**POWER PURCHASE AGREEMENT**

**BETWEEN**

**[EMBEDDED GENERATOR]**

**(“Embedded Generator”)**

**AND**

**[ELECTRICITY DISTRIBUTION COMPANY]**

**(“DisCo”)**

# CONTRACT SUMMARY

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| --- | --- |
| **Nature of Contract** | This is an agreement between the Power Producer of the power system (“**Embedded Generator**” and the distribution licensee (the “**DisCo**”) for the development of a Embedded Solution (solar PV+ battery+ fossil fuel). Under this agreement, the Embedded Generator seeks to construct and operate a power system and connect to the DisCo’s distribution system. |
| **Term** | 20 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 Chargeable Energy** | The DisCo shall purchase on a take or pay basis, the minimum chargeable energy. The minimum chargeable energy shall be reviewed every 6 months. |
| **Sale and purchase of energy** | On and after the commercial operations date until the expiry of the operational Period or earlier termination, the embedded generator agrees to make the contract capacity available to the utility on their demand and the utility agrees to pay for the net electrical output supplied according to the terms and conditions herein specified.  The embedded generator guarantees that the contract capacity when requested by the utility shall be made available at least [95%] of the time within a one (1) month interval |
| **Billings and collections** | The embedded generator will issue an invoice to the utility for the net electrical output delivered during the month.  The utility is still responsible for billing their customers which includes the premium customers. |
| **Obligation of the embedded generator towards interconnection** | The embedded generator shall bear all Shallow connection costs, dedicated network upgrades costs, finance the procurement of customer meters and undertake the procurement, supply, construction of the embedded generator’s Plant and connection Equipment |

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**THIS POWER PURCHASE AGREEMENT** isdatedthis\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2023

**BETWEEN**:

1. **[Name of Embedded Generator],** a company incorporated under the laws of the Federal Republic of Nigeria with registration number ……. and whose registered office is at ………………………. (hereinafter referred to as “**Embedded Generator**” which expression shall where the context so admits, include its successors-in-title and assigns) of the first part;

**AND**

1. **[Name of the DisCo],** a public company incorporated under the laws of the Federal Republic of Nigeria with registration number …….. and whose registered office is at …….( hereinafter referred to as “**DisCo**” which expression shall where the context so admits, include its successors-in-title and assigns) of the second part.

The Embedded Generator and the DisCo may be collectively referred to as “**Parties**” and individually as “**Party**”.

**BACKGROUND**:

1. The DisCo is engaged in the business of electricity distribution and operates a distribution network across [insert name of states] for the sale of electricity to end-use customers.
2. The Embedded Generator has proposed to develop, design, engineer, construct, commission, own, operate and maintain the Power Plant with a total installed capacity of XMW to be located at the Site (as defined below).
3. The Embedded Generator wishes to sell, and the DisCo wishes to purchase all the Net Electrical Output (as defined below) of the Plant on and pursuant to the terms and conditions contained herein.
4. The DisCo and the Embedded Generator have agreed to enter into this Agreement for the purpose of documenting their intentions.

**NOW IT IS HEREBY AGREED AS FOLLOWS:**

# DEFINITIONS AND INTERPRETATION

* 1. **Definitions**

In this Agreement, the following term shall have the following meanings except otherwise provided:

|  |  |
| --- | --- |
| **“Abandonment”** | means either:   1. the cessation of substantially all activities relating to the construction or operation and maintenance of the Plant or the Embedded Generator’s Connection Equipment, for at least thirty (30) days consecutively subject to Clause 16 (*Force Majeure*); 2. the physical absence of substantially all employees of the Embedded Generator from the Site after the commencement of construction of the Plant and the Embedded Generator’s Connection Equipment for at least thirty (30) days consecutively; 3. the cessation of substantially all activities relating to the construction or operation and maintenance of the Dedicated Network or the or the DisCo’s Connection Equipment, for at least thirty (30) days consecutively subject to Clause 16 (*Force Majeure*); 4. a persistent failure of the Embedded Generator or the DisCo to perform its obligations hereunder such as to suggest an intention to repudiate this Agreement; or 5. a failure by the Embedded Generator or the DisCo to resume and continue the performance of substantially all of its obligations under this Agreement within a reasonable period following the cessation of a Force Majeure Event which causes the Party's failure or delay in complying with its obligations under the Agreement.   Provided that this definition does not apply in cases of a Force Majeure Event. |
| **“Acceptable Commercial Bank”** | means a bank or financial institution that:   1. has two of the following three financial ratings: (i) a “Long-Term Issuer Default Rating” of “A” or better from Fitch Ratings Ltd; (ii) a “Foreign Long-Term Issuer Credit Rating” of “A” or better by Standard & Poor’s Financial Services LLC, and (iii) a “Long-Term Issuer Rating of “A2” or better by Moody’s Investors Service, Inc., or 2. is a commercial bank in Nigeria that is otherwise acceptable to the Embedded Generator. |
| **“Account Administration Agreement”** | means the agreement among the Embedded Generator, the DisCo, NESI-SSL and the Account Manager, which sets forth conditions upon which the funds in the various accounts created pursuant to the Project will be maintained and disbursed by the Account Bank. |
| **“Account Manager”** | means the entity appointed by the Parties to administer the Account Administration Agreement. |
| **“Act”** | means the Electricity Act, 2023 as may be amended from time to time. |
| **“Acts of Insolvency”** | means in respect of a Party:   1. the admission in writing of such Party of its inability generally to pay its obligations as they come due; 2. winding-up (excluding a solvent winding up for the purposes of a corporate restructuring), dissolution, administration or liquidation; 3. the making by it of any arrangement or composition with its creditors (excluding a solvent winding up for the purposes of a corporate restructuring); 4. the taking of possession by an encumbrance of, or the appointment of a liquidator (other than in respect of a solvent liquidation), a receiver, administrative receiver, compulsory manager or similar officer over, the whole or any material part of its property or assets; or      1. the involuntary commencement against a Party of any procedure analogous with any of the above procedures that is not stayed within one hundred eighty (180) Days.   Provided that a circumstance, event or act will not be considered an Act of Insolvency of a Party if it involves a limited recourse obligation of the Party to a third party other than an obligation under a Finance Document, unless it causes any of the circumstances, events or acts listed in (a) – (e). |
| **“Affiliates”** | means for either Party any person(s) that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with such Party. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “under common control with,” and “controlled by”), as used with respect to any Party, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person, whether through the ownership of over fifty percent (50%) voting stock or other equity interests, by contract, or otherwise. |
| **“Agreement”** | means this Power Purchase Agreement together with the Annexes hereto and any extensions, renewals or amendments of this Power Purchase Agreement agreed to in writing by the Parties. |
| **“Ancillary Services”** | means such services relating to operation of the Grid and electric power production by the Plant that are provided by Embedded Generator and required by System Operator pursuant to the Grid Code or as required by the DisCo, other than the provision of Net Electrical Output to the DisCo, including without limitation operation at a power factor outside of the normal range specified in the Grid Code to provide or absorb reactive power, voltage control, frequency regulation, operative reserves, load following and black start capability. |
| **“Applicable Interest Rate”** | means the rate that is equal to NIBOR plus [2%][[1]](#footnote-2) per annum. |
| **“Applicable Law”** | means any and all constitutions, treaties, charters, acts, statutes, laws (including all environmental laws and tax laws), decrees, ordinances, rules, codes, instruments, regulations, orders, announcements or published gazettes, practices or any interpretation thereof which are enacted, issued or promulgated by any Relevant Authority, including regulations and rulings made or issued by the NERC, any final decree, judgment or order of any court of competent jurisdiction and any standards and/or objective criteria which are contained in any Authorisation and are relevant for the transaction stipulated herein. Any reference to any Applicable Law shall include all statutory and administrative provisions consolidating, amending or replacing such Applicable Law and shall include all rules and regulations promulgated thereunder. |
| **“Authorisation”**  **Available Electricity Output** | means any applicable approval, consent, exemption (including waiver), licence, order or permit of or duly issued by or from any Relevant Authority required for the due performance by either Party of any covenant or obligation hereunder and as set out in Clauses 4 and 5.  means the electric energy, expressed in kWh made available from the Net Electrical Output to supply non-premium customers. |
| **“Back Up Meter”** | has the meaning given to that term in Clause 9.2. |
| **“Billing Dispute”** | shall have the meaning given to it in Clause 11.7. |
| **“Billing Period”** | means a calendar Month in a Contract Year and “**Monthly Bill**” means a Monthly invoice delivered to the DisCo from the Embedded Generator in accordance with Clause 11.4 and Annex 1 provided that the first Billing Period shall run from the Commercial Operations Date to the end of the Month in which the Commercial Operations Date occurs and the last Billing Period shall run from the first day of that Month in which the Operational Period ends, to the actual date upon which the Operational Period ends. |
| **“Business Day”** | means any Day other than a Saturday or Sunday, that is not a national public holiday in Nigeria or a Day on which banks are authorized by law or executive order to be closed in Nigeria. |
| **“Certificate of Occupancy”** | means the certificate or certificates of occupancy issued to the Embedded Generator that grants a right of occupation and use of the Site for the generation of electricity. |
| **“Change in Law”** | means at any time after the Commencement Date:   1. the adoption, promulgation, or modification after the Commencement Date of any Applicable Law, by any Relevant Authority; 2. the imposition of any material condition not required as of the Commencement Date in connection with the issuance, renewal, extension, replacement or modification of any Authorisation by any Relevant Authority; 3. the change or modification of any Authorisation by a Relevant Authority or the imposition of other obligations imposing a cost on Embedded Generator or imposition of requirements for the operation and maintenance of the Plant that are materially more onerous than the requirements in effect as of the Commencement Date; or 4. any other action by a Relevant Authority that makes unenforceable, invalid or void any material obligation of the DisCo or the Embedded Generator; or makes it unlawful for the DisCo or the Embedded Generator to make or receive any payment, to perform any material obligation or to enjoy or enforce any material right under this Agreement. |
| **“Change in Tax”** | means the adoption, promulgation, bringing into effect, repeal, amendment, reinterpretation, change or failure in application of the provisions of the relevant legislation after the Commencement Date, or modification after the Commencement Date of any Applicable Law by any Relevant Authority, relating to any Tax, including any application of any Tax which is imposed on Embedded Generator or the Project and:   1. causes Embedded Generator to incur any Tax in excess of those Embedded Generator would have incurred under any Applicable Law in effect as of the Commencement Date; or 2. results in a reduction in the amount of any Tax that Embedded Generator would have incurred under any Applicable Law in effect as of the Commencement Date. |
| **“Commencement Date”** | means the date of execution of this Agreement by the Parties. |
| **“Commercial Operations Date”** | means [insert months] from the Initial Conditions Precedent Satisfaction Date, when the Plant, the Dedicated Network the Embedded Generator’s Connection Equipment and the DisCo’s Connection Equipment have achieved commercial operations after Commissioning or such extended date agreed by the Parties. |
| **“Commercial Operation Tests”** | means tests run in accordance with Clause 6.5 and Annex 3 hereof designed to demonstrate that the Plant and Embedded Generator’s Connection Equipment are capable of operating to standards of performance and safety consistent with Applicable Law, Good Industry Practices and according to the Minimum Functional Specifications. |
| **“Commissioning Completion Notice”** | has the meaning given to it in Clause 6.5.3. |
| **“Commissioning Period”** | means the duration of the Commissioning of the Plant, the Dedicated Network and the Embedded Generator’s Connection Equipment. |
| **“Commissioning Procedures”** | means the commissioning procedures described in Annex 3. |
| **“Commissioning”** | means the undertaking of the commissioning test, procedures and trial runs on the Plant, the Dedicated Network and the Embedded Generator’s Connection Equipment for the purpose of interconnecting with, and delivering the Net Electrical Output to the DisCo, and the term “**Commission**” shall be construed accordingly. |
| **“Conditions Precedent”** | means the DisCo’s Conditions Precedent and Embedded Generator’s Conditions Precent specified in Clause 4. |
| **“Confidential Information”** | means information of a confidential or proprietary nature, whether or not specifically marked as confidential. Such information shall include, but not be limited to, any documentation, records, listing, notes, data, computer disks, files or records, memoranda, designs, financial models, accounts, reference materials, trade-secrets, prices, tariffs, strategic partners, marketing plans, strategic or other plans, financial analyses, customer names or lists, project opportunities and the like, provided however that Confidential Information does not include information which:   1. was in the possession of the receiving Party before receipt from the disclosing Party; 2. is or becomes publicly available other than as a result of unauthorized disclosure by the receiving Party; 3. is received by the receiving Party from a third party not known by the receiving Party with the exercise of reasonable diligence to be under an obligation of confidentiality respecting the information; or 4. is independently developed by the receiving Party without reference to information provided by the disclosing Party. |
| **“Connection Agreement”** | means the agreement between the Embedded Generator and the DisCo which governs the connection of the Plant to the Dedicated Network. |
| **“Connection Equipment”** | means the Embedded Generator’s Connection Equipment and/or the DisCo’s Connection Equipment, as the case may be; |
| **“Connection Site”** | means the location more particularly described in Annex 2 to this Agreement at which the Plant and the Embedded Generator‘s Connection Equipment connects to the Dedicated Network and the DisCo‘s Connection Equipment. |
| **“Connection”** | has the meaning given in the Distribution Code. |
| **“Construction Contract”** | means either:   1. the construction contract or contracts for the construction or supply and installation of the Plant and the Embedded Generator’s Connection Equipment between the Embedded Generator and its Contractor; or 2. the construction contract or contracts for the enhancement and upgrade of the Dedicated Network and the DisCo’s Connection Equipment between the DisCo and its Contractor. |
| **“Contract Capacity”** | means the maximum of [4MW] which may be requested in whole or part by the DisCo and which shall be made available by the Embedded Generator in accordance with this Agreement. |
| **“Contract Year”** | means each period of twelve (12) consecutive Months commencing on the Commercial Operations Date and on each anniversary thereof and ending at the end of the Day immediately prior to each immediately following anniversary of the first Day of the Contract Year and the final Contract Year shall end on the expiration of the Term or termination of this Agreement. |
| **“Contractor”** | means the contractor under the Construction Contract, any subcontractor under the Construction Contract, the Operations and Maintenance Agreement or any other Project Document under which a person provides services to the Embedded Generator or the DisCo directly or indirectly connected to this Agreement. This term includes any other subcontractor of a Party that carries out obligations of that Party under this Agreement. |
| **“Cure Notice”** | means the notice which the non-defaulting party may serve in the event that the Embedded Generator or the DisCo is in default of the terms of the Agreement. |
| **“Day”** | means each period of twenty-four (24) Hours commencing at 00:00 Hours, and “**Daily**” shall be construed accordingly. |
| **“Dedicated Network”** | means the part of the Distribution Network already existing or otherwise to be constructed, reinforced, upgraded or extended, including being continuously maintained specifically towards supporting the operationalisation of the Project, as well as facilitate the efficient wheeling of power from the Plant to the REG Customers. |
| **“Dedicated Network Upgrades Cost”** | means the costs of reinforcement, refurbishment, extension or reconfiguration of the Dedicated Network; |
| **“Default”** | means any one or more of the events specified as a Embedded Generator’s Event of Default or a DisCo’s Event of Default. |
| **“Defective Metering Event”** | means, in relation to any Metering System that:     1. such Metering System is not in service; 2. any seal on a metering device constituting part of that Metering System is found to be broken; or 3. a metering device constituting part of that Metering System fails to register or, upon testing, is found to vary by more than the Metering Tolerance. 4. does not record or which records with an error beyond the permissible limits prescribed under the Metering Code. |
| **“Delivery Point”** | means the point of common coupling at which the Net Electrical Output from the Plant is delivered to the DisCo and which represents the points where ownership, responsibility and risk of loss for the Net Electrical Output passes from the Embedded Generator to the DisCo. The Delivery Point is indicated in Annex 4 to this Agreement. |
| **“Dependable Capacity”** | means the sustainable capacity in MW from the Plant as determined pursuant to Clause 6.1.1. |
|  |  |
| **“DisCo’s Event of Default”** | has the meaning given to that term in Clause 17.2. |
| **“DisCo's Connection Equipment”** | means the apparatus, electrical lines and any other equipment owned and/or used by the DisCo and are used for the purpose of connecting the Plant and the Embedded Generator‘s Connection Equipment to Dedicated Network as specified in Annex 2 to this Agreement. |
| **“Dispute”** | means any dispute, controversy, or claim of any kind or type, whether based on contract, tort, statute, regulation, or otherwise, arising out of, relating to, or connected with this Agreement, or the operations carried out under this Agreement between the Parties, including any dispute concerning the existence, validity, interpretation, performance, breach, or termination of this Agreement. |
| **“Dispute Notice”** | means a written notice of the Dispute to the other Party setting out the material particulars of the Dispute. |
| **“Distribution Network”** | means any connection of cables, service lines and overhead lines, meters, electrical apparatus/equipment and having design voltage of 33 kV and below used to transport electric power on a distribution system by the Embedded Generator. |
| **“Documents of Title”** | means the Certificate of Occupancy and the Registered Deed of Assignment, or any other registered document evidencing the right to occupy the Site by the Embedded Generator. |
| **“Embedded Generation System Availability”** | means the availability of the Embedded Generation System measured as a percentage of all the hours in a Month. The Embedded Generation System Availability is expressed as a percentage and is calculated according to the following formula: |
| **“Embedded Generator’s**  **Facilities”**  **“Embedded Generator’s**  **Non-premium hours”** | has the meaning given to the term in Clause 10.1.  means the availability of the Embedded Generation Plant to supply electrical energy required for the non-premium customers during daylight [9am – 4pm] from the Net Electricity Output. |
| **“Embedded Generator’s Event of Default”** | has the meaning given to that term in Clause 17.1. |
| **“Embedded Generator's**  **Connection Equipment”** | means the apparatus, electricity lines and any other equipment owned and/or used by the Embedded Generator which is located at the Connection Site and is used for the purpose of connecting the Plant to the DisCo’s Dedicated Network, as specified in Annex 2 to this Agreement. |
| **“Energy Output Shortage”** | means any shortage in the Net Electrical Output. |
| **“Environmental Attributes”** | means any and all credits, benefits, emissions reduction rights, offsets, and allowances, howsoever entitled, attributable to the Plant, the production of electrical energy from the Plant and its displacement of conventional energy generation, including:   1. any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; 2. any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by Applicable Law, to contribute to the actual or potential threat of altering the earth’s climate by trapping heat in the atmosphere; and 3. the reporting rights related to these avoided emissions, such as renewable energy credits. |
| **“Environmental Incentives”** | means any and all credits, rebates, subsidies, payments or other incentives that relate to self – generation of electricity, the use of technology incorporated into the Plant, environmental benefits of using the Plant, or other similar programs available from regulatory entities, any government authority, or the manufacturer of any part of the Plant. |
| **“Exchange Rate”** | means the NAFEX rate for the relevant date of payment as published by FMDQ on its website at www.fmdqotc.com, or if such rate is not available on that website, then the website of any other competent source that publishes NAFEX rates or any replacement rates. |
| **“Expert”** | means the individual appointed under Clause 31.3 for the purposes specified therein. |
| **“Expert Determination”** | has the meaning given to that term in Clause 31.3. |
| **“Expropriation”** | means the act(s) of expropriation, requisition or nationalization of the Plant or any material portion of the Plant by a Relevant Authority; provided that, the following shall in no event constitute an Expropriation:   1. any measure that constitutes a bona fide, non-discriminatory measure of general application that governments normally take for the purpose of regulating economic activity, ensuring public safety, raising revenues or protecting the environment, unless the measure is designed by the Relevant Authority to have a confiscatory effect; 2. any loss due to a breach by a Relevant Authority of its obligations under any Project Document, where the Relevant Authority is acting solely in a commercial capacity, unless the breach is designed to have, or has, a confiscatory effect; and 3. any Change in Law or change in tax unless the breach is designed to have, or has, a confiscatory effect. |
| **“Force Majeure Event”** | has the meaning given to that term in Clause 16.1. |
| **“Forced Outage or Partial Forced Outage”** | means a total or partial interruption of the Net Electrical Output into the Delivery Point, excluding any total or partial interruption that is the result of:   1. a request by the DisCo in accordance with this Agreement; 2. a Scheduled Maintenance Outage or an Unscheduled Maintenance Outage; or 3. a Force Majeure Event. |
| **“Gas Supplier”** | means the supplier under the Gas Supply Agreement and, in the event that the transporter of gas to the Plant is different from the gas seller, the term “Gas Supplier” shall include such transporter of gas to the Plant. |
| **“Gas Supply Agreement” or “GSA”** | means the contractual agreement related to the supply and/or transportation and delivery of natural gas for the Plant by the Gas Supplier to the Embedded Generator. |
| **“Gas Supply**  **Constraint”** | means any failure of supply or constraints on the supply or delivery/transportation of gas caused by any default or breach by the Gas Supplier under the Gas Supply Agreement or any circumstance or event (including, for the avoidance of doubt, a Force Majeure Event (or force majeure event pursuant to the Gas Supply Agreement) affecting the Gas Supplier. |
| **“Good Industry Practices”** | means those practices, methods, and procedures conforming to safety and legal requirements that are attained by exercising that degree of skill, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced generator and/or distributor of electricity engaged in the same or a similar type of undertaking or activity under the same or similar circumstances and conditions to those pertaining in Nigeria and satisfying the health, safety, and environmental standards of reputable international electric generation and/or distribution companies. For the avoidance of doubt, in the event of a conflict between Applicable Law and Good Industry Practices, Applicable Law shall prevail. |
| **“Grid”** | means the network of high voltage transmission lines, transformers, switchgear and other transmission equipment which is owned and/or maintained by the Transmission Company of Nigeria Plc. and utilized for the conveyance of energy from generating plants to distribution systems, and to which the Distribution Network is interconnected with. |
| **“Grid Available Hours”** | means the hours between [INSERT]. |
| **“Gross Negligence”** | means any act or failure to act (whether sole, joint or concurrent) which seriously and substantially deviates from a diligent course of action or which is in reckless disregard of or indifference to, foreseeable harmful consequences. |
| **“Hour”** | means each period of sixty (60) minutes commencing at 00:00, and “**Hourly**” shall be construed accordingly. |
| **“Indemnified Party”** | means the Party that receives the benefit of an indemnity pursuant to Clause 12.4, together with such Party’s directors, officers, and employees and such Party’s Affiliates, their directors, officers and employees. |
| **“Independent Collections Account”** | means an account opened or to be opened for the purpose of receiving payments from the Customers on the RE feeder to ringfence the funds collected from the REG Customers. |
| **“Independent Engineer”** | means a licensed electrical engineer registered with Nigerian Society of Engineers with at least 10 years of experience in utility-scale power plant operations appointed by the Embedded Generator with consent of the DisCo. |
| **“Initial Conditions**  **Precedent”** | means the Conditions Precedent as set out in Clauses 4.1 and 4.3 of this Agreement that must have been fulfilled on or before the Initial CP Satisfaction Date and before the commencement of the Initial Period. |
| **“Initial CP**  **Satisfaction Date”** | means the [date] the Initial Conditions Precedent are satisfied or otherwise waived by the Parties. |
| **“Initial Period”** | shall have the meaning given to it in Clause 3.2 of this Agreement. |
| **“kV”** | means kilovolts, a unit of one thousand volts. |
| **“kW”** | means kilowatt, a unit of electrical capacity equivalent to 1000 watts. |
| **“kWh”** | means kilowatt-hour, a unit of electrical energy equivalent to the consumption or generation of one kilowatt of power for one hour. |
| **“Lapse of Authorisation”** | means any Authorisation:   1. is revoked by the Relevant Authority which issued it; 2. is not issued, renewed or, having lapsed, is not reissued, within one hundred eighty (180) Days (or such longer period allowed by Applicable Law) of application by Embedded Generator for that Authorisation to be issued, renewed or reissued, as the case may be, and as a result, the Embedded Generator’s ability to perform its obligations under this Agreement, any Project Documents is materially and adversely affected; or 3. is made subject, subsequent to its grant, upon renewal or otherwise, to any terms or conditions that materially and adversely affect the Embedded Generator’s ability to perform its obligations under an Authorisation, this Agreement, any Project Document; or   in each instance despite the Embedded Generator’s compliance with the applicable procedural and substantive requirements in respect of the relevant Authorisation as applied in a non-discriminatory manner. |
| **“Main Meters”** | has the meaning given to that term in Clause 9.2. |
| **“Maintenance Reserve Account”** | means the bank account dedicated to holding the portion of tariff charged to Premium Customers to be used for the operations and maintenance of the Dedicated Network; |
| **“Metering Point”** | means the location of the Main Meter. |
| **“Metering System”** | means all forms of meters and metering devices, consisting of the Main Meter and Back Up Meter and the associated current transformers (CTs) and voltage transformers (VTs) and metering protection equipment and low voltage LV electrical circuitry and associated ancillary equipment used for reading and measurement of Net Electrical Output, reactive power, and reactive power demand; “**Meters”** shall be construed accordingly. |
| **“Metering Tolerance”** | means, in relation to any component of the Metering System, plus or minus 1.5 per cent from the measurement made by the standard meter used in a test of such component. |
| **“Minimum Chargeable Energy”** | means the minimum amount of energy specified in Annex 12 that the DisCo hereby agrees to purchase from the Embedded Generator and pay for as measured on a daily basis during the Operational Period. The Minimum Chargeable Energy shall be reviewed every [six (6) months]. The minimum Chargeable Energy is derived from the premium customers energy requirement. |
| **“Minimum Functional**  **Specifications”** | means the minimum functional specifications (including the technical limits of the Plant) for the construction and operation of the Plant as set forth in Annex 5 of this Agreement. |
| **“Minimum Indemnification**  **Amount”** | means [INSERT AMOUNT]. |
| **“Month”** | means a calendar month according to the Gregorian calendar, and “**Monthly**” shall be construed accordingly. |
| **“MW”** | means megawatt, a unit of electric capacity, being one thousand (1,000) kW. |
| **“Naira” or “N”** | means the currency of the Federal Republic of Nigeria. |
| **“NERC”**  **NESI-SSL** | means Nigerian Electricity Regulatory Commission, a body established under the Electric Power Sector Reform Act 2005.  NESI-SSL is appointed by Central Bank of Nigeria to manage and disburse funds pooled from AEDC’s principal Collection accounts. |
| **“Net Electrical Output”** | means the electric energy, expressed in kW, generated by the Plant, and delivered to the Delivery Points for sale directly to the DisCo and the resale by the DisCo to its customers, as measured by the Metering System. Net Electrical Output is net of (i) all loads on Embedded Generator’s side of the Delivery Point, and (ii) transformer losses for transformation to Grid voltage (where applicable) at the point of interconnection. |
| **“Nigeria Electricity Market”** | means the system for effecting the purchase and sale of electricity in Nigeria comprising of, but not limited to generation companies, distribution companies, Nigerian Bulk Electricity Trading Company Plc, the Transmission Company of Nigeria Plc, the System Operator and the Market Operator amongst others; |
| **“Nigeria Inter-Bank Offer Rate” or “NIBOR”** | means the interest rate for 90-day deposits as published by FMDQ on its website at www.fmdqgroup.com, or if such rate is not available on that website, then the website of any other competent source that publishes such rates. |
| **“Notice of Expert**  **Determination”** | has the meaning given to that term in Clause 31.1. |
| **“Operating Day”** | means twenty-four (24) Hours beginning at 00:00 daily. |
| **“Operation and Maintenance Agreement”** | means the agreement for the operation and maintenance of the Plant between Embedded Generator and Contractor providing the operation and maintenance services. |
| **“Operational Conditions**  **Precedent”** | means conditions precedent that must have been fulfilled on or before the Commercial Operations Date and before the commencement of the Operational Period. |
| **“Operational Period”** | shall have the meaning given to it in Clause 3.3 of this Agreement. |
| **“Outage”** | means any condition that reduces the Net Electrical Output of the Plant to less than [25%] of the daily Net Electrical Output offtake of the DisCo, and includes Unscheduled Outages, Scheduled Maintenance Outages, and Forced Outages or Partial Forced Outages. |
| **“Payment Due Date”** | In the case of payment under Clause 11.5 of this Agreement, within twenty (20) days after receipt of invoice by the DisCo for the relevant Billing Period. |
| **“Person”** | means any individual, corporation, partnership, joint venture, trust, unincorporated organisation, Relevant Authority, or other legal entity. |
| **“Plant”** | means the electricity generating facilities consisting of solar photovoltaic plant of [STATE CAPACITY], battery storage of [STATE CAPACITY], and gas backup generator of [STATE CAPACITY] to be constructed and owned by Embedded Generator at the Site**,** and includes all energy producing equipment and its auxiliary equipment and interconnection facilities on Embedded Generator’s side of the Delivery Point. |
| **“Premium Customers”** | means a REG Feeder Customer who will pay a tariff that is above the regulated tariff of the DisCo (premium tariff) for the receipt of a minimum of [95%] power availability monthly to be supplied by the DisCo from the Plant developed by the Embedded Generator and from the national grid; |
| **“Project”** | means the design, development, engineering, procurement, construction, permitting, commissioning, testing, operation and maintenance of the Plant as well as the improvement, enhancement and rehabilitation of the Distribution Network and particularly the Dedicated Network/feeders supplying power to the REG Feeder Customers, and all activities incidental thereto in accordance with the terms and conditions of the agreements between the DisCo and the Embedded Generator. |
| **“Project Documents”** | means the following documents/agreements in relation to the Project:   1. the Construction Contract; 2. the Connection Agreement; 3. the Documents of Title; 4. the policies of insurance required to be obtained and maintained by Embedded Generator under Clauses [.]; and; 5. Account Administration Agreement 6. any other document which the Parties agree shall be designated as a Project Document. |
| **“Project Team”** | means the group of individuals appointed by the Parties for the administration and supervision of their respective obligations under this Agreement and the Connection Agreement; |
| **“Prolonged Force Majeure Events”** | has the meaning given to that term in Clause 16.2. |
| **“Prolonged Gas Supply Constraint”** | means a Gas Supply Constraint that lasts for more than six consecutive Months during the Operational Period. |
| **“Reasonable and Prudent Operator”** | means the Embedded Generator or the DisCo using a degree of diligence, prudence, and foresight which would reasonably and ordinarily be exercised by an experienced operator engaged in the same type of undertaking under the same or similar circumstances and conditions. |
| **“Reasonable Endeavours”** | means, for any action required to be made, attempted or taken by a Party under this Agreement, the efforts that a prudent Person would undertake to protect its own interests, including commercial interests, taking into account the conditions affecting such action, including the amount of notice to act, recognition of the need to act, the duration and type of the action, and the projected benefit, cost and risk to the Party required to take such action. |
| **“REG Feeder Customer”** | means all end-user customers of the DisCo connected to the Dedicated Network. The term REG Feeder Customers shall be construed accordingly. |
| **“Registered Deed of**  **Assignment”** | means the deed of assignment evidencing the transfer of occupancy and use or other title in respect of the Site. |
| **“Relevant Authority”** | means any department, authority, instrumentality, agency or any other relevant entity within the Federal Republic of Nigeria from which an Authorisation is to be obtained from time to time and any authority, body or other person within the Federal Republic of Nigeria having jurisdiction under Applicable Law with respect to the Embedded Generator, the DisCo, or the Project. |
| **“Relevant Change”** | means any Change in Law or Change in Tax. |
| **“Relevant Event”** | has the meaning given to that term in Clause 12.5. |
| **“Scheduled Maintenance**  **Outage”** | means a planned interruption of the Plant’s generating capability or any material part thereof that:   1. has been scheduled by Embedded Generator; and 2. is for inspection, testing, preventive maintenance, corrective maintenance, repairs, replacement or improvement of the Plant or any material part thereof. |
| **“Shallow Connection**  **Costs”** | means all costs relating to the connection of the Embedded Generator’s Plant to the Dedicated Network. |
| **“Site”** | means the land in which the Plant shall be installed. |
| **"System Operator"** | means the division of TCN responsible for the operation of TCN’s transmission network system or such future independent system operator that takes over these duties. |
| **“Take or Pay”**            **“Take and Pay”** | means the obligation of the DisCo to take, and if not taken, to pay for the Minimum Chargeable Energy, notwithstanding that the actual energy consumed by the DisCo may be less than the Minimum Chargeable Energy.  Means the quantity of electrical energy expressed in kwh per clock hour (as measured by the metering system) above the Minimum Chargeable Energy, which the DisCo shall upon request to the Embedded Generator, take delivery of and shall pay for. |
| **“Tariff’** | means the price per kWh payable by the DisCo as determined in Clause 11 and as more particularly set out in Annex 1. |
| **“Tax”** | means any charge, fee, levy or other assessment imposed by any Relevant Authority, whether federal, state, local or otherwise; including all income, withholding, gross receipts, business, environmental, value added, capital gain, duties, capital stock, registration, excise, ad valorem, real property, personal property, land, local development, licence, sales, production, occupation, use, service, transfer, payroll, employment, social security travel, franchise, severance, bonus, or other tax of any kind, as well as any charges and assessments (including any interest, penalties or additions to tax attributable to or imposed on or with respect to any such assessment, whether disputed or not and all stamp or documentary taxes and fees. |
| **“Tax Credits”** | means any and all (a) investment tax credits, (b) production tax credits and (c) similar tax credits or grants under any Applicable Law, relating to the construction, ownership or production of electricity from the Plant. |
| **“TCN”** | means the Transmission Company of Nigeria Plc. |
| **“Termination Notice”** | means a Notice specifying a date on which this Agreement shall terminate, which date shall occur no less than thirty (30) Days after the date of the Termination Notice and no more than sixty (60) Days after the date of the Termination Notice. |
| **“Underperformance**  **Events”** | means any of the following events occurring:   1. non-provision of the Net Electrical Output or the Contract Capacity by the Embedded Generator except where this occurs as a result of Force Majeure or Scheduled Maintenance Outages; 2. non-provision of the Net Electrical Output or the Contract Capacity by the Embedded Generator as a result of Forced Outage or Partial Forced Outage; 3. provision of the Net Electrical Output or the Contract Capacity that does not meet the frequency and voltage limit as set out in the Grid Code. |
| **“Underperformance**   1. **Liquidated Damages”** | means the sum of liquidated damages to be deductible from the Tariff of the applicable month by the DisCo when any Underperformance Event occurs. The Underperformance Liquidated Damages is set out in clause 5.2.2 of this Agreement. |
| **“Unscheduled Outage”** | means an interruption that:   1. is not a Scheduled Maintenance Outage or a Forced Outage or Partial Forced Outage; 2. is necessary in accordance with Clause 7.4; and is for the purpose of performing work on specific components, which, considering Good Industry Practices, should not, in the reasonable opinion of the Embedded Generator, be postponed until the next Scheduled Maintenance Outage. |
| **“USD”** | means the lawful currency of the United States of America. |
| **“Wilful Misconduct”** | means any act or failure to act (whether sole, joint, concurrent or otherwise) taken or not taken with an intentional disregard of foreseeable harmful consequences. |
| **“Year”** | means a period of twelve calendar Months, beginning each January 1, according to the Gregorian calendar. |
| **“Year End”** | means at the end of a given year. |

