

Scaling Mini-Grids

SMG

Grant Agreement Template

*July 2022*

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**Governing Law and Dispute Resolution.** These Terms and any dispute arising out of or relating to these Terms shall be governed by and construed in accordance with the laws of the State of New York, without regard to the State of New York’s choice-of-law principles. You agree to submit to the exclusive jurisdiction over all disputes under these Terms in the federal and state courts in the State of New York located in New York County, and that you shall not contest such jurisdiction on any grounds, including without limitation on the ground that the forum is inconvenient.

**[GRANTING AUTHORITY]**

and

**[BENEFICIARY]**

**FORM OF GRANT AGREEMENT  
RELATING TO A MINI-GRID LOT FOR [*REGION*]*,* IN [*HOST COUNTRY*]**

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**Grant Agreement**

Date: [●] 20[●]

**GRANT AGREEMENT** (this “**Agreement**”) is dated [●] 20[●] and entered into

**BETWEEN**:

1. **[*INSERT* *GRANTING AUTHORITY*]** (the “**Granting Authority**”); and
2. [***INSERT CONCESSIONAIRE***], a company duly incorporated in [***insert details***] with its registered office at ………… [*insert details*] (the “**Beneficiary**”),

collectively referred to as the “**Parties**” or, individually, a “**Party**”.

**WHEREAS**:

1. The Granting Authority is desirous of supporting private sector entities undertaking the construction, operation, and maintenance of Mini-Grids and providing customers living in unserved or underserved communities with sustainable access to electricity.
2. The Beneficiary is a duly incorporated and registered company ………… (*specify type of legal entity*), which has been awarded a concession for the development, operation and maintenance of Mini-Grids in …………… [*insert Host Country*].
3. The Beneficiary has met the eligibility requirements for viability gap funding.
4. In order to facilitate the development of the Mini-Grid[*Sites/Lots*], the Granting Authority is desirous of providing a financial grant to the Beneficiary as viability gap funding to enable the Beneficiary to build, own, operate, and maintain Mini-Grids in ………… [*insert Host Country*] on a financially viable basis.

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

# DEFINITIONS; RULES OF INTERPRETATION

## **Definitions**

Capitalised terms used in this Agreement shall have the same meanings given to them in the Concession Agreement unless otherwise defined below.

“**Concession Agreement**” means the concession agreement entered into between the Beneficiary as concessionaire and ………… as grantor dated ………….

“**Day**” means each period of twenty-four (24) Hours commencing at 00:00 Hours, and “**Daily**” shall be construed accordingly.

“**Dispute**” has the meaning given to it in Clause 15.1.

“**Effective Date**” has the meaning given to it in Clause 2.1.

“**Extended Remedy Period**” has the meaning given to it in Clause 10.2 or 10.3 as relevant.

“**Grant**” means the viability gap funding to be provided by the Granting Authority to the Beneficiary pursuant to this Agreement.

“**Grant Expiry Date**” means the earlier to occur of: (i) an early termination of this Agreement in accordance with Clauses 10.2 and 10.3 of this Agreement; and (ii) the date on which the Beneficiary has received the Total Grant Amount.

“**Grant Period**” means the period set out in Clause 2.2 or as may be extended pursuant to this Agreement.

**“Host Country**” means ………… [*insert relevant country*].

“**Initial Provisions**” means Clauses 1.1 (*Definitions*), 1.2 (*Rules of Interpretation*), 2 (*Term*), 4 (*Conditions Precedent*), 7 (*Representations and Warranties*), 9 (*Confidentiality*), 11 (*Force Majeure*), 12 (*Indemnities*), 13 (*Governing Law*), 14 (*Commercial Acts; Sovereign Immunity*), 15 (*Resolution of Disputes*) and 16 (*Miscellaneous*).

“**Notice of** **Dispute**” has the meaning given to it in Clause 15.1.

“**Per Connection Amount**” has the meaning given to it in Clause 3.1.

“**Proof of Connections**” means the metering data of the Customers’ electricity consumption for [three (3)] Months after connection of the Customer.

“**Refund Period**” has the meaning given to it in Clause 10.8.

“**Signing Date**” means the date of this Agreement.

“**Total Grant Amount**” has the meaning given to it in Clause 3.1.

“**Written Notice**” means a written message or letter sent by one Party of this Agreement to the other Party by either registered mail or email, or any other means which allow the sending Party to verify that the receiving Party has received the message or letter.

## **Rules of Interpretation**

In this Agreement:

### the headings and table of contents are for convenience only and shall be ignored in interpreting this Agreement;

### the singular includes the plural and vice versa;

### references to Clauses, paragraphs, Schedules, Annexes and Appendices are references to Clauses and paragraphs of, and Schedules, Annexes and Appendices to, this Agreement;

### Schedules, Annexes and Appendices hereto shall form part of this Agreement;

### the terms “include” and “including” mean without limitation;

### all periods of time and dates shall be based on and computed according to the Gregorian calendar and times of day are the times of day in the Host Country;[[1]](#footnote-2)

### a reference to the Granting Authority or Beneficiary, any Party or other Person includes its successors in title, permitted assignees and transferees;

### except as provided for herein, a reference to this Agreement or any other agreement, document or instrument shall mean this Agreement or such other agreement, document or instrument as the same may be amended, modified, supplemented, novated or replaced from time to time; and

### where provision is made for the giving of notice, certificate, determination, consent or approval by any Person, that notice, certificate, determination, consent or approval shall be in writing, and the words “notified,” “certified,” “determined,” “consents” or “approved” shall be construed accordingly.

