

Legal Notice No.....

THE ENERGY ACT (No. 1 of 2019)

IN EXERCISE of the powers conferred by Sections 208 of the Energy Act, 2019, the Cabinet Secretary for Energy makes the following Regulations.

THE ENERGY (MINI-GRID) REGULATIONS, 2021

PART I – PRELIMINARIES

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| Citation | 1. These Regulations may be cited as the Energy (Mini-Grid) Regulations, 2021. |
| Application | 2. These Regulations shall apply to all Mini-Grids with installed capacity of up to 1 MW including Public Mini-Grids, the owners, operators, and users of the Mini-Grids as well as all other private or public stakeholders. |
| Interpretations | 3. In these Regulations, unless the context otherwise requires –

“ The Act ” means the Energy Act, 2019 and any revision thereof;

“ Authority ” means the Energy & Petroleum Regulatory Authority established under Section 9(1) of the Act;

“ Bulk Supply Tariff ” means a set of prices, rates, charges, and any other costs associated with capacity, supply, and delivery of electrical energy between a Distribution Licensee and the Mini-Grid Developer and/or Mini-Grid Operator approved by the Authority;

“ Cabinet Secretary ” means the Cabinet Secretary for the time being responsible for Energy as defined in Section 2 of the Act;

“ Commissioning Reports ” means the reports recording the activities and results of the commissioning process prepared by an Engineer under Regulation 7(2)(j) of these Regulations;

“ Community Contract ” means an agreement between a Mini-Grid Developer and/or Mini-Grid Operator and the Local Community, signed under Regulation 5(5)(a) of these Regulations;

“ Connected Community ” means Local Community connected to the distribution network of a licensed Mini-Grid Developer and/or Mini-Grid Operator as provided in Regulation 5(5)(a) of these Regulations; |

“Connection Point” has the same meaning as defined in the Kenya National Distribution Code;

“Consumer” has the same meaning as defined in Section 2 of the Act;

“Consumer Service Charter” means a declaration of service standards of the Mini-Grid Developer and/or Mini-Grid Operator to Consumers;

“Consumer Supply Contract” means a contract approved by the Authority between a Mini-Grid Developer and/or Mini-Grid Operator and a consumer for the purchase of electrical energy as provided in Regulation 21(1) of these Regulations;

“Corporation” means the Rural Electrification and Renewable Energy Corporation as established under Section 43 of the Act;

“Date of Application” means the date when an application for a Licence has been reviewed by the Authority and the Authority has confirmed in writing to the Mini-Grid Developer that the application is complete;

“Distribution Code” means the Kenya National Distribution Code;

“Distribution Licence” means any document or instrument authorising a person to distribute energy in the manner prescribed in such document or instrument in that person’s authorised area of supply for the purpose of enabling supply to premises in that area and to also receive bulk supply from another Licensee;

“Distribution Licensee” means a person granted a licence by the Authority to own and/or operate a Distribution Network for the purpose of enabling supply of electrical energy to that person’s authorised area of supply;

“Distribution Network” means a power delivery system that delivers electric power from electrical substations or generation plants at medium- and low-voltage levels to Consumers;

“Effective Date” means the date of execution of the Community Contract or the date of grant of approval for the EOI and Exclusive Site Reservation and Allocation, whichever is the later;

“Energy Supply Agreement” means an approved contract between a Mini-Grid Developer and/or Mini-Grid Operator and a Distribution Licensee referred to in Regulation 5(5)(b) under which the Mini-Grid Operator purchases electrical energy in bulk from a Distribution Licensee for retail in accordance with the terms of a Consumer Supply Contract between the Mini-Grid Developer and/or Mini-Grid Operator and the Mini-Grid Developer’s and/or Mini-Grid Operator’s Consumers;

“Engineer” means a person registered under the Engineers Act, 2011 as a professional engineer, or consulting engineer and who holds a valid licence thereunder;

“EOI” means an Expression of Interest made to the Cabinet Secretary for development of a Mini-Grid at a specified site;

“Exclusive Site Reservation and Allocation” means an approval obtained from the Cabinet Secretary through an EOI by a Mini-Grid Developer under Regulation 5(1);

“Generation” means the production of electricity from a generating station to be fed into a Distribution Network;

“Generation Capacity” means the guaranteed active power that any generation plant can supply to a load or network at any point in time under given environmental constraints (temperature, humidity, etc.) And a power factor of 0.8 (inductive) for at least one hour under the assumption that the plant is well maintained and fully functional;

“Host County Government” means a County Government as established under Article 176 of the Constitution within whose boundaries a Mini-Grid Project is developed and operated;

“INEP” means Kenya’s prevailing Integrated National Energy Plan developed under Section 5 of the Act;

“Interconnected Mini-Grid” means a Mini-Grid connected to a Distribution Network which is operated by a third Party under a separate licence;

“Isolated Mini-Grid” means a Mini-Grid not connected to any Distribution Network operated by a third Party under a separate licence;

“KNES” means the prevailing Kenya National Electrification Strategy;

“Licence” means any document or instrument in writing granted under these Regulations, to any person authorising the generation, distribution, and/or retail supply of electrical energy, in the manner described in such document or instrument;

“Local Community” means a people living in a sub-county within which an energy resource is situated or is to be situated and are organised under a local leadership structure that is served or to be served by the Mini-Grid;

“Main Grid” means a national integrated power delivery system that transmits and delivers electric power to Consumers at any voltage level;

“Mini-Grid” or **“Mini-Grid Project”** means any electricity supply system with or without its own power Generation Capacity, supplying electricity to more than one Consumer and which can operate in isolation from or be connected to a third Party’s Distribution Network with an installed capacity of up to 1 MW;

“Mini-Grid Developer” means a person who has applied or intends to apply for a Licence to develop a Mini-Grid;

“Mini-Grid Operator” means a person who has been granted a Licence to operate a Mini-Grid;

“Mini-Grid Tariff Model” means the tariff model template approved by the Authority to determine the reasonable cost of Mini-Grid development and operation and tariffs to be charged by a Mini-Grid Operator as described in Regulation 6(1);

“Mini-Grid Tariff Model Guidelines” means the explanatory notes developed by the Authority that guide a Mini-Grid Developer on how the Mini-Grid Tariff Model must be completed to form part of a Tariff application as described in Regulation 6(1);

“National Environment and Management Authority (NEMA)” means the Authority established under Section 7 of the Environmental Management and Coordination Act No. 8 of 1999;

“National Uniform Tariff” means the prevailing tariff as determined by the Authority for application by a Distribution Licensee with responsibility for operating the Main Grid;

“Performance Standards” means the Performance Standards and quality of supply and service described in Regulation 16;

“Person” has the same meaning as defined in Section 2 of the Act;

“Potential Mini-Grid Area” means Underserved Area and/or Unserved Area (in km from the national grid and or population density of the geographical area) as ascertained by the Cabinet Secretary from time to time;

“Private Mini-Grid” means a Mini-Grid that is not a Public Mini-Grid;

“Public Mini-Grid” means a Mini-Grid that is owned and operated by a public sector entity including the National Government, a County Government, or any State Corporations;

“Retail Tariff” means a set of prices, rates, charges, and any cost associated with capacity, supply, and delivery of electrical energy (which may vary by category of Consumers service, voltage, or time of use, and may include any adjustments or formulae therefor), as approved by the Authority pursuant to Section 165 of the Act;

“Site Restoration” means to return the site to the status it was before the activities of the Mini-Grid Developer;

“Tariff” has the same meaning as set out in Section 2 of the Act;

“Tariff Control Period” means the duration in which the Tariff shall be applicable;

“Tribunal” means the Energy and Petroleum Tribunal established under the Act.

“Underserved Area” means an area within a Distribution Network which is poorly or not served by a Distribution Licensee;

“Unserved Area” means an area outside a Distribution Licensee’s network area of supply without an existing distribution system.

- General Principles** **4.** (1) A person who wishes to undertake a Mini-Grid Project with an installed capacity of up to 1 MW shall apply to the

Authority for (a) a Mini-Grid Tariff Approval; and (b) a Licence in accordance with these Regulations.

- (2) A Mini-Grid will generally consist of electricity generation, distribution network, geographical and electrical boundaries, metering system and electricity consumers.
- (3) A Mini-Grid Developer and/or Mini-Grid Operator is responsible for obtaining all necessary requirements for the feasibility, site acquisition, development, approval, financing, engineering, procurement, construction, commissioning, and operation of the Mini-Grid Project.
- (4) A Mini-Grid Developer is responsible for the location of the Mini-Grid Project site with reference to the supply options for grid expansion, grid intensification and densification, mini-grids and stand-alone systems in Kenya as articulated in the KNES and subsequently the INEP as provided in Section 5 of the Act.
- (5) A Mini-Grid may be developed by a Mini-Grid Developer who responds to a call by the Cabinet Secretary for bids to develop a Mini-Grid in a particular site through a fair, open and competitive process or by a Developer who initiates Mini-Grid Projects in sites that are not the subject of a call for bids by the Cabinet Secretary.
- (6) Where a Host County Government provides no objection to a Mini-Grid Project in its County, considerations it may factor in prior to providing such no objection shall include:
 - a. site availability;
 - b. alignment of the Mini-Grid Project to County development plans;
 - c. the Mini-Grid Developer's technical and financial capability; and
 - d. the Mini-Grid Developer's engagement with the community.

PART II - APPROVAL AND PERMITS

Exclusive Site Reservation and Allocation

5. (1) The Mini-Grid Developer shall submit an EOI to the Cabinet Secretary for Exclusive Site Reservation and Allocation and development of one or more Mini-Grid Projects. The EOI shall *inter alia* include the following information:
 - a. Description of the site(s);
 - b. Proposed technology for electricity generation;
 - c. Pre-feasibility study report showing expected area of coverage and number of customers to be served;
 - d. Future plans to integrate with the Main Grid where applicable;
 - e. Demonstration of the technical and financial capacity to undertake the project;
 - f. Demonstration of initial engagement with the Local Community with evidence of the consultation including documented written minutes, signed attendance registers and photographs;
 - g. A letter of no objection from the Host County Government; and
 - h. An indicative tariff and how the proposal is aligned with KNES and INEP.
- (2) A Mini-Grid Developer who proposes to develop a Mini-Grid Project pursuant to the Public Private Partnership Act, No. 15 of 2015, shall, when submitting his EOI provide evidence of compliance with that Act.
- (3) The Cabinet Secretary shall within five (5) days of receipt of the EOI , inform the applicant in writing whether the application is complete.
- (4) The Cabinet Secretary may grant approval of the EOI and Exclusive Site Reservation and Allocation upon considering the information submitted in Section 5(1) and (2) within fifteen (15) days of submission of complete information.

- (5) Upon grant of approval of the EOI and Exclusive Site Reservation and Allocation:
 - a. The Local Community and the Mini-Grid Developer shall enter into a Community Contract for each site in the form set out in the **First Schedule** for the development of the Mini-Grid valid for twelve (12) months from the Effective Date. The Community Contract shall be submitted to the Authority as part of the tariff application with a document endorsing appointment of the Community Representative as well as minutes and attendance register of the meeting confirming the appointment; and
 - b. In the case of an Interconnected Mini-Grid Project, the Mini-Grid Developer shall enter into an Energy Supply Agreement with the Distribution Licensee as provided in the **Second Schedule** and submit a copy thereof to the Authority.
- (6) The Cabinet Secretary, shall, where he declines to grant approval of the EOI, provide reason(s) for the same.
- (7) A Mini-Grid Developer shall submit to the Authority an application for Tariff approval for one or more sites within ten(10) months of the Effective Date.
- (8) A Mini-Grid Developer who does not comply with Regulation 5(7) shall lose the Exclusive Site Reservation and Allocation unless the Mini-Grid Developer renegotiates with the Local Community at least forty-five (45) days before the expiry date for an additional period of no more than twelve (12) months and have it approved by the Cabinet Secretary.
- (9) A Mini-Grid Developer may voluntarily relinquish his exclusive right to develop a Mini-Grid Project at any time before the expiry of the Exclusive Site Reservation and Allocation by giving at least thirty (30) days' written notice to the Local Community, Host County Government, Cabinet Secretary, and Authority.