* 1. **Interpretation**

In this Agreement, including the recitals and Annexes except where expressly provided to the contrary:

* + 1. The Annexes hereto shall form part of this Agreement and in the event of any conflict between the main body of this Agreement and an Annex, the provisions in the Annexes shall prevail over the provisions in the main body of this Agreement;
    2. reference to any consent “not to be unreasonably withheld” is deemed to be qualified by the requirement that such consent shall not be unreasonably conditioned or delayed;
    3. reference to “include” and ‘including” is deemed to be qualified by the additional term without limitation;
    4. reference to any publication, statute, rule, regulation, instrument or standard means the same as amended, supplemented or re-enacted from time to time;
    5. references to this Agreement or any other agreement, document, or instrument shall mean this Agreement or such other agreement, document or instrument as the same may be amended, modified, supplemented, novated or replaced from time to time provided, that*,* in the event that an amendment, modification, supplement, novation or replacement to an agreement other than this Agreement has a material effect on the rights or obligations of a Party under this Agreement, then such amendment, modification, supplement, or replacement shall not be considered in interpreting the rights or obligations of a Party under this Agreement unless such Party has consented to or ratified the amendment, modification, supplement, novation, or replacement of such other agreement;
    6. any requirement that an action may or shall be taken within a specified number of Days means that such action may or shall be taken within the number of Days so specified starting at 00:00:00 Hours on the Day on which the requirement to take such action arose and ending at 23:59:59 Hours on the last Day;
    7. reference to any amount of money means that amount in Naira, except where indicated otherwise;
    8. reference to Clauses and Annexes means reference to Clauses hereof, and Annexes to this Agreement, unless otherwise stated;
    9. headings are inserted for ease of reference only and shall not, affect the interpretation or construction of this Agreement or have any legal effect;
    10. any remedy that provides for the payment of damages by a Party represents a genuine pre-estimate of the likely loss or damage which will be suffered by the Party to whom such damages are payable in consequence of the act or omission of the Party liable to pay such damages and shall not in any way be construed as a penalty;
    11. any good faith best estimate which is given by a Party when required in accordance with this Agreement is non-binding and given for information only and the Party giving such good faith best estimate shall have no liability to the other Party for any inaccuracy thereof;
    12. reference to any notice or notification means a notice or notification made in writing or as otherwise expressly provided in this Agreement;
    13. In the event of any ambiguity or discrepancy in this Agreement, the following shall apply:
        1. in the case of any ambiguity or discrepancy between the written description of any drawing and the specifications and standards, the latter shall prevail;
        2. In the case of any ambiguity or discrepancy between the dimension scaled from the drawing and its specific written dimension, the latter shall prevail; and
        3. In the case of any ambiguity or discrepancy between any value written in numerals and that in words, the latter shall prevail.

# AGREEMENT FOR SALE AND PURCHASE OF ENERGY

* 1. On and after the Commercial Operations Date until the expiry of the Operational Period or earlier termination, the Embedded Generator agrees to make the Contract Capacity available to the DisCo on the Disco’s demand. The parties will comply with the payment waterfall to ensure the Net Electrical Output supplied according to the terms and conditions herein is paid. The Embedded Generator guarantees that the Contract Capacity, when requested by the DisCo, shall be made available at least [95%] of the time within a one (1) month interval.
  2. Delivery of Net Electrical Output shall be deemed completed at the Delivery Point, at which point title to, control of, and risk of loss of or damage to, custody and liability for injury or damage caused by Net Electrical Output delivered under this Agreement shall pass to the DisCo.
  3. The DisCo shall deliver the Net Electrical Output generated under this Agreement to the REG Feeder Customers based on the dispatch process aligned with embedded generator for payment from the REG Feeder Customers
  4. The DisCo shall purchase on a Take or Pay basis, the Minimum Chargeable Energy.
  5. Notwithstanding any provision to the contrary under this Agreement, the Embedded Generator does not undertake in this Agreement to provide any Ancillary Services/transmission services to the DisCo. This Agreement is premised on the assumption that the DisCo shall accept delivery of Net Electrical Output at the Delivery Point without charge to the Embedded Generator for transmission services. If charges are imposed on the Embedded Generator for Ancillary Services/transmission services, the Tariff will be adjusted so that the Embedded Generator will recover such costs. The DisCo will be required to have an understanding with the transmission company to guarantee this service's provision.

# TERM OF AGREEMENT

* 1. Subject to the provision of this Clause 3, this Agreement shall become effective on the Commencement Date and shall remain in full force and effect during the Initial Period and until the conclusion of the Operational Period.
  2. **Initial Period**

The Initial Period will commence on the Initial CP Satisfaction Date and will terminate on the Commercial Operations Date unless earlier terminated in accordance with the terms of the Agreement. The Initial Period shall not exceed [one hundred and eighty (180) days] unless extended with the agreement of the Parties.

* 1. **Operational Period**

The Operational Period will commence from the Commercial Operations Date and continue for a period of [INSERT NUMBER OF YEARS] unless earlier terminated in accordance with the terms of this Agreement. During the Operational Period, the Parties shall supply and pay for the Net Electrical Output in accordance with the terms of this Agreement.

* 1. The following Clauses shall become effective on the Commencement Date:
     1. Clause 1 (Definitions and Interpretations);
     2. Clause 4 (Conditions Precedent);
     3. Clause 5.1 (Obligations of Embedded Generator prior to Commercial Operations Date);
     4. Clause 12 (Liability and Indemnification);
     5. Clause 14 (Representations and Warranties);
     6. Clause 12 (Liability and Indemnification);
     7. Clause 19 (Confidentiality);
     8. Clause 20 (Notices);
     9. Clause 24 (Assignments).
     10. Clause 31 (Governing Law and Dispute Resolution);
  2. Renewal
     1. This Agreement may be renewed after the Operational Period for such further period and on such terms and conditions as may be mutually agreed between the Parties.
     2. Where a Party desires to extend the prevailing Operational Period of this Agreement, it shall issue a written notice to the other Party no later than [twelve (12) Months] prior to the expiration of the then prevailing Operational Period.
     3. Such other Party shall, upon receipt, respond within [three (3) Months] with its decision as to whether or not it wishes to negotiate to extend the Agreement.
     4. The Parties shall use their Reasonable Endeavours within the subsequent [six (6) Months] during the notice period aforesaid to negotiate in good faith to extend the Agreement in accordance with terms to be agreed by the Parties.
     5. In the event that:

1. The Party in receipt of an extension request, notifies the other Party that it does not wish to extend the prevailing Operational Period; or
2. the Parties are not able to agree to an extension of the Operational Period within the six (6) Month period set out above,

the Agreement shall terminate at the end of the then prevailing Operational Period.

* + 1. The provisions of Clause 3.5 shall apply or be repeated during any renewal of the Operational Period of this Agreement.

# CONDITIONS PRECEDENT

The DisCo and Embedded Generator shall be required to meet the following Conditions Precedent:

* 1. **Pre-Execution Conditions Precedent**

Prior to the Commencement Date, the Parties shall fulfil the conditions in Annex 13 to this Agreement.