# TERM

## The Initial Provisions shall come into full force and effect on the Signing Date. The remaining provisions of this Agreement (other than the Initial Provisions) shall come into full force and effect on the date on which the conditions precedent set forth in Schedule 1 are satisfied or waived (such date being the “**Effective Date**”).

## Subject to Clause 2.3 below, the term of this Agreement shall commence on the Effective Date and shall remain in force until the Grant Expiry Date (the “**Grant Period**”).

# GRANT PAYMENT AND SUSPENSION

## In order to facilitate the development of the Mini-Grids included in the Concession, the Granting Authority shall provide the Beneficiary with a Grant of ………………… Dollars (*insert amount*) per Connection (“**Per Connection Amount**”) up to the amount equalling the Per Connection Amount multiplied by the Target Completion Connections, being an amount equal to ………………… [*US$x*] (the “**Total Grant Amount**”).

## The Grant shall be disbursed in accordance with Schedule 2 (*Conditions of Disbursement*) and subject to the conditions precedent specified therein.

## The maximum number of Connections that the Beneficiary may claim a Grant for is the Target Completion Connections and the maximum amount of the Grant to be disbursed under this Agreement is the Total Grant Amount.

## If the Granting Authority reasonably believes that any event in Clause 10.2 has occurred, the disbursement of the Grant may be suspended by Written Notice from the Granting Authority. The suspension will continue for a maximum period of ………………… [sixty (60)] Days [or the Extended Remedy Period (if longer)], during which time the Granting Authority will decide whether the event giving rise to the Granting Authority’s right to terminate this Agreement has been remedied or waived to its satisfaction or whether to issue a Written Notice to terminate this Agreement.

## [*The Grant* *shall be paid to the Beneficiary free from all taxes and withholding*.][[2]](#footnote-3)

## Each payment of the Grant shall be made by the Granting Authority within [twenty (20)] Days of the notification of fulfilment of conditions precedent to that disbursement under Clause 4.2 below.

## Payment shall be made to the account of the Beneficiary that is notified in writing to the Granting Authority or, upon the request of the Beneficiary, to an account of the Beneficiary’s Lenders.

# CONDITIONS PRECEDENT FOR GRANT DISBURSEMENT

## The Parties agree and acknowledge that, for each payment milestone, the Grant shall only be disbursed on verification that the Beneficiary has fulfilled the related conditions precedent as per the conditions and deadlines stipulated in Schedule 2 (*Conditions Precedent to Disbursement*), unless waived or otherwise agreed on with the Granting Authority in writing.

## On the fulfilment of all conditions precedent of a particular payment milestone as set out in Schedule 2 (*Conditions Precedent to Disbursement*), the Granting Authority shall notify the Beneficiary no later than …………… (*specify the numbers of Days*) Days following the date of fulfilment.

# BENEFICIARY OBLIGATIONS

## The Beneficiary shall:

### ensure that sufficient financing is secured to design, develop, operate and maintain the Mini-Grids;

### secure all necessary Consents to operate the Mini-Grids at its own expense;

### design, develop, operate and maintain the Mini-Grids in accordance with Good Industry Practice;

### recruit and employ all personnel necessary to undertake the Concession Works and the Concession Services, at its own expense, including recruitment and employment of personnel who possess the required skills and experience that are appropriate to the tasks to which they are assigned, to operate and maintain the Mini-Grids and to provide any Additional Services, provided that this obligation can be satisfied by the Beneficiary subcontracting the Concession Works to the EPC Contractor, and subcontracting the operating and maintenance of the Mini-Grids and the provision of any Additional Services to the OSA Contractor;

### provide Concession Works and Concession Services in compliance with the Applicable Laws, the Concession Agreement and this Agreement;

### comply with all Applicable Laws, the Environmental and Social Requirements and the Consents;

### use the Grant for the purpose specified in, and in accordance with, this Agreement;

### maintain proper books, data and records in accordance with Applicable Laws; and

### …………………………………………… (*Add additional General Obligations if necessary*).

# REPORTING AND MONITORING REQUIREMENTS

## The Beneficiary shall maintain, at a location acceptable to the Granting Authority, the Mini-Grids records and reports that document the operation and maintenance of the Mini-Grids in form and substance satisfactory to the Granting Authority.

## The Beneficiary shall maintain all records and documents submitted in support of its applications for Grants hereunder for a period of …………… (*insert number*) years, in accordance with Good Industry Practice and Applicable Laws, or in such form and format as agreed between the Parties, and shall permit the Granting Authority or its representative to have access thereto for monitoring purposes as provided under this Agreement.

