



NIGERIAN ELECTRICITY REGULATORY COMMISSION

ELIGIBLE CUSTOMER REGULATIONS 2017

REGULATION NO. NERC-R-111

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NIGERIAN ELECTRICITY REGULATORY COMMISSION

In the exercise of the powers conferred on the Nigerian Electricity Regulatory Commission (the Commission) by section 96 of the Electric Power Sector Reform Act and all other enabling powers, the Commission makes the following Regulations:

ARRANGEMENT OF SECTIONS

CHAPTER I

General

1. Commencement
2. Objectives
3. Application of these Regulations

CHAPTER II

Criteria for Determining Eligibility

4. Criteria for Customer Eligibility
5. Minister's Declaration
6. Site Aggregation Requirements
7. Metering Requirements
8. Contractual Requirements
9. Financial Requirements

CHAPTER III

Criteria to Supply Power to Eligible Customers

10. Criteria to Supply Power to Eligible Customers
11. Generation Licence
12. Trading Licence

CHAPTER IV

Procedure for Granting Eligible Customer Status

13. Application documents
14. Obtaining Commission's Approval

CHAPTER V

Rights and Obligations of Eligible Customer and Supplier

15. Rights of Eligible Customer
16. Obligations of the Eligible Customer
17. Rights of the Supplier
18. Obligations of the Supplier

CHAPTER VI

Rights and Obligations of Service Providers

19. Rights and Obligations of the Transmission Service Provider
20. Rights and Obligations of the Market Operator
21. Rights and Obligations of the Distribution Service Provider
22. Rights and Obligations of the System Operator

CHAPTER VII

Switching Rules

23. Approval of Power Purchase Agreements
24. Exit from Distribution Licensee Network
25. Reconnection to Distribution Licensee Network
26. Procedure for Supplier Switching

CHAPTER VIII

Access to Transmission and Distribution Network

27. Access to Transmission and Distribution Networks

CHAPTER IX

Pricing and Cost of Supply

28. Pricing
29. Competition Transition Charge
30. Power Consumer Assistance Fund
31. Rural Electrification Fund

CHAPTER X

Metering, Billing and Settlement

32. Metering, Billing and Settlement

CHAPTER XI
Balancing

33. Treatment of Energy Differences

CHAPTER XII
Phasing of Implementation

34. Phasing of Implementation

35. Phase I

36. Phase II

CHAPTER XIII
Supplier of Last Resort

37. Supplier of Last Resort

38. Role of Distribution Companies

CHAPTER XIV
Miscellaneous

39. Information on Suppliers and Eligible Customers

40. Dispute Resolution

41. Application of other Regulations

42. Amendment or Repeal

43. Interpretation

SCHEDULES

I. Application Documents

II. Conditions Precedent to Commencement of Phase II

CHAPTER I

GENERAL

1. Commencement

1. These Regulations shall come into force on the date it is approved by a resolution of the Commission.
2. These Regulations shall be signed by the Chairman/Chief Executive of the Commission who shall cause the seal of the Commission to be affixed thereon.

2. Objectives

1. The objective of these Regulations are to provide standard rules to achieve the following:
 - a. Facilitate competition in the supply of electricity, promote the rapid expansion of generation capacity and opportunity for improvement in quality of supply.
 - b. Encourage third party access to transmission and distribution infrastructure as a precursor to full retail competition in the Nigerian electricity market.
 - c. Allow licensed generation companies with uncontracted capacity to access unserved and underserved customers thus improving the financial liquidity of the electricity industry.
 - d. Enhance the stability and operational efficiency of generation companies arising from the flatter load profiles of Eligible Customers and possibly lower technical losses, depending on the required network interconnection.

3. Application of these Regulations

These Regulations shall govern the supply of electric power to Eligible Customers as may be declared by the Minister from time to time in line with section 27 of the Act.

CHAPTER II

CRITERIA FOR CUSTOMER ELIGIBILITY

4. Criteria for Customer Eligibility

End use customers that meet the conditions specified in the declaration of the Minister may apply for Eligible Status upon meeting the requirements stated in sections 5 to 9 and section 34 of these Regulations.

