



## **Midstream and Downstream Environmental Remediation Fund Regulations**

***Draft Date: 10/06/2022***

### **Establishment of the Fund**

1. (1) These Regulations are made for the administration of the Environmental Remediation Fund ("Fund") established by the provision of Section 103 of the Act.

(2) The Fund is established for midstream and downstream petroleum operations carried out under licences, permits and authorisations administered by the Authority.

(3) The Authority shall administer and manage the Fund in accordance with these Regulations and other applicable laws.

(4) The Fund shall be financed by prescribed financial contributions from licencees conducting the Midstream and downstream petroleum operations

### **Utilisation of the Fund**

2. (1) The Fund shall be utilised to provide funding for the management of environmental impact, rehabilitation of negative environmental impacts caused by midstream and downstream petroleum activities or operations, except where such activities or operations are in accordance with section 8(d) of the Act.

(2) The funding referred to in Regulation 2 (1) shall only be used where a licencee fails to rehabilitate or manage or is unable to undertake rehabilitation or management of any negative impact on the environment.

(3) Where the Authority determines to apply the Fund to rehabilitate or manage the negative environmental impact relating to a particular licence, the Authority shall provide a written notice to the holder of such licence that it has defaulted to fulfil its obligation.

(4) Where the Authority determines to apply the Fund, the procurement of any goods, works or services required for the utilisation of the Fund shall be subject to the Public Procurement Act.

### **Amount of the financial contribution**

**3.** (1) The financial contribution shall be paid on or before 31<sup>st</sup> December of every calendar year for each licence, permit and authorisation including for the year in which a licence, permit and authorisation has been granted.

(2) For the purpose of these Regulations, petroleum operations under each licence, shall fall under one of the following categories of areas where operations are located —

- (a) Onshore High-Risk Area being areas which include any of the following:
  - (i) mangrove areas;
  - (ii) wetland and swamp areas;
  - (iii) a zone of 500 meters along any river and lake;
  - (iv) such other areas as the Authority may determine as high-risk.
- (b) Shallow Water High-Risk Area being:
  - (i) a zone of 10 km seawards of a high-water mark;
  - (ii) such other shallow water areas as the Authority may determine as high risk.
- (c) Other Onshore Areas being the part of Nigeria that is defined as onshore and frontier acreages in the Act, other than Onshore High-Risk Areas.
- (d) Other Shallow Water Areas, being the part of Nigeria that is defined as shallow water in the Act, other than Shallow Water High-Risk Areas.
- (e) Deep Water Area, being the part of Nigeria that is defined as deep offshore in the Act.

(3) The Authority shall, prior to the first payment of the financial contribution, notify the licensee of which category the licence falls, such that where;

- (a) all or part of a petroleum prospecting licence or petroleum mining lease is situated in an area that is considered an Onshore High-Risk Area, the entire licence or petroleum mining lease shall be considered as being located in an Onshore High-Risk Area,
- (b) all or part of a petroleum prospecting licence or petroleum mining lease is situated in a shallow water area that is

considered a Shallow Water High-Risk Area, the entire licence or lease shall be considered as being located in a Shallow Water High-Risk Area,

- (c) all or part of a petroleum prospecting licence or petroleum mining lease is situated onshore and part in shallow water, the entire licence or lease shall be considered onshore, and
- (d) all or part of a petroleum prospecting licence or petroleum mining lease is situated in shallow water and part in deep offshore, the entire licence or lease shall be considered shallow water.

(4) The financial contribution shall be determined as follows—

- (a) The following formula shall be used to determine the annual financial contribution —

*Financial contribution for a year = Fixed Contribution + (Midstream and Downstream Capital Expenditure x CER) + (CL x CLR) + (CG x CGR)*

- (b) For the purpose of determining the financial contribution, the Midstream and Downstream Capital Expenditure shall not include contributions to a decommissioning and abandonment fund.
- (c) The amount of expenditure incurred during a relevant year, which is characterised as expenditure of capital nature under the Companies Income Tax Act, shall be included in the full amount incurred during the relevant year and shall not be depreciated under the initial and annual allowances rules for the purpose of the calculation of the financial contribution.
- (d) The average daily capacity of a facility shall be the name plate capacity. Where the capacity changes due to additional investment or abandonment during the year, the average daily capacity shall be determined by the sum of all capacities multiplied by the days such capacity is in existence and dividing this amount with the number of days in such year. The result shall be rounded to entire barrels or thousand cubic feet, as the case may be.

(6) The financial contribution shall be paid in United States dollars. However, for production delivered for local refining, the financial contribution may be wholly or partly paid in Naira at Central Bank of Nigeria applicable exchange rate for the payment date.

## **Payment of the financial contribution**

4. (1) The initial financial contribution shall be paid by the prospective licensee prior to the granting of the licence and shall apply to the first year in which a licence is granted. The initial financial contribution shall consist solely of the Fixed Contribution provided for in Regulation 3(4) multiplied by 365.

(2) The annual financial contribution for any succeeding year shall be paid by the licensee prior to each anniversary of the effective date of the licence. Such annual financial contribution shall consist of the Fixed Contribution plus the capital and production related components of the contribution related to the estimated capital expenditures and average capacity for the year prior to the succeeding year pursuant to Regulation 3(4) multiplied by 365.

