

## ANNEX 11

### TRIPARTITE CONTRACT BETWEEN INTERCONNECTED MINI-GRID OPERATOR, DISTRIBUTION LICENSEE AND CONNECTED COMMUNITY

*Note: This Agreement has been included pursuant to S.9 of the Mini-Grid Regulation 2016. This Agreement is in template format for the Parties to liberally adopt. However, the mandatory provisions must be incorporated by the Parties.*

**THIS AGREEMENT** is made on this **[DATE]**

**BETWEEN:**

[NAME OF DISCO], a company duly incorporated under the laws of the Federal Republic of Nigeria and having its registered office at **[OFFICE ADDRESS]** hereinafter called the “**DisCo**” which expression shall where the context so admits include its successors-in-title.

**AND**

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

**AND**

[NAME] a legally authorised representative of **[NAME OF COMMUNITY]** connected to the Interconnected Mini-Grid hereinafter called the “**Interconnected Community Representative**”.

**O R**

[NAME] a Company/Association duly incorporated/registered under the laws of the Federal Republic of Nigeria and having its registered office at **[OFFICE ADDRESS]**, acting as the legally authorised representative of **[NAME OF COMMUNITY]** connected to the Interconnected Mini-Grid hereinafter called the “**Interconnected Community**”.

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

**RECITAL/ BACKGROUND**

- A. The Mini-Grid Operator is in the business of constructing, operating and maintaining mini-grids.
- B. Pursuant to Section 67 of the Electric Power Sector Reform Act 2005 (“**EPSRA**”), Nigeria Electricity Regulatory Commission (“**NERC**”) has issued to the DisCo a Distribution Licence to

distribute and trade (retail supply) electricity within [AREA OR ZONE WHERE THE DISCO CAN OPERATE] which includes the Distribution Network.

- C. The Mini-Grid Operator seeks to connect to the DisCo's distribution network described in Schedule 1 below and operate as an Interconnected Mini-Grid, supplying electricity to the Connected Community under the terms set out in this Agreement.
- D. The DisCo has agreed to delineate part of its distribution network to be operated in an island mode and as part of an Interconnected Mini-Grid.
- E. This Agreement sets out the conditions for the connection and operation in Recital C above, which include but are not limited to the following:
  - i. the usage right for the DisCo's network infrastructure;
  - ii. the construction and ownership right for additional infrastructure;
  - iii. the tariff for electricity generated and supplied by the Mini-Grid Operator;
  - iv. the availability of stable nominal voltage at the Connection Point of the generator with the DisCo's Network; and
  - v. the agreement of the Connected Community to purchase electricity from the Mini-Grid.

**NOW THEREFORE**, in view of the foregoing and in consideration of the mutual benefits to be derived 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**

1.1 In this Agreement each of the following words and expressions shall have the following meanings:

**“Applicable Laws”** means the Constitution of the Federal Republic of Nigeria, 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 or any other relevant authority in Nigeria.

**“Assets and Infrastructure”** means those assets and infrastructure within the Distribution Network that forms part of the Interconnected Mini-Grid.

**“Effective Date”** means [NUMBER OF DAYS] following the fulfilment of the Conditions in Clause 2 of this Agreement or as agreed otherwise by the Parties.

**“Commission”** means the Nigerian Electricity Regulatory Commission

<b>“Connected Community”</b>	[Name and location of Community including the Local Government Area]
<b>“Default Interest Rate”</b>	means the rate of (X%) per annum above Central Bank of Nigeria Monetary Policy Rate or such equivalent rate as may be agreed between the Mini-Grid Operator and the DisCo.
<b>“Distribution Network”</b>	means any connection of cables, service lines and overhead lines, electrical apparatus/equipment and having design voltage of 33kV and below used to transport electric power on a distribution system.
<b>“Generation Assets”</b>	means the generation assets owned by the Mini-Grid Operator that forms part of the Interconnected Mini-Grid.
<b>“Initial Term”</b>	shall have the meaning ascribed in Clause 3.2
<b>“Interconnected Network”</b>	means the interconnected network specified in the map in Schedule 1 of this Agreement for the connection of the distribution network at [(coordinates) (Distribution Grid) to the Mini-Grid Operator].
<b>“Renewal Term”</b>	shall have the meaning ascribed in Clause 3.4
<b>“Maximum Capacity”</b>	means the maximum amount of electricity expressed in kW or kVA which can be transmitted from the Mini-Grid Operator’s Generator and to the Interconnected Network.
<b>“Mini-Grid Regulations”</b>	means the NERC Regulations for Mini-Grids Up To 1MW in force from time to time
<b>“Standardized Spreadsheets for Tariff Calculation”</b>	shall be the standardized spreadsheet in Annex 15 of the Mini-Grid Regulations
<b>“Subsequent Term”</b>	shall have the meaning ascribed in Clause 3.3
<b>“Technical Codes”</b>	shall have the same meaning in the Mini-Grid Regulations

