

THE ELECTRONIC -TRANSACTIONS BILL

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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

Sponsored by Senator Hope Uzodinma

[] Commencement

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

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

Objectives of the Bill

(a) conducting transactions using electronic or related media;

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

(c) the protection of personal data; and

(d) facilitating electronic commerce in Nigeria

PART II - GENERAL PROVISIONS

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

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

(a) the creation or execution of a will;

(b) the execution of negotiable instruments;

(c) the creation, performance or enforcement of an indenture, declaration of trust or power of attorney with the exception of constructive and resulting trusts;

(d) any contract for the sale or other disposition of immovable property, or any interest in such property;

1 (e) the conveyance of immovable property or the transfer of any
2 interest in immovable property;

3 (f) documents of title for movable or immovable property; and

4 (g) where such application would involve a construction of a rule of
5 law that is clearly inconsistent with the manifest intent of the lawmaking body
6 or repugnant to the context of the same rule of law,

7 PROVIDED that the mere requirement that information be in writing, written
8 or "printed" shall not by itself be sufficient to establish such intent.

9 (2) Any appropriate regulatory body may prescribe rules, conditions
10 and regulations that shall be complied with in order to meet the provisions of
11 this Act.

12 (3) Notwithstanding anything in the Stamp Duty Act, in relation to
13 this Act, documents whose media are not paper, shall be liable to stamp duties
14 as may be prescribed by the appropriate regulatory body.

15 (4) Notwithstanding anything contained in the Nigerian
16 Communications Act, or rules made under it, it shall be lawful to transmit and
17 send documents as defined in this Act.

18 3. -(1) Information shall not be denied legal effect, validity and
19 enforceability solely on the grounds of-

20 (a) the medium in or on which the information is represented, the
21 technology in which the representation of the information was made in which
22 the information is being communicated;

23 (b) the Information in the document derives its validity and
24 enforceability by reference to information in another document.

25 Where the use of a document is required by any law, that requirement shall be
26 satisfied by a document as defined in this Act.

27 A document shall not be denied admissibility solely on the grounds that the
28 document can neither be confirmed nor denied owing to the medium or
29 technology used

30 Separate documents on or in the same or separate media and based on the same

1 or separate technologies, even when combined into a single document, for
2 transmission, retention or other purposes, do not lose their distinct nature, if
3 both the integrity of the combined document and the integrity of each
4 separate reconstituted document are ensured by logical structuring
5 elements.

6 4. -(1) Where any law requires information to be in writing, that
7 requirement is met if the information is contained in a document as defined
8 by this Act and such information is accessible in a manner useable for
9 subsequent reference.

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

13 (3) The provision of this Section shall not apply,

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

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

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

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

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

23 (v) a public notice.

24 (b) To any document required to accompany any transportation or
25 handling of hazardous materials, pesticides or other toxic or dangerous
26 material;

27 (d) To override any rule of law intended for protection of
28 consumers.

29 5. Except as otherwise expressly agreed by the parties to an
30 agreement, the provisions of this Act shall apply in generating, sending,

1 receiving, storing or otherwise processing documents.

2 6.-(1) Where an existing law, regulation, rule, practice or procedure,
3 requires information to be presented or retained in its original form, that
4 requirement is met by a document if-

5 (a) there exists a reliable assurance as to the integrity of the
6 information is preserved from the time when it was first generated in its final
7 form as a document; and

8 (b) where it is required that information be presented, that
9 information is capable of being displayed to the person to whom it is to be
10 presented.

11 (2) Subsection (1) applies whether the requirement therein is in the
12 form of an obligation or of this section the law, regulation, rule, practice or
13 procedure simply provides consequences for the information not being
14 presented or retained in its original form

15 (3) For the purposes of paragraph (a) of subsection (1) of this section
16 the integrity of information shall be deemed to be reliable assured if-

17 (a) If the information has remained complete and unaltered, apart
18 from the addition of any endorsement and any change which arises in the
19 normal course of communication, storage and display; and

20 (b) In determining whether the information has remained complete
21 and unaltered the purpose for which the information was generated and all the
22 relevant circumstances shall be considered.