5 Minister's Declaration

1. A customer or group of end-use customers registered with the Commission for the purpose whose consumption is more than 2 MWh/h over the course of one month, that is connected to a metered 11kV or 33kV delivery point on the distribution network of a distribution licensee under a distribution use of system agreement with such distribution licensee for the connection and for the delivery of electrical energy;
2. A customer or group of end-use customers registered with the Commission for the purpose, that is connected directly to a metered 132kV or 330kV delivery point on the transmission network under a transmission use of system agreement for the connection and for the delivery of electrical energy;
3. A customer or group of end-use customers registered with the Commission for the purpose, whose consumption is more than 2 MWh/h over the course of one month, that is connected directly to a metered 33kV delivery point on the transmission network under a transmission use of system agreement, and has entered into a bilateral agreement for the construction, installation and operation of the distribution system used to connect the customer to the 33kV delivery point, with the distribution licensee licensed to operate in the location where the customer and the 33kV delivery point are located;
4. A customer or group of end-use customers registered with the Commission for the purpose, whose consumption is more than 2 MWh/h over the course of one month, that is directly connected through a metered delivery point, to the generation facility of a generation licensee it intends to purchase electrical energy from and has entered into a bilateral agreement for the construction, installation and operation of the distribution system used to connect the customer to the generation facility with the distribution licensee licensed to

operate in the location where the generation facility and the customer are located.

6. Site Aggregation Requirements

1. A group of end users may combine multiple sites and apply for eligibility status from the Commission with each application being considered on its own merit. In considering such applications, applicants must fulfill the following three (3) site aggregation requirements:
 - a. Each Eligible Customer in the sites to be aggregated is connected to the same Distribution Licensee's network, an IEDN or an off-grid licensee and are connected to the same feeder.
 - b. The applicant is a single legal entity which may be a Special Purpose Vehicle who shall apply for eligibility status on behalf of the group of end-users and shall execute the transaction documents.
 - c. There is a minimum consumption of 500KVA at each site and all located within the same geographical network as may be determined by the Commission from time to time.

7. Metering Requirements

An end use customer seeking to attain Eligibility Status shall procure and install appropriate metering infrastructure at all trading points in compliance with the Metering Code and such meters shall have remote reading capability for the measurement of active power, reactive power, peak demand and profiling of real load.

8. Contractual Requirements

1. Applicants for Eligibility Status shall fulfill the following contractual requirements as a precondition for approval by the Commission:
 - a. Execution of a Power Purchase Agreement (guided by the Commission's standard template) with the prospective Supplier.
 - b. Execution of Transmission Use of System ("TUoS") agreements with the Supplier and Transmission Service Provider, where applicable.

- c. Execution of Distribution Use of System (“DUoS”) with the Supplier and Distribution Licensee (where applicable).
- d. Execution of market participation agreements with the Market Operator.
- e. Execution of a bilateral agreement with the distribution licensee for the construction, installation and operation of a distribution system to be used for the supply to the customer, where applicable.
- f. Execution of other agreements as may prescribed by the Commission.

9. Financial Requirements

Applicants shall post a Letter of Credit or Bank Guarantee in favour of the Market Operator in accordance with the Market Rules to cover Market administration charges, TUoS charge and other charges as may be approved by the Commission.

CHAPTER III

CRITERIA TO SUPPLY POWER TO ELIGIBLE CUSTOMERS

10. Criteria to Supply Power to Eligible Customers

A supplier may offer to sell electric power to an Eligible Customer if it holds any of the licences listed in sections 11 and 12 of these Regulations

11. Generation Licence

A licensee that has been issued a generation licence by the Commission pursuant to section 64 (3) of the Act.

12. Trading Licence

A licensee that has been issued a trading licence pursuant to section 68 of the Act.

CHAPTER IV

PROCEDURE FOR GRANT OF ELIGIBLE CUSTOMER STATUS

13. Application Documents

The Applicant and Supplier shall provide documentary evidence to the Commission showing completion of the preconditions in Chapters II and III and the provision of supporting documents listed in Schedule I of these Regulations.

14. Obtaining Commission's Approval

1. Applicants shall take the following steps to obtain the approval of the Commission.
 - a. The Applicant and Supplier shall execute a Power Purchase Agreement.
 - b. The Applicant or Supplier shall execute a TUoS agreement and DUoS agreements as may be required for the delivery of energy to the Eligible Customer.
 - c. The Applicant or the Supplier shall file an application to the Commission for Eligibility Status with all supporting documents with the Commission.
 - d. The Commission shall verify and evaluate the application and issue a decision no later than 30 working days from the date of filing complete documentation.
 - e. The Commission shall consider the application for licence by prospective suppliers on its own merit.

