

# METERING SERVICES AGREEMENT

between

EKO ELECTRICITY DISTRIBUTION PLC

and

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For the Provision of Residential Metering Services under the Meter Asset Provider (MAP) Regulations 2018 in EKEDP Service Areas – Lagos South.

<b>1. DEFINITIONS .....</b>	<b>1</b>
<b>2. Scope of Services.....</b>	<b>3</b>
<b>3. Conditions Precedent .....</b>	<b>4</b>
<b>4. Meter Procurement .....</b>	<b>4</b>
<b>5. Meter Financing.....</b>	<b>5</b>
<b>6. Meter Installation - General.....</b>	<b>5</b>
<b>7. Inspection and Acceptance Prior to Installation .....</b>	<b>6</b>
<b>8. Meter Installation – Unmetered Customers .....</b>	<b>7</b>
<b>9. Meter Replacement .....</b>	<b>8</b>
<b>10. Post Installation Meter Inspection and Acceptance.....</b>	<b>9</b>
<b>11. Meter Inspection and Revenue Protection .....</b>	<b>10</b>
<b>12. Meter Maintenance:.....</b>	<b>12</b>
<b>13. Prior to Replacement of any meter.....</b>	<b>13</b>
<b>14. Project Management by EKEDP .....</b>	<b>13</b>
<b>15. Project Management by MAP.....</b>	<b>13</b>
<b>16. Customer Handling by EKEDP .....</b>	<b>14</b>
<b>17. Customer Handling by the MAP .....</b>	<b>14</b>
<b>18. Fault Reporting and Customer Complaints.....</b>	<b>14</b>
<b>19. Customers with MAP Meter Who Relocate .....</b>	<b>15</b>
<b>20. Permit grant and proprietary rights .....</b>	<b>16</b>
<b>21. Documentation and Training .....</b>	<b>16</b>
<b>22. Data handling and Security .....</b>	<b>16</b>
<b>23. Background Checks.....</b>	<b>17</b>
<b>24. Incident response and Changes.....</b>	<b>18</b>
<b>25. Crisis Preparedness Planning .....</b>	<b>18</b>
<b>26. Access .....</b>	<b>18</b>
<b>27. Rights and Obligation of MAP .....</b>	<b>19</b>
<b>28. Rights and Obligations of EKEDP .....</b>	<b>21</b>

29.	Performance .....	21
30.	Key Performance Indicators:.....	22
31.	Reporting by MAP to EKEDP .....	22
32.	Meter Service Charge .....	24
33.	Incentives and Penalties.....	24
34.	Meter Handover to EKEDP .....	25
35.	Invoicing and Monthly Statement .....	25
36.	Terms of payment .....	26
37.	Event of Customer default .....	27
38.	Taxes .....	27
39.	Term.....	27
40.	Warranties .....	28
41.	Liabilities and Indemnity .....	29
42.	Limitation of Liability .....	30
43.	Confidential Information.....	30
44.	Insurance.....	31
45.	Health and Safety .....	31
46.	Divestiture:.....	31
47.	Assignment: .....	31
48.	Notices.....	31
49.	Severability.....	32
50.	Force Majeure Event.....	32
51.	Fundamental Principles of Good Faith and Fair Dealing .....	33
52.	Termination of this Agreement.....	33
53.	Governing Law .....	35
54.	Change of Law .....	35
55.	Dispute Resolution.....	35
56.	Corrupt Practices Act Requirements.....	36
57.	Third Party Beneficiaries .....	36

<b>58.</b>	<b>Relationship of the Parties.....</b>	<b>36</b>
<b>59.</b>	<b>Counterparts .....</b>	<b>37</b>
<b>60.</b>	<b>Interpretation .....</b>	<b>37</b>

## AGREEMENT

This Agreement (hereinafter called "the Agreement") is made this \_\_\_\_\_ day of the month of \_\_\_\_\_ 2018

### BETWEEN

EKO Electricity Distribution Company Plc, licensed by the Nigeria Electricity Regulatory Commission with offices at \_\_\_\_\_ Nigeria (hereinafter referred to as "EKEDP" which expression shall where the context so admits include its successors in title and assigns} on the first Part;

### AND

\_\_\_\_\_ Ltd; a company incorporated under the law of Nigeria with its registered office at \_\_\_\_\_ (hereinafter referred to as the "MAP" which expression shall where the context so admits include its successors in title and permitted assigns) of the other part;

EKEDP and the MAP are also hereinafter referred to individually and collectively as "party" and "Parties" respectively)

### WHEREAS

- (i) EKEDP, is desirous of engaging the service of the MAP for the provision of Metering Services; and has requested the MAP to provide the metering services as defined in this agreement;
- (ii) The MAP, having represented to EKEDP that it has the required professional skills, personnel and technical resources, has offered its services for the purpose required by EKEDP and the parties hereto have agreed to the provision of the Metering Services on the Terms and Condition set forth in this agreement.

**NOW THEREFORE**, for valuable consideration receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

- (a) The following schedules attached hereto shall be deemed to form an integral part of this agreement.
  - (i) Schedule A: Analysis of customers to be provided with metering services

- (ii) Schedule B1: Meter Specifications
  - (iii) Schedule B2: Minimum Meter Specifications and Installation Requirements
  - (iv) Schedule C: Service Level Agreement and Key Performance Indicators
  - (v) Schedule D: Schedule of Prices
- (b) The mutual rights and obligations of EKEDP and the MAP shall be set forth in the Agreement, in particular;
- (i) The MAP shall carry out the Metering Services in accordance with the provisions of the Agreement; and
  - (ii) EKEDP shall make payments to the MAP in accordance with the provisions of the Agreement.

## 1. DEFINITIONS

**“AC&C losses”** means Aggregate Commercial and Collection Losses calculated as (1- (the cash collected from customers less the product of kWh injected to the network by the average customer tariffs applying to the customers connected)) expressed as %.

**“Act”** means the Electric Power Sector Reform Act no. 6 of 2005, as may be amended from time to time.

**“Agreement”** means the Agreement signed by the Parties and all the attached documents, including the Schedules.

**“Authorized Access”** - means all acts related to handling of meters in accordance with NERC Regulations and Order on Unauthorized Access.

**“Commission”** means the Nigerian Electricity Regulatory Commission established by the Act.

**“Contracting Parties”** mean parties entering into a legal Agreement

**“Contact Centre”** is a customer service centre equipped to handle large amounts of customer communications.

**“Customer Information”** - means all data related to personal information as well as electricity consumption pattern of the customers who are metered by the MAP.

**“Distribution Company”** Means the counterparty to this Agreement who has been issued a distribution license under section 67 of the Act.

**“Distribution Company Confidential information”** shall mean any information of a confidential or proprietary nature received by MAP, directly or indirectly, from Distribution Company, or acquired or developed pursuant to the provision of the Services, including, but not limited to, business affairs, data, designs, manuals, training materials and Documentation, formulas, ideas, inventions, knowledge of manufacturing processes, mask-works, methods, prices, financial and accounting data, products and product specification systems, and technical information and the terms of the Agreement.

**“Distribution Licensee”** means a person that has been issued a distribution license under section 67 of the Act.

**“Incidence Response”**- Means the organization and approaches adopted by the MAP to address and manage any breach of security of the metering system.

**“Irrevocable payment guarantee”** - means an instrument assuring the MAP of a determined payment to be made by EKEDP into its account at the end of every month.

**“Leveling”** -means the process of reconciling the accounts of MAP to capture outstanding payments made from the variance account.

**“Line of Sight”** Means an authorization to view the data of payment going into the dedicated account.

**“Meter Asset Provider” (MAP)** means a person that is granted a permit by the Commission to provide metering services which may include meter financing, procurement, supply, installation, maintenance and replacement.

**“Metering installation standards”** means the requirements for the connection of meters and metering systems to an electrical circuit as specified in the Metering Code.

**“Metering Code”** means the code issued by the Nigerian Electricity Regulatory Commission that regulates metering systems in the Nigerian Electricity Supply Industry (NESI).

**“Metering Service Agreement”** (AGREEMENT) means an agreement entered into between the Distribution Licensee and the MAP for the provision of metering services.

**“Metering Service Charge”** This refers to periodic payments made by an electricity customer to cover the cost of metering services rendered by MAP, Meter service charge covers the cost of providing meters and the ongoing costs of operating and maintaining the metering infrastructure. This cost structure provides a transparent way of billing metering costs so that customers are only required to pay for their own metering services.

**“Metering Services Provider”** means a person certified by the Commission as a manufacturer, importer, supplier (vendor), or installer of Electric Energy Meters and /or Metering Systems.

**“Proprietary Rights”** - means the rights owned by OEMs or software developers for the equipment or solutions deployed by the MAP.

**“Quality Management system”** means is a collection of articulated business processes focused on consistently meeting customer requirements and enhancing their satisfaction.

**“Service Agreement”** means an agreement between two parties where one agrees to provide a specified service to the other.

**“Service Agreement terms”** means the rules by which the parties to the AGREEMENT must agree to abide by during the tenure of the AGREEMENT.

**“Statutory Requirements”** This refers to those requirements which are applicable by virtue of law enacted by the government.



