

[SHB. 281]

DOWNSTREAM GAS BILL 2005

ARRANGEMENT OF SECTIONS

Section:

PART I — ESTABLISHMENT OF THE GAS REGULATORY COMMISSION AND ITS

BOARD OF COMMISSIONERS, ETC.

1. Establishment of Gas Regulatory Commission.
2. The Objects of the Commission.
3. Establishment and Composition of the Board and Appointment of Commissioners.
4. Appointment and Removal of Members of the Board.
5. Tenure of Office and Conditions of Service of Commissioners.
6. Suspension of Commissioners.
7. Cessation of Membership.
8. Filling of Vacancies.

PART II — POWERS AND FUNCTIONS OF THE BOARD AND THE COMMISSION

9. Functions of the Commission.
10. The Network Code.
11. Powers of the Commission.

PART III — STAFF OF THE COMMISSION

12. Appointment of the Secretary and other staff of the Commission.
13. Other staff of the Commission, etc.
14. Conditions of Service.

PART IV — FINANCIAL POSITIONS

15. Funds of the Commission.
16. Surplus Funds of the Commission.
17. Financial Year of the Commission.
18. Budget and Accounts of the Commission.
19. Audit of the Commission's Accounts.
20. Powers of Auditors.
21. Exemption from Stamp Duty.

PART V — THE LICENSING REGIME

22. Activities requiring a Licence.
23. Matters relating to Licence Applications.
24. Advertisement of Licence Applications.
25. Licence regulations.
26. Licence Conditions.
27. Separation of Certain Licensed Activities.
28. Compensation for Acquisition of Land.

29. Non-discrimination.
30. Duration of Licence.
31. Assignment or Transfer of Licence.
32. Amendment of Licence.
33. Contravention and Enforcement of Licence Conditions.
34. Surrender of Licence.
35. Revocation or Suspension of Licence.
36. Grounds for the revocation of a Licence.
37. Mandatory Registration with the Commission.
38. Register of Licences.
39. Preparation of Licences and Duplicates.
40. Fiscal Relief for Project of Strategic National Importance.
41. Register of Memorials.
42. Effect of Registration.
43. Public Access to the Registry.
44. Disclosure of Confidential or other Information.

PART VI — TRANSPORTATION NETWORK OPERATOR LICENCE

45. Grant of Transportation Network Operator Licence
46. General Duties of a Transportation Network Operator.
47. Powers of a Transportation Network Operator.
48. Conditions Applicable to a Transportation Network Operator Licence.

PART VII — SUPPLY LICENCE

49. Grant of a Supply Licence.
50. General Duties of a Supplier.
51. Rights of a Supplier.
52. Conditions Applicable to a Supply Licence.

PART VIII — TRANSPORTATION PIPELINE OWNER LICENCE

53. Grant of Transportation Pipeline Owner Licence.
54. General Duties of a Transportation Pipeline Owner.
55. Conditions Applicable to a Transportation Pipeline Owner Licence.

PART IX — DISTRIBUTION LICENCE

56. Grant of Distribution Licence.
57. General Duties of the Distributor.
58. Rights of the Distributor.
59. Conditions Applicable to a Distribution Licence.
60. Arrangements for Gas Distribution.

PART X — LICENSING OF PRE - EXISTING ACTIVITIES

-
61. Formation of the Nigerian Gas Transportation Company.
 62. Shareholding in the Nigerian Gas Transportation Company.
 63. Licensing of the Nigerian Gas Transportation Company.
 64. Formation of the Nigerian Gas Marketing Company.
 65. Licensing of the Nigerian Gas Marketing Company.
- PART XI — WHOLESALE GAS MARKET
66. Wholesale Gas Market.
 67. Wholesale Customers.
 68. Trading and Settlement of Wholesale Gas.
- PART XII — THIRD PARTY ACCESS
69. Third Party Access.
 70. Conditions for the Provision of Third Party Access.
 71. Disputes in respect of Third Party Access.
- PART XIII — CUSTOMER PROTECTION
72. Customer Protection.
 73. Provision of Service to Customers.
 74. Transfer of Customers.
- PART XIV — THE PRICING REGIME
75. Power to Regulate and Review Prices.
 76. Pricing Principles.
 77. Approval and Publication of Charging Structures.
 78. Regulation of Transportation Tariffs.
 79. Regulation of Distribution Tariffs.
 80. Regulation of Customer Prices.
 81. Wholesale Gas Prices.
 82. Transitional Pricing Arrangements.
 83. Determinations.
- PART XV — PUBLIC SERVICE OBLIGATIONS
84. Public Service Obligations.
 85. Public Service Levy.
- PART XVI — COMPETITION AND MARKET REGULATION
86. Competition and Market Regulation.
 87. Power of the Commission to Determine Abuse of Market Power.
 88. Competition and Market Monitoring.
- PART XVII — OFFENCES AND PENALTIES
89. Offences and Penalties.
 90. Prohibition on the Wrongful Use of Equipment.

C420

- 91. Penalty not Prescribed.
- 92. Penalty for Refusal to Furnish Return or Supply Information.

PART XVIII — DISPUTE RESOLUTION

- 93. Power to Resolve Disputes.
- 94. Publication of Guidelines for Dispute Resolution by Commission.
- 95. Terms and Conditions for the Resolution of Disputes.
- 96. Registration of Determinations.
- 97. Enforcement of Determinations.
- 98. Judicial Review.
- 99. Referrals of Questions of Law to the Court of Appeal

PART XIX — LEGAL PROCEEDINGS

- 100. Limitation of Suits Against the Commission, its Agents, etc.
- 101. Service of Notice on the Commission.
- 102. Judgment Against the Commission.
- 103. Indemnity.

PART XX — MISCELLANEOUS

- 104. Functions and Powers of the Minister.
- 105. Formulation of Policy.
- 106. Relationship with the Commission.
- 107. Unreasonable Withholding of Gas Supply.
- 108. Disclosure of Interests.
- 109. Validity of Decisions and Acts of the Commission.
- 110. Interpretation.
- 111. Short Title.

FIRST SCHEDULE — PROCEEDINGS OF THE COMMISSION

SECOND SCHEDULE — CONFLICT OF INTEREST PROVISIONS

THIRD SCHEDULE — CONSEQUENTIAL AGREEMENT

FOURTH SCHEDULE — TRANSITIONAL AND SAVINGS PROVISIONS

A BILL
FOR

[EXECUTIVE]

AN ACT TO PROVIDE FOR A SEPARATE LEGAL AND REGULATORY REGIME FOR THE DOWNSTREAM GAS SECTOR, DISTINCT FROM UPSTREAM GAS; TO ESTABLISH THE GAS REGULATORY COMMISSION, TO PROVIDE FOR THE FORMATION OF THE NIGERIAN GAS TRANSPORTATION COMPANY AND THE NIGERIAN GAS MARKETING COMPANY; TO ESTABLISH THE BASIC PRINCIPLES FOR THE ORGANISATION AND REGULATION OF THE DOWNSTREAM GAS SECTOR AND ALL OTHER MATTERS CONNECTED THEREWITH

[]

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

- 1 PART I — ESTABLISHMENT OF THE GAS REGULATORY COMMISSION AND ITS
- 2 BOARD OF COMMISSIONERS, ETC.
- 3 1.—(1) There is hereby established a body known as the Gas Regulatory
- 4 Commission (in this Act referred to as “the Commission”).
- 5 (2) The Commission
- 6 (a) shall be a body corporate with perpetual succession and a Common
- 7 Seal;
- 8 (b) may sue or be sued in its corporate name;
- 9 (c) may enter into contracts and incur obligations;
- 10 (d) may acquire hold or dispose of any property, movable or immovable
- 11 for the purpose of carrying out any of its functions under this Act; and
- 12 (e) do all such things as are necessary for or incidental to the carrying out
- 13 of its functions and duties under this Act
- 14 2.—(1) The objects of the Commission are:
- 15 (a) to promote the implementation of national policies for the Downstream
- 16 Gas Sector as may from time to time be formulated, modified or amended;
- 17 (b) to promote the efficient, effective and sustainable development and
- 18 operation of the Downstream Gas Sector;
- 19 (c) to promote the efficient development and operation of the
- 20 Transportation Network and Distribution Network;

-
- 1 (d) to encourage and facilitate both local and foreign investment in the
2 Downstream Gas Sector;
3 (e) to organise and regulate the Downstream Gas Sector;
4 (f) to develop, where appropriate, competitive markets for Gas and Gas
5 services in the Downstream Gas Sector;
6 (g) to promote safe and reliable supply and efficient use of Gas throughout
7 Nigeria;
8 (h) to provide conditions that will enable Gas Transportation, Supply
9 and Distribution activities to be carried out, on an equitable basis while
10 protecting the rights and interests of Licensees, Customers and other
11 stakeholders;
12 (i) to regulate, where necessary, the prices of Downstream Gas activities
13 and Gas products; and
14 (j) to ensure security of Gas supply, market development and the
15 development of competition.

16 (2) The provisions of this Act shall apply to all activities within, or
17 associated with the Downstream Gas Sector and to all Persons conducting
18 such activities.

19 (3) The Commission shall have such powers and duties as are conferred
20 on it by this Act or by any other enactment or law on such matters on which
21 the National Assembly has power to make.

22 3.—(1) There is hereby established for the Commission a Board to be
23 known as the Board of Commissioners (in this Act referred to as “the Board”)
24 which shall have overall responsibility for the business and operations of the
25 Commission as specified under this Act.

26 (2) The Board shall consist of:

- 27 (i) a Chairman
28 (ii) the Executive Vice Chairman who shall be the Chief Executive and
29 Accounting Officer of the Commission; and
30 (iii) five other members, one of whom shall be a member of the National
31 Electricity Regulatory Commission.

1 (3) The members of the Board, other than the Chairman shall be full
2 time members;

3 4. The Chairman and members of the Board shall be appointed to office
4 or removed by the President in accordance with sections 5 and 7 of this Act:

5 (1) A Person shall not be appointed as a Commissioner and no Person shall
6 be qualified to hold office as a Commissioner who:

7 (a) is neither a citizen of, nor permanently resident in, the Federal
8 Republic of Nigeria; or

9 (b) owns or subsequently acquires a financial interest in any business
10 connected, either directly or indirectly, with the Downstream Gas Sector,
11 or is engaged in any activity whether for remuneration or otherwise
12 connected therewith unless the President, after due enquiry, is satisfied
13 that the interest will not interfere with the Person's impartial discharge
14 of his duties as a Commissioner, or unless the activity or financial interest
15 is terminated prior to the appointment taking effect; or

16 (c) has, by virtue of a law in force in any country:

17 (i) been adjudged or otherwise declared insolvent or bankrupt and
18 has not been rehabilitated or discharged pursuant to that law; or

19 (ii) made an assignment to, or arrangement or composition with
20 a Committee of Inspection of his creditors which has not been
21 rescinded or set aside; or

22 (d) has, pursuant to a law in force in any country:

23 (i) been adjudged, by a court of competent jurisdiction, to be of
24 unsound mind; or

25 (ii) been banned from practicing his profession; or

26 (iii) been convicted of an offence and either fined or sentenced to
27 a term of imprisonment imposed with or without the option of a
28 fine, whether or not any portion has been suspended, and has not
29 received a pardon; or

30 (e) is a serving member of the National Assembly on the date of
31 assumption of duty as a Commissioner; or

Downstream Gas

1 (f) is in the employment of a company engaged in activities in the oil
2 and Gas sector on the date of assumption of duty as a Commissioner;
3 or
4 (g) is banned from holding Public Office or has been dismissed from
5 the Public Service.

6 (2) The supplementary provisions set out in the First Schedule to this Act
7 shall have effect with respect to the proceedings of the Board and the
8 other matters mentioned therein

9 5.—(1) The Chairman, the Executive Vice-Chairman and other members
10 of the Board of the Commission, shall each hold office:

11 (a) for a period of five years and may be reappointed for another period
12 of five years and no more; and

13 (b) on such terms and conditions as may be specified in his letter of
14 appointment.

15 (2) Notwithstanding any other provisions of this Act, the President
16 shall ensure that the Commission remains duly constituted and shall take
17 steps necessary to ensure that at all times there are a minimum of five
18 Commissioners serving on the Commission.

19 (3) Commissioners shall be Persons chosen for their expertise, experience
20 or professional qualifications in the following fields or areas of competence:

21 (a) the production, gathering, processing, transportation, distribution or
22 supply of Gas; or

23 (b) the generation, distribution or transmission of electricity or other
24 forms of power; or

25 (c) law, regulation, accountancy, economics, finance, engineering or
26 administration particularly where such qualifications have been developed
27 in connection with activities related to the Gas or the power sector;

28 provided that a Person shall not be appointed as a Commissioner unless he
29 has a university degree and a minimum of fifteen years post-qualification
30 experience.

31 (4) A Commissioner shall hold office for a period of not more than five
years, and may be re-appointed by the President for one further period of

1 five-years only; provided that, to ensure continuity in the Commission, the
2 period of appointment of the first seven Commissioners shall be as follows:

- 3 (a) the Chairman shall be appointed for five years; and
- 4 (b) the Executive Vice Chairman shall be appointed for five years; and
- 5 (c) three Commissioners shall be appointed for four years; and
- 6 (d) the two remaining Commissioners shall be appointed for three years..
- 7 (5) A Commissioner shall continue in office after the expiry of his term
8 of office until he has been re-appointed, or his successor has been appointed,
9 in accordance with section 3 provided, however, that a Commissioner shall
10 not hold office pursuant to this subsection for more than six months.

11 (6) A Member of the Board shall be paid a salary and such allowances
12 that are commensurate with emoluments generally applicable in the oil and
13 Gas sector.