**Requirements for
tariff approval,
review, and
adjustment**

6. (1) Applications for Tariff approval shall be made electronically or in any other manner that the Authority may approve from time to time. The application shall be accompanied by the following:

- a. Duly completed Tariff application in the prescribed form as provided in the **Third Schedule**;
- b. Letter of no objection from the Host County Government;
- c. The approval of the EOI issued by the Cabinet Secretary;
- d. The Mini-Grid Tariff Model duly completed by the Mini-Grid Developer in accordance with the Mini-Grid Tariff Model Guidelines as revised from time to time in consultation with relevant stakeholders;
- e. Detailed Feasibility Study Report capturing the following:
 - i. Project Description: location, ownership, capacity, technology;
 - ii. A detailed assessment of the sustainability of the energy resource;
 - iii. Load forecasts segregated by Consumer types;
 - iv. A detailed assessment of the technical and financial viability of the project;
 - v. A detailed description of the financing arrangements for the project;
 - vi. An assessment of the social and economic benefits and costs of the proposed project; and
 - vii. Willingness and Ability-to-Pay Analysis of the potential consumer;
- f. A detailed Engineer's Report that covers:
 - i. Existing supply (if applicable);
 - ii. Generation plant and distribution system drawings;
 - iii. Power flow analysis
 - iv. Home wiring;
 - v. Proposed metering scheme;
 - vi. Billing system: post or prepaid;
 - vii. Future grid integration proposals;
 - viii. Earthing requirements;
 - ix. System protection and controls;
 - x. Applicable standards; and
 - xi. Safety manual and procedures.
- g. Project approval by the National Environmental Management Authority;

- h. A grid interconnection study for any Interconnected Mini-Grid(s);
- i. Proof of land ownership (Title Deed) or Lease Agreement for the generating plant;
- j. Way leave/Easement agreement(s) for the Distribution Network
- k. Certificate of Incorporation or Business Registration;
- l. Company's official search (CR12) from the Registrar of Companies (not older than twelve 12 months);
- m. Valid Tax Compliance Certificate;
- n. The Mini-Grid Developer's audited accounts for the last three years, where applicable;
- o. Proof of source of financing for a Mini-Grid Developer who has as at the date of application been in existence for less than a year;
- p. Copies of valid work permits or entry permit class G for foreign directors or notarized declaration of non-residence for foreign directors not residing in Kenya;
- q. The Community Contract(s), a document endorsing appointment of a Community Representative, and minutes and attendance register of the meeting confirming the appointment;
- r. The Proposed Consumer Supply Contract as provided in the **Sixth Schedule**;
- s. The Proposed Consumer Service Charter which shall *inter alia* cover the following:
 - i. Process of application for connection of electricity supply to the Consumer;
 - ii. Timeframes for connection to electricity after application;
 - iii. Expected quality of supply and quality of service parameters;

- iv. Determination and payment for electricity supplied;
 - v. Disconnection and reconnection of electricity supply;
 - vi. Electricity supply interruptions;
 - vii. Illegal connection and sanctions, metering, and rights and obligations of the Mini-Grid developer/operator;
 - viii. Consumer obligations and rights; and
 - ix. Attendance to Consumer in service centres, or through community-based Consumer service agents, on telephone or in correspondence; and
- t. The Proposed Consumer Complaints and Dispute Handling Procedure which shall *inter alia* cover the following:
- i. How to contact the Mini-Grid Operator;
 - ii. How to lodge a complaint to the Mini-Grid Operator;
 - iii. Complaint handling process; and
 - iv. How to handle complaints that endanger persons and property.
- (2) The Authority shall within fifteen (15) days of receipt of the Tariff application, inform the applicant in writing whether the application is complete.
- (3) The Tariff review and approval by the Authority shall involve the following tasks:
- a. Detailed analysis of the submitted Tariff model;
 - b. Detailed analysis of the Feasibility Study;
 - c. Assessment of all other submitted information; and
 - d. Stakeholder consultation in which the Authority or its designated agent shall participate. The Authority shall give a notice of at least seven (7) days to the Mini-Grid Developer and Local Community prior to the stakeholder engagement.
- (4) Following the Tariff review, the Authority shall:

- a. Publish its decision on the approved Tariff within sixty (60) days of receipt of the documents required under paragraph 6(1); or
 - b. Communicate to the Mini-Grid Developer in writing the justification for adjustment of the Tariff applied by the Mini-Grid Developer at least fourteen (14) days before publication. The Mini-Grid Developer may appeal a decision on the tariff before publication; or
 - c. Reject the Tariff applied by a Mini-Grid Developer within sixty (60) days of receipt of the documents required under paragraph 6(1) and communicate the reasons for rejection to the Mini-Grid Developer and Local Community.
- (5) The Authority shall notify the Mini-Grid Developer of a Tariff approval with a Tariff Approval Letter in the form provided in the **Fourth Schedule**.
 - (6) Upon approval of the Tariff, the Mini-Grid Developer shall begin construction of the Mini-Grid, on obtaining the Physical Planning Approval from the Host County Government.
 - (7) The Tariff Control Period for Mini-Grids shall be three (3) years from the date of approval by the Authority as provided in Section 165(7) of the Act.
 - (8) The Mini-Grid Developer shall apply for a Licence within twelve (12) months of Tariff approval.
 - (9) A Mini-Grid Developer who does not comply with Regulation 6(8) shall lose the Exclusive Site Reservation and Allocation unless the Authority, on an application made to the Authority in writing by the Mini-Grid Developer, chooses to extend this period for an additional period of no more than twelve (12) months if the Authority is satisfied with the reasons given for extension.
 - (10) An application for tariff review shall be made at least sixty (60) days before the expiry date of the current tariff.

Mini-Grid Licence Application

- 7. (1) Subject to the provisions of section 119(3) of the Act, a Mini-Grid Developer shall apply for a Licence to operate the generation and distribution infrastructure.

- (2) Applications for a Licence shall be made electronically with one (1) paper copy submitted to the Authority, or in any other manner that the Authority may, from time to time, require in the form provided in the **Fifth Schedule** and accompanied by the following:
- a. The Physical Planning Approval from the Host County Government specifying the geographical coverage of the Mini-Grid;
 - b. Evidence of a physical office accessible to the consumers and other stakeholders or of dedicated on-site staff and a customer service line;
 - c. A copy of the public notice issued in accordance with Section 119(3) of the Act;
 - d. Licence application fees of the amount specified in the **Seventh Schedule**.
 - e. Copies of identification documents for all directors;
 - f. Copies of valid work permits or entry permit class G for foreign directors or notarized declaration of non-residence for foreign directors not residing in Kenya;
 - g. The Proposed Consumer Service Charter which shall *inter alia* cover the following:
 - i. Process of application for connection of electricity supply to the Consumer;
 - ii. Timeframes for connection to electricity after application;
 - iii. Expected quality of supply and quality of service parameters;
 - iv. Determination and payment for electricity supplied;
 - v. Disconnection and reconnection of electricity supply;
 - vi. Electricity supply interruptions;
 - vii. Illegal connection and sanctions, metering, and rights and obligations of the Mini-Grid developer/operator;
 - viii. Consumer obligations and rights; and
 - ix. Attendance to Consumer in service centres, or through community-based Consumer service

agents, on telephone or in correspondence;
and

h. Commissioning Reports prepared by a registered Professional Engineer.

(3) The Authority shall within fifteen (15) days of receipt of the application for a Licence, inform the applicant in writing whether the application is complete.

(4) The Authority shall review the application based on the following criteria:

- a. The impact of the undertaking on the social, cultural, or recreational life of the Local Community;
- b. The need to protect the environment and to conserve the natural resources in accordance with the Environmental Management and Coordination Act No. 8 of 1999 and all other Applicable Laws;
- c. Land use or the location of the undertaking;
- d. Economic and financial benefits to the country, county, or area of supply of the undertaking, with reference to alternative energy supply options;
- e. The economic and energy policies in place at the time, including those related to national electrification and renewable energy;
- f. The cost of the undertaking and financing arrangements;
- g. The ability of the applicant to operate the system in a manner designed to protect the health and safety of users as well as other members of the public who would be affected;
- h. The technical and financial capacity of the applicant to render the service for which the Permit is required;
- i. Any representations or objections made by the public that are heard and determined by the Authority;

- j. The proposed tariff offered; and
 - k. Any other matter that the Authority may consider likely to have a bearing on the undertaking.
- (5) The Authority shall process and communicate the outcome of the application within sixty (60) days from the Date of Application.
 - (6) If the Mini-Grid Developer meets the criteria, the Authority shall issue the Mini-Grid Developer with a Licence.

Requirements for Grant of a Mini-Grid Licence

- 8. The Mini-Grid Developer shall be granted a Licence on meeting requirements specified in 7(4) including having constructed, tested, and commissioned generation plant and distribution infrastructure which can serve at least 30% of the site's target Consumers.

Procedure for Public Notice and Determination of Objections

- 9. (1) The applicant shall, fifteen (15) days before making the application to the Authority for grant of a Licence, publish and serve a notice of the application pursuant to Section 119(3) of the Act and the notice shall:
 - a. Indicate the date the intended application is to be made;
 - b. Contain a description and location of the proposed Mini-Grid project(s);
 - c. Inform members of the public of the date from which the application may, subject to limits of confidentiality, be inspected at the offices of the applicant, the Authority, or sub-county or county administration; and
 - d. Invite the persons, who may be directly affected or are in the areas that are likely to be affected by the Mini-Grid project, who object to the grant of the Licence, whether on personal, environmental, or other grounds, to lodge with the Authority an objection in writing, setting out the grounds of objection, within thirty (30) days of the date of the application as stated in the notice and forwarding such objection to the applicant.

- (2) Where a person objects to the grant of a Licence, the Authority shall at the request of the applicant or objector, hold a hearing and give both the applicant and objector notice of the hearing to be held within one (1) month of the date of the objection.
- (3) The Authority may hear any objection in public and at the time and place specified in the notice given to the applicant and to every objector, at least fifteen (15) days before the hearing date.
- (4) The hearing shall be conducted in accordance with procedures issued by the Authority, and the duration of the hearing shall not be considered as part of the processing period specified in Section 121(2) of the Act.
- (5) The Authority may, after holding a hearing, reject an objection, accept an objection, or direct the applicant to amend the application or provide additional information.
- (6) The Authority shall communicate its decision to the Parties within sixty (60) days after the hearing.
- (7) Where the Authority has directed that the application should be amended or requested for additional information, the applicant shall amend the application or provide the additional information within fifteen (15) days of the Authority's directive and it shall reconsider the application and communicate its final decision within sixty (60) days.

Notice of Grant of a Mini-Grid Licence and Applicable Fees

10. (1) The Authority shall inform the applicant of the grant of a Licence and specify the conditions to be satisfied by the applicant, including applicable Licence fees.
- (2) The applicant shall pay the fees specified in the Payment Schedule per the **Seventh Schedule**.

Form of Licence

11. The Authority shall issue the Licence in the form set out per the **Eighth Schedule** or in a form as the Authority may deem fit from time to time.

Date of Commencement, Duration, and Relinquishment

12. (1) A Licence issued under these Regulations shall come into operation on the date of its issue, and shall continue for a duration of the number of years specified in the Licence subject to the provisions of the Act and these Regulations.

- (2) A Mini-Grid Developer may voluntarily relinquish an allocated Mini-Grid site at any time before the expiry of the Licence by giving at least six (6) months' written notice to the Authority.
- (3) Upon relinquishment of a Licence, the Mini-Grid Operator:
 - a. shall at its own cost decommission the Mini-Grid infrastructure and assets within three (3) months or as may be directed by the Authority; or
 - b. with the approval of the Authority may transfer the Mini-Grid assets to another Mini-Grid Operator or a Distribution Licensee.
- (4) Notwithstanding the provisions in 14(1), the Authority may require the Mini-Grid Operator to continue operating the mini-grid until an operator of last resort or a new operator takes over the mini-grid.

**Suspension or
Revocation of
Licence**

13. (1) Notwithstanding an Order issued or a sanction, penalty or fine imposed by the Authority, a Licence issued under these Regulations may be suspended or revoked where the Authority is satisfied that the Mini-Grid Operator is not operating in accordance with the terms and conditions of the Licence, including the declaration of a Mini-Grid Operator's Mini-Grid Area as 'Underserved' after the Mini-Grid Operator has begun to operate.
- (2) The Authority shall give a notice of not less than thirty (30) days to the Licensee requiring him to show cause as to why the Licence should not be suspended or revoked.
- (3) The notice issued in 13(2) shall clearly state the grounds on which the Authority proposes to suspend or revoke the Licence.
- (4) Where the Authority suspends or revokes the Licence, the Authority shall give notice by public advertisement of such suspension or revocation within thirty (30) days of its decision to revoke or suspend.
- (5) Upon revocation of a Licence, the Mini-Grid Operator:

- a. shall at its own cost decommission the Mini-Grid infrastructure and assets within ninety (90) days or as may be directed by the Authority; or
 - b. with the approval of the Authority may transfer the Mini-Grid assets to another Mini-Grid Operator or a Distribution Licensee as long as they comply with applicable standards.
- (6) Where a Licence is suspended or revoked the Authority shall, in consultation with the Cabinet Secretary, take such action as is necessary to ensure that the supply of electrical energy to consumers is not unduly interrupted as a result of the suspension or revocation.

Public Mini-Grids

14. (1) In the case of Public Mini-Grids, the implementing agency shall notify the Authority of all Mini-Grids being developed using public funds or in partnership with a development partner for which the National Uniform Tariff shall apply prior to commencement of construction.
- (2) The notification shall consist of:
- a. Detailed Feasibility Report in accordance with Regulation 6(1)(e);
 - b. Approval from the National Environmental Management Authority in accordance with Regulation 6(1)(g);
 - c. Agreement between the implementing agency and the agency that will be in charge of operation and maintenance where applicable; and
 - d. Public notice notifying the public of the intention to develop the Mini-Grid as provided by Regulation 9(1).