“**Testing and Calibration**” means all required tests to be carried out by NEMSA designated Meter Test Stations.

“**Unauthorized Access**” - means all acts related to tampering of meters in accordance with NERC Regulations and Order on Unauthorized Access.

“**Vending data**” - means record of units of electricity purchased by the pre-payment customers metered by the MAP.

“**Walking the Line**” means tracing the path of a line from the injection end of the line to the termination of the line at its most distant point from the injection point.

## **2. Scope of Services**

2.1. This Agreement shall cover the provision of metering service by Meter Asset Provider to EKEDP, which will include the following services:

- (i) Meter procurement and financing thereof,
- (ii) Meter installation,
- (iii) Meter replacement
- (iv) Meter calibration and testing,
- (v) Meter maintenance,
- (vi) Meter Data Management Platform
- (vii) Meter inspection and revenue protection,

The detailed scope of services which apply in this Agreement is set out in the **Service Level Provision at Clause 3.**

2.2. The MAP shall as a minimum procure, finance and install the number and type of meters set out in **Schedule A** and strictly in accordance with the timetable set out in that Schedule.

2.3. The MAP shall procure meters that meet the minimum specifications contained in the Metering Code and the attached specifications at **Schedule B1**. All meters supplied must interface and be compatible with EKEDP vending and billing systems.

2.4. The MAP shall also provide necessary warehousing and storage facilities as well as logistics required to store and deploy meters while ensuring integrity and functionality of the meters at all times.

2.5. The MAP shall comply with the provision of the Meter Asset Provider Regulations 2018, the Nigeria Electricity Supply Industry Metering Code, the guidelines for certification of Metering Service Provider and Related Matters and other relevant Regulations.

2.6. Any Supplies and services which might not have been specifically mentioned in this Agreement but are necessary for the scope mentioned in Clause 3 below and/or completeness of the works at the highest possible level, including any royalties, license fees & compensation to be paid, whether incurred by the MAP or by a third party for the work covered in the scope, regardless of when incurred, shall be supplied/ provided by the MAP without any extra cost and within the time schedule for efficient, smooth and satisfactory operation and maintenance of the works at the highest possible level under Nigerian conditions (but according to International standards for facility of this type), unless expressly excluded from the scope of supplies and services in this Agreement

### **3. Conditions Precedent**

- 3.1. EKEDP shall not be obliged to proceed with execution and implementation of this Agreement until parties have met all the following pre-conditions:
- 3.2. The Technical Specifications of the Metering Solution have been demonstrated during a site visit and accepted by EKEDP.
- 3.3. The Project Implementation Plan for the rollout of the metering solution has been accepted by EKEDP.
- 3.4. The MAP has demonstrated proof of funding availability for the full implementation of the Project including but not limited to:
  - 3.4.1. A firm financial commitment letters from credible funding source(s) of the MAP; and
  - 3.4.2. A diligent discussion between EKEDP and the MAP's funding sources/partners;
- 3.5. The MAP has demonstrated that it can procure and supply the meters to specification and on time to fulfil this contract;
- 3.6. The MAP has demonstrated that it has local warehousing and site facilities to warehouse the stock of meters necessary to fulfil this contract;
- 3.7. The MAP has demonstrated to EKEDP that it has the staff in place with the necessary technical qualifications and training to fulfil this contract;
- 3.8. The MAP has all authorizations and approvals required for the supply, installation of the Meters and Metering Solution; and
- 3.9. The MAP is in good standing and compliant with all relevant guidelines, regulations codes, standards and requirements issued by the NERC and NEMSA for the supply and installation of meters.

### **4. Meter Procurement**

- 4.1. The analysis of such customers for whom meters are to be procured are attached to the Meter Services Agreement as Schedule A.
- 4.2. Any amendment to the total number of customers as summarized in Schedule A shall be made through a written modification and substitution of a revised Schedule A into this Agreement. Any increase in the number of meters to be provided will be subject to the Schedule of Prices at Schedule D.
- 4.3. The MAP shall ensure capacity to provide metering services, maintenance and replacement for deployed meters where necessary in accordance with the provisions of this agreement and throughout the term thereof
- 4.4. The meters to be procured and installed shall meet or exceed the Technical Specifications set out in Schedule B1.

## **5. Meter Financing**

- 5.1. The MAP has agreed subject to the terms of this Agreement, to finance the all-inclusive cost of supply, installation, complete deployment of the Metering Solution, provision of Services and implementation of the Project.
- 5.2. EKEDP shall have no liability to the MAP or any other party, in the event that funds are not timely paid to vendors or manufacturer, in respect of the Meters and the Metering Solution by the MAP. EKEDP shall, following the finance, supply and installation of the Meters, be entitled to assume that the MAP has paid its suppliers in full. No supplier, manufacturer or vendor nor any other third party of the MAP shall be deemed a third-party beneficiary of this Agreement.

## **6. Meter Installation - General**

- 6.1. The MAP shall install the number of meters stated in Schedule A over a period of 1 years; the number of meters to be installed shall be in accordance with and to the timeframe set out in Schedule A.
- 6.2. The MAP shall install all the meters within **360 days (1 years)** of execution of the Meter Service Agreement.
- 6.3. The delivery and installation requirements for each meter shall be in consonance with the provisions as contained in Schedule B2 and with the Meter Installation Guidelines as contained in the Metering Code.
- 6.4. The MAP shall be responsible for the sealing and the enclosure of each meter that is installed or replaced including carrying out a check for meter security and integrity.
- 6.5. The MAP is responsible for meter supply, transportation, storage and all efforts necessary to ensure efficient and effective installation.

- 6.6. The MAP shall provide to the Distribution Company copies of all applicable certifications in respect of meters that it is deploying under this Agreement.
- 6.7. The MAP shall obtain statutory clearance for the works executed by it. The MAP shall provide comprehensive insurance for the contract value of the entire works and third-party liability insurance to cover all risks until completion of contract.
- 6.8. All transport/lifting/unloading/storage/preservation of items at site shall be arranged by the MAP at no extra cost to the Distribution Company. All these activities shall be performed in line with original equipment manufacturers recommendations and/or best engineering practice, with due consent of EKEDP Engineer – In charge.
- 6.9. All MAP installers shall be adequately trained in the installation of the MAP's provided metering solution; and shall be appropriately licenced and certified.
- 6.10. The MAP shall deploy, as minimum, technology and back-office systems that are capable of maintaining and retrieving records of financial, inventory, customer data and monitoring usage of deployed infrastructure on an on-line real time basis (where applicable)

## **7. Inspection and Acceptance Prior to Installation**

- 7.1. The MAP shall arrange for the testing and calibration of all meters to be installed in line with the provisions of the Metering Code.
- 7.2. The MAP shall at its own expense and at no cost to EKEDP carry out all such pre-installation tests, inspections of the Meters and Metering Solution adopting generally accepted performance test protocol agreed by the Parties and provide Services as requested by EKEDP and the relevant regulatory agencies. These tests shall include accelerated lifecycle tests amongst others.
- 7.3. EKEDP's (or its representative) reserves the right to carry out routine inspections of all and any meter installation carried out by the MAP as it deem without necessarily informing the MAP.
- 7.4. Inspections may be conducted on the premises or warehouse of the MAP or its Subcontractor as determined by EKEDP,. During the conduct of the test, all reasonable facilities and assistance, shall be furnished to the inspectors at no charge to EKEDP.
- 7.5. EKEDP or its designated representative shall be entitled to inspect, attend and witness the tests and/or inspections referred to in this Clause 7, whether carried out at MAP premises, at meter test stations or any such other agreed location provided that EKEDP bears its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.

- 7.6. Whenever the MAP is ready to carry out any such test and inspection, it shall give reasonable notice, including the place and time, to EKEDP. The MAP shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable EKEDP or its designated representative to attend the test and/or inspection.
- 7.7. Notwithstanding the provisions of Clause 7.5, EKEDP may require the MAP to carry out any test and/or inspection which though not stipulated in the Inspection and Performance Testing Protocol is deemed necessary to verify that the characteristics and performance of the Meters comply with the technical specification's codes and standards under this Agreement. All costs of such additional tests shall be borne by the MAP.
- 7.8. EKEDP or its representative shall have the right to request and witness a field performance test to be performed on the Meters and Metering solution at MAP's cost within EKEDP's network. The MAP shall assist EKEDP or its representative with the inspections and provide reasonable assistance where necessary
- 7.9. The MAP shall provide EKEDP with a report of the results of any such test and/or inspection within a reasonable time from completion thereof.
- 7.10. A pre-installation tests and protocol completion report shall be provided to EKEDP prior to commencing installation of each batch or consignment of meters to the MAP's site or warehouse established for the performance of the agreement.
- 7.11. Based on an own inspection as provided for above of a valid sample size pre-agreed between the parties, EKEDP may reject the remaining delivery. EKEDP may recover such charges for the cost of inspecting rejected Meters to the MAP.
- 7.12. EKEDP may reject any Meters that fails to pass any test and/or inspection or do not conform to the specifications. The MAP shall either rectify or replace such rejected Meters at no cost to EKEDP, and shall repeat the test and/or inspection, at no cost to EKEDP.
- 7.13. The MAP agrees that neither the execution of a test and/or inspection of the Meters or any part thereof, nor the attendance by EKEDP or its representative, nor the issuance of any report pursuant to Clause 7.6, shall release the MAP from any warranties or other obligations under this Agreement.