14 6.—(1) Subject to the procedure prescribed by subsection (3) of this
15 section, a Commissioner may be suspended by the President:

- 16 (a) if criminal proceedings have been instituted against that Commissioner
17 for an offence in respect of which a sentence of imprisonment without the
18 option of a fine may be imposed; or
- 19 (b) if the President suspects on reasonable grounds that the circumstances
20 set out in section 7 (2) have arisen and intends to investigate them further.

21 (2) In investigating the suspected misconduct of, or an offence allegedly
22 committed by a suspended Commissioner, the President shall request the
23 Chief Justice of the Federation to constitute a tribunal to carry out the
24 investigation, which tribunal shall be comprised of not more than three
25 Persons chaired by a Person who has held or holds office as a judge. The
26 remaining members of the tribunal shall not include:

- 27 (a) any other holder of a public office;
- 28 (b) members of the National Assembly;
- 29 (c) any Person with a financial interest in a Licensee; or
- 30 (d) any Relative of, or Person associated with, the Commissioner in
31 question.

(3) The procedure for the conduct of the tribunal's investigation referred

1 to in subsection 2 of this section shall require that:

2 (a) within seven days of its constitution, the tribunal shall issue a notice
3 in writing to the Commissioner informing him of the conduct that has
4 formed the basis for his suspension. The Commissioner shall respond to
5 the notice within seven days of its receipt and the tribunal shall thereafter
6 report its prima facie findings to the President within twenty-eight days
7 of the constitution of the tribunal;

8 (b) after due enquiry, and within sixty days of its appointment under this
9 section, the tribunal shall report its findings in writing to the President
10 with a recommendation of whether or not the Commissioner should be
11 reinstated or removed from office. The President shall forthwith act in
12 accordance with that recommendation.

13 (4) While a Commissioner is under suspension pursuant to subsection
14 (1) of this section:

15 (a) he shall not carry out any duties as a Commissioner; and

16 (b) he shall continue to be paid his salary and benefits throughout the
17 period of his suspension.

18 (5) The provisions of Part XVIII of this Act shall not apply to this section
19 of the Act.

20 7.—(1) A Commissioner shall vacate his office and his office shall become
21 vacant:

22 (a) three months after the date upon which he gives notice in writing to the
23 President of his intention to resign, or on the expiry of such other period
24 of notice as he may agree with the President;

25 (b) on the date of his sixty-fifth birthday.

26 (2) A Commissioner shall be removed by the President:

27 (a) on conviction by a Court of competent jurisdiction or a validly
28 constituted Tribunal:

29 (i) in Nigeria, in respect of any offence; or

30 (ii) outside Nigeria, in respect of an offence involving financial
31 impropriety or any conduct which, if committed in Nigeria, would
constitute an offence; or

- 1 (b) if he is or becomes disqualified pursuant to section 3 of this Act, from
2 holding office as a Commissioner; or
3 (c) if he has been found, after due enquiry, to have conducted himself in a
4 manner that renders him or her unsuitable as a Commissioner, in particular
5 because of a failure to comply with the provisions of sections 3, 4, 20 (2)
6 and 108 and of this Act; or
7 (d) if he has failed to comply with a material term or condition of his
8 employment; or
9 (e) if he is mentally or physically incapable of carrying out his functions as
10 a Commissioner.

11 (3) A Commissioner removed pursuant to this section shall not be
12 eligible for re-appointment and shall not serve the Commission in any other
13 capacity.

14 8. On the death of, or vacation of office for whatever reason by, a
15 Commissioner, the President shall fill the vacancy within ninety days from
16 the date of the death or vacation of office of a Commissioner and such
17 appointment shall be made in accordance with the procedure for the
18 appointment of Commissioners set out in section 3 of this Act.

19 PART II — POWERS AND FUNCTIONS OF THE BOARD AND THE COMMISSION

20 9. The Commission shall:

- 21 (a) consider applications for Licences and issue, renew, modify, suspend
22 and, if necessary, revoke any Licence pursuant to Part V of this Act;
23 (b) take steps to ensure and enforce compliance with the terms and
24 conditions of all Licences;
25 (c) at all times keep a register of all Licences issued and any renewals,
26 amendments, suspensions or revocations thereof;
27 (d) carry out enquiries, tests, audits or investigations and take such other
28 steps as may be necessary to monitor the activities of Licensees and to
29 secure and enforce compliance with Licence terms and conditions;
30 (e) regulate prices in the manner prescribed under Part XIV of this Act;
31 (f) undertake the commercial regulation of the Downstream Gas Sector;
(g) promote competition and ensure:

Downstream Gas

- 1 (i) the provision of Third Party Access to the Transportation Network and
2 Distribution Networks and the development, approval and subsequent
3 oversight of an appropriate code or codes to govern the terms and
4 conditions of access;
- 5 (ii) at such time as the Commission declares the need to have arisen, the
6 development of market rules for trading in Wholesale Gas, following
7 consultation with relevant stakeholders and other industry participants;
- 8 (h) as requested by the Minister, report to the Minister, on all issues relating
9 to the development of the Downstream Gas Sector, that may be relevant
10 to the Minister in carrying out his statutory duties;
- 11 (i) investigate complaints in respect of matters of regulatory compliance,
12 whether brought before it by Customers, market participants or otherwise;
- 13 (j) endeavour to settle disputes referred to it for resolution by Licensees,
14 Customers or the general public in relation to any of the following issues:
- 15 (i) connection to the Gas Transportation Network and Distribution
16 Networks;
- 17 (ii) the use of the Gas Transportation Network and Distribution Networks;
- 18 (iii) the Supply of Gas; or
- 19 (iv) the provision of services in respect of any Licensed activity;
- 20 (k) establish Customer Protection measures in accordance with Part XIII of
21 this Act;
- 22 (l) undertake consultation with Customers, Licensees and industry
23 participants affected by or with an interest in those of its decisions that
24 have the potential to affect them and consider any responses to the
25 consultation;
- 26 (m) publish those decisions, Directions or Determinations that have
27 implications for Customers and industry participants together with the
28 reasons for the decision, Direction or Determination;
- 29 (n) submit to the Minister, for delivery to the National Assembly, at the end
30 of every Financial Year:
- 31 (i) a report of its activities during the year; and

Downstream Gas

- 1 (ii) its financial accounts duly audited by an independent auditor;
- 2 (o) promote the safe and reliable supply and efficient use of Gas throughout
3 Nigeria;
- 4 (p) promote the interests of Customers whilst also taking into account the
5 ability of Licensees to effectively finance their Licensed activities, provided
6 that the Commission shall not be liable for any difficulties arising out of
7 the inefficient or negligent operation of Licensed activities by Licensees.
- 8 (q) promote the principles of sustainable resource and infrastructures
9 development through the efficient supply and use of Gas;
- 10 (r) promote competition and private sector participation, when and where
11 feasible;
- 12 (s) monitor and report to the Minister on the adequacy or otherwise of
13 market development, security of Gas supply and the development of
14 competition;
- 15 (t) ensure security of Gas supply, market development and the development
16 of competition;
- 17 (u) ensure that all reasonable demands for Gas are met provided it is
18 economic and practical to do so; and
- 19 (v) implement policies issued by the Minister in respect of the Downstream
20 Gas Sector.
- 21 (w) undertake such other activities necessary for the carrying out of its
22 duties and responsibilities under the provisions of this Act.
- 23 10.—(1) The Commission shall in conjunction with Licensees and
24 other stakeholders develop a Network Code governing the operation of the
25 Network;
- 26 (2) The Network Code may include, but shall not be limited to the
27 following arrangements:
- 28 (a) a connection policy, standard terms for connection to the Transportation
29 Network and Distribution Network and a statement of the connection
30 charging methodology;
- 31 (b) a mechanism by which users reserve capacity in the Transportation
Network or Distribution Network, and, in the event that at any time there is

Downstream Gas

- 1 a greater demand for access than there is available capacity, a mechanism
2 for allocating capacity between users;
- 3 (c) the nomination of any one of the following parties to take responsibility
4 for matters that may arise with respect to Gas in transit through the
5 Network, such matters to include but not be limited to the amount of
6 Gas injected into or withdrawn from the Network, nominating volumes,
7 payment for the use of the Network and payment for overruns and
8 shortfalls of Gas:
- 9 (i) the seller of the Wholesale Gas being conveyed;
10 (ii) the purchaser of the Wholesale Gas being conveyed; or
11 (iii) a willing third party;
- 12 (d) requirements for the provision of information to the Transportation
13 Network Operator and the Distributor about the volume, timing and
14 flow-rate of injections into and withdrawals from the Transportation
15 Network or Distribution Network as the case may be;
- 16 (e) the structure of charges and the applicable Tariffs charged for using
17 the Transportation Network and Distribution Networks;
- 18 (f) as required, arrangements for balancing the Wholesale Gas being
19 conveyed;
- 20 (g) registration arrangements;
- 21 (h) metering, allocation and settlement arrangements;
- 22 (i) governance arrangements.

23 (3) The Commission shall make copies of the Network Code available
24 to interested parties upon payment of a prescribed fee.

25 11. The Commission shall, in order to fulfil its functions under this Act,
26 have the power:

- 27 (a) to issue, modify, extend, renew, suspend and revoke any Licence
28 pursuant to the requirements of this Act;
- 29 (b) to make recommendations to the Minister for the issuance, amendment
30 or revocation of any Regulations relevant to the provisions or requirements
31 of this Act;
- (c) to monitor and impose pricing restrictions and the application of pricing

Downstream Gas

1 methodologies by Licensees in accordance with the provisions of Part XIV
2 of this Act;
3 (d) subject to subsection (e) of this section, to request and obtain any
4 information or any document concerning Licensed activities from any
5 Licensee notwithstanding that they may contain business secrets provided
6 that any such information or documents, shall be restricted to those which
7 a company can be compelled to produce as evidence in a civil proceeding
8 in a court of law;
9 (e) where it considers it to be in the Public Interest:
10 (i) publish information provided by Licensees; and
11 (ii) require Licensees to publish certain information;
12 (f) to impose and enforce Licence conditions and to enforce the specific
13 requirements of the Act;
14 (g) to institute legal proceedings against Licensees for failure to comply
15 with Licence conditions or other requirements of the Act;
16 (h) subject to the provisions of this Act, issue legally binding Determinations
17 in respect of any dispute brought before it.

18 PART III — STAFF OF THE COMMISSION

19 12. The Commission shall appoint a Secretary who shall not be a
20 Commissioner to keep the corporate records of the Commission and
21 undertake such other functions as the Chairman and the Commission may
22 from time to time direct. The Secretary shall be a lawyer or chartered secretary
23 with a minimum of 15 years post qualification experience.

24 13. The Commission shall employ such number of Persons as it considers
25 necessary for the exercise of its powers and performance of its functions under
26 this Act.

27 14. The Commission shall determine the terms and conditions of service
28 of the staff of the Commission, including remuneration, allowances, pensions
29 and benefits and, in determining these terms and conditions, shall take into
30 account the overriding objective of attracting and retaining the highest
31 quality of manpower.

PART IV — FINANCIAL PROVISIONS

1 15.—(1) The Commission shall establish and maintain a fund from which
2 all its expenditure including salaries of Commissioners and staff shall be met.

3 (2) The funds of the Commission shall include, but not be limited to:

4 (a) funds allocated to the Commission by the Federal Government of
5 Nigeria for establishing the Commission;

6 (b) Licence fees, charges and other income accruing to the Commission
7 otherwise in the exercise, performance and discharge by the Commission
8 of its powers, duties and functions under this Act and any subsidiary
9 legislation excluding funds from any fines or penalties recovered pursuant
10 to this Act;

11 (c) emergency funds allocated to the Commission by the Federal
12 Government, where a request is made by the Commission for additional
13 funds to meet its reasonable expenditures;

14 (d) an appropriate surcharge on the unit cost of transportation of Gas as
15 shall be determined after a biennial consultative process held between
16 the Commission, industry participants and stakeholders. Such surcharge
17 to be subject to the approval of the President; and

18 (e) grants from international agencies, loans or such other moneys as may
19 vest in or accrue to the Commission, whether in the course of its operations
20 or otherwise, provided that, it shall not accept any gifts or donations
21 including political donations.

22 16. If, upon an audit of the Commission's accounts, the auditors
23 determine that a portion of the funds received pursuant to section 15 are
24 surplus to the budgeted requirements of the Commission, such surplus funds
25 shall be carried forward to the following year and the Commission's funding
26 requirements shall be subject to an appropriate adjustment of the surcharge
27 provided for in section 15 (d).

28 17. The Financial Year of the Commission shall be the period of twelve
29 months ending on the 31st December in each year or such other period as
30 the Minister may determine.

31 18.—(1) The Commission shall, at least three months before the end of
every financial year, prepare a budget of its requirements for the following

1 financial year for approval by the National Assembly.

2 (2) The Commission shall ensure that proper accounts of its income and
3 expenditure and other records relating to such accounts are prepared and
4 kept in respect of all the activities, funds and property of the Commission,
5 including such particular accounts and records as the Minister may require.

6 19.—(1) The Commission shall appoint as auditors one or more Persons
7 in accordance with the guidelines for the appointment of auditors issued by
8 the Auditor-General of the Federation.

9 (2) The auditors appointed shall within three months from the end
10 of each Financial Year, make a report to the Commission on the statement
11 of accounts prepared pursuant to section 18 (1) and such report shall state
12 whether or not, in the opinion of the auditors, the statement of accounts
13 gives a true and fair view of the Commission's affairs.

14 (3) The Minister may require the Commission to obtain from its auditors
15 such other reports, statements or explanations in connection with the
16 Commission's operations, funds and property as the Minister may consider
17 necessary, and the Commission shall forthwith comply with any such
18 requirement.

19 (4) The Commission shall publish its audited statement of accounts in
20 its website and in at least two Nigerian newspapers in nationwide circulation
21 within one month following the receipt of the auditor's report pursuant to
22 subsection (2) of this section.

