

ANNEX 1A

AGREEMENT FORM FOR AN EXCLUSIVE PROJECT DEVELOPMENT PERIOD AT A SITE FOR AN ISOLATED MINI-GRID

N.B – This is a template form that can be amended to suit the specific circumstance and peculiarities of the parties

This Agreement is dated [XXX]

Between

[XXXX], a company duly incorporated under the laws of the Federal Republic of Nigeria with registration number [RC Number] and having its registered office at [OFFICE ADDRESS] called the “**Mini-Grid Developer**”.

And

[XXXX] a legally authorised representative of [NAME OF COMMUNITY] in its capacity as [Village Head] called the “**Community Representative**”.

OR

[XXXX] 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] called the “**Community.**”

(In this Agreement, the Mini-Grid Developer and Community Representative are referred to as “**Parties**” or “**Party**”).

RECITAL/ BACKGROUND

- A. The Mini-Grid Developer is in the business of developing and constructing Mini-Grids.
- B. The Mini-Grid Developer seeks to develop a Mini-Grid to supply electricity to the Community from electricity generated by the Mini-Grid.
- C. The Mini-Grid Developer has identified the Location as suitable for a Mini-Grid in accordance with the Mini-Grid Regulations and seeks to undertake feasibility studies preparatory to developing a Mini-Grid to supply electricity to the Community.

D. In view of the above, the Community Representative has agreed to grant the Mini-Grid Developer an exclusivity period to develop the Mini-Grid under the terms set out in this Agreement.

NOW THEREFORE, the Parties agree as follows:

1. DEFINITIONS AND INTERPRETATIONS

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

“Confidential Information” shall include but is not limited to technical know-how, information and data, plans, strategies, techniques, processes, operations, formulae, proprietary information and material belonging to any of the Parties in respect of the Mini-Grid Project.

“Effective Date” means the date of this Agreement.

“Exclusivity Period” means the Initial Exclusivity Period, Supplementary Exclusivity Period and any further extensions of the exclusive period granted pursuant to Clause 4.

“Location” means the area within the distribution network where a Mini-Grid is proposed to be located.

“NERC” means the Nigerian Electricity Regulatory Commission.

“Permit” means a Permit granted by NERC to a Mini-Grid Operator for the construction, operation, maintenance and where applicable ownership of Mini-Grids.

“Technical Codes” 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;

1.2.2 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; and

1.2.3 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

This Agreement shall commence on the Effective Date.

3. MINI-GRID PROJECT

The Parties agree that the Mini-Grid Developer shall have the right to investigate, develop and commission a Mini-Grid in the Community ("**Mini-Grid Project**").

4. EXCLUSIVITY PERIOD

4.1 The Exclusivity Period shall start on the Effective Date and shall end [12 or 24 months] after ("**Initial Exclusivity Period**") unless extended pursuant to this Clause 4 in this Agreement.

4.2 Where the Initial Exclusivity Period is for 12 months, the Community Representative shall have the discretion to extend the Initial Exclusivity Period for up to an additional 12 months after the expiration of the Initial Exclusivity Period ("**Supplementary Exclusivity Period**"), provided that the Mini-Grid Developer has made significant progress to the satisfaction of the Community. ***[NOTE: the Parties can set out specific conditions precedent that needs to be satisfied by the Parties during the exclusivity period.]***

4.3 A Supplementary Exclusivity Period can only be granted by the Community Representative subject to NERC's approval.

4.5 Pursuant to Clause 4.3, NERC's approval for the extensions shall be granted provided that:

4.5.1 the Parties are able to set out progress made and provide a justification to the satisfaction of the Community why an extension is required; and

4.5.2 any delays experienced are due to no fault of the Mini-Grid Developer.

4.6 Where the Initial Exclusivity Period exceeds 12 months, the Mini-Grid Developer and the Community shall in addition to this Agreement, execute Form A in Schedule 1 and

thereafter submit to NERC for approval.

