***Generic Tripartite Agreement Template for Public Use – September 2022***

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**TRIPARTITE AGREEMENT**

**BETWEEN**

**[DISTRIBUTION LICENSEE NAME]**

**(DISTRIBUTION LICENSEE)**

**AND**

**[MINI-GRID OPERATOR NAME]**

**(MINI-GRID OPERATOR)**

**AND**

**[LARGE COMMERCIAL & INDUSTRIAL COMPANY NAME]**

**(INTERCONNECTED CUSTOMER)**

**FOR THE DEVELOPMENT AND DEPLOYMENT OF [X] KW INTERCONNECTED SOLAR PV + BATTERY + DIESEL DISTRIBUTED ENERGY SYSTEM (MINI-GRID) AT [LARGE COMMERCIAL & INDUSTRIAL COMPANY NAME]**

 **THIS** **AGREEMENT** is made on this \_\_\_\_\_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[20XX]

**BETWEEN:**

**[DISTRIBUTION LICENSEE NAME]**, a company duly incorporated under the laws of the Federal Republic of Nigeria with registration number **[Placeholder – Registration Number]** having its registered office at **[Placeholder – Address]** hereinafter called the “**DisCo**” which expression shall where the context so admits include its successors-in-title and assigns.

**AND**

**[MINI-GRID OPERATOR]**, a company duly incorporated under the laws of the Federal Republic of Nigeria with registration number **[Placeholder]** having its registered office at **[Placeholder – Address]**, hereinafter called the “**Mini-Grid Operator**” which expression shall where the context so admits include its successors-in-title and assigns.

**AND**

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

In this Agreement, the DisCo, Mini-Grid Operator and Interconnected Customer are referred to collectively as **“Parties”** and individually as **“Party”**.

**RECITAL/ BACKGROUND**

1. The Mini-Grid Operator is in the business of constructing, operating and maintaining mini-grids and associated Generation Assets.
2. Pursuant to Section 67 of the Electric Power Sector Reform Act 2005 (“**EPSRA**”), Nigerian Electricity Regulatory Commission (the “**Commission**”) has issued to the DisCo, a Distribution License to distribute and trade (retail supply) electricity within **[Placeholder – Disco Franchise Zone]** Distribution Zone comprising of the **[Placeholder – States within Disco Franchise Zone]** of the Federal Republic of Nigeria, which includes the Distribution Network.
3. The Mini-Grid Operator seeks to connect to the DisCo’s Distribution Network as described in Schedule 1 below and operate a Mini-Grid on the Interconnected Customer’s premises, supplying electricity to the Interconnected Customer under the terms set out in this Agreement.
4. The DisCo has agreed to allow the Interconnected Customer to operate in an island mode as part of a Mini-Grid (described in Schedule 1 and 2).
5. This Agreement sets out the conditions for the connection and operation in Recital C above, which includes but not limited to the following:
	1. the construction and ownership rights of relevant infrastructure;
	2. the tariff for electricity generated and supplied by the Mini-Grid Operator;
	3. the Mini-Grid Operator and DisCo hours of supply and reliability requirements;
	4. the financing of DisCo grid upgrades directly relevant to this agreement, and the subsequent repayment by the DisCo to the Mini-Grid Operator;
	5. the availability of stable nominal voltage at the Customer Point of Interconnection of the Mini-Grid Operator with the Distribution Network; and
	6. the agreement of the Interconnected Customer to purchase electricity from the Mini-Grid Operator covering both supplies from the Mini-Grid and the Distribution Network at a blended rate.

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

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

“**Agreement**” means this tripartite agreement dated ……………………

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

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

**Infrastructure**” Mini-Grid owned and operated by the Mini-Grid Operator.

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

**“Bank Guarantee for** a bank guarantee (in a form and from a bank with a credit

**the DisCo”** rating acceptable to the DisCo) provided by the Mini-Grid Operator for the benefit of the DisCo and for the monetary value of 3 Months of estimated net payments to the DisCo.

**“Bank Guarantee for** a bank guarantee (in a form and from a bank with a credit

**the Mini-Grid** rating acceptable to the Mini-Grid Operator) provided by

**Operator”** the Interconnected Customer) for the benefit of the Mini-Grid Operator and for the monetary value of the Minimum Consumption for a period of 3 Months.

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

**“Change in Law”** means the occurrence of any of the following after the date of execution of this Agreement:

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

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

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

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

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

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

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

the Mini-Grid and the DisCo’s Distribution Network.

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

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

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

**Rate”** Nigeria Monetary Policy Rate or such equivalent rate as may be agreed between the Mini-Grid Operator and the DisCo.

**“DisCo** refers to the [X5] tariff for the kWh supplied by the

**Extraordinary Backup** Mini-Grid Operator when the DisCo does not meet the

**Tariff”** Grid Availability Standard during a given Month, and charged to the DisCo.

**“DisCo Grid Tariff”** refers to the tariff [X4] NGN/kWh the Mini-Grid Operator shall purchase electricity from the DisCo for resale to the Interconnected Customer during the Grid Priority Hours, whereby X4 is the value provided in Schedule 7.

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

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

**“Distribution Network** means the extreme case in which the percentage availability

**Failure”** of the grid during the Grid Priority Hours during a given Month is below 50%.

**“Distribution Network** are calculated by subtracting the percentage availability

**Failure Costs”** of the grid during the Grid Priority Hours during the given Month from 50%, and then multiplying it by the total kWh supplied during Grid Priority Hours during the respective Month, and multiplying that by the DisCo Extraordinary Backup Tariff.

**“Effective Date”** means seven days following the fulfilment of the condition in Clause 2 of this agreement or as agreed otherwise by the Parties.

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

**Discrepancy”** Distribution Network was below [90%] availability during a given Month – by subtracting the percentage availability of the grid during the Grid Priority Hours during the given Month from [90%], and then multiplying it by the total kWh supplied during Grid Priority Hours during the respective Month.

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

**“Generation** means the generation assets owned by the Mini-Grid

**Assets”** Operator, including but not limited to solar photovoltaics, batteries, diesel gensets, that forms part of the Mini-Grid**.**

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

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

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

**Standard”** 8.2 from the DisCo’s Distribution Network at the Grid Point of Interconnection.

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

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

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

**Interconnection”** Network interconnects to the Mini-Grid or Interconnected

 Customer; the point of electricity delivery from the DisCo’s Distribution Network to the Mini-Grid.

**“Grid Priority** means between [3 pm and 8:59 am WAT] daily.

**Hours”**

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

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

**Customer”** Interconnected Customer’s [site details].

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

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

**"Metering Systems”** means the Grid Metering System (as defined in Clause 15.1) and/or the Mini-Grid Metering System (as defined in Clause 15.2), as the case may be.

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

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

**Standard”** 8.4 from the Mini-Grid at the Customer Point of Interconnection.

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

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

**“Mini-Grid Priority** means between [9 am and 2:59 pm] Western Africa Time (WAT)] daily.

**Hours”**

“**Mini-Grid** means the Nigeria Electricity Regulatory Commission

**Regulations**” Regulations 2016 for Mini-Grids up to 1MW in force from time to time.

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

**Consumption**” shall accept from the Mini-Grid Operator (which includes electricity both from the Mini-Grid Generation Assets and the Distribution Network) every 12 Months, as defined in Clause 9.2.

**"Month”** means one calendar Month.

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

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

**Network Upgrades”** Date of Commercial Operation as detailed in Clause 7.7 and listed in Schedule 3.

**“Permit”** means a permit or equivalent granted by the Commission to the Mini-Grid Operator for the construction, operation and/or maintenance and ownership of the Mini-Grid.

**“Project”** means**:**

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

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

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

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

**Maintenance Outage”** performanceof the DistributionNetworkor Mini-Grid is subject to a material reduction affecting electricity supplies to the Interconnected Customer that: a) has been scheduled and agreed to by either Disco or Mini-Grid Operator; and b) is for inspection, testing, preventive maintenance, corrective maintenance, repairs, replacement or improvement of the Distribution Network or Generation Assets.

**“Recoverable** refers to the liability the DisCo incurs to the Mini-Grid

**Expenditure”** Operator for the value of electricity the Mini-Grid Operator supplies the Interconnected Customer when the DisCo Distribution Network falls below the Grid Availability Standard during the Grid Priority Hours during a given calendar Month.