(3) The applicable financial contribution shall be paid prior to the termination of a licence, where the period of a licence terminates prior to an anniversary of the effective date of such a licence.

(4) Subject to the provisions of Regulation 5(1), the financial contribution paid by a prospective licensee under these Regulations shall not be refunded, credited, or otherwise offset against any liability due from a licensee, unless an over-payment is made due to an error in which case a refund shall be made to the extent of such over-payment.

## **Reporting**

5. The prospective licensee shall submit the calculation of the annual financial contribution in the form prescribed by the Authority not later than thirty days (30) days after the payment due date and where actual capital expenditures or actual production or both are different from the estimated expenditures or production or both the required adjustment shall be made.

## **Determination of Financial Contribution by the Authority**

6. (1) The Authority may appoint an independent assessor to conduct the assessment and determine the financial contribution where;

- a. The financial contribution does not reflect the size of the operations and the level of environmental risk;
- b. the allocation to environmental categories pursuant to Regulation 3(2) is in error;
- c. the capital expenditures or production or both are under-estimated; or
- d. for any other reasons.

The remuneration of the assessor and other costs associated with such assessment shall be borne by the Authority.

(2) The Authority shall notify the prospective licensee within thirty [30] days after receiving the application for a licence, that the financial contribution requires an adjustment and that an assessment has been initiated.

(3) Where the Authority does not notify the prospective licensee within the timeline prescribed under Regulation 6 (2), the financial contributions shall be deemed approved and shall be calculated under Regulation 3.

(4) An independent assessor to be appointed by the Authority under Regulation 6 (1) shall be competent and have expertise and experience in environmental matters, natural resource planning and management, management of petroleum operations, and environmental rehabilitation practices.

(5) Upon the completion of the assessment the Authority shall notify the prospective licensee in writing about the adjusted financial contribution, within sixty [60] days from the date of the notice issued to a prospective licensee under Regulation 6(2).

### **Annual Reports and Disclosures**

7. (1) The Authority shall keep proper accounts and records in relation to the Fund and shall prepare and publish in respect of each financial year a Statement of the Fund's Accounts.

(2) The annual statement required under Regulation 7(1) shall be published not later than one hundred and eighty [180] days after the end of the financial year.

(3) The Authority shall publish the annual statement required under Regulation 7 (1) in the public domain and keep it available to the public on the website of the Authority.

### **Audit of Financial Contribution of fund**

8. The financial contribution to the Fund shall be subject to audit by the prospective licensee, in accordance with guidelines that the Authority may issue.

### **Interpretation**

9. (1) In addition to the interpretations contained in the Petroleum Industry Act, 2021 the following interpretation shall apply to this Midstream and Downstream Environmental Remediation Fund Regulations.

- (a) "Act" means the Petroleum Industry Act, 2021;
- (b) "year" means a period of a year from any day during the year.
- (c) "Fixed Contribution" is the fixed contribution in US\$ per day, as determined in accordance with Table 1 of the Schedule to these Regulations;
- (d) "Midstream and Downstream Capital Expenditure" is the expenditure, characterised as expenditure of capital nature under the Companies Income Tax Act, incurred during a year for which the financial contribution is payable;
- (e) "CER" is the rate applicable to the capital expenditure, as determined in accordance with Table 1 of the Schedule to these Regulations;
- (f) "CL" is the average daily capacity of facilities under a licence during a year for which the financial contribution is payable, in barrels per day;
- (g) "CLR" is the rate in US\$ per bbl/day for average daily capacity for liquid hydrocarbons (CL), as determined in accordance with Table 1 of the Schedule to these Regulations;
- (h) "CG" is the average daily capacity of facilities under a licence during a year for which the financial contribution is payable, in thousand cubic feet (Mcf) per day;
- (i) "CGR" is the rate in US\$ per Mcf/day for average daily capacity for gaseous hydrocarbons (CG), as determined in accordance with Table 1 of the Schedule to these Regulations;

### **Short title**

**10.** (1) These Regulations shall be cited as the Midstream and Downstream Environmental Remediation Fund Regulations.

## SCHEDULE 1

### RATES FOR THE FINANCIAL CONTRIBUTION CALCULATION

TABLE 1 – Rates for the financial contribution for the midstream and downstream operations:

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>	<b>Column 5</b>
<b>Location of petroleum operation under a license</b>	<b>Contribution in US\$ per day (Fixed Contribution)</b>	<b>Rate for annual Midstream and Downstream Capital Expenditure (CER)</b>	<b>Rate for average daily capacity for liquids in US\$ per bbl/day (LCR)</b>	<b>Rate for average daily capacity for natural gas, in US\$ per Mcf/day (GCR)</b>
Onshore High-Risk Areas	US\$ 40	0.0010%	US\$ 0.0020	US\$ 0.000200
Onshore – Other Areas	US\$ 32	0.0008%	US\$ 0.0010	US\$ 0.000100
Shallow Water – High-Risk Areas	US\$ 24	0.0006%	US\$ 0.0005	US\$ 0.000050
Other Shallow Water Areas	US\$ 16	0.0003%	US\$ 0.0002	US\$ 0.000020
Deep Water Areas	US\$ 8	0.0001%	US\$ 0.0001	US\$ 0.000010