PART III – OPERATION

Operation of the Mini-Grid

15. (1) A Mini-Grid Developer and/or Mini-Grid Operator shall be responsible for the safe construction, operation, and maintenance of the Mini-Grid project.
- (2) A Mini-Grid Developer and/or Mini-Grid Operator shall be responsible for the design, construction,

commissioning, operation and/or maintenance and de-commissioning of its Mini-Grid infrastructure in compliance with the applicable standards established by the Authority from time to time, terms and conditions of the Licence, Community Contract, or Energy Supply Agreement as applicable and in accordance with any other standards of design, construction, and maintenance.

Performance Standards, Reliability, Quality of Supply and Quality of Service

16. The Mini-Grid Operator shall:

- (1) Operate the Mini-Grid Project in a manner which achieves Performance Standards and quality of supply and service levels to which the Mini-Grid Operator is subject, as may be established or agreed with the Connected Community and approved by the Authority, or any other applicable standards established by the Authority from time to time.
- (2) Prepare a report, within ninety (90) days after the Licence becomes effective, indicating the minimum Performance Standards and quality of supply and service levels as well as the plans to meet such standards and quality as stipulated in these Regulations.
- (3) Not be in breach of their obligations if they have failed to meet the Performance Standards or any other standard established and approved by the Authority from time to times directly due to Force Majeure, PROVIDED that the Mini-Grid Operator has used reasonable efforts, to the extent reasonably possible, to comply with the Performance Standards or any other applicable operating standard established in Distribution Code, as the case may be.

Reporting Requirements to the Authority

- 17.** A Mini-Grid Operator shall provide reports in the format set out in **Ninth Schedule** as relates to the reliability, quality of supply and quality of service.

Health, Environmental and Safety Obligations

- 18.** All Mini-Grid Operators shall comply with all health, safety, and environmental laws in force in Kenya from time to time.

Insurance

- 19.** A Mini-Grid Operator shall adopt and implement reasonable and prudent policies in relation to the management and insurance of risks associated with the Mini-Grid project.

**Accounts, Records,
and Reports of the
Mini-Grid
Operator**

20. (1) The Mini-Grid Operator shall maintain its books of account in the form and particulars prescribed by the Authority under the Act.
- (2) In the event that the Mini-Grid Operator holds one or more Licences, if specifically requested by the Authority, the Mini-Grid Operator shall ensure that the accounts of each undertaking under each Licence shall be kept separate and distinct and in the manner and form prescribed by the Authority.
- (3) The Mini-Grid Operator shall ensure that the accounts pertaining to each undertaking are examined and audited by such competent and impartial persons appointed by the Mini-Grid Operator.
- (4) The Authority may at any time and at the expense of the Mini-Grid Operator, require auditors to investigate and report on any particular matter or things relating to or arising out of the operation of the Mini-Grid PROVIDED that the Mini-Grid Operator shall only be liable for the reasonable expenses of such auditors
- (5) Any report made by the auditor, or such portion thereof as the Authority may direct, shall be appended to the annual statements of account of the Mini-Grid Operator.

**Connection
Agreements,
Metering and
Billing**

21. (1) The Mini-Grid Operator shall enter into a Consumer Supply Contract in the format provided in the **Sixth Schedule** with every Consumer who willingly accepts to connect to the Mini-Grid in accordance with the Mini-Grid Operator's connection terms.
- (2) The tariff and billing model shall be described in the Consumer Supply Contract between the Mini-Grid Operator and the Consumers.

**Handling of
complaints**

22. (1) The Mini-Grid Operator shall comply with the applicable provisions relating to the resolution of complaints and disputes as may be prescribed by the Authority or under the Act, and in particular:
- a. Implement procedures, approved by the Authority, to receive, process and respond to complaints relating to the reliability and quality of supply or quality of service;

- b. Maintain a record of the information about the identity of the complainant, type of malfunction or complaint, the location, in case of interruptions, the outage time, and the time taken to reconnect, and all such matters established in the Distribution Code or in the Performance Standards; and
 - c. Submit to the Authority reports about malfunctions, interruptions problems in reliability and quality of supply or quality of service, and consumers' complaints in the form and manner approved by the Authority.
- (2) The Mini-Grid Operator shall, whenever requested to do so by the Authority, review the complaint and dispute resolution procedure.
 - (3) The Mini-Grid Operator shall make available to their consumers free of charge a current copy of the applicable complaints resolution procedures drafted in English and Kiswahili and may include copies in any other local language in wide usage as from time to time revised, at their office premises during working hours.

Accidents/Incidents Reporting

23. The Mini-Grid Operator shall:

- (1) Notify the Authority within 48 hours of any accident by electric shock, and also of any other accident of such kind as to have caused, or to have been likely to have caused loss of life or personal injury, and of any explosion or fire, which has arisen from and in the course of the generation, distribution, or retail supply of electrical energy by the Licensee or as specifically provided for in Section 214 of the Act.
- (2) The Authority may direct an investigation to be carried out into any accident or incident and take such action as it deems necessary.

PART IV – INTERCONNECTION

Extension of a Distribution Licensee's Network to Mini-Grid and/or Exit

- 24. (1) A Mini-Grid Operator operating under a Mini-Grid Licence who has built a distribution system to the requirements of the Distribution Code that allows interconnection with the Main Grid, may in the event of a

Main Grid arriving at the Mini-Grid Area, apply to the Authority for modification of their Licence to operate as:

- a. A power producer selling to the Distribution Licensee and the distribution assets owned by the Mini-Grid Operator will be treated as in Regulation 24(3);
 - b. A power distributor that purchases power in bulk from the Distribution Licensee and resells that electricity to the Consumers under an Energy Supply Agreement approved by the Authority in the format set out per the **Second Schedule**;
 - c. The Mini-Grid Operator that remains the power distributor for the area and purchases power from the Distribution Licensee in addition to its existing generation, and sells power to the Consumers; or
 - d. Any other operating model as approved by the Authority.
- (2) The Distribution Licensee should provide a notice to the Authority and Mini-Grid Operator/Developer of its intention to connect the Mini-Grid to the Main Grid at least twelve (12) months before the intended connection.
- (3) If a Mini-Grid Operator seeks to continue operating as a power distributor or as a combined power producer and power distributor for the area under the Licence, or as a new entity, then the Mini-Grid Operator or that new entity shall submit a request to the Distribution Licensee with a copy to the Authority asking the Distribution Licensee to:
- a. Indicate whether sufficient electricity is available for a bulk purchase by the Mini-Grid Operator or the new entity for resale to retail Consumers; and
 - b. Offer to enter into an Energy Supply Agreement with the Mini-Grid Operator or the new entity.
- (4) If the Distribution Licensee fails to deliver a written response to the request under Regulation 24(3) within thirty (30) days, then the entity seeking to operate as a power distributor may apply to the Authority with a copy to the Distribution Licensee. The application shall include a proposed retail tariff and a proposed bulk supply tariff.

- (5) The Authority shall consider the application and if the proposed retail tariff:
- a. Is the same as the approved tariff of the Distribution Licensee, it shall allow the application as long as the power distributor remains commercially sustainable; or
 - b. Is higher than the approved tariff of the Distribution Licensee, the Applicant shall be required to submit the proposed margin that would be added to the bulk supply tariff in order to ensure efficient distribution operations.
- (6) Without prejudice to the options available under Regulation 24(1) above, a Mini-Grid Operator that has been operating a Mini-Grid and is then connected to the Main Grid, may remove its distribution assets, or sell these assets to the Distribution Licensee.
- (7) Where the Mini-Grid Operator removes its assets in any event the Mini-Grid Operator shall return the site to the status it was before the activities of the Mini-Grid Developer.
- (8) Where a Distribution Licensee intends to extend its Distribution Network to interconnect with an isolated Mini-Grid, and the isolated Mini-Grid Operator chooses to sell any or all Mini-Grid assets to the Distribution Licensee, the Isolated Mini-Grid Operator shall negotiate compensation from the Corporation in consultation with the Distribution Licensee before handover of any or all Mini-Grid assets as approved by the Authority, based on the remaining depreciated value of the assets including construction and development cost as defined during the tariff definition by the Authority, plus any revenue the Mini-Grid Operator is owed by consumers but has not yet received up until the date of the transfer of assets. For compensation to be payable, the Mini-Grid at the time of granting of the Exclusive Site Reservation and Allocation must have met the electrification strategy requirements in the KNES or INEP.
- (9) Where the Parties fail to agree to the terms of the compensation, the Authority shall act as an arbiter to determine the compensation to be paid.

- (10) After the expiry of a Licence of an Interconnected Mini-Grid, and where not renewed, a Distribution Licensee may re-integrate an Interconnected Mini-Grid into its network subject to:
 - a. The written proof of endorsement by the Connected Community; and
 - b. Written approval by the Authority.
- (11) PROVIDED that the compensation specified in Regulation 24(8) shall apply in this instance unless otherwise agreed upon between the Distribution Licensee and the Mini-Grid Operator.
- (12) Section 140(1)(d) of the Act shall not apply to these Regulations.

Offences and Penalties

- 25. The offences and penalties set out in Sections 168, 169, 219, 220 and 221 of the Act apply to these Regulations. In addition to this, any person who:
 - (1) Undertakes or carries out any Mini-Grid construction without approval from the Authority commits an offence and shall, on conviction, be liable to a fine not less than one million Kenya Shillings or a maximum term of imprisonment of one year or both.
 - (2) Operates a Mini-Grid business without a Licence issued by the Authority commits an offence and shall, on conviction, be liable to a fine not less than one (1) million Kenya Shillings or to a term of imprisonment not less than one year or to both such fine and imprisonment.
 - (3) Levies charges to electricity consumers other than the Retail Tariff or Connection Charge approved by the Authority commits an offence and shall, on conviction, be liable in case of conviction to a fine not less than one million Kenya Shillings or a maximum term of imprisonment of one year or both.
 - (4) Makes a false statement or a statement which he has reasons to believe is untrue to the Authority or committee or agent or an officer acting on behalf of the Authority as required under these Regulations commits an offence and shall on conviction be liable to a fine not exceeding ten

(10) million Kenya Shillings or imprisonment for a term not exceeding five years or to both per Section 210 of the Act.

- (5) Fails to adhere to Health, Environmental and Safety obligations, resulting in loss of third Party property, injuries or loss of life/lives commits an offence and on conviction shall be liable as per the provisions of the Laws of Kenya.

Appeals

- 26.** Any person aggrieved by a decision or Order of the Authority may, within thirty (30) days of communication of the Order or decision, appeal to the Tribunal as provided under the Act.

FIRST SCHEDULE (r. 5(5)(a))

COMMUNITY CONTRACT TEMPLATE BETWEEN THE MINI-GRID DEVELOPER AND THE COMMUNITY

THIS Agreement is made on theday of.....2..... between:

- A. [NAME], a Company registered in the Republic of Kenya and having its principal place of business at,,and of P.O. Box....., in the Republic aforesaid, (hereinafter referred to as the “Mini-Grid Developer”) which expression shall where the context so admits include its successors and assigns on one part; and
- B. [NAME] a legally authorised representative of [NAME OF COMMUNITY] located at [LOCATION OF COMMUNITY] in his/her capacity as [village Head] (hereinafter called the “Community Representative”) on the other part.

WHEREAS the Mini-Grid Developer is in the business of constructing, operating, and maintaining Mini-Grids,

WHEREAS the Mini-Grid Developer seeks to develop a Mini-Grid and supply electricity to the Community from electricity generated by the Mini-Grid (“Project”)

AND WHEREAS this Agreement confirms consent of the Community to the project to be carried out by the Mini-Grid Developer.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. Unless the context or express provision otherwise requires: -
 - a. Reference to “this Agreement” includes its recitals, any schedules and documents mentioned hereunder and any reference to this Agreement or to any other document includes a reference to the other document as varied supplemented and or replaced in any manner from time to time.
 - b. Any reference to any Act shall include any statutory extension, amendment, modification, re-amendment or replacement of such Act and any rule, Regulation or Order made there under.
 - c. Words importing the masculine gender only, include the feminine gender or (as the case may be) the neutral gender.
 - d. Words importing the singular number only include the plural number and vice versa.
 - e. In this Agreement, the Mini-Grid Developer and the Community are referred to collectively as “Parties” and individually as “Party”.
 - f. ‘Effective Date’ means date of execution of this Agreement or the date of grant of approval for the EOI whichever is the later
 - g. ‘Distribution Licensee’ means an electricity distribution company licensed by the Authority.
 - h. means the Energy and Petroleum Regulatory Authority.
 - i. “Mini-Grids Standard Tariff Model” means the standardised spreadsheets approved by the Authority for calculating the Mini-Grid tariff (found in website)

2. This Agreement shall be valid for twelve (12) months unless extended under Regulation 5(8) of the Energy (Mini-Grid) Regulations 2021 and automatically be renewed for the duration of the Exclusive Site Reservation and Allocation and thereafter for the Licence period.
3. This Agreement shall remain valid for the period of the Licence. If the Mini-Grid Developer would not have commenced construction within the duration of the Exclusive Site Reservation and Allocation, the Agreement shall terminate.
4. Any amendment or variation to the terms of this Agreement shall only be valid and effective where expressed in writing and signed by both Parties.
5. No failure or delay to exercise any power, right or remedy by any Party shall operate as a waiver of that right, power, or remedy
6. This Agreement shall be governed by the Laws of Kenya.
7. This Agreement does not grant an exclusive right to the use of land for the project to the Mini-Grid Developer.
8. The [**TECHNOLOGY FOR THE MINI-GRID**] system, shall be used to generate and supply power to the electricity Consumers.
9. The Parties acknowledge that the decision as to who qualifies as a Consumer to be supplied electricity is dependent on the technical design of the Mini-Grid system and the economic evaluation of the feasibility study carried out by the Mini-Grid Developer, with the participation of the Community.
10. The Mini-Grid Developer shall notify the Community and ensure agreement and understanding of the same where new components are to be integrated into the Mini-Grid system that may have the effect of affecting service.
11. The Parties shall jointly identify suitable land within the Community for the Mini-Grid Project.
12. The Mini-Grid Developer shall at its own expense procure the land identified pursuant to Clause 11.
13. The Mini-Grid Developer and the landowner shall agree and execute a separate agreement for the lease, in consultation with the Community.
14. Subject to the terms of this Agreement, the Mini-Grid Developer shall:
 - a. During the Initial Term (first year from the effective date), carry out the project planning, acquire the necessary permissions to install, operate and maintain the energy system.