## **8. Meter Installation – Unmetered Customers**

- 8.1. The MAP will be responsible for installing meters to every customer who is unmetered in accordance with Schedule A and to the standards of installation at Schedule B2
- 8.2. The sequencing of customers for metering will be in accordance with the Project Management provisions at Clause 16.

8.3. The MAP will provide a Daily Meter Installation/Replacement Report to EKEDP for each day when meters have been installed, providing information on each meter installed including customer number, address and GPS coordinates, meter number, type, meter location, units pre-loaded (for pre-payment meters).

## **9. Meter Replacement**

9.1. The MAP shall repair or replace faulty meters within two (2) working days of being notified of such faults. Where a MAP fails to repair or replace a meter within two (2) working days of a report by the customer or Distribution Company, the customer shall not be liable for the payment of Metering Service Charge for the billing period unless such delays were as a result of inaccessibility to the customer's premises

9.2. Any meters to be replaced in accordance with the above criteria that are installed inside premises where customers permission needs to be sought before meter auditors can have access should be re-installed such that meter auditors do have access at all times

9.3. Prior to the replacement of any meter the MAP shall observe the provisions of Clause 13 of this Schedule.

9.4. The sequencing of customers for meter check will be in accordance with the Project Management provisions at clause 16.

9.5. MAP will provide to EKEDP on a daily basis for each day when meters have been replaced as a part of the Daily Meter Installation Report, providing information on:

- a) each meter installed including customer number, address and/ or GPS coordinates, meter number, type, meter location, units pre-loaded (for pre-payment meters).
- b) readings from the meter that has been replaced in accordance with clause 13 of this Schedule.

## **10. Post Installation Meter Inspection and Acceptance**

- 10.1. EKEDP shall only be obliged to accept the Meters if:
  - 10.1.1. The Meters and Metering Solution are supplied in accordance with the agreed technical specifications and requirements;
  - 10.1.2. The Meters and Metering Solution pass the Inspection and Performance Test Protocol;
  - 10.1.3. The Meter and Metering Solution Pass all Quality Assurance and Quality Control measures and requirements;
  - 10.1.4. The term and conditions set out in 10.3 below are met;
  - 10.1.5. The Meters and Metering Solution comply with minimum technical standards prescribed in the Metering Code and by NERC.
  - 10.1.6. The Meter and Metering Solution are NEMSA certified.
- 10.2. The MAP shall only be deemed to have satisfactorily delivered the Meters and fulfilled its obligation to supply each Meter under this Agreement when:
  - 10.2.1. An installed Meter is registered with its details reflected on the Data Management System installed at EKEDP's Head office; and
  - 10.2.2. The Meters are activated which shall be confirmed by presentation of evidence of first vending of each installed Meter.
  - 10.2.3. EKEDP shall provide MAP with token units that will be used to effect the first vending of each installed Meter.
  - 10.2.4. EKEDP has physically inspected each meter and confirmed that it has been programmed for the correct customer category and tariff class.
- 10.3. EKEDP shall inspect the installed Meters and, acting reasonably, either accept or reject them on the basis of Acceptance Conditions stipulated in this Clause 22. Rejected meters will be promptly replaced.
- 10.4. Acceptance shall be confirmed by the issuance of the EKEDP Project Manager's signature on the Daily Installation Report as certification.
- 10.5. The certification above shall not cover damages arising from improper installation or errors in installation of the Meters and Metering Solution

## **11. Meter Inspection and Revenue Protection**

11.1. The MAP shall take responsibility for Revenue Protection against Unauthorized Access/ Tampering over its meters through the control of Aggregate Commercial and Collection (AC&C) losses.

11.2. To help achieve this the MAP shall be responsible for meter inspection activities which Include:

- a) Monitoring of meter tampering and bypass;
- b)
- c) Periodic inspection of every meter to ensure functionality and accuracy;
- d) Replacement of faulty meters or faulty meter parts when due;
- e) Monitoring of customer premises for secondary illegal connections;



- 11.3. The MAP shall perform periodic inspection of customer meters to ensure meter integrity and accuracy as follows:
- 11.3.1. Meters are on average to be inspected and read at least every 4 months; that is one quarter of installed meters should be inspected each month
  - 11.3.2. MAP will furnish to EKEDP a daily/ weekly/ monthly Inspection Report of the poles and the meters connected thereto that have been inspected, their condition and the meter readings. The MAP staff member responsible for the inspection will be identified on the report and they will certify the report as complete, accurate and correct; The report will highlight any unauthorized access or tampering of the meter and/or other accessories of which it is or becomes aware, including any material breach or potential material breach of security on a system or network which contains, processes or transmits Confidential Information.
  - 11.3.3. The MAP will furnish the Distribution Company with full details of each unauthorized access or tampering or attempt thereof and use reasonable efforts to assist the Distribution Company in investigating or preventing the recurrence of any unauthorized access or tampering or attempt thereof.
  - 11.3.4. EKEDP will provide to the MAP a Suspicious Activity Report at daily/ weekly/ monthly intervals from their Vending platform which will list customers whose meters need to be checked as a priority as a result of no/ low or erratic vending, or discrepancies between vending and customer meter readings. Customers listed on the Suspicious Activity report will be checked within 7 days.
  - 11.3.5. EKEDP may request an inspection of every meter on the consumption side of a network check meter if the AC&C losses revealed by reconciling that meter with the aggregate payments of customers fed by the metered supply are greater than 5%.
- 11.4. Each Party shall make reasonable efforts to cooperate with the other Party in any litigation and investigation against third parties deemed necessary by the other Party to protect its proprietary rights. Each Party shall have the right to conduct and control any investigation relating to such breach or potential breach of its Confidential Information that it determines is appropriate.
- 11.5. Each Party shall use all reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge of the other Party's confidential Information.

11.6. EKEDP has the right to request the immediate withdrawal from the personnel of the MAP or any of its sub-contractors working on the Services being provided under this Agreement whom EKEDP has reasonable grounds to believe are perpetrating or a party to fraud, defalcation, theft or other malpractice.

## **12. Meter Maintenance:**

12.1. The Meters shall be supplied with a warranty cover of 10 years from the date of installation of the meters ("Warranty Period"). This warranty covers all manufacturer defects and related problems which shall be replaced during the warranty period at no cost to EKEDP or the Customer, subject to clause 12.3 (c) below.

12.2. The MAP warrants that throughout the Warranty Period, the Meters shall be free from defects arising from any act or omission of the MAP or arising from design, materials, and workmanship, under normal use in the conditions prevailing in Nigeria. Warranties shall not cover defects arises as a result of fair wear and tear, wilful damage or negligence.

12.3. In the case of meter faults reported by customers, in line with the provisions of the Metering Code.

a) A customer's meter shall be repaired or replaced by the MAP within two (2) working days of being notified of such faults. A customer may report a fault to EKEDP who will immediately inform the MAP Project Manager by e-mail. Faults may also be detected through EKEDP inspection visits.

b) A customer meter shall be repaired or replaced at no additional cost to EKEDP or customer within the amortization period of the asset unless the damage was as a result of the willful action of the customer. Where there is a dispute on the responsibility for the damage of a meter asset the customer has a right to fair resolution in line with the Metering Code and other applicable Regulations and the MAP shall provide a meter pending the resolution of the dispute.

c) Where it is established that the customer wilfully damaged a meter, the MAP shall replace the meter based on an upfront payment by the customer or other mutually agreed terms of payment.

12.4. Where a MAP fails to repair or replace a meter within two (2) working days of a report by the customer or Distribution Company, the customer shall not be liable for the payment of Metering Service Charge for the billing period unless such delays were as a result of inaccessibility to the customer's premises.

12.5. The MAP will submit to EKEDP a Daily Faults Report showing the faults reported to them by EKEDP, the faults repaired by the MAP and the faults outstanding for repair. In each case the fault details will include the customer number, customer, customer details, the time/ date the fault was reported.

### **13. Prior to Replacement of any meter**

- 13.1. Where a meter is to be removed for any reason MAP shall notify EKEDP and ensure that the metering data stored in the Metering System (MD) is retrieved and ensure that a final Meter reading (NMD) is obtained for the purpose of proper terminal billing of the removed meter.
- 13.2. Prior to meter replacement, the MAP shall take photographs using a digital camera; photos shall include immediate work area and a photo of the face of the meter in which the meter reading is legible. In each photo, the MAP shall include details of the installation address, the work area and the meter once the installation is complete.
- 13.3. All replacement shall only be carried out upon written approval by EKEDP (or its representative in accordance with clause 15
- 13.4. The MAP shall catalogue all photos by property address and account number, Photos shall be submitted to the Distribution Company on a daily basis.

### **14. Project Management by EKEDP**

- 14.1. At the Commencement of the Agreement EKEDP will designate a Project Manager who will be responsible for the management of all of EKEDP's duties and obligations under this Agreement. EKEDP will inform the MAP and keep the MAP informed of any changes.

