



**NIGERIAN ELECTRICITY REGULATORY COMMISSION
(BUSINESS CONTINUITY FOR THE NIGERIAN ELECTRICITY SUPPLY INDUSTRY)
REGULATIONS 2017**

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In exercise of the powers conferred by Section 96 (1) & (2) of the Electric Power Sector Reform Act 2005 (Act No. 6 of 2005), the Nigerian Electricity Regulatory Commission makes the following Regulations for Business Continuity for the Nigerian Electricity Supply Industry.

Arrangement of Regulations

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**NIGERIAN ELECTRICITY REGULATORY COMMISSION (BUSINESS CONTINUITY FOR THE
NIGERIAN ELECTRICITY SUPPLY INDUSTRY) REGULATIONS, 2017**

CHAPTER I

GENERAL PROVISIONS

1. Short title

These Regulations may be cited as the Nigerian Electricity Regulatory Commission (Business Continuity rules for the Nigerian Electricity Supply Industry) Regulations, 2017

2. Commencement

These Regulations shall come into force on the date on which it is approved by a resolution of the Commission and signed by the Chairman of the Commission who shall cause the seal of the Commission to be affixed hereon.

3. Definitions and Interpretation

In these Regulations, unless the context otherwise requires, the following capitalized terms have the meanings assigned to them:

“Act”	means the Electric Power Sector Reform Act, 2005;
“Affected Party”	means a Licensee whose operations have been impacted by the occurrence of a Force Majeure Event under any applicable Industry Agreement;
“Annual Performance Target”	means the annual performance targets that a Licensee and its core investor are obligated to achieve in accordance with the Performance Agreement and Post-Acquisition Plan;
“BPE”	means the Bureau of Public Enterprises;
“Bulk Power Purchase Agreements”	means the Power Purchase Agreements in effect between the Bulk Trader and the Generation Companies, as may be novated from time to time;
“Bulk Trader” or “NBET”	means the Nigerian Bulk Electricity Trading Plc.;
“Business Day”	means a day other than a Saturday; Sunday or public holiday declared by the Federal Government; on which banks are open for business in Nigeria;
Business Continuity Failure Event	means the point whereby market participants exceed tolerance levels in meeting critical obligations as defined or set by these Regulations;
“Business Continuity Plan”	means the plan required by the Commission to be submitted by a Licensee, to show how such Licensee intends to cure or ameliorate a Business Continuity Failure Event;

“Business Measures”	Continuity	means such measures undertaken by the Commission to ensure business continuity and stability of the NESI;
“Business Rules”		means the Nigerian Electricity Regulatory Commission (Business Rules of the Commission) Regulations, 2006;
“Call Option”		means, where applicable, the irrevocable and unconditional right granted to BPE by the core investor in a Licensee, to purchase or procure the purchase by BPE’s nominee of the option shares in accordance with the terms of a Performance Agreement;
“Call Option Notice”		means a written notice given to a core investor in a Licensee by BPE, informing the core investor of its decision to exercise its Call Option;
“Commission”		means the Nigerian Electricity Regulatory Commission;
“Core Investor”		means a person or entity holding 60% shares or such other majority shares in a Licensee;
“Dependable Capacity”		Means the available capacity of the Plant in each settlement period, pursuant to the provisions of the relevant Industry Agreement;
“Derogation”		means a directive from the Commission relieving a Licensee from its obligation to comply with a technical standard or code;
“Distribution Company” or “DISCO”		means a company that holds a distribution license issued by the Commission;
“Dispute Mechanism”	Resolution	means the alternative dispute resolution mechanisms contained in the Market Rules 2014 and Commission’s Business Rules;
“Electricity Industry Enforcement Regulation”		means the Commission’s Electricity Industry (Enforcement) Regulation, 2014;
“Event of Default”		means a default or breach of a contractual obligation that materially adversely affects the performance of a Licensee’s obligations under an Industry Agreement and which entitles the other party to terminate the Industry Agreement;
“Extended Target Date”		means the extension of target date granted to a Licensee pursuant to the provisions of a Performance Agreement;
“Financial Audit”		means an independent, objective evaluation of a Licensee’s financial reports and financial reporting processes, which is undertaken to provide the Commission with a report on the financial status of a Licensee. The Financial Audit will include a check for

accuracy and full representation of financial activities and claims of the Licensee;

“Financial Constraints”

Includes illiquidity or insolvency of a Licensee resulting in the failure or inability of the Licensee to meet its obligations;

“Financial Security”

means an unconditional and irrevocable standby letter of credit, demand guarantee, charge or bond, in such form as a Licensee Counterparty or Non-Licensee Counterparty may reasonably approve, which is issued for the fulfilment of payment obligations and allowing for partial drawings and providing for payment forthwith under the relevant Industry Agreement;

“Fines”

means monetary sums imposed by the Commission under this Regulation.

