storage of petroleum liquids;
  - (f) establish, construct or operate a petroleum liquids transportation network;
  - (g) engage in the bulk sale of petroleum liquids, or
  - (h) undertake construction or operation of any facility for the production of lubricants or petrochemicals based on petroleum products.
- (2) Except in accordance with an appropriate licence or permit issued by the Authority, a person shall not undertake the following activities with respect to downstream petroleum products operations-
- (a) construct or operate any facility for the distribution or sale of petroleum products to retail customers;
  - (b) establish, construct or operate a depot for the storage of petroleum products; or
  - (c) undertake distribution, marketing or retail trading of petroleum products;
- (3) The Authority may, by regulation, prescribe additional activities to be undertaken only on the basis of a Licence or Permit and shall have power to issue licences or permits for the activities in accordance with this Act.
- (4) Where a person engages in any of the activities set out in subsection (1), (2) or (3) of this section without a licence or permit, the Authority shall -
- (a) seal the premises where the activity is undertaken;
  - (b) dismantle and seize the facilities by which the activities were undertaken;
  - (c) confiscate equipment or materials employed by the person in such activity; or
  - (d) impose penalties as prescribed by regulations under this Act.
- (5) Notwithstanding any provision of this Act, a person who engages in any of the activities set out in subsection (1), (2) or (3) of this section without a Licence or Permit, commits an offence and is liable to imprisonment for a term of –
- (a) 1 year or to a fine prescribed by regulation, in the case of an activity requiring a licence; or
  - (b) 6 months or to a fine prescribed by regulation, in the case of an activity requiring a permit.
- (6) A holder of a subsisting lease, licence or permit who is engaged in activities in midstream or downstream petroleum liquids operations prior to the

effective date shall, within 24 months from the effective date, apply to the Authority and the Authority may issue the appropriate licence or permit, where applicable.

- (7) The provisions of subsection (4) of this section shall not apply to any person who has made an application contemplated under subsection (6) of this section until the Authority has considered the application given a decision.
- (8) Where any person, in applying for a licence or permit, knowingly makes a false or misleading statement, the Authority may –
  - (a) suspend or revoke the licence or permit; or
  - (b) impose a fine on the licensee or permit holder on the basis of the false or misleading information.

**175. Special regulations for midstream and downstream petroleum liquids operations**

In addition to any matter provided under section 113 of this Act, the Authority may issue regulations with respect to midstream and downstream petroleum liquids operations, which shall include -

- (a) the operation of crude oil refineries, lube plants, petroleum liquids transportation pipelines, bulk storage facilities for petroleum liquids 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, transportation pipelines and other facilities or vessels for the bulk transportation of petroleum liquids, bulk storage facilities for petroleum liquids and terminals and outlets for retail trading of petroleum products; and
- (c) matters ancillary to or consequential on the activities set out in paragraphs (a) and (b) of this section.

**176. Rights of way relating to midstream and downstream petroleum liquids operations**

Subject to applicable law and the terms and conditions prescribed by the authority, a licensee or permit holder is entitled to a right of way for the laying, operation and maintenance of petroleum liquids transportation pipelines, communication lines, power lines and other similar lines through or across the areas the licensee or permit holder may require for carrying on midstream or downstream petroleum liquids operations under the licence or permit.

**177. Surface rights reserved for the authority for midstream and downstream petroleum liquids operations**

The Authority may for the purpose of efficiency, grant rights of way, easements or other rights over any surface or seabed areas subject to an existing licence or

permit, which may be necessary for the laying, operation and maintenance of petroleum liquids transportation pipelines, communication lines, power lines and other similar lines and any right of way or other rights reserved shall continue for the benefit of any entity to whom the authority may subsequently grant the same licence or permit.

**178. Petroleum liquids midstream network code**

- (1) The Authority may in consultation with licensees and other stakeholders with respect to midstream petroleum liquids operations, develop a network code governing the terms of access into facilities and infrastructure used in midstream petroleum liquids operations.
- (2) The network code may include the following matters -
  - (a) a connection and interconnection policy, standard terms for connection to a open access petroleum liquids transportation pipeline or petroleum liquids transportation network and a statement of the connection charging methodology;
  - (b) a mechanism by which users reserve capacity in facilities and infrastructure and at any time there is a greater demand for access than available capacity, a mechanism for allocating capacity between users;
  - (c) the nomination;
  - (d) requirements for the provision of information to the petroleum liquids transportation network operator about the volume, timing and flow-rate of injections into and withdrawals from the petroleum liquids transportation network;
  - (e) the structure of charges and the applicable tariffs charged for using the petroleum liquids transportation network;
  - (f) the balancing of crude oil, condensates or petroleum products being conveyed;
  - (g) registration arrangements;
  - (h) metering, allocation and settlement arrangements;
  - (i) governance arrangements; and
  - (j) the maintenance of a register of customers and Suppliers.
- (3) The petroleum liquids midstream network code shall be published on the website of the authority and physical copies shall be made available to interested persons on payment of a prescribed fee.

**179. Third party access relating to midstream and downstream petroleum liquids operations**

Subject to section 162 of this Act, any person licenced under the provisions of this Act to supply petroleum liquids shall be permitted third party access to facilities



and infrastructure used for midstream petroleum operation by owners, operating on their own account, of such facilities and infrastructure -

- (a) in the manner prescribed by this act, the regulations, codes and other guidelines issued by the authority under this act; and
- (b) on commercially viable terms based on a cost reflective pricing methodology.

**180. Conditions for the provision of open access in relation to petroleum liquids operations**

(1) Where open access applies, open access to the facilities and infrastructure used with respect to midstream petroleum liquids operations shall be -

- (a) undertaken on a non-discriminatory basis between system users with similar characteristics pursuant to section 116 of this Act ;
- (b) provided in respect of any available capacity, where the 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 approved by the Authority, where applicable;
- (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) subject to the pricing principles set out in section 207 of this Act,

provided that facilities and infrastructure which are specifically defined by the Authority for the storage of national strategic stocks shall be exempt from the provisions of this Act relating to open access.

(2) The Authority may mediate in disputes in respect of open access.

**181. National strategic stocks**

The Authority shall -

- (a) establish, administer and ensure the storage and distribution of the national strategic stocks of petroleum products in accordance with regulations issued by the Authority;
- (b) determine and publish 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, such levy to be determined as a percentage of the retail price and be deducted on wholesale basis; and
- (c) designate, in consultation with the appropriate authorities and national security agencies, the strategic locations across the country where the national strategic stocks shall be distributed and maintained.

**182. Operating stock**

The Authority shall ensure that all companies with a Licence for the bulk storage of petroleum products granted pursuant to section 174 of this Act maintain operating stocks in accordance with guidelines published by the Authority.

**183. Grant of a crude oil refining licence**

- (1) Subject to sections 111 and 174 of this Act and upon the approval of the Authority of an application and payment of a prescribed fee by a qualified person, the Minister may, on the recommendation of the Authority, grant and issue to that person a crude oil refining licence which shall permit the licensee to –
  - (a) procure, construct, install and operate facilities to process crude oil on its own account into derivative chemicals and petroleum products; and
  - (b) sell such chemicals and petroleum products at the exit of the refinery.
- (2) In considering an application for a crude oil refining licence, the Authority shall take into account the economic case for a refinery, including the potential demand for its use.

**184. General duties of a crude oil refiner**

The crude oil refiner shall undertake the activities contemplated by the Licence in a manner that best complies with the following general obligations, to -

- (a) procure, construct, install, operate and maintain its refinery and associated facilities in an economical, safe, reliable and environmentally friendly manner;
- (b) shut down its facilities in emergencies and in order to carry out maintenance or in accordance with curtailment directives issued by the Authority;
- (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) produce petroleum products to a quality suitable for the transportation system as specified in the Licence;
- (f) produce petroleum products to a quality suitable for use in accordance to the specifications approved by the Authority;
- (g) to treat all customers in a non-discriminatory manner pursuant to section 116 of this Act; and
- (h) abstain from activities, which in the opinion of the Authority may prevent, restrict or distort competition.

**185. Access rights**

A crude oil refiner shall have the right of access to facilities, including harbours, jetties, petroleum bulk storage, transportation facilities and pumping installations

in accordance with the open access or third party access requirements and the tariff methodology approved by the Authority.

**186. Conditions applicable to a crude oil refining licence**

In addition to conditions as may be imposed by the Authority pursuant to section 114 of this Act, a crude oil refining licence shall be deemed to be granted subject to the conditions that the holder shall -

- (a) conduct its licenced activities safely and reliably in compliance with any law in force and prescribed health and safety related regulations, standards and operating procedures issued pursuant to this Act;
- (b) have regard to the effect of its licenced activities on the environment and complying with the requirements for environmental protection, management and restoration under this Act;
- (c) mark, maintain and secure the boundaries of its facilities and associated infrastructure constructed under the terms of its licence and any law in force; and
- (d) comply with any conditions precedent or other conditions as the Authority may prescribe by regulation.

**187. Grant of a bulk petroleum liquids storage licence**

- (1) Subject to sections 111 and 174 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person bulk petroleum liquids storage licence authorising the holder to undertake the bulk storage of petroleum liquids whether for its own account or on behalf of customers as provided for in the licence.
- (2) In considering an application for a bulk petroleum liquids storage licence, the Authority shall take into account the economic case for bulk storage facility, including the potential demand for its use.

**188. General duties of a bulk storage licensee**

The holder of a bulk petroleum liquids storage licence shall undertake the activities contemplated by the licence in a manner that best complies with the following general obligations, to -

- (a) establish and make available to the public at its offices, the -
  - (i) procedure for obtaining third party access and throughput and terminating its services, and
  - (ii) method of response to the request for its service;
- (b) procure, construct, install, operate and maintain its facilities in a safe, economical, reliable and environmentally friendly manner taking into account any strategic plans formulated by the Authority;
- (c) shut down its facilities in emergencies and in order to carry out maintenance or in response to curtailment directives issued by the Authority;

- (d) grant third party access to use or have access to spare capacity within its facilities for the purpose of ensuring competitive supply of crude oil and petroleum products, where the licensee operates on its own account;
- (e) consult with the Authority and obtain written permission prior to any modification of technical and operational rules of practice concerning the operation of its facilities;
- (f) conduct its licenced activities in a non-discriminatory manner between all classes of customers pursuant to section 116 of this Act, where the licence is for bulk storage for customers;
- (g) manage its facilities as a reasonable and prudent operator; and
- (h) abstain from activities, which in the opinion of the Authority may prevent, restrict or distort competition.

**189. Conditions applicable to a bulk petroleum liquids storage licence**

In addition to conditions as may be imposed by the Authority pursuant to section 114 of this Act, a bulk petroleum liquids storage licence shall be deemed to be granted subject to the conditions that the holder shall -

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

**190. Grant of petroleum liquids transportation pipeline licence**

- (1) Subject to sections 111 and 174 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person a petroleum liquids transportation pipeline licence with the exclusive right to own, construct, operate and maintain a transportation pipeline for the bulk transportation of petroleum liquids within a route as defined in the licence for its own account with third party access provisions or as common carrier as stipulated in the licence.
- (2) In considering an application for a petroleum liquids transportation pipeline licence, the Authority shall take into account the economic case for a petroleum liquids transportation pipeline including the potential demand for its use.

**191. General duties of a petroleum liquids transportation pipeline owner**

The holder of a petroleum liquids transportation pipeline licence shall undertake

the activities contemplated by the licence in a manner that best complies with the following general obligations -

- (a) establish and make available to the public at its offices, the -
  - (i) procedure for obtaining and terminating transmission and interconnection services, and
  - (ii) method of response to the request for its service;
- (b) construct, operate and maintain its petroleum liquids transportation pipeline in a safe, economical, and reliable manner taking into account any strategic plans formulated by the Authority;
- (c) manage supply shortfalls and meet on a reasonable endeavours basis requests for transportation above contractual volumes;
- (d) shut down its petroleum liquids transportation pipeline in emergencies and in order to carry out maintenance or in response to curtailment directives issued by the Authority;
- (e) provide access on a non-discriminatory basis pursuant to section 116 of this Act, where the licence is granted on a common carrier basis;
- (f) consult with the Authority and obtain written permission prior to any modification of technical and operational rules of practice concerning the operation of its pipeline;
- (g) manage its transportation pipeline as a reasonable and prudent operator; and
- (h) abstain from activities, which in the opinion of the Authority may prevent, restrict or distort competition.

**192. Conditions applicable to a petroleum liquids transportation pipeline licence**

In addition to conditions as may be imposed by the Authority pursuant to section 114 of this Act , a transportation pipeline licence shall be deemed to be granted subject to the conditions that the holder shall -

- (a) not own petroleum liquids in the pipeline on its own account, where the licence is issued on a common carrier basis;
- (b) a lessee, operating on its own account, may own the petroleum liquids in a petroleum liquids transportation pipeline, for the purpose of connecting petroleum liquids produced in a field to another petroleum liquids transportation pipeline or petroleum liquids transportation network, subject to third party access provisions as may be included in the licence;
- (c) a crude oil refiner, operating on its own account, may own the petroleum liquids in a petroleum liquids transportation pipeline for the purpose of transporting petroleum liquids to its refinery or from its refinery to petroleum product distributors and other wholesale customers, subject to third party access provisions as may be included in the licence;
- (d) a petroleum product distributor, operating on its own account, may own the petroleum liquids in a petroleum liquids transportation pipeline, where

the principal user of the transportation pipeline is the petroleum product distributor, subject to third party access provisions as may be included in the licence;

- (e) a wholesale petroleum liquids supplier, operating on its own account, may own the petroleum liquids in a petroleum liquids transportation pipeline, for the purpose of connecting to a lessee or wholesale customer to or from a petroleum liquids transportation network or petroleum liquids transportation pipeline, subject to third party access provisions as may be included in the licence;
- (f) conduct its licenced activities safely and reliably in compliance with any law in force and prescribed health and safety related regulations issued pursuant to this Act;
- (g) have regard to the effect of its licenced activities on the environment and comply with the requirements for environmental protection, management, and restoration under this Act; and
- (h) mark, maintain and secure the boundaries of the pipelines and associated infrastructure constructed under the terms of its licence.

### **193. Grant of transportation network operator licence**

- (1) Subject to sections 111 and 174 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person a petroleum liquids transportation network operator licence authorising the conduct of activities specified in the Licence, which shall include -
  - (a) conveyance of petroleum liquids through the transportation network;
  - (b) balancing the inputs and off takes from the transportation network;
  - (c) providing open access to the transportation network; and
  - (d) charging for the use of the transportation network.
- (2) The Authority shall grant only one petroleum liquids transportation network operator licence for specified petroleum liquids within a geographically defined area to a single network operator, provided that the authority may, at its discretion, issue licences to other parties for the operation of isolated or dedicated pipelines.

### **194. General duties of a petroleum liquids transportation network operator**

The petroleum liquids transportation network operator shall exercise the rights and obligations imposed on it in a manner that best complies with the following general obligations -

- (a) establish and make available to the public at its offices, the -
  - (i) procedure, terms and conditions for obtaining and terminating access and interconnection services to the transportation network, and
  - (ii) method of response to the request for its service;

- (b) operate an efficient and economical transportation network for the safe and reliable conveyance of specified petroleum liquids in a manner that is designed to meet all reasonable demands for the specified petroleum liquids;
- (c) operate a nomination and balancing mechanism and an equitable curtailment of transportation whenever technical or operational expediencies requires;
- (d) consult with the Authority and obtain written permission prior to any modification of technical and operational rules of practice concerning the operation of its transportation network;
- (e) ensure the development and operation of a network code and terms for access into the transportation network in collaboration with the Authority and shippers and licensees and permit holders operating essential infrastructure;
- (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) abstain from activities, which in the opinion of the Authority may prevent, restrict or distort competition; and
- (i) enter into agreements with transportation pipeline owners, distributors, and, wholesale customers for connection to, and operation of, the transportation network.

**195. Powers of a petroleum liquids transportation network operator**

Subject to the provisions of this Act, the Authority may grant the following special powers or authority to a petroleum liquids transportation network operator to facilitate the conduct of its licenced activities -

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

**196. Conditions applicable to a petroleum liquids transportation network operator licence**

- (1) In addition to such conditions as may be imposed by the Authority pursuant to section 114 of this Act, a petroleum liquids transportation network operator licence may include an obligation to develop market rules in accordance with the provisions of this Act.

- (2) A petroleum liquids transportation network operator may be owner of any or all of the petroleum liquids transportation pipelines in the petroleum liquids transportation network.
- (3) Where third parties are owners of certain petroleum liquids transportation pipelines in the petroleum liquids transportation network, the owners shall be paid by petroleum liquids transportation network operator the tariffs determined for non-operating owners of the pipelines.
- (4) A petroleum liquids transportation network operator shall not misuse its monopoly position in the geographical area to charge franchise of other access charges for providing access to the petroleum liquids transport network other than the charges specifically permitted under this act and its regulations.

**197. Grant of a wholesale petroleum liquids supply licence**

- (1) Subject to sections 111 and 174 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person a wholesale petroleum liquids supply licence.
- (2) A lessee producing crude oil or condensates and a crude oil refiner is a qualified person for the purpose of subsection (1) of this section and shall be entitled to apply for and be issued with a wholesale petroleum liquids supply licence by the Authority.
- (3) A wholesale petroleum liquids supply licence authorises the supplier to sell and deliver petroleum liquids to bulk customers in Nigeria or for export.

**198. General duties of a wholesale petroleum liquids supplier**

A wholesale petroleum liquids supplier shall undertake the activities contemplated by the licence in a manner that best complies with the following general obligations, to -

- (a) provide a reliable supply of petroleum liquids to purchasers on request, provided that it is economically feasible; and
- (b) abstain from activities, which in the opinion of the Authority may prevent, restrict or distort competition.

**199. Rights of a wholesale petroleum liquids supplier**

Subject to the provisions of this Act, the Authority may grant the following specific powers or authority to the holder of a wholesale petroleum liquids supply licence to facilitate the conduct of its licenced activities, the right to -

- (a) terminate wholesale supply to a customer in the event of non-payment, following a notice period as prescribed by regulation;
- (b) recover from a customer, on the basis of an invoice and subject to any



conditions imposed by the Authority on the level and structure of a licensee's charges and costs reasonably incurred in the supply of petroleum liquids, provided that the sale of petroleum liquids to customers by the wholesale petroleum liquids supplier shall be subject to the provisions of this Chapter; and

- (c) enter a premises, in accordance with a metering code issued by the Authority, to remove its meters for the purpose of reading the meters, testing and maintaining metering equipment and disconnecting customers.

## **200. Conditions applicable to a wholesale petroleum liquids supply licence**

- (1) In addition to conditions as may be imposed by the Authority pursuant to section 114 of this Act, a wholesale petroleum liquids supply licence shall be deemed to be granted subject to the supplier -
  - (a) ensuring a reliable and efficient supply of petroleum liquids to customers on request, provided that it is economically feasible;
  - (b) supplying petroleum liquids on request to a customer who is willing and able to pay for connection to the transportation network or transportation pipeline, subject to safety and network capacity constraints; and
  - (c) conducting licenced activities safely, reliably and in an environmentally friendly manner in compliance with any law in force and any health and safety related regulations issued by the authority pursuant to this act or any other Act.
- (2) A wholesale petroleum liquids supplier shall undertake its licenced activities in a manner that best complies with the covenants and conditions of the licence and comply with customer protection measures approved by the Authority.

## **201. Grant of licence for distribution of petroleum products**

Subject to sections 111 and 174 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person a petroleum product distribution licence.

## **202. General duties of petroleum product distributor**

In addition to conditions the Authority may imposed pursuant to section 114 of this Act or that may be prescribed by regulation, a petroleum product distribution licence shall be deemed to be granted subject to the duty of the holder to -

- (a) develop and maintain a safe, efficient, reliable and economical service for the distribution of petroleum products to individual customers and petroleum product retailers;
- (b) carry on its business in a manner that will promote competition and avoid monopoly in the retail supply of petroleum products in Nigeria;

- (c) conduct its licenced activities safely and reliably in compliance with any law in force and prescribed environmental, health and safety regulations issued pursuant to this or any other Act;
- (d) publish the prices to be charged and to be paid by a person to whom the distributor sells petroleum products in a manner to ensure adequate publicity unless the Authority otherwise;
- (e) avoid undue preference as between persons or any class of persons or discriminate as between persons or any class of persons in establishing prices; and
- (f) comply with customer protection measures approved by the Authority.

**203. Grant of a licence to construct and operate a facility for retail supply and distribution of petroleum products**

- (1) Subject to sections 111 and 174 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person a petroleum product retail licence authorising the holder to establish, construct and operate a facility to be employed for retail sale of petroleum products.
- (2) The Authority shall issue guidelines in respect of the process for the establishment, construction and operation of facilities to be employed by petroleum product retailers for retail sale of petroleum products.

**204. Grant of a permit to construct and operate a facility for the production of petrochemicals**

- (1) Subject to sections 111 and 174 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person a petrochemicals production licence authorising the holder to establish, construct and operate a facility for the production of petrochemicals and sell the petrochemicals produced.
- (2) The Authority shall issue guidelines in respect of petrochemicals production licences.

**205. Pricing regime and power to regulate tariffs**

- (1) Subject to the provisions of this Section, wholesale and retail prices of petroleum products shall be based on unrestricted free market pricing conditions.
- (2) Where the Authority determines that -
  - (a) a particular licenced activity is a monopoly service;
  - (b) competition has not yet developed in the market for any petroleum product to an extent as to protect the interests of customers; or

(c) a particular licensee is a dominant provider of services,

the Authority shall have the power to regulate the tariffs and prices charged by licensees in respect of the activities in a manner consistent with the Authority's duties under the this Act and with the pricing principles set out in section 207 of this Act.

- (3) The Authority shall undertake periodic pricing methodology reviews.
- (4) The Authority 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.

## **206. Wholesale prices for petroleum products**

- (1) The holder of a wholesale petroleum liquids supply licence and a wholesale customer shall, subject to the provisions of this Chapter, negotiate the wholesale prices directly between the parties on an arm's length basis, provided that the transfer price shall be transparent and reflect the transfer price between the parties.
- (2) The Authority shall have a power to monitor bulk sale of petroleum products and may publish market-based prices in order to ensure that the transactions are undertaken in a manner that transfer pricing between the supplier and the wholesale 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 authority with information relating to the transaction including, where applicable, the cost incurred by the supplier in the production or supply of the product and other information relevant to the price at which the product is sold.
- (4) A supplier who knowingly provides information, which is false or misleading with respect to the information required in subsection (3) of this section is liable to a fine stipulated by the Authority in regulations.

## **207. Pricing principles in relation to petroleum products**

Subject to the provisions of this part, the Authority 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 distribution and retail sales;

- (b) the prices charged for each licenced 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 Authority and the Authority shall treat the information with utmost confidentiality;
- (c) there shall not be discrimination in prices charged between customers with similar characteristics, such as similar size or a similar consumption profile;
- (d) ensure efficient charges relating to petroleum products supply covering billing, metering and other services;
- (e) ensure the avoidance of economic distortions and a competitive market for the sale, distribution and marketing of petroleum products in Nigeria; and
- (f) allow the seller to recover reasonably and prudently incurred costs, including a reasonable return on the capital invested in the business.

**208. Publication of prices**

Licensees shall publish prices as required by the Authority in a manner that ensures that the customers are able to identify and calculate the full extent of charges for which they will become liable.

## **Part VI**

### **Other Matters Related to Midstream and Downstream Operations**

**209. Public service obligations**

The Authority may issue regulations imposing public service obligations on licensees or a class of licensees in relation to the maintenance of strategic stock for which the Authority shall approve a tariff to be paid by the consumers;

**210. Competition and Market Regulation**

The Authority shall, subject to the provisions of the Federal Competition and Consumer Protection Act, have the responsibility to -

- (a) monitor the state of the markets regulated by the Authority;
- (b) administer, monitor and ensure compliance with the provisions of this Act and any law or regulation 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 the existing market arrangements may constitute barriers to entry into the market for new market participants;
- (f) determine whether there is any anti-competitive activity being carried on and exercise its powers under this section to prevent the continuance of the activity; and

- (g) determine any pre-conditions and any transitional arrangements required for any services to be offered competitively.

**211. Power to prevent anti-competitive behaviour**

- (1) Subject to the provisions of the Federal Competition and Consumer Protection Act, the Authority shall have the responsibility to prevent anti-competitive behaviour with respect to midstream and downstream petroleum operations and 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 midstream and downstream petroleum operations –
    - (i) has the purpose or effect of substantially lessening competition in any segment of the midstream and downstream petroleum operations,
    - (ii) may likely result in anti-competitive or discriminatory conduct, including an unlawful exercise of market power that may prevent customers from obtaining the benefits of a properly functioning and competitive market,
    - (iii) may amount to practices which reflect an apparent or probable effect of crippling, excluding or deterring the entry of another person into midstream and downstream petroleum operations, or
    - (iv) may likely be indicative of an abuse of dominant position in respect of the provision of any service;
  - (b) consider how best to prevent or mitigate abuse of market power in its decisions and determinations regarding matters including licence applications, grant of licence, licence terms and conditions and the regulation of prices for services in competitive markets; and
  - (c) where, in the opinion of the Authority there is or may be, anti-competitive behaviour and in particular an abuse of market power, the Authority 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, and
    - (iv) levy fines prescribed by regulations issued by the Authority, which shall not exceed 5% of the annual turnover of the company for the preceding year.
- (2) Notwithstanding the provisions of this section, where the Authority deems it to be in national interest or necessary to preserve or promote the benefits of

a functional and effective competitive market, the Authority may, on the application by a licensee or other person with the ability to influence the price of petroleum products, -

- (a) give written approval to the application upon such terms and conditions and impose other requirements as it may deem appropriate; and
  - (b) 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.
- (3) The Authority may at any time withdraw an approval granted under subsection (2) of this section upon such terms and conditions as it may deem appropriate.