**“Technical Codes”** shall have the same meaning in the Mini-Grid Regulations.

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

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

“**Transmission** means the amount of excess electricity the Mini-Grid

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

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

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

1. **COMMENCEMENT AND TERM**
	1. This Agreement shall commence on the Effective Date.
	2. The sale of electricity from the Mini-Grid Operator to the Interconnected Customer and the sale of electricity from the DisCo to the Mini-Grid Operator shall commence on the Date of Commercial Operation, at which time any supply agreement between the Interconnected Customer and DisCo is terminated.
	3. The **Date of Commercial Operation** shall be within 12 Months of the Effective Date.
	4. Subject to the earlier termination in accordance with Clause 17 of this Agreement, the initial duration of this Agreement shall be twenty (20) years (“**Initial Term**”) from the Date of Commercial Operation.
	5. After the Initial Term, this Agreement can be extended for an additional period(s) to be agreed upon at a later date between the Parties (“**Renewal Term**”).
	6. From the Effective Date, any exclusivity agreement entered between the Parties in respect of the Mini-Grid, if not terminated will be deemed to have been terminated.
	7. The duration of this Agreement covering the Initial Term and the Renewal Term shall be referred to as the “Term”.
2. **RIGHT TO GENERATE AND SELL ELECTRICITY IN DISCO’S SERVICE TERRITORY UNDER MINIGRID REGULATIONS**
	1. The DisCo hereby grants the Mini-Grid Operator the right to connect to the DisCo’s Distribution Network for the purpose of receiving electricity from the DisCo and supplying it to the Interconnected Customer as detailed in Schedule 1 for the duration of the Term subject to the Mini-Grid complying with the requirements of the Technical Codes.
	2. The Mini-Grid Operator confirms that it has undertaken an analysis of the physical condition of the Distribution Network at the Grid Point of Interconnection and confirms that the infrastructure of the DisCo at the Grid Point of Interconnection is in good condition and conforms with the requirements in the Technical Codes.
	3. Pursuant to Clause 4.1, the Mini-Grid Operator shall have the right to connect such number of captive generators up to a total Generation Capacity (as defined in the Mini-Grid Regulations) of 1MW to the Interconnected Customer sufficient to cover the demand by the Interconnected Customer.
3. **DUTIES AND OBLIGATIONS OF THE PARTIES**
	1. Subject to the terms of this Agreement, the DisCo shall:
		1. pay the compensation prescribed in Clause 17.4.1.1 in the event of termination of this Agreement or termination of the DisCo’s obligations under this Agreement which occurs pursuant to Clause 17.3.1, Clause 17.3.2, Clause 17.3.4, Clause 17.3.5, and Clause 17.3.6;
		2. pay the compensation prescribed in Clause 17.5.1 in the event of termination of this Agreement or termination of the DisCo’s obligations under this Agreement;
		3. make available to the Mini-Grid Operator such information and documents in its possession and control and such reasonable assistance required for the performance of its obligations under this Agreement;
		4. prior to the Effective Date, provide the Mini-Grid Operator with a copy of its plan to execute the Necessary Prior Distribution Network Upgrades and any relevant planned Distribution Network upgrades as relates to the Distribution Network that serves the Interconnected Customer, and procedures to ensure the Mini-Grid Operator’s connection standard complies with the Technical Codes;
		5. meter and bill the Mini-Grid Operator for power supplied to the Interconnected Customer from the Distribution Network;
		6. operate, maintain and carry out such repairs to the Distribution Network in the course of its operations in accordance with the Technical Codes to maintain a Grid Availability Standard of [90%] during the Grid Priority Hours (as outlined in Clause 8.2) or pay the Mini-Grid Operator the Recoverable Expenditure (as detailed in Clause 11.4 and 11.5), and not provide less than an average of [70%] power availability during the Grid Priority Hours for any 3 consecutive Months;
		7. prior to the Date of Commercial Operation, make the Necessary Prior Distribution Network Upgrades as detailed in Clause 7.7 to maintain the DisCo reliability required in 8.2 during the Grid Priority Hours; and
		8. repay the Mini-Grid Operator for the Necessary Prior Distribution Network Upgrades as detailed in Clause 7.8.
	2. Subject to the terms of this Agreement, the Mini-Grid Operator shall:
		1. undertake such restorations to the land, rooftop, and environment required to restore it back to good condition in the event of termination of this Agreement pursuant to Clause 17.1.1, Clause 17.1.2, Clause 17.1.3, Clause 17.1.5, Clause 17.2.1, and Clause 17.2.3;
		2. develop, finance, build, own and operate the Generation Assets to supply electricity to the Interconnected Customer at the locations set out in Schedule 2;
		3. ensure that the Interconnected Customer has availability to power as required in Clause 8.4;
		4. operate, maintain and carry out such repairs to the Assets and Infrastructure in the course of its operations to maintain its reliability requirements and in accordance with the Technical Codes, including the responsibility to refuel and maintain backup diesel generators as needed;
		5. buy electricity from the DisCo for resale to the Interconnected Customer during the Grid Priority Hours as defined in Clause 8.1;
		6. finance the Necessary Prior Distribution Network Upgrades listed in Schedule 3 as detailed in Clause 7.7 and 7.8;
		7. bill the Interconnected Customer for all electricity received monthly (from both the DisCo’s Distribution Network supply and the Mini-Grid) and collecting the respective amount from the Interconnected Customer, and then settling with the DisCo for electricity received from the Distribution Network minus any payments due from the DisCo pursuant to this Agreement;
		8. adhere to the Interconnected Customer’s site access and safety protocols;
		9. obtain the necessary approvals from the Commission required by the Mini-Grid Operator to undertake the activities in Clause 4.3 above; and
		10. report reliability metrics to the DisCo in writing on a monthly basis, by the 15th day of the following Month.
	3. The Mini-Grid Operator shall carry out its obligations under this Agreement in accordance with the Mini-Grid Regulations, Good Industry Practice, Technical Codes and the standards and requirements of the Commission and the Standards Organization of Nigeria.
	4. The Mini-Grid Operator shall be responsible for making the necessary repairs to the Assets and Infrastructure; and this shall ensure that such repairs conform to the requirements of the Technical Codes.
	5. Subject to the terms of this Agreement, the Interconnected Customer shall:
		1. pay the compensation prescribed in Clause 17.5.2.2.1 in the event of termination of this Agreement which occurs pursuant to Clause 17.1.7, 17.3.7, 17.3.8, Clause 17.3.9, Clause 17.3.10 and Clause 17.3.11;
		2. provide sufficient land, rooftop, or other identified space agreed upon by the Parties within Interconnected Customer’s boundaries, as will be required by the Mini-Grid Operator, for the safe installation and operation of the Generation Assets as depicted in the map in Schedule 2;
		3. ensure that the land/rooftop/location provided pursuant to Clause 5.5.2 above shall be either at no cost to the Mini-Grid Operator or at a minimal cost agreed upon by the Parties. In any case, all costs (including cost of land acquisition or lease) are recoverable through the electricity tariff;
		4. ensure that other than the nominal fee imposed pursuant to Clause 5.5.3 above, the Mini-Grid Operator shall not be required to make any further payments in respect of the usage of the land/rooftop/location;
		5. coordinate with the Mini-Grid Operator, the DisCo and Relevant Authority as needed to execute this Agreement;
		6. ensure that none of its personnel, agents or visitors touch or tamper with the Mini-Grid;
		7. ensure an enabling work environment free of any harassment of, or encumbrances to, the personnel or agents of the Mini-Grid Operator during and after the construction of the Mini-Grid;
		8. procure such security measures that are reasonably necessary and required by the Mini-Grid Operator to prevent any vandalism and/or electricity theft within the Mini-Grid;
		9. provide the Mini-Grid Operator access to the roof where solar PV is agreed to be installed by the Interconnected Customer and Mini-Grid Operator as detailed in Schedule 2 for the purpose of installation, maintenance, and repairs to the Mini-Grid and Generation Assets; and
		10. pay the Mini-Grid Operator for the cost of removal and reinstatement of solar PV panels and relevant equipment and loss of income during that downtime in the case that the Interconnected Customer requests or requires the solar PV panels and relevant equipment be temporarily or permanently removed from the rooftop location where the solar PV panels are installed per Schedule 2.
4. **OWNERSHIP OF THE NEW INSTALLATIONS**
	1. The Mini-Grid installed by the Mini-Grid Operator on the Interconnected Customer’s land/rooftop/location shall remain the property of the Mini-Grid Operator unless stated otherwise under this Agreement.
	2. The Necessary Prior Distribution Network Upgrades are initially financed by the Mini-Grid Operator and owned by the Mini-Grid Operator over a period of [5 years] from the date of payment for such works. DisCo is responsible for paying back the finance over a period of [5 years]. After the term of [5 years] when the finance in the Necessary Prior Distribution Network Upgrades is recovered, the ownership of the assets shall transfer to the DisCo with Full Title Guarantee.
5. **CONNECTION OF THE GENERATION ASSETS TO THE DISTRIBUTION NETWORK AND UPGRADES OF THE DISTRIBUTION NETWORK**

**Generation Assets Connections**

* 1. The cost for the connection of the Generation Assets to the Distribution Network shall be borne by the Mini-Grid Operator.
	2. Except where Parties agree to do otherwise, the Mini-Grid Operator shall install the Generation Assets, connect them to the Distribution Network and construct all the foundations, buildings, fencing and other infrastructure required for installing, securing and accessing the Generation Assets.
	3. Except where Parties agree to do otherwise, the cost of the construction undertaken by the Mini-Grid Operator pursuant to Clause 7.2 above shall be borne by the Mini-Grid Operator.
	4. The Generation Assets shall be as depicted in Schedule 4.
	5. Except where Parties agree to do otherwise, the Mini-Grid Operator shall at its own cost maintain the Generation Assets for its generation activities and operations.
	6. With written notice to the Parties, the Mini-Grid Operator can subcontract the activities outlined in Clause 7 and elsewhere under this Agreement, but the Mini-Grid Operator bears the responsibility for meeting its terms of this Agreement.