- b. Plan, design, procure, install, commission, operate and maintain the power station and the distribution network.
 - c. Sell electricity generated to the electricity Consumers who are deemed as qualified Consumers.
 - d. Provide reliable and satisfactory energy to the qualified Consumers within the Community.
 - e. Carry out its operations in accordance with Good Industry Practice, Kenya National Distribution Code and the applicable standards and requirements.
- 15. The Parties acknowledge that the tariff shall be calculated by Standardised Spreadsheets approved by .
- 16. The Community acknowledges that meters and indoor installations may be installed at electricity Consumers' premises to ensure efficient and adequate power supply if the Licence is granted.
- 17. The Parties to this Agreement declare that there is no existing conflict of interest which could have an effect to this project.
- 18. The Mini-Grid Developer may terminate this Agreement by giving thirty (30) days written notice to the Community Representative where:
 - a. It decides not to pursue the Project;
 - b. The Community commits a breach of Clause 17 which has an adverse effect on the Project and fails to remedy this breach within thirty (30) working days (or as agreed between the Parties) of receiving the notice of breach; and
 - c. There are repeated incidents of sabotage which endangers the financial viability of the Mini-Grid Developer's energy supply and has an adverse effect on the Project.
- 19. Where termination occurs the Mini-Grid Developer shall undertake such restorations to the land and environment required to restore it back to good condition.
- 20. Upon termination, the Mini-Grid Developer shall at its own cost remove the Mini-Grid assets and infrastructure from the allocated site.
- 21. Any notice required to be given in writing to any Party herein shall be deemed to have been sufficiently served, if where delivered personally, one day after such delivery; notices by electronic mail and facsimile shall be deemed to be served one day after the date of such transmission and delivery respectively, notices sent by post shall be deemed served seven (7) days after posting by registered post (and proof of posting shall be proof of service), notices sent by courier shall be deemed served two (2) days after such receipt by the courier service for Local Suppliers and five (5) days for Foreign Suppliers.
- 22. For the purposes of Notices, the address of the Parties shall be as follows:

Community Representative (give address),
Mini-Grid Developer (give address)

23. The Mini-Grid Developer shall bear its own cost of or in connection with the preparation, negotiation, and execution of this Agreement

IN WITNESS whereof the Parties hereto have caused this Agreement to be executed in accordance with the Laws of Kenya the day and year first above written.

SIGNED for and on behalf of

Signed by:

.....
.....

Witnessed by:

.....
.....

SIGNED for and on behalf of

Signed by:

.....
.....

Witnessed by:

.....
.....

SECOND SCHEDULE (r.5(5)(b), r.24(1)(b))
ENERGY SUPPLY AGREEMENT TEMPLATE

THIS Agreement is made on the day of.....20.... between:

- a. [NAME], a Company registered in the Republic of Kenya and having its principal place of business at,,and of P.O. Box....., in the Republic aforesaid, (hereinafter referred to as the “Distribution Licensee”) which expression shall where the context so admits include its successors and assigns on one part; AND
- b. [NAME], a Company registered in the Republic of Kenya and having its principal place of business at,,and of P.O. Box....., in the Republic aforesaid, (hereinafter referred to as the “Mini-Grid Operator”) which expression shall where the context so admits include its successors and assigns on the other part

Both the Distribution Licensee and the Mini-Grid Operator are herein referred to individually as a “Party” and collectively as the “Parties”.

WHEREAS:

- A. The Distribution Licensee is licensed by the Authority to purchase, distribute and supply electricity in the particular area.
- B. The Mini-Grid Operator is also licensed by the Authority to purchase electrical energy in bulk and distribute and/or supply electrical energy within [Insert particulars of area].
- C. The Mini-Grid Operator wishes to purchase electrical energy in bulk from the Distribution Licensee, for retail in accordance with the terms entered into between the Mini-Grid Operator and the Consumers within the Mini-Grid (the “Consumer Supply Contract”).
- D. The Distribution Licensee agrees to supply the Mini-Grid Operator with bulk electrical energy as specified in Clause 3 of this Agreement.
- E. The Parties agree to abide by and ensure that the supply of electrical energy from the Distribution Licensee to the Mini-Grid Operator is done on the terms and conditions hereinafter contained and in accordance with the Applicable Laws

NOW THEREFORE, in consideration of the mutual benefits to be derived and the representations and warranties, conditions and promises herein contained, and intending to be legally bound hereby, the Parties hereby agree as follows:

1. INTERPRETATIONS

1.1 In this Agreement, unless the context otherwise requires—

- a) Reference to a business day is reference to any day which is not a Saturday, Sunday or recognised public holiday in the Republic of Kenya;

- b) Reference to a day, week or month is reference to a calendar day, week, or month;
- c) Reference to Clauses, Appendices or paragraphs or figures are reference to clauses, paragraphs, and figures of and to this Agreement;
- d) Words in the singular shall be interpreted as referring to the plural and vice versa, and words denoting persons shall be interpreted as referring to natural and legal persons;
- e) The term including shall be construed without any limitation;
- f) A requirement that payment be made on a day which is not a business day shall be construed as a requirement that the payment be made on the next business day;
- g) Headings are for convenience only and shall not affect the construction of this Agreement;
- h) Unless otherwise provided herein, where a consent or approval is required by one Party from the other Party, such consent or approval shall not be unreasonably withheld or delayed; and
- i) All technical terms contained in this Agreement shall have ascribed to them the ordinary definition used in the Kenya National Distribution Code (the KNDC).

2. **CONDITIONS PRECEDENT**

2.1 This Agreement shall not be effective unless and until the Distribution Licensee has received an opportunity to review the Mini-Grid Developers network. The cost of the review will be met by the Developer and the fees shall be as agreed by both parties. The Distribution Licensee shall be satisfied that the network:

- a) Complies with the Applicable Law and all of the Distribution Licensee's applicable Connection and Operation Standards;
- b) Has been completed in all material respects (except punch list items that do not materially and adversely affect the ability of the Mini-Grid Operator's network to operate as intended);
- c) Has a written plan for safe operation in accordance with Prudent Electrical Practices; and
- d) Has been granted approval by the Authority to purchase electrical energy in bulk for the Specified Purpose (hereinafter described).

- 2.2 The review of the Application will be carried out within three (3) months of the Distribution Licensee receiving the Mini-Grid Operator's Application.
- 2.3 The Distribution Licensee shall carry out this review for its purposes, and the Mini-Grid Operator acknowledges that the Distribution Licensee will not be liable for any damage or loss caused by any fault or inadequacy in the Mini-Grid Operator's network, where the Mini-Grid Operator relies on conclusions in the Distribution Licensee's review.
- 2.4 Where the Distribution Licensee declines an Application to supply energy in bulk to the Mini-Grid Operator, the Mini-Grid Operator may request the Authority to intervene.

3. SUPPLY OF ELECTRICAL ENERGY

- 3.1 The supply of electrical energy under this Agreement will be at a nominal voltage of [] volts and at a nominal frequency of [] Hz. The sanctioned load shall be [] KW, and the contract demand shall be [] KVA, until amended in accordance with the provisions of the Kenya National Distribution Code.
- 3.2 The Distribution Licensee agrees that the supply of electrical energy shall be used by the Mini-Grid Operator for retail through the Mini-Grid Operator's network. The Mini-Grid Operator agrees and undertakes that the electrical energy supplied under this Agreement shall be used by the Mini-Grid Operator exclusively for the specified purpose, and the said electrical energy shall in no event, be permitted to be used in any manner which constitutes unauthorised use under the Applicable Laws.
- 3.3 The Delivery Point shall be [] / The Connection Point to the Distribution Licensee's network shall be [].

4. OBLIGATIONS

4.1 MINI-GRID OPERATOR OBLIGATIONS

4.1.1 The Mini-Grid Operator shall :

- a) Obtain and maintain at its own cost, way leave and other rights of way necessary for installation, operation, and maintenance of the distribution works for the specified purpose and provide or secure peaceful, unhindered access to any premises in or through which such work, operation or maintenance is required or cables need to be laid for providing electrical energy to the Mini-Grid Operator. If so required by the Distribution Licensee, the Mini-Grid Operator shall at his own cost procure and submit duly executed way leave confirmation in favour of the Distribution Licensee for the purpose set out in this Clause.

- b) For purposes of Clause 2, allow the Distribution Licensee an opportunity to review the Mini-Grid Operator's network and satisfy itself that the Mini-Grid Operator's network complies with the Applicable Law and all applicable Connection and Operation Standards specified in the Kenya National Distribution Code.
- c) Ensure that the Mini-Grid Operator's network is installed, maintained and operated so as not to cause or be likely to cause any damage or loss of property to the Distribution Licensee or any third Party; and allow only appropriately authorised persons to perform work on the Mini-Grid Operator's network.
- d) Inform the Distribution Licensee in writing, with full details, of any modifications it wishes to add to the Mini-Grid Operator's network specifications prior to those modifications being made. The Mini-Grid Operator acknowledges that the Distribution Licensee reserves the right to reject these modifications for reasonable cause.
- e) Construct, interconnect, operate, test, and maintain the Mini-Grid Operator network in accordance with the terms of this Agreement, the connection and operation standards, where applicable and the Applicable Laws as may be amended from time to time.
- f) Protect the Mini-Grid Operator's network from damage by reason of electrical disturbances or faults caused by the operation, faulty operation, or non- operation of the Distribution Licensee's facilities, and notwithstanding the provisions of Clause 15 the Distribution Licensee shall not be liable for any damages so caused, except in the case of gross negligence or gross or wilful misconduct.
- g) Inform the Distribution Licensee as soon as possible of any relevant change to its contact details.

4.2 DISTRIBUTION LICENSEE'S OBLIGATIONS

4.2.1 The Distribution Licensee shall:

- a) Make reasonable endeavours to ensure that the connection of the Mini-Grid Operator is not interrupted, subject to the provisions of Clause 10 and Clause 12.
- b) Inform the Mini-Grid Operator about Mini-Grid Operator network or other constraints, encountered or which may be encountered while meeting the Mini-Grid Operator's applied load. The continuation of supply of electricity to the Mini-Grid Operator network will be subject to the resolution of such constraints to the satisfaction of the Distribution Licensee, and the Mini-Grid Operator shall take such steps as may be reasonably required to overcome such constraints.

- c) Construct, interconnect, operate, test, and maintain Distribution Licensee's equipment and the distribution network in accordance with the terms of this Agreement, the connection and operation standards, where applicable and the Applicable Laws as may be amended from time to time.
- d) Ensure that the distribution network is installed, maintained and operated so as not to cause or be likely to cause any damage or loss to the Mini-Grid Operator, their equipment, personnel or any third Party; and allow only appropriately authorised persons to perform work on the distribution network.
- e) Not interfere with the Mini-Grid Operator's network and equipment without the prior written consent of the Mini-Grid Operator, except for reasons specified in Clause 13.

5. **WARRANTIES AND REPRESENTATIONS**

5.1 The Mini-Grid Operator warrants that:

- a) It is a corporation duly organised, validly existing and in good standing under the Laws of Kenya and has corporate power to carry on its business as it is now being conducted.
- b) It has full right, power, and authority to enter into this Agreement and each agreement, document, and instrument to be executed and delivered by the Distribution Licensee pursuant to this Agreement and to carry out the transaction contemplated hereby.
- c) It has obtained all authorisations, waivers or exemptions necessary for the operation of the Mini-Grid Operator's network, including for the purchase of bulk electrical energy and the retailing of electrical energy.
- d) It shall interconnect, operate, test, and maintain the Mini-Grid Operator's network in accordance with reasonable and prudent operating practice, applicable industry standards and the applicable manufacturer's instructions and recommendations
- e) There are no lawsuits, actions or administrative, arbitration or other proceedings or government investigations pending or threatened against or relating to the Distribution Licensee's property or assets. The Distribution Licensee has not received any request for information, notice, demand letter, administrative notice, inquiry or formal or informal complaint or claim with respect to any property owned, operated, leased or used by the Distribution Licensee or any facilities or operations thereon.
- f) It is not in material violation of any laws, rules or regulations which apply to the conduct of its business or any facilities or property owned, leased, operated, or used by the Distribution Licensee.