## The Granting Authority shall have the right to:

### request from the Beneficiary any information required to verify the Service Standards provided to Customers and the progress of construction and connection of Customers, and compliance with any other obligation under this Agreement; and

### inspect the necessary books, data and records of the Beneficiary to monitor the Project activities.

# REPRESENTATIONS AND WARRANTIES

## **Granting Authority Representations and Warranties**

The Granting Authority hereby represents and warrants to the Beneficiary that:

### it has full power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement;

### the execution, delivery, and performance of this Agreement by or on behalf of the Granting Authority:

#### has been duly authorised by all requisite action on the part of the Granting Authority; and

#### will not violate Applicable Law;[[3]](#footnote-4)

### this Agreement constitutes a legal, valid and binding obligation of the Granting Authority, subject to the Legal Reservations;

### no filing or registration with, no notice to and no permit, authorisation, consent or approval of any Person is required for the execution, delivery or performance of this Agreement by the Granting Authority, except for such permits, authorisations, consents or approvals as have been obtained;

### it is not in default under any agreement or instrument of any nature whatsoever to which it is a party or by which it is bound in any manner that would have a material adverse effect on its ability to perform its obligations under this Agreement or the validity or enforceability of this Agreement; and

### there is no action, suit, proceeding or investigation pending, or to the Granting Authority’s knowledge, threatened against the Granting Authority, which if adversely determined would have a material adverse effect on its ability to perform its obligations under this Agreement or the validity or enforceability of this Agreement.

## **Beneficiary Representations and Warranties**

The Beneficiary hereby represents and warrants to the Granting Authority that:

### the Beneficiary is a limited liability company, duly incorporated and validly existing under Applicable Law, and has full corporate power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement;

### the execution, delivery and performance of this Agreement by the Beneficiary:

#### has been duly authorised by all requisite corporate action on the part of the Beneficiary, and no other proceedings on the part of the Beneficiary or any other Person are necessary for such authorisation; and

#### will not:

##### violate Applicable Law;

##### violate any provision of the memorandum and articles of association (or equivalent governing documents) of the Beneficiary; or

##### be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any indenture, agreement for or relating to borrowed money, bond, note, instrument or other agreement to which the Beneficiary is a party or by which the Beneficiary or its property is bound,

excluding defaults or violations that would not, individually or in the aggregate, have a material adverse effect on the business, properties, financial condition or results of operation of the Beneficiary, or on its ability to perform its obligations under this Agreement;

### this Agreement constitutes a legal, valid and binding obligation of the Beneficiary, subject to the Legal Reservations;

### no filing or registration with, no notice to and no permit, authorisation, consent or approval of any Person is required for the execution, delivery or performance of this Agreement by the Beneficiary, except for ………………… ………………… (*insert any relevant carve outs*);

### there is no action, suit, proceeding or investigation pending or, to the Beneficiary’s knowledge, threatened:

#### for the dissolution of the Beneficiary or any of its shareholders; or

#### against the Beneficiary, which, if adversely determined, would have a material adverse effect on its ability to perform its obligations under this Agreement or the validity or enforceability of this Agreement.

## **Conduct of the Parties**

### Each Party represents, warrants and covenants to the other Party that it has not engaged in, nor will it engage in, (and it has not authorised or permitted, nor will it authorise or permit, any Affiliate or any other Person acting on its behalf to engage in) any activity in breach of Anti-Corruption Laws with respect to and during the procurement or execution of this Agreement, or otherwise in connection with the Project.

### No Party will enter into any transaction in connection with the Project with, or for the benefit of, any Prohibited Person.

### No Party shall engage in (and no Party shall authorise or permit any Affiliate or any other Person acting on its behalf to engage in) with respect to the Project or any transaction contemplated by this Agreement, any Sanctionable Practices.

# NOTICES

## All notices or other communications to be given or made under this Agreement shall be in English and in writing, shall be addressed for the attention of the Persons indicated below and shall be delivered personally or sent by courier or, unless such communication requires a signature, email. The addresses of the Parties and their respective email addresses shall be:

**If to the Granting Authority**:

………………… ………………… (*insert*address)

Telephone:

Email: …………………

Attention: …………………

Telephone:

Email: …………………

Attention: …………………

**If to the Beneficiary**:

………………… ………………… (*insert* address)

Telephone: …………………

Email: …………………

Attention: …………………

## Except as otherwise expressly provided in this Agreement, all notices shall be deemed to be delivered:

### when delivered by hand or by overnight courier; or

### if received during business hours on a Business Day for the receiving Party, when transmitted by email to the receiving Party’s email address and, if received after business hours or on a day that is not a Business Day for the receiving Party, on the receiving Party’s first Business Day following the date transmitted by email to the receiving Party’s email address.

## Any notice given by email shall be confirmed in writing, delivered personally or sent by courier, but the failure to so confirm or deliver shall not void or invalidate the original notice if it is in fact received by the Party to which it is addressed.