“Force Majeure Event or FM Event”

means a Force Majeure Event under any of the Industry Agreements or Other Agreements to which a Licensee is a party;

“Generation Company” or “GENCO”

means a company that holds a generation license issued by the Commission;

“Good Industry Standards”

means at a particular time, those practices, methods and actions in accordance with good standards of skill, diligence, prudence, responsibility and foresight applicable to the international electricity generation, trading and distribution industry which would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition, and which practices, methods and actions shall include (and shall be adjusted if necessary to take account of):

- a) The operations and maintenance guidelines recommended by the manufacturers of the Licensee’s facilities and the machinery and equipment included in any facilities including warranties;
- b) The requirements of Applicable Law; and
- c) Conditions stipulated in the applicable Industry Agreements;

“Gross Energy Output”

means useful electric energy delivered to the relevant Delivery Point by a GENCO for transmission by the Transmission Service Provider, associated with the contract capacity to the extent such energy output is produced from the contract capacity pursuant to the relevant Industry Agreements at the time of delivery;

“Industry Agreements”

means the Vesting Contracts, the Performance

Agreements, Grid Connection Agreements, any Use of Transmission Network System Agreements, Ancillary Services Agreements, Market Participation Agreements Gas Supply and Aggregation Agreements, Gas Transportation Agreements and Power Purchase Agreements entered into by a Licensee;

“Interim Operator” means a temporary operator appointed by the Commission in accordance with Regulation 26 of these Regulations;

“Insurance” means the insurance policies required to be provided by all Licensees under their License Terms and Conditions, Industry Agreements or Relevant Rules;

“Investigations” means the authorisation or directive of the Commission, to its officials, or appointed inspectors pursuant to Section 95 of the Act, for the purpose of conducting investigations in respect of the occurrence (or likelihood of occurrence) of any Business Continuity Failure Event. Investigations may include technical or financial audit; market monitoring and surveillance; or inquiry into the operations of a Licensee; or such other methods of investigation as may be directed by the Commission from time to time;

“Key Performance Indicators” means those areas of performance deemed as critical in the assessment of the proficiency of a Licensee as prescribed by the Commission in the Relevant Rules, Multi-Year Tariff Order, 2015 and any other document designated by the Commission;

“License” means a license as issued by the Commission to a Licensee;

“Licensee” means the holder of a distribution or generation License;

“Licensee Counterparty” means an entity that is licensed by the Commission, and is a counterparty to a Licensee under any Industry Agreement;

“Licence Terms and Conditions” means the terms and conditions subject to which the Licence is issued to the Licensee by the Commission;

“Market Rules” means the Market Rules for Transitional and Medium Term Stages of the Nigerian Electricity Supply Industry 2014

“Market Instability” means a disruption or distress occurring in the NESI, which may result in, or which results in electricity service disruption to customers and which continues for up to (7) days or affects other obligations owed to

	Market Participant(s) across the NESI value chain;
“Minimum Performance Targets”	means the minimum performance targets to be achieved/reached by a Licensee, as set out in the Performance Agreement;
“Misappropriation”	means the intentional illegal use or misuse of the property, funds, or income accruing to a Licensee for an unauthorised purpose including any act done or omitted to be done solely, jointly or concurrently in relation to the use of the funds or income of a Licensee with a deliberate and intentional disregard of foreseeable harmful consequences. Misappropriation shall also include the concealment of funds by a Licensee in order to avoid its payment, contractual and compliance obligations in the NESI or avoid compliance with applicable Laws;
“NBET” or “Bulk Trader”	means the Nigerian Bulk Electricity Trader;
“NDPHC”	means Niger-Delta Power Holding Company;
“NELMCO”	Nigerian Electricity Liability Management Company
“NESI”	means the Nigerian electricity supply industry;
“Non-Licensee Counterparty”	means an entity which holds no license issued by Commission but is a counterparty to a Licensee under Other Agreements;
“Other Agreement”	means the Gas Sale and Aggregation Agreement, Gas Transportation Agreement, Shareholders’ Agreement of a Licensee company, the [Share Sale Agreement between BPE and the Core Investors], the Pre-completion Receivables Transfer Agreement between [Core Investors/DISCOs and NELMCO.], and the Pre-Completion Liabilities Transfer Agreement [Core Investors/DISCOs and NELMCO.];
“Payment Plan”	means a plan agreed between contracting parties in the form of a schedule required to be submitted to the Commission by a Licensee for the purpose of paying any outstanding debts;
“Put Option”	means the irrevocable and unconditional right granted by the BPE to the core investor in a Licensee to require BPE to purchase or, at BPE’s sole discretion, to procure the purchase by BPE’s nominee of the option shares, in accordance with the Performance Agreement;
“Put Option Notice”	means a written notice given to BPE by a core investor in a Licensee, informing BPE of its decision to exercise its Put Option;
“Rectification Order”	means such orders issued by the Commission

necessary to prevent or mitigate the effect of a Business Continuity Failure Event, which shall be issued in accordance with Section 75 of the Act;

“Relevant Assets”		means a part of the distribution or generation system and/or land upon which the foregoing is situated whose book value at the time of any proposed disposal exceeds Five Million Naira or such amounts as the Commission may specify, and the removal of which will be detrimental to the system;
“Relevant Rules”		means any of the Grid Code, the Distribution Code, the Metering Code, the Market Rules, the Nigerian Electricity Health and Safety Standards Manual and any other regulation or order made by the Commission;
“Successor Company”		means a company created pursuant to Section 8 of the Act, to take over designated functions of the initial holding company;
“Suspension of License”		means the suspension of a Licensee’s license in accordance with the Commission’s Electricity Industry (Enforcement) Regulations, 2014;
“Systems Operator”		means the holder of a system operation license issued by the Commission, being part of the Transmission Company of Nigeria;
“Target Date”		means the fifth (5 th) anniversary of the date: (i) on which BPE approves the revisions to the Baseline ATC&C Loss Level proposed by the Licensee; or (ii) where parties disagree, the date on which the Expert rules in favour of the Licensee, in accordance with the Performance Agreement;
“Technical Agreement”	Services	means an agreement or agreements entered into between a Licensee and a technical services provider, for the provision of technical services relevant to the operations of the Licensees;
“Transmission Provider”	Service	means the entity that holds an electricity transmission licence issued under the Act to provide transmission services over the grid.
“Warning Notice”		means a letter issued by the Commission to warn a Licensee in respect of the likely occurrence of a Business Continuity Failure Event; and
“Winding Up”		means the process of dissolution of a Licensee, in which accounts are settled and assets are liquidated so that they may be distributed and the business may be terminated as defined by Corporate Allied Matters Act

2004.