CHAPTER V

RIGHTS AND OBLIGATIONS OF ELIGIBLE CUSTOMER AND SUPPLIER

15 Rights of the Eligible Customer

1. Network Access

- a. Eligible customers shall be granted access to transmission and distribution networks for the purpose of delivery of electricity pursuant to the execution of the TUoS and/or DUoS agreement as applicable.
- b. Such access rights to transmission and distribution networks and conditions of electric power network usage shall be subject to the general conditions for delivery and supply of electricity, Grid Code, Distribution Code, Metering Code and any other Regulation of the Commission.

2 Supplier Choice

- a. An Eligible Customer may freely choose a supplier and contract the pricing, quantity, and time of supply pursuant to the Grid Code, Market Rules and general conditions for delivery and supply of electricity.
- b. An Eligible Customer may contract for electricity supply from more than one supplier, provided that adequate infrastructure is available for the System Operator and Market Operator to reliably account for energy quantities.
- c. The contract for access to network connection or any other contract shall not contain any provision to limit the eligible customer's choice of supplier or impose a discriminatory fee, in case of supplier switching.

16. Obligations of the Eligible Customer

1. In order to exercise the rights referred to in these Regulations, the eligible customer shall comply with the obligations stated below:

- i. Enter into a contract for supply with the holder of a Generation or Trading Licence
- ii. Enter into a contract to access the transmission and distribution network (as may be required) and in compliance with technical codes, general conditions for delivery and supply of electricity and the terms of the Power Purchase Agreement.
- iii. Comply with the requirements for off-take on contracted quantities of electricity and peak capacity at each connection point.
- iv. Meet all financial obligations pursuant to the agreements for the supply of electricity and in a timely manner:
 - A. As contracted in the Power Purchase Agreement.
 - B. For use of the transmission network, ancillary services and system operations at the tariff prescribed by the Commission.
 - C. For use of the distribution network at the tariff prescribed by the Commission.
 - D. For the costs and settlement of balances pursuant to the Market Rules.
 - E. For market administration charges.
- v. Notify the Commission of any change in corporate identity, address and service location.

17. Rights of the Supplier

The rights of the supplier are as provided in the PPA, TUoS, DUoS, Market Participation Agreement and Terms and Conditions of licence.

18. Obligations of the Supplier

1. The Supplier to an Eligible Customer is obliged to:
 - a. Regularly submit all required data to the transmission or distribution

licensees prescribed by the contract provisions on the access to the network (network usage) and contract on supply.

- b. Notify the Eligible Customer in writing about all types of services which are paid for by the customer as well as other possible conditions at which the supply of electricity is carried out, before engaging in contract for supply.
- c. An existing supplier whose supply contract is to be terminated shall not set any special additional condition outside the contract including unpaid obligations and shall be guided by the provision of the Market Rules.

CHAPTER VI

RIGHTS AND OBLIGATIONS OF SERVICE PROVIDERS

19. Rights and Obligations of the Transmission Service Provider

The rights and obligations of the Transmission Service Provider (except as expressly contained in these Regulations) are as provided in the Technical Codes, Market Rules, Agreements and licence terms and conditions.

20. Rights and Obligations of the Market Operator

The rights and obligations of the Market Operator (except as expressly contained in these Regulations) are as provided in the Market Rules, Agreements and licence terms and conditions.

21. Rights and Obligations of the Distribution Service Provider

The rights and obligations of the Distribution Service Provider (except as expressly contained in these Regulations) are as provided in the Technical Codes, Agreements and licence terms and conditions.

22. Rights and Obligations of the System Operator

The rights and obligations of the System Operator (except as expressly contained in these Regulations) are as provided in the Market Rules, Technical Codes, Agreements and licence terms and conditions.

CHAPTER VII

SWITCHING RULES

Eligible Customers may switch supplier subject to the following rules:

23. Approval of Power Purchase Agreements

The Commission shall approve all Power Purchase Agreements with prospective suppliers before the commencement of service.

24. Exit from Distribution Licensee Network

An Eligible Customer that intends to exit from a distribution licensee's supply shall provide a minimum of 3 months notice to the supplier. A waiver may be allowed for Force Majeure events but subject to verification by the Commission.

25. Reconnection to Distribution Licensee Network

1. An Eligible Customer wishing to reconnect to a distribution licensee's supply network shall provide a minimum of 3 months notice of intent to allow for adequate planning, unless waived by the other party.
2. The applicable tariff for the Eligible Customer on reconnection to the distribution licensee shall be at the prevailing tariff rates for customers in the same tariff class.

