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A BILL FOR

AN ACT TO FACILITATE THE USE OF INFORMATION IN ELECTRONIC FORM FOR CONDUCTING
TRANSACTIONS IN NIGERIA AND FOR CONNECTED PURPOSES

Sponsors:

SENATOR NKECHI NWAOGU
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[]

Commence-
ment.

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

Objectives of

1 PART I — PRELIMINARY

2 1. This Bill is to provide a legal and regulatory framework for:

the Act.

3 (a) conducting transactions using electronic or related media;

Application

4 (b) the protection of the rights of consumers and other parties in
5 electronic transactions and services;

6 (c) the protection of personal data; and

7 (d) facilitating electronic commerce in Nigeria.

8 PART II — GENERAL PROVISIONS

9 2.—(1) Without prejudice to the provisions of any law or regulation
10 regarding commercial and other transactions or relationship of parties thereto,
11 this Act shall apply to the use of information in the form of electronic or other
12 media.

and Scope of
the Act.

Subsidiary

13 (2) This Act shall not apply to any law requiring writing or signature in
14 any of the following circumstances:

-
- 1 (a) the creation or execution of a will;
- 2 (b) the execution of negotiable instruments;
- 3 (c) the creation, performance or enforcement of an indenture, declaration
- 4 of trust or power of attorney with the exception of constructive and
- 5 resulting trusts;
- 6 (d) any contract for the sale or other disposition of immovable property,
- 7 or any interest in such property;
- 8 (e) the conveyance of immovable property or the transfer of any interest
- 9 in immovable property;
- 10 (f) documents of title for movable or immovable property; and
- 11 (g) where such application would involve a construction of a rule of law
- 12 that is clearly inconsistent with the manifest intent of the lawmaking body
- 13 or repugnant to the context of the same rule of law:
- 14 PROVIDED that the mere requirement that information be in writing,
- 15 written or "printed" shall not by itself be sufficient to establish such
- 16 intent.
- 17 (3) Any appropriate regulatory body may prescribe rules, conditions
- 18 and regulations that shall be complied with in order to meet the provisions
- 19 of this Act.
- 20 (4) Notwithstanding anything in the Stamp Duty Act, in relation to this
- 21 Act, documents whose media are not paper, shall be liable to stamp duties
- 22 as may be prescribed by the appropriate regulatory body.
- 23 (5) Notwithstanding anything contained in the Nigerian Communications
- 24 Act, or rules made under it, it shall be lawful to transmit and send documents
- 25 as defined in this Act.
- 26 3.—(1) Information shall not be denied legal effect, validity and
- 27 enforceability solely on the grounds of:
- 28 (a) the medium in or on which the information is represented, the
- 29 technology in which the representation of the information was made in
- 30 which the information is being communicated;
- 31 (b) the Information In the document derives its validity and enforceability
- Regulations.
- Validity of
- Electronic Records.
- Documents

1 by reference to information in another document.

2 (2) Where the use of a document is required by any law, that requirement
3 shall be satisfied by a document as defined in this Act.

4 (3) A document shall not be denied admissibility solely on the grounds
5 that the document can neither be confirmed nor denied owing to the medium
6 or technology used.

7 (4) Separate documents on or in the same or separate media and
8 based on the same or separate technologies, even when combined into a
9 single document, for transmission, retention or other purposes, do not lose
10 their distinct nature, if both the integrity of the combined document and the
11 integrity of each separate reconstituted document are ensured by logical
12 structuring elements.

13 4.—(1) Where any law requires information to be in writing, that
14 requirement is met if the information is contained in a document as defined by
15 this Act and such information is accessible in a manner useable for subsequent
16 reference.

Required to
be in Writing.

Exclusion of

17 (2) Subsection (1) applies whether the requirement therein is in the form
18 of an obligation or of this section the law simply provides consequences for
19 the information not being in writing.

20 (3) The provision of this section shall not apply:

21 (a) if the information required by law to be in writing is a notice of:

22 (i) the cancellation or termination of utility services;

23 (ii) the default, acceleration, possession, foreclosure or eviction or the
24 right secured under a credit agreement, or a rental agreement for a
25 primary residence of an individual;

26 (iii) the cancellation or termination of health insurance or benefit or life
27 insurance benefits excluding annuities;

28 (iv) recall of a product or material failure of a product that risks
29 endangering health or safety;

30 (v) a public notice;