23 (4) Where a document is required to be presented in multiple copies to
24 a single addressee at the same time, that requirement shall be satisfied by the
25 submission of a single document that is capable of being reproduced by that
26 addressee.

27 (5) This section does not affect immigration and citizenship
28 documents 8. (1) In any legal proceedings, nothing in the application of the
29 rules of evidence shall apply so as to deny the admissibility of any document in
30 evidence-

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

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

4 (2) The weight to be attached to the information represented in a
5 document as defined in this Act, shall be determined by the following-

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

8 (b) the reliability of the manner in which the integrity of the
9 information was maintained;

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

11 (d) any other relevant factor.

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

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

19 7. -(1) Where any law provides for:

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

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

24 (c) the receipt or payment of money in a particular manner, then,
25 notwithstanding anything contained in any other law for the time being in
26 force, such requirement shall be deemed to have been satisfied if such filing,
27 issue, grant, receipt or payment, as the case may be, is effected by means of a
28 document as defined in this Act and as may be prescribed by the appropriate
29 regulatory body.

30 (2) The appropriate regulatory body, in pursuance of the objectives

1 of this Act and for the purposes of subsection (1) of this section may by
2 Regulations prescribe-

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

5 (b) the manner or method of payment of any fee or charges for filing,
6 creation or issuance of any document or record under paragraph (a).

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

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

17 9.-(1) Where an existing law, regulation, rule, practice or procedure,
18 requires that certain information, documents or records be retained, that
19 requirement is met by retaining the information in a document as defined in this
20 law, PROVIDED-

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

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

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

29 (2) An obligation to retain documents, records or information in
30 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
3 (I) 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 (I) 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 10. -(1) Where the signature of a person is required, that
12 requirement is met in relation to an electronic communication if-

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

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

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

21 (2) This section does not affect the operation of any other law that
22 makes 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
26 in an 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

- 1 prosecuting agencies in areas of criminal law;
- 2 (c) by a natural person in the course of personal or domestic
3 activity
- 4 17. -(1) Personal data shall only be processed if at least one of the
5 following conditions are met-
- 6 (a) The data owner has given his consent to the processing;
- 7 (b) The processing is necessary for the performance of a contract to
8 which the data owner is a party, or for the taking of steps at the request of the
9 data owner with a view to entering into a contract;
- 10 (c) The processing is necessary for compliance with any legal
11 obligation to which the data holder is subject, other than an obligation
12 imposed by contract;
- 13 (d) The processing is necessary in order to protect the vital interests
14 of the data owner;
- 15 (e) The processing is necessary in the interest of the public and
16 good governance.
- 17 (2) Personal data shall be obtained only for specified and lawful
18 purposes, and shall not be further processed in any manner incompatible
19 with those purposes.
- 20 (3) Personal data shall be adequate, relevant and not excessive in
21 relation to the purposes for which they are processed.
- 22 (4) Personal data shall be provided accurately and, where
23 necessary, kept up to date.
- 24 (5) Personal data processed for whatever purpose, shall not be kept
25 for longer than required.
- 26 (6) Personal data shall be processed in accordance with the rights
27 of data owners under the laws of the Federal Republic of Nigeria.
- 28 (7) Personal data shall not be transferred to a country or territory
29 outside the Federal Republic of Nigeria unless that country or territory
30 provides adequate level of protection for the rights and freedoms of data
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1 owners in relation to the processing of personal data

2 18.-(1) personal data revealing racial or ethnic origin, political
3 opinions, religious or philosophical beliefs, trade-union membership, and the
4 processing of data concerning health or sexual orientation shall not be
5 processed unless-

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

8 (b) processing is necessary for the purposes of carrying out the
9 obligations and specific rights of the holder in the field of labour law and it is
10 authorized by law and adequate safeguards are provided;

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

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

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

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

26 (2) Subsection (1) shall not apply where processing of the data is
27 required for the purposes of preventive medicine, medical diagnosis, the
28 provision of care or treatment or the management of health-care services, and
29 where those data are processed by a health professional subject to the
30 obligation of professional secrecy or by another person also subject to an

1 equivalent obligation of secrecy.