1.2 In this Agreement, except where the context otherwise requires:

- 1.2.1 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;
- 1.2.2 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;
- 1.2.3 words in the singular shall include the plural and vice versa;
- 1.2.4 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;
- 1.2.5 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;
- 1.2.6 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;
- 1.2.7 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;
- 1.2.8 a reference to "writing" or "written" shall include any legible reproduction of words delivered in permanent and tangible form (including email);
- 1.2.9 a reference to "includes" or "including" shall mean "includes without limitation" or "including without limitation";
- 1.2.10 the headings in this Agreement are for convenience only and shall not affect its interpretation.

## **2. CONDITIONS**

This Agreement shall become effective upon approval by the Commission.

[NOTE THAT THIS IS NOT AN EXHAUSTIVE LIST OF CONDITIONS. HOWEVER THE CONDITIONS LISTED ARE MANDATORY AND MUST BE MET BEFORE A TRIPARTITE CONTRACT BECOMES EFFECTIVE].

### 3. COMMENCEMENT AND TERM

3.1 This Agreement shall commence on the Effective Date of the Commission's Approval.

3.2 Subject to the earlier termination in accordance with this Agreement, the initial duration of this Agreement shall be as stated in the Annex 1B from the Effective Date for the purpose of project planning, securing necessary permissions where applicable, construction and commissioning of the project ("**Initial Term**");

3.3 Upon expiration of the Initial Term, this Agreement will be automatically renewed for a period of 20 years ("**Subsequent Term**").

3.4 Except where the Parties agreeing otherwise, this Agreement will automatically be renewed for a successive (1) year period (each "**Renewal Term**") unless a Party provides the other Party with notice of its intent not to renew this Agreement at least 1 year prior to the expiration of the Subsequent Term.

3.5 From the Effective Date, any exclusivity agreement entered into between the parties in respect of this Project, if not terminated will be deemed to have been terminated.

### 4. RIGHT OF USAGE OF THE DISTRIBUTION NETWORK

4.1 The DisCo hereby grants the Mini-Grid Operator an exclusive right of usage of the Interconnected Network for the duration of the Term.

4.2 The Mini-Grid Operator confirms that it has undertaken an analysis of the physical condition of the Distribution Network and confirms that, save for those listed as deficient in Schedule 2 below, the Assets and Infrastructure of the DisCo within the Distribution Network are in good condition and conform with the requirements in the Technical Codes.

4.3 Pursuant to Clause 4.1, the Mini-Grid Operator shall have the following rights:

4.3.1 carry out such repairs that are required to perform its obligations under this Agreement;

4.3.2 make new connections to, expand and/or extend the Interconnected Network provided that, the Commission's approval has been obtained and these connections and extensions are in accordance with the requirements of the Technical Codes;

4.3.3 to connect such amount of generators up to a total Generation Capacity of 1 MW to the Distribution Network sufficient to cover the demand by the Interconnected Community within the Maximum Capacity and the technical limits of the Distribution Network.

4.4 The cost of the repairs in Clause 4.3.1 above shall be borne by the [Mini-Grid Operator AND/OR DisCo].

## **5. DUTIES AND OBLIGATIONS OF THE PARTIES**

5.1 Subject to the terms of this Agreement, the DisCo shall:

5.1.1 pay the compensation prescribed in Clause 14.3.1 below in the event of termination which occurs pursuant to Clause 14.1.1 and Clause 14.2 of this Agreement.

