

Scaling Mini-Grids

SMG

Concession Agreement Template

*July 2022*

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2121 Pennsylvania Avenue, N.W.

Washington, D.C. 20433 U.S.A

Internet: www.ifc.org

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Date: [●] 20[●]

[COMPETENT AUTHORITY]

and

[CONCESSIONAIRE]

CONCESSION AGREEMENT TEMPLATE  
RELATING TO A MINI-GRID CONCESSION FOR [*REGION*] IN [*HOST COUNTRY*]

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

BETWEEN:

1. THE GOVERNMENT OF………… [*Host Country*], represented by ………… [*the Ministry of Energy* *and the* *Ministry of Finance*] (the “Grantor”); and
2. ………… [*CONCESSIONAIRE*], a company duly incorporated in ………… [insert details] with its registered office at ………… (the “Concessionaire”),

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

WHEREAS:[[1]](#footnote-2)

1. The Grantor desires and intends to rely on the private sector to help achieve its rural electrification goals, and the Concessionaire desires and intends to develop, design, finance, insure, construct, commission, own, operate and maintain a series of Mini-Grids (as defined below) and to generate, distribute and supply electrical energy to customers [*and which will benefit from* [*reference Grant Agreement, if any (as defined below)*]].
2. The Concessionaire has entered into, or will enter into, a Grant Agreement with ………… [*insert relevant* *Governmental Authority*] with respect to viability gap funding, which will be made available to the Concessionaire to develop, design, finance, insure, construct, commission, own, operate and maintain Mini-Grids in the Host Country, upon the achievement of certain construction and operational milestones in respect of the Mini-Grids to be constructed for the generation and distribution of energy in the Concession Area (each capitalised term as defined in Clause 1 (*Definitions; Rules of Interpretation*) below).
3. To promote the implementation of the Concession, and in exchange for the promises and agreements of the Concessionaire pursuant to this Agreement, the Grantor agrees to undertake certain obligations to support the Concessionaire in respect of the implementation of the Concession as provided in this Agreement.

THEREFORE, in consideration of the mutual benefits to be derived from 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 respective meanings given below.

1. “**Abandonment**” means:
   1. prior to the Concession Technical Commissioning Date, the voluntary cessation of the construction [*at all of the Mini-Grid Sites included within the Concession Area*] [*at all of the Mini-Grid Sites included in a particular phase of construction and the voluntary cessation of the operation and maintenance of all Mini-Grids included within Mini-Grid Lots that have reached Mini-Grid Lot Technical Commissioning*]*[[2]](#footnote-3)*, or the withdrawal of all, or substantially all, personnel by the Concessionaire from [*all of the Mini-Grid Sites included within the Concession Area*] [*all of the Mini-Grid Sites included in a particular phase of construction and the voluntary cessation of the operation and maintenance of all Mini-Grids included within Mini-Grid Lots that have reached Mini-Grid Lot Technical Commissioning*] for reasons other than an Excusing Event; and
   2. after the Concession Technical Commissioning Date, the voluntary cessation of the operation and maintenance [*at all Mini-Grid Sites included within the Concession Area*] for reasons other than an Excusing Event.
2. “Acceptable Bank” means a bank or a financial institution having international ratings for its long-term unsecured unsubordinated debt obligations from at least two of Standard & Poor’s Ratings Services, Fitch Ratings Limited and Moody’s Shareholders Service, Inc., such ratings being no less than ………… [●] (Standard & Poor’s Ratings Services or Fitch Ratings Limited) or ………… [●] (Moody’s Shareholders Service, Inc.), or as otherwise agreed between the Parties from time to time.
3. “Access Rights” has the meaning given to such term in Clause 5.4(a) (*Access Rights*).
4. “Access Rights List” has the meaning given to such term in Clause 5.4(b) (*Access Rights*).
5. “**Additional Concessionaire Amounts**” means:
   1. the sum of:
      1. the balance of all trade and book debts and receivables that have accrued to the Concessionaire but are unpaid; and
      2. the book value of all inventory of the Concessionaire; *minus*
   2. the value of any overdraft facility or short-term financial payables of the Concessionaire that are outstanding.

“**Additional Debt**” means any Debt of the Concessionaire pursuant to any Additional Funding.

1. “**Additional Funding**” has the meaning given to such term in Clause 12.3 (*Additional Funding*).
2. “**Additional Services**” means the provision of additional services by the Concessionaire to Customers, which may include but not be limited to the provision of financing to Customers to assist with the purchase of household electrical appliances, or the provision of appliances or insurance services to Customers and/or the provision of internet services, telecoms services, water or other utility services to Customers, in each case as permitted by Applicable Law.
3. “Affected Party” has the meaning given to such term in Clause 17.1 (*Definition of Force Majeure*).
4. “Affiliate” means any Person that directly, or indirectly through one or more intermediaries, Controls, or is Controlled by, or is under common Control with, another Person.
5. “Agents” means, in relation to each Party, such Party’s directors, officers, employees, Contractors, agents, professional advisors and/or consultants.
6. “Agreement” has the meaning given to such term in the preamble to this Agreement.

“Anti-Corruption Laws” means any Applicable Law in the Host Country in relation to matters pertaining to the prevention of corruption, bribery and money-laundering.

1. “**Applicable Law**” means any decree, resolution, statute, act, order, rule, ordinance, law, decision, code, regulation (including implementing regulation), treaty, directive (to the extent having the force of law) or any interpretation by a Governmental Authority having jurisdiction over the matter in question, including in relation to any Tax, including any amendments, modifications, replacements or re-enactments thereof.

“Asset Expropriation” means the expropriation, compulsory acquisition, requisition, confiscation or nationalisation (including by way of any series of events or measures that (directly or indirectly) collectively have the effect of expropriation, compulsory acquisition, requisition, confiscation or nationalisation) by any Governmental Authority of any Mini-Grid or a part of it, or any other assets of the Concessionaire or the Contractors that are intended to form part of the Mini-Grids or to be used in connection with the construction, installation, testing, commissioning, operation or maintenance of any Mini-Grid or any Mini-Grid Site (prior to its transfer by the Concessionaire to the Grantor).

1. “Automatic Tariff Cap Adjustment Date” means the day prior to the start of each Quarter.[[3]](#footnote-4)
2. “**Average Tariff for a Quarter**” has the meaning given to such term in Clause 1 (*Limit on Tariffs*) of Schedule 8 (*Tariff Regulation*).
3. “**Business Day**” means any day other than a Saturday or Sunday, on which business by and between banks may be carried out, and which is not a national public holiday, in the Host Country.
4. “**Buy-Out Amount**” means the Concessionaire Buy-Out Amount, the Grantor Buy-Out Amount, the Natural Force Majeure Buy-Out Amount, the Distribution Buy-Out Amount, the Generation and Storage Buy-Out Amount and any Partial Buy-Out Amount.
5. “**Centre**” means the International Chamber of Commerce International Centre for Alternative Dispute Resolution.
6. “**Change in Law**” means any of the following events after the Signing Date:
   1. a change in, modification to or amendment, repeal, revocation or expiration of any Applicable Law;
   2. the enactment, adoption or promulgation of any new Applicable Law;
   3. a change in application, interpretation or enforcement of any Applicable Law;
   4. the imposition of any material condition not required as of the Signing Date in connection with the issuance, renewal or modification of any Consent by any Governmental Authority or the imposition of any new Consent;
   5. the change or modification of any Consent by a Governmental Authority or the imposition of other obligations imposing a cost on the Concessionaire or any Contractor; or
   6. a Change in Tax.
7. “Change in Tax” means the adoption, promulgation, bringing into effect, repeal, amendment, reinterpretation, change or failure in application against the provisions of the relevant legislation, change in interpretation or modification after the Signing Date of any Applicable Law by any Governmental Authority, relating to any tax, duty (including Customs Duties), licence fee or other revenue-producing measure, including any application of any tax (including withholding taxes on distributions to shareholders to the extent such withholding taxes are final tax liabilities of the shareholders and are not subject to any credit or adjustment, including any credit or adjustment against any other tax liability), duty, licence fee or other revenue-producing measure that is imposed on the Concessionaire or any Contractor and causes the Concessionaire to incur for itself or on behalf of any Contractor, any tax, withholding obligation, duty, licence, fee or similar revenue-producing fee in excess of those the Concessionaire would have incurred under the Applicable Laws in effect as of the Signing Date.

“**Change of Control**” means the Sponsor(s) ceasing to Control the Concessionaire. For the purposes of this definition, “**Control**” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the Concessionaire, whether through the ownership of a majority or other controlling interest in the voting securities, equity or other Ownership Interest in the Concessionaire, or by agreement between Persons conferring such power or voting rights. “**Controlled**” has a corresponding meaning.

“**Coercive Practices**” means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or the property of any person to influence improperly the actions of a person.

“**Collusive Practices**” means any arrangement between two (2) or more persons designed to achieve an improper purpose, including influencing improperly the actions of another person.

“**Commissioning and Testing Plan**” means the plan to be developed by the Concessionaire for the process and procedures for the technical commissioning and testing of the Mini-Grids, in accordance with Clause 6.6 (*Mini-Grid Testing and Commissioning*).

