

**A LAW TO MAKE PROVISION FOR THE ESTABLISHMENT OF THE  
ONDO STATE URBAN WATER SECTOR, THE ONDO STATE WATER CORPORATION, THE  
ONDO STATE WATER REGULATORY COMMISSION AND FOR OTHER MATTERS  
INCIDENTAL THERETO OR CONNECTED THEREWITH**

**Commencement** ( )

**BE IT ENACTED** by the House of Assembly of Ondo State, Nigeria as follows:

**PART I - PRELIMINARY**

**1. Short Title**

This Law may be cited as the Ondo State Urban Water Sector, the Ondo State Water Corporation, the Ondo State Water Regulatory Commission Law, 2016.

**2. Interpretation**

In this law, unless the context otherwise requires:

“**Adviser**” means a person appointed in writing by an officer of the Corporation, who has appropriate skills and experience to assist and advise the Corporation to achieve informed decisions concerning the effective delivery of the defined service, including, if appropriate, the preparation and conclusion of PPP agreements;

“**Catchment Area**” means any area of land or water from which water is contributed to the supply of any water works;

“**Chairman**” means the Chairman of the Ondo State Water Regulatory Commission appointed in accordance with this Law;

“**COMEG**” means Council of Mining Engineers and Geologists;

“**COREN**” means Council for Regulation of Engineering in Nigeria;

“**Domestic Supply**” means water from any waterworks used in any tenement for drinking, washing, cooking or for bathing or any other purposes of domestic life;

“**Dwelling House**” means any premises used wholly or mainly for the purposes of private dwelling, with or without a garage, outhouse, garden, compound, yard, court, forecourt or other appurtenances belonging thereto or usually enjoyed therewith;

“**Excess Consumption**” means:

- (a) in the case of a tenement which is exempted from the general water rate, any quantity of water ascertained by meter as having been used in such tenement;

- (b) in the case of a tenement in respect of which the general water rate is paid, any quantity of water ascertained by meter as having been used in such tenement in excess of such monthly allowance as may be prescribed.

**“Feasibility Study”** means the internal and external mechanism assessment described in Schedule 1, Section 9 of this Law;

**“Financial Year”** means every period of twelve months beginning on 1<sup>st</sup> January and terminating on the 31<sup>st</sup> day of December;

**“Gathering Ground”** means any surface of land or water which collects rainfall for the purposes of any waterworks;

**“IDAMCs”** means Internally Delegated Area Management Contracts;

**“Member”** in relation to the Corporation means persons on the Management Board described in Section 5 of this Law and shall include the Chairman;

**“MOU”** means Memorandum of Understanding;

**“Meter”** means any appliance used for measuring, ascertaining or regulating the amount of water taken or used from any waterworks, by means of any service, as well as any orifice or gauge or other appliance used in estimating the flow of water in or from any part of any waterworks;

**“Non-Domestic Supply”** means any water from all waterworks used for the purpose of, or in carrying on, any trade, business or manufacture, or from watering fields or gardens cultivated or occupied as a means of pecuniary profit, or for private fountains, or for any ornamental purpose, or for the supply of ponds or tanks, or for laundries or public wash-houses, or public baths, vessels, ships, boats or machinery, and includes the water used or consumed by any person resident in or occupying any premises where a non-domestic supply is given as well as any water taken or used from any water works for the use of any Local Government; Federal or State Government Establishment or Department;

**“Occupier”** in relation to a tenement means the person in occupation of the whole or of any part of such tenement but does not include a lodger;

**“Ondo State Water Regulatory Commission” or “ODSWRC”** means the State Agency established under Section 41 of this Law to perform water service regulatory functions;

**“ODSWRC Commissioner”** means the Chairman or the Commissioner of ODSWRC, appointed in accordance with this Law;

**“Owner”** in relation to a tenement includes the holder of a tenement whether under lease, license or otherwise;

**“Person”** means a corporate entity, limited liability Company, partnership that is not prohibited from entering into a PSP or PPP Agreement by regulations prescribed by the ODSWRC;

**“Prescribed Water Services”** means the abstraction, conveyance, treatment and distribution of potable water, water intended to be converted to potable water or water for commercial use, where such water is provided to customers or other Water Service Providers;

**“Procurement Stage”** means the period from project initiation until the contract is signed;

**“PPP (Public Private Partnership) Agreement”** means:

- a contract between a public sector, institution or corporation and a private sector entity (private party);
- private party performs an institutional function and/ or uses State property in accordance with output specifications;
- substantial transfer of financial, technical and operational risk to the private party;
- private party benefits through unitary payments by institution and/ or user fees;
- institution retains major role as main purchaser of the services or as main enabler of the project;

**“PPP Project Adviser”** means a person appointed by the Corporation to provide hands-on technical assistance from the date of registration to the completion of the project, including, if appropriate, the signing of a PPP Agreement and in the development and delivery stages;

**“PSP (Private Sector Participation) Agreement”** means a concession agreement, after image agreement, management agreement or any agreement entered into by or on behalf of the State and a private sector person selected by the State through a competitive bidding process:

- (i) to provide prescribed water services; or
- (ii) to improve, rehabilitate or expand the network of prescribed water services capabilities within the State;

**“Public Fountain”** means any fountain, standpipe, valve, tap or appliance, used or intended to be used for or in connection with the supply of water to the public from any waterworks and vested in or erected or hereafter to be erected by the Corporation and which is the property of the Corporation;

**“Public Utility Corporation”** means any such body corporate established by any Law enacted by the State or the Federal Government, or any enactment having effect as if so

enacted, as the Executive Governor may by notice in the State Gazette declare to be a public utility Corporation for the purposes of this Law;

**“Reasonable time”** means from 6.00 a.m. to 6.00 p.m.;

**“State”** means Ondo State of Nigeria;

**“State Information System”** means the system for the collection of information pertaining to prescribed water services to be created and maintained in accordance with regulations prescribed by the ODSWRC and this Law;

**“State Water Agency”** means Ondo State Water Corporation;

**“State Waters”** means water from sources in Ondo State of Nigeria other than such sources as may be declared by the Federal Government to be sources affecting the State and another State;

**“Service”** means pipes, valves, cisterns, cocks, fittings or other appliances or devices (excepting any meter as herein defined) by or through which water flows or is intended to flow from any waterworks or which are or may be used for the purpose of supplying any tenement from any waterworks;

**“Street”** includes any square, court, highway, road, thoroughfare or public passage or place over which the public have a right of way;

**“Tenement”** means land with buildings which is held or occupied as a distinct or separate holding or tenancy or any wharf or pier, but does not include land without buildings;

**“The Corporation”** means the Ondo State Water Corporation established by Section 3 of this Law;

**“The Government”** means the Government of Ondo State of Nigeria and “the State” shall be construed accordingly;

**“The Governor”** means the Governor of Ondo State;

**“Water Service Provider”** means the State Water Agency acting in that capacity and any other person who provides prescribed water services to customers or other water service providers within a specific jurisdiction together with or without the responsibility to collect any tariffs that may be due and includes a water service intermediary;

**“Waterworks”** means all reservoirs, dams, weirs, tanks, cisterns, tunnels, treatment plants, conduits, aqueducts, mains, pipes, fountains, sluices, valves, pumps, engines and all other structures or appliances used or constructed for the storage, conveyance, supply, measurement or regulation of water, which are vested in the Corporation by virtue of this Law or which are thereafter acquired, used or constructed by or on behalf of the Corporation and are the property thereof;

**“WSP License”** means the license issued pursuant to this Law granting a person rights to provide prescribed water service within a jurisdiction (that is the geographical areas specified therein).

## **PART II - ESTABLISHMENT, CONSTITUTION AND FUNCTIONS OF THE CORPORATION**

### **3. Establishment of the Corporation**

There is hereby established a Corporation to be known as the Ondo State Water Corporation (hereinafter called **“the Corporation”**).

### **4. Incorporation**

(1) The Corporation shall be a body corporate with perpetual succession and a common seal and shall have power to sue and be sued in its corporate name and to acquire, hold or dispose of movable and immovable property for the purpose of its functions under this Law.

(2) The Corporation is the asset holding Company by which all Government properties in the Urban Water Sector is held in trust.

### **5. Constitution of the Corporation**

(1) The governing body of the Corporation shall be a Management Board (referred to in this Law as **“the Board”**).

(2) The Board shall consist of:

(i) An Executive Chairman who shall be appointed by the Governor shall be: An experienced person from any field of study.

(a) The Chief Executive Officer.

(b) One person appointed by the Governor who, in his opinion will represent adequately the interest of water customers;

(c) A representative of the Ministry of Water Resources;

(d) A representative of the Ministry of Finance;

(e) A representative of the organised private sector (financial)

(g) A member of the Nigerian Chambers of Commerce and Industry.

(3) There shall be paid to each member, not being an officer in the public service of the State, such remuneration, if any, whether by way of salary, fees, or allowances as the Governor may determine.

(4) The provisions contained in the schedule to this Law shall have effect in respect of the constitution and proceedings of the Corporation.

## **6. Duties of the Corporation in Respect of the Establishment and Management of Waterworks and Supply of Water**

It shall be the duty of the Corporation, subject to the provisions of this Law:

- (a) to control and manage all waterworks vested in the Corporation under the provisions of this Law;
- (b) to establish, control, manage, extend and develop such new waterworks and to extend and develop such existing ones as the Corporation may consider necessary for the purpose of providing water in order to meet the requirement of the general public, agriculture, trade and industry in various parts of the State;
- (c) to ensure that water is supplied to the customers thereof at reasonable charges and in potable quality and adequate quantity;
- (d) to organise the conduct of comprehensive research for the purposes of the Corporation from time to time on matters relating to its functions under this Law and to submit, on request, the result of such research to the Governor for the utilization of the same by him in the formulation of policy relating to the supply and usage of water in the State;
- (e) to make arrangements and enter into agreements with any person, department or office of the Government of the State or anybody or institution or to delegate authority to any of its members, officers, employees, servants or agents for the exercise, performance or provision by that person, department, office, body, institution, member, officer, employee, servant or agent, as agent for the Corporation, of any of the functions, services or facilities which may be exercised, performed or provided by the Corporation under this Law;
- (f) identify and implement projects for the provisions of water services, which may be undertaken with private sector participation, pursuant to consultation with the relevant authorities, in order to fulfill the water services obligations of the State;
- (g) ensure the supply of potable water in the State, either pursuant to project agreements with private participants or by raising necessary funds through the capital market;
- (h) verify and monitor compliance by private participants with any project agreements, ensure that contracts are in writing, contain termination provisions for non-performance or under performance, contain dispute resolution mechanisms and provide for a periodic review once every three years of any contract that is longer than three years;
- (i) enter into Internally Delegated Area Management Contracts (IDAMCs) to improve service delivery within the State; and

- (j) to ensure that the quality of water produced conforms with World Health Organisation standards and residual chlorine must be maintained.
- (k) To plan and design maps of water supply line networks in all the major towns and cities in the State and update same from time to time to include new network extension.

## **7. General Powers of the Corporation**

- (1) Without prejudice to the generality of the provisions of this Section, the powers of the Corporation shall include powers:
  - (a) to adopt with or without amendments such master plans for the maintenance and development of its undertakings as its officers may prepare and submit from time to time;
  - (b) to construct, reconstruct, maintain and operate waterworks and all other stations, buildings and works, necessary for the discharge of its functions under this Law;
  - (c) to carry any water pipe through, across or under any street or any place laid out or intended as a street and after giving reasonable notice in writing to the owner or occupier thereof, into, through or under any lands whatsoever without paying any compensation, but making good any damage done;
  - (d) to abstract water from any lake, river, stream or other natural source forming part of State Waters and to do likewise in respect of other waters by arrangement with the appropriate authority under and in accordance with the provisions of any Law in that behalf;
  - (e) from time to time, to examine any surface or underground waters forming part of State Waters for the purpose of determining what, if any, pollution exists and the causes thereof and to do likewise in respect of other waters by arrangement with the appropriate authority under and in accordance with the provisions of any Law in that behalf;
  - (f) to enter upon any land after giving reasonable notice in writing to the owner or occupier, at any time for the purpose of examining, repairing or removing any water-pipe which is the property of the Corporation;
  - (g) to construct public fountains in any street or other public place;
  - (h) at any time between the hours of six o'clock in the morning and six o'clock in the evening, upon giving reasonable notice to the owner or occupier, except in cases of urgency at any other time, to enter into or upon any tenement upon which any service has been laid or into or upon which water from any waterworks is supplied or flows, so as -

- (i) to inspect any service and to ascertain whether there is any waste, leakage, obstruction or damage to any service or meter therein and anything in connection therewith; or
  - (ii) to ascertain the amount of water taken or used; or
  - (iii) to disconnect the supply of water to any tenement or to diminish, withhold or divert the supply of water to any tenement through or by means of any service, either wholly or in part;
- (i) to diminish, withhold or suspend, stop, turn off or divert the supply of water through or by means of any service or public fountain either wholly or in part whenever the Corporation shall think necessary or proper and without prejudice to any liability to pay any water rate, meter rent or other sums due or to become due under this Law;
- (j) to enter into such contracts as may be necessary, advantageous or expedient for the performance of its functions under this Law, including contracts for the construction or extension of waterworks or the bulk supply of materials; provided that –
- (i) contracts shall be awarded in accordance with such general or special directions as may be issued from time to time by the Governor;
  - (ii) no person shall be awarded any contract for the construction or extension of any waterworks or the bulk supply of materials unless his name is included in a register of contractors to be prepared and kept by the Corporation;
  - (iii) notwithstanding the provision of subparagraph (ii) above, any person to be awarded contract funded outside Government budgetary allocation or Corporation funding shall be exempted from such registration;
- (k) to acquire, purchase, lease, hold, construct, manufacture or maintain any property whatsoever whether movable or immovable required for or in connection with the performance of its functions and to sell, dispose of or otherwise deal with such property or any part thereof;
- (l) to enter into any agreement with any person for the supply, construction, manufacture, maintenance or repair, by that person, of any property whether movable or immovable, which is necessary or appropriate for the purpose of the Corporation subject to the same provisions as in paragraph (j) of this sub-section, which provisions shall apply in respect of this paragraph with necessary adaptations and modifications;
- (m) to do anything for the purpose of advancing the skill of persons employed by the Corporation or the efficiency of the equipment of the Corporation or the manner in



- which the equipment is operated, including the provision of facilities for training, education and research;
- (n) to accept or acquire and hold any security of any kind in any form whatsoever;
  - (o) to surrender, re-transfer or re-convey any security held by the Corporation whether upon exchange for another security or upon discharge;
  - (p) in relation to any security held by the Corporation, to exercise any power, right or privilege in respect thereof as a private individual would be capable of exercising in like circumstances;
  - (q) to make, draw, accept or endorse negotiable instruments;
  - (r) to invest money standing to its credit and not for the time being required for its purposes under this Law in stocks, shares debentures or other securities whatsoever approved by the Governor and with like approval to sell stocks, shares, debentures or other securities;
  - (s) to enter into any commitments, agreements or other arrangements in respect of the provision, distribution, supply or sale of water, subject as is in paragraph (l) of this sub-section;
  - (t) to insure its property against all forms of risks;
  - (u) with the approval of the Governor, to write off bad debts;
  - (v) to license boreholes within the State in so far as it is for commercial purposes, so as to control depletion and contamination of ground water aquifers and to discourage earth movement that may result from over pumping;
  - (w) to inspect water purification facilities of commercial water providers and where it is found that such facilities do not conform with safety standards, such facilities should be shut down until such safety standards are complied with.
- (2) The preceding provisions of this Section relate only to the capacity of the Corporation as a statutory corporation and nothing in the said provisions shall be construed as authorizing the disregard by the Corporation of any enactment or rule of law.

