**TRIPARTITE AGREEMENT**

**BETWEEN**

**PLACEHOLDER**

**(DISTRIBUTION LICENSEE)**

**AND**

**PLACEHOLDER**

**(POWER PRODUCER)**

**AND**

**PLACEHOLDER**

**(INTERCONNECTED CUSTOMER)**

**FOR THE DEVELOPMENT AND DEPLOYMENT OF XX KW INTERCONNECTED SOLAR PV + XX KWH BATTERY + XX KW DIESEL/GAS DISTRIBUTED ENERGY SYSTEM AS POWER PRODUCER AT PLACEHOLDER**

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# CONTRACT SUMMARY[[1]](#footnote-2)

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| --- | --- |
| **Nature of Contract** | This is a tripartite agreement between the Power Producer of the power system (“**Power Producer**”, distribution licensee (the “**DisCo**”) and the customer (“**Interconnected Customer**”) for the development of an interconnected solar PV+ battery+ diesel distributed energy system for usage by the Customer. Under this agreement, the Power Producer seeks to construct and operate a power system and connect to the DisCo’s distribution network for the supply of power to the Interconnected Customer. |
| **Term** | 10 years with an option to terminate subject to the terms of the termination clause. Upon expiry of the Term, Parties also have an option to renew on terms to be mutually agreed. |
| **Minimum Consumption** | The minimum consumption of electricity shall be XX kWh in total during Power System Priority Hours every 6 months. |
| **Pricing** | * The Power Producer shall purchase and pay a DisCo Grid Tariff (for all electricity from the DisCo while the Interconnected Customer shall pay for all electricity consumed from both the Power Producer and the DisCo grid through a blended tariff. * DisCo Grid Tariff will include a Premium Fee for improved service and to support the payment of recoverable expenditure and DisCo to recoup grid upgrade costs. * Should the Disco’s supply to the Interconnected Customer fall below the Grid Availability Standard of X%[[2]](#footnote-3) the DisCo is liable to pay the Power Producer a fee (Recoverable Expenditure). The Power Producer will deduct this fee from the Premium Fee portion monthly |
| **Billing** | The Power Producer is responsible for billing and collecting and settling the payment due to the Customer as well as to the DisCo. |
| **Escalation Mechanism** | The tariffs and minimum consumption are adjustable subject to changes in the market conditions (changes to the inflation rate and exchange rate). The Disco Grid Tariff may also be adjusted where there is a change to the grid tariff/ band. |
| **Availability Standards** | * The Power Producer is responsible for providing the Interconnected Customer with 95% power availability between the hours of [X:XX am - X:XX pm] while the Disco is responsible for providing the Interconnected Customer with XX% power availability between the hours of [X:XXpm - X:XXam]. * The Power Producer is also responsible for providing backup to the DisCo’s performance. * Failure of either Party to meet the respective availability standards attracts pre-determined consequences (including penalties and termination). |

**THIS** **AGREEMENT** is made on XX day of MONTH, XXXX

**XXXXX**, a company duly incorporated under the laws of the Federal Republic of Nigeria with registration number **RC No. XXXX** having its registered office at XXXXXXXX**, hereinafter called the “Disco”,** which expression shall where the context so admits include its successors-in-title and assigns.

**AND**

**XXXXXX**, a company duly incorporated under the laws of the Federal Republic of Nigeria with registration number RC **XXXX**, having its registered office at XXXX, hereinafter called the “Power Producer”, which expression shall where the context so admits include its successors-in-title and assigns.

**AND**

**[LARGE COMMERCIAL & INDUSTRIAL COMPANY NAME]**, a company duly registered under the laws of the Federal Republic of Nigeria with registration number **[Placeholder]**, having its registered office at **[Placeholder]**, hereinafter called the “**Interconnected Customer**”.

In this Agreement, the DisCo, Power Producer, and Interconnected Customer are referred to collectively as **“Parties”** and individually as **“Party”**.

# RECITAL/ BACKGROUND

1. The Power Producer is in the business of constructing, operating and maintaining power generation systems and associated generation assets.
2. Pursuant to Section 68 of the Electricity Act, 2023 (“**EA**”), the Nigerian Electricity Regulatory Commission (the “**Commission**”) has issued to the DisCo, a Distribution License to distribute and trade (retail supply) electricity within its Franchise Areas within the XXXXX States of the Federal Republic of Nigeria, which includes the Distribution Network.
3. The Power Producer seeks to connect to the DisCo’s Distribution Network as described in Schedule 1 below and operate a Power System on the Interconnected Customer’s premises, supplying electricity to the Interconnected Customer under the terms set out in this Agreement.
4. The DisCo has agreed to allow the Interconnected Customer to operate in an island mode as part of a Power System (described in Schedule 1 and 2).
5. This Agreement sets out the conditions for the connection and operation in Recital C above, which includes but not limited to the following:
   1. the construction and ownership rights of relevant infrastructure;
   2. the tariff for electricity generated and supplied by the Power Producer;
   3. the Power Producer and DisCo hours of supply and reliability requirements;
   4. the financing of DisCo grid upgrades directly relevant to this Agreement, and the subsequent repayment by the DisCo to the Power Producer;
   5. the availability of stable nominal voltage at the Customer Point of Interconnection of the Power Producer with the Distribution Network; and
   6. the agreement of the Interconnected Customer to purchase electricity from the Power Producer covering both supplies from the Power System and the Distribution Network at a blended rate.
   7. the connection agreement
   8. the use of networks agreement

**NOW THEREFORE,** in view of the foregoing and in consideration of the mutual benefits to bederived contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

# DEFINITIONS AND INTERPRETATIONS

* 1. In this Agreement each of the following words and expressions shall have the following meanings:

“**Agreement**” means this tripartite agreement as amended, restated, or modified in any way

“**Anti-Corruption** means (a) the United States Foreign Corrupt Practices

**Laws**” Act of 1977; (b) the United Kingdom Bribery Act 2010; and (c) all applicable national, regional, provincial, state, municipal or local laws and regulations that prohibit tax evasion, money laundering, or otherwise dealing in the proceeds of crime or the bribery of, or the providing of unlawful gratuities, facilitation payments, or other benefits to, any Government Official or any other person

“**Applicable Laws**” means the Constitution of the Federal Republic of Nigeria (1999( (as amended), any national, state or local law, statute, bye-law, ordinance, decree, directive, regulation, standard, circular, guideline, rule, code, delegated or subordinated legislation, judicial act or decision, judgment, order, proclamation, directive, executive order, other legislative measure, binding actions or enactments of the Federal Republic of Nigeria, the Commission or any other Relevant Authority in Nigeria currently in force and as may be amended or supplemented from time to time.

“**Assets and** means those assets and infrastructure within the

**Infrastructure**” Power System owned and operated by the Power Producer.

**“Authorization”** means any applicable approval, consent, exemption (including waiver), license, order or permit of or duly issued by or from any Relevant Authority required for the due performance by any Party of any covenant or obligation hereunder and includes the Authorizations already obtained prior to the date of this Agreement.

**“Business Day”** means any day other than a weekend or public holiday in Nigeria.

**“Change in Law”** means:

**(a)** the adoption, promulgation, bringing into effect, repeal, amendment, reinterpretation, change in application, change in interpretation or modification after the date of this Agreement of any Applicable Laws by any Relevant Authority;

(b) the imposition of any material condition not required as of the date hereof in connection with the issuance, renewal or modification of any Authorization by any Relevant Authority; or

(c) the change or modification of the Distribution License by the Relevant Authority or the imposition of other obligations imposing a cost on the DisCo;

which in case of any of the above establishes a material increase in cost, a material reduction in revenue, or material delay in schedule or makes unenforceable, invalid or void any material obligation of the Parties.

**“Commission”** means the Nigeria Electricity Regulatory Commission.

**“Connection Protocol”** means the section of this contract that is concerned with the connection of the generation assets to the distribution network and upgrades of the distribution network, which contains critical terms agreed under a Connection Agreement.

**“Customer Point of** means the point of electricity delivery to the

**Interconnection”** Interconnected Customer including electricity from both

the Power System and the DisCo’s Distribution Network

**“Date of Commercial** means the date after which all testing and commissioning

**Operation”** has been completed in accordance with Good Industry Practices and is the initiation date to which the Power Producer can start producing electricity for sale to the Interconnected Customer pursuant to this Agreement.

**“Default Interest** means the rate of 2% per annum above Central Bank of

**Rate”** Nigeria Monetary Policy Rate or (where not available) the interest rate charged by the Nigerian Bulk Electricity Trading Plc on the Disco’s monthly invoice plus two percent (2%) on the outstanding sum due to the Disco from the Power Producer.

**“DisCo Grid Tariff”** refers to the tariff XX NGN/kWh at the beginning of this agreement) the Power Producer shall collect on behalf of the DisCo from the Interconnected Customer, for electricity consumption during the Grid Priority Hours. Tariff detail is provided in Schedule 7.

**“Distribution** means any connection of cables, service lines, and

**Network”** overhead lines, electrical apparatus/equipment, and a design voltage of 33kV and below are used to transport electric power on a distribution system and are owned and operated by the DisCo.

**“Effective Date”** means seven days following approval of this Project by the Commission and the fulfilment/waiver of the Conditions Precedent in Clause 2 of this Agreement or as agreed otherwise by the Parties.

**“Electricity Supply** refers to the number of kWh calculated – if the DisCo’s

“ refers to the tariff for the kWh supplied by the

**Extraordinary Backup** Operator when the DisCo does not meet the

**Tariff”** Grid Availability Standard during a given month, and charged to the DisCo. This tariff is based on the cost of the fossil fuel and the agreed maintenance cost.

**Discrepancy”** Distribution Network was below [XX%] availability during a given month – by subtracting the percentage availability of the grid during the Grid Priority Hours during the given month from [XX%], and then and multiplying it by the total kWh supplied during Grid Priority Hours during the respective month.

**“Expert”** means any competent person jointly appointed by the Parties for the purposes specified in Clause 27.3

**“Full Title Guarantee”** means, in respect of any asset to be transferred under this Agreement, as the case may be, that such asset is transferred with full title guarantee and free from all charges, liens, other encumbrances and third party claims

**“Generation** means the generation assets owned by the Power

**Assets”** Producer, includingbut not limited to solar photovoltaics, batteries, diesel gensets, that forms part of the Power System

**“Good Industry** means, in respect of any task and circumstance,

**Practices”** exercising that degree of skill, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced undertaking engaged in the same type of task under the same or similar circumstances, and includes undertaking such task.

“**Government officials**” means any official or employee of any government, or any agency, ministry, department of a government (at any level), person acting in an official capacity for a government regardless of rank or position, official or employee of an entity wholly or partially controlled by a government (for example, a state-owned oil company), political party and any official of a political party; candidate for political office, officer or employee of a public international organization, such as the United Nations or the World Bank, or immediate family member (meaning a spouse, child, sibling, parent, or household member) of any of the foregoing

**“Grid Availability** means the level of availability of power defined in Clause

**Standard”** 7.2 from the DisCo’s Distribution Network at the Grid Point of Interconnection.

**“Grid Metering** all meters and metering devices, equipment, electrical

**System”** circuitry, recording equipment, communications equipment and related equipment used for measuring electricity delivered by the Distribution Network.

**“Grid Point of** means the point at which the DisCo’s Distribution

**Interconnection”** Network interconnects to the Power System or Interconnected Customer; the point of electricity delivery from the DisCo’s Distribution Network to the Power System

**“Grid Priority** means between [X:XX pm and X:XX am] daily.

**Hours”**

**“Initial Term”** shall have the meaning ascribed in Clause 3.4.

**“Interconnected** means[Customer Address]. This includes both the

**Customer”** Interconnected Customer’s bitumen processing facility and its office located on-site.

**“Market Conditions”** means the macro-economic and Interconnected Customer-specific conditions that all tariffs in this document are based on set out in paragraph 1.6 of Schedule 6. If the Market Conditions go above or below the thresholds detailed in Schedule 6, it can trigger the Parties to apply for a tariff adjustment per the terms of this Agreement.

**“Metering Code”** means the Nigeria Metering Code approved by the Commission for use in measuring the flow of energy within the transmission and distribution systems in Nigeria.

**"Metering Systems”** means the Grid Metering System (as defined in Clause 13.10) and/or the Power System Metering System (as defined in Clause 13.11), as the case may be.

**“ Power System**” means the electricity supply system, including the Generation Assets and, Generation Metering System and cabling between the Generation Assets and the Customer Point of Connection and associated and ancillary plant and equipment, situated on Interconnected Customer’s site, [connected to the Distribution Network] and supplying power from both the Generation Assets and the Distribution Network to the Customer Point of Connection (excluding the **Necessary Prior** **Distribution** **Network** **Upgrades**).

**“ Generation** means the level of availability of power defined in Clause

**Availability** 7.4 from the Power Systemat the Customer Point of

**Standard”** Interconnection.

**“Generation**

**Metering** all meters and metering devices, equipment, electrical

**System”** circuitry, recording equipment, communications equipment and related equipment used for measuring electricity delivered to the Interconnected Customer by the Generation Assets of the Power Producer or from the Distribution Network of the DisCo.

**“Power System**

**Priority** means between [9 am and 2:59 pm] daily.

**Hours”**

**“Minimum** means the minimum kWh the Interconnected

**Consumption**” Customer shall accept from the Power Producer during Power System Priority Hours every 6 months, as defined in Clause 8.2.