In the Interpretation of these Regulations, unless the context otherwise requires:

- a) Words importing any one gender includes the other gender and the singular includes the plural and vice versa.
- b) References herein to "Regulation" shall be construed as a reference to these Regulations as amended or modified by the Commission from time to time in accordance with the applicable laws in force.
- c) References to statutes, regulations or guidelines shall be construed as including all provisions consolidating, amending or replacing such statutes, regulations or guidelines, as the case may be.
- d) Headings are inserted for convenience and may not be taken into account for the purpose of interpretation of these Regulations
- e) Any term that is defined in the Act, any Relevant Rule, an Industry Agreement or Other Agreement and used in these Regulations, but not herein defined, has the same meaning as in the Act, such Relevant Rule, the Industry Agreement or Other Agreement.

4. Application of the Regulation

These Regulations shall apply to NERC Licensees.

5. Objectives of the Regulations

- a) In furtherance of Section 32 of the Act, the core objectives of the Regulations are as follows:
 - i) To monitor the financial health of Licensees in order to ensure stability in the NESI;
 - ii) To prevent financial contagion and to facilitate business continuity within the NESI;
 - iii) To prevent Market Instability;
 - iv) To create, promote, preserve an efficient and adequately regulated NESI and
 - v) To ensure security of supply and continuous operations of a critical national infrastructure.
- b) The Regulation is not designed to be repetitive of existing consequences under the Act, Relevant Rules, License Terms and Conditions, Industry Agreements and Other Agreements, but is to complement all preceding instruments governing the NESI. The purpose of this Regulation is to provide Business Continuity Measures for the smooth running of the NESI. In the event of any conflict between this Regulation and any existing Legislation or Relevant Rules, the applicable Relevant Rule shall take precedence.

6. Principles of the Regulations

In exercising its regulatory powers under the Act and under these Regulations, the Commission shall be guided by the following principles:

- a) Fair hearing, transparency and non-discrimination;
- b) Proportionality in the exercise of the powers contained in these Regulations;
- c) The need to ensure and foster an efficient NESI;
- d) Encouragement of its licensees to achieve set milestones and targets by means of regulation that is supportive and geared towards the overall benefit of the NESI
- e) Strict enforcement of these Regulations only after all other avenues for sustaining the licensee business as contained in any existing legislation, Agreement or Relevant Rule has been explored.
- f) Such other principles and considerations as the Commission may from time to time deem necessary, to meet the principal objects of the Act and the interest of the Federal Republic of Nigeria.

CHAPTER II

BUSINESS CONTINUITY FAILURE EVENTS

7. Performance Obligations Failure Events

- 7.1 A Performance Obligation Failure Event shall occur or be deemed by the Commission to have occurred in the following circumstances:
- a) Where it becomes apparent to the Commission from its review of Licensee's Annual Performance Targets at least 2 years prior to the Target Date that the Licensee is unlikely to meet its Minimum Performance Targets by the Target Date;
 - b) Where it becomes apparent to the Commission from its review of Licensee's key performance Indicators that the Licensee has failed to meet the minimum performance target for at least 3 consecutive months or 6 months within a year;
 - c) Where a Licensee fails to meet its Minimum Performance Target by the Target Date or Extended Target Date (as applicable);
 - d) Except for safety or emergency reasons as permitted under the relevant Industry Agreements and/or the Relevant Network Code, where a DISCO fails to purchase and/or accept delivery of Dependable Capacity and Gross Energy Output;
 - e) Continuous failure of a DISCO to supply electricity to customers, including diversion of electricity supply amongst customers or customer classes;
 - f) Continuous failure of a GENCO to deliver the Dependable Capacity and Gross Energy Output to the grid ; or
 - g) Any other event as may be declared by the Commission.

PROVIDED that in the case of a Successor Company, the evaluation to determine if a Performance Obligation Failure Event has occurred shall be jointly carried out by NERC and BPE during the validity period of the Performance Agreement between the BPE and the Core Investor of the Successor Company

8. **Compliance Obligations Failure Events**

8.1 A Compliance Obligation Failure Event shall occur or be deemed by the Commission to have occurred in the following circumstances:

- a) Where a Licensee continuously fails to obtain or maintain valid insurance policies as required under the Relevant Rules, Industry Agreement and Other Agreements;
- b) Subject to the provisions of Regulations 14 of this Regulation, where the Licensee's assets are destroyed and the Licensee is unable to replace or reinstate such assets, due to failure to insure or inadequacy of Insurance coverage;
- c) Where a Licensee has failed, or continually fails to comply with any of its obligations which are required to be performed in accordance with the Relevant Rules and Good Industry Practice; or
- d) Any other event as may be declared by the Commission.