5.1.2 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;

5.1.3 prior to the Effective Date, provide the Mini-Grid Operator with a copy of its expansion plan of the Distribution Network and as relates to the Interconnected Network, a copy of all existing operational procedures, plans and regulations applicable to the Distribution Network which are available to the DisCo; and

5.1.4 promptly provide to the Mini-Grid Operator, in relation to the Interconnected Network, all technical and operational information in the DisCo's possession or produced by or provided to the DisCo during the Term. If the Mini-Grid Operator identifies technical and operational information that should be available in relation to the Interconnected Network but is not in the DisCo's possession and is required by the Mini-Grid Operator in order to perform in accordance with this Agreement, the DisCo and the Mini-Grid Operator shall in co-operation use reasonable endeavours to obtain such information.

5.1.5 obtain the necessary approvals from the Commission required by the Mini-Grid Operator to undertake the activities in Clause 4.3.2 above

5.2 Subject to the terms of this Agreement, the Mini-Grid Operator shall:

5.2.1 have a generator within the Interconnected Network to supply electricity to the Connected Community;

5.2.2 operate the Interconnected Network and ensure that it has an availability of at least [95%] at all times;

5.2.3 operate, maintain and carry out such repairs to the Asset and Infrastructure in the course of its operations in accordance with the Technical Codes; and

5.2.4 ensure that new connections, installations and extensions made pursuant to Clause 4.3.2 conform with the requirement in the Technical Codes and this Agreement<sup>1</sup>.

5.3 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.

5.4 The [Mini-Grid Developer **OR** DisCo]<sup>2</sup> shall be responsible for making the necessary repairs to the Assets and Infrastructure listed in Schedule 2; and this shall ensure that such repairs conform to the requirements of the Technical Codes.

5.5 Subject to the terms of this Agreement, the Connected Community/Connected Community Representative shall:

5.5.1 ensure that the Connected Community provides sufficient land required by the Mini-Grid Operator required for the installation and operation of the Generation Assets as depicted in the map in Schedule 4 below;

5.5.2 that the land provided pursuant to Clause 5.4.1 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 from the electricity tariff;

---

<sup>1</sup> This is to be decided between the Parties

5.5.3 ensure that other than the nominal fee imposed pursuant to Clause 5.4.2 above, the Mini-Grid Operator shall not be required to make any further payments in respect of the usage of the land;

5.5.4 procure the payment of the tariff as stipulated in the Agreement by the Interconnected Community;

5.5.5 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 Interconnected Network;

5.5.6 be responsible for any vandalism and/or theft within the Interconnected Network which occurs due to its breach of Clause 5.5.5.

## **6. OWNERSHIP OF THE NEW INSTALLATIONS**

6.1 The DisCo and the Mini-Grid Operator agree that all new installations, improvements, extensions and expansions to the Interconnected Network made by the Mini-Grid Operator shall vest in and continue to vest in and remain the property of the [DisCo or Mini-Grid Operator]<sup>3</sup>.

6.2 [The Mini-Grid Operator and the DisCo agree that the provision in Clause 6.1 above is applicable, notwithstanding that the Mini-Grid Operator paid the cost of these new installations and extensions]<sup>4</sup>.

## **7. CONNECTION OF THE GENERATION ASSETS TO THE DISTRIBUTION NETWORK AND EXPANSION OF THE DISTRIBUTION NETWORK**

### ***GENERATION ASSETS CONNECTIONS***

7.1 The cost for the connection of the Mini-Grid Operator's generation assets to the Distribution Network shall be borne by the Mini-Grid Operator.

7.2 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 as well as roads and other infrastructure required for installing, securing and accessing the Generation Assets.

<sup>3</sup> The Parties to decide how to handle ownership and compensation of new installations.

<sup>4</sup> To be decided by the Parties

- 7.3 Except where Parties agree to do otherwise, the cost of the constructions undertaken by the Mini-Grid Operator pursuant to Clause 7.3 above shall be borne by the Mini-Grid Operator.
- 7.4 The Generation Assets shall be as depicted in Schedule 5.
- 7.5 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.