1. “**Completed Connection**” means a Connection that has been supplied with electricity for a period of no less than [three (3)] Months.
2. “**Concession**” means the right granted by the Grantor to the Concessionaire to design, finance, construct, install, operate and maintain Mini-Grids and to provide the Concession Services and any Additional Services within the Concession Area pursuant to the terms of this Agreement.
3. “**Concession Area**” has the meaning given to such term in Schedule 1 (*Concession Area*).
4. “**Concession Assets**” means all the assets comprising the Mini-Grids and all those assets (other than financial assets) owned by the Concessionaire for the purpose of providing the Additional Services and for performing its obligations under the Concession Agreement.
5. “**Concession Commissioning**” means that:
   1. each Mini-Grid [*Site/Lot*] has achieved Mini-Grid [*Site/Lot*] Technical Commissioning;
   2. each Mini-Grid [*Site/Lot*] has commenced Mini-Grid Commercial Operations;
   3. in respect of each Mini-Grid [*Site/Lot*], the Design and the Technical Standards are complied with;
   4. in respect of each Mini-Grid [*Site/Lot*], the Environmental and Social Requirements are complied with; and
   5. the Target Commissioning Connections have been achieved, and such Connections:
      1. comply with the required Customer Category Targets that apply for such Connections; and
      2. are Completed Connections.
6. “**Concession Commissioning Certificate**” means a certificate in the form attached at Annex 4 (Form of Concession Commissioning Certificate) of Schedule 6 (Commissioning and Testing).
7. “**Concession Commissioning Date**” means the date Concession Commissioning occurs, as set forth in the Concession Commissioning Certificate.
8. “**Concession Completion**” means the date upon which the Concessionaire achieves the Target Completion Connections, as set forth in the Concession Completion Certificate.

“**Concession Completion Certificate**” means a certificate in the form attached at Annex 5 (Form of Concession Completion Certificate) of Schedule 6 (Commissioning and Testing).

1. “**Concession Data**” means all data, records or information, embodied in any medium (including all electronic, optical, magnetic or tangible media), that is generated, collected, processed, stored or transmitted by, in, through or about a Mini-Grid in connection with the development, construction, operation or maintenance thereof, and in respect of the Additional Services, as well as any derivatives, compilations and copies of the foregoing in whatever form, including any redacted and/or aggregated versions of the same. By way of example, but not exclusion, “Concession Data” includes all records related to historical revenue and electric power usage by Customers, records concerning as-built Mini-Grid construction, design and materials, machinery and equipment maintenance files, Customer lists, Customer purchasing histories, production data, quality control records and procedures, and records regarding Customer complaints and inquiry files, research and development files for the Mini-Grid, records and data (including all correspondence with any Governmental Authority), sales material and records (including pricing history, total sales, sales and pricing policies and practices) and internal financial statements.
2. “**Concession Effective Date**” has the meaning given to such term in Clause 2.1 (*Concession Effective Date*).
3. “Concession End Notice” has the meaning given to such term in Clause 2.2 (*Concession Period*).
4. “**Concession Equipment**” means all of the hardware equipment for electricity generation, distribution, supply and transmission that is installed or incorporated into any Mini-Grid (including the equipment in respect of the Electronic Operating Platform), and all special tools required to operate and maintain the Mini-Grids included in the Concession Area and to provide the Additional Services.
5. “**Concession Period**” has the meaning given to such term in Clause 2.2 (*Concession Period*).
6. “Concession Services” means:
   1. the generation, storage, distribution, sale and supply of electrical power to Customers by the Concessionaire;
   2. the operation and management of the Mini-Grids; and
   3. the provision of any Additional Services.
7. “Concession Standards” has the meaning given to such term in Clause 6.1 (*Compliance with Applicable Laws and Agreements*).
8. “**Concession Technical Commissioning Date**” means the date Mini-Grid[*Site/Lot*] Technical Commissioning occurs in respect of the last Mini-Grid [*Site/Lot*] to achieve Mini-Grid [*Site/Lot*] Technical Commissioning.

“**Concession Wide**” means, with respect to a Concessionaire Event of Default, a Grantor Event of Default, a Force Majeure Event and a Grid Expansion, occurring after the Concession Effective Date, such an event or events which has/have, individually or collectively, an impact on Mini-Grids within the Concession Area which:

* 1. prior to the Concession Technical Commissioning Date, represent [*insert percentage*][[4]](#footnote-5) or more of the projected revenues of the Concessionaire for the next succeeding twelve (12) calendar months in accordance with the Financial Model, and
  2. after the Concession Technical Commissioning Date, represent [*insert percentage*][[5]](#footnote-6) or more of the revenues of the Concessionaire for the immediately preceding twelve (12) calendar months.

“Concession Works” means the design, construction, testing, Commissioning and completion of the Mini-Grids, any works in respect of the Additional Services, and the refurbishment and upgrading of any Existing Assets.

1. “Concessionaire” has the meaning given to such term in the preamble to this Agreement.

“**Concessionaire Buy-Out Amount**” has the meaning given to such term in Clause 1(a) (*The Buy-out Amount*), Annex 1 (*Termination Buy-Out Amounts*) of Schedule 9 (*Termination*).

1. “**Concessionaire Delay Event**” has the meaning given to such term in Clause 3.3 (*Failure to Achieve the Concession Effective Date – Concessionaire Delay Event*).
2. “**Concessionaire Development Bond**” has the meaning given to such term in Clause 3.5(a) (*Concessionaire Development Bond*).
3. “Concessionaire Event of Default” has the meaning given to such term in Clause 18.1(a) (*Concessionaire Events of Default*).
4. “Concessionaire Exclusivity” has the meaning given to such term in Clause 4.2(a) (*Exclusivity*).
5. “**Concessionaire Financed Assets**” has the meaning given to such term in Clause 4.3 (*Return on Assets*) of Schedule 8 (*Tariff Regulation*).
6. “**Concessionaire Partial Buy-Out Amount**” has the meaning given to such term in Clause 1(d) (*The Buy-out Amount*), Annex 1 (*Termination Buy-Out Amounts*) of Schedule 9 (*Termination*).
7. “**Concessionaire Solar Home Systems**” means Solar Home Systemsprovided by the Concessionaire within the Concession Area.
8. “**Condition Precedent**” has the meaning given to such term in Clause 2.1 (*Concession Effective Date*).
9. “Connection” means each customer connection to a Mini-Grid in the Concession Area at a Customer Connection Point and any customer connected to a Concessionaire Solar Home System, in each case pursuant to a Customer Agreement.
10. “Consent” means any applicable approval, consent, authorisation, exemption (including waiver), licence, order or permit of or duly issued by any Governmental Authority required for the due performance by either Party of any covenant or obligation hereunder and includes the Initial Consents.
11. “Contractor” means any Person with whom the Concessionaire contracts for the provision of goods and/or services relating to the design, construction, operation and/or maintenance of any part of the Mini-Grids included in the Concession Area, and for the provision of the Additional Services, and shall include, but not be limited to, the EPC Contractor and the OSA Contractor.
12. “**Corrupt Practices**” means the offering, giving, receiving or soliciting, directly or indirectly, anything of value to influence improperly the actions of another person.
13. “**Cost/Revenue Impact”** means an:
    1. increase in the costs incurred by the Concessionaire, and/or
    2. a decrease in the revenues received by the Concessionaire,

in the construction, ownership, operation and maintenance ofthe Mini-Grids.

1. “**COVID-19**” means the strain of coronavirus known as coronavirus infectious disease 2019 (COVID-19) and/or the causative virus known as severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), including any mutations of COVID-19 and/or SARS-CoV-2, as recognised by the World Health Organization.
2. “**COVID-19 Related Health Event**” means any epidemic or pandemic that results from COVID-19.[[6]](#footnote-7)
3. “**CPI**” has the meaning given to such term in Clause 3.2 (*Indexation of Tariff Cap*) of Schedule 8 (*Tariff Regulation*).
4. “**Customer**”means each legal or natural Person with whom the Concessionaire has a Connection and to whom the Concessionaire supplies, distributes and sells electricity under a Customer Agreement.
5. “**Customer Agreement**” means an agreement entered into between the Concessionaire and each Customer with respect to the supply, distribution and sale of electricity.
6. “Customer Category”[[7]](#footnote-8) means each of Customer Category 1, Customer Category 2, Customer Category 3 and SHS Customers.
7. “Customer Category 1” or “**CC1**” means domestic residential customers.
8. “Customer Category 2” or “**CC2**” means commercial and industrial customers.
9. “Customer Category 3” or “**CC3**” means any public institutions or services or any other entity that is legally owned by a Governmental Authority.
10. “Customer Category Targets” means, with respect to each Mini-Grid [*Site/Lot*],the number of Customers from within that Mini-Grid[*Site/Lot*] in each Customer Category required to be connected, as set out in Schedule 11 (*Milestone Schedule*).
11. “Customer Connection Point” means the metering and ready board or electrical supply board (as applicable) that will be installed at each Customer’s property when it is connected to the Distribution Network or, in respect of a Concessionaire Solar Home System, the installation point of that Concessionaire Solar Home System at the Customer’s property.
12. “**Customer Provisions**” means minimum/maximum standards and general provisions that must be included in the Customer Agreements, as set forth in Schedule 12 (*Customer Provisions*).
13. “Customs Duties” means those duties, taxes, charges or import fees imposed by Applicable Law on goods imported into, or exported from, the Host Country.
14. “**Day**” means each period of twenty-four (24) Hours commencing at 00:00 Hours. “**Daily**” shall be construed accordingly.