8.2 The evaluation to determine if a Compliance Obligation Failure Event has occurred in the case of a Successor Company, during the validity period of the Performance Agreement between the BPE and the Core Investor of the Successor Company shall be determined by the Commission in conjunction with the BPE

8.3 Each Licensee shall provide detailed periodic reports to the Commission on the status of its insurance coverage. These reports shall be submitted to the Commission [on 31st January of every year], and shall include the types of insurances obtained, the name of the insurer, the value of the insurance, and period of validity of the insurance.

8.4 Within 1 week from the date of expiration of a Licensee's insurance policies, each Licensee shall submit to the Commission, all evidence of renewal of such expired insurance policies.

9. **License Obligations Failure Events**

a. A Licence Obligation Failure Event shall occur or deemed by the Commission to have occurred in the following circumstances:

- i. Where the Commission has suspended a Licensees' Licence as a result of Licensees' contravention of its License Terms and Conditions; and
- ii. Where a Licensee has assigned, disposed, transferred or charged its License, licensed business or Relevant Assets to another person without the prior written consent of the Commission and BPE.

10. **Financial Obligations Failure Events**

10.1 A Financial Obligation Failure Event shall occur or be deemed by the Commission to have occurred in the following circumstances:

- b) Where a DISCO fails to provide or maintain its Financial Security in favour of the Market Operator and/or NBET;
- c) Where a DISCO fails to pay 100% of its invoices to the Market Operator or NBET as and when due for a continuous period of (2) months (regardless of whether or not the Financial Security provided by the DISCO has not been drawn);
- d) Where a DISCO's Financial Security has been called by the Market Operator on more than one (1) occasion within a four (4) month period, or on more than three (3) occasions within a 12 month period;
- e) Where a GENCO that has been provided Financial Security by the Bulk Trader or a DISCO (pursuant to a bilateral arrangement with the GENCO), fails to provide or maintain its Financial Security to the Non-Licensee Counterparties under the Gas Sale and Aggregation Agreement and Gas Transportation Agreement;
- f) A valid enforcement by the counterparty of security created over a Licence, licensed business or Relevant Asset as a result of the failure of the Licensee to fulfil lawful contractual or other obligations.
- g) Where a GENCO's Financial Security has been called by the Non-Licensee counterparty on more than one (1) occasion within a four (4) month period, or on more than three (3) occasions within a 12 month period; or
- h) Any other event as may be declared by the Commission.

PROVIDED that a Financial Obligations Failure event may only occur if its occurrence is strictly due to default of the licensee and not other players in the value chain. The Commission shall determine cases that will be classified as default by the licensee.

11. **Contractual Obligations Failure Events**

11.1 A Contractual Obligation Failure Event shall occur or deemed by the Commission to have occurred in the following circumstance:

- a) Where an Event of Default occurs under an Industry Agreements or any Other Agreement;
- b) Where an Industry Agreement or Other Agreement is terminated;
- c) Where the Technical Services Agreement of a Licensee is terminated during the first 5 years of the Performance Agreement as a result of a default or breach by the Licensee;
- d) Where the exercise of a Put Option or Call Option under the Performance Agreement is likely to result in Market Instability; or

- e) Any other event as may be declared by the Commission.

12. Winding up

12.1 The following Liquidation Events shall amount to Business Continuity Failure Events:

- a) Where a petition for winding is instituted before a court of competent jurisdiction against the Licensee under the Laws of Nigeria;
- b) Where a provisional liquidator has been appointed in a court proceeding for the winding up of a Licensee;
- c) The voluntary filing by the Licensee of a winding up petition;
- d) Where a court of competent jurisdiction has made an order winding up the Licensee; or
- e) Any other event as may be declared by the Corporate and Allied Matters Act 2004.

13. Financial Constraints

When the Commission determines that the licensee is unable to meet their financial obligations.

14. Force Majeure Events

The occurrence of a Force Majeure Event, which in the opinion of the Commission results or is likely to result in a Business Continuity Failure Event under Regulations 7 – 13 of these Regulations shall amount to a Business Continuity Failure Event.

CHAPTER III

PART 1 - BUSINESS CONTINUITY MEASURES

15. Business Continuity Measures

15.1 The following are Business Continuity Measures which may be undertaken or caused to be undertaken by the Commission where a Business Continuity Failure Event as set out in Chapter II of these Regulations has occurred or is likely to occur:

- a) The conduct of Investigations;
- b) The initiation of additional monitoring on the activities of a Licensee on a weekly, monthly, quarterly, annual or other interval as the Commission may deem fit in the circumstances;
- c) The issuance of a Warning Notice;
- d) The issuance of a Rectification Order;

- e) A Derogation;
- f) Mediation between relevant parties; and
- g) Any one or more of the NERC Intervention Events as set out in Chapter III of these Regulations.

15.2 Notwithstanding anything in these Regulations to the contrary, the Commission may, at its sole discretion, apply any one, some or all of the Business Continuity Measures in response to a Business Continuity Failure Event where it deems necessary.

15.3 Business Continuity Measures for successor companies prior to the target date specified in their respective Performance Agreements shall be jointly determined by NERC and BPE.