**Distribution Network Maintenance and Upgrades**

* 1. Prior to commencement of the Date of Commercial Operation of this Agreement, the DisCo shall make the Distribution Network upgrades as detailed in Schedule 3 needed to maintain the required reliability detailed in Clause 8.2 during Grid Priority Hours (“**Necessary Prior Distribution Network Upgrades**”). The capital expense of the grid upgrades detailed in Schedule 3 shall be financed by the Mini-Grid Operator. The DisCo is responsible for installing the equipment detailed in Schedule 3 and covering the labor costs for installation.
		1. All Prior Necessary Distribution Network Upgrade costs shall be based on industry and market rates. The Mini-Grid Operator will review all Prior Necessary Distribution Network Upgrade costs based on industry and market rates before approval for recovery and before the Date of Commercial Operation.
	2. The DisCo shall repay the Mini-Grid Operator for financing the Necessary Prior Distribution Network Upgrades detailed in Schedule 3 through payments of NGN [X1] per Month, adjusted for inflation as detailed in Schedule 3, starting one Month after the Date of Commercial Operation.
	3. Subject to the approval of the Commission, and except where the DisCo and Mini-Grid Operator agree otherwise, and excluding the Necessary Prior Distribution Network Upgrades, the DisCo shall bear the costs for any additional Distribution Network upgrades or maintenance required to meet the DisCo’s reliability requirements as outlined in Clause 8.
1. **AVAILABILITY OF ELECTRICITY FROM THE DISTRIBUTION NETWORK AND MINI-GRID**
	1. The DisCo undertakes to the Mini-Grid Operator that the Distribution Network shall be available daily to supply electricity to the Interconnected Customer between the hours of [3:00 pm and 8:59 am WAT] (“Grid Priority Hours”) in accordance with the requirements of Clause 8.2.
	2. The DisCo undertakes to the Mini-Grid Operator to make electricity available from the Distribution Network to meet the Interconnected Customer’s demand requirements [90%] of the time during the Grid Priority Hours which constitutes the **Grid Availability Standard**.
	3. Subject to Clause 8.4, the Mini-Grid Operator shall ensure that its Generation Assets will provide electricity between the hours of [9:00 am and 2:59 pm WAT] daily (“**Mini-Grid Priority Hours**”) to the Interconnected Customer and, in the case that power from the Distribution Network is not available, will provide backup power during the Grid Priority Hours without a planned downtime to transition between the Distribution Network supply and the Mini-Grid supply.
	4. The Mini-Grid Operator warrants to the Interconnected Customer, an availability of power to meet the Interconnected Customer’s capacity requirements [99%] of the time at all times of day (averaged annually) which constitutes the **Mini-Grid Availability Standard**.
	5. For the purpose of clarity, power is considered as available from the Distribution Network if the grid voltage and frequency at the Grid Point of Interconnection does not deviate more than plus/minus 2.5% from the nominal values as specified in Schedule 5, and as defined in the Technical Codes.
	6. For the purpose of clarity, power is considered as available to the Interconnected Customer if the voltage and frequency at the Customer Point of Interconnection does not deviate more than plus/minus 2.5% from the nominal values as specified in Schedule 5, and as defined in the Technical Codes.
	7. If electricity from the Distribution Network is available during the Grid Priority Hours, the Mini-Grid Operator will purchase from the DisCo and provide to the Interconnected Customer electricity from the Distribution Network in an amount equal to what is required by the Interconnected Customer during the Grid Priority Hours.
	8. The Mini-Grid Operator shall make every reasonable effort to prevent Unscheduled Outages. The Mini-Grid Operator is not responsible for damage to the Interconnected Customer’s equipment due to an Unscheduled Outage.
2. **SALE OF ELECTRICITY BETWEEN THE MINI-GRID OPERATOR AND THE INTERCONNECTED CUSTOMER**
	1. The Mini-Grid Operator shall sell electricity derived from both the Generation Assets and the Distribution Network to the Interconnected Customer for a tariff of [X2] NGN/kWh (“**Blended Tariff**”), where X2 is set in Schedule 6.
	2. The Interconnected Customer shall accept a minimum of [X3] kWh total every 12 Months (“**Minimum Consumption**”) commencing on the Date of Commercial Operation. If the Interconnected Customer does not accept that minimum amount of kWh, the Interconnected Customer will pay the deficit between the number of kWh consumed and the Minimum Consumption number of kWh multiplied by the weighted average Blended Tariff for that time period as stipulated in 9.1 and Schedule 6.
3. **SALE OF ELECTRICITY BETWEEN THE DISTRIBUTION NETWORK MAIN GRID AND THE MINI-GRID OPERATOR**
	1. In accordance with Clause 5.2.5, the Mini-Grid Operator shall purchase electricity from the DisCo for resale to the Interconnected Customer for a tariff of [X4] NGN/kWh during the Grid Priority Hours (“**DisCo Grid Tariff**”) (whereby X4 is the value provided in Schedule 7).
	2. Notwithstanding the provision of Clause 8.1 above, where the DisCo seeks to increase the availability of electricity supply from the Distribution Network above the Grid Priority Hours, the DisCo shall inform and obtain the approval of the Mini-Grid Operator in writing.
	3. The Mini-Grid Operator can purchase electricity from the DisCo outside of the Grid Priority Hours (i.e., during the Mini-Grid Priority Hours to complement its generation assets), but it is not obligated to. The DisCo is not obligated to provide electricity supply during the Mini-Grid Priority Hours.
4. **UNDERPERFORMANCE**

**Underperformance by the Mini-Grid Operator**

* 1. If power is not available at the power voltage and frequency levels defined in Clause 8.6, then the Mini-Grid Operator will remedy the situation within [X] timeframe. Until the situation is remedied, the Interconnected Customer may choose to self-operate a supply solution until the Mini-Grid Operator restores power availability in compliance with Clause 8.6, but must coordinate the switch with the Mini-Grid Operator. But in that case, the Interconnected Customer takes on operational responsibility (e.g., if their genset creates power quality issues and damages equipment the Mini-Grid Operator is not responsible).
	2. In the event the Mini-Grid Operator is found to provide less than an average of [99%] but more than [95%] power availability over 12 consecutive Months, the Mini-Grid Operator and the Interconnected Customer shall agree upon a remedy and liquidated damages in the amount equating to the lost revenue the Interconnected Customer incurred within 30 days. If the Interconnected Customer is dissatisfied with the remedy, then the Mini-Grid Operator owes the Interconnected Customer liquidated damages in the amount of NGN [2,900,000].
	3. In the event the Interconnected Customer feels the Mini-Grid Operator is underperforming but does not yet have 12 Months of reliability data required by Clause 17.1.6 to terminate the Agreement, the Interconnected Customer shall report this to the Mini-Grid Operator and is entitled to report this to DisCo to resolve. If the Interconnected Customer does not feel it is resolved within 30 days of notifying the Mini-Grid Operator and the DisCo, the Interconnected Customer is entitled to enter into Dispute Resolution pursuant to Clause 29.
	4. Where the installation of the Mini-Grid has not been completed and is not in commercial operation (in other words, the Date of Commercial Operation does not occur) within 12 Months after the Effective Date of this Agreement (or otherwise agreed in writing between the Parties) but the Mini-Grid has been completed and is in commercial operation by 18 Months from the Effective Date, the DisCo shall be entitled to liquidated damages in the sum of [NGN 1,500,000]and the Interconnected Customer shall be entitled to a credit for liquidated damages in the sum of [NGN 1,500,000] unless otherwise agreed by the Parties in writing, in the first invoice paid to the DisCo and the first invoice issued to the Interconnected Customer respectively.

**Underperformance by the DisCo**

* 1. In accordance with the obligation of the DisCo to meet the Grid Availability Standard under the terms as provided in Clause 8, the Mini-Grid Operator shall purchase electricity from the DisCo in accordance with Clause 10.1. However, where electricity is not made available by the DisCo from the Distribution Network during the Grid Priority Hours as required in Clause 8.1, the Mini-Grid Operator shall be required to supply electricity to the Interconnected Customer from its Generation Assets to maintain reliable supply to the Interconnected Customer. If the DisCo Distribution Network falls below the Grid Availability Standard during the Grid Priority Hours in a given calendar Month, the DisCo will be liable to pay the Mini-Grid Operator the **Recoverable Expenditure**.
		1. The Recoverable Expenditure for a given Month is calculated by multiplying the DisCo Extraordinary Backup Tariff by the Electricity Supply Discrepancy.

$$Recoverable Expenditure \left[NGN\right]=DisCo Extraordinary Backup Tariff\left[\frac{NGN}{kWh}\right]×Electricity Supply Discrepency [kWh]$$

* + - 1. The **DisCo Extraordinary Backup Tariff** is NGN [X5]/kWh (whereby X5 is the value provided in Schedule 6).
			2. The **Electricity Supply Discrepancy** for a given Month is calculated by subtracting the percentage availability of the grid during the Grid Priority Hours during the given Month from [90%], and then and multiplying it by the total kWh supplied by both the Mini-Grid and grid supply during Grid Priority Hours during the respective Month.

$$Electricity Supply Discrepancy \left[kWh\right]=\left(\left[90\right]\%-\% Availability of Grid during Grid Priority Hours\right)×Total Actual kWh Supplied During Grid Priority Hours [kWh]$$

* 1. The Recoverable Expenditure will be subtracted from the total amount the Mini-Grid Operator owes the DisCo for electricity supplied from the Distribution Network each Month. When the Recoverable Expenditure is greater than the amount the Mini-Grid Operator owes the DisCo for electricity supplied from the Distribution Network for a given Month, the remaining liability the DisCo owes the Mini-Grid Operator will be carried over to the subsequent invoice(s) until the full amount is recovered. Each twelve (12) Months, the DisCo will settle any debts owed to the Mini-Grid Operator for the Electricity Supply Discrepancy within 60 days of receiving an invoice from the Mini-Grid Operator.
	2. In the extreme case that the percentage availability of the grid during the Grid Priority Hours during a given Month is below 50% (defined as “**Distribution Network Failure**”), the Mini-Grid operator will sum the **Distribution Network Failure Costs** and will evenly distribute that cost to the Interconnected Customer monthly over the following 12-Month period in the form of a surcharge on the Interconnected Customer’s bill. In such cases, the DisCo is liable to pay the Mini-Grid Operator the Recoverable Expenditure for the portion of the Electricity Supply Discrepancy that is not due to a Distribution Network Failure i.e., the portion of the Electricity Supply Discrepancy between 50% and [90%] grid availability.
		1. The **Distribution Network Failure Costs** are calculated by subtracting the percentage availability of the grid during the Grid Priority Hours during the given Month from 50%, and then multiplying it by the total kWh supplied during Grid Priority Hours during the respective Month, and multiplying that by the DisCo Extraordinary Backup Tariff referred to in Clause 11.5.1.1.

$$Distribution Network Failure Costs \left[NGN\right]=\left(50\%-\% Availability of Grid during Grid Priority Hours\right)×Total kWh Supplied During Grid Priority Hours \left[kWh\right] × DisCo Extraordinary Backup Tariff\left[\frac{NGN}{kWh}\right]$$