23 20.—(1) An auditor appointed pursuant to section 19 (1) shall have
24 access to all accounts and other records relating to such accounts which are
25 kept by the Commission or its agents and may require from any Commissioner
26 or employee or agent of the Commission such information and explanations
27 as in the auditor's opinion are necessary for the purposes of the audit.

28 (2) Any Commissioner or employee or agent of the Commission who
29 fails without reasonable cause to comply with a request or instruction of an
30 auditor pursuant to subsection (1) of this section shall be guilty of an offence
31 and liable to a maximum fine of x500,000 or such other fine as the Minister

1 may prescribe in Regulations or other statutory instrument issued pursuant
2 to this Act.

3 21.—(1) Notwithstanding the provisions of any other enactment to
4 the contrary, stamp duty shall not be chargeable in respect of any transfer
5 made or transaction entered into pursuant to this Act upon which, but for
6 the exemption granted hereunder, stamp duty would have been payable.

7 (2) In particular, and without derogation from the foregoing, no stamp
8 duty shall be chargeable:

9 (a) upon the incorporation of the Nigerian Gas Transportation Company
10 and Nigerian Gas Marketing Company;

11 (b) in respect of any other transfer of rights and assets made pursuant to
12 this Act;

13 (c) where a Person with activities existing prior to the commencement
14 of this Act is required by the Commission, pursuant to the provisions of
15 section 33 of this Act, to separate his Licensed activities.

16 PART V — THE LICENSING REGIME

17 22.—(1) Subject to the provisions of section 40, no Person shall, except
18 in accordance with an appropriate Licence issued by the Commission:

19 (a) own and operate a Transportation Pipeline;

20 (b) operate a Transportation Network;

21 (c) undertake the Supply of Gas; or

22 (d) own and operate a Distribution Network.

23 (2) Subject to a formal consultation process held between industry
24 participants, stakeholders and the Commission, the Commission may, by
25 Regulations issued pursuant to this Act, prescribe additional activities to be
26 undertaken only on the basis of a Licence.

27 (3) Any Person who at the commencement of this Act was engaged in any
28 activity regulated under this Act shall, within sixty days of the commencement
29 of this Part of this Act or within such other period as the Minister may permit,
30 apply to the Commission for the issuance of an appropriate License for the
31 Transportation, Distribution or Supply of Gas, as the case may be.

1 (4) Subject to the provisions of section 40, any Person who:
2 (a) without a Licence either engages in any of the activities set out in
3 subsection (1) or engages in any activity that becomes subject to Licensing
4 under subsection (2) or (3) of this section; or
5 (b) in applying for a Licence, knowingly makes a statement which is false
6 or misleading in any material particular;
7 shall be guilty of an offence and liable to a fine of x30,000,000 or to
8 imprisonment for a term of two years, provided that proceedings in respect
9 of any such offence shall be instigated only by the Commission and, provided
10 further that, in addition to the fine, the Commission may, after due enquiry
11 and having made arrangements to ensure that Customers are not adversely
12 affected, suspend or revoke any Licence issued on the basis of false or
13 misleading information.

14 23.—(1) The Commission may grant, renew, modify or extend individual
15 Licences issued further to Section 22 (1).

16 (2) An application for the grant, renewal, modification or extension
17 of a Licence shall be presented to the Commission in the form and manner
18 prescribed by Regulations; and shall be accompanied by the prescribed fee,
19 if any, together with such information or documents as may be prescribed
20 in Regulations issued by the Commission.

21 (3) The Commission may furnish any Person applying for the grant,
22 renewal or extension of a Licence with such non-confidential information as
23 the applicant may request which may facilitate the filing of the application.

24 (4) An applicant for a Licence who is an Affiliate of a body corporate
25 that has applied for or holds any other Licence shall disclose such interest to
26 the Commission in its application.

27 (5) The Commission shall consider all information presented in respect of
28 an application for a Licence including representations from interested parties
29 in favour of or against the granting, extension or renewal of the Licence; and
30 shall furnish any applicant for a Licence with any other information that may
31 facilitate the filing of an application.

1 (6) Where the Commission has decided to grant a Licence it shall publish
2 a notice of its decision in the form and in the manner prescribed in Regulations
3 issued by the Commission.

4 (7) Where the Commission has decided to decline an application, it shall
5 inform the applicant of its refusal of the application and its reasons for such
6 refusal and shall state a reasonable timescale within which the applicant in
7 respect of the application can make further representations in respect of the
8 decision.

9 (8) The Commission shall duly consider any representation made by an
10 applicant for a Licence in respect of a refusal of a Licence application.

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

15 24.—(1) When an application is made for a Licence as contemplated
16 in section 29 (2), the applicant shall publish a notification of the application
17 in at least two Nigerian newspapers with nationwide circulation, in the form
18 and manner, for as many times, for such period or periods and in accordance
19 with the timescale the Commission may prescribe in Regulations.

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

25 (3) Following the grant or renewal of a Licence the applicant shall publish
26 the notification of the grant or renewal in the form and manner in at least two
27 Nigerian newspapers with nationwide circulation, for as many times, for such
28 period or periods and in accordance with such timescale as the Commission
29 may prescribe in Regulations.

30 25.—(1) The Commission shall make recommendations to the Minister
31 to issue Regulations applicable to Licensing procedures under this Act, such
Regulations to include, but shall not be limited to:

- 1 (a) the procedure, form, criteria, timescale and fees for Licence applications,
2 including any criteria for the grant of the Licence, and the grounds on
3 which Licences may be refused;
4 (b) the duration of Licences and the procedure, form, criteria and timescale
5 for their renewal;
6 (c) the procedure, form and timescale for publishing notification of a
7 Licence application or renewal;
8 (d) the procedure, form, criteria and timescale for Licence modifications,
9 including the process for changing standard and special Licence conditions
10 and the public consultation process required as part of the Licence
11 modification procedures;
12 (e) the procedure, form, criteria and timescale for the transfer or surrender
13 or suspension or revocation of a Licence.

14 26.—(1) Conditions included in a Licence issued pursuant to this Part
15 may require the Licensee:

- 16 (a) to comply with any Directions given by the Commission in relation to
17 matters specified in the Licence;
18 (b) to undertake or refrain from undertaking anything specified in the
19 Licence;
20 (c) to secure the approval of the Commission prior to undertaking anything
21 specified in the Licence;
22 (d) to comply with industry codes, standards and market rules;
23 (e) to comply with price or revenue restrictions imposed by the Commission
24 in accordance with Part XIV of this Act;
25 (f) to provide information to the Commission;
26 (g) to restrict the use of certain types of sensitive information;
27 (h) to prepare and submit to the Commission true and sufficient annual
28 statements of accounts for each Licensed activity in such form, and
29 containing such particulars as the Commission may require and produce
30 such books upon the request of duly authorised officers of the Commission;
31 (i) to adhere to undertakings made within a business plan submitted as

1 part of the Licence application process;
2 (j) to prepare and submit to the Commission such information and
3 periodical reports as the Commission may require;
4 (k) publish terms of access to its Transportation or Distribution pipeline or
5 network as the case may be;
6 (l) to operate its Licence and related facilities, if any, according to the
7 standard of a reasonable and prudent operator.

8 (2) Conditions applicable to a Licence may cease to have effect or may
9 be modified under circumstances specified in the Licence or pursuant to the
10 provisions of section 38 of this Act.

11 (3) Licences granted by the Commission to Licensees of the same class
12 shall contain similar conditions, which shall be standard Licence conditions
13 for that class. Any differences in conditions contained in Licences issued to
14 Licensees of the same class shall only be for objectively justifiable reasons.

15 (4) Subject to the provisions of this Act, the Commission shall have the
16 power to include special conditions specific to a particular Licence or Licensee
17 provided, however, that such special Licence conditions shall be designed to
18 meet specific circumstances and shall not unduly disadvantage one Licensee
19 in relation to another.

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

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

25 27.—(1) At such time as the Commission determines that it is practical
26 and necessary to facilitate competition, the Commission may introduce
27 Licence conditions, subject to the approval of the Minister, requiring the
28 separation, either in management, accounting or legal terms, of Licensed
29 activities, which may prohibit a Licensee from also holding Licences of another
30 type.

(2) Gas sale between a Licensee and an Affiliate of that Licensee shall be

1 undertaken in a manner that ensures that the transfer pricing between both
2 entities are at a transparent arms length basis and in a manner that reflects
3 the pricing principles contained in Part XIV of this Act.

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

7 28.—(1) The Commission shall issue Licenses subject to compliance
8 by the applicant with the provisions of the Land Use Act in respect of
9 compensation for acquisition of land for petroleum operations.

10 (2) The Governor of a State in respect of which land is required for the
11 conduct of operation of activities subject to a License shall promptly issue an
12 appropriate Certificate of Occupancy in respect of the said land within a period
13 of 3 months from the date of submission by the applicant of an application
14 for a Certificate of Occupancy in respect of the said land.

15 29. Except on the basis of objectively justifiable and identifiable
16 differences, Licensees shall not discriminate between Customers or classes of
17 Customers or their related undertakings or Network users in respect of access,
18 Tariffs, prices, conditions or standards of service, unless expressly permitted
19 by the Commission.

20 30.—(1) A Licence issued pursuant to this Act shall be valid for a period
21 of 25 years in the first instance. The Licence may be renewed for such further
22 periods as the Commission may determine subject to the criteria and in
23 accordance with the procedure prescribed by Regulations issued pursuant to
24 this Act, provided however that any one extension shall not exceed twenty-five
25 years.

26 (2) The Commission may set new or different Licence conditions upon
27 the renewal of a Licence.

28 31.—(1) No Licensee shall, without the prior written consent of the
29 Commission, directly or indirectly assign or transfer its Licence or any rights
30 or obligations arising from such Licence.

31 (2) An application for the assignment or transfer of a Licence shall be

1 made to the Commission, which may require the applicant to publish a notice
2 of the application in such form and in the manner and timescale prescribed
3 in Regulations issued pursuant to this Act.

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

11 (4) The Commission shall, subject to subsection (3) of this section,
12 communicate its refusal or approval of an application for the assignment or
13 transfer of a Licence in writing.

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

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

20 32.—(1) The Commission may, modify, suspend or revoke any Licence
21 conditions or include additional conditions as it deems fit.

22 (2) The Commission shall not modify, suspend, revoke or include
23 additional conditions to a Licence unless it has:

24 (a) consulted with the Minister, industry participants and stakeholders,
25 giving reasons for the proposed modification, suspension, removal or
26 addition and having properly considered any representations or objections
27 raised; and

28 (b) given the affected Licensee(s) written notice of its intention to do so
29 together with a draft copy of the proposed Licence modification, and
30 giving the Licensee(s) an opportunity to make written submissions to the
31 Commission thereon within time period specified in Regulations issued
pursuant to this Act but within thirty days from the date of the written

1 notice.

2 (3) The Commission may not modify, suspend, revoke or include
3 additional conditions to the Licence conditions of any type of Licence if
4 such modification, suspension or revocation would adversely interfere with
5 the performance of contractual obligations assumed by the Licensee with
6 Customers on the basis of such Licence or result in any Licensee being unduly
7 disadvantaged in competing with another Licensee or Licensees of the same
8 type or with suppliers of competing fuels, in the case of a Supply Licence.

9 (4) The procedure to be followed in modifying, suspending, revoking
10 or adding any Licence conditions shall be as prescribed in the Regulations
11 issued pursuant to this Act.

12 (5) A Licensee who is disaffected by a proposed Licence modification
13 may appeal against the decision of the Commission pursuant to the procedure
14 set out in sections 100 and 101 of this Act.

15 33.—(1) Where it appears to the Commission that a Licensee is
16 contravening, has contravened or is likely to contravene any of the conditions
17 of the Licence, the Commission may publish a notice in such manner as it
18 considers appropriate to draw the attention of other Persons affected or
19 likely to be affected by the contravention or threatened contravention of the
20 Licence:

21 (a) specifying the actual or potential contravention;

22 (b) directing the Licensee to do, or not to do, such things as it may
23 specify;

24 (c) specifying the remedy and the timescale for compliance;

25 (d) notifying the Licensee of its intention to issue an Enforcement Order.

26 (2) The Licensee and any other interested party shall be entitled to make
27 representations against or in support of the enforcement notice by a date
28 specified in the notice.

29 (3) If a Licensee fails to comply with a notice served pursuant to
30 subsection (1) of this section, the Commission may issue an Enforcement
31 Order. Failure to comply with an Enforcement Order shall constitute an offence.

1 (4) The Commission may not issue an Enforcement Order if:
2 (a) the Licensee is able to demonstrate to the satisfaction of the
3 Commission that it is not contravening or about to contravene a condition
4 of a Licence; or

5 (b) the Licensee has ceased to contravene a condition of a Licence provided
6 that if the earlier contravention was deliberate, the Commission may, at its
7 discretion, impose an appropriate penalty as determined by Regulations
8 made pursuant to this Act.

9 (5) If the Licensee fails to comply with the Enforcement Order the
10 Commission may institute legal proceedings against the Licensee to ensure
11 compliance with the Enforcement Order. Appeals in respect of such legal
12 proceedings shall be brought before the Court of Appeal.

13 (6) The Commission may, subject to the Regulations made pursuant to
14 this Act, adjust from time to time the penalty mentioned in subsection (4) (b)
15 of this section in order to reflect current rates of inflation.

16 34.—(1)The Licensee may, upon application in the form and manner
17 and upon meeting conditions prescribed by Regulations issued pursuant to
18 this Act, surrender the Licence if:

- 19 (a) the Licensed activity is no longer required;
20 (b) the Licensed activity is not economically justifiable;
21 (c) the Licensee has failed to commence Licensed activity within the time
22 frame specified in the Licence; or
23 (d) another Qualified Person is willing and able to assume the rights and
24 obligations of the Licensee concerned in accordance with the requirements
25 and objectives of this Act;

26 and where applicable, the Licensee has complied with all requirements of
27 the law in respect of relinquishment and decommissioning of installations
28 and reclamation of land.