16. **Business Continuity Measures for Performance Obligation Failure Events**

16.1 Where a Performance Obligation Failure Event occurs or is likely to occur, the Commission may apply the following Business Continuity Measures:

- a) The Commission may initiate Investigations;
- b) Upon conclusion of Investigations, the Commission may request the Licensee to make representations on its performance obligations to the Commission within such a period of time as the Commission may determine;
- c) Where the Licensee fails to make representations or fails to make representations satisfactory to the Commission within the period stipulated by the Commission, the Commission may issue a Warning Notice requiring the Licensee to meet a specified performance requirement within such period of time as the Commission may determine;
- d) Where the Licensee fails to meet the specified performance requirement stipulated in the Warning Notice, the Commission may issue a Rectification Order requiring the Licensee to take necessary steps to achieve the specified performance requirement within a grace period not exceeding [3 months];
- e) If the Licensee fails to achieve the performance requirement as specified in the Rectification Order, the Commission may impose a fine at the rate of N10, 000.00 per day on the Licensee or on each member of the Licensee's board of directors for each day of default until the default is remedied; and
- f) If the default continues for more than [30 days], the Commission shall be entitled to apply a NERC Intervention as it deems necessary.

16.2 Without prejudice to the generality of the above, the following measures may apply to the following specific Performance Obligations Failure Event:

16.2.1 Where a Performance Obligations Failure Event in Regulations 7.1 (c), (d) or (e) of these Regulations occurs or is likely to occur, the Commission may apply the following Business Continuity Measures:

- a) Where an Investigation reveals that the Licensee's system is damaged or in need of repairs, the Commission may issue a Rectification Order requiring the Licensee to remedy the damage/defect within [30 days] from the date of the Rectification Order;
- b) If the Licensee fails to comply with the Rectification Order, the Commission may impose a fine at the rate of N10, 000.00 per day on the Licensee or to each member of the board of directors for each day of default until the default is remedied;
- c) Where the Performance Obligation Failure Event occurs as a result of the wilful contravention of the Licensee's obligations, the Commission may impose a fine on the Licensee and/or each member of the board of directors for each day of default until the default is remedied; and
- d) Notwithstanding Regulations 16.2.1(b) above, where failure continues for another period of [15] days, the Commission may apply a NERC Intervention as it deems necessary.

16.2.2 Where a Performance Obligation Failure Event in Regulations 7.1(a) occurs or is likely to occur, the Commission may initiate [quarterly] monitoring processes over the activities of the Licensee in accordance with the milestones provided by BPE or other performance milestones imposed by the Commission.

16.2.3 Where a Performance Obligation Failure Event in Regulations 7.1(b) occurs or is likely to occur, the Commission may, consult with BPE to determine BPE's intended course of action, and the Commission may apply the following Business Continuity Measures:

- i. Where BPE communicates its intention to grant an extension of the Target Date or a further extension (as the case may be), the Commission may initiate [quarterly] monitoring processes over the activities of the Licensee in accordance with the milestones provided by BPE towards achieving the Extended Target Date; and
- ii. Where BPE communicates its intention to exercise its Call Option under the Performance Agreement, the Commission may immediately apply a NERC Intervention as it deems necessary.

16.2.4 Where a performance agreement imposed by NERC

17. **Business Continuity Measures for Compliance Obligations Failure Event**

- 17.1 Where a Compliance Obligation Failure Event occurs or is likely to occur, the Commission may apply the following Business Continuity Measures:
- a) Initiate an Investigation to determine the extent of the Licensee's non-compliance;
 - b) Upon conclusion of the Investigation, issue a notice to the Licensee, requiring the Licensee to make representations to the Commission;
 - c) Issue a Warning Notice requiring the Licensee to comply within a period of not more than [15] days submit a Business Continuity Plan; Provided that where the Compliance Obligation Failure Event in Regulations 8.1 (c) of these Regulations occurs, the Commission may in addition, require the Licensee to provide a Business Continuity Plan within a specific number of days, and may grant the Licensee's applications for Derogations, where applicable;
 - d) Where the Licensee fails to comply with the Warning Notice, the Commission may publish a Rectification Order requiring the Licensee to comply within a grace period of [15] days. The Rectification Order may include a requirement on each member of the Licensee's board of directors and the Licensee, to pay a fine of [N10, 000] per day from the date of default until the default is remedied; and
 - e) Where the Licensee is unable to rectify the default at the expiration of the period stipulated in the Rectification Order, the Commission may order changes in the board and management of the Licensee, as it may deem appropriate.
- 17.2 Without prejudice to the generality of Regulations 17.1 (a)-(e), where the Compliance Obligations Failure Events in Regulations 8.1(b) occurs, the Commission shall not be required to issue a Warning Notice to the Licensee. The Commission may apply the following Business Continuity Measures:
- a) Issue a Rectification Order which shall include a requirement to provide a Business Continuity Plan, and a requirement on each member of the Licensee's board of directors to pay a fine of [N10, 000] per day from the date of default of the obligation to procure the relevant insurance policies, until the default is remedied; and
 - b) Where the Licensee is unable to rectify the default at the expiration of a 30 day period after the Rectification Order, the Commission may apply a NERC Intervention as it deems necessary.