“**Necessary Prior** means the necessary upgrades to the Distribution

**Distribution** Network performed by the DisCo prior to the

**Network Upgrades”** Date of Commercial Operation as detailed in Clause 13.7 and listed in Schedule 3.

**"Permit”** means a permit or equivalent granted by the Commission to the Power Producer for the construction, operation and/or maintenance and ownership of the Power System.

**“Project”** means**:**

1. the development, financing, design, engineering, procurement, manufacture, factory testing, transportation, construction, erection, installation, equipping, completion, testing, commissioning, insurance, ownership, operation, maintenance and decommissioning of the Power System;
2. the supply and sale of electricity to the Interconnected Customer; and
3. all activities incidental to any of the foregoing in accordance with this Agreement.

**“Property”** means the Interconnect Customer premises located at PLACEHOLDER.

**“Recoverable Expenditure”** refers to the liability the DisCo incurs to the Power Producer for the value of electricity the Power Producer supplies the Interconnected Customer when the DisCo Distribution Network falls below the Grid Availability Standard during the Grid Priority Hours during a given calendar month**.**

**“Related Party”** means a Party to this Agreement (a) its subsidiaries, directors or employees, contractors, agents; or (b) any other person or entity, including that party’s affiliates (and its subsidiaries, employees, or directors)] when acting for or on behalf of a party to this Agreement or otherwise involved in the performance of this Agreement.

**“Relevant Authority”** means any court, local, national or supranational agency, inspectorate, minister, ministry, administrative or regulatory body, authority, industry body, official or public or statutory person having (in each case) jurisdiction by Applicable Laws over either or both of the Parties, this Agreement, the Power System or other aspects of the subject matter of this Agreement and in each case within Nigeria.

**“Renewal Term”** shall have the meaning ascribed in Clause 3.5.

**“Restricted Jurisdiction”** means a country, state, territory, or region which is subject to comprehensive economic or trade restrictions under Trade Control Laws applicable to any Party. As of the date of this Agreement, Restricted Jurisdictions include Cuba, Crimea and Sevastopol (and other non-government-controlled territories of Ukraine), Iran, North Korea, Sudan and Syria.

“**Restricted Party**” means any individual, legal person, entity or organisation that is:

1. resident, established or registered in a Restricted Jurisdiction or otherwise targeted by Trade Control Laws;
2. directly or indirectly owned or controlled (as these terms are interpreted under the relevant Trade Control Laws), or acting on behalf of, persons, entities or organisations described in (a) or (b); or
3. director, officer or employee of a legal person, entity or organisation described in (i) to (iii).

**“Sanctions”** means any trade restrictions or economic sanctions administrated or enforced by the United Nations Security Council, the European Union, Her Majesty’s Treasury of UK or the US Department of Treasury’s Office of Foreign Assets and Control, and U.S. Department of Defence or any other recognised sanctions authority.

**“Scheduled** means an instance in which the available capacity or

**Maintenance Outage”** performanceof the DistributionNetworkor Power System is subject to a material reduction affecting electricity supplies to the Interconnected Customer that: a) has been scheduled and agreed to by either Disco or Power Producer; and b) is for inspection, testing, preventive maintenance, corrective maintenance, repairs, replacement or improvement of the distribution network or generating assets.

**“Signature Date”** means the date this Agreement is executed by all the Parties.

**“Technical Codes”** shall have the same meaning in the relevant NERC Regulations.

“**Trade Control Laws**” means any laws concerning trade or economic sanctions or embargoes, Restricted Party lists, trade controls on the imports, export, re-export, transfer or otherwise trade of goods, services or technology, anti-boycott legislation and any other similar regulations, rules, restrictions, orders or requirements having the force of law in relation to the above matters and in force from time to time, including those of the European Union, the United Kingdom, the United States of America or any government laws in relation to the above matters applicable to a Party.

**“Transmission** means that the DisCo, outside of its control, does not

**Network Failure”** receive electricity supply from the transmission system substation that supplies the distribution feeder that supplies the Interconnected Customer for more than two (2) hours during the Grid Priority Hours and which can be verified from the Transmission Company of Nigeria (TCN).

“**Transmission** means the amount of excess electricity the Power

**Network Failure Cost**” Producer provided to the Interconnected Customer that is directly due to Transmission Network Failure(s) and is above the 10% grid backup supply the Power Producer is expected to provide per the Grid Availability Standard and multiplied by the DisCo Premium Fee to calculate the monetary cost of that excess electricity

**“Unscheduled Outage**” means an instance in which the available capacity or performance of the Distribution Network or Power System is subject to a reduction affecting electricity supplies to the Interconnected Customer which is not a Scheduled Outage.

**“Use of Network Protocol”** means the section of this contract that is concerned with the use of the electricity distribution network to transport electricity to or from the Interconnected Customer, which contains critical terms agreed under a Use of Network Agreement**.**

* 1. In this Agreement, except where the context otherwise requires:
     1. any reference to “this Agreement” includes the Schedules and Annexures to it, each of which forms part of this Agreement for all purposes, and where any such Schedule or Annexure conflicts with the provision of this Agreement the relevant provisions of this Agreement (excluding the Schedules and Annexures) shall apply;
     2. a reference to an enactment or statutory provision shall include a reference to any subordinate legislation made under the relevant enactment or statutory provision or subordinate legislation as from time to time amended, consolidated, modified, re-enacted or replaced;
     3. words in the singular shall include the plural and vice versa;
     4. a reference to a Clause, paragraph, Annexure or Schedule shall be a reference to a Clause, paragraph, Annexure or Schedule (as the case may be) of or to this Agreement;
     5. a reference to this Agreement and any other document referred to in this Agreement is a reference to such document as amended, varied, or supplemented at any time;
     6. if a period of time is specified as **from** a given day, or from the day of an act or event, it shall be calculated exclusive of that day;
     7. if a period of time is specified as **to** a given day, or to the day of an act or event, it shall be calculated inclusive of that day;
     8. a reference to "writing" or "written" shall include any legible reproduction of words delivered in permanent and tangible form (including email);
     9. a reference to "includes" or "including" shall mean "includes without limitation" or "including without limitation";
     10. the headings in this Agreement are for convenience only and shall not affect its interpretation.

# CONDITIONS PRECEDENT

2.1 Subject to Clause 3.1 (*Commencement and Term*), this Agreement shall become effective (the “**Effective Date**”) seven days upon approval by the Commission and satisfaction of the conditions precedent stated in this Clause (“**Conditions Precedent**”) which must be satisfied (or waived in writing) by the relevant Party on or before the Date of Commercial Operations in accordance with this Clause 2.

* 1. Power Producer’s Conditions Precedent
     + - The Power Producer shall:
     1. procure all Authorizations required for the due performance of its obligations under this Agreement;
     2. complete the construction installation and commissioning of the Power System;
     3. perform jointly with the DisCo and the Interconnected Customer initial calibrations and accuracy tests for the Metering Systems;
     4. undertake the installations and cabling works required to connect the Power System to the Grid Point of Connection;
     5. undertake the installations and cabling works required for the connection of the Power System to the Customer Point of Interconnection; and
     6. undertake jointly with the DisCo and the Interconnected Customer an analysis of the physical condition of the Distribution Network at the Grid Point of Interconnection to ascertain that the Distribution Network at the Grid Point of Interconnection is in good condition and it is in accordance with the requirements of the Technical Codes.
  2. The DisCo’s Conditions Precedent

The DisCo shall:

* + 1. procure all Authorizations required for the due performance of its obligations under this Agreement;
    2. prior to the Effective Date, provide the Power Producer with a copy of its plan to execute the Necessary Prior Distribution Network Upgrades and any relevant planned Distribution Network upgrades as relates to the Distribution Network that serves the Interconnected Customer, and procedures to ensure the Power Producer’s connection standard complies with the Technical Codes;
    3. provide the Power Producer and confirmation that the Necessary Prior Distribution Network Upgrades been implemented;
    4. connect the Distribution Network to the Grid Point of Interconnection
    5. undertake jointly with the Power Producer and the Interconnected Customer an analysis of the physical condition of the Distribution Network at the Grid Point of Interconnection to ascertain that the Distribution Network at the Grid Point of Interconnection is in good condition and that it is in accordance with the requirements of the Technical Codes.
    6. complete the installation of the Grid Metering System; and
    7. perform jointly with the Power Producer and the Interconnected Customer initial calibrations and accuracy tests for the Metering Systems.
  1. The Interconnected Customer’s Condition Precedent

The Interconnected Customer shall:

* + 1. procure all applicable Authorizations required for the due performance of its obligations under this Agreement;
    2. provide sufficient land, rooftop, or other identified space agreed upon by the Parties within Interconnected Customer’s boundaries, as will be required by the Power Producer, for the safe installation and operation of the Generation Assets as depicted in the map in Schedule 2; complete all internal wirings or reticulations to be utilized by the Interconnected Customer after the Customer Point of the Interconnection;
    3. perform jointly with the DisCo and the Power Producer initial calibrations and accuracy tests for the Metering Systems;
    4. undertake jointly with the DisCo and the Power Producer an analysis of the physical condition of the Distribution Network at the Grid Point of Interconnection to ascertain that the Distribution Network at the Customer Point of Interconnection is in good condition and it is in accordance with the requirements of the Technical Codes.
  1. Cooperation
     1. Each Party, upon request of the other Party and at such other Party’s expense, shall use reasonable endeavours to assist the other Party in satisfying each Condition Precedent for which such other Party is primarily responsible under this Clause, but shall have no obligation to execute any agreement referenced therein or related thereto.
     2. Any one other Party may waive compliance of one or more of the Conditions Precedent set forth in this Clause in its sole discretion, or, with the permission of the other Parties, convert such Condition Precedent into a contractual obligation to be performed after Effective Date of this Agreement, in which case the other Party shall not have an obligation to satisfy such condition as a Condition Precedent except as may be agreed by the Parties.
     3. If any Party fails to satisfy its Conditions Precedent, it shall give notice to the other Party giving reasons for the delay or failure to satisfy the Condition Precedent and the revised date by which it is reasonably expected that the Condition Precedent shall be satisfied.
     4. Upon such notification per Clause 2.5.3, the Parties may mutually agree on an extension of time for the satisfaction of such Conditions Precedent.
     5. Either Party may terminate this Agreement with immediate effect by giving notice to the other Party if the Conditions Precedent have not been satisfied or waived in accordance with this Agreement [12] months after the Signature Date (“**Long Stop Conditions Precedent Satisfaction Date**”), subject to any extension pursuant to Clause 2.5.4.
     6. From the date of such termination, the Parties shall have no further rights against each other and shall be released from all further obligations under this Agreement, subject to any rights and obligations that may have accrued before the date of such termination.
     7. If the Parties are unable to achieve Date of Commercial Operations as a result of the failure of a Party to fulfil its Conditions Precedent which is not a Force Majeure event, and such Conditions Precedent have not been waived by other Party, the Party in default shall bear the cost of the demobilization of the Power System. Where no specific Party is in default, Parties shall bear their respective costs.
     8. Where the Date of Commercial Operations is delayed as a result of Force Majeure, Clause 16.3 and 16.4 *(Force Majeure*)shall apply.

# COMMENCEMENT AND TERM

* 1. This Agreement shall commence on the Effective Date save for Clauses 1 (*Definitions and Interpretations*), 2 (*Conditions Precedent*), 3 (*Commencement and Terms*), 4 (Use of Network Protocol), 5 (*Duties and Obligations of the Parties*), 6 (*Ownership*), 14 (*Representation and Warranties*), 15 (*Termination*), 16 (*Force Majure*), 17 (*Confidential Information*), 18 (*Conflict of Interest*), 19 and 20 (*Amendment and Waivers*), 21 (*License*), 22 (*Notices*), 23 (*Counterparts*), 24 (*Severability*), 25 (*Entire Agreement*), 26 (*Successors and Assigns/Subcontracting and Assignment*), 27 (*Cost*), 28 (*Governing Law and Dispute Resolution*), 29 (*Information and Data Protection*), 30 (*Indemnification*), 31 (*Mutual Non-circumvention Clause*) and any other provision in this Agreement, though not expressly mentioned in this Clause, which by its nature ought to be effective from the Signature Date, shall commence on the Signature Date.
  2. The sale of electricity from the Power Producer to the Interconnected Customer and the sale of electricity from the DisCo to the Power Producer shall commence on the Date of Commercial Operation, at which time any supply agreement between the Interconnected Customer and DisCo is suspended.
  3. The **Date of Commercial Operation** shall be seven days from Conditions Precedent Satisfaction Date.
  4. Subject to the earlier termination in accordance with Clause 15 of this Agreement, the initial duration of this Agreement shall be ten (10) years (“**Initial Term**”) from the Date of Commercial Operation.
  5. Upon the expiration of the Initial Term, this Agreement may be renewed by the mutual written agreement of the Parties, subject to the satisfactory performance of the Operator, and upon such terms and for such periods as may be agreed among the Parties (“**Renewal Term**”).
  6. From the Effective Date, any other exclusivity agreement entered between the Parties with respect to the Power System, if not terminated, will be deemed to have been terminated.