“Debt” means loans issued to the Concessionaire from Lenders pursuant to the Financing Agreements, and all amounts that may be due and payable by the Concessionaire thereunder at any time, including repayments of principal (whether scheduled or accelerated by the Lenders) and interest (including default interest), commissions, fees, expenses, costs, make-whole payments or other prepayment costs due thereunder, and any amounts due by the Concessionaire to hedge providers under interest rate or foreign exchange hedging instruments, and shall include any Expansion Debt and Additional Debt.

1. “Debt Outstanding” means the amount in [*insert debt currency*] required to pay any:
   1. principal;
   2. accrued interest, including any additional interest amounts accruing on unpaid overdue amounts under the Financing Agreements on account of the application of the relevant default interest margins pursuant to the Financing Agreements;
   3. fees or expenses;
   4. in the case of any loans made under the Financing Agreements at a fixed rate of interest, any unwinding or redeployment costs associated with the early repayment of those loans as a result of an early termination of this Agreement and as calculated on the terms set out in the relevant Financing Agreements;
   5. payments and costs incurred by the Concessionaire in connection with the early termination or closing out of any interest rate swap contracts or foreign exchange hedging contracts in connection with an early termination of this Agreement; and
   6. without prejudice to any amounts expressly excluded from “Debt Outstanding” in this definition, any other amounts due and payable pursuant to the Financing Agreements,

in each case, as such amounts are outstanding to the Lenders under the Financing Agreements, ***less***:

* + 1. the amount of any cash balances that are within the control of the Lenders and indefeasibly and immediately available to be applied by the Lenders towards the reduction of the Debt Outstanding, including the balance of any debt service reserve or similar account; and
    2. the amount of any payments that the Concessionaire has received in connection with an early termination or closing out of any interest rate swap contracts or foreign exchange hedging contracts in connection with an early termination of this Agreement.

1. Debt Outstanding shall not include (i) without prejudice to sub-clause (d) above, any other make-whole payments that may be payable to the Lenders under the Financing Agreements; or (ii) for the avoidance of doubt, any principal, interest, fees or expenses, breakage costs or other amounts outstanding under a Shareholder Loan.
2. “**Demand Event**” means, at the time of determination:
   1. consumption of electricity by Connections within the Concession Area does not reach the projected demand assumed in the Demand Predictions; and
   2. the number of Completed Connections achieved by the Concessionaire is below the Target Completion Connections,

and in each case, such event/s is/are not the result of the action or inaction of the Concessionaire or a Concessionaire Event of Default.

1. “**Demand Increase**” has the meaning given to such term in Clause 12.2(a) (*Expansion*).
2. “**Demand Predictions**” means the projected demand for, and consumption of, electricity within the Concession Area, as set forth in the Financial Model and appended to Schedule 18 (*Demand Predictions*).
3. “**Design**” means the Mini-Grid design set forth in Schedule 3 (*Design*), which may be updated in accordance with this Agreement.
4. “**Development** **Termination Costs**” means the reasonable and documented development costs incurred by a Party (without double counting) up to the termination of this Agreement, and those costs incurred as a result of the termination of this Agreement, which shall include, but not be limited to:
   1. all Taxes paid and other costs:
      1. already paid under or in connection with this Agreement; and
      2. imposed upon the Concessionaire as a result of the termination of this Agreement;
   2. all application fees and other costs paid in relation to any Consents;
   3. all amounts paid as consideration, or in respect of any down-payment or for services already incurred under any Project Agreement;
   4. amounts paid or payable by the Concessionaire in relation to the termination of contracts and subcontracts entered into in relation to the Project (including the Project Agreements);
   5. employee severance costs and demobilisation costs paid or payable by the Concessionaire; and
   6. any Generation Site reinstatement costs.
5. “**Development Termination Costs Reimbursement Amount**” has the meaning given to such term in Clause 19.1(b) (*Termination prior to the Concession Effective Date – Grantor Delay Event*)or Clause 19.2(b)(ii) (*Termination prior to the Concession Effective Date – Concessionaire Delay Event*), as applicable.
6. “Direct Agreement” means an agreement to be entered into between the Concessionaire, the Grantor and the Lenders (or their agent) under which the Grantor shall, inter alia, consent to the granting of certain security interests in this Agreement to such Lenders and agree customary step-in and other rights for the benefit of such Lenders, in the form set out in Schedule 17 (*Form of Direct Agreement*), with such amendments as the Parties deem necessary.
7. “**Dispute**” has the meaning given to such term in Clause 20.1 (*Notice of Dispute*).
8. “Distribution Assets” means the Distribution Network and associated infrastructure assets.
9. “Distribution Buy-Out Amount” has the meaning given to such term in Section II(a) (*Small Power Producer*) of Annex 2 (*Compensation and Transfer on Grid Expansion*) of Schedule 9 (*Termination*).
10. “Distribution Network” refers to the overhead lines, underground cables and electrical apparatus/equipment used to transport electric energy from the Mini-Grid Delivery Point to (and including) the metering installations installed at the Customer Connection Points.
11. “Distribution Partial Buy-Out Amount” has the meaning given to such term in Section II(b) (*Small Power Producer*) of Annex 2 (*Compensation and Transfer on Grid Expansion*) Schedule 9 (*Termination*).

[*“****Dollars****” or “****US$****” means the lawful currency of the United States of America*.]

“**EE Account**” has the meaning given to that term in Clause 5 (*Extraordinary Tariff Events*) of Schedule 8 (*Tariff Regulation*).

“**Electronic Operating Platform**” means [*the SMG Odyssey Platform [to be defined if used here, or to insert alternative software platform, if used]*].

1. “**Emergency**” means any event or circumstance affecting a Mini-Grid that:
   1. would reasonably be considered an emergency in accordance with Good Industry Practice;
   2. has a materially adverse effect on the ability of the Concessionaire to maintain a safe, adequate and continuous electrical service to its Customers, having regard to the Service Standards;
   3. presents a physical threat to Persons, property or the environment or the security, integrity or reliability of any Mini-Grid; or
   4. either Party reasonably expects to have the effects described in paragraphs (b) or (c) above.
2. “**Environmental and Social Impact Assessment**” or “**ESIA***”* means the environmental and social impact assessment, which shall be developed and implemented by the Concessionaire based on the recommendations set forth in the Environmental and Social Scoping Study and in accordance with the Environmental and Social Requirements.
3. “**Environmental and Social Management Framework**” or “**ESMF**” means the framework developed by the Grantor setting out the principles, rules, guidelines and procedures for screening, assessing and managing potential social and environmental impacts related to the construction and operation of the Mini-Grids included in the Concession Area, and the provision of Additional Services. It shall include environmental and social risk assessments in the form of the development of an ESIA and/or an ESMP and/or other management plans, if required for any Mini-Grid Lot to meet the Environmental and Social Requirements, to include but not be limited to Land Use and Livelihood Restoration Plans.
4. “**Environmental and Social Management Plan**” or “**ESMP**” means the plan or plans to be developed by the Concessionaire on or prior to the Concession Effective Date based on the ESMF and setting out specific social, health and safety, and environmental measures to be undertaken by the Concessionaire to enable the Mini-Grids to be constructed, equipped and operated, and the Additional Services to be provided, in compliance with the Environmental and SocialRequirements. The ESMP may be amended or supplemented from time to time.
5. “**Environmental and Social Requirements**” means:
   1. the IFC Performance Standards;
   2. the World Bank Group (WBG) Environmental, Health, and Safety Guidelines applicable to the construction and operation of the Mini-Grids included in the Concession Area; and
   3. any Applicable Law in respect of health, safety and the environment.
6. “**Environmental and Social Scoping Study**” means the preliminary environmental and social impact assessment, dated …………, prepared by the Grantor prior to the Signing Date. It reflects preliminary environmental and social technical screening and scoping assessments of the Mini-Grid [*Sites/Lots*] and the proposed terms of reference for the final ESIA and Stakeholder Engagement Plan.
7. “**Environmental Liabilities**” means all liabilities, Losses, damages and expenses (including the reasonable costs of investigation, testing, containment, removal, clean-up, abatement or remediation and lawyers’ fees and costs) incurred as a result of complying with mandatory provisions of any Applicable Law or other legally enforceable obligations that are necessary to enable the Concessionaire to perform its obligations under and in connection with this Agreement and the Project (whether or not quantified in amount), in each case relating to the presence of hazardous materials in the environment.

“EPC Contract(s)” means the agreement(s) to be entered into between the Concessionaire and one or more EPC Contractor(s) relating to the design, engineering, procurement, manufacture, construction and Commissioning of the Mini-Grids or any part thereof, as amended from time to time.

