

ANNEX 12

CONTRACT TEMPLATE BETWEEN ISOLATED MINI-GRID OPERATOR AND COMMUNITY

THIS AGREEMENT is made on this [DATE]

BETWEEN

[NAME], 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] in his capacity as [village Head] connected to the Interconnected Mini-Grid hereinafter called the “**Community Representative**”.

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[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/CHAIRMAN OF THE LOCAL GOVERNMENT AREA] connected to the Interconnected Mini-Grid hereinafter called the “**Community**”.

In this Agreement, the Mini-Grid Operator and Community/Community Representative 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. The Mini-Grid Operator seeks to develop a Mini-Grid and supply electricity to the Community from electricity generated by the Mini-Grid (“**Project**”).
- C. In view of the above, this Agreement sets out the terms and conditions under which the Mini-Grid Operator shall supply electricity to the Community.

1. DEFINITIONS AND INTERPRETATIONS

5.1 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,
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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.

“Effective Date” means date of execution of this Agreement or as agreed otherwise by the Parties.

“Community” [Name and location of Community including the Local Government Area]

“Community Power Committee” or “CPC” means a committee established by the Community to coordinate all electricity customers in the Community, to address enquiries and complaints.

“Distribution Company” means an electricity distribution company Licenced by NERC.

“Qualified Customers” means those customers that are deemed qualified pursuant to Clause 3.2.

“NERC” means the Nigerian Electricity Regulatory Commission.

“Standardized Spreadsheets for Tariff Calculation” means the standardized spreadsheets in Annex 15 of the Mini-Grid Regulations.

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

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

5.2.1 any reference to “this Agreement” includes the Schedules and Annexures to it, each of which forms part of this Agreement for all purposes;

5.2.2 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;

5.2.3 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;

2. COMMENCEMENT AND TERM

2.1 This Agreement shall commence on the Effective Date.

2.2 Subject to the earlier termination in accordance with this Agreement:

2.2.1 the initial duration of this Agreement shall be [12] months from the Effective Date to undertake the activities in Clause [4.1.] (“**Initial Term**”);

2.2.2 upon expiration of the Initial Term, this Agreement will be automatically renewed for a period of 20 years (“**Subsequent Term**”).

2.3 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.

3. MINI-GRID PROJECT

3.1 The [TECHNOLOGY FOR THE MINI-GRID] system, which supplies electricity at a low voltage to a distribution network, shall be used.

3.2 The Parties acknowledge that the decision as to who qualifies as a Qualified Customer to be supplied electricity is dependent on the technical design of the Mini-Grid system and the economic evaluation of the feasibility study already carried out by the Mini-Grid Operator, with the full consent of the Community and the Community Power Committee (“**CPC**”).

3.3 Where new components are to be integrated, this shall be mutually agreed and understood between the Parties.

3.4 The Parties acknowledge that:

3.4.1 The Mini-Grid Operator is a [private and profit-oriented company], with the aim of supplying electricity to rural communities and investing its own funds into projects to generate profits from the sale of electricity to customers; and

3.4.2 The Mini-Grid Operator is committed to the provision and supply of a long-term and high quality electricity service, which is contingent upon regular payments from customers.

4. LAND

4.1 The Parties shall jointly identify suitable land within the Community for the Mini-Grid Project according to the criteria of the Mini-Grid Operator;

4.2 The Community shall at its own expense procure the land identified pursuant to Clause 5.1 above which shall be leased to the Mini-Grid Operator at no cost to the Mini-Grid Operator or a nominal fee of no more than N10, 000 annually; and

4.3 The Community and the Mini-Grid Operator shall execute a separate agreement for the lease arrangement in Clause 4.2 above.

5. DUTIES AND OBLIGATIONS OF THE PARTIES

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

5.1.1 During the Initial Term, carry out the project planning, acquire the necessary permissions to install, operate and maintain the energy system;

5.1.2 plan, design, procure, install, commission, operate and maintain the power station and the distribution network;

5.1.3 sell electricity generated to the customers who are deemed qualified pursuant to Clause 3.2 above (“**Qualified Customers**”);

5.1.4 provide reliable and satisfactory energy services to the Qualified Customers within the Community; and

5.1.5 carry out its operations in accordance with Good Industry Practice, Technical Codes and the standards and requirements set out in this Agreement.

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

5.2.1 ensure that the Community provides sufficient land required by the Mini-Grid Operator required for its operation;

5.2.2 ensure that other than the nominal fee imposed pursuant to Clause 4.2 above, the Mini-Grid Operator shall not be required to make any further payments in respect of the usage of the land;

5.2.3 procure the payment of the tariff as stipulated in this Agreement and

5.2.4 ensure that the Community establishes a Community Power Committee (“**CPC**”) to coordinate all electricity customers, to address enquiries and complaints.

6. Tariff

Tariff Model and Tariff

6.1 The Parties acknowledge that:

6.1.1 the tariff will be calculated either by:

6.1.1.1 using the Standardized Spreadsheets and approved by NERC; or

6.1.1.2 In case of Registered Mini-Grids, by an agreement between the Registered Mini-Grid Operator and the Community/Community Representative preferably based on the Standardized Spreadsheet with a minimum of 60% of the Qualified Customers in the Community consenting to the tariff in the agreement.

6.1.2 The tariff applied will be higher than the tariff charged by the DisCo and this is due to the fact that smaller power supply systems have higher costs of energy generation.

6.1.3 The Mini-Grid Operator's goal is to offer the lowest possible tariffs to its customers based on efficient technology and operational practices.

