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~~Lagos - 24th June, 2022~~

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Vol. 109

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Government Notice No.74

The following is published as supplement to this *Gazette*:

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45 Nigeria Upstream Petroleum Host Communities Development
Regulations, 2022.

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Footnotes and Publishers

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title

PETROLEUM INDUSTRY ACT, NO. 6, 2021
NIGERIA UPSTREAM PETROLEUM HOST COMMUNITIES
DEVELOPMENT REGULATIONS, 2022.



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PETROLEUM INDUSTRY ACT, NO. 6, 2021**NIGERIA UPSTREAM PETROLEUM HOST COMMUNITIES
DEVELOPMENT REGULATIONS, 2022****[23rd Day of June, 2022]**

In exercise of the powers conferred on it by sections 10(f), 234(2) and 235(6)(a) of the Petroleum Industry Act, No. 6, 2021 ("the Act") and of all other powers enabling it in that behalf, the Nigerian Upstream Petroleum Regulatory Commission ("Commission") makes the following Regulations—

heading

PART I — OBJECTIVES AND APPLICATION**1. The objectives of these Regulations are to**heading
Objective.

(a) provide substantive and procedural requirements for the establishment and administration of the trust and the Fund for Nigerian Upstream Petroleum host communities ;

(b) outline the parameters for the administration and safeguard of the Fund ;

(c) prescribe a grievance resolution mechanism for settlement of disputes between host communities and settlors ; and

(d) provide general rules for the implementation of the provisions of section 234 (1) (a)-(d) of the Act for the development of host communities.

2. These Regulations shall apply to Nigerian Upstream Petroleum host communities and a holder of a licence or lease engaged in upstream petroleum operations as defined in section 318 of the Act.

Application.

heading

PART II — GENERAL POWERS OF THE COMMISSION**3. Pursuant to section 235(6) of the Act, the Commission shall have powers to—**small
General
Powers of
the
Commission.

(a) conduct a periodic assessment of the performance of each fund using a performance matrix published on its website ;

(b) investigate and report pursuant to section 26 of the Act, cases of fraud, mismanagement, misappropriation or misapplication of the Fund to relevant authorities, including the Nigeria Police Force, Economic and Financial Crimes Commission and the Corporate Affairs Commission ;

(c) initiate action to trace and recover the funds of the trust, where the funds are mismanaged or misappropriated ;

(d) set up a mechanism for members of the upstream petroleum communities under a trust to report any incidents of fraud, mismanagement, misappropriation or misapplication of the Fund ; and

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Responsibility
for
compliance.

heading

(e) ensure implementation of proposed projects of upstream petroleum communities at all stages, which includes project initiation, contract award, project execution and project completion.

4.—(1) A licensee or lessee shall ensure compliance with these Regulations and the Act.

(2) Where a licence or lease is held by more than one licensee or lessee operating under a joint operating agreement, the operator appointed under the joint operating agreement or other agreement, shall be responsible for compliance on their behalf.

(3) Notwithstanding the provisions of sub-regulation (2) of this regulation, a licensee or lessee shall be liable for any failure on the part of the operator to comply with the provisions of the Act or these Regulations.

5. An area of operation shall be a territory within the boundary of the area to which a licence or a lease relates and any area which hosts a licensee or lessee's facilities used in upstream petroleum operations in accordance with the provisions of section 318 of the Act.

6.—(1) A host community shall be as defined under section 318 of the Act.

(2) In determining host communities situated in or appurtenant to shallow water and deep-water areas of operation, the following criteria shall apply—

(a) a littoral community to a deep-water area of operation located along the Gulf of Guinea of the Nigerian shoreline up to about 500 metres inland, provided that such community is gazetted by the National Boundary Commission ;

(b) littoral communities to shallow water areas of operations within Nigeria's shallow waters, identified as a host community by a settlor prior to the enactment of the Act, and any other community identified and determined by the settlor ;

(c) littoral communities to shallow water and deep-water areas of operations, which include any other community selected by the settlor pursuant to section 235(3) of the Act ; and

(d) littoral communities to deep-water area of operations shall be categorised by their respective state coastlines and shall be assigned to a settlor by the Commission for the purpose of setting up the trust and other responsibilities provided under Chapter 3 of the Act.

(3) Any host community which is a beneficiary of the trust shall not be excluded by the settlor or Commission from a trust except in the following circumstances—

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Determination
of
operational
area.

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Determination
of host
community.

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Returns.

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B 2119

(a) where the boundary of the area of operation changes as a result of relinquishment, such that a community previously selected as a beneficiary is no longer within the area of operation of the retained area of the lease ; or

(b) where a court of competent jurisdiction has by a final unappealed judgment, determined that a community previously selected as a host community, does not qualify as a host community under the Act or any other law.

heading

PART III — HOST COMMUNITY DEVELOPMENT TRUST AND TRUST FUND

7. Prior to a registration of a trust at the Corporate Affairs Commission, not later than 60 days prior to the deadline prescribed under section 236 (a) (d) and (e) of the Act, a settlor or through the operator, where applicable, shall submit to the Commission for approval, the following documents in relation to the trust to be registered—

(a) a copy of the proposed constitution of the trust to be registered, which shall be in compliance with sections 239(1), 239(2), 240(1), 241, 242(1), 247(1), 249(1), 254 and 255 of the Act and section 827 of the Companies and Allied Matters Act ;

(b) the details of the proposed trustees of the trust, intended to form the Board of Trustees as stipulated in regulation 13(2) of these Regulations ;

(c) the criteria for the selection of the trustees, subject to regulation 13(2) of these Regulations ;

(d) a copy of the applicant's licence or lease, with a map identifying the settlor's area of operations annexed to it ;

(e) the list and location of host communities to be covered by the trust ;

(f) the host community development plan specifying matters described in regulation 20 of these Regulations ; and

(g) a fund matrix specifying matters described in regulation 22(1) of these Regulations.

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Pre-approval
of Host
Community
Development
Trust
registration
by the
Commission.

8.—(1) The Commission shall within 30 days of receipt of the documents submitted by the settlor pursuant to regulation 8 of these Regulations, notify the settlor of its approval or refusal of the application.