1. “EPC Contractor(s)” means the Person(s) or group of Persons contracted by the Concessionaire to perform the EPC Contract(s).
2. “**Equipment Standards**” means the specifications set out in Annex 1 (*Equipment Standard*s) of Schedule 4 (*Technical Standards*).
3. “Equity” means, at any time, the aggregate of:
   1. the amount subscribed for and paid in as Share Capital by the Shareholders and not repaid or otherwise reimbursed to the Shareholders on or before that time;
   2. the outstanding amount of any Shareholder Loan;
   3. any credit balance on the accumulated profit and loss account; and
   4. the amount standing to the credit of the reserves of the Concessionaire (excluding asset revaluation reserves and including, without limitation, any share premium account and capital redemption reserve funds);

after deducting from the amounts in (a), (b), (c) and (d):

* + 1. any debit balance on the profit and loss account or impairment of the issued share capital of the Concessionaire (except to the extent that the deduction of that debit balance or impairment has already been made);
    2. amounts set aside for dividends to the extent not already deducted from equity;
    3. amounts of deferred tax assets; and
    4. amounts attributable to capitalised items such as goodwill, trademarks, deferred charges, licences, patents and other intangible assets.

1. “Event of Default” means each of a Grantor Event of Default and a Concessionaire Event of Default.
2. “Exchange Rate” means the average buy rate for the purchase of Foreign Currency with Local Currency, published by the Reference Banks each Day.
3. “**Excusing Event**” means
   1. a Grantor Event of Default;
   2. any other breach by the Grantor of this Agreement;
   3. any Change in Law; or
   4. a Force Majeure Event.
4. “**Existing Assets**” means those mini-grid assets installed within the Concession Area prior to the Signing Date and that are required by the Concessionaire for the performance of the Concession.
5. “**Expansion**” has the meaning given to such term in Clause 12.2(a) (*Expansion*).
6. “**Expansion Debt**” means any Debt pursuant to an Expansion Financing.
7. “**Expansion Financing**” has the meaning given to such term in Clause 12.2(b) (*Expansion*).
8. “Expert” has the meaning given to such term in Clause 20.3 (*Expert Referral*).
9. “Expropriation” means:
   1. Asset Expropriation; and/or
   2. Share Expropriation.
10. “**Expropriation Agreement**” means an agreement to be entered into by the Grantor and the Shareholders with respect to the payment of the Grantor Buy-Out Amount to the Shareholders by the Grantor upon a Share Expropriation.
11. “**Extraordinary Tariff Event**” means:
    1. a Change in Law;
    2. a Political Force Majeure Event (other than a Change in Law); or
    3. any Grantor Event of Default.
12. “**E&S Monitoring Report**” means an environmental and social monitoring report setting out the specific social, environmental, social management and developmental impact information, to include information in respect of labour and working conditions and health and safety and to be provided by the Concessionaire in respect of each Mini-Grid[*Site/Lot*]*.*

“Feasibility Studies” means [*add general description*], including any initial studies provided by the Grantor to the Concessionaire and any further studies carried out by the Concessionaire relating to the technical, economic, legal, environmental and social aspects of the Mini-Grids included in the Concession Area, as well as related scheduling considerations for the implementation of a Mini-Grid [*Site/Lot*] [*, which shall include the modelling of the electric load profile of the targeted population and an assessment of the Customer Categories and the willingness to pay and ability to pay of potential customers within the Concession Area*].

1. “**Final Acceptance Certificate**” means the certificate, in the form attached at Annex 3 (*Form of Final Acceptance Certificate*) of Schedule 6 (*Commissioning and Testing*), to be issued in respect of each Mini-Grid [*Site/Lot*] upon Commissioning.
2. “Financial Close” means the execution and delivery of the Financing Agreements and the satisfaction or waiver of the conditions precedent for the initial availability of funds under those Financing Agreements.
3. “**Financial Model**” means the Initial Financial Model, as such Initial Financial Model may be updated from time to time in accordance with Clause 6.15(b).
4. “Financing Agreements” means all loan agreements, notes, indentures, security agreements, guarantees, hedging agreements and other agreements, documents and instruments entered into by Lenders relating to the debt financing of the development, design, procurement, construction, Commissioning, operation and maintenance of the Mini-Grids included in the Concession Area, or any part thereof, or relating to any financing that includes but is not limited to the funding for the aforementioned activities, in each case as the same may be amended from time to time and shall include any such agreements entered into in respect of an Expansion Financing or Additional Funding.
5. “**Force Majeure Event**” has the meaning given to such term in Clause 17.1 (*Definition of Force Majeure*).

“Foreign Currency” means ………… [*Dollars[[8]](#footnote-9)*].

1. “Foreign Lenders” means the Lenders that are not incorporated under Applicable Law and that may provide Foreign Currency loans to the Concessionaire under the Financing Agreements.
2. “Foreign Sponsors” means Sponsors who are not incorporated under Applicable Law.
3. “**Fraudulent Practices**” means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a person to obtain a financial or other benefit or to avoid an obligation.

“**Fuel Price**” has the meaning given to such term in Clause 3.2 (*Indexation of Tariff Cap*) of Schedule 8 (*Tariff Regulation*).

“**Generation and Storage Assets**” means the energy generation and battery storage assets of each Mini-Grid.

1. “**Generation and Storage Buy-Out Amount**”has the meaning given to such term in Clause (a)(i) of Section III (*Small Power Distributor*) of Annex 2 (*Compensation and Transfer On Grid Expansion*) of Schedule 9 (*Termination*).
2. “**Generation and Storage Partial Buy-Out Amount**”has the meaning given to such term in Clause (b)(i) of Section III (*Small Power Distributor*) of Annex 2 (*Compensation and Transfer On Grid Expansion*) of Schedule 9 (*Termination*).
3. “**Generation Site**” means each area of land on which the Generation and Storage Assets and the Mini-Grid Delivery Point are located, together with any lay-down or working areas required during construction and operations of a related Mini-Grid by the Concessionaire, the EPC Contractor(s), the OSA Contractor and/or any subcontractors for the purposes of the Project, as identified in Annex 2 (*Generation Sites*) of Schedule 1 (*Concession Area*).
4. “Good Industry Practice” means those standard practices, methods and procedures conforming to environmental, social, labour, safety and legal requirements that are attained by exercising that degree of skill, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced operator of a renewable energy source or hybrid renewable energy source and diesel mini-grid facility engaged in the same type of undertaking under the same or similar circumstances to those subsisting in the Host Country.
5. [*“****Government Guarantee****”[[9]](#footnote-10) means the guarantee to be given by [insert relevant ministry] to the Concessionaire in respect of the payment obligations of the Grantor under this Agreement*.]
6. “Governmental Authority” means:
   1. the government of the Host Country or any other national, regional, local or municipal, administrative, executive, legislative, judicial, quasi-judicial, regulatory, agency, department or political subdivision thereof, authority or instrumentality (which shall include but not be limited to the Regulator);
   2. any other relevant entity from which a Consent is to be obtained from time to time; and
   3. any ministry, department, municipality, other governmental entity, instrumentality, agency, committee or commission under the direct or indirect control of the government of the Host Country, or any ministry, department or political subdivision thereof, or any independent regulatory authority, body or other Person within the Host Country having jurisdiction under the laws of the Host Country, or purporting to have jurisdiction, with respect to the Concessionaire, its Contractors and the Project or any part of it.
7. “**Grant**” has the meaning given to such term in the preamble to this Agreement.
8. “**Grant Agreement**” means the Grant Agreement to be entered into between the ……… [*insert relevant entity*] and the Concessionaire pursuant to which the ………… [*insert relevant entity*] shall agree to disburse the Viability Gap Funding to the Concessionaire on the terms and conditions set out therein.
9. “Grantor” has the meaning given to such term in the preamble to this Agreement.
10. “**Grantor Buy-Out Amount**” has the meaning given to such term in Clause 1(b) (*Buy-out Amount*), Annex 1 (*Termination Buy-Out Amounts*) of Schedule 9 (*Termination*).
11. “Grantor Delay Event” has the meaning given to such term in Clause 3.2 (*Failure to Achieve Concession Effective Date – Grantor Delay Event*).
12. “**Grantor Development Bond**” has the meaning given to such term in Clause 3.6(a) (*Grantor Development Bond*).
13. “Grantor Event of Default” has the meaning given to such term in Clause 18.2(a) (*Grantor Event of Default*).
14. “**Grantor Partial Buy-Out Amount**” has the meaning given to such term in Clause 1(e) (*The Buy-out Amount*), Annex 1 (*Termination Buy-Out Amounts*) of Schedule 9 (*Termination*).
15. “Grid” means the national electricity transmission and distribution network in the Host Country and/or an electricity transmission and distribution network that covers one or more provinces or regions in the Host Country, operated by a Grid Operator.
16. “Grid Expansion” means any expansion of the Grid into the Concession Area by a Governmental Authority or any Person authorised by a Governmental Authority, or any private Person.
17. “Grid Expansion **Notice**” has the meaning given to such term in Clause 8.1 (*Grid Expansion*).

“**Grid Expansion Notice Period**” has the meaning given to such term in Clause 8.1 (*Grid Expansion*).

1. “Grid Expansion Removal Date” has the meaning given to such term in Clause 8.1(b) (*Grid Expansion*).
2. “Grid Expansion Termination Date” has the meaning given to such term in Clause 8.1(b) (*Grid Expansion*).
3. “Grid Operator” means a national or regional utility or any other public or private entity that operates the Grid or part of the Grid and/or supplies electricity within the Host Country.[[10]](#footnote-11)

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

“**ICC**” means the International Chamber of Commerce.