* 1. **Embedded Generator’s Initial Conditions Precedent**
     1. The Embedded Generator’s Initial Conditions Precedent set out below must be satisfied or waived by the DisCo no later than the Initial CP Satisfaction Date which shall not be later than twelve (12) months from the effective date of this Agreement:

1. The Embedded Generator and its counterparts shall have executed all the relevant Project Documents. The Embedded Generator shall during negotiation, and prior to execution, make all draft and execution copies of the Project Documents available to the DisCo and the DisCo will have the right to review and to provide reasonable input on the Project Documents;
2. The Embedded Generator shall provide to the DisCo a copy of all relevant resolutions of its board of directors and shareholders authorising the execution, delivery, and performance by the Embedded Generator of this Agreement and the other Project Documents to which the Embedded Generator is a party;
3. the Embedded Generator shall use best endeavours to (or shall cause its Affiliates to obtain and maintain) these requisite Authorisations when and as such Authorisations are required specifically:

an Embedded Generation License

Environmental Impact Assessment (EIA); and

Development/Building Permit issued by the relevant State physical planning authority; and

all necessary rights of way, easements, third party approvals, authorisations and necessary consents (including any requisite waivers) to enable the Embedded Generator to finance, construct, own, operate, and maintain the Plant and to allow connection, testing and Commissioning of the Plant in accordance with this Agreement;

1. The Embedded Generator shall fulfil other appropriate conditions which may be agreed in writing by the Parties.
   1. **Embedded Generator’s Operational Conditions Precedent**
      1. The Embedded Generator’s Operational Conditions Precedent must be satisfied or waived in writing by the DisCo on or before the Commercial Operations Date. Prior to the Commercial Operations Date, the Embedded Generator shall:
2. ensure that the certification of the Plant and its interconnection to the DisCo’s network by the Nigerian Electricity Management Services Agency (NEMSA) has been obtained;
3. ensure all works relating to the Connection of the Plant to the DisCo’s Dedicated Network are Commissioned prior to Connection;
4. fulfil other appropriate conditions which may be agreed in writing by the Parties.
   1. **DisCo’s Initial Conditions Precedent**
      1. The DisCo’s Initial Conditions Precedent must be satisfied or waived by the Embedded Generator no later than the Initial CP Satisfaction Date.
      2. The DisCo shall:
5. Have procured the execution of a minimum of sixty (60%) of the Premium Customers’ power purchase agreements for premium services, or alternatively, ensure that customer consultation have occurred to at least ninety (90%) of the Premium Customers with the minutes recorded;
6. Satisfy the condition in Section 22.2 of the Market Rules on prudent procurement of embedded generation; and
7. fulfil other appropriate conditions which may be agreed in writing by the Parties.
   1. **DisCo’s Operational Conditions Precedent**
      1. The DisCo’s Operational Conditions Precedent below must be satisfied or waived in writing by the Embedded Generator on or before the Commercial Operations Date:
8. Carry out all necessary network refurbishment and upgrade in line with Applicable Law andGood Industry Practices using funding provided by the Embedded Generator and ensure that all equipment utilised for the network refurbishment are of good quality standard, provided that the DisCo shall approve whoever is to carry out the network refurbishment and upgrade;
9. Ensure all distribution network works relating to the Connection of the Embedded Generator’s Plant to the DisCo’s Dedicated Network are Commissioned prior to Connection; and
10. Fulfill other appropriate conditions which may be agreed in writing by the Parties.
    1. **Joint Operational Conditions Precedent**
       1. The Parties shall jointly perform initial calibrations and accuracy tests for the Primary Meter and Secondary Meter;
       2. The Parties shall jointly seek and obtain approval of NERC for the project.
       3. The Parties have entered into the Connection Agreement.
    2. **Satisfaction of Conditions Precedent** 
       1. The Parties shall use Reasonable Endeavours to satisfy or procure the satisfaction of the Conditions Precedent as soon as is reasonably practicable and shall satisfy or procure the satisfaction of each of the Conditions Precedent for which they are primarily responsible for satisfying on or before the Initial CP Satisfaction Date or the Commercial Operations Date, as applicable.
       2. Each Party, upon request of the other Party and at such other Party’s expense, may use Reasonable Endeavours to assist the other Party in satisfying each Condition Precedent for which such other Party is primarily responsible for satisfying.
       3. Upon satisfaction of a Condition Precedent, the Party that is primarily responsible for the satisfaction of the Condition Precedent shall notify the other Party of its satisfaction. Such notice shall include necessary supporting documentation to substantiate the satisfaction of the Condition Precedent. The other Party may by notice within five (5) Days dispute whether such Condition Precedent has been satisfied.
       4. Where it is indicated that the consent of a Party is required to waive a Condition Precedent, then such Condition Precedent shall only be waived with the consent of such Party. Where it is indicated that the consent of both Parties is required to waive any Condition Precedent, such Condition Precedent shall only be waived with the consent of both Parties. Either Party may condition the waiver of a Condition Precedent upon the conversion of that Condition Precedent into a condition subsequent.
       5. On or before the Initial CP Satisfaction Date or the Commercial Operations Date, as applicable, each of the Parties shall provide notice to the other acknowledging that all Conditions Precedent have been met, waived (where permitted by Applicable Laws) or made conditions subsequent, at which point all of the provisions of this Agreement shall become effective.
    3. **Failure to Satisfy Conditions Precedent**
       1. If any Party becomes aware of the reasonable likelihood that it will not be able to satisfy a Condition Precedent for which it is primarily responsible under Clause 4 on or before the Initial CP Satisfaction Date or the Commercial Operations Date, as applicable then:
11. the Party responsible for satisfying such Condition Precedent 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; and
12. upon such notification in Clause 4.8.1(a), the Parties shall mutually agree on an extension of time for the satisfaction of such Condition Precedent. As a result of such extension, the date newly determined shall be deemed to be the Initial CP Satisfaction Date or Commercial Operation Date (as applicable) for the purpose of this Agreement.

* + 1. Either Party may terminate this Agreement with immediate effect by giving a Termination Notice to the other Party if the Conditions Precedent have not been satisfied or waived in accordance with this Agreement by the Initial CP Satisfaction Date/Commercial Operations Date, subject to any agreed extension pursuant to Clause 4.8.1(b).

# OBLIGATIONS OF THE PARTIES

The obligations of the Parties will include:

* 1. **Obligations of the Embedded Generator Prior to Commercial Operations Date**
     1. The Embedded Generator shall design, engineer, construct, and Commission the Plant and the Embedded Generator’s Connection Equipment:

1. in accordance with this Agreement, Applicable Law, such requirements as the DisCo may reasonably deem necessary and;
2. in a good and workmanlike manner, only with materials and equipment that are new, utility grade and suitable for their intended use;
3. in such a manner as to provide that the useful life of the Plant, with proper operation and maintenance, will be in line with Annex 11;
4. in all material respects with sound engineering and construction practices of a Reasonable and Prudent Operator.
   * 1. The Embedded Generator shall provide the DisCo with progress reports on the Project, the procurement of requisite Authorisations;
     2. The Embedded Generator shall bear all Shallow Connection Costs, Dedicated Network Upgrades Costs, finance the procurement of customer meters and undertake the procurement, supply, construction of the Embedded Generator’s Plant and Connection Equipment;
     3. The Embedded Generator shall make all necessary arrangements at its own cost and expense to mobilise the Plant and the Embedded Generator’s Connection Equipment to the Site; and
     4. The Embedded Generator shall Commission the Plant and the Embedded Generator’s Connection Equipment on or before the Commercial Operations Date.
   1. **Obligations of the DisCo Prior to Commercial Operations Date**
      1. The DisCo shall design, engineer, construct, enhance, upgrade and Commission the Dedicated Network and the DisCo’s Connection Equipment:
5. in accordance with this Agreement, Applicable Law, such requirements as the DisCo may reasonably deem necessary;
6. in a good and workmanlike manner, only with materials and equipment that are new, utility grade and suitable for their intended use;
7. in such a manner as to provide that the useful life of the Dedicated Network, with proper operation and maintenance, will be at least equal to [INSERT NUMBER OF YEARS]; and
8. in all material respects with sound engineering and construction practices of a Reasonable and Prudent Operator.
   * 1. The DisCo shall provide the cost estimates and recommend suitable contractors (who are registered with the DisCo and NEMSA) and approved by the Embedded Generator for design, engineering, construction, enhancement, upgrade and Commission of the Dedicated Network and the DisCo’s Connection Equipment.
     2. The DisCo shall provide the Embedded Generator with progress reports with respect to the enhancement and upgrade of the Dedicated Network and the DisCo’s Connection Equipment.
     3. The DisCo may use all Reasonable Endeavours (or may cause others to use all Reasonable Endeavours) to assist the Embedded Generator (when such assistance is required) in obtaining and maintaining any requisite Authorisations for the development, financing, design, construction, testing, operation and maintenance of the Plant;
   1. **Obligations of the Embedded Generator after Commercial Operations Date** 
      1. Following Commercial Operations Date, the Embedded Generator shall, in addition to obligations stipulated in other clauses of this Agreement:
9. supply the Net Electrical Output to the DisCo in accordance with this Agreement and the Available Electricity Output during the Embedded Generator’s non-premium hours;
10. operate and maintain the Plant and the Embedded Generator’s Connection Equipment in a good and workmanlike manner, only with materials and equipment that are new, utility grade and suitable for their intended use, in accordance with Good Industry Practices and the other terms of this Agreement, so as to ensure that, following the Commercial Operations Date, the Plant is able at all times to deliver the Contract Capacity, as agreed between Parties, to the DisCo throughout the complete Operational Period;
11. ensure that the Plant and the Embedded Generator’s Connection Equipment complies and continues to comply at all times with all technical requirements for interconnection, in accordance with Applicable Law and Good Industry Practices;
12. ensure that the Plant when Commissioned can meet the demands of the Premium Customers connected to the Dedicated Network; and
13. ensure that, where the Plant and the Embedded Generator’s Connection Equipment are damaged after the Commercial Operations Date, appropriate steps are taken to restore the Plant and the Embedded Generator’s Connection back to full operational capacity so as to provide the Contract Capacity, as agreed between Parties, to the DisCo throughout the Operational Period; and
14. comply with Applicable Law, Relevant Rules and Good Industry Practices when fulfilling its obligations during the Operational Period.
    1. **Obligations of the DisCo after Commercial Operations Date**
       1. Following Commercial Operations Date, the DisCo shall, in addition to obligations stipulated in other parts of this Agreement:
15. pay for the Net Electrical Output and meet all its payment obligations under this Agreement;
16. operate, maintain, repair and reinforce the Dedicated Network and the DisCo’s Connection Equipment in a good and workmanlike manner, only with materials and equipment that are new, utility grade and suitable for their intended use, in accordance with Good Industry Practices and the other terms of this Agreement, so as to ensure that, following the Commercial Operations Date, the Dedicated Network is able at all times to deliver the Net Electrical Output to the Premium Customers throughout the Operational Period;
17. continue to give the Embedded Generator or its duly authorised contractors all reasonable and necessary access to the DisCo's premises for the purpose of connecting, inspecting, testing, altering, replacing or maintaining any service line, meter and/or other equipment. The required activity can only be conducted with the presence of the DisCo. The authotised personnel cant condcuted any activities within the premisis without prior notice provided to the DisCo. Authorised personnel should always have their company offical identity card;
18. take immediate steps to remedy any defects resulting from the DisCo’s use of the Net Electrical Output in such a way as to interfere with or cause irregularities in the supply of the Net Electrical Output by the Embedded Generator;
19. comply with Applicable Law, Relevant Rules and Good Industry Practices when fulfilling its obligations during the Operational Period;
20. not to tamper with the Metering System, the Embedded Generator’s Connection Equipment or bypass the Metering System; and
21. on a Reasonable Efforts basis cooperate with the Embedded Generator to procure any other necessary document, equipment, grant, or otherwise not stated herein, which is or are necessary for the Embedded Generator to effectively carry out its obligations under this Agreement.
    1. **Underperformance**
       1. If an Underperformance Event occurs, the DisCo shall be entitled to deduct the Underperformance Liquidated Damages from the Tariff of the applicable month for every day the Underperformance Event occurs provided that settlement will be made on a monthly basis.
       2. In the event an Underperformance Event occurs during the Operational Period, the Embedded Generator shall pay the liquidated damages reflected in the table below:

|  |  |
| --- | --- |
| **Embedded Generation System Availability** | **Embedded Generator Liquidated Damages (% of Tariff of the Applicable Month of the Underperformance Event Deductible)** |
| 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% |

* + 1. If the Embedded Generator Availability Standard Deviation goes below fifty percent (50%), it shall constitute an Embedded Generator Event of Default.

# COMMISSIONING AND COMMERCIAL OPERATION

* 1. **Commissioning** 
     1. Within the Initial Period, the DisCo and Embedded Generator shall agree on the Commissioning Date [three] months prior to Commissioning. The Embedded Generator shall give the DisCo not less than fifteen (15) Days’ prior notice of its estimate of the date the Plant and the Embedded Generator’s Connection Equipment is expected to commence Commissioning and shall give five (5) Days’ notice to the DisCo of any change in such estimate. The notice shall also estimate the length of the Commissioning Period for the Plant and Embedded Generator’s Connection Equipment. The Commissioning and further testing shall establish the Dependable Capacity of the Plant provided the DisCo is available to provide adequate load for the test.
     2. The Embedded Generator and shall give the DisCo three (3) Day’s notice of any change in the Commissioning Period that will delay the Commercial Operations Date.
     3. The Embedded Generator shall, acting in accordance with Applicable Law and Good Industry Practices, perform the Commissioning of the Plant and the Embedded Generator’s Connection Equipment.
     4. The Parties shall cooperate with each other during the Commissioning of the Plant and the Embedded Generator’s Connection Equipment.
     5. The Embedded Generator shall communicate to the DisCo when the Plant is commissioned.
     6. In the event that the Commissioning of the Plant and the Embedded Generator’s Connection Equipment is not successfully completed by the expiration of the Commissioning Period, the Commissioning Period shall be extended until completion of the Commissioning Procedures and Embedded Generator shall ensure that the Commissioning is carried out and successfully completed as soon as practicable.
  2. **Commissioning Procedures**
     1. The Embedded Generator shall be responsible for carrying out the Commissioning Procedures stipulated in Annex 3.
     2. The Commissioning Procedures shall consist of procedures and tests designed to demonstrate that the Plant and the Embedded Generator’s Connection Equipment are capable of operating to standards of performance and safety consistent with Applicable Law and with Good Industry Practices. Provided that the DisCo’s Connection Equipment and the Distribution Network have been commissioned and capable of taking the Net Electrical Output prior to the Commissioning of the Plant and the Embedded Generator’s Connection Equipment.
  3. **Appointment of Independent Engineer**
     1. At least thirty (30) Days before the Commissioning, the Embedded Generator shall at its expense, nominate the Independent Engineer, acceptable to the DisCo, to carry out inspections and certification of the Plant and the Embedded Generator’s Connection Equipment, as well as to update the Net Electrical Output, as may be required under this Agreement. Annex 6 shall apply.
     2. If a Dispute occurs between the Parties regarding the tests and inspections carried out by the Independent Engineer on the Plant and the Embedded Generator’s Connection Equipment, such Dispute shall be reported to an Expert pursuant to Clause 31.3 of this Agreement.
  4. **Commercial Operations Tests and Commercial Operations Date**
     1. The DisCo shall be given at least [five (5) days] prior written notice of the Commercial Operations Tests and shall be entitled to have representatives present for the purpose of observing any such test, and receive, within fourteen (14) Days thereafter, a written summary of all the test reports.
     2. The Commercial Operations Date for the Plant and the Embedded Generator’s Connection Equipment shall occur on the date immediately following the date on which:

1. the Embedded Generator gives notice to the DisCo that it has successfully completed the Commercial Operations Tests; and

1. the Independent Engineer has issued a certificate (“**Engineer’s Certificate**”) addressed to both Parties, certifying, without material qualification, that:

Embedded Generator has installed all Plant and the Embedded Generator’s Connection Equipment and equipment consistent with the requirements of this Agreement;

the DisCo’s Connection Equipment and the DisCo’s Distribution Network are installed, tested and capable of producing the Net Electrical Output in accordance with the Minimal Functional Specifications;

Commissioning of the Plant and the Embedded Generator’s Connection Equipment have been completed, and

Embedded Generator has successfully completed the Commercial Operations Tests and is ready to commence commercial operations.