# USE OF NETWORK PROTOCOL

* 1. The DisCo hereby grants the Power Producer the right to connect to the DisCo’s Distribution Network for the purpose of receiving electricity from the DisCo and supplying it to the Interconnected Customer as detailed in Schedule 1 for the duration of the Term subject to the Power System complying with the requirements of the Technical Codes.
  2. Pursuant to Clause 4.1, the Power Producer shall have the right to connect such number of generators up to a total generation capacity of XXMW to cover the demand by the Interconnected Customer.

# DUTIES AND OBLIGATIONS OF THE PARTIES

* 1. Subject to the terms of this Agreement, the DisCo shall:
     1. Pay the compensation prescribed in Clause 15.4.1. in the event of termination of this Agreement or termination of the DisCo’s obligations under this Agreement, which occurs pursuant to Clause 15.3.1, Clause 15.3.2, Clause 15.3.4, Clause 15.3.5, and Clause 15.3.6;
     2. Pay the compensation prescribed in Clause 15.5.1 in the event of termination of this Agreement or termination of the DisCo’s obligations under this Agreement;
     3. Make available to the Power Producer such information and documents in its possession and control and such reasonable assistance required for the performance of its obligations under this Agreement;
     4. meter and bill the Power Producer for power supplied to the Interconnected Customer from the Distribution Network;
     5. Operate, maintain and carry out such repairs to the Distribution Network in the course of its operations in accordance with the Technical Codes to maintain a Grid Availability Standard of [XX%] during the Grid Priority Hours (as outlined in Clause 7.2) or pay the Power Producer the Recoverable Expenditure (as detailed in Clause 10.4 and 10.5), and not provide less than an average of [XX%] power availability during the Grid Priority Hours for any 3 consecutive months;
     6. prior to the Date of Commercial Operation, make the Necessary Prior Distribution Network Upgrades as detailed in Clause 13.7 to maintain the DisCo reliability required in 8.2 during the Grid Priority Hours;
     7. not tamper with, alter, hack or otherwise compromise the Power System, including the Generation Metering System;
     8. repay the Power Producer for the Necessary Prior Distribution Network Upgrades as detailed in Clause 13.9; and
     9. carry out its obligations under this Agreement in accordance Good Industry Practice and Applicable Laws.
  2. Subject to the terms of this Agreement, the Power Producer shall:
     1. undertake such restorations to the land, rooftop, and environment required to restore it back to good condition in the event of termination of this Agreement pursuant to Clause 15.1.1, Clause 15.1.2, Clause 15.1.3, Clause 15.1.5, Clause 15.2.1, and Clause 15.2.3;
     2. develop, finance, build, own, and operate the Generation Assets to supply electricity to the Interconnected Customer at the locations set out in Schedule 2, within [twelve (12) months] from the Signature Date, failure of which can lead to the early termination of this Agreement, without any liability to the DisCo, subject to the granting of any relevant Authorization by a Relevant Authority;
     3. ensure that the Interconnected Customer has availability to power as required in Clause 7.4;
     4. operate, maintain and carry out such repairs to the Assets and Infrastructure in the course of its operations to maintain its reliability requirements and in accordance with the Technical Codes, including the responsibility to refuel and maintain backup diesel generators as needed;
     5. Collect electricity payment on behalf of the DisCo from the Interconnected Customer, for electricity consumption from the main grid during the Grid Priority Hours as defined in Clause 9.1;
     6. finance the Necessary Prior Distribution Network Upgrades listed in Schedule 3 as detailed in Clause 13.8 and 13.9;
     7. bill the Interconnected Customer for all electricity received monthly (from both the DisCo’s Distribution Network supply and the Power System ) and collecting the respective amount from the Interconnected Customer, and then settling with the DisCo for electricity received from the Distribution Network minus any payments due from the DisCo pursuant to this Agreement;
     8. adhere to the Interconnected Customer’s site access and safety protocols;
     9. obtain the necessary approvals from the Commission required by the Power Producer to undertake the activities in Clause 4.3 above; and
     10. report reliability metrics to the DisCo in writing on a monthly basis, by the 15th day of the following month.
     11. carry out its obligations under this Agreement in accordance with the Good Industry Practice, Technical Codes, the standards and requirements of the Commission and the Standards Organization of Nigeria.
     12. be responsible for making the necessary repairs to the Assets and Infrastructure, and this shall ensure that such maintenance conform to the requirements of the Technical Codes and
     13. Procure and install all meters required for the execution of the Agreement and for the metering of customers, provided that the Operator shall ensure that only an existing and duly licensed meter asset provider of the DisCo shall supply and install approved meters in accordance with the meter asset provider’s agreement with the DisCo.
  3. Subject to the terms of this Agreement, the Interconnected Customer shall:
     1. Pay the compensation prescribed in Clause 15.5.2.2.1 in the event of termination of this Agreement, which occurs pursuant to Clause 15.1.7, 15.3.7, 15.3.8, Clause 15.3.9, Clause 15.3.10 and Clause 15.3.11;
     2. ensure that the land/rooftop/location provided pursuant to Clause 5.5.2 above shall be either at no cost to the Power Producer or at a minimal cost agreed upon by the Parties. In any case, all costs (including the cost of land acquisition or lease) are recoverable through the electricity tariff;
     3. Ensure that other than the nominal fee imposed pursuant to Clause 5.5.3 above, the Power Producer shall not be required to make any further payments in respect of the usage of the land/rooftop/location;
     4. Coordinate with the Power Producer, the DisCo and the Relevant Authority as needed to execute this Agreement;
     5. Ensure that none of its personnel, agents or visitors touch or tamper with the Power System ;
     6. Ensure an enabling work environment free of any harassment of, or encumbrances to, the personnel or agents of the Power Producer during and after the construction of the Power System;
     7. Procure such security measures that are reasonably necessary and required by the Power Producer to prevent any vandalism and/or electricity theft within the Power System;
     8. Provide the Power Producer access to the roof where solar PV is agreed to be installed by the Interconnected Customer and Power Producer as detailed in Schedule 2 for the purpose of installation, maintenance, and repairs to the Power System and Generation Assets; and
     9. Pay the Power Producer for the cost of removal and reinstatement of solar PV panels and relevant equipment and loss of income during that downtime in the case that the Interconnected Customer requests or requires the solar PV panels and relevant equipment be temporarily or permanently removed from the rooftop location where the solar PV panels are installed per Schedule 2.
  4. Relocation of Generation Assets

(a) At the Interconnected Customer’s request, the Power Producer may relocate the Generation Assets from a particular Property (“**Old Site**”) to another Property (“**Relocation Site**”) and provide the Services at the Relocation Site, provided that:

1. the Interconnected Customer shall send the Power Producer a written request for relocation from the current Property not later than thirty (30) Business Days before the relocation is required;
2. the Interconnected Customer shall send the DisCo a written notification of relocation from the current Property at least ninety (90) days before relocation is needed;
3. the Power Producer has assessed the Relocation Site and made a finding in writing that the Project can be carried out with respect to the Relocation Site.
4. The Parties shall execute an addendum (or a new agreement) reflecting the details of the relevant Relocation Site, and the provisions of this Agreement shall become applicable to the Relocation Site.
5. the Interconnected Customer shall pay all costs associated with the uninstallation of the Generation Assets and their relocation to a Relocation Site, as agreed by the Parties in writing;
6. the Interconnected Customer shall remain liable to pay the Blended Tariff in accordance with the terms of this Agreement in respect of such Site until the day that the Systems are uninstalled from the Site, and
7. the Power Producer shall have no obligation to relocate the Systems at a Site to a Relocation Site until (1) it has received payment from the Interconnected Customer of the agreed invoiced sum of the relocation costs; and (2) it has conducted a power audit, agreed with the DisCo regarding the Relocation Site (including terms of Necessary Prior Distribution Network Upgrades), and confirmed the suitability of the Relocation Site in which case the following shall apply:
8. If the relocation is requested to occur before the Power Producer recovers the total cost of financing the Necessary Prior Distribution Network Upgrades, the Power Producer would also finance the Necessary Prior Distribution Network Upgrades for the Relocation Site, paid for by the DisCo in accordance with an agreed Necessary Prior Distribution Network Upgrades Repayment Schedule through a reduction in the Disco Grid Tariff revenues. In addition, the outstanding cost and duration of the Necessary Prior Distribution Network Upgrades of the Old Site would be recovered from the Interconnected Customer through an increased Blended Tariff as agreed by the Parties.
9. If the relocation is requested to occur after the Power Producer recovers the total cost of financing the Necessary Prior Distribution Network Upgrades, the Power Producer can proceed to relocate to the Relocation Site and the terms of Clause 13.9 shall apply.
10. Where the Relocation Site is outside the jurisdiction of the Disco under this Agreement, the Power Producer and the Interconnected Customer shall negotiate with the licensed distribution company at the Relocation Site to agree on terms similar to those under this Agreement otherwise, this Agreement shall be terminated and Clause 15.5.2(b) (*Termination*) shall apply.

(b) For the avoidance of doubt and unless otherwise a different agreement is executed between Parties, the Parties agree that the provisions of Clause 3 (*Commencement and Term*), and such other relevant provisions in this Agreement, shall become applicable to the Relocation Site from the Term start date (“**Term Start Date**”) of the addendum. Once the Generation Assets are uninstalled, the terms applicable to the original Site shall be suspended for no longer than four (4) months (“**Suspension Period**”) and will resume from the Date of Commercial Operation of the Relocation Site It is understood by Parties that the after the Suspension Period, if Parties are unable to achieve the Date of Commercial Operation, the Power Producer shall have the right to terminate the Agreement in line with clause 15.5.2(b) (*Termination*).

(c) Where the Interconnected Customer cancels a relocation request, it shall pay the Power Producer any accrued costs and evidenced expenses which the Power Producer incurred.

# OWNERSHIP

* 1. The Power System installed by the Power Producer on the Interconnected Customer’s land/rooftop/location shall remain the property of the Power Producer unless stated otherwise under this Agreement.
  2. The Interconnected Customer covenants that it will not, during the period of the Term, pledge, encumber, transfer or hypothecate the Power System to any person. The Interconnected Customer confirms as applicable that (a) no person has a lien on the Property (b) it will obtain from any person that has a lien on the Property an acknowledgement, in form and substance satisfactory to the Power Producer, confirming that the Power System is not subject to such lien, which acknowledgment will be obtained promptly following execution of this Agreement, and in any event prior to the date Power Producer commences installation of the Power System The Interconnected Customer covenants that in case of the encumbrance of the Interconnected Customer’s real property, the Interconnected Customer shall ensure that it is explicitly stipulated in the relevant mortgage or other agreement that the Power System is not part of the mortgaged or otherwise encumbered property.
  3. This Agreement constitutes notice to the Interconnected Customer that Power Producer has granted or intends to grant a lien or other security interest in respect of its rights under this Agreement, the receivables hereunder, its ownership interest in the Power System (installed by the Power Producer), and any related rights in favour of its lenders. The Interconnected Customer acknowledges notice of, and consents to, the granting of the security referred to in this Clause.
  4. The Necessary Prior Distribution Network Upgrades are initially financed by the Power Producer and owned by the Power Producer over a period of X years from the date of payment for such works. DisCo is responsible for paying back the finance over a period of X years. In the event the X years period is insufficient to recover the finance of the Necessary Prior Distribution Network Upgrades, Parties shall after to extend the period for such additional period as may be necessary to recover the finance. After the term of X years (or such extended period), when the finance in the Necessary Prior Distribution Network Upgrades is recovered, the ownership of the assets will transfer to the DisCo with Full Title Guarantee.

# AVAILABILITY OF ELECTRICITY FROM THE DISTRIBUTION NETWORK AND POWER SYSTEM

* 1. The DisCo undertakes to the Power Producer that the Distribution Network shall be available daily to supply electricity to the Interconnected Customer for X hours between the hours of [X:XXpm and X:XX am] (“Grid Priority Hours”) in accordance with the requirements of Clause 7.2.
  2. The DisCo undertakes to the Power Producer to make electricity available from the Distribution Network to meet the Interconnected Customer’s demand requirements [XX%] of the time during the Grid Priority Hours which constitutes the **Grid Availability Standard**.
  3. Subject to Clause 7.4, the Power Producer shall ensure that its Generation Assets will provide electricity between the hours of [X:XX am and X:XX pm] daily (“**Power System** **Priority Hours**”) to the Interconnected Customer and, in the case that power from the Distribution Network is not available, will provide backup power during the Grid Priority Hours without a planned downtime to transition between the Distribution Network supply and the Power System supply.
  4. The Power Producer warrants to the Interconnected Customer, an availability of power to meet the Interconnected Customer’s capacity requirements [95%] of the time at all times of day (averaged annually) which constitutes the **Power System** **Availability Standard**.
  5. For the purpose of clarity, power is considered as available from the Distribution Network if the grid voltage and frequency at the Grid Point of Interconnection does not deviate more than plus/minus 5% from the nominal values as specified in Schedule 5, and as defined in the Technical Codes.
  6. For the purpose of clarity, power is considered as available to the Interconnected Customer if the voltage and frequency at the Customer Point of Interconnection does not deviate more than plus/minus 5% from the nominal values as specified in Schedule 5, and as defined in the Technical Codes.
  7. If electricity from the Distribution Network is available during the Grid Priority Hours, the Power Producer will purchase from the DisCo and provide to the Interconnected Customer electricity from the Distribution Network in an amount equal to what is required by the Interconnected Customer during the Grid Priority Hours.
  8. Each Party shall make every reasonable effort to prevent Unscheduled Outages. The Power Producer is not responsible for damage to the Interconnected Customer’s equipment due to an Unscheduled Outage.