31 (b) To any document required to accompany any transportation or handling

	1	of hazardous materials, pesticides or other toxic or dangerous material;
provisions by	2	(c) To override any rule of law intended for protection of consumers.
Parties.	3	5. Except as otherwise expressly agreed by the parties to an agreement,
Original	4	the provisions of this Act shall apply in generating, sending, receiving, storing
Documents.	5	or otherwise processing documents.
Admissibility	6	6.—(1) Where an existing law, regulation, rule, practice or procedure,
	7	requires information to be presented or retained in its original form, that
	8	requirement is met by a document if:
	9	(a) there exists a reliable assurance as to the integrity of the information
	10	is preserved from the time when it was first generated in its final form as
	11	a document; and
	12	(b) where it IS required that information be presented, that information is
	13	capable of being displayed to the person to whom it is to be presented.
	14	(2) Subsection (1) applies whether the requirement therein is in the
	15	form of an obligation or of this section the law, regulation, rule, practice
	16	or procedure simply provides consequences for the information not being
	17	presented or retained in its original form.
	18	(3) For the purposes of paragraph (a) of subsection (1) of this section
	19	the integrity of information shall be deemed to be reliable assured if:
	20	(a) If the information has remained complete and unaltered, apart from the
	21	addition of any endorsement and any change which arises in the normal
	22	course of communication, storage and display; and
	23	(b) In determining whether the information has remained complete and
	24	unaltered the purpose for which the information was generated and all
	25	the relevant circumstances shall be considered.
	26	(4) Where a document is required to be presented in multiple copies
	27	to a single addressee at the same time, that requirement shall be satisfied by
	28	the submission of a single document that is capable of being reproduced by
	29	that addressee.
of	30	(5) This section does not affect immigration and citizenship documents.
Documents.	31	7.—(1) In any legal proceedings, nothing in the application of the rules
Electronic		of evidence shall apply so as to deny the admissibility of any document in

1 evidence:

2 (a) on the sole ground that it is in the form of a document as defined in
3 this Act; or

4 (b) on the grounds that it is not in its paper form.

5 (2) The weight to be attached to the information represented in a
6 document as defined in this Act, shall be determined by the following given
7 evidential weight based on the following:

8 (a) the reliability of the manner in which the information was generated,
9 stored or communicated;

10 (b) the reliability of the manner in which the integrity of the information
11 was maintained;

12 (c) the manner in which its originator was identified; and

13 (d) any other relevant factor.

14 (5) Any appropriate regulatory body may by regulation, having due
15 regard to the development of Information Technology, provide that this
16 section or a specified provision of this section, does not apply to a specified
17 requirement, permission, or law.

18 (6) This section does not apply to the practice and procedure of a court or
19 tribunal, where practice and procedure herein includes all matters in relation
20 to which rules of court may be made.

21 8.—(1) Where any law provides for:

22 (a) the filing of any form, application, or any other document with any
23 office, authority, agency or body corporate;

24 (b) the issue or grant of any license, permit, sanction or approval by
25 whatever name called in a particular manner; and

26 (c) the receipt or payment of money in a particular manner, then,
27 notwithstanding anything contained in any other law for the time being
28 in force,

29 such requirement shall be deemed to have been satisfied if such filing, issue,
30 grant, receipt or payment, as the case may be, is effected by means of a
31 document as defined in this Act and as may be prescribed by the appropriate

Filing.

Electronic
Gazette.

1 regulatory body.

2 (2) The appropriate regulatory body, in pursuance of the objectives
3 of this Act and for the purposes of subsection (1) of this section may by
4 Regulations prescribe:

5 (a) the manner and format in which document or records shall be filed,
6 created, or issued;

7 (b) the manner or method of payment of any fee or charges for filing,
8 creation or issuance of any document or record under paragraph (a);

9 (c) where the document is to be signed, the type of signature required
10 and the manner and format in which such signature must be attached or
11 logically associated with the document.

Retention of
Records.

12 9. Where any law provides that any rule, regulation, order, bye-law,
13 notification, or any other matter, shall be published in a Gazette, then, such
14 requirement shall be deemed to have been satisfied if such rule, regulation,
15 order, bye-law, notification or any other matter is published electronically
16 provided that where any rule, regulation, order, bye-law, notification or any
17 other matter is published in the Gazette or Electronic Gazette, the date of
18 publication shall be deemed to be the date of the Gazette.

Validity of
electronic

19 10.—(1) Where an existing law, regulation, rule, practice or procedure,
20 requires that certain information, documents or records be retained, that
21 requirement is met by retaining the information in a document as defined
22 in this law:

23 (a) the information contained therein is accessible so as to be usable for
24 subsequent reference;

25 (b) the document is retained in the format in which it was generated,
26 sent or received, or in a format which can be demonstrated to represent
27 accurately the information generated, sent or received; and

28 (c) such information, if retained, enables the identification of the origin
29 and destination of the document, the date and time when it was sent or
30 received.

