NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

BETWEEN

ABUJA ELECTRICITY DISTRIBUTION PLC

AND

……

THIS NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT is made this …….. day of …….., 20….

BETWEEN

ABUJA ELECTRICITY DISTRIBUTION PLC, a company incorporated under the laws of Nigeria with its registered office at 1, Ziguinchor Street, Wuse Zone 4, Abuja, FCT (hereinafter referred to as "**AEDC"**) which expression shall where the context so admits includes its successors-in-title, nominees, appointees, agents and assigns) of the other part.

AND

…….., a limited liability company incorporated under the laws of the Federal Republic of Nigeria and having its principal place of business at ……., (hereinafter referred to as "**……..")** (which expression shall where the context admits include its successors-in-title and assigns) of the one part.

Both AEDC and …… shall individually be referred to as Party and jointly as Parties.

Recitals:

(A) AEDC is a Company duly licensed to sell and distribute electricity throughout the Abuja Distribution Zone comprising of the Federal Capital Territory, Niger, Nasarawa and Kogi States of the Federal Republic of Nigeria.

(B) …….

(C) AEDC has developed a program to catalyse finance to improve power supply for identified clusters within its franchise areas, through its DESSA (Distributed Energy Strategies and Solutions for AEDC) initiative (the "**Project**").

(D) In line with clause C above, the Parties are engaged in or wish to engage in discussions, in connection with the development of Mini-Grid solutions in identified clusters within AEDC's franchised areas of operation. (the "**Transaction**"**).**

(E) The Parties will in furtherance of the Transaction, from time-to-time, be provided with and exposed to information, data, documents and materials which are Confidential Information (as hereinafter defined) and are secret and of value to the Party providing the information.

(F) The Parties have agreed to be bound by certain duties of confidentiality, non-circumvention, non-violation and non-use in respect of the information, designs, patent, trademark, copyright and any other right which each Party has in the Confidential Information supplied.

Now therefore, in consideration of the mutual promises, assertions and covenants herein and other good and valuable considerations, the receipt of which is acknowledged hereby, the parties hereto mutually and voluntarily agree as follows:

1 **Definitions**

In this Agreement, the following capitalized words and phrases shall have the following meanings assigned to them unless the context otherwise requires:

"Advisors" means all Persons working wholly or partially for or on behalf of any of the Parties as board members or directors, consultants, advisors, contractors or otherwise but excludes all Employees of the Party;

"**Affiliates"** means in relation to any of the Parties, any company or other legal entity which: (i) Controls either directly or indirectly such person; or (ii) which is controlled directly or indirectly by such person; or (iii) is directly or indirectly controlled by a company or other legal entity which directly or indirectly controls such person;

"**Control**" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of another entity, whether through the ownership of voting securities, by contract or otherwise and "**Controlled**" shall be construed accordingly;

"Confidential Information" means all information, customer information and data, surveys, reports, designs, drawing and other data, information and knowledge, whether factual, interpretative or otherwise, associated with, or related to the Disclosing Party, its business and/or the Proposed Transaction (including confirmation that the Parties are in discussions concerning the Proposed Transaction) in any form (whether written, machine readable or otherwise) provided by the Disclosing Party to the Receiving Party; provided however that "Confidential Information" shall not include any information which the Receiving Party can show:

(i) was, at the time of its disclosure by the Disclosing Party, already in the public domain;

(ii) entered the public domain after its disclosure by the Disclosing Party other than as a result of disclosure by the Receiving Party in violation of this Agreement or any of its Employees or Advisors;

(iii) was lawfully in the Receiving Party's possession at the time of its disclosure by the Disclosing Party and was not acquired by the Receiving Party:

(A) on a confidential basis; or

(B) to its knowledge, after reasonable inquiry, as a result of a breach by a Third Party of any obligation of confidence upon that Third Party;

(iii) was lawfully received by the Receiving Party from a Third Party after disclosure to the Receiving Party by the Disclosing Party, and the Receiving Party received the information from that Third Party other than:

(A) on a confidential basis; or

(B) to its knowledge, after reasonable inquiry, as a result of a breach by the Third Party of any obligation of confidence upon that Third Party;

"Disclosing Party" means either AEDC or …….. as the case may be who discloses Confidential Information to the other Party;

"Employee" means any individual in an employee relationship with any of the Parties;

"**Evaluation**" means (i) the assessment, analysis, evaluation and other similar activities related to the Proposed Transaction, the Disclosing Party and/or its business; and (ii) any negotiations or discussions related to the Proposed Transaction between the Disclosing Party and the Receiving Party;

"Person" means any individual, corporation, partnership, branch, business unit, limited partnership, sole proprietorship, governmental or regulatory body, un-incorporated organization or any other entity of any nature whatsoever;

"Receiving Party" means either AEDC or …….. as the case may be who receives Confidential Information from the other Party;

"Third Party" means any Person other than a Party to this Agreement; and

Derivations of any of the foregoing words and phrases shall have a corresponding meaning.