## **8. Appointment of Committees**

- (1) Subject to the provisions of this Section, the Corporation may appoint a committee to advise or take any other action as to the initiation, administration or progress of any project which the Corporation may undertake or in which it may participate or for any other purpose, whether general or special, relating to the functions of the Corporation, that in the opinion of the Corporation would be better regulated or managed by means of a committee, and may delegate to a committee so appointed,

with or without restriction or conditions any function exercisable by the Corporation under this Law:

Provided that the power to make rules or regulations or to borrow money shall not be delegated to any committee by the Corporation.

- (2) The number of members of any committee appointed under this section, the Chairman of the committee, the terms of office and remuneration of the members thereof shall be such as the Corporation may with the approval of the Governor determine.
- (3) Any committee appointed under this Section may include, with the approval of the Governor, persons who are not members of the Corporation but who possess such special qualification or experience as in the opinion of the Corporation would prove beneficial to the work or purpose of the committee:

Provided that majority of the members of every committee shall be members or officers of the Corporation.

## **9. Power of Governor to Give Directives**

- (1) The Governor may, after consultation with the Corporation, give to the Corporation such general directives as to the discharge by the Corporation of its functions under this Law as appears to the Governor to be necessary to ensure conformity by the Corporation with the policy of the Government for the time being in respect of the supply and distribution of water in the State and the Corporation shall give effect to any such directives.
- (2) The Governor may, after consultation with the Corporation give to the Corporation specific directives for the purposes of remedying any defect, which may be disclosed in the arrangements of the Corporation for the discharge of its functions under this Law and the Corporation shall give effect to any such directives.
- (3) The power conferred by sub-section (2) of this Section on the Executive Governor shall include power to give directions prohibiting or limiting any expenditure proposed to be incurred by the Corporation which appears to the Governor to be excessive or unnecessary.
- (4) The Corporation shall afford to the Governor facilities for obtaining information relating to the assets and liabilities and functions of the Corporation, and shall furnish him with returns, accounts, minutes of meetings and other information relating thereto and shall afford to him facilities for the verification of information furnished, in such manner and at such times as he may require.

## **PART III - FINANCIAL PROVISIONS, ASSETS AND LIABILITIES OF THE CORPORATION**

### **10. Funds and Resources of the Corporation and Application of its Revenue**

- (1) The funds and resources of the Corporation shall consist of:
  - (a) such sums or other property whatsoever as may from time to time be advanced by way of loan or grants to the Corporation by the Government;
  - (b) such sums or other property whatsoever as may from time to time be advanced by way of loan or grants to the Corporation by any Local Government or Statutory Corporation in the State, the Government of the Federation or of another State or any agency or institution of any such Government, any international organization, any private foundation or any person whatsoever;
  - (c) any investments or other property whatsoever acquired by or vested in the Corporation;
  - (d) money earned or arising from any investments or other property whatsoever acquired by or vested in by the Corporation;
  - (e) all other sums (whether as water rates or water charges or otherwise) or other property whatsoever which may in any manner become payable to or vested in the Corporation in respect of its powers and duties or of any matter incidental thereto under this law or by virtue of the provisions of any other enactment.
- (2) The following charges shall be defrayed out of the revenue of the Corporation for any financial year:
  - (a) the remuneration and allowances of members of the Board and those of any committee of the Corporation;
  - (b) the salaries, remuneration, fees, allowances, pensions, gratuities and other retirement benefits of the officers, servants, other employees and agents, technical or other advisers or consultants to the Corporation;
  - (c) all expenses of working and management of the Corporation and its waterworks and other properties including proper provision for depreciation or renewal of assets;
  - (d) such minor works of a capital nature as the Corporation may deem necessary from time to time;
  - (e) such sums including compensation that may be payable by the Corporation to any person or authority under the provisions of this Law or any other enactment;
  - (f) taxes, rates and other levies payable by the Corporation under any enactment;
  - (g) interest on any loan raised by the Corporation;

- (h) sums required to be transferred to any sinking fund or otherwise set aside for the purpose of making provisions for the redemption of debentures, stocks or other securities or the repayment of other loan;
  - (i) such other sums as the Governor may approve for payment out of the revenue account of the Corporation in respect of any financial year.
- (3) The balance of the revenue of the Corporation for any financial year shall be applied to the creation of a general reserve or such other reserves as the Executive Council may from time to time approve both in regard to their maximum amount and in other respects.

## **11. Reserve Fund**

- (1) The Corporation shall carry to a general reserve fund, such part of the receipts of revenue account as is available for the purpose until the fund reaches the prescribed amount and if the fund is subsequently reduced below that amount the Corporation shall carry to the fund so much of any such receipts as is required to restore the fund to that amount and is available for the purpose.
- (2) The application of the reserve fund so formed shall be as the Corporation may with the approval of the Governor determine:
- Provided that no part of the moneys comprised in the reserve fund shall be applied otherwise than for the purposes of the Corporation.
- (3) The amount of the reserve fund shall be such as the Governor may from time to time prescribe.

## **12. Loans and Grants by the Governor or the Federal Government**

- (1) The Corporation may accept either from the Government or the Federal Government –
- (a) grants of any sums or property as the Government or the Federal Government shall deem fit;
  - (b) loans upon such terms as to repayment, payment of interest or otherwise as the Government or the Federal Government, may determine.
- (2) The Executive Council may, if it deems it expedient so to do, waive in favour of the Corporation any right of or liability to the Government in respect of any property vested in the Corporation by or under the provisions of this Law.

## **13. Power to Borrow Money**

- (1) Subject to the provisions of this Section the Corporation may borrow sums required by it for meeting any of its obligations or discharging any of its functions under this Law.
- (2) (a) The power of the Corporation to borrow shall be exercisable only with the approval of the Executive Council as to the amount of the loan, the sources of the borrowing and the terms on which the borrowing may be effected and the approval given for the purposes of this sub-section may be either general or limited to a particular borrowing.
  - (b) Approval of the Executive Council for the purpose of this sub-section may be subject to such conditions, other than conditions that may be imposed under paragraph (a) of this sub-section, as the Executive Council may stipulate.

#### **14. Debentures to the Government**

- (1) If the Government makes any loan to the Corporation at any time in accordance with the provisions of this Law, the Corporation shall, if so required by the Executive Council, issue to the Government a debenture or debentures of a normal value equivalent to the sum loaned.
- (2) Debentures issued in accordance with the provisions of sub-section (1) of this section shall bear interest at such rate, if any and from such date as the Executive Council may specify.

#### **15. Guarantee by the Government of Loans to the Corporation**

- (1) The Government may guarantee in such manner and on such conditions as the Executive Council may think fit, the payment of the principal and interest of any sum or sums borrowed by the Corporation with the approval of the Executive Council.
- (2) Such sums as may be required by the Accountant-General for the purpose of making good the obligations of the Government under any guarantee of the borrowing of the Corporation shall be charged on the Consolidated Revenue Fund of the State.

#### **16. Repayment of an Interest on Monies Issued to meet Guarantees**

- (1) The Corporation shall make to the Executive Council at such times and in such manner as the Executive Council may direct –
  - (a) payment of such amounts towards repayment of any sums paid by the Government in fulfillment of any guarantee of the borrowings of the Corporation; and
  - (b) payments of interest on the amount for the time being outstanding in respect of any sums so paid at such rate as the Executive Council may so direct.
- (2) Different rates of interest may be directed by the Executive Council –

(a) as respect different sums; and

(b) for different periods.

#### **PART IV - APPOINTMENT AND TRANSFER OF OFFICERS OF THE CORPORATION AND ADMINISTRATIVE ORGANISATION**

##### **17. Appointment and Discipline of the Managing Director, Secretary, Heads of Departments and Other Senior Officers of the Corporation**

(1) The General Manager/Chief Accounting Officer of the Corporation shall be -

(a) a professionally qualified engineer of at least ten(10) years with cognate experience of water supply engineering and management; and should be COREN-registered; or

(b) a person trained in a related professional discipline with at least ten(10) years cognate experience in the water industry and is registered with the appropriate professional body related to his field.

(c) Notwithstanding paragraph (a) and (b) above, such person referred to in paragraph (a) and (b) must possess the following:

(i) training in water industry of related field

(ii) should be registered with the professional body of his study;

(iii) at least ten(10) years cognate experience in the water industry;

(2) The General Manager /Chief Accounting Officer shall be appointed among the senior officers of the corporation with the pre-requisite qualification and experience.

(3) The General Manager/Chief Accounting Officer shall have ultimate responsibility for the carrying out of the policies and decisions of the Corporation in accordance with the provisions of this Law.

(4) A fit and proper person shall be appointed as Secretary to the Corporation, who shall be a Legal Practitioner or an Administrative Officer with at least ten (10) years cognate experience and registered with the relevant professional body and in addition to any function as may be conferred or imposed upon him, by this Law, have such functions as may from time to time be assigned to him by the Corporation or the General Manager/Chief Accounting Officer.

(5) Every department of the Corporation shall be under the immediate supervision of an officer of the Corporation, to be known by such title as the Corporation may determine, and such officers shall be the heads of their respective departments and

shall in the discharge of their functions be responsible to the General Manager /Chief Accounting Officer.

- (6) The power to appoint and exercise disciplinary control over the General Manager /Chief Accounting Officer, the Secretary, all other heads of departments of the Corporation, as well as such senior officers as the Governor may determine and the power to determine their terms and conditions of service as to remuneration or otherwise, shall be vested in the Governor, regard being had to the provisions of any regulations or rules that may be made under sections 22 or 23 of this Law.

## **18. Other Staff etc., of the Corporation**

- (1) Subject to the provisions of Sections 17 and 19, the Corporation may appoint, promote and exercise disciplinary control from time to time over such other officers and servants of the Corporation as the Corporation may deem necessary for the due discharge of its functions under this Law.
- (2) The exercise of the powers vested in the Corporation by sub-section (1) of this section shall be subject to the provisions of any regulations or rules that may be made under Sections 22 or 23 respectively.
- (3) Subject to the provisions of sub-section (1) of this Section, the General Manager/Chief Accounting Officer shall have power to appoint, promote and exercise disciplinary control in respect of established and un-established employees of the Corporation below the rank of Assistant Executive Officer or equivalent rank and he shall be assisted in the exercise of these powers in such manner as the Corporation may direct:

Provided that the General Manager/Chief Accounting Officer may delegate his power of appointment, promotion and disciplinary control in respect of established and un-established employees below the rank of Senior Clerical Officer or equivalent rank to such departmental, divisional or sectional head or field or other officers of the Corporation as he may consider fit.

## **19. Establishment and Functions of the Establishment Committee**

- (1) There shall be an Establishment Committee which shall comprise all departmental heads and shall be charged with the responsibility of making recommendations to the Corporation in respect of the appointments, promotions and disciplinary control of all officers of the Corporation of the rank of Assistant Executive Officer or equivalent rank and above and not being such officers as are referred to in sub-section (5) of Section 17. The Establishment Committee shall be divided into two namely:
  - (a) Senior Establishment Committee which shall be in charge of officers from Grade Level 08 to 16; and

(b) Junior Establishment Committee to be in charge of officers from Grade Level 01 to 07.

(2) The General Manager/Chief Accounting Officer shall be the Chairman of the Establishment Committees and shall have power to make known to the Corporation his views in any case where he disagrees with the views of the other members of the Establishment Committees.

## **20. Pensions**

The administration of Pensions in respect of the employees of the Corporation shall be in accordance with the Pensions Act in force in Nigeria.

## **21. Power of the Corporation to Establish and Maintain Departments, etc., and make other Administrative Arrangements**

The Corporation shall have power –

- (a) to establish and maintain such departments, administrative units, subsidiary divisions, sections, branches and area offices thereof;
- (b) to device and use all such forms and procedures; and
- (c) to make all such other administrative arrangements, as may in the opinion of the Corporation be necessary or expedient for the performance of its functions under this Law.

## **22. Power to make Regulations Relating to Employees of the Corporation**

(1) The Corporation may, with the approval of the Executive Council and subject to the provisions of this Law, make regulations in respect of the appointment, promotion, transfer, dismissal and exercise of disciplinary control over, its employees and without prejudice to the generality of the foregoing, make regulations for any of the following matters;

- (a) the qualifications to be required for appointment;
- (b) the method of appointment (including probation and confirmation);
- (c) the forms of any agreement to be entered into between the Corporation and its employees;
- (d) the terms and conditions of service (including, without prejudice to the generality of that expression, the salaries and allowances, the grant of advances, the provision of quarters, leave and medical and dental treatment;
- (e) the procedure and requirements for promotion;
- (f) the maintenance of discipline (including dismissal and termination of appointments);



(g) the transfer of employees between the Corporation and the State Government, Local Governments or other bodies corporate directly established by the Legislature of the State, or having effect as if so established;

(h) such other matters relating to departmental procedure, duties and responsibilities of employees as the Corporation considers can be best provided for by regulations.

(2) The head of such departments, administrative units, subsidiary divisions, sections, branches and area offices must hold a minimum qualification of a first Degree or its equivalent in the relevant field.