31 (2) An obligation to retain documents, records or information in
accordance with subsection (1) does not extend to any information, the sole

1 purpose of which is to enable the document to be sent or received.

2 (3) A person may satisfy the requirement referred to in subsection (1)
3 of this section by using the services of any other person, provided that the
4 conditions set forth in paragraphs (a), (b) and (c) of subsection (1) are met.

5 (4) Nothing in this Act, shall confer a right upon any person to insist
6 that any Agency or department of the Federal or State Government or any
7 authority or body established by or under any law shall accept, issue, create,
8 retain and preserve any document only in an electronic form or effect any
9 monetary transaction by means of a document.

10 PART III — ELECTRONIC SIGNATURE

11 11.—(l) Where the signature of a person is required, that requirement
12 is met in relation to an electronic communication if: signature.

13 (a) any method is used to identify the person and to indicate the person's
14 approval of the information communicated;

15 (b) having regard to all the relevant circumstances at the time the method
16 was used, the method was as reliable as was appropriate for the purposes
17 for which the information was communicated; and

18 (c) the person to whom the signature is required to be given consents to
19 that requirement being met by way of the use of the method mentioned
20 in paragraph (a).

21 (2) This section does not affect the operation of any other law that makes
22 provision for or in relation to requiring:

23 (a) an electronic communication to contain an electronic signature
24 however described;

25 (b) an electronic communication to contain a unique identification in an
26 electronic form; and

27 (c) a particular method to be used in relation to an electronic
28 communication to identify the originator of the communication and to
29 indicate the originator's approval of the information communicated.

30 (3) This section shall apply to the execution and the use of the electronic
31 signature in closed systems, unless the users of a closed system specify
otherwise.

1 12. The administration of electronic signature shall be in accordance
2 with rules, guidelines and standards as may be prescribed by NITDA.

3 13. Electronic Signature Certification services shall be provided by a
4 certification authority in accordance with the provisions of the accreditation
5 granted under the electronic signature administration.

6 14. An electronic signature created or used outside Nigeria shall have
7 the same legal effect in Nigeria as an electronic signature created or used in
8 Nigeria if it satisfies the Nigeria Certification Standards.

9 15. A certification authority shall maintain for a minimum period as may
10 be prescribed in the certification administration guidelines:

11 (a) the documentation concerning the organizational, technical and
12 security means used for compliance with the requirements arising from
13 law and from the relevant regulations;

14 (b) originals of applications for issuance of certificates together with the
15 respective documents proving identity of the applicant;

16 (c) the documents corresponding to any revoked certificate.

17 16. An accredited certification authority shall be liable for any breach
18 of its obligations and shall pay fines as may be specified in the certification
19 administration guidelines.

20 17.—(1) The provisions of this Part shall apply to the processing of
21 personal data wholly or partly by automated means, and to the processing
22 otherwise than by automated means of personal data which form part of a
23 filing system or are intended to form part of a filing system.

24 (2) The provisions shall not apply to the processing of personal data:

25 (a) in the course of an activity concerning public safety, defence, national
26 security

27 (b) concerns the activities of law enforcement, intelligence or prosecuting
28 agencies in areas of criminal law;

29 (c) by a natural person in the course of personal or domestic activity.

30 18.—(1) Personal data shall only be processed if at least one of the
31 following conditions are met:

 (a) the data owner has given his consent to the processing;

1 (b) the processing is necessary for the performance of a contract to which
2 the data owner is a party, or for the taking of steps at the request of the
3 data owner with a view to entering into a contract;

4 (c) the processing is necessary for compliance with any legal obligation
5 to which the data holder is subject, other than an obligation imposed by
6 contract;

7 (d) the processing is necessary in order to protect the vital interests of the
8 data owner;

9 (e) the processing is necessary in the interest of the public and good
10 governance

11 (2) Personal data shall be obtained only for specified and lawful
12 purposes, and shall not be further processed in any manner incompatible
13 with those purposes.

14 (3) Personal data shall be adequate, relevant and not excessive in relation
15 to the purposes for which they are processed.

16 (4) Personal data shall be provided accurately and, where necessary,
17 kept up to date.

18 (5) Personal data processed for whatever purpose, shall not be kept for
19 longer than required.

20 (6) Personal data shall be processed in accordance with the rights of data
21 owners under the laws of the Federal Republic of Nigeria.