#### **212. Separation of certain licenced activities**

- (1) The Authority may require the holder of a Licence to maintain separation in management, accounting or legal entities of its licenced or permitted activities, which may prohibit the holder of the Licence from directly holding licences of another type.
- (2) Licenced activities between a holder of a Licence and an affiliate shall be undertaken in a manner 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 107 and 207 of this Act.
- (3) A holder of a Licence shall not, without the prior written consent of the Authority, directly or indirectly acquire an interest in, purchase or merge with another holder of a licence or an affiliate of a holder of a Licence.

#### **213. Non-discrimination among customers**

A holder of a licence or permit 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 pursuant to the provisions of section 116 of this Act.

#### **214. Considerations for exercise of the Authority's powers**

In the exercise of its powers under this Chapter, the Authority 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 on barriers 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 matter which the Authority may deem relevant.

**215. Power to serve notice, issue “cease and desist” order, etc.**

- (1) Where, in the opinion of the Authority, any act or activity prohibited under this Chapter has been or is likely to be undertaken by any Person, the Authority may –
  - (a) serve a notice on the person, specifying the act or activity and its intention to issue a “cease and desist” order;
  - (b) direct the person to whom the notice is issued to do or not to do, the specified act or activity; and
  - (c) specify the time frame for compliance with the notice.
- (2) Where the person to whom the notice or directive issued pursuant to subsection (1) of this section fails to comply, the Authority may issue a “cease and desist” order.
- (3) The Authority may levy a fine not exceeding 5% of the annual turnover of the company for the preceding year or revoke the licence of any person who fails to comply with a “cease and desist” order or a directive issued under subsection (1) of this section.

**PART VII**

**Common Provisions for Upstream, Midstream and Downstream Petroleum Operations**

**216. Consultation for regulations**

- (1) The Commission and Authority shall consult with stakeholders prior to finalizing any regulations or amendments to regulations.
- (2) The stakeholders to be consulted for any particular regulation shall be lessees, licensees and permit holders that may be impacted by the regulations and such other persons that may be interested in the subject matter of the proposed regulation.
- (3) The Authority or Commission, as the case may be, may, in finalizing any regulation under this section, take into consideration any submission made during the stakeholders’ consultation pursuant to subsection (1) of this section.
- (4) Prior to holding the stakeholders’ consultation pursuant to subsection (1) of

this section, the Commission or Authority, as the case may be, shall publish in at least two national newspapers with wide coverage and on its website, notice of -

- (a) the stakeholders' consultation;
  - (b) its invitation to lessees, licensees, permit holders and other stakeholders to participate in the stakeholders' consultation;
  - (c) the venue and period during which the stakeholders' consultation is to be held;
  - (d) the nature of the matter to which the stakeholders' consultation relates;
  - (e) the matters upon which the Commission or Authority, as the case may be, would require submissions;
  - (f) the form in which stakeholders are to make submissions on the subject matter of the stakeholders' consultation;
  - (g) the period of notice for the commencement of the stakeholders' consultation, which shall not be less than 21 days; and
  - (h) the address or addresses to which the submissions may be sent.
- (5) Notwithstanding the provisions of subsection (1) of this section, the Commission or Authority may, in national interest and exigency of the situation, issue a regulation without conducting a stakeholders' consultation.
- (6) A regulation made pursuant to subsection (5) of this section shall be valid for not more than 1 year with effect from its commencement date, except it is confirmed following a stakeholders' consultation conducted in accordance with subsections (3) of this section.
- (7) The Commission or Authority, as the case may be, shall fix a date upon which the confirmed regulation under subsection (6) of this section shall come into effect and cause the notice of that commencement date to be published in at least two national newspapers with wide coverage and on its website.

## **217. Contravention and enforcement of conditions of leases, licences or permits**

- (1) Where it appears to the Commission or Authority that the holder of a lease, licence or permit is contravening, has contravened or is likely to contravene any of the conditions of the lease, licence or permit, the Commission or Authority, as the case may be, may publish a notice in a 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 lease, licence or permit -
- (a) specifying the actual or potential contravention;
  - (b) directing the holder to do or not to do, the things specified;
  - (c) specifying the remedy and the timeframe for compliance; and



- (d) notifying the holder of the Lease, Licence or Permit of its intention to issue an Enforcement Order.
- (2) The holder of the lease, licence or permit and any other interested party shall be entitled to make representations against or in support of a notice published pursuant to subsection (1) of this section on a date specified in the notice.
- (3) Where a holder of the lease, licence or permit fails to comply with a notice published pursuant to subsection (1) of this section, the Commission or Authority, as the case may be, may issue an enforcement order.
- (4) The Commission or Authority may not issue an enforcement order if the holder of the lease, licence or permit -
  - (a) is able to demonstrate to its satisfaction that it is not contravening or about to contravene a condition of a lease, licence or permit; or
  - (b) has ceased to contravene a condition of the lease, licence or permit,provided that where the earlier contravention was deliberate, the Commission or Authority, as the case may be, may, at its discretion, impose a penalty as prescribed by Regulation.
- (5) A holder of a lease, licence or permit who fails to comply with the enforcement order under this section, commits an offence and the Commission or Authority may suspend or revoke the lease, licence or permit of the liable offender or impose any other penalty prescribed by regulations.
- (6) The penalty issued pursuant to subsection (1) (b) of this section may be reviewed in regulation, in order to reflect the effect of inflation.
- (7) The Commission or Authority, as the case may be, may order the sealing up of any premises whatsoever, including any facility or plant engaged in petroleum operations, where there has been a contravention of this Act or any regulation.

## **218. Mandatory registration**

A person engaged in petroleum operations, which require a lease, licence or permit by the Commission or Authority under this Act, shall register its undertaking with the Commission or Authority, as the case may be and provide information concerning the activities of the undertakings as may be prescribed in regulations.

## **219. Register of licences, permits and authorisations**

- (1) The Commission and Authority shall establish, maintain and make publicly available, a register of leases, licences, permits and authorisations, issued, revoked, suspended, surrendered or withdrawn and any modification or exemption granted in respect of any lease, licence, permit or authorisation

pursuant to this Act.

- (2) The officer registering the issuance of any instrument as provided under subsection (1) of this section shall require an acknowledgement of the receipt of a copy of such instrument from the person receiving it in such form as may be prescribed by regulation.

## **220. Preparation of licences, permits and authorisations**

- (1) A lease, licence, permit or authorisation and any exemption granted under this Act shall be prepared in duplicate, one copy shall be delivered to the holder of the lease, licence, permit or authorisation and the other copy to be retained by the Commission or Authority which shall be bound up in a book of the appropriate series within its register and serially numbered.
- (2) The register referred to in section 219 of this Act shall also be kept in an electronic format and soft copies of individual leases, licences, permits, authorisations or exemptions shall be forwarded to the holder of a lease, licence, permit or authorisation.
- (3) The Commission or Authority, as the case may be, shall cause a licence, permit or authorisation to be prepared upon payment of the requisite fees.
- (4) The officer registering a lease, licence, permit or authorisation or exemption under subsection (1) shall require an acknowledgement of the receipt of the copy of the lease, licence, permit or authorisation or exemption from the person accepting such lease, licence, permit or authorisation or exemption in such form as may be prescribed by regulations.

## **221. Effective date and authentication of licences, permits and authorisations**

- (1) The lease, licence, permit or authorisation or any exemption shall be authenticated under the seal of the Commission or Authority, as the case may be and the validity of the lease, licence, permit or authorisation or any exemption shall commence from the date of its issuance.
- (2) The date of issuance of any lease, licence, permit or authorisation or any exemption shall be inscribed on the lease, licence, permit or authorisation or any exemption.

## **222. Register of memorials**

The Commission or Authority, as the case may be, shall enter in the appropriate register a memorial of any extension, transfer, surrender, revocation, exemption, relinquishment, change of address, change of name or any other matter affecting the status of or any interest in any Lease, Licence, Permit or Authorisation registered under this Chapter together with the date of such entry.

**223. Register of interests**

The Commission or Authority, as the case may be, shall establish and maintain a register in which particulars of any interest or shares transferred or assigned are recorded by the Commission or Authority and the register shall be updated in relation to any change in the status of such interest or shares transferred or assigned.

**224. Effect of registration**

A lease, licence, permit or authorisation registered under this Chapter shall, subject to the provisions of this Act, be conclusive evidence -

- (a) that the rights described in the lease, licence, permit or authorisation are vested in the person named as the holder of the lease, licence, permit or authorisation; and
- (b) of the conditions and other provisions to which the holder of the lease, licence, permit or authorisation is subject under this Act.

**225. Public access to the registry**

- (1) The registry and the registers required pursuant to sections 219, 222 and 223 of this Act shall be readily accessible to the public during the hours and upon the days designated by the Commission or Authority, as the case may be.
- (2) The Commission and Authority shall maintain an up-to-date electronic form of the registers required under sections 219, 222 and 223 of this Act on its website, which may be accessed for free by any member of the public.
- (3) A member of the public shall, upon the payment of prescribed fees, be entitled to obtain a certified true copy of any document or record contained in the registers referred to in sections 219, 222 and 223 of this Act.

**226. Default approvals**

- (1) Any matter which requires the Commission's or Authority's approval under this Act or under any regulation, shall be approved or rejected within the time limit specified in this Act or in any Regulation issued by the Commission or the Authority.
- (2) Where no time limit has been specified under this Act or in any applicable Regulation, the time limit referred to in subsection (1) of this section shall be 60 days.
- (3) The Commission or Authority shall reject an application within the stipulated time limit with reasons and any rejected application shall be tracked and accurate record of it kept.
- (4) Default approvals shall be recorded in the appropriate register by the

Commission or Authority.

## **227. Disclosure of confidential or other information**

- (1) Where a director or employee of the Commission or Authority, in the course of his duties, acquires information relating to the financial affairs of any person or to any commercial secret or where any other person indirectly acquires such or other information required to be kept confidential under the provisions of this Act from any director or employee of the Commission or Authority, he shall not make use of such information for any unauthorised or unofficial purpose nor disclose it to any other person except -
  - (a) for the purpose of legal proceedings under this Act or any other law; and
  - (b) to the extent that it may be necessary to do so for the purpose of this Act or any other law;
- (2) A director or employee of the Commission or Authority shall not, for personal gain, make use of any information acquired by him in the course of his duties within a period of 5 years after the date on which he ceased to be a director or employee.
- (3) Any person who contravenes subsection (1) of this section 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 or other sanctions prescribed in regulation.

## **228. Offences**

- (1) A person shall not -
  - (a) obstruct or assault any officer of the Commission or Authority or any person authorised by the Commission or Authority in the exercise of the powers conferred on the Commission or Authority under this Act;
  - (b) refuse any officer of the Commission or Authority or any person authorised by the Commission or Authority, as the case may be, 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 or Authority; or
  - (c) fail to comply with any lawful demand, notice or order of an officer or authorised person of the Commission or Authority in the execution of the officer's duties under this Act.
- (2) A person shall not -
  - (a) engage in any petroleum operations without a valid lease, licence or permit where such lease, licence or permit is required under this act;
  - (b) unlawfully remove, destroy or damage any facility used for petroleum

- operations;
- (c) furnish a statement or incomplete information calculated to mislead or wilfully delay or obstruct the Commission or Authority and its officers in the exercise of their duties;
  - (d) obstruct or fail to cooperate with the Commission or Authority 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 any facility or infrastructure; or
  - (f) use or permit its facility, infrastructure or equipment to be used for or in relation to the Commission or Authority of any offence.

## **229. Penalties**

- (1) A person who violates the provisions of section 228 of this Act commits an offence and is liable on conviction to a fine prescribed in regulations.
- (2) Where an offence has been committed under the provisions of section 228 (2) (b) of this Act, the person who committed the offence shall discontinue the operations of the affected infrastructure, facility or equipment until any damage, alteration, malfunction or loss has been rectified and all safety issues have been resolved.
- (3) The Commission or Authority, as the case may be, may by regulation, where necessary, review the amount of the penalty stipulated in subsection (1) of this section to reflect the effect of inflation.

## **230. Refusal to furnish, return or supply information**

A person who -

- (a) fails or refuses to furnish, return or supply information to the Commission or Authority or any other lawful authority at the time and in the manner prescribed;
- (b) furnishes a false or incomplete return;
- (c) supplies false or incomplete information;
- (d) wilfully delays or obstructs the Commission or Authority, its officers and agents, police officers and other law enforcement officers in the exercise of the powers or duties conferred or imposed on the Commission or Authority under this Act; or
- (e) conceals, fails or refuses, without reasonable cause, to supply information required by the Commission or Authority or any duly empowered lawful authority at the time and in the manner prescribed or when required to do so,

commits an offence and is liable to a fine or a term of imprisonment as may be prescribed in regulation.

**231. Power to issue administrative penalties**

- (1) The Commission or Authority, as the case may be, may assess a penalty in the prescribed amount against any person for prescribed contraventions of this Act, regulations or an order made pursuant to this Act.
- (2) Prior to assessing a penalty, the Commission or Authority, as the case may be, shall provide notice to the person -
  - (a) setting out the facts and circumstances that makes the person liable to a penalty;
  - (b) specifying the amount of the penalty that is considered appropriate in the circumstances; and
  - (c) informing the person of the person's right to make representations to the Authority or Commission, as the case may be.
- (3) A Person to whom notice is sent pursuant to subsection (2) of this section may make representations to the Commission or Authority, as the case may be, in respect of whether or not a penalty should be assessed and the amount of the penalty.
- (4) Representations subsection (3) of this section shall be made within 30 days after the person received the notice under subsection (2) of this section .
- (5) After considering any representations made pursuant to subsection (3) of this section, the Authority or Commission, as the case may be, may:
  - (a) assess a penalty and set a date by which the penalty is to be paid in full; or
  - (b) determine that no penalty should be assessed.
- (6) The Authority or Commission, as the case may be, shall serve a copy of its decision pursuant to subsection (5) of this section on the person who made the representations.

**232. Abandonment, decommissioning and disposal**

- (1) The decommissioning and abandonment of onshore and offshore petroleum wells, installations, structures, utilities, plants and pipelines for petroleum operations shall be conducted in accordance with –
  - (a) good international petroleum industry practice; and
  - (b) guidelines issued by the Commission or Authority, as the case may be, provided that the guidelines shall meet the standards prescribed by the international maritime organisation on offshore petroleum

installations and structures.

- (2) A decommissioning and abandonment shall not take place without the written approval of the Commission or Authority, as the case may be.
- (3) The Commission or Authority, as the case may be, shall by written notice, require a lessee, licensee or permit holder to commence the decommissioning and abandonment of a well, installation, structure, utility and pipeline, where such decommissioning and abandonment is required under good international petroleum industry practices or the guidelines.
- (4) In production sharing contracts or any other contractual arrangement pursuant to section 84(2) of this Act responsibilities and liabilities relating to decommissioning and abandonment as specified in this section and section 233 of this Act shall apply to the licensee or lessee as contractor.
- (5) A licensee or lessee may by written notice inform the Commission or Authority, as the case may be, of its intention to decommission or abandon.
- (6) Upon a notice in subsection (5) of this section, the lessee or licensee, shall prior to any decommissioning and abandonment, submit to the Commission or Authority, as the case may be, a programme setting out -
  - (a) 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 and abandonment of disused installations, structures or other assets used in 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 good international petroleum industry practices and environmental development;
  - (d) steps to be taken to ensure maintenance and safeguard, where any installation, structure or pipeline remained disused and in position or are to be partly removed with respect to deep and ultra-deep water environment and where the installation, structure or pipeline is partly removed, the licensee or lessee shall remain liable for any residual liability arising from the installation, structure or pipeline not removed; and
  - (e) assessment of the environmental and social impact of the decommissioning and abandonment measures.
- (7) Onshore installations and structures shall be completely removed and the environment restored to its original condition, except for buried transportation pipelines and gathering lines.

- (8) Except for the abandonment of wells, upon the submission of a decommissioning and abandonment programme by the licensee or lessee to the Commission or Authority, as the case may be, consultations shall be made with interested parties and other relevant public authorities and bodies.
- (9) The programme referred to in subsection (6) of this section shall not be approved unless relevant environmental, technical and commercial regulations or standards are complied with.
- (10) Prior to the approval of an application or programme for decommissioning and abandonment, the Commission or Authority, as the case may be, shall ensure that -
- (a) considerations and recommendations are taken in the light of individual circumstances;
  - (b) the potential for reuse of a transportation pipeline together with other existing facility in connection with 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 transportation pipeline is to be performed in a manner that guarantees sustainable environmental development; 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 good international petroleum industry practices.
- (11) The Commission or Authority, as the case may be, shall enforce compliance by any holder of a current licence or lease or a holder of an expired Licence or Lease and who was responsible for the applicable decommissioning and abandonment plan with respect to a licence or lease that has expired, to carry out its remaining or unfulfilled decommissioning and abandonment obligations under this Act.
- (12) In archiving and maintaining the database of installations, structures and assets set out in subsection (14) of this section the Commission or Authority, as the case may be, shall prescribe the manner and method in which the data shall be submitted by operators.
- (13) The Commission or Authority, as the case may be, may recall a licensee or lessee responsible for a decommissioning and abandonment programme



with respect to a licence or lease that has expired or is surrendered or a licensee or lessee that has transferred or divested its interest or equity, to carry out an obligation under this Act.

- (14) The Commission or Authority, as the case may be, shall ensure that a list of the installations, structures and pipelines onshore and offshore Nigeria used for petroleum operations and their current status is compiled and made available or accessible to the public annually.

### **233. Decommissioning and abandonment fund**

- (1) Each lessee and licensee shall set up and maintain a decommissioning and abandonment fund, which shall be held by a financial institution that is not an affiliate of the lessee or licensee.
- (2) The decommissioning and abandonment fund shall only be used to pay for decommissioning and abandonment costs.
- (3) Where a lessee or a licensee fails to comply with the decommissioning and abandonment plan, the decommissioning and abandonment fund shall be accessed by the Commission or Authority, as the case may be, to pay for the performance by a third party of such lessee's or licensee's obligations pursuant to section 232 of this Act.
- (4) The amounts to be contributed to the decommissioning and abandonment fund shall be based on the following -
  - (a) with respect to upstream petroleum operations, on the decommissioning and abandonment plan approved by the Commission in the field development plan required by Section 79 (2) of this Act and where –
    - (i) no decommissioning and abandonment plan exists, and
    - (ii) a Field is in development or producing,

the lessee shall submit a decommissioning and abandonment plan based on the criteria established in section 232 (6) of this Act within 1 year of the effective date, which when approved by the Commission, shall form the basis of the computation of the amount to be contributed by the lessee; and

- (b) with respect to midstream petroleum operations, on the decommissioning and abandonment plan submitted pursuant to section 111(3) of this Act and where no such plan exists, the licensee shall submit a decommissioning and abandonment plan to the Authority based on the criteria established in section 232 (6) of this Act within 1 year of the effective date, which once approved by the

Authority shall form the basis of the computation of the amount to be contributed by the licensee.

- (5) The decommissioning and abandonment plan shall establish the yearly amount to be contributed to the respective decommissioning and abandonment fund and the yearly amount shall be based on a reasonable estimate by the licensee or lessee of the applicable decommissioning and abandonment costs, projected forward on a nominal basis and divided by the estimated life of the facilities and the reasonable cost estimate shall be approved by the Commission or Authority, as the case may be.
- (6) The estimated life of the facilities referred to in subsection (5) of this section shall be based on the -
  - (a) estimated life of the Field, in case of facilities used for upstream petroleum operations, and
  - (b) period of time for which the safe operations of the facilities were designed, in case of facilities used for midstream petroleum operations.
- (7) The estimated yearly contribution pursuant to subsection (5) of this section shall be reviewed every 10 years following the first submission.
- (8) A decommissioning and abandonment fund shall be funded by the applicable Licensee or lessee based on the yearly amount established in subsection (5) of this section and as provided in regulation.
- (9) A licensee or lessee shall –
  - (a) inform the Commission or Authority, as the case may be, of the establishment of its decommissioning and abandonment fund not more than 3 months from the date of commencement of production for upstream petroleum operations or the commissioning of the facilities for midstream petroleum operations; and
  - (b) furnish the Commission or Authority, as the case may be, on an annual basis with statements of accounts with respect to its decommissioning and abandonment fund.
- (10) The decommissioning and abandonment fund shall be used exclusively for the purposes of decommissioning and abandonment of structures and facilities as provided in this section.
- (11) Where the licensee or lessee is party to a production sharing or farm out agreement pursuant to section 84 (1) of this Act with one or more third parties, a decommissioning and abandonment plan funded in whole or in part by the applicable third parties shall be provided for in the applicable

production sharing or farm out agreement.

- (12) From the effective date, contributions to the decommissioning and abandonment Fund shall be eligible for cost recovery and shall be tax deductible, provided that decommissioning and abandonment costs disbursed from the decommissioning and abandonment fund shall not be eligible for cost recovery or deductible for tax purposes.
- (13) Where there is excess in the decommissioning and abandonment fund after the decommissioning and abandonment has been carried out and approved by the Commission or the Authority, as the case may be, the excess shall be considered income for production sharing or tax purposes and the amount after the withholding of profit oil and any tax shall be returned to the licensee or lessee.

**CHAPTER THREE**  
**Host Communities Development**

**234. Objectives and regulations**

- (1) The objectives of this Chapter are to -
  - (a) foster sustainable prosperity within host communities;
  - (b) provide direct social and economic benefits from petroleum operations to host communities;
  - (c) enhance peaceful and harmonious co-existence between licensees or lessees and host communities; and
  - (d) create a framework to support the development of host communities.
- (2) The Commission and Authority may make regulations with respect to this Chapter on areas within their competence and jurisdiction as specified in this Act.

**235. Incorporation of host communities development trusts**

- (1) Settlor shall incorporate a trust for the benefit of the host communities for which the settlor is responsible (“host community development trust”).
- (2) Where there is a collectivity of settlors operating under a joint operating agreement with respect to upstream petroleum operations, the operator appointed under the agreement shall be responsible for compliance with this Chapter on behalf of the Settlers.
- (3) For settlors operating in shallow water and deep offshore, the littoral communities and any other community determined by the settlors shall be host communities for the purposes of this Act.
- (4) The settlor shall for the purposes of setting up the trust, appoint and authorise a body trustees (the “ Board of Trustees”), which shall apply to be registered by the Corporate Affairs Commission as a corporate body under the Companies and Allied Matters Act in the manner provided under this Chapter.
- (5) The name of the corporate body to be registered by the Board of Trustees shall contain the phrase “host communities development trust”.
- (6) The Commission or the Authority, as the case may be, shall –
  - (a) make regulations on the administration, guide and safeguard the utilisation of the trust fund; and
  - (b) have the oversight responsibility for ensuring that the projects proposed by the board of trustees are implemented.

- (7) The Settlor shall undertake needs assessment that the metamorphose into the Community Development Plan for the purpose of determining the projects to be undertaken by the Host Communities Development Trust.

**236. Timeframe for incorporation of host communities development trust**

The host communities development trust shall be incorporated -

- (a) within 12 months from the effective date for existing oil mining leases;
- (b) within 12 months from the effective date for existing designated facilities;
- (c) within 12 months from the effective date for existing for new designated facilities under construction on the effective date;
- (d) prior to the application for field development plan for existing oil prospecting licences;
- (e) prior to the application for field development plan for petroleum prospecting licences and petroleum mining leases granted under this Act; and
- (f) prior to commencement of commercial operations for licensees of designated facilities granted under this Act.

**237. Transfer of settlor's interest and obligations subject to host communities development trust obligation**

- (1) Subject to the provisions of this Act, where the whole or part of an interest in a licence or lease governed by this Act is assigned, novated or otherwise transferred to another party, the legal and equitable interest, rights and obligations of the transferor in relation to any associated host community development plan and host community development trust, shall be deemed to attach to the property to be transferred to the transferee, the legal and equitable interests, rights and obligations of the transferor shall be deemed to become the interests, rights and obligations of the transferee.
- (2) Where part of a licence or lease governed by this Act is surrendered pursuant to the provisions of this Act, the holder or holder nominee will continue to discharge its surviving obligations, notwithstanding that the area that is surrendered may be granted to a new lessee or licensee.
- (3) Where any licence or lease governed by this Act is revoked, terminated or expired, the holder will continue to discharge its surviving obligations, notwithstanding that the area revoked, terminated or expired may be granted to a new lessee or licensee.

**238. Failure to incorporate host communities development trust**

Failure by any holder of a licence or lease governed by this Act to comply with its obligations under this Chapter may be grounds for revocation of the applicable licence or lease.

**239. Objectives of host communities development trust**

- (1) The Constitution of the host communities development trust shall allow the host communities development trust to manage and supervise the administration of the annual contribution of the Settlor contemplated under this Chapter and any other sources of funding.
- (2) The objectives of the host communities development trust shall be specified in the constitution as set out in paragraphs (a) to (e) of subsection (3) of this section.
- (3) The objectives of the host community development trust shall include, to -
  - (a) finance and execute projects for the benefit and sustainable development of the host communities;
  - (b) undertake infrastructural development of the host communities within the scope of funds available to the Board of Trustees for such purposes;
  - (c) facilitate economic empowerment opportunities in the host communities;
  - (d) advance and propagate educational development for the benefit of members of the host communities;
  - (e) support healthcare development for the host communities;
  - (f) support local initiatives within the host communities, which seek to enhance protection of the environment;
  - (g) support local initiatives within the host communities which seek to enhance security;
  - (h) invest part of available fund for and on behalf of the host communities; and
  - (i) assist in any other developmental purpose deemed beneficial to the host communities as may be determined by the Board of Trustees.
- (4) Notwithstanding the provisions of this Act relating to funding of the trust fund, nothing shall preclude the host communities from their entitlements under any other law.