1. **PAYMENT TERMS**
	1. By the 5th Business Day following the last day of the Month for each Month of the Agreement period, the Mini-Grid Operator shall provide the DisCo with a schedule for the prior Month detailing any amounts due by the DisCo to the Mini-Grid Operator, including for the repayment of the financing for the Necessary Prior Distribution Network Upgrades detailed in Clause 7.8 and any Recoverable Expenditure as detailed in Clause 11.4 and Clause 11.5.
	2. By the 10th Business Day following the last day of the Month for each Month of the Agreement period, the DisCo shall provide the Mini-Grid Operator with an invoice for the prior Month detailing the net amount the Mini-Grid Operator owes the DisCo or the DisCo owes the Mini-Grid Operator. The invoice will detail the amount of electricity the Mini-Grid Operator purchased from the DisCo and any amounts due by the DisCo from the schedule detailed in Clause 12.1.
	3. By the 10th Business Day following the issuance of an invoice from the DisCo, the net amount the Mini-Grid Operator owes the DisCo shall be payable into a bank account designated by the DisCo.
	4. Where the Mini-Grid Operator fails to pay the DisCo for the net of any amounts due to the DisCo pursuant to Clause 12.3, on the day it is due and payable, interest shall accrue at the Default Interest Rate on the unpaid balance from the date on which payment is due until the date on which payment is received by the DisCo.
	5. Pursuant to Clause 11.5, each twelve (12) Months, the DisCo shall settle any debts owed to the Mini-Grid Operator for the Electricity Supply Discrepancy within 60 days of the Mini-Grid Operator issuing an invoice to the DisCo.
	6. By the 10th Business Day following the last day of the Month for each Month of the Agreement period, the Mini-Grid Operator shall provide the Interconnected Customer with an invoice for electricity supplied during the prior Month.
	7. By the 10th Business Day following the issuance of an invoice from the Mini-Grid Operator to the Interconnected Customer, the amount the Interconnected Customer owes the Mini-Grid Operator shall be payable into a bank account designated by the Mini-Grid Operator.
	8. Where the Interconnected Customer fails to pay the Mini-Grid Operator for electricity supplied pursuant to Clause 12.7, on the day it is due and payable, interest shall accrue at the Default Interest Rate on the unpaid balance from the date on which payment is due until the date on which payment is received by the Mini-Grid Operator.
	9. Prior to the Effective Date, or other date agreed to by the Interconnected Customer and Mini-Grid Operator, the Interconnected Customer shall obtain and provide the Mini-Grid Operator with a bank guarantee (in a form and from a bank with a credit rating acceptable to the Mini-Grid Operator) for the monetary value of the Minimum Consumption for a period of 3 Months (“**Bank Guarantee for the Mini-Grid Operator”**) and maintain such a Bank Guarantee for the rest of the Term.
	10. Prior to the Effective Date, or other date agreed to by the DisCo and Mini-Grid Operator, the Mini-Grid Operator will obtain and provide the DisCo with a bank guarantee (in a form and from a bank with a credit rating acceptable to the DisCo) for the monetary amount of 3 Months of estimated net payments to the DisCo (“**Bank Guarantee for the DisCo”**) and maintain such a Bank Guarantee for the rest of the term of the Agreement.
2. **TARIFF SCHEDULE AND ADJUSTMENTS**
	1. The Mini-Grid Operator shall provide electricity to the Interconnected Customer at the tariffs agreed by Parties in this Agreement and as outlined in Schedule 6, approved by the Commission and compliant with the Mini-Grid Regulation.
	2. The Parties agree that the initial Blended Tariff referred to in Clause 9.1 (subject to Clause 13.3), the Minimum Consumption referred to in Clause 9.2, the DisCo Extraordinary Backup Tariff referred to in Clause 11.4.1.1, and the Grid Availability Standard referred to in Clause 8.2 shall not be subject to review or adjustment until after the first 3 years of this Agreement commencing on the Date of the Commercial Operation, unless agreed to by all Parties.
	3. Notwithstanding any provision of this Agreement to the contrary, where there is a Commission approved change to the DisCo Grid Tariff through annual, minor or extraordinary reviews or where the Grid Availability Standard is changed by the Parties which affects which Multi-Year Tariff Order (MYTO) Tariff Band the Interconnected Customer falls under, the Parties agree to cause the Blended Tariff referred to in Clause 9.1 to be reviewed within 100 days of the change in order to reflect such change(s). The Blended Tariff can be modified in proportion to the DisCo Grid Tariff change and the amount of electricity from the DisCo’s Distribution Network consumed by the Interconnected Customer.
	4. The current state of the Market Conditions detailed in Schedule 6 will be reviewed by the Parties every 3 years. If the Market Conditions in Schedule 6 exceed the high threshold or go below the low thresholds set out in paragraph 1.6 of Schedule 6 at that time, the Parties agree to review and adjust the Blended Tariff Schedule referred to in 9.1, the Minimum Consumption referred to in Clause 9.2, the DisCo Extraordinary Backup Tariff referred to in Clause 11.4.1.1, and the Grid Availability Standard referred to in Clause 8.2 in order to reflect such change(s).
		1. If the diesel fuel price is outside of the Market Condition thresholds, that shall only affect the DisCo Extraordinary Backup Tariff; it shall not affect the Blended Tariff.
	5. The Blended Tariff Schedule can be adjusted according to Clauses 13.3 and 13.4 and the procedures in the Mini-Grid Regulations. Where there is a conflict between the Mini-Grid Regulations and this Tripartite Agreement, this Tripartite Agreement takes precedence.
	6. The Parties agree that an inspection of accounts for the purpose of an adjustment of tariffs may be carried out by the Commission.
	7. Parties shall keep a historical record of accounts beginning on the Effective Date and commensurate to the Initial Term and any Renewal Terms of the Agreement, and keep this available for 5 years after termination of the Agreement.
3. **SCHEDULED MAINTENANCE OUTAGES**
	1. The Mini-Grid Operator is entitled to Scheduled Maintenance Outages at its own cost. The schedule for Scheduled Maintenance Outages shall be established as follows:
		1. any Scheduled Maintenance Outages shall be during the hours of Grid Priority Hours and planned in consultation with the Interconnected Customer at least 5 days in advance.
	2. The DisCo is entitled to Scheduled Maintenance Outages to ensure reliability from its supply feeder to the Interconnected Customer. The schedule for Scheduled Maintenance Outages shall be established as follows:
		1. any Scheduled Maintenance Outages shall be during the hours of Mini-Grid Priority Hours.
	3. The Mini-Grid Operator shall cooperate and use their reasonable endeavors to accommodate any reasonable request by a Party to reschedule any Scheduled Maintenance Outage provided:
		1. such request would not defer maintenance required at a particular time by Good Industry Practices;
		2. the Party requesting a schedule change agrees to compensate the other Parties for any reasonable additional costs and expenses caused by such a rescheduling;
		3. for the avoidance of doubt, any of the Parties shall be entitled to reschedule a Scheduled Maintenance Outage(s) without compensating the other Parties if and to the extent that such rescheduling meets the conditions in Clauses 14.1.1 and 14.2.1 above, and the rescheduling is required for health or safety reasons, to avoid damage (or the threat of imminent damage) to the Interconnected Customer’s processing facility or equipment, or if such rescheduling is required by Good Industry Practices.
	4. Unscheduled and Forced Outages
		1. Either Parties shall advise each other of the need for any Unscheduled Outage, together with the proposed commencement date, in arrears if the interruption was immediate, and the estimated duration of the work to be undertaken to restore delivery shall be provided.
		2. If the interruption is not immediate, Parties shall agree the period during which such Unscheduled Outage may be undertaken.
4. **METERING SYSTEM**
	1. The DisCo at its cost and expense shall in compliance with the Metering Code, procure, install and maintain all meters and metering devices, equipment, electrical circuitry, recording equipment, communications equipment and related equipment used for measuring electricity delivered by the Distribution Network at the Grid Point of Interconnection (collectively referred to as the “**Grid Metering System**”).
	2. The Mini-Grid Operator at its cost and expense shall in compliance with the Metering Code and the Technical Code to procure, install and maintain all meters and metering devices, equipment, electrical circuitry, recording equipment, communications equipment and related equipment used for measuring electricity delivered to the Interconnected Customer by the Generation Assets of the Mini-Grid Operator (collectively referred to as the “**Mini-Grid Metering System**”).
	3. **Compliance, Integrity and Accuracy of Metering System**
		1. The specifications, operation and measurement accuracy of the Metering Systems shall comply with the standards and specifications set out in the Metering Code and Technical Code, and with Applicable Law and Good Industry Practices.
		2. Mini-Grid Operator may maintain additional meters for operational purposes which shall conform to the Metering Code.
		3. Upon request by the DisCo or the Mini-Grid Operator, upon five (5) days’ notice and not more frequently than once a Month, the DisCo, Mini-Grid Operator, or Interconnected Customer may request an inspection or test of the Metering Systems.
		4. Parties agree that the Mini-Grid Operator may, at its own cost and expense, install and maintain its own Metering Systems for the purpose of measuring the accuracy and integrity of the DisCo’s Metering Systems.
		5. The Mini-Grid Operator, the DisCo, and the Interconnected Customer undertake not to tamper with or otherwise interfere in anyway with any part of the Metering System, and shall use reasonable precautions in accordance with Applicable Law, Good Industry Practices and the Metering Code to ensure that the Metering System is secure and is not tampered with by any other person.
		6. If, at any time, any Party discovers that any part of the Metering System has been tampered with, or as a result of any other action or inaction such device may be unfit for the purpose of such device, that Party shall report such event to the other Parties and Parties will correct the metered volumes and provide payment reconciliation accordingly.
5. **REPRESENTATION AND WARRANTIES**
	1. Each Party represents and warrants to the other, on the date of this Agreement, and continuing throughout the Term that:
		1. it is duly organized under the Applicable Laws of its jurisdiction of formation and that it has the requisite legal power and authority to enter into, and carry out its obligations under, this Agreement;
		2. it shall continue to have all necessary corporate power and authority (corporate and regulatory) to carry on its business as presently conducted and to perform its obligations under this Agreement;
		3. the execution and delivery of this Agreement and the consummation of the transactions contemplated thereby have been duly authorized by all necessary corporate actions on its part;
		4. Agreement constitutes legal, valid and binding obligations enforceable against it in accordance with the terms hereof;
		5. the execution of this Agreement is not prohibited by its constituent documents nor does its execution contravene provisions of any Applicable Law;
		6. the execution, delivery, and performance of this Agreement have been duly authorized by all requisite actions and will not constitute a violation of:
			1. any statute, judgment order, decree or regulation of any court, commission, government authority or arbitral tribunal applicable or relating to itself, its assets or its functions, or
			2. any other documents, or to the best of its knowledge any indenture, contract or agreement to which it is a party or by which it may be bound.
		7. there are no actions, suits or proceedings pending or, to the best of its knowledge threatened against it before any court, government authority or arbitral tribunal that could reasonably be expected to restrain it from performing or result in a material adverse effect on its ability to perform its duties and obligations under this Agreement; and
		8. no representation or warranty made by it herein contains any untrue or misleading statement.
6. **TERMINATION**
	1. **Termination by Interconnected Customer**