### **15. Project Management by MAP**

- 15.1. At the Commencement of the Agreement the MAP will designate a Project Manager who will be responsible for the management of all of the MAP's duties and obligations under this Agreement. The MAP will inform EKEDP and keep EKEDP informed of any changes.
- 15.2. The MAP shall provide to EKEDP a detailed project management plan including initiation, planning, execution and a Gantt chart indicating timelines for the completion of metering of all customers as specified in Schedule A that will meet the timelines set out in Schedule A. This will be based on information provided by EKEDP at commencement and then updated from time to time on the lines (and the customers associated with those lines) which have been both enumerated and cleaned-up and are therefore ready for metering.
- 15.3. The Gantt chart shall be in general monthly targets for the 3-year period of installation together with a monthly programme looking 26 weeks ahead. The monthly programme will show the lines and poles to be metered week by week and the number of customers associated with each.

15.4. On the first day of each calendar month until all meter installation is completed the MAP will produce a draft Monthly Installation Report to address the installation programme for the calendar month following the month that has just started. This will be discussed and agreed with the nominated EKEDP Project Manager.

## **16. Customer Handling by EKEDP**

16.1. EKEDP will use the Monthly Installation Report from the MAP to inform their customers in advance that a meter or as the case may be, replacement meter, is scheduled to be installed. The customer will be informed of the type of meter and be provided with details of the MAP.

16.2. The customer will also be informed of the monthly MSC to be levied over a 10-year term and the option to pay up-front. They will be informed that there is a requirement to keep a pre-payment meter in credit with sufficient units to pay the monthly MSC, even if they are not vending, for example if they were to be absent from the property for some time. Inadequate credit to pay the monthly MSC might lead to disconnection or removal of the meter.

## **17. Customer Handling by the MAP**

17.1. Prior to commencement and for the entire duration of the Agreement all personnel of the MAP will be equipped with uniforms and photo identity cards, which they will always wear and carry when working on the services. All vehicles used by MAP personnel in the execution of the services will be clearly branded and liveried as MAP vehicles.

17.2. It will be the responsibility of the MAP to provide each customer with easy-to-understand instructions in a language of their choosing of how to use the meter with which they have been provided.

17.3. A set of the instructions for each type of meter will be submitted to EKEDP at the commencement of this Agreement for approval. The instructions will include the fault reporting process and location of EKEDP's customer centres.

## **18. Fault Reporting and Customer Complaints**

18.1. Customers will have been instructed to report any meter faults to an EKEDP customer centre. EKEDP will ascertain from their customer database if the responsibility for the maintenance of that customer's meter lies with the MAP. If so they will be informed immediately by e-mail or any other suitable means of communication to the MAP Project Manager with full details of the customer, customer location and nature of the fault. The 2-day time limit for effecting a repair will commence from the time the e-mail was sent.

18.2. Any customer complaints in respect of services delivered by the MAP will be shared with the MAP and investigated by EKEDP if the severity of the complaint justifies it.

## **19. Customers with MAP Meter Who Relocate**

19.1. Customers with a MAP meter who relocate to another property will be given the option of:

- (i) Relocating the meter to the customer's new property provided it is within EKEDP licenced area; this will require the customer to pay to EKEDP the full costs of the meter relocation in advance;
- (ii) Selling the meter to the incoming property owner; EKEDP will provide a figure for the depreciated value of the meter to the outgoing owner for him to recover from the incoming owner, the new owner will assume the balance of any monthly MSC that remain to be paid; (and a new MAP meter will be provided at the customer's new property.

**20. Permit grant and proprietary rights**

- 20.1. The MAP shall ensure that appropriate permits and proprietary rights to solutions are obtained from the holders of proprietary rights. Such permits and rights shall be renewed as they fall due.
- 20.2. In the event that these are not in place the EKEDP Project Manager may suspend all or part of the MAP activities until the situation is regularised in line with the provisions of 9.1.

**21. Documentation and Training**

- 21.1. The MAP shall keep records of all document including Meter Service Provider certifications issued by NERC, Meter type test issued by NEMSA, SONCAP certificates issued by Standards Organization of Nigeria and any other required certification. The MAP shall ensure timely renewal of these certifications as they fall due. The MAP will provide copies to EKEDP.
- 21.2. The MAP shall not deploy any person to any site where installation or inspection activities are taking place without appropriate training on meter installation, maintenance and relayed safety requirements.

**22. Data handling and Security**

**Data Management and Security**

22.1. All data and Information submitted by or on behalf of EKEDP to MAP or otherwise in MAP's possession or accessible by MAP pursuant to the provision of the Services, including without limitation all Personal Information ("Distribution Oath), are and shall remain the property of EKEDP or applicable third parties. EKEDP Data shall not be:

- (i) Used by MAP or any MAP Agent other than in connection with providing the Services in accordance with the terms of this Agreement
- (ii) Disclosed sold, assigned, leased or otherwise provided to third parties or to anyone not having a specific need to know the information for providing the Services, by MAP or any MAP Agent; or
- (iii) Commercially exploited by or on behalf of MAP or any MAP Agent.

**Data Security:**

22.2. MAP shall establish and maintain safeguards against the destruction, loss, alteration or unauthorized disclosure of EKEDP's Data in the possession of MAP or any MAP Agent in accordance with Distribution Company's security standards set out in the Service Agreement or as notified, by EKEDP to MAP from time to time. EKEDP shall be responsible for reasonable costs incurred by the MAP in the event of changes to such standards after the effective date of the Agreement.

**Return or Destruction of Data:**

22.3. Upon EKEDP's request at any time and upon the cessation or termination of the services, whichever is later, MAP shall, as directed by EKEDP:

- (i) Promptly return to EKEDP in the format and on the media in use as of the date of the request all, or the portion requested, of EKEDP's Data; or
- (ii) Erase or destroy all or a portion of EKEDP Data in MAP's possession prior to the cessation or termination of the services and destroy all media containing Distribution Company Data.

22.4. If EKEDP directs the MAP to erase or destroy all or a portion of EKEDP's Data, MAP shall promptly confirm to Distribution Company in writing that such erasure or destruction has occurred. Archival tapes containing any Distribution Company's Data shall be used solely for backup purposes and shall be returned or destroyed pursuant to this Section.

## **23. Background Checks**

23.1. MAP agrees to perform background checks on any MAP employees, representatives or agents (and any MAP employees, representatives or agents of MAP sub-contractors) hired on or after the Effective date who have access to, or may have access to, any Customer facility for the purpose of delivering, maintaining, servicing, or removing equipment and/or products, to ensure employees:

- (i) are not currently excluded, debarred or otherwise ineligible to participate in connection with this Agreement in which such employee will be providing Services for a customer;
- (ii) have not been convicted of a criminal offense related to/or in connection with electricity business or theft;
- (iii) as discovered through any background check or based upon MAP knowledge, have not been terminated from employment by any employer or contractor for theft, misappropriation of property, or any other potentially illegal or unethical acts; and

- (iv) MAP agrees not to use any employee or potential employee failing to meet the above criteria to provide Services to any Customer under this Agreement. Any breach of this section shall give EKEDP the right to receive compensation for any loss that may have been suffered as a direct consequence of this breach.

## **24. Incident response and Changes**

- 24.1. EKEDP and the MAP shall both separately implement reasonable and appropriate security measures to protect all systems that maintain, transmit, store or process all relevant data associated with meters and metering services under this agreement. They shall also take measures to adequately protect against malware and unauthorized access to such data.
- 24.2. The MAP agrees to hold all customer information in strict confidence. The MAP shall not use or disclose such information except as permitted or required by this Agreement or as required by law. Unless otherwise stated in the agreement, all customer data is the property of EKEDP.
- 24.3. The MAP shall seek EKEDP's 'no objection' before implementing any amendment or replacement of hardware and software associated with the meters that the MAP is providing or has installed.
- 24.4. Following the receipt of a report of a potential breach involving Meter or customer vending data, each party shall notify the other within one business day. Each party shall keep the other informed on the progress of each step of the incident response. The MAP shall indemnify and hold harmless EKEDP from any consequence or liability arising from such data breach.

## **25. Crisis Preparedness Planning**

- 25.1. EKEDP and the MAP shall ensure frequent back up of relevant data to ensure integrity of the metering system.
- 25.2. The MAP will develop a process to recover its installation and maintenance process, records and facilities in the event of a natural disaster or any event that disrupts the meter installation and maintenance process or the ability of the MAP to meet its delivery commitments to EKEDP or satisfy customer metering requests. If requested by EKEDP, the MAP will review its Business Continuity Plan with EKEDP and make changes as agreed, subjected to any confidentiality requirements.

