

Indicative Terms and Conditions for the Minimum Revenue Guarantee

*July 2022*

Scaling Mini-Grids

SMG

DISCLAIMER

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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.

Indicative Terms and Conditions for the Minimum Revenue Guarantee

*[Subject to review and approval from the Donor and IFC’s management as well as Legal and Environmental and Social teams]*

*The Administrative Entity (“AE”) acting for the Donor is proposing to use funds received from the Donor to offer Minimum Revenue Guarantees to private developers (each a “Developer”) of mini-grids in target countries, which were developed in part by adopting principles and documentation developed as part of the Scaling Mini-Grid Program (each a “Mini-Grid Project”). For each Mini-Grid Project, AE will enter into a contractual arrangement principally consisting of a Guarantee Agreement and a Project Agreement with the Developer. The key terms and conditions of the Guarantee Agreement and the Project Agreement, with respect to the financial support of one Mini-Grid Project, are set out in the table below.*

*This Term Sheet does not constitute a commitment by IFC nor the Donor. IFC’s decision (in its capacity as both AE and as potential investor) to support the Mini-Grid Project is contingent on satisfactory due diligence including on all shareholders, suppliers, equipment, project design, demand studies, contracts proposed by the preferred bidder and overall risk allocation for the project, environmental and social considerations, completion of market and sector due diligence, finalisation of all project documents satisfactory to IFC, and approval by IFC’s management and Board of Directors and execution of final documentation in a form and substance satisfactory to IFC.*

*Preliminary Definitions*

*Capitalised terms used herein and not otherwise defined have the meaning assigned to these terms in the template Concession Agreement.*

*Actual Revenue: Revenue from Customers (other than Special Customers) reported as per the audited financial statements.*

*Base Case Revenue: Revenue from Customers (other than Special Customers)*, *measured on an annual financial year basis and as defined in the Financial Model.[[1]](#footnote-2)*

*Completed Connections: Completed Connections as defined in the template Concession Agreement.*

*Concession Completion: Concession Completion as defined in the template Concession Agreement.*

*Financial Model: Developer’s base case financial model submitted at the time of the bid based on the minimum subsidy requirement and as subsequently revised and updated periodically in accordance with Clause 6.15(b) of the Concession Agreement.[[2]](#footnote-3)*