***EXPANSION OF THE DISTRIBUTION NETWORK***

- 7.6 Subject to the approval of the Commission and except where the Disco and Mini Grid Operator agree otherwise, the Mini-Grid Operator shall bear the costs for any extensions of the Distribution Network it undertakes.
- 7.7 Where the Parties agree that the DisCo shall perform the extensions at its own cost, the modalities for such extensions shall be as follows:

7.7.1 [DETAILS OF SUCH MODALITIES TO BE INCLUDED HERE]

**8. AVAILABILITY OF THE DISTRIBUTION NETWORK**

- 8.1 The DisCo undertakes to the Mini-Grid Operator that the main grid shall be available at the minimum [XX] times per week between the hours of [XX] am and [XX] pm for at least [XX] hours.
- 8.2 The Mini-Grid Operator warrants to the Interconnected Community, an availability of [95]% of the Distribution Network. For the purpose of clarity, the Distribution Network is considered as available if the grid voltage and frequency at the customer's connection does not deviate more than plus/minus 20% from the nominal values as specified in Schedule 6.
- 8.3 Where the average monthly availability of the Distribution Grid is lower or greater than the value in Clause 8.2 above more than three months in a row, the Interconnected Community shall have a right to contact NERC for a change in the tariffs.

**9. EXTRACTION LIMITS**

- 9.1 The Mini-Grid Operator undertakes not to extract more than the Maximum Capacity in any 15 minute interval in both directions.

9.2 Where the Mini-Grid Operator extracts more than the Maximum Capacity, a penalty [XX] NGN for each 15 minute interval exceeding the Maximum Power shall be paid by the Mini-Grid Operator to the DisCo.

## **10. SALE OF ELECTRICITY BETWEEN THE MAIN GRID AND THE DISTRIBUTION NETWORK**

10.1 The Mini-Grid Operator shall purchase electricity from the main grid for a tariff of [XX] NGN/kWh.

10.2 The Mini-Grid Operator shall sell excess electricity to the main grid, subject to the Commission's consent.

## **11. USAGE FEE AND PAYMENT TERMS**

11.1 Pursuant to the rights granted in Clause 4.1 and 4.3 above, the Mini-Grid Operator shall be required to pay a usage fee to the DisCo of [XX] NGN monthly (“Usage Fee”).

11.2 Except where the Parties have agreed otherwise with NERC's approval, the Usage fee shall be calculated using the procedure in Annex 8 of the Mini-Grid Regulations 2016.

11.3 Following the issuance of an invoice by the DisCo, the Usage Fee shall be payable on the 10<sup>th</sup> business day following the day the invoice is delivered to the Mini-Grid Operator into a bank account designated by the DisCo. Where such date is a public holiday or weekend, the payment will be due on the first working day after this day.

11.4 Where the Mini-Grid Operator fails to pay the Usage Fee 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.

## **12. TARIFF**

12.1 The Mini-Grid Operator shall provide electricity to the Connected Community at the tariffs as approved by NERC and calculated with the Standardized Spreadsheets in Annex 15.

12.2 The Mini-Grid Operator shall be required to give sufficient notice to the other Parties where it intends to apply for an adjustment of tariff.

12.3 This tariff can be adjusted according to the procedures mentioned in the Mini-Grid Regulations.

12.4 The Parties agree that an inspection of accounts for the purpose of an adjustment of tariffs may be carried out by NERC. This inspection may be initiated by the Community, the Mini-Grid Operator or by NERC.

### **13. REPRESENTATION AND WARRANTIES**

13.1 Each Party represents and warrants to the other, on the date of this Agreement, and continuing throughout the Term that:

13.1.1 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;

13.1.2 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;

13.1.3 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;

13.1.4 Agreement constitutes legal, valid and binding obligations enforceable against it in accordance with the terms hereof;

13.1.5 the execution of this Agreement is not prohibited by its constituent documents nor does its execution contravene provisions of any Applicable Law;

13.1.6 the execution, delivery, and performance of this Agreement have been duly authorized by all requisite actions and will not constitute a violation of:

13.1.6.1 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

13.1.6.2 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;

13.1.7 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

13.1.8 no representation or warranty made by it herein contains any untrue or misleading statement.