**240. Sources of funding for petroleum host communities development trust**

- (1) The constitution of each host community development trust shall establish a fund comprising of one or more accounts (“host community development trust fund”) to be funded pursuant to this section.
- (2) Each settlor, where applicable through the operator, shall make an annual contribution to the applicable host community development trust fund of an amount equal to 2.5% of its actual operating expenditure in the immediately preceding calendar year in respect of all petroleum operations affecting the

host communities for which the applicable host community development trust was established.

- (3) Each host community development trust may receive donations, gifts, grants or honoraria that are provided to such host community development trust for the attainment of its objectives.
- (4) Profits and interest accruing to the reserve fund of a host community development trust shall also be contributed to the applicable host community development trust fund.

**241. Matters on which the funds may be utilised**

The constitution of each host community development trust shall provide that the applicable host community development trust fund be used exclusively for the implementation of the applicable host community development plan.

**242. The Board of trustees, composition, management, etc.**

- (1) The constitution of the host communities development trust shall contain provisions requiring the Board of Trustees to be set up by the settlor, who shall determine its membership and the criteria for their appointment, provided that the membership of the Board of Trustees of the host communities development trust shall be subject to the approval of the Commission or the Authority, as the case may be.
- (2) The settlor shall, in the determination of membership of the Board of Trustees, include persons of high integrity and professional standing, who may not necessarily come from any of the host communities.
- (3) The settlor shall determine –
  - (a) the selection process, procedure for meeting, financial regulations and administrative procedures of the Board of Trustees
  - (b) the remuneration, discipline, qualification, disqualification, suspension and removal of members of the Board of Trustees; and
  - (c) other matters other than the above relating to the operation and activities of the Board of Trustees.
- (4) Each member of the Board of Trustees shall serve a term of 4 years in the first instance and may be reappointed for another term of 4 years and no more.
- (5) The Board of Trustees shall have a secretary, who shall be appointed by the settlor to keep the books of the Board.

### **243. Duties and functions of the Board of Trustees**

The Board of Trustees shall be responsible for the general management of the host communities development trust and shall be responsible for -

- (a) determining the criteria, process and proportion of the host communities development trust fund to be allotted to specific development programs;
- (d) approving the projects for which the host communities development trust fund shall be utilised;
- (e) providing general oversight of the projects for which the host communities development trust fund shall be utilised;
- (f) approving the appointment of fund managers for purposes of managing the reserve fund;
- (g) set up the management committee of the host communities development trust and appoint its members; and
- (h) determining the allocation of funds to host communities based on the matrix provided by the settlor.

### **244. Allocation of funds**

The Board of Trustees shall in each year and pursuant to section 240 of this Act allocate from the host communities development trust fund, a sum equivalent -

- (a) 75% to the capital fund out of which the Board of Trustees shall make disbursements for projects in each of the host community as may be determined by the management committee in furtherance of the objectives set out in section 234 of this Act, provided that any sums not utilised in a given financial year shall be rolled over and utilized in subsequent year;
- (b) 20% to the reserve fund, which sums shall be invested for the utilisation of the host community development trust whenever there is a cessation in the contribution payable by the settlor; and
- (c) to an amount not exceeding 5% to be utilised solely for administrative cost of running the trust and special projects, which shall be entrusted by the Board of Trustee to the settlor, provided that at the end of each financial year, the settlor shall render a full account of the utilisation of the fund to the Board of Trustees and where any portion of the Fund is not utilised in a given year, it shall be returned to the capital fund.

### **245. Matrix for distribution of trust fund**

- (1) The settlor shall provide to the Board of Trustees a matrix for distribution of the trust fund to the host communities.
- (2) The Board of Trustees shall utilize the matrix provided under subsection (1) of this section for distribution of the funds in the host communities development trust fund to each of its host communities.



**246. Engagement of fund managers**

- (1) The Board of Trustees shall engage a Fund Manager to invest the reserve fund as the fund accrues.
- (2) The Board of Trustees shall manage the interest and profits accruable from the investment of the reserve fund and allocate the gain in accordance with section 244 of this Act.

**247. Management committee, composition, powers, etc.**

- (1) The constitution of the host communities development trust shall contain provisions requiring the Board of Trustees to set up a management committee for the host communities development trust.
- (2) The membership of the management committee shall comprise -
  - (a) one representative of each host community, who shall be nominated by the host community as a non-executive member; and
  - (b) executive members, selected by the board of trustees, who shall be Nigerians of high integrity and professional standing, who may not necessarily be from any of the host communities and the number of executive members shall be determined by the settlor.
- (3) A person appointed under paragraphs (a) and (b) of subsection (2) of this section, shall serve a term of 4 years in the first instance and may be reappointed for another term of 4 years and no more.
- (4) The Board of Trustees shall in accordance with the host communities development trust determine –
  - (a) the selection process, procedure for meetings, financial regulations and administrative procedures of the management committee;
  - (b) the remuneration, discipline, qualification, disqualification, suspension and removal of members of the management committee; and
  - (c) any other matter relating to the operations and activities of the management committee.
- (5) The management committee shall have a secretary, who shall be appointed by the settlor to keep the books of the committee.

**248. Duties and functions of the management committee**

The management committee shall be responsible for the general administration of the host communities development trust on an *ad hoc* basis and be responsible for the -

- (a) preparation of the budget of the host communities development trust and submit it to the Board of Trustees for approval;
- (b) development and management of the contracting process for project award

- on behalf of the host communities development trust subject to approval of the Board;
- (c) determination of project award winners and contractors to execute projects on behalf of the host communities development trust through a transparent process subject to approval of the Board;
  - (d) supervision of projects execution;
  - (e) nomination of fund managers for appointment by the Board of Trustees for approval, to manage the reserve fund;
  - (f) reporting on the activities of the management committee, contractors and other service providers to the Board of Trustees; and
  - (g) undertaking of any other function and duty that may be assigned to it by the Board of Trustees to enhance the performance of the host communities development trust.

**249. Host community advisory committee, composition, etc**

- (1) The constitution of the host communities development trust shall contain provisions mandating the management committee to require each host community to set up an advisory committee (“Host Community Advisory Committee”).
- (2) The management committee shall in accordance with the constitution of the host community development trust, determine –
  - (a) the selection process, procedure for meetings, financial regulations and administrative procedures of the host community advisory committee;
  - (b) the remuneration, discipline, qualification, disqualification, suspension and removal of members of the host community advisory committee; and
  - (c) any other matter relating to the operations and activities of host community advisory committee.
- (3) Decisions of the management committee with respect to subsection (2) of this section shall be subject to the approval of the Board.

**250. Duties and functions of the host community advisory committee**

The host community advisory committee shall perform the following functions -

- (a) nominate member to represent the host communities on the management committee;
- (b) articulate community development projects to be transmitted to the management committee;
- (c) monitor and report progress of projects being executed in the community to the management committee;
- (d) advise the management committee on activities that may lead to improvement of security of infrastructure and enhancement of peace-

- building within the community and the entire area of operation; and
- (e) take responsibility for first line protection of facilities and ensure that petroleum operations are uninterrupted by members of their community failing which, benefits from the trust to the host community shall be disallowed.

**251. Host community needs assessment**

- (1) The settlor shall after the grant of any licence or lease issued pursuant to this Act, conduct a needs assessment (“Host Community Needs Assessment”) in accordance with this Act and regulations made pursuant to this Act.
- (2) Each host community needs assessment shall, from a social, environmental, and economic perspective -
- (a) determine the specific needs of each affected host community;
  - (b) ascertain the effect that the proposed petroleum operations might have on the host community; and
  - (c) provide a strategy for addressing the needs and effects identified.
- (3) Each host community needs assessment shall show that the settlor has -
- (a) engaged with each affected host community to understand the issues and needs of such host community;
  - (b) consulted with and considered the reasonable concerns of women, youth and community leaders; and
  - (c) engaged with each affected host community in developing a strategy to address the needs and effects identified in the applicable Host community needs assessment.
- (4) The settlor shall develop a host community development plan and shall submit to the Commission or Authority, as the case may be, based on the findings of the host community needs assessment, in order to undertake its oversight function preparatory to the establishment of the trust.

**252. Contents of host community development plans**

The host community development plan shall -

- (a) specify the community development initiatives required to respond to the findings and strategy identified in the host community needs assessment;
- (b) determine and specify the projects to implement the specified initiatives;
- (c) provide a detailed timeline for projects;
- (d) determine and prepare the budget of the host community development plan;
- (e) set out the reasons and objectives of each project as supported by the host community needs assessment;

- (f) conform with the Nigerian content requirements provided in the Nigerian Oil and Gas Industry Content Development Act; and
- (g) provide for ongoing review and reporting to the Commission.

**253. Financial year of the host communities development trust**

The financial year of the host communities development trust shall commence on the 1<sup>st</sup> day of January and end on the 31st December of each year or any other date set for this purpose by the Board of Trustees.

**254. Accounts and audit**

The constitution of the host communities development trust shall contain provisions requiring the Board of Trustees to -

- (a) keep account of the financial activities of the host communities development trust; and
- (b) appoint auditors to audit the accounts of the host communities development trust annually.

**255. Mid-year and annual reports**

The constitution of the host communities development trust shall contain provisions requiring the -

- (a) management committee to submit a mid-year report of its activities to the Board of Trustees not later than 31st of August of the particular year;
- (b) management committee to submit an annual report accompanied by its audited account to the Board of Trustees not later than 28th of February of the succeeding year;
- (c) Board of Trustees to submit an annual report of the activities of the host communities development trust accompanied by its audited account to the settlor not later than 31st of March of the particular year; and
- (d) settlor to submit an annual report of the activities of the host community development trust accompanied by its audited account to the Commission or Authority, as the case may be, not later than 31st of May of the particular year.

**256. Exemption from income tax**

The funds of the host communities development trust created pursuant to this Act shall be exempted from taxation.

**257. Deduction of payment for petroleum host community development**

- (1) Any payment made by the settlor pursuant to section 240(2) of this Act, shall be deductible for the purposes of hydrocarbon tax and companies income tax as applicable.
- (2) Where in any year, an act of vandalism, sabotage or other civil unrest occurs

that causes damage to petroleum and designated facilities or disrupts production activities within the host community, the community shall forfeit its entitlement to the extent of the cost of repairs of the damage that resulted from the activity with respect to the provisions of this Act within that financial year.

- (3) The basis for computation of the trust fund in any year shall always exclude the cost of repairs of damaged facilities attributable to any act of vandalism, sabotage or other civil unrest.

## CHAPTER FOUR

### Petroleum Industry Fiscal Framework

#### Part I

#### Objectives and Administration

##### 258. Objectives

The objectives of this Chapter are to -

- (a) establish a progressive fiscal framework that encourages investment in the Nigerian petroleum industry, balancing rewards with risk and enhancing revenues to the Federal Government of Nigeria;
- (b) provide a forward-looking fiscal framework that is based on core principles of clarity, dynamism and fiscal rules of general application;
- (c) establish a fiscal framework that expands the revenue base of the Federal Government, while ensuring a fair return for investors;
- (d) simplify the administration of petroleum tax; and
- (e) promote equity and transparency in the petroleum industry fiscal regime.

##### 259. Administration

From the commencement of this Act, the administration and collection of Government revenue in the petroleum industry shall be the function of the Federal Inland Revenue Service (the Service) and the Commission as follows -

- (a) the Service shall be responsible for the assessment and collection of -
  - (i) hydrocarbon tax and enforcement of the provisions of this Act as it relates to hydrocarbon tax assessment and revenue collection, and
  - (ii) companies income tax and tertiary education tax in accordance with this Act as it relates to taxable petroleum operations;
- (b) The Commission shall be responsible for the determination and collection of -
  - (i) rents and royalties and its enforcement under this act; and
  - (ii) related payments or production shares, where the model contract includes provisions related to production sharing, profit sharing or risk service provisions.

#### Part II

#### Hydrocarbon Tax

##### 260. Application of this Part

- (1) This part applies to companies engaged in upstream petroleum operations in the onshore, shallow water and deep offshore; provided that the

hydrocarbon tax under this part shall not apply to -

- (a) associated and non-associated natural gas; and
  - (b) condensates and natural gas liquids produced from non-associated gas in fields or gas processing plants, provided the related volumes are determined at the measurement points or at the exit of the gas processing plant, regardless of whether the condensates or natural gas liquids are subsequently comingled with crude oil.
- (2) Hydrocarbon tax shall apply to crude oil, condensates and natural gas liquids produced from associated gas.
  - (3) The costs of production of associated gas, upstream of the measurement point shall be allocated to crude oil for the purposes of calculating hydrocarbon tax, provided that costs solely attributable to production of associated gas shall not be allocated to crude oil, but may be claimed under the Companies Income Tax Act (CITA).
  - (4) This Part shall not apply to a frontier acreage until it is reclassified pursuant to the provisions of subsection (3) of section 68 of this Act.
  - (5) For the purpose of determining royalties, condensates shall be treated as crude oil and natural gas liquids as natural gas.
  - (6) Upstream petroleum operations shall be subject to CITA.

**261. Charge of hydrocarbon tax**

There shall be levied upon the profits of any company engaged in upstream petroleum operations in relation to crude oil a tax to be known as hydrocarbon tax, which shall be charged and assessed upon its profits related to such operations and payable during each accounting period in accordance with the provisions of this Act, provided that for production sharing contract executed prior to the commencement of this Act and converted pursuant to section 92 of this Act, hydrocarbon tax shall be charged and assessed separately on the profits from each and every petroleum mining lease and payable during each accounting period in accordance with the provisions of this Act.

**262. Ascertainment of crude oil revenue, adjusted profit, assessable profits and chargeable profits**

- (1) Subject to the provisions of this Act, in relation to any accounting period, the crude oil revenue of a company for that period shall be the value of any chargeable oil adjusted to the measurement points, based on the -

- (a) proceeds of all chargeable oil sold; and
  - (b) value of all chargeable oil disposed.
- (2) For the purpose of subsection (1) of this section, the value of any chargeable oil disposed of, shall be regarded as the aggregate of the value of that crude oil determined for royalties for all fields in accordance with the provisions of this Act or any applicable law.
- (3) The adjusted profits of an accounting period shall be the profits of that period after the deductions allowed by section 263 (1) of this Act.
- (4) The assessable profit of an accounting period shall be the adjusted profit of that period after any deduction allowed by section 265 of this Act.
- (5) The chargeable profits of an accounting period shall be the assessable profits of that period after the deduction allowed by section 266 of this Act.

**263. Allowable deductions**

- (1) In computing the adjusted profit of a company in upstream petroleum operations related to crude oil for any accounting period, there shall be deducted expenses wholly, reasonably, exclusively and necessarily incurred during that period for the following, including but without otherwise expanding or limiting the generality of the foregoing -
- (a) rents incurred by the company for the period pursuant to a petroleum mining lease or petroleum prospecting licence;
  - (b) all Royalties the liability for which was incurred and were paid by the company during that period in respect of crude oil and associated gas and where a petroleum mining lease includes payments to the Federation Account related to production sharing, profit sharing, risk service contracts or other contractual features under a Model Contract and the company has incurred liability for such payments in kind or in cash;
  - (c) operating expenses for upstream petroleum operations including expenses directly incurred for repair of premises, plant, machinery or fixtures employed for the purpose of carrying on production activities or for the renewal, repair or alteration of production implement, utensils or articles so employed;
  - (d) an expenditure, tangible or intangible directly incurred in connection with the drilling of the first exploration well and the first two appraisal wells in the same field, whether the wells are productive or



not, provided that subsequent exploration wells, appraisal wells and other wells shall be treated as qualifying drilling expenditure under the Fifth Schedule to this Act and where a deduction may be given under this section in respect of any such expenditure, that expenditure shall not be treated as qualifying drilling expenditure for the purpose of the Fifth Schedule to this Act;

- (e) any contribution to a pension, provident or other society, scheme or fund for production staff which may be approved, with or without retrospective effect, by the National Pension Commission subject to such general conditions or particular conditions in the case of the society, scheme or fund as the Service may prescribe, provided that any sum received by or the value of any benefit obtained by the company, from any approved pension, provident or other society, scheme or fund, in the accounting period of that company shall, for the purpose of section 262(1) of this Act, be treated as income of the company for that accounting period;
  - (f) any amount contributed to a fund, scheme or arrangement approved by the Commission for the purpose of decommissioning and abandonment, provided that the surplus or residue of the fund shall be subject to tax under this Act at the end of life of the field, where such surplus is returned to the lessee;
  - (g) sums incurred by way of interest on any money borrowed by the company, where the Commission is satisfied that the interest was payable on capital employed for upstream petroleum operations and that the respective interest rates reflect market conditions;
  - (h) all sums the liability of which was incurred by the company to the Federal Government or any State or Local Government Council by way of duty, customs duty, excise duty, stamp duties, taxes, fees or like charges; and
  - (i) any amount contributed to any fund, scheme or arrangement approved by the Commission pursuant to the establishment of Host Community Development Trusts under Chapter Three of this Act, Environmental Remediation Fund and Niger Delta Development Commission and other similar contributions.
- (2) Where a deduction has been allowed to a company under this section in respect of a liability of the company and the liability or part of the liability is waived, released or recovered, the amount of the deduction or the part of

the liability corresponding to the part of the liability shall, for the purpose of section 262(1) of this Act, be treated as income of the company of its accounting period, in which such waiver or release was made or given.

#### **264. Deductions not allowed**

Subject to the express provisions of this Act, for the purpose of ascertaining the adjusted profit of a company in the accounting period from its upstream petroleum operations applicable to crude oil, no deduction shall be allowed in respect of –

- (a) disbursements or expenses not being money wholly, reasonably, exclusively and necessarily incurred for the purpose of those operations;
- (b) expenditure for the purchase of information relating to the existence and extent of petroleum deposits;
- (c) expenditure incurred as a penalty, natural gas flare fees or imposition relating to natural gas flare;
- (d) financial or bank charges, arbitration and litigation costs, bad debts and interest on borrowing other than pursuant to section 263(1)(g) of this Act;
- (e) head office, costs incurred outside Nigeria or affiliate cost;
- (f) production bonuses, signature bonuses paid for the acquisition of, or of rights in or over, petroleum deposits, bonuses or fees paid for renewing petroleum mining lease or petroleum prospecting licence or marginal field or fees paid for assigning rights to another party;
- (g) tax inputted into a contract or an agreement on a net tax basis and paid by a company on behalf of the vendor or contractor;
- (h) capital withdrawn or sum employed or intended to be employed as capital;
- (i) capital employed in improvements as distinct from repairs;
- (j) sum recoverable under an insurance or contract of indemnity, except an amount that is not recovered under the scheme;
- (k) rent of or cost of repairs to any premises or part of premises not incurred for the purpose of those operations;
- (l) amounts incurred in respect of tertiary education tax, companies income tax, any income tax, profits tax or other similar taxes, whether charged within Nigeria or elsewhere;
- (m) the depreciation of any premises, buildings, structures, works of a permanent nature, plant, machinery or fixtures;
- (n) payment to provident, savings widows' and orphans' or other society, scheme or fund, except such payments as are allowed under section 263(1)(e) of this Act; and
- (o) costs pursuant to paragraph 2(2)(c) of the Sixth Schedule to this Act.

## **265. Assessable Profits and Losses**

- (1) The assessable profits for each company or petroleum mining lease for any accounting period shall be the amount of the adjusted profit of that period after the deduction of the amount of any loss incurred by that company during any previous accounting period.
- (2) A deduction under subsection (1) of this section shall be made so far as possible from the amount, if any, of the adjusted profit of the first accounting period after that in which the loss was incurred, and, so far as it cannot be so made, then from the amount of the adjusted profit of the next succeeding accounting period and so on until such loss is fully deducted.

## **266. Chargeable profits and allowances**

- (1) The chargeable profits of any company for any accounting period shall be the amount of the assessable profits of that period after the deduction of any amount to be allowed in accordance with the provisions of this section, namely -
  - (a) the aggregate amount of capital allowances due to the company under the provisions of the Fifth Schedule to this Act for the accounting period;
  - (b) the aggregate amount of all production allowances due to the company under the provisions of the Sixth Schedule to this Act for the accounting period; and
  - (c) in the case of acquisition costs of petroleum rights, the value of the rights and the value of the assets acquired shall be reported separately to the Service, provided that the value of the rights shall be eligible for annual allowance of 10% per annum and the value of the assets shall be depreciated based on the applicable depreciation rates for the respective assets, and there shall be a retention of 1% in the last year until the asset is disposed of.
- (2) In determining the chargeable profit, the total cost shall not exceed the cost-price ratio as determined in the Sixth Schedule.

### **Part III**

#### **Ascertainment of Chargeable Tax**

## **267. Chargeable Tax**

The chargeable tax for any accounting period of a company shall be a percentage of the chargeable profit for that period aggregated and it shall be -

- (a) 42.5% of the profit from crude oil for onshore areas for petroleum mining Leases selected pursuant to sections 93(6)(b) and 93(7)(b) of this Act;

- (b) 37.5% of the profit from crude oil for shallow water areas for petroleum mining leases selected pursuant to sections 93(6)(b) and 93(7)(b) of this Act;
- (c) 22.5% of profit from crude oil for onshore areas for new licences and leases granted after the commencement of this Act and for marginal fields in onshore areas;
- (d) 20.0% of profit from crude oil for shallow water areas for new licences and leases granted after the commencement of this Act and for marginal fields in shallow water areas;
- (e) 5% of the profit from crude oil from deep offshore areas for petroleum mining leases selected pursuant to sections 93(6)(b) and 93(7)(b) of this Act; and
- (f) 10% of profit from crude oil for deep offshore areas for new licences and leases granted after the commencement of this Act.

**268. Additional Chargeable Tax payable in certain circumstances**

- (1) Where, for any accounting period of a company, the amount of the chargeable tax for that period, calculated in accordance with the provisions of this Act other than this Section, is less than the amount mentioned in subsection (2) of this Section, the company shall be liable to pay an additional amount of chargeable tax for that period equal to the difference between those two amounts.
- (2) The amount referred to in subsection (1) of this section is, for any accounting period of a company, the amount which the chargeable tax for crude oil for that period, calculated in accordance with the provisions of this Act, would come to, in the case of crude oil exported from Nigeria by the company, the reference in section 262(1)(a) of this Act to the proceeds of sale were a reference to the amount obtained by multiplying the number of barrels of that crude oil determined at the measurement point by the fiscal oil price per barrel.
- (3) For the purpose of subsection (2) of this section the relevant sum per barrel of crude oil or condensate by a company is the fiscal oil price applicable to that crude oil as may be advised by the Commission.
- (4) The whole of any additional chargeable tax for crude oil and associated gas payable by a company by virtue of this section for any accounting period shall be payable concurrently with the final instalment of the chargeable tax payable for that period.
- (5) Every fiscal oil price per barrel established shall bear a fair and reasonable

relationship -

- (a) to the established fiscal oil price of Nigerian crude oil streams of comparable quality and specific gravity; or
  - (b) where there are no such established official selling prices for such Nigerian crude oil streams to the official selling prices at main international trading centers for crude oil of comparable quality and gravity, due regard being had in either case to freight differentials and other relevant factors.
- (6) Where any crude oil, which in relation to a particular company is its chargeable oil, is exported from Nigeria by another company, that crude oil shall for the purpose of this section be deemed to be exported from Nigeria by that particular company.

#### **Part IV**

#### **Ascertainment of Total Profits and Consolidation for Tax Purposes**

##### **269. Artificial transactions, etc.**

- (1) Where the Service is of the opinion that any disposition is not given effect to or that any transaction which reduces or would reduce the amount of any tax payable is artificial or fictitious, the Service may disregard any such disposition or direct that such adjustments shall be made with respect to the Companies' liability to tax as the Service considers appropriate to counteract the reduction of liability to tax effected or reduction which would otherwise be effected, by the transaction and the companies concerned shall be assessed accordingly.
- (2) In subsection (1) of this section, the expression "disposition" includes any trust, grant, covenant, agreement or arrangement.
- (3) For the purpose of this section, the following transactions shall be deemed to be artificial or fictitious, namely, transactions between persons one of whom has control over the other or between persons both of whom are controlled by some other person which, in the opinion of the Service, were not made on terms which might be expected to have been made by independent Persons engaged in the same or similar activities dealing with one another at arm's length.
- (4) A company in respect of which any direction is made under this section, shall have a right of appeal in like manner as though for the purpose of Part III of

this Chapter such direction was an assessment.

- (5) Subject to the provisions of this Act, the provisions of the Income Tax (Transfer Pricing) Regulations 2018 shall apply.

#### **270. Assessable Profits and adjusted Losses**

- (1) Subject to the provisions of this section, the assessable profits of any company for any accounting period shall be the amount of the adjusted profit of that period after the deduction of the amount of any Loss incurred by that company during any previous accounting period.
- (2) A deduction under subsection (1) of this section shall be made where possible from the amount, if any, of the adjusted profit of the first accounting period after that in which the loss was incurred, and where it cannot be so made, then from the amount of the adjusted profit of the next succeeding accounting period and so on.
- (3) Within 5 months after the end of any accounting period of a company, or within such further time as the Service may permit in writing, the company may elect in writing that a deduction or any part to be made under this section shall be deferred to and be made in the succeeding accounting period, and may so elect in any succeeding accounting period.