26. Procedure for Supplier Switching

1. An Eligible Customer that intends to switch suppliers shall inform the current Supplier in writing of the intention to switch suppliers at an agreed date, subject to the termination clause under the PPA and the Commission's approval of the new contract for supply.
 - a. The procedure for switching from one supplier to another commences

with the execution of a PPA with the new supplier and other industry agreements (as provided in chapter 2) prior to terminating the existing PPA.

- b. The date of switching of Supplier shall be as provided for in the PPA with the new supplier.
- c. The new supplier to the Eligible Customer is required to submit an executed PPA to the Commission and a notification of the executed PPA to the System Operator, Market Operator, the supplier of last resort and the Commission, pursuant to the provisions of the general conditions for delivery and supply of electricity, Technical Codes and Market Rules.
- d. The Market Operator shall, prior to the effectiveness of the new contract, submit to the previous and new supplier data on accounting balance and metering data of the eligible customer, within three days counting from the date the balance was determined.

CHAPTER VIII

ACCESS TO TRANSMISSION AND DISTRIBUTION NETWORKS

27. Access to Transmission and Distribution Networks

1. An Eligible Customer or its Supplier shall be granted access to the Transmission and Distribution Network for the purpose of delivery of electricity pursuant to the Contract for use of network.
 - a. Access to the network and conditions of electric power network usage which the eligible customer is connected to, is determined by the general conditions for delivery and supply of electricity as provided for in the technical codes and any other Regulations of the Commission.
 - b. The Commission shall provide for compliance by licensees with the rules relating to fair and non-discriminatory third party access to the transmission and distribution networks.
 - c. The Commission shall promote third party access to the transmission and distribution networks by ensuring:
 - i. Fair access to the distribution and transmission networks subject to availability of capacity;
 - ii. Compliance with the approved regulated DUoS and TUoS tariff;
 - iii. Compliance with Market Rules, Technical Standards and Codes;
 - iv. Network expansion plans to meet customer needs;
 - v. Compliance with quality standards for supply of electricity and maintenance of frequency and regulation of voltage.

- d. Eligible Customers and suppliers applying for access to the Transmission and Distribution Networks shall file a written application with the entity that is licensed to grant access to the Transmission and Distribution Network pursuant to the rules enabling fair access to the networks and copy the Commission.

A decision on applications for third party access to a transmission or distribution network shall be communicated to the applicant within 30 days of submission of complete documentation.

Where third party access is denied due to lack of capacity, reasons for the refusal shall be communicated to the applicant.

- e. Pursuant to the rules governing Hearing Procedures, the party denied access to transmission and distribution may file a petition to the Commission against the denial.

Where a network licensee unreasonably refuses to allow third party access to an Applicant, the Commission shall issue an Order granting access and sanction the licensee for the denial.

CHAPTER IX

PRICING AND COST OF SUPPLY

28. Pricing

- 1 The price at which a supplier delivers power to an Eligible Customer may (in addition to capacity and energy charges negotiated in the PPA) include the following charges as approved by the Commission, and in line with the operative Tariff Methodology:
 - a. Transmission Use of System Charges (where applicable)
 - b. Distribution Use of System Charges (where applicable)
 - c. Regulatory fees
 - d. Ancillary Service Charges
 - e. Market Administration and System Operation charges

29. Competition Transition Charge

The Minister may upon consultation with the President, issue a directive for the collection of Competition Transition Charges from Eligible Customers in accordance with section 28 of the Act.

30. Power Consumer Assistance Fund

The Commission may determine the rate of contributions to be made by Eligible Customers to the Power Consumer Assistance Fund in accordance with section 84 (1) of the Act.

31. Rural Electrification Fund

The Commission may determine the contribution rates to be made by Eligible Customers to the Rural Electrification Fund in accordance with section 89 (a) of the Act.

CHAPTERX

METERING,BILLING AND SETTLEMENT

32. Metering, Billing and Settlement

Metering, billing and settlement of invoices for Eligible Customers shall be in line with the provisions of Metering Code and the Market Rules.

CHAPTER XI

BALANCING

33. Treatment of Energy Differences

1. Energy differences may arise when:
 - a. An Eligible Customer is unable to take the generated contracted quantities; or
 - b. A generator is unable to deliver contracted quantities.

Such differences shall be settled in accordance with the provisions under Power Purchase Agreement and the balancing mechanism developed by the Market Operator pursuant to the provisions in the Market Rules.