## A Party may, with no less than [five (5)] Days’ notice, change the address, addressee and/or email address to which such notices and communications to it are to be delivered or emailed.

# CONFIDENTIALITY

## Each Party shall, and shall cause its and its employees, consultants and agents to, hold in confidence all documents and other forms of information, including electronic communications, marked as confidential by or on behalf of the Party providing the information relating to the Project.

## Notwithstanding the foregoing, a Party may disclose such information to its professional advisors and to prospective Lenders or Shareholders of such Party, or to any political risk providers (or reinsurers of such political risk providers), to succeeding entities, to prospective transferees and assignees and their professional advisors that, in each case, other than with respect to its Lenders, have agreed to be bound by these confidentiality provisions.

## The provisions of this Clause 9 (*Confidentiality*) shall not apply to any information:

### in the public domain otherwise than by a breach of Clause 9.1 (*Confidentiality*) by the same Party;

### in the possession of the Party before divulgence that was not obtained under an obligation of confidentiality;

### obtained from a third party who is free to divulge the same to other third parties and that was not obtained by either Party under an obligation of confidentiality;

### required to be disclosed by:

#### law;

#### appropriate regulatory authorities; or

#### a court, arbitrator, Expert or administrative tribunal in the case of proceedings before a court, arbitrator, Expert or tribunal to which the disclosing Party is a party; or

#### the Party claiming confidentiality has consented to be disclosed.

## The provisions of this Clause 9 (*Confidentiality*) shall survive for a period of [two (2)] years from the termination or expiry of this Agreement.

# TERMINATION

## Unless extended as per Clause 2.3 or terminated in accordance with this Clause 10, this Agreement shall terminate on the expiry of the Grant Period.

## Each of the following events, if not remedied in full within the time permitted (if any), shall give rise to the right of the Granting Authority to terminate this Agreement:

### the occurrence of any material breach by the Beneficiary of this Agreement that is not remedied within [sixty (60)] Days after a Written Notice from the Granting Authority in accordance with Clause 10.4; provided that for material breaches that can be remedied only in more than [sixty (60)] Days, the Beneficiary may have such additional time to remedy that breach as the Granting Authority may, in its absolute discretion, grant in order to remedy such material breach (the “**Extended Remedy Period**”) provided that the breach is remedied no later than the last day of the Extended Remedy Period;

### the occurrence of any of the following events:

#### the passing of a resolution by the shareholders of the Beneficiary for the winding up of the Beneficiary except in the case of a solvent restructuring;

#### the voluntary filing by the Beneficiary of a petition of bankruptcy, moratorium, or other similar relief;

#### the appointment of a liquidator in a proceeding for the winding up of the Beneficiary after notice thereto and due hearing, which appointment has not been set aside or stayed within [90][[4]](#footnote-5) Days of such appointment; or

#### the making by a court with jurisdiction over the Beneficiary of an order winding up the Beneficiary that is not stayed or reversed by a court of competent authority within [30][[5]](#footnote-6) Days;

### any falsification of data or results to secure the Grant or this Agreement;

### misappropriation of the Grant and/or the use of the Grant for matters not related to the Concession Works and the Concession Services, except for the return of Equity which funded the capital expenditure of the Beneficiary prior to the Grant disbursements, and a failure by the Beneficiary to refund the misappropriated funds within the Refund Period, except where any refund is being disputed in good faith by the Beneficiary, as set forth in Clause 10.8; or

### a breach of Clause 7.3 (*Conduct of the Parties*) by the Beneficiary.

## Each of the following events, if not remedied in full within the time permitted (if any), shall give rise to the right of the Beneficiary to terminate this Agreement:

### the occurrence of any material breach by the Granting Authority of this Agreement that is not remedied within sixty (60) Days after a Written Notice from the Beneficiary in accordance with Clause 10.4; provided that for material breaches that can be remedied only in more than sixty (60)Days, the Granting Authority may have such additional time to remedy that breach as the Beneficiary may, in its absolute discretion, grant in order to remedy such material breach (the “**Extended Remedy Period**”) provided that, the breach is remedied no later than the last day of the Granting Authority Extended Remedy Period;

### termination of the Concession Agreement;

### any of the representations and warranties made by the Granting Authority prove to be materially inaccurate or misleading on the date on which they were made or given; or

### a breach of Clause 7.3 (*Conduct of the Parties*) by the Granting Authority.

## Subject to Clause 10.8, upon the occurrence of an event specified in Clause 10.2 or 10.3, the non-defaulting Party may serve a notice (a “**Written Notice**”) on the defaulting Party specifying:

### the type and nature of the termination event that has occurred, giving reasonable details; and

### confirming the remedy period, including any Extended Remedy Period (if any), provided in Clause 10.2 or 10.3, as the case may be.

## If the defaulting Party either rectifies the termination event within the remedy period specified in the Written Notice, or proposes a rectification programme that the non-defaulting party consents to and implements the programme, in accordance with its terms, the Written Notice shall be deemed to be revoked and this Agreement will continue.