“ICC Rules” has the meaning given to such term in Clause 20.4(a) (*Arbitration*).

“**ICSID**” means the International Centre for the Settlement of Disputes, an international organisation established by treaty among its member countries, including the Host Country.

“IFC” means the International Finance Corporation, an international organisation established by Articles of Agreement among its member countries, including the Host Country.

1. “IFC Performance Standards” means the IFC Performance Standards on Environmental and Social Sustainability dated 1 January 2012.[[11]](#footnote-12)

**“Impact End Date”** means, with respect to an Extraordinary Tariff Event, the end of the Cost/Revenue Impact attributable to that Extraordinary Tariff Event.

1. “**Independent Engineer**” means the engineer to be appointed by the Parties in accordance with Clause 6.11(a) (*Independent Engineer*).
2. “**Independent Engineer List**” has the meaning given to such term in Clause 6.11(c) (*Independent Engineer*).
3. “**Initial Concession Period**” has the meaning given to such term in Clause 2.2 (*Concession Period*).
4. “**Initial Consent**” means each consent set forth in Schedule 15 (*Initial Consents*).
5. “**Initial Expiry Date**” means the date falling [*twenty (20*)] years from the Concession Effective Date.
6. “**Initial Financial Model**” means the tariff financial model submitted by the Concessionaire to the Grantor prior to the Signing Date.
7. “Initial Provisions” means Clauses 1.1 (Definitions), 1.2 (Rules of Interpretation), 2.1 (*Concession Effective Date*), 3 (*Conditions Precedent*), 4.1 (*Grant of the Concession*), 4.2 (*Exclusivity*), 5 (*Generation Sites and Land Use Rights*), 6.1 (*Compliance with Applicable Laws and Agreements*), 6.5 (*Contracting*), 8.3 (*Grantor’s Grid Expansion Undertaking*), 9 (*Consents*), 10 (*Covenants*), 12 (*Financing and Project Support*), 13 (*Representations and Warranties*), 14 (*Foreign Currency Exchange and Transfer of Funds*), 16 (*Liability and Indemnification*), 17 (*Force Majeure*), 18 (*Events of Default*) 19.1–19.3 (*Termination*), 20 (*Resolution of Disputes*) and 21 (*Miscellaneous*).
8. **“Initial Reschedule Period”** has the meaning given to such term in Clause 6.6(f) (*Mini-Grid Testing and Commissioning*).
9. “**Insurance Policy**” or “**Insurance Policies**” means the terms and conditions of the Insurances.

“**Insurance Proceeds**” means any amount received by the Concessionaire in respect of insurance policies taken out by it in connection with the Mini-Grids included in the Concession Area and the provision of the Concession Works and the Concession Services.

“**Insurances**” means those insurances required to be placed by the Concessionaire as set forth in Schedule 10 (*Insurances*).

1. “**Interconnected Mini-Grid**” has the meaning given to such term in Clause 8.2(a)(iv) (*Grid Expansion*).
2. “**Interconnection Standards**” means the specifications for interconnection of the Mini-Grids to the Grid as set out in Annex 4 (*Interconnection Standards*) of Schedule 4 (*Technical Standard*s).
3. “**Internal Wiring**” means all wiring downstream of the Customer Connection Point that is situated on Customer property.
4. “**Internal Wiring Standards**” means the specifications for the Internal Wiring of Customers as set out in Annex 1 (*Equipment Standards*) of Schedule 4 (*Technical Standard*s).
5. “kW” means a kilowatt.
6. “kWh” means a kilowatt-hour.
7. “**Land Lease Agreement**” means a land lease agreement in the form appended to Schedule 14 (*Form of Land Lease Agreement*).
8. “**Land Use and Livelihood Restoration Plans**” means the plans to be prepared by the Concessionaire for Persons and land impacted by the Project in accordance with the Environmental and Social Requirements.

“Lapse of Consent” means:

* 1. the revocation of any Consent by a Governmental Authority;
  2. subject to paragraphs (e) and (f) below, the failure to issue, renew or reissue a Consent within [thirty (30)] BusinessDays of application by the Concessionaire for that Consent to be issued, renewed or reissued, as the case may be, and as a result the Concessionaire’s ability to perform its obligations under the Transaction Documents, EPC Contract or Operating Services Agreement is materially and adversely affected;
  3. any Consent being made subject, subsequent to its granting, on renewal or otherwise, to any terms or conditions that materially and adversely affect the economic return of the Project and/or the Concessionaire’s ability to enjoy its rights and/or perform its obligations under the Transaction Documents, EPC Contract or Operating Services Agreement;
  4. the change or modification of a Consent by a Governmental Authority (other than in respect of a change or modification of a Consent requested by the Concessionaire);
  5. in the case of a customs clearance or other import-related approval, the non-issuance of any Consent required solely to import any item required for the design, construction, installation, operation or maintenance of the Mini-Grids within [twenty (20)] Business Days of application by the Concessionaire or a Contractor(s);
  6. in the case of any Consent required by a Contractor (other than any Consent contemplated by paragraph (b) above), the failure to issue, renew or reissue such Consent within [twenty (20)] Business Days of the application by either the Contractor(s) or the Concessionaire for that Consent to be issued, renewed or reissued, as the case may be, and as a result the (relevant) Contractor’s ability to perform its obligations under the EPC Contract(s) or Operating Services Agreement is materially and adversely affected; or
  7. [in relation to the ………… [*Mini-Grid Licence/Generation or Distribution Licence*] and/or ………… [*insert any other key operational licence*], a failure by the Governmental Authority to issue the ………… [*insert relevant Mini-Grid Licence/Generation or Distribution Licence*],

in each instance despite the Concessionaire’s compliance with the applicable procedural and substantive requirements of Applicable Laws in respect of the relevant Consent.

1. “**Large Customer**” means any Customer whose peak demand is expected to exceed [*250*] kW.
2. “Legal Reservations” means:
   1. the principle that equitable remedies may be granted or refused at the discretion of a court;
   2. the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
   3. in relation to each of the above, similar principles, rights and defences under Applicable Law;
   4. the time barring of claims under Applicable Law; and
   5. defences of set-off or counterclaim.
3. “**Lenders**” means any lenders, export credit agencies, multilateral institutions, bondholders or other lending agencies whose ordinary course of business is the lending of money, or any trustee, security agent or agent acting on behalf of any of the foregoing, any account bank, credit, guarantee or hedging provider, in each case, providing financing, refinancing or hedging to the Concessionaire pursuant to a Financing Agreement, including any agent or trustee, however, “**Lenders**” shall exclude:
   1. any Sponsor or Shareholder in its capacity as the provider of a Shareholder Loan; and
   2. the Grantor, any Governmental Authority or any Affiliate of, or Person owned by, the Grantor or any Governmental Authority.
4. “Lien” means any claim, option, charge (fixed or floating), mortgage, lien, pledge, equity, encumbrance, right to acquire, right of pre-emption, right of first refusal, title retention or any other third-party right, or other security interest or any agreement or arrangement having a similar effect or any agreement to create any of the foregoing.

“**Local Currency**” means ……… [*insert local currency*].

“**Longstop Concession Completion Date**” means the date falling ………… Months from the Target Concession Completion Date.

1. “Loss” or “**Losses**” means any loss, damage, liability, claims, payment or obligation and all costs and expenses (including reasonable legal fees) relating thereto.
2. “**Loss Amount**” means the amount calculated in accordance with the formula set forth in Clause 6 (*Grantor Compensation Formula*) of Schedule 8 (*Tariff Regulation*).
3. “**MIGA**” means the Multilateral Investment Guarantee Agency established by the MIGA Convention among its member countries, including the Host Country.
4. “**Milestone Schedule**” means the construction and Connection milestone schedule as set out in Schedule 11 (*Milestone Schedule*).

“**Mini-Grid**” means a [*small-scale*] distribution network (low or medium voltage), together with one or more power generation plants, designed to be capable of operating as an isolated system with clearly defined physical and electrical boundaries, [*but with the technical capability to be interconnected to other electricity grids*][[12]](#footnote-13), *including* ………… [*insert relevant host country grid(s)*] and comprises the related:

* 1. Generation and Storage Assets;
  2. the Distribution Network;
  3. the Mini-Grid Delivery Point and the Customer Connection Points; and
  4. the Concessionaire Solar Home Systems.

1. “**Mini-Grid** **Commercial Operations**” means, with respect to each Mini-Grid, that the Mini-Grid generates and distributes electricity to Customers at the Customer Connection Points.

“Mini-Grid Delivery Point” means the location where the protection and metering devices are installed at the point of connection of the relevant Generation and Storage Assets to the related Distribution Network.

“**Mini-Grid Lot**” means each group of Mini-Grids located in its respective Mini-Grid Lot Area, as detailed in Annex 1 (*Concession Area [and Mini-Grid Lots*]) of Schedule 1 (*Concession Area*).

1. “**Mini-Grid Lot Area**” means the area of land within which a number of Mini-Grid Sites are located and grouped, as detailed in Annex 1 (*Concession Area* *[and Mini-Grid Lots*]) of Schedule 1 (*Concession Area*).

“**Mini-Grid Site**” means, with respect to each Mini-Grid, the Generation Site, the area covered by the Distribution Network and the area around that Site within which Customers are capable of being connected to the relevant Mini-Grid.