# SALE OF ELECTRICITY BETWEEN THE POWER PRODUCER AND THE INTERCONNECTED CUSTOMER

* 1. The Power Producer shall sell electricity derived from both the Generation Assets and the Distribution Network to the Interconnected Customer for a tariff of [X2] NGN/kWh (“**Blended Tariff**”), as set in Schedule 6. Except as other provided in Clause 8.2, the Client shall remain obligated to pay the Power Producer for all power consumed pursuant to this Agreement.
  2. The Interconnected Customer shall accept a minimum of [X3] kWh during Power System Priority Hours in total every 6 months (“**Minimum Consumption**”) commencing on the Date of Commercial Operation. If the Interconnected Customer does not accept that minimum amount of kWh, the Interconnected Customer will pay the deficit between the number of kWh consumed and the Minimum Consumption number of kWh multiplied by the weighted average Blended Tariff for that time period as stipulated in Clause 8.1 and Schedule 6.

# COLLECTION OF ELECTRICITY PAYMENT ON BEHALF OF THE DISTRIBUTION NETWORK MAIN GRID

* 1. In accordance with Clause 5.2.5, the Power Producer shall collect the payment from the Interconnected Customer on behalf of the DisCo for electricity consumption from the main grid at a tariff of [X4] NGN/kWh during the Grid Priority Hours (“**DisCo Grid Tariff**”) (more details provided in Schedule 7).
  2. Notwithstanding the provision of Clause 9.1 above, where the DisCo seeks to increase the availability of electricity supply from the Distribution Network above the Grid Priority Hours, the DisCo shall inform and obtain the approval of the Power Producer in writing.
  3. The Power Producer can opt for electricity from the DisCo outside of the Grid Priority Hours (i.e., during the Power System Priority Hours to complement its generation assets) to serve the Interconnected Customer, but it is not obligated to. The DisCo is not obligated to provide electricity supply during the Power System Priority Hours.

# UNDERPERFORMANCE

**Underperformance by the Power Producer**

* 1. If power is not available at the power voltage and frequency levels defined in Clause 7.6, then the Power Producer will remedy the situation within 60 days. Until the situation is remedied, the Interconnected Customer may choose to self-operate a supply solution until the Power Producer restores power availability in compliance with Clause 7.6 but must coordinate the switch with the Power Producer. But in that case, the Interconnected Customer takes on operational responsibility (e.g., if their genset creates power quality issues and damages equipment, the Power Producer is not responsible).
  2. In the event the Power Producer provides less than an average of [95%] power availability over 3 consecutive months, reviewed on a rolling basis, by reasons not due to a Force Majeure event, Transmission Network Failure, or breach by the Interconnected Customer of its obligations under this Agreement, the Power Producer and the Interconnected Customer shall pay the liquidated damages reflected in the table below.

|  |  |
| --- | --- |
| **Power Producer Availability Standard Deviation** | **Liquidated Damages (% of Previous Month’s Blended Tariff)** |
| 95 – 100% | 0% |
| 90 – 94.9% | 10% |
| 85 – 89.9% | 20% |
| 80 – 84.9% | 30% |
| 70 – 79.9% | 40% |
| 60 – 69.9% | 50% |
| 50 – 59.9% | 60% |
| 49.99% or less | 100% |

**Underperformance by the DisCo**

* 1. In accordance with the obligation of the DisCo to meet the Grid Availability Standard under the terms as provided in Clause 7, the Power Producer shall purchase electricity from the DisCo in accordance with Clause 9.1. However, where electricity is not made available by the DisCo from the Distribution Network during the Grid Priority Hours as required in Clause 7.1, the Power Producer shall be required to supply electricity to the Interconnected Customer from its Generation Assets to maintain reliable supply to the Interconnected Customer. If the DisCo Distribution Network falls below the Grid Availability Standard during the Grid Priority Hours in a given calendar month, the DisCo will be liable to pay the Power Producer the **Recoverable Expenditure**, to be deducted from the Premium Fee portion in the DisCo invoice (paid by the operator quarterly).

The Recoverable Expenditurefor any given month is calculated by subtracting the percentage availability of the grid during the Grid Priority Hours during the month from XX%, and then multiplying it by the total kWh supplied during Grid Priority Hours during the respective month and multiplying that by the DisCo Premium Fee or Extraordinary Backup Tariff.

* 1. The Recoverable Expenditure will be subtracted from the Premium Fee amount the Power Producer owes the DisCo for electricity supplied from the Distribution Network each month. When the Recoverable Expenditure is greater than the amount the Power Producer owes the DisCo for electricity supplied from the Distribution Network for a given month, the remaining liability the DisCo owes the Power Producer will be carried over to the subsequent invoice(s) until the full amount is recovered. Each twelve (12) months, the DisCo will settle any debts owed to the Power Producer for the Electricity Supply Discrepancy within 60 days of receiving an invoice from the Power Producer. In the event of termination or expiration of this Agreement, the DisCo shall pay any outstanding Recoverable Expenditure within 60 days of the termination or expiration of the Agreement.

# PAYMENT TERMS

* 1. By the 5th Business Day following the last day of the month for each month of the Agreement period, the Power Producer shall provide the DisCo with a schedule for the prior month detailing any amounts due by the DisCo to the Power Producer, including for the repayment of the financing for the Necessary Prior Distribution Network Upgrades detailed in Clause 13.8 and any Recoverable Expenditure as detailed in Clause 10.
  2. By the 7th Business Day following the last day of the month for each month of the Agreement period, the DisCo shall provide the Power Producer with an invoice for the prior month detailing the net amount the Power Producer owes the DisCo or the DisCo owes the Power Producer. The invoice will detail the amount of electricity the Power Producer purchased from the DisCo and any amounts due by the DisCo from the schedule detailed in Clause 11.1.
  3. Within 14 business days following the issuance of an invoice from the DisCo, the net amount the Power Producer owes the DisCo shall be payable into a bank account designated by the DisCo.
  4. Where the Power Producer fails to pay the DisCo for the net of any amounts due to the DisCo pursuant to Clause 11.3, on the day it is due and payable, interest shall accrue at the Default Interest Rate on the unpaid balance from the date on which payment is due until the date on which payment is received by the DisCo. Where the Power Producer fails to pay the DisCo for two consecutive invoices, the DisCo has the right to bill the DisCo Grid Tariff to the customer directly. The Power Producer still reserves the billing for grid premium fee to guarantee supply during Grid priority period.
  5. Pursuant to Clause 11.5, each twelve (12) months, the DisCo will settle any debts owed to the Power Producer for the Electricity Supply Discrepancy within 30 days of the Power Producer issuing an invoice to the DisCo. Where the DisCo fails to pay the invoice on the date it is due and payable, interest shall accrue at the Default Interest Rate on the unpaid balance from the date on which payment is due until the date on which payment is received by the Power Producer.
  6. By the 5th Business Day following the last day of the month for each month of the Agreement period, the Power Producer shall provide the Interconnected Customer with an invoice for electricity supplied during the prior month.
  7. Within 15 days following the issuance of an invoice from the Power Producer, the amount the Interconnected Customer owes the Power Producer shall be payable into a bank account designated by the Power Producer.
  8. Where the Interconnected Customer fails to pay the Power Producer for electricity supplied pursuant to Clause 11.8, on the day it is due and payable, interest shall accrue at the Default Interest Rate on the unpaid balance from the date on which payment is due until the date on which payment is received by the Power Producer. [[3]](#footnote-6)Furthermore, where the payment of any invoice issued to the Interconnected Customer under this Agreement is overdue: the Operator shall have the right to not procure or pay for diesel; and the Interconnected Customer shall have the obligation to procure and pay for diesel from the Operator’s diesel vendor (or such other diesel vendor acceptable to the Operator) by (1) directly paying the invoice of the diesel vendor or (2) prepaying for diesel to the Operator for onward payment of the invoice of the diesel vendor, which prepayment shall be reflected in the invoice for the Blended Tariff.
  9. In the event that Interconnected Customer fails to make full or timely payments (in accordance with the provisions of this Agreement), of any sums due under this Agreement after same has been demanded, The Power Producer may, upon the expiration of five (5) days after making a demand for outstanding sum(s) due from Interconnected Customer, whether pursuant to an invoice by Power Producer or otherwise. The Power Producer shall also have the right to terminate this Agreement in accordance with Clause 15.3 and Clause 15.5.2(b) or temporarily cease delivery of the electrical power to Interconnected Customer.

# TARIFF SCHEDULE AND ADJUSTMENTS

* 1. The Power Producer shall provide electricity to the Interconnected Customer at the tariffs agreed by Parties in this Agreement and as outlined in Schedule 6.
  2. Parties agree that the initial Blended Tariff referred to in Clause 8.1 (subject to Clause 12.3), the Minimum Consumption referred to in Clause 8.2, and the Grid Availability Standard referred to in Clause 7.2 shall be subject to review or adjustment biannually (twice a year) commencing on the Date of the Commercial Operation, unless agreed otherwise by all Parties.
  3. Notwithstanding any provision of this Agreement to the contrary, where there is a Commission approved change to the DisCo Grid Tariff through annual, minor or extraordinary reviews or where the Grid Availability Standard is changed by the Parties which effects which Multi-Year Tariff Order (MYTO) Tariff Band the Interconnected Customer falls under, Parties agree to cause the Blended Tariff referred to in Clause 8.1 to be reviewed within 48 hours of the change in order to reflect such change(s). The Blended Tariff can be modified in proportion to the DisCo Grid Tariff change and the amount of electricity from the DisCo’s Distribution Network consumed by the Interconnected Customer within the next billing cycle.
  4. The current state of the Market Conditions detailed in Schedule 6 will be reviewed by the Parties every 6 months. If the Market Conditions in Schedule 6 exceed the high threshold or go below the low thresholds set out in paragraph 1.6 of Schedule 6 at that time, the Parties agree to review and adjust the Blended Tariff Schedule referred to in 9.1, the Minimum Consumption referred to in Clause 8.2, and the Grid Availability Standard referred to in Clause 7.2 in order to reflect such change(s).
  5. The Blended Tariff Schedule can be adjusted according to Clauses 12.3 and 12.4.
  6. The Parties agree that an inspection of accounts for the purpose of an adjustment of tariffs may be carried out by the Commission.
  7. Parties shall keep a historical record of accounts beginning on the Effective Date and commensurate to the Initial Term and any Renewal Terms of the Agreement, and keep this available for 5 years after termination of the Agreement.

# CONNECTION PROTOCOL

**Generation Assets Connections**

* 1. Except where Parties agree to do otherwise, the Power Producer shall install the Generation Assets, connect them to the Distribution Network and construct all the foundations, buildings, fencing, and other infrastructure required for installing, securing and accessing the Generation Assets.
  2. The Generation Assets shall be as depicted in Schedule 4.
  3. The Power Producer can subcontract the activities outlined in this Clause 13 and elsewhere under this Agreement, but the Power Producer bears the responsibility for meeting its terms of this Agreement.

**Distribution Network Maintenance and Upgrades**

* 1. Prior to commencement of the Date of Commercial Operation of this Agreement, the DisCo will make the Distribution Network upgrades as detailed in Schedule 3 needed to maintain the required reliability detailed in Clause 7.2 during Grid Priority Hours (“**Necessary Prior Distribution Network Upgrades**”). The capital expense of the grid upgrades detailed in Schedule 3 shall be financed by the Power Producer. The DisCo is responsible for installing the equipment detailed in Schedule 3 and covering the labor costs for installation.
  2. The DisCo will repay the Power Producer for financing the Necessary Prior Distribution Network Upgrades detailed in Schedule 3 through payments of XX NGN per month, reflecting the cost of capital as detailed in Schedule 3, starting one month after the Date of Commercial Operation.
  3. Subject to any approval that may be provided by the Commission, and except where the DisCo and Power Producer agree otherwise, the DisCo shall bear the costs for any additional Distribution Network upgrades or maintenance required to meet the DisCo’s reliability requirements as outlined in Clause 7.

**Metering System**

* 1. The DisCo at its cost and expense shall in compliance with the Metering Code, procure, install and maintain all meters and metering devices, equipment, electrical circuitry, recording equipment, communications equipment and related equipment used for measuring electricity delivered by the Distribution Network at the Grid Point of Interconnection (collectively referred to as the “**Grid Metering System**”).
  2. The Power Producer at its cost and expense shall in compliance with the Metering Code and the Technical Code to procure, install and maintain all meters and metering devices, equipment, electrical circuitry, recording equipment, communications equipment and related equipment used for measuring electricity delivered to the Interconnected Customer by the Generation Assets of the Power Producer (collectively referred to as the “**Generation Metering System**”).
  3. **Compliance, Integrity and Accuracy of Metering System** 
     1. The specifications, operation and measurement accuracy of the Metering Systems shall comply with the standards and specifications set out in the Metering Code and Technical Code, and with Applicable Law and Good Industry Practices.
     2. Power Producer may maintain additional meters for operational purposes which shall conform to the Metering Code.
     3. Upon request by the DisCo or the Power Producer, upon five (5) days’ notice and not more frequently than once a month, the DisCo, Power Producer, or Interconnected Customer may request an inspection or test of the Metering Systems.
     4. Parties agree that the Power Producer may, at its own cost and expense, install and maintain its own Metering Systems for the purpose of measuring the accuracy and integrity of the DisCo’s Metering Systems.
     5. The Power Producer, the DisCo, and the Interconnected Customer undertake not to tamper with or otherwise interfere in anyway with any part of the Metering System, and shall use reasonable precautions in accordance with Applicable Law, Good Industry Practices and the Metering Code to ensure that the Metering System is secure and is not tampered with by any other person.
     6. If, at any time, any Party discovers that any part of the Metering System has been tampered with, or as a result of any other action or inaction such device may be unfit for the purpose of such device, that Party shall report such event to the other Parties and Parties will correct the metered volumes and provide payment reconciliation accordingly.