(2) Where the Commission refuses the settlor's application, the Commission shall provide the settlor with the reason for refusal and may direct the settlor to amend its application and resubmit it within 30 days.

(3) Where the Commission does not communicate its decision to the settlor within the 30-day period specified in sub-regulation (2) of this regulation, the settlor's application shall be deemed to have been approved, and the settlor shall be entitled to proceed with the incorporation of the trust.

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Approval by
the
Commission.

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Failure to
Incorporate
a trust.

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9.—(1) Where a settlor fails to incorporate a trust as stipulated in section 236 (a), (d) and (e) of the Act, the Commission may within 14 days issue to such defaulting settlor or operator where applicable, a notice in writing of its failure to establish a trust and direct the settlor to register the trust within 45 days.

(2) A settlor that fails to incorporate a trust within the timeline stated in the notice under sub-regulation (1) of this regulation, shall be liable to an administrative penalty of \$2,500 or its equivalent in Naira per day from the date of expiration of 45 days' notice period issued under sub-regulation (1) of this regulation until the trust is incorporated.

(3) The Commission may make recommendations to the Minister, for the revocation of the licence or lease of the defaulting settlor where the settlor fails to incorporate a trust within 30 days after the expiration of the 45 days' timeline specified by the Commission in the notice issued under sub-regulation (1) of this regulation.

10.—(1) A trust shall be administered in accordance with the provisions of the Act, these Regulations, the constitution of the trust and any other applicable law.

(2) The Commission may, in the exercise of its supervisory and oversight powers—

(a) require information from the settlor, the Board of Trustees or the fund manager relating to the administration of the trust or the Fund, where the Commission believes that there is or has been any misconduct or mismanagement in the administration of the trust or the Fund ;

(b) enter into any project site owned by or being administered by the trust for the purpose of inspecting the progress of any project embarked on by the trust ;

(c) carry out enquiries, audits or investigations and take other steps to monitor the activities of the trust ; and

(d) take any other steps prescribed by the Act to ensure compliance with the provision of the Act and these Regulations.

(3) The Commission shall give the settlor reasonable time to provide the information requested pursuant to sub-regulation (2) of this regulation and the settlor shall make available the information requested within the timeline specified by the Commission.

(4) The Board of Trustees of a trust shall ensure that the trust and the Fund are equitably administered and managed in accordance with the provision of the Act and these Regulations.

(5) Where it appears to the Commission that there is, there has been or likely to be a contravention of the Act, these Regulations or the constitution of the trust, or there has been any misconduct or mismanagement in the administration of the Fund, the Commission shall give notice to the settlor, Board of Trustees or the operator where applicable, and require it to take remedial actions specified by the Commission.

(6) Where the settlor fails to take any remedial actions pursuant to sub-regulation (5) of these Regulations, the settlor shall be liable to administrative penalty of \$2,500 or its equivalent in Naira per day for each day it remains in default.

(7) The administration of the trust shall be subject to the provisions of the Companies and Allied Matters Act and any other applicable law.

11.—(1) The trustees and the settlor shall not dissolve the trust except with the approval of the Commission.

(2) The trustees or settlor as the case may be, shall give the Commission sufficient details of its reason, where they intend to dissolve the trust.

(3) The Commission may in its discretion, approve or refuse to approve the proposed dissolution of the trust.

(4) The Commission may approve the dissolution of a trust where—

(a) in its estimation, the trust is no longer required ;

(b) the object of the trust has been fully realised ;

(c) the licence of the settlor has expired and is not renewed ; and

(d) the licence of the settlor is revoked and the oil field or block has not been reallocated, and in each case, the Fund has been fully exhausted.

(5) Where the Commission refuses to approve the proposed dissolution of a trust, it shall give reasons for doing so.

(6) Where the Commission approves the dissolution of a trust, the trust shall be dissolved in accordance with the provisions of the Companies and Allied Matters Act.

12.—(1) Subject to regulation 13(2) of these Regulations, a settlor shall—

(a) prior to the incorporation of a trust, appoint in consultation with the host communities, the first trustees ; and

(b) in consultation with the advisory committee, appoint additional or replacement trustees, other than the first trustees.

(2) The number of the trustees shall be an odd number, not exceeding nine members, but subject to size and diversity of the host community.

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Winding up
and
dissolution
of trust and
the Fund.

small
Appointment
of trustees.

(3) The settlor shall determine the criteria for the appointment of trustees, the selection process, remuneration, discipline, qualification, disqualification, suspension and removal of any member of the Board of Trustees.

(4) Without prejudice to the provisions of the Act and these Regulations, a settlor shall give due consideration to diversity as it relates to age, gender and physical disability in determining the criteria for appointment to the Board of Trustees.

(5) Members of the Board of Trustees shall serve a term of four years in the first instance and may be reappointed for another term of four years and no more.

13.—(1) Prior to appointment of a trustee, the settlor shall submit an application to the Commission in the prescribed form for approval.

(2) The application referred to under sub-regulation (1) of this regulation shall be accompanied with the following information and documents—

(a) the draft constitution of the trust ;

(b) the minutes of the meeting with the host communities or advisory committee as applicable where the proposed trustee was nominated for appointment ;

(c) the full name and address of the proposed trustee ;

(d) a copy of a valid means of identification of the proposed trustee ;

(e) the qualifications and professional background of the proposed trustee, including a short profile of the proposed trustee ;

(f) evidence that the trustee comes from the relevant host community ; and

(g) any other document the Commission may specify from time to time.

(3) The Commission shall within 30 days of receipt of the application, give notice to the settlor of the rejection or approval of the appointment of the trustee.

(4) Where the Commission fails to give notice to the settlor within the time specified in sub-regulation (3) of this regulation, the appointment of the trustees shall be deemed approved.

(5) The Commission may reject the appointment of a trustee, where it determines that—

(a) the provisions of the Act were not complied with in the process of the selection of the trustee ;

(b) the trustee does not meet the criteria for appointment as provided in the constitution of the trust ; or

Content

(c) the trustee is disqualified from acting as a trustee under regulation 14 of these Regulations.