CHAPTER XII

PHASING OF IMPLEMENTATION

34. Phasing of Implementation

There shall be a phased approach to the introduction of declared classes of eligible customers as a precursor to the eventual introduction of retail competition and the licensing of traders in the Medium-Term Market of the Nigeria Electricity Supply Industry.

35. Phase I

1. A customer or group of end-use customers registered with the Commission for the purpose that is connected directly to a metered 132kV or 330kV delivery point on the transmission network under a transmission use of system agreement for the connection and delivery of electrical energy;
2. A customer or group of end-use customers registered with the Commission for the purpose, whose consumption is more than 2 MWh/h over the course of one month, that is connected directly to a metered 33kV delivery point on the transmission network under a transmission use of system agreement, and has entered into a bilateral agreement for the construction, installation and operation of the distribution system used to connect the customer to the 33kV delivery point, with the distribution licensee licensed to operate in the location where the customer and the 33kV delivery point are located;
3. A customer or group of end-use customers registered with the Commission for the purpose, whose consumption is more than 2 MWh/h over the course of one month, that is directly connected through a metered delivery point, to the generation facility of a generation licensee it intends to purchase electrical energy from and has entered into a bilateral agreement for the construction, installation and operation of the distribution system used to connect the

customer to the generation facility with the distribution licensee licensed to operate in the location where the generation facility and the customer are located;

4. A customer or group of end-use customers registered with the Commission for the purpose whose consumption is more than 2 MWh/h over the course of one month, that is connected to a metered 33kV delivery point on the distribution network of a distribution licensee under a distribution use of system agreement with such distribution licensee for the connection and for the delivery of electrical energy

36. Phase II

1. The implementation of Phase II shall commence upon the fulfillment of conditions precedent listed in Schedule II and following an Order by the Commission.
2. End use customers qualified to apply for eligibility status in phase II are:
 - i. A customer or group of end-use customers registered with the Commission for the purpose whose consumption is more than 2 MWh/h over the course of one month, that is connected to a metered 11kV delivery point on the distribution network of a distribution licensee under a distribution use of system agreement with such distribution licensee for the connection and for the delivery of electrical energy.

CHAPTER XIII

SUPPLIER OF LAST RESORT

37. Supplier of Last Resort

A supplier of last resort shall act as the contingent supplier to an Eligible Customer in the event of a failure by the contracted supplier.

38. Role of Distribution Companies

A Distribution Company shall act as supplier of last resort to an Eligible Customer operating within its network coverage area and the service shall be provided under a provisional arrangement at a price to be mutually agreed by the contracting parties.

CHAPTER XIV

MISCELLANEOUS

39. Information on Suppliers and Eligible Customers

A list of Eligible Customers and their licensed suppliers shall be maintained on the Commission's website.

40. Dispute Resolution

All disputes between parties in connection with this Regulation shall be resolved in accordance with the dispute resolution clauses of the respective agreements governing their relationship and the dispute resolution mechanism in the Market Rules (where applicable).

41. Application of other Regulations

The provisions of all other Regulations, Rules and Codes of the Commission shall be applicable to all other issues not covered by these Regulations.

42. Amendment or Repeal

The Commission may amend or repeal, in whole or in part, the provisions of this Regulation.

43. Interpretation

1. Unless otherwise specified in this Regulation:
 - a. Words importing any one gender include the other gender and the singular includes the plural and vice versa;
 - b. Words or expressions used in this regulation but not defined shall have the same meanings respectively assigned to them in the Act;

- c. Any reference to a statute or statutory provision includes a reference to that provision as amended, re-enacted or replaced and any regulations or orders made under such provisions from time to time; and
- d. If the date on which an event is scheduled to occur by this regulation is a day which is not a business day, then the event shall be deemed to occur on the next business day (except in the case of switching as described in Chapter VII of these Regulations).

2. In this Regulation, unless the context otherwise requires:

“Act” means the Electric Power Sector Reform Act 2005, as may be amended from time to time;

“Ancillary Service” means a service, other than the primary production of electricity, which is used to operate a stable and secure power system including but not limited to: reactive power, operating reserve, frequency control and black start capability;

“Aggregation” means a combination of two or more load sites as defined in Section 6 of these Regulations;

“Applicant” means a person who applies to the Commission for the status of an Eligible Customer or Supplier of Electricity to an Eligible customer;

“Balance Responsibility” means the responsibility to settle fiscal balances between Eligible Customers and suppliers;

“Commission” means the Nigerian Electricity Regulatory Commission established by the EPSR Act