1. the Independent Engineer, based on the results of the Commercial Operations Tests has determined the Net Electrical Output, using an industry standard computer program, based on which the Table with the Net Electrical Output set in Annex 1 shall be updated.

provided that the Commercial Operations Date may not occur prior to the date on which the DisCo provides notice to the Embedded Generator that the DisCo’s Distribution Network has been completed, commissioned and is operational;

* + 1. Towards the end of the Commissioning Period, the Embedded Generator shall give Notice to the DisCo of the likely date on which the Commissioning Period would end and on which it intends to commence Commercial Operations (the “**Commissioning Completion Notice**”). The date indicated in the Commissioning Completion Notice as the Commercial Operations Date shall, unless the Parties otherwise agree in writing, be the Commercial Operations Date.
    2. Upon receipt of the Commissioning Completion Notice, the DisCo may by Notice to the Embedded Generator propose a later date as the Commercial Operations Date, provided that the later date shall not be more than thirty (30) Days from the date indicated by the Embedded Generator in the Commissioning Completion Notice, otherwise, the DisCo’s payment obligation shall become effective thirty (30) Days after the date proposed by the Embedded Generator as Commercial Operations Date in the Commissioning Completion Notice. Where the Embedded Generator accepts the later date proposed by the DisCo in accordance with this Clause 6.5.2, such new date shall be deemed to be the Commercial Operations Date.
    3. This Clause 6 shall apply mutatis mutandis to the DisCo in relation to the Dedicated Network and the DisCo’s Connection Equipment.

* 1. **Authorisations**

From the Commencement Date, the Parties shall, at their own cost and expense, apply for, procure, diligently pursue and, following receipt, maintain (and, where applicable, cause their Contractors to procure and maintain) all Authorisations they are required to obtain and thereafter maintain to fulfil their obligations under this Agreement.

# OPERATION AND MAINTENANCE

* 1. **Operation and Maintenance**
     1. Each Party shall at all times during the Operational Period, either directly or through a Contractor, operate and maintain the Plant, the Embedded Generator’s Connection Equipment, the Dedicated Network and the DisCo’s Connection Equipment as applicable to the Parties in accordance with this Agreement, Good Industry Practices, and Applicable Law. The appointment of an operations and maintenance Contractor by a Party shall not relieve that Party of any of its obligations or excuse the Party’s from any obligations under this Agreement, Good Industry Practices, and Applicable Law regarding the design, construction, insurance, operation, and/or maintenance of the Plant, the Embedded Generator’s Connection Equipment, the Dedicated Network and the DisCo’s Connection Equipment as applicable to the respective Parties, or any liability whatsoever resulting from a breach of any term or condition of this Agreement.
     2. The operations and maintenance of the Plant, the Embedded Generator’s Connection Equipment, the Dedicated Network and the DisCo’s Connection Equipment as applicable to the Parties shall be done according to Operational and Maintenance Framework mutually agreed upon by the Parties as contained in Annex 7.

* 1. **Scheduled Maintenance Outages**

The Embedded Generator and the DisCo shall be entitled in each Contract Year to Scheduled Maintenance Outages in accordance with this agreement at its own cost. For the avoidance of doubt, the DisCo has no obligation to pay for any Net Electrical Output which is not supplied due to Scheduled Maintenance Outages.

* 1. **Scheduling of Scheduled Maintenance Outages**

The schedule for Scheduled Maintenance Outages for each Contract Year shall be established as follows:

* + 1. The Parties shall use Reasonable Endeavours to coordinate and align their Scheduled Maintenance Outages in other not to disrupt each Party’s business operations.
    2. The Embedded Generator shall use Reasonable Endeavours to coordinate with Gas Supplier and gas transporter to align its Scheduled Maintenance Outages with the scheduled maintenance outages proposed by the Gas Supplier and gas transporter.
    3. The Parties shall cooperate and use their Reasonable Endeavours to accommodate any reasonable request by the other Party to reschedule any Scheduled Maintenance Outage provided (i) such request would not defer maintenance required at a particular time by Good Industry Practices. For the avoidance of doubt, each Party shall be entitled to reschedule a Scheduled Maintenance Outage(s), if and to the extent that such rescheduling is required for health or safety reasons, to avoid damage (or the threat of imminent damage) to the Plant, the Embedded Generator’s Connection Equipment, the Dedicated Network and the DisCo’s Connection Equipment as applicable to the Parties, or if such rescheduling is required by Good Industry Practices.
  1. **Unscheduled Outages**

Each Party (“Notifying Party”) shall notify the other Party (“Receiving Party”) of the need for any Unscheduled Outage, together with the proposed commencement date and estimated duration of the work to be undertaken. Upon receiving the notice, the Receiving Party shall advise the Notifying Party of the periods during which such Unscheduled Outage may be undertaken, such periods to be reasonable in light of the DisCo’s requirements for electricity and the necessity for the Unscheduled Outage.

* 1. **Notification of Forced Outages**

Each Party shall advise the other Party of any Forced Outage or Partial Forced Outage immediately upon occurrence and shall, as such information becomes available and is updated from time to time, keep the other Party informed as to the estimated duration of the work to be undertaken and the estimated conclusion of the Forced Outage or Partial Forced Outage.

# COMPLIANCE WITH APPLICABLE LAW AND GOOD INDUSTRY PRACTICE

* 1. The Parties agree that they shall each be bound by the Applicable Law and Good Industry Practice.

* 1. The provisions of the Applicable Laws will supersede the provisions of this Agreement in the event of a conflict unless the Parties have elected to adopt the provisions of this Agreement in lieu of the equivalent provisions of the Applicable Laws if and to the extent that such election is allowed by the Applicable Laws.
  2. The DisCo acknowledges and agrees that the Embedded Generator is the exclusive owner of all Environmental Attributes and Environmental Incentives attributable to the Plant.

# METERING

* 1. **Metering**

Metering of Net Electrical Output, reactive power, voltage, and power quality by the Parties for the purposes of this Agreement shall be done in accordance with the Metering Code.

* 1. **Main Meters and Back Up Meters**

In addition to the official meter installed, owned, operated and maintained by the Embedded Generator which will be used as a primary reference for the measurement of Net Electrical Output delivered at the DisCo’s Delivery Point, reactive power, voltage and power quality (“**Main Meter**”), the DisCo may, at its cost and expense supply, install and maintain one or more revenue-quality meters, recording equipment, telemetry, and related equipment (each a “**Back Up Meter**”) to be used for measurement of Net Electrical Output delivered at its Delivery Point, reactive power, voltage and power quality. The Metering System will be jointly sealed by the DisCo and the Embedded Generator and the metering equipment measurement accuracy and specifications shall be in conformity with Metering Code.

* 1. **Delivery of Meter Data**

The Embedded Generator will ensure that data from any meter controlled by the Embedded Generator is sent to the DisCo, and will do so on a real time basis at such time as the DisCo is prepared to receive such data stream.

* 1. **Meter Failure or Inaccuracy**

* + 1. In the event of a failure, inaccuracy or defect in a Metering System, the Embedded Generator shall in the case of the Main Meter repair, replace, and/or recalibrate the Main Meter owned by it at its own expense and the DisCo shall in the case of the Back Up Meter repair, replace, and/or recalibrate the Back Up Meter owned by it at its own expense.
    2. If there is a Defective Metering Event in relation to a Main Meter, then the official measurement of Net Electrical Output shall be determined in accordance with this Clause 9.4.2:

1. If the Parties are able to agree on the amount of any error due to a Defective Metering Event, then the erroneous measurements of Net Electrical Output shall be corrected by such amount.
2. If the Parties are unable to agree on the amount of any error caused by a Defective Metering Event, then the percentage error by which the Main Meter is to be corrected, for the period determined in accordance with this Clause 9, shall be determined (i) by reference to the Back Up Meter, in such order, or by calibration, tests or mathematical calculation, or (ii) if the percentage of error is not ascertainable in either manner, by estimating on the basis of Net Electrical Output under similar conditions during the period before the last test.
   * 1. If a correction is to be made pursuant to Clause 9.4.2, then such correction shall be made to readings given by the official meter for the period commencing on (a) the Day of the Defective Metering Event, if such Day can be established to the reasonable mutual satisfaction of the Parties, or (b) if the Day of the Defective Metering Event cannot be established to the reasonable mutual satisfaction of the Parties, the Day which is halfway between the Day of the immediately preceding test of such Metering System and the Day the Defective Metering Event was discovered.
     2. Any corrections pursuant to this Clause 9.4 will be reflected in the next invoice following determination of the amount, and the appropriate Party shall pay the other Party the difference between the amount previously paid and the amount finally determined to be due.
   1. **Assurances Regarding Meter Tampering**

The Parties undertake not to tamper with or otherwise interfere with any part of the Main Meters or Back Up Meters in any way and shall use reasonable precautions in accordance with Applicable Law and Good Industry Practices to ensure that the Main Meters and Back Up Meters are secure and are not tampered with by any other person.

* 1. **Notice of Meter Tampering**

If, at any time, either Party discovers that any part of the Main Meter or a Back Up Meter 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 owner of the relevant meter for necessary actions.

* 1. **Daily Meter Reading**

Embedded Generator shall have the Main Meters read daily and report such data to the DisCo on a weekly basis. Such data will include all of the available details as to Net Electrical Output and shall be provided in a form readily usable by the DisCo.

* 1. **Metering Inspection and Testing**

Both parties shall have the Main Meters and Check Meters inspected at least annually, and may have such inspection and testing performed at any time at its direction, all at its own expense. The DisCo shall have the right to be present at any meter test. Upon request by the DisCo on reasonable notice and not more frequently than once a Month, the DisCo may request an additional inspection or test of the Main Meter. The actual expense of any additional inspection or testing will be borne by the DisCo, unless upon such inspection or testing, the metering device is found to register inaccurately by more than the Metering Tolerance as prescribed under the Metering Code, in which event the expense of the requested additional inspection or testing will be borne by Embedded Generator. If requested by the DisCo, the Embedded Generator will, at the DisCo’s cost, provide copies of any inspection or testing reports to the DisCo.

# TITLE AND RISK

* 1. The Embedded Generator or its assignees shall be the legal and beneficial owner of and shall retain full title to the Plant and the Embedded Generator’s Connection Equipment or interconnection facilities provided by the Embedded Generator (the “**Embedded Generator’s Facilities**”), at all times. The Parties both consent to and agree that the Embedded Generator’s Facilities shall be considered personal property (removable from the DisCo’s premises where present in such premises) and not attached to or be deemed a part of, or fixture to, the DisCo’s premises.

* 1. The DisCo covenants that it will at all times treat the Embedded Generator’s Facilities as the exclusive property of Embedded Generator and will permit Embedded Generator to post conspicuous signs to that effect on or near the DisCo’s premises. The DisCo covenants that it will not during the period of this Agreement pledge, encumber, transfer or hypothecate the Embedded Generator’s Facilities to any person.

* 1. The DisCo covenants that in case of encumbrance of the DisCo’s real property, the DisCo shall ensure that it is explicitly stipulated in the relevant mortgage or other agreement that the Embedded Generator’s Facilities is not part of the mortgaged or otherwise encumbered property. The DisCo will obtain an acknowledgement, in form and substance satisfactory to Embedded Generator, confirming that the Embedded Generator’s Facilities are not subject to such encumbrance, which acknowledgment will be obtained promptly following execution of this Agreement, and in any event prior to the date Embedded Generator commences installation of the Embedded Generator’s Facilities.

* 1. Title to, and risk of loss of, all Net Electrical Output shall transfer from the Embedded Generator to the DisCo upon delivery of such Net Electrical Output to the Delivery Point.

# PRICES, BILLING AND PAYMENTS

* 1. **Minimum Chargeable Energy**

The DisCo shall Take or Pay the Minimum Chargeable Energy for each Month during the Operational Period through the independent collection account only. Where the DisCo requires additional electrical energy above the Minimum Chargeable Energy, the Embedded Generator shall make the required quantity of energy available to the DisCo at the Delivery Point, and the DisCo shall take and pay for such quantity of energy as measured by the metering system,

* 1. **Price**
     1. For each Contract Year, the DisCo shall pay the Embedded Generator the Tariff which comprises of the cost of the Net Electrical Output, the costs of financing the reinforcement and refurbishment of the Dedicated Network, upgrade and maintenance fees, the cost of connecting the Plant to the Distribution Network at the Connection Point, and the cost of financing the procurement of customer meters in accordance with the rate as provided in Annex 1.
     2. The Tariff, expressed in kWh, shall include all costs and expenses incurred by Embedded Generator to deliver the Net Electrical Output at the Delivery Point, including but not limited to the investment cost of the Plant by the Embedded Generator and the enhancement and upgrade of the Dedicated Network, the Embedded Generator’s Connection Equipment and other capital expenditure, funding the procurement of Main Meters, the operations and maintenance of the Embedded Generator’s Facilities, and the reasonable return on investments.