#### **271. Trade or business sold or transferred**

- (1) Without prejudice to section 275 of this Act, where a trade or business of upstream petroleum operations carried on in Nigeria by a company is sold or transferred to another company for the purposes of better organization of that trade or business or the transfer of its management and any asset employed in that trade or business is sold or transferred, then, if the Service is satisfied that one of those companies has control over the other or that both companies are controlled by some other person or are members of a recognized group of companies and have been so for a consecutive period of at least 3 years prior to the date of reorganization, the provisions set out in subsection (2) of this section shall have effect.
- (2) Where subsection (1) of this section applies, the Service may in its discretion if, on or before the date on which the trade or business is so sold or transferred, the first sale of or bulk disposal of chargeable oil by or on behalf of the company selling or transferring the trade or business has occurred, but the first sale of or bulk disposal of chargeable oil by or on behalf of the company acquiring

that trade or business has not occurred, direct that -

- (a) the first accounting period of the company acquiring that trade or business shall commence on the date on which the sale or transfer of the trade or business takes place and end on 31<sup>st</sup> December of that same year, and the definition of accounting period in section 318 of this Act shall be construed accordingly
  - (b) for the purpose of the Fifth Schedule to this Act, the asset sold or transferred to the company acquiring that trade or business by the company selling or transferring the trade or business shall be deemed to have been sold for an amount equal to the residue of the qualifying expenditure on the asset on the day following the day on which the sale or transfer occurred; and
  - (c) the company acquiring the asset so sold or transferred shall be deemed to have received all allowances given to the company selling or transferring the trade or business in respect of the asset under the Fifth Schedule to this Act and any allowances deemed to have been received by that company under the provisions of this paragraph, provided that the Service in its discretion may -
    - (i) require the company selling or transferring the trade or business or the company acquiring that trade or business, to guarantee or give security to the satisfaction of the Service for payment in full of tax due or to become due from the company selling or transferring the trade or business; and
    - (ii) impose such conditions as it deems fit on either of the companies or on both of them.
- (3) In the event of failure by the company or companies selling to fulfil the guarantee or conditions, the Service may revoke the direction and may make the additional assessments or repayment of tax as may be necessary to give effect to the revocation.
- (4) Where the acquiring company makes a subsequent disposal of the assets thereby acquired within the succeeding 3 years after the date of acquisition, any concession enjoyed under this subsection shall be rescinded and the company shall be treated as if it did not qualify for the concession as at the date of the initial reorganization.
- (5) Where a trade or business of petroleum operations carried on in Nigeria by a company incorporated under any law in force in Nigeria is sold or transferred

to another company and any asset employed in that trade or business is so sold or transferred, and the Service is satisfied that the companies are not connected and that none has control over the other or both are not controlled by another company, the -

- (a) acquisition cost of the rights and assets or the cost incurred by the acquiring party shall not be eligible as qualifying capital expenditure under the Fifth Schedule to this Act for the purpose of the Hydrocarbon Tax but shall be eligible for qualifying capital expenditure under the companies Income Tax at an annual allowance rate of 10% per annum; and
  - (b) accounting period of the new trade or business shall be as provided in subsection (2) of this section.
- (6) For the purpose of subsection (2) (a) of this section, the accounting period of the company acquiring that trade or business shall commence on the date on which the sale or transfer of the trade or business to the company takes place or on such date within the calendar month in which the sale or transfer takes place as may be elected by the company with the approval of the Service and end on 31st December of that same year and the definition of “Accounting Period” under this Act shall be construed accordingly.
- (7) A merger, take-over, transfer or restructuring of the trade or business carried on by a company shall not take place without the approval and having obtained direction of the Service to any tax that may be due and payable under the Capital Gains Tax Act.
- (8) Reference to a ‘trade or business’ in this section shall include references to any part of the trade or business.

## **272. Consolidation of costs and taxes**

- (1) A company engaged in upstream petroleum operations across terrains shall be allowed to consolidate costs for the purpose of companies income tax.
- (2) A company engaged in upstream petroleum operations related to crude oil across terrains shall be allowed to consolidate costs and taxes for the purposes of hydrocarbon tax only across assets in which it holds Licences and leases in accordance with the six categories of chargeable tax stipulated in section 267 of this Act.
- (3) In respect of a company in existence prior to the commencement of this Act,



the amount of any loss incurred during any accounting period by a company selling or transferring its trade or business whether to a connected or unrelated party, being a loss which has not been allowed against any assessable profit of any accounting period of that company shall not be allowed against any assessable profit of the company acquiring that trade or business.

- (4) A company that is a contractor in a contract pursuant to section 84(2) of this Act shall be allowed to consolidate its Losses and revenues across petroleum prospecting licences and petroleum mining leases granted after the commencement of this Act, for the purposes of subsections (1) and (2) of this section with respect to the various tax classes under section 267 of this Act.

## **Part V**

### **Persons Chargeable**

#### **273. Partnerships, etc.**

- (1) Any person, other than a company, who engages in upstream petroleum operations either on his own account or jointly with any other person or in partnership with any other person with a view to sharing the profits arising from the operations, commits an offence.
- (2) Where the person referred to in subsections (1) of this section has benefitted from any profits on upstream petroleum operations, the person shall be subject to hydrocarbon tax and companies income tax under this Act on the profits and shall pay a penalty provided under section 297 of this Act.
- (3) Where two or more companies are engaged in upstream petroleum operations either in partnership, in a joint venture or in concert under any scheme or arrangement, tax shall be charged and assessed on them in accordance with subsection (4) of this section.
- (4) The apportionment of any profits, outgoings, expenses, liabilities, deductions, qualifying expenditure and the tax chargeable upon each company shall be in line with the equity interest of the parties under a jointly executed agreement that will be made available to the Service and where no jointly executed agreement is made available, the Commission shall advise the Service the approved equity interest of the parties and it shall be binding on the parties.

- (5) Subject to the provisions of this Act, where two or more companies are engaged in upstream petroleum operations either in partnership, in a joint venture or in concert under any scheme or arrangement, the Service may make regulation, in compliance with section 61 of the Federal Inland Revenue Service (Establishment) Act, for the ascertainment of tax to be charged or assessed upon each company so engaged.
- (6) Regulations made under subsection (5) of this section may make provisions –
  - (a) with respect to apportionment of any Profits, outgoings, expenses, liabilities, deductions, qualifying expenditure and tax chargeable upon each company;
  - (b) for the computation of any tax as if the partnership, joint venture, scheme or arrangement were carried on by one company and apportion that tax between the companies concerned;
  - (c) to accept other basis of ascertaining the tax chargeable upon each of the companies; and
  - (d) which have regard to any circumstances whereby the operations are partly carried on for any company by an operating Company whose expenses are reimbursed by those Companies.
- (7) Regulations made under this section may be of general application for the purpose of this Section and this Part or for a class of arrangement or for a particular application to a specific partnership, joint venture, scheme or arrangement.
- (8) The effect of any regulation made under this section shall not impose a greater burden of tax upon any company so engaged in any partnership, joint venture, scheme or arrangement than would have been imposed upon that company under this Part. if all things enjoyed, done or suffered by such partnership, joint venture, scheme or arrangement had been enjoyed, done or suffered by that company in the proportion in which it enjoys, does or suffers those things under or by virtue of that partnership, joint venture, scheme or arrangement.

#### **274. Company wound up, etc.**

- (1) Where a company is being wound up or where in respect of a company a receiver has been appointed by any Court, by the holders of any debentures issued by the company or otherwise, the company may be assessed and charged to tax in the name of the liquidator of the company, the receiver or

any agent in Nigeria of the liquidator or receiver and may be so assessed and charged to tax for any accounting period whether before, during or after the date of the appointment of the liquidator or receiver with respect to companies income tax and hydrocarbon tax.

- (2) Any liquidator, receiver or agent under subsection (1) of this section shall be answerable for doing the acts required to be done by virtue of this Act for the assessment and charge to tax of the company and for payment of such tax.
- (3) A liquidator or receiver under subsection (1) of this section shall not distribute any asset of the Company to the shareholders or debenture holders unless he has made provision for the payment in full of any tax which may be found payable by the company or by the liquidator, receiver or agent on behalf of the company.

#### **275. Avoidance by transfer**

Where a company which is or was engaged in petroleum operations transfers a substantial part of its assets to any person without having paid any companies income tax or hydrocarbon tax, assessed or chargeable upon the company, for any accounting period ending prior to such transfer and in the opinion of the Service one reason for such transfer by the company was to avoid payment of such tax then that tax as charged upon the company may be sued for and recovered from that person in a manner similar to a suit for any other tax under section 294 of this Act.

#### **276. Indemnification of representative**

Every person answerable under this Act for the payment of companies income tax or hydrocarbon tax on behalf of a company may retain out of any money in or coming to his hands or within his control on behalf of such company so much as shall be sufficient to pay the tax and shall be indemnified against any person for payments made by him in accordance with the provisions of this Act.

### **Part VI**

#### **Applicability, Accounts and particulars**

#### **277. Preparation and delivery of accounts and particulars**

- (1) Every company engaged in upstream petroleum operations related to crude oil shall for each accounting period of the company make up accounts of its profits or losses and prepare the following particulars for the purpose of determining hydrocarbon Tax –

- (a) a statement of accounts of its profits or losses;
  - (b) computations of its actual adjusted profit or loss and actual assessable profits of that period;
  - (c) in connection with the Fifth Schedule to this Act, a schedule showing -
    - (i) the residues at the end of that period in respect of its assets,
    - (ii) all qualifying petroleum expenditure incurred by it in that period,
    - (iii) the values of any of its assets disposed of in that period, and
    - (iv) the allowances due to it under that schedule for that period;
  - (d) in connection with the Sixth Schedule to this Act, a schedule showing total production allowance from each and every field of its upstream petroleum operations related to crude oil;
  - (e) a computation of its actual chargeable profits of that period;
  - (f) a statement of amounts repaid, refunded, waived or released to it, referred to in section 263(2) of this Act, during that period;
  - (g) a computation of its chargeable tax for that period and where associated gas is being sold or otherwise delivered through the measurement point the methodology used to determine the chargeable tax;
  - (h) duly completed self-assessment form attested to by the principal officer of the company; and
  - (i) evidence of payment of the final instalment.
- (2) Every company engaged in upstream petroleum operations related to crude oil shall, with respect to any accounting period of the company and within 5 months after the expiration of that period or within 5 months after the effective date of this Act, whichever is later, deliver to the Service a copy of its accounts, bearing an auditor's certificate, of that period, in accordance with the provisions of subsection (1) of this section and copies of the particulars referred to in subsection (1) of this section relating to that period with the copy of the delivered company accounts and each copy of those particulars, shall, where the copies are -
- (a) not estimates, contain a declaration signed by authorised officer of the company or by its liquidator, receiver or the agent of the liquidator or receiver, that the same is true and complete; and
  - (b) estimates, contain a declaration, similarly signed, that the estimate was made to the best of the ability of the person signing same.
- (3) Notwithstanding the provisions of this section, every company which is yet to commence bulk sales or disposal of chargeable oil, shall file with the

Service its audited accounts and returns -

- (a) within 18 months from the date of its incorporation, in the case of a newly incorporated company; and
  - (b) within 5 months after any period ending on 31st December of the following year, in the case of any other company, provided that where there is an interval between 31st December of the preceding year and the date on which the company commences the bulk sale or disposal of chargeable oil, natural gas or condensate, the interval shall be deemed to form part of the preceding period.
- (4) A company which fails to comply with the provisions of subsection (2) or (3) of this section is liable to pay as penalty for late filing –
- (a) N10,000,000 on the first day the failure occurs;
  - (b) N2,000,000 for each and every subsequent day in which the failure continues; or
  - (c) other sum as may be prescribed by the Minister of Finance by Order published in the gazette.

**278. Power of the Service to request further information**

The Service may give notice in writing to any company engaged in upstream petroleum operations related to crude oil as the Service may deem necessary requiring the company to furnish further information, within reasonable time as may be specified, in relation to any matter referred to in section 277 of this Act or any other matter which the Service may consider necessary for the purposes of this Act.

**279. Power to call for returns, books, etc.**

- (1) For the purpose of obtaining full information in respect of any company's upstream petroleum operations related to crude oil, the Service may give notice to a company requiring it within a period not less than 21 days from the date of service of the notice, to complete and deliver to the Service any information called for in such notice and in addition or alternatively requiring an authorised representative of such company or its liquidator, receiver or the agent of such liquidator or receiver, to attend before the Service or its authorised representative on the date or dates as may be specified in the notice and to produce for examination any books, documents, accounts and particulars which the Service may deem necessary.
- (2) Where a company assessable to hydrocarbon tax under the provisions of this Act fails or refuses to keep books or accounts which, in the opinion of the

Service are adequate for the purpose of ascertaining the tax, the Service may by notice in writing require it to keep such records, books and accounts as the Service considers to be adequate in a form and in a language as the Service may direct and the company shall the keep records, books and accounts as directed.

- (3) An appeal shall lie from any direction of the Service made under this section to the Tax Appeal Tribunal.

## **280. Returns of estimated tax**

- (1) Not later than 2 months after the commencement of each accounting period of any company engaged in upstream petroleum operations related to crude oil, the company shall submit to the Service an estimated return of its profits or losses for that accounting period for the purpose of hydrocarbon tax, which shall include -
  - (a) computations of its estimated adjusted profit or loss and of its estimated assessable profits of that period;
  - (b) in connection with the Fifth Schedule to this Act, a schedule showing –
    - (i) the estimated residues at the end of that period in respect of its assets,
    - (ii) all estimated qualifying petroleum expenditure incurred by it in that period,
    - (iii) the values of any of its assets, estimated by references to the provisions of that Schedule, to be disposed of in that period, and
    - (iv) the allowances due to it under that schedule for that period;
  - (c) in connection with the Sixth Schedule to this Act, a schedule showing estimated total production allowance from all its upstream petroleum operations related to crude oil on field by field basis;
  - (d) a computation of its estimated chargeable profits of that period; and
  - (e) a computation of its estimated tax for that period.
- (2) Where, at any time during the accounting period, there is a change in price, cost and volume, the company shall submit further returns containing its revised estimated tax for such period.
- (3) Where the further returns provided for under subsection 2 of this section is not made, the Service shall impose interest at the prevailing LIBOR or any other successor rate plus 10% points for the differential of the revised tax

over the estimated tax paid by the company.

- (4) Every return made by a company engaged in upstream petroleum operations related to crude oil in fulfilment of the provisions of this Section shall be subject to review and validation by the Service.
- (5) Where a company does not provide the estimates pursuant to subsection 1 and 2 of this section, the Service shall have the right to determine such estimates on the best of judgment basis and impose same on the company.
- (6) A company which fails to comply with the provisions of subsection (1) of this section is liable to pay as penalty for late filing –
  - (a) N10,000,000 on the first day the failure occurs;
  - (b) N2,000,000 for each and every subsequent day in which the failure continues; or
  - (c) other sum as may be prescribed by the Minister of Finance by Order published in the gazette.

#### **281. Extension of periods for making returns**

Where it is shown by any company to the satisfaction of the Service that for some good reason, the company is not able to comply with the provisions of section 277 of this Act within the time limited by that section or any notice given to it under sections 278 or 279 of this Act, within the time limited by any such notice, the Service may grant in writing such extension of that time as the Service may consider necessary.

#### **282. Assessment of Tax Payable**

- (1) The Service shall proceed to assess a company with the hydrocarbon tax for any accounting period of the company immediately after the expiration of the time allowed to such company for the delivery of self-assessment provided for in section 277 of this Act.
- (2) Where a company has delivered a self-assessment for any accounting period of the company, the Service may –
  - (a) accept the self-assessment; or
  - (b) refuse to accept the self-assessment and proceed as provided in subsection (3) of this Section upon any failure as mentioned and the like consequences shall ensue.
- (3) Where, for any accounting period, a company files a self-assessment which

was rejected by the Service or has failed to file self-assessment as provided in section 277 of this Act within the time limited by that section or has failed to comply with any notice given to it under sections 278 or 279 of this Act within the time specified in such notice or within any extended time provided in section 281 of this Act, and the Service is of the opinion that the company is liable to pay hydrocarbon tax, the Service may estimate the amount of the tax to be paid by the company for that accounting period and make an assessment accordingly, provided that –

- (a) the assessment shall not affect any liability otherwise incurred by such company by reason of its failure or neglect to deliver the accounts and particulars or to comply with the notices; and
- (b) nothing in this subsection shall affect the right of the Service to make any additional assessment under the provisions of section 283 of this Act.

### **283. Additional assessments**

- (1) Where the Service discovers or is of the opinion at any time that, with respect to any company liable to hydrocarbon tax, tax has not been charged and assessed upon the company or has been charged and assessed upon the company at an amount less than that which ought to have been assessed and charged for any accounting period of the company, the Service may within 6 years after the expiration of that accounting period -
  - (a) assess the company, as often as may be necessary, with tax for that accounting period at such amount or additional amount as in the opinion of the Service ought to have been charged and assessed; and
  - (b) may make any consequential revision of the tax charged or to be charged for any subsequent accounting period of the company.
- (2) Where a revision under subsection (1) of this section results in a greater amount of tax to be charged than has been charged or would otherwise be charged, an additional assessment or an assessment for any such subsequent accounting period shall be made and the provisions of this Act as to notice of assessment, objection, appeal and other proceedings under this Act shall apply to any such assessment or additional assessment and to the tax charged.
- (3) For the purpose of computing under subsection (1) of this section the amount or the additional amount of tax for any accounting period of a



company which ought to have been charged, all relevant facts consistent with section 289(4) of this Act shall be taken into account even though it is not known when any previous assessment or additional assessment on the company for that accounting period was made or could have been made.

- (4) Notwithstanding the provisions of this section, where any form of fraud, willful default or neglect has been committed by or on behalf of any company in connection with hydrocarbon tax imposed under this Act, the Service may, at any time and as often as may be necessary, assess the company on such amount as may be necessary for the purpose of recovering any loss of tax attributable to fraud, willful default or neglect.

#### **284. Making of assessments, etc.**

- (1) Assessments of hydrocarbon tax shall be made in such form and in such manner as the Service shall authorize and shall contain the –
  - (a) names and addresses of the companies assessed to tax or of the persons in whose names any companies have been assessed to tax, provided that the names of the represented companies are indicated; and
  - (b) particular accounting period and the amount of the chargeable profits and chargeable tax for that period, in the case of each company for each of its accounting periods.
- (2) When any assessment is to be amended or revised, a form of amended or revised assessment shall be made in a manner similar to that in which the original of that assessment was made under subsection (1) of this section showing the amended or revised amount of the chargeable profits and chargeable tax.
- (3) A copy of each assessment and of each amended or revised assessment shall be filed in a list which shall constitute the assessment list for the purpose of this Act.

#### **285. Notices of assessment, etc**

- (1) The Service shall cause to be served personally on or sent by courier to a company which is liable to hydrocarbon tax under this Act, by way of an additional assessment or an assessment by the Service, a notice of assessment stating the -
  - (a) accounting period and the amount of its chargeable profits and chargeable tax assessed and charged upon the company;

- (b) place at which payment of the tax should be made; and
  - (c) rights of the company under subsection (2) of this section.
- (2) Where any person in whose name an assessment was made in accordance with the provisions of this Act disputes the assessment, the person may apply to the Service by notice of objection in writing, to review and revise the assessment made on him and the application shall be made within 30 days from the date of service of the notice of the assessment, stating the amount of chargeable –
  - (a) profits of the company of the accounting period in respect of which the assessment is made; and
  - (b) tax and the tax which such person claims should be stated on the notice of assessment.
- (3) The Service, upon being satisfied that due to absence from Nigeria, sickness or other reasonable cause, the person in whose name the assessment was made was prevented from making the application within such period of 30 days, shall extend the period as may be reasonable in the circumstances.
- (4) After receipt of a notice of objection referred to in subsection (2) of this section, the Service may within such time and place as it shall specify, require -
  - (a) the person giving the notice of objection to furnish such particulars as the Service may deem necessary; and
  - (b) any other person, by notice, to give evidence orally or in writing in respect of any matter necessary for the ascertainment of the hydrocarbon tax payable and the Service may further require that where such evidence is given -
    - (i) orally, it shall be given on oath, and
    - (ii) in writing, it shall be given by affidavit.
- (5) In the event of any person assessed who has objected to an assessment made upon him agreeing with the Service as to the amount of tax liable to be assessed, the assessment shall be amended accordingly and notice of the tax payable shall be served upon the person.
- (6) Where an applicant for revision under subsection (2) of this section fails to agree with the Service on the amount of the hydrocarbon tax, the Service shall give such applicant notice of refusal to amend the assessment as desired by the applicant or may revise the assessment to such amount as the

Service may determine and give the applicant notice of the revised assessment and tax payable, together with notice of refusal to any subsequent request to amend the revision and, where necessary, any reference in this Act to an assessment or additional assessment shall be treated as a reference to an assessment or additional assessment as revised under the provisions of this subsection.

## **286. Errors and defects in assessment and notice**

- (1) An assessment, warrant or other proceeding purporting to be made in accordance with the provisions of this Act shall not be quashed or deemed to be void or voidable for want of form or be affected by reason of a mistake, defect or omission, if the -
  - (a) substance and effect of the assessment is in conformity with the provisions of this Act; and
  - (b) company assessed or intended to be assessed or affected is designated according to common intent and understanding.
  
- (2) An assessment shall not be invalidated or affected –
  - (a) by reason of a mistake as to –
    - (i) the name or a company liable or of a person in whose name a company is assessed; or
    - (ii) the amount of the tax;
  - (b) by reason of any variance between the assessment and the notice thereof, if in cases of assessment, the notice thereof be duly served on the company intended to be assessed or on the person in whose name the assessment was to be made on a company, and such notice contains, in substance and effect, the particulars on which the assessment is made.

## **287. Tax computation**

Notwithstanding anything to the contrary in any law -

- (a) all hydrocarbon tax computation made under this Act shall be in the currency in which the transaction was effected; and
- (b) any assessment made under section 284 of this Act shall be in the currency in which the computation giving rise to the assessment was made.

## **Part VII**

### **Appeals**

## **288. Appeals to Tax Appeal Tribunal**

Any Company or tax payer, who does not agree with an assessment made pursuant to section 285(6) of this Act, may appeal against the assessment to the Tax Appeal Tribunal established under the provisions of section 59 of the Federal Inland Revenue Service (Establishment) Act.

**289. Assessment to be final and conclusive**

- (1) Where –
- (a) no valid objection or appeal has been lodged within the time limited by section 285 of this Act or the rules of the relevant tribunal or court, as the case may be, against an assessment as regards the amount of the hydrocarbon tax assessed;
  - (b) the amount of the tax has been agreed to under section 285(5) of this Act; or
  - (c) the amount of the tax has been determined on objection or revision under section 285(6) of this Act or on appeal,

the assessment as made, agreed to, revised or determined on appeal, as the case may be, shall be final and conclusive for all purposes of this Act as regards the amount of such tax.

- (2) Where the full amount of the tax in respect of the final and conclusive assessment under subsection (1) of this section is not paid within the appropriate period or periods prescribed in this Act, the provisions relating to the recovery of tax and to any penalty under section 292 of this Act, shall apply to the collection and recovery, subject only to the set-off of the amount of any tax repayable under any claim, made under any provision of this Act, which has been agreed to by the Service or determined on an appeal against a refusal to admit any such claim.
- (3) Where an assessment has become final and conclusive, any tax overpaid shall be repaid or treated as credit in favour of the assessed party.
- (4) Nothing in section 285 of this Act or in this Chapter shall prevent the Service from making any assessment or additional assessment to Hydrocarbon Tax for any accounting period which does not involve re-opening any issue on the same facts which has been determined for that accounting period, under section 285(5) and (6) of this Act by agreement or otherwise or on appeal.

**Part VIII**

**Collection, Recovery and Repayment of Tax**

**290. Procedure in cases where objection or appeal is pending**

Collection of hydrocarbon tax shall, in cases where notice of an objection or an appeal has been given, remain in abeyance and any pending proceedings for any payment in instalment shall be stayed until the objection or appeal is determined but the Service may in any such case, enforce payment of that portion of the tax which is not in dispute by an application to the Tribunal or Court, as the case may be.

**291. Time within which payment is to be made**

- (1) Subject to the provisions of section 290 of this Act, hydrocarbon tax for any accounting period shall be payable in equal monthly instalments together with a final instalment as provided in subsection (4) of this section.
- (2) The first monthly payment shall be due and payable not later than the third month of the accounting period and shall be in an amount equal to one-twelfth or where the accounting period is less than a year, in an amount equal to equal monthly proportion, of the amount of tax estimated to be chargeable for such accounting period in accordance with section 280 (1) of this Act.
- (3) Each of the remainder of monthly payments to be made subsequent to the payment under subsection (2) of this section shall be due and payable not later than the last day of the month in issue and shall be in an amount equal to the amount of tax estimated to be chargeable for such period by reference to the latest returns submitted by the company in accordance with section 280 (2) of this Act less so much as has already been paid for such accounting period divided by the number of such of the monthly payments remaining to be made in respect of such accounting period.
- (4) A final instalment of tax shall be due and payable on or before the due date of filing of the self-assessment of tax for such accounting period and shall be the amount of the tax assessed for that accounting period less so much as has already been paid under subsections (2) and (3) of this section.
- (5) Any instalments on account of tax estimated to be chargeable shall be treated as hydrocarbon tax charged and assessed for the purposes of sections 292 and 294 of this Act.