### **23. Power to Make Rules Relating to Retirement Benefits for Employees of the Corporation**

The Corporation may, with the approval of the Executive Council, make rules, in respect of its employees for:

(a) the pensions, gratuities and retirement allowances to be granted to pensionable employees of the Corporation and their dependants;

(b) the gratuities and retirement allowances to be granted to non-pensionable employees of the Corporation and their dependants; and

(c) establishment, maintenance and management of a provident fund.

## **PART V- POWER AND PROCEDURE IN RESPECT OF WATER SUPPLY AND WATER RATES**

### **24. Rates and Scales of Charges for Water**

(1) The rates and scales of charges for water shall be such as the Corporation may, from time to time, with the approval of the ODSWRC, determine.

(2) Subject to the provisions of sub-section (1) of this Section, all charges for water sold in bulk or direct to customers and for services rendered by the Corporation shall be fixed at such rates and at such scales that the revenue derived every year from such scales and services, together with its revenue for such year from every sources will be sufficient as nearly as may be, to pay:

(a) the working expenses and other outgoings of the Corporation properly chargeable to income in that year;

(b) the payments falling to be made in such year by the Corporation in respect of the interest on or repayment of the principal of any money borrowed by the Corporation;

(c) such sums as the Corporation may think proper to set aside in that year for a general reserve, extensions, renewals, depreciation, loans and other like purposes.

(3) Charges for water or services may, if the Corporation thinks it fit, be fixed at different rates and scales for different localities.

## **25. Directive Principles of Corporation's Policy in Respect of Water Supply**

(1) The provision of this Section shall not be enforceable against the Corporation by any court of law, but the principles therein shall be regarded by the Corporation as being fundamental in the determination of its policy in respect of the levying of rates for water supply and it shall be the duty of the Corporation to apply those principles in the formulation of its policy as aforesaid and generally in the management of its affairs.

(2) The Corporation shall direct its policy towards the implementation of the following principles:

(a) determination of water rates shall as far as practicable be based on a predetermined cost recovery tariff which is affordable and takes into consideration the need to promote cross subsidy on a related level of service for the less privileged;

(b) metering policy shall be addressed with vigour throughout all consumers' units to control leakages;

(c) such institutions as hospitals and schools shall not be regarded as industrial or commercial concerns and they shall be charged special rates;

(d) the Corporation shall treat each of its waterworks as a separate undertaking required to produce its own profit and loss accounts and to be managed in such a way as to become self-sustaining within a reasonable period;

(e) the Corporation shall not set out to make excessive profits in respect of its waterworks taken together as one undertaking and as much as possible any profits made from year to year shall be ploughed back into its business with a view to reducing the cost of water to the customers.

## **26. Recovery of Rates**

If any person fails to pay any water bill for which he is liable, within one month after the same becomes payable, the Corporation may recover such outstanding bill with cost in the appropriate Court.

## **27. Purchase and Resale of Water**

- (1) The Corporation may purchase water in bulk and may resell such water either in bulk or by distribution directly to individual customers.
- (2) No person shall resell water supplied by the Corporation save under license granted by the Corporation upon such terms and conditions as the Corporation may prescribe:  
Provided that no such license shall be required for the sale of any manufactured goods or other commodity in which water supplied by the Corporation is included.

## **28. Services to Tenements and Payments for Excess Consumption and for Meter Rent**

- (1) The Corporation may subject to the provisions of any regulations made under Section 33, supply water through any service to any tenement on application being made by the owner or occupier thereof.
- (2) The Corporation may refuse to supply water to any particular tenement otherwise than by a meter installed and kept in repair by the Corporation.
- (3) The occupier of a tenement to which water is supplied by meter shall pay monthly to the Corporation the amount due for water consumed and for meter rent.
- (4) The Corporation shall as soon as convenient, after the end of each month notify the occupier of a tenement supplied with water of the amount due from him and for meter rent, and the amount payable shall be paid by such occupier within fourteen days of the service upon him of such notice, and if the same is not then paid, the Corporation may disconnect the service to the tenement.
- (5) If any person fails to pay the amount due from him or his rent, the Corporation may recover the same with costs, together with the expense of disconnecting the service to the tenement, in any court of competent jurisdiction.

## **29. Corporation not Responsible for Safety of Customer Pipes etc.**

The Corporation shall not by virtue of making any inspection or test of a customer's pipes, fittings, appliances and apparatus in accordance with this Law or any regulations made thereunder or having effect as if so made, whether during the progress of the work of installation at the customer's premises or after its completion, be deemed to be responsible for the efficiency or safety of the customer's pipes, fittings, appliances and apparatus so inspected or tested, or for the proper execution of the work of installation or for any damage or loss arising out of the use or misuse of apparatus by the customer or any other person other than an employee of the Corporation.

## **30. Entitlement to Supply and Preclusion of Preferential Treatment**

Except in so far as is otherwise provided by this Law, where a supply of water is provided by the Corporation or any of her agents in any part of an area for private purposes, every person within that part of the area shall, upon application to the Corporation, be entitled to a supply on the same terms on which other persons in such part of the area are entitled under similar circumstances to corresponding supply but in the case of a fresh connection only if adequate water can be made available without substantial detriment to existing supplies to persons or institutions in the area.

### **31. Expenses of Certain Necessary Alterations**

- (1) If any person or any department of the Government or any other authority does any matter or thing which such person, department or authority is by or under any law authorised to do and which necessitates an alternation in any part of any waterworks or of any distribution system vested in or the property of the Corporation, the Corporation shall on reasonable notice being given to it by such person, department or authority make such alteration and the expenses incurred thereby shall be borne by such person, department or authority.
- (2) In the event of any dispute arising as to the amount of such expenses, the same may be referred by the person, department or authority as aforesaid or the Corporation to any Arbitrator to be appointed by the Governor.

### **32. Continuity of Supply of Water**

- (1) The Corporation shall as far as possible supply water:

Provided that:

- (a) the Corporation shall have the right to suspend the supply for such periods as may be necessary for carrying out inspection, tests or repairs and for the making of new connections, after due notice has been given to its customers;
  - (b) the Corporation shall have the right to suspend or discontinue any supply where the payment or any rates, due or charges are in arrears.
- (2) The Corporation shall in no case be under any obligation to pay damages or compensation for loss, damage or inconvenience caused through any suspension, failure, disconnection or a whole or partial interruption of the supply of water howsoever caused.

### **33. Power to make Regulations**

- (1) The Corporation may, with the approval of the ODSWRC, make regulations for the better carrying out of the provisions of this Law, and without prejudice to the generality of the foregoing provisions, make regulations in respect of all or any of the following matters:

- (a) the price of, or charge for, water supplied by meter or otherwise, whether or not the supply has been effected with the consent of the Corporation;
  - (b) exemption from any water rate or charge of any tenement or class of tenements, or any person or class of persons;
  - (c) the amount to be paid in respect of water supplied to any Government or Local Government institution or to any institution whether of a public or private nature or to any special part of any such institution as aforesaid;
  - (d) the amount of rent to be paid for meters;
  - (e) the method and manner in which water may be taken from public fountains;
  - (f) the price to be paid for all services constructed or laid by the Corporation and the time and place for the payment of the same;
  - (g) the construction, laying, fitting, alteration or readjustment of services, and the nature, quality, size and pattern thereof and of meters used therewith;
  - (h) the forms of all notices required to be given or sent under this Law and the issuing and service thereof;
  - (i) the control, whether or not by prohibition, of boating on or fishing in any waterworks;
  - (j) the prevention of the wrongful opening or closing of any lock, cock, valve, sluice or manhole appertaining to any waterworks or otherwise belonging thereto;
  - (k) the prevention of the commission of any offence or nuisance in or about any of the stations, works, plants, buildings or premises of the Corporation;
  - (l) the prevention of trespasses upon or injury to stations, works, plants, buildings or premises appertaining to any waterworks or otherwise belonging thereto;
  - (m) generally for regulating the operation of the waterworks and the government thereof and the maintenance of goods order thereon;
  - (n) generally for the preservation and the conservation of the sources of water in catchments areas;
  - (o) the prescription of penalties for offences against any regulations made under this Section.
- (2) If any person contravenes or fails to comply with the provisions of any regulations made under the provisions of this Section, the Corporation may, without prejudice to its right to take proceedings for a fine or other penalty in respect of such contravention or non-compliance, cut off the supply and in addition or in the

alternative may, after such notice in writing as it may think fit, enter and cause any water fittings belonging to or used by that person which are not in accordance with the requirements of the regulations to be altered, repaired, replaced or removed, and may recover the expenses reasonably incurred by it in so doing from the person in default in the manner provided in this Law for the recovery of water rates.

- (3) The application of any regulations made under this Section may be general or may be limited as to area or time or otherwise.

### **34. Rules for Guidance of Employees of the Corporation**

- (1) The Corporation may make rules for the guidance and conduct of its employees in respect of the operation and management of its waterworks.
- (2) Rules made under this section shall not be required to be published in the State Gazette or for the information of the public, but shall be brought to the notice of all employees of the Corporation in such manner as the Corporation may think fit.

## **PART VI - ACCOUNTS AND REPORT OF THE CORPORATION**

### **35. Accounts and Audit**

- (1) The Corporation shall:
  - (a) cause to be kept proper accounts in respect of its functions under this Law and other records in relation thereto; and
  - (b) prepare, in respect of each financial year, a statement of accounts in such form as may be approved by the Governor.
- (2) The said annual statement of accounts shall be a fair and accurate statement of the financial position, and of the results of the operations of the Corporation for the financial year to which it relates and the Governor shall exercise his power under paragraph (b) of sub-section (1) of this Section accordingly.
- (3) The said annual statement of account shall be audited by an auditor or auditors to be appointed by the Corporation with the approval of the Governor and the remuneration to be paid by the Corporation to the auditor or auditors so appointed shall be approved by the Governor.
- (4) As soon as the said annual statement of accounts has been audited as aforesaid, the Corporation shall forward to the Governor a copy of the said statement of accounts together with a copy of the report made by the auditors.

### **36. Annual Report**

- (1) The Corporation shall, within six months after the end of each financial year, make to the Governor a report, in such form and containing such particulars as the Governor

may from time to time direct, dealing with the activities of the Corporation during the financial year.

- (2) Every annual report made by the Corporation under sub-section (1) of this Section shall contain particulars of all directions given under this Law by the Governor and the ODSWRC to the Corporation during each financial year.

## **PART VII - PROCEEDINGS BY OR AGAINST THE CORPORATION**

### **37. High/Magistrate Courts to have Jurisdiction**

A Magistrate Court shall have jurisdiction in respect of matters involving the Corporation to the extent of the jurisdiction conferred on it by the Magistrate Court Law while the High Court of the State shall have unlimited jurisdiction in respect of matters involving the Corporation.

### **38. Institution and Conduct of Legal Proceedings**

- (1) Without prejudice to the provisions of any other Law, all civil proceedings and all proceedings for an offence against any provision of this Law or of any rules or regulations made or having effect as if made under this Law, may be brought in the name of the Corporation and may be instituted and conducted by the General Manager/Chief Accounting Officer, or by any other officer of the Corporation authorized generally or specifically in writing by the General Manager/Chief Accounting Officer in relation to any proceedings or class of proceedings.
- (2) The Corporation may be represented at any stage of any proceeding in any court by any officer in the employment of the Corporation who shall satisfy the court that he is duly authorized in writing by the Corporation in that behalf.
- (3) Nothing in sub-section (1) or (2) of this Section shall be construed as precluding the Corporation from being represented by a legal practitioner in any court in which a legal practitioner has a right of audience.

### **39. Pre Action Notice**

A thirty (30) day notice in writing shall be given to the Corporation by any person, group or persons or organization that intends to sue the Corporation in any Law Court within the State.

### **40. Proof of Money Due**

In an action for the recovery of any rate, or other moneys (other than fines and penalties payable or recoverable under the Law), a certificate under the hand of the General Manager/Chief Accounting Officer, or of any person appointed by the Corporation in that

behalf, that any sum of money is due, and that the defendant is the person liable to pay the same shall, in the absence of evidence to the contrary, be conclusive evidence of such debt and of the non-payment thereof and that the defendant is the person liable to pay the same.

## **PART VIII - ESTABLISHMENT OF ONDO STATE WATER REGULATORY COMMISSION**

### **41. Establishment of the Regulatory Commission**

- (1) There is hereby established a commission to be known as the Ondo State Water Regulatory Commission or ODSWRC (hereinafter called “**the Commission**”) which shall be a body corporate and can sue and be sued in its corporate name and subject to this Law, perform all acts that bodies corporate may by law perform.
- (2) The ODSWRC shall have the following principal objectives:
  - (a) to promote State Water Laws and Policies and National Water Law and Policies;
  - (b) to create, promote and preserve efficient industry and market structures and to ensure the optimal utilization of resources for the provision of Prescribed Water Services.
  - (c) to maximise access to Prescribed Water Services, by promoting and facilitating Consumer connections to distribution systems in urban and non-urban areas;
  - (d) to ensure that an adequate supply of water is available to Customers and ensure that Customers (including low-income or vulnerable Customers) benefit from any gains from increased competition and efficiency;
  - (e) to ensure that the prices charged by Water Services Providers are sufficient to allow the Water Services Providers to finance their activities and to allow for reasonable earnings for efficient operation;
  - (f) to ensure the safety, security, reliability and quality of service in the production and delivery of water to Customers;
  - (g) to ensure that regulation is fair and balanced for Water Services Providers, Customers, investors and other stakeholders;
  - (h) to receive complaints and resolve disputes between Customers and Water Services Providers;
  - (i) to ensure that regulatory decision-making has regard to all relevant health, safety, environmental and social legislations applying to the water sector; and
  - (j) to promote consistency in regulation between States on a national basis.



- (3) Without derogating from sub-section (1), the Commission shall perform its functions and exercise its powers in such a manner as it considers best in achieving any or all of its objectives under this Law.
- (4) For the furtherance of the objects referred to in this Section, the ODSWRC shall perform the Water Services Regulatory Functions conferred on it under this Part and otherwise in this Law.

#### **42. Autonomy of the Commission in the exercise of its functions**

Except as expressly provided by or under this Law, the ODSWRC shall be autonomous in the exercise of its Water Services Regulatory Functions, including any determination, report or inquiry.