- g) It shall comply with all obligations imposed by the Distribution Licensee by this Agreement and all Applicable Laws

5.2 The Distribution Licensee warrants that:

- a) It is a corporation duly organised, validly existing and in good standing under the Laws of Kenya and has corporate power to carry on its business as it is now being conducted.
- b) It has full right, power, and authority to enter into this Agreement and each agreement, document, and instrument to be executed and delivered by the Distribution Licensee pursuant to this Agreement and to carry out the transaction contemplated hereby.
- c) It has obtained all authorisations, waivers or exemptions necessary for the distribution and supply of electricity.
- d) It shall interconnect, operate, test, and maintain its equipment and network in accordance with reasonable and prudent operating practice, applicable industry standards and the applicable manufacturer's instructions and recommendations.
- e) It is not in material violation of any laws, rules or regulations which apply to the conduct of its business or any facilities or property owned, leased, operated, or used by the Distribution Licensee
- f) It shall comply with all obligations imposed on the Distribution Licensee by this Agreement and all Applicable Laws.

6. PAYMENT

- 6.1 The Mini-Grid Operator shall pay for the supply of electricity based on the approved Bulk Supply Tariff and such other charges as may be determined by the Authority from time to time for the relevant category, and pay all other charges as may be applicable in accordance with the schedule of charges approved by the Authority.
- 6.2 On or before the tenth (10th) day of the month, the Distribution Licensee shall invoice the Mini-Grid Operator with respect to the bills payable by the Mini-Grid Operator for the previous month showing the electrical energy supplied, applicable taxes, other charges and the total sum payable.
- 6.3 If the Mini-Grid Operator fails or neglects to pay any charge for electricity or any other sum due by the twenty-fourth 24th day of the month, then the Distribution Licensee shall be entitled to disconnect supply to the Mini-Grid Operator as well as proceed with further action(s) available to it under Applicable Laws for recovery of entire amounts due.

7. SECURITY DEPOSIT

- 7.1 The Mini-Grid Operator agrees to deposit a sum of Kenya Shillings [...] and maintain the security deposit as demanded by the Distribution Licensee from time to time in accordance with the Applicable Laws.

8. METERING REQUIREMENTS

- 8.1 The Distribution Licensee shall provide and install an energy meter at the Delivery Point that meets the minimum requirements approved by the Authority.
- 8.2 The Mini-Grid Operator shall be responsible for paying the Distribution Licensee the cost of the meter and installation, and in the case of meter defect or damage caused by any act or negligence of the Mini-Grid Operator, its employees or agents, the Mini-Grid Operator shall bear the cost for a replacement meter.
- 8.3 The Distribution Licensee shall own, operate and maintain the metering system and read the energy meter for the purposes of measurement and calculating compensation due to the Distribution Licensee for supply of electrical energy to the Mini-Grid Operator.
- 8.4 The Distribution Licensee shall make the metering data available to the Mini-Grid Operator and to any other person entitled to the metering data under the Applicable Law.
- 8.5 The Mini-Grid Operator shall at all times provide the Distribution Licensee's representatives and the representatives' equipment, with safe, convenient and unhindered access to the meter for the purpose of reading the metering equipment and for connection, disconnection, reconnection, maintenance and repair of the metering equipment. The representatives shall carry official identification and produce that official identification on request by the Mini-Grid Operator.

9. SALE/TRANSFER OF MINI-GRID OPERATOR'S NETWORK

- 9.1 The Mini-Grid Operator shall, prior to transfer of his rights, interest and entitlements in respect of the Mini-Grid Operator's network, ensure that all amounts due in respect of the electrical energy supplied to the Mini-Grid Operator and all other sums payable to the Distribution Licensee are paid in full. Notwithstanding any sale, transfer or cessation of his rights, interest and entitlement in the Mini-Grid Operator network, the Mini-Grid Operator shall continue to be liable for all amounts payable to the Distribution Licensee in relation to the electrical energy supplied to the Mini-Grid Operator network until termination of this Agreement or transfer of the connection.
- 9.2 Without prejudice to the rights of the Distribution Licensee to recover all unpaid amounts from the Mini-Grid Operator, the Mini-Grid Operator further undertakes to include an appropriate clause in the transfer document that the transferee/ new

owner or occupier shall pay all outstanding amounts to the Distribution Licensee immediately on execution of transfer/sale deed.

10. TEMPORARY INTERRUPTION OF ELECTRICITY SUPPLY

10.1 The Distribution Licensee may interrupt the connection service and temporarily stop supply in any of the following cases:

- a) In accordance with the Distribution Licensee's operational policies;
- b) If reasonably necessary for planned maintenance, construction, and repairs on the distribution network;
- c) For the purpose of protecting, or preventing danger or damage to, persons or property;
- d) If the Mini-Grid Operator fails to allow the Distribution Licensee access as required under this Agreement;
- e) If the Mini-Grid Operator modifies his network without prior authorisation from the Distribution Licensee, in such a way that it has a material effect on the Distribution Licensee's injection of electricity into Mini-Grid Operator network;
- f) If abnormal physical or economic supply conditions exist, for example, but without limitation,
 - i. where there are local or national electricity shortages or,
 - ii. capacity constraints,
 - iii. instances of extreme fuel prices, or
 - iv. where rationing is required as part of any national rationing plan; or there exist adverse operating effects, in accordance with Clause 11 of this Agreement.

10.2 The Parties obligations in cases of temporary disconnections are as follows:

- a) The Distribution Licensee shall make reasonable endeavours to:
 - i. Within reasonable time notify the Mini-Grid Operator before an interruption; and
 - ii. Co-ordinate with the Mini-Grid Operator to minimise the impacts of the interruption.
- b) The Distribution Licensee and the Mini-Grid Operator shall co-operate to restore the distribution network to the normal operating state as soon as is reasonably practicable following temporary interruption.

- c) In the case of forced outage, the Distribution Licensee shall, subject to the need to restore the distribution network, make reasonable endeavours to restore service to the Mini-Grid Operator and to advise the Mini-Grid Operator of the expected duration of the outage.

11. ADVERSE OPERATING EFFECTS

11.1 The Distribution Licensee shall notify the Mini-Grid Operator as soon as is reasonably practicable if it reasonably considers that operation of the Mini-Grid Operator's network may:

- a) adversely affect the service provided to other distribution network Consumers; or
- b) cause damage to the distribution network or other facilities; or
- c) present hazard to any persons.

11.2 If, after receiving that notice, the Mini-Grid Operator fails to remedy the adverse operating effect within a reasonable time, the Distribution Licensee may disconnect supply by giving reasonable notice or without notice when reasonably necessary in the event of an emergency or hazardous situation.

12. PERMANENT DISCONNECTION OF ELECTRICITY SUPPLY

12.1 The Distribution Licensee may permanently disconnect supply in the following circumstances:

- a) On receipt of a request from the Mini-Grid Operator ;
- b) Without notice, if the Mini-Grid Operator has failed to comply with either the connection or safety requirements of the Distribution Licensee and there is an on-going risk to persons or property;
- c) Provide at least ten (10) business days' notice of intention to disconnect, if;
 - i. The Mini-Grid Operator has not off taken electricity from the distribution network at any time in the preceding 12 months; and the Distribution Licensee has not been notified by the Mini-Grid Operator of reasons for the non- off take; and
 - ii. The Distribution Licensee has reasonable grounds for believing that the Mini-Grid Operator has ceased to operate or cannot utilise the electrical energy for the specified purpose.

13. ACCESS TO PREMISES

- 13.1 The Distribution Licensee's representatives may enter the Mini-Grid Operator's premises at all reasonable hours without notice to the Mini-Grid Operator for the following purposes:
- a) To inspect the Mini-Grid Operator's protective devices and read or test meter(s); or
 - b) To disconnect the Mini-Grid Operator network and/or service to the Mini-Grid Operator, whenever in the Distribution Licensee's sole opinion, a hazardous condition exists and such immediate action is necessary to protect persons, the Distribution Licensee's facilities, or property of others from damage or interference caused by the network, or the absence or failure of properly operating protective devices.
- 13.2 Where a hazardous condition exists and the Distribution Licensee has to take emergency action to protect the health and safety of persons, or to prevent damage to property as set out in Clause 13.1 (b), the Distribution Licensee shall as soon as practicable, inform the Mini-Grid Operator of the occurrence and circumstances involved.
- 13.3 The Distribution Licensee's representatives shall carry official identification and produce that official identification on request by the Mini-Grid Operator.

14. CONFIDENTIALITY

- 14.1 Each Party must preserve the confidentiality of confidential information, and must not directly or indirectly reveal, report, publish, transfer, or disclose the existence of any confidential information, except as permitted in sub-clause 14.2.
- 14.2 Each Party must only use confidential information for the purposes expressly permitted by this Agreement.
- 14.3 Either Party may disclose confidential information in any of the following circumstances:
- a) If the Mini-Grid Operator and Distribution Licensee agree in writing to the disclosure of information;
 - b) If disclosure is expressly provided for under this Agreement;
 - c) If, at the time of receipt by the Party, the confidential information is in the public domain or if, after the time of receipt by either Party, the confidential information enters the public domain (except where it does so as a result of a breach by either Party of its obligations under this Clause or a breach by any other person of that person's obligation of confidence);
 - d) If either Party is required to disclose confidential information by-

- i. A statutory or regulatory obligation, body, or authority; or
 - ii. A judicial or arbitration process; or
 - iii. The regulations of a stock exchange upon which the share capital of either Party is from time to time listed or dealt in; or
 - iv. The Kenya National Distribution Code.
- e) If the confidential information is released to the officers, employees, directors, agents, or advisors of the Party, PROVIDED that-
- i. The information is disseminated only on a need-to-know basis; and
 - ii. Recipients of the confidential information have been made fully aware of the Party's obligations of confidence in relation to the information; and
 - iii. Any copies of the information clearly identify it as confidential information.
- f) If the confidential information is released to a bona fide potential purchaser of the business or any part of the business of a Party, subject to that bona fide potential purchaser having signed a confidentiality agreement enforceable by the other Party in a form approved by that other Party, and that approval may not be unreasonably withheld.
- 14.4 For the avoidance of doubt, a Party is responsible for any unauthorised disclosure of confidential information made by that Party's officers, employees, directors, agents, or advisor.

15. INDEMNITY AND LIABILITY

- 15.1 Each Party as indemnitor shall defend, hold harmless, and indemnify the other Party and the directors, officers, employees, and agents of the other Party against and from any and all loss, liability, damage, claim, cost, charge, demand, or expense (including any direct, indirect or consequential loss, liability, damage, claim, cost, charge, demand, or expense, including legal fees) for injury or death to persons, including employees of either Party, and damage to property, including property of either Party, arising out of or in connection with –
- a) the engineering, design, construction, maintenance, repair, operation, supervision, inspection, testing, protection, or ownership of the indemnitor's facilities, or
 - b) the making of replacements, additions, betterments to, or reconstruction of the indemnitor's facilities. This indemnity shall apply notwithstanding the active or passive negligence of the indemnitee. However, neither Party shall

be indemnified hereunder for its loss, liability, damage, claim, cost, charge, demand, or expense resulting from its sole negligence, wilful misconduct or breach of confidentiality.

- 15.2 The indemnitor shall, on the other Party's request, defend any suit asserting a claim covered by this indemnity and shall pay for all costs, including reasonable legal fees that may be incurred by the other Party in enforcing this indemnity.
- 15.3 The provisions of this Clause shall not be construed to relieve any insurer of its obligations to pay any insurance claims in accordance with the provisions of any valid insurance policy.
- 15.4 Except as otherwise provided in Clause 15.1, neither Party shall be liable to the other Party for consequential damages incurred by that Party.
- 15.5 Nothing in this Agreement shall create any duty to, any standard of care with reference to, or any liability to any person who is not a Party to it.
- 15.6 The maximum total liability of each Party, as a result of a breach of this Agreement, shall not in any circumstances exceed, in respect of a single event or series of events arising from the same event or circumstance, the lesser of-
 - a) The direct damage suffered or the maximum total liability that the Party bringing the claim against the other Party has at the time that the event (or, in the case of a series of related events, the first of such events) giving rise to the liability occurred; or
 - b) Kenya Shillings [xxx] per kW of the contracted demand up to a maximum of Kenya Shillings [xxx].
- 15.7 The limits on liability in Clause 15.6 above, do not apply-
 - a) If the Mini-Grid Operator or Distribution Licensee, or any of its officers, employees, directors, agents, or advisors, has acted fraudulently or willfully in breach of this Agreement; or
 - b) To a breach of confidentiality under Clause 14 by either Party.