(6) The settlor shall not advertise the name of a proposed trustee or register a trustee with the Corporate Affairs Commission unless the trustee has been approved or deemed approved by the Commission.

14. Without prejudice to the provisions of the Act, a person shall not be qualified to be appointed as a trustee of a trust, where the person—

- (a) is not of high integrity and professional standing ;
- (b) is an infant, that is, less than 18 years old ;
- (c) is of unsound mind, having been found by a court as such ;
- (d) is an undischarged bankrupt ; and

(e) has been convicted of an offence involving fraud or dishonesty within ten years of the proposed appointment.

15. The Board of Trustees shall administer the trust and perform the duties provided under section 243 of the Act.

16.—(1) The settlor may remove a trustee from office in accordance with the constitution of the trust.

(2) A trustee shall be removed from office where at any time during the trustee's tenure, the trustee becomes disqualified as a trustee in accordance with regulation 12(3) of these Regulations and the constitution of the trust.

(3) The settlor shall remove a trustee within 30 days of becoming aware that the trustee has become disqualified in accordance with regulation 12(3) of these Regulations and the constitution of the trust.

(4) Where a settlor fails to remove a trustee as specified by these Regulations or any applicable law, the settlor shall be liable to pay an administrative penalty of \$2,500 or its equivalent in Naira for every day the disqualified trustee continues to hold office.

(5) For the purpose of sub-regulation (3) of this regulation, the settlor shall be deemed to have notice of any matter which disqualifies a trustee under regulation 14 of these Regulations where such matters are publicly known or reasonably ought to have been known by the trustee or the settlor.

(6) The settlor shall within 14 days of removal of a trustee, notify the Commission of such removal and provide the Commission with supporting documents evidencing the grounds for such disqualification or reason for removal.

(7) A trustee shall be deemed to have vacated office upon disqualification as a trustee in accordance with regulation 14 of these Regulations and shall no longer be eligible to participate in the activities of the Board of Trustees.

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Minimum
qualifications
of a trustee.

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Duties of
the Board of
Trustees.
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Removal of
a trustee by
the settlor.

17.—(1) A trustee may resign from office voluntarily at any time, subject to giving a 21 days notice of resignation to the settlor.

(2) The settlor shall within seven days of receipt of the letter of resignation of a trustee or upon otherwise having notice of the resignation of a trustee, notify the Commission of the resignation.

heading
PART IV — HOST COMMUNITIES DEVELOPMENT TRUST COMMITTEES

18.—(1) Within 30 days of the establishment of the trust, the Board of Trustees shall set up and appoint members of the management committee.

(2) The management committee shall comprise—

(a) a representative of each of the host community, nominated by the relevant host community as a non-executive member ;

(b) the following executive members, who shall be Nigerians of high integrity and professional standing—

(i) a person, who is qualified to practice as an accountant in Nigeria, with not less than 10 years' experience as a practicing accountant in Nigeria,

(ii) a person, who is a member of the Chartered Institute of Project Managers of Nigeria, with not less than 10 years' experience as a practicing project manager in Nigeria,

(iii) a person with at least 10 years working experience in the finance sector in Nigeria, and

(iv) a legal practitioner with not less than 10 years post call experience.

(3) A person shall not be qualified to act as a member of the management committee, where the person—

(a) is less than 18 years old ;

(b) is a lunatic or a person of unsound mind ;

(c) is an undischarged bankrupt ; or

(d) has been convicted of an offence relating to fraud, dishonesty or vandalism of any oil installations and gas assets in Nigeria.

(4) The remuneration, qualification, disqualification, discipline, suspension or removal of members of the management committee by the Board of Trustees shall be in accordance with the constitution of the trust.

(5) A member of the management committee shall serve a term of four years in the first instance and may be reappointed for another term of four years and no more.

(6) The Board of Trustees shall notify the Commission within 10 working days of the appointment or removal of any member of the management committee.

(7) The management committee shall be responsible for the general administration of the host community development trust in an ad hoc basis and shall perform duties set out in section 248 of the Act.

19.—(1) Within 30 days of the constitution of the management committee, the management committee shall set up and appoint members of the host communities advisory committee.

(2) The remuneration, qualification, disqualification, discipline, suspension or removal of members of the advisory committee by the management committee shall be in accordance with the constitution of the trust or internal policies as approved by the Board of Trustees from time to time.

(3) The advisory committee shall comprise of one representative from each host community.

(4) Notwithstanding the provisions of regulation 19(2) of these Regulations, a person shall not be qualified to act as a member of the advisory committee, where the person

(a) is less than 18 years old ;

(b) is a lunatic or of unsound mind ;

(c) is an undischarged bankrupt ; or

(d) has been convicted of an offence relating to fraud, dishonesty or vandalism of any oil and gas assets in Nigeria.

(5) Decisions of the management committee with respect to the appointment of members of the advisory committee shall be subject to the approval of the Board of Trustees.

(6) The advisory committee shall perform the duties set out in section 250 of the Act.

20.—(1) Pursuant to section 251 of the Act, settlors shall carry out a host communities needs assessment, within six months following the grant of a license or lease.

(2) In the case of existing licenses and leases, the settlor shall carry out host communities needs assessment prior to the establishment of the trust in accordance with section 251(4) of the Act.

(3) A settlor shall carry out host communities needs assessment every five years, to determine the current needs of the host communities.

heading

Host
Communities
Advisory
Committee.

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Host
Communities
Needs
Assessment,
Host
Communities
Development
Plan and
Fund
Distribution
Matrix.

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- (4) The host communities needs assessment shall require an evaluation of the—
(a) level of primary, secondary and tertiary education in the community ;
(b) availability of basic utilities including water, electricity and shelter ;
(c) access to healthcare ;
(d) level of infrastructure development in the community including roads and telecommunications infrastructure ;
(e) social, environmental and economic needs of the community ; and
(f) such other needs of the host communities as the settlor may determine.
- (5) The host communities needs assessment shall demonstrate that the settlor has complied with the provisions of section 251(3) of the Act.
- (6) The host communities needs assessment shall form the basis for the host communities development plan.
- (7) Upon completion of the host communities needs assessment in accordance with regulation 20(1) and (2) of these Regulations, the settlor shall prepare the host communities development plan pursuant to section 252 of the Act, which shall be submitted to the Commission in accordance with regulation 20(8) of these Regulations.
- (8) Upon completion of the host communities needs assessment in accordance with regulation 20(3) of these Regulations, the settlor shall prepare the host communities development plan and submit the plan to the Commission for approval, within 30 days from the date of completion of the host communities needs assessment.