18. **Business Continuity Measures for Licence Obligations Failure Events**

- 18.1 Where the Commission has suspended a Licensees' Licence as a result of Licensees' contravention of its License Terms and Conditions, the Commission may apply a NERC Intervention as it deems necessary;
- 18.2 Where a Licensee has assigned, disposed, transferred or charged its License, licensed business or Relevant Assets to another person without the prior written consent of the Commission, BPE or NDPHC, as may be required under the License Terms and Conditions, Industry Agreement or Other Agreement, the

Commission may initiate Investigations and thereupon apply the following Business Continuity Measures:

- a) Issue a notice to the Licensee notifying it of the breach; the outcome of the Investigations; and requiring the Licensee to make representations on the breach within [5 days] from the date of notice;
- b) Issue a Warning Notice directing the defaulting Licensee to inform the transferee that the purported disposal is null and void; and request the Licensee to make a formal application to the Commission within 5 days (and comply with the provision of the Industry Agreement or Other Agreement, as may be applicable). The Commission may further impose a fine of [N10, 000.00] per day on the Licensee and its board of directors from the date of default until a formal application is made; and
- c) Where the Licensee fails to comply with Regulations 18.2 (b) above, the Commission may publish a Rectification Order, directing the Licensee to make a formal application to the Commission within 5 days, (and comply with the provision of the Industry Agreement or Other Agreement, as may be applicable), failure of which the Commission may declare a NERC Intervention.

19. **Business Continuity Measures for Financial Obligations Failure Event**

19.1 Where a Financial Obligation Failure Event in Regulations 10 (a), (b) and (c) occur, the Commission may, without prejudice to the powers of the Market Operator under the Market Rules, apply the following Business Continuity Measures:

- a) Pursuant to Rule 8 (v) of the Supplementary Order of TEM and the Guidelines for Escrowing Collection Accounts of Electricity Distribution Companies in Nigeria (2016) the funds of such DISCO shall, immediately be escrowed, and the DISCO's collection accounts shall be subject to an account management process approved by the Commission;
- b) Upon escrowing the funds of the DISCO, the Commission may conduct Investigations; and
- c) Where a DISCO's funds have been escrowed for up to three (3) consecutive months or repeatedly for up to 3 (three) separate occasions within a 12 month period, the Commission may immediately apply a NERC Intervention as it deems necessary.
- d) The Distribution Company's collections accounts may cease to be subject to the account management process referenced above, where the Distribution Company has shown a track record of 100% payment to the market for [2] settlement periods, and has valid Financial Security for [4] settlement periods.

19.2 Where a Financial Obligation Failure Event in Regulations 10(d) and (e) occur, the Commission may apply the following Business Continuity Measures:

- a) The Commission may initiate Investigations; and

- b) The Commission may in its absolute discretion apply a NERC Intervention.

20. Business Continuity Measures for Contractual Obligations Failure Events

20.1 Where a Contractual Obligations Failure Event occurs or is likely to occur, the Licensee or Licensee's counterparty shall immediately notify the Commission within [5] Business Days of the occurrence of the Contractual Obligation Failure Event. Upon notification, the Commission may apply the following Business Continuity Measures:

- a) Cause a discussion to be held with the parties to the agreement, mediate between the parties, and direct the Licensee to provide a Business Continuity Plan to cure the Contractual Obligation Failure Event;
- b) Consider the submissions of the Licensee, and where satisfactory, the Commission may allow the Licensee to continue operations for such period of time as may be determined by the Commission;
- c) In the event that the Contractual Obligation Failure Event subsists after the expiration of the period determined by the Commission in Regulation 20.1 (b) of these Regulations, the Commission may issue a notice to the Licensee, allowing it to make representations. Where the Licensee fails to make representations, or the representations are not satisfactory to the Commission, the Commission may issue a Rectification Order requiring the Licensee to remedy the Contractual Obligation Failure Event within a specified period of time, and pay fines not exceeding N10,000.00 per day, for each day of default until the default is remedied;
- d) Where the Contractual Obligations Failure Event remains unremedied for a further period of 20 Business Days, the Commission may apply a NERC Intervention as it deems necessary;
- e) The Commission shall at all times prior to the employment of any of the Business Continuity Measures listed in sub-Regulation (a)-(d) above, take cognizance of any timelines, grace periods or cure periods contained in the relevant Industry Agreement, the Technical Services Agreement or Other Agreement; and
- f) Without prejudice to the foregoing, upon the occurrence of a Contractual Obligations Failure Event, the Commission reserves the right to direct the Licensee or any Counterparty Licensee to be subject to the Dispute Resolution Mechanism as stipulated in the Market Rules or Commission's Business Rules as the case may be and the parties shall be subject to the provisions contained therein.

20.2 Without prejudice to the generality of Sub-Regulation 20.1 above, where the Contractual Obligations Failure Event in Regulations 11 (d) occurs, the Commission may apply the following Business Continuity Measures:

- a) Mediate between the core investor in the Licensee and the BPE to explore the possibility of the issuing party's withdrawal of the Put Option or Call Option Notice; and
- b) Where the issuing party is unwilling to withdraw a Put Option or Call Option Notice, and in the opinion of the Commission this may lead to Market Instability the Commission, will apply a NERC Intervention.

21. Business Continuity Measures for Liquidation Events of a Licensee

21.1 The Business Continuity Measures for Liquidation Events shall be as follows:

- a) The Licensee shall, upon knowledge of the pendency of an action and/or receipt of the copy of the order for advertisement of the petition for Winding Up, notify the Commission within 2 days by delivering to the Commission a copy of all processes relating to the petition and/or court order;
- b) The Licensee shall provide the Commission with regular updates on developments in the petition proceedings; and
- c) If in the opinion of the Commission such proceedings are materially impairing or are likely to materially impair the ability of the Licensee to carry out its obligations, the Commission may declare a NERC Intervention.