“**Mini-Grid [*Site/Lot*] Technical Commissioning**” means, with respect to a Mini-Grid [*Site Lot*]*,* the completion of the technical commissioning tests and issue by the Concessionaire of a Final Acceptance Certificate in respect of that Mini-Grid[*Site/Lot*], which is countersigned by the Independent Engineer or deemed accepted in accordance with Clause 6.6 (Mini-Grid Testing and Commissioning) so as to put *[the Mini-Grid into Mini-Grid Commercial Operations*]/[*each of the Mini-Grid Sites within the Mini-Grid Lot into Mini-Grid Commercial Operations*].

“**Mini-Grid [*Site/Lot*] Technical Commissioning Date**” means in respect of each Mini-Grid[*Site/Lot]* the date of Mini-Grid *[Site/Lot]* Technical Commissioning as set forth in the Final Acceptance Certificate for that Mini-Grid [*Lot*].

1. [“*Ministry of Energy” means the ministry responsible for energy, being, at the Signing Date, the …………*………… *[Ministry of Energy] [[13]](#footnote-14) of the Grantor.*
2. *“Ministry of Finance” means the ministry responsible for finance, being at the Signing Date, the ………*………… *[Ministry of Finance, Economic Development & Planning][[14]](#footnote-15) of the Grantor*.
3. “**Month**” means a calendar month according to the Gregorian calendar beginning at 12:00 midnight on the last Day of the preceding month and ending at 12:00 midnight on the last Day of that month. “**Monthly”** shall be construed accordingly.
4. “**Natural Force Majeure Buy-Out Amount**” has the meaning given to such term in Clause 1(c) (*Buy-out Amount*), Annex 1 (*Termination Buy-Out Amounts*) of Schedule 9 (*Termination*).
5. “Natural Force Majeure Event” has the meaning given to such term in Clause 17.3 (*Natural Force Majeure Events*).

“**Natural Force Majeure Event Partial Buy-Out Amount**” has the meaning given to such term in Clause 1(d) (*Buy-out Amount*), Annex 1 (*Termination Buy-Out Amounts*) of Schedule 9 (*Termination*).

“**Non-Temporary Extraordinary Tariff Event**” means an Extraordinary Tariff Event where the Cost/Revenue Impact attributable to that Extraordinary Tariff Event is expected to apply for the Concession Period.

“Notice of Dispute” has the meaning given to such term in Clause 20.1 (*Notice of Dispute*).

1. “**Obstructive Practices**” means any of the following: (a) deliberately destroying, falsifying, altering or concealing evidence material to any investigation, or making false statements to investigators, in order to materially impede any investigation into allegations of any Coercive Practice, Collusive Practice, Corrupt Practice or Fraudulent Practice; (b) threatening, harassing or intimidating any person to prevent them from disclosing their knowledge of matters relevant to any such investigation or from pursuing any such investigation; or (c) acts intended to materially impede the exercise of any person’s access to contractually required information in connection with an investigation into allegations of any Coercive Practice, Collusive Practice, Corrupt Practice or Fraudulent Practice.
2. “**Off-Grid Customer**” means any Person within the Concession Area who the Concessionaire (acting reasonably) considers it would not be economically feasible to connect to a Distribution Network but who may be supplied with a Concessionaire Solar Home System.

“Operating Services Agreement” means all contracts relating to the operation and maintenance of the Mini-Grids included in the Concession Area and entered into between the Concessionaire and one or more OSA Contractors.

1. “OSA Contractor” means any Person(s) or group of Persons contracted by the Concessionaire to perform the Concession Services pursuant to an Operating Services Agreement.
2. “**Outstanding Works**” has the meaning given to such term in Clause 6.6(g) (*Mini-Grid Testing and Commissioning*).
3. “**Ownership Interest**” means with respect to any corporation, limited liability company, partnership or other business organisation, shares, equity or ownership interests, or other similar interests in such business organisation, with voting or other rights of management and control and securities of such business organisation that are convertible into same at the option of the holder, whether such shares, ownership interests or other similar interests are held directly or indirectly through one or more intermediate entities or affiliates.
4. “**Partial Buy-Out Amount**” means each of the Concessionaire Partial Buy-Out Amount, the Grantor Partial Buy-Out Amount, the Natural Force Majeure Event Partial Buy-Out Amount, the Distribution Partial Buy-Out Amount and the Generation and Storage Partial Buy-Out Amount.
5. “**Parties**” or, individually, “**Party**” has the meaning given to such term in the preamble to this Agreement.
6. “**Permitted Generation**” means any:
   1. Self-Production; and
   2. Solar Home Systems.
7. “Permitted Liens” means any Lien on any property, revenues or other assets, present or future, of the Concessionaire, except for:
   1. any Liens securing any Debt;
   2. the naming of the Lenders as loss payee under the Insurance Policies; and
   3. any Lien arising from any tax, assessment or other governmental charge or other Lien arising by operation of law, in each case if the obligation underlying any such Lien is not yet due or, if due, is being contested in good faith by appropriate proceedings, so long as:
      1. those proceedings do not involve any substantial danger of the sale, forfeiture or Loss of any part of the Concession Assets, title thereto or any interest therein, nor interfere in any material respect with the use or disposition thereof or the implementation of the Project or the carrying on of the business of the Concessionaire; and
      2. the Concessionaire has set aside adequate reserves to promptly pay in full any amounts that the Concessionaire may be ordered to pay on final determination of any such proceedings.
8. “Persistent Service Standard Failure” means a material Service Standard failure that affects [*insert percentage*][[15]](#footnote-16) or more Connections across the Concession Area for a continuous period of at least [*six (6)*] Months.
9. “Person” means an individual, corporation, partnership, joint venture, trust, unincorporated organisation or any other legal entity.
10. “Political Force Majeure Event” has the meaning given to such term in Clause 17.2 (*Political Force Majeure Events*).
11. “**Preliminary Compliance Certificate**” has the meaning given to such term in Clause 6.13(b)(i) (*Responsibility for the Internal Wiring and installations*).
12. “**Private Landowner**” means any Person who is the legal and beneficial owner of any land identified for a Generation Site who is not the Grantor or another Governmental Authority.
13. “Prohibited Person” means a Person who, or who is owned or Controlled by, or is under the management, in any capacity of, any Person who:
    1. has been named on a list of sanctioned Persons promulgated by the United Nations Security Council or its committees pursuant to resolutions under Chapter VII of the Charter of the United Nations; or
    2. has been named on the World Bank’s list of ineligible firms (see, www.worldbank.org/debarr).
14. “**Project**” means the design, financing, construction, installation, Commissioning, operation and maintenance of the Mini-Grids, and the provision of Additional Services, by the Concessionaire and its Contractors within the Concession Area pursuant to the Concession, on the terms and conditions set forth in this Agreement.
15. “Project Agreements” means:
    1. this Agreement;
    2. the Grant Agreement;
    3. each Land Lease Agreement;
    4. [*the Government Guarantee*;]/[*and*
    5. *each Local Community Agreement[[16]](#footnote-17)*],

in each case, as may be amended from time to time.

1. “**Prolonged Force Majeure Event**” has the meaning given to such term in Clause 19.6(a) (*Termination or Removal for Prolonged Force Majeure Events after the Concession Effective Date*).
2. “**Provisional Acceptance Certificate**” means the certificate, in the form attached at Annex 2 (*Form of Provisional Acceptance* Certificate) of Schedule 6 (*Commissioning and Testing*), to be issued in respect of a Mini-Grid [*Site/Lot*] that requires the completion of Outstanding Works prior to Mini-Grid[*Site/Lot*]Technical Commissioning.
3. **“Quarter**” has the meaning given to such term in Clause 1 (*Limit on Tariffs*) of Schedule 8 (*Tariff Regulation*).
4. “**Reduction Event**” has the meaning given to such term at Clause 11.3 (*Compensation in lieu of a Tariff Cap Adjustment or the charging of a Supplemental Tariff*).
5. “**Reference Banks**” means ………………………… [*to be determined on a jurisdiction-by-jurisdiction basis*].
6. “Regulator” has the meaning given to such term in Recital (B).
7. “**Relevant Concession Assets**” has the meaning given to such term in Schedule 9 (*Termination*).
8. “**Remedy Notice**” has the meaning in Clause 18.3(a) (*Remedy Period and Compensation*).

“**Remote Monitoring Standards**” means those Reporting Requirements that are capable of being monitored through the Electronic Operating Platform, as set forth in Schedule 7 (*Reporting Requirements*).

“**Removal**” means the removal of any non-performing or affected Mini-Grid Site [*and/or Mini-Grid Lot*] from the Concession as a result of a Grantor Event of Default, Concessionaire Event of Default, Prolonged Force Majeure Event or Grid Expansion, which in each case is not Concession Wide, and to “**Remove**” an affected Mini-Grid Site [*and/or Mini-Grid Lot*] shall be construed accordingly.