**292. Penalty for non-payment of tax and enforcement of payment**

- (1) Where any hydrocarbon tax or any instalment of tax due and payable is not paid within the appropriate time limit prescribed in section 291 of this Act –

- (a) a sum equal to 10% of the amount of the tax payable shall be added and the provisions of the Act relating to the collection and recovery of tax shall apply to the collection and recovery of such sum;
  - (b) the tax due shall incur interest at the prevailing LIBOR or any successor rate, plus 10% from the date when the tax becomes payable until it is paid and the provisions of this Act relating to collection and recovery of tax shall apply to the collection and recovery of the interest;
  - (c) the Service shall serve a demand notice upon the company or person in whose name a tax is chargeable and if payment is not made within 1 month from the date of the service of the demand notice, the Service may proceed to enforce payment under this Act; and
  - (d) an addition imposed under this subsection shall not be deemed to be part of the tax paid for the purpose of claiming relief under any of the provisions of this Act.
- (2) Any person who without lawful justification or excuse fails to pay Hydrocarbon Tax within the period of one month prescribed in subsection (1) (c) of this section, commits an offence under this Act and the provisions of subsections 1(a) to (c) of this section shall apply.
- (3) The Service may, for any good cause shown, remit the whole or any part of the additional 10% penalty and interest on the tax due under subsection (1) of this section.

### **293. Collection of tax after determination of objection or appeal**

- (1) Where payment of hydrocarbon tax in whole or in part has been held in abeyance pending the result of a notice of objection or of appeal, the tax outstanding under the assessment as determined on such objection or appeal, as the case may be, shall be payable within one month from the date of service on the company assessed or on the person in whose name the company is assessed, of the notification of the tax payable by the Service or the Tribunal.
- (2) Where such balance is not paid within one month, the provisions of section 292 of this Act shall apply.

### **294. Suit for tax by the Service**

- (1) hydrocarbon tax may be sued for and recovered in a court of competent

jurisdiction at the place at which payment shall be made by the Service.

- (2) In any suit under subsection (1) of this section the production of a certificate signed by any person duly authorized by the Service giving the name and address of the defendant and the amount of tax due by the defendant shall be sufficient evidence of the amount due.

**295. Relief in respect of error or mistake**

- (1) Where a person who has paid hydrocarbon tax for an accounting period alleges that any assessment made upon him or in his name for that period, was excessive by reason of some error or mistake in the accounts, particulars or other written information supplied by him to the Service for the purpose of the assessment, that person may, not later than 6 years after the end of the accounting period in respect of which the assessment was made make an application in writing to the Service -
  - (a) for a relief; or
  - (b) to set-off the credit against the liability of a similar tax payable to the Service.
- (2) On receiving an application under subsection (1) of this section, the Service shall inquire into it and subject to the provisions of this section shall by way of repayment of tax give such relief or approve the set-off in respect of the error or mistake as appears to the Service to be reasonable and just.
- (3) A relief shall not be given under this section in respect of an error or mistake as to the basis on which the liability of the applicant ought to have been computed where the accounts, particulars or information was in fact made or given on the basis or in accordance with the practice of the Service generally prevailing at the time when the accounts, particulars or information was made or given.
- (4) In determining any application under this section, the Service shall have regard to all the relevant circumstances of the case and in particular shall consider whether the granting of relief would result in the exclusion from charge to tax of any part of the chargeable profits of the applicant and for this purpose, the Service may take into consideration the liability of the applicant and assessments made upon him in respect of other years.

## **296. Repayment of tax**

- (1) Except as otherwise expressly provided in this Act, a claim for the repayment of any hydrocarbon tax overpaid shall not be allowed unless it is made in writing within 6 years next after the end of the accounting period to which it relates.
- (2) The Service shall cause to be refunded or set-off at the option of the applicant upon presentation of relevant documents evidencing the tax to be refunded.
- (3) Any tax claimed based on this Section, which is proven not to be due, shall attract a penalty at the prevailing LIBOR or any other successor rate plus 10% from the date the payment or set-off was made up to the date the refund is made by the applicant.

## **Part IX**

### **Offences and Penalties**

## **297. Penalty for defaults**

- (1) A person who fails to comply with the provisions of this Chapter or any regulation made under this Act for which no other penalty is specifically provided, shall be liable to an administrative penalty of N10,000,000, and where the default continues beyond a period stipulated by this Act or regulation, the person shall be liable to a further administrative penalty of N2,000,000 or such other sum as may by order be prescribed by the Minister of Finance, for each day the default continues.
- (2) Notwithstanding the provisions of subsection (1) of this section, a person who is found guilty of an offence under this Chapter or in a regulation made under this Act for which no other penalty is specifically provided, shall, upon conviction, be liable to a fine of N10,000,000 or other sum as may be prescribed by the Minister of Finance by an order and where the offence continues beyond a period stipulated by this Act or regulation, the person shall be liable to an additional fine of N2,000,000 or such other sum as may by order be prescribed by the Minister of Finance, for each day the default continues or to imprisonment for 6 months.
- (3) A person who –
  - (a) fails to comply with the requirements of a notice served on him under this Chapter;



- (b) fails to comply with the provisions of section 277 of this Act;
  - (c) without sufficient cause fails to attend in answer to a notice or summons served on him under this Chapter or having attended fails to answer any question lawfully put to him; or
  - (d) fails to submit any return required to be submitted under sections 277 or 281 of this Act,  
commits an offence.
- (4) Any violation in respect of which a penalty is provided for in subsection (1) of this section shall be deemed to occur in Nigeria.

**298. Penalty for making incorrect accounts, etc**

- (1) A person who without reasonable excuse –
- (a) makes up or causes to be made up any incorrect accounts by omitting or understating any profits or overstating any Losses of which he is required under this Act to make up accounts;
  - (b) prepares or causes to be prepared any incorrect schedule or statement required to be prepared under section 277 of this Act by overstating any expenditure or overstating any royalties or other sums or by omitting or understating any amounts repaid, refunded, waived or released; or
  - (c) gives or causes to be given any false or misleading information in relation to any matter or thing affecting his liability to hydrocarbon tax,
- is liable to an administrative penalty of the sum of N15,000,000 or 1% of the amount of tax which has been undercharged in consequence of such incorrect account, schedule, statement or information or would have been so undercharged if the account, schedule, statement or information had been accepted as correct, and shall still be liable for the appropriate tax which would have been charged.
- (2) Notwithstanding the provisions of subsection (1) (c) of this section, a person who gives or causes to be given any false or misleading information in relation to any matter or thing affecting his liability to hydrocarbon tax commits an offence and upon conviction is liable to a fine of N15,000,000 or 1% of the amount of tax which has been undercharged in consequence of such incorrect account, schedule, statement or information, or would have been so undercharged if the account, schedule, statement or information had been accepted as correct and shall still be liable for the appropriate tax which would have been charged.

- (3) The Service may compound any offence under this Act by accepting a sum of money not exceeding the maximum fine specified for the offence and shall issue an official receipt for any money so received.

### **299. False statements and returns**

- (1) A person who –
  - (a) for the purpose of obtaining any deduction, refund, rebate, reduction or repayment in respect of hydrocarbon tax for himself or for any other person or who in any return, account, particulars or statement made or furnished with reference to tax, knowingly makes any false statement or false representation or forges or fraudulently alters or uses or fraudulently lends or allows to be used by any other person any receipt or token evidencing payment of the tax under this Act; or
  - (b) aids, abets, assists, counsels, incites or induces any other person –
    - (i) to make or deliver any false return or statement under this Act,
    - (ii) to keep or prepare any false accounts or particulars affecting tax, or
    - (iii) unlawfully refuses or neglects to pay tax;

commits an offence and is liable on conviction to a fine of N15,000,000 or 1% of the amount of tax for which the person assessable is liable under this Act for the accounting period in respect of or during which the offence was committed, or to imprisonment for 6 months or to both the fine and imprisonment and shall still be liable for the appropriate hydrocarbon tax which would have been assessed and charged.

- (2) Notwithstanding the provisions of subsection (1) of this section, any person who does any of the acts or makes the omissions contained in subsection (1) of this section, may be liable to an administrative penalty of N15,000,000 or 1% of the amount of hydrocarbon tax for which the person assessable is liable under this Act for the accounting period in respect of or during which the act or omission occurred and shall still be liable for appropriate tax which would have been assessed and charged.

### **300. Penalties for offences by authorised and unauthorised Persons**

- (1) A person who, -
  - (a) being a member of the Service charged with the administration of this

Act or any assistant employed in connection with the assessment and collection of the hydrocarbon tax who -

- (i) demands from any person an amount in excess of the authorised assessment of the tax payable,
  - (ii) withholds for his own use or otherwise any portion of the amount of tax collected,
  - (iii) renders a false return, whether verbal or in writing of the amounts of tax collected or received by him,
  - (iv) defrauds any person, embezzles any money or otherwise uses his position to deal wrongfully with the Service or any other individual; or
- (b) not being authorised under this Act, collects or attempts to collect the tax under this Act, commits an offence and is liable on conviction to a fine equivalent to 200% of the sum in question or to imprisonment for a term not exceeding 3 years or to both such fine and imprisonment.

**301. Tax to be payable notwithstanding any proceedings for penalties**

The institution of proceedings for or the imposition of a penalty, fine or term of imprisonment under this Act shall not relieve any person of liability to payment of any hydrocarbon tax for which he is or may become liable.

**Part X**

**Application of Companies Income Tax to Petroleum Operations**

**302. General requirement of companies engaged in petroleum operations to pay companies income tax**

- (1) Without prejudice to Companies Income Tax Act and any other applicable law, the provisions of this Act shall apply and any company, concessionaire, licensee, lessee, contractor or subcontractor involved in the upstream, midstream or downstream petroleum operations under this Act, shall also be subject to income tax under this Act.
- (2) Income Tax applicable to a Company engaged in upstream, midstream and downstream petroleum operations shall be determined separately for-
  - (a) upstream petroleum operations, provided that such operations can be consolidated with wholesale gas and wholesale petroleum liquids supply operations as defined under this Act;
  - (b) midstream petroleum operations; and
  - (c) downstream petroleum operations.

- (3) Subject to subsection (2)(a) of this section, a person intending to be involved in more than one stream shall register and use a separate company for each stream of petroleum operations under this Act.
- (4) In determining the Companies Income Tax, the hydrocarbon tax under this Act shall not be deductible.
- (5) All companies engaged in domestic midstream petroleum operations, downstream gas operations and large-scale gas utilization industries as defined in this Act, shall be entitled to benefit from the incentives provided under section 39 of the Companies Income Tax Act.
- (6) Natural gas transferred or disposed from the upstream to the midstream or downstream shall be subject to tax under the Companies Income Tax Act.
- (7) Natural gas liquids and liquid petroleum gases derived from natural gas shall be subject to income tax.
- (8) Acquisition costs of petroleum rights shall be eligible for annual allowance at the rate of 10% with a retention value of 1% in the last year until the asset is disposed.
- (9) Capital allowances for other assets shall be granted as follows –
  - (a) upstream petroleum operations assets shall be in accordance with the Fifth Schedule of this Act; and
  - (b) midstream and downstream Operations shall be in accordance with the Second Schedule to the Companies Income Tax Act.
- (10) Section 24 of the Companies Income Tax Act shall be read in conjunction with the following provisions of this Act –
  - (a) all rents and royalties the liability for which was incurred by the company during that period in respect of crude oil sold, condensate sold and natural gas sold or delivered or disposed of in any other commercial manner and where a petroleum mining lease includes payments to the Federation Account related to production sharing, profit sharing, risk service contracts or other contractual features and the company has incurred liability for such payments and such payments were made;
  - (b) any amount contributed to any fund, scheme or arrangement approved by the Commission or Authority for the purpose of providing for –
    - (i) abandonment and decommissioning, or

- (ii) petroleum host communities' development trust,  
provided that the surplus or residue of such funds shall be subject to tax under this Act; and
  - (c) other deductions as may be prescribed by the Minister of Finance by Order published in the Gazette.
- (11) Section 27 of the Companies Income Tax Act shall be read in conjunction with the following provisions of this Act –
  - (a) any expenditure for the purchase of information relating to the existence and extent of Petroleum deposits;
  - (b) any expenditure incurred as a penalty including natural gas flare fees or any such imposition relating to natural gas flare;
  - (c) production bonuses, signature bonuses paid for the acquisition of, or of rights in or over, petroleum deposits; signature bonuses or fees paid for renewing petroleum mining lease or petroleum prospecting licence or fees paid for assigning rights to another party including for marginal fields; and
  - (d) any tax inputted into a contract or an agreement on a net tax basis and paid by a company on behalf of the vendor or contractor.
- (12) Any company involved in upstream petroleum operations shall apply the accounting periods established for hydrocarbon tax on an actual year basis for its company's income tax in accordance with the provisions of sections 277, 280 and 291 of this Act.
- (13) Any company involved in upstream petroleum operations that is in default of subsection 12 of this section in relation to filing of companies income tax returns, shall be liable to pay penalty for late filing as follows –
  - (a) N10,000,000 on the first day the failure occurs;
  - (b) N2,000,000 for each and every subsequent day in which the failure continues; or
  - (c) other sum as may be prescribed by the Minister of Finance by Order published in the Gazette
- (14) Offences and penalties specified under Part IX of this Chapter shall be applicable to companies income tax of upstream petroleum companies.
- (15) The tax due from a company involved in upstream petroleum operations shall –

- (a) in the case of Naira remittances, carry interest at the prevailing NIBOR plus 10% from the date when the tax becomes payable until it is paid; and
- (b) in the case of foreign currency remittances, incur interest at the prevailing LIBOR or any successor rate plus 10% from the date when the tax becomes payable until it is paid,

the provisions of this Act relating to collection and recovery of tax shall apply to the collection and recovery of the interest.

## **Part XI**

### **General Provisions**

#### **303. General Application of this Part and other matters**

- (1) The provisions of this Act shall not apply to holders of an oil prospecting licence or oil mining lease who do not enter into a conversion contract until the termination or expiration of the respective oil prospecting licence or oil mining lease but any renewal of an oil mining lease shall be based on this Act.
- (2) The fiscal provisions of this Act are the base terms that are applicable and the Commission may under section 74(2) of this Act conduct a licensing round whereby the bid parameter is a higher royalty, profit oil share or other fiscal feature in order to ensure that the Government receives the full market value for each block.

#### **304. Regulations, rules and forms**

- (1) Where matters relate to hydrocarbon tax and companies income tax, the Minister of Finance may make regulations for the carrying out of the provisions of this Act and the Service may make rules and specify the form of returns, claims, statements and notices under this Act.
- (2) Where matters relate to fees, rents, royalties and payments to Government other than taxes and duties, the Commission may make regulations and rules generally for the carrying out of the provisions of this Act.

#### **305. Fiscal stabilization**

Fiscal stabilization clauses contained in any Production Sharing Contract or other contract entered into after the commencement of this Act shall not be applicable to

certain fiscal provisions, regardless of whether these changes affect the contractor favorably or unfavorably, if changes are being made in a manner that is not discriminatory to the petroleum industry or the contractor, with respect to -

- (a) generally applicable taxes, such as withholding taxes, companies income tax, tertiary education tax and VAT;
- (b) levies, taxes or payments to comply with modern principles in respect of environment, labor laws, health and safety; and
- (c) new taxes, levies or duties to implement Nigeria's commitments with respect to climate change under the United Nations Framework Convention on Climate Change and other related international agreements.

### **306. Royalty**

All production of petroleum, including production tests shall be subject to Royalties as provided in the Seventh Schedule to this Act.

## CHAPTER FIVE

### Miscellaneous Provisions

#### **307. Legal proceedings, etc.**

- (1) The provisions of the Public Officers Protection Act shall apply in relation to any suit instituted against the Commission or the Authority, the Commission Chief Executive or the Authority Chief Executive, any commissioner or director, officer or employee of the Commission or the Authority.
- (2) No action, claim, proceeding or suit shall lie or be commenced against the Commission or the Authority, the Commission Chief Executive or Authority Chief Executive, any commissioner or director or any other employee or officer of the Commission or the Authority, for any act done, attempted to be done or omitted to be done pursuant to this Act or any other law or enactment or of any public duty or authority in respect of any alleged neglect or default in the execution of this Act or any other law or enactment, duty or authority or be instituted in any court unless it is commenced within 3 months after the accrual of any cause of action in respect of any such act, neglect or default and provided such act or omission was not done in good faith.

#### **308. Pre-Action Notice**

- (1) A suit shall not be commenced against the Commission or the Authority or any officer of the Commission or the Authority, before the expiration of a period of 1 month after a written notice of the intention to commence the suit has been served on the Commission or the Authority.
- (2) The notice referred to in subsection (1) of this section shall state the cause of action, the particulars of claim, the name and address of the claimant and the reliefs sought.
- (3) A notice, summons or other document required or authorised to be served on the Commission or the Authority pursuant to this Act or any other law or enactment, may be served by delivering it to the office of the Commission Chief Executive or the Authority Chief Executive.
- (4) An order for execution or attachment of any property of the Commission or the Authority shall not be issued unless a 3 months' notice of the intention to commence execution process has been given to the Commission or the Authority.

#### **309. Consequential Amendments**

Subject to the provisions of the Constitution, upon the coming into force of this



Act, where the provisions of any other enactment or law 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. Deemed modified

### **310. Repeals**

- (1) From the effective date of this Act the following enactments and Regulations are repealed -
  - (a) Associated Gas Reinjection Act, 1979 CAP A25 Laws of the Federation 2004, and its Amendments;
  - (b) Hydrocarbon Oil Refineries Act No. 17 of 1965, CAP H5 Laws of the Federation of Nigeria 2004;
  - (c) Motor Spirits (Returns) Act, CAP M20 Laws of the Federation of Nigeria 2004;
  - (d) Nigerian National Petroleum Corporation (Projects) Act No. 94 of 1993, CAP N124 Laws of the Federation of Nigeria 2004;
  - (e) Nigerian National Petroleum Corporation Act (NNPC) 1977 No, 33 CAP N123 Laws of the Federation of Nigeria as amended, when NNPC ceases to exist pursuant to section 54(3) of this Act;
  - (f) Petroleum Products Pricing Regulatory Agency (Establishment) Act 2003;
  - (g) Petroleum Equalisation Fund (Management Board etc.) Act No. 9 of 1975, CAP P11 Laws of the Federation of Nigeria 2004;
  - (h) Petroleum Equalisation Fund (Management Board, etc.) Act, 1975;
  - (i) Petroleum Profit Tax Act Cap P13 LFN 2004, and
  - (j) Deep Offshore and Inland Basin Production Sharing Contract Act 2019, as amended.
- (2) The provisions of the Pre-Shipment Inspection of Oil Export Act, 1996 shall be amended accordingly.
- (3) With respect to the Petroleum Equalisation Fund, as of the Effective Date -
  - (a) the collection of net surplus revenues from oil marketing companies shall cease, except for the collection of unpaid net surplus revenues earned prior to the effective date; and
  - (b) the payment for reimbursements to oil marketing companies shall cease, except for possible remaining payment obligations incurred prior to the effective date.
- (4) An amount remaining in the Fund after the completion of the transactions

under paragraphs (a) and (b) of this subsection shall be transferred to the Midstream Gas Infrastructure Fund; and

- (5) Where the Fund is insufficient to make the payments pursuant to paragraph (b) of this subsection the Authority may prorate the amounts payable based on the ratio between the Funds remaining and the outstanding payables, provided that where the Fund is in a deficit, the proration shall be zero, and oil marketing companies shall have no claim as to further outstanding amounts.

### **311. Saving provisions**

- (1) Any Act, 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 or Authority 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 or oil mining lease granted under the Petroleum Act, 1969 that is subsisting as at the effective date of this Act shall continue to have effect, subject to the following terms and conditions -
  - (a) with respect to renegotiated production sharing contracts, the following conditions shall apply, -
    - (i) where negotiations of the contracts are continuing upon the effective date of this Act, such contracts shall be signed within 1 year of the effective date and in the event of failure to complete the negotiations within 1 year of the effective date, such contract shall be deemed to conform to the provisions of this Act at the expiration of the lease,
    - (ii) where the contracts were or are signed by NNPC, the leases shall be assigned to NNPC Limited without prior approval of the contractor and NNPC Limited shall continue its role as concessionaire under such Leases, NNPC shall by written notice notify the contractor of such assignment,
    - (iii) the renegotiated production sharing contracts, shall not feature any investment tax credits and shall feature a cost oil limit of not more than 60% of the total oil production and for the purpose of determining the profit oil share based on cumulative production, the production from the total production of all production areas selected under section 93 of the Act shall be used,
    - (iv) the contracts and leases shall continue to be subject to the

- legislation pursuant to subsection (9) of this section, provided that such Leases shall be subject to section 93 of this Act and in this respect the conversion date for the purpose of the interpretation of section 93 of this Act shall be the signing date of such renegotiated production sharing contracts, and
- (v) upon expiration or terminations, the Leases and renegotiated production sharing contracts can only be renewed on the basis of the provisions of this Act;
  - (b) with respect to other oil prospecting licences and oil mining leases that do not wish to convert pursuant to section 92(6), the provisions of section 303(2) of this Act and the provisions of subsection (9) of this section shall apply and the domestic gas price shall be \$2.50 per MMBtu instead of the prices established in Schedule Three of this Act.
  - (c) contractors of NNPC of oil prospecting licences and oil mining leases shall be subject to the provisions of sections 232 and 233 of this Act.
- (3) Any other licence, lease, certificate, authority or permit which was issued by the Department of Petroleum Resources, Petroleum Products Pricing and Regulatory Agency or Petroleum Equalisation Fund, as the case may be and which had effect immediately before the effective date shall continue to have effect, *mutatis mutandis*, for the remainder of its period of validity as if it had been issued by the Commission or Authority.
  - (4) Any tariff, price, levy, or surcharge which was payable to the Department of Petroleum Resources, Petroleum Products Pricing and Regulatory Agency or Petroleum Equalisation Fund 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.
  - (5) Any licence, permit or other right granted in respect of commercial activities pertaining to midstream petroleum operations or downstream petroleum operations, including refineries, pipelines, storage, transportation, distribution and retail under any law in force at the time in Nigeria, shall, in accordance with the provisions of this Act, apply to the regulatory institutions for the issuance of the appropriate licence, and pending the issuance of the said appropriate licence or permit within 24 months of the effective date and the existing licence, permit or right shall continue in force as if it had been issued under the provisions of this Act.
  - (6) Any other permit or other right in respect of any sector of the Petroleum Industry to which subsections (2), (3) and (4) of this section does not apply and that has been granted by the Department of Petroleum Resources,

Petroleum Pricing and Product Regulatory Agency or Petroleum Equalisation Fund, as the case may be, and which is still in existence on the effective date, shall continue in force for the remainder of its duration as if it had been issued under the provisions of this Act.

- (7) Any tariff, price, levy, or surcharge, which was payable to the Department of Petroleum Resources, Petroleum Pricing and Product Regulatory Agency or Petroleum Equalisation Fund 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, whichever is earlier, provided that any payments under Chapter Two of this Act shall be applicable.
- (8) Within 3 months from the effective date, the Minister of Petroleum on the advice of the Commission or the Authority, may make any further transitional and savings provisions that are necessary or desirable, provided that such provisions are consistent with the transitional and savings provisions in this Act.
- (9) Notwithstanding the provisions of section 310 of this Act, the following laws shall be saved until the termination or expiration of all oil prospecting licences and oil mining leases pursuant to subsection (2)(b) of this section:
  - (a) Petroleum Act, CAP P10, Laws of the Federation of Nigeria, 2004;
  - (b) Petroleum Profit Tax Act, 1958;
  - (c) Oil Pipelines Act, CAP 07 Laws of the Federation of Nigeria 2004 and any subsidiary legislation shall, in so far as it is not inconsistent with this Act, remain in operation until it is repealed or revoked and shall be deemed for all purposes to have been made under this Act;
  - (d) Deep Offshore and Inland Basin Production Sharing Contracts Act (1999) and its Amendment; and
  - (e) any other law or Regulations that are consistent with the principles of section 92(6) of this Act.
- (10) Within 24 months from the effective date, existing Lessees and Licence and Permit holders engaged in activities in midstream or downstream petroleum operations prior to the effective date shall apply and the Authority shall, where applicable, issue the appropriate licence or permit.

### **312. Transfer of assets and liability to the Commission**

- (1) The Commission shall be vested with all assets, funds, resources and other movable and immovable properties which immediately before the effective date were held by the Petroleum Inspectorate or the Department of Petroleum Resources.

- (2) The rights, interests, obligations and liabilities of the Petroleum Inspectorate and Department of Petroleum Resources existing immediately before the effective date under any contract or instrument or law or in equity are hereby assigned to and vested in the Commission.
- (3) Any contract or instrument covered by subsection (2) of this section shall be of the same force and effect against or in favour of the Commission and shall be enforceable as fully and effectively as if instead of the Petroleum Inspectorate or Department of Petroleum Resources the Commission had been named therein or had been a party thereto.
- (4) The Commission shall be subject to all the obligations and liabilities to which the Petroleum Inspectorate and Department of Petroleum Resources were subject immediately before the effective date and all other persons shall as from the effective date have the same rights, powers and remedies against the Commission as they had against the Petroleum Inspectorate or Department of Petroleum Resources immediately before the effective date.