#### **14. TERMINATION**

14.1 The DisCo may terminate this Agreement on written notice to the other Parties if:

14.1.1 the DisCo decides to re-integrate the Mini-Grid into the main-grid before the expiration of the Term or Renewal Term, which may be due to any of the following events in the paragraphs below:

- i. 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 of such failure and the non-payment has not been cured within such [30] day period;
- ii. the Mini-Grid Operator commits a breach of this Agreement, other than that provided in Clause 14.1.1 (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.

14.1.2 the Mini-Grid Operator becomes insolvent 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;

14.1.3 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.

14.2 The Mini-Grid Operator may on written notice to the DisCo terminate the Agreement if:

14.2.1 The DisCo's Licence expires and is not renewed within [30] days of its expiration or the DisCo's Licence is cancelled by NERC;

14.2.2 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;

14.2.3 the DisCo commits a 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;

14.2.4 Any of the representations made by the DisCo under this Agreement is not true and correct in all material respects and this has a material adverse effect on the Mini-Grid Operator or the performance of the DisCo's obligations under this Agreement.

14.3 The consequences of termination shall be as follows:

14.3.1 Where termination occurs pursuant to Clause 14.1.1 and Clause 14.2, the DisCo shall pay compensation to the Mini-Grid Operator as provided in the Mini-Grid Regulations.

14.3.2 The DisCo may set off any liability of the Mini-Grid Operator to pay a Usage Fee or any other costs (where applicable) to the DisCo against any compensation due from the DisCo to the Mini-Grid Operator.

14.3.3 Where termination occurs, the DisCo would immediately re-integrate the Connected Community in order to provide electricity supply for as long as necessary until another Mini-Grid Operator is ready to take over operations or the DisCo can go on operating the Interconnected Network.

14.4 Upon termination, the Mini-Grid Operator shall at its own cost:

14.4.1 remove the Mini-Grid's Generation Assets which it does not want to form part of the re-integrated network;

14.4.2 disconnect any connection of its generator(s) to the Distribution Network and restore the connections which existed prior to the connection of its generators.

14.5 On the termination date the Mini-Grid Operator shall 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 relating to the Distribution Network and the performance of the obligations under this Agreement and required for the continued operation and maintenance of the Distribution Network.

## **15 FORCE MAJEURE**

15.1 A party is not liable for failure to perform its obligations if such failure is as a result of:

15.1.1 Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster);

15.1.2 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). ("**Force Majeure**")

## **16 CONFIDENTIAL INFORMATION**

16.1 A Party shall not intentionally disclose or allow to be disclosed to any third party any Confidential Information concerning the other Parties or any information obtained under this Agreement and in furtherance to the execution of the Interconnected Mini-Grid unless:

16.1.1 the disclosure is expressly assented to in writing by the Party to which the Confidential Information belongs;

16.1.2 the disclosure is subject to a legal obligation of disclosure.

16.2 Each Party, after consultation with the others, shall adopt reasonable procedures to preserve the Confidential Information of the other Parties.

16.3 No information shall constitute Confidential Information if:

16.3.1 the information is generic in nature, or have 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;

16.3.2 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.

16.3.3 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 or it or by any equivalent laws or regulations of institutions or other equivalent authorities in jurisdictions outsider Nigeria; or

16.3.4 the information is expressly stated in writing to be non-confidential.

## **17 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.

## **18 AMENDMENTS**

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

## **19 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.

## **20 NOTICES**

20.1 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

20. Notices and other documents may be sent by hand delivery, registered post, courier or email, provided that law suits arising out of or in connection with this Agreement may not be served by email.

20.2 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 20):

If	to	DisCo:
[ADDRESS]		

Attention:

Tel:

E-mail address:

If to Mini-Grid Operator:

Attention:

[.]

Tel:

[]

E-mail Address: [.]

If to Interconnected Community or Representative of Interconnected Community:

Attention:

[.]

Tel:

[]

E-mail Address: [.]

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

## 21 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.

## **22 SEVERABILITY**

22.1 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.

22.2 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.

## **23 ENTIRE AGREEMENT**

23.1 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.

23.2 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.