1. “**Removal Date**” means the date of a Removal, as set forth in a Removal Notice.
2. “**Removal Notice**” means a notice in writing given by a Party pursuant to which that Party exercises its Removal option and states the date, which shall be no later than [ninety (90)] Days following the date of the notice, on which the Removal shall take effect.
3. “**Reporting Requirements**” has the meaning set forth in Schedule 7 (*Reporting Requirements*).
4. “**Sanctionable Practices**” means any Coercive Practices, Collusive Practices, Corrupt Practices, Fraudulent Practices or Obstructive Practices.[[17]](#footnote-18)
5. “**Self-Production**” means the generation of electricity by a Person within the Concession Area for its own consumption; i.e. electricity which will not be sold or distributed by such Person to any other Person.

“**Service Standards**” means those service standards which shall apply to each Mini-Grid from its Mini-Grid *[Site/Lot]* Technical Commissioning Date, as set forth in Schedule 5 (*Service Standards*).

1. “Share Capital” means shares, preference shares, warrants, rights to invest, equity or other forms of ownership interests or rights (of each class) in the share capital of the Concessionaire, with voting rights, economic rights or rights of management and control and securities that are convertible into such instruments at the option of the holder.
2. “Share Expropriation” means the expropriation, compulsory acquisition, requisition, confiscation or nationalisation (including by way of any series of events or measures that (directly or indirectly) collectively have the effect of expropriation, compulsory acquisition, requisition, confiscation or nationalisation) by any Governmental Authority of any Ownership Interest or any rights in respect of the Ownership Interest of the Concessionaire.
3. “Shareholder” means any Person that holds any Share Capital.

“Shareholder Loan” means any loan made available to the Concessionaire by or on behalf of a Shareholder or a Sponsor (in its capacity as a Shareholder or Sponsor).

“**SHS Customers**” means residential Customers with Concessionaire Solar Home Systems.

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

1. “**Small Power Distributor**” has the meaning given to such term in Clause 8.2(a)(iii) (*Grid Expansion Options*).
2. “**Small Power Producer**” has the meaning given to such term in Clause 8.2(a)(ii) (*Grid Expansion Options*).
3. “**Solar Home Systems**” meanssolar home systems with or without energy storage supply systems, whether or not supplied by the Concessionaire or a third party or connected to the Distribution Network.
4. “**Special Customers**” has the meaning given to such term in Clause 11.4 (*Bilateral Contracts and Special Customers*).
5. “**Sponsor Affiliate**” has the meaning given to such term in Clause 10.1(b)(iv) (*Change of Ownership Interests*).
6. “**Sponsors**” means ………………………… [*to be inserted on a Concession-by-Concession basis*].
7. “**Stakeholder Engagement Plan**” means the plan to be developed by the Concessionaire for stakeholder engagement as required pursuant to the ESMF.
8. “**Starting Tariff Cap**” has the meaning given to such term in Clause 3.1 (*Starting Tariff Cap*) of Schedule 8 (*Tariff Regulation*).
9. “**Street Lighting**” means a public lighting network.
10. “**Street Lighting Standards**” means the technical and service standards for Street Lighting set forth in Annex 5 (*Street Lighting Areas and Standards*) of Schedule 4 (*Technical Standard*s).
11. “**Subsequent Expiry Date**” has the meaning given to such term in Clause 2.2 (*Concession Period*).
12. “**Supplemental Tariff**” means each of:
    1. in the event of a Temporary Extraordinary Tariff Event, the TEE Adder added to the Tariff Cap, as calculated and applied in accordance with Clause 5.1 (*Compensation for Temporary* *Extraordinary Tariff Event*) of Schedule 8 (*Tariff Regulation*); and
    2. in the event of a Non-Temporary Extraordinary Tariff Event, the EE Adder added to the Tariff Cap, as calculated and applied in accordance with Clause 5.2 (*Compensation for* *Non-Temporary Extraordinary Tariff Events*) of Schedule 8 (*Tariff Regulation*).
13. “**Target Commissioning Connections**” means ………… [*to be agreed for each Concession*] Connections, as set forth in Schedule 11 (*Milestone Schedule*).

“**Target Completion Connections**” means ……….. [*to be agreed for each Concession*] Connections.

“**Target Concession Completion Date**” means …………… [*to be agreed for each Concession*].

“**Target Concession Effective Date**” means …………… [*to be agreed for each Concession*].

1. “**Tariff Cap**” means the Starting Tariff Cap, as set and reset from time to time in accordance with Clause 11 (*Tariff*) and Schedule 8 (*Tariff Regulation*).
2. “**Tariff Period**” means those periods described in Clause 2 (*Tariff Periods*) of Schedule 8 (*Tariff Regulation*).
3. “**Tariff Review Date**” means the date falling [*•*][[18]](#footnote-19) Days prior to the end of each Tariff Period.
4. “**Tariff Schedule**” means the schedule of charges the Concessionaire shall apply to its Customers (other than Special Customers) for the sale and distribution of electricity and the provision of Additional Services, set in accordance with Schedule 8 (*Tariff Regulation*) and as may be amended from time to time in accordance with Clause 11 (*Tariff*) and Schedule 8 (*Tariff Regulation*).
5. “Tax” or “**Taxes**” means any charge, fee, levy or other assessment imposed by any Governmental Authority (whether federal, state, local or otherwise), including all income, withholding, gross receipts, business, environmental, value added, capital gain, duties, capital stock, registration, excise, ad valorem, real property, personal property, land, local development, licence, sales, production, occupation, use, service, transfer, payroll, employment, social security, travel, franchise, severance, bonus, or other tax of any kind, as well as any charges and assessments (including any interest, penalties or additions to tax attributable to or imposed on or with respect to any such assessment, whether disputed or not and all stamp or documentary taxes and fees).
6. “Technical Dispute” means a Dispute that relates to a purely technical or engineering matter related to this Agreement that is susceptible to resolution by an Expert in the relevant field.
7. “**Technical Standards**” means those standards that shall apply during the construction and installation and Commissioning of the Mini-Grids, as set forth in Schedule 4 (*Technical Standards).*
8. “**TEE Account**” has the meaning given to that term in Clause 5 (*Extraordinary Tariff Adjustments*) of Schedule 8 (*Tariff Regulation*).
9. “**Temporary Extraordinary Tariff Event**” means an Extraordinary Tariff Event where the Cost/Revenue Impact attributable to that Extraordinary Tariff Event is expected to cease prior to the end of the Concession Period.
10. “**Termination**” means the expiry of this Agreement at the end of the Concession Period or an early termination of this Agreement pursuant to Clause 19.1 (*Termination prior to the Concession Effective Date – Grantor Delay Event*) to Clause 19.8 (*Termination or Removal upon Grid Expansion*).
11. “**Termination Costs**” means the following, calculated as at the Transfer Date:
    1. if payment is made to the Concessionaire, the sum of all income, receipts, sales, value added, transfer, property or other Taxes or any other costs imposed on the Company by any Governmental Authority in connection with the transfer of all of the Concessionaire’s rights, title and interests in the Project, the transfer and/or removal of the Relevant Concession Assets and the payment of the Buy-Out Amount;
    2. if payment is made to the Shareholders pursuant to the Expropriation Agreement, the sum of all income, receipts, sales, value added, transfer, property or other Taxes or any other costs imposed on the Shareholders by any Governmental Authority in connection with the transfer of the Share Capital and the payment of the Buy-Out Amount; and
    3. all costs associated with the demobilisation of the construction of the Mini-Grids, including:
       1. the cost of work completed but not yet paid for by the Concessionaire;
       2. costs associated with removing construction material and equipment and personnel; and
    4. termination payments under the Project Agreements and other contracts with consultants and Contractors that relate to the construction, operation and maintenance of the Mini-Grids and the provision of Additional Services; and
    5. any prepayment charges, wind-up costs, hedge break costs, accrued interest charges or similar charges payable to the Lenders in accordance with the Financing Agreements and outstanding as at the Transfer Date.
12. “**Termination Date**” means the date of a Termination, as set forth in a Termination Notice.
13. “Termination Notice” means a notice in writing given by a Party pursuant to which that Party exercises its option to Terminate this Agreement and states the date, which shall be no earlier than thirty (30) Business Days and no later than sixty (60) Days, following the date of the notice, on which the termination shall take effect.
14. “**Total Extraordinary Tariff Event Balance**” on any date means the sum of the balances of all EE Accounts and all TEE Accounts on that date.
15. “Transaction Documents” means the Financing Agreements and the Project Agreements.
16. “**Transfer Date**” has the meaning given to such term in Annex 3 (Transfer of Concession Assets or Share Capital) of Schedule 9(*Termination*).
17. “**Transfer Notice**” has the meaning given to such term in Clause 19.9 (*Transfer Notice*).
18. “**Transfer Percentage**” means the percentage of the Concessionaire Financed Assets represented by the Transferred Assets.
19. “**Transferred Assets**” means:
    1. in respect of a Removal, the Concessionaire Financed Assets in each affected Mini-Grid [*Site/Lot*];
    2. in respect of a Grid Expansion where the Concessionaire elects to become a Small Power Producer, the Distribution Assets (or where that Grid Expansion is not Concession Wide, the Distribution Assets in the affected Mini-Grid [*Site/Lot*]); and
    3. in respect of a Grid Expansion where the Concessionaire elects to become a Small Power Distributor, the Generation and Storage Assets (or where that Grid Expansion is not Concession Wide, the Generation and Storage Assets in the affected Mini-Grid [*Site/Lot*]).
20. “**Unpaid Sum**” has the meaning given to such term in Clause 16.6 (*Default Interest*).
21. “**Viability Gap Funding**” means the grants to be made available to the Concessionaire under the Grant Agreement upon achieving certain Connection milestones set forth therein.
22. “**WBG Environmental, Health and Safety Guidelines**” means the World Bank Group Environmental, Health and Safety Guidelines.[[19]](#footnote-20)
23. “World Bank Group” means the World Bank Group (WBG), composed of the International Development Association, the International Bank for Reconstruction and Development, ICSID, IFC and MIGA.