22 (7) Personal data shall not be transferred to a country or territory outside
23 the Federal Republic of Nigeria unless that country or territory provides
24 adequate level of protection for the rights and freedoms of data owners in
25 relation to the processing of personal data.

26 19.—(1) Personal data revealing racial or ethnic origin, political
27 opinions, religious or philosophical beliefs, trade-union membership, and
28 the processing of data concerning health or sexual orientation shall not be
29 processed unless:

30 (a) the data owner has given his explicit consent to the processing of those
31 data;

(b) processing is necessary for the purposes of carrying out the obligations

1 and specific rights of the holder in the field of labour law and it is authorized
2 by law and adequate safeguards are provided;

3 (c) processing is necessary to protect the vital interests of the data owner or
4 of another person where the data owner is physically or legally incapable
5 of giving his consent;

6 (d) processing is carried out in the course of its legitimate activities with
7 appropriate guarantees by a foundation, association or any other non-
8 profit-seeking body with a political, philosophical, religious or trade-union
9 aim and on condition that the processing relates solely to the members of
10 the body or to persons who have regular contact with it in connection with
11 its purposes and that the data are not disclosed to a third party without
12 the consent of the data owners;

13 (e) the processing relates to data which are manifestly made public by the
14 data owner or is necessary for the establishment, exercise or defense of
15 legal claims; and

16 (f) the processing is in the interest of public policy, good governance and
17 national security.

18 (2) Subsection (1) shall not apply where processing of the data is
19 required for the purposes of preventive medicine, medical diagnosis, the
20 provision of care or treatment or the management of health-care services,
21 and where those data are processed by a health professional subject to the
22 obligation of professional secrecy or by another person also subject to an
23 equivalent obligation of secrecy.

24 20.—(1) Subject to the provisions of this Act, an individual shall be entitled
25 to be informed by any data holder where personal data of which that
26 individual is the data owner are being processed by or on behalf of that data
27 holder. Such information which may be communicated in an intelligible
28 form shall include:

29 (a) the personal data of which that individual is the data owner;

30 (b) the purposes for which they are being or are to be processed; and

31 (c) the recipients or classes of recipients to whom they are or may be
disclosed,

1 (d) any information available to the data holder as to the source of those
2 data.

3 (2) The right in subsection (1) can only be exercised provided that
4 the data owner has made a request in writing, and paid any required
5 administrative fees.

6 (3) A data holder is not obliged to comply with a request under this
7 section unless he is supplied with such information as he may reasonably
8 require in order to satisfy himself as to the identity of the person making the
9 request and to locate the information which that person seeks.

10 (4) Where a data holder cannot comply with the request without
11 disclosing information relating to another individual who can be identified
12 from that information, he is not obliged to comply with the request unless:

13 (a) the other individual has consented to the disclosure of the information
14 to the person making the request; and

15 (b) it is reasonable in all the circumstances to comply with the request
16 without the consent of the other individual.

17 21.—(1) An individual is entitled at any time by notice in writing to a data
18 holder to require the data holder at the end of such period as is reasonable
19 in the circumstances to cease, or not to begin, processing for the purposes of
20 direct marketing, such personal data in respect of which he is the data owner.

21 (2) If a court of record is satisfied, on the application of any person who
22 has given a notice under subsection (1), that the data holder has failed to
23 comply with the notice, the court of record may order him to take such steps
24 for complying with the notice as the court deems fit.

25 (3) An individual who suffers damage by reason of any contravention by
26 a data holder of any of the requirements of this Act is entitled to compensation
27 from the data holder for that damage.

28 22. Any person acting under the authority of the holder or of the
29 processor, including the processor himself, who has access to personal data,
30 shall not process such data except on instructions from the holder, unless he
31 is required to do so by law.

1 statement that he has reason to know that the electronic agent will perform
2 the subject of the contract, or instruct a person or agent to do so.

3 (5) Where there is an obligation on any person, agency or body
4 corporate, to make financial payments, such obligation shall be fulfilled if the
5 payment is made electronically in a manner specified by the Central Bank of
6 Nigeria under any law, regulation or directive.

7 (6) NITDA or any appropriate regulatory body, having due regard to
8 developments in Information Technology, may by regulation provide that
9 subsection (l) does not apply to a specified transaction or to a specified law.

10 27.—(1) A document is that of the originator if it was sent by the
11 originator.

12 (2) As between the originator and the addressee, a document is deemed
13 to be that of the originator if it was sent:

14 (a) by a person who had the authority to act on behalf of the originator in
15 respect of that document; and

16 (b) by an information system programmed by, or on behalf of, the originator
17 to operate automatically.