#### **43. Composition of the Commission**

- (1) Subject to sub-section (2), the ODSWRC shall consist of a Chairman and four part-time voting Commissioners who shall be appointed by the Governor as follows:
  - (a) a Chairman;
  - (b) a representative of the Customers;
  - (c) a representative of the organized private sector as represented by the State Chapter of the National Chamber of Commerce, Industry, Mines and Agriculture;
  - (d) a Legal Practitioner of at least 10 years post call experience; and
  - (e) for the period of four years after commencement of operation of the ODSWRC, one member nominated by the regulatory advisor appointed under Section 61 (3), being a person with at least five years experience in international regulation of utility and infrastructure enterprises who shall be either a public utility regulator, a contracted technical advisor or regulatory advisor to a regulated utility.
- (2) In selecting potential nominees, the Governor shall ensure that individuals are chosen, from both the public and private sectors, for their experience or professional qualifications in the water sector, in utilities regulation and in law, accountancy, economics, finance or administration.
- (3) There shall be an Executive Secretary who shall be a full time and non-voting member of the Commission.

#### **44. Tenure of Office of an ODSWRC Commissioner**

- (1) Subject to this Law, an ODSWRC Commissioner shall hold office for a period of five years, provided that, to ensure continuity in the ODSWRC, the period of appointment of the first five ODSWRC Commissioner shall be as follows:

- (a) The Chairman shall be appointed for four years
  - (b) The other ODSWRC Commissioners shall be appointed for four years
- (2) An ODSWRC Commissioner shall continue in office after the expiry of his term until he has been re-appointed, or his successor has been appointed, provided that an ODSWRC Commissioner shall not continue in office pursuant to this sub-section for longer than six months.
- (3) An ODSWRC Commissioner shall hold office on such reasonable terms and conditions as the Governor may fix in relation to ODSWRC Commissioners generally and in accordance with the terms hereof.
- (4) An ODSWRC Commissioner whose term of office has expired is eligible for re-appointment for another four year term and thereafter shall not be eligible to serve on the ODSWRC.
- (5) The terms and conditions of office of an ODSWRC Commissioner shall not, without the Chairman's consent be altered to his detriment during his tenure of office.

#### **45. Qualifications**

- (1) A person shall not be appointed as an ODSWRC Commissioner who:
- (a) is neither a citizen of Nigeria nor permanently resident in Nigeria; or
  - (b) has a pecuniary interest in any Water Services Provider regulated under this Law or any entity which is in competition with or provides similar services to those supplied by a Water Services Provider regulated under this Law within the State unless the Governor is satisfied that the interest or activity is indirect and passive and will not interfere with the person's impartial discharge of his duties as an ODSWRC Commissioner, or unless the pecuniary interest is terminated prior to the appointment taking effect; or
  - (c) has, in terms of a law in force in any country:
    - (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
    - (ii) made an assignment to, or arrangement or composition with, his creditors which has not been rescinded or set aside; or

- (d) has, in terms of a law in force in any country:
- (i) been adjudged, by a court of competent jurisdiction, to be of unsound mind;
  - (ii) been banned from practicing his profession; or
  - (iii) been convicted of an offence and sentenced to a term of imprisonment imposed with or without the option of a fine, whether or not any portion has been suspended and has not received a free pardon.

(2) A person who is a current member of the House of Assembly or Senate or of the House of Representatives shall not be appointed as an ODSWRC Commissioner.

#### **46. Vacation of office**

(1) An ODSWRC Commissioner shall vacate his office and his office shall become vacant:

- (a) three months after the date upon which he gives notice in writing to the Governor of his intention to resign or on the expiry of such other period of notice as he and the Governor may agree; or
- (b) on the date he begins to serve a sentence of imprisonment imposed without the option of a fine:
  - (i) in Nigeria in respect of an offence; or
  - (ii) outside Nigeria, in respect of an offence involving financial impropriety or any conduct which, if committed in Nigeria, would constitute an offence; or
- (c) when he attains the age of 70 years; or
- (d) if he attends fewer than 75% of the Commission's meetings in any one year period; or
- (e) in the case of members who have professional qualifications, the ODSWRC Commissioner is barred or suspended from his professional body.

(2) On the death of or vacation of office by an ODSWRC Commissioner, the Governor shall appoint another candidate to fill that vacancy within one month.

#### **47. Executive Secretary and Secretariat**

(1) The Executive Secretary shall be appointed by the Governor.

- (2) The Executive Secretary shall be a person who has served at management level in the public or private sector for a minimum of five years.
- (3) The Executive Secretary shall be the accounting and administrative officer of the ODSWRC and shall hold office on such terms and conditions as may be specified in his letter of appointment.
- (4) The Executive Secretary must not be directly or indirectly engage in any paid employment outside the duties of the ODSWRC.

#### **48. Departments of the ODSWRC**

The ODSWRC shall have the following Departments:

- (1) Water Resources/Environmental Management Unit.
- (2) Water Quality Control Unit.
- (3) Economic/Price Setting and Adjustment Unit.
- (4) Procurement Unit.
- (5) Project Management Unit.
- (6) Legal and Regulatory Unit.
- (7) Project Finance Unit.

#### **49. Business of the ODSWRC**

- (1) Subject to this Law, the ODSWRC may regulate its own proceedings.
- (2) The ODSWRC shall meet for the dispatch of business as often as is necessary or expedient and subject to this Section, may adjourn, close and otherwise regulate its meetings and procedures as it deems fit but the first meeting of the ODSWRC shall be called by the relevant State Ministry not later than 6 months after the commencement of this Law.
- (3) The Chairman or in his absence, the Vice Chairman shall preside at all meetings of the ODSWRC.

- (4) All decisions of the ODSWRC shall be on the basis of the majority of the members present and voting.
- (5) The quorum for the meeting of the ODSWRC shall be three and each ODSWRC Commissioner present shall have one vote on each question before the ODSWRC and in the event of an equality of vote, the Chairman shall have a casting vote in addition to a deliberative vote.
- (6) For a meeting of the ODSWRC to review any previous decision or order taken by the ODSWRC, the quorum shall be no less than the ODSWRC members present when the decision was taken or the order was made.

## **50. Appointment and Remuneration of Staff**

- (1) ODSWRC Commissioners shall be paid from the funds of the ODSWRC, such remuneration and allowances, if any, as the ODSWRC may propose from time to time for the approval of the House of Assembly, which in approving the same shall have regard to the salaries and allowances paid to the staff of other regulatory commissions operating in Nigeria and the following principles:
  - (a) the specialized nature of work to be performed by the ODSWRC;
  - (b) the salaries paid in the private sector to individuals with equivalent responsibilities, expertise and skills; and
  - (c) the nature of the expenses incurred by the ODSWRC employees, including national and international travel expenses.
- (2) Other staff of the ODSWRC shall be paid from the funds of the ODSWRC, such remuneration and allowances as the ODSWRC shall determine.
- (3) No employee of the ODSWRC shall, for the period that in two years after his resignation or retirement, seek any form of office, employment or consultancy arrangements, either for remuneration or otherwise, connected with any Water Services Provider regulated under this Law or any entity which is in competition with or provides similar services to those supplied by a regulated Water Services Provider within the State.
- (4) For the purposes of this part, employee shall include ODSWRC Commissioners and staff of the Commission.
- (5) The appointment of the employees of the Commission other than the ODSWRC Commissioners shall be through interview and competitive process.

## **51. Disclosure**

- (1) If an ODSWRC Commissioner -
  - (a) acquires or holds a direct or indirect pecuniary interest in any matter that is under consideration by the ODSWRC; or
  - (b) owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the ODSWRC Commissioner's private interests coming or appearing to come into conflict with his functions as an ODSWRC Commissioner; or
  - (c) knows or has reason to believe that a relative of the ODSWRC Commissioner has acquired or holds a direct or indirect pecuniary interest in any matter that is under consideration by the ODSWRC; or
  - (d) if for any reason the private interest of an ODSWRC Commissioner come into conflict with his functions as an ODSWRC Commissioner, the ODSWRC Commissioner shall forthwith disclose the fact to the Commission.
- (2) An ODSWRC Commissioner referred to in sub-section (1) shall take no part in the consideration or discussion of or vote on, any question before the ODSWRC which relates to any contract, right, immovable property or interest referred to in that sub-section.
- (3) If for any reason, the private interests of an ODSWRC Commissioner come in conflict with his functions as an ODSWRC Commissioner, the ODSWRC Commissioner shall forthwith disclose the fact to the Commission.
- (4) An ODSWRC Commissioner shall, prior to accepting his appointment to the ODSWRC make a declaration of assets in accordance with paragraph 11 of the Fifth Schedule of the 1999 Constitution.
- (5) An ODSWRC Commissioner who contravenes any of subsections (1), (3), or (4) commits an offence and shall be liable on conviction to a fine of Five Hundred Thousand Naira or to imprisonment for three years or both.

## **52. Validity of Decision**

- (1) No decision or any act of the ODSWRC done under the direction of the ODSWRC shall be invalid on the ground that:

- (a) there existed a vacancy or vacancies among the ODSWRC Commissioners;  
or
  - (b) there existed some defect in the constitution of the ODSWRC at the time the decision was taken or Law was done or authorised.
- (2) If an ODSWRC Commissioner referred to in Section 51 takes part in the consideration of a matter in which his private interests are in conflict with his function as ODSWRC Commissioner, the other ODSWRC Commissioners may subsequently ratify any such decision or action.

### **53. Budget**

- (1) On or before such date as the Governor may specify before the beginning of every financial year, the Chairman shall prepare and submit to the Governor a budget showing the Expenditure which the ODSWRC proposes to incur in respect of that financial year to carry out the functions of the ODSWRC.
- (2) During any financial year the ODSWRC may prepare and submit to the Governor a supplementary budget relating to expenditure which were inadequately provided for in the annual budget due to unforeseen circumstances.
- (3) A supplementary budget shall be deemed to form part of the annual budget of the ODSWRC for the financial year to which it relates.
- (4) The ODSWRC may vary a budget prepared under this Section, provided that no variation may be made which has the effect of increasing the total amount of expenditure provided for in the budget.

### **54. Funds of the Commission**

- (1) There is established for the ODSWRC a fund into which all monies accruable to the ODSWRC shall be paid and from which shall be defrayed all expenditure incurred by the ODSWRC.
- (2) The funds of the ODSWRC shall consist of:
- (a) fees, charges and other income accruing to the ODSWRC from Water Services Providers and other things done by it in terms of this Law, excluding any fines or penalties recovered pursuant to this Law;

- (b) a surcharge on Tariffs payable by Customers of Prescribed Water Services as ODSWRC may by regulation decide.
- (c) funds allocated to the ODSWRC by the Governor and ratified by the House of Assembly, pursuant to a request by the ODSWRC for additional funds required to meet its reasonable expenditures;
- (d) such other moneys as may vest in or accrue to the ODSWRC, whether in the course of its operations or otherwise.

## **55. Accounts**

- (1) The Executive Secretary shall ensure that proper accounts and other records relating to such accounts are kept in respect of all ODSWRC activities, funds and property, including such particular accounts and records as the ODSWRC may require.
- (2) The accounts shall be audited annually by external auditors appointed in accordance with the guidelines for the appointment of auditors issued by the Auditor-General of the State.
- (3) The auditor shall be entitled at all reasonable times to require to be presented to him all accounts and other records relating to such accounts which are kept by the ODSWRC or its agents and to require from any officer or employee or agent of the ODSWRC such information and explanation as in the auditor's opinion are necessary for the purpose of its audit.
- (4) Any officer or employee or agent of the ODSWRC who fails without just cause to comply with a requirement of an auditor in terms of subsection (3), commits an offence and is liable on conviction to a fine or to imprisonment as specified under Section 106 of his Law.

## **56. Annual Reports**

- (1) The ODSWRC shall submit an annual report of its activities to the Governor and the State House of Assembly in accordance with the provision of this Law.
- (2) The annual report shall, amongst other information, contain a detailed presentation of the ODSWRC's performance during the reporting year stated against any target set in the ODSWRC's approved plans together with an analysis of the opportunities and constraints impacting upon the ODSWRC's performance and the actions proposed for addressing them.



- (3) The ODSWRC shall, within six months after the end of the financial year, furnish the State House of Assembly with:
  - (a) a copy of the audited accounts of the ODSWRC; and
  - (b) a copy of the report of the external auditor.
- (4) The ODSWRC shall publish its annual report in two national daily newspapers circulating within the State and on the internet.
- (5) The ODSWRC shall cause the audited accounts and annual report to be published in the State Government Official Gazette after complying with subsection (3) of this section.

#### **57. Other Reports**

- (1) In addition to any report which the ODSWRC is required by this Law to submit to the Governor, the ODSWRC shall submit to the Governor or State House of Assembly such other reports as they may require and such other reports as the ODSWRC considers advisable.
- (2) The Governor shall release to the public, any report submitted pursuant to subsection (1), within two months following the receipt of such a report.

#### **58. Protection of ODSWRC**

- (1) No liability shall be attached to the Executive Secretary or to any employee of the ODSWRC or to any ODSWRC Commissioner for any loss or damage sustained by any person as a result of the bonafide exercise or performance of any function, which by or in terms of this Law is conferred or imposed upon such person.
- (2) No execution or attachment of process shall be issued against any property vested in the Commission except with the prior consent of the Attorney-General.

#### **59. Benchmarking of ODSWRC**

Where so required under any Water Sector Program Commitments or otherwise by the Governor, the ODSWRC must submit such reports to the Governor and the Federal Ministry of Water Resources as may be required in order to facilitate the comparison of activities and performance of the ODSWRC with other State Water Regulatory Commissions operative in Nigeria.

## **60. Delegation of Powers**

- (1) Subject to subsection (2), the ODSWRC may in writing delegate any power vested in it by or under this Law, and may impose separate or concurrent duties with respect to enforcement of any regulatory or orders made by the ODSWRC in a relevant area on any Water Services Provider (or a Local Government Authority.)

## **61. Advisory Support and Outsourcing**

- (1) The ODSWRC may appoint advisory committees to advise on the exercise of the Water Services Regulatory Functions.
- (2) The ODSWRC may (and shall for the period of five years after commencement of operation of the ODSWRC) enter arrangements with private sector experts to advise on or to undertake the performance of any Water Services Regulatory Functions (which experts may act as advisor to more than one State Water Regulatory Commission).
- (3) Any private sector expert appointed under this Section shall be appointed by an open and competitive bidding, subject to all applicable bidding and award guidelines including adequate technical requirements.