16. **GOVERNING LAW AND DISPUTE RESOLUTION**

- 16.1 This Agreement shall be interpreted, governed, and construed under the laws of the Republic of Kenya.
- 16.2 Any dispute or difference of any kind between the Parties in connection with or arising out of this Agreement, or the breach, termination or validity hereof that is not settled amicably between the Parties within fifteen (15) business days shall be settled by reference to arbitrator(s) to be agreed within ten (10) business days of service of notice of such dispute, difference or question by the one Party on the other; failing which agreement the arbitrator(s) shall be appointed at the request of

any of the Parties by the chairman of the Institute of Chartered Arbitrators of Kenya and such arbitration shall be conducted in accordance with the latest revision of the Arbitration Act, No 4 of 2005 of the Laws of Kenya. The award shall be in writing and shall set forth in reasonable detail the facts of the dispute and the reasons for the arbitrator's decision. The award in such arbitration shall be final and binding upon the Parties and judgement thereon may be entered in any Court having jurisdiction for its enforcement. The Parties renounce any right of appeal from the decision of the arbitrator insofar as such renunciation can validly be made and the arbitrator shall not have the authority to Order the termination or amendment of this Agreement.

17. THE ENERGY AND PETROLEUM REGULATORY AUTHORITY

- 17.1 This Agreement shall at all times be subject to such changes or modifications by the Authority as it may, from time to time, direct in the exercise of its jurisdiction.
- 17.2 Notwithstanding any other provisions of this Agreement, the Distribution Licensee has the right to unilaterally file with the Authority, pursuant to the Authority's rules and regulations, an application for change in rates, charges, classification, service, or rule or any agreement relating thereto.

18. AMENDMENT, MODIFICATIONS, WAIVER OR ASSIGNMENT

- 18.1 This Agreement may not be altered or modified by either of the Parties, except by an instrument in writing executed by each of them.
- 18.2 None of the provisions of this Agreement shall be considered waived by a Party unless such waiver is given in writing. The failure of a Party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect.
- 18.3 This Agreement contains the entire agreement and understanding between the Parties, their agents, and employees as to the subject matter of this Agreement. Each Party also represents that in entering into this Agreement, it has not relied on any promise, inducement, representation, warranty, agreement, or other statement not set forth in this Agreement.
- 18.4 Neither Party shall assign this Agreement or any of its rights or duties hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Any assignment or delegation made without such written consent shall be null and void.

19. NOTICES

- 19.1 Any notice required under this Agreement shall be in writing and registered mailed at any post office with postage prepaid and addressed to the Party, or personally

delivered to the Party, at the address below. Changes in such designation may be made by notice similarly given. All written notices shall be directed as follows:

Mini-Grid Operator

Chief Executive Officer.....

Name of Licensee.....

Post Office Box.....

Distribution Licensee

Name.....

Post Office Box/Private Bag.....

City/Town.....

20. FORCE MAJEURE

20.1 A failure by either Party to comply with or observe any provisions of this Agreement (other than payment of any amount due) does not give rise to any cause of action or liability based on default of the provision if;

a) The failure is caused by:

- i. an event or circumstance occasioned by, or in consequence of, an act of God, being an event or circumstance;
- ii. due to natural causes, directly or indirectly and exclusively without human intervention; and
- iii. that could not reasonably have been foreseen or, if foreseen, could not reasonably have been resisted; or
- iv. a strike, lockout, other industrial disturbance, act of public enemy, war, blockade, insurrection, riot, epidemic, aircraft, or civil disturbance; or
- v. the binding Order or requirement of a Court, government, local authority, the Authority, and the failure is not within the reasonable control of the affected Party; or
- vi. the partial or entire failure of supply or availability of electricity to the distribution network.

b) any other event or circumstance beyond the control of the Party invoking this Clause; and the Party could not have prevented such failure by the exercise of the degree of skill, diligence, prudence, and foresight that would reasonably and ordinarily be expected from a skilled and experienced Mini-

Grid Operator or Distribution Licensee engaged in the same type of undertaking under the same or similar circumstances in Kenya at the time.

- 20.2 If a Party becomes aware of a prospect of a forthcoming force majeure event, it must notify the other Party as soon as is reasonably practicable of the particulars of which it is aware.
- 20.3 If a Party invokes this Clause, it must as soon as is reasonably practicable notify the other Party that it is invoking this Clause and of the full particulars of the force majeure event relied on.
- 20.4 The Party invoking this Clause must;
- a) use all reasonable endeavours to overcome or avoid the force majeure event; and
 - b) use all reasonable endeavours to mitigate the effects or the consequences of the force majeure event; and
 - c) consult with the other Party on the performance of the obligations.

Nothing in Clause 20.4 requires a Party to settle a strike, lockout, or other industrial disturbance by acceding, against its judgement, to the demands of opposing Parties.

21. TERM AND TERMINATION OF AGREEMENT

- 21.1 This Agreement shall become effective when signed by the Mini-Grid Operator and the Distribution Licensee, subject to Clause 2, and may, and terminate under the following scenarios
- a) Upon expiry of the Mini-Grid Operator's Licence/Permit:
 - b) When the Distribution Licensee permanently disconnects supply in accordance with the terms of Clause 12; or
 - c) When the Mini-Grid Operator defaults in payment to the Distribution Licensee of any sum or commits breach of any of its obligations under this Agreement or the Applicable Laws ("Event of Default"). Upon the occurrence of an Event of default, the Distribution Licensee shall provide the Mini-Grid Operator with written notice mentioning the nature of default and the intention of the Distribution Licensee to terminate this Agreement for default. In the event the Mini-Grid Operator fails or refuses to cure such default within fifteen (15) business days of the date of such notice, the Distribution Licensee shall in its sole discretion be entitled to terminate this Agreement from the date stated in the notice.

22. SIGNATURES

IN WITNESS WHEREOF, whereof the Parties hereto have caused this Agreement to be executed in accordance with the Laws of Kenya the day and year first above written.

Mini-Grid Operator

Signature.....

Name.....

Designation

Date

Distribution Licensee

Signature.....

Name

Date.....

THIRD SCHEDULE (r. 6(1)(a))
TARIFF APPLICATION FORM

We.....
 (Name of Person) hereby submit a tariff application for our Mini-Grid project to be located at

Summary of the salient features of the project

Item	Details
Technology	
Capacity (kW)	
Projected Annual Net Electrical Output (MWh)	
Projected Total Project Cost (Million KShs)	
Projected Total Project Revenue (Million KShs)	
Capital Structure (%Equity:%Debt)	
Cost of Equity	
Cost of Debt	
Weighted Average Cost of Capital (%)	

Summary of tariff model output

Consumer Category	Number	Fixed Charge (KShs/Month)	Tariff Components	
			Energy Charge (KShs/kWh)	Demand Charge (KShs/kWh)
Anchor				
Business				
Institutions				
Residential				

Connection Fee Details

Connection fee	KShs:			
Mode of recovery	Lump sum (✓)		Instalment (✓)	No

Benchmarking outputs

		Per customer	Per kW	Total	Unit
Capacity	Installed (name plate) Capacity				kW
Opex	Plant lifetime total O&M Costs				KSh

Capex	Generation	<i>Solar</i>				KSh
		<i>Wind</i>				KSh
		<i>Fossil Fuel</i>				KSh
		<i>Small Hydro</i>				KSh
		<i>Biomass</i>				KSh
		Total				KSh
	Distribution					KSh
	Retail Metering and Reticulation					KSh
	General Utility Property Plant & Equipment					KSh
	Intangible Assets (Financing-Related)					KSh
	PVIF of Replacement Investments					KSh
	TOTAL CAPEX					KSh

Subsidies	Grants/Contributions/Connection Payments				KSh
	Present Value of Required Subsidy				KSh

We have enclosed the Tariff Model as per the approved standard Mini-Grid Tariff model. This application is made pursuant to the requirements of Section 119 of the Energy Act of 2019.

Signature:

Date:

FOURTH SCHEDULE (r. 6(5))
TARIFF APPROVAL NOTIFICATION

The Energy & Petroleum Regulatory Authority (Authority) Board at its [meeting details] considered and approved the tariff application by [Mini-Grid Developer's name] for [name of Mini-Grid(s)] pursuant to Sections 11(c) and 163(1) of the Energy Act, 2019 for a period of [period of tariff approval] effective [effective date].

The applicable charge rates are as follows:

Consumer Category	Connection Fee (KSh)	Fixed Charge (KShs/Month)	Tariff Components	
			<i>Energy Charge (KShs/kWh)</i>	<i>Demand Charge (KShs/kVA/month)</i>
Anchor				
Business				
Institutions				
Residential				

This authorization allows you to commence construction of the referenced site upon receipt of Physical Planning Approval from the Host County Government. The Authority affirms that you shall be issued with a Licence for the site upon commissioning of the agreed Generation plant and Distribution infrastructure and submission of the required information provided for in Regulation 7(2).

You are advised to submit your request for tariff renewal at least sixty (60) days before the end of the approved period.

[Gazette notice attached to the letter]

FIFTH SCHEDULE (r. 7(2))

MINI-GRID LICENCE APPLICATION FORM

**APPLICATION IN RESPECT OF A LICENCE FOR THE
GENERATION, DISTRIBUTION, AND RETAIL SUPPLY OF ELECTRICAL
ENERGY UNDER THE ENERGY ACT, NO 1 OF 2019**

GENERAL PARTICULARS

1. State:

- (1) Name and address of applicant in full; in the case of a partnership or other joint venture (other than a body corporate), give the names and addresses of each Party concerned
.....
.....
- (2) Name, address, and telephone number of person to whom correspondence or enquiries concerning the application should be directed
.....
.....
- (3) The date from which the Licence is desired to take effect
.....
.....

2.

- (1) State whether the applicant is a public limited company, private limited company, overseas company, other body corporate, partnership, unincorporated association, sole trader, or other entity (and in the last case give particulars of the legal status).
.....
.....
- (2) If the applicant is a body corporate, state-
 - a. the jurisdiction under which it is incorporated
.....
.....
 - b. if applicable, its registered number
.....
.....
.....(Attach copies of Certificate of Registration, Certificate of Incorporation, CR 12, Memorandum and/or Articles of Association where applicable)
 - c. the full names and addresses of its current directors
.....
.....
 - d. the name and registered office of any holding company of the applicant
.....
.....

- (3) If the applicant is neither a body corporate nor a sole trader, give the name(s) and address(s) of the person or persons in whom effective control of the applicant rests.
.....
.....
- (4) Where any person (other than a person whose name is given at paragraph 2(2) (d) or paragraph 2(3) above) holds 20 per cent or more of any class of the shares of the applicant, give the name and address of each such person, specifying in each case the number of shares so held and the percentage of the aggregate number of shares of that class represented thereby.
.....
.....
- (5) Give particulars of any licences or permits under the Act held, applied for (whether or not successfully) or intended to be applied for by the applicant or (so far as is known to the applicant) by any person who is a related person in relation to the applicant.
.....
.....
3. This application has been made and signed by the person(s) whose particulars are specified in paragraph 4(1) and on the date specified in paragraph 4(2) here below.
- (1) Name(s) and designation(s) of person(s) signing the application: -
.....
.....
- (2) Date of application.....

SIXTH SCHEDULE (r.7(2)(i))
CONSUMER SUPPLY CONTRACT TEMPLATE

SUPPLY CONTRACT	
Reference Number:	Physical Address:
Contract Issue Date:	Consumer category:
CONSUMER DATA	
Full Names:	Occupation:
ID No:	Postal Address:
County:	Mobile No:
Town/Village:	House/premise number:
SUPPLY DATA	
Voltage:	Connection Date:
Authorised Maximum Demand:	
CONNECTION FEE	
Amount:	Receipt No:

Terms of contract:

SEVENTH SCHEDULE (r. 10(2))

**PAYMENT SCHEDULE FOR GRANT AND RENEWAL OF MINI-GRID GENERATION,
DISTRIBUTION, AND/OR RETAIL LICENCE**

The applicant shall pay an application fee of KSh 10,000 per site during Licence application.

TECHNOLOGY	FEES	
	GRANT FEE KSH./KW	ANNUAL FEE KSh./KW
Solar	300	90
Wind	300	85
Small hydro/biogas/biomass	300	75
Diesel	300	70
Solar-Diesel hybrid	300	80
Wind-Diesel hybrid	300	60
Solar-Wind- Diesel hybrid	300	82

EIGHTH SCHEDULE (r.11)
FORM OF LICENCE MINI-GRID

ISSUED TO:

Name of Licensee

IN RESPECT OF:

Name and/or particulars of undertaking

BY:

Energy and Petroleum Regulatory Authority

DATED:

LICENCE REF NO:

THE ENERGY ACT (Act No. 1 2019)

[STATE TYPE OF LICENCE]

Issued Pursuant to Regulation 11 of these Mini-Grid Regulations

1. Definitions and Interpretation

(1) Any Word or expression defined for the purposes of the Act, the Mini-Grid Regulations or the General Interpretations Act, Chapter 2 of the Laws of Kenya shall, unless the context otherwise requires, have the same meaning ascribed thereto when used in the Conditions.

(2) Any reference to a statute shall include any statutory amendments, modification, or re-enactment thereof and subsidiary legislation made thereunder after the date when this Permit comes into force and effect.

(3) Except where the context otherwise requires, the following terms shall have the following meanings:

“Act” means the Energy Act, 2019 and includes any subsidiary legislation made thereunder.

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters of energy in the Government of the Republic of Kenya;

“Authority” means the Energy and Petroleum Regulatory Authority established under Section 4 of the Act.

“Force Majeure” means circumstances beyond the Licensee's control which shall include, but not be limited to, acts of God, fire, flood, tempest, civil commotion,

acts of government or parliamentary authority and breakdown of communication lines.