18 (3) As between the originator and the addressee, an addressee is
19 entitled to regard a document as being that of the originator, and to act on
20 that assumption, if:

21 (a) in order to ascertain whether the document was that of the originator,
22 the addressee properly applied a procedure previously agreed to by the
23 originator for that purpose; and

24 (b) the document as received by the addressee resulted from the actions
25 of a person whose relationship with the originator or with any agent of
26 the originator enabled that person to gain access to a method used by
27 the originator to identify documents.

28 (4) Subsection (3) does not apply:

29 (a) if the addressee has received notice from the originator that the
30 document is not that of the originator, and had reasonable time to act
31 accordingly;

1 (b) in a case where subsection (3) (b) applies, at any time when the
2 addressee knew or should have known, had he exercised reasonable care
3 or used any agreed procedure, that the document was not that of the
4 originator;

5 (c) if in all the circumstances of the case, it is unconscionable for the
6 addressee to regard the document as that of the originator or to act on
7 that assumption; and

8 (d) where a document is that of the originator or is deemed to be that of
9 the originator, or the addressee is entitled to act on that assumption, then,
10 as between the originator and the addressee, the addressee is entitled to
11 regard the document received as being what the originator intended to
12 send, and to act on that assumption,

13 PROVIDED however that the addressee is not so entitled when he knew,
14 or should have known, had he exercised reasonable care or used any
15 agreed procedure, that the transmission resulted in any error in the
16 document as received.

17 (5) The addressee is entitled to regard each document received as a
18 separate document and to act on that assumption:

19 EXCEPT to the extent that it duplicates another document and the addressee
20 knew or should have known, had he exercised reasonable care or used any
21 agreed procedure, that the document was a duplicate.

22 (6) Nothing in this section shall affect the law on the formation of
23 contracts.

24 28.—(1) Subsections (2) to (4) of this section shall apply where, on or
25 before sending a document, or by means of that document, the originator
26 has requested or has agreed with the addressee that receipt of the document
27 be acknowledged.

28 (2) Where the originator has not agreed with the addressee that the
29 acknowledgment be given in a particular form or by a particular method, an
30 acknowledgment may be given by:

31 (a) any communication by the addressee, whether automated or otherwise;

1 or

2 (b) any conduct of the addressee, sufficient to indicate to the originator
3 that the document has been received.

4 (3) Where the originator has stated that the delivery of the document
5 is conditional on receipt of the acknowledgment, the document is treated
6 as though it has never been sent, until the acknowledgment is received.

7 (4) Where the originator has not stated that the delivery of a document
8 is conditional on receipt of the acknowledgment, and the acknowledgment
9 has not been received by the originator within the time specified or agreed
10 or, if no time has been specified or agreed, within a reasonable time, the
11 originator:

12 (a) may give notice to the addressee stating that no acknowledgment
13 has been received and specifying a reasonable time by which the
14 acknowledgment shall be received; and

15 (b) if the acknowledgment is not received within the time specified in
16 paragraph (a), may, upon notice to the addressee, treat the document as
17 though it had never been sent, or exercise any other rights he may have.

18 (5) Where the originator receives the addressee's acknowledgment of
19 receipt, it is presumed, unless contrary evidence is adduced, that the particular
20 document was received by the addressee.

21 (6) The presumption in subsection (5) above does not imply that the
22 document corresponds to the information received.

23 (7) Where the received acknowledgment states that the related
24 document met requirements, either agreed upon by the parties or set forth
25 in applicable standards, it is presumed that those requirements have been
26 met.

27 (8) Except in so far as it relates to the sending or receipt of the document,
28 this section shall apply to the legal consequences that may arise either from
29 that document or from the acknowledgment of its receipt.

30 29.—(1) Unless otherwise agreed between the originator and the
31 addressee, the dispatch of a document occurs when it enters an information

1 system outside the control of the originator or of the person who sent the
2 document on behalf of the originator.

3 (2) Unless otherwise agreed between the originator and the addressee,
4 the time of receipt of a document is determined as follows:

5 (a) if the addressee has designated an information system for the purpose
6 of receiving documents, receipt occurs:

7 (i) at the time when the document enters the designated information
8 system; and

9 (ii) if the document is sent to an information system of the addressee
10 that is not the designated information system, at the time when the
11 document is retrieved by the addressee;

12 (b) if the addressee has not designated an information system, unless
13 otherwise agreed between the originator and the addressee, receipt occurs
14 when the document enters a designated information system.

15 (3) Subsection (2) applies notwithstanding that the place where the
16 information system is located may be different from the place where the
17 document is deemed to be received under subsection (4).