21.—(1) The host communities development plan shall—

- (a) specify the communities development initiatives required to respond to the findings and strategy identified in the host communities needs assessment ;
(b) determine and specify the projects to implement the specified initiatives ;
(c) provide a detailed timeline for projects ;
(d) set out the reasons and objectives of each project as supported by the host communities needs assessment ;
(e) conform with the Nigerian content requirements provided in the Nigerian Oil and Gas Industry Content Development Act ;
(f) provide for ongoing review and reporting to the Commission ; and
(g) contain such other matters as may be prescribed by the Commission from time to time.

(2) The Commission may publish a template of the host communities development plan on its website from time to time.

(3) Upon the approval of the host communities development plan by the Commission, it shall not be amended without prior written approval of the Commission.

22.—(1) The fund distribution matrix shall set out—

(a) the basis for proposed allocation of funds to host communities based on equitable and economic principles ;

(b) description of the existing programme of host community support prior to the Act, where applicable ; and

(c) such other matters that the Commission may specify from time to time.

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Fund
Distribution
Matrix.

(2) The fund distribution matrix shall not be amended without the prior written consent of the Commission.

(3) Without prejudice to sub-regulation (1) of this regulation, the Commission may issue a template of fund distribution matrix to serve as a guide to settlors.

heading

PART V—ESTABLISHMENT AND MANAGEMENT OF THE HOST COMMUNITIES DEVELOPMENT TRUST FUND

23.—(1) A settlor shall establish the host communities development trust fund (the Fund) in the name of the trust within one month of the—

(a) incorporation of a trust for existing oil mining leases ;

(b) grant of approval of the field development plan for existing oil prospecting licences ; and

(c) grant of approval of field development plan for new petroleum prospecting licences or petroleum mining leases granted under the Act.

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Establishment
of the Host
Communities
Development
Trust Fund
by the
settlor

(2) The Fund shall be deposited in a designated account, in a commercial bank duly licensed by the Central Bank of Nigeria with a minimum credit rating of 'BBB' issued by at least, two rating agencies, one of which shall be a rating agency incorporated in Nigeria and registered with the Securities and Exchange Commission.

(3) The Board of Trustees of the Fund shall maintain in the same commercial bank, the following accounts—

(a) collection account, into which the settlor shall pay its annual contribution in an amount equal to 3% of its actual annual operating expenditure of the preceding financial year in the upstream petroleum operations affecting the host communities for which the fund was established ;

(b) the capital fund account, into which the 75% of the amount standing to the credit of the collection account shall be paid and utilised in accordance with regulation 20(2) of these Regulations ;

(c) the reserve fund account, into which 20% of any amount standing to the credit of the collection account shall be paid and utilised in accordance with regulation 20(3) of these Regulations ; and

(d) the administrative cost account to be entrusted to the settlor, into which an amount not exceeding 5% of any amount standing to the credit of the collection account shall be paid and utilised in accordance with regulation 20(4) of these Regulations.

(4) The money in each of the accounts comprising the Fund shall remain distinct and shall not be co-mingled.

(5) Upon the establishment of the Fund, the following details shall be submitted to the Commission—

(a) details of each of the bank accounts and sub-accounts comprising the Fund ;

(b) details of signatories to the bank account and sub-accounts, which shall comprise the representatives of the settlor and Board of Trustees ;

(c) a copy of the settlor's board resolution approving the opening of the bank accounts and sub-accounts comprising the Fund and the bank account mandate ; and

(d) a forecast of the contributions for the subsequent five years.

(6) Where the credit rating of a bank in which the Fund is domiciled declines below the prescribed rating under sub-regulation (2) of this regulation, the Board of Trustees shall within one month, transfer the Fund to a bank with the prescribed rating and shall provide the Commission with the following—

(a) details of each of the bank accounts and sub-accounts comprising the Fund ;

(b) details of signatories to the bank account and sub – accounts, which shall comprise of representatives of the settlor and board of trustees ; and

(c) a copy of the Board of Trustees' resolution approving the opening of the bank accounts and sub - accounts comprising the Fund and the mandate of bank account.

(7) The Board of Trustees or settlor as may be applicable, shall not make any change to the signatories, mandate, name or other details of the Fund or change the bank where the Fund is domiciled, without the prior approval of the Commission.

(8) Where the Commission approves any of the changes contemplated in regulation 23(7) of these Regulations, the Board of Trustees shall within five working days of making such changes provide the Commission with the information and documents set out in sub-regulation (6) of this Regulations.

24.—(1) The settlor shall make its first annual contribution to the Fund within one month after the Fund has been established by the Board of Trustees, and thereafter make contributions on a yearly basis within three months to the end of each year.

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Contribution
to the
Fund.

(2) Any financial contribution made by a settlor between August 16, 2021 to August 15, 2022 to any ongoing host communities development project or scheme in accordance with their terms, shall be deemed to constitute a contribution made by a settlor under sub-regulation (1) of this regulation, provided the settlor shall be liable to pay the difference where the financial contribution is less than three percent of their operating expenditure of the preceding financial year.

(3) The annual contribution made in the preceding year shall not form part of the operating expenditure for the determination of annual contribution for the succeeding year.

(4) Where the settlor is responsible for host communities in different areas of operation, the 3% share of the operating costs shall be determined based on the operating costs that are attributable to each area of operation.

(5) Where the settlor established “any other community” as a host community pursuant to section 235(3) of the Act, the settlor shall allocate the share of the operating costs to the various host communities in line with section 245 of the Act.

(6) Contributions for littoral communities to deep-water area of operations, shall be pooled and distributed amongst beneficiary trusts equitably considering annual operating expenditure of the preceding financial year, asset value, size and any other criteria as may be determined by the Commission.