29 (2) Where the Licensee has commenced activities and has ongoing
30 operations, it shall, unless a shorter period is stipulated in the Licence, give
31 the Commission at least twelve months notice in writing of its intention to
cease its activities.

1 (3) The form and procedure to be followed in surrendering a Licence
2 under subsection (1) shall be as prescribed in Regulations issued pursuant
3 to this Act.

4 35. The Commission may after giving (six) months notice of its intention,
5 suspend or revoke a Licence if the Licensee has breached or continues to
6 breach a condition of the Licence or a Regulation or a provision of this Act
7 where such condition or provision stipulates that a breach thereof shall make
8 the Licence liable to revocation or suspension, as the case may be.

9 36. Without prejudice to the generality of the provisions of sections 33
10 and 35, a Licence may be revoked:

11 (a) if the Licensee becomes insolvent or bankrupt or it enters into an
12 agreement or composition with its creditors or takes advantage of any
13 enactment for the benefit of its debtors or goes into liquidation, except
14 as part of a scheme for an arrangement or amalgamation;

15 (b) upon the transformation or dissolution of the company or corporation
16 unless it is for the purpose of amalgamation or reconstruction and provided
17 the prior consent of the Commission has been obtained; or

18 (c) if a Licensee fails to commence activities within the timescale prescribed
19 in the Licence.

20 37. Any Person engaged in activities in the Downstream Gas Sector,
21 which activities are required to be Licensed by the Commission pursuant to
22 this Act shall register its undertaking with the Commission and provide such
23 information concerning the activities of the undertaking as may be prescribed
24 by Regulations issued pursuant to this Act.

25 38.—(1) The Commission shall establish, maintain and make publicly
26 available a register of all Licences issued, revoked, suspended, surrendered
27 or withdrawn and all modifications and exemptions granted for the purposes
28 of this Act.

29 (2) The officer registering the issuance of a Licence or any modifications
30 or exemptions as contemplated under subsection (1) of this section
31 shall require an acknowledgment of the receipt of a copy of the Licence
modification or exemption from the Person accepting it in such form as may

1 be prescribed by Regulations issued pursuant to this Act.

2 39.—(1) All Licences or exemptions granted under this Act shall be
3 prepared in duplicate, one copy being delivered by the Commission to the
4 Licensee and the other retained by the Commission to be bound up in a book
5 of the appropriate series and serially numbered.

6 (2) The Commission shall not cause any Licence to be prepared until
7 the requisite fees have been paid.

8 40. Where a project is approved by Federal Government as a project
9 of strategic national importance, the Commission may make appropriate
10 recommendations to the Minister to issue Regulations pursuant to this Act for
11 appropriate fiscal relief to such project and such fiscal relief shall be limited
12 to the specific project and may be subject to such specified conditions as
13 may be deemed necessary. No fiscal relief made pursuant to this Act shall
14 be deemed to extend to such project expansion.

15 41. The Commission shall enter in the appropriate register a memorial
16 of the extensions, transfers, surrenders, revocations, exemptions, forfeitures,
17 changes of address, changes of name or any other matter affecting the status
18 of or any interest in any Licence registered under this Act together with the
19 date of such entry.

20 42. The due registration of any Licence registered under this Part shall,
21 subject to the provisions of this Act, be conclusive evidence:

22 (a) that the rights described therein are vested in the Person for the time
23 being named as the Licensee; and

24 (b) of the conditions and other provisions to which the Licensee is subject,
25 so far as the same are required by any provision of this Act to be specified
26 in the document.

27 43.—(1) The registry and the registers required under sections 38 and
28 41 shall be readily accessible to the public during the hours and upon the
29 days designated by the Commission.

30 (2) Upon the payment of the prescribed fee, a member of the public
31 shall be entitled to obtain a certified true copy of any document or record
contained in the registers referred to in sections 38 and 41 of this Act.

1 44.—(1) If any Commissioner or employee of the Commission in the
2 course of his duties, acquires information relating to the financial affairs of
3 any Person, or to any commercial secret, or if any other Person indirectly
4 acquires such or other information required to be kept confidential under the
5 provisions of this Act from any Commissioner or employee of the Commission,
6 he shall not for Personal gain make use of such information, nor disclose it to
7 any other Person except:

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

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

17 (3) Any Person who contravenes Subsection (1) or (2) commits an offence
18 and is liable on conviction to the forfeiture of any proceeds accruing to him
19 on account of the contravention and to a fine not exceeding x5,000,000 or
20 to imprisonment for a period not exceeding two years or to both such fine
21 and imprisonment.

22 PART VI — TRANSPORTATION NETWORK OPERATOR LICENCE

23 45.—(1) Subject to section 22 of this Act, and upon approval by the
24 Commission of an application by a Qualified Person and the payment by such
25 Person of the prescribed fee, the Commission may grant and issue to that
26 Person a Transportation Network Operator Licence authorising the conduct
27 of activities specified in the Licence, including the following:

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

 (2) The Commission shall grant only one Transportation Network

1 Operator Licence within a geographically defined area to a single Network
2 operator; provided however, that the Commission may, at its discretion, issue
3 similar Licences to other parties for the operation of isolated or dedicated
4 pipelines.

5 46. The Transportation Network Operator shall exercise the rights and
6 obligations imposed on it in a manner best calculated to meet the following:

7 (a) operate an efficient and economical Transportation Network for the
8 safe and reliable conveyance of Gas in such a manner as is designed to
9 meet all reasonable demands for Gas;

10 (b) operate nominations and balancing mechanism and an equitable
11 curtailment of Gas transportation whenever technical or operational
12 expediencies so require;

13 (c) ensure equitable and transparent access to the Transportation Network;

14 (d) establish and publish terms and conditions for access to the Network;

15 (e) enter into agreements with Transportation Pipeline Owners, Distributors,
16 and, where appropriate, Wholesale Customers for connection to, and
17 operation of, the Transportation Network.

18 47. Subject to the provisions of this Act, the Commission may grant the
19 following special powers or authority to a Transportation Network Operator
20 to facilitate the conduct of its Licensed activities:

21 (a) the power to request for and obtain from all Licensees, information
22 required to operate the nominations and balancing mechanism, to operate
23 the Network or to facilitate competition;

24 (b) subject to any restrictions or conditions imposed by the Commission
25 with respect to both the level and structure of its charges, the right to
26 recover, on the basis of an invoice, expenses reasonably incurred in
27 undertaking its Licensed activities; and

28 (c) to purchase Gas for its own operations for purposes such as testing and
29 commissioning of facilities, for compression purposes and for line fill.

30 48. In addition to such conditions as may be imposed by the Commission
pursuant to section 26 of this Act, a Transportation Network Operator Licence

Downstream Gas

1 may include an obligation to develop market rules in accordance with section
2 68 of this Act.

3 PART VII — SUPPLY LICENCE

4 49.—(1) Subject to section 22 of this Act, and upon the approval by the
5 Commission of an application made by a Qualified Person and the payment
6 of the prescribed fee, the Commission may grant and issue to that Person a
7 Supply Licence.

8 (2) A Producer of Gas intending to Supply Gas into the Downstream
9 Sector shall be a Qualified Person within the meaning of the provisions of
10 this Part and shall be entitled to apply for and be issued a Supply Licence by
11 the Commission.

12 (3) A Supply Licence, whilst it has effect, authorises the Supplier to sell
13 and deliver Gas to purchasers of Gas at any location in Nigeria.

14 50.—(1) A Supplier shall undertake the activities contemplated by the
15 Supply Licence in a manner best calculated to comply with the following
16 general obligations:

17 (a) to provide a reliable supply of Gas to purchasers on request, provided
18 that it is economically feasible to do so; and

19 (b) to do nothing that, in the opinion of the Commission, may prevent,
20 restrict or distort competition.

21 51. Subject to the provisions of this Act, the Commission may grant the
22 following specific powers or authority to a Supplier to facilitate the conduct
23 of its Licensed activities:

24 (a) the right to terminate Gas supply to a Customer in the event of
25 non-payment, following a notice period and disconnection procedure
26 specified in Regulations issued pursuant to this Act;

27 (b) the right to recover from a Customer, on the basis of an invoice, and
28 subject to any restrictions or conditions imposed by the Commission
29 with respect to both the level and structure of a Licensee's charges, all
30 costs reasonably incurred in the supply of Gas, inclusive of the cost of
31 Gas, the cost of transportation and distribution of Gas, as well as Licence
fees; provided always that the sale of Gas to Wholesale Customers by the

1 holder of a Supply Licence shall be subject to the provisions of Section 81
2 of this Act;

3 (c) the right to enter a premises to remove its meters, for the purpose of
4 reading meters, to test metering equipment and to disconnect Customers;
5 such entry to be undertaken in accordance with a metering code issued
6 by the Commission.

7 52.—(1) In addition to such conditions as may be imposed by the
8 Commission pursuant to sections 25 and 26 of this Act, a Supply Licence shall
9 be deemed to be granted subject to the Supplier:

10 (a) ensuring a reliable and efficient supply of Gas to Customers on request,
11 provided that it is economical to do so;

12 (b) requesting security or applying a credit scoring methodology approved
13 by the Commission in deciding whether supply is economical;

14 (c) subject to safety and Network capacity constraints, supplying Gas on
15 request to a Customer who is willing and able to pay for connection to the
16 Transportation Network;

17 (d) conducting Licensed activities safely and reliably in compliance with
18 any law in force and any health and safety Regulations issued pursuant to
19 this or any other Act;

20 (e) complying with Customer Protection measures in accordance with Part
21 XIII of this Act.

22 (2) A Supplier shall be obliged to undertake its Licensed activities in a
23 manner that is best calculated to meet the covenants and conditions of the
24 Licence.

25 PART VIII — TRANSPORTATION PIPELINE OWNER LICENCE

26 53.—(1) Subject to section 22 of this Act, and upon the approval of
27 the Commission of an application by a Qualified Person and the payment by
28 such Person of the prescribed fee, the Commission may grant and issue to
29 that Person a Transportation Pipeline Owner Licence with the exclusive right
30 to own, construct, operate and maintain a Transportation Pipeline within a
31 route as defined in the Licence.

(2) In considering an application for a Transportation Pipeline Owner

1 Licence, the Commission shall consider the economic case for a Transportation
2 Pipeline including the potential demand for its use.

3 54. The Transportation Pipeline Owner shall undertake the activities
4 contemplated by the Transportation Pipeline Owner Licence in a manner
5 best calculated to comply with the following general obligations:

6 (a) to operate and maintain economical, safe and reliable Transportation
7 infrastructure taking into account any strategic plans formulated by the
8 Commission;

9 (b) manage supply shortfalls and meet on a reasonable endeavour basis
10 requests for transportation above contractual volumes;

11 (c) shut down its transportation systems in emergencies and in order to
12 carry out maintenance;

13 (d) manage the transportation pipelines as a reasonable and prudent
14 operator; and

15 (e) to do nothing that, in the opinion of the Commission, prevents, restricts
16 or distorts competition.

17 55. In addition to such conditions as may be imposed by the Commission
18 pursuant to sections 25 and 26 of this Act, a Transportation Pipeline Owner
19 Licence shall be deemed to be granted subject to the condition that the
20 Transportation Pipeline Owner Licensee shall:

21 (a) not Supply Gas to Customers on its own account;

22 (b) conduct its Licensed activities safely and reliably in compliance with
23 any law then in force and prescribed health and safety Regulations made
24 pursuant to this or any other Act;

25 (c) have due regard for the effect of its Licensed activities on the
26 environment and complying with the requirements for environmental
27 protection, management, and restoration under this Act and any law then
28 in force; and

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

1 56.—(1) Subject to section 22 of this Act, and upon approval by the
2 Commission of an application made by a Qualified Person and the payment
3 of the prescribed fee, the Commission may grant and issue to that Person
4 a Distribution Licence granting the right to own and operate a distribution
5 system and to Distribute Gas within a Local Distribution Zone.

6 (2) The holder of a Distribution Licence shall be entitled to apply for,
7 hold and operate a License for the exclusive Supply of Gas within the Local
8 Distribution Zone to Customers that are not Wholesale Customers.

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

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

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

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

19 (a) to develop, operate and maintain an economical Distribution Network
20 for the safe and reliable conveyance of Gas;

21 (b) to ensure a reliable and efficient Distribution of Gas to Customers on
22 request, provided that it is economical to do so;

23 (c) subject to safety and Network capacity constraints, to distribute Gas
24 on request to a Customer who is willing and able to pay for connection to
25 the Distribution Network;

26 (d) to conduct Licensed activities safely and reliably in compliance with
27 any law in force and any health and safety Regulations issued by the
28 Commission pursuant to this or any other Act;

29 (e) to connect all Customers within its Local Distribution Zone in accordance
30 with the Regulations if economically practicable to do so;

31 (f) to co-operate with the Commission in the development of the Network
Code;

Downstream Gas

- 1 (g) to offer and publish terms and conditions of access to its Distribution
2 Network as required;
3 (h) to comply with Customer Protection measures in accordance with Part
4 XIII of this Act; and
5 (i) to do nothing to prevent, restrict or distort competition.

6 58. Subject to the provisions of this Act, the Commission may, in order
7 to facilitate the conduct of its Licensed activities, grant the Distributor the
8 right:

- 9 (a) to enter the premises of a Customer in order to read meters, to test
10 metering equipment or to disconnect Customers and remove meters;
11 (b) the right to recover, on the basis of an invoice, costs reasonably incurred
12 in the provision of appropriate infrastructure, subject to any restriction or
13 conditions imposed by the Commission with respect to both the level and
14 structure of a Distributor's charges; and provided that reasonably incurred
15 costs shall include any amount paid to the Commission as a Licence fee.