**Scheduled Maintenance Outages**

* 1. The Power Producer is entitled to Scheduled Maintenance Outages at its own cost. The schedule for Scheduled Maintenance Outages shall be established as follows:
     1. any Scheduled Maintenance Outages shall be during the hours of Grid Priority Hours and planned in consultation with the Interconnected Customer at least 5 days in advance.
  2. The DisCo is entitled to Scheduled Maintenance Outages to ensure reliability from its supply feeder to the Interconnected Customer. The schedule for Scheduled Maintenance Outages shall be established as follows:
     1. any Scheduled Maintenance Outages shall be during the hours of Power System Priority Hours.
  3. The Power Producer shall cooperate and use their reasonable endeavors to accommodate any reasonable request by a Party to reschedule any Scheduled Maintenance Outage provided:
     1. such request would not defer maintenance required at a particular time by Good Industry Practices;
     2. the Party requesting a schedule change agrees to compensate the other Parties for any reasonable additional costs and expenses caused by such a rescheduling;
     3. for the avoidance of doubt, any of the Parties shall be entitled to reschedule a Scheduled Maintenance Outage(s) without compensating the other Parties if and to the extent that such rescheduling meets the conditions in Clauses 13.13.1 and 13.14.1 above, and the rescheduling is required for health or safety reasons, to avoid damage (or the threat of imminent damage) to the Interconnected Customer’s facility or equipment, or if such rescheduling is required by Good Industry Practices.
  4. Unscheduled and Forced Outages
     1. Either Parties shall advise each other of the need of any Unscheduled Outage, together with the proposed commencement date, in arrears if the interruption was immediate and estimated duration of the work to be undertaken to restore delivery shall be provided.
     2. If the interruption is not immediate, Parties shall agree the period during which such unscheduled outage may be undertaken.

# REPRESENTATION AND WARRANTIES

* 1. Each Party represents and warrants to the other, on the date of this Agreement, and continuing throughout the Term that:
     1. it is duly organized under the Applicable Laws of its jurisdiction of formation and that it has the requisite legal power and authority to enter into, and carry out its obligations under, this Agreement;
     2. it shall continue to have all necessary corporate power and authority (corporate and regulatory) to carry on its business as presently conducted and to perform its obligations under this Agreement;
     3. the execution and delivery of this Agreement and the consummation of the transactions contemplated thereby have been duly authorized by all necessary corporate actions on its part;
     4. Agreement constitutes legal, valid and binding obligations enforceable against it in accordance with the terms hereof;
     5. the execution of this Agreement is not prohibited by its constituent documents nor does its execution contravene provisions of any Applicable Law;
     6. neither it nor any of its owners, subsidiaries, directors or officers is subject to Sanctions, or is owned or controlled by a person that is subject to Sanctions.
     7. it is not engaged in any activity, production, use, distribution, business, or trade involving any of the items on the exclusion list of the European Development Finance Institution (EDFI) (available on EDFI’s website—https://www.edfi.eu/wp/wp-content/uploads/2017/09/EDFI-Exclusion-List\_-September-2011.pdf).
     8. it has an internal anti-bribery and corruption policy and it or (any of its directors or shareholders) has not been found by any judicial, administrative, supervisory, or criminal process, or alleged under any judicial, administrative, supervisory or criminal inquiry, to have committed or engaged in any act that gives rise to any corrupt practice, fraudulent practice, anti-competitive practice, money laundering or terrorism financing
     9. the execution, delivery, and performance of this Agreement have been duly authorized by all requisite actions and will not constitute a violation of:
        1. any statute, judgment order, decree or regulation of any court, commission, government authority or arbitral tribunal applicable or relating to itself, its assets or its functions, or
        2. any other documents, or to the best of its knowledge any indenture, contract or agreement to which it is a party or by which it may be bound.
     10. there are no actions, suits or proceedings pending or, to the best of its knowledge threatened against it before any court, government authority or arbitral tribunal that could reasonably be expected to restrain it from performing or result in a material adverse effect on its ability to perform its duties and obligations under this Agreement; and
     11. no representation or warranty made by it herein contains any untrue or misleading statement.
  2. The Operator, the Interconnected Customer, and the DisCo hereby mutually indemnify and hold harmless each other in full against any and all costs, expenses, damages, losses, suits, claims and liabilities, including claims from the Customer and third-party claims, arising out of or in connection with a breach of representations and warranties, and the execution and performance of this Agreement.

# TERMINATION

* 1. **Termination by Interconnected Customer**

The Interconnected Customer may terminate this Agreement on written notice to the Power Producer where it has already utilized the Dispute Resolution procedures outlined in Clause 27 and still wishes to terminate this agreement, and where:

* + 1. the Power Producer’s Permit expires and is not renewed within 60 days of the expiration or the Permit is cancelled by the Commission;
    2. the Power Producer abandons the Project for any period of more than 3 consecutive months after the Date of Commercial Operation;
    3. the installation of the Power System has not been completed and is not in commercial operation (in other words, the Date of Commercial Operation does not occur) within 12 months after the Signature Date by reasons not due to a Force Majeure event or a breach of the Interconnected Customer obligations under this Agreement (or as agreed between the Parties);
    4. the Power Producer becomes unable to pay its debts (as defined by section 4 of the Bankruptcy Act 1979 and section 572 of the Companies and Allied Matters Act 2020) or makes any arrangement or composition with its creditors generally or has a receiver, manager, liquidator, administrator or trustee in bankruptcy appointed or suffers any event analogous to the foregoing in any jurisdiction;
    5. the Power Producer is found to commit a breach of Clause 5.2 and fails to remedy the breach within 60 days (or such other extended timeline as may be agreed among the Parties) after receiving the notice of breach executed by the Interconnected Customer.
    6. The Power Producer is found to provide less than an average of [90%] power availability over 12 consecutive months or less than [95%] power availability over two (2) consecutive 12-month periods (where the power availability is averaged each 12-month period – i.e. if Year 1’s power availability is below [95%], and Year 2’s power availability is below [95%]), and the Power Producer and Interconnected Customer fail to agree to a remedy within 30 days (or as agreed between the Parties) after the Interconnected Customer notified the Power Producer.
    7. The Interconnected Customer is unable to consume the amount of electricity required to meet the Minimum Consumption for two (2) consecutive twelve (12) month periods and the Parties are not able to agree upon a reduced Minimum Consumption level or alternative solution within 60 days of the Power Producer or Interconnected Customer notifying the Parties.
  1. **Termination by DisCo**

The DisCo may terminate this Agreement on written notice to the other Parties where it has already utilized the Dispute Resolution procedures outlined in Clause 27 and still wishes to terminate this agreement, and where:

* + 1. the DisCo integrates the Interconnected Customer into the Distribution Network before the expiration of the Initial Term or Renewal Term, which may only be invoked in the event of the following:

1. Changes due to applicable law or regulation or planned distribution network expansion.
2. the Power Producer fails to pay any amount due to the DisCo, provided that the DisCo has given the Power Producer not less than 60 days’ notice to remedy such failure and the non-payment has not been cured within such 30 day period;
3. the Power Producer commits a material breach of this Agreement, other than that provided in Clause 15.2.1 (a) above, which in the case of a breach which is capable of remedy has not been remedied within 60 days (or such other period as may be agreed by the Power Producer and the DisCo) of the DisCo notifying the Power Producer of the breach.
   * 1. the Power Producer becomes insolvent and unable to pay its debts (as defined by section 4 of the Bankruptcy Act 1979 and section 572 of the Companies and Allied Matters Act 2020) or makes any arrangement or composition with its creditors generally or has a receiver, manager, liquidator, administrator or trustee in bankruptcy appointed or suffers any event analogous to the foregoing in any jurisdiction;
     2. any of the representations made by the Power Producer under this Agreement is not true and correct in all material respects and this has a material adverse effect on the DisCo or the performance of the Power System’s Operation under this Agreement.
   1. **Termination by Power Producer**

The Power Producer may terminate this Agreement on written notice to the other Parties where it has already utilized the Dispute Resolution procedures outlined in Clause 27 and still wishes to terminate this agreement, and where:

* + 1. The DisCo does not provide an average monthly power availability of [XX[[4]](#footnote-7)%] during the Grid Priority Hours for any 3 consecutive months (where the power availability is averaged each month separately – i.e. if Month 1’s power availability is below [XX%], Month 2’s power availability is below [XX%], and Month 3’s power availability is below [XX%]) for reasons not related to a Transmission Network Failure, and fails to remedy the problem within 30 days (or as agreed between the Parties) after the Power Producer notifies the DisCo,
    2. The DisCo’s Distribution License expires and is not renewed within 60 days of its expiration or the DisCo’s Distribution License is cancelled by the Commission;
    3. The DisCo becomes unable to pay its debts (as defined in section 572 of the Companies and Allied Matters Act 2020) or makes any arrangement or composition with its creditors generally or has a receiver, manager, liquidator, administrator or trustee in bankruptcy appointed or suffers any event analogous to the foregoing in any jurisdiction;
    4. the DisCo commits a material breach of this Agreement which in the case of a breach which is capable of remedy has not been remedied within 30 days (or such other period as may be agreed by the Power Producer and the DisCo) of the Power Producer notifying the DisCo of the breach;
    5. Any of the representations made by the DisCo under this Agreement is not true and correct in all material respects and this has a material adverse effect on the Power Producer or the performance of the DisCo’s obligations under this Agreement.
    6. DisCo does not make the Necessary Prior Distribution Network Upgrades within 12 months of the Effective Date and the Parties have not agreed to a remedy within 30 days of the Power Producer notifying the DisCo of the breach;
    7. the Interconnected Customer commits a breach of Clause 5.5 which has an adverse effect on the Project and fails to remedy this breach within 30 working days (or as agreed between the Parties) of receiving the notice of breach;
    8. there are repeated incidents of vandalism, thefts of electricity which endanger the financial viability of the Power Producer’s energy supply and has a material adverse effect on the Project.
    9. the Interconnected Customer becomes insolvent and unable to pay its debts (as defined in section 572 of the Companies and Allied Matters Act 2020) or makes any arrangement or composition with its creditors generally or has a receiver, manager, liquidator, administrator or trustee in bankruptcy appointed or suffers any event analogous to the foregoing in any jurisdiction;
    10. Any of the representations made by the Interconnected Customer under this Agreement is not true and correct in all material respects and this has a material adverse effect on the Power Producer or the performance of the Interconnected Customer’s obligations under this Agreement;
  1. **Termination of DisCo Obligations**
     1. Where the DisCo is at fault for termination:
        1. Where Clause 15.3.1, Clause 15.3.2, Clause 15.3.3, Clause 15.3.4, Clause 15.3.5, and Clause 15.3.6 occur and the DisCo’s obligation in this Agreement is terminated, the DisCo shall pay compensation to the Power Producer;
        2. Where Clause 15.3.1, Clause 15.3.2, Clause 15.3.3, Clause 15.3.4, Clause 15.3.5, and Clause 15.3.6 occur and the DisCo’s obligation to provide electricity to the Interconnected Customer per this Agreement is terminated, the Power Producer and the Interconnected Customer remain obligated by this Agreement on the following basis:
           1. The Power Producer shall remain obligated to provide electricity for sale to the Interconnected Customer during the Power System Priority Hours without the obligation to backup grid supply during the Grid Priority Hours;
           2. The Interconnected Customer shall purchase electricity from the Power Producer during the Power System Priority Hours at the Blended Tariff in schedule in Schedule 6 until the Power Producer proposes a revised tariff for electricity supplied during the Power System Priority Hours, the Grid Priority Hours and a revised Minimum Consumption within 60 days of the DisCo’s obligation to supply electricity per this Agreement terminating (or such other period as may be agreed by the Power Producer and the Interconnected Customer); and
           3. The Interconnected Customer will either accept or reject a revised tariff for electricity supplied during the Power System Priority Hours and a revised Minimum Consumption within 60 days of receiving a letter with the proposed values from the Power Producer (or such other period as may be agreed by the Power Producer and the Interconnected Customer). For the avoidance of doubt, where the Interconnected Customer and the Power Producer are aligned on the revised tariff electricity supplied during and/or outside the Power System Priority Hours and a revised Minimum Consumption, this Agreement shall take the form of a bi lateral arrangement and the Disco’s obligations contained under this Agreement shall become inapplicable (without prejudice to any obligations that had arisen prior to termination of Disco’s obligations).
        3. If the Power Producer’s proposed revised tariff and Minimum Consumption is rejected and the Interconnected Customer and Power Producer cannot agree on a revised tariff and Minimum Consumption or alternative arrangement within 60 days (or such other period as may be agreed by the Power Producer and the Interconnected Customer), the Agreement shall be terminated pursuant to Clause 15.4.1 unless the Parties agree to an alternative arrangement.
  2. **Consequences of Termination**
     1. If the DisCo’s obligation is terminated or the Agreement is terminated pursuant to Clause 15.3.1, Clause 15.3.2, Clause 15.3.3, Clause 15.3.4, Clause 15.3.5, Clause 15.3.6, Clause 15.1.7, 15.3.7, 15.3.8, Clause 15.3.9, Clause 15.3.10, and Clause 15.3.11, the DisCo shall repay the Power Producer any outstanding amount owed to the Power Producer for the Necessary Prior Distribution Network Upgrades financed by the Power Producer detailed in Schedule 3 within 12 months of the Power Producer notifying the DisCo’s that the DisCo’s obligations are terminated (or other period agreed upon by the Power Producer and DisCo).
        1. If the Agreement is terminated where the Power Producer is at fault pursuant to Clause 15.1.1, Clause 15.1.2, Clause 15.1.3, Clause 15.1.4, Clause 15.1.5, Clause 15.1.6, Clause 15.2.1, Clause 15.2.2, Clause 15.2.3, and Clause 15.2.4, the DisCo is not obligated to continue repay the Power Producer any outstanding amount owed to the Power Producer for the Necessary Prior Distribution Network Upgrades from the date of termination.
     2. The consequences of termination by the Power Producer and the Interconnected Customer shall be as follows:
        1. Where the termination is as a result of the Power Producer’s breach:
           1. Where termination occurs, pursuant to Clause 15.1.1, Clause 15.1.2, Clause 15.1.3, Clause 15.1.4, Clause 15.1.5, Clause 15.1.6, Clause 15.2.1, Clause 15.2.2, and Clause 15.2.3, the Power Producer shall undertake such restorations to the land, rooftop, and environment required to restore it back to good condition.
        2. Where the termination is as a result of the Interconnected Customer’s breach:
           1. Where termination occurs, pursuant to Clause 15.1.7, 15.3.7, 15.3.8, Clause 15.3.9, Clause 15.3.10, and Clause 15.3.11, the Interconnected Customer shall have the option to:

1. (if offered by the Power Producer) purchase the Power System at Fair Value from the Power Producer
2. pay the Power Producer a termination fee of 25% of the book value of the Power System assets in between year 1 and year 10, before the expiration the Term of the Agreement, where the date is from the Date of Commercial Operation; in addition shall pay the balance of the grid upgrades cost, if the grid upgrades cost has not been paid in full by the disco as at the date of termination (see Schedule 4 for details on asset cost, depreciation schedule and termination fee), or
3. pay to the Power Producer other compensation as agreed to by the Parties and/or the Commission.

* + - * 1. And, where termination occurs, pursuant to Clause 15.1.7, 15.3.7, 15.3.8, Clause 15.3.9, Clause 15.3.10, and Clause 15.3.11, the Power Producer shall pay 5% of the termination fee received from the Interconnected Customer to the DisCo.
    1. The DisCo may set off any liability of the Power Producer to pay the amount the Power Producer owes the DisCo for electricity supplied from the Distribution Network or any other costs (where applicable) to the DisCo against any compensation due from the DisCo to the Power Producer.
    2. The Power Producer may set off any liability of the DisCo to pay the amount the DisCo owes the Power Producer for Electricity Supply Discrepancy or any other costs (where applicable) to the Power Producer against any compensation due from the Power Producer to the DisCo.
    3. Subject to the provision of this Agreement, where termination of this Agreement occurs, the DisCo would immediately re-integrate the Interconnected Customer in order to provide electricity supply for as long as necessary until/if another Power Producer is ready to take over operations.
  1. Upon termination, the Power Producer shall:
     1. at its own cost remove the Power Producer’s Power System which it has not agreed to or does not intend to transfer to the Interconnected Customer, or negotiate a separate contract with the Interconnected Customer involving the use of those assets, or transfer the Generation Assets to the Interconnected Customer at Fair Value or other agreed upon amount; and
     2. at its own cost, disconnect any connection of its Generation Assets to the Distribution Network and restore the connections which existed prior to the connection of its generators or alternative arrangement agreed upon by the Parties.
  2. On the termination date, the Power Producer shall:
     1. deliver up to the DisCo all materials, documents, records, data and other information of whatever nature in the Power Producer’s possession, custody or power belonging to the DisCo and relating to the Distribution Network and Grid Point of Interconnection, and the performance of the obligations under this Agreement and required for the continued operation and maintenance of the Distribution Network;
     2. deliver up to the Interconnected Customer all materials, documents, records, data and other information of whatever nature in the Power Producer’s possession, custody or power belonging to the Interconnected Customer and relating to the Generation Assets and Customer Point of Interconnection, and the performance of the obligations under this Agreement and required for the continued operation and maintenance of the Generation Assets transferred to the Interconnected Customer.

# FORCE MAJEURE

* 1. A party is not liable for failure to perform its obligations if such failure is as a result of:
     1. natural disasters (including fire, flood, earthquake, storm, hurricane or other natural disaster);
     2. war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, government sanction, blockage, embargo, labour dispute, strike (excluding any strikes by staff of either the DisCo or Power Producer), pandemics, epidemic, Transmission Network Failure outside of the DisCo’s control, a delay by the Relevant Authority in issuing any Authorization necessary; provided that a Party has made all necessary applications for such Authorization in a timely and correct manner (“**Force Majeure**”).
  2. In the case of Force Majeure due to a **Transmission Network Failure** outside of the DisCo’s control, which is defined as the DisCo not receiving electricity supply from the transmission system substation that supplies the distribution feeder that supplies the Interconnected Customer for more than two (2) hours during the Grid Priority Hours and which can be verified from the Transmission Company of Nigeria (TCN), the DisCo shall notify the Parties within 7 days and provide evidence of the hours during which the Transmission Network Failure caused the DisCo to not be able to meet its obligation to supply power.
     1. The Power Producer’s obligation to provide [95%] reliability of power supply to the Interconnected Customer is not suspended unless agreed otherwise by the Power Producer and the Interconnected Customer.
     2. In a given month, if the DisCo is able to meet its Grid Availability Standard despite the Transmission Network Failure(s) occurring in the same month, then no action is needed.
  3. If any Force Majeure Event occurs by reason of which a Party is unable to perform any of its obligations under this Agreement (or any part thereof), the Party shall inform the other Parties immediately no later than seven (7) days of the occurrence of a Force Majeure with full particulars thereof and the consequences thereof.
  4. The Party affected by the Force Majeure shall do what is reasonably within its means to rectify, prevent and reduce to a minimum and mitigate the effect of any delay occasioned by any Force Majeure Event, including recourse to alternate sources of services, equipment and materials; and as soon as reasonably possible, and in accordance with Good Industry Practice, ensure the resumption of normal performance of this Agreement after the cessation of any Force Majeure Event or its effects and shall otherwise perform its obligations under this Agreement to the extent not excused under this Clause.
  5. **Effects of a Force Majeure Event**

An Affected Party shall not be liable for any delay or failure in performing its obligations, including achieving the conditions for transfer of the Grant Assets, due to a Force Majeure Event or the effect on the Affected Party of the Force Majeure Event, provided that no relief shall be granted to the Affected Party to the extent that such failure or delay:

* 1. **Allocation of Costs during Force Majeure Events**

Upon occurrence of a Force Majeure Event, the respective costs attributable to such Force Majeure Event (The “Force Majeure Costs”), shall be borne by the Affected Party and neither Party shall be required to pay to the other Party any Force Majeure Costs.

* 1. **Prolonged Force Majeure Events**
     1. The occurrence of Force Majeure Event and the continuation of such Force Majeure Event for a period of 90 days or more from the date of the occurrence of such Force Majeure Event; or a series of related Force Majeure Events and the continuation in the aggregate of such Force Majeure Events for a period of 90 days or more shall be a Prolonged Force Majeure Event,
     2. In the event of the occurrence of a Prolonged Force Majeure Event, then either Party shall have the right, but not the obligation, to terminate this Agreement fortwith by delivering a notice of termination to the other Parties; provided that, such right of termination shall not apply during the implementation of a restoration of a Force Majeure Event or after the relevant performance of the obligation has been completely restored (insofar as may reasonably be determined by the Party giving the notice of termination).
     3. Notwithstanding the foregoing, where substantial performance is resumed by the Affected Party or the Parties have begun negotiations on how to remedy the Prolonged Force Majeure Event, the Parties shall be at liberty to further extend the period for the Prolonged Force Majeure Event, by an agreement in writing, where it is practicable in the circumstance to do so.

# CONFIDENTIAL INFORMATION

* 1. A Party shall not intentionally disclose or allow to be disclosed to any third party any Confidential Information concerning the other Parties or any information obtained under this Agreement and in furtherance to the execution of the Power System unless:
     1. the disclosure is expressly assented to in writing by the Party to which the Confidential Information belongs;
     2. the disclosure is subject to a legal obligation of disclosure.
  2. Each Party, after consultation with the others, shall adopt reasonable procedures to preserve the Confidential Information of the other Parties.
  3. No information shall constitute Confidential Information if:
     1. the information is generic in nature, or has at the relevant time become public knowledge or has been in the public domain, other than as a result of disclosure by the Parties or their representative;
     2. the information has at the relevant time become, already in the possession of the Parties free from any obligation of confidentiality to either of the Parties or any other person and has not been acquired by any person in breach of any obligations of confidentiality.
     3. the information is required to be disclosed by law or order of any court, tribunal or agency of competent jurisdiction or by any governmental body, department or agency having jurisdiction of it or by any equivalent laws or regulations of institutions or other equivalent authorities in jurisdictions outside Nigeria; or
     4. the information is expressly stated in writing to be non-confidential.

# CONFLICT OF INTEREST

The Parties to this Agreement declare that there is no existing conflict of interest which would affect their entry into this Agreement.

# AMENDMENT

No amendments to this Agreement shall be effective unless it is in writing and signed by the Parties or their authorized representatives.

# WAIVERS

Save where expressly set out herein to the contrary, a waiver of any term or provision of this Agreement shall only be effective if given by a written instrument executed by the Party waiving the provision of this Agreement and no forbearance, indulgence or inaction by any Party at any time to require performance of any of the provisions of this Agreement nor any single or partial exercise of any such right shall, in any way, affect, depreciate or prejudice the right of such Party to require performance of that provision in the future.

# LICENSE

* 1. The Customer hereby grants, to the Power Producer and its agents, employees, contractors, subcontractors, assignees and relevant governmental authorities (the **“Relevant Parties**”) a non-exclusive license, easement and all other required rights to enable the Relevant Parties, use and have access to, on, over, under and across the Property and the Facility (including the roofs, rooms, cubicles, access ways, cable ways, connection points for electricity, water, air conditioning, and telecommunications, and other facilities on the Property) (collectively, the “Premises”) for the purposes of:
     1. designing, installing, constructing, altering, protecting, operating, maintaining, repairing, inspecting, monitoring or removing the Power System, as the Power Producer may from time to time require in order to properly carry out its obligations or enforce its rights under the Principal Agreement;
     2. for any other purpose that may from time to time be useful or necessary in connection with the activities set out in Clause 1.1 above, and under the Principal Agreement.
  2. During the term of this Agreement, the Customer shall ensure that rights granted to the Power Producer under this Agreement to use and access to the Property are preserved and protected. the Customer shall not, of its own accord, permit any third parties to interfere with such rights or access. Notwithstanding the provisions of this Agreement, the ownership to the Power System shall remain with the Power Producer.

# The Customer represents and warrants to the Power Producer that the Customer holds full legal and valid title to the Property and no lien or other encumbrance to which the Property may be subject would reasonably be expected to adversely impact the Power Producer’ rights hereunder

# NOTICES

* 1. All notices or other documents to be furnished by the Parties under or in connection with this Agreement shall be in English language and shall be sent to the addresses stated above and marked for the attention of the persons designated in this Clause 21. Notices and other documents may be sent by hand delivery, registered post, courier or email, provided that lawsuits arising out of or in connection with this Agreement may not be served by email.
  2. The addresses and contacts for the service of notices and other documents are as follows (or such other address or contacts as may be subsequently notified by the relevant Party in accordance with this Clause 21):

If to DisCo:

Address: [Placeholder]

Attention: [Placeholder]

Tel: [Placeholder]

E-mail Address: [Placeholder]

If to Power Producer:

Address: [Placeholder]

Attention: [Placeholder]

Tel: [Placeholder]

E-mail Address: [Placeholder]

If to Interconnected Customer:

Address: [Placeholder]

Attention: [Placeholder]

Tel: [Placeholder]

E-mail Address: [Placeholder]

Each Party shall notify the other in writing promptly of any change in the above address or contact person.

* 1. Except as referred to in Clause 21.4, a notice will be deemed to have been served:
     1. in the case of any communication made by letter, when delivered by hand, by recognized courier at the address set out in Clause 21.2; and
     2. if sent by email, on delivery to the recipient’s server and provided no error message is received by the sender.

* 1. If the deemed time of service is not during normal business hours, being between the hours of 09:00 and 17:00, the notice will be deemed served at the opening of business on the next Business Day.

# COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.

# SEVERABILITY

* 1. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

If one Party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

# ENTIRE AGREEMENT

* 1. This Agreement constitutes the entire Agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
  2. Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

# SUCCESSORS AND ASSIGNS/SUBCONTRACTING AND ASSIGNMENT

* 1. This Agreement is binding upon, and inures to the benefit of, the Parties and their respective successors and assigns.
  2. The Interconnected Customer may not assign or sub-contract any of its rights or obligations under this Agreement to any other third party without first obtaining the express written consent of the Power Producer, such consent not to be unreasonably withheld or delayed. The Power Producer may, without the consent of the Interconnected Customer, grant a lien or other security interest as speculated under Clause 6.4.
  3. The Interconnected Customer and DisCo permit the Power Producer to sub-contract its installation and maintenance obligations under this Agreement, provided that the Power Producer shall remain fully responsible for the performance of its obligations under this Agreement and the Power Producer shall procure that the sub-contractor complies with the obligations of the Power Producer under this Agreement as if it were a party to this Agreement. The Power Producer shall contractually impose no less onerous terms than those contained in this Agreement, in its agreement with its permitted sub-contractor(s).
  4. The Power Producer shall be entitled to transfer the ownership of the Generation Assets to its subsidiary, affiliate, or related company (the “**Transfer**”) without the consent of the Interconnected Customer provided that the Power Producer shall be responsible for the performance of its obligations under this Agreement, including but not limited to the provision of the Services.Where the Power Producer intends to transfer responsibility for the performance of its obligations under this Agreement to its subsidiary, affiliate, or related company, the Power Producer shall obtain the prior written consent of the Interconnected Customer and the DisCo before effecting such transfer.

# COST

Except as otherwise agreed, each Party shall bear its own costs incurred in connection with the negotiations, preparation and execution of this Agreement.

# GOVERNING LAW AND DISPUTE RESOLUTION

* 1. **Governing Law**

This Agreement and any disputes or claims arising out of or in connection with its subject matter or formation including non-contractual disputes or claims) are governed by and construed in accordance with the laws of the Federal Republic of Nigeria.

* 1. **Dispute Resolution**
     1. Except as otherwise expressly provided in this Agreement, any dispute between the Parties under this Agreement shall be resolved amicably by the Parties.
     2. In the event that such dispute cannot be resolved within one (1) month, the dispute shall be referred to a court of competent jurisdiction in the Federal Republic of Nigeria, and to this end, the Parties hereby consent to the jurisdiction of the Nigerian courts.
  2. **Expert Determination**
     1. In the event that the Parties are unable to resolve any dispute of a technical nature (a “**Technical Dispute**”) or of a commercial nature with respect to billing, metering or any matter (a “**Commercial Dispute**”), then such dispute shall be settled by an expert determination in accordance with the provisions of this Clause 27.3.
     2. Any Party may, by notice in writing (“**Notice of Expert Determination**”), give notice that it requires a Dispute to be referred to Expert Determination, and call on the other party to agree on the identity of the person to be appointed as Expert.
     3. The Expert shall be appointed on the mutual agreement of the Parties.
     4. If within ten (10) Days of the Notice of Expert Determination, the Parties are unable to agree on the identity of the person to be appointed as an Expert, either Party shall be entitled to submit a request to the CIArb and the Expert shall be appointed by the Chairman of the Lagos Chapter of the CIArb. The Chairman shall endeavour to appoint the Expert within fifteen (15) Days of service of the request, or as soon as reasonably practicable thereafter.
     5. The Expert shall, in consultation with the Parties and within seven (7) Days of its appointment, determine and give written notice to the Parties of the time and place of a preliminary conference (“**Preliminary Conference**”) which the Parties shall attend.
     6. Prior to the Preliminary Conference, the Expert may advise on any conditions he or she wishes to impose (including provision of security for the fees and expenses of the Expert) and request the agreement of the Parties to such conditions.
     7. At the Preliminary Conference, the Parties and the Expert shall discuss and agree on the issues in Dispute, or formulate a procedure by which those issues can be clarified and agreed; plan and agree on the determination process including a timetable for provision of submissions, documents and any other evidentiary material; make arrangements for confidentiality agreements to be signed by all persons taking part in the determination process, make such other planning and administrative arrangements as may be required in relation to the determination process, including in respect of the terms of appointment of the Expert.
     8. The Expert shall be independent of, and act fairly and impartially as between the Parties, giving each party a reasonable opportunity of putting its case and dealing with that of the other Party, and a reasonable opportunity to make submissions on the conduct of the determination process.
     9. The Parties shall continue to perform their contractual obligations notwithstanding the existence of the determination process.
     10. No later than thirty (30) Days after receiving the submissions and evidentiary material from the Parties, the Expert shall determine the Dispute between the Parties and notify such determination in writing to the Parties and the Expert’s determination shall contain a statement of reasons in such form as the Expert considers reasonably appropriate, having regard to the amount and complexity of the Dispute.  The Expert’s determination may include provision for the payment of interest on any monetary sum determined, in such amount as the Expert considers reasonable or as provided in this Agreement.
     11. Unless otherwise agreed in writing by the Parties or in the face of manifest error or fraud raised within thirty (30) days of the determination, the determination of the Dispute by the Expert shall be final and binding on the Parties. If a determination is rejected in writing by any Party on the basis of manifest error or fraud, the Dispute shall be referred to arbitration pursuant to Clause 27.4 (*Arbitration*) of this Agreement. Court of competent jurisdiction in the Federal Republic of Nigeria, and to this end, the Parties hereby consent to the jurisdiction of the Nigerian courts.
     12. All costs of the Expert Determination and all fees payable to the Expert shall be borne by the Party against whom the Dispute is determined.
  3. **Arbitration**
     1. Except as otherwise expressly provided in this Agreement, any dispute arising between the Parties touching on or concerning the interpretation or performance of this Agreement or anything therein contained or the rights and liabilities of the Parties, which the Parties cannot settle by amicable resolution, then either Party may serve on the other a demand for reference to arbitration.
     2. Where the parties are unable to amicably resolve the dispute between them within 30 days of notice of said dispute being given by one Party to the other Party, such Dispute shall be referred to an Arbitration Panel agreed and appointed by the Parties and shall be settled in accordance with the Arbitration and Conciliation Act, (CAP A18 Laws of the Federation of Nigeria 2004) or any statutory modification or re-enactment thereof for the time being in force.
     3. Within 30 days of such demand being served, each Party shall appoint an arbitrator and the two arbitrators thus appointed shall within fifteen 15 days appoint a third arbitrator. If the arbitrators do not agree on the appointment of such third arbitrator, or if either Party fails to appoint the arbitrator to be appointed by him, such arbitrator shall be appointed by the Chairperson of Chartered Institute of Arbitrators (UK), Nigeria Branch, who in making his appointment, shall have regard to the nature of the Dispute in question and appoint an Arbitrator who is experienced and skilled in the area of dispute, and when appointed, the third arbitrator will convene meetings and act as chairman thereof.
     4. The award of arbitrators shall be determined by a majority of the arbitrators, or in the absence of agreement of the arbitrators by the chairman. The arbitrators’ award shall be binding upon the Parties and the expenses of the arbitration shall be borne by the Parties in such proportion and manner as may be provided in the award. The Arbitration and Conciliation Act, (CAP A18 Laws of the Federation of Nigeria 2004) or any statutory modification or re-enactment thereof for the time being in force shall apply to the determination of the matter in dispute. The entire proceedings of the Arbitration shall be in English Language. The venue of the arbitration shall be Abuja, Nigeria or such other venue as may be mutually convenient, including by videoconference.
     5. Parties have a time period of 12 months after an infraction occurs to bring attention to the infraction to all Parties and begin resolving the dispute using the method outlined in Clause 30. If a Party does not move toward amicable dispute resolution within 12 months of the infraction, they cannot seek reparations from the other Party.
  4. **Interim Relief**
     1. Nothing in this Clause 27 shall preclude any Party from seeking interim and/or urgent relief orders from a court of competent jurisdiction in the Federal Republic of Nigeria. And to this end the Parties hereby consent to the jurisdiction of the Nigerian courts.

# INFORMATION AND DATA PROTECTION

* 1. Any information and data provided by a Party (hereinafter referred to as “**the Data Provider**”) to another Party (hereinafter referred to as “**the Data User**”) and used by the Data User directly or indirectly in the performance of the Agreement shall remain at all times the property of the Data Provider. It shall be identified, clearly marked and recorded as such by the Data User on all media and in all documentation.
  2. The Data User shall take all reasonable precautions to preserve the integrity and prevent any corruption or loss, damage or destruction of the Data Provider’s data and information
  3. In the event of termination of this Agreement, the Data User shall when directed to do so by the Data Provider, instruct all its agents and sub-contractors to, erase all information and data provided by the Data Provider and all copies of any part of the information and data provided by the Data Provider from the Data User’s systems and magnetic data.
  4. The Data User agrees to comply and have adequate measures in place to ensure that its staff, advisor, financier, consultant etc. complies at all times with the provisions and obligations contained in the Nigeria Data Protection Regulations 2019 (and as may be amended from time to time).
  5. All personal data acquired by the Data User from the Data Provider shall only be used for the purposes of this Agreement and shall not be further processed or disclosed without the consent of the Data Provider.
  6. Nothing in this Agreement shall oblige a Party in this Agreement to disclose any information to another party if it is of the view that to do so would be a breach of the Nigerian Data Protection Regulation 2019 and the GDPR.
  7. Each party shall indemnify and hold the other harmless for any breach of the Nigeria data protection Regulation 2019 and other relevant Regulations pertaining to this clause and Data Protection which renders the innocent party liable for any costs, fines, claims or expenses howsoever arising.
  8. In fulfilment of their obligations under this Clause the Power Producer and the DisCo shall have in place and will maintain at all times the Information Standards which will deal comprehensively with the protection of the confidentiality, integrity and security of all and any information supplied to them.
  9. Parties shall ensure that there are audit and accounting procedures in place to deal with the requirements of this clause.
  10. Parties shall ensure that their staff, consultants, privies, financiers, advisors etc. are reliably trained to ensure awareness of (and compliance with) their obligations under this clause.
  11. Further to this undertaking, the Power Producer and the DisCo agree to:
      + - 1. Provide each other with such information and access to their premises (upon giving reasonable notice) as may be reasonably required to satisfy themselves that the obligations referred to in the clause are complied with.
          2. Make such application for a change in their notification and take such other steps as may be reasonably practicable to afford each other’s access to information, which is reasonably required in connection with or for any purpose connected with the rights and obligations under this Agreement.
          3. Take all reasonable steps to ensure that all their agents, partners and sub-contractors comply with all the provisions set out above whenever they are processing each other’s Customers/Staff Personal information or data relating to this contract.

# INDEMNIFICATION

Each Party respectively, as an Indemnifying Party, shall indemnify, defend, and hold harmless the other Party, as an Indemnified Party, from and against all losses or damages relating to third party claims for personal injury or property damage arising from:

the breach of any representation, covenant or obligations of the Indemnifying Party under this Agreement; and

from any other act, omission or event for which the Indemnifying Party is liable pursuant to this Agreement.

1. **ANTI-BRIBERY AND CORRUPTION COMPLIANCE** 
   1. Each Party warrants and represents that neither it nor any of its Affiliates has made or will make, directly or indirectly any offer, payment, promise to pay, or any offer, gift, promise to give or authorization of the giving of anything of value to or for the use or benefit of any official or employee of the government of the Federal Republic of Nigeria or any political party or political party official or candidate for office, where such payment, gift, promise or advantage would violate any Applicable Laws or any applicable anti-bribery and anti-corruption regulations and codes of practice.
   2. Parties shall comply with all applicable anti-bribery and anti-corruption laws in any relevant jurisdiction (including those in the Federal Republic of Nigeria) and all applicable anti-bribery and anti-corruption regulations and codes of practice.
   3. Parties shall warrants and represent that they maintain and will maintain adequate policies and procedures to comply with Anti-Corruption Laws as well as adequate internal controls, including but not limited to using reasonable efforts to ensure that all transactions are accurately recorded and reported in its books and records to reflect truly the activities to which they pertain, such as the purpose of each transaction, with whom it was entered into, for whom it was undertaken, or what was exchanged.
   4. Parties shall retain such books and records for the period required by applicable law or a Party’s own retention policies, whichever is longer.
   5. In the event any Party becomes aware that it has breached an obligation in this paragraph, such Party will promptly notify the other Parties, subject to the preservation of legal privilege.
   6. Parties warrant that they have used and will use reasonable efforts to require any subcontractors, agents, or any other third parties to also comply with the foregoing requirements in this clause.
   7. Parties will provide information (which unless publicly available will include documentary evidence) in support of the any Party’s ongoing Know Your Customer (“KYC”) and Due Diligence process requirements, about its ownership, officers, and corporate structure (including any changes thereto).
   8. Only a Party (and not its Affiliates or a third party) shall make payments to the other Party, except with that other Party’s prior written consent.
2. **ANTI – TERRORISM**
   1. Each Party hereby represents and warrants that whatever consideration/payment that may be derived from this Agreement shall be used in compliance with all applicable anti-terrorist financing and asset control laws, including, but not limited to, the Terrorism (Prevention) Act and all United Nations Conventions on anti-terrorism.
   2. In this regard, the Parties agree to take all reasonable steps to ensure that no person or entity expected to receive such consideration/payment in connection with the implementation of this Agreement is named on any list of suspected terrorists. Parties undertake to fully comply with the provisions of the Terrorism (Prevention) Act.