* 1. **Computation and Indexation**
     1. The Tariff payable shall be reviewed on 1st January of each year following the Commercial Operations Date and shall be escalated on the basis of inflation and change in foreign exchange rates, changes in the gas price and changes in Applicable Law and Tax in line with the formula provided in Annex 1.
     2. Notwithstanding any provisions of this Agreement, either Party may call for a review at any time during a year in the event that the value of the relevant index rises or decreases by more than [5]% over the base value for the year in question in line with the thresholds set out in Annex 1. The review process should be concluded within a billing cycle
  2. **Billing** 
     1. The Embedded Generator shall prepare within five (10) Business Days after the end of each Month and forward to the DisCo and the Account Manager, an invoice showing the total Net Electrical Output delivered during the Month, any previous outstanding balance, any liquidated charges for the Month, any applicable taxes and total amount due on the invoice.
     2. Each invoice shall contain or be supported by such information specified in Annex 8 to enable the DisCo to verify the accuracy thereof.
     3. Payment to the Embedded Generator for the Net Electrical Output supplied to the DisCo shall be payable in Naira and settled in accordance with the payment waterfall in Clause 11.6 of this Agreement and the Account Administration Agreement.
     4. Where there is a shortfall on payment due to the Embedded Generator under the Account Administration Agreement in any relevant Month for the Net Electrical Output supplied, the following provisions shall apply:[[2]](#footnote-3)

1. The Embedded Generator shall submit to the DisCo and Account manager on the last Business Day of the Month an invoice specifying the amounts due for the Net Electrical Output delivered to the DisCo.
2. All payments to be made to the Embedded Generator by the Account Manager shall be paid into the Embedded Generator’s designated bank account(s) or such other account belonging to the Embedded Generator as Embedded Generator may from time to time designate in writing in accordance with the Account Administration Agreement.
3. Payments due to the Embedded Generator under this Agreement shall be inclusive of Value Added Tax (VAT) and net of all withholding tax deductions and shall be subject to such standard adjustments for inflation and Change in Law, standards, approvals, directives or other legal or quasi-legal requirements as may be agreed by the DisCo and the Embedded Generator.
4. The Embedded Generator shall submit its invoices for the payments due under this Agreement on or after the first Business Day of the relevant Billing Period.
5. All payments stated in the invoice shall become due and payable by the DisCo through the Account Manager on the Payment Due Date.
   1. **Payment** 
      1. Payment due to the Embedded Generator from the DisCo in accordance with Clause 11.4.2 shall be effected on the Payment Due Date for the relevant Billing Period. A billing period is not regarded as concluded until the Embedded Generator is paid in full. As such, parties shall not initiate Clause 11.6 for the next billing period.
   2. **Payment Waterfall**

Payment to the Embedded Generator for the Net Electrical Output supplied to the DisCo and energy resale to the customers for each month shall be settled in accordance with the following payment waterfall from the Independent Collection Account for the relevant billing period:

* + 1. The DisCo’s obligations to the Relevant NESI Market Participants shall be paid in full where the fund in the Independent Collection Account is sufficient to satisfy all the payment obligations in this Clause 11.6 or paid 30% of the collections for that month, whichever amount is lower.
    2. The Embedded Generator is paid in full or paid the balance of collections for that month, whichever amount is lower.
    3. The DisCo is paid in full for the balance of collections for that month, whichever amount is lower. This amount
    4. The Maintenance Reserve Account is paid in full or the balance of collections for that month, whichever amount is lower.
    5. Any funds left over will be retained in the Independent Collection Account and will contribute towards settling payments in the next settlement period.
    6. When the REG feeder loss level is greater than 15%, payment for 11.6.4 will occur prior to 11.6.3.
  1. **Billing Disputes**
     1. The DisCo may contest invoiced amounts (a “**Billing Dispute**”). The DisCo shall notify the Embedded Generator in writing of a Billing Dispute within [seven (7) days] from the receipt of the Embedded Generator’s invoice. Provided that the uncontested portions of invoiced amounts shall be paid on or before the Payment Due Date or shall be subject to late payment interest charges at the Applicable Interest Rate.
     2. Where, pursuant to the settlement of the Billing Dispute, it is ascertained the DisCo has overpaid certain amount; such overpaid amount will be set off against subsequent invoices. Where pursuant to the settlement of the Billing Dispute, it is ascertained the DisCo has underpaid certain amount; such underpaid amount will become immediately due and payable or shall be subject to late payment interest charges at the Applicable Interest Rate from the Payment Due Date.
     3. All Billing Disputes shall be settled within [fifteen (15) days] of delivery of the Billing Dispute to the Embedded Generator.
     4. In the event that the Billing Dispute is not settled within timeframe provided in Clause 11.7.3 above, the Billing Dispute shall be resolved in accordance with Clause 31.3 or Clause 31.2. If an amount disputed by the DisCo is subsequently deemed to have been due pursuant to the applicable invoice, late payment interest at the Applicable Interest Rate shall accrued from the Payment Due Date until the date of actual payment. Provided always that at the resolution of the Billing Dispute, if any payment made pursuant to this Clause 11.7.4 is found to have been an overpayment, the Embedded Generator shall within [seven (7) days] of the finding refund such money to the DisCo.

* 1. **Adjustment for Change in Law, Regulation and other Requirements**
     1. Notwithstanding any other provisions of this Agreement, the Parties agree that the amount payable by the DisCo to the Embedded Generator under this Agreement shall be correspondingly increased or reduced, if after the execution of this Agreement, a Change in Law which was not caused or necessitated by any wrongful act or omission of Embedded Generator shall result in Embedded Generator incurring more or lower costs than Embedded Generator could reasonably have anticipated.
     2. The Tariff shall be increased annually based on the indices stated in Clause 12.3. Provided that in no event shall the Tariff in any Contract Year be less than the Tariff for the immediately preceding Contract Year.

* 1. Any adjustment of the Tariff as determined by the parameters stated in Annex 1 shall be agreed to by the Parties.

# LIABILITY AND INDEMNIFICATION

* 1. **Limitation of Liability**
     1. Except as expressly provided in this Agreement, neither Party shall be liable to the other Party in contract, tort, warranty, strict liability or any other legal theory for any indirect, consequential, incidental, punitive or exemplary damages, loss of use, loss of contract, loss of opportunity or loss of profit. In respect of a breach of the provisions of this Agreement, neither Party shall have any liability to the other Party save as expressly stated in this Agreement; provided, however, that this provision is not intended to constitute a waiver of any rights of one Party against the other with regard to matters unrelated to this Agreement.
     2. Nothing herein shall exclude or limit the liability of either Party for any loss or damage arising by virtue of Gross Negligence or Wilful Misconduct.

* 1. **Mitigation of Damages**

Each Party shall use Reasonable Endeavours (with or without incurring expense reasonable in the circumstances arising) to mitigate or avoid any loss or damage caused by the failure of the other Party to meet its obligations under this Agreement, whether or not such failure is the result of a Force Majeure Event.

* 1. **Mutual Indemnifications**

* + 1. Subject to Clause 12.5, the DisCo shall indemnify Embedded Generator against, and hold Embedded Generator harmless from, at all times after the date hereof, any and all losses, and any and all actions, claims and demands in respect of such losses, incurred, suffered, sustained, or required to be paid, directly or indirectly, by, or sought to be imposed upon, Embedded Generator for personal injury or death to persons or damage to property arising out of the negligent or intentional acts or omissions of the DisCo in connection with this Agreement or relating to Net Electrical Output after delivery at the Delivery Point.
    2. Subject to Clause 12.5, Embedded Generator shall indemnify the DisCo against, and hold the DisCo harmless from, at all times after the date hereof, any and all losses, and any and all actions, claims and demands in respect of such losses, incurred, suffered, sustained, or required to be paid, directly or indirectly, by, or sought to be imposed upon, the DisCo for personal injury or death to persons or damage to property arising out of the negligent or intentional acts or omissions of Embedded Generator or breach of representations and warranties by Embedded Generator in connection with this Agreement or relating to Net Electrical Output on the Embedded Generator’s side of the Delivery Point.
  1. **Notice of Claims**

Each Party shall promptly notify the other Party of any loss, claim, action, demand or proceeding in respect of which it is or may be entitled to indemnification under this Clause. Such notice shall be given as soon as reasonably practicable after the relevant Party becomes aware of the loss, claim, action, demand or proceeding. Failure to give such notice in a timely fashion shall not affect the Indemnified Party’s rights to indemnification hereunder except to the extent that the Indemnifying Party is materially prejudiced thereby.

* 1. **Limitation on Indemnification**

Each Party shall be solely liable, and shall not be entitled to assert any claim for indemnification under this Agreement for any loss that would otherwise be the subject of indemnification under this Agreement until all losses of such Party arising during the current Contract Year exceed the Minimum Indemnification Amount. For purposes of this Clause 12, a loss (or claim for indemnification) shall be deemed to arise in the Year during which the event giving rise to the loss (or claim for indemnification) occurred or, in the case where the event is continuing in more than one Year, in the Contract Year during which the event ends, provided that a Party shall not be obliged to refrain from making a claim under this Clause (where it is otherwise entitled to do so) at the end of a given year (“**Year End**”) by reason of the fact that the event in question (“**Relevant Event**”) is still continuing, and provided further that in the event that such Party does make such a claim at the Year End it shall continue to be able to claim in relation to all remaining losses arising from the Relevant Event regardless of when they occur.

* 1. **Fines and Penalties**

Any fines or other penalties incurred by either Party for non-compliance with Applicable Law or Authorisations shall not be reimbursed by the other Party but shall be the sole responsibility of the fined or penalized Party except where the non-compliance is caused by the negligence or intentional act or omission of, or breach of this Agreement by, the other Party.

# INSURANCE

* 1. **Maintenance of Insurance Policies by the Embedded Generator**
     1. The Embedded Generator shall obtain and maintain, or cause to be obtained and maintained during the Initial Period and the Operational Period, insurance policies as required by Applicable Law including but not limited to the policies set forth in Annex 10.
     2. Prior to the Commercial Operations Date and not less than annually thereafter during the Operational Period, the Embedded Generator shall deliver to the DisCo certificate(s) of insurance showing that the insurance stated in Annex 10 to this Agreement are in full force and effect.
     3. To the extent available, the Embedded Generator shall require its insurers and underwriters to waive their rights of subrogation in favour of the other Party, its Affiliates, and their directors, officers, employees, agents and insurers.

# REPRESENTATION AND WARRANTIES

* 1. **Embedded Generator’s Representations and Warranties**

Embedded Generator represents and warrants to the DisCo that as of the Commencement Date:

* + 1. Embedded Generator is a company, duly organised and incorporated under the Applicable Law, and has all requisite corporate power and authority to own or lease and operate its properties and to carry on its business as proposed to be conducted under this Agreement.
    2. The execution, delivery and performance of this Agreement by Embedded Generator:

1. has been duly authorized by all requisite corporate action on the part of Embedded Generator, and no other proceedings on the part of Embedded Generator or any other Person are necessary for such authorisation;
2. will not violate (i) Applicable Law or any applicable order of NERC or order of any Relevant Authority or (ii) any provision of the memorandum and articles of association of Embedded Generator; and
3. will not violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any indenture, agreement for borrowed money, bond, note, instrument or other agreement to which Embedded Generator is a party or by which Embedded Generator or its property is bound, excluding defaults or violations that would not, individually or in the aggregate, have a material adverse effect on the business, properties, financial condition or results of operation of Embedded Generator, or on its ability to perform its obligations hereunder.
   * 1. This Agreement has been duly executed and delivered by Embedded Generator and constitutes a legal, valid and binding obligation of Embedded Generator, enforceable against it in accordance with its terms, subject to Applicable Law.

* + 1. Embedded Generator is not in default under any agreement or instrument of any nature whatsoever to which it is a party or by which it is bound in any manner that would have a material adverse effect on its ability to perform its obligations hereunder or the validity or enforceability of this Agreement.

* + 1. There is no action, suit, proceeding or investigation pending or, to Embedded Generator’s knowledge, threatened (a) for the dissolution of Embedded Generator, or (b) against Embedded Generator, which, if adversely determined, would have a material adverse effect on its ability to perform its obligations hereunder or the validity or enforceability of this Agreement.

* + 1. It is not in violation of any Applicable Law or judgment entered by any Relevant Authority, which violations, individually or in the aggregate, would materially affect the performance of any of its obligations under this Agreement. There are no legal or arbitration proceedings or any proceeding by or before any Relevant Authority, now pending or (to the best knowledge of Embedded Generator) threatened against Embedded Generator that, if adversely determined, could reasonably be expected to have a materially adverse effect on the financial condition, operations, prospects or business, as a whole, of Embedded Generator, or its ability to perform under this Agreement.

* + 1. It has:

1. the experience, qualifications, and capabilities to perform its obligations hereunder; and
2. made all investigations and inspections that it deems necessary to perform its obligations hereunder, including without limitation investigations and inspections of the Site.
   1. **Embedded Generator’s Covenants**

Embedded Generator hereby covenants and agrees with the DisCo to:

* + 1. construct, operate, and maintain the Plant and Embedded Generator’s Connection Equipment in such manner as to maintain the useful life of the Plant and the Embedded Generator’s Connection Equipment to be at least equal to the Operational Period;

* + 1. operate and maintain the Plant and Embedded Generator’s Connection Equipment in all material respects, in accordance with this Agreement, Good Industry Practices and Applicable Law; and

* + 1. work and cooperate in good faith with the DisCo with respect to all of the DisCo’s obligations and rights hereunder.

* 1. **DisCo’s Representations and Warranties**

The DisCo represents and warrants to Embedded Generator that as of the Commencement Date:

* + 1. The DisCo is a company, duly organised and incorporated under Applicable Law, and has all requisite corporate power and authority to carry on its business as proposed to be conducted under this Agreement.

* + 1. The DisCo has full corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder.

* + 1. The execution, delivery, and performance of this Agreement by the DisCo:

1. has been duly authorized by all requisite corporate action on the part of the DisCo, and no other proceedings on the part of the DisCo or any other person are necessary for such authorisation;
2. will not violate (i) Applicable Law or (ii) any applicable Order of the NERC or order of any Relevant Authority or (iii) any provision of the memorandum and articles of association of the DisCo; and
3. will not violate, be in conflict with, result in a breach of, nor constitute (with due notice or lapse of time or both) a default under any indenture, agreement for borrowed money, bond, note, or other agreement to which the DisCo is a party or by which the DisCo or its property is bound, excluding defaults or violations that would not, individually or in the aggregate, have a material adverse effect on the business, properties, financial condition, or results of operation of the DisCo, nor on its ability to perform its obligations hereunder.
   * 1. This Agreement has been duly executed and delivered by the DisCo and constitutes a legal, valid, and binding obligation of the DisCo, enforceable against it in accordance with its terms, subject to Applicable Law.

* + 1. No filing or registration with, no notice to, and no permit, authorisation, consent, or approval of any person is required for the execution, delivery, or performance of this Agreement by the DisCo*.*

* + 1. All relevant components of the DisCo’s Connection Equipment and Dedicated Network have a warranty period of at least two (2) years.

Provided that where the industry standard for the warranty period of particular equipment is at least one (1) year, procuring such an equipment would not be in breach of this clause.

* + 1. The DisCo is not in default under any agreement or instrument of any nature whatsoever to which it is a party or by which it is bound in any manner that would have a material adverse effect on its ability to perform its obligations hereunder or the validity or enforceability of this Agreement.

* + 1. There is no action, suit, proceeding or investigation pending or, to the DisCo’s knowledge, threatened (i) for the dissolution of the DisCo, or (ii) against the DisCo, which, if adversely determined, would have a material adverse effect on its ability to perform its obligations hereunder or the validity or enforceability of this Agreement.