“Kenya National Distribution Code” means set of technical requirements placed upon the users of Kenya National Distribution System;

“Lenders” means any financial institutions, which have provided loans or hedging facilities to the Licensee for purposes of developing the Mini-Grid, and includes their agents, trustees, transferees, and assigns;

“Licensee” means holder of Licence for electricity generation, distribution, and retail supply

2. Grant of (State Type of Licence)

IN EXERCISE of the powers conferred by the provisions of sections 10, 117, and 122 of the Energy Act, 2019. the **ENERGY AND PETROLEUM REGULATORY AUTHORITY** (the Authority), **HEREBY GRANTS** this (Generation, Distribution, and Retail) Licence to (Insert Licensee Name), a limited liability company incorporated in the Republic of Kenya under Certificate of Incorporation (Insert Certificate No) whose registered office is situated at (Insert Physical and Postal Addresses), Kenya (the Licensee) to (State the Undertaking) at (State Location of) and brief particulars of the undertaking more particularly described in this (State Type of Licence).

3. Undertaking to which the Licence Relates

This Licence is specific and limited to the (Describe the Undertaking) situated (state location), which is [procured, constructed, installed, owned, maintained, and operated] by the Licensee. For the avoidance of doubt, it is hereby stated that the Licence does not authorise nor entitle the Licensee to carry out any other undertaking except the undertaking herein specified and permitted.

4. Duration of Licence

This Licence shall come into force and effect on the date hereof, (which date shall for the purposes of the Act be the Date of the Commencement of the Licence) and shall continue in operation from the Date of Commencement for a duration of [25] years subject to the provisions of the Act and to the Conditions specified herein.

5. Renewal of the Licence

- (1) This Licence may be renewed in accordance with Section 119 of the Act.
- (2) If the Licensee wishes to renew this Licence after its expiration date, the Licensee shall submit to the Authority an application for renewal not later than twenty-four (24) months prior to the expiration of this Licence.

- (3) The Authority shall have the right to accept or reject the application for renewal in light of the Licensee's performance during the period preceding the application for renewal.

6. Alteration, suspension, or revocation of the Licence

- (1) The Conditions of this Licence are subject to modification, alteration, revision, or amendment in accordance with the terms herein specified or with Section 122 (3) of the Act.
- (2) This Licence may not be altered, revised, or modified by the Authority, except with the consent of the Licensee.
- (3) The Licence may be suspended or revoked in accordance with Section 126 of the Act, Regulation 13 of the Energy (Mini-Grid) Regulations, 2021 and is further subject to the conditions as to revocation specified in Condition 28 hereof.

7. Exceptions and limitations on the Licensee's obligations

If the Licensee is prevented from performing any of his obligations under this Licence because of Force Majeure:

- (1) the Licensee shall notify the Authority of the obligations he is prevented from performing as soon as reasonably practicable; and
- (2) the Authority may suspend those obligations and the Licensee will not be liable to perform those obligations, for so long as the Force Majeure continues, only if and to the extent that the inability to perform could not have been prevented by taking steps specifically required under this Licence, or other reasonable precautions and the inability cannot reasonably be circumvented by the Licensee at his expense through the use of alternative sources, work-around plans or other means.

8. Liability under tort and contract Laws of Kenya

Notwithstanding any provisions of this Licence, the Licensee is subject to liability under tort and contract Laws of Kenya.

9. Establishment of an Office in Kenya

- (1) The Licensee shall at the commencement of this Licence provide to the Authority an electronic, postal, and physical address of an office in Kenya at which communication from the Authority may be sent or delivered.
- (2) The Licensee shall maintain such offices until this Licence expires or is revoked under the Act.

10. Acquisition of any property for purposes of this Licence

- (1) The Licensee shall ensure that any compulsory acquisition or taking of any land or property by the Licensee for purposes related to the electric power undertaking virtue of this Licence shall be made in compliance with Article 40 of the Constitution of Kenya, 2010.
- (2) In contracting or arranging for the provision of goods, assets, and services required to enable the Licensee to carry out his undertaking, the Licensee shall purchase or otherwise acquire such goods, assets and services from the most economical sources available to him, having regard to the quantity and nature of the goods, assets and services required to enable him to discharge his obligations under the Act, the Mini-Grid Regulations and this Licence and to the diversity, number, and reliability of such goods, assets and services at that time available for purchase or other acquisition.
- (3) Any contracts or arrangements for the purchase of goods, assets, and services from an associated company or a related undertaking shall be on arm's length terms.

11. Disposal of assets, change in capital and change in control

- (1) The Licensee shall be required, for the duration of the Licence, to notify the Authority of any of the following:
 - (a) any action that may lead to a decrease of the Licensee's share capital existing on the date this Licence was issued;
 - (b) any acquisition by a third Party of more than 25% of the Licensee 's share capital;
 - (c) a change in the controlling interest of the Licensee within the meaning of Section 124(6) of the Act; or
 - (d) the intention of the Licensee to increase or decrease its authorised capital or its paid up capital.
- (2) The Licensee shall be required for the duration of the Licence, to obtain the prior written approval of the Authority for any of the following:
 - (a) Subject to paragraph (4) disposal of any part of the Licensee's electric power undertaking (including any of the assets forming part of the undertaking) by means of sale, transfer, merger, lease, or any other means; and
 - (b) any action that may lead to a decrease of the Licensee's share capital existing at the time this Licence was issued that may affect the financial,

technical, or operational qualifications on which the granting of this Licence was based.

- (3) For the purposes of paragraph (1) (c) above and notwithstanding anything to the contrary contained in this Licence, a person shall be considered to have control of the Licensee if the person exercises, or is able to exercise or is entitled to acquire direct or indirect control over the Licensee's affairs, and in particular, but without prejudice to the generality of the forgoing, if the person possesses or is entitled to acquire a majority of the issued share capital of the Licensee or to exercise a majority of the voting rights in the Licensee.
- (4) For the purpose of paragraph (2) (a), the Licensee shall have the right to dispose of an asset or part of its undertaking without the prior approval of the Authority if the Authority has issued a directive granting a general consent for the disposal of the assets of a specified description or below a specified value and the Licensee provided, prior to the disposal, the Authority with evidence that the asset or part of undertaking to be disposed of falls within the provisions of such directive.
- (5) Without prejudice to paragraph (4) above, the Licensee may apply by notice to the Authority for permission of disposal of assets, specifying assets to be disposed and the reasons, or for the approval of any of the actions set out in paragraph (2) (b) above.
- (6) The Licensee may dispose of the relevant assets or may undertake any of the actions set out in paragraph (2) (b) above. as specified in the notice referred to in paragraph (5) if:
 - (a) the Authority confirms in writing that it consents to such disposal or action;
 - (b) the Authority does not inform in writing of any objection to such disposal or action within thirty (30) days of the notice;
 - (c) paragraph (4) above applies; or
 - (d) the Licensee is obliged by law or final Order of a competent Court to dispose of the relevant asset or part of its undertaking, but without prejudice to the Authority's power to revoke this Licence as a result of such disposal.

12. Transferability of the Licence

- (1) Subject to paragraph (2) herein below, the Licensee shall not transfer or otherwise divest himself of any rights, powers or obligations conferred or imposed upon him by this Licence without the written consent of the Authority.

- (2) The Authority hereby consents to the transfer of the undertaking and the Licence to the secured lenders or to Parties duly nominated by them under the terms and conditions of the financing agreements relating to the undertaking.
- (3) Subject to the provisions of Section 117 of the Act and to this Licence the Licensee may apply for other Licences for electric power undertakings in any area within the Republic of Kenya.
- (4) The Licensee shall not purchase or acquire any undertaking or associate himself with any public or local authority, company, person, or body of persons supplying electrical energy under any Licence or Certificate of Registration, except with the authority of the Authority.
- (5) The Authority may revoke this Licence, in addition to such other action as the Authority may deem fit, if the Licensee contravenes the provision of paragraph (1) above.

13. Provision of information to the Authority and other Licensees

- (1) The Licensee shall on request by the Authority provide it with any information relating to his activities conducted under or in connection with this Licence, as the Authority may consider necessary for the purpose of performing the functions assigned to it by or under the Act.
- (2) After the end of each financial year, the Licensee shall submit to the Authority an annual performance report indicating the quality of service and performance of the Licensee during the previous year against the Performance Standards established in Regulation 16 of the Energy (Mini-Grid) Regulations, 2021.
- (3) The Licensee shall also furnish to other Licensees such information as may be reasonably required by those Licensees in order to ensure the secure and efficient operation, coordinated development, and inter-operability of the electricity network if applicable.
- (4) The information requested in paragraphs (1), (2), and (3) shall be provided by the Licensee:
 - (a) as soon as possible but in any case not later than a reasonable date specified in the request, and
 - (b) in such form and manner as the Authority or other Licensee may require.
- (5) The Licensee shall submit annual reports to the Authority on his undertakings that encompass the financial and technical aspects, performance within one hundred and eighty (180) days of the end of the Licensee's financial year, or such other period approved by the Authority, and such other reports as required by the Authority.

- (6) For purposes of this Condition, "information" shall include any plans, drawings, specifications, designs, documents, reports, accounts, statistics, registers (including registers relating to the Licensee's Members or Directors and Secretaries from time to time) or planned annual maintenance schedules (whether or not prepared specifically at the request of the Authority or other Licensee) of any description specified in the request.
- (7) The Authority or any person approved by the Authority in writing may:
 - (a) at all reasonable times, with at least 48 hours' notice, enter upon the premises of the Licensee and inspect or investigate any plant, machinery, books, accounts, and other documents found thereat and take copies thereof, and/or
 - (b) require the Licensee to furnish to the Authority, books, accounts, records, and other documents in such form as the Authority may demand.
- (8) The Authority may require that the accuracy of any documents or particulars be verified by a person who, in the Authority's opinion, is competent to verify such documents or particulars or render a professional opinion thereon.
- (9) A person approved by the Authority, shall produce proof of such approval at the request of any person affected by his activities.
- (10) The Licensee shall submit the following financial data to the Authority when requested by the Authority:
 - (a) the Licensee's financial statements for each Financial Year, together with the report of an external auditor and his remarks on such financial statements;
 - (b) any other financial data the Authority may specify with a reasonable prior notice
- (11) The Authority may ask for other reports as needed to fulfil its responsibilities.

14. Monitoring of Compliance

- (1) The Licensee shall give officers of the Authority or any person or persons duly approved by the Authority access to the Licensee's works for the purposes of any inspection under the Act or for ascertaining if the provisions of the Act and/or this Licence are being complied with.
- (2) The Licensee shall also comply with the provisions of the Grid Code in respect of inspection and testing of his works by other licensees.

- (3) Entry into the Licensee's works pursuant to paragraphs (1) and (2) of this Condition shall be upon reasonable notice and with the prior permission of the Licensee. Such permission shall not be unreasonably denied.

15. Events of which Licensee must promptly notify the Authority in writing

The Licensee shall promptly notify the Authority in writing of the occurrence of any of the following events:

- (a) any accident by electric shock, and also of any other accident of such kind as has, or would have been likely to cause loss of life or personal injury, and of any explosion or fire, which has arisen from and in the course of the generation, transformation, conversion, distribution, or retail supply of electrical energy by the Licensee, or which has arisen in or about any generating station, substation, switch station, factory, works or electric supply lines of the Licensee and also notice of any loss of life or personal injury occasioned by any such accident, explosion, or fire; PROVIDED that such notice shall be sent by the earliest practicable post and/or electronic means, after the accident, explosion or fire occurs, or, as the case may be, after the loss of life or personal injury becomes known to the Licensee.
- (b) any event which threatens the Licensee's financial ability to discharge his obligations under this Licence or any Power Purchase Agreement;
- (c) any forced outage affecting a significant portion of the undertaking which is likely to subsist for a continuous predetermined duration specified in the special conditions of this Licence;
- (d) changes relating to the physical, electronic, and postal address of the Licensee in Kenya;
- (e) any change in the composition or structure of the shareholding of the Licensee affecting the original or subsequent subscribers to the Licensee's registered memorandum of association; or in the event that the securities of the Licensee become listed in a securities exchange, any transaction with the effect of making a single person control five percent (5%) or more of the voting power at any general meeting of the Licensee; or
- (f) any transfer of the undertaking and Licence under Condition 12.

16. Confidentiality and use of information

- (1) The Licensee shall maintain the confidentiality of the information and data it possesses on other Licensees, in accordance with the agreements with such Licensee, where applicable, and may not disclose such information to third Parties (other than the Authority) except when requested by laws or relevant

authorities, or to the extent authorised by the concerned Licensee or the Authority or required in relevant Codes or Regulations.

- (2) The Licensee and its affiliates shall ensure that all information received by it relating to the undertaking:
 - (a) is not used by the Licensee or its affiliates for any purpose other than that for which it was provided or for a purpose permitted by this Licence or a Code; and
 - (b) is not used by the Licensee or its affiliates for any commercial advantage in the provision of any service other than a service comprised in the undertaking.
- (3) The Licensee may request the Authority not to disclose commercially sensitive information provided by the Licensee to the Authority pursuant to this Licence. Upon satisfaction of the Authority that the information is commercially sensitive, the Authority shall not disclose any part of or all of such information, as applicable without the prior approval of the Licensee. These restrictions shall not apply for:
 - (a) information which is in the public domain; or
 - (b) information which is, or becomes, publicly known or available otherwise than through the action of the Authority; or
 - (c) information relating to performance and the level of compliance of the Licensee with the Performance Standards.