## The non-defaulting Party may extend the remedy period referred to in the Written Notice or agree changes to the rectification programme at any time by notice in writing to the defaulting Party.

## If a defaulting Party fails to implement any rectification programme in accordance with its terms or to remedy the termination event within the time period specified in the Written Notice or any extension thereof, this Agreement will terminate upon thirty (30) Days’ further Written Notice from the non-defaulting Party.

## Upon the occurrence of an event specified in Clause 10.2(d), the Granting Authority shall be entitled to reclaim any Grant amount already disbursed to the Beneficiary and the Beneficiary shall, within a period of forty-five (45) Days from the date of the Written Notice (the “**Refund Period**”), refund the Grant amounts received, except that where the Beneficiary disputes in good faith any such Written Notice for a refund it shall not be in default for failing to refund the Grant amounts received within the Refund Period provided that it has responded to, or made submissions in response to, any claim that may be brought against it in respect of the falsification of data or results, within the Refund Period and such claims are the subject of dispute resolution by the Parties in accordance with Clause 15. The right of the Granting Authority to reclaim any Grant amount and the corresponding right of the Beneficiary to respond to or defend any such claim against it pursuant to this Clause 10.8 shall survive for a period of [*two (2)*] years from the termination or expiry of this Agreement.

## Upon termination of this Agreement due to breach of any terms of this Agreement by the Beneficiary, no further sums will be owed to the Beneficiary by the Granting Authority.

# FORCE MAJEURE

## On the occurrence of a Force Majeure Event, the Affected Party shall as soon as reasonably practicable give notice to the other Party of the circumstances, events or conditions giving rise to the Force Majeure Event.

## The Affected Party shall make all reasonable efforts to reduce and mitigate the effects occasioned by the Force Majeure Event on the performance of this Agreement, and the Parties shall together take all necessary measures to carry on their obligations under this Agreement and limit the consequences of the Force Majeure Event.

## No payment obligations shall be excused by a Force Majeure Event.

## In the event of an inability by an Affected Party to fulfil its obligations due to a Force Majeure Event, the Affected Party shall not be liable for any delay or failure in performing its obligations (other than payment obligations) due to a Force Majeure Event for the duration of such Force Majeure Event.

# INDEMNITIES

## From and after the Effective Date and throughout the Grant Period, neither Party shall be liable to the other Party in contract, tort, warranty, strict liability or any other legal theory for any indirect, consequential, incidental, punitive or exemplary damages, loss of use, loss of contract, loss of opportunity or loss of profit; and in respect of a breach of the provisions of this Agreement, neither Party shall have any liability to the other Party save as expressly stated in this Agreement; *provided, however*, that this provision is not intended to constitute a waiver of any rights of one Party against the other with regard to matters unrelated to this Agreement.

## Notwithstanding Clause 12.1, each Party shall be liable to the other Party for any loss or damage arising by virtue of gross negligence or wilful misconduct.

# GOVERNING LAW

## The Agreement shall be governed by, and construed and enforced in accordance with, the laws of England and Wales.

# COMMERCIAL ACTS; WAIVER OF SOVEREIGN IMMUNITY

### The Granting Authority unconditionally and irrevocably agrees that the execution, delivery and performance by it of this Agreement constitutes a commercial transaction and that its rights and obligations under this Agreement are of a commercial nature.

### In addition to the foregoing, for the purposes of Clause 15 (*Resolution of Disputes*) the Granting Authority unconditionally and irrevocably agrees that:

#### should any proceeding (including any arbitration proceeding) be brought against it or its assets in relation to this Agreement or any transaction arising from this Agreement, no immunity from such proceedings shall be claimed by or on behalf of itself or with respect to its assets, except that this paragraph: (i) shall not apply to military property (including military aircraft and warships) customarily used for defence purposes and under the control of a military authority; and (ii) diplomatic and consular property customarily used to discharge diplomatic and consular functions and under the control of a diplomatic or consular authority;

#### it waives, to the fullest extent permitted by law, any right of immunity that it or any of its assets has or may acquire in the future in any jurisdiction in connection with any such proceedings or the enforcement of related final judgments, decisions or awards; and

#### it consents generally in respect of the enforcement of any final judgments, decisions or awards against it in any such proceedings (including any arbitration proceedings) in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings (including the making, enforcement or execution against or in respect of any assets whatsoever irrespective of their use or intended use).

# RESOLUTION OF DISPUTES

## **Notice of Dispute**

If a dispute, controversy or claim arising out of or relating to this Agreement or its subject matter, existence, negotiation, interpretation, validity, termination or enforceability (including any non-contractual dispute or claim in relation to this Agreement) (a “Dispute”) arises, either Party shall have the right to serve on the other Party a Written Notice identifying the disputed issue (the “Notice of Dispute”).

## **Resolution by Parties**

### Within [fifteen (15)] Business Days of service of the Notice of Dispute, one or more Representatives of each Party, with the appropriate decision-making authority, shall meet to attempt to resolve the Dispute by agreement.