4.7 Where a Supplementary Exclusivity Period is required, the Mini-Grid Developer and the Community shall execute Form B in Schedule 1 and thereafter submit to NERC for approval.

4.8 Where an extension is required, the Mini-Grid Developer shall duly notify the Community Representative at least a month before the expiration of the Exclusivity Period using the applicable form in Schedule 1 to this Agreement stating the reasons for the extension.

5 DUTIES AND OBLIGATIONS OF THE PARTIES

5.1 For the duration of the Exclusivity Period, the duties and obligations of the Community Representative shall be as follows:

5.1.1 The Community Representative shall not and shall ensure that the Community does not:

5.1.1.1 directly or indirectly take any action to solicit, initiate, encourage, assist the submission of any proposal, negotiation or offer from any person or entity for the purpose of developing, installing, commissioning and/or operating a Mini-Grid; and

5.1.1.2 act in a manner that will adversely affect the Mini-Grid Project.

5.1.2 Cooperate in good faith and provide the Mini-Grid Developer all such information, documentation and authority required for the Mini-Grid Project.

5.2 For the duration of the Exclusivity Period, the duties and obligations of the Mini-Grid Developer shall be as follows:

5.2.1 undertake the feasibility and investigations required for Mini-Grid Project in a timely manner;

5.2.2 ensure that the Mini-Grid Project is in compliance with the Technical Codes.

6 TIME IS OF THE ESSENCE

The Parties agree that, for the purpose of this Agreement and for the duration of the Exclusivity Period, they will carry out their respective obligations with respect to the Mini-Grid Project in a timely and efficient manner.

7 POST EXCLUSIVITY PERIOD

7.1 At the end of the Exclusivity Period, where the Mini-Grid Developer decides to implement the Mini-Grid Project:

7.1.1 A definitive agreement will be executed between the Parties;

7.1.2 The Mini-Grid Developer shall comply with the Mini-Grid Regulations 2016.

7.2 At the end of the Exclusivity Period, where the Mini-Grid Developer decides not to implement the Mini-Grid Project:

7.2.1 it shall duly notify the other Party stating the reasons for its decision;

7.2.2 make the necessary restorations required following investigative activities undertaken for the Mini-Grid Project; and

7.2.3 Save for Clause 7.2.2, the Mini-Grid Developer shall have no liability.

8 TERMINATION

8.1 This Agreement may terminate by mutual agreement by all Parties.

8.2 This Agreement automatically terminates, where the Parties execute a definitive agreement pursuant to Clause 7.1.1 for the Mini-Grid Project.

8.3 The Community Representative may terminate this Agreement on written notice to the other Parties if:

8.3.1 it decides to expand before the expiration of the Exclusivity Period;

8.3.2 where the Mini-Grid Developer breaches Clause 5.2.1 and Clause 5.2.2

8.3.3 Mini-Grid Developer abandons the Project for a period of more than 3 consecutive months;

8.4 The Mini-Grid Developer may terminate this Agreement on written notice to the other Parties if:

8.4.1 it decides not wish to pursue the Mini-Grid Project; or

8.4.2 the Community Representative breaches Clause 5.1.

9 REMEDIES

If during the Exclusivity Period, the Community Representative breaches any of its obligations to the Mini-Grid Developer which results to a loss suffered by the Mini-Grid Developer, the Community Representative must reimburse the Mini-Grid Developer all the costs incurred as a result of the loss.