(7) In determining operating expenditure pursuant to section 240(2) of the Act, the settlor shall take into consideration non-capital production costs, cost of sales, administrative expenses and any other expense incurred for the operations of the business on a day-to-day basis as included in the audited financial report, provided that such expenditures shall not include capital expenditures, impairment, depreciation or amortisation.

(8) The Fund shall consist of—

- (a) sums accruing to the trust from donations, gifts, grants or honoraria ; and
- (b) interest, revenue or profits accruing to the reserve fund.

(9) The settlor shall submit to the Commission, its annual audited report within three months to the end of the preceding year and the report shall include the details of the settlor's annual operating expenditure in the preceding financial year in the upstream petroleum operations affecting the host communities for which the Fund was established.

(10) In accordance with section 234(4) (b) of the Act, the settlor may, subject to obtaining the approval of the Commission, discontinue contribution to the reserve fund or disengage the fund manager or decline to hire a fund manager in order to reduce expenditures, where the available funds for administration under section 244(c) of the Act are insufficient to fund ongoing operations.

(11) A settlor shall in support of its application for approval, provide such information as the Commission may from time to time require.

25.—(1) All money standing to the credit of the Fund shall be utilised in accordance with section 244(a)-(c) of the Act.

(2) Money in the capital fund shall be disbursed for projects in each of the host communities as shall be determined by the management committee pursuant to section 244(a) of the Act and approved by the Board of Trustees.

(3) Money in the reserve fund shall be invested by the Fund Manager in accordance with regulation 34 of these Regulations, for utilisation of the trust in the event of a cessation of contribution payable by the settlor pursuant to section 244 (b) of the Act.

(4) Money in the administrative expense fund account shall be utilised solely for administrative costs pursuant to section 244(c) of the Act.

(5) Administrative costs shall consist of —

(a) remuneration in form of sitting allowance for the Board of Trustees pursuant to section 242(3) of the Act ;

(b) remuneration for the management committee pursuant to section 247(4)(b) of the Act ;

(c) remuneration in form of stipends for the advisory committee pursuant to section 249(2)(b) of the Act ;

(d) fees of the fund manager ;

(e) fees payable to auditors appointed ; and

(f) such other costs wholly reasonable and necessary for the administration of the trust and the Fund.

(6) Any money not utilised in administrative expense fund at the end of each year shall be remitted into the capital fund account.

26. Withdrawals shall not be made from the Fund unless—

- (a) at least one signatory to the account authorising the withdrawal is the representative of the settlor ;
- (b) the withdrawal complies with the annual host community development plan submitted to the Commission in accordance with regulation 21 of these Regulations ; or
- (c) withdrawal shall not result in the account being overdrawn or being put into negative balances.

27. Where the available sum for the administration of the Fund is insufficient, the settlor shall have the power to make any of the following adjustments as may be considered necessary or expedient in the interest of the ongoing operations—

- (a) reduction of the number of members of the Board of Trustees, provided that the number of members of the Board of Trustees shall not be less than five at any given period ;
- (b) discontinue contribution to the reserve fund or disengage the fund manager or decline to hire a fund manager in accordance with regulation 31 of these Regulations ;
- (c) reduction of the frequency of meetings of the Board of Trustees, provided that the number of meetings held by the Board of Trustees in a year shall not be less than four ;
- (d) reduction of the number of members of the management committee under section 247 of the Act, provided that such number of members shall not fall below five at any given period ;
- (e) reduction of the frequency of meetings of the management committee, provided that the management committee shall meet at least four times in a year ; and
- (f) reduction of the frequency of meetings of the host communities advisory committee under section 249 of the Act, provided that the number of meetings shall not fall below two times in a year.

28.—(1) The capital fund and administrative cost fund shall be managed by the Board of Trustees and settlor respectively, who shall ensure that any payments into and out of the accounts shall be in accordance with the Act and the host communities development plan approved by the Commission.

(2) The Board of Trustees and settlor in administering the capital fund and administrative cost fund shall—

- (a) act with honesty and fairness ;
- (b) act with skill, care and diligence ;

- (c) act in the interest of the host communities ;
- (d) act with independence, objectivity and in accordance with the Act ;
- (e) apply the sums in accordance with the host communities development plan and the Act ;
- (f) refuse to participate in any business relationship or accept any gift that could reasonably be expected to affect its independence or objectivity ; and
- (g) keep proper account and accurate records.

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Management
of the
Reserve
Fund.

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Oversight
powers of
the
Commission
over the
Fund.

29. The reserve fund shall be managed by the fund manager in accordance with the provisions of the Act and regulation 34 of these Regulations.

30.—(1) The settlor shall render quarterly returns to the Commission in relation to the Fund, which shall include—

- (a) the statement of each bank account and sub-accounts constituting the Fund ;
- (b) an audited report of the Fund detailing amongst others, payments into and out of the funds and the purposes for which such payments were made ;
- (c) any approved withdrawals outside of the approved host communities development plan and the basis for such withdrawals ; and
- (d) any other information as may be prescribed by the Commission from time to time.

(2) A settlor which fails, neglects or refuses to file the quarterly returns shall be liable to—

- (a) administrative penalty of \$10,000 or its equivalent in Naira ; and
- (b) in the case of a continuous offence, to an additional administrative penalty of \$1,000 or its equivalent in Naira for each day during which the offence continues.

(3) Where the settlor provides evidence that the inability to provide annual returns as at and when due arises from the refusal of the Board of Trustees to provide same promptly, the administrative penalty imposed pursuant to sub-regulation (2) of this regulation shall not apply and the Commission shall give the settlor extension of time to provide the annual returns following its liaison with the Board of Trustees.

(4) Where the settlor provides evidence that it is unable to provide the annual returns after the expiration of the extension of time given to the settlor, the Commission may exercise its powers to issue enforcement orders pursuant to section 217 of the Act to compel the settlor to deal with the erring Board of Trustees.