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| --- | --- |
| Description | Term |
| Indicative Terms and Conditions of the Guarantee Agreement | |
| Guarantor | [IFC] acting in its capacity as the Administrative Entity (“AE”) |
| Guaranteed Beneficiary | The company undertaking the relevant Mini-Grid Project |
| Currency | US$ (United States dollars) |
| Maximum Guaranteed Amount | The Maximum Guaranteed Amount will be up to US$ [•] million. |
| Guarantee Support | The Guarantee would backstop up to [X]% of the difference between the Base Case Revenue in a given financial year (prorated for an incomplete first and last year) and the Actual Revenue for that year, as a result of the occurrence of a Guaranteed Event (as defined below). |
| Available Guaranteed Amount | Up to US$ [•] million per annum  To be set as the lower of:   1. Guarantee Support; and 2. the remaining Maximum Guaranteed Amount.   Any amount paid by the AE to the Guaranteed Beneficiary under the Guarantee Agreement will be deducted from the Maximum Guaranteed Amount and will not be reinstated. The Guaranteed Beneficiary shall not be entitled to any payment under the Guarantee Agreement in excess of the Available Guaranteed Amount.[[3]](#footnote-4) |
| Guaranteed Events | After Concession Completion,[[4]](#footnote-5) consumption of electricity by Completed Connections of Customers (other than Special Customers) within the Concession Area does not reach the projected demand assumed in the Base Case Revenue; provided, however, that no Guaranteed Event shall be deemed to have occurred if:   1. its occurrence is due to (A) the Guaranteed Beneficiary failing to comply with its obligations under the Concession Agreement (including its failure to operate in accordance with the Technical and Performance Standards); or (B) the occurrence of a Force Majeure Event; or 2. the actual revenue received from Customers (including Special Customers) reported as per the audited financial statements is equal to or exceeds the Base Case Revenue.[[5]](#footnote-6) |
| Maximum Guaranteed Period | Up to the debt term from the Guarantee Effective Date as defined below. Guarantee may be cancelled, without penalty, by the Guaranteed Beneficiary at each anniversary of the Guarantee Effective Date. |
| Exclusions, Withholding, Limitation/Suspension & Termination Events | Standard exclusion, withholding, limitation/suspension and termination events for transactions of this nature. |
| Conditions Precedent to Effectiveness of the Guarantee | Usual and customary conditions for Guarantees of this type, including but not limited to the following:   1. Firm commitment for sufficient financing to complete the construction of the Mini-Grid Project, including satisfactory contribution of equity; 2. Delivery of the Financial Model and execution, delivery and effectiveness of all transaction documents, including the Concession Agreement, [the Grant Agreement], [the applicable Land Lease Agreement granting the Guaranteed Beneficiary the right to use the designated site(s) for purposes of building the generation plants being part of the Mini-Grid Project]; 3. [Delivery of all relevant host country environmental approvals required for the construction [and operation] of the Mini-Grid Project;] 4. Compliance of the Guaranteed Beneficiary with (a) [IFC’s Performance Standards](https://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Sustainability-At-IFC/Policies-Standards/Performance-Standards); and (b) IFC’s [Sanctionable Practices](http://www.ifc.org/SanctionablePractices) and Anti-Money Laundering Provisions; 5. Satisfaction of all Conditions Precedent for first disbursement under the financing documents, if applicable, save for any condition that requires the effectiveness of the Guarantee Agreement to have occurred; 6. Provision of satisfactory legal opinions; 7. Payment in full of the Upfront Administrative Fee and the first installment of the Guarantee Fee (if applicable);[[6]](#footnote-7) and 8. Satisfactory integrity due diligence of the Guaranteed Beneficiary (and related parties). |
| Guarantee Effective Date | The date on which the Conditions Precedent to the effectiveness of the Guarantee are satisfied or waived to the satisfaction of the Guarantor. |
| Claims under the Guarantee | Only [one] claim can be submitted to the AE for each year of operations. The revenue shortfall from Customers (other than Special Customers) shall be confirmed by an Independent Auditor based on audited financial statements for the relevant year. |
| Disputes | [ICC arbitration] |
| Governing law | [English law or New York law] |
| Indicative Terms and Conditions of Project Agreement | |
| Parties | The AE and the Guaranteed Beneficiary |
| Representations and Warranties | The Guaranteed Beneficiary will represent, among other standard and project-specific provisions, that:   1. it is in compliance with the [IFC Performance Standards] and the [other applicable Environmental and Social Requirements]; and 2. neither it nor any of its Affiliates or Sponsors, nor any Person acting on its or their behalf, has engaged in any Sanctionable Practices in connection with the Mini-Grid Project. |
| Covenants | The Guaranteed Beneficiary covenants are, among others, that it will:   1. comply with the Concession Agreement and applicable laws, including environmental laws, and the applicable environmental and social requirements; 2. comply with the IFC Performance Standards; 3. provide quarterly unaudited financial statements and annual audited financial statements and other reports[[7]](#footnote-8) to AE; 4. provide certain notices and other information related to the Mini-Grid Project to AE; 5. provide AE with access to the Mini-Grid Project; 6. not engage in (or authorize or permit any Affiliate or Sponsors or any other Person acting on its or their behalf to engage in) any Sanctionable Practices in connection with the Mini-Grid Project; 7. comply with World Bank Group requirements regarding individuals or firms included in the World Bank Group list of firms debarred from World Bank Group-financed contracts; 8. obtain AE’s consent prior to agreeing to any change to any transaction document that would affect the rights or obligations of AE under the Guarantee Agreement or any other guarantee-related agreement. |
| Payment of Fees to AE | Payment of fees due to AE is the obligation of the Guaranteed Beneficiary. |
| Upfront Administrative Fee | An amount between US$50,000 and US$100,000, depending on the size of the Guarantee, to defray administrative and external costs of the AE to prepare and issue the Guarantee.[[8]](#footnote-9) |
| Guarantee Fee | [100–200][[9]](#footnote-10) basis points per annum. The Guarantee Fee is charged on that portion of the guaranteed amount that AE has contractually committed and for which AE has financial exposure under the Guarantee (Available Guaranteed Amount). The Guarantee Fee must be paid in advance semi-annually on [insert dates].[[10]](#footnote-11)  AE will have the right to terminate the Guarantee in the event of nonpayment of any installment of the Guarantee Fee. |

1. Note: Base Case Revenue will be the product of Completed Connections and the Tariff payable for the predicted consumption per connection that is set out in the Demand Predictions. [↑](#footnote-ref-2)
2. Note: The Financial Model will be updated periodically and after certain one-off events as listed in Clause 6.15(b) of the Concession Agreement. In particular, the Base Case Revenue will be set based on the updated model at the Concession Completion, at each Tariff Review Date and after the assessment of any Supplemental Tariff. There should therefore not be any “double recovery” under the minimum revenue guarantee for events that are otherwise compensated for via the tariff reset on a Tariff Review Date or a Supplemental Tariff. [↑](#footnote-ref-3)
3. Drafting Note: Where an additional guarantee product is made available to the Concessionaire during the Concession Period, the Available Guaranteed Amount may also need to cross-refer to claims made under that other product to avoid double recovery. [↑](#footnote-ref-4)
4. Note: The instrument only becomes drawable once Concession Completion (as defined in the Concession Agreement) is reached. The Concessionaire may elect for deemed Concession Completion where the Target Completion Connections could not be reached due to a Demand Event. On Concession Completion, the Financial Model is updated such that Base Case Revenue will reflect the actual number of Completed Connections. [↑](#footnote-ref-5)
5. Drafting Note: There should be no ability to claim on the guarantee if, after taking into account revenues from Special Customers, the base case is met. [↑](#footnote-ref-6)
6. Drafting Note: The agreement may become effective but no claim can be made on the guarantee until the fee is paid. [↑](#footnote-ref-7)
7. Other reports could include, for example, Data-related reporting. [↑](#footnote-ref-8)
8. Drafting Note: To be a fixed amount. [↑](#footnote-ref-9)
9. Placeholder pricing to be agreed with the Donor. [↑](#footnote-ref-10)
10. Payment Schedule to be defined in the Guarantee Agreement. [↑](#footnote-ref-11)