18 (4) Unless otherwise agreed between the originator and the addressee,
19 a document is deemed to be dispatched at the principal place of businesses of
20 the originator, and is deemed to be received at the principal place of business
21 of the addressee.

22 (5) For the purposes of subsection (4):

23 (a) if the originator or the addressee has more than one place of business,
24 the place of business is that which has the closest relationship to the
25 underlying transaction or, where there is no underlying transaction, the
26 principal place of business;

27 (b) if the originator or the addressee does not have a place of business,
28 reference is to be made to his habitual residence.

29 (6) NITDA or any appropriate regulatory body may by regulation, provide
30 that this section does not apply to a specified communication involving
31 documents, or to a specified law.

30. Where a contract to which this Act applies is a transnational contract,

1 and a dispute arises out of or in connection with such contract, the following
2 provisions shall to apply:

3 (1) the dispute shall be decided in accordance with the rule of law
4 designated by the parties as applicable to the substance of the dispute;

5 (2) any designation by the parties of the law or legal system of a given
6 country shall be construed, unless otherwise expressed, as directly referring
7 to substantive law of that country and not to its conflict of laws rules;

8 (3) where parties have not designated any law under subsection (1), the
9 court or arbitral body shall apply the rules of law which it considers to be
10 appropriate given all the circumstances surrounding the dispute;

11 (4) where the contract has been concluded with a person who pursues
12 commercial or professional activities in Nigeria or who by any means directs
13 such activities to several countries including Nigeria, such contract shall
14 be subject to Nigerian law;

15 (5) where a consumer enters into a contract with a party who is not
16 domiciled in Nigeria but has a branch, agency or other establishment in
17 Nigeria, that party shall, in dispute arising out of the operations of the
18 branch, agency or establishment, be deemed to be domiciled in Nigeria;

19 (6) in all cases, the court shall rule in accordance with the terms of the
20 contract and shall take into account the usage of the trade applicable to
21 the transaction.

22 PART V — CARRIAGE OF GOODS

23 31. This Part applies to any action in connection with, or in pursuance
24 of, a contract of carriage of goods, including but not limited to—

25 (a) (i) furnishing the marks, number, quantity or weight of goods;

26 (ii) stating or declaring the nature or value of goods;

27 (iii) issuing a receipt for goods;

28 (iv) confirming that goods have been loaded;

29 (b) (i) notifying a person of terms and conditions of the contract;

30 (ii) giving instructions to a carrier;

31 (c) (i) claiming delivery of goods;

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- 1 (ii) authorizing release of goods;
2 (iii) giving notice of loss of, or damage to, goods;
3 (d) giving any other notice or statement in connection with the
4 performance of the contract;
5 (e) undertaking to deliver goods to a named person or a person authorized
6 to claim delivery;
7 (f) granting, acquiring, renouncing, surrendering, transferring or
8 negotiating rights in goods;
9 (g) acquiring or transferring rights and obligations under the contract.

10 32.—(1) Subject to Subsection (3), where the law requires that any
11 action referred to in Section 25 be carried out in writing or by using a paper
12 document, that requirement is met, if the action is carried out by using one
13 or more documents.

14 (2) Section (1) applies, whether the requirement therein is in the form
15 of an obligation or whether the law simply provides consequences for failing,
16 either to carry out the action in writing or to use a paper document.

17 PART VI — CONSUMER PROTECTION

18 33.—(1) A service provider or vendor shall provide a consumer with
19 sufficient and relevant information to enable informed decisions on the part
20 of that consumer. Such information shall be:

- 21 (a) clearly presented in a language the consumer understands;
22 (b) accurate;
23 (c) conspicuously displayed at appropriate stages of the consumer's
24 decision making, particularly before the consumer confirms transactions
25 or provides any personal information; and
26 (d) capable of being saved or printed by the consumer.

27 (2) A service provider or vendor shall ensure that its marketing practices
28 and information are current, accurate, not deceptive and misleading to the
29 consumer.

30 (3) A service provider or vendor shall identify itself and provide
31 information about its business policies, and practices stating enquiry,
complaint and claim procedures, warranty or other support services related

1 to its goods or services before the commencement of the transaction.

2 (4) Such information mentioned in subsection (3) shall include:

3 (a) a description of the goods or services including the quantity to be
4 purchased;

5 (b) the full price, including:

6 (i) the applicable currency;

7 (ii) any shipping charges, taxes, and specific reference to any other
8 charges that the vendor is responsible for collecting;

9 (iii) when the vendor cannot reasonably ascertain the amount of
10 potentially applicable charges including additional taxes, customs fees,
11 custom broker fees and the fact that such charges may apply; and

12 (iv) when the full price cannot be worked out in advance, the method
13 the vendor will use to calculate it, including any recurrent costs and the
14 method used to calculate such costs;

15 (5) A service provider or vendor shall provide the consumer with a
16 record of the transaction within a reasonable time after the transaction has
17 been completed.