16 59.—(1) In addition to such conditions as may be imposed by the
17 Commission pursuant to sections 25 and 26 of this Act, or that may be
18 prescribed by Regulations issued pursuant to this Act, each Distribution
19 Licence shall be deemed to be granted subject to the Distributor:

- 20 (a) conducting its Licensed activities in a safe and reliable standard and in
21 compliance with prescribed management, health, and safety Regulations
22 issued pursuant to this Act or any other Act;
23 (b) having due regard to the effect of its Licensed activities on the
24 environment and complying with the requirements for environmental
25 protection, management, and restoration under this Act and any law then
26 in force;
27 (c) marking, maintaining and securing the boundaries of the Pipelines
28 constructed as prescribed;
29 (d) complying with Customer Protection measures set out in Part XIII of
30 this Act.

31 (2) A Distributor shall connect Customers within its Local Distribution

1 Zone in the manner prescribed by Regulations issued pursuant to this Act,
2 provided that it is economical and practical to do so.

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

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

8 PART X — LICENSING OF PRE - EXISTING ACTIVITIES

9 61. There shall be incorporated a company to be known as the Nigerian
10 Gas Transportation Company which shall be a body corporate with limited
11 liability which shall succeed into the activities of the Nigerian Gas Company
12 relating to the Transportation of Gas in accordance with the transfer provisions
13 set out in the Second schedule to this Act.

14 62.—(1) The Nigerian Gas Transportation Company shall be a joint
15 venture company between the Nigerian National Petroleum Corporation and
16 private sector investors.

17 (2) A minimum of 51% of the issued share capital of the Nigerian Gas
18 Transportation Company shall be held by private sector investors.

19 63. The Commission shall issue a Transportation Pipeline Owner Licence
20 to the Nigerian Gas Transportation Company in respect of the pre-existing
21 Transportation Pipelines transferred from the Nigerian Gas Company to the
22 Nigerian Gas Transportation Company.

23 64.—(1) There shall be incorporated a company to be known as the
24 Nigerian Gas Marketing Company which shall be a body corporate with limited
25 liability which shall succeed into the activities of the Nigerian Gas Company
26 relating to the Supply and Distribution of Gas in accordance with the transfer
27 provisions set out in the Second Schedule to this Act.

28 (2) The Nigerian Gas Marketing Company shall be a wholly - owned
29 subsidiary of the Nigerian National Petroleum Corporation.

30 65. The Commission shall issue a Supply Licence and Distribution
31 Licence to the Nigerian Gas Marketing Company in respect of the pre-existing
Distribution Networks transferred by the Nigerian Gas Company.

Downstream Gas

PART XI — WHOLESALE GAS MARKET

- 1
2 66. The Commission shall, following consultations with interested
3 stakeholders, make recommendations to the Minister to issue Regulations:
4 (a) defining the class or classes of Customers that, from time to time, shall
5 constitute Wholesale Customers under this Act; and
6 (b) specifying the qualifying criteria for such classification;
7 provided that such Regulations may be amended from time to time to
8 facilitate the introduction of competition in Supply and, provided further
9 that any amendment of the Regulations resulting in a change of the class
10 of Customers shall not affect the rights and obligations of parties under Gas
11 Supply contracts entered into prior to such amendment.
- 12 67. Wholesale Customers shall be entitled to secure Gas from any
13 Supplier authorised by a Licence to Supply Gas.
- 14 68.—(1) If the Commission determines that there is a need for formal
15 arrangements for the trading of Wholesale Gas, the Commission may require
16 the Transportation Network Operator to develop arrangements for the safe
17 and efficient trading of Wholesale Gas.
- 18 (2) If required pursuant to subsection (1), the Transportation Network
19 Operator shall make arrangements for the trading and settlement of
20 Wholesale Gas in consultation with industry participants and interested
21 stakeholders and subject to the approval of the Commission.
- 22 (3) The arrangements for the trading of Wholesale Gas may include, but
23 shall not be limited to:
- 24 (a) the designation of a Market Operator by the Commission to facilitate
25 Gas trading;
26 (b) the levying of charges on market participants to recover the costs of
27 market operation, and the level of charges to be subject to the approval
28 of the Commission;
29 (c) arrangements by which the purchasers of Wholesale Gas have access
30 to offers to sell, and the sellers of Wholesale Gas have access to offers to
31 purchase Gas;
 (d) arrangements for settling the volumetric or monetary accounts for

Downstream Gas

1 purchases and sales of Gas between parties; and
2 (e) rules of participation in the Wholesale Gas market and governance
3 arrangements for overseeing their implementation and amendment.

4 (4) The Wholesale Gas trading arrangements:

5 (a) may be compulsory or optional; and

6 (b) may be incorporated into the Network Code developed in accordance
7 with the provisions of section 70 (2) of this Act.

8 (5) Once the arrangements and applicable rules have been approved,
9 the Commission shall:

10 (a) publish a notification in the form and manner prescribed by Regulations
11 issued pursuant to this Act indicating that the Wholesale Gas trading
12 arrangements have been approved and stating the date on which they
13 will be implemented; and

14 (b) make copies available to members of the public upon payment of the
15 prescribed fee.

16 PART XII — THIRD PARTY ACCESS

17 69.—(1) Any Person shall be permitted access to a Transportation
18 Pipeline, a Transportation Network or a Distribution Network, as the case
19 may be, for the purpose of having Gas transported to points of consumption
20 subject to compliance with the prescribed terms and conditions for access
21 stated in the Network Code.

22 (2) The Commission shall be primarily responsible for the development
23 of a Network Code that shall set out standard terms and conditions for
24 connection to, access and use of the Transportation Network and Distribution
25 Networks.

26 (3) Where a Transportation or Distribution Pipeline is isolated from
27 the main Transportation Network or Distribution Network, the Commission
28 shall develop separate terms of access for such isolated Transportation or
29 Distribution Pipeline.

30 70.—(1) Third Party Access to the Transportation Network and
31 Distribution Network shall be:

Downstream Gas

- 1 (a) provided on a non-discriminatory basis between system users with
2 similar characteristics;
3 (b) provided in respect of any available capacity. Provided that such
4 capacity is not subject to a previous contractual commitment;
5 (c) provided in accordance with and governed by the terms and conditions
6 of the Network Code(s) approved by the Commission;
7 (d) provided on the condition that the applicant for access is or becomes
8 a party to and undertakes to comply with the applicable Network Code;
9 and

10 (e) subject to the pricing principles set out in Part XIV of this Act.

11 (2) Connection Agreements may be entered into between:

- 12 (a) a Customer and a Distributor; or
13 (b) Transportation Pipeline Owners and Transportation Network Operator,
14 or
15 (c) a Distributor and the Transportation Network Operator, when a
16 Distribution Network connects to the main Transportation Network, or
17 (d) a Supplier and a Transportation Pipeline Owner or Transportation
18 Network Operator.

19 71.—(1) Disputes in respect of Third Party Access shall be resolved by
20 a Determination of the Commission.

21 (2) Notwithstanding any contrary provisions of Part XVIII or Part
22 XIX of this Act, appeals against Determinations made by the Commission
23 in connection with Third Party Access may be referred to arbitration in
24 accordance with the procedure specified in the Arbitration and Conciliation
25 Act Cap 19 Laws of the Federation of Nigeria Vol.1, 1990.

PART XIII — CUSTOMER PROTECTION

27 72.—(1) In order to protect the interests of Customers, the Commission
28 may make recommendations to the Minister to issue Regulations requiring
29 Suppliers or Distributors, as the case may be, and by such means as the
30 Regulations may specify:

- 31 (a) to publish their terms of Supply or Distribution;
(b) to establish or to facilitate the establishment of a forum at which

1 Customers are able to express their views and to raise concerns;
2 (c) to formulate and adhere to such standards of performance as are, in its
3 opinion, necessary to ensure the safety, reliability and quality of Supply and
4 Distribution services to Customers; and set penalties for failure to comply;
5 (d) to prepare and submit reports to the Commission indicating their
6 performance levels and the status of their operations in respect of Licensed
7 activities at such times as may be prescribed by Regulations or in their
8 respective Licences, and at least on an annual basis;
9 (e) to develop and adhere to Customer service codes, setting out the
10 practices and procedures to be followed in the conduct of specified
11 Licensed activities. Such codes may include, but shall not be limited to,
12 practices and procedures for:
13 (i) the installation, testing, Maintenance and reading of meters;
14 (ii) fault repairs and response to Customer emergencies;
15 (iii) the connection and disconnection of Customers;
16 (iv) responding to Customer complaints and complaint resolution;
17 (v) billing and invoicing;
18 (vi) the extension of payment and credit facilities;
19 (vii) the provision of information to Customers and the use and
20 protection of Customer information;
21 (viii) the establishment of special services for economically or socially
22 disadvantaged Customers.
23 (2) All Customer service codes must be approved by the Commission
24 prior to publication and may be reviewed at intervals as may be considered
25 necessary by the Commission. The codes shall be made available to all
26 Customers on request.
27 (3) The Commission shall by Regulations require, Licensees to notify
28 Customers of Customer service codes that must be adhered to by Licensees.
29 Notification may be effected by advertising the availability of the Customer
30 service codes in a form and manner prescribed in Regulations issued pursuant
31 to this Act.

Downstream Gas

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

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

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

9 (a) in the event that an existing Distributor for a Local Distribution Zone or
10 a Supplier becomes insolvent, or is unable to provide Licensed services,
11 or has had its Licence suspended or revoked;

12 (b) in the event that the Distributor for a Local Distribution Zone or Supplier
13 refuses or fails to fulfil the terms of its Licence to Distribute or Supply Gas
14 to Customers; and

15 (c) in such other circumstances as the Commission may, deem appropriate;
16 provided that any reasonable additional costs associated with the obligation
17 to act as Distributor or Supplier of Last Resort will be recoverable through
18 appropriate charging arrangements agreed with the Commission.

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

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

PART XIV — THE PRICING REGIME

27 75.—(1) Where the Commission determines:

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

then the Commission shall have the power to regulate the prices charged or

Downstream Gas

1 the revenues earned by Licensees in respect of such activities, in a manner
2 consistent with the Commission's duties under section 9(p) of this Act and
3 with the pricing principles set out in section 76.

4 (2) The Commission shall have the power to undertake periodic
5 pricing methodology reviews provided however that a pricing methodology
6 review shall not affect arrangements entered into or approvals given for the
7 development of a Downstream Gas utilization project.

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

12 76. In the exercise of its powers to regulate prices charged and the
13 revenues earned by Licensees, the Commission shall, at all times be guided
14 by the following principles:

15 (a) Gas prices shall be disaggregated into the component elements of
16 the supply chain including the costs of Wholesale Gas, Transportation,
17 Distribution and Supply;

18 (b) the prices charged for each Licensed activity shall reflect the costs
19 incurred in the efficient provision of that activity;

20 (c) prices charged shall permit a reasonable return for Licensees on their
21 investments; and

22 (d) prices shall not discriminate between Customers with similar
23 characteristics, such as similar size or a similar consumption profile.

24 77. Licensees, subject to price or revenue Regulations issued pursuant
25 to this Act shall:

26 (a) propose Tariffs and Tariff methodologies for the approval of the
27 Commission prior to the application of such charges;

28 (b) impose Tariffs in accordance with such approval; and

29 (c) publish such Tariffs, as required by the Commission in a manner that
30 ensures that the Customers of such Licensees are able to identify and
31 calculate the full extent of all charges for which they will become liable.

78. The Tariffs charged for the use of the Transportation Network shall

Downstream Gas

1 reflect:

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

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

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

9 80. Regulated Customer prices shall reflect:

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

17 81.—(1) Notwithstanding the provisions of section 76, Wholesale Gas
18 Supply between a Supplier and a Customer shall be negotiated directly
19 between the parties on an arms length basis; provided however, that the
20 Gas transfer price between an Upstream Gas producer and a Downstream
21 purchaser shall be transparent and reflect the transfer price between the
22 parties.

23 (2) The Commission shall have power to monitor Wholesale Gas Supply
24 transactions in order to ensure that the transfer price between the Wholesale
25 Gas Supplier and Customer is undertaken on a transparent arms length basis.

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

31 (4) The information provided to the Commission by the Supplier in

1 compliance with the provisions of subsection (3) of this section shall be
2 classified by the Commission as confidential information and may not be
3 disclosed to any Persons, except the Federal Inland Revenue Service for a
4 period of five years commencing from the date of the submission of the
5 information to the Commission.

6 (5) The Supplier shall be guilty of an offence and liable to a fine not
7 exceeding x50,000,000 if he knowingly conceals information required
8 under subsection (3) of this section or provides information which is false or
9 misleading in any material particular with respect to the information required
10 in subsection (3) of this section.

11 82.—(1) A transitional pricing plan setting out temporary or transitional
12 pricing arrangements allowing for a gradual transition towards pricing
13 arrangements that comply with the pricing principles outlined in section 76
14 shall be introduced and implemented by the Commission.

15 (2) The transitional pricing plan shall be formulated by the Commission
16 in consultation with the Ministers for Petroleum Resources, Finance, Industries
17 and Power and Steel; and with Gas producers, power producers, the National
18 Electricity Regulatory Commission and other key stakeholders.

19 (3) The transitional pricing plan shall:

20 (a) address cross-subsidies existing within the Downstream Gas Sector
21 between Customers, between classes of Customers and between the
22 Gas sector and the power and other industrial sectors at the date of the
23 coming into force of this Act;

24 (b) include, but not be limited to, such matters as:

25 (i) arrangements for eradicating the cross-subsidies referred to in
26 subsection (3) (a);

27 (ii) the prescription of the period(s) during which transitional pricing
28 arrangements will apply;

29 (iii) implications for other parties and sectors;

30 (iv) actions required to implement the plan; and

31 (v) identification of the parties responsible for particular actions.