(5) Where the Commission discovers that a withdrawal was made from the Fund in contravention of the approved host communities development plan or the Act without the approval of the Commission by the settlor, the fund manager or any other person, such person shall—

- (a) immediately refund such monies into the Fund, provided that such refund, shall not serve as a defence to any criminal liability ; and
- (b) be liable to administrative penalty of \$1,000 per day from the date on which the withdrawal was made until the date that such funds are refunded into the Fund.

31.—(1) The Board of Trustees shall be responsible for appointing the fund manager on the recommendation of the Management Committee.

(2) The fund manager shall be appointed within one month of the establishment of the Fund.

(3) A person shall not be appointed as a fund manager in respect of the reserve fund unless—

- (a) it is incorporated under the Companies and Allied Matters Act ;
- (b) the total market value of assets managed by the fund manager is not less than five years projected value of the reserve fund ;
- (c) it is registered as a fund manager with the Securities and Exchange Commission ; and
- (d) it is registered as a fund manager with the Commission ;

(4) Any appointment made in contravention of sub-regulation (3) of this regulation shall be null and void and any trustee who participates in the appointment of a fund manager in contravention of the provisions of this regulation shall be liable to an administrative penalty of not less than \$2,500 or its equivalent in Naira and a further sum of \$1,000 or its equivalent in Naira for every day during which the contravention persists.

(5) Where the Commission discovers that a fund manager has been appointed in contravention of sub-regulation (3) of this regulation, the Commission may by notice require the Board of Trustees to immediately appoint a fund manager in compliance with sub-regulation (3) of this regulation and the Board of Trustees shall appoint another fund manager within 14 days of receiving the Commission's notice.

32. The fund manager shall in administering the reserve fund—

- (a) act with honesty and fairness ;
- (b) act with skill, care and diligence ;
- (c) act in the interest of the host communities ;
- (d) act with independence and objectivity ;

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Appointment
of the fund
manager.

- (e) communicate with the Board of Trustees in a timely and accurate manner ;
- (f) refuse to participate in any business relationship or accept any gift that could reasonably be expected to affect its independence or objectivity ;
- (g) exercise due diligence in ensuring the maintenance of the reserve fund and shall ensure that there is no avoidable deterioration in value ;
- (h) institute such mechanisms to ensure proper care is taken for the collection, monitoring and supervision of the reserve fund ;
- (i) avoid conflict between its interests and the interest of the host communities ;
- (j) disclose the interests of its directors and management that may conflict with its duties to the Board of Trustees ; and
- (k) ensure that it keeps proper and accurate records, including recording the details of its decision-making process in dealing with any investments together with justifications of such decisions and forwarding same to the Board of Trustees.

33.—(1) The fund manager shall cease to act as a fund manager where—

- (a) its registration with the Securities and Exchange Commission is withdrawn or revoked in accordance with the Investments and Securities Act ;
- (b) it becomes bankrupt or makes a compromise with its creditors or a moratorium is granted on its debt or such other comparable measures are taken against the fund manager ;
- (c) it is found guilty of a crime involving fraud or dishonesty or any other felony or it is sanctioned for misconduct by Securities and Exchange Commission or any professional body or association ; or
- (d) it resigns its appointment as fund manager by a notice to the Board of Trustees.

(2) Where a fund manager ceases to act or is otherwise removed under these Regulations, the Board of Trustees shall notify the settlor within 10 working days and shall appoint another fund manager within 10 working days of the removal of the previous fund manager and the settlor shall notify the Commission within 10 working days of receipt of notice from the Board of Trustees provided that the settlor may pursuant to regulation 24(10) of these Regulations, notify the Commission of its decision not to appoint a fund manager.

(3) Where the Board of Trustees fails to appoint a fund manager or the settlor fails to issue the notice in accordance with sub-regulation (2) of this regulation, the Commission may appoint an interim fund manager to manage the reserve fund.

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Cessation of
office of the
fund
manager and
appointment
of interim
fund
manager.

Content

(4) The interim fund manager shall manage the reserve fund until a fund manager is appointed by the Board of Trustees in accordance with these Regulations.

(5) The Board of Trustees shall provide the interim fund manager with all necessary documents and access required to manage the reserve fund.

(6) The remuneration of the interim Fund Manager shall be borne by the trust.

heading

**PART VI — INVESTMENT OF THE RESERVE FUND
AND REPORTING OBLIGATIONS**

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Criteria for
investment
in securities.

34.—(1) Money standing to the credit of the reserve fund—

(a) may be invested by the fund manager on the approval of the Board of Trustees ; and

(b) shall be invested by the fund manager with the objectives of safety and maintenance of fair returns on amounts invested.

(2) The fund manager shall only invest in allowable instruments prescribed under the Regulations on Investment of Pension Fund Assets, subject to the quality ratings set out therein.

(3) The Commission may issue guidelines for the investment of the reserve fund by the fund manager.

(4) The funds in the reserve fund shall not be invested in unlisted securities by the fund manager, where the investment—

(a) is in early or start up stage of the target company, or may qualify as seed capital ;

(b) shall cause the value of the fund so invested in the securities of the unlisted company to exceed five percent of the net asset value of the reserve fund ; or

(c) is in a company where the board, management, or affiliate of the fund manager or settlor jointly or severally have more than five percent equity stake.

(5) Fund managers shall not invest funds in the reserve fund in any instruments that are subject to any type of prohibitions or limitations on sale or purchase of such investment save for close-ended funds.

(6) Fund managers shall ensure that they maintain a diversified portfolio of allowable instruments and avoid undue concentration in one of the allowable instruments.

(7) The proportion of reserve fund invested in a particular allowable instrument shall not exceed five percent of the amount in the reserve fund.

Content

(8) Fund managers shall not apply funds in the Reserve Fund by way of loans or credit or as collateral for any loan taken by any person including the settlor.

(9) Interests derived from any investments shall be dealt with as directed by the Board of Trustees subject to section 246 of the Act.

(10) In accordance with section 256 of the Act, interests, dividends, profits, investments and other incomes accruable to the reserve fund shall be tax exempted.

(11) A fund manager who fails to comply with the provisions of these Regulations shall be liable to administrative penalty of \$20,000 or its equivalent in Naira or such additional sum as may be prescribed by the Commission and where the investment resulted in a diminution of the fund, the fund manager shall make up for the loss from personal funds.