18 34.—(1) A service provider or vendor shall take reasonable steps to
19 ensure that any consumer who agrees to contract is fully informed of terms
20 of such contract. In particular, the consumer shall be provided with an option
21 to correct or cancel the order before it is accepted or processed.

22 (2) When a service provider or vendor cannot fulfill an obligation to
23 a consumer within the time frame originally specified in the terms of an
24 agreement, the service provider or vendor shall promptly notify the consumer,
25 and provide the option of cancelling the order at no charge, except when
26 doing so would be unreasonable.

27 (3) When a consumer contracts for the ongoing provision of goods or
28 services, and there is a material change in the goods or services, or contract
29 concerning the goods or services, the service provider or vendor shall:

30 (a) promptly notify the consumer about the change;

31 (b) provide the consumer with an option to decline further supply of

1 the goods or services, through a simple method of cancellation, without
2 incurring cost or further obligation; and

3 (c) provide timely confirmation of any such cancellation.

4 (4) A service provider or vendor shall not hold the consumer liable for
5 any charges related to a transaction in the following circumstances:

6 (a) the transaction was not authorized by the consumer;

7 (b) the goods or services delivered were materially different from those
8 described by the service provider or vendor;

9 (c) the service provider or vendor failed to provide material information
10 that could affect the decision about the goods or services;

11 (d) the goods or services were not delivered in the time specified, or under
12 the conditions stated in the original offer; and

13 (e) there was no option for the consumer to cancel the transaction when
14 the consumer acted in good faith.

15 PROVIDED that under these circumstances, a service provider or vendor
16 shall refund any payment(s) the consumer makes, including any
17 reasonable costs the consumer incurred directly in the return of the
18 goods in question to the vendor in good order and within a reasonable
19 time.

20 35.—(l) A service provider or vendor shall ensure confidentiality of all
21 personal information collected from the consumer EXCEPT where the consent
22 of the consumer is obtained or where the law demands disclosure.

23 (2) A service provider or vendor shall make public its privacy policy and
24 make it easily accessible to the consumer prior to the commencement of the
25 contract and whenever personal information is either requested or collected.
26 Information that shall be disclosed as part of the privacy policy includes the
27 following:

28 (a) the specific kinds and sources of information being collected and
29 maintained in an electronic form, purposes, usage and disclosure;

30 (b) the choices available to a consumer regarding the collection, use and
31 disclosure of their personal information, how they may exercise and change

1 these choices, and the implications of such choices;
2 (c) how a consumer may review and correct or remove such information;
3 and
4 (d) when the service provider or vendor uses computer cookies, how and
5 why they are used and the consequences of consumers' refusal to accept
6 a computer cookie.

7 (3) A service provider or vendor shall limit its collection, use and
8 disclosure of personal information to that which a reasonable person would
9 consider appropriate in the circumstances.

10 (4) A service provider or vendor shall not, as a condition for a transaction,
11 require a consumer to consent to the collection, use or disclosure of personal
12 information beyond that necessary to complete the sale.

13 (5) When a consumer's consent to the collection, use and disclosure of
14 personal information is required, and cannot reasonably be obtained, such
15 consent shall be provided separately in a clearly worded, online opt-in or
16 opt-out process.

17 (6) When a service provider or vendor transfers a consumer's personal
18 information to third parties, the service provider or vendor shall remain
19 responsible for the protection of that information. Before any such transfer,
20 the service provider or vendor shall ensure, through contractual or other
21 means, that the third party complies with the privacy provisions of this Act.

22 36. Any unsolicited electronic messages sent by a service provider or
23 vendor to a consumer shall prominently display a return address and shall
24 clearly provide a simple procedure by which a consumer can notify the sender
25 that he does not wish to receive such messages.

26 PART VII — LIABILITY OF SERVICE PROVIDERS OR VENDORS

27 37.—(1) A service provider or vendor is not liable for providing access
28 to or for operating facilities for transmitting, routing or storage of electronic
29 records via an information system under its control, provided the service
30 provider or vendor —

31 (a) does not initiate the transmission;

-
- 1 (b) does not select the addressee;
2 (c) performs the functions in an automated, technical manner without
3 selection of the electronic record; and
4 (d) does not modify the electronic record contained in the transmission.