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

6 83.—(1) The Commission shall investigate any case of suspected
7 anti-competitive behaviour and make necessary Determinations thereon as
8 contemplated in Part XIX of this Act. The Commission may impose penalties if
9 the Licensee is adjudged to have conducted its activities in a non - competitive
10 manner; and

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

14 PART XV — PUBLIC SERVICE OBLIGATIONS

15 84.—(1) The Commission may, following consultations with Licensees,
16 Customers and other interested stakeholders, make recommendations to
17 the Minister to issue Regulations imposing Public Service Obligations on
18 Licensees in relation to matters including, but not limited to the following:

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

24 85.—(1) The Commission shall make recommendations to the Minister
25 to issue Regulations providing for the recovery of any additional costs incurred
26 in complying with the Public Service Obligations through a public service levy,
27 which may be imposed on Customers provided that it would, in the opinion
28 of the Minister, be in the wider public interest.

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

PART XVI — COMPETITION AND MARKET REGULATION

Downstream Gas

1 86. No Licensee or any other Person having the ability to influence the
2 terms and conditions on which Licensed activities are performed and the
3 price at which Gas is supplied in the Downstream Gas Sector shall:

4 (a) make it a condition for the provision or supply of a product or service in
5 the Downstream Gas Sector whereby any Person acquiring such a product
6 or service will be required to acquire or not to acquire any other product
7 or service either from the Licensee or from any other Licensee, Person or
8 entity;

9 (b) enter into any contract, arrangement collaboration or understanding,
10 whether legally enforceable or not, which provides for or permits:

11 (i) the fixing of Tariffs, prices or charges for the purpose of, or in such a
12 manner as to, manipulate market prices or the price of any product or
13 service;

14 (ii) engage in or conduct its activities, directly or indirectly, for purpose
15 of market sharing;

16 (iii) permit, allow, influence, direct or indirect exclusion of, or the
17 imposition of any embargoes or boycotts on, another Licensee, operator
18 or supplier of equipment or apparatus; or

19 (c) engage in any other conduct that the Commission deems
20 anti-competitive.

21 87.—(1) Notwithstanding the provisions of any other law, the
22 Commission shall have the responsibility to prevent and take action against
23 anti-competitive behaviour in the Downstream Gas Sector; and for this
24 purpose may:

25 (a) initiate an action in the Federal High Court for the determination of the
26 question whether any conduct by a Licensee or any other Person operating
27 or intending to operate in the Downstream Gas Sector:

28 (i) has the purpose or effect of substantially lessening competition in
29 any segment of the Downstream Gas Sector; or

30 (ii) would likely result in anti-competitive or discriminatory conduct,
31 including but not limited to an unlawful exercise of market power
that may prevent Customers from obtaining the benefits of a properly

Downstream Gas

- 1 functioning and competitive Downstream Gas market;
- 2 (b) consider, in its decisions and Determinations regarding matters
3 including, but not limited to, Licence applications, the grant of Licences,
4 Licence terms and conditions and the regulation of prices in respect of
5 services in competitive markets, how best to prevent or mitigate abuses
6 of market power;
- 7 (c) where, in the opinion of the Commission there is, or may be, or there
8 exists a likelihood of, anti-competitive behaviour and in particular an
9 abuse of market power, and so that the Commission may discharge its
10 responsibilities under this section, the Commission may:
- 11 (i) issue cease and desist orders as may be required;
- 12 (ii) require and compel the disclosure of information from such
13 Licensees;
- 14 (iii) undertake inquiries and investigations;
- 15 (iv) levy fines which shall be set out in Regulations issued pursuant to
16 this Act from time to time, provided that such fines shall not exceed
17 10% of the annual turnover of the affected Person or company for the
18 preceding year.
- 19 (d) notwithstanding the provisions of this section, upon the application
20 by a Licensee or other Person with the ability to influence the price of
21 Gas in the Downstream Gas Sector, and where the Commission considers
22 that it would be in the national interest or that it would be necessary to
23 preserve or promote the benefits of a properly functional and effectively
24 competitive Downstream Gas market, the Commission:
- 25 (i) may give written approval for a specific activity upon such terms and
26 conditions as the Commission shall deem appropriate;
- 27 (ii) in issuing the approval, may impose such requirements as it deems
28 fit and require such undertakings as it deems appropriate from the
29 applicant as a condition precedent to the issuance of the said approval;
- 30 (iii) may withdraw an approval of a specific activity that it has granted
31 subject to such terms and conditions as it may, in its absolute discretion,
designate; and

Downstream Gas

1 (iv) issue Directions to prevent or mitigate any conduct that shall or
2 is likely to lead to unlawful exercise of market power that will prevent
3 Customers from obtaining the benefits of a properly functioning and
4 competitive Downstream Gas market.

5 (2) Nothing in subsection (1) of this section shall be construed to
6 preclude or restrict the right of the Commission or any Person to seek an
7 injunction against any conduct prohibited in this Part XVI provided that the
8 Commission must be notified by any Person who wishes to proceed to court
9 or to arbitration for the enforcement of any of the provisions of this Part XVI.

10 (3) Notwithstanding the provisions of any other law, the Commission
11 shall, until such time as a federal agency having the power to determine,
12 pronounce upon, administer, monitor and enforce compliance with
13 anti-competition laws is established and functional, have the exclusive
14 competence to determine, pronounce upon, administer, monitor and enforce
15 compliance with this Part XVI, competition laws and Regulations that govern
16 or relate to the Downstream Gas Sector whether or not they are of a general
17 or specific nature. In so doing the Commission may consider:

- 18 (a) the relevant economic market;
- 19 (b) global trends in the relevant economic market;
- 20 (c) the effect on the number of competitors in the market and their
21 respective market shares;
- 22 (d) the effect on barriers to entry into the market;
- 23 (e) the effect on the range of services in the market;
- 24 (f) the effect of the conduct on the cost and profit structures in the market;
- 25 (g) the ability of any independent Licensee or operator to make price or
26 Tariff regulating decisions; and
- 27 (h) any other matters which the Commission deems relevant.

28 88.—(1) Notwithstanding the provisions of any other law, the
29 Commission shall have responsibility to monitor the state of the Gas market
30 in order:

- 31 (a) to determine whether the Downstream Gas Sector is ready for an
increased level of competition in retail and supply services in order that

Downstream Gas

- 1 it may make recommendations to the Minister to issue Regulations for
2 amendment of the definition of Wholesale Customers in this Act;
- 3 (b) to determine whether there is a need for an organised market for
4 Wholesale Gas in order that it may take the relevant steps pursuant to
5 section 68 to develop a Wholesale market arrangement;
- 6 (c) to assess whether the Downstream Gas Sector is operating properly
7 or whether the existing market arrangements may constitute barriers to
8 entry into the market for new players;
- 9 (d) to determine whether there is any anti-competitive activity being
10 carried on, in which case the Commission would be required to exercise
11 its powers under this section of the Act to prevent the continuance of such
12 activity;
- 13 (e) to determine any pre-conditions and any transitional arrangements
14 required for any services to be offered competitively.
- 15 (2) To enable the Commission to discharge its responsibilities under
16 sub-section (1) above and in particular, to determine whether there is, or may
17 be, an abuse of market power, the Commission shall have power to:
- 18 (a) require and compel the disclosure of information from Licensees;
19 and
- 20 (b) undertake inquiries and investigations.
- 21 (3) If, in the opinion of the Commission there has been an abuse or a
22 threatened abuse of market power, the Commission may serve a notice on
23 such company or Person specifying the abuse or threatened abuse, and of
24 its intention to issue a cease and desist order.
- 25 (4) The Commission shall publish the notice:
- 26 (a) specifying the actual or threatened contravention;
27 (b) directing the company or Person to whom the notice is issued to, or
28 not to do, such things as it may specify;
29 (c) specifying the remedy and the timescale for compliance; and
30 (d) notifying the company or Person to whom the notice is issued of its
31 intention to issue a cease and desist order or to levy a fine not exceeding

Downstream Gas

1 x50,000,000 provided that such fine shall not exceed 10% of the annual
2 turnover of the company or Person for the preceding year.

3 (5) The Commission shall publish the notice in the form and manner
4 specified in the Regulations and shall invite the company or Person to whom
5 the notice is issued and any other interested parties to make representations
6 against or in support of the notice by a specified date.

7 (6) If the company or Person to whom the notice is issued fails to comply
8 with a notice served pursuant to subsection (1) of this section, the Commission
9 may issue a cease and desist order. Failure to comply with such an order shall
10 constitute an offence punishable by a fine not exceeding x50,000,000 or the
11 revocation of the relevant Licence where that company or Person is a Licensee.

12 (7) A cease and desist order may not be issued nor a fine imposed if:

13 (a) the company or Person to whom the notice is issued is able to
14 demonstrate to the satisfaction of the Commission that it has not abused
15 or is not threatening to abuse its market power; or

16 (b) the company or Person to whom the notice is issued has ceased to
17 abuse or has ceased from the threat to abuse its market power provided
18 that if the earlier contravention was deliberate, the Commission may, at
19 its discretion, impose an appropriate penalty which shall be prescribed in
20 the Regulations issued pursuant to this Act.

21 (8) Appeals in respect of such legal proceedings shall be brought before
22 the Court of Appeal.

23 PART XVII — OFFENCES AND PENALTIES

24 89.—(1) Notwithstanding anything contained in any other law, no
25 Person shall:

26 (a) cause damage to any infrastructure, plant or equipment belonging to
27 a Licensee, including but not limited to Gas fittings, meters, apparatus or
28 equipment; or

29 (b) alter the operation of any meter, equipment or apparatus including
30 but not limited to those used for measuring the quantity or quality of Gas
31 supplied; or

(c) prevent any such meter, equipment or apparatus including but not

Downstream Gas

1 limited to all such items used for measuring or registering the quantity of
2 Gas supplied, from functioning accurately or properly such as or registering
3 the quantity of Gas supplied; or

4 (d) otherwise destroy, interfere with or remove the meters, equipment or
5 apparatus of a Licensee without the permission of the Licensee.

6 (2) Any Person convicted for intentionally committing any offence listed
7 in subsections 1 (a) to (d) of this section shall be liable to:

8 (a) pay a penalty not exceeding x10,000,000; and

9 (b) reimburse the Licensee for any Gas illegally taken and for any damage
10 to the Licensee's equipment; provided that:

11 (i) where such Person is unable to pay the penalty or to reimburse the
12 Licensee, he or, in the case of a company, every officer responsible for
13 the management of the company, shall be liable to imprisonment for a
14 period of not less than two years and not more than five years unless, the
15 officer proves to the strictest standard, that he had taken all reasonable
16 precautions and exercised due diligence to prevent the commission of
17 the offence; and

18 (ii) the Commission may, from time to time adjust the amount of the
19 penalty stipulated in subsection (a) of this section by Regulations issued
20 pursuant to this Act, in order to reflect current rates of inflation.

21 (3) Any Person convicted for negligently committing any offence listed
22 in subsections 1 (a) to (d) of this section, shall be liable to

23 (a) pay a penalty not exceeding x2,000,000; and

24 (b) reimburse the Licensee for any Gas illegally taken and for any damage
25 to the Licensee's equipment, provided that:

26 (i) where such Person is unable to pay the penalty or to reimburse the
27 Licensee, he or, in the case of a company, every officer responsible for
28 the management of the company, shall be liable to imprisonment for a
29 period of not less than six months and not more than two years unless,
30 having regard to the nature of his functions in that capacity and to
31 all circumstances, the officer proves that he had taken all reasonable

1 precautions and exercised due diligence to prevent the commission of
2 the offence; and

3 (ii) the Commission may, from time to time adjust the amount of the
4 penalty stipulated in subsection (a) of this section by Regulations issued
5 to pursuant to this Act, in order to reflect current rates of inflation.

6 (4) Where an offence has been committed under subsection (1)
7 above, the Supplier may, discontinue the Supply of Gas until any damage,
8 alteration, malfunction or loss has been rectified and all safety issues have
9 been resolved.

10 90. No Licensee shall use or permit its Pipeline, equipment or other
11 facilities to be used in, for, or in relation to, the commission of any criminal
12 or civil offence, and each Licensee shall:

13 (a) upon a written request from the Commission or any other lawful or
14 duly empowered authority, assist the Commission or such lawful authority,
15 in preventing the commission or attempted commission of any criminal
16 offence under this Act or any other statute in force in the Federal
17 Republic of Nigeria including but not limited to those affecting the public
18 revenue and the preservation of national security;

19 (b) in respect of any act or omission arising from the performance of a
20 duty or obligation imposed by the Commission or other lawful authority
21 not be liable for any act or for any omission done in good faith.

22 91. Where no specific penalty is prescribed in respect of any offence
23 under this Act, any Person who contravenes any of the provisions of this Act
24 or any Regulations issued pursuant to this Act guilty of an offence and shall
25 be liable, on conviction:

26 (a) as a first offender, to a fine not exceeding x2,000,000 or to such other
27 amount as may be prescribed in Regulations issued pursuant to this Act
28 or to imprisonment for a period not exceeding two years or to both fine
29 and imprisonment; or

30 (b) for subsequent convictions, to a fine not exceeding x10,000,000 or such
31 other amount as may be prescribed in Regulations issued pursuant to this
Act or to imprisonment for a period not exceeding five years or to both

1 fine and imprisonment; provided that the Commission may, from time to
2 time adjust the amount of the penalty stipulated in subsection (a) of this
3 section by Regulation, in order to reflect current rates of inflation.

4 92. Any Person who:

5 (a) fails or refuses to furnish a return or to supply information to the
6 Commission or any other duly empowered lawful authority at the time
7 and in the manner prescribed; or

8 (b) who furnishes a false or incomplete return; or

9 (c) supplies false or incomplete information; or

10 (d) wilfully delays or obstructs the Commission, its officers, an inspector or
11 police officer in the exercise of the powers or duties conferred or imposed
12 on the Commission under this Act; or

13 (e) conceals, fails or refuses, without reasonable cause, to supply
14 information required by the Commission or any duly empowered lawful
15 authority at the time and in the manner prescribed or when required to do
16 so, shall be guilty of an offence and shall be liable to a fine not exceeding
17 x20,000,000 or to imprisonment for a period not exceeding one year or
18 to both fine and imprisonment provided that the Minister may, from time
19 to time adjust the amount of the penalty stipulated in this section by
20 Regulations issued pursuant to this Act, in order to reflect current rates of
21 inflation.