(12) The agreement between the trust and a fund manager shall incorporate the provisions of sub-regulation (11) of this regulation.

35.—(1) A settlor shall submit to the Commission, the mid-year and annual reports prepared by the management committee and Board of Trustees under section 255 (a) (b) and (c) of the Act, within 30 days from the expiration of the period prescribed therein.

(2) A settlor shall submit an annual report of its activities on the trust in the preceding year accompanied by the audited accounts of the trust to the Commission, not later than 31st May of the following year.

(3) The annual report shall be in such form as the Commission shall specify from time to time and shall contain sufficient details to show the financial position of the Fund at any given time, the list of proposed projects for the host communities for the following year and status of executed or ongoing projects for the host communities and cost of the individual projects.

(4) The Commission may where it deems fit after the review of the report, require the settlor to provide additional documents to clarify any item contained in the report.

(5) The documents or information referred to under sub-regulation (4) of this regulation may include receipts of purchase, contracts with third parties, bank statements, title documents or any other document the Commission may require based on the content of the annual return filed.

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Mid-year
and annual
reports.

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Content

heading
PART VII — MISCELLANEOUS PROVISIONS

36.—(1) A settlor that fails to comply with the provisions of regulations 20, 21 and 22 of these Regulations shall be liable to an administrative penalty of \$20,000 or its Naira equivalent and an additional administrative penalty of \$1,000 or its Naira equivalent for each day during which the offence continues.

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Offences,
penalties
and
sanctions.

(2) A settlor who—

- (a) fails to comply with any of the requirements specified in regulations 24(8) and 38(3) of these Regulations ;
- (b) makes false, inaccurate, incomplete or misleading information in any record or report ;
- (c) fails to comply with official notice or directive issued by the Commission ;
- (d) fails to remit funds within the stipulated period pursuant to section 253 of the Act ;
- (e) fails to discharge surviving obligations pursuant section 237 of the Act ;
- (f) fails to provide any information, document or report required to be provided to the Commission pursuant to the Act or these Regulations within the prescribed period,

shall be liable to a penalty issued by the Commission not exceeding \$250,000 or its equivalent in Naira and in addition the Commission may make a recommendations to the Minister, for the revocation of the license or lease of the defaulting settlor.

37.—(1) Where an act of vandalism, sabotage or civil unrest is suspected to have occurred that causes damage to the facilities used in upstream petroleum operations of the settlor within the host communities or disrupts production activities, the settlor shall notify the Commission within 24 hours of the disruptive act.

heading
Vandalism.

(2) A settlor shall within 30 days of the disruptive act, submit a report on the disruptive act to the Commission and the Board of Trustees.

(3) The report shall contain—

- (a) a description of the disruptive act ;
- (b) the area of the settlor's operations affected by the disruptive act ;
- (c) the extent of damage to the settlor's facilities used in upstream petroleum operations ;
- (d) the value of crude oil, condensates, natural gas liquids or natural gas that was spilled or lost as a result of the act ;

(e) the estimated cost of repair of damage to the settlor's facilities used in upstream petroleum operations, and where the damage requires a replacement of the facility, the estimated cost of the replacement ;

(f) in case of a shut-down of the settlor's operations, the operating expenditures incurred during the period that the production was shut down or where a part of the operations is shut down, the operating costs of the part that was shut down ; and

(g) the reductions that may be obtained in taxation as a result of additional costs that may be charged for tax purposes and a cash - flow illustrating how the total costs under Paragraphs (d), (e) and (f) of this sub-regulation, less the tax recovery under regulation 37(3) (g) of these Regulations shall be recovered pursuant to section 257(2) of the Act.

(4) The damage calculated pursuant to section 257(2) of the Act, shall not include loss of profits, losses due to delay of production of reserves, or other losses not specifically included in sub-regulation (3) of this regulation, since the losses shall be deemed to be a business risk of the settlor.

(5) The Commission shall review the report submitted by the settlor pursuant to sub-regulation (2) of this regulation and in the event of a spill, the Commission shall deal with it in accordance with the environmental and remediation regulation issued by the Commission.

(6) The Commission shall, on the basis of the report of the joint investigation team, determine whether the disruptive act was due to technical or natural cause or third-party interference and establish the costs and tax recovery under regulation 37(3) of these Regulations and any adjustment required in the cash-flow pursuant to regulation 37(3)(g) of these Regulations.

(7) The decision of the Commission shall be binding on the settlor and the host communities.

38.—(1) Where a licence or lease, is surrendered pursuant to section 237 (2) of the Act, or is revoked, terminated or expires pursuant to section 237(3) of the Act, the settlor shall fulfil its surviving obligations and where these obligations have been complied with, the settlor shall have no further obligations either partly or wholly with respect to the area that was surrendered.

(2) Where a portion of a license or lease area is surrendered or relinquished, the area of operations shall be considered adjusted as a result of such surrender or relinquishment.

(3) A settlor shall, in the event of the adjustment stated under sub-regulation (2) of this regulation, apply to the Commission for its approval of the following—

(a) host communities that the settlor no longer considers its responsibility ;

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Cessation of
settlor's
interests.

Content

- (b) revised or new Board of Trustees ;
- (c) revised constitution of the Host Communities Development Trust ;
- (d) revised forecast of contributions pursuant to section 240(2) of the Act ;
- (e) revised host communities development plan ; and

(f) amount in the reserve fund to be allocated to the host communities for which the operations of the settlor has ceased.

(4) The Commission shall review the information in sub-regulation (3) (a)-(e) of this regulation and decide on matters pursuant to this regulations.

(5) Surviving obligations of the settlor shall not include any matter related to the management and utilization of the reserve fund pursuant to section 244(b) of the Act.

(6) Where an amount in the reserve fund is remaining upon the cessation of activities by the settlor, the Board of Trustees shall continue to manage the Fund and report to the Commission in the manner contemplated by the Act as if it were the settlor.