The Interconnected Customer may terminate this Agreement upon written notice to the to the other Parties where it has already utilized the Dispute Resolution procedures outlined in Clause 29 and still wishes to terminate this agreement, and where:

* + 1. the Mini-Grid Operator’s Permit expires and is not renewed within 60 days of the expiration, or the Permit is cancelled by the Commission, or a Change in Law occurs and is not resolved within 60 days or other time period agreed upon by the Parties;
		2. the Mini-Grid Operator abandons the Project for any period of more than 3 consecutive Months after the Date of Commercial Operation;
		3. the installation of the Mini-Grid has not been completed and is not in commercial operation (in other words, the Date of Commercial Operation does not occur) within 18 Months after the Effective Date of this Agreement (or as agreed between the Parties);
		4. the Mini-Grid Operator becomes unable to pay its debts (as defined by section 4 of the Bankruptcy Act 1979 and section 409 of the Companies and Allied Matters Act 2004) or makes any arrangement or composition with its creditors generally or has a receiver, manager, liquidator, administrator or trustee in bankruptcy appointed or suffers any event analogous to the foregoing in any jurisdiction;
		5. the Mini-Grid Operator is found to commit a breach of Clause 5.2 and fails to remedy the breach within 30 days (or as agreed between the Parties) after receiving the notice of breach executed by the Interconnected Customer.
		6. The Mini-Grid Operator is found to provide less than an average of [95%] power availability over 12 consecutive Months or less than [99%] power availability over two (2) consecutive 12-Month periods (where the power availability is averaged each 12-Month period – i.e. if Year 1’s power availability is below [99%], and Year 2’s power availability is below [99%]), and the Mini-Grid Operator and Interconnected Customer fail to agree to a remedy within 30 days (or as agreed between the Parties) after the Interconnected Customer notifies the Mini-Grid Operator.
		7. The Interconnected Customer is unable to consume the amount of electricity required to meet the Minimum Consumption for two (2) consecutive twelve (12) Month periods and the Parties are not able to agree upon a reduced Minimum Consumption level or alternative solution within 60 days of the Mini-Grid Operator or Interconnected Customer notifying the Parties.

* 1. **Termination by DisCo**

The DisCo may terminate this Agreement upon written notice to the other Parties where it has already utilized the Dispute Resolution procedures outlined in Clause 29 and still wishes to terminate this agreement, and where:

* + 1. the DisCo integrates the Interconnected Customer into the Distribution Network before the expiration of the Initial Term or Renewal Term, which may only be invoked in the event of the following:
1. the Mini-Grid Operator fails to pay any amount due to the DisCo, provided that the DisCo has given the Mini-Grid Operator not less than 30 days’ notice to remedy such failure and the non-payment has not been cured within such 30-day period;
2. the Mini-Grid Operator commits a material breach of this Agreement, other than that provided in Clause 17.2.1 (i) above, which in the case of a breach which is capable of remedy has not been remedied within 30 days (or such other period as may be agreed by the Mini-Grid Operator and the DisCo) of the DisCo notifying the Mini-Grid Operator of the breach.
	* 1. the Mini-Grid Operator becomes insolvent and unable to pay its debts (as defined by section 4 of the Bankruptcy Act 1979 and section 409 of the Companies and Allied Matters Act 2004) or makes any arrangement or composition with its creditors generally or has a receiver, manager, liquidator, administrator or trustee in bankruptcy appointed or suffers any event analogous to the foregoing in any jurisdiction;
		2. any of the representations made by the Mini-Grid Operator under this Agreement is not true and correct in all material respects and this has a material adverse effect on the DisCo or the performance of the Mini-Grid’s Operation under this Agreement; or
		3. the Mini-Grid Operator fails to put in place and maintain a Bank Guarantee in accordance with Clause 12.10 or, in respect of any Bank Guarantee provided:
			1. a payment due under such Bank Guarantee is not paid when due, and remains unpaid 5 Business Days after the Mini-Grid Operator’s receipt of a notice referring to this Clause 17.2.4.1; or
			2. such Bank Guarantee fails or ceases to be in full force and effect (other than in accordance with its terms) and/or the Mini-Grid Operator and/or the applicable provider of the Bank Guarantee disaffirms, disclaims, repudiates or rejects in whole or in part or challenges the validity of such Bank Guarantee and no replacement Bank Guarantee has been procured by the Mini-Grid Operator and provided to the DisCo within 10 Business Days of the first to occur of: (a) such Bank Guarantee having ceased to be in full force and effect; or (b) the date on which the Mini-Grid Operator and/or the applicable provider of the Bank Guarantee challenged the validity of such Bank Guarantee, as applicable.
		4. Any of the representations made by the Interconnected Customer under this Agreement is not true and correct in all material respects and this has a material adverse effect on the DisCo or the performance of the Interconnected Customer’s obligations under this Agreement;
	1. **Termination by Mini-Grid Operator**

The Mini-Grid Operator may terminate this Agreement on written notice to the other Parties where it has already utilized the Dispute Resolution procedures outlined in Clause 29 and still wishes to terminate this agreement, and where:

* + 1. The DisCo does not provide an average monthly power availability of [70%] during the Grid Priority Hours for any 3 consecutive Months (where the power availability is averaged each Month separately – i.e. if Month 1’s power availability is below [70%], Month 2’s power availability is below [70%], and Month 3’s power availability is below [70%]) for reasons not related to a Transmission Network Failure, or other Force Majeure (not including a Distribution Network Failure) and fails to remedy the problem within 30 days (or as agreed between the Parties) after the Mini-Grid Operator notifies the DisCo;
		2. The DisCo’s Distribution License expires and is not renewed within 60 days of its expiration or the DisCo’s Distribution License is cancelled by the Commission;, or a Change in Law occurs and is not resolved within 60 days or other period of time agreed upon by the Parties;
		3. The DisCo becomes unable to pay its debts (as defined by section 4 of the Bankruptcy Act 1979 and section 409 of the Companies and Allied Matters Act 2004) or makes any arrangement or composition with its creditors generally or has a receiver, manager, liquidator, administrator or trustee in bankruptcy appointed or suffers any event analogous to the foregoing in any jurisdiction;
		4. the DisCo commits a material breach of this Agreement which in the case of a breach which is capable of remedy has not been remedied within 30 days (or such other period as may be agreed by the Mini-Grid Operator and the DisCo) of the Mini-Grid Operator notifying the DisCo of the breach;
		5. Any of the representations made by the DisCo and/or the Interconnected Customer under this Agreement is not true and correct in all material respects and this has a material adverse effect on the Mini-Grid Operator or the performance of the DisCo’s obligations under this Agreement.
		6. DisCo does not make the Necessary Prior Distribution Network Upgrades within 12 Months of the Effective Date and the Parties have not agreed to a remedy within 30 days of the Mini-Grid Operator notifying the DisCo of the breach;
		7. the Interconnected Customer commits a breach of Clause 5.5 which has an adverse effect on the Project and fails to remedy this breach within 30 working days (or as agreed between the Parties) of receiving the notice of breach;
		8. there are repeated incidents of vandalism, thefts of electricity to the Mini-Grid which endanger the financial viability of the Mini-Grid Operator’s energy supply and has a material adverse effect on the Project.
		9. the Interconnected Customer becomes insolvent and unable to pay its debts (as defined by section 4 of the Bankruptcy Act 1979 and section 409 of the Companies and Allied Matters Act 2004) or makes any arrangement or composition with its creditors generally or has a receiver, manager, liquidator, administrator or trustee in bankruptcy appointed or suffers any event analogous to the foregoing in any jurisdiction;
		10. any of the representations made by the Interconnected Customer under this Agreement is not true and correct in all material respects and this has a material adverse effect on the Mini-Grid Operator or the performance of the Interconnected Customer’s obligations under this Agreement;
		11. the Interconnected Customer fails to put in place and maintain a Bank Guarantee for the Mini-Grid Operator in accordance with Clause 12.9 or, in respect of any Bank Guarantee provided:
			1. a payment due under such Bank Guarantee is not paid when due, and remains unpaid 5 Business Days after the Interconnected Customer’s receipt of a notice referring to this Clause 17.2.4.1; or
			2. such Bank Guarantee fails or ceases to be in full force and effect (other than in accordance with its terms) and/or the Interconnected Customer and/or the applicable provider of the Bank Guarantee disaffirms, disclaims, repudiates or rejects in whole or in part or challenges the validity of such Bank Guarantee and no replacement Bank Guarantee has been procured by the Interconnected Customer and provided to the Mini-Grid Operator within 10 Business Days of the first to occur of: (a) such Bank Guarantee having ceased to be in full force and effect; or (b) the date on which the Interconnected Customer and/or the applicable provider of the Bank Guarantee challenged the validity of such Bank Guarantee, as applicable.
	1. **Termination of DisCo Obligations**
		1. Where the DisCo is at fault for termination:
			1. Where Clause 17.3.1, Clause 17.3.2, Clause 17.3.3, Clause 17.3.4, Clause 17.3.5, and Clause 17.3.6 occur and the DisCo obligation in this Agreement is terminated, the DisCo shall pay compensation to the Mini-Grid Operator as provided in the Mini-Grid Regulations;
			2. Where Clause 17.3.1, Clause 17.3.2, Clause 17.3.3, Clause 17.3.4, Clause 17.3.5, and Clause 17.3.6 occur and the DisCo’s obligation to provide electricity to the Interconnected Customer per this Agreement is terminated, the Mini-Grid Operator and the Interconnected Customer remain obligated by this Agreement on the following basis:
				1. The Mini-Grid Operator shall remain obligated to provide electricity for sale to the Interconnected Customer during the Mini-Grid Priority Hours without the obligation to backup grid supply during the Grid Priority Hours;
				2. The Interconnected Customer shall purchase electricity from the Mini-Grid Operator during the Mini-Grid Priority Hours at the Blended Tariff;
				3. The Mini-Grid Operator shall charge the Blended Tariff per the Blended Tariff schedule in Schedule 6 until the Interconnected Customer and the Mini-Grid Operator negotiate and agree upon a revised tariff for electricity supplied during the Mini-Grid Priority Hours;
				4. The Mini-Grid Operator shall propose a revised tariff for electricity supplied during the Mini-Grid Priority Hours and a revised Minimum Consumption within 60 days of the DisCo’s obligation to supply electricity per this Agreement terminating (or such other period as may be agreed by the Mini-Grid Operator and the Interconnected Customer); and
				5. The Interconnected Customer will either accept or reject a revised tariff for electricity supplied during the Mini-Grid Priority Hours and a revised Minimum Consumption within 60 days of receiving a letter with the proposed values from the Mini-Grid Operator (or such other period as may be agreed by the Mini-Grid Operator and the Interconnected Customer).
			3. If the Mini-Grid Operator’s proposed revised tariff and Minimum Consumption is rejected and the Interconnected Customer and Mini-Grid Operator cannot agree on a revised tariff and Minimum Consumption or alternative arrangement within 60 days (or such other period as may be agreed by the Mini-Grid Operator and the Interconnected Customer), the Agreement shall be terminated pursuant to Clause 17.4.1.1 unless the Parties agree to an alternative arrangement.
	2. **Consequences of Termination**
		1. If the DisCo’s obligation is terminated or the Agreement is terminated pursuant to Clause 17.3.1, Clause 17.3.2, Clause 17.3.3, Clause 17.3.4, Clause 17.3.5, Clause 17.3.6, Clause 17.1.7, 17.3.7, 17.3.8, Clause 17.3.9, Clause 17.3.10, and Clause 17.3.11, the DisCo shall repay the Mini-Grid Operator any outstanding amount owed to the Mini-Grid Operator for the Necessary Prior Distribution Network Upgrades financed by the Mini-Grid Operator detailed in Schedule 3 within 12 Months of the Mini-Grid Operator notifying the DisCo’s that the DisCo’s obligations are terminated (or other period agreed upon by the Mini-Grid Operator and DisCo).
			1. If the Agreement is terminated where the Mini-Grid Operator is at fault pursuant to Clause 17.1.1, Clause 17.1.2, Clause 17.1.3, Clause 17.1.4, Clause 17.1.5, Clause 17.1.6, Clause 17.2.1, Clause 17.2.2, Clause 17.2.3, and Clause 17.2.4, the DisCo is not obligated to continue repaying the Mini-Grid Operator any outstanding amount owed to the Mini-Grid Operator for the Necessary Prior Distribution Network Upgrades from the date of termination.
		2. The consequences of termination by the Mini-Grid Operator and the Interconnected Customer shall be as follows:
			1. Where the Mini-Grid Operator is at fault:
				1. Where termination occurs, pursuant to Clause 17.1.1, Clause 17.1.2, Clause 17.1.3, Clause 17.1.4, Clause 17.1.5, Clause 17.1.6, Clause 17.2.1, Clause 17.2.2, and Clause 17.2.3, the Mini-Grid Operator shall undertake such restorations to the land, rooftop, and environment required to restore it back to good condition and shall pay compensation to the Interconnected Customer in the amount of NGN [70,000,000]or other amount as agreed to by the Parties and/or the Commission and in accordance with the Mini-Grid Regulations.
			2. Where the Interconnected Customer is at fault:
				1. Where termination occurs, pursuant to Clause 17.1.7, Clause 17.2.5, Clause 17.3.7, Clause 17.3.8, Clause 17.3.9, Clause 17.3.10, and Clause 17.3.11, the Interconnected Customer shall have the option to:
1. purchase the Mini-Grid at fair market book value from the Mini-Grid Operator plus 5% (which the Mini-Grid Operator shall pay to the DisCo pursuant to Clause 17.5.2.2.2),
2. pay the Mini-Grid Operator a termination fee of 50% of the undepreciated value of the Mini-Grid assets in years 1-10 of the Agreement or 75% of the undepreciated value of the Mini-Grid in years 11-20 of the Agreement, where the date is from the Date of Commercial Operation, or
3. pay to the Mini-Grid Operator other compensation as agreed to by the Parties and/or the Commission.

* + - * 1. And, where termination occurs, pursuant to Clause 17.1.7, Clause 17.2.5, Clause 17.3.7, Clause 17.3.8, Clause 17.3.9, Clause 17.3.10, and Clause 17.3.11, the Mini-Grid Operator shall pay 5% of the termination fee received from the Interconnected Customer to the DisCo.
		1. The DisCo may set off any liability of the Mini-Grid Operator to pay the amount the Mini-Grid Operator owes the DisCo for electricity supplied from the Distribution Network or any other costs (where applicable) to the DisCo against any compensation due from the DisCo to the Mini-Grid Operator.
		2. The Mini-Grid Operator may set off any liability of the DisCo to pay the amount the DisCo owes the Mini-Grid Operator for Electricity Supply Discrepancy or any other costs (where applicable) to the Mini-Grid Operator against any compensation due from the Mini-Grid Operator to the DisCo.
		3. Where termination of this Agreement occurs, the DisCo would immediately re-integrate the Interconnected Customer in order to provide electricity supply for as long as necessary until/if another Mini-Grid Operator is ready to take over operations.
	1. Upon termination, the Mini-Grid Operator shall:
		1. at its own cost remove the Mini-Grid Operator’s Mini-Grid which it has not agreed to or does not intend to transfer to the Interconnected Customer, or negotiate a separate contract with the Interconnected Customer involving the use of those assets, or transfer the Generation Assets to the Interconnected Customer at fair market book value or other agreed upon amount; and
		2. at its own cost, disconnect any connection of its Generation Assets to the Distribution Network and restore the connections which existed prior to the connection of its generators or alternative arrangement agreed upon by the Parties.
	2. On the termination date, the Mini-Grid Operator shall:
		1. deliver up to the DisCo all materials, documents, records, data and other information of whatever nature in the Mini-Grid Operator’s possession, custody or power belonging to the DisCo and relating to the Distribution Network and Grid Point of Interconnection, and the performance of the obligations under this Agreement and required for the continued operation and maintenance of the Distribution Network;
		2. deliver up to the Interconnected Customer all materials, documents, records, data and other information of whatever nature in the Mini-Grid Operator’s possession, custody or power belonging to the Interconnected Customer and relating to the Generation Assets and Customer Point of Interconnection, and the performance of the obligations under this Agreement and required for the continued operation and maintenance of the Generation Assets transferred to the Interconnected Customer.
1. **FORCE MAJEURE**
	1. A Party is not liable for failure to perform its obligations in this Agreement if such failure is as a result of:
		1. natural disasters (including fire, flood, earthquake, storm, hurricane or other natural disaster);
		2. war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, government sanction, blockage, embargo, labour dispute, strike (excluding any strikes by staff of either the DisCo or Mini-Grid Operator), Transmission Network Failure outside of the DisCo’s control (“**Force Majeure**”).
	2. In the case of Force Majeure that occurs after the Date of Commercial Operation but during the Term of this Agreement due to a **Transmission Network Failure** outside of the DisCo’s control, which is defined as the DisCo not receiving electricity supply from the transmission system substation that supplies the distribution feeder that supplies the Interconnected Customer for more than two (2) hours during the Grid Priority Hours and which can be verified from the Transmission Company of Nigeria (TCN), the DisCo shall notify the Parties within 7 days and provide evidence of the hours during which the Transmission Network Failure caused the DisCo to not be able to meet its obligation to supply power.
		1. The Mini-Grid Operator’s obligation to provide [99%] reliability of power supply to the Interconnected Customer is not suspended unless agreed otherwise by the Mini-Grid Operator and the Interconnected Customer.
		2. In a given Month, if the DisCo is able to meet its Grid Availability Standard despite the Transmission Network Failure(s) occurring in the same Month, then no action is needed.
		3. In a given Month, if the DisCo is unable to meet its Grid Availability Standard and a Transmission Network Failure(s) occurred in the same Month, then the Mini-Grid Operator will keep records of the amount of excess electricity it provided to the Interconnected Customer that is directly due to Transmission Network Failure(s) and is above the 10% grid backup supply the Mini-Grid Operator is expected to provide per the Grid Availability Standard and multiply it by the DisCo Extraordinary Backup Tariff (referred to in Clause 11.4.1.1) to calculate the monetary cost of that excess electricity (the “**Transmission Network Failure Cost**”). Every 12-Month period, the Mini-Grid Operator will sum the Transmission Network Failure Costs and will evenly distribute that cost to the Interconnected Customer monthly over the following 12-Month period in the form of a surcharge on the Interconnected Customer’s bill.