22 PART XVIII — DISPUTE RESOLUTION

23 93.—(1) The Commission shall have the power to resolve disputes
24 between Persons who are subject to this Act and between such Persons and
25 other parties regarding any matter under this Act or its subsidiary legislation
26 provided that no dispute shall be referred to the Commission unless:

27 (a) an attempt has been made by the parties concerned to resolve the
28 dispute through negotiation;

29 (b) a resolution cannot be reached under any other relevant or applicable
30 dispute resolution procedure prescribed by this Act, including but not
31 limited to those pertaining to the Wholesale market and the Network

1 Code; and

2 (c) both parties are granted the opportunity to present their respective
3 cases to the Commission.

4 (2) For purpose of the resolution of disputes the Commission may
5 act either as an arbitrator or mediator.

6 (3) When acting as an arbitrator the Commission shall issue a
7 Determination on the matter.

8 (4) The Commission may if it so wishes, appoint a Person acceptable to
9 all parties to act as mediator or arbitrator on its behalf in respect of any dispute
10 before it and the decision of the mediator or arbitrator shall be regarded as
11 being the determination of the Commission.

12 94.—(1) The Commission may publish guidelines setting out the
13 principles that it may take into account in resolving disputes.

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

16 (a) an agreement may not be reached, or will not be reached between the
17 parties to the dispute within a reasonable time; and

18 (b) the resolution of the dispute would promote the objects of this Act or
19 its subsidiary legislation.

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

22 (4) The Commission may make recommendations to the Minister to
23 issue Regulations for the discharge of the functions and for the conduct of
24 the proceedings of the Commission, including but not limited to procedures
25 for participation in the proceedings of Licensees, Customers, Wholesale
26 Customers and other Persons.

27 95.—(1) Subject to the objects of this Act and any guidelines issued
28 by the Commission under this Part, the Commission or, if the Commission
29 deems fit, an arbitrator, may resolve the dispute in accordance with the
30 Arbitration and Conciliation Act provided that the Commission shall have the
31 discretion to require either party to the dispute to pay any costs incurred by
the Commission in appointing an arbitrator.

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

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

6 (a) be properly recorded in writing;

7 (b) state the basis or bases for the Determination; and

8 (c) be provided to the parties to the dispute as soon as practicable.

9 96.—(1) The Commission shall register all Determinations that it
10 makes pursuant to this Part.

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

12 (a) the names of the parties to the dispute;

13 (b) a general description of the matter pertaining to the Determination;

14 and

15 (c) the date of the Determination.

16 97. Subject to the agreement of the parties, a Determination
17 of the Commission may be enforced by the Federal High Court as if the
18 Determination is a judgment of such Court.

19 98.—(1) An aggrieved Person shall have a right of appeal to the
20 Federal High Court for a judicial review of questions of law and process
21 pertaining to a Determination or other action of the Commission.

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

26 99.—(1) If any question of law arises during a proceeding for a
27 Determination of the Commission, the Commission may, at its discretion,
28 request any Person directly affected by such proceeding to reserve that
29 question for the decision of the Federal High Court.

30 (2) Where a question has been reserved in terms of subsection (1),
the Commission shall state the question in the form of a special case and file

1 it with the Registrar of the Federal High Court.

2 PART XIX — LEGAL PROCEEDINGS

3 100.—(1) Subject to the provision of this Act, the provisions of the
4 Public Officers Protection Act shall apply in relation to any suit instituted
5 against any member, officer or employee of the Commission.

6 (2) No suit shall be commenced against the Commission before
7 the expiration of a period of one month after written notice of intention to
8 commence the suit has been served upon the Commission by the intending
9 plaintiff or his agent; and the notice shall clearly and explicitly state the cause
10 of action, the particulars of the claim, the name and place of abode of the
11 intending plaintiff and the relief which he claims.

12 (3) The Federal High Court shall have original jurisdiction in any
13 dispute between the Commission and:

- 14 (a) its employees;
- 15 (b) any Licensee;
- 16 (c) any other Person.

17 101. Any summons, notice or other document required or authorised
18 to be served upon the Commission under the provisions of this Act or any
19 other enactment or law may be served by delivering the same to the Chief
20 Executive Officer of the Commission or the Secretary to the Commission at
21 the principal office of the Commission.

22 102. In any action or suit against the Commission no execution
23 or attachment or process in the nature thereof shall be issued against the
24 Commission but any sums of money which may, by the judgment of the court,
25 be awarded against the Commission shall, subject to any directions given by
26 the court where notice of appeal has been given by the Commission, be paid
27 from the general reserve fund of the Commission.

28 103. Every Commissioner, agent, auditor or employee for the time
29 being of the Commission shall be indemnified out of the assets of the
30 Commission against any liability incurred by him or her in defending any
31 proceedings whether civil or criminal, if any such proceeding is brought
against him or her in his or her capacity as such Commissioner, agent, auditor

1 or employee as aforesaid.

2 PART XX — MISCELLANEOUS

3 104.—(1) The general responsibilities and functions of the Minister
4 under this Act shall include the following:

5 (a) to make Regulations subject to recommendations made by the
6 Commission;

7 (b) subject to section 105 of this Act, the formulation, modification, issuance
8 and monitoring of policies for the Downstream Gas Sector;

9 (c) subject to section 88 of this Act and following consultations with the
10 Commission, to determine the extent of competition in the retail and
11 Supply markets for Gas;

12 (d) the obligation to receive and review records and reports submitted by
13 the Commission pursuant to this Act;

14 (2) The Minister shall in all cases conduct his statutory duties in a
15 manner best calculated to meet the objectives set out in section 2 of this Act.

16 105.—(1) Prior to the formulation or review of policies for the
17 Downstream Gas Sector the Minister shall consult with and have due regard
18 to the representations of relevant stakeholders in the Downstream Gas Sector,
19 including, but not limited to, the Commission, the Federal Ministry of Finance,
20 Federal Ministry of Power and Steel, the Federal Ministry of Environment and
21 the National Electricity Regulatory Commission as well as industry participants
22 and the general public.

23 (2) In formulating and reviewing policies for the Downstream Gas
24 Sector or any amendments thereto, the Minister shall take into consideration
25 the findings of the consultative process carried out pursuant to subsection
26 (1) of this section.

27 106.—(1) Subject to subsection (2) of this section, the Minister shall,
28 in writing, from time to time notify the Commission of any specific concerns
29 of the Federal Government in respect of the Downstream Gas Sector.

30 (2) In the execution of his functions in his relationship with the
31 Commission, the Minister shall at all times ensure that the independence

1 of the Commission is maintained and is not in any way compromised with
2 respect to the discharge of its functions and operations under this Act.

3 107.—(1) The holder of a Licence, Lease or Contract issued under
4 the provisions of the Petroleum Act, Cap 350 Laws of the Federation of
5 Nigeria 1990 shall, if required by the Commission, disclose in writing to the
6 Commission within a period of 14 days such information as may be required
7 by the Commission in respect of:

8 (a) its Gas reserves available in various fields within its Licence, lease
9 or contract area; or

10 (b) the price payable in respect of Gas supply from its Licence, lease
11 or contract area, as the case may be, to a willing and able Wholesale Customer
12 or Licensed Supplier;

13 (2) Where it is established by the Commission that there are sufficient
14 Gas resources available within a Licence, Lease or contract area and:

15 (a) that there is a deliberate and unreasonable withholding of Gas supply by
16 the holder of the Licence, Lease or Contract to a willing and able Wholesale
17 Customer or Licensed Supplier, or

18 (b) the holder of the Licence, Lease or Contract does not have a viable plan
19 for the utilization of the Gas resources within a reasonable timeframe, or

20 (c) it is in the public interest that the holder of the Licence, Lease or Contract
21 supply Gas to the interested Wholesale Customer or Licensed Supplier;

22 the Commission shall recommend to the Minister, and the Minister shall have
23 the power to compel the holder of the Licence, Lease or Contract to make
24 Gas available to the interested Wholesale Customer or Licensed Supplier
25 free of cost at the flare or upon terms to be negotiated between the parties.

26 108.—(1) A Commissioner shall upon his appointment disclose to
27 the Commission all conflicts of interest, whether actual or potential in respect
28 of or in connection with any of his functions as a Commissioner.

29 (2) A Commissioner shall not take part in the consideration or
30 discussion of, or vote on any matter before the Commission which places him
31 or her in a conflict of interest situation, whether actual or potential, including

1 but not limited to any contract, right, immovable property or interest of any
2 nature or any matters referred to in subsection (1) of this section.

3 (3) A Commissioner shall, during the continuance of his or her
4 appointment, declare his or her interests and investments on an annual basis
5 such interests and investments as he or she is permitted to maintain pursuant
6 to section 4 (1) (b) of this Act.

7 109.—(1) No decision or act of the Commission or act done under
8 the direction of the Commission shall be invalid on the ground that:

9 (a) there existed a vacancy or vacancies among the Commissioners; or

10 (b) there existed some defect in the constitution of the Commission at the
11 time that the decision was taken or the act was done or authorised.

12 (2) Any decision or act of the Commission which results in a conflict
13 between the private interests and functions of a Commissioner, contrary to
14 the provisions of section 18 and the First Schedule to this Act, shall be invalid.

15 110. In this Act—

16 “Act” means the Downstream Gas Act;

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

21 “Authorised Area” in relation to Distribution, means the geographically
22 defined area designated as such in the Licence, that is not, for the time
23 being, also so designated in any other Licence of the same type;

24 “Board” means Board of Commissioners established under section 3 of this
25 Act;

26 “Chairman” means Chairman of the Commission and the Board under this
27 Act;

28 “Commissioner” means any Person or Persons appointed to the Commission
29 to act in that capacity;

30 “Companies and Allied Matters Act” means the Companies and Allied
31 Matters Act, Cap 59, Laws of the Federation of Nigeria, 1990;

“Connection Agreement” means an agreement setting out the terms on

Downstream Gas

1 which individual, physical connections to the Transportation Network
2 will be effected and matters such as the configuration, pressure, technical
3 parameters and cost of the connection;
4 “Customer” means any ultimate purchaser of Gas for end-use consumption;
5 “Customer Protection” means the standards, practices and service
6 protections for Customers including, but not limited to, those relating
7 to pricing, service quality and standards, billing practices, performance
8 reporting and any Regulations of the Commission that provide such
9 protections;
10 “Determination” means a formal written decision of the Commission
11 settling a dispute referred to it for resolution pursuant to Part XVIII of this
12 Act;
13 “Direction” means a charge or instruction issued by the Commission to a
14 Licensee or other Person in the exercise of its powers or for other purposes
15 connected with this Act;
16 “Distribution” or “Distribute” means the activity of conveying Gas to
17 Customers through low-pressure Pipelines;
18 “Distribution Licence” means a Licence granted pursuant to Part IX of this
19 Act;
20 “Distribution Network” means a set of interconnected Gas Distribution
21 Pipelines;
22 “Distribution Pipeline” means a low-pressure Pipeline for the purposes of
23 conveying Gas;
24 “Distributor” means the holder of a Distribution Licence;
25 “Distributor of Last Resort” means a Person designated by the Commission
26 to Distribute Gas within a specified area in the event that another
27 Distributor is unable to do so, for whatever reason;
28 “Downstream” begins at the point that natural Gas enters a facility
29 producing Pipeline Specification Gas;
30 “Downstream Gas Sector” comprises the activities of Transportation,
31 Distribution and Supply of Gas to Customers. It includes the extraction
of liquefied petroleum Gas for commercial purposes and the sale and

Downstream Gas

- 1 purchase of Gas for industrial uses such as the production of compressed
2 natural Gas, electric power, Gas to liquids, liquefied natural Gas, methanol
3 and fertilizer, but excludes Pipelines for the transportation of natural Gas
4 from producing wells to facilities producing Pipeline Specification Gas;
5 “Enforcement Order” means an order issued by the Commission;
6 “Financial Year” means the period of twelve months from 1st January to
7 31st December in any calendar year or such other meaning as may be
8 ascribed by the Financial Year Act, Chapter 145 Laws of the Federation of
9 Nigeria 1990 or such other period as the Minister may determine
10 “Gas Meter” means any equipment or any combination of devices that
11 serve to measure the volumes of Gas conveyed through the Network as
12 well as the volumes of Gas utilised by the Customers;
13 “Gas Producer” or “Producer” means the holder of a lease or other
14 legal authorisation permitting the extraction of Gas, whether or not in
15 association with any other hydrocarbon;
16 “Gas Regulatory Commission” or “Commission” means the regulatory
17 authority established pursuant to Part I of this Act;
18 “Land Use Act” means the Land Use Act, Chapter 202, Laws of the Federation
19 of Nigeria 1990;
20 “Licence” in relation to Transportation Network Operation, Transportation,
21 Distribution and Supply of Gas, means a Licence issued by the Commission
22 pursuant to Part V of this Act and “Licensed “ has a corresponding meaning;
23 “Licensee” means any Person who holds a Licence issued by the Commission
24 pursuant to Part V of this Act;
25 “Local Distribution Zone” means an Authorized Area as specified in the
26 Regulations, within which one Distributor may operate;
27 “Maintain” means to repair and keep in good working order; and
28 “Maintenance” has a corresponding meaning;
29 “Market Operator” means a Person engaged in the organisation and
30 administration of the trading of Wholesale Gas;
31 “Minister” means the Minister charged with responsibility for Petroleum