(7) With respect to the host communities for which the operations of the settlor has ceased, pursuant to sub-regulation (2) of this regulation, the Board of Trustees shall continue to manage the Fund and report to the Commission in the manner contemplated by the Act as if it were the settlor.

heading**39.—(1) Where a dispute arises between—**

(a) one or more host communities in relation to the trust or the Fund ; and

(b) a host community and a settlor in connection with upstream petroleum operations or a trust,

small
Grievance
mechanism
and conflict
resolution
procedure.

the disputing parties shall follow the procedure set out in this regulation to resolve the dispute.

(2) In the case of a—

(a) dispute arising between host communities, the aggrieved host community shall give a dispute notice to the settlor and the Board of Trustees, support the notice with relevant documents and after service of the dispute notice, the settlor and the Board of Trustees shall attempt in good faith to resolve the dispute between the host communities ; and

(b) dispute between the settlor and a host community or communities, the Board of Trustees shall give a dispute notice to the chairman of the Board of Directors of the settlor, support the notice with relevant documents and after service of the dispute notice, the Board of Directors of the settlor and the Board of Trustees shall attempt in good faith to resolve the dispute.

(3) A copy of the dispute notice shall be sent to the Commission.

(4) Where the settlor and the Board of Trustees, in the case of a dispute between host communities, or the Board of Directors of the settlor and the Board of Trustees, in the case of a dispute between a settlor and a host community, are unable to resolve the dispute within 30 days after service of the dispute notice, any of the disputing parties may refer the dispute to the Alternative Dispute Resolution Centre of the Nigerian Oil and Gas Excellence Centre for mediation.

(5) A mediation may be initiated by the aggrieved party serving a mediation notice in writing on the other party or parties to the dispute, referring the dispute to mediation.

(6) A copy of the mediation notice shall be sent to the Commission.

(7) Unless as otherwise agreed between the disputing parties, the mediation shall be concluded within 45 days of the issuance of the mediation notice.

(8) The mediation meetings shall be held at a venue agreed by the disputing parties, failing which, it shall be held in the state capital of the host community.

(9) Any settlement reached by the disputing parties pursuant to the mediation and duly signed by the disputing parties or their representatives shall be final and binding on them.

(10) Where the dispute is not resolved within 30 days after the commencement of the mediation, or an aggrieved party fails or ceases to participate in the mediation before the 30 days expiry period, or the mediation terminates before 30 days, an aggrieved party may refer the dispute to the Commission, who shall attempt in good faith to resolve the dispute.

(11) Where the Commission is unable to resolve the dispute within 45 days of the dispute being referred to it, the disputing parties may refer the dispute to an Arbitrator under the Arbitration and Conciliation Act.

(12) Final resolution by the Commission shall not increase the budget of the trust unless the dispute relates to inaccurate calculation of the budget.

40.—(1) Prior to the incorporation of a host community development trust pursuant to section 235(1) of the Act, the settlor shall make arrangements for the effective transfer of existing host community development projects and schemes to the fund and notify the Commission in accordance with section 316 of the Act.

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Transfer of
existing host
community
development
projects and
schemes.

Content

(2) Upon the establishment of the Fund, the settlor shall—

- (a) select all the communities under any of its existing memoranda of understanding or any other agreements, community development programmes and corporate social responsibility schemes as host communities' beneficiaries under the applicable Fund to be established pursuant to the Act ;
- (b) transfer any money accrued in any account as its annual payment obligation under such arrangements to the Fund ;
- (c) transfer all invested and investable instruments under any existing memoranda of understanding or any other agreement to the reserve fund under the management of the fund manager ;
- (d) transfer all development projects, schemes, assets and liabilities under any existing memoranda of understanding or any other agreement pursuant to section 316 of the Act to the relevant fund ; and
- (e) ensure the continued execution of all development projects or schemes in paragraph (d) of this sub-regulation by the Fund.

heading

41.—(1) The definitions contained in section 318 of the Act, shall apply to these Regulations.

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Interpretation.

(2) In these Regulations—

- “*Act*” means the Petroleum Industry Act, 2021 ;
- “*advisory committee*” means the host communities advisory committee set up pursuant to section 249 of the Act ;
- “*annual contribution*” means three per cent of a settlor’s actual annual operating expenditure of the preceding financial year in the upstream petroleum operations affecting the host communities for which the applicable host communities development trust fund was established ;
- “*applicable law*” means all applicable laws, statutes, rules, regulations, official directives, ordinance, licence, permits or orders of any competent authority (whether administrative, legislative, executive or otherwise) including judgments, orders and decrees of courts, commissions or bodies exercising similar functions in each case as is in effect from time to time ;
- “*Board of Trustees*” means the governing board of the trust established under section 242 of the Act ;
- “*Commission*” means the Nigerian Upstream Petroleum Regulatory Commission ;
- “*dispute notice*” means a written notice of a dispute setting out the nature and full particulars of the dispute ;
- “*Fund*” means the host communities development trust fund established by a settlor pursuant to section 240(1) of the Act ;

"host community" means a community situated in or appurtenant to the area of operations of a settlor, and any other community as a settlor may determine under Chapter 3 of the Act as further described in regulation 5 of these Regulations ;

"lease" means an oil mining lease or a petroleum mining lease ;

"lessee" means the holder of a lease ;

"licence" means an oil prospecting licence or petroleum prospecting licence ;

"licensee" means the holder of a licence ;

"management committee" means the committee set up under section 247 of the Act ;

"Minister" has the meaning ascribed to it in the Act ;

"Regulations" means these Nigerian Upstream Host Communities Development Regulations issued by the Commission ;

"settlor" means a holder of an interest in a lease or licence whose area of operation is located in or appurtenant to a host community ;

"trust" means the host communities development trust ;

"trustee" means a member of the board of trustees ;

"upstream petroleum operations" has the meaning given to it in section 318 of the Act ; and

"year" means a period of a year from any day during the year, in accordance with the Gregorian calendar.

42. These Regulations shall be cited as the Nigeria Upstream Petroleum Host Communities Development Regulations, 2022.

MADE at Abuja this 23rd day of June, 2022.

footnote

ENGR. GBENGA KOMOLAFE, FNSE

Commission Chief Executive

Nigerian Upstream Petroleum Regulatory Commission

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Citation

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