## **26. Access**



26.1. EKEDP or its Agents shall be permitted unhindered access to any Site where MAP is installing or replacing meters.

(i)

## **27. Rights and Obligation of MAP**

### **Rights of the MAP**

27.1. The MAP shall have:

- (i) Legal ownership of the meter asset until fully amortized through payment of a metering service charge by beneficiary customers.
- (ii) The right to be paid in full, after deduction of any applicable penalties, the aggregated metering service charge paid by customers during billing cycle.
- (iii) Access to customer's premises, to enable it carry out its operations with respect to the meter asset in compliance with the Metering Code, Meter Reading, Billing and Collection Regulations and any other applicable Regulation of the Commission.
- (iv) Access to viewing rights to the vending platform associated with meters supplied under the Agreement.
- (v) Have the right to an upfront payment from the customer before replacing a damaged meter where it is established that the customer is responsible for wilful damage of the meter.

### **Obligations of the MAP to EKEDP**

27.2. The MAP shall;

- (i) Ensure conformity with all specifications for the meter asset and installation standards.
- (ii) Obtain all necessary certifications and approvals for meters in line with extant codes, regulations and industry requirements.
- (iii) Engage only certified Meter Service Provider for the deployment of meters in line with the provision of the AGREEMENT.
- (iv) Implement a Quality Management System in order to ensure that the quality of meter assets, the installations and service complies with the service levels set out in this agreement.

### **Obligations of the MAP to EKEDP to ensure EKEDP fulfils its customer obligations**

27.3. The MAP shall:

- (i) Perform periodic inspection of meters to ensure integrity and accuracy, where required, the MAP shall arrange for the testing and calibration of customer meters in line with the provisions of the metering code.
- (ii) Perform its obligation to customers according to service standards set out in this agreement and applicable Metering code
- (iii) Install the meter at the premises of the customer within ten (10) working days of the receipt of full payment by the customer where he chooses to make an upfront payment for the meter having been notified by EKEDP that meter installation is scheduled.
- (iv) replace faulty meters within two (2) working days of being notified of such faults.

## **28. Rights and Obligations of EKEDP**

### **Right of Distribution Company**

28.1. EKEDP shall have:

- (i) Access to customer meters installed by the MAP
- (ii) The right to use data derived from customer meters for monitoring, billing, planning and any other related activities.
- (iii) The right to query data derived from customer meters for audit purposes and evaluating consistence, accuracy and integrity. EKEDP shall treat cases of unauthorized access and meter tampering in accordance with existing laws and Regulations.
- (iv) The right to monitor meter installation activities of the MAP and its agents to ensure integrity of the process.

### **Obligations of EKEDP**

28.2. EKEDP shall:

- (i) Include a metering service charge as a clear item on the billing of its customers provided with meter under this AGREEMENT with MAP and shall be separate from the energy charge. The Metering service charge shall be based on the outcome of the procurement process for the MAP and subject to the approval of the commission.
- (ii) Provide the MAP with the meter deployment plan including comprehensive list of customers to be provided with meters.
- (iii) Provide relevant information to the MAP in a timely manner to enable it carry out its obligations under this Agreement.
- (iv) Ensure timely disbursement in full to MAP the aggregated metering service charge paid by all customers supplied with meters under this Agreement.
- (v) Assume liability for the payment of applicable metering service charge for customers affected by a prolonged service outage exceeding two weeks.
- (vi) Provide a structure for ring-fencing the metering service charge paid by all customers for the purpose of timely payment to MAP.

## **29. Performance**

29.1. The MAP will install the number and type of meters set out in Schedule A.

- 29.2. It is imperative that the timetable set out in Schedule A is adhered to and achieved. Any slippage in the program of installation will be notified by the EKEDP project manager to the MAP at the end of each calendar months in a Notice of Under-Performance. Slippage that is likely to prejudice the achievement of annual and overall targets will be drawn to the MAP's attention and the MAP will make proposals to remedy the situation within 10 working days of receiving such a Notice.
- 29.3. Significant slippage where the MAP is 3 months or more behind a monthly schedule that achieves the annual targets and 3- year total will be subject to penalties in line with clause 35. Where the slippage is not due to any fault of the MAP or the result of inadequate clean-up/ enumeration to allow meter installation to proceed then the MAP will notify EKEDP and the targets will be extended by a period corresponding to the period during which the MAP is impeded.
- 29.4. Every meter installed will comply with the technical standards and specification set out in Schedule B1. Meters that are found not to comply will be replaced as a priority within 5 working days at MAP's cost. No payment will be made for meters that are not in full compliance with standards and specification.
- 29.5. Every meter installed will fully comply with the installation standards set out at Schedule B2. Meters that are found not to comply will be replaced as a priority within 5 working days at MAP's cost. No payment will be made for meters that are not in full compliance with standards and specification.
- 29.6. Meter faults notified by customers to EKEDP and then by EKEDP to MAP will be rectified within 2 working days in accordance with clause 12.3.
- 29.7. Customer complaints in respect of the installation, maintenance, repair and inspection services delivered by the MAP will be logged and recorded by EKEDP's Work Force Management System or any other mechanism created by the EKEDP Customer Centre(s) and passed to the MAP for remedial action.

### **30. Key Performance Indicators:**

- 30.1. By the 5<sup>th</sup> working day of each month the MAP shall deliver t EKEDP a Monthly Performance Report for the calendar month just ended to the format and layout at Schedule E.

### **31. Reporting by MAP to EKEDP**

- 31.1. At or before the Commencement of the contract the EKEDP Project Manager will make the MAP aware of the Monthly Performance Reporting requirements and construct the monthly targets to be applied by extraction from Schedule A and from the MAP's submitted Bid.
- 31.2. The MAP will submit the following Reports to EKEDP:

- (i) Monthly Installation Report at clause 14.4
- (ii) Daily Installation Report as at clauses 6.3 and 7.4
- (iii) Daily/ weekly/ monthly Inspection Report in accordance with clause 9.3 (ii)
- (iv) Daily Fault Report in accordance with clause 12.5.
- (v) Monthly Performance Report in accordance with clause 29 above.

## **32. Meter Service Charge**

- 32.1. This refers to periodic payments made by an electricity customer to cover the cost of metering services rendered by MAP. Meter Service Charge covers the cost of providing meters and the ongoing costs of operating and maintaining the metering infrastructure. This cost structure provides a transparent way of billing metering costs so that customers are only required to pay for their own metering services.
- 32.2. The Metering Service Charge will be set to amortise the costs of the meter, its installation and subsequent maintenance and regular inspection over a 10-year term from the date of installation.
- 32.3. Schedule D sets out the Schedule of Prices which constitute the Metering Charge for each type of meter applicable to each customer type being provided taken from the Bid document submitted by the MAP.
- 32.4. Where a customer elects to pay for a meter asset upfront, the amount payable to the MAP shall be the total cost for that type of meter shown in Schedule D, which shall cover the efficient cost of the meter asset plus its installation cost plus a provision to cover its lifetime maintenance and replacement costs (assumed to be 10 years), excluding financing costs.
- 32.5. The MAP shall be entitled to its monthly Metering Service Charge subject to customer vending for the applicable month. Where a customer did not vend for a given period, the cumulative of the monthly Metering Service Charge for the period such customer has not vended shall be deducted upon the next vend and issued accordingly to the MSC in the prevailing month

## **33. Incentives and Penalties**

### **Overall timetable**

- 33.1. It is the responsibility of the MAP to adhere to the installation programme in accordance with clause 6. If the MAP is in arrears due to matters under the MAP's control, then he will receive a Notice in accordance with clause 30.2. If the situation is not remedied as set out in clause 29.2 then EKEDP will withhold part payment of the monthly MSC charges in accordance with the table below until such time as the arrears are fully remedied.

<b>Extent of arrears</b>	<b>Proportion of aggregated monthly MSC charges withheld</b>
<b>0 – 1 month</b>	<b>5%</b>
<b>1-3 months</b>	<b>7½%</b>
<b>➤ Than 3 months</b>	<b>10%</b>

33.2. Any MSC charges withheld will be reimbursed to the MAP once the installation program is regularised.

### **Meter Repair times**

33.3. The MAP shall forfeit the metering service charge for a given customer in any month that it fails to replace or repair the meter within two (2) working days stipulated unless the failure is a result of inaccessibility of customer's premises. Such forfeiture shall continue until the meter is replaced or repaired.

33.4. EKEDP shall in the event of a prolonged delay in repairing or replacing a defective meter asset be compensated by the MAP for loss of revenue.

33.5. EKEDP shall use the Daily fault Report to calculate the extent the delays each month.

## **34. Meter Handover to EKEDP**

34.1. When a meter has been amortised in full the payment of MSC by the customer will cease and the meter cease to be the property of the MAP. But does not relieve the MAP responsibility to such meter for the term of this Agreement.

34.2. MAP will immediately cease to include such meters in its monthly invoicing calculations.

## **35. Invoicing and Monthly Statement**

35.1. EKEDP will produce a statement from its customer billing and vending systems for each calendar month showing:

- (i) the number and cost of meters installed by the MAP by type in the month;
- (ii) the cumulative number and cost of meters installed by type and by month since the commencement of the Agreement;
- (iii) the amounts vended to pre-payment customers and the number of customers with no vend by category;

- (iv) the revenue billed to credit customers and the number with no consumption by category;
- (v) the MSCs to be applied in the month by type of meter subject to customer vend;
- (vi) the cumulative MSCs applied since commencement by type of meter;
- (vii) the unamortised cost remaining at the month end by type of meter;
- (viii) deductions for delays in fault rectification;
- (ix) (if applicable) a schedule of lines that had suffered a prolonged service outage in excess of 2 weeks and the number of customers affected by type.
- (x) EKEDP shall be granted a line of sight into the MAP dedicated account for the purpose of reconciliation.