## **PART IX - WATER SERVICES REGULATION FUNCTIONS OF THE ODSWRC**

### **62. Water Services Regulatory Functions**

- (1) The function of the ODSWRC is to do all things necessary or conducive to the regulation of the provision of Prescribed Water Services in the State including:
  - (a) advising the State Government on Water supply matters;
  - (b) licensing Water Service Providers;
  - (c) developing sector guidelines on the technical and financial management of Water Service Providers;
  - (d) making regulations prescribing all matters, which by this Law are required or permitted to be prescribed or which in the opinion of the ODSWRC are necessary or convenient to be prescribed for carrying out or giving effect to this Law, including:

- (i) the administration of the affairs of the ODSWRC, including, inter alia, the holding of meetings, hearing and proceedings, arbitration and mediation proceedings, the conduct of inquiries and investigations, the rules by which evidence shall be taken and generally the conduct of its business.
  - (ii) the procedure for issuing WSP Licenses;
  - (iii) the determination of the standards for the provision of Prescribed Water Services including Water Quality Standards;
  - (iv) the method and manner by which the Tariffs that may be charged by Water Services Providers for their Prescribed Water Services will be determined (including a metering scheme, to the extent practicable and cost-effective);
  - (v) the duties, powers, rights and obligations of a Water Services Provider;
  - (vi) the resource procurement policies of, and entering into PSP or PPP Agreement by the Water Services Providers, including, as may be applicable, the review and approval of same;
  - (vii) the requirement of water services development plans;
  - (viii) procedures for monitoring compliance with National Water Laws and Policies and State Water Laws and Policies;
  - (ix) guidelines to eliminate illegal connections, unregulated or illegal use of Prescribed Water Services; and
  - (x) practices, procedures and reporting requirements for monitoring and enforcing this law (including establishment fines and penalties).
- (e) Set, approve and from time to time review standards of performance of services in the sector.

### **63. Discharge of Functions**

- (1) In the discharge of its Regulatory Functions under this Law, including the making of regulations and/of any decision or determination, the ODSWRC shall:
- (a) consult in good faith with persons who are or are likely to be affected by the decision including Water Services Providers, Customers and any customer associations;

- (b) give to such persons an opportunity to make submissions to and to be heard by the ODSWRC;
  - (c) have regard to the evidence adduced at any hearing and to matters contained in any submissions;
  - (d) give reasons in writing for every decision;
  - (e) ensure that notice is given of each regulation, decision or determination in Government Gazette, in a national daily newspaper circulating in the State and on the internet;
  - (f) ensure that decisions are accessible to the public at reasonable times and places; and
  - (g) ensure that decisions are consistent with all applicable National and State Water Law and Policies and Water Sector Programme Commitments of the State.
- (2) The ODSWRC may make interim orders pending the final disposition of a matter before it.

#### **64. Other Powers of the ODSWRC**

- (1) The ODSWRC may exercise such other powers in relation to economic regulation (including the power to make determinations and the power to act as an arbitrator in dispute under a PSP or PPP Agreement) as may be conferred on it under a PSP or PPP Agreement.
- (2) In making a determination under this Section the ODSWRC must have regard to any factors specified in the PSP or PPP Agreement in relation to economic regulatory matters.

### **PART X - LICENSES**

#### **65. WSP License required to operate as Water Service Provider**

- (1) No person shall operate as a Water Service Provider unless such person:
  - (a) holds a WSP License from the Ondo State Water Regulatory Commission; or
  - (b) is exempted from the requirement to obtain a license in respect of the provision of the relevant Prescribed Water Services.

- (2) Any person, including, without limitation, the State Water Agency, who, at the commencement of this Law, was acting as a Water Services Provider without a WSP License from the ODSWRC, may continue to do so until the expiry of reasonable notice, which notice must not be longer than one year, given by the ODSWRC that the continuation will be subject to the issuance of a WSP License.
- (3) The ODSWRC shall have the authority to make determination as to whether a person is engaging, or is about to engage in business for which a WSP License is required under this Law and may, by an order published in the Gazette, exempt a person from the requirement to obtain a WSP License in respect of the provision of the Prescribed Water Services specified in the order. An exemption may be of general or specific application.
- (4) An exemption will be subject to the terms, conditions and limitations specified in the order and may retain powers and functions of and leave any matter to be determined by the ODSWRC in relation to the regulation of the provision of Prescribed Water Services by such Water Services Providers.

## **66. WSP Licensing**

- (1) The ODSWRC may issue an interim WSP License for Prescribed Water Services to any person as specified under the Law for a period not exceeding eighteen (18) months or such shorter period as may be specified in this Law, if it determines that it is necessary in the public interest to do so.
- (2) Any person who contravenes the requirements of this Law on obtaining the required WSP Licenses commits an offence and shall be liable on conviction to a fine of Five Hundred Thousand Naira (N500,000:00) or to three years imprisonment or both.
- (3) The ODSWRC shall have the authority to order any person who contravenes the Law as stated in subsection (2) above to cease his operations and to make such orders, including an order to another Water Services Provider to disconnect facilities, as may be necessary to prevent the continuation or reoccurrence of the contravention.

## **67. Limitation on Transfer**

A Water Services Provider shall not, except as provided under this Law, assign or cede its WSP License or transfer its undertaking or any part thereof, by way of sale, mortgage,

lease, exchange or otherwise without the prior written consent of the ODSWRC, provided that, should the ODSWRC determine that in any instance the circumstances so require, it may establish WSP License terms and conditions providing it specific or general consent for any or all of the foregoing.

## **68. Application**

- (1) An application for a WSP License shall be made to the ODSWRC in the form and manner prescribed by the ODSWRC and be accompanied by the prescribed fee and such information or documents as may be prescribed or as the ODSWRC may require.
- (2) Within thirty (30) days after applying for a WSP License, the applicant shall, at his own expense, cause a notice of the application to be published in the Gazette (with the assistance of the Commission) or in a National Newspaper in circulation in the area in which it intends to operate as a Water Services Provider, in accordance with such direction as may be given by the ODSWRC, stating the period, prescribed by the ODSWRC, within which objections or representation in connection with the application may be made to the ODSWRC and the ODSWRC shall not issue any WSP License until all objections or representations received by the ODSWRC have been considered.
- (3) Subject to subsection (4), if on consideration of an application that satisfies the requirements of subsection (1), the ODSWRC is also satisfied that:
  - (a) the applicant is likely to comply with such provisions of this Law, including without limitation, all codes of conduct, standards, regulations and WSP License terms and conditions, as apply to the service or system it intends to provide or operate; and
  - (b) the grant of the WSP License is in the public interest after consideration of all relevant factors, including but not limited to the following:
    - (i) existing lawful service;
    - (ii) efficient and beneficial use of Prescribed Water Services in the relevant geographic area; and
    - (iii) the socio-economic impact of issuing or failing to issue a WSP License,the ODSWRC shall issue the appropriate WSP License, as the case may be, to the applicant.
- (4) If on consideration of an application that satisfies the requirements of subsection (1), the ODSWRC is not satisfied as to the additional matters referred to in subsection

(3), it shall refuse to issue a WSP License to the applicant, subject to affording the applicant an adequate opportunity to make representations in the matter.

(5) The period between the ODSWRC's receipt of an application under subsection (1) and all documents and information submitted in support of it and the date on which it notifies the applicant of the adequacy of the documents and information, shall not exceed one month.

(6) The period between the ODSWRC's receipt of an application that satisfies the requirements of subsection (1), and the date on which the ODSWRC notifies the applicant of its decision or proposed decision in accordance with subsection (3) or subsection (4), as the case may be, shall not exceed six (6) months, unless the applicant consents to an extension of the period.

(7) Notwithstanding subsections (1) to (6) the ODSWRC may establish simplified procedures for different Water Services Providers such as Water Services Intermediaries so as to expedite the application and licensing process.

## **69. Terms and Conditions of License**

(1) A WSP License shall be issued subject to such terms and conditions as are required by this Law or may be prescribed, or as the ODSWRC may determine, such terms and conditions shall not be inconsistent with PSP or PPP Agreements, where applicable.

(2) Unless expressly indicated in the WSP License, the grant of a WSP License shall not hinder or restrict the grant of a WSP License to another person for a like purpose and in the absence of such an express indication, the Water Services Provider shall not claim any exclusivity, provided that the ODSWRC may allow a WSP License to be exclusive for all or part of the period of the WSP License, for a specific purpose, for a geographic area, or for some combination of the foregoing.

(3) A WSP License may contain terms and condition for the WSP License to cease to have effect or to be modified or amended by the ODSWRC in such circumstances as may be specified in the WSP License.

(4) A WSP License shall be valid for the period set out in the License.

## **70. Determination of Fees and Charges**

The ODSWRC shall impose a fee in accordance with this Section in relation to all WSP Licenses issued under this Law, which shall be payable in such amounts as may be determined by the ODSWRC to be a reasonable estimate of the costs, which will be incurred by the ODSWRC in relation to regulation of the Prescribed Water Services to which the WSP License relates and at such intervals as may be determined by the ODSWRC.

## **71. Renewal of License**

Subject to this Law, a Water Services Provider may apply to the ODSWRC for a renewal of the WSP License before it expires in the form and manner prescribed and within the period prescribed which application shall be accompanied by the prescribed fee, if any.

## **72. Amendment of License**

- (1) Subject to this Section, the provisions of a WSP License may be amended:
  - (a) in accordance with the procedures specified in the License; or
  - (b) by agreement between the ODSWRC and the Water Services Provider.
- (2) The Water Services Provider or the ODSWRC, as applicable, shall publish a notice of the proposed alteration or amendments to the WSP License in accordance with such directions as may be given by the ODSWRC, stating their period, prescribed by the ODSWRC, within which objections or representations in connection with the amendments may be made to the ODSWRC, and the ODSWRC shall not amend any WSP License until all objections or presentations received by the ODSWRC have been considered.

## **PART XI - STANDARDS AND TARRIFS**

### **73. Water Standards**

- (1) The ODSWRC shall develop, in consultation with applicable Federal and State Ministries, Water Services Providers, Customers and other interested parties, the following performance standards and codes:
  - (a) standard of overall performance in connection with the provision of Prescribed Water Services and in connection with the promotion of the efficient use of water by customers;
  - (b) Water Quality Standards;
  - (c) such technical codes and manuals as may be required for the safe, reliable and efficient operation of the system; and
  - (d) such other standards, codes and manuals as the ODSWRC may require.
- (2) Standards, codes and manuals approved by the ODSWRC pursuant to sub-section (1) shall be binding on the applicable Water Services Providers and shall be



published by the applicable Water Services Providers in such manner as the ODSWRC may direct.

- (3) Different methods may be determined for different Water Services Providers under this Section.
- (4) In carrying out its functions under this Law, including setting and monitoring standards under this Section, the ODSWRC shall consult and cooperate with the State Environmental Protection Agency and other State, Federal and regional agencies responsible for environmental and water resources management regulation.

#### **74. Tariffs**

- (1) The ODSWRC shall adopt and provide to the Water Services Provider Tariff methodologies for Tariffs that may be charged by the Water Services Provider for the Prescribed Water Services.
- (2) No Water Services Provider shall fix any Tariff to be charged for Prescribed Water Services unless the Tariff is in accordance with the applicable Tariff methodology adopted by the ODSWRC.
- (3) In determining Tariff methodologies, the ODSWRC shall have regard to:
  - (a) the particular circumstances of the Prescribed Water Services for which the determination is being made;
  - (b) the costs of producing and supplying the Prescribed Water Services;
  - (c) the interests of the Water Services Provider including assurance of the financial integrity of the Water Services Provider;
  - (d) the cost of complying with relevant health, safety, environmental and social legislation;
  - (e) the need to provide incentives for continued improvement in technical and economic efficiency and quality of Prescribed Water Services;
  - (f) the interests of Customers, including the need to avoid undue discrimination between Customers and Consumer categories.
- (4) The ODSWRC may establish simplified Tariff methodologies for different Water Services Providers such as Water Services Intermediaries.

- (5) Notwithstanding sub-section(3)(f), in establishing Tariff methodologies the ODSWRC may differentiate among Customers on the basis of differences in total water consumption, the time periods on which water is consumed and other such criteria as may affect the cost of providing a service and may allow a lifetime Tariff for some Customers.
- (6) Prior to approving a Tariff methodology, the ODSWRC shall give notice in the Gazette and in one or more National newspapers with wide circulation in the State, of the proposed establishment of a Tariff methodology, indicating the period within which objections or representations in connection with the same may be made to the ODSWRC.
- (7) The ODSWRC shall fix the date on which the Tariff methodology shall come into operation and it shall cause notice to be given in the Gazette of that date.
- (8) The ODSWRC shall establish procedures for undertaking fixed and extraordinary reviews of the Tariff methodology, which procedures may provide for the use of an expert review panel including members from outside the ODSWRC.
- (9) Every person upon whom any function has been conferred or imposed in connection with setting Tariffs shall be bound by a Tariff methodology that has come into operation under this Section.
- (10) Every Water Services Provider shall, within the time prescribed by the ODSWRC, file with the ODSWRC in such form as the ODSWRC may prescribe, a schedule showing the Tariffs charged by it for the Prescribed Water Services it provides.
- (11) Any fines or penalties levied against a Water Services Provider in terms of this Law or any other Law or regulation shall not be transferable to Customers.

## **PART XII - WATER SERVICES PROVIDERS**

### **75. Conditions for provision of Prescribed Water Services**

- (1) Prescribed Water Services shall be provided on terms and conditions set by the Water Services Provider and consistent with applicable Laws and regulations.
- (2) These conditions shall:
  - (a) be in writing, accessible to the public and available free of charge to any Customer;

- (b) be in accordance with applicable National and State Water Laws and Policies;
- (c) be in accordance with conditions for the provision of Prescribed Water Services contained in this Law and all regulations made pursuant to this Law;
- (d) be in accordance with every applicable Water Services Development Plan adopted in terms of this Law; and
- (e) provide for:
  - (i) the technical conditions of existing or proposed extensions of supply;
  - (ii) the determination and structure of Tariffs;
  - (iii) the conditions for payment;
  - (iv) the circumstances under which Prescribed Water Services may be limited or discontinued;
  - (v) procedures for limiting or discontinuing Prescribed Water Services; and
  - (vi) measures to promote water conservation and demand management.

(3) Procedures for the limitation or discontinuation of Prescribed Water Services shall:

- (a) be fair and equitable; and
- (b) provide for the required notice of intention to limit or discontinue Prescribed Water Services and for an opportunity to make representations, unless:
  - (i) other Customers would be prejudiced;
  - (ii) there is an Emergency Situation; or
  - (iii) the customers have interfered with the limited or discontinued service:

(4) Every person who uses Prescribed Water Services provided by a Water Services Provider does so subject to any applicable condition set by that Water Services Provider.