### If the Dispute is not resolved for any reason whatsoever (including if no such meeting has taken place) within [fifteen (15)] Business Days of service of the Notice of Dispute, then either Party shall have the right to refer the Dispute to arbitration in accordance with Clause 15. 3 (Arbitration).

## **Arbitration**

### Any Dispute that is not resolved by resolution of the Parties pursuant to Clause 15.2 (*Resolution by Parties*), shall be referred to and finally resolved by arbitration under the ICC Rules, and the ICC Rules shall be deemed to be incorporated by reference into this Clause 15.4 (*Arbitration*).

### Further:

#### the number of arbitrators shall be three (3);

#### the claimant shall nominate one (1) arbitrator and the respondent shall nominate one (1) arbitrator for appointment by the International Court of Arbitration;

#### if the claimant and/or the respondent fails to nominate an arbitrator within thirty (30) Days of receiving a notice of the arbitrator chosen by the party on the other side, an arbitrator shall be appointed on their behalf by the International Court of Arbitration in accordance with the ICC Rules. In such circumstances, any existing nomination or confirmation of the arbitrator chosen by the party on the other side of the proposed arbitration shall be unaffected, and the remaining arbitrator shall be appointed in accordance with the ICC Rules;

#### the two (2) arbitrators nominated by the Parties shall within fifteen (15) Days of the appointment of the second arbitrator jointly nominate a third arbitrator who, subject to confirmation by the International Court of Arbitration, shall act as President of the arbitral tribunal;

#### if the two (2) arbitrators nominated by the Parties fail to agree on a third arbitrator within thirty (30) Days of the nomination of the second arbitrator, the third arbitrator shall be appointed by the International Court of Arbitration at the written request of any Party;

#### the seat, or legal place, of the arbitration shall be London, United Kingdom;

#### the hearing shall be held in London, United Kingdom or, if the Parties agree in their respective absolute discretion, in ………… [*insert alternative venue in a neutral jurisdiction convenient to the Parties*];

#### the language of the arbitration proceedings shall be English; and

#### judgment on the award of the arbitral tribunal may be entered and enforced by any court of competent jurisdiction.

### Any arbitral award issued under this Clause 15.3 (*Arbitration*) shall be final and binding upon the Parties and shall be the sole and exclusive remedy between the Parties regarding all Disputes, and each Party undertakes to comply with and to carry out any such arbitral award, fully and without delay. The Parties expressly waive to the fullest extent permitted by law or under equity any rights of appeal to the courts of any jurisdiction with respect to any award of arbitration pursuant to this Clause 15.3 (*Arbitration*). The Parties expressly agree that any rights of appeal that may not be waived by a Party shall be exercisable by a Party only: (i) after the award has been fully implemented under this Clause 15.3 (*Arbitration*); or (ii) if such Party must pay an amount under such award, after such Party has either paid such amount to the other Party or deposited the amount of the award with the tribunal or a court of competent jurisdiction.

### Notwithstanding any Dispute between the Parties, each Party shall continue to perform all of its obligations under this Agreement.

### The Parties do not consent to the publication of any award made pursuant to this Clause 15.3 (*Arbitration*).

## **Interim Reliefs in the Courts of Host Country**

Notwithstanding Clause 15.3 (*Arbitration*), this Clause 15 (*Resolution of Disputes*) is without prejudice to a Party’s right to seek interim relief against another Party through the Host Country or any other competent courts to protect its rights and interests, or to enforce the obligations of the other Party or an arbitral award made pursuant to arbitration proceedings brought under this Agreement.

## **Governing Law of Arbitration Agreement**

The arbitration agreement set out in this Clause 15 (*Resolution of Disputes*) shall be governed by and construed in accordance with English law.

# MISCELLANEOUS

## **Expenses of the Parties**

All expenses incurred by or on behalf of each Party, including all fees and expenses of agents, representatives, counsel and accountants employed by the Parties in connection with the preparation of this Agreement, shall be borne solely by the Party who shall have incurred such expenses, and the other Party shall have no liability in respect thereof, except as otherwise agreed.

## **Further Assurances**

If it shall be necessary and proper after the execution hereof to execute any additional documents or take further action to effect the intent of this Agreement, the Parties agree to take such action.

## **Entire Agreement**

This Agreement is a complete and exhaustive statement of their agreement with respect to the subject matter contained in this Agreement and supersedes any previous agreements or understandings between the Parties.

## **Amendments**

### This Agreement can be amended only by written agreement between the Parties.

### [*Notwithstanding Applicable Law, the Granting Authority agrees that it shall not exercise any right to unilaterally modify this Agreement.*][[6]](#footnote-7)

## **Waiver**

### No waiver by a Party of any default by the other Party in the performance of any of the provisions of this Agreement shall:

#### operate or be construed as a waiver of any other or further default or defaults whether of a like or different character; or

#### be effective unless granted in writing duly executed by a duly authorised representative of such Party.

### Neither the failure by a Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement, nor time or other indulgence granted by one Party to the other Party, shall act as a waiver of such breach, nor as an acceptance of any variation, or as the relinquishment of any such right, or any other right under this Agreement.