### **313. Transfer of assets and liability to the Authority**

- (1) The Authority shall be vested with all assets, funds, resources and other movable and immovable properties, which immediately before the effective date were held by the Department of Petroleum Resources, the Petroleum Pricing and Product Regulatory Agency, and the Petroleum Equalisation Fund (Management Board).
- (2) The rights, interests, obligations and liabilities of the Department of Petroleum Resources, the Petroleum Pricing and Product Regulatory Agency, and the Petroleum Equalisation Fund (Management Board) existing immediately before the effective date under any contract or instrument or law or in equity are hereby assigned to and vested in the Authority.
- (3) Any contract or instrument covered by subsection (2) of this section shall be of the same force and effect against or in favour of the Authority and shall be enforceable as fully and effectively as if instead of the Department of Petroleum Resources, the Petroleum Pricing and Product Regulatory Agency, and the Petroleum Equalisation Fund (Management Board) had been named therein or had been a party thereto.
- (4) The Authority shall be subject to all the obligations and liabilities to which the Department of Petroleum Resources, the Petroleum Pricing and Product Regulatory Agency, and the Petroleum Equalisation Fund (Management Board) were subject immediately before the Effective Date and all other persons shall as from the Effective Date have the same rights, powers and

remedies against the Authority as they had against the Department of Petroleum Resources, the Petroleum Pricing and Product Regulatory Agency, and the Petroleum Equalisation Fund (Management Board) immediately before the Effective Date.

### **314. Transfer of employees and conditions of service**

- (1) From the effective date, employees in the relevant divisions in the Petroleum Inspectorate or the Department of Petroleum Resources shall be employees of the Commission on terms no less favourable to those in effect immediately prior to such transfer, and all years of service with the Petroleum Inspectorate or the Department of Petroleum Resources, as applicable, shall be deemed to be years of service qualifying for employment-related entitlements under any applicable law.
- (2) The Commission shall assume and continue to fulfil all statutory obligations in respect of pension schemes to which the Petroleum Inspectorate or the Department of Petroleum Resources, as applicable, was obliged in respect of its employees, prior to the effective date.
- (3) From the effective date, employees of each of the Department of Petroleum Resources, the Petroleum Pricing and Product Regulatory Agency, and the Petroleum Equalisation Fund (Management Board), shall be employees of the Authority on terms no less favourable to those in effect immediately prior to the Effective Date, and all years of service with the Department of Petroleum Resources, the Petroleum Pricing and Product Regulatory Agency or the Petroleum Equalisation Fund (Management Board), as applicable, shall be deemed to be years of service qualifying for employment-related entitlements under any applicable law.
- (4) The Authority shall assume and continue to fulfil all statutory obligations in respect of pension schemes to which the Department of Petroleum Resources, the Petroleum Pricing and Product Regulatory Agency and the Petroleum Equalisation Fund (Management Board), as applicable, was obliged in respect of its employees, prior to the effective date.

### **315. Movement of staff of the institutions**

As part of the implementation process of sections 313 and 57 of this Act, the Minister may within 24 months of the effective date cause an inter-agency transfer of any staff of the institutions listed below to the Commission, the Authority or NNPC Limited based on skills and competence requirements of the new institutions, if the skills and competence of the said staff are most suitable in any of the successor institutions during the implementation process -

- (a) Department of Petroleum Resources;

- (b) Nigerian National Petroleum Corporation or any of its subsidiaries;
- (c) Petroleum Equalisation Fund;
- (d) Petroleum Inspectorate; and
- (e) Petroleum Products Pricing and Regulatory Authority.

**316. Transfer of Existing Host Community Development Projects and Host Community Development Schemes**

- (1) Every settlor shall transfer any existing host community development project or scheme to a host community development trust established pursuant to the provisions of this Act.
- (2) Every applicable settlor shall notify the Commission or Authority, as the case may be, upon completion of any transfer pursuant to subsection (1) of this section to any one or more host community development trusts of any of its existing host community development projects or schemes.
- (3) Any financial contribution made by a settlor from the effective date until the date falling 12 months after the effective date to any ongoing host community development project or scheme in accordance with their terms shall be deemed to constitute a contribution made by such holder or holder nominee pursuant to section 240(2) of this Act.

**317. Transitional and Savings Provisions related to Chapter Four**

- (1) Anything made or done, or having effect as if made or done, before the effective date of this Act under or pursuant to any provision of the Petroleum Act, the Petroleum Profit Tax Act and the Deep Offshore and Inland Basin Production Sharing Contract Act by the Service and having any continuing or resulting effect with respect to the taxation of the profits of a company or any matter connected therewith, shall be treated and for all purposes shall have effect as if it were made or done by the Service under the corresponding provisions of this Act.
- (2) All rules, orders, notices or other subsidiary legislation made under the Petroleum Act, the Petroleum Profits Tax Act, and the Deep Offshore and Inland Basin Production Sharing Contract Act shall continue to have effect as if made under the corresponding provisions of this Act.
- (3) All references in any other enactment to provisions of the Petroleum Act, the Petroleum Profits Tax Act and the Deep Offshore and Inland Basin Production Sharing Contract Act shall be construed as references to the corresponding provisions of this Act.
- (4) With respect to petroleum mining leases selected pursuant to section 93

(5)(b) and 93(6)(b) of this Act, any capital allowances existing at the effective date for the related oil mining leases shall be carried over to the selected petroleum mining leases, provided the allowances relate to upstream petroleum operations and do not include investment tax allowances and investment tax credits.

- (5) Subject to the provisions of Section 303(1) of this Act, the provisions of Parts II and X of Chapter Four of this Act shall apply upon the commencement of the first Accounting Period following the Effective Date.

### **318. Interpretation**

In this Act unless the context otherwise requires -

**“accounting date”** means the date on which a company usually prepares its accounting statement.

**“accounting period”** in relation to a company engaged in petroleum operations, means -

- (a) a period of one year commencing on 1<sup>st</sup> January and ending on 31<sup>st</sup> December of the same year; or
- (b) any shorter period commencing on the day the company first makes a sale or bulk disposal of chargeable oil, domestic, export or both, and ending on 31<sup>st</sup> December of the same year; or
- (c) any period of less than a year being a period commencing on 1<sup>st</sup> January of any year and ending on the date in the same year when the company ceases to be engaged in petroleum operations.

In the event of any dispute with respect to the date of the first sale of chargeable oil above or with respect to the date on which the company ceases to be engaged in petroleum operations, the Commission shall determine the same and no appeal shall lie;

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

**“adjusted profit”** means adjusted profit as stated in sections 262 and 272 of this Act.

**“advisory committee”** has the meaning given to it in section 230 of this 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 more than 50% of the voting rights in a company, partnership or legal entity;

**“aggregate gas price”** means the gas price determined pursuant to section 167 (4) of this Act;



**“area of operation”** means the territory which hosts a Lessee’s or licensee’s operational or designated facilities and any other ancillary facilities related to upstream and midstream petroleum operations;

**“assessable profit”** means Assessable Profit as stated in sections 262 and 272 of this Act.

**“associated gas”** means -

(a) natural gas, commonly known as gas-cap gas, which overlies and is in contact with crude oil in a reservoir; and

(b) solution gas dissolved in crude oil in a reservoir and emerging from the fluid as pressure drops.

**“authorisation”** means approval issued by the Commission or Authority for an activity in the petroleum industry;

**“Authority”** means the “The Nigerian Midstream and Downstream Petroleum Regulatory Authority” as provided for in this Act;

**“Authority Chief Executive”** means the executive pursuant to section 34(2)(c) of this Act;

**“Authority Fund”** means the fund established pursuant to section 47 of this Act;

**“barrel”** means a barrel of 42 United States gallons.

**“board”** means the Governing Board of the Commission, Authority, NNPC Limited or an Incorporated Joint Venture Company;

**“board of trustees”** means the governing board of the trust established pursuant to section 242 of this Act;

**“bulk gas storage licence”** means a licence granted pursuant to section 132 of this Act;

**“capital fund”** means the fund available to the Board of Trustees of a host community development trust for community development projects and other matters on behalf of the holder or holders as provided for in this Act;

**“chargeable oil”** means chargeable oil as defined in section 262 of this Act

**“chargeable profit”** means chargeable profit as stated in section 262 of this Act.

**“chargeable tax”** means chargeable tax as stated in section 267 of this Act.

**“chargeable volume”** in relation to a company engaged in upstream petroleum operations means the chargeable volume as set out in paragraph 7 of the Seventh Schedule.

**“Chief Executive”** means the Commission Chief Executive or the Authority Chief Executive;

**“commercial discovery”** means a discovery of crude oil, 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 and development of crude oil, natural gas or condensate;

**“Commission”** means the Nigerian Upstream Petroleum Regulatory Commission established under this Act;

**“Commission Chief Executive”** means the executive pursuant to section 11(2)(c) of this Act;

**“Commission Fund”** means the fund established pursuant to section 24 of this Act;

**“company”** means in this Act, any company or corporation, other than a corporation sole, incorporated under the Companies and Allied Matters Act;

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

**“condensate”** means to a portion of natural gas of such composition that are in the gaseous phase at temperature and pressure of the reservoirs, but that, when produced, are in the liquid phase at surface pressure and temperature.

**“connection agreement”** means an agreement setting out the terms on which individual, physical connections to the transportation pipeline, transportation network or gas distribution 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 Altered);

**“conversion contract”** means a contract pursuant to the provisions of section 92 of this Act;

**“conversion date”** means the date pursuant to the provisions of section 92 of this Act;

**“Corporate Affairs Commission”** means the Corporate Affairs Commission of Nigeria;

**“Corrupt Practices Law”** means -

- (a) the laws of the Government in respect of bribery, kickbacks and corrupt business practices;
- (b) the Foreign Corrupt Practices Act of 1977 of the United States of America (Pub. L. No. 95-213 §§ 101-104 et. seq.), as amended;
- (c) the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed in Paris on 17 December

1997, which entered into force on 15 February 1999, and the Convention's Commentaries;

(d) the United Kingdom Bribery Act 2010; and

(e) any other law of general application relating to bribery, kickbacks or corrupt business practices.

**"Council"** means the Council established pursuant to section 52(3) and (4) of this Act.

**"crude oil"** means petroleum, which is in liquid conditions upon production from a reservoir either in its natural state or after the extraction of water, sand or other foreign substance from it, but before any such oil has been refined or otherwise treated, other than oil extracted by destructive distillation from coal, bituminous shales or other stratified deposits.

**"crude oil refiner"** means the holder of a crude oil refining licence pursuant to section 183 of this Act;

**"customary court"** means a customary court established by the applicable laws of a State of the Federation or the Federal Capital Territory;

**"customer client"** means a wholesale customer of the strategic sector who is a client of the domestic gas aggregator making use of the escrow account mechanism;

**"customer client volume"** is the volume of natural gas that is paid for by a customer client for the benefit of a specific producer client into the escrow account of the domestic gas aggregator in any one month.

**"customer protection"** means the standards, practices and service protections for customers including, those relating to pricing, service quality and standards, billing practices, performance reporting and any regulations of the Commission and Authority that provide such protections;

**"decommissioning and abandonment"** means the approved process of cessation of operations of crude oil and natural gas wells, installations, plants and structures, including shutting down an installation's operations 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 restoration of the area after removal of installations, plants and structures; and

**"decommission"** has a corresponding meaning;

**"decommissioning and abandonment fund"** has the meaning given to it in section 232 of this Act;

**“decommissioning and abandonment plan”** is the plan to be submitted in the Field development plan pursuant to section 79(2) for upstream petroleum operations and pursuant to section 111(3) of this Act for midstream petroleum operations;

**“deep offshore”** means any area within the territorial waters, continental shelf or exclusive economic zone offshore of Nigeria having a water depth in excess of 200 meters;

**“deep rights”** are petroleum rights vested in the Government after relinquishment pursuant to section 88(5) (b) of this Act.

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

**“designated facilities”** means petroleum terminals, crude oil and natural gas transportation pipelines, bulk storage tank farms, refineries, and gas processing plants in midstream petroleum operations and petrochemical plants;

**“distribution pipeline”** means a low-pressure pipeline for the purpose of conveying natural gas or petroleum products to customers;

**“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 109 of this Act;

**“domestic gas aggregator”** means a licensee of a domestic gas aggregation licence;

**“domestic gas aggregation licence”** means a licence granted pursuant to section 153 of this Act;

**“domestic gas demand requirement”** means an aggregate of the volume of natural gas required to meet the natural gas demand for strategic sectors within the domestic economy for a specified period pursuant to section 173 of this Act;

**“domestic gas delivery obligation”** means the obligations of a Lessee producing natural gas to dedicate and deliver to a transfer point a specific volume of natural gas towards meeting the domestic gas demand requirement, as stipulated in section 110 of this Act;

**“downstream gas operations”** means all activities entered into for the purpose of , distribution and supply of natural gas to retail customers, city gate reception terminals for natural gas; stations for the distribution, marketing and retailing of natural gas.

**“downstream petroleum products operations”** means all activities entered into for the purpose of distribution and supply of petroleum products to retail

customers, tank farms for distribution of petroleum products; and stations for the distribution, marketing and retailing of petroleum products;

**“downstream petroleum operations”** means downstream gas operations and downstream petroleum products operations;

**“effective date”** means the date on which this Act comes into force;

**“enforcement order”** means an order issued by the Commission or the Authority;

**“exploration well”** means a well that in the opinion of the Commission is aimed at discovering petroleum in a separate field in which petroleum has not been previously discovered;

**“domestic base price”** means the price determined pursuant the Third Schedule to this Act;

**“Federal High Court”** means the Federal High Court established by section 249 of the Constitution of the Federal Republic of Nigeria, 1999 (as Altered);

**“Federation Account”** means the Federation Account stated in section 162 of the Constitution of the Federal Republic of Nigeria, 1999 (as Altered);

**“field”** includes an area consisting of a single reservoir or multiple reservoirs all grouped on, or related to, the same geological structural feature, stratigraphic condition, a combination of both and refers to the underground productive formations or their vertical projection to the surface;

**“fiscal gas price”** means the price in US \$/MMBtu determined at the measurement point for natural gas pursuant to applicable regulations.

**“fiscal oil price”** means the price pursuant to applicable regulations for crude oil and condensate in US \$/barrel determined at the measurement point in such a manner that the price is equal to the price for which comparable crude oil and condensate of similar quality could be sold on similar terms at similar times by parties under no compulsion to buy or sell and whereby none of such parties exerts or is in a position to exert influence on the other party having regard to all relevant facts.

**“Fiscal Responsibility Act”** means the Fiscal Responsibility Act, 2007;

**“force majeure”** includes delays or inability to perform any obligations under this Act, (other than a payment obligation), due to any event beyond the reasonable control of a person. The event may be, but is not limited to, any act, event, happening, or occurrence due to natural causes; and acts or perils of navigation, fire, hostilities, war (declared or undeclared), blockade, labour disturbances, strikes, riots, insurrection, civil commotion, quarantine

restrictions, epidemics, storms, floods, earthquakes, accidents, blowouts or lightning. An event of *force majeure* shall not include changes in the laws of Nigeria or any political subdivision thereof or any acts or orders of Government, any minister, ministry, department, sub-division, agency, authority, council, committee, or other constituent element thereof, or any corporation owned and/or controlled by any of the foregoing, where operations are delayed, curtailed or prevented by *force majeure*, then the time for carrying out the obligation and duties thereby affected, and rights and obligations hereunder, shall be extended for a period equal to the period thus involved provided that such period shall not exceed three years in total after which each party can terminate the respective licence or lease;

**“frontier acreages”** means any or all onshore acreages in an area defined as a frontier in a regulation issued by the Commission;

**“frontier basin”** means basins defined as frontier in a Regulation issued by the Commission;

**“frontier exploration fund”** means the fund established in subsection (3) of section 9 of this Act;

**“fund manager”** means a person or company appointed by the board of trustees to manage and invest the reserve fund established under the provisions of Chapter Three of this Act for the benefit of the trust;

**“gas distribution licence”** means a licence for the distribution of natural gas through a low-pressure pipeline system in a specific geographical area pursuant to section 148 of this Act;

**“gas distribution network”** means a set of interconnected distribution pipelines for natural gas;

**“gas distributor”** is the holder of a gas distribution licence.

**“gas processing licence”** means a licence granted pursuant to section 129 of this Act;

**“gas retailer”** means a holder of a Retail Gas Supply Licence pursuant to section 146 of this Act;

**“gas transportation network”** means a gas transportation network pursuant to section 138 of this Act;

**“gas transportation network operator licence”** means a licence to operate a gas transportation network pursuant to section 138 of this Act;

**“gas transportation network operator”** means the holder of a gas transportation network operator licence;

**“gas transportation pipeline”** means a gas transportation pipeline pursuant to section 135 of this Act;

**“gas transportation pipeline licence”** means a Licence for a Gas Transportation Pipeline granted pursuant to section 135 of this Act;

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

**“good international petroleum industry practices”** means those uses and practices that are, at the time in question, generally accepted in the international petroleum industry as being good, safe, economical, environmentally sound and efficient in petroleum operations. They should reflect standards of service and technology that are either state-of-the-art or otherwise appropriate to the operations in question and should be applied using standards in all matters that are no less rigorous than those in use by petroleum companies in global operations;

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

**“host community”** means any community situated in or appurtenant to the Area of Operation of a Settlor, and any other community as a Settlor may determine pursuant to Chapter Three of this Act;

**“host community development plan”** has the meaning given to it in section 252 of this Act;

**“host community development trust”** has the meaning given to it in subsection (1) of section 235 of this Act;

**“host community development trust fund”** means the fund established pursuant to section 235(1) of this Act;

**“host community needs assessment”** has the meaning given to it in section 252(1) of this Act;

**“large-scale gas utilisation industries”** means -

- (a) large-scale industries that use natural gas as a feedstock such as gas-to-liquid plants, petrochemical industries and fertilizer plants; and
- (b) mini-LNG plants, power plants and such other industries as defined in regulations.

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

**“lease”** means a petroleum mining lease;

**“lessee”** means a holder of a lease;

**“LIBOR”** means | London Interbank Offered Rate

**“Licence”** means a licence issued by the Commission or Authority in respect of

any applicable upstream, midstream or downstream petroleum operations;

**“licensee”** means a holder of a licence;

**“liquefied natural gas”** or **“LNG”** means natural gas in liquid form through condensation at close to atmospheric pressure and at a temperature of approximately minus 162 degrees celsius.

**“liquefied petroleum gas”** or **“LPG”** means mixtures of propane and butane and small concentrations of other gases which are gaseous under room temperature and pressure but are liquified by applying pressure;

**“licensing round guidelines”** means guidelines that are established by the Commission to govern the process of issuing Licences or leases during a licensing round;

**“local distribution zone”** means an authorised area as specified in regulations, within which one gas distributor may operate;

**“loss”** means a loss ascertained in like manner as an Adjusted Profit.

**“marginal field”** means a field or discovery which has been declared a marginal field prior to 1<sup>st</sup> January 2020;

**“management committee”** means the committee set up pursuant to section 247 of this Act;

**“marketable natural gas”** means a mixture mainly of methane and other hydrocarbons, where necessary through the processing of the raw natural gas for the removal or partial removal of some of its constituents, and which meets specifications determined by the Authority for distribution to wholesale customers and retail customers -

(a) for use as a domestic, commercial and industrial fuel; and

(b) as feedstock or industrial raw material;

**“marketable natural gas delivery point”** means a point where marketable natural gas is made available to customers, at the exit of a gas processing plant or gas conditioning plant or at a measurement point, or such other location immediately downstream of a facility in which such natural gas has been produced, processed, conditioned or treated in order to produce marketable natural gas;

**“measurement point”** means -

(a) a point determined in the field development plan pursuant to section 79(2) of this Act, where petroleum is being measured and its value is determined for royalty purposes,

(b) where the point has not been determined, a point directly downstream of



the flow station in the petroleum mining lease, and

- (c) where measurements take place outside the petroleum mining lease, a deemed measurement point in the petroleum mining lease based on a calculation procedure approved by the Commission adjusting from the point(s) where petroleum is being measured;

**“midstream gas infrastructure fund”** means the fund established pursuant to section 52 of this Act:

**“midstream gas operations”** means activities downstream of the measurement points of petroleum mining leases, whether or not related to the petroleum mining lease, with respect to the construction and operation of natural gas transport or transmission pipelines, including the related compressor stations; construction and operations of facilities to compress, transport and deliver compressed natural gas (“CNG”); construction and operations of gas processing facilities and central processing facilities, producing ethane, propane, butane and natural gas liquids and marketable natural gas; construction and operation of underground or above ground facilities for the storage of natural gas; ethane extraction plants; construction and operation of gas to liquids (“GTL”) plants; construction and operation of lubricant, petrochemical and fertilizer plants, construction and operation of liquefied natural gas (“LNG”) plants, and related LNG terminals as well as storage and transport of LNG; acquisition, operation or chartering of LNG tankers for coastal and marine transportation; purchase and sale, trading, bartering, aggregating and marketing of natural gas transported by pipelines, compressed natural gas, liquefied natural gas, methane, ethane, propane, butane, natural gas liquids and liquids from GTL plants with respect to wholesale customers and gas distributors and related administration and overhead.

**“midstream petroleum liquids operations”** means activities downstream of the measurement point(s) of petroleum mining leases, whether or not related to the petroleum mining lease, with respect to the construction and operation of facilities for upgrading of heavy oil; construction and operation of lubricant, petrochemical and fertilizer plants, construction and operation of petroleum liquids transport pipelines, including the related pumping stations; acquisition, operation, leasing, rental or chartering of barges, coastal or ocean-going tankers, railcars and trucks for the transport of petroleum liquids; construction, leasing and operation of tank farms and other storage facilities and export terminals for petroleum liquids; construction and operation of refineries, purchase and sale,

trading, bartering, marketing of petroleum liquids and related administration and overhead.

**“midstream petroleum operations”** means midstream petroleum liquids operations and midstream gas operations.

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

**“Ministry of Environment”** means the Federal Ministry in charge of environmental matters;

**“Ministry of Finance”** means the Federal Ministry in charge of finance matters;

**“MMBtu”** means millions of British thermal units;

**“Ministry of Finance Incorporated”** means the corporation sole established by the Ministry of Finance Incorporated Act CAP M15 Laws of the Federation of Nigeria, 2004;

**“model contract”** means a contract pursuant to section 84(2) and (3) of this Act;

**“model lease”** means a standard petroleum mining lease with terms and conditions adopted for a specific licensing round and may contain contractual provisions in a model contract attached to the lease;

**“model licence”** means a standard Petroleum prospecting licence with terms and conditions adopted for a specific licensing round and may contain contractual provisions in a model contract attached to the licence;

**“National Data Repository”** means national petroleum data bank as defined in the National Data Repository Regulation, 2007 and its amendment;

**“National Salaries, Incomes and Wages Commission”** means the National Salaries, Incomes and Wages Commission established by section 1 of the National Salaries, Incomes and Wages Commission Act CAP N72, Laws of the Federation of Nigeria, 2004;

**“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;

**“Natural Gas”** means all gaseous hydrocarbons, and all substances contained in it and as exist in natural state in strata, associated or not with crude oil, and are in a gaseous state upon production from a reservoir and excludes condensates.

**“Natural Gas Liquids”** or **“NGL”** means hydrocarbons liquefied at the surface in separators, field facilities or in gas processing plants, and include but are not limited to, ethane, propane, butanes, pentanes, and natural gasoline.

**“NIBOR”** means Nigerian Interbank Offered Rate.

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

**“Nigerian National Petroleum Corporation”** or **“NNPC”** means the Nigerian National Petroleum Corporation established by section 1 of the Nigerian National Petroleum Corporation Act CAP N123, Laws of the Federation of Nigeria, 2004;

**“NNPC limited”** means Nigerian National Petroleum Company Limited, a company to be incorporated under the Companies and Allied Matters Act pursuant to the provisions of this Act;

**“non-associated gas”** means natural gas that is found in a reservoir which does not contain significant quantities of crude oil.

**“oil mining lease”** means an oil mining lease granted pursuant to the Petroleum Act, 1969, prior to the effective date of this Act;

**“oil prospecting licence”** means an oil prospecting licence granted pursuant to the Petroleum Act, 1969, prior to the effective date of this Act;

**“onshore”** means any land areas above the high-water mark, other than Frontier Acreages;

**“parcel”** shall be a parcel pursuant to section 69(4) of this Act;

**“Pensions Reforms Act”** means the Pensions Reforms Act 2014;

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

**“person”** means any individual, company or other juristic person;

**“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 bitumen and coal;

**“petroleum exploration licence”** means a Licence pursuant to section 71 of this Act;

**“petroleum exploration operations”** or **“PEL”** means any geological, geophysical, geochemical and other surveys and any interpretation of data relating thereto, and the drilling of such shot holes, core holes and stratigraphic tests, related to the exploration for crude oil and natural gas, but not including exploration wells;

**“Petroleum Equalisation Fund”** means the fund established under the Petroleum Equalisation Fund (Management Board etc.) Act No. 9 of 1975, CAP P11 Laws of the Federation of Nigeria 2004;

**“petroleum industry”** means the industries involved in upstream, midstream and downstream petroleum operations in Nigeria;

**“Petroleum Inspectorate”** means the Petroleum Inspectorate established under section 10 of the Nigerian National Petroleum Corporation Act CAP N123, Laws of the Federation of Nigeria, 2004;

**“petroleum liquids”** means crude oil, condensates, liquid petroleum products and Liquefied Petroleum Gas;

**“petroleum liquids transportation pipeline licence”** means a licence for a petroleum liquids transportation pipeline granted pursuant to section 190 of this Act;

**“petroleum liquids transportation network operator licence”** means a licence to operate a petroleum liquids transportation network pursuant to section 193 of this Act;

**“petroleum liquids transportation network operator”** means the holder of a petroleum liquids transportation network operator licence;

**“petroleum liquids transportation network”** means a network pursuant to section 193 of this Act;

**“petroleum liquids transportation pipeline”** means a pipeline pursuant to section 190 of this Act;

**“petroleum mining lease”** means a Lease pursuant to section 81 of this Act;

**“petroleum operations”** means upstream, midstream and downstream petroleum operations;

**“Petroleum Pricing and Product Regulatory Agency”** means the Petroleum Pricing and Product Regulatory Agency established under section 1 of the Petroleum Pricing and Product Regulatory Agency (Establishment) Act CAP P43, Laws of the Federation of Nigeria, 2004;

**“petroleum product distribution licence”** means a licence for the distribution of petroleum products pursuant to section 201 of this Act;

**“petroleum product distributor”** is the holder of a petroleum product distribution licence;

**“petroleum product retailer”** means a holder of a petroleum product retail licence;

**“petroleum product retail licence”** means a permit to retail petroleum products to final customers pursuant to section 203 of this Act;

**“petroleum products”** means materials derived from crude oil and natural gas processing such as ethane, propane, butanes, pentanes, liquefied petroleum gas,

natural gas liquids, asphalts, gasoline, diesel, gas oil, jet fuel, transportation fuels, fuel oils for heating and electricity generation and such other derivatives;

**“Petroleum prospecting licence”** or **“PPL”** means a licence pursuant to section 72 of this Act;

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

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

**“producer client”** means a Lessee who is a client of the domestic gas aggregator making use of the escrow account mechanism

**“production sharing contract”** means any agreement for the exploration, development and production of petroleum on terms under which the financial risk-bearing party shall recover costs and receives a share of the profits based on a share of production as established in the contract from the applicable area.