(5) Where one Water Services Provider provides Prescribed Water Services to another Water Services Provider, it may not limit or discontinue those services for reasons of non-payment, unless it has given at least 30 days notice in writing of its intention to

limit Prescribed Water Services, or 60 days notice in writing of its intention to discontinue those Prescribed Water Services to:

(a) the other Water Services Provider; and

(b) the ODSWRC.

## **76. Duty to Provide access to Prescribed Water Services**

(1) Every Water Services Provider has a duty to all Customers or potential Customers in its area of jurisdiction, as designated in its WSP License, to ensure efficient, affordable, economical and sustainable access to Prescribed Water Services in accordance with the terms of its WSP License.

(2) This duty is subject to:

(a) the terms of the WSP License and any applicable PSP or PPP Agreement;

(b) the availability of water resources;

(c) the need to regulate access to Prescribed Water Services in an equitable way;

(d) the duty of Customers to pay reasonable charges, which must be in accordance with any prescribed norms and standards for Tariffs for Prescribed Water Services;

(e) the duty to conserve water resources;

(f) the nature, topography, zoning and situation of the land in question; and

(g) the right of the relevant Water Services Provider to limit or discontinue the provision of Prescribed Water Services if there is a failure to comply with reasonable conditions set for the provision of such services.

(3) A Water Services Provider may not unreasonably refuse or fail to give access to Prescribed Water Services to a Customer or potential Customer in its area of jurisdiction.

(4) In emergency situations, a Water Services Provider shall take reasonable steps to provide Basic Water Supply to any person within its area of jurisdiction and may do so at cost to the State Government in accordance with standards prescribed by the ODSWRC.

- (5) A Water Services Provider may impose from time to time reasonable limitations on the use of Prescribed Water Services.
- (6) No provisions of this Section shall be interpreted to expand the obligations of a Water Services Provider under a PSP or PPP Agreement awarded and approved in accordance with the provisions of this Law or pre-existing this Law.

## **77. Rights of Water Services Provider**

- (1) The Water Services Provider may:
  - (a) construct, operate, alter or repair any Water Services Work in accordance with the terms of its WSP License and where applicable, any applicable PSP or PPP Agreement and with the permission of the relevant State and Federal Government authorities.
  - (b) levy tariffs for Prescribed Water Services provided by it in accordance with this Law and the tariff methodology applicable to it in accordance with this Law;and
  - (c) apply for, enter into agreement for and perform all obligations related to grants or loans under a Water Sector Programme Commitment.

## **78. Obligations of Water Service Provider**

- (1) A Water Services Provider shall:
  - (a) comply with the provisions of its WSP License and regulations, general codes and other requirements issued by the ODSWRC from time to time, unless stayed by a court of competent jurisdiction and notwithstanding that the Water Services Provider has or may intend to take legal action challenging any such order or notice;
  - (b) provide the Prescribed Water Services in accordance with all applicable State and Federal Water Laws and any other Laws applicable to it;
  - (c) unless expressly exempted by the ODSWRC, prepare and submit to the ODSWRC each year, such accounting information as the ODSWRC may require;
  - (d) provide to the ODSWRC, complete and regular information, in the form and substance prescribed, as may be called for by the ODSWRC concerning the provision of Prescribed Water Services and so as to prove compliance with the

approved Tariff, Tariff methodology and with any other obligation of the Water Service Provider under this Law or its WSP License and to enable the ODSWRC to monitor implementation of the Water Service Development Plan.

- (2) Every Water Services Provider shall establish procedures for dealing with complaints by its Customers or potential Customers, which procedure and any amendment shall be approved by the ODSWRC.

## **PART XIII - CUSTOMERS**

### **79. Customers**

- (1) In addition to any other right contained in the Contract between the Customer and the Water Services Provider, a Customer shall have the right to be informed by the Water Services Provider of the rights and obligations of the Water Services Provider under WSP License.
- (2) A Customer shall in addition to any other obligation contained in any Contract between the Customer and the Water Services Provider:
- (a) pay for the services provided or made available in accordance with the applicable Tariff;
  - (b) pay the surcharge on Tariff imposed under this Law;
  - (c) comply with the technical regulations issued by the Water Services Provider related to Customer installations including their maintenance;
  - (d) allow the Water Services Provider to install a meter on the property where appropriate and keep the meter in the same condition as existed when installed, fair wear and tear excepted;
  - (e) report a damaged meter as soon as the damage occurs or becomes known to the Customer;
  - (f) permit the Water Services Provider or its agents and employees to read the meter in accordance with the terms established in the WSP License.

- (3) Where the Customer fails, after the prescribed notice to comply with subsection (2), the Water Services Provider may suspend the service to that Customer except where the Customer is on essential service.

## **PART XV - COMPLAINTS, ENFORCEMENT AND APPEALS**

### **80. Right of Complaint to the ODSWRC**

- (1) Any Customer or Water Services Provider may submit a complaint to the ODSWRC in respect of a matter arising under this Law.
- (2) A dispute between a Customer and a Water Services Provider which relates to the provision of Prescribed Water Services or the Tariff chargeable for the service provided by a Water Services Provider shall in the first instance be referred to the ODSWRC for investigation and settlement.
- (3) The ODSWRC shall investigate complaints received by it unless it is of the opinion that:
  - (a) the complaint is trivial, frivolous, vexatious or not made in good faith; or
  - (b) the complaint is on the same subject as a matter which is already under investigation.

### **81. Investigation**

Upon receiving a complaint from any Customer or other Water Services Provider, or on its own initiative, the ODSWRC may inquire into the conduct or functioning of any Water Services Provider in carrying out the Water Services Provider's obligations under this Law, rules or regulations, codes of conduct or the terms and conditions of the WSP License.

### **82. Enforcement Orders**

- (1) Without derogation from its other powers in this Part, where the ODSWRC is satisfied that a Water Services Provider is contravening, has contravened or is likely to contravene any of the conditions of the WSP License, the ODSWRC may serve upon the Water Services Provider an enforcement order:
  - (a) requiring the Water Services Provider to do, or not to do, such things as are specified in the order for the purpose of rectifying or avoiding any contravention or threatened contravention of any condition of the WSP License; and

- (b) stipulating the period within which any requirement referred to in subsection (1) (a) shall commence and be completed.
- (2) A notice of any enforcement order shall be published by the ODSWRC in the Gazette and in the public media or in such manner as the ODSWRC considers appropriate to draw the attention of the persons affected or likely to be affected by the contravention or threatened contravention of the WSP License.
- (3) Before serving an order in terms of subsection (1), the ODSWRC shall serve a notice upon the Water Services Provider concerned:
  - (a) specifying the grounds upon which the order is to be issued and what the ODSWRC considers is required for the purpose of rectifying or avoiding any contravention or threatened contravention of any condition of the WSP License.
  - (b) stipulating the maximum period that the ODSWRC considers reasonable for the implementation of any requirement it proposes to order; and
  - (c) allowing the Water Services Provider, to make representations to the ODSWRC within such period from the date of service of the notice as it shall specify
- (4) An order served under subsection (1), may specify a penalty for each day that the Water Services Provider subjected to the order is in default of compliance with the order.

### **83. Suspension or cancellation of License**

- (1) Subject to this Section and after an inquiry, including an opportunity for the Water Services Provider to show cause as to why the WSP License should not be cancelled, the ODSWRC may cancel or suspend any WSP License, if in its opinion:
  - (a) the WSP License was issued through fraud or the misrepresentation or non-disclosure of a material fact by the Water Services Provider;
  - (b) the Water Services Provider has failed, without reasonable cause, to comply with an enforcement order issued by the ODSWRC;
  - (c) the Water Services Provider has failed, after appropriate notice in accordance with the terms of the License, to comply with any term or condition of its WSP License, the breach of which is expressly declared by such WSP License to render it liable to cancellation; or



- (d) the financial position of the Water Services Provider is such that he is unable to fully and efficiently discharge the duties and obligations imposed by the WSP License.
- (2) Before cancelling a WSP License, the ODSWRC shall notify the Water Services Provider in writing of its intention to cancel the WSP License concerned and the reasons for doing so and shall allow the Water Services Provider an opportunity to demonstrate, within 60 days following the delivery of such a notification, that circumstances have changed such that cancellation may no longer be warranted.
- (3) Notwithstanding subsections (1) and (2), instead of cancelling a WSP License, the ODSWRC may allow the WSP License to remain in force, subject to such further terms and condition as it may deem necessary to impose and such terms and conditions shall form part of the WSP License.

#### **84. Power in relation to Statutory Managers**

- (1) Without derogating from the ODSWRC's power in this Part, where a WSP License has been suspended or cancelled, the Governor may, where necessary in the State interest and acting on the recommendation of the ODSWRC, direct that the Water Services Provider be operated under the management and control of a competent person (in this Section referred to as the "Statutory Manager").
- (2) The Statutory Manager may exercise all relevant powers and perform all relevant duties on behalf of the Water Services Provider to the exclusion of the Water Services Provider and may use the infrastructure of the original Water Services Provider to the extent necessary to perform those functions.
- (3) As soon as a Water Services Provider is in a position to resume its functions effectively, the Statutory Manager shall stop exercising the delegated powers and performing the delegated duties.
- (4) The Statutory Manager may recover from the original Water Services Provider:
  - (a) all outstanding expenses which it incurred; and
  - (b) all losses which it suffered, as result of having acted in accordance with this Section.
- (5) The suspension or cancellation of a WSP License and the appointment of a Statutory Manager under this section shall not prejudice or affect the security of any holder of

any security interest in the Water Services Provider or any mortgage or the right of enforcing the security.

## **85. Review of decisions by ODSWRC**

(1) Subject to this Section, any person who is aggrieved by:

- (a) a decision of the ODSWRC not to issue a WSP License;
- (b) any term or condition of a WSP License issued to him or a refusal by the ODSWRC to specify a term or condition in a WSP License;
- (c) a refusal by the ODSWRC to renew a WSP License;
- (d) any amendment of a WSP License or a refusal by the ODSWRC to amend WSP License;
- (e) the cancellation of a WSP License;
- (f) the grant or refusal by the ODSWRC to grant any approval or authority in terms of this Law;
- (g) the outcome of any arbitration or mediation by the ODSWRC of a dispute between Water Services Providers;
- (h) a decision of the ODSWRC in respect of Tariffs; or
- (i) any other decision of the ODSWRC,

may within fourteen (14) days after receipt of that decision apply to the ODSWRC for reconsideration of the matter.

(2) An application shall only be heard under this Section if the applicant:

- (a) relies on new facts or changed circumstances that could not, with ordinary due diligence have become known to the applicant while the matter was initially being considered by the ODSWRC; or
- (b) alleges that the decision was based upon material errors of fact or law.

(3) Where an application has been made for review under subsection (1) the Appellate Body may not hear an appeal under Section 86 until such review has been completed.

## **86. Deviation from Water Services Development Plan**

A Water Services Provider shall not undertake activities that constitute a substantial deviation from a Water Services Development Plan approved by the ODSWRC unless it is embodied in a new Water Services Development Plan adopted in accordance with the procedure set out in this Part.

#### **87. Reporting on Implementation of Water Services Development Plan**

A Water Services Provider shall report on the implementation of its Water Services Development Plan during each financial year in the form and times prescribed by the ODSWRC.

#### **88. State-wide Development Plan**

- (1) In consultation with the applicable State Ministries, the ODSWRC must prepare, on an annual basis, a State-Wide Development Plan that is an aggregation and harmonization of the approved Water Services Development Plan in accordance with and in furtherance of National Water Laws and Policies and State Water Laws and Policies and any Water Sector Programme commitments of the State and submit same for approval by the House of Assembly.
- (2) The State-Wide Development Plan will prioritize among the approved Water Services Development Plans, funding needs to support application for funding from the State or Federal Government (including under any Water Sector Programme Commitments of the State).
- (3) Where the House of Assembly does not approve or requires any changes to the State-Wide Development Plan recommended by the ODSWRC, it shall be required to publish written reasons for such decision.
- (4) The ODSWRC shall cause the State-Wide Development Plan to be published in the Gazette.

#### **89. Financial Assistance**

- (1) The ODSWRC is authorized to perform any obligation imposed on it under any Water Sector Programme Commitments or any functions delegated to it by the Federal or State Government in accordance with such programme or otherwise in relation to the

advance of financial assistance to Water Services Providers by the Federal or State Governments, including as applicable, to make recommendations in respect of applicants for funds available under such programmes in accordance with the terms and conditions applicable to the programme.

- (2) The ODSWRC may refuse to recommend that financial assistance be provided to any Water Services Provider who fails to comply with its obligations under this Law.

## **PART XVI - PSP or PPP Agreement**

### **90. PSP Agreement**

- (1) The State Government (directly or through the State Water Agency or any Publicly owned Water Services Provider) may, where permitted in accordance with the provisions of this Law and other applicable State laws and policies, enter into PSP or PPP Agreement with any person to perform any function, or service or to provide any facility which may be exercised or performed or provided by a Water Services Provider under this Law.
- (2) The award of a PSP or PPP Agreement shall be carried out in accordance with all applicable State and Federal Laws and Policies, including the following provisions:
  - (a) except as otherwise authorized by the ODSWRC, a PSP or PPP Agreement shall be awarded by open and competitive bidding, subject to bidding and award guidelines, including adequate technical requirements.
  - (b) the scope of the project or activities, the subject of the PSP or PPP Agreement (including the design, construction, maintenance or operation of the Water Services Works or the modernization, rehabilitation, expansion, management or operation of existing Water Services Works) must be in conformity with the state-Wide Development Plan, or otherwise have been approved by the responsible State Ministry.
  - (c) no representations shall be made to State or Federal Government for funding or subsidies except as previously approved in writing by the State or the Federal Government, as the case may be;
  - (d) the awards shall be consistent with the bidding and award guidelines developed for the PSP or PPP Agreement and with applicable National Water Laws and Policies and State Water Laws and Policies, any other applicable laws, circulars,

regulations and guidelines relating to the tendering of public contracts and private sector investigation infrastructure; and

(e) The PSP or PPP Agreement shall be approved by the ODSWRC but such approval shall be limited to ensuring that the PSP or PPP Agreement is in compliance with this Law and the applicable Water Services Development Plan and that the prescribed procedures for award of the PSP or PPP Agreement have been followed.

(3) The ODSWRC shall develop further provisions for the procedure for award of PSP or PPP Agreement, which may include compulsory provisions to be contained in a PSP or PPP Agreement.