## **Language**

The language for the purpose of administering and interpreting this Agreement shall be English.

## **Consents**

Unless otherwise provided in this Agreement, whenever a consent or approval is required by either Party from the other Party, such consent or approval (including a Consent) shall not be unreasonably withheld or delayed.

## **Severability**

If any term or provision of this Agreement is held by a court, arbitral tribunal, or other authority of competent jurisdiction to be invalid, void, unenforceable or against public policy, the rest of this Agreement will remain in full force and effect and will in no way be adversely affected.

## **Assignment and Security**

The Parties are not permitted to assign their interests in this Agreement, save that the Beneficiary may:

### charge or assign its rights and interests under this Agreement in favour of the Lenders; and

### subject to the terms and conditions of any political risk insurance policy or guarantee, assign to any political risk insurer, all or any part of its rights and interests under or pursuant to this Agreement.

## **Relationship of the Parties**

This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon any Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, to act on behalf of, to act as or be an agent or representative of, or to otherwise bind, the other Party.

## **No Third Parties**

Other than as specified in Clause 16.9 (*Assignment and Security*), this Agreement is intended solely for the benefit of the Parties, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, or confer any right of suit or action on any Person not a Party to this Agreement.

## **Counterparts**

This Agreement may be executed in two or more counterparts, all of which will be considered one and the same Agreement and each of which will be deemed an original.

**IN WITNESS WHEREOF**, this Agreement has been executed in two counterparts by duly authorised representative of the Parties hereto on the day, month and year first above written.

**Signed for and on behalf of Granting Authority**

Date:

By:

Name:

Authorised signatory:

Seal:

**Signed for and on behalf of the Beneficiary**

Date:

By:

Name:

Authorised signatory:

## Seal:

1. Schedule 1   
   Conditions Precedent to Effective Date

*Please note that some of the conditions in this Schedule may already be fulfilled through a duly filled application for the Grant which has been accepted by the Granting Authority, in which case the respective conditions may be deleted.*

* + 1. Execution of this Agreement and the Concession Agreement by each of the parties thereto.
    2. Proof that the Beneficiary has been duly incorporated under the Applicable Law, as a local entity.
    3. Incumbency Certificate executed by a director and the company secretary or two directors of the Beneficiary, along with a board resolution, confirming that it is duly authorised to enter into this Agreement.
    4. [*The Beneficiary having obtained a ………………… (insert as relevant – Mini-Grid/Generation and Distribution) Licence that covers each* [*Mini-Grid Site/Mini-Grid Lot]*.[[7]](#footnote-8)]
    5. The issue of a legal opinion by …………… [the Attorney-General[[8]](#footnote-9)] in respect of the entry into by, and the enforceability of the obligations under this Agreement against, the Granting Authority.[[9]](#footnote-10)
    6. [*Evidence of the approval of this Agreement (including any indemnities included in it) by the …………… [Parliament/Government/President].*]

1. Schedule 2  
   Conditions Precedent to Disbursement[[10]](#footnote-11)
   * 1. **Milestone 1 – Mini-Grid [*Site/Lot*] Technical Commissioning**

Disbursement of up to ………… []% (*enter percentage in words*) of the Total Grant Amount on [*Mini-Grid Site Technical Commissioning of a Mini-Grid/Mini-Grid Lot Technical Commissioning of a Mini-Grid Lot*].

The Beneficiary may make a claim to the Granting Authority for a *pro rata* amount of the Milestone 1 payment upon each Mini-Grid [*Site/Lot*] in the Concession Area achieving Mini-Grid [*Site/Lot*] Technical Commissioning.

The Beneficiary shall submit evidence of the following conditions precedent in order to make a claim under this paragraph 1.1:

* + - 1. The Independent Engineer has issued the Final Acceptance Certificate for that Mini-Grid [*Site/Lot*];
      2. [*Other evidence to be specified*.]
    1. **Milestone 2 – Interim Concession Commissioning Connections**

Subject to Clause 3.3 of this Agreement, disbursement of ………… []% (*enter percentage in words*) of the Total Grant Amount upon the Beneficiary achieving ………… []%[[11]](#footnote-12) (*enter percentage in words*) of the Target Commissioning Connections.

The Beneficiary shall submit evidence of the following conditions precedent in order to make a claim under this paragraph 1.2:

* + - 1. the Beneficiary has signed a Customer Agreement for each Connection that it is claiming a Grant payment for;
      2. the tariff set by the Beneficiary in the Customer Agreement complies with the current Tariff Schedule [*except as permitted in respect of any Special Customer pursuant to the Concession Agreemen*t]; and
      3. the Beneficiary has submitted evidence of Proof of Connections to the Granting Authority and the Granting Authority has verified and approved such evidence.[[12]](#footnote-13)
    1. **Milestone 3 – Concession Commissioning Connections**

Subject to Clause 3.3 of this Agreement, disbursement of ………… []%[[13]](#footnote-14) (*enter percentage in words*) of the Total Grant Amount upon the Beneficiary achieving the Target Commissioning Connections (………… []% (*enter percentage*) of the Target Completion Connections).