21.2 Notwithstanding the above, in the event that a court of competent jurisdiction makes an order winding up the Licensee, the Commission may apply a NERC Intervention.

22. Business Continuity Measures for Financial Constraints

22.1 Notwithstanding the provisions of this Chapter(III):

- a) Where an Investigation reveals that a Business Continuity Failure Event has occurred or is likely to occur as a result of a Financial Constraints, the Commission may issue a notice to the Licensee requiring it to make representations, and a directive, requiring the Licensee to take steps to improve its financial position within a specified period, which shall not exceed 3 months. If the Licensee fails to comply with the financial requirement within the time stipulated in the directive, the Commission may apply a NERC Intervention; and
- b) Where an Investigation reveals that a Business Continuity Failure Event has occurred or is likely to occur as a result of a Financial Constraint resulting from Misappropriation of funds by the board of directors or management of a Licensee, the Commission may issue a Rectification Order or directive allowing the Licensee a specific time to meet a financial requirement, impose a fine on the board of directors or management, and/or direct a change in the board of directors and management of the Licensee.

23. Business Continuity Measures for Force Majeure Events

23.1 In the event of the occurrence of a Force Majeure Event, the following steps shall be taken:

- a) The Affected Party shall notify the Commission of the occurrence of the Force Majeure Event ("FM Event"), as soon as reasonably practicable and in no event, no later than 5 days following the occurrence of the FM Event. The notice shall contain the particulars of the FM Event and its effects including an estimate of the likely duration of the FM Event, a description of the obligations likely to be affected and a statement of the actions required to be taken in order for the Affected Party to comply with its obligations;
- b) The Affected Party shall in addition, submit to the Commission a Business Continuity Plan;
- c) The Affected Party shall from the date of the notification of the occurrence of the FM Event, provide bi-monthly updates to the Commission on the status of the FM Event. The Commission shall initiate Investigations as it deems necessary;
- d) Where in the opinion of the Commission, the Affected Party has taken satisfactory steps within its power, aimed at ameliorating the effect of the FM Event, but its operations remain affected, the Commission shall provide reasonable assistance to the Affected Party, to the extent possible. The Commission may in assisting the Licensee takes active steps which include collaborating with Counterparties of such Affected Party to resolve the situation, where necessary; granting Derogations to the Licensee where applicable; and providing other reliefs as the Commission may deem fit;
- e) Where in the opinion of the Commission, the Affected Party has not taken satisfactory steps within its power to ameliorate the effect of the FM Event, and the Affected Licensee is unable to undertake the core obligations under its License, the Commission may apply a NERC Intervention; and
- f) The Commission shall at all times, take cognisance of the provisions of the relevant Industry Agreement or Other Agreement under which a FM Event has occurred in applying Business Continuity Measures.

PART II- NERC INTERVENTION

24. Change in Board and Management of Licensees

24.1 Without prejudice to the provisions of the Act or to any other regulation, the Commission may change the board or management of a Licensee in accordance with the provisions of these Regulations. PROVIDED that in the case of successor companies that are yet to reach their target date, such change will be jointly determined by the Commission and the BPE.

- 24.2 The Commission shall abide by the provisions on the changes in boards and management of Licensees as contained in the Electricity Industry Enforcement Regulation (or such other Regulation as the Commission may issue from time to time).
- 24.3 Failure to comply with the decision of the Commission under this Regulation shall constitute a breach of these Regulations for which any of the NERC Intervention stipulated in these Regulations may be imposed by the Commission.

25. Suspension of License

- 25.1 Without prejudice to its rights to suspend a License in the Relevant Rules, the Commission may suspend the License of a Licensee in accordance with the provisions of these Regulations.
- 25.2 The Commission shall abide by the provisions of the Act and the Electricity Industry Enforcement Regulation (or such other Regulation as the Commission may issue from time to time) in exercising its powers to suspend.
- 25.3 The Commission shall make all such further orders as may be necessary to give full effect to its decision under this Regulation which may include making provisions for the appointment of an Interim Operator.
- 25.4 Where the Commission is satisfied that a Licensee's license should be restored, it may make any such further orders or alteration(s) to the License as it may deem necessary to forestall the occurrence of a future Business Continuity Failure Event.

26. Appointment of an Interim Operator

- 26.1 The Commission may appoint such person(s) as Interim Operator(s) of the undertaking of a Licensee to forestall or remedy the occurrence of a Business Continuity Failure Event. Such appointment shall be done by an order of the Commission specifying:
- a) The extent of the powers, roles and responsibilities of the Interim Operator;
 - b) Handover of the operations of the Licensee to the Interim Operator;
 - c) Remuneration of the Interim Operator;
 - d) Review of the performance of the Interim Operator; and
 - e) The termination of the appointment of the Interim Operator.
- 26.2 The Commission shall have absolute discretion in its selection of suitable candidates having regard to their professional, technical, and commercial expertise; and general administrative experience in the operation of power utilities, and any other requirement as may be determined by the Commission. PROVIDED that in the case of a successor company that is yet to achieve its target date, such selection shall be carried out in conjunction with the BPE.