**“Public Procurement Act”** means Public Procurement Act 2007;

**“public service obligations”** means specific obligations imposed by the Authority on licensees 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 with respect to upstream, midstream and downstream petroleum operations is such a person as is designated by regulation;

**“regulation”** means rule or order having force of law issued by the Minister, Minister of Finance, the Commission or the Authority in accordance with the provisions of this Act;

**“Rent”** means the annual charge made in respect of a Licence or Lease granted under this Act.

**“renegotiated production sharing contract”** means a production sharing contract for which court cases or arbitration cases were outstanding, and was or is being renegotiated after the effective date of this Act with the objective of settling the outstanding court cases or arbitration cases;

**“reserve fund”** has the meaning given to it in section 244 of this Act;

**“reservoir”** means a subsurface rock formation containing an individual and separate natural accumulation of producible Petroleum characterised by a single natural pressure system;

**“retail gas supply licence”** means a Licence granted pursuant to section 146 of this Act;

**“retention period”** means the period not exceeding 10 years, in the first instance, granted by the Commission to the holder of a petroleum licence 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 for a significant gas discovery under this Act;

**“royalties”** means the royalties specified in the Seventh schedule.

**“shallow water”** means areas in the offshore of Nigeria up to and including a water depth of 200 meters.

**“Service”** means the Federal Inland Revenue Service.

**“settlor”** is a holder of an interest in a petroleum prospecting licence or petroleum mining lease or a holder of an interest in a licence for midstream petroleum operations, whose area of operations is located in or appurtenant to any community or communities;

**“signature bonuses”** means payments made with respect to the acquisition of petroleum prospecting licences or petroleum mining leases.

**“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;

**“special investigation unit”** means a unit established either under section 27 or section 50 of this Act;

**“strategic sectors”** means in relation to marketable natural gas purchases, Wholesale Customers of the following sectors the -

- (a) power sector,
- (b) gas based industries, consisting of industries using gas as a feed stock or industrial raw material, and
- (c) commercial sector, consisting of industries, as may be determined by the

Authority, which use gas as an energy source;

**“standard cubic foot”** means, in relation to natural gas, the quantity of dry ideal natural gas at a temperature of sixty (60) degrees Fahrenheit and a pressure of fourteen decimal six nine six (14.696) pounds per square inch absolute contained in a volume of one (1) cubic foot.

**“supplier”** means the holder of a wholesale gas supply licence, a wholesale petroleum liquids supply licence or a retail gas supply licence;

**“tariff”** means the price charged for the provision of a particular service, or group of services, with respect to midstream and downstream petroleum operations;

**“terrain”** refers to the area of any PEL, PPL or PML.

**“terminal”** means a terminal for Petroleum Liquids, pumping or booster station, or other installation or structure associated with a terminal, including its storage facilities, other than a terminal situated within “a port or any approaches thereto” within the meaning of the Nigerian Ports Authority Act;

**“third party access”** means the legal requirement for owners of certain infrastructure facilities to grant access to those facilities to parties other than themselves or their own customers, for uncommitted capacity, including competitors in the provision of the relevant services, on terms stipulated in this Act or regulations;

**“transportation fuels”** means fuels used for transport on land, on water and in the air, such as gasoline, aviation gasoline, diesel, jet fuel, marine bunker fuel, LNG, CNG and other fossil fuel based products, as well as hydrogen, bio-diesel, bio-jet fuel, ethanol and other fuels used for transport purposes;

**“transportation network”** means a system of interconnected transportation pipelines and other facilities required to transport natural gas or petroleum liquids;

**“transportation pipeline”** means a pipeline used for the bulk conveyance of petroleum liquids and for natural gas under high-pressure;

**“transportation pipeline owner”** means the holder of a gas transportation pipeline licence or a petroleum liquids transportation pipeline licence;

**“upstream petroleum operations”** means the winning or obtaining of petroleum in Nigeria by or on behalf of a company on its own account for commercial purposes; petroleum exploration operations; all activities upstream of the measurement points, related to the winning of petroleum through wells or mining from petroleum reservoirs, drilling, fracking, completing, treatment and

operation of wells producing Petroleum; construction and operation of gathering lines and manifolds for crude oil, natural gas and water; construction and operation of high and low pressure separators; construction and operation of facilities to treat crude oil and natural gas; flaring of natural gas; compression and reinjection of natural gas in reservoirs; construction and operation of facilities for the production of electricity or heat from natural gas or other fuels as energy source for the winning of petroleum; injection or re-injection of water into the reservoirs; construction and operation of pipelines and other facilities for the discharge of water; construction and operation of fixed or floating platforms or other vessels required for the winning of Petroleum; construction and operation of fixed or floating storage facilities of crude oil in the licence area; transportation to and from the licence area of personnel, goods and equipment; metering of well stream fluids; metering of petroleum at the measurement point(s) prior to transportation; sale and marketing of Crude Oil, natural gas or condensates or any of them at the measurement point(s) and such other activities which by regulation are considered upstream petroleum operations; and related administration and overhead; provided, however, that where field facilities or fixed or floating platforms or vessels provide for fully integrated upstream and midstream petroleum operations, the Commission may consider the entire operations as upstream Petroleum operations;

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

**“wholesale customer”** means a class of customers designated in regulations with respect to –

- (a) natural gas, the right to contract for and purchase a supply of wholesale gas, with a capability to connect individually and economically to a transportation pipeline or transportation network and shall include gas distributors, and
- (b) crude oil or petroleum products, it shall be a customer of a yearly volume defined by regulation and shall include petroleum product distributors;

**“wholesale gas”** means natural gas sold by a supplier to wholesale customers;

**“wholesale gas supplier”** means the holder of a wholesale gas supply licence;

**“wholesale gas supply licence”** means a licence for the supply to wholesale customers of natural gas pursuant to section 142 of this Act;

**“wholesale petroleum liquids supply licence”** means a licence for the supply to



wholesale customers of petroleum liquids pursuant to section 197 of this Act;  
**“wholesale petroleum liquids supplier”** means a holder of a wholesale petroleum liquids supply licence.

**319. Short title**

This Act may be cited as the Petroleum Industry Bill, 2020.

**First Schedule**  
**[section 3 (3)]**

**Rights of Pre-Emption**

1. The Minister shall have the right to require the holder of any Licence or Lease granted under this Act (referred to in this Schedule as "the licensee or lessee") to -
  - (a) provide for the Federal Government, to the extent of any refinery or petroleum products storage capacity he may have in Nigeria, petroleum products complying with specification given by the Minister; or
  - (b) deliver to any person holding a Licence to operate a refinery, such quantity and quality of crude oil as may be specified by the Minister to the extent that the licensee or lessee has crude oil of that quantity and quality.
2. The licensee or lessee shall use his best endeavours to increase so far as possible with his existing facilities, the supply of petroleum or petroleum products, or both, for the Federal Government to the extent required by the Minister.
3. The licensee or lessee shall, with all reasonable expedition and so as to avoid demurrage on the vessels conveying the same, use his best endeavours to deliver all petroleum or petroleum products purchases by the Minister under the right of pre-emption in such quantities, and at such places of shipment or storage in Nigeria, as may be determined by the Minister.
4. Where a vessel employed to carry petroleum or petroleum products pursuant to paragraph 3 of this Schedule is detained on demurrage at the port of loading, the licensee or lessee shall pay the amount due for demurrage according to the terms of the charter-party or the rates of loading previously agreed to by the licensee or lessee, unless the delay is due to causes beyond the control of the licensee or lessee.
5. Any dispute which may arise as to whether a delay is due to causes beyond the control of the licensee or lessee shall be settled by agreement between the Minister and the licensee or lessee or, in default of agreement, by arbitration.
6. The price to be paid for petroleum or petroleum products taken by the Minister in exercise of the right of pre-emption shall be -
  - (a) the reasonable value at the point of delivery, less discount to be agreed by both parties; or
  - (b) where no such agreement has been entered into prior to the exercise of the

right of pre-emption, a fair price at the port of delivery to be settled by agreement between the Minister and the Licensee or Lessee or, in default of agreement, by arbitration.

7. To assist in arriving at a fair price for the purposes of paragraph 6(b) of this Schedule, the licensee or lessee shall, if the Minister so requires-
  - (a) furnish for the confidential information of the Minister particulars of quantities, descriptions and prices of petroleum or petroleum products sold to other customers and of charters or contracts entered into for their carriage; and
  - (b) exhibit original or authenticated copies of the relevant contracts or charter-parties.
8. The Minister may take control of any works, plants or premises of the licensee or lessee and if he does so, the licensee or lessee and his servants or agents shall conform to and obey all directions issued by the Minister or on his behalf.
9. Reasonable compensation shall be paid to the licensee or lessee for any loss or damage caused to him by reason of the exercise by the Minister of the powers conferred by paragraph 8 of this Schedule.
10. Any compensation payable under paragraph 9 of this Schedule shall be settled by agreement between the Minister and the licensee or lessee or, in default of agreement, by arbitration.
11. Any arbitration under the First Schedule shall take place after the Petroleum or Petroleum Products have been delivered.

## Second Schedule

### [sections 54(7) and 65(1)]

#### Principles of Negotiating Incorporated Joint Ventures

##### 1. General Provisions

- (1) An incorporated joint venture company may be created for an existing joint operating agreement. Each incorporated joint venture company shall be formed under the Companies and Allied Matters Act. NNPC Limited shall enter into negotiations with the other parties to such existing joint operating agreements with a view to, among other things-
  - (a) agreeing and executing a shareholders' agreement in respect of the applicable incorporated joint venture company;
  - (b) agreeing the provisions of the memorandum and articles of association of the applicable incorporated joint venture company; and
  - (c) incorporating the applicable incorporated joint venture company.
- (2) Prior to the incorporation of each incorporated joint venture company, the parties to each applicable joint operating agreement shall continue to carry out their obligations under such joint operating agreement in the ordinary course of business.
- (3) Each incorporated joint venture company shall be owned by the parties to the applicable existing joint operating agreement in the same proportion as their existing participating interests set forth in such joint operating agreement, or in such other proportion as the parties thereto shall mutually agree.
- (4) Upon and following the incorporation of an incorporated joint venture company -
  - (a) it can carry out upstream, midstream and downstream petroleum operations subject to the appropriate fiscal regime as specified in the this Act;
  - (b) it shall be deemed to be the sole licensee or lessee (as applicable) of each petroleum prospecting licence or petroleum mining lease held jointly pursuant to the applicable existing joint operating agreement immediately prior to its incorporation;
  - (c) it shall at all times be the operator of petroleum operations under each petroleum prospecting licence and petroleum mining lease that it holds;
  - (d) it may contract for specific petroleum services but may not enter into any contract or group of contracts which would have the effect of transferring, directly or indirectly, any of the functions as operator

except with the approval of the Commission, in the case of upstream petroleum operations, or the Authority, in the case of midstream and downstream petroleum operations;

- (e) it shall by publication on its website make public reasonable details relating to its incorporation and constitutional documents; and
- (f) it may render any services related to its operations (other than financial and insurance services), to any other incorporated joint venture company, NNPC Limited, or any other third party under such conditions as it may deem necessary or desirable.

## **2. Special Provisions Relating to Incorporated Joint Venture Companies**

- (1) No incorporated joint venture company shall be subject to the provisions of the Fiscal Responsibility Act and the Public Procurement Act.
- (2) Once incorporated, the following provisions shall apply to each Incorporated joint venture company -
  - (a) prior to any sale of shares in an Incorporated joint venture company by any shareholder (other than NNPC Limited) of such Incorporated joint venture company, such shareholder shall first offer such shares for sale to NNPC Limited at fair market value and on commercially reasonable terms.
  - (b) each incorporated joint venture company shall have its head office and main operational offices in Nigeria.

## **3. Organisation of Incorporated Joint Venture Companies**

- (1) Each incorporated joint venture company shall have a board of directors to be appointed by the shareholders of the incorporated joint venture company.
- (2) The board of directors of each incorporated joint venture company shall be made up of persons:
  - (a) who have distinguished themselves in their various capacities; and
  - (b) who are able to exercise independence and objectivity with respect to the affairs of the incorporated joint venture company.
- (3) The powers of the Board of directors of each incorporated joint venture company shall be established in the articles of association of such incorporated joint venture company; provided, that the Board of directors of such incorporated joint venture company shall have the power to approve the annual work program and budget of such incorporated joint venture company and any revisions thereof.
- (4) The Board of directors of each incorporated joint venture company may create

committees and subcommittees.

- (5) Decisions of the Board of directors of each incorporated joint venture company shall be guided by commercial and technical considerations that represent good international petroleum industry practices.

**4. Special provisions relating to the shares of incorporated joint venture companies**

- (1) The share capital of each incorporated joint venture company shall consist only of ordinary shares.
- (2) The shares held directly or indirectly by NNPC Limited in each incorporated joint venture company shall at all times during the life of each incorporated joint venture company remain non-transferable either by way of sale, assignment, mortgage or pledge to any other entity except as approved by the Government and such sale or transfer shall be at fair market value after an open, transparent and competitive bidding process.
- (3) No holder of shares of an incorporated joint venture company shall encumber, grant as security, assign or transfer (except for a transfer to an entity which is exclusively owned by the ultimate parent company of the transferring shareholder) its shares in an incorporated joint venture company without the prior written consent of NNPC Limited.
- (4) Any change of control in respect of any holder of shares (other than of the NNPC Limited) in an incorporated joint venture company shall require the prior approval of NNPC Limited.
- (5) For the purposes of this section:
  - (a) “**change of control**” means if any person or combination of persons acting jointly or in concert (other than permitted holders) shall at any time acquire direct or indirect beneficial ownership of a percentage of the voting power of the outstanding voting securities of the holder (by contract or otherwise) that exceeds 50% thereof; and
  - (b) “**permitted holder**” means any person or combination of persons acting jointly or in concert that held more than 50% of the direct or indirect beneficial ownership of the voting power of the voting securities of the holder (by contract or otherwise) at the time the applicable petroleum prospecting licence or petroleum mining lease was granted to such holder.

**5. Special provisions relating to rents, royalties, taxes and other levies payable by an incorporated joint venture company**

- (1) Each incorporated joint venture company shall be subject to this Act on payment of rents, royalties and taxes.

- (2) The initial capitalisation of each incorporated joint venture company and the transactions required to create such incorporated joint venture company shall not create any additional tax liabilities for any of the holders of shares in the incorporated joint venture company; provided that all assets, interests and liabilities previously held jointly pursuant to the applicable joint operating agreement are transferred to the incorporated joint venture company at their net book value.

## **6. Special right of shareholders in an incorporated joint venture company to purchase petroleum and any petroleum derivatives**

- (1) Each direct holder of shares in an incorporated joint venture company shall have the right to purchase from the incorporated joint venture company:
  - (a) at open market prices, a percentage of the crude oil, natural gas and condensates produced by such incorporated joint venture company equal to its shareholding interest in such incorporated joint venture company; and
  - (b) at open market prices, a percentage of the petroleum products produced by such incorporated joint venture company equal to its percentage ownership interest in the incorporated joint venture company.
- (2) Where the direct holders of shares in an incorporated joint venture company do not purchase all crude oil, natural gas, condensates and petroleum products that they are entitled to pursuant to subsection (1) of this section, such incorporated joint venture company may sell the remaining balance to any Person at open market prices and on arm's length terms.
- (3) Any income received by an incorporated joint venture company as a result of the export of Petroleum may be held in bank accounts abroad and may be used by such incorporated joint venture company to pay its obligations outside Nigeria, subject to any obligations of such incorporated joint venture company under this Act and any other applicable enactments.
- (4) The transfer overseas of any funds by an incorporated joint venture company shall be subject to the Regulations and policies of the Central Bank of Nigeria.

## **7. Pro-rata dividend distribution**

- (1) Each incorporated joint venture company shall pay dividends and other distributions pro rata among the number of issued shares held directly by its shareholders.
- (2) Each dividend payment or other distribution shall be subject to any withholding tax applicable under the Companies Income Tax Act.

**8. Dividend Policy**

The board of directors of each incorporated joint venture company shall establish and from time to time amend the dividend distribution policy of such incorporated joint venture company. Such dividend distribution policy shall be premised on the prudent and commercially reasonable management of the finances and operations of the incorporated joint venture company.

**9. Special Provisions Relating to Financing of Operations**

- (1) Each incorporated joint venture company shall finance any exploration for new prospects, development of new Fields, or any other investments in accordance with the applicable approved annual work program and budget for such incorporated joint venture from the cash flows of the incorporated joint venture company and any borrowings by such incorporated joint venture company, in each case as approved by its Board of directors.
- (2) Where the cash flow, together with any borrowings, of an incorporated joint venture company is insufficient to finance the work program in respect of any exploration for new prospects, development of new Fields, or any other investments approved by the Board of directors of such incorporated joint venture company, the shareholders of such incorporated joint venture company shall consult as to the manner in which further financing can be raised.



**Third Schedule**  
**[section 167(c)]**

**Domestic Base Price and Pricing Framework**

- (1) The domestic base price as of January 1, 2021 shall be \$ 3.20 per MMBtu
- (2) The domestic base price shall be increased every year by \$ 0.05 per MMBtu until 2037, when a price of \$ 4.00 per MMBtu will apply for that year and future years.
- (3) The Authority, may, by regulations, change the domestic base price pursuant to paragraph (1) and the yearly increase pursuant to paragraph (2) to reflect changed market conditions and supply frameworks. The objective is to establish a fully functioning free market in natural gas for domestic supplies. This is to be achieved through the voluntary supplies pursuant to subsection 110(2). Where insufficient voluntary supplies are occurring, the Authority may increase the domestic base price and, or the yearly increases. At the same time, the Authority shall monitor the gas prices in other major emerging countries and ensure that Nigeria continuous to have a price level for natural gas that is less than the average of these emerging countries in order to promote the non-oil sectors in the Nigerian economy.

**Fourth Schedule**  
**[sections 168(1) and 266(1)(d)]**

**Pricing formula for gas price for the gas based Industries**

The gas price for the gas based industries shall be determined by the following pricing formula:

$$CP = NRP * (1 + EPF) \leq EPP$$

**Where -**

CP is the applicable gas price in \$/MMbtu

NRP is the National Reference Price which is \$1.00/MMbtu

EPF is the End Product Factor which is described by the following formula (CMPP – PRP)/PRP

CMPP is the Average Current Month End Product Price in \$/MT

PRP = Product Reference Price in \$/MT i.e. dollar per metric tonne which varies depending on the industry

End Product	NRP (\$/mmbtu) Net of transport Tariff \$/Kcf	PRP (\$/MT)
Ammonia	1.00	250
Urea	1.00	250
Methanol	1.00	250
Polypropylene (LDPPE/HDPPE)	1.00	250
Low Sulphur Diesel (GTL)	1.00	325

## Fifth Schedule

[sections 263(1)(d), 271 (2)(b), (2)(c)(5)(a), 277(1)(c) and 280(1)(b)]

### Capital Allowances

#### 1. Interpretation

For the purposes of this schedule, unless the context otherwise requires –

- (a) **“Concession”** includes a petroleum exploration licence, petroleum prospecting licence, petroleum mining lease, any right, title or interest in or to Petroleum in the ground and any option of acquiring any such right, title or interest;
  
- (b) **“Lease”** includes an agreement for a lease where the term to be covered by the lease has begun, any tenancy and any agreement for the letting or hiring out of an asset, but does not include a mortgage, and all cognate expressions including **“LEASEHOLD INTEREST”** shall be construed accordingly and where,
  - 
  - (i) with the consent of the lessor, a lessee of any asset remains in possession after the termination of the lease without a new lease being granted, that lease shall be deemed for the purposes of this schedule to continue so long as the lessee remains in possession; and
  - (ii) on the termination of a lease of any asset, a new lease of that asset is granted to the lessee, the provisions of this schedule shall have effect as if the second lease were a continuation of the first lease;
  
- (c) **Qualifying expenditure** means, subject to the express provisions of this schedule, expenditure incurred for the purpose of hydrocarbon tax in an accounting period, which is capital expenditure, refers to as –
  - (i) **“qualifying plant expenditure”** incurred on plant, machinery and fixtures directly for upstream petroleum operations applicable to crude oil for petroleum mining leases or petroleum prospecting licence;
  - (ii) **“qualifying pipeline and storage expenditure”** including floating production systems incurred directly or gathering pipelines for upstream petroleum operations applicable to crude oil for petroleum mining leases or petroleum prospecting licences;
  - (iii) **“qualifying building expenditure”** other than expenditure, which is included in subparagraphs c(i), c(ii) or c(iv) of this **“Interpretation”**, incurred directly on the construction of buildings, structures or works of a permanent nature for upstream petroleum operations applicable

to crude oil for petroleum mining leases or petroleum prospecting licences; or

(iv) “qualifying drilling expenditure”, tangible and intangible, other than expenditure which is included in subparagraphs c(i) or c(ii) of this “Interpretation”, incurred directly in connection with upstream petroleum operations for petroleum mining leases or petroleum prospecting licence; in view of –

1. searching for or discovering and testing petroleum deposits, or winning access, or
2. the construction of any works or buildings which are likely to be of little or no value when the upstream petroleum operations for which they were constructed cease to be carried on, provided that, for the purposes of these definitions, qualifying expenditure shall not include any sum which may be deducted under the provisions of Section 263 of this Act and have benefited from capital allowances prior to the acquisition of the asset by another entity.

(d) For the purposes of interpretation of qualifying expenditure, where expenditure is incurred by a company before its first accounting period and such expenditure would have fallen to be treated as qualifying expenditure (ascertained without the qualification contained in the foregoing proviso) if it had been incurred by the company on the first day of its first accounting period and that expenditure is incurred in respect of an asset, -

- (a) owned by the company then such expenditure shall be deemed to be qualifying expenditure incurred by it on that day; or
- (b) which has been disposed of by the company before the beginning of its first accounting period, then any Loss suffered by the company on the disposal of such asset shall not be allowed on commencement of accounting period. Any profit realized by the company on such disposal shall be liable to capital gains tax in the same period accordingly.

## **2. Provisions relating to pre-production expenditure**

For the purposes of this Schedule, where –

- (a) expenditure has been incurred before its first accounting period and the expenditure would have been treated as a qualifying expenditure in any of the classes of qualifying expenditures stated in subparagraphs 1c(i)-(iv) above, then it shall be so classified and capital allowances claimed accordingly; and

- (b) Where the expenditure before the first accounting date should have been treated as allowable deduction in an accounting period, it shall be so allowed but fully amortized over a period of five (5) years with a 1% retention value.

### **3. Owner and meaning of relevant interest**

- (1) For the purposes of this Schedule, where an asset consists of a building, structure or works, the owner shall be taken to be the owner of the relevant interest in such building, structure or works.
- (2) Subject to the provisions of this paragraph, in this Schedule, the expressions “the relevant interest” means, in relation to any expenditure incurred on the construction of a building, structure or works, the interest in such building, structure or works to which the company which incurred the expenditure was entitled when it incurred the expenditure.
- (3) Where a Company incurs qualifying building expenditure or qualifying drilling expenditure on the construction of a building, structure or works, the company is entitled to two or more interests therein, and one of those interests is an interest which is reversionary on all the others, that interest shall be the relevant interest for the purposes of this Schedule.
- (4) Where the owner of the relevant interest does not have statutory title to the asset, that is, it is not the licensee or lessee to the asset, the qualifying capital expenditure and the capital allowances accruing therefrom, for the purposes of this Schedule, shall be to the benefits of the holder of the licence or lease.

### **4. Sale of Buildings, etc.**

Where capital expenditure has been incurred on the construction of a building, structure or works and the relevant interest is sold, the company which buys that interest shall be deemed, for the purposes of this Schedule, to have incurred, on the date when the purchase price became payable, capital expenditure on the construction equal to the price paid by it for such interest or to the original cost of construction, whichever is the less and the capital expenditure shall not be eligible for capital allowance deduction under the hydrocarbon tax, provided that where such relevant interest is sold before the building, structure or works has been used; the foregoing provisions of this paragraph shall have effect with respect to sale and the original cost of construction shall be taken to be the amount of the purchase price on such sale.