35.2. EKEDP shall grant the MAP access to viewing right to the vending platform associated with meter asset supplied under this Agreement.

35.3. EKEDP and MAP shall meet within 10 working days to reconcile any differences between the statement which EKEDP has provided and the records and information of the MAP.

35.4. The MAP will invoice EKEDP for the MSCs plus any incentives less any penalties that are due on a calendar month basis within 15 working days of the month end.

35.5. EKEDP will approve the invoice within 5 working days. If any amount remains in dispute, then the amount not in dispute will be approved for payment by EKEDP.

## **36. Terms of payment**

36.1. EKEDP shall provide a payment structure and security acceptable to the MAP in line with the terms of this Agreement. The payment structure shall ensure timely disbursement in full to the MAP the aggregated metering service charge paid by all customers supplied with meters under this agreement. The Metering Service Charge paid by all customers shall be immediately ring-fenced in a dedicated account owned by the MAP.

36.2. The payment structure shall be maintained until full amortization of the cost of meter. Amortisation of the asset shall be over a period of 10 years.

36.3. Anytime a payment default occurs in this regard, EKEDP shall provide an irrevocable payment guarantees to the MAP in a format and amount specified by the MAP.



## **37. Event of Customer default**

37.1. It is each customer's responsibility to ensure that they pay the monthly MSC as a part of their electricity bill or, in the case of customers with a pre-payment meter that it holds enough credit to cover the monthly charges as they fall due. This responsibility will be set out in the meter instructions when the meter is installed. If the customer is not vending, such that the MSC falls into arrears, then EKEDP will issue a warning notice to the customer. If the customer does not rectify the arrears by vending enough credit to address the arrears, then the meter should be disconnected.

## **38. Taxes**

38.1. The metering service charge payable by the customer to MAP under this Agreement shall be calculated to be inclusive of value added tax.

38.2. Payment of MSC to the MAP by EKEDP will be after deduction of VAT which will be paid to the tax authorities.

## **39. Term**

39.1. The Term of this Agreement shall commence on the effective date and shall continue until the expiration of an initial term of eleven (11) years.

39.2. In the event that there are unamortised amounts outstanding at the end of the Term in respect of some meters then either:

- (i) EKEDP can reimburse the MAP for those amounts; the affected customers will continue to pay MSCs to EKEDP until their meter is fully amortised;
- (ii) This Agreement will be extended in respect of those customers with meters not fully amortised until such time as the meters have been amortised in full.

39.3. Service Agreement terms, which extend beyond the term of this Agreement, shall be subjected to the approval of the Commission. If this AGREEMENT expires or is terminated parties will not enforce any Service Agreement term, which purports to extend beyond the expiration or termination of this Agreement unless such extension is or has been mutually agreed upon by the parties and approved by the Commission. With respect to any term which survives expiration or termination of this AGREEMENT (as a result of such approval by the parties), the provisions of this Agreement that have been incorporated into such Service Agreement shall remain valid provisions of that Service Agreement unless and until the Contracting Parties thereto otherwise agree, notwithstanding termination of this Agreement.

## 40. Warranties

40.1. Each party represents and warrants to the other party that:

40.1.1. Such party has the full power and authority to execute, deliver and perform this Agreement and to carry out the transaction contemplated hereby;

40.1.2. To the best of such party's knowledge, the execution, delivery and performance by such party of this Agreement, does not and will not materially conflict with any legal contractual, or organizational requirement of such party; and

40.1.3. There are no pending or threatened legal, administrative, or other proceedings that if adversely determined, could reasonably be expected to have a material adverse effect on such party's ability to perform its obligations under this Agreement.

40.2. MAP warrants that:

40.2.1. services will be performed to the best of its ability and in accordance with reasonable and customary practices prevailing at the time for its business.

40.2.2. It has full title to the Meters and Metering Solution and is fully qualified to sell the Meters and Metering Solution to EKEDP.

40.2.3. It does not have other obligations or conflicts that will limit its ability to deliver on its obligation to EKEDP;

40.2.4. It has not provided any misleading information in the course of the procurement process for this Project;

40.2.5. It and/or its subcontractors are duly licensed by NERC as certified metering service providers in all relevant categories as may be relevant to enable it to implement the Project.

40.2.6. The Meters to be supplied for the Project are duly certified by NEMSA.

40.2.7. The meters supplied are fully compatible with EKEDP data, billing and vending systems.

40.2.8. All pre-payment meters supplied can and will only accept pre-paid vouchers or credits vended by EKEDP and not from any other external source.

40.2.9. It is financially sound, has the financial capacity and resources to deploy the financial accommodation it has committed to provide to EKEDP for the implementation of the Project.

- 40.2.10. It has adequate human resources, equipment, competence, expertise and skills necessary to carry out fully and satisfactorily, within the stipulated completion period, the delivery of the Meters in accordance with this Agreement
- 40.2.11. All the Meters are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Agreement.
- 40.2.12. The Meters to be provided conform in all material respects with the requisite technical specifications and are free from defects in design, material and workmanship; and comply with the requisite regulatory requirements applicable to the Nigerian Electricity Supply Industry.
- 40.2.13. It has and shall continue to comply with all Applicable Laws, ordinances, rules and regulations when performing its obligations under this Agreement.
- 40.2.14. The obligations expressed to be assumed by the MAP in this Agreement are legal, valid, binding and enforceable obligations.
- 40.3. The MAP acknowledges and agrees that EKEDP relied upon each of the Warranties as set out in Clause 28 when entering into this Agreement.
- 40.4. The MAP undertakes and warrants to EKEDP that each of the Representations and Warranties in this Clause 42 (MAP's Representations and Warranties) is given on the basis that it is true and accurate as at the date of this Agreement and repeated every day for the duration of Project Implementation.

## **41. Liabilities and Indemnity**

- 41.1. The MAP shall be fully and solely liable to EKEDP for the performance of the MAP's obligations. All corporate entities that make up the MAP under this Agreement shall be deemed to be jointly and severally liable to EKEDP for the performance of the MAP's obligations under this Agreement.
- 41.2. The MAP undertakes to fully indemnify and hold EKEDP and all its employees and officers harmless from and against any and all claims, demands, losses, consequences, damages, costs, penalties and expenses of any nature, including attorney's fees and expenses, which EKEDP may suffer as a result the performance of MAP's obligations under this Project, including:
- 41.2.1. all losses, expenses, costs, penalties, claims (including interest thereon), liabilities and demands which EKEDP may suffer or incur in connection with a breach by the MAP of any of its warranties;
- 41.2.2. any third-party liability for any accident, injury, illness and/or death of any individual(s), destruction of properties;

- 41.2.3. any failure of the MAP to obtain all permits, licences and approvals, as required by the Laws in relation to the design, execution and completion of the Project and the remedying of any defects; and
- 41.2.4. acts and omissions of MAP personnel, MAP's subcontractors and its NERC certified meter installers resulting from their access to Installation Locations as it relates to damage caused by the wilful default or negligence of the Key Expert or any MAP Sub-contractor or either of them or actions taken to remedy such wrongs, wilful and negligent acts and omissions.
- 41.3. The MAP shall indemnify and hold harmless EKEDP and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which EKEDP may suffer as a result of any third party liability for injuries and/or death of any individual(s), destruction of properties, and/or for any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Agreement by reason of the installation of the Meters by the MAP or the use of the Meters in the locations where they are installed.
- 41.4. The copyright in all documents, and other materials containing data and information furnished to EKEDP by the MAP herein shall remain vested in the MAP, or, if they are furnished to EKEDP directly or through the MAP by any third party, including MAPs of materials, the copyright in such materials shall remain vested in such third party. The MAP shall ensure that EKEDP's confidential information are adequately protected and undertakes to indemnify the EKEDP for any breach thereof.

## **42. Limitation of Liability**

- 42.1. Notwithstanding anything in this Agreement to the contrary, EKEDP shall not have any liability under this Agreement, for:
- (i) Any punitive or exemplary damages, or
  - (ii) Any special, consequential, incidental or indirect damages, including lost profits, lost data, lost revenues and loss of business opportunity, whether or not the other party was aware or should have been aware of the possibility of these damages.

## **43. Confidential Information.**

- 43.1. The Distributions Company and the MAP shall employ proper procedures and standards designed to maintain the confidential nature of the terms of this Agreement, except to the extend:

- (i) That the disclosure of which is reasonable believed by such party to be required in connection with regulatory or other legal requirements relating to its affairs;
- (ii) That to disclose to anyone or more of such party's employee, officers, directors, agents, attorneys or accountants who would have access to the contents of this Agreement and such a data and information in the normal course of the performance of such person's duties for such party, to the extent that such party has procedures in effect to inform such person of the confidential nature thereof.