# MUTUAL NON-CIRCUMVENTION CLAUSE

Each Party hereby irrevocably agrees and warrants that it and its Affiliates shall not, directly or indirectly, interfere with, circumvent, attempt to circumvent, avoid or bypass other Parties to this Agreement, or obviate or interfere with the relationship of any Party and its contacts for the purpose of gaining any benefit, whether such benefit is monetary or otherwise. This is without prejudice to the Power Producer’s right to install additional systems at the Property in respect of a separate contractual arrangement between the Interconnected Customer as customer and Power Producer as service provider.

1. **TRADE CONTROLS**

Parties confirm and warrant that they are knowledgeable about Trade Control Laws applicable to the performance of its agreement including the lists of Restricted Parties. Parties shall comply with all applicable Trade Control Laws in the performance of this agreement and in particular Parties undertake that they shall not, and shall procure that their Related Parties shall not, do anything in connection with the performance of this agreement which causes any Party to (a) be exposed to a risk of being added to any Restricted Party list or otherwise becoming the target of any national, regional or multilateral trade or economic sanctions under Trade Control Laws; or (b) be in breach of any Trade Control Laws.

# EXECUTION PAGE

**IN WITNESS WHEREOF** the Parties hereto have caused their respective common seals to be hereunto affixed the day and year first above written.

Signed by the within named

**\*DisCo Name\*. on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**...............................................**  **..............................................**

**[PLACEHOLDER] [PLACEHOLDER]**

**Authorised Signatory Authorised Signatory**

The common seal of the within named:

**\*Power Producer\* on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Has hereunto been affixed in the presence of:

**...............................................**  **..............................................**

**XXXXXXXXX XXXXXXXXXX**

**[Title] [Title]**

The common seal of the within named

**PLACEHOLDER on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Has hereunto been affixed in the presence of:

**...............................................**  **..............................................**

**[PLACEHOLDER] [PLACEHOLDER]**

**[Placeholder Title] [Placeholder Title]**

# ANNEX 1 – CONNECTION TERMS

# SCHEDULE 1 – CONNECTION PLAN

[Placeholder- to be added by Power Producer. Schematic and single-line diagram depicting connected Customer and Generation Assets interconnection]

Signature

Signature Power Producer:

Signature Interconnected Customer:

# SCHEDULE 2 – MAP OF THE CONNECTED CUSTOMER SITE AND POWER SYSTEM LAYOUT ON SITE

The Customer will also provide survey plan and geographic coordinates where needed and available.

[Placeholder - to be added by Power Producer.]

Signature :

Signature Power Producer:

Signature Interconnected Customer:

# SCHEDULE 3 – LIST OF NECESSARY PRIOR DISTRIBUTION NETWORK UPGRADES

**1.1 List of Assets and Costs of Assets:**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Asset** | **Quantity** | **Specification** | **Condition**[[5]](#footnote-8) | **Cost per Asset (NGN)** | **Total Costs of Assets (NGN)** |
|  |  |  |  |  | [Cost per Asset multiplied by Quantity] |
|  |  |  |  |  |  |
|  |  |  |  |  |  |

**Total capital cost:** XXX NGN

**1.2 DisCo Necessary Prior Distribution Network Upgrades Repayment Schedule:** The DisCo will incur a liability to the Power Producer monthly for the first X years of the Project for the amount below. The repayment includes a 12% cost of capital.

|  |  |
| --- | --- |
| **Year** | **Monthly Liability (NGN per month)** |
| Year 1 |  |
| Year 2 |  |
| … |  |
| Year X |  |

Signature DisCo:

Signature Power Producer:

# SCHEDULE 4 – DETAILS OF FIXED INFRASTRUCTURE FOR GENERATION ASSETS

[Placeholder - to be added by Power Producer. Details on plant generation assets to be installed, including relevant spec sheets.]

These details shall include the following as applicable[[6]](#footnote-9) –

(iv) Fuel Sourcing, Transportation and Supply Arrangements.

(v) Water supply and availability analysis for plant and staff use.

(vi) Plant Design.

(vii) Power Station Information:

a. Total capacity (MW)

b. Number of Generating Units

c. Size of Generating Units (MW)

d. Expected Annual Generation (MWh)

e. Proposed Running Regime

f. Station Load/Load Facto (viii) Generator Unit Information:

a. Generator Type

b. Rating (MVA, MW)

c. Terminal Voltage (KV)

d. Rated Frequency

e. Rated speed (RPM)

f. Automatic Frequency Control Facility

g. Rated Power Factor

h. Unit Efficiency

i. Short Circuit Ratio

j. Direct Axis Transient Reactance

k. Direct Axis Sub-transient Reactance

l. Quadrature Axis transient reactance

m. Generator Cooling (Air-cooled, Hydrogen etc)

n. Auxiliary Power Requirements

o. Type of Exciter (Static or Rotating, Self or Separately Excited)

p. AVR type

q. Generator Protection (Relays)

r. Type and Characteristics of Governor Control System

s. Generator Unit Transformer Data

t. Manufacturer’s name / Year of Manufacture / Warranty

1. (ix) Engineering, Procurement and Construction (EPC) Contract. (Please refer to the report on the Guide to the Development of Independent Power Plants) (x) Details of Phasing of Project, if applicablei) Auxiliary Systems: Please refer to the report on the Guide to the Development of IPPs.

(ii) Ancillary Services:

v Black Start facilities

v Reactive Power Generation capabilities

v Frequency Response Capability

v Maximum Generation (MAXGEN) capability

v Fast Start capabilit (xiii) Report of evacuation studies (For Grid Connection):

v Load Flow Studies

v Stability Studies

v Short Circuit Studies (xiv) Station Safety Arrangements:

v Emergency Response Plan

v Fire Fighting Facilities

v First Aid

v Safety Awareness and Staff Training Plans

v Personal Protective Equipment (PPE)

1. v Health & Safety Polici) Environmental Impact Assessment (EIA) and Waste Management Plan.

(ii) Expected date of Commissioning

(iii) Evidence of approval from Transmission Company of Nigeria (TCN) confirming that proposed connection point has capacity to take load which will be fed to it Connection.

B. SOLAR PHOTOVILTAIC CELLS TECHNOLOGY:

Ø Maximum Cell Voltage

Ø Type of Solar Cell employed

Ø Maximum generation from PV Cells

Ø Type of Solar Panels and Inverters

Ø Capacity of Solar Panels and Inverters

Ø Building Penetrations/Water Damages

Ø Batteries Capacity

Signature DisCo:

Signature Power Producer:

Signature Interconnected Customer:

# SCHEDULE 5 – BOUNDARY VALUES OF THE DISTRIBUTION NETWORK MAIN GRID

The Distribution Network is considered as available if the grid voltage and frequency at the Grid Point of Interconnection does not deviate more than +/- 5% from the following values. The Power System is considered as available if the voltage and frequency at the Customer Point of Interconnection does not deviate more than +/- 5% from the following values.

Grid Voltage Nominal Value: 400 V

Grid Frequency Nominal Value: 50 Hz

In case of complaints, by either the Power Producer or the Interconnected Customer, these values shall be checked by the DisCo at least 2 times in a period of one month and with a time interval between the 2 measures of at least 5 days at the Grid Point of Interconnection, and confirmed by the Power Producer.

Signature DisCo:

Signature Power Producer:

Signature Interconnected Customer:

# ANNEX 2 – TARIFF COMPUTATION AND DELIVERY

# SCHEDULE 6 – INTERCONNECTED CUSTOMER BLENDED TARIFF SCHEDULE, AND TARIFF ADJUSTERS

* 1. **Blended Tariff Schedule:** The Interconnected Customer shall pay the Power Producer for electrical energy at the price of NGN[X2] per kWh (“**Blended Tariff**”) delivered and measured with the Metering System at the Customer Point of Interconnection, which includes all electricity delivered to the Interconnected Customer whether it’s from the Power System or the DisCo’s Distribution Network. The Blended Tariff is subject to review and adjustment due to triggering events and conditions as specified in 1.3 and 1.6 below.
  2. **Summary of Blended Tariff Schedule Adjustments:** The Blended Tariff can be adjusted due to and only due the following unless otherwise agreed by all Parties, as detailed in Clause 12:
* Upon announcement of a Commission approved change in grid tariffs:
  + Changes to the DisCo Grid Tariff in Schedule 7 as detailed in Section 1.5 by the next billing cycle.
* Every 6 Months:
  + If any Market Condition in Section 1.6 exceeds or is below the thresholds outlined, a tariff adjustment can be applied for as detailed in Section 1.7.
  1. **Changes to the Minimum Consumption and the Grid Availability Standard:** Parties can only apply for changes to the Minimum Consumption referred to in Clause 8.2, the and the Grid Availability Standard referred to in Clause 7.4 every 6 months when there is a review of the Market Conditions and the relevant Market Conditions in Section 1.6 exceeds or is below the thresholds outlined as detailed in Clause 12.
  2. **Changes to DisCo Grid Tariff:** The tariff schedule in Section 1.1 above assumes the Power Producer shall pay the DisCo DisCo MYTO tariff described in Schedule 7 (DisCo Grid Tariff). As stated in Clause 12, where there is a Commission-approve change to the DisCo Grid Tariff through annual, minor or extraordinary reviews, Parties agree to review the Blended Tariff Schedule referred to in Section 1.1 within 100 days of the change in order to reflect such change(s). The Blended Tariff Schedule can be modified in proportion to the DisCo Grid Tariff change and the amount of electricity from the DisCo’s Distribution Network grid consumed.
  3. **Market Condition Thresholds:** The Market Conditions and their respective thresholds referred to throughout this Agreement are below.

|  |  |
| --- | --- |
| **Market Condition Variable** | **% Change in Market Condition (Increase or Decrease)** |
| Nigerian Naira Inflation Annual (calculated over 3 years), according to the Nigerian National Bureau of Statistics[[7]](#footnote-10) | ± 8% |
| Change in Foreign Exchange Rate between the Nigerian Naira and the United States Dollar, according to Nigerian Central Bank official exchange rate as may be reflected in the I & E Window, as communicated by FMDQ (Financial Markets Dealers Quotation) OTC Plc | ±5% |
| Change in Interconnected Customer consumption habits, resulting in needing more or less electricity than planned | ± 20% |
| Availability of grid supply from the DisCo’s Distribution Network during Grid Priority Hours Averaged over 3 Years (% of time grid is available) | Low Threshold: XX%  High Threshold: XX% |

* 1. **Adjustment in Blended Tariff Schedule:** Any adjustments approved by the Commission through annual, minor or extraordinary reviews, shall apply to the Blended Tariff Schedule in Section 1.1. The adjustment of the price will be based on Clause 8, and Clause 12.

Signature DisCo:

Signature Power Producer:

Signature Interconnected Customer:

# SCHEDULE 7 – DISCO GRID TARIFF SCHEDULE

**DisCo Grid Tariff Schedule:** The Power Producer shall pay the DisCo for electrical energy at the price of NGN XX per kWh delivered and measured with the Metering System at the Grid Point of Interconnection (“**DisCo Grid Tariff**”). The DisCo Grid Tariff shall be in accordance with the schedule as shown below which is subject to the DisCo MYTO tariff order. This tariff is tied to Tariff Band A for an MD-1 customer upon agreement with DisCo, unless the definition of Tariff Band A changes or the Grid Availability Standard is modified by the Parties.

In addition, the DisCo’s improved service to guarantee availability during Grid Priority Hours is considered a premium service. The Premium Fee for the service is calculated based on the Customer’s average annual consumption, the cost of grid upgrade and the standard operating expenses of the DisCo.

|  |  |  |
| --- | --- | --- |
| **Year** | **DisCo Grid Tariff (N/kWh) *Band A MD-1 customer tariffs*** | **DisCo Premium Fee (N/kWh)** |
| Year 1 [2023, pending Date of Commercial Operation] | xx | xx |
| Year 2 | xx | xx |
| Year 3 onwards | Pending MYTO review | Pending DisCo review |

Signature DisCo:

Signature Power Producer:

Signature Interconnected Customer:

# ANNEX 3 – IMPLEMENTATION DETAILS

# SCHEDULE 8 – PROJECT IMPLEMENTATION PLAN

[Placeholder – to be added by Power Producer]

[Need to include: Timelines for commissioning of the power plant and on the date when different capacities of the plant will come into operation]

Signature DisCo:

Signature Power Producer:

Signature Interconnected Customer:

1. Adjustment can be made based on termsheet alignment [↑](#footnote-ref-2)
2. 90% Is recommended but needs to be agreed between both DisCo and the power producer as the availability will be evaluated based on the agreed hours of supply from the grid. [↑](#footnote-ref-3)
3. Applies if the Power producer is providing a backup genset. [↑](#footnote-ref-6)
4. Change based on grid availability agreed, for example, if 90 then this can be 75% [↑](#footnote-ref-7)
5. Equipment condition is regarded as either ‘working,’ ‘partially working’, ‘faulty’ and ‘offline’. All assets must be ‘working.’ [↑](#footnote-ref-8)
6. Determine what is applicable for the project. [↑](#footnote-ref-9)
7. The inflation and diesel fuel price thresholds are based on historical data from movement in the Consumer Price Index of the Nigerian National Bureau of Statistics. [↑](#footnote-ref-10)