17. Environmental, health and safety obligations

- (1) The Licensee shall comply with the provisions of all environmental, health and safety laws in force in Kenya from time to time.
- (2) The Authority may, after consultations with the appropriate authorities, issue orders relieving the Licensee of his obligations under paragraph (1) hereof relating to environmental laws to the extent that such exemption is permitted under the applicable environmental laws.
- (3) The Licensee shall carry out his undertaking in a manner that is designed to protect the health and safety of persons employed by the Licensee at the undertaking and the users of the service and other members of the public who would be affected by his operations.

18. Insurance

The Licensee shall adopt and implement reasonable and prudent policies in relation to the management and insurance of risks associated with the undertaking.

19. Licence fees

- (1) The Licensee shall, at the times stated hereunder, pay to the Authority fees of the amount specified in, or determined under, the following paragraphs of this Condition.
- (2) Within 30 days after the commencement of this Licence, the Licensee shall pay to the Authority a grant of Licence fee of (Insert amount in Kenya Shillings calculated in accordance with the Seventh Schedule of these Regulations).
- (3) In respect of the year beginning on the expiration of twelve calendar months from the commencement date of this Licence, and in every subsequent year, the Licensee shall pay to the Authority an annual fee of (Insert amount in Kenya Shillings calculated in accordance with of the Sixth Schedule of these Regulations). The fee shall be paid by the Licensee to the Authority within thirty (30) days of the annual anniversary of the commencement date of this Licence until expiry.

18. Payments to the Licensee

- (1) The payments to be made to the Licensee in respect of electrical energy sold or ancillary or network services provided by virtue of this Licence shall be in accordance with the Power Purchase Agreement or Network Service Contract or tariffs (or any other subsequent Power Purchase Agreement or Network Service Contract or tariffs) as approved by the Authority.
- (2) Except as stated in the Power Purchase Agreement or Network Service Contract or tariffs approved by the Authority, no rebate or reduction in the maximum prices will apply in consideration of any stated improvement in the conditions of the demand by reason of load factor, time of the demand or other circumstances of the demand.

19. Fair competition and restriction to horizontal or vertical integration

- (1) The Licensee shall:
 - (a) not show undue preference to, or exercise unfair discrimination against, any person or other Licensee, in respect of his undertaking;
 - (b) not engage in any practice or enter into any arrangement that has the object or the likely effect of preventing, restricting, or distorting competition in the generation, distribution, or retail supply of electrical energy; and
 - (c) comply with every directive issued by the Authority for the purpose of preventing any practice or arrangement that has the object or effect of preventing, restricting, or distorting such competition.

- (2) The Licensee shall not directly or indirectly acquire shares or interest in another electric power undertaking within the Republic of Kenya without the prior written consent of the Authority, which consent shall not be unreasonably withheld.

20. Compliance with technical standards and guidelines as required by the Authority

- (1) In planning, providing connection, operating, the Licensee shall fully comply with technical standards and guidelines as required by the Authority.
- (2) In case the Licensee finds that it is, or will be, unable to comply with any requirements of the Authority at any time, then he shall make such reasonable efforts as are required to remedy such non-compliance as soon as reasonably practicable and immediately notify the Authority.
- (3) The Licensee shall make a copy of the technical standards and guidelines, as revised from time to time, as required by the Authority, available for inspection by members of the public resident in his area of supply at each of his offices during normal working hours; and provide at a reasonable fee a copy of the technical standards and guidelines as revised from time to time, as required by the Authority, to any person residing in his area of supply who requests it.
- (4) The Authority may, following consultation with the Licensee and other Licensees or users that may be affected, and for good cause shown, issue directives relieving the Licensee of his obligations to comply with specific provisions of the technical standards and guidelines as required by the Authority to such extent or duration as may be established in such directives.

21. Connection and use of the distribution system

- (1) The Licensee shall not unduly discriminate between consumers or undertakings of the same category in offering terms and conditions for connecting or upgrading connection to or use of the distribution system.
- (2) Subject to other Conditions in this Licence, on the application of the owner or occupier of any premises within the Licensee's area of supply or an undertaking desiring to connect or upgrade an existing connection to the distribution system of the Licensee, and who is not in arrears of any amount due to the Licensee in relation to Licensee's distribution and supply business, the Licensee shall;
 - (a) offer to provide connection or to provide modifications to an existing connection of the premises or undertaking to his distribution system; and
 - (b) where the terms offered by the Licensee are accepted by the applicant and on payment to the Licensee of the relevant Connection Charges and compliance with the requirements specified by the Licensee in that regard pursuant to the Distribution Code, the Licensee shall provide the connection or the modification of the connection to the Licensee's

distribution system to those premises or undertaking, including the laying of any required distribution mains, in accordance with the terms offered.

- (3) The application form, terms and procedures shall be in accordance with the timeframes, connection conditions and procedures established in the Distribution Code.
- (4) The cost payable for a connection to the distribution system of the Licensee shall be determined in accordance with the applicable Connection Charges.
- (5) The agreement to connect an undertaking shall also include, when applicable, conditions for the use of the distribution system of the Licensee.
- (6) The Licensee shall not be obliged to provide a connection in circumstances
 - (a) to do so would involve a breach of a technical, reliability or safety standard issued by the Authority, the Grid Code, or the Distribution Code or the Act or this Licence; or
 - (b) connecting the undertaking or consumer who has made the application endangers the security and reliability of the distribution service.
- (7) If the Licensee refuses to connect an applicant, the Licensee shall inform within 14 days the applicant, and the Authority, providing the reasons for such refusal.

22. Planning, operation, and maintenance of the distribution system

- (1) The Licensee shall plan, as necessary expand or upgrade, maintain and operate the Licensee's distribution system so as to ensure that, subject to the availability of adequate generating capacity, the distribution system is capable of providing consumers with a safe, reliable, and efficient supply of electrical energy. In particular, the Licensee shall plan, develop, and operate the Licensee's distribution system in accordance with the standards established in the technical standards and guidelines established from time to time by the Authority.
- (2) The Licensee shall keep a register of assets which constitute his distribution system, which must include the physical description of the distribution system and the location of equipment.

24. Interruption of supply

- (1) In case the Licensee is undertaking any operation, maintenance, replacement, restoration, or any other activity that may lead to interruption of supply to a specific area or areas, he shall, no later than two days prior to the date of the interruption of supply, advise through appropriate means, all consumers of the areas to be affected, the date and time when the supply is planned to be interrupted and the period within which it will be restored.

- (2) The Licensee shall not unduly discriminate against or unduly prefer any one individual or any category of consumers in favour of or as against any other individual or any other category of consumers in preparing and implementing curtailment and restoration plans when scheduling maintenance or other Demand Control measures, and shall endeavour that, far as practicable and reasonable, the consumers are treated equitably in such Demand Control measures and plans, PROVIDED that exemptions may apply to vital and priority consumers.
- (3) The Licensee shall inform and send to the Authority and the system operator (where applicable) copies of any Demand Control guiding principle, demand reduction plan or demand restoration plan to be agreed by the Licensee with the System Operator in accordance with the Grid Code.

25. Performance Standards and quality of supply and service

- (1) The Licensee shall conduct his undertaking in the manner which achieves Performance Standards, Reliability and quality of supply and service levels to which he is subject, as may be established or approved by the Authority, or any other applicable standard established in Codes or Regulations issued under the Act.
- (2) The Licensee shall prepare a report, within ninety (90) days after this Licence becomes effective, indicating the minimum Performance Standards and quality of supply and service levels as well as his plans to meet them as stipulated in sub-condition (1) hereof.
- (3) The Licensee shall submit from time to time, as provided for in the Performance Standards or in Authority monitoring procedures, the information required to enable the Authority to monitor his compliance with the Performance Standards and quality of supply and service levels.

The Licensee shall not be in breach of his obligations under this Licence if he has failed to meet the Performance Standards or any other standard established in Codes directly due to Force Majeure, PROVIDED that the Licensee has used reasonable efforts, to the extent reasonably possible, to comply with the Performance Standards or any other applicable operating standard established in Codes, as the case may be.

26. Review of Authority's Decisions

- (1) Licensee shall have the right to apply to the Authority for review of its decisions in relation to revocation or amendment of this Licence or any other decision that affects the Licensee's undertaking or its rights under this Licence.
- (2) If requested by the Licensee in the prescribed manner, the Authority may review its decisions that affect the Licensee's undertaking or its rights under this Licence, including its decision in relation to revocation or amendment of this Licence.

27. Adherence to the terms of the Licence and penalties

- (1) Where the Authority is satisfied that the Licensee has contravened any of the conditions of this Licence, the Authority may issue an Order requiring the Licensee to take specific actions or to refrain from taking specific actions in order to rectify the contravention.
- (2) Prior to issuing such an Order, the Authority shall inform the Licensee of its intention to issue the Order and the grounds upon which the Order will be issued and provide the Licensee an opportunity to make a representation in accordance with the procedure including time period, specified by the Authority in a directive.
- (3) Without limiting any other right or remedy available to the Authority under the Act, the Authority may specify in the Order a penalty for each day the Licensee is in default of compliance. The penalty specified by the Authority shall not exceed the limits (if any) for such penalties set by the Act or Other applicable legislation. .

28. Revocation of Licence

- (1) Subject to Section 126 of the Act, the Authority may at any time revoke this Licence if:
 - (a) The undertaking or the execution of the works related thereto has not commenced at the expiry of twelve months from the date on which this Licence was granted, except where the Authority is satisfied that this occurred as a result of events beyond the reasonable control of the Licensee in which Case the Authority shall substitute such period as it in its sole discretion considers reasonable in all the circumstances) or at the expiry of any extended period which the Authority may allow;
 - (b) The Authority is satisfied that the Licensee has willfully or negligently failed to operate within the terms and conditions of this Licence or the provisions of the Act, or the provisions of the Mini-Grid Regulations, or any other regulations issued under the Act;
 - (c) The Licensee at any time after the commencement of this Licence makes representation to the Authority that the undertaking cannot be carried on with profit, and ought to be abandoned, and, upon inquiry the Authority is satisfied that the representation is true;
 - (d) The Licensee agrees in writing with the Authority that this Licence should be revoked;
 - (e) Any amount (unless this is being contested in good faith by the Licensee with recourse to the appropriate administrative and judicial procedures)

payable by the Licensee under any of the conditions or Regulations prescribed under the Act is unpaid 30 days after it has become due and remains unpaid for a period of 30 days after the Authority given the Licensee notice that the payment is overdue;

- (f) The Licensee is unable to pay its debts (unless this is being contested in good faith by the Licensee with recourse to all appropriate judicial procedures and measures) or has any voluntary arrangement proposed in relation to it or enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Authority);
- (g) The Licensee fails to comply with a final Order of the Authority issued under Act and such failure is not rectified to the satisfaction of the Authority within 60 days after the Authority has given notice of such failure to the Licensee, PROVIDED that no such notice shall be given by the Authority before the expiration of the period within which an appeal under Section 40 of the Act may made to the Tribunal;
- (h) The Licensee ceases to carry on the undertaking authorised by this Licence;
- (i) The Licensee goes into liquidation or makes arrangement with its creditors, or a receiver/manager is appointed over the whole or any material part of the Licensee's assets or undertaking (other than by the Lenders);
- (j) The Licensee passes any resolution for winding up other than a resolution previously approved in writing by the Authority;
- (k) The Licensee becomes subject to an Order for Winding up by a Court of competent jurisdiction;
- (l) It is established that the Licensee submitted information the Licensee knew or had reason to know to be false when making its application for this Licence, and
- (m) The Licensee purchases or acquires the undertaking of, or associates itself with, any public or local authority, company, person, or body of persons generating or transmitting or distributing electrical energy under any Licence without the authorisation of the Authority.

This Licence was granted at Nairobi this day of 20....

IN WITNESS WHEREOF the Common seal of the Energy and Petroleum Regulatory Authority was hereto affixed pursuant to the approval of the Authority given on theday of 20.....

In the presence of

Title and Name

.....

DIRECTOR GENERAL

Title and Name

.....

AUTHORITY SECRETARY

Made on this day of 20....

Title and Name

.....

CABINET SECRETARY FOR ENERGY

NINTH SCHEDULE (r. 17)
REPORTING REQUIREMENTS

TYPE OF REPORT	TIMELINES
Accidents and incidents	Accidents to be reported at the earliest time possible but not later than 24 hours after occurrence in a prescribed format Keep a record of incidents
Report on safety	Quarterly
Revenue flows	Quarterly
Technical and commercial losses	Quarterly
Capacity Factor	Quarterly
Consumer Numbers, Classes and Categories	Quarterly
Consumer/Stakeholder complaints	Quarterly
Generated energy (kWh)	Quarterly
Sales (kWh)	Quarterly
Power interruptions/outages	Not later than 24 hours for outages which affect more than 25% of the Consumers and quarterly for other interruptions.