5 (2) The acts of transmission, routing and of provision of access referred
6 to in subsection (1) include the automatic, intermediate and transient storage
7 of the information transmitted in so far as this takes place —

- 8 (a) for the sole purpose of carrying out the transmission in the information
9 system;
10 (b) in a manner that makes it ordinarily inaccessible to anyone other than
11 the anticipated recipients; and
12 (c) for a period not longer than is reasonably necessary for the transmission.

13 38. A service provider or vendor that transmits an electronic record
14 provided by a recipient of the service via an information system under its
15 control is not liable for the automatic, intermediate and temporary storage
16 of that electronic record, where the purpose of storing such electronic record
17 is to make the onward transmission of the electronic record more efficient
18 to other recipients of the service upon their request, provided the service
19 provider—

- 20 (a) does not modify the electronic record;
21 (b) complies with conditions on access to the electronic record;
22 (c) complies with rules regarding the updating of the electronic record,
23 specified in a manner widely recognised and used in the industry;
24 (d) does not interfere with the lawful use of technology, widely recognised
25 and used in the industry, to obtain information on the use of the electronic
26 record; and
27 (e) removes or disables access to the electronic record it has stored upon
28 receiving a take-down notice.

29 39.—(1) A service provider or vendor that provides a service that consists
30 of the storage of electronic records provided by a recipient of the service, is
31 not liable for damages arising from the records stored at the request of the

1 recipient of the service, as long as the service provider —

2 (a) does not have information that the record or activity relating to the
3 record is infringing the rights of a third party;

4 (b) is not aware of facts or circumstances from which the infringing activity
5 or the infringing nature of the information is apparent; and

6 (c) upon receipt of a take-down notification referred to under section 38,
7 acts expeditiously to remove or to disable access to the information.

8 (2) The limitations on liability established by this section do not apply
9 to a service provider unless it has designated an agent to receive notifications
10 of infringement and has provided through its services, including on its web
11 sites in locations accessible to the public, the name, address, phone number
12 and e-mail address of the agent.

13 (3) Subsection (1) does not apply when the recipient of the service is
14 acting under the authority or the control of the service provider.

15 40. A service provider or vendor is not liable for damages incurred by a
16 person if the service provider refers or links users to a web page containing
17 an infringing electronic record or infringing activity, by using information
18 location tools, including a directory, index, reference, pointer, or hyperlink,
19 where the intermediary or service provider —

20 (a) does not have information that the record or an activity relating to the
21 electronic record is infringing the rights of that person;

22 (b) is not aware of facts or circumstances from which the infringing activity
23 or the infringing nature of the electronic record is apparent;

24 (c) does not receive a financial benefit directly attributable to the infringing
25 activity; and

26 (d) removes, or disables access to, the reference or link to the electronic
27 record or activity within a reasonable time after being informed that the
28 electronic record or the activity relating to such electronic record, infringes
29 the rights of a person.

30 41.—(1) For the purposes of this Part, a notification of an offending
31 activity shall be in writing and addressed by the complainant to the service

1 provider or vendor or its designated agent and shall include —
2 (a) the full names and address of the complainant;
3 (b) signature of the complainant;
4 (c) identification of the right that has allegedly been infringed;
5 (d) identification of the material or activity that is claimed to be the subject
6 of unlawful activity;
7 (e) the remedial action required to be taken by the intermediary or service
8 provider in respect of the complaint;
9 (f) telephonic and electronic contact details, if any, of the complainant;
10 (g) a statement that the complainant is acting in good faith;
11 (h) a statement by the complainant that the information in the take-down
12 notification is to his or her knowledge true and correct.

13 (2) Any person who lodges a notification of unlawful activity with a
14 service provider knowing that it materially misrepresents the facts commits
15 an offence and is liable for damages for wrongful take-down as may be
16 prescribed by the appropriate regulatory body.

17 (3) A Service provider or vendor is not liable for wrongful take-down
18 in response to a notification.

19 42.—(1) A Service provider or vendor shall not be required to monitor
20 any record processed by means of its system in order to ascertain whether
21 its processing would constitute or give rise to an infringement.

22 (2) Except as provided by subsection (1), nothing in this section shall
23 relieve a Service provider or vendor from:

24 (a) any obligation to comply with an order or direction of a court or other
25 competent authority; and

26 (b) any contractual obligation.

27 43.—(1) Regulatory bodies may by regulation establish standards or
28 requirements of conduct with which service providers or vendors carrying
29 on business in or from within Nigeria shall comply.

30 (2) A standard established by regulation made under subsection (1)
31 may relate to one or more of the following matters —