* + 1. It is not in violation of any Applicable Law or judgment entered by any Relevant Authority, which violation, individually or in the aggregate, would affect its performance of any obligation under this Agreement. There are no legal or arbitration proceedings or any proceeding by or before any Relevant Authority, now pending or (to the best knowledge of the DisCo) threatened against the DisCo that, if adversely determined, could reasonably be expected to have an adverse effect on the financial condition, operations, prospects, or business, as a whole, of the DisCo, or its ability to perform under this Agreement.

* + 1. It has:

1. carefully examined this Agreement, together with all Schedules attached hereto, thoroughly and become familiar with all their respective terms and provisions;
2. investigated to its satisfaction the Applicable Law and determined that it can perform its obligations hereunder in accordance therewith; and
3. the experience, qualifications, and capabilities to perform its obligations hereunder.
   1. **DisCo’s Covenant**

The DisCo hereby covenants and agrees with the Embedded Generator to:

* + 1. construct, enhance, upgrade, operate, and maintain the Dedicated Network and the DisCo’s Connection Equipment in such manner as to maintain the useful life of the Dedicated Network and the DisCo’s Connection Equipment to be at least equal to the Operational Period;
    2. operate and maintain the Dedicated Network and the DisCo’s Connection Equipment in all material respects, in accordance with this Agreement, Good Industry Practices and Applicable Law; and
    3. work and cooperate in good faith with the Embedded Generator with respect to all of the Embedded Generator’s obligations and rights hereunder.
  1. **Conduct of the Parties**

Each Party represents that it and the shareholders, officers, directors, employees, and agents of it and its Affiliates have not made, offered, or authorized, and covenants that it will not (and it shall procure that the shareholders, officers, directors, employees and agents of it and its Affiliates will not) make, offer or authorize, with respect to the matters which are the subject of this Agreement, any payment, gift, promise or anything of value or advantage, whether directly or through any other person or entity, to or for the use or benefit of any public official (i.e. any person holding a legislative, administrative or judicial office, including any person employed by or acting on behalf of a public agency, a public enterprise or a public international organisation) or any political party or political party official or candidate for office, where such payment, gift, promise or advantage would violate any Applicable Law.

* 1. **Effect and Duration of Representations and Warranties**

Each representation and warranty given by a Party as of the Commencement Date shall be true and accurate in all material respects.

* 1. **Disclaimer of Other Representations and Warranties**

To the full extent permitted by the Applicable Law, except as expressly stated in this Agreement, the Parties negate any other representation or warranty written or oral, express, or implied, including any representation or warranty of merchantability, conformity to samples, or fitness for any particular purpose.

# TAXES

* 1. **Liability for Taxes**

Each Party shall be responsible for and shall pay or cause to be paid all Taxes arising in respect of its facilities, taxes based on its income, profits, and capital gains, and all other taxes arising from the generation, sale, and delivery or receipt of Net Electrical Output at the Delivery Point as contemplated in this Agreement in accordance with Applicable Law. If a Party has a legal responsibility to collect any Tax directly from the other Party for payment to the appropriate taxing authorities, such as VAT, the portion of any payment representing such Tax shall be separately stated in the invoice.

* 1. **Proof of Payment**

The Parties shall fulfil any withholding and tax retention obligations imposed by Applicable Law. If a Party is required to withhold Tax from payments to the other Party as required by Applicable Law, the Party withholding such Tax shall, upon request from the other Party, provide a withholding tax receipt or other evidence of withholding and payment as required by the applicable tax jurisdiction.

* 1. **Tax Indemnity**

* + 1. Each Party agrees to defend, indemnify in full and hold the other Party harmless from liability to any Relevant Authority resulting from failure of the Indemnifying Party or Indemnifying Party’s employees’ failure to make timely payment of, or timely filings with respect to, any obligations to pay Taxes incurred in respect of any payments under this Agreement. Such indemnities shall include all penalties and interest imposed in addition to the Taxes due as a result of Indemnifying Party’s or Indemnifying Party’s employees’ failure to comply with reporting, filing, payment or procedural requirements to discharge its tax obligations.

* + 1. Following a Change in Tax, each Party shall be liable for and shall indemnify the other Party for any incremental withholding Tax imposed by Relevant Authority on payments in excess of amounts initially withheld, (as long as the increment on the withheld tax did not become applicable only due to the failure of the non-Indemnifying Party to remit the tax timeously), provided that any amount indemnified by Embedded Generator shall be included in the calculation of compensation payable as a result of the Change in Tax.

# FORCE MAJEURE

* 1. **Definition of Force Majeure** 
     1. A “**Force Majeure Event**" shall be a Natural Force Majeure Event or a Political Force Majeure Event, which prevents the Party claiming Force Majeure (the Affected Party) from performing its obligations under this Agreement.
     2. For the purpose of this Clause 16:

1. “**Natural Force Majeure Event**” shall include any one or more of the following events amongst others: Acts of God, pandemic, epidemic or plague, breakdown/collapse of the Distribution network due to heavy rain and storm etc
2. “**Political Force Majeure Event**” shall include any one or more of the following events amongst others: acts of war (whether declared or undeclared), change in law, invasion, armed conflict, act of foreign enemy or blockade; acts of rebellion, riot, civil commotion, strikes of a political nature (other than solely by employees of the Embedded Generator or its contractors), Expropriation, nationalisation, requisition, confiscation, seizure, appropriation or repossession by any persons of all or any part of the DisCo or the Embedded Generator assets; and any boycott, sanction, embargo, penalty, restraint or directive having the effect of shutting down or reducing supply of electricity or which prohibits (by rendering unlawful) the operation of either Party’s installation and such operation cannot be made lawful by a modification to such Party’s installation, or other restriction imposed on the DisCo or the Embedded Generator.
   * 1. A “**Force Majeure Event**” shall expressly not include the following conditions:
3. normal wear and tear or inherent flaws in materials and equipment or breakdowns of equipment;
4. the economic hardship of an affected Party or changes in market conditions which is a result of a change in law
5. any event caused by, or connected with, the affected Party’s (i) negligent or intentional acts, errors or omissions, (ii) failure to comply with any laws or (iii) breach of, or default under, this Agreement;
6. unavailability of (i) fuel supply, reserves or transportation, (ii) water supply, or (iii) electric transmission or distribution service sufficient to export the output of the Plant in whole or part, except to the extent such unavailability is itself due to a Force Majeure Event.
7. failure to make a payment of money in accordance with the Party’s obligations under this Agreement;
8. any failure to take into account prevailing site conditions;
9. inability to obtain or maintain adequate funding; and
10. delays resulting from reasonably foreseeable unfavourable weather conditions or other similar reasonably foreseeable adverse conditions.
    * 1. For the avoidance of doubt, Force Majeure Event also includes non-performance of contract by reason of a Force Majeure Event under that contract by a third party with whom the DisCo or the Embedded Generator has contracted for the purposes of performing any of its obligations under this Agreement, provided that the non-performance by the third party contractor was caused by an event that would constitute a Force Majeure Event under this Agreement.
    1. **Effects of a Force Majeure Event**
       1. An affected Party shall not be liable for any delay or failure in performing its obligations, 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;
11. would have nevertheless been experienced by the affected Party had the Force Majeure Event not occurred; or
12. was caused by the failure of the affected Party to comply with its obligations under any terms and conditions under this Agreement (excluding a Force Majeure Event).
    * 1. In the event of the occurrence of a Force Majeure Event for a period of one hundred and eighty (180) days or more, (“**Prolonged Force Majeure Event**”), then either Party shall have the right, but not the obligation, to terminate this Agreement by delivering a Termination Notice.
    1. **Allocation of costs during Force Majeure Events**

Upon occurrence of a Force Majeure Event (save for a Political Force Majeure Event), the respective costs attributable to such Force Majeure Event (“**Force Majeure Costs**”) in the case of Natural Force Majeure, shall be borne by the respective Party and neither Party shall be required to pay to the other Party any Force Majeure Costs.

# EVENT OF DEFAULT

* 1. **Embedded Generator’s Events of Default**

The occurrence of any of the following events shall constitute a Embedded Generator’s Event of Default unless caused by a DisCo’s Event of Default or a Force Majeure Event:

1. a breach by the Embedded Generator which adversely affects the performance of its material obligations under this Agreement;
2. any Acts of Insolvency of Embedded Generator;
3. delay in achieving Commercial Operations Date except where delay is caused by the DisCo;
4. The Plant fails to meet the Minimum Functional Specifications;
5. any breach of a representation or warranty by the Embedded Generator under this Agreement or in any certificate or other document issued by the Embedded Generator pursuant to this Agreement which is later discovered to have been incorrect in any material respect which had significant effect to the transaction herein shall be incorrect as of the date when made or deemed made;
6. a breach by the Embedded Generator of its obligation to obtain and maintain the insurances required under the Agreement;
7. the Abandonment by the Embedded Generator of the construction or operation of the Plant;
8. the occurrence of Underperformance Events below the threshold stipulated in Clause 5.5.3;
9. expiration (where renewal is not obtained) or cancellation of the Embedded Generator’s licence.

Provided that, if the event set out in Clause 17.1 (b) above occur for the purposes of the amalgamation, reorganization or reconstruction of the Embedded Generator, it shall not constitute a Embedded Generator’s Event of Default.

* 1. **DisCo’s Events of Default**

The occurrence of any of the following events shall constitute a DisCo’s Event of Default unless caused by a Embedded Generator’s Event of Default or a Force Majeure Event:

1. a breach by the DisCo which adversely affects the performance of its material obligations under this Agreement;
2. any Acts of Insolvency of the DisCo;
3. delay in the Commercial Operations Date due to breach of the DisCo’s obligations;
4. a breach by the DisCo of any of its obligations under the Agreement which substantially frustrates or renders it impossible for Embedded Generator to perform its obligations under the Agreement for a continuous period of two (2) months;
5. any breach of a representation or warranty by the DisCo under this Agreement or in any certificate or other document issued by the DisCo pursuant to this Agreement which is later discovered to have been incorrect in any material respect which had significant effect to the transaction herein shall be incorrect as of the date when made or deemed made;
6. expiration (where renewal is not obtained) or cancellation of the DisCo’s license;
7. a breach by the DisCo of its obligation to obtain and maintain the insurances required under the Agreement;

Provided that, if the event set out in in Clause 17.2 (b) above occur for the purposes of the amalgamation, reorganization or reconstruction of the DisCo, it shall not constitute a DisCo’s Event of Default;

* 1. **Embedded Generator’s Remedies**
     1. If a DisCo’s Event of Default occurs and is continuing for a period of sixty (60) days after a cure notice has been given to the DisCo in the case of default that is capable of remedy, the Embedded Generator may:

1. terminate this Agreement by giving written notice to the DisCo of such DisCo’s Event of Default and of the Embedded Generator’s intention to terminate this Agreement; or
2. suspend delivery of all or any portion of the Net Electrical Output in which case the Embedded Generator shall incur no liability under any provision of this Agreement towards the DisCo as a result of such suspension and the Embedded Generator may exercise any rights or remedies it has under Applicable Law, in addition to any rights in this Agreement.
   * 1. Upon termination of this Agreement by the Embedded Generator pursuant to this Clause 17.3, the Embedded Generator shall be excused and released from all obligations and liabilities hereunder. Provided that the Embedded Generator shall not be excused from its obligations to make payment of any payments or amounts then due and any termination payments and from any action, inaction or event occurring before the effective date of such termination.
   1. **DisCo’s Remedies**
      1. If a Embedded Generator’s Event of Default occurs and is continuing for the period of [sixty (60) days] after a cure notice has been given to the Embedded Generator in the case of default that is capable of remedy, the DisCo may subject to Clause 18.5 terminate this Agreement by giving written notice to the Embedded Generator of such Embedded Generator’s Event of Default and of the DisCo’s intention to terminate this Agreement.
      2. Upon termination of this Agreement by the DisCo pursuant to this Clause 17.4, the DisCo shall be excused and relieved of all obligations and liabilities hereunder. Provided that the DisCo shall not be excused from its obligations to make payment of any amounts then due and any termination payments and from any action, inaction or event occurring before the effective date of such termination.

# TERMINATION AND COMPENSATION

* 1. **Early Termination**
     1. The Agreement may be terminated by giving a sixty (60) days’ notice to the expiration of its Term upon the mutual agreement of the Parties.
     2. The early termination of this Agreement shall be without prejudice to any rights, obligations, and remedies arising out of or in connection with this Agreement, which have vested, matured or accrued to either Party before the date of the expiration or termination.
  2. **Termination by DisCo’s/Embedded Generator’s Event of Default**
     1. The Agreement may be terminated by a Party if the Event of Default of the other Party occurs and is continuing, subject to Clause 17.5.
     2. Upon such a termination, both Parties shall be excused and relieved of all obligations and liabilities under this Agreement, except for payment of any amounts then due and any liabilities resulting from any action, inaction or event occurring before the effective date of such termination.
  3. **Termination for Prolonged Force Majeure Event** 
     1. Where the Agreement is terminated pursuant to a Prolonged Force Majeure Event, the DisCo shall pay to the Embedded Generator:

1. within seven (7) Days from the date of the Embedded Generator’s invoice, any outstanding Tariff due and payable under this Agreement up to and including the date of termination; and
2. all other incurred or committed amounts prior to the Event of Force Majeure are payable by the DisCo to the Embedded Generator under this Agreement.
   * 1. The provisions of this Clause 18.3 shall survive termination of this Agreement and shall be without prejudice to the rights of either Party to claim damages as a result of any breach by the other Party of its obligations under this Agreement, whether prior to or arising out of the termination of this Agreement.
   1. **Termination by Expropriation**

In the event of an Expropriation, the Embedded Generator has the right to terminate the Agreement by delivering a Termination Notice to the DisCo.

* 1. **Termination Compensation**

Notwithstanding any provision on termination payment, the compensation payable by any Party in the event of a termination of the Agreement shall be made in accordance with the Annex 9.