Downstream Gas

- 1 Oil and Gas Resources in Nigeria;
- 2 “Network” means a system of interconnected Transportation and/or
- 3 Distribution Pipelines;
- 4 “Network Code” means the code developed by the Transportation Network
- 5 Operators in accordance with section 10 of this Act;
- 6 “NGC” or the “Nigerian Gas Company” means the Nigerian Gas Company
- 7 Limited;
- 8 “NGTC” means the Nigerian Gas Transportation Company established
- 9 pursuant to Part X of this Act;
- 10 “NGMC” means the Nigerian Gas Marketing Company established pursuant
- 11 to Part X of this Act;
- 12 “Nigeria” means the territory of the Federal Republic of Nigeria inclusive of
- 13 its land borders, territorial waters, continental shelf and exclusive economic
- 14 zone;
- 15 “NNPC” means the Nigerian National Petroleum Corporation established
- 16 pursuant to the provisions of the Nigerian National Petroleum Corporation
- 17 Act Cap 320, Laws of the Federation of Nigeria 1990;
- 18 “Person” means an individual, a firm, an unincorporated association or a
- 19 body corporate;
- 20 “Pipeline” means all parts of any infrastructure through which Gas is
- 21 conveyed, including pipes, valves, and other equipment appurtenant to
- 22 pipes such as compressor stations, compressor units, metering stations,
- 23 regulator stations, delivery stations, holders, and fabricated assemblies;
- 24 “Pipeline Specification Gas or Gas” means Gas of a quality specified in a
- 25 contract between a Supplier and a Customer and conforming to a quality
- 26 specified in the Regulations issued pursuant to this Act for introduction
- 27 into the Downstream Gas Sector;
- 28 “Pipeline Route” means a route specified in a Transportation Pipeline Owner
- 29 Licence in respect of which the Licensee may construct and operate a
- 30 pipeline;
- 31 “President” means the President of the Federal Republic of Nigeria;
- “Public Interest” means the general protection of the collective health and

Downstream Gas

- 1 welfare of the citizens of the Federal Republic of Nigeria in contradistinction
2 to the protection of the interests of any individual Person;
- 3 “Public Service Obligations” means specific obligations imposed by the
4 Minister on Licensees in relation to security of supply, social service,
5 economic development, environmental protection or the use of
6 indigenous materials;
- 7 “Qualified Person” in respect of the issuance of a Licence to a Transport
8 Network Operator, Supplier, Distributor or Transport Pipeline Owner is
9 such Person as is designated by Regulations issued by the Commission
10 pursuant to this Act;
- 11 “Regulations” means any Regulations issued or made by the Minister
12 pursuant to this Act;
- 13 “Relative” means spouse, child, parent, brother, sister, uncle, aunt, in-laws,
14 cousins, and, where applicable, their spouses, children and step relations;
- 15 “Retail Tariff” means the composite price charged to Customers for Gas
16 delivered to the point of consumption;
- 17 “Supply” means the sale of Gas by a Supplier to a purchaser of Gas;
- 18 “Supplier” means the holder of a Supply Licence;
- 19 “Supplier of Last Resort” means a Person designated by the Commission
20 to Supply specified purchasers in the event that another Supplier is, for
21 whatever reason, unable to do so;
- 22 “Supply Licence” means a Licence granted pursuant to Part VII of this Act;
- 23 “Tariff” means the price charged for the provision of a particular service,
24 or group of services, in the Downstream Gas Sector;
- 25 “Third Party Access” means the right of any Person to have Gas conveyed
26 by a Transportation Pipeline Owner, or a Transportation Network Operator
27 or a Distributor from a point of entry into the Transportation or Distribution
28 Network, as the case may be, to a point of exit from the Transportation or
29 Distribution Network subject to the terms and conditions of the Network
30 Code(s);
- 31 “Transport” or “Transportation” means the conveyance of Gas through the
Transportation Network;

Downstream Gas

- 1 "Transportation Network" means a system of interconnected high pressure
2 Gas Transportation pipelines and other facilities required to carry out the
3 function of Transportation;
- 4 "Transportation Network Operation" means the activities carried out by a
5 Transportation Network Operator;
- 6 "Transportation Network Operator" means the holder of a Transportation
7 Network Operator Licence;
- 8 "Transportation Network Operator Licence" means a Licence granted
9 pursuant to Part VI of this Act;
- 10 "Transportation Pipeline" means a Pipeline used for the bulk conveyance
11 of Gas under high-pressure;
- 12 "Transportation Pipeline Owner" means the holder of a Transportation
13 Pipeline Owner Licence;
- 14 "Transportation Pipeline Owner Licence" means a Licence issued pursuant
to Part VIII of this Act that authorises the holder of the Licence to own,

Downstream Gas

construct and Maintain Pipelines for the Transportation of Gas;

“Upstream” in relation to delineating the Downstream Gas Sector means all activities prior to the Downstream Gas Sector;

“Vice-Chairman” means the Vice Chairman of the Commission;

“Wholesale Customer” means a class of Customer designated in Regulations issued by the Commission as having the right to contract for and secure a Supply of Wholesale Gas from any source for either domestic use or export purposes;

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

111. This Act may be cited as Downstream Gas Bill, 2006.

FIRST SCHEDULE

PROCEEDINGS OF THE COMMISSION

1. The Commission may specifically or generally authorise any member or employee of the Commission to undertake anything authorised or required by the Act to be done by the Commission, provided that:

(a) any such delegation of functions shall be subject to such reservations, restrictions and exceptions as the Commission may determine, and may be revoked by the Commission at any time;

(b) such delegations shall not include the power of the Commission to delegate its authority or its power to make Determinations.

2. The Commission shall establish documented procedures for:

(a) establishing committees for undertaking specific activities or functions and determining their membership, remit and governance;

(b) holding and recording the proceedings of meetings;

(c) decision making, particularly the process for consulting stakeholders, and the process for recording and publishing Determinations and other decisions together with the reasons for the Determinations and decisions;

(d) recording and storing any information received from Licensees in the course of carrying out its statutory duties; and

(e) the delegation of authority to specific members of the staff of the Commission;

3. The Commission shall meet for business as often as is necessary or expedient and, subject to this section, may adjourn, close and otherwise regulate its meetings and procedure as it deems fit.

4. The Chairman or, in his absence, the Vice Chairman shall preside at all meetings of the Board of the Commission;

5. All decisions of the Commission shall be held on the basis of majority of the members present and voting;

6. The quorum for the meeting of the Commission shall be five and, at all meetings of the Commission, each Commissioner present shall have one vote on each question before the Commission;

7. For a meeting of the Commission to review any previous decision or order taken by the Commission, the quorum shall be no less than the Commissioners present when the decision was taken or order was made;

8. Without derogation from Subsection (3), the Commission may conduct its business by means of written resolutions signed by all the Commissioners, provided that, if any Commissioner requires that a matter be placed before all the Commissioners for discussion, this subsection shall not apply to such matter.

SECOND SCHEDULE

CONFLICT OF INTEREST PROVISIONS

1. Subject to the provisions of this Schedule, no Commissioner or staff of the Commission shall have a direct or indirect financial interest or investment in any Licensee engaged in the Downstream Gas Sector throughout the tenure of his office or employment with the Commission.

2. Subject to paragraphs 4 and 5 hereof, each Commissioner or staff of the Commission shall, on an annual basis, present a written declaration affirming the non-existence of any such interest as is specified in paragraph 1 and shall pledge to disclose and inform the Commission of any such relationship or interest that arises or is likely to arise during his tenure or employment with the Commission.

3. A Commissioner shall, prior to accepting his appointment to the Commission, make a declaration of assets in accordance with section 172 of the Constitution of the Federal Republic of Nigeria 1999.

4. All Commissioners and staff of the Commission shall, within a period of six months of their appointment, divest themselves of any direct or indirect financial interests, if any which they hold in the Downstream Gas Sector at the date of their appointment to the Commission.

5. Each Commissioner or staff of the Commission shall declare on appointment or at the commencement of employment and annually thereafter, for as long as he serves the Commission, any interest or investment that he -

(a) has; or

(b) knows any member of his immediate family to have in any aspect of the Downstream Gas Sector.

6. For so long as a Person holds the office of Commissioner, and for a period of one year after he ceases to be a Commissioner for any reason whatsoever, he shall not acquire, hold or maintain, directly or indirectly, any interest, office, employment or consultancy arrangements connected with the

Downstream Gas Sector, whether for remuneration or otherwise engage in any activity connected therewith. If such Person acquires any such interest involuntarily or by way of succession or testamentary disposition, he shall promptly notify the Commission and divest himself of such interest within a period of three months of such interest being acquired unless the Commission decides, after due enquiry, that the interest of the Commissioner is minimal or not material. In determining whether or not the interest of a Commissioner or his employment subsequent to having left office is minimal or not material the Commission shall have regard to the provisions set out in this Schedule.

7. If a Commissioner or staff of the Commission contravenes the provisions of paragraphs 1 and 2 of this Schedule, or gives false information under paragraph 5 of this Schedule, they shall be liable, on conviction, to the payment of a fine not exceeding five million naira or imprisonment for a term not exceeding one year or to both.

8. The Commission shall, in establishing whether or not the interest of a Commissioner or staff of the Commission is minimal or not of a material nature, consider factors including but not limited to the following —

- (a) the revenues, investments, profits and managerial efforts of the relevant company or other entity in regard to its communications activities compared with other aspects of the company's or such entity's business;
- (b) the extent to which the Commission regulates and oversees the activity of such company or entity;
- (c) the degree to which the economic interests of such company or other entity may be affected by an action of the Commission; and

(d) the perceptions held or likely to be held by the public regarding the relevant Person's financial interest or investment in that company or other entity.

9. The Commission may at any time review and reverse its findings under paragraph 8 of this Schedule and direct the application of the prohibitions contained in this Schedule to the affected Commissioner or staff of the Commission and the Board shall not be under an obligation to disclose the reason or basis for its review to the affected Commissioner or staff member.

10. In any case in which the Commission exercises the waiver or the reversal of its findings as specified in paragraph 9 of this Schedule, the Commission shall so soon thereafter publish the details thereof and such publication shall include information regarding the identity of the Person who has been granted the waiver or in whose favour a reversal of a finding has been made, the position held by such Person and, the nature of the financial interests which are the subject of the waiver or the reversal.

THIRD SCHEDULE

CONSEQUENTIAL AMENDMENTS

110.—(1) Notwithstanding anything to the contrary in any enactment, the powers and obligations of the Minister of Petroleum Resources in respect of the Downstream Gas Sector existing immediately before the commencement of this Act, shall, upon the commencement of this Act, be limited to the scope of the powers and obligations of the Minister as is specified in this Act, and where necessary, shall be exercised by the Commission in accordance with the provisions of this Act.

(2) Upon the coming into force of this Act, any enactment for the time being in force in Nigeria shall be amended to the extent that it is inconsistent with the provisions of this Act. In particular:

(a) the Petroleum Act, Cap 350, Laws of the Federation of Nigeria, 1990 and the Regulations issued thereunder, to the extent that it vests the Minister with powers in respect of matters regulated by this Act;

(b) the Nigerian National Petroleum Corporation Act, 1977, Chapter 320, Laws of the Federation of Nigeria 1990, to the extent that it establishes a Petroleum

Downstream Gas

Inspectorate and charges the Nigerian National Petroleum Corporation with the duty of establishing, providing and operating pipelines, tanker-ships or other facilities for the carriage or conveyance of natural Gas and its products and derivatives.

(3) Any legislation, subsidiary legislation or Regulation, guideline, directive and order made pursuant to any principal legislation amended by this Act, shall, in so far as it is not inconsistent with this Act and subject to section 1 of this Third Schedule, remain in operation 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.

(4) Any regulations, by laws or notices relating to the Downstream Gas Sector which, immediately before the commencement of this Act, were in force, shall continue to be in force *mutatis mutandis* as if they had been issued by the Commission under this Act and may be amended or repealed upon the issuance of Regulations by the Minister in accordance with the provisions of this Act.

FOURTH SCHEDULE

TRANSITIONAL AND SAVINGS PROVISIONS

1. Any Licence or permit granted under an enactment amended by this Act shall continue to have effect, *mutatis mutandis*, for the remainder of its period of validity as if it had been issued under the appropriate provisions of this Act.

2. Any Person engaged in the Transportation, Distribution and Supply of Gas and in the operation of a Gas Transportation Pipeline prior to the commencement of this Act shall, within six months of the commencement of this Act, or within such further period as the Commission may allow, apply in writing to the Commission for a Licence under Part V of this Act.

3. The Commission shall grant a Licence contemplated in this Act unless it finds that the applicant is not capable of or is unwilling to operate any of the Licensed activities in a manner that is consistent with the purposes and provisions of this Act.

4. Nothing in this Act shall invalidate any Licence, lease, right or agreement entered into between the Nigerian Gas Company Limited with third parties or other authority provided that:

(a) such Licence, lease, right, agreement or other authority shall be limited to the extent prescribed by this Act; and

(b) save as otherwise expressly provided by such Licence, lease, right, agreement or other authority, it shall be the duty of any holder of such Licence, lease, right, agreement or other authority to do all such act as will enable it exercise its rights thereunder in accordance with the requirements of this Act and in all respects as if such Licence, lease, right, agreement or other authority were issued under this Act or any Regulations made thereunder.

Downstream Gas

5. The rights, interests, obligations and liabilities of the Nigerian National Petroleum Corporation and the Nigerian Gas Company, existing before the commencement of this Act under any contract or instrument, or in any law or in equity shall by virtue of this Act be deemed to have been preserved, assigned to and vested, as the case may be, in the Nigerian Gas Transportation Company Limited and Nigerian Gas Marketing Company established by this Act to the extent that they are not inconsistent with any of the provisions of this Act

6. Any Tariff, price, levy or surcharge which, immediately before the commencement of this Act, was chargeable in respect of the supply of Gas to