2 **19.-(1) Subject to the provisions of this Act, an individual shall be**
3 **entitled to be informed by any data holder where personal data of which that**
4 **individual is the data owner are being processed by or on behalf of that data**
5 **holder. Such information which may be communicated in an intelligible**
6 **form shall include-**

7 (a) the personal data of which that individual is the data owner,

8 (b) the purposes for which they are being or are to be processed,

9 and

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

12 (d) any information available to the data holder as to the source of
13 those data.

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

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

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

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

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

28 **20.-(1) An individual is entitled at any time by notice in writing to a**
29 **data holder to require the data holder at the end of such period as is**
30 **reasonable in the circumstances to cease, or not to begin, processing for the**

1 purposes of direct marketing, such personal data in respect of which he is the
2 data owner.

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

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

10 21. Any person acting under the authority of the holder or of the
11 processor, including the processor himself, who has access to personal data,
12 shall not process such data except on instructions from the holder, unless he is
13 required to do so by law.

14 22.-(1) A data holder must implement appropriate technical and
15 organizational measures and exercise reasonable care to protect personal data
16 against accidental or unlawful destruction or accidental loss and against
17 unauthorized alteration, processing, disclosure or access, in particular where
18 the processing involves the transmission of data over a network, and against all
19 other unlawful forms of processing.

20 (2) Having regard to the state of the art and the costs of their
21 implementation, such measures shall ensure a level of security appropriate to
22 the risks represented by the processing and the nature of the data to be
23 protected.

24 23. The data holder must, where processing is carried out on his
25 behalf, choose a processor who provides sufficient guarantees in respect of the
26 technical security measures and organizational measures governing the
27 processing to be carried out and must ensure compliance with those measures.

28 24. NITDA may in consultation with any appropriate regulatory
29 body, develop rules and guidelines for Data Protection in Nigeria.

PART V - ELECTRONIC CONTRACTS

1
2 **25. -(1) In the context of contract formation, unless otherwise**
3 **agreed by the parties, an offer and acceptance may be expressed by means of**
4 **a document as defined in this Act.**

5 **(2) Where a document is used in the formation of a contract, that**
6 **contract shall not be denied validity or enforceability on the ground that a**
7 **document was used for that purpose.**

8 **(3) A contract may be formed by the interaction of electronic**
9 **agents, PROVIDED that the interaction results in the agents engaging in**
10 **operations that confirm or indicate the existence of a contract.**

11 **(4) (a) A contract may be formed by the interaction of an electronic**
12 **agent and a natural person;**

13 **(b) A contract is formed if the person has reason to know that he is**
14 **dealing with an electronic agent and the person takes actions or makes a**
15 **statement that he has reason to know that the electronic agent will perform**
16 **the subject of the contract, or instruct a person or agent to do so.**

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

21 **(6) NITDA or any appropriate regulatory body, having due regard**
22 **to developments in Information Technology, may by regulation provide that**
23 **Subsection (1) does not apply to a specified transaction or to a specified law.**

24 **26. -(1) A document is that of the originator if it was sent by the**
25 **originator;**

26 **(2) As between the originator and the addressee, a document is**
27 **deemed to be that of the originator if it was sent-**

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

30 **(b) by an information system programmed by, or on behalf of, the**

1 originator to operate automatically.

2 (3) As between the originator and the addressee, an addressee is
3 entitled to regard a document as being that of the originator, and to act on that
4 assumption, if-

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

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

12 (4) Subsection (3) does not apply-

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

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

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

22 (d) where a document is that of the originator or is deemed to be that of
23 the originator, or the addressee is entitled to act on that assumption, then, as
24 between the originator and the addressee, the addressee is entitled to regard the
25 document received as being what the originator intended to send, and to act on
26 that assumption, PROVIDED however that the addressee is not so entitled
27 when he knew, or should have known, had he exercised reasonable care or used
28 any agreed procedure, that the transmission resulted in any error in the
29 document as received.