# CONFIDENTIALITY

* 1. Subject to the exceptions set forth below, each Party agrees that:
     1. without the consent of the other Party, it shall not disclose any Confidential Information received from the other Party to any other person (other than its Affiliates, counsel, consultants, Contractors, members, employees, officers and directors, potential or existing lenders, investors or partners, and then only to such persons subject to similar confidentiality restrictions as those set forth herein) and;
     2. it shall use any Confidential Information received from the other Party only for the purpose of fulfilling its obligations under this Agreement. Notwithstanding the foregoing, the Parties may disclose any Confidential Information required to be disclosed under Applicable Law or the rules of any stock exchange or other regulatory authority or pursuant to a validly issued subpoena or required filing.
  2. If a receiving Party is required by Applicable Law, validly issued subpoena, required filing, or the rules of any stock exchange or other regulatory authority, to disclose any Confidential Information provided by the disclosing Party, the receiving Party may make disclosure as required, but the receiving Party shall prior to making any disclosure notify the disclosing Party of the requested disclosure and shall use its reasonable efforts to cooperate with the disclosing Party, in any efforts by the disclosing Party to minimize the extent of the Confidential Information disclosed and the Persons to whom disclosed.
  3. Each Party acknowledges that it may be impossible to measure the damages which may result from a breach of this Clause 19 and agrees that the provisions of this Clause 19 may be required to be specifically performed and each Party shall have the right to obtain preliminary and permanent injunctive relief to secure specific performance of the terms of this Clause 19. The provisions of this Clause 19 shall survive until three years after the effective date of any termination of this Agreement.

# NOTICES

* 1. All notices, demands or other communications required from or given by a Party pursuant to this Agreement shall be provided to the other Party in accordance with the requirements set forth in this Clause 20. All notices, demands or other communications required hereunder shall be given or made in writing and shall be delivered personally, sent by electronic mail, sent by a courier service, or mailed by registered or certified mail, postage prepaid to the Parties at the following addresses, or at such other address as may be designated by notice given pursuant hereto:

**To DisCo:**

|  |  |
| --- | --- |
| Address: |  |
| Attention: |  |
| Number: |  |
| Email: |  |

**To Embedded Generator:**

|  |  |
| --- | --- |
| Address: |  |
| Attention: |  |
| Number: |  |
| Email: |  |

Notices delivered by hand or sent by electronic mail shall be deemed given on the day so given, transmitted or sent. Notices mailed or sent via courier service shall be deemed given two (2) clear Days after the date so mailed or on the date of actual acknowledgement of receipt, whichever is earlier. The designation of the person to be notified or the address of said person may be changed at any time by similar notice.

# SEVERABILITY

If any provision of this Agreement is finally determined to be illegal, invalid, void or unenforceable under any Applicable Law, then such provision shall be deemed to be deleted and the remaining provisions of this Agreement shall continue in full force and effect and if necessary, be so amended as shall be necessary to give effect to the spirit and intent of this Agreement to the extent possible.

# SURVIVAL

* 1. **Survival of Terms and Conditions**

All applicable provisions of this Agreement shall continue in effect after termination to the extent necessary to provide for final billings and adjustments related to the period of supply prior to termination, including the computation and repayment of any monies due and owing by one Party to the other Party under this Agreement, the compensation amount, confidentiality, indemnification and Dispute resolution.

* 1. **Survival of Obligations**

The cancellation, expiration, or earlier termination of this Agreement shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, including, without limitation, warranties, remedies, or indemnities.

# COUNTERPARTS

This Agreement may be executed in any number of counterparts and each such counterpart shall be deemed an original Agreement for all purposes; provided that no Party shall be bound to this Agreement unless and until both Parties have executed a counterpart.

# ASSIGNMENT

* 1. **Permitted Assignments**

This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the Parties hereto. Neither Party shall, without the written consent of the other Party, such consent not to be unreasonably withheld, assign, transfer, mortgage or pledge this Agreement or its rights and/or obligations thereunder.

* 1. **Assignments to Affiliates**

Neither Party shall, without the written consent of the other, such consent not to be unreasonably withheld, assign all or part of its rights and interests to:

* + 1. any entity acquiring all or substantially all of the assets of such Party;
    2. any entity merged or consolidated with such Party; or
    3. any entity which is controlled by such Party

Provided that for any assignment to Affiliates by the DisCo, the Embedded Generator will need to be satisfied as to the technical and financial capability of the Affiliate.

# WAIVER

* 1. No waiver of any term, provision or condition of this Agreement shall be effective unless it is in writing and signed by the waiving Party.
  2. The waiver of any term, provision or condition of this Agreement or of any action pursuant to this Agreement on any occasion shall not constitute a waiver of:
     1. Any other term provision, or condition of, or action pursuant to, this Agreement; or
     2. Such terms provisions or conditions of, or actions pursuant to, this Agreement on any future occasion.

# VARIATION

This Agreement may be varied, amended, changed, modified, or altered; provided that such amendment, change, modification, or alteration shall be in writing and signed by the Parties.

# NO THIRD-PARTY BENEFICIARIES

The interpretation of this Agreement shall exclude any right under legislative provisions or court made law conferring rights under a contract to Persons not a party to that contract.

# NATURE OF RELATIONSHIP

* 1. This Agreement shall not be interpreted to create an association, joint venture, or partnership between the Embedded Generator on the one hand and the DisCo on the other hand. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.
  2. The Embedded Generator shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of persons to perform services to be provided under this Agreement, including all Federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers’ compensation coverage.
  3. None of the persons employed by the Embedded Generator shall be considered employees of the DisCo for any purpose; nor shall the Embedded Generator represent to any person that he or she is or shall become an employee of the DisCo.

# FURTHER ASSURANCES

The Parties shall undertake all further acts and execute and deliver all further instruments, deed and documents as shall be reasonably required in order to perform and carry out the provisions of this Agreement.

# ENTIRE AGREEMENT

The Agreement contains and expressly refers to the entire agreement between the Parties with respect to its subject matter and supersedes all previous agreements and undertakings between the Parties with respect to its subject matter and each Party acknowledges and confirms that it does not enter into this Agreement in reliance on any representation, warranty or other undertaking by the other Party not fully reflected in the terms of this Agreement.

# GOVERNING LAW AND DISPUTE RESOLUTION

* 1. **Governing Law**

This Agreement shall be governed by, construed and enforced in accordance with the laws of the Federal Republic of Nigeria.

* 1. **Dispute Resolution by Arbitration**
     1. The Parties shall make a good faith effort to resolve Disputes on an amicable basis through negotiations facilitated by the Project Team before invoking Dispute resolution procedures. During the continuation of said Dispute resolution procedures, the Parties shall continue the performance of their obligations under this Agreement, unless where doing so would be impossible or impracticable.
     2. Where the Project Team is unable to resolve the Dispute as provided in Clause 31.2.1 above, any Party alleging the existence of a Dispute shall give a Dispute Notice and within [five (5) Business Days] of the service of a Dispute Notice, a director or other senior representative of each Party with authority to settle the Dispute shall meet to seek to resolve the Dispute. If within [ten (10) Business Days] of service of the Dispute Notice (or within such longer period of time as the Parties may agree), no meeting has taken place or the Dispute has not been resolved, either Party shall be entitled to refer the Dispute to Expert determination or arbitration in accordance with this Clause 31.2 and Clause 31.3.
     3. Subject to Clause 31.2.2 and Clause 31.3, any Dispute or difference of any kind between the Parties in connection with or arising out of this Agreement including the interpretation of this Agreement, its validity and any purported breach or termination shall be amicably settled by the representatives of the Parties. In the event a Dispute cannot be amicably resolved, it shall be finally settled by arbitration under the Arbitration and Conciliation Act 1988 or any amendment or replacement thereof (the Arbitration Act). The arbitration shall be administered by the Chartered Institute of Arbitrators, Nigeria Branch (CIArb).
     4. The place of arbitration shall be [Lagos][[3]](#footnote-4), Nigeria and the language of the arbitration shall be English.
     5. There shall be [three (3)] arbitrators, one appointed by each Party and the third who shall be the presiding arbitrator shall be appointed by the arbitrators each Party has appointed provided that where the arbitrators are unable to agree on the third arbitrator, same shall be appointed by the Chairman of the Chartered Institute of Arbitrators (Nigeria Branch) for the time being, on the application of either Party.
     6. This Agreement to arbitrate constitutes a waiver of any right to sovereign immunity from execution to which a Party might otherwise be entitled with respect to the enforcement of any award rendered by an arbitral tribunal constituted pursuant to this Agreement.
     7. The award in such arbitration shall be final and binding upon the Parties, save in the event of fraud or manifest error, and judgment thereon may be entered in any court having jurisdiction for its enforcement; and the Parties renounce any right or appeal from the decision of the tribunal in so far as such renunciation can validly be made.
  2. **Expert Determination**
     1. Subject to Clause 31.2.2 above, in the event that the Parties are unable to resolve any Dispute pursuant to Clause 31.2.1 above, and the Dispute is of a technical nature (a “**Technical Dispute**”) or of a commercial nature with respect to billing or Termination Compensation (a “**Commercial Dispute**”), then such Dispute may be settled by an expert determination in accordance with the provisions of this Clause 31.3.
     2. Any Party may, by notice in writing (“**Notice of Expert Determination**”), give notice that it requires a Technical Dispute or Commercial 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. The Expert shall be appointed on the mutual agreement of the Parties.
     3. If within seven (7) 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 can write to the Chairman, Nigeria Electricity Regulatory Commission to appoint an Expert for the Parties.
     4. The Parties shall continue to perform their contractual obligations notwithstanding the existence of the determination process, and each Party shall act in a transparent manner and provide to the Expert all information in its possession requested by the Expert for the purposes of making its determination.
     5. As soon as reasonably practicable 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 for the payment of interest on any monetary sum determined, in such amount as the Expert considers reasonable, in view of the cap in Clause 12.
     6. Unless otherwise agreed in writing by the Parties or in the face of manifest error or fraud, the determination of the Dispute by the Expert shall be final and binding on the Parties.
     7. All costs of the Expert Determination and all fees payable to the Expert shall be borne by both Parties equally.

**IN WITNESS OF WHICH**, the Parties hereto have executed this Agreement in the manner hereinafter appearing.

Signed for and on behalf of the within named **(NAME OF EMBEDDED GENERATOR )**

**NAME OF DIRECTOR:**  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**signature OF DIRECTOR:** **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**date signed/SEALED:** **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**NAME OF DIRECTOR:**  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**signature OF DIRECTOR:** **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**date signed/SEALED:** **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Signed for and on behalf of the within named **(NAME OF DISCO)**

**NAME OF DIRECTOR:**  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**signature OF DIRECTOR:** **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**date signed/SEALED:** **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**NAME OF DIRECTOR:**  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**signature OF DIRECTOR:** **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**date signed/SEALED:** **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

# ANNEX 1 - TARIFF MECHANISM

1. **Tariff**

The DisCo shall pay Embedded Generator for the Net Electrical Output a Tariff of [ \* ] N/kWh.

The Tariff shall be subject to variation based on:

1. **Currency Exchange Rate**: Any increase in the NAFEX NGN: USD exchange rate as published by the FMDQ on its website at www.fmdqotc.com, or if such rate is not available on that website, then the website of any other competent source that publishes NAFEX rate, such that any depreciation in the Naira against the USD over the preceding 12 Months will result in an adjustment of the Tariff. The Tariff is based on the current applicable Exchange Rate of N [\_\_\_\_\_\_] to 1 USD. This tariff will be adjusted every Contract Year, per the fluctuation in the Applicable Exchange Rate.
2. **Change in Law or Change in Tax:** Where any increase occurs in the Embedded Generator’s costs **arising** due to any change in, addition to, termination of or substitution of any Applicable Law after the date of this Agreement; the Embedded Generator shall provide sufficient evidence to prove increase in cost after the date of this Agreement and the DisCo shall have right to verify the veracity of the Embedded Generator’s claim and settle the Embedded Generator’s claim based on facts obtained. In order to claim an adjustment in the Tariff on account of a Relevant Change, the Embedded Generator shall send a notice to the DisCo regarding such event and its estimate of the adjustment necessary to ensure that the Embedded Generator is in no worse financial position as a consequence of the Relevant Change as it would have been in if the Relevant Change had not occurred and taking into account.
3. **Inflation:** using the Monthly average Consumer Price Index (CPI) of the Federal Republic of **Nigeria** as published by the National Bureau of Statistics (NBS), every 1% change in inflation will result in 1% change in the Tariff to be adjusted every 12 Months from the Month of the Commercial Operations Date.
4. **Gas Price:** any and all increases or decreases in the Embedded Generator’s benchmark gas price **such** that a N1.00 variation in gas price under the Gas Supply Agreement will result in a Naira [●] variation in the Tariff.

# ANNEX 2 - CONNECTION SITE SPECIFICATIONS AND CONNECTION EQUIPMENT

# ANNEX 3 - COMMISSIONING PROCEDURES

# ANNEX 4 - DESCRIPTION OF DELIVERY POINT/CONNECTION POINT

# ANNEX 5 - FUNCTIONAL SPECIFICATIONS AND OPERATING PARAMETERS

# ANNEX 6 - APPOINTMENT OF EXPERT

# ANNEX 7 – OPERATIONS AND MAINTENANCE FRAMEWORK FOR THE PLANT

# ANNEX 8 – INVOICE

# ANNEX 9 - TERMINATION COMPENSATION

# ANNEX 10 - SELLER AND BUYER INSURANCE REQUIREMENTS

* + - 1. **Embedded Generator’s Insurances**
  1. Construction all risks insurance for the Plant and the Embedded Generator’s Connection Equipment, with a sufficient limit to cover full replacement value of the Plant and the Embedded Generator’s Connection Equipment;
  2. Operational all risks insurance (including Business Interruption Cover) for the Plant and the Embedded Generator’s Connection Equipment, with sufficient limits to cover full replacement value of the Plant and the Embedded Generator’s Connection Equipment, and Business Interruption Cover for an indemnity period covering the maximum possible time it would take to replace the Plant and the Embedded Generator’s Connection Equipment or repair them to a condition that would reasonably be expected to result in the Plant and the Embedded Generator’s Connection Equipment being able to meet the Embedded Generator‘s obligations; and
  3. General liability insurance with a limit of [AMOUNT] per occurrence, covering the Embedded Generator for legal liability arising out of damage to third party property or injury (or death) to third parties. This general liability insurance must contain contractual liability protection for losses or damages caused to Embedded Generator’s property, staff or agents.

# ANNEX 11 – USEFUL LIFE OF COMPONENTS OF THE PLANT

# ANNEX 12 – MINIMUM CHARGEABLE ENERGY CALCULATION

This annex will also include the total number of premium customers, estimated load and their names.

# ANNEX 13 – PRE-EXECUTION CONDITIONS PRECEDENT

Review of the load assessment and approving the load to determine the contract capacity

[.]

**ANNEX 14 – OPERATIONS AND MAINTENANCE FRAMEWORK FOR THE NETWORK INFRASTRUCTURE INVESTMENT**

1. Parties to confirm or amend as they see fit [↑](#footnote-ref-2)
2. RMI to confirm whether they are satisfied with this mechanism. [↑](#footnote-ref-3)
3. Venue for arbitration subject to confirmation [↑](#footnote-ref-4)