**5. Annual Allowance**

- (1) Subject to the provisions of this Schedule, where in any accounting period, a company owning any asset has incurred in respect of the asset qualifying expenditure wholly, reasonably, exclusively and necessarily for the purposes of upstream petroleum operations applicable to crude oil carried on by it, there shall be due to that company as from the accounting period in which the expenditure was incurred, an allowance “an annual allowance” at the appropriate rate percent specified in the table to this Schedule.
- (2) Notwithstanding the provisions of sub-paragraph (1) of this paragraph, there shall be retained in the books, in respect of each asset 1 percent of the initial cost of the asset which may only be written off in accordance with sub-paragraph (3) of this paragraph.
- (3) Any asset or part of it in respect of which capital allowances have been granted, may only be disposed of on the authority of a certificate of disposal issued by the Commission or any person authorized by it.

**6. Asset to be in use at end of accounting period**

An annual allowance in respect of qualifying expenditure incurred in respect of any asset shall only be due to a company for any accounting period if at the end of the accounting period it was the owner of that asset and costs were incurred for the purposes of the upstream petroleum operations applicable to crude oil carried on by it.

**7. Balancing allowances**

Subject to the provisions of this schedule, where in any accounting period of a company, the company owning any asset in respect of which it has incurred qualifying expenditure wholly and exclusively for the purposes of upstream petroleum operations applicable to crude oil carried on by it, disposes of that asset, an allowance “a balancing allowance” shall be due to that company for that accounting period of the excess of the residue of that expenditure, at the date such asset is disposed of, over the value of that asset at that date, provided that a balancing allowance shall only be due in respect of such asset if immediately prior to its disposal it was in use by such company for the purposes of the upstream petroleum operations applicable to crude oil for which such qualifying expenditure was incurred.

**8. Balancing charges.**

Subject to the provisions of this schedule, where in any accounting period of a company, the company owning any asset in respect of which it has incurred qualifying expenditure wholly and exclusively for the purposes of upstream

petroleum operations applicable to crude oil carried on by it, disposes of that asset, the excess “a balancing charge” of the value of that asset, at the date of its disposal, over the residue of that expenditure at that date shall, for the purposes of section 262(1)(a) of this Act, be treated as income of the company of that accounting period, provided that a balancing charge in respect of such asset shall only be so treated if immediately prior to the disposal of that asset it was in use by such company for the purposes of the upstream petroleum operations applicable to crude oil for which the qualifying expenditure was incurred and shall not exceed the total of annual allowances due under the provisions of this schedule, in respect of such asset.

**9. Residue**

The residue of qualifying expenditure, in respect of any asset, at any date, shall be taken to be the total qualifying expenditure incurred on or before that date, by the owner, in respect of that asset, less the total of any annual allowances due to such owner, in respect of that asset, before that date.

**10. Meaning of “disposed of”**

Subject to any express provision to the contrary, for the purposes of this schedule –

- (a) a building, structure or works of a permanent nature is disposed of if any of the following events occur –
  - (i) the relevant interest is sold, or
  - (ii) that interest, being an interest depending on the duration of a concession, comes to an end at the end of that concession, or
  - (iii) that interest, being a Leasehold interest, comes to an end and the possession of the building, structure or works of a permanent nature reverts to the holder of the reversionary interest, or
  - (iv) the building, structure or works of a permanent nature are demolished or destroyed or, without being demolished or destroyed, cease altogether to be used for the purposes of upstream petroleum operations applicable to crude oil carried on by the owner;
- (b) plant, machinery or fixtures are disposed of if they are sold, discarded or cease altogether to be used for the purposes of upstream petroleum operations applicable to crude oil carried on by the owner;
- (c) assets in respect of which qualifying drilling expenditure is incurred are disposed of if they are sold or if they cease to be used for the purposes of the upstream petroleum operations applicable to crude oil of the company incurring the expenditure either on the company ceasing to carry on the operations or on such company receiving insurance or compensation monies therefrom.

**11. Value of an asset or interest in a petroleum prospecting licence or petroleum mining lease**

- (1) The value of an asset or interest in a petroleum prospecting licence or petroleum mining lease at the date of its disposal shall be the net proceeds of the sale or of the relevant interest, or, where it was disposed of without being sold, the amount which, in the opinion of the service, the asset or the relevant interest, as the case may be, would have fetched if sold in the open market at that date, less the amount of any expenses which the owner might reasonably be expected to incur if the asset were so sold.
- (2) For the purpose of this paragraph, where an asset is disposed of in the circumstances that insurance or compensation money are received by the owner, the asset or the relevant interest, as the case may be, shall be treated as having been sold and as though the net proceeds of the insurance or compensation money were the net proceeds of the sale.

**12. Apportionment**

- (1) Any reference in this schedule to the disposal, sale or purchase of any asset or interest includes a reference to the disposal, sale or purchase of that asset, as the case maybe, together with any other asset, whether or not qualifying expenditure has been incurred on such last-mentioned asset, and, where an asset is disposed of, sold, or purchased together with another asset, so much of the value of the assets as, on a just apportionment, is properly attributable to the first mentioned asset shall, for the purposes of this Schedule, be deemed to be the value of, or the price paid for that asset, as the case may be.
- (2) For the purposes of this sub-paragraph, all the assets or interest which are purchased or disposed of in pursuance of one bargain shall be deemed to be purchased or disposed of together, notwithstanding that separate prices are or purport to be agreed for each of those assets or that there are or purport to be separate purchases or disposals of those assets.
- (3) The provisions of sub-paragraph (1) of this paragraph shall apply, with modifications, to the sale or purchase of the relevant interest in any asset together with any other asset or relevant interest in that other asset provided that the provisions for apportionment in sub-paragraphs (1) and (2) above shall not apply in the sale or disposal of concessions or interest in a part of the asset.



**13. Part of an asset**

Any reference in this schedule to any asset shall be construed whenever necessary as including a reference to a part of any asset (including an undivided part of that asset in the case of joint interests) and when so construed, any necessary apportionment shall be made in a manner, which in the opinion of the Service, is just and reasonable.

**14. Exclusion of certain expenditure**

Subject to the express provisions of this schedule, where any company has incurred expenditure which is allowed to be deducted under any provision (other than a provision of this Schedule) of this Act, such expenditure shall not be treated as qualifying expenditure.

**15. Asset used or expenditure incurred partly for the purpose of Petroleum operations**

- (1) The following provisions of this paragraph shall apply where either or both of the following conditions apply with respect to any asset –
  - (a) the owner of the asset has incurred in respect of the asset a qualifying expenditure partly for the purposes of upstream petroleum operations applicable to crude oil carried on by him and partly for other purposes;
  - (b) the asset in respect of which the owner has incurred qualifying expenditure is used partly for the purposes of upstream petroleum operations applicable to crude oil carried on by such owner and partly for other purposes.
- (2) Any allowances which would be due or any balancing charges which would be treated as income if both expenditure were incurred wholly and exclusively for the purposes of the upstream petroleum operations applicable to crude oil and if the asset were used wholly and exclusively for the purposes of such operations, shall be computed in accordance with the provisions of this schedule.
- (3) So much of the allowances and charges computed in accordance with provisions of sub-paragraph (2) of this paragraph shall be due or shall be so treated, as the case may be, as in the opinion of the Service is just and reasonable having regard to all circumstances and to the provisions of this Schedule.

**16. Disposal without change of ownership**

Where an asset in respect of which qualifying expenditure has been incurred by the owner has been disposed of in circumstances that the owner remains the

owner, then, for the purposes of determining whether and, if so, in what amount, any annual or balancing allowance or balancing charge shall be made to or on such owner in respect of his use of that asset after the date of the disposal –

- (a) qualifying expenditure incurred by the owner in respect of the asset prior to the date of the disposal shall be left out of account;
- (b) the owner shall be deemed to have bought such asset immediately after the disposal for a price equal to the residue of the qualifying expenditure at the date of the disposal, increased by the amount of any balancing charge or decreased by the amount of any balancing allowance made as a result of the disposal.

*Capital allowances shall be for the computation of Hydrocarbon Tax and not for cost recovery purposes in Production Sharing Contracts, which shall have their own provisions under the Model Contract.*

## 17. Capital allowance rates

Qualifying expenditure shall be subject to the rates below:

<b>Qualifying Capital Expenditure</b>	<b>1st Year</b>	<b>2nd Year</b>	<b>3rd Year</b>	<b>4th Year</b>	<b>5th Year</b>
Qualifying Plant Expenditure	20%	20%	20%	20%	19%
Qualifying Pipeline Expenditure	20%	20%	20%	20%	19%
Qualifying Building Expenditure	20%	20%	20%	20%	19%
Qualifying Drilling Expenditure	20%	20%	20%	20%	19%

Exploration expenditure and the first two appraisal wells expenditure in the same field are to be treated as deductible costs 100% in the year incurred, while for additional exploration expenditures and appraisal expenditures in the same field relating to pre-production period are to be amortized and deducted on commencement of accounting period at an annual allowance of 20 per cent (20%) in the first to fourth year and 19% in the fifth year with a 1% retention value.

**Sixth Schedule**  
**[sections (254)(o), 277(1)(d) and 280(1)(c)]**

**Production Allowances and Cost Price Ratio Limit**

**1. Production Allowance**

- (1) There shall be a production allowance for crude oil production by Leases which are converted oil mining leases based on a conversion contract and their renewals, which shall be the lower of US \$ 2.50 per barrel and 20% of the fiscal oil price.
- (2) There shall be a production allowance per field for crude oil production by a company for leases granted after the commencement of this Act and determined as follows -
  - (a) for onshore areas – the lower of US\$ 8.00 per Barrel and 20% of the fiscal oil price per barrel up to a cumulative maximum production of 50 million Barrels from commencement of production and the lower of US\$ 4.00 per barrel and 20% of the fiscal oil price thereafter;
  - (b) for shallow water areas – the lower of US\$8.00 per barrel and 20% of the fiscal oil price, up to a cumulative maximum production of 100 million barrels from commencement of production and the lower of \$4.00 per barrel and 20% of the fiscal oil price thereafter;
  - (c) for deep offshore areas and frontier basins – the lower of US\$ 8.00 per barrel and 20% of the fiscal oil price, up to a cumulative maximum production of 500 million barrels from the commencement of production and the lower of US \$4.00 per barrel and 20% of the fiscal oil price thereafter.
- (3) The detailed procedures for determining the production allowances shall be established in regulations.

**2. Cost Price Ratio (CPR) Limit**

- (1) All costs prescribed under Section 263 and the First Schedule to this Act in an accounting period the sum of which is eligible for deduction under the hydrocarbon tax shall be subject to a cost price ratio limit of 65% of gross revenues determined at the measurement points.
- (2) Where, as a result of sub-paragraph (1) of this paragraph, any excess costs incurred has not been allowed for deduction for that year of assessment, then -
  - (a) the costs may be allowed for deduction for the purposes of

ascertaining the profits of the company for subsequent years of assessment provided that –

- (i) the total costs to be deducted shall not exceed the actual costs incurred, and
  - (ii) in carrying costs forward, capital allowances shall be carried forward with priority over operating costs;
- (b) the total costs to be allowed as deduction in those subsequent years shall be such an amount that if added to the sum of the total costs to be allowed as deduction under subparagraph (1) of this paragraph shall not exceed the specified cost price ratio limit of 65%; and
- (c) where pursuant to paragraph 2(2)(b) to this schedule, any costs exceed the cost price ratio limit upon the termination of upstream petroleum operations related to crude oil, such costs shall be not deductible for purposes of calculation of the hydrocarbon tax.

## Seventh Schedule

[section 306]

### Petroleum Fees, Rents and Royalty

#### Part I – Fees

##### 1. Fees payable for licences and leases

The Commission shall through Regulations publish the rates or fees payable in respect of the following -

- (a) application for a petroleum exploration licences;
- (b) application for a renewal of a petroleum mining lease;
- (c) application to assign an interest or sublet a petroleum exploration licence, petroleum prospecting licence or petroleum mining lease;
- (d) application to terminate or effect a partial or full surrender of a petroleum exploration licence, petroleum prospecting licence or petroleum mining lease;
- (e) application for permit to operate a drilling rig;
- (f) application for grant of field development plan approval and the related petroleum mining lease;
- (g) application for the approval of the drilling of a well;
- (h) permit to export samples for analysis;
- (i) application to withdraw any of the applications above; and
- (j) application for other fees as may be deemed necessary by the Commission.

#### PART II – Rents and bonuses

##### 2. *Rents for Licences*

Every petroleum prospecting licence and petroleum mining lease shall be subject to rent as prescribed in the relevant regulation and the rent shall be an amount per hectare per year.

##### 3. *Payment of fees before grant of licence or lease*

- (1) A petroleum prospecting licence and petroleum mining lease shall not be granted without prior payment of the applicable fees, applicable signature bonuses, and the rent applicable to the first year.
- (2) A petroleum mining lease shall not be renewed without prior payments of the renewal bonus pursuant to this Act.

##### 4. *Penalty for default in payment of rent*

Failure to pay the rent as prescribed in the relevant regulation shall result in a penalty as prescribed in the said regulation or any other enactment, provided that where no penalty is prescribed in the said regulation, there shall be an application

of an interest rate of LIBOR or any other successor rate plus 10% to the outstanding payment in dollars and where the payment of the applicable rent is not made within three months, revocation of such licence or lease under this Act shall be initiated.

5. *Verification and payment account*

Any rents imposed under this section shall be paid into the Federation Account and verified by the Commission.

### **Part III – Royalties**

6. *All Petroleum production subject to Royalties*

All production of petroleum, including production tests, shall be subject to royalties on a non-discriminatory basis with respect to all licensee and lessees and shall be paid into the Federation Account and verified by the Commission. For royalty purposes condensates shall be treated as crude oil and natural gas liquids shall be treated as natural gas.

7. *Measurement Point for the determination of production volumes*

(1) The royalties shall be determined on a monthly basis at the measurement point(s). Where there is production from production tests under a petroleum prospecting licence, the Commission shall determine measurement point for such production. Where there is no measurement equipment at a possible measurement point in the field at the commencement of this Act, or where logistical conditions make the installation of measurement equipment at a possible measurement point impractical or uneconomic in the opinion of the Commission, the Commission may approve procedures for determining the chargeable volumes at a deemed measurement point in the field based on measurements at the point of sale, export terminal or other point downstream of such deemed measurement point pursuant to the regulations or guidelines. The measurement of crude oil, condensates and natural gas liquids shall be in barrels and of natural gas in standard cubic feet. Where so justified, the Commission may approve reporting of production of natural gas liquids in metric tons.

(2) The chargeable volume for royalty purposes shall be calculated by ascertaining the quantity of natural gas, crude oil, condensates and natural gas liquids produced in the relevant month from each field operated by the licensee or lessee pursuant to the regulations or guidelines.

- (3) Where natural gas liquids are extracted in a gas processing plant downstream of the measurement point, the rich natural gas volumes, still including the natural gas liquids, shall be measured at the measurement point and be the basis for royalty calculations. The value of such rich natural gas shall be the value of the marketable natural gas plus the natural gas liquids at the exit of the gas processing plant, less the gas processing costs and less the transport cost between the measurement point and the gas processing plant based on tariffs established by the Authority.
- (4) Natural gas liquids and liquid petroleum gases shall have the same royalty rates as the natural gas from which these products are derived.
- (5) The chargeable volume shall be measured at standard temperatures and pressures as defined by regulation or guidelines and production shall not include any -
  - (a) volumes burned, flared or vented with the approval of the Commission;
  - (b) volumes re-injected by the lessee into reservoirs for the purpose of improving or enhancing production of crude oil or for conservation of natural gas;
  - (c) volumes used in the upstream petroleum operations for the production of electricity or heat for exclusive use in the operations of the lessee; and
  - (d) water or sediments.
- (6) The obligation to install the necessary measurement equipment shall be that of the licensee or lessee and shall be certified by the Commission. The measurement procedures and equipment for measurement at and prior to the measurement point shall be established in regulations or guidelines.

8. *Determination of price for royalty*

- (1) The royalties applicable to crude oil and condensates shall be based on the fiscal oil price determined for the field at the measurement point(s) under applicable regulations or guidelines. This price shall be determined by the Commission on the basis of information supplied by the lessees and from non-confidential independent publications making such adjustments for quality and transport costs as appropriate to prices of comparable crude oils and condensates sold in the international market, as determined by the Commission, for which appropriate information is available and with the objective to approximate as reasonably as possible the average fair market

value of the month of the crude oil and condensates for such month for such field.

- (2) The fiscal oil price for each field shall consider any quality differentials related to international crude oils and condensates and shall be an export parity price taking into consideration the transportation costs within Nigeria as determined by the Authority to export terminals.
- (3) The royalties applicable to natural gas shall be based on the fiscal gas price determined for the field at the measurement point under to applicable regulations or guidelines. This price shall be determined by the Commission, taking into consideration submissions by the lessees, and shall be based on the netback value at the measurement point based on the composition of the natural gas in terms of marketable natural gas, ethane, propane, butane, pentanes and other natural gas liquids as may be derived by processing of the natural gas. The net back procedure shall take into consideration the type of natural gas markets to which the natural gas from the field is being sold, such as export markets, domestic wholesale markets, markets based on the aggregate gas price or other natural gas pricing framework as permitted under this Act. The procedure shall take into consideration conditioning costs, processing costs and transportation costs within Nigeria as determined by the Authority from the measurement point to the market, where the sales point is downstream of the measurement Point. Where natural gas liquids are produced in the field, the total gross value of the liquids shall be taken into account in the determination of the total gross value of the natural gas for purposes of the fiscal gas price.

9. *Royalties in kind or cash*

- (1) The Commission shall receive the royalty in kind or in cash at its discretion and the payment shall be subject to notice periods and procedures as provided for in regulations or guidelines. Where royalties are paid in cash the payments shall be based on the fiscal oil price and fiscal gas price.
- (2) The Licensee or Lessee shall pay royalties to the Commission within a period that is not more than one month after the end of every month during which the petroleum is produced or as the Commission may direct:
  - (a) with respect crude oil and condensates the royalties shall be based on the royalties based on production pursuant to paragraph 10 of this Schedule plus the royalties based on price pursuant to paragraph 11 of this Schedule.
  - (b) With respect to natural gas and natural gas liquids the royalties shall be



based on the royalties based on production pursuant to paragraph 10 of this Schedule.

10. *Royalties based on production*

- (1) For the purposes of Paragraph 9 of this Schedule, royalties based on production shall be calculated on a field basis.
- (2) The royalty shall be at a rate per centum of the chargeable volume of the crude oil and condensates produced from the field area in the relevant month on terrain basis as follows in -
  - (a) onshore areas 18 per cent
  - (b) shallow water (up to 200m water depth) 16 per cent
  - (c) deep offshore (greater than 200m water depth) 10 per cent
  - (d) frontier basins 7.5 per cent
- (3) For deep offshore fields with a production during a month of not more than 15,000 bopd, the royalty rate shall be 7.5%. Production above 15,000 bopd shall be at the royalty rate specified in subparagraph (2) of this paragraph.
- (4) Royalties for onshore fields and shallow water fields, including marginal fields, with crude oil and condensate production not more than 10,000 bopd during a month shall be at a rate per centum of the chargeable volume of the crude oil and condensates produced from the field area per production day during a month on tranching basis as follows -
  - (a) for the first 5,000 bopd 5 per cent
  - (b) for the next 5,000 bopd 7.5 per cent

Provided that fields with crude oil and condensate production more than 10,000 bopd during a month shall be charged royalty rates specified under subparagraph (2) of this Paragraph.

With respect to paragraphs (3) and (4), where a single Field covers two or more petroleum mining leases, the royalty shall be determined based on the total production from the field.

- (5) Royalty based on production for natural gas and natural gas liquids shall be at a rate per centum of the chargeable volume in the relevant area on Terrain basis as follows in -
  - (a) onshore areas 7.5per cent;
  - (b) deep offshore areas 5 percent;
  - (c) shallow water 5 percent; and
  - (d) frontier basins 5 percent.

Royalty rate for natural gas produced and utilized in-country shall be 5 per

cent of the chargeable volume.

- (6) Where a field is located partially in onshore and in shallow water or partially in shallow water and deep offshore areas, the weighted average royalty shall be calculated as per regulations.

*11. Royalty by price*

There shall be payable, in addition to the royalty set out in paragraph 10 of this Schedule, for onshore, shallow water and deep offshore a royalty by price with respect to crude oil and condensates at the rates set out below -

- |                             |             |
|-----------------------------|-------------|
| (a) Below \$ 50 per barrel  | 0 per cent  |
| (b) At \$ 100 per barrel    | 5 per cent  |
| (c) Above \$ 150 per barrel | 10 per cent |
- (d) Between \$ 50 and \$ 100 per barrel and between \$ 100 and \$ 150 per barrel the royalty by price shall be determined based on linear interpolation. (As an example if in 2020 the price is \$ 75/bbl, the royalty by price shall be 2.5%)
- (e) The price levels mentioned in (a), (b),(c) and (d) shall apply to the year 2020. At the beginning of 2021 and of each succeeding calendar year these price levels shall be increased by 2% relative to the values of the previous year.
- (3) There shall be no royalty by price for frontier acreages.
- (4) Royalty derived from “royalty by price” shall be for the credit of Nigerian Sovereign Investment Authority.

*(12) Penalty for non-payment and outstanding payments of Royalties and enforcement of payment*

Where any royalty due and payable under this Act is not paid within two months after the month in which the royalty is due, then it qualifies to be a debt which shall attract the following -

- (a) a sum equal to 10 per cent of the amount of the royalty payable which shall be added to the royalty;
- (b) in the case of foreign currency transactions, the outstanding payments due shall incur interest at the prevailing LIBOR or any other successor rate plus 10 percent (point basis); or
- (c) in the case of Naira transactions, the outstanding payments due shall incur interest at the prevailing NIBOR plus 10 percent (point basis);
- (d) N10,000,000 or US Dollar equivalent on the first day the failure to pay the royalty occurs; and
- (e) N2,000,000 or US Dollar equivalent for each day in which the failure continues.

*(13) Revocation, seizure and distraint*

Where any fee, rent or royalty due under this Act is unpaid within three months after the month when it becomes due (whether legally demanded or not), the Commission may, in addition to any other remedies which may be available:

- (a) initiate revocation of such licence or lease pursuant to this Act; and
- (b) enter into any land, property or premises possessed or occupied by the licensee or lessee in connection with the licence or lease; and
  - (i) seize and distrain and sell as landlords may do for rents in arrear any petroleum, petroleum products, engines, machinery, tools, implements or other effects belonging to the licensee or lease which may be found in or upon the land, property or premises; and
  - (ii) out of money arising from the sale of the distress, retain and pay off the arrears of the fee, rent or royalty and also the costs and expenses incidental to the distress and sale, rendering the surplus (if any) to the licensee or lessee.

#### ***Part IV – Supplemental***

##### ***(14) Production Sharing, Profit Sharing and Risk Service Contracts***

- (1) Where the Commission decides to grant a petroleum prospecting licence or petroleum mining lease under contractual terms pursuant to Section 84 of this Act, the Commission shall prepare the related model contract, which stipulates the fiscal and other provisions related to such contract, to be attached to such licence or lease. The contracts shall be administered by the Commission and the Government revenues related to the contracts shall be paid to the Federation Account and verified by the Commission.
- (2) The model contract shall contain as a minimum, the provisions related to fees, rents, royalties, hydrocarbon tax and companies income tax stipulated in this Act.
- (3) A model licence related to frontier acreages shall not contain contractual provisions pursuant to Section 84 of this Act and shall only contain the minimum provisions related to fees, rents, royalties under paragraph 10 of this Schedule and companies income tax stipulated in this Act and upon the renewal of any petroleum mining leases, hydrocarbon tax and royalty based on price under paragraph 11 of this Schedule based on onshore conditions shall apply.
- (4) For new acreage any production sharing contract shall have a cost limit of 70% based on total oil production, and where applicable condensates and natural gas liquids derived from associated gas, measured at the

measurement point. Furthermore, the minimum profit oil scale to Government in a production sharing contract shall be based on cumulative production per field as follows -

- (a) up to and including 50 million barrels – 5%
  - (b) over 50 million barrels and up to and including 100 million barrels – 10%
  - (c) over 100 million barrels and up to and including 350 million barrels – 15%
  - (d) over 250 million barrels up to and including 750 million barrels – 25%
  - (e) over 750 million barrels ad up to and including 1500 million barrels – 35%
  - (f) over 1500 million barrels 45%
- (5) There shall be no production sharing for associated or non-associated natural gas, to which only the rents, royalties and companies income tax applies under this Act. Capital and operating costs related to making associated natural gas available at the measurement point(s) can be recovered from cost oil.
- (6) The contractors shall be the licensees or lessees and shall thereby be entitled to the capital allowances under the Fifth Schedule.
- (7) The profit oil for crude oil under conversion contracts or for new acreages shall be determined as the total volume of crude oil, where applicable, condensates and natural gas liquids derived from associated gas, less the royalties and less the cost oil as defined in the model contract.
- (8) For production sharing purposes, the adjusted profit of a company for hydrocarbon tax shall be determined pursuant to Section 263(1)(b), which means that royalties and the value of profit oil delivered in kind or cash from all fields to the Federation Account shall be deductible for the purposes of determining the adjusted profits. The calculation shall be consolidated as per the six groups under Section 267, subject to the provisions of Section 261 and the capital allowances under the Fifth Schedule shall be applied.
- (9) For a production sharing contract subject to a conversion contract under this Act, the cost limit shall be 60%.