$$Transmission Network Failure Cost \left[NGN\right]=DisCo Extraordinary Backup Tariff\left[\frac{NGN}{kWh}\right]×(Excess Electricity Supplied by Developer due to Transmission Network Failue \left[kWh\right]-\left(10\% × Total Actual kWh Supplied During Grid Priority Hours \left[kWh\right]\right))$$

* 1. If any Force Majeure occurs by reason of which a Party is unable to perform any of its obligations under this Agreement (or any part thereof), the affected Party shall inform the other Parties immediately no later than seven (7) days of the occurrence of a Force Majeure with full particulars thereof and the consequences thereof.
	2. The Party affected by the Force Majeure shall act reasonably within its means to avoid or remove the cause(s) of the Force Majeure and to the extent possible, shall continue the performance of its obligations under this Agreement, provided that either Party shall be at liberty to terminate this Agreement forthwith where the Force Majeure continues for a period not less than Ninety (90) consecutive calendar days.
1. **CONFIDENTIAL INFORMATION**
	1. A Party shall not intentionally disclose or allow to be disclosed to any third party any information relating to this Agreement or to financial, commercial, technical, operational, personnel, management aspects of the Mini-Grid (“**Confidential Information**”), or any Confidential Information concerning the other Parties, or any information obtained under this Agreement and in furtherance to the execution of the Mini-Grid unless:
		1. the disclosure is expressly assented to in writing by the Party to which the Confidential Information belongs;
		2. the disclosure is subject to a legal obligation of disclosure.
	2. Each Party, after consultation with the others, shall adopt reasonable procedures to preserve the Confidential Information of the other Parties.
	3. No information shall constitute Confidential Information if:
		1. the information is generic in nature, or has at the relevant time become public knowledge or has been in the public domain, other than as a result of disclosure by the Parties or their representative;
		2. the information has at the relevant time become, already in the possession of the Parties free from any obligation of confidentiality to either of the Parties or any other person and has not been acquired by any person in breach of any obligations of confidentiality.
		3. the information is required to be disclosed by law or order of any court, tribunal or agency of competent jurisdiction or by any governmental body, department or agency having jurisdiction of it or by any equivalent laws or regulations of institutions or other equivalent authorities in jurisdictions outside Nigeria; or
		4. the information is expressly stated in writing to be non-confidential.
2. **CONFLICT OF INTEREST**

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

1. **AMENDMENT**

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

1. **WAIVERS**

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

1. **NOTICES**
	1. All notices or other documents to be furnished by the Parties under or in connection with this Agreement shall be in English language and shall be sent to the addresses stated above and marked for the attention of the persons designated in this Clause 23. Notices and other documents may be sent by hand delivery, registered post, courier or email, provided that lawsuits arising out of or in connection with this Agreement may not be served by email.
	2. The addresses and contacts for the service of notices and other documents are as follows (or such other address or contacts as may be subsequently notified by the relevant Party in accordance with this Clause 23):

If to DisCo:

[Address]

Attention: [Title]

Tel: [Placeholder]

E-mail Address: [Placeholder]

If to Mini-Grid Operator:

[Address]

Attention: [Title]

Tel: [Placeholder]

E-mail Address: [Placeholder]

If to Interconnected Customer:

[Address]

Attention: [Title]

Tel: [Placeholder]

E-mail Address: [Placeholder]

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

* 1. Except as referred to in Clause 23.4, a notice will be deemed to have been served:
		1. in the case of any communication made by letter, when delivered by hand, by recognized courier at the address set out in Clause 23.2; and
		2. if sent by email, on delivery to the recipient’s server and provided no error message is received by the sender.

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

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

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

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

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

This Agreement is binding upon, and inures to the benefit of, the Parties and their respective successors and assigns.

1. **COST**

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

1. **GOVERNING LAW AND DISPUTE RESOLUTION**

**Applicable Laws**

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

**Dispute Resolution**

* 1. Except as otherwise expressly provided in this Agreement, any dispute between the Parties under this Agreement shall be resolved amicably by the Parties.
	2. In the event that such dispute cannot be resolved within one (1) Month, to the Parties shall use the procedure set out in the Commission’s Dispute Resolution Mechanism pursuant to section 25 and Annex 10 of the Mini-Grid Regulations 2016.
	3. The Parties acknowledge and agree that, except as expressly provided in this Agreement, the provisions of Annex 10 (Dispute Resolution Mechanism) of the Mini-Grid Regulations constitute the sole remedy of the Parties.
1. **INFORMATION AND DATA PROTECTION**
	1. Any information and data provided by a Party (hereinafter referred to as “**the Data Provider**”) to another Party (hereinafter referred to as “**the Data User**”) and used by the Data User directly or indirectly in the performance of the Agreement shall remain at all times the property of the Data Provider. It shall be identified, clearly marked and recorded as such by the Data User on all media and in all documentation.
	2. The Data User shall take all reasonable precautions to preserve the integrity and prevent any corruption or loss, damage or destruction of the Data Provider’s data and information.
	3. In the event of termination of this Agreement, the Data User shall when directed to do so by the Data Provider, instruct all its agents and sub-contractors to erase all information and data provided by the Data Provider and all copies of any part of the information and data provided by the Data Provider from the Data User’s systems and magnetic data.
	4. The Data User agrees to comply and have adequate measures in place to ensure that its staff, advisor, financier, consultant etc. complies at all times with the provisions and obligations contained in the Nigeria Data Protection Regulations 2019 (and as may be amended from time to time).
	5. All personal data acquired by the Data User from the Data Provider shall only be used for the purposes of this Agreement and shall not be further processed or disclosed without the consent of the Data Provider.
	6. Nothing in this Agreement shall oblige a Party in this Agreement to disclose any information to another party if it is of the view that to do so would be a breach of the Nigerian Data Protection Regulation 2019.
	7. Each party shall indemnify and hold the other harmless for any breach of the Nigeria data protection Regulation 2019 and other relevant Regulations pertaining to this clause and Data Protection which renders the innocent party liable for any costs, fines, claims or expenses howsoever arising.
	8. In fulfilment of their obligations under this Clause the Mini-Grid Operator and the DisCo shall have in place and will maintain at all times the Information Standards which will deal comprehensively with the protection of the confidentiality, integrity and security of all and any information supplied to them.
	9. Parties shall ensure that there are audit and accounting procedures in place to deal with the requirements of this clause.
	10. Parties shall ensure that their staff, consultants, privies, financiers, advisors etc. are reliably trained to ensure awareness of (and compliance with) their obligations under this clause.
	11. Further to this undertaking, the Mini-Grid Operator and the DisCo agree to:

 i. Provide each other with such information and access to their premises (upon giving reasonable notice) as may be reasonably required to satisfy themselves that the obligations referred to in the clause are complied with.

ii. Make such application for a change in their notification and take such other steps as may be reasonably practicable to afford each other’s access to information, which is reasonably required in connection with or for any purpose connected with the rights and obligations under this Agreement.

iii. Take all reasonable steps to ensure that all their agents, partners and sub-contractors comply with all the provisions set out above whenever they are processing each other’s Customers/Staff Personal information or data relating to this contract.

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

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

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

1. **MUTUAL NON-CIRCUMVENTION CLAUSE**
	1. Each Party hereby irrevocably agrees and warrants that it and its Affiliates shall not, directly or indirectly, interfere with, circumvent, attempt to circumvent, avoid or bypass other Parties to this Agreement, or obviate or interfere with the relationship of any Party and its contacts for the purpose of gaining any benefit, whether such benefit is monetary or otherwise.

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

Signed by the within named

**[DISTRIBUTION LICENSEE NAME]**

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

**[PLACEHOLDER] [PLACEHOLDER]**

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

The common seal of the within named

**[MINI-GRID OPERATOR]**

Has hereunto been affixed in the presence of:

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

**[PLACEHOLDER] [PLACEHOLDER]**

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

The common seal of the within named

**[INTERCONNECTED CUSTOMER]**

Has hereunto been affixed in the presence of:

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

**[PLACEHOLDER] [PLACEHOLDER]**

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

**SCHEDULE 1 – INTERCONNECTION PLAN**

[Placeholder- to be added by Mini-Grid Operator. Schematic and single-line diagram depicting Interconnected Customer, DisCo grid, and Generation Assets interconnection]

Signature DisCo:

Signature Mini-Grid Operator:

Signature Interconnected Customer:

**SCHEDULE 2 – MAP OF THE INTERCONNECTED CUSTOMER SITE AND MINI-GRID LAYOUT ON SITE**

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

[Placeholder - to be added by Mini-Grid Operator.]

Signature DisCo:

Signature Mini-Grid Operator:

Signature Interconnected Customer:

**SCHEDULE 3 – LIST OF NECESSARY PRIOR DISTRIBUTION NETWORK UPGRADES**

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

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Asset**  | **Quantity**  | **Specification**  | **Condition[[1]](#footnote-2)**  | **Cost per Asset (NGN)** | **Total Costs of Assets (NGN)** |
|  |  |  |  |  | [Cost per Asset multiplied by Quantity] |
|  |  |  |  |  |  |
|  |  |  |  |  |  |

**Total capital cost:** NGN [X]

|  |  |
| --- | --- |
| **Year** | **Monthly Liability (NGN per Month)** |
| Year 1  |  |
| Year 2 | [adjusted for 12% inflation] |
| Year 3 | [adjusted for 12% inflation] |
| Year 4 | [adjusted for 12% inflation] |
| Year 5 | [adjusted for 12% inflation] |

**1.2 DisCo Necessary Prior Distribution Network Upgrades Repayment Schedule:** The DisCo will incur a liability to the Mini-Grid Operator monthly for the first [5 years] of the Project for the amount below.