(4) As soon as a PSP or PPP Agreement has been entered, the Water Services Provider must supply a copy thereof to the ODSWRC.

## **PART XVII - STATE INFORMATION SYSTEM**

### **91. Establishment of the State Information System**

(1) The ODSWRC shall ensure that there is a State Information System on Prescribed Water Services.

(2) The State Information System may form part of a National information system operated by the Federal Ministry of Water Resources relating to water generally.

(3) The ODSWRC shall provide reports from the State Information System to the National Information System.

(4) The ODSWRC shall take reasonable steps to ensure that the information provided is in a format accessible to all stakeholders.

### **92. Purpose of State Information System**

(1) The purpose of the State Information system shall be:

(a) to record and provide complete and accurate data for the development, implementation and monitoring of Prescribed Water Services in the State and as necessary, for the implementation of National Water Laws and Policies; and

(b) to provide information to Water Services Providers, Customers and other members of the public:

- (i) to enable them to monitor and compare the performance of Water Services Providers;
- (ii) for research purposes; and
- (iii) for any other lawful reason.

### **93. Provision of Information**

- (1) The ODSWRC may require any Water Services Provider and Customer to furnish information to be included in the State Information System.
- (2) The ODSWRC or the provider of the State Information System may charge a reasonable fee for making information available, subject to the objectives of transparency and effective public access to relevant information.

## **PART XVIII - GENERAL PROVISIONS**

### **94. Compliance with Other Laws**

No approval given under this Law and nothing in this Law shall relieve any Water Services Provider or any other person from complying with any other law relating to the management or regulation of the environment or water resources; or with any other applicable State or Federal Water Laws or policies including, where required, any obligation on a Water Services Provider to obtain a license or permit to extract water to be used in providing the Prescribed Water services.

### **95. Entry and Inspection of Property**

- (1) Any person authorized in writing by the ODSWRC or any Water Services Provider may:
  - (a) at any reasonable time and without prior notice, subject to limitations set out in subsection (3), enter any property and inspect any Water Services Work in order to ascertain whether this Law or any regulation or directive made under it is being complied with;
  - (b) after reasonable notice to the owner or occupier of any property, enter that property with the necessary persons, vehicles, equipment and material:
    - (i) to repair, maintain, remove or demolish any Water Services Work belonging to or operated by the Water Services Provider concerned;

- (ii) to remove vegetation interfering with any Water Services Work belonging to or operated by the Water Services Provider concerned;
  - (iii) to establish the suitability of any water source or site for the construction of a Water Services Work; and
  - (iv) search, excavate, bore or carry on any activity necessary for the recovery or measurement of water.
- (c) after reasonable notice to the owner or occupier of any property, pass through the property in order to enter another property lawfully.
- (2) Any person entering a property shall identify himself or herself and present his or her authorization.
- (3) A private resident or business premises may only be entered:
- (a) where it is necessary in terms of this Law to do so; and
  - (b) on reasonable notice; and
  - (c) at a reasonable time.

## **PART XIX - OFFENCES**

### **96. Injury, Pollution, etc**

Any person who willfully or negligently damages any waterworks, public fountains, services or meters or unlawfully draws off, diverts or takes water from the same, or from any stream or waters by which any waterworks are supplied or pollutes any such water or allows any foul liquid, gas or other noxious or injurious matter to enter into any water works, river, lake, stream or any services connected therewith, shall be guilty of an offence and shall be liable on conviction to imprisonment for twelve months or to a fine of Five Hundred Thousand Naira (~~N~~500,000:00) or to both such fine and imprisonment, in addition to a penalty of Fifty Thousand Naira (~~N~~50,000:00) for each day while the offence continues.

### **97. Waste and Altering Service**

- (1) Any person who willfully or negligently misuses or wastes, or causes or allows to be misused or wasted any water passing into, through, upon or under any tenement from any waterworks shall be guilty of an offence and shall be liable on conviction to imprisonment for one month or to a fine of Fifty Thousand Naira (~~N~~50,000:00) or to both such fine and imprisonment.
- (2) Any person who without any lawful justification or excuse, the proof of which shall be on him, alters or causes or permits to be altered or connects or reconnects any service without the consent of the Corporation or contrary to any regulations made

under this Law, shall be guilty of an offence and shall be liable on conviction to imprisonment for six months or to a fine of Fifty Thousand Naira or to both such fine and imprisonment.

- (3) Any person who without any lawful justification or excuse, the proof of which shall be on him, taps, damages or causes to be destroyed, any mains or central network or pipes belonging to the Corporation, shall be guilty of an offence and shall be liable on conviction to imprisonment for seven years or to a fine of One Hundred Thousand Naira (N100,000;00) or to both such fine and imprisonment.

#### **98. Fraudulent Measurement**

Any person who alters or causes or permits to be altered, any service with intent to avoid the accurate measurement or register or water by means of any meter or to obtain a greater supply of water than he is entitled to or to avoid payment therefore or willfully or negligently damages any meter, shall be guilty of an offence and shall be liable on conviction to imprisonment for three months or to a fine of Fifty Thousand Naira (N50,000:00) or to both such fine and imprisonment and any service so altered or meter so damaged shall be replaced or repaired by the Corporation at the expense of such person and the cost of replacing or repairing such service or meter may be recovered upon order of a Court in the same manner as any penalty may be recovered upon conviction.

#### **99. Foul Accumulation of Earth, etc**

- (1) Any person who, on any tenement occupied or owned by him or his servants, puts, allows to be put or to remain or to accumulate, fails to remove or to cause to be removed or to take such steps as may be necessary to prevent, upon notice in writing from the Corporation so to do, any foul, noisome or injurious matters or any earth deposit or excavated material in such manner or place that it may be washed, fall or be carried into any waterworks or river or the gathering grounds thereof, shall be guilty of an offence and shall be liable on conviction to imprisonment of one year or to a fine of Five Hundred Thousand Naira (N500,000:00) or to both such fine and imprisonment and in respect of any period during which such matter, earth, deposit or excavated material is allowed to remain after notice in writing from the Corporation requiring the same to be removed to a penalty of Fifty Thousand Naira (N50,000:00) for each day whilst the offence continues.

- (2) Any person who constructs or erects any building or structure on any piece of land acquired for use of the Corporation or marked for the construction and passage of pipeline shall be guilty of an offence and shall be liable on conviction to a fine of Two Hundred and Fifty Thousand Naira (N250,000:00).

#### **100. Bathing, washing, etc**

Any person who –

- (a) bathes in any part of any waterworks; or



(b) washes, throws or causes to enter therein, any horse, cow, dog, goat, pig, other animal or any bird or any clothes, material or thing; or

(c) wrongfully opens or closes any lock, cock, valve, sluice or manhole belonging to any waterworks,

shall be guilty of an offence and shall be liable on conviction to imprisonment for six months or to a fine of Fifty Thousand Naira (~~N~~50,000:00) or to both such fine and imprisonment.

#### **101. Liability of Owner of Tenement for Offence**

Where any tenement has benefited from any act constituting an offence under Sections 96 to 100, the owner of such tenement shall, without prejudice to the power to prosecute any other person for any offence therefore, be deemed to have committed that offence and may be punished accordingly.

#### **102. Penalty for Refusing or Failing to Pay Rates or Charges**

Any person who without lawful justification or excuse, the proof of which shall be on the person charged, refuses or fails to pay any rate or charge payable by him by virtue of this Law or any regulation made thereunder or having effect as if so made by the date on which it is payable, shall be guilty of an offence and shall be liable on conviction to a fine of Ten Thousand Naira (~~N~~10,000:00) or to imprisonment for six months or to both such fine and imprisonment.

#### **103. Penalty for inciting any Person to refuse to pay Rates or Charges**

Any person who, without lawful justification or excuse, the proof of which shall lie on the person charged:

(a) incites any person to refuse to pay any rate or charge payable by him by virtue of this Law, or any regulations made thereunder or having effect as if so made; or

(b) Incites or assists any person to misrepresent in anyway his rateable capacity or any information material to the assessment of or rating upon any tenement of which he is owner or occupier;

shall be guilty of an offence and shall be liable on conviction to a fine of Ten Thousand Naira (~~N~~10,000:00) or to imprisonment for six months or to both such fine and imprisonment

#### **104. Penalty for Discharge of Industrial and Chemical Waste**

Any person or firm or corporate body who willfully or negligently –

(a) discharges industrial waste; or

(b) dumps chemical waste, petroleum products or prohibited substance or pollutes any waterworks, public fountain, lake or river,

shall be guilty of an offence and shall be liable on conviction to a fine not less than Five Million Naira (~~N~~5,000,000:00).

#### **105. Penalty for non-Compliance with Audit Reports**

Any officer or employee or agent employed under this Law who fails without just cause to comply with a requirement of an auditor in terms of Sections 35 and 55 (3) commits an offence and shall be liable on conviction to a fine of Fifty Thousand Naira (~~N~~50,000:00) or to imprisonment of six months or both.

### **PART XX - POWERS IN RELATION TO LAND**

#### **106. Preliminary Investigation in Respect of Land Required for Waterworks**

(1) Whenever it appears to the Corporation that any land in the State is likely to be needed for the purpose of any water works, the Corporation may, by its servants and agents, together with all necessary workmen enter upon any such land and -

(a) (i) survey and take levels of the land;

(ii) dig or bore under the subsoil; and

(iii) do all necessary acts to ascertain whether the land is adapted for such purposes;

(b) clear, set out and mark the boundaries of the land in respect of which it is proposed to make an application under sub-section (1) of Section 107:

Provided that no such agent, servant or workman shall enter any building or upon any enclosed court or garden attached to a dwelling house (except with the consent of the occupier thereof) unless at least 'seven days' notice in writing of the intended entry has been given to such occupier.

(2) As soon as conveniently may be after any entry made under sub-section (1) of this Section, the Corporation shall pay compensation for all damage arising out of the exercise of any power conferred by that sub-section.

(3) In the case of dispute as to the amount of any compensation payable under sub-section (2) of this Section, the amount may be determined by the High Court having jurisdiction in respect of the place where the land is situated.

## **107. Compulsory Acquisition of Land**

- (1) Where the Corporation has done all things necessary under sub-section (1) of Section 106 to ascertain the suitability of the land for its intended purpose, the Corporation shall make an application to the Executive Council for the formal acquisition of such land and the Executive Council may upon such application and after such enquiry as it may think fit, declare that the land is required for the purpose of the Corporation.
- (2) Upon such declaration being made, the land to which it relates shall be deemed to be land required for a public purpose of the State within the meaning of the Land Use Act and the Executive Council may cause action to be taken by the appropriate authority for the purpose of acquiring the land for the Corporation.
- (3) The Corporation shall not sell, demise, mortgage, charge or otherwise alternate any land or any interest in any land acquired for the Corporation under the provisions of this Section without prior approval of the Executive Council.
- (4) The compensation, if any, payable under the Land Use Act or any enactment amending or replacing the same for the acquisition of any kind under this Section shall, in the first instance, be paid by the Government of the State but the Corporation shall refund to the Government any compensation so paid and all incidental expenses incurred by the Government.
- (5) In this Section –

“the appropriate authority” means the authority having power under the Land Use Act to acquire land for public purposes of the State.

## **PART XXI - MISCELLANEOUS AND GENERAL**

### **108. Provisions relating to the use of Water by Fire Authorities and Fire Brigades**

- (1) Nothing in this Law shall preclude any fire authority or fire brigade from abstracting water, for the purpose of the prevention or control of fire, from any public fountain, service or waterworks of the Corporation.
- (2) Water shall not be extracted by any fire authority or fire brigade for the purpose of testing any fire-lighting appliances except with the consent of the Corporation, which consent shall not be unreasonably withheld.
- (3) No charge shall be made for water supplied by the Corporation under sub-section (1) or (2) of this Section.
- (4) Any main pipe, valve, hydrant, service or other waterworks required within the area of operation of the Corporation by any fire authority or fire brigade in the discharge of its functions to prevent and control fire shall be provided by the Corporation upon full

payment thereof by such fire authority or fire brigade, but such main, pipe, valve, hydrant, service or other waterworks shall vest in the Corporation in perpetuity but shall be maintained and renewed by the Corporation as the fire authority or fire brigade may require and at the expense of such fire authority or fire brigade.

(5) In this Section, the expressions "fire authority" and "fire brigade" means:

- (a) any fire authority or fire brigade constituted, organized or established under Fire Services Law, 2006 or any subsequent enactment amending or replacing that Law; or
- (b) any authority or body of firemen respectively constituted, organized or established under any other enactment.

### **109. Control of Abstraction and Prevention of Waste Water in Certain Areas**

- (1) Where the Governor is satisfied that special measures for the conservation of water in any area within the State are necessary in the public interest, whether for the protection of water supplied to the public or for the protection of water supplies used for industrial or other purposes, he may make an order defining the area in question and thereupon the provisions of this Section shall apply to that area.
- (2) Subject to the following provisions of this Section no person shall, in any area to which this section applies:
  - (a) construct any well, borehole, or other works for the purpose of abstracting underground water; or
  - (b) extend any existing well, borehole or other works for the purpose of abstracting additional quantities of underground water;
  - (c) abstract water from any river, dam or lake;
  - (d) construct any works capable of providing water in excess of one thousand gallons a day, unless he has obtained in accordance with regulations made under this Section, a license from the ODSWRC.
- (3) The foregoing sub-section (2) of this Section shall not apply to -
  - (a) the construction or extension of any well, borehole or other work by any individual for the purpose of abstracting water solely and to the extent necessary for the supply of water for the domestic purposes of his household;
  - (b) the construction or extension of any well, borehole or other work, if that construction or extension is expressly authorized by any enactment.
- (4) The Corporation may make regulations for the better carrying out of any or all of the provisions of this Section.

(5) Any person who contravenes any of the provisions of this Section, shall be guilty of an offence and shall be liable on conviction to a fine of Two Hundred Thousand Naira (N200,000:00) or imprisonment for two years or to both such fine and imprisonment.

#### **110. Execution or Issue of Instruments**

(1) Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Corporation by any person generally or specially authorized by the Corporation for that purpose.

(2) Any document purporting to be a document duly executed or issued under the seal of the Corporation or on behalf of the Corporation shall, unless the contrary is proved, be deemed to be a document so executed or issued, as the case may be.

#### **111. Service of Notices, etc**

Service upon the Corporation of any notice, order or other document may be effected by delivering the same at the office of the Corporation or by sending it by registered post, addressed to the Secretary to the Corporation at that office.