- 26.3 In appointing the Interim Operator, the Commission shall give consideration to the following:
- a) Competence and track record of the Interim Operator in the area of operations of the Licensee;
 - b) Conflict of interest of the Interim Operator with that of the Licensee.
- 26.4 An Interim Operator may be a corporate entity (including another Licensee of the Commission), an individual or group of individuals.

27. Initiation of Enforcement

- 27.1 Further to the power conferred by the Act on the Commission to monitor the operations of Licensees in the electricity sector and Section 32(2)(f) - (g) of the Act, the Commission may exercise its powers under this Regulation on its own initiative or upon receipt of any information from any third party where it has reason to believe that a Business Continuity Failure Event has occurred, is occurring or is likely to occur.
- 27.2 The Commission reserves the right to defer to all or part of the enforcement process stipulated in Chapter II of the Electricity Industry (Enforcement) Regulations, 2014.

**CHAPTER IV
MISCELLANEOUS PROVISIONS**

28. Resilience Plan

- 28.1 All Licensees shall prepare and submit a Resilience Plan to the Commission (in accordance with Schedule 1).
- 28.2 Each Resilience Plan shall give due consideration to all potential risks of disruption of each Licensee's critical business functions including those outside the control of the Licensee.

29. Inherent powers of the Commission

- 29.1 Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent powers of the Commission to make orders as may be necessary in the interest of the public and to prevent the abuse of the process of the Commission.
- 29.2 Nothing in these Regulations shall affect the inherent right and discretion of the Commission to make orders or impose sanctions against any Licensee in respect of any matter not provided for under these Regulations, which affects or is likely to affect Market Stability.

30. Amendments or revocation

The Commission may amend or revoke the provisions of these Regulations in whole or in part.

31. **Dispute Resolution**

31.1 Any dispute arising from any provision of these Regulations shall be resolved in accordance with Schedule 1 of the Business Rules.

31.2 All proceedings before the Commission under these Regulations shall be in accordance with the Business Rules of the Commission

32. **Collaboration by the Commission**

In the exercise of any of the powers under these Regulations, the Commission may, where expedient, collaborate with the BPE, Market Operator, the System Operator or the Transmission Service Provider, NBET and/or any other entity or government authority to give effect to the objectives and provisions of these Regulations.

33. **Relationship with the Commission's Regulations, Codes and Rules**

33.1 These rules shall be interpreted so as to avoid, to the extent reasonably possible, findings of inconsistency between these rules and any of the regulations, codes and rules that may be issued by the Commission from time to time.

33.2 In the event of any inconsistency or conflict with the Relevant Commission Rules currently in force, the provisions of these Regulations shall prevail.

34. **Citation**

These Regulations shall be referred to as the **Nigerian Electricity Regulatory Commission (Business Continuity for the Nigerian Electricity Supply Industry) Regulations, 2017.**

SCHEDULE 1

RESILIENCE PLAN

- a) The Resilience Plan is an operational document that comprises the procedures for managing Business Continuity. The Business Owners (BPE, NERC and NBET) will own the documents that specify the policy frameworks and response plans to treat risks and issues related to Business Continuity before NERC Interventions.
1. Subject to any other requirements imposed by the Commission, each Resilience Plan shall, at the minimum, provide for the following:
- 1.1. The result of the business impact analysis of the Licensee's business identifying time sensitive and/or critical business functions and processes and the resources ordinarily deployed by the Licensee to support them;
 - 1.2. The insurance requirements of the Licensee as well as any relevant insurance policy which can aid the Licensee's reversion to optimal business operations;
 - 1.3. Key resources required to carry out recovery needed to revert to optimal business operations;
 - 1.4. Plans, measures and arrangements to ensure the continuous delivery of critical services while permitting the Licensee to recover lost functions and assets;
 - 1.5. An initial response plan identifying the communication process and the manner by which responsibilities will be delegated as an initial response to an event affecting business continuity; and
 - 1.6. A development plan framework by which risk of future occurrences are effectively minimized.
 - 1.7. Business Impact Analysis which shall:
 - a) Identify the mandate and critical aspects of the business of the Licensee
 - b) Prioritize services
 - c) Identify critical business equipment and contingency equipment options
 - d) Identify impacts of disruptions
 - e) Identify areas of potential revenue loss and intangible losses
 - f) Insurance requirements
 - g) Ranking of critical business services based on potential loss of revenue, time of recovery and severity of impact of a disruption
 - h) Identify internal and external dependencies of critical services
 - 1.8. Plans for business continuity which shall:
 - a) Provide for mitigation measures for potential threats and risks
 - b) Analyze current recovery capabilities and their continued applicability
 - c) Create continuity plans based on the results of the Business Impact Analysis
 - d) Provide for succession planning
 - e) Provide for response in preparation for a disruption event
 - 1.9. Readiness procedures which shall include:
 - a) Staff training on individual responsibilities upon the occurrence of a disruption event
 - b) The development and scheduling of exercises to maintain and achieve high level readiness
 - c) Testing and post-exercise evaluation

- 1.10. Quality assurance techniques to ensure that the Resilience Plan is accurate, relevant and effective. This shall contain:
- a) A schedule and triggers for internal review
 - b) External audit of the Resilience Plan
- 1.11. Response to a disruption event which shall include;
- a) Incident, communications and operations management;
 - b) Measures to ensure continuation of critical services;
 - c) Recovery and restoration

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