The Beneficiary shall submit evidence of the following conditions precedent in order to make a claim under this paragraph 1.2:

* + - 1. the Beneficiary has signed a Customer Agreement for each Connection that it is claiming a Grant payment for;
      2. the tariff set by the Beneficiary in the Customer Agreement complies with the current Tariff Schedule [*except as permitted in respect of any Special Customer pursuant to the Concession Agreemen*t]; and
      3. the Beneficiary has submitted evidence of Proof of Connections to the Granting Authority and the Granting Authority has verified and approved such evidence.[[14]](#footnote-15)
    1. **Per Connection Amount for new Connections after the Concession Commissioning Date**

Subject to Clause 3.3 of this Agreement, commencing on the Concession Commissioning Date, the Beneficiary may make a claim to the Granting Authority a maximum of once every [*six (6)*]*[[15]](#footnote-16))* Months for the Per Connection Amount[[16]](#footnote-17) for each new Connection made at a Mini-Grid Site since the last Grant claim.

The Beneficiary shall submit evidence of the following conditions precedent in order to make a claim under this paragraph 1.4:

* + - 1. The Independent Engineer has countersigned the Concession Commissioning Certificate or Concession Commissioning has been deemed to have occurred in accordance with Clause 6.6 of the Concession Agreement.
      2. The Beneficiary has signed a Customer Agreement for each Connection that it is claiming a Grant payment for.
      3. The tariff set by the Beneficiary in the Customer Agreement complies with the current Tariff Schedule [*except as permitted in respect of any Special Customer pursuant to the Concession Agreement*].
      4. The Beneficiary has submitted evidence of Proof of Connections to the Granting Authority and the Granting Authority has verified and approved such evidence.[[17]](#footnote-18)
      5. [*Other evidence to be specified*.]

Contacts

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1. Drafting Note: This assumes that the time in each Host Country adheres to a common time – but will need to be modified where more than one time zone applies in any Host Country or region covered by the Concession Area. [↑](#footnote-ref-2)
2. To be confirmed whether the Beneficiary will be granted a tax exemption or whether the Granting Authority will be obliged to gross-up. We assume the Granting Authority is unlikely to have the authority to grant tax exemptions so this may need to be addressed via the Concession Agreement. Provision has been made in the Concession Agreement to address this point. [↑](#footnote-ref-3)
3. Drafting Note: Where the Grantor is a private party rather than a Governmental Authority, the additional representations set forth at Clause 7.2(b)(ii)(B) and (C) shall also be included here. [↑](#footnote-ref-4)
4. To be completed based on local practice/precedent. [↑](#footnote-ref-5)
5. To be completed based on local practice/precedent. [↑](#footnote-ref-6)
6. Drafting Note: To be included in jurisdictions which may allow the Granting Authority as a matter of law to unilaterally amend the Agreement. [↑](#footnote-ref-7)
7. Drafting Note: To be included where the jurisdiction requires a specific generation and/or distribution licence to construction and operate Mini-Grids. [↑](#footnote-ref-8)
8. Drafting Note: Reference to an Attorney-General is more likely to be relevant in common law jurisdictions, where the Attorney-General will likely be the relevant person to issue a legal opinion confirming the authority of a Governmental Authority to enter into, deliver and perform its obligations under an agreement. If obtaining an Attorney-General’s opinion is not feasible in a particular jurisdiction, evidence of authority to enter into the agreement may need to be provided by way of a local legal counsel legal opinion. Depending on the jurisdiction, Parliamentary, Cabinet or other Governmental approvals, including budget appropriations, may need to be obtained. [↑](#footnote-ref-9)
9. Drafting Note: This assumes that the Granting Authority will be a Governmental Authority but if this is not the case, this CP will need to be modified accordingly. [↑](#footnote-ref-10)
10. Drafting Note: The exact split between upfront grants and the per connection disbursements is to be considered for each transaction and to be aligned with the project-specific financial model in co-ordination with the Grant provider. [↑](#footnote-ref-11)
11. Drafting Note: Percentage should represent a portion of the Target Completion Connections that is less than the Target Commissioning Connections. [↑](#footnote-ref-12)
12. To be confirmed if independent verification is required. [↑](#footnote-ref-13)
13. Numbers added by way of illustration. The percentages for Milestones 1, 2 and 3 should add up to the Target Commissioning Connections as a % of Target Completion Connections. [↑](#footnote-ref-14)
14. To be confirmed if independent verification is required. [↑](#footnote-ref-15)
15. Drafting Note: Timing to be determined in the context of the construction and commissioning schedule for each Project. [↑](#footnote-ref-16)
16. Using the percentage examples given in brackets in this clause, this assumes that 50% of the Total Grant Amount has been paid at the time 50% of the Target Completion Connections are made. [↑](#footnote-ref-17)
17. To be confirmed if independent verification is required. [↑](#footnote-ref-18)