2 Obligation of Confidence

2.1 Subject to Section 2.2 below, the Receiving Party shall preserve the Confidential Information as strictly confidential and private, and shall not disclose or reveal, or allow to be disclosed or revealed, the Confidential Information in any manner, directly or indirectly, to any Third Party except as expressly permitted below. The Receiving Party shall be liable for any breach of this Agreement by any of its Employees or Advisors and shall take all reasonable steps necessary to ensure compliance with this Agreement by such Persons.

2.2 The Receiving Party may disclose the Confidential Information:

2.2.1 only to its current Employees and Employees of its Affiliates who have a need to know the Confidential Information for the purposes of conducting the Evaluation and only after each such current Employee has understood that the Confidential Information is being disclosed subject to the terms of this Agreement and the Employee agrees to fully comply with the provisions of this Agreement both during and after his or her employment with the Receiving Party or its Affiliate (as applicable); and

2.2.2 only to its current Advisors and Advisors to its Affiliates, its lenders and potential investors who have a need to know the Confidential Information for the purposes of conducting the Evaluation and only after each such current Advisor, lender or potential investor acknowledges that the Confidential Information is being disclosed subject to the terms of this Agreement and agrees in writing to be bound by the terms and conditions of this Agreement or hold the Confidential Information subject to a separate confidentiality obligation not less onerous than that contained herein.

3 Restricted Use

The Receiving Party shall ensure that the Confidential Information is used only for the purpose of conducting the Evaluation and for no other purpose whatsoever.

4 Notice of Unauthorized Disclosure

The Receiving Party shall immediately notify the Disclosing Party of any actual, threatened or likely disclosure of Confidential Information (not expressly permitted by this Agreement) by it, any of its Employees, Advisors or any other Person which (to the Receiving Party's knowledge) obtained the Confidential Information directly or indirectly from or through the Receiving Party.

5 Disclosure required by Law

5.1 Subject to clause 5.2 below no announcement or disclosure relating to the Proposed Transaction or their prospective interest in the Proposed Transaction will be made or solicited by either Party or on its behalf without the other Party's prior written consent (which may be given on such terms as the other Party considers appropriate).

5.2 The Receiving Party may disclose such Confidential Information as required under applicable law provided that, if such a disclosure is required, the Receiving Party shall:

(i) where permitted by law promptly notify the Disclosing Party of the situation with all relevant details;

(ii) take all reasonable steps to limit the amount and degree of disclosure and otherwise preserve the confidentiality of the applicable Confidential Information;

(iii) to the extent reasonably possible, consult with the Disclosing Party prior to the disclosure and assist the Disclosing Party in seeking a protective order or other remedy in order to limit or restrict the disclosure or otherwise preserve the confidentiality of the applicable Confidential Information; and

(iv) disclose only such portion of the Confidential Information as is required to be disclosed by applicable law and only to the extent required to be disclosed by applicable law.

6 Title

The Receiving Party shall obtain no right, title, or other interest of any nature whatsoever in or to the Confidential Information.

7 Return / Destruction of Confidential Information

7.1 The Receiving Party shall, within five (5) working days of written notice received from the Disclosing Party, return and deliver to the Disclosing Party or destroy, all Confidential Information directly or indirectly under its control including, without limitation, all documents, notes, extracts, summaries, memoranda, copies and other materials including deletion of the confidential information from any computer, word-processor or other device containing any of the Confidential Information or which may have the effect of disclosing the Confidential Information whether in the form of writing, machine readable data or any other format whatsoever. If the Confidential Information is in the form of materials generated internally by the Receiving Party, the Receiving Party may, instead of providing such materials to the Disclosing Party, destroy such materials.

7.2 The Receiving Party will if required by the Disclosing Party following receipt of a written notice under clause 7.1 confirm in writing (such confirmation to be signed by a Director of the Receiving Party) its compliance and the compliance of its Advisors, Affiliates and/or Employees with clause 7.1 of this Agreement

8 Remedies

8.1 Indemnity

The Receiving Party shall be liable, indemnify and hold the Disclosing Party harmless from and against any and all claims, expenses (including reasonable legal fees incurred) and other liabilities or damages of whatever nature suffered by the Disclosing Party as a result of any breach or threatened breach of this Agreement by the Receiving Party, its or its Affiliate's Employees, its Advisors or any Person obtaining the Confidential Information directly or indirectly from or through the Receiving Party in breach of this Agreement.