#### **112. Restriction on Execution against Corporation Waterworks**

No execution or attachment or process in the nature thereof shall be issued against any waterworks vested in or the property of the Corporation, but any sums of money which may be the judgment of any Court awarded against the Corporation shall, subject to any directions given by the Court where notice of appeal has been given by the Corporation in respect of the said judgment, be paid by the Corporation from its fund.

#### **113. Waterworks Excluded from Rates**

Waterworks vested in or the property of the Corporation shall not be regarded as hereditaments or tenements to be valued for rating purposes under any enactment.

#### **114. Exemption of Agreement for Supply of Water from Stamp Duty**

Water shall be deemed to be goods, wares or merchandise for the purposes of the exemption numbered (3) under the heading "AGREEMENT" or any "MEMORANDUM of an AGREEMENT" contained in the Schedule to the Stamp Duties Act.

## 115. Power of the Governor to Surcharge Persons

(1) Where, upon considering any audit report on accounts or in any other case, the Governor is satisfied that in respect of the functions of the Corporation under this Law

—

(a) any sum due to the Corporation has not been duly brought into account; or

(b) any loss of or deficiency in the moneys or loss or destruction of any other property of the Corporation has occurred by reason of the negligence, breach of official duty or other misconduct of any person, the Governor may surcharge the amount of such sum, loss or deficiency or of the value of the property lost or destroyed upon the person or his legal personal representative in the event of death, whether he be a member of the Corporation or an officer or other employee or agent of the Corporation.

(2) Before exercising any of his powers under sub-section (1) of this Section, the Governor may by writing under his hand appoint any person to conduct the inquiry for the purposes of this Section and to take evidence and examine witnesses upon oath or affirmation, (which oath or affirmation that person is hereby empowered to administer) and that person may, by summons under his hand, require all such persons as he may deem fit to appear before him at a time and place to be stated in such summons and to produce all such books, records, accounts and other documents and materials as he may consider necessary for the purposes of the memory.

(3) If the Governor decides to surcharge any amount on any person under sub-section (1) of this Section, he shall cause a notice to be served upon such person or on his legal personal representatives in the event of his death, requiring him or such representatives to pay the amount surcharged within such period from the date of the service of the notice as may be specified therein.

(4) Notwithstanding any of the provisions of the preceding sub-sections of this Section, no liability to surcharged shall be incurred by any officer, other employee or agent of the Corporation who can prove to the satisfaction of the Governor that he acted in pursuance of and in accordance with the terms of a resolution of the Corporation or of any committee duly appointed under this Law, or on the written instructions of any officer, employee or agent of the Corporation to whose orders, in relation to the matter in question he was subject:

Provided that nothing in this sub-section shall exempt any person from, liability to surcharge in accordance with the provisions of this Section where that person knew or ought reasonably to have known that the terms of any resolution or any written instructions as aforesaid were not in accordance with the provisions of this Law or any regulations or rules made or directions given or having effect as if made or given hereunder.

## **116. Recovery of Surcharges**

Any amount notified as a surcharge in accordance with the provision of sub-section (3) of Section 115 shall be a debt due to the Corporation and may be sued for and recovered in any court of competent jurisdiction at the suit of the Corporation.

## **117. Appeals Against Surcharge**

- (1) Any person who is aggrieved by any decision of the Governor to surcharge any amount upon him may, within thirty days of such decision, appeal to the High Court.
- (2) The High Court on such appeal shall have power to confirm, vary or quash the decision of the Governor and give such directions as the Court may deem fit in the matter.

## **118. Repeal**

The Ondo State Water Corporation Law, Laws of Ondo State, 2006 is hereby repealed.

## **SCHEDULE ONE**

### **PART XXII - ONDO STATE URBAN WATER SECTOR PPP GUIDELINE**

#### **1. Inception**

When the Corporation contracts for goods or services, it must do so in accordance with:

- (a) a system which is fair, equitable, transparent, competitive and cost –effective;
  - (b) the administrative action on a PPP procurement process which must be in accordance with the law and prescribed procedures;
  - (c) accountability, responsiveness and openness in the Corporation’s decision making process;
  - (d) all bidders at each stage of a procurement process who must have an equal chance of competing for the contract and no action taken by the Government may prejudice their competitiveness.
2. The Corporation may enter into a service delivery agreement with a community based organization or other non-governmental organization or a Private Party.
  3. The Private Party performs a Corporation function for or on behalf of the Corporation or acquires the management or use of the Corporation property for its own commercial purpose or both.

4. The Private Party assumes substantial financial, technical and operational risks in connection with:
  - (a) the design, financial building and operation;
  - (b) the performance of the corporation function; and
  - (c) the management or use of the Corporation property.
5. The Private Party receives a benefit from performing the Corporation function or from using the Corporation property or both by:
  - (i) the consideration to be paid or given by the Corporation or a divisional entity under the sole or shared control of the Corporation;
  - (ii) charges or fees to be collected from users or customers of a service provided by them; and
  - (iii) a combination of the benefits referred to in such paragraph (i) and (ii).
6. (1) Affordability limits, value-for-money considerations and risks profile of the project will determine a PPP projects financing structure and sources of funding.  
(2) A typical PPP finance structure must:
  - (a) involve some capital contribution by the corporation to the initial costs of the project; or
  - (b) wholly funded through corporate finance; or
  - (c) a combination of funds and private equity.
7. As soon as the Corporation begins a project that may be a PPP, the General Manager/Chief Accounting Officer must:
  - (i) in writing, notify the Executive Council and the Ondo State Water Regulatory Commission, of relevant information on the expertise within the Corporation in compliance with the Laws on PPP Projects.
  - (ii) If requested to do so by the State Executive Council or the Ondo State Water Regulatory Commission, appoint a person with appropriate skills and expertise, either from within or outside the Corporation, as the Adviser to assist and advise the Corporation on the preparation and procurement of the PPP Agreement.
8. (1) The PPP project cycle must enable the three regulatory tests of affordability, value for money and risk transfer to be applied at every stage of preparing for, procuring and managing a PPP agreement.



(2) The Corporation Public Private Partnership Regulations sets out four distinct phases to the project cycle which are:

- (a) inception;
- (b) Feasibility study;
- (c) Procurement;
- (d) PPP contract Management.

(3) The Corporation must apply these tests throughout the project cycle.

(4) The views and recommendations of the State Executive Council and ODSWRC must be solicited before the Corporation publicly invite bids and before the execution of any PPP agreement.

## **FEASIBILITY STUDY**

9. To determine whether an external mechanism, including a PPP, is in the best interest of the Corporation, the General Manager and Chief Accounting Officer must undertake a feasibility study that:

- (1) explains the strategic and operational benefits of the proposed mechanism, including a PPP, for the Corporation in terms of its objectives;
- (2) describes in specific terms:
  - (a) the nature of the private parties' role in the PPP;
  - (b) the extent to which this role, both legally and by nature, can be performed by a Private Party;
  - (c) describes how the proposed agreement will:
    - (i) provide value for money to the Corporation;
    - (ii) be affordable for the Corporation;
    - (iii) transfer appropriate technical, operational and financial risks to the private Party;
    - (iv) impact on the Corporation's revenue flows and its current and future budgets

(3) takes into account all relevant information;

(4) explains the capacity of the Corporation to effectively monitor, manage and enforce the agreement.

10. When the feasibility study is completed, the General Manager/Chief Accounting Officer must present the feasibility study report, with all relevant documents, to the State Executive Council for its approval to continue with the proposed PPP within sixty (60) days.

## **PROCUREMENT**

11.(1) Prior to issuing any bid documentation, the General Manager/Chief Accounting Officer of the Corporation must solicit the views and recommendations of the State Executive Council.

(2) All bidders at each stage of a procurement process must have an equal chance of competing for the contract and no action taken by the Government may prejudice their competitiveness.

12. Each administrative action in a PPP procurement process must be in accordance with the laws and prescribed procedures, there must be accountability, responsiveness and openness in the ODSWRC's decision making.

13. Where the value of the proposed PPP agreement exceeds Fifty Million (N50,000,000:00) Naira or the complementation of the proposed agreement exceeds one year, competitive bidding is required.

14. (1) After evaluation of the bids, but prior to appointing the preferred bidder, the General Manager/Chief Accounting Officer must solicit the view and recommendation of the Executive Council in terms of:

(a) the proposed terms and conditions of the draft PPP agreement;

(b) the Corporation's plan for the effective management of the agreement after its conclusion;

(c) the preferred bidder's competency to enter into the agreement;

(d) the preferred bidder's capacity to comply with the obligations of the agreement;

(2) Sixty (60) days prior to signing of contract the State Executive Council must pass a resolution authorizing the execution of the PPP contract.

15. A PPP agreement between the Corporation and a Private Party must:

(a) provide value for money to the Corporation;

- (b) be affordable for the Corporation;
- (c) describe in specific terms, the nature of the Private Party's role in the PPP;
- (d) confer effective power on the Corporation;
- (e) provide for management and enforcement of the agreement;
- (f) impose financial management duties on the Private Party, including transparent processes relating to internal financial control, budgeting, accountability and reporting;
- (g) provide for the termination of the agreement if the Private Party:
  - (i) fails to comply with terms or conditions of the agreement;
  - (ii) deliberately provides incorrect or misleading information to the Corporation.
- (h) restrain the Private Party, for the full period of the agreement, from offering otherwise than in accordance with the agreement an employment, consultancy or the contract to a person;
  - (i) who is an official of the Corporation or a government entity under the sole or shared control of the Corporation;
  - (ii) who was such an official at any time during a period of one year before the offer is made.
- (i) restrain the Private Party, for a period of three years from offering an employment consultancy or other contract to an employee of the government directly involved in the negotiation of the agreement.
- (j) Comply with Section 6 (h) of this Law.

16. Only the General Manager/Chief Accounting Officer of the Corporation may sign a PPP agreement on behalf of the Corporation.

17. The General Manager/Chief Accounting Officer of a Corporation shall not sign a PPP agreement unless Section 15 (a) to (j) of this Schedule has been complied with.

## **PPP CONTRACT MANAGEMENT**

18. The General Manager/Chief Accounting Officer of the Corporation that is a party to a PPP agreement is responsible for ensuring that the PPP agreement is properly implemented, managed, enforced and reported on including ensuring that the Corporation has the requisite contract management and monitoring capacity.

19. A PPP agreement may be amended by the parties, but only after:
- (i) the reasons for the proposed amendment have been tabled in the State Executive Council;
  - (ii) the amendment is consistent with the basic essentials of the PPP project.

## **SCHEDULE TWO [Section 5 (4)]**

### **CONSTITUTION AND PROCEEDINGS OF THE CORPORATION**

1. Every member of the Corporation (other than an ex-officio member) shall, subject to the provisions of this Schedule, hold office for a period of three years from the date of his appointment or for such other period as the Governor may specify from time to time.
2. Any member of the Corporation (other than an ex-officio) may, at any time, by writing under his hand addressed to the Governor, resign his office.
3. A member of the Corporation (other than an ex-officio) who has ceased to be such a member shall be eligible for re-appointment.
4. (1) Notwithstanding the provisions of paragraph 1, the Governor may, at any time, in his own discretion, remove from office, any member of the Corporation.  
  
(2) If the Governor is satisfied that a member of the Corporation (other than an ex-officio)  
-
  - (a) has been absent from four consecutive meetings of the Corporation without the permission of the Governor in the case of the Chairman or the permission of the Chairman in the case of any other member; or
  - (b) has become bankrupt or made an arrangement with his creditors; or
  - (c) is incapacitated by physical or mental illness; or
  - (d) is otherwise unable or unfit to discharge the functions of a member;the Governor may declare his office as member of the Corporation to be vacant and shall notify the fact in such manner as he thinks fit, and upon such declaration, his office shall become vacant.
5. No act or proceedings of the Corporation shall be questioned on account of any vacancy among its members or on account of the appointment of any member having been defective.
6. Where any member of the Corporation is temporarily incapacitated by illness or is temporarily absent from Nigeria, the Governor may appoint any person to hold temporarily the office held by such incapacitated or absent member during the period of

such incapacity or absence and all the powers and duties of such member under this Law shall devolve upon the person so temporarily appointed.

7. Where upon any special occasion, the Corporation desires to obtain the advice of any person on any particular matter, the Corporation may co-opt such a person to be a member of such meeting or meetings as may be required and such person whilst so co-opted shall have all the rights and privileges of a member save that he shall not be entitled to vote on any question.
8. The Corporation shall meet at least once in a month at such time and place as its Chairman may direct.

Provided that any three other members may, by notice in writing signed by them, request the Chairman to summon a special meeting of the Corporation for such purposes as shall be specified in the notice, the Chairman shall within fourteen (14) days, summon the special meeting for the purposes set out therein.

9. Such number of members as constitutes a majority of the members of the Corporation for the time being appointed shall form a quorum at any meeting of the Corporation.
10. (1) At every meeting of the Corporation, the Chairman if present, shall preside, but in his absence, the Corporation, subject to the provisions and voting of paragraph 6 of this Schedule, may appoint one of its members present to preside.
  - (2) Subject to the provisions of this Law, any question which fails to be determined by the Corporation at any of its meetings shall be decided by a majority of the members present and voting on the question.
  - (3) The Chairman of the Corporation or any other member presiding in his absence shall have an original vote and in the event of an equality of votes, a casting vote.
- 11.(1) Subject to the provisions of this Law, the Corporation may make Standing Orders for the purpose of regulating its own proceedings.
  - (2) Without prejudice to the generality of the foregoing provisions, the Corporation may make regulations for the purpose of providing -
    - (a) for the manner of transaction of its business;
    - (b) for the custody and use of the common seal and the manner in which Cheques, instrument and other documents of any description shall be signed on behalf of the Corporation.

This printed impression has been carefully compared by me with the Bill which has been passed by the Ondo State House of Assembly and found by me to be a true copy of the said Bill.

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**RT. HON. (BARR.) PRINCESS AKINDELE JUMOKE YETUNDE**  
*Speaker Ondo State House of Assembly.*

.....  
**MR. ADEYELU MICHEAL BODE.**  
*Clerk, Ondo State House of Assembly.*

**GOVERNOR'S ASSENT**

I hereby signify my assent to this Bill

**GOVERNOR'S SEAL**

.....  
**DR. OLUSEGUN MIMIKO**  
**GOVERNOR, ONDO STATE OF NIGERIA**

Dated this..... day of .....2017



**ONDO STATE COMMERCIAL  
MOTORCYCLE AND TRICYCLE  
TRANSPORT OPERATION LAW 2017**