“Competition Transition Charge” or **“CTC”** means any charge established under section 29 of the Act;

“Distribution Licensee” or **“DisCo”** means a holder of a distribution license issued under section 67 of the Act and any other holder of a distribution license issued by the Commission;

“Distribution Network” means all electric lines used for distribution of energy to final consumers and includes any structures and equipment used for that purpose which is connected to the transmission system;

“Distribution Network Operator” means the distributor who owns, operates and

maintains a Distribution Network;

“Eligible Customer” means a customer that meets the Eligibility requirements under this Regulation and is registered by the Commission;

“Generation Licensee” means the holder of a generation license issued under section 64 of the Act and any other holder of a generation license issued by the Commission;

“Grid Code” means the instructions, rules, procedures, guidelines, etc. for the planning and operation of an interconnected power system and accounting requirements relating thereto;

“Independent Power Producer” means an entity that is granted a Generation License pursuant to section 64 (3) (b) of the Act;

“Market Operator” means the company or entity licensed to carry on system operation under the Act, in so far as such company or entity is engaged in the administration of the market, including making, publishing, amending, administering and or enforcing the Market Rules and settlement of payments among market participants pursuant to its License;

“Market Rules” means the Market Rules for the Transitional and Medium Term Stages of the Nigerian Electricity Supply Industry 2014, approved under Section 26 of the Act;

“Minister” means the Honourable Minister for Power, Works and Housing or any other Minister to whom the President may from time to time assign administrative functions in respect of the EPSR Act;

“Regulations” means these Eligible Customer Regulation or any other Regulation applicable to Eligible Customers that may be issued by the Commission from time to time;

“Supplier” means any licensee that is authorized by the Commission to supply electricity to an Eligible Customer;

“Supplier of Last Resort” means the supplier that is appointed to assume responsibility for electricity supply to the Eligible Customer, under the terms and conditions prescribed by these Regulations, when the supplier to eligible customers ceases to supply due to termination or conclusion of the contract or any other reasons for non-supply;

“Switching” means the process of an Eligible Customer changing its source of

energy supplier from a distribution licensee to a generation licensee or vice versa; or from a generation licensee to another generation licensee;

“System Operator” means the holder of a system operation license issued under section 66 of the Act;

“TSP” means the transmission licensee of the national interconnected Transmission System of Nigeria, which provides open access transmission services;

“Technical Codes” means the Grid Code, the Distribution Code, the Metering Code, Health and Safety Code and such other codes as may be applicable;

“Trader” means the holder of a trading license issued under section 68 of the Act.

SCHEDULE I

A. DOCUMENTATION FROM ELIGIBLE CUSTOMER (to be submitted in triplicate)

1. A copy of the applicant's certificate of incorporation.
2. Tax clearance certificate.
3. Memorandum and articles of association.
4. Forms CAC2 and CAC7.
5. Board resolutions approving the application.
6. Copies of documents showing that the applicant/supplier have satisfied safety and technical requirements.
7. Utility bills.
8. Letter of introduction from bankers and other financial support documents.
9. Statement from the System Operator or Distribution System Operator (as the case may be) indicating the structures to which the Eligible Customer is connected; also stating that the Eligible Customer meets the conditions prescribed by the relevant Technical Codes and general conditions for delivery and supply of electricity.
10. Letter of clearance from Disco of non-indebtedness of the Eligible Customer.
11. Draft PPA, TUoS,DUoS and Market Participation Agreement.

B. DOCUMENTATION FROM SUPPLIER (to be submitted in triplicate)

1. Draft PPA, TUoS, DUoS and Market Participation Agreement
2. Evidence of excess capacity over and above that contracted with NBET (for Successor GenCos)

SCHEDULE II

Conditions Precedent to Commencement of Phase II

1. Minimum of eleven (11) activated eligible customer transactions spread over a minimum of six (6) Discos.
2. A declaration from the System Operator (verified by the Commission) on the technical capacity of TSP and DisCos to manage more Eligible Customers.
3. The Commission's review of the impact of phase 1 implementation on the revenue of distribution companies within six months after the commencement of the initial switch date.
4. Review to the satisfaction of the Commission on the revenue impact on DisCos within 6 months after commencement of the initial switch date.

**THE COMMON SEAL OF
NIGERIAN ELECTRICITY REGULATORY COMMISSION
was affixed pursuant to the Order of the Commission
on November 1, 2017**



**SANUSI GARBA
VICE CHAIRMAN**