30 (5) The addressee is entitled to regard each document received as a

1 separate document and to act on that assumption, EXCEPT to the extent that
2 it duplicates another document and the addressee knew or should have
3 known, had he exercised reasonable care or used any agreed procedure, that
4 the document was a duplicate.

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

7 27. -(1) Subsections (2) to (4) of this section shall apply where, on
8 or before sending a document, or by means of that document, the originator
9 has requested or has agreed with the addressee that receipt of the document
10 be acknowledged.

11 (2) Where the originator has not agreed with the addressee that the
12 acknowledgement be given in a particular form or by a particular method, an
13 acknowledgement may be given by-

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

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

18 (3) Where the originator has stated that the delivery of the
19 document is conditional on receipt of the acknowledgement, the document
20 is treated as though it has never been sent, until the acknowledgement is
21 received.

22 (4) Where the originator has not stated that the delivery of a
23 document is conditional on receipt of the acknowledgement, and the
24 acknowledgement has not been received by the originator within the time
25 specified or agreed or, if no time has been specified or agreed, within a
26 reasonable time, the originator:

27 (a) may give notice to the addressee stating that no
28 acknowledgement has been received and specifying a reasonable time by
29 which the;

30 (b) if the acknowledgement is not received within the time

1 specified in paragraph (a), may, upon notice to the addressee, treat the
2 document as though it had never been sent, or exercise any other rights he may
3 have.

4 (5) Where the originator receives the addressee's acknowledgement
5 of receipt, it is presumed, unless contrary evidence is adduced, that the
6 particular document was received by the addressee.

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

9 (7) Where the received acknowledgement states that the related
10 document met requirements, either agreed upon by the parties or set forth in
11 applicable standards, it is presumed that those requirements have been met.

12 (8) Except in so far as it relates to the sending or receipt of the
13 document, this section shall apply to the legal consequences that may arise
14 either from that document or from the acknowledgement of its receipt.

15 **28.**(1) Unless otherwise agreed between the originator and the
16 addressee, the dispatch of a document occurs when it enters an information
17 system outside the control of the originator or of the person who sent the
18 document on behalf of the originator.

19 (2) Unless otherwise agreed between the originator and the addressee,
20 the time of receipt of a document is determined as follows-

21 (a) if the addressee has designated an information system for the
22 purpose of receiving documents, receipt occurs-

23 (i) at the time when the document enters the designated information
24 system; and

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

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

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

4 (4) Unless otherwise agreed between the originator and the
5 addressee, a document is deemed to be dispatched at the principal place of
6 businesses of the originator, and is deemed to be received at the principal
7 place of business of the addressee.

8 (5) For the purposes of subsection (4):if the originator or the
9 addressee has more than one place of business, the place of business is that
10 which has the closest relationship to the underlying transaction or, where
11 there is no underlying transaction, the principal place of business; if the
12 originator or the addressee does not have a place of business, reference is to
13 be made to his habitual residence.

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

17 **29.** Where a contract to which this Act applies is a transnational
18 contract, and a dispute arises out of or in connection with such contract, the
19 following provisions shall to apply-

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

22 (2) Any designation by the parties of the law or legal system of a
23 given country shall be construed, unless otherwise expressed, as directly
24 referring to substantive law of that country and not to its conflict of laws
25 rules;

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

29 (4) Where the contract has been concluded with a person who
30 pursues commercial or professional activities in Nigeria or who by any

1 means directs such activities to several countries including Nigeria, such
2 contract shall be subject to Nigerian law;

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

7 (6) In all cases, the court shall rule in accordance with the terms of the
8 contract and shall take into account the usage of the trade applicable to the
9 transaction.

10 **PART V - CARRIAGE OF GOODS**

11 **30.** This Part applies to any action in connection with, or in pursuance
12 of, a contract of carriage of goods, including but not limited to-

13 (a) (i) furnishing the marks, number, quantity or weight of goods-

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

15 (iii) issuing a receipt for goods;

16 (iv) confirming that goods have been loaded.