8.2 Other relief

The Parties agree that monetary damages are not an adequate or sufficient remedy for a breach of this Agreement. Therefore, in addition to any applicable monetary damages, the Disclosing Party shall also be entitled to injunctive relief and other judicial relief to prevent breaches of this Agreement.

9 Term

This Agreement shall remain binding on the Parties until the execution of a definitive agreement between the Parties for the Proposed Transaction and where no definitive Agreement is entered into, it shall continue for three (3) years from the date of this Agreement.

10 Miscellaneous

10.1 No further obligations or additional right

This Agreement shall not impose upon either Party any obligation to provide information (confidential or otherwise) to the other Party. This Agreement shall not oblige either Party to continue its pursuit of the Proposed Transaction or enter into any further agreement or document related thereto, it being agreed that either Party may stop pursuing the Proposed Transaction at any time or for any reason without any liability whatsoever to the other Party save as arising from this Agreement. All Confidential Information is and shall remain the property of the Disclosing Party. Nothing in this NDA shall be construed as granting to the Receiving Party any property rights, by license or otherwise, in the Confidential Information of the Disclosing Party (including, without limitation, under any trademark, patent, copyright, mask work protection right, or any other intellectual property right).

10.2 No liability for inaccuracy

Each Receiving Party acknowledges that (i) the information supplied by the Disclosing Party may not be accurate or complete; and (ii) if the Parties proceed to a binding and enforceable agreement, such agreement will contain only the representations and warranties upon which each Party will be entitled to rely in relation to the Proposed Transaction. Therefore, the Disclosing Party is not liable for or in relation to the information provided by it to the Receiving Party pursuant to this Agreement.

10.3 Entire Agreement/No waiver

Any amendments to this Agreement must be in writing and executed by both Parties in order to be effective. No delay or failure to complain shall constitute a waiver of any rights of a Party or the obligations of the other Party, it being agreed that any waiver of any right of a Party or obligation of the other Party must also be in writing and signed by the waiving Party and such waiver shall impact only the right or obligation expressly noted in such waiver.

10.4 **Assignment**

Neither Party may assign any rights or obligations under this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, and any purported assignment not permitted hereunder shall be void.

10.5 **Severability**

If individual provisions of this Agreement are determined by an authority with due jurisdiction to be legally invalid, void or unenforceable, such shall not affect the validity or enforceability of the remaining provisions of this Agreement. The Parties agree to replace the invalid, void or unenforceable provision with a valid and enforceable provision which comes as close as possible to the original provision as regards its commercial intent.

10.6 **Data Protection**

Each Party agrees to take adequate steps in ensuring the safeguard and protection of personal data exchanged in course of the engagement as prescribed under the Nigerian Data Protection Regulation (NDPR), 2019.

10.7 **Governing law**

This Agreement shall be governed by the laws of the Federal Republic of Nigeria.

Any dispute claims or controversy arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration pursuant to the Arbitration and Conciliation Act, (CAP A18 Laws of the Federation of Nigeria 2004) or any statutory modification or re-enactment thereof for the time being in force. The arbitral proceedings shall be presided over by a sole arbitrator to be jointly appointed and any award rendered by the Arbitrator may be entered in any court having jurisdiction thereto.

In the event that Parties are unable to mutually agree on a sole arbitrator within fourteen (14) days after a dispute has arisen, such arbitrator may be appointed by a judge of the Federal High Court Abuja on application of either Party.

The venue for the arbitration shall be Abuja, FCT.

The costs of the arbitration will be borne equally by the Parties to the dispute, regardless of which Party to the dispute is successful, provided that each Party to the dispute shall be responsible for its own legal costs and the costs of any witness put forward by such Party to the dispute**.**

IN WITNESS WHEREOF the Parties' representatives have executed this Agreement in the manner hereinafter appearing the day and year first above written:

The common seal of the within named **ABUJA ELECTRICITY DISTRIBUTION PLC** was affixed to this Agreement :

In the presence of:

……	**……...…..**
SAM ADIKAMKWU	**ENGR. BADA AKINWUNMI**
Director, Legal and Company Secretary	**Managing Director**

The common seal of the within named ……..was affixed to this Agreement:

In the presence of:

.....	**.....**
Name:	**Name:**
Designation:	**Designation:**