6.1.4 The tariff is lower than the cost of alternative sources of energy currently being used by the Community

6.1.5 Based on Clauses 6.1.1 to 6.1.4 above, the Parties agree to that the tariff shall be [XXXX] based on:

Tariffs set by NERC based on the Standardized Spreadsheets;

Or

In case of Registered Mini-Grids, tariffs agreed between the Registered Mini-Grid Operator and the Community Representative to which the consent of a minimum of the 60% of the Qualified Customers within the Community has been obtained (preferably calculated using the calculation tool in Annex 15).

Change in Tariffs

6.2 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.

6.3 The Parties agree to give sufficient notice to each other where it intends to change its tariffs and apply to NERC for an adjustment of tariff.

7. METERS AND INDOOR INSTALLATIONS

7.1 Pre-paid energy meters with [Specification of Meters] shall be installed at each Qualified Customer's premises.

7.2 The financing method for the indoor installation packages shall be agreed between the Parties on a case by case basis with the consent of the Commission.

7.3 The payment of electricity shall be subject to the subscribed power of each customer.

8 COMMUNITY POWER COMMITTEE

8.1 The Community/Community Representative shall facilitate the establishment of a CPC which shall:

8.1.1 support the Mini-Grid Operator in all Mini-Grid Project related activities that are not detrimental to the Community;

8.1.2 assist in providing labour for the construction of the Mini-Grid Project;

8.1.3 assist financially to cover for the capital cost of some assets required for the Mini-Grid Project;

8.1.4 assist in acquiring the necessary permits to install, operate and maintain the energy system;

8.1.5 convey and communicate the Community's issues to the Mini-Grid Operator and vice versa;

8.1.6 [collection on behalf of the Mini-Grid Operator fees for the electricity used for public lighting and transfer such fees collected to Mini-Grid Operator, where applicable];

8.1.7 Take the necessary measures against theft or vandalization of equipment;
and

8.1.8 assist the Mini-Grid Operator in identifying suitable personnel for power station guards, electricians and locally based sales agents.

9 EXCLUSIVITY

9.1 For the duration of this Agreement, the Community Representative shall not enter into and shall ensure that the Community does not enter into any agreement with third parties in respect of other electricity supply initiatives.

10 TERMINATION

10.1 The Agreement may terminate upon mutual agreement by the Parties.

10.2 With the consent of the Community, the Community Representative may terminate this Agreement by giving thirty (30) days written notice to the Mini-Grid Operator where:

10.2.1 the Distribution Company decides to re-integrate the Mini-Grid into the main-grid before the expiration of the Term;

10.2.2 the Mini-Grid Operator's Permit expires and is not renewed within [30] days of the expiration or the Permit is cancelled by NERC;

10.2.3 the Mini Grid Operator abandons the Project for a period of more than [3] consecutive months;

10.2.4 the installation of the power system has not commenced within 12 months after the execution of this Agreement;

10.2.5 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;

10.2.6 the Mini-Grid Operator commits a breach of Clause 5.1.4 and/or Clause 5.1.5 and fails to remedy the breach within 14 days (or as agreed between the Parties) following receipt of the notice of breach executed by at least 50% of all the Qualified Customers within the Community.

10.3 The Mini-Grid Operator may terminate this Agreement by giving 30 (thirty) days written notice to the Community Representative if:

10.3.1 where it decides not to pursue the Project;

10.3.2 the Community Representative commits a breach of Clause 5.2 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; and

10.3.3 there are repeated incidents of vandalism, thefts of electricity which endanger the financial viability of the Mini-Grid Operator's energy supply and has an adverse effect on the Project.

10.4 Where termination occurs, pursuant to Clause 10.3.1, the Mini-Grid Operator shall undertake such restorations to the land and environment required to restore it back to good condition.

10.5 Upon termination, the Mini-Grid Operator shall at its own cost remove the Mini-Grid assets and infrastructure.

11. NOTICES

11.1 All notices or other documents to be furnished by the Parties under or in connection with this Agreement shall be in the English language and shall be sent to the addresses stated above and marked for the attention of the persons designated in this clause 11. Notices and other documents may be sent by hand delivery, registered post, courier or email, provided that proceedings arising out of or in connection with this Agreement may not be served by email.

11.2 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 11):

If to Mini-Grid Operator:

Attention: [.]

Tel: []

E-mail Address: [.]

If to Representative of Community Representative:

Attention: [.]
Tel: []
E-mail Address: [.]

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

12. AMENDMENT

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

13. WAIVER

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.

14 COSTS

Each Party shall bear its own cost of or in connection with the preparation, negotiation and execution of this Agreement.

15 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.

16 SEVERABILITY

- 16.1 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.

- 16.2 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.

17 CONFIDENTIAL INFORMATION

- 17.1 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 Mini-Grid Project unless:
- 17.1.1 the disclosure is expressly assented to in writing by the Party to which the Confidential Information belongs;
 - 17.1.2 the disclosure is subject to a legal obligation of disclosure,
- 17.2 Each Party, after consultation with the others, shall adopt reasonable procedures to preserve the Confidential Information of the other Parties.
- 17.3 No information shall constitute Confidential Information if:
- 17.3.1 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;
 - 17.3.2 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.
 - 17.3.3 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
 - 17.3.4 the information is expressly stated in writing to be non-confidential.

18 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.

19 ENTIRE AGREEMENT

19.1 Each Party acknowledges that, in entering into this Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, assurance or warranty of any person other than as expressly set out in this Agreement.

19.2 Nothing in this Clause 17 operates to limit or exclude any liability or fraud.

20 SUCCESSORS AND ASSIGNS

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

21 GOVERNING LAW AND DISPUTE RESOLUTION

Governing Law

21.1 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

21.2 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.

21.3 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 **[MINI-GRID OPERATOR]**

Signed at on this day of 2016.

By:

Name:

WITNESSES

1. _____

2. _____

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

Signed at on this day of 2016.

1.

2. _____