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

18 (ii) giving instructions to a carrier;

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

20 (ii) authorizing release of goods;

21 (iii) giving notice of loss of, or damage to, goods;

22 (d) giving any other notice or statement in connection with the
23 performance of the contract;

24 (e) undertaking to deliver goods to a named person or a person
25 authorized to claim delivery;

26 (f) granting, acquiring, renouncing, surrendering, transferring or
27 negotiating rights in goods;

28 (g) acquiring or transferring rights and obligations under the contract.

29 **31.**-(1) Subject to Subsection (3), where the law requires that any
30 action referred to in Section 25 be carried out in writing or by using a paper

1 document, that requirement is met, If the action is carried out by using one or
2 more documents.

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

6 PART VI - CONSUMER PROTECTION

7 32.-(1) A service provider or vendor shall provide a consumer with
8 sufficient and relevant information to enable informed decisions on the part
9 of that consumer. Such information shall be-

10 (a) clearly presented in a language the consumer understands;

11 (b) Accurate;

12 © conspicuously displayed at appropriate stages of the consumer's
13 decision making, particularly before the consumer confirms transactions or
14 provides any personal information; and

15 (d) capable of being saved or printed by the consumer.

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

19 (3) A service provider or vendor shall identify itself and provide
20 information about its business policies, and practices stating enquiry,
21 complaint and claim procedures, warranty or other support services related
22 to its goods or services before the commencement of the transaction.

23 (4) Such information mentioned in subsection (3) shall include-

24 (a) a description of the goods or services including the quantity to
25 be purchased; the full price, including-

26 (i) the applicable currency;

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

29 (iii) when the vendor cannot reasonably ascertain the amount of
30 potentially applicable charges including additional taxes, customs fees,

1 custom broker fees and the fact that such charges may apply; and
2 (iv) when the full price cannot be worked out in advance, the method
3 the vendor will use to calculate it, including any recurrent costs and the method
4 used to calculate such costs;

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

8 **33.-(1)** A service provider or vendor shall take reasonable steps to
9 ensure that any consumer who agrees to contract is fully informed of terms of
10 such contract. In particular, the consumer shall be provided with an option to
11 correct or cancel the order before it is accepted or processed.

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

17 (3) When a consumer contracts for the ongoing provision of goods or
18 services, and there is a material change in the goods or services, or contract
19 concerning the goods or services, the service provider or vendor shall-

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

21 (b) provide the consumer with an option to decline further supply of
22 the goods or services, through a simple method of cancellation, without
23 incurring cost or further obligation; and

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

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

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

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

30 (c) the service provider or vendor failed to provide material

1 information that could affect the decision about the goods or services;

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

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

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

10 34. -(1) A service provider or vendor shall ensure confidentiality of
11 all personal information collected from the consumer EXCEPT where the
12 consent of the consumer is obtained or where the law demands disclosure.

13 (2) A service provider or vendor shall make public its privacy
14 policy and make it easily accessible to the consumer prior to the
15 commencement of the contract and whenever personal information is either
16 requested or collected. Information that shall be disclosed as part of the
17 privacy policy includes the following-

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

20 (b) the choices available to a consumer regarding the collection,
21 use and disclosure of their personal information, how they may exercise and
22 change these choices, and the implications of such choices;

23 (c) how a consumer may review and correct or remove such
24 information; and

25 (d) when the service provider or vendor uses computer cookies,
26 how and why they are used and the consequences of consumers' refusal to
27 accept a computer cookie.

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

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

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

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

13 35. Any unsolicited electronic messages sent by a service provider or
14 vendor to a consumer shall prominently display a return address and shall
15 clearly provide a simple procedure by which a consumer can notify the sender
16 that he does not wish to receive such messages.

17 PART VII- LIABILITY OF SERVICE PROVIDERS OR VENDORS

18 36. -(1) A service provider or vendor is not liable for providing access
19 to or for operating facilities for transmitting, routing or storage of electronic
20 records via an information system under its control, provided the service
21 provider or vendor-

22 (a) does not initiate the transmission;

23 (b) does not select the addressee;

24 (c) performs the functions in an automated, technical manner without
25 selection of the electronic record; and

26 (d) does not modify the electronic record contained in the
27 transmission.