#### **44. Insurance**

- 44.1. The MAP shall take necessary insurance with financially sound and reputable insurance companies to cover its obligations and responsibilities under this agreement.
- 44.2. EKEDP may request the MAP to provide certificates or other acceptable proof of its insurance, describing the coverage of its insurance, and notice of any material change to its insurance. In addition, EKEDP may require MAP to obtain a reasonable amount of additional insurance, by providing MAP with good reason for the additional insurance.

#### **45. Health and Safety**

- 45.1. All parties to this agreement shall comply with all statutory health and safety regulations.
- 45.2. Any accident to any MAP personnel and/ or any customer in connection with the services shall be reported to EKEDP immediately.

#### **46. Divestiture:**

- 46.1. Neither the MAP nor EKEDP shall divest themselves of any material obligation under this Agreement through sale, transfer, liquidation, exchange, or any other means for financial or ethical reasons without the express consent of the other party and the approval of the Commission.

#### **47. Assignment:**

- 47.1. This Agreement is specific to the parties and therefore, neither the MAP nor EKEDP shall assign any of the rights, interests or obligations contained in the Agreement without the express consent of the other party and the approval of the Commission. Any assignment of rights or delegation of duties or obligations without such prior written consent and approval shall be void of no effect.

#### **48. Notices**

48.1. All notices, requests or communications required hereunder shall be in writing and shall be deemed to have been duly given if delivered personally by hand or overnight courier service. This may also be delivered, mailed by certified or registered mail to the address or addressed in each instance to the parties at the addresses first set forth above (or at such other address as shall be given by either of the parties to the other in accordance with this paragraph.)

## **49. Severability**

49.1. If any term or other provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms, provisions and conditions of this Agreement shall nevertheless remain in full force and effect.

49.2. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible to the fullest extent permitted by applicable law.

## **50. Force Majeure Event**

50.1. "Force Majeure Event" shall mean any event or circumstance or combination of events or circumstances that is beyond the reasonable control of a party and that materially and adversely affects the ability of that party to perform any of its obligations under this Agreement but only to the extent that;

- (i) such circumstance, event or condition, despite the exercise of diligence, cannot be prevented, reasonably anticipated, avoided or overcome by the affected party;
- (ii) the affected party has taken all reasonable precautions, due care and measures to prevent, avoid or overcome the effect of such circumstance, event or condition on its ability to perform its obligations under this Agreement and to mitigate its Consequences;
- (iii) such circumstance, event or condition is not the direct or indirect result of a breach or failure by the affected Party to perform, any of its obligations under this Agreement; and
- (iv) Such circumstance, event or condition is without fault or negligence of the affected Party.

- 50.2. Neither Party shall be in breach of its obligations under this Agreement (other than payment obligations) or incur any liability to the other Party for any losses or damages of any nature whatsoever incurred or suffered by that other (otherwise than under any express indemnity in this Agreement) if and to the extent that it is prevented from carrying out those obligations by, or such losses or damages are caused by, a Force Majeure Event except to the extent that the relevant breach of its obligation would have occurred, or the relevant losses or damages would have arisen, even if the force Majeure Event had not occurred.
- 50.3. As soon as it is reasonably practicable following the date of commencement of a force Majeure Event, and within a reasonable time following the date of termination of a Force Majeure Event, any party invoking it shall submit to the other party reasonable proof of the nature of the force Majeure Event and of its effect upon the performance of the Party's obligations under this Agreement.
- 50.4. Parties shall, at all times take all reasonable steps within their respective powers and consistent with Good Operating Practices (but without incurring unreasonable additional Costs) to:
- (i) Prevent force Majeure Event affecting the performance of the MAP's obligation under this Agreement.
  - (ii) Mitigate the effect of any Force Majeure Event; and
  - (iii) Comply with its obligation under this Agreement.
- 50.5. The Parties shall consult together in relation to the above matter following the occurrence of a Force Majeure event.
- 50.6. Should (1) apply as a result of a single Force Majeure Event for a continuous period of more than (180) days then the parties shall endeavour to agree to any modifications to this Agreement (including without limitation, determination of new tariffs if appropriate) in accordance with the provision of Clause (1) (d) which may be equitable having regard to the nature of the force Majeure Event and which is consistent with the statutory requirement.

## **51. Fundamental Principles of Good Faith and Fair Dealing**

- 51.1. In entering into this Agreement, Parties acknowledge that all aspects of the business relation and dealings, between them contemplated by this Agreement including the performance of all obligations and the exercise of all rights under this AGREEMENT shall be governed by the fundamental principle of good faith and fair dealings. Parties shall assure that they respectively, comply with the principles of good faith and fair dealing.

## **52. Termination of this Agreement**

52.1. This AGREEMENT may be terminated as follows;

- (i) In the event that either party defaults in the performance of any of its duties or obligations that are material in the context of the overall relationship between them and fails to cure such default within sixty (60) days after being given written notice specifying the default, or, with respect to any default which cannot reasonably be cured within sixty (60) days.
- (ii) If the defaulting party fails to provide, promptly after being given notice specifying the default, a specific written action plan for curing the default as expeditiously as reasonably possible, including a specific schedule for the action plan and a mutually agreed upon end date by which the action plan is to be completed and the default cured, and to proceed utilizing its reasonable best efforts to cured the default in accordance with and on the schedule specified in the action plan, then the party not in default may, by giving written notice thereof to the defaulting party, terminate this AGREEMENT as of a date specified in such notice of termination. Additionally, in the event that the defaulting party fails to cure the default by the mutually upon end date as set forth in the action plan, the party not in default may, by giving written notice thereof to the defaulting party, immediately terminate this AGREEMENT.
- (iii) In the event that either party is declared insolvent or bankrupt, is the subject of any proceedings relating to its liquidation, insolvency or for the appointment of a receiver or similar officer for it, makes an assignment for the benefit of all or substantially all of its creditors, then the other party hereto may, by giving written notice thereof to such party, terminate this AGREEMENT as of a date specified in such notice of termination.
- (iv) Expiration or termination of this AGREEMENT shall not relieve the parties of their respective obligations, which survive expiration or termination under the Terms and Conditions.
- (v) In the event of termination of this Agreement due to MAP default, where such default was not cured within 60 days of written notice by EKEDP. The MAP shall forfeit applicable Metering Service Charge from the month in which notice was served including all arrears of Metering Service Charge against already deployed meters.
- (vi) EKEDP shall continue to issue Metering Service Charge less of inspection & replacement cost for installed MAP meters until fully amortised. **Unamortised meter costs in the event of termination** pursuant to sub-clause (V) above shall be forfeited by the MAP



52.2. Except as may be otherwise provided in this Agreement, such breach by either party will result in the other party being responsible to reimburse the non-defaulting party for all costs incurred directly as a result of the breach of this Agreement and shall be subjected to such damages as may be allowed by law including all legal fees and costs of enforcing this Agreement.

52.3. Where the MAP is in material breach, EKEDP may take ownership of any performance bond submitted by the MAP.

### **53. Governing Law**

53.1. This agreement shall be governed by, construed and enforced in accordance with the laws of the Federal Republic of Nigeria.

### **54. Change of Law**

54.1. In the event that implementation and enforcement of Applicable Law, and notably the amendment of the MAP Regulations, impacts any part of the scope of Meters or Metering Solutions under this Agreement (the "**Qualifying Change Event**"), both parties shall work collaboratively to try to mitigate unfavorable impacts of the Regulations or such Applicable Law to the Project. In furtherance of the above,

54.1.1. Each party shall abide by the requirements of the Applicable Law or regulation.

54.1.2. Each party shall independently bear the cost of amendments and transitioning in alignment with any new Regulations as contemplated in this clause without recourse to one another. The provision of this clause does not deter from the relief of extension of delivery time for delays occasioned by the Qualifying change event.

54.1.3. Each party agrees to indemnify and hold the other party harmless against any liability, claim, damage, loss or expense whatsoever, incurred by the other party as a result of the occurrence of the Qualifying Change Event, or amendment of the MAP Regulations.

### **55. Dispute Resolution**

55.1. The parties shall attempt to resolve any dispute, controversy or claim arising out of or relating to this Agreement, through negotiations.

55.2. If the matter, including any question regarding its breach, existence, validity or termination or the legal relationships established by this agreement is not resolved by negotiation within 30 days of receipt of a written "invitation to negotiate", the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (ADR) procedure, or in default of agreement, through an ADR procedure as governed by the Arbitration and Conciliation Act of Nigeria Cap A18 LFN 2004 which Rules are deemed to be incorporated by reference into this clause.

55.3. The language of the arbitration shall be English; and the place of the arbitration shall be Lagos Nigeria.

## **56. Corrupt Practices Act Requirements**

56.1. Both parties shall ensure adherence to all ethical norms and in no form either directly or indirectly be involved in unethical practices.

56.2. Parties shall comply with all relevant orders, code and regulations issued by the Nigeria Electricity Regulatory Commission and all Anti-Corruption Laws and Guidelines as contained in the Corrupt Practices and Other Related Offences Act 2000, Economic and Financial Crimes Commission Act 2002, Advanced Fee Fraud and Other Related Offences Act 2006, Money Laundering Prohibition Act 2004 and other anti-corruption regulations under the Laws of the Federal Republic of Nigeria.