## **24 SUCCESSORS AND ASSIGNS**

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

## **25 COST**

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

**26 GOVERNING LAW AND DISPUTE RESOLUTION**

***Governing Law***

26.1 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***

26.2 Except as otherwise provided in this Agreement, any dispute of whatever nature which may arise between all or any of the Parties out of or in connection with this Agreement shall be dealt with in accordance with the procedure set out in Annex 10 (Dispute Resolution Mechanism) of the Mini-Grid Regulations.

26.3 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.

**IN WITNESS** whereof this Agreement was executed the day and year first above written. For **[ELECTRICITY DISTRIBUTION COMPANY]**

Signed at ..... on this ..... day of ..... 2014.

By:

Name:

WITNESSES

1. \_\_\_\_\_

2 \_\_\_\_\_

For **[MINI-GRID OPERATOR]**

Signed at ..... on this ..... day of ..... 2014.

By:

Name:

WITNESSES

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_

For **[INTERCONNECTED COMMUNITY /REPRESENTATIVE OF INTERCONNECTED COMMUNITY]**

Signed at ..... on this ..... day of ..... 2014.

By:

Name:

WITNESSES

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_

**ACCOMPANYING DOCUMENTATION (IN ADDITION TO SCHEDULES BELOW)**

1. Certified copy of Certificate of Incorporation, Memorandum and Articles of Association, Deed of Partnership or Deed of Trust, as applicable
2. Certified copy of Certificate of Occupancy or Lease Agreement for Project Site
3. Certified copy of building permit
4. Filled Standardized Spreadsheets for Tariff Calculation

**SCHEDULE 1 – MAP OF THE INTERCONNECTED NETWORK**

DisCo to provide survey plan and geographic coordinates where available

Signature DisCo

Signature Mini-Grid Operator

Signature Interconnected Community

**SCHEDULE 2 – LIST OF DEFICIENCIES IN THE DISTRIBUTION GRID**

Deficiencies

Signature DisCo

Signature Mini-Grid Operator

**SCHEDULE 3 – DISTRIBUTION NETWORK INFRASTRUCTURE INSTALLED BY THE MINI-GRID OPERATOR**

Map of new connections and lines

(the Mini-Grid Operator) hereby certifies that the new Distribution Grid infrastructure will conform with the requirements in the Technical Codes. The contribution of the DisCo to the construction of new assets is [ XXX NGN to be paid on the date of commissioning of the new infrastructure]

5.

- The contribution of the Interconnected Community to the construction of new assets is [XXX NGN to be paid on the date of commissioning of the new infrastructure]<sup>6</sup>.

Signature DisCo

Signature Mini-Grid Operator

Signature Interconnected Community

<sup>5</sup> To be decided by the parties

<sup>6</sup> To be decided by the parties

**SCHEDULE 4 – MAP OF PLOT FOR POWER GENERATION ASSETS**

Signature DisCo

Signature Mini-Grid Operator

Signature Interconnected Community

**SCHEDULE 5 – DIAGRAM OF FIXED INFRASTRUCTURE FOR GENERATION ASSETS**

Cost split between the partners

DisCo: XXX NGN or XX %

Interconnected Community: XXX NGN or XX %

Mini-Grid Operator: XXX NGN or XX %

Others: XXX NGN or XX %

Dismantling of infrastructure after contract termination:

Signature DisCo

Signature Mini-Grid Operator

Signature Interconnected Community

## SCHEDULE 6 – BOUNDARY VALUES OF THE DISTRIBUTION GRID

The Distribution Grid is considered as available if the grid voltage and frequency at the customer's connection does not deviate more than +/- 20% from the following values:

Grid Voltage Nominal Value: XX V

Grid Frequency Nominal Value: XX Hz

Therefore, the average monthly availability of the Distribution Grid (for more than 3 months in a row):

- cannot be lower than  $XX * 80\%$  V or  $XX * 80\%$  Hz  
or
- greater than  $XX * 120\%$  V or  $XX * 120\%$  Hz

In case of complaints, these values should be checked at least 2 times in a period of one month and with a time interval between the 2 measures of at least 5 days.

Signature DisCo

Signature Mini-Grid Operator

Signature Interconnected Community