28 (2) The acts of transmission, routing and of provision of access
29 referred to in subsection (1) include the automatic, intermediate and transient
30 storage of the information transmitted in so far as this takes place-

1 (a) for the sole purpose of carrying out the transmission in the
2 information system;

3 (b) in a manner that makes it ordinarily inaccessible to anyone
4 other than the anticipated recipients; and

5 (c) for a period not longer than is reasonably necessary for the
6 transmission.

7 **37.** A service provider or vendor that transmits an electronic record
8 provided by a recipient of the service via an information system under its
9 control is not liable for the automatic, intermediate and temporary storage of
10 that electronic record, where the purpose of storing such electronic record is
11 to make the onward transmission of the electronic record more efficient to
12 other recipients of the service upon their request, provided the service
13 provide-

14 (a) does not modify the electronic record;

15 (b) complies with conditions on access to the electronic record;

16 (c) complies with rules regarding the updating of the electronic
17 record, specified in a manner widely recognised and used in the industry;

18 (d) does not interfere with the lawful use of technology, widely
19 recognised and used in the industry, to obtain information on the use of the
20 electronic record; and

21 (a) removes or disables access to the electronic record it has stored
22 upon receiving a take-down notice.

23 **38. -(1)** A service provider or vendor that provides a service that
24 consists of the storage of electronic records provided by a recipient of the
25 service, is not liable for damages arising from the records stored at the
26 request of the recipient of the service, as long as the service provider-

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

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

1 receipt of a take-down notification referred to under section 38, acts
2 expeditiously to remove or to disable access to the information.

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

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

10 **39.** A service provider or vendor is not liable for damages incurred by
11 a person if the service provider refers or links users to a web page containing an
12 infringing electronic record or infringing activity, by using information
13 location tools, including a directory, index, reference, pointer, or hyperlink,
14 where the intermediary or service provider-

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

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

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

21 (d) removes, or disables access to, the reference or link to the
22 electronic record or activity within a reasonable time after being informed that
23 the electronic record or the activity relating to such electronic record, infringes
24 the rights of a person.

25 **40.-(1)** For the purposes of this Part, a notification of an offending
26 activity shall be in writing and addressed by the complainant to the service
27 provider or vendor or its designated agent and shall include-

28 (a) the full names and address of the complainant;

29 (b) signature of the complainant;

30 (c) identification of the right that has allegedly been infringed;

1 (d) identification of the material or activity that is claimed to be the
2 subject of unlawful activity;

3 (e) the remedial action required to be taken by the intermediary or
4 service provider in respect of the complaint;

5 (f) telephonic and electronic contact details, if any, of the
6 complainant;

7 (g) a statement that the complainant is acting in good faith;

8 (h) a statement by the complainant that the information in the take-
9 down notification is to his or her knowledge true and correct.

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

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

16 **41.**-(1) A Service provider or vendor shall not be required to
17 monitor any record processed by means of its system in order to ascertain
18 whether its processing would constitute or give rise to an infringement.

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

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

23 (b) any contractual obligation.

24 PART VIII- SUBSIDIARY REGULATION

25 **42** -(1) Regulatory bodies may by regulation establish standards or
26 requirements of conduct with which service providers or vendors carrying
27 on business in or from within Nigeria shall comply.

28 (2) A standard established by regulation made under subsection (1)
29 may relate to one or more of the following matters-

30 (a) the types of services that are permitted to be provided by service

1 the person, body or organisation, request that person, body or organisation
2 to-

3 (a) develop standards or conduct requirements that apply to service
4 providers or vendors as regards one or more specified matters relating to the
5 provision of services by those service providers or vendors; and

6 (b) provide details relating to those standards or conduct
7 requirements to the regulatory body within such time as may be specified in
8 the request.

9 (5) If the regulatory body is satisfied with the standards and code of
10 conduct provided under subsection (4), it shall approve such standards and
11 conduct requirements by notice published and thereupon such standards and
12 conduct requirements shall apply to such service providers or vendors as
13 may be specified in the notice.