Signature DisCo:

Signature Mini-Grid Operator:

Signature Interconnected Customer:

**SCHEDULE 4 – DETAILS OF FIXED INFRASTRUCTURE FOR GENERATION ASSETS**

[Placeholder - to be added by Mini-Grid Operator. Details on generation assets to be installed, including relevant spec sheets.]

Signature DisCo:

Signature Mini-Grid Operator:

Signature Interconnected Customer:

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

The Distribution Network is considered as available if the grid voltage and frequency at the Grid Point of Interconnection does not deviate more than +/- 2.5% from the following values. The Mini-Grid is considered as available if the voltage and frequency at the Customer Point of Interconnection does not deviate more than +/- 2.5% from the following values.

Grid Voltage Nominal Value: 400 V

Grid Frequency Nominal Value: 50 Hz

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

Signature DisCo:

Signature Mini-Grid Operator:

Signature Interconnected Customer:

**SCHEDULE 6 – INTERCONNECTED CUSTOMER BLENDED TARIFF SCHEDULE, DISCO EXTRAORDINARY BACKUP TARIFF, AND TARIFF ADJUSTERS**

* 1. **Blended Tariff Schedule:** The Interconnected Customer shall pay the Mini-Grid Operator for electrical energy at the price of NGN[X2] per kWh (“**Blended Tariff**”) delivered and measured with the Metering System at the Customer Point of Interconnection, which includes all electricity delivered to the Interconnected Customer whether it’s from the Mini-Grid or the DisCo’s Distribution Network. The Blended Tariffs factor in assumed Market Conditions over the period of the Initial Term of the Agreement, such as inflation.

|  |  |
| --- | --- |
| **Year** | **Blended Tariff (N/kWh)** |
| Year 1 [2021, pending Date of Commercial Operation] |  |
| Year 2 |  |
| Year 3 |  |
| Year 4 |  |
| Year 5 |  |
| Year 6 |  |
| Year 7 |  |
| Year 8 |  |
| Year 9 |  |
| Year 10 |  |
| Year 11 |  |
| Year 12 |  |
| Year 13 |  |
| Year 14 |  |
| Year 15 |  |
| Year 16 |  |
| Year 17 |  |
| Year 18 |  |
| Year 19 |  |
| Year 20 |  |

* 1. **DisCo Extraordinary Backup Tariff:** The DisCo Extraordinary Backup Tariff of NGN [X5]/kWh in Clause 11.4.1.1 is below. The DisCo Extraordinary Backup Tariffs factor in assumed Market Conditions over the period of the Initial Term of the Agreement, such as inflation.

|  |  |
| --- | --- |
| **Year** | **DisCo Extraordinary Backup Tariff (N/kWh)** |
| Year 1 [2021, pending Date of Commercial Operation] |  |
| Year 2 |  |
| Year 3 |  |
| Year 4 |  |
| Year 5 |  |
| Year 6 |  |
| Year 7 |  |
| Year 8 |  |
| Year 9 |  |
| Year 10 |  |
| Year 11 |  |
| Year 12 |  |
| Year 13 |  |
| Year 14 |  |
| Year 15 |  |
| Year 16 |  |
| Year 17 |  |
| Year 18 |  |
| Year 19 |  |
| Year 20 |  |

* 1. **Summary of Blended Tariff Schedule Adjustments:** The Blended Tariff can be adjusted due to and only due the following unless otherwise agreed by all Parties, as detailed in Clause 13:
* Within 100 days of a Commission approved change in grid tariffs:
	+ Changes to the DisCo Grid Tariff in Schedule 7 as detailed in Section 1.5.
* Every 3 Years:
	+ If any Market Condition in Section 1.6 exceeds or is below the thresholds outlined, a tariff adjustment can be applied for as detailed in Section 1.7.
	1. **Changes to the Minimum Consumption, Extraordinary Backup Tariff, and the Grid Availability Standard:** Parties can only apply for changes to the Minimum Consumption referred to in Clause 9.2, the Extraordinary Backup Tariff referred to in Clause 11.4.1.1, and the Grid Availability Standard referred to in Clause 8.4 every 3 years when there is a review of the Market Conditions and the relevant Market Conditions in Section 1.6 exceeds or is below the thresholds outlined as detailed in Clause 13. If the diesel fuel price is outside of the Market Condition thresholds, that shall only affect the DisCo Extraordinary Backup Tariff; it shall not affect the Blended Tariff.
	2. **Changes to DisCo Grid Tariff:** The tariff schedule in Section 1.1 above assumes the Mini-Grid Operator shall pay the DisCo MYTO tariff described in Schedule 7 (DisCo Grid Tariff). As stated in Clause 13, where there is a Commission-approve change to the DisCo Grid Tariff through annual, minor or extraordinary reviews, Parties agree to review the Blended Tariff Schedule referred to in Section 1.1 within 100 days of the change in order to reflect such change(s). The Blended Tariff Schedule can be modified in proportion to the DisCo Grid Tariff change and the amount of electricity from the DisCo’s Distribution Network grid consumed.
	3. **Market Condition Thresholds:** The Market Conditions and their respective thresholds referred to throughout this Agreement are below.

|  |  |  |
| --- | --- | --- |
| **Market Condition** | **Low Threshold (not to go below)** | **High Threshold (not to exceed)** |
| Nigerian Naira Inflation, Annual (calculated over 3 years), according to the Nigerian National Bureau of Statistics[[2]](#footnote-3) | 8% | 16% |
| Diesel Fuel Price Change (calculated over 3 years), according to the Nigerian National Bureau of Statistics (Automotive Gas Oil index) | 8% | 16% |
| Change in Interconnected Customer consumption habits, resulting in needing more electricity or using diesel generator more than planned  | Needing 20% less electricity than data provided in this RFP suggests during Mini-Grid Priority Hours; Needing 20% less electricity from the diesel gensets than data provided in this RFP suggests  | Needing 20% more electricity than data provided in this RFP suggests during Mini-Grid Priority Hours; Needing 20% more electricity from the diesel gensets than data provided in this RFP suggests |
| Proportion of electricity used during the Grid-Priority Hours versus the Mini-Grid Priority Hours deviates from data provided in the RFP | -20% | +20% |
| Availability of grid supply from the DisCo’s Distribution Network during Grid Priority Hours Averaged over 3 Years (% of time grid is available) | [85%] [This is if the Grid Availability Standard is 90%; this value can be adjusted if the Grid Availability Standard is higher or lower] | 100% |

**1.7. Adjustment in Blended Tariff Schedule:** Any adjustments approved by the Commission through annual, minor or extraordinary reviews, shall apply to the Blended Tariff Schedule in Section 1.1. The adjustment of the price will be based on Clause 9, Clause 13, and the Mini-Grid Regulations where not in conflict with this Agreement.

Signature DisCo:

Signature Mini-Grid Operator:

Signature Interconnected Customer:

**SCHEDULE 7 – DISCO GRID TARIFF SCHEUDLE**

**DisCo Grid Tariff Schedule:** The Mini-Grid Operator shall pay the DisCo for electrical energy at the price of NGN[X4] per kWh delivered and measured with the Metering System at the Grid Point of Interconnection (“**DisCo Grid Tariff**”). The DisCo Grid Tariff shall be in accordance with the schedule as shown below which is subject to the DisCo MYTO tariff order. This tariff is tied to Tariff Band B (average of 16-20 hours of supply per day) for an MD-1 customer under MYTO 2020, unless the definition of Tariff Band B changes or the Grid Availability Standard is modified by the Parties.

|  |  |
| --- | --- |
| **Year** | **DisCo Grid Tariff (N/kWh) [*Placeholder tariffs – Insert Band B, MD-1 customer tariffs under MYTO 2020]*** |
| Year 1 [2021, pending Date of Commercial Operation] | 67.15[[3]](#footnote-4) |
| Year 2 | 67.12 |
| Year 3 | 67.13 |
| Year 4 | 65.61 |
| Year 5 | 64.45 |
| Year 6 | 64.42 |
| Year 7 | 64.51 |
| Year 8 | 64.63 |
| Year 9[[4]](#footnote-5) | 64.63 |
| Year 10 | 64.63 |
| Year 11 | 64.63 |
| Year 12 | 64.63 |
| Year 13 | 64.63 |
| Year 14 | 64.63 |
| Year 15 | 64.63 |
| Year 16 | 64.63 |
| Year 17 | 64.63 |
| Year 18 | 64.63 |
| Year 19 | 64.63 |
| Year 20 | 64.63 |

Signature DisCo:

Signature Mini-Grid Operator:

**SCHEDULE 8 – PROJECT IMPLEMENTATION PLAN**

[Placeholder – to be added by Mini-Grid Operator]

Signature DisCo:

Signature Mini-Grid Operator:

Signature Interconnected Customer:

1. Equipment condition is regarded as either ‘working,’ ‘partially working’, ‘faulty’ and ‘offline’. All assets must be ‘working.’ [↑](#footnote-ref-2)
2. The inflation and diesel fuel price thresholds are based on historical data from the Nigerian National Bureau of Statistics. [↑](#footnote-ref-3)
3. This Tariff Band B MYTO tariff corresponds with the Project starting in Q3 or Q4 2021. [↑](#footnote-ref-4)
4. The Commission has not released MYTO tariffs for after 2028. The enactment of new MYTO tariffs can trigger a proposed tariff adjustment per the terms of this Agreement. [↑](#footnote-ref-5)