10 CONFIDENTIAL INFORMATION

10.1 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:

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

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

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

10.3 No information shall constitute Confidential Information if:

10.3.1 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;

10.3.2 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;

10.3.3 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 outside Nigeria; or

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

11 NON-CIRCUMVENTION

11.1 At any time prior to the expiration of the Exclusivity Period and two years thereafter, it is expressly agreed that the identities of any individual or entity and any other third parties (including, without limitation, suppliers, customers, financial sources, manufacturers and consultants) discussed and made available by the any Party in respect of the Mini-Grid Project and any related business opportunity shall constitute Confidential Information and the recipient or any group company or associated entity or individual shall not (without the prior written consent of the disclosing Party):

11.1.1 directly or indirectly initiate, solicit, negotiate, contract or enter into any business transactions, agreements or undertakings with any such third party identified or introduced by the disclosing Party; or

11.1.2 seek to by-pass, compete, avoid or circumvent the disclosing Party from any business opportunity that relates to the Mini-Grid Project by utilising any Confidential Information or by otherwise exploiting or deriving any benefit from the Confidential Information.

11.2 Except insofar as the Party was engaged in a prior business relationship with the individual or entity or third party.

12 ENTIRE AGREEMENT

The Parties agree that this Agreement including the Schedules and the Forms therein executed for extensions of the Exclusivity Period constitutes the entire Agreement between the parties irrespective of all previous agreements, promises, assurances, warranties, representations and understanding between them, whether written or oral, relating to its subject matter.

***IN WITNESS** whereof this Agreement was executed the day and year first above written.*

For **[MINI-GRID DEVELOPER]**

Signed at on this day of 2016.

By:

Name:

WITNESSES

1. _____

2. _____

For **[COMMUNITY REPRESENTATIVE]**

Signed at on this day of

By:

Name:

WITNESSES

1. _____

2. _____

SCHEDULE 1

FORM A – INITIAL EXCLUSIVITY PERIOD REQUEST FORM

Company Representative name: _____

Company name: _____

Company address: _____

Company registration number: _____

Duly authorised representative of the abovementioned company and

Community Representative name: _____

Position: _____

Address:

Duly authorised representative of the Community of *[Name of Community]*

Pursuant to Clause 4.1, 4.4 and 4.6 of the Exclusivity Agreement dated [], I [NAME], the Mini-Grid Developer of the Mini-Grid Project, hereby request for an initial exclusivity period for [] months (“Initial Exclusivity Period”). The reasons for exclusivity are as follows: ***[NOTE: The Parties shall only use Form A for an Initial Exclusivity Period which exceeds 12 months. Where the Initial Exclusivity Period does not exceed 12 months, the Agreement shall be sufficient].***

(Reasons of your request and/or forecasted tasks to be performed):

(Attach the necessary documentation to support the above request)

I, [NAME OF COMMUNITY REPRESENTATIVE] hereby grant the exclusivity requested under the same terms and conditions of the Agreement. Thus, the exclusivity period expires on XX of the month of XXXXX of the year XXXX.

This exclusivity is subject to approval of Nigerian Electricity Regulatory Commission (NERC).

Date:

Date:

Date:

Signature:
[Community Representative]

Signature:
[NERC Developer Representative]

Signature:
[Mini-Grid Representative]

Signature:
[Community Representative]

FORM B – SUPPLEMENTARY EXCLUSIVITY PERIOD REQUEST FORM

Company Representative name: _____

Company name: _____

Company address: _____

Company registration number: _____

Duly authorised representative of the abovementioned company
and

Community Representative name: _____

Position: _____

Address: _____

Duly authorised representative of the Community of *[Name of Community]*

Pursuant to Clause 4.2, 4.3 and 4.7 of the Exclusivity Agreement dated [], I [NAME], the Mini-Grid Developer of the Mini-Grid Project, hereby request for an extension of an additional [XX] months (“Supplementary Exclusivity Period”) under the same terms and conditions of said Agreement.

(Reasons of your request and/or outstanding tasks to be performed):

(Attach the necessary documentation to support the above request)

I, [NAME OF COMMUNITY REPRESENTATIVE] hereby grant the extension requested under the same terms and conditions of the Agreement. Thus, the extended exclusivity period expires on XX of the month of XXXXX of the year XXXX.

Date:

Date:

Date:

Signature:
Representative]

[NERC Signature:
Developer Representative

[Mini-Grid Signature:
Representative]

[Community