14 (6) If the regulatory body has approved any standard or code of
15 conduct that applies to service providers or vendors, and-

16 (a) It receives notice from a person, body or organisation
17 representing service providers or vendors or proposals to amend the
18 standard or code; or

19 (b) It no longer considers that the standard or code is appropriate, it
20 may by notice revoke or amend any existing standard or code

21 **43.-(1)** Where an offence under this Act or subsidiary regulation,
22 which has been committed by a body corporate, is proved to have been
23 committed with the consent or connivance of, or to be attributable to any
24 neglect on the part of any director, manager, secretary or other similar officer
25 of the body corporate, or any person who was purporting to act in any such
26 capacity, he, as well as the body corporate, shall be guilty of that offence.

27 (2) Where the affairs of a body corporate are managed by its
28 members, subsection (1) shall apply in relation to the acts and defaults of a
29 member in connection with his functions of management as if he were a
30 director of the body corporate.

1 **44.** In this Act-

● 2 "closed system" includes a private network or intranet used and restricted to a
3 specified group of persons;

4 "court" means a court of record;

5 "data holder" means, a person who either alone or jointly or in common with
6 other persons determines the purposes for which and the manner in which any
7 personal data is, or is to be, processed;

8 "data owner" means an individual who is the subject of personal data;

9 "document" includes a representation of Information in a precise formalised
10 language in or on a medium from which it can be read or from which it can be
11 retrieved in a form in which it can be read or perceived; a representation of data
12 on or in a data medium from which it is retrievable, such that it is readable in or
13 on the medium, or on its retrieval;

14 "electronic agent" includes a computer programme or other electronic or
15 automated means configured and enabled by a person that is used to initiate or
16 respond to electronic records or performance in whole or in part without review
17 by an individual;

18 "electronic data" includes all data created, recorded, transmitted or stored in
19 digital or other intangible form by electronic, magnetic, optical or by any other
20 means, including non-paper means, that have capabilities for creation,
21 recording, transmission or storage similar to those means. And except where
22 the context so permits;

23 "electronic" in this Act is used to include non-paper based media that have
24 capabilities for creation, recording, transmission and storage in a manner
25 similar to electronic means;

26 "electronic signature" means data attached to, incorporated in, or logically
27 associated with other data and which is intended by the user to serve as a
28 signature;

29 "personal data" means data which relate to a living individual who can be
30 identified from those data, or from those data and other information which is in

1 the possession of, or is likely to come into the possession of, the data
2 controller, and includes any expression of opinion about the individual and
3 any indication of the intentions of the data controller or any other person in
4 respect of the individual;

5 "data" means information represented in a form in which it can be
6 processed;

7 "Information" includes facts, concepts, events images, sounds, codes,
8 computer programs, software and databases;

9 "Information system" means a system for creating, generating, sending,
10 receiving, storing, displaying or otherwise processing electronic data;

11 "regulatory body" includes any Agency of the Federal Government of
12 Nigeria empowered by law to make regulations;

13 "service provider" includes any person or body corporate that provides
14 services to other persons or entities;

15 "subsidiary regulation" means rules, guidelines or standards issued under
16 this Bill by a regulatory Agency for the purpose of giving effect to any of the
17 provisions of this Act within the mandate of that Agency as may be
18 conferred by this Act or any subsisting law;

19 "transaction" means the execution of an activity whether or not for
20 consideration and whether or not of a commercial nature. It includes the
21 communication of information to another person or body;

22 "Computer cookie" means a string of text data used in information systems
23 to remember a user, or visitor to a website in order to indicate an appropriate
24 content, and to differentiate users and maintain data related to the user
25 during the navigation of a website or an information system;

26 "NITDA" means the National Information Technology Development
27 Agency

28 **45.** This Act may be cited as the Electronic Transactions Bill, 2015. Short Title

EXPLANATORY MEMORANDUM

This Bill seeks to provide a legal and regulatory framework for conducting transactions using electronic or related media and the protection of the rights of consumers and other parties in electronic transactions and services as well as facilitating electronic commerce in Nigeria