## **57. Third Party Beneficiaries**

57.1. Unless explicitly stated otherwise elsewhere in this Agreement, no person other than the parties themselves have any right or remedies under this agreement.

## **58. Relationship of the Parties.**

58.1. The parties hereto understand and agree that the Collaboration is limited to the activities, rights and obligations as set forth in this agreement. Nothing in this Agreement shall be construed or shall be deemed, for financial, tax, legal or other purposes.

- (i) To create or imply a general partnership between parties,
- (ii) To make either party the agent of the other for any purpose,
- (iii) To alter, amend, supersede or vitiate any other arrangements between the Parties with respect to any subject matters not covered hereunder,
- (iv) To give either party the right to bind the other,

- (v) To create any duties or obligations between the parties except as expressly set forth herein, or
- (vi) To grant any direct or implied licenses or any other right other than as expressly set forth herein.

## **59. Counterparts**

59.1. This Agreement may be executed in one or more counterpart, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This shall not be effective until the execution and delivery between each of the parties of at least one set of the counterparts.

## **60. Interpretation**

60.1. The parties agree that this Agreement is to be constructed as jointly drafted. Nothing in this Agreement is intended to violate any law or shall be interpreted to violate any law. This agreement shall be constructed according to its fair meaning and not for or against either party. The masculine gender shall be deemed to denote the feminine gender the singular to denote the plural, and vice-versa, where the context so permits.

# Schedule A

Analysis of Customers to be provided with metering services

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# **Schedule B**

## **Minimum Meter Specifications & Installation Requirements**

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See Annexure 1 of Bid Document

# Schedule C

## Service Level Agreement & Key Performance Indicators

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The Distribution Company and the MAP shall enter into Service Level Agreements specifying the following standards and responsibilities:

1. Time frame for meter installation:

The MAP shall install \_\_\_\_\_ meters over \_\_\_\_\_ period. (In accordance with [Schedule A](#))

2. Minimum Installation Standards:

The following installation standards shall apply:

- a. Every Meter along with its auxiliary equipment shall be enclosed in a standard cubicle/box as in Appendix D of the Metering Code.
- b. Metering point shall be located on the incoming side of the customer's switch gear/miniature circuit breaker.
- c. Where the Metering System is not mounted on a pole, it shall be mounted at a height of 1.8m on a board on a wall (at about an eye level) for ease of reading and maintenance while a split consumer unit if applicable will be mounted at the consumer's convenience at his cost.
- d. The incoming service cable to the meter shall be visually traceable.
- e. The size of CT secondary cables shall be 4mm<sup>2</sup> (standard) for LV installation and 6mm<sup>2</sup> for H.T installation. V.T cable size shall be 2.5mm<sup>2</sup>.
- f. All VT/CT secondary cables shall be numbered and ferruled for easy identification.
- g. The size of the neutral cable shall be the same as the size of phase cables.
- h. Correct connection must be ensured with the right polarity, phase association and phase sequence.
- i. Joints in CT and VT cables shall be avoided.

- j. All CT and VT cable shall be dipped/tied properly.
- k. In the case of outdoor CT and VT, the meter shall be located as close as possible to the instrument transformers.
- l. The class of the CT shall not be inferior to the associated meter.
- m. All components of the metering system shall be sealed as specified in Appendix C of the Metering Code.

3. Maintenance:

The MAP shall be responsible for meter maintenance activities and revenue protection, which include:

- a. Monitoring of meter tampering and bypass
- b. Periodic inspection of the meter to ensure functionality and accuracy
- c. Replacement of faulty meters or faulty meter parts when due.

4. Periodic Meter Reading:

- a. The MAP or Distribution Company (as agreed) shall schedule at least once in four (4) months reading for all manually read (credit) meters.

5. Meter Replacements:

In line with the provisions of the Metering Code,

- a. A customer's meter shall be repaired or replaced by the MAP within two (2) working days.
- b. A customer meter shall be repaired or replaced at no additional cost within the amortization period of the asset unless the damage was as a result of the wilful action of the customer. Where there is a dispute on the responsibility for the damage of a meter asset, the customer has a right to fair resolution in line with the Metering Code and other applicable Regulations and the MAP shall provide a meter pending the resolution of the dispute.
- c. Where it is established that the customer wilfully damaged a meter, the MAP shall replace the meter based on an upfront

payment by the customer or other mutually agreed terms of payment.

6. Protection against Unauthorized Access/Tampering:

- a. Notification of Unauthorized Access. The MAP shall, as soon as reasonably practicable, notify the Distribution Company of any unauthorized access or tampering of the meter and/or other accessories of which it is or becomes aware, including any material breach or potential material breach of security on a system or network which contains, processes or transmits Confidential Information.
- b. Furnishing Details of Unauthorized Access. The MAP shall, as soon as reasonably practicable, furnish the Distribution Company with full details of the unauthorized access or tampering, or attempt thereof, and use reasonable efforts to assist the Distribution Company in investigating or preventing the recurrence of any unauthorized access or tampering, or attempt thereof.
- c. Cooperation. Each Party shall make reasonable efforts to cooperate with the other Party in any litigation and investigation against third parties deemed necessary by the other Party to protect its proprietary rights. Each Party shall have the right to conduct and control any investigation relating to such breach or potential breach of its Confidential Information that it determines is appropriate.
- d. Recurrence. Each Party shall use all reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge of the other Party's Confidential Information.

7. Key performance Indicators:

- a. The MAP shall conform to the Key Performance Indicators as attached in Schedule C

8. Data Management and Security

- a. All data and information submitted by or on behalf of the Distribution Company to MAP or otherwise in MAP's possession or accessible by MAP pursuant to the provision of the Services, including without limitation all Personal Information ("Distribution Data"), are and shall remain the property of Distribution Company or applicable third parties. The Distribution Company Data shall not be:



- I. used by MAP or any MAP Agent other than in connection with providing the Services;
  - II. disclosed, sold, assigned, leased or otherwise provided to third parties or to anyone not having a specific need to know the information for providing the Services, by MAP or any MAP Agent; or
  - III. Commercially exploited by or on behalf of MAP or any MAP Agent.
- b. Return or Destruction of Data
- I. Upon Distribution Company's request at any time and upon the cessation or termination of the services, whichever is later, MAP shall, as directed by Distribution Company:
    - a. promptly return to the Distribution Company, in the format and on the media in use as of the date of the request, all, or the portion requested, of the Distribution Company's Data; or
    - b. erase or destroy all or a portion of the Distribution Company Data in MAP's possession prior to the cessation or termination of the services and destroy all media containing Distribution Company Data.
  - II. If the Distribution Company directs the MAP to erase or destroy all or a portion of the Distribution Company's Data, MAP shall promptly confirm to Distribution Company in writing that such erasure or destruction has occurred. Archival tapes containing any Distribution Company's Data shall be used solely for back-up purposes and shall be returned or destroyed pursuant to this Section.....
- c. Data Security
- I. MAP shall establish and maintain safeguards against the destruction, loss, alteration or unauthorized disclosure of the Distribution Company's Data in the possession of MAP or any MAP Agent in accordance with Distribution Company's security standards set out in the Service Agreement or as notified by Distribution Company to MAP from time to time. The Distribution Company shall be responsible for reasonable costs

incurred by the MAP in the event of changes to such standards after the effective date of the Agreement.

The MSP shall meet the performance standard set forth in the Market Rule Metering Code

## 9. Certified Replacement

The MAP shall ensure that all replacement meter is certified and approved by the distribution company before deployment to customers with defective or faulty meters.

## 10. Record Retention

The MAP shall provide to the distribution company all energy data of metered customer for which it acts as metering service provider or the authorized agent. The MSP shall retain all meter records required to be maintained by the MSP for a minimum period of seven (10) years.

## 11. Audits

EKEDP shall have the right to audit, from time to time during normal business hours and upon reasonable notice, the records and procedures of the MSP in order to verify compliance by the MSP with the obligations imposed on the metering service providers under the market rules and with the MSP's obligations under this agreement.

### Monthly Performance Report

Indicators	Month		Cumulative	
	Target	Actual	Target	Actual
<b>New customers</b>				
Illegal connections discovered				
<b>Installation (by customer type and total)</b>				
No of customers metered (excluding replacements)				
Arears in Installation Program (in months)	0		0	
<b>Replacement (by customer type and total)</b>				
No of customers re-metered				
<b>Faults</b>				
No of faults reported in month				
Average No of days taken to rectify				
No. of faulty meters not rectified within 2 days				
% of faults rectified within target	100%		100%	

<b>Customer Complaints</b>				
No. of complaints received from MAP customers				
No. of complaints resolved				
<b>Inspection performance &lt;DELETE IF NOT APPLICABLE&gt;</b>				
Inspections completed				
Arrears of Inspections (in months)	0		0	
<b>AC&amp;C Losses</b>				
AC&C losses on remetered zones %				
<b>Network Performance</b>				
Number of outages				
Refund of loss of revenue to MAP (Naira)	₦0		₦0	

**Schedule D**  
**Schedule of Prices (as per bid submitted)**

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