## Rules of Interpretation

In this Agreement:

* 1. the headings and table of contents are for convenience only and shall be ignored in interpreting this Agreement;
  2. the singular includes the plural and vice versa;
  3. references to Clauses, paragraphs, Schedules, Annexes and Appendices are references to Clauses and paragraphs of, and Schedules, Annexes and Appendices to, this Agreement;
  4. Schedules, Annexes and Appendices hereto shall form part of this Agreement;
  5. the terms “include” and “including” mean without limitation;
  6. all periods of time and dates shall be based on and computed according to the Gregorian calendar and times of day are times of day in the Host Country;[[20]](#footnote-21)
  7. a reference to the Concessionaire, a Foreign Sponsor, Sponsors, the Grid Operator, the Regulator, the Independent Engineer, the Grantor, any Governmental Authority, a Contractor, a Lender, any Party or other Person includes its successors in title, permitted assignees and transferees;
  8. 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
  9. 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.

# Concession Term

## Concession Effective Date

* 1. The Initial Provisions shall come into full force and effect on the Signing Date.
  2. The provisions of this Agreement (other than the Initial Provisions) shall come into full force and effect on the date on which the conditions set forth in the table in Schedule 2 (*Conditions Precedent*) (each a “Condition Precedent”) are satisfied or waived (such date being the “Concession Effective Date”), in accordance with Clause 3.1 (*Conditions Precedent*).

## Concession Period

* 1. Subject to Clause 2.1 (*Concession Effective Date*) and Clause 3.1 (Conditions Precedent), the term of this Agreement shall commence on the Concession Effective Date and shall continue until the date falling [*twenty-five (25) years*] after Concession Completion (the “**Initial Concession Period**”), in full force and effect pursuant to its terms unless extended or terminated in accordance with the provisions of this Agreement (the “Concession Period”).
  2. Subject to Clause 2.2(c) below, the Concession Period shall automatically renew for a period of [*three (3)*] years on the Initial Expiry Date, and on each anniversary of the Initial Expiry Date thereafter (each a “**Subsequent Expiry Date**”), unless either Party gives no less than …………… [*twenty-four (24) Months*] written notice prior to a Subsequent Expiry Date of its intention to terminate the Concession to the other Party (the “**Concession End Notice**”).
  3. Where either Party does not intend to automatically extend the Concession Period upon the Initial Expiry Date, they must serve a Termination Notice upon the other Party on a date falling no later than …………… [*twenty-four (24 Months)*] prior to the Initial Expiry Date.

# Conditions Precedent

## Conditions Precedent

* 1. It shall be a condition precedent to the Concession Effective Date that:
     1. the conditions precedent set forth in Clause 1.1 (*Concessionaire Conditions Precedent*) of Schedule 2 (Conditions Precedent) for which the Concessionaire shall be primarily responsible are satisfied (or waived in writing by the Grantor) by the Target Concession Effective Date;
     2. the conditions precedent set forth in Clause 1.2 (*Grantor’s Conditions Precedent*) of Schedule 2 (Conditions Precedent) for which the Grantor shall be primarily responsible are satisfied (or waived in writing by the Concessionaire) by the Target Concession Effective Date; and
     3. the conditions precedent set forth in Clause 1.3 (*General Conditions Precedent*) of Schedule 2 (Conditions Precedent) shall be satisfied (or waived in writing by each of the Parties) by the Target Concession Effective Date.
  2. Each Party, upon the request of the other Party, shall use reasonable endeavours to assist the other Party in satisfying each Condition Precedent for which such other Party is primarily responsible.
  3. The Parties shall, from time to time, meet to discuss and coordinate their plans for the satisfaction of the Conditions Precedent and each Party shall keep the other informed on a timely basis as to progress in relation to the satisfaction of the Conditions Precedent.
  4. On the Concession Effective Date, each Party shall provide notice to the other acknowledging that all Conditions Precedent set forth in Schedule 2 (Conditions Precedent) have been met or waived, at which point all of the provisions of this Agreement shall become effective.
  5. Where a Condition Precedent is not satisfied or waived by the Target Concession Effective Date:
     1. the Parties may extend the Target Concession Effective Date in accordance with Clauses 3.2 (*Failure to Achieve Concession Effective Date – Grantor Delay Event*), 3.3 (*Failure to Achieve the Concession Effective Date – Concessionaire Delay Event*) or 3.4 (*Failure to Achieve the Concession Effective Date – Natural Force Majeure* Event); or
     2. if the Target Concession Effective Date is not extended by the Parties, a right to Terminate this Agreement shall arise pursuant to Clauses 19.1 to 19.3 (Termination).

## Failure to Achieve Concession Effective Date – Grantor Delay Event

* 1. Subject to Clause 3.6(b) (*Grantor Development Bond*) below, if the Concession Effective Date cannot be achieved by the Target Concession Effective Date because of:
     1. an Excusing Event (other than a Natural Force Majeure Event) or a failure by the Grantor to procure any Conditions Precedent for which the Grantor is responsible in accordance with Clause 3.1(a)(ii) (Conditions Precedent); or
     2. any delay or failure in the satisfaction of any of the Conditions Precedent set forth in Clause 1.3 (*General Conditions Precedent*) of Schedule 2 (Conditions Precedent) that is not attributable to the Concessionaire or any of its Contractors,

and in each case, which is not caused by a Natural Force Majeure Event (a “**Grantor Delay Event**”),

##### the Parties may agree to extend the Target Concession Effective Date; or

##### the Concessionaire shall be entitled to elect to:

###### extend the Target Concession Effective Date on a day-for-day basis for every day of delay so caused, or for such other period as may be agreed by the Parties; or

###### Terminate this Agreementat any time following the original Target Concession Effective Date, in accordance with Clause 19.1 (*Termination prior to the Concession Effective Date – Grantor Delay Event*).

## Failure to Achieve the Concession Effective Date – Concessionaire Delay Event

Subject to Clause 3.5(b) (*Concessionaire Development Bond*) below, if the Concession Effective Date cannot be achieved by the Target Concession Effective Date because of a Concessionaire Event of Default or the failure by the Concessionaire to procure any Conditions Precedent for which the Concessionaire is responsible in accordance with Clause 3.1(a)(iii) (*Conditions Precedent*) above, in each case, which is not caused by a Grantor Delay Event or a Natural Force Majeure Event (a “**Concessionaire Delay Event**”):

### the Parties may agree to extend the Target Concession Effective Date; or

### the Grantor shall be entitled to elect to:

#### extend the Target Concession Effective Date on a day-for-day basis for every day of delay so caused, or for such other period as may be agreed by the Parties; or

#### Terminate this Agreement at any time following the original Target Concession Effective Date, in accordance with Clause 19.2 (*Termination prior to the Concession Effective Date – Concessionaire Delay Event*).

## Failure to Achieve the Concession Effective Date – Natural Force Majeure Event

### If the Concession Effective Date cannot be achieved by the Target Concession Effective Date because of a Natural Force Majeure Event, the Parties agree that:

### the Target Concession Effective Date shall be extended on a day-for-day basis for every day of delay so caused, or for such other period as may be agreed by the Parties; or

### in the event of a Natural Force Majeure Event that is a Prolonged Force Majeure Event, either Party may Terminate this Agreement in accordance with Clause 19.3 (*Termination prior to the Concession Effective Date – Prolonged Force Majeure Event*).

## Concessionaire Development Bond

### On or prior to the Signing Date, the Concessionaire shall provide and maintain an irrevocable bank guarantee for a total amount of …………… [*insert relevant amount]*, substantially in the form appended at Annex 1 (*Concessionaire Development Bond*) of Schedule 13 (*Development* Bonds), issued by an Acceptable Bank (the “**Concessionaire** Development Bond”).

### The Grantor shall be entitled to call on the Concessionaire Development Bond if this Agreement is terminated prior to the Concession Effective Date, in accordance with Clause 3.3 (Failure to Achieve Concession Effective Date – Concessionaire Delay Event), to cover the costs of the Grantor related to the performance of its obligations under this Agreement or its efforts in connection with the satisfaction of the Conditions Precedent and the termination of the Concession. The recovery of such costs to be limited to an amount equal to the amount of the Concessionaire Development Bond.

### The Concessionaire Development Bond will be returned in full upon the earlier to occur of:

#### the achievement of the Concession Effective Date; or

#### a termination of this Agreement prior to the Concession Effective Date, as set out in Clause 3.2 (*Failure to Achieve Concession Effective Date – Grantor Delay Event*) or Clause 3.4 (*Failure to Achieve Concession Effective Date – Natural Force Majeure Event*) of this Agreement.

### The Concessionaire Development Bond shall have an expiry date no earlier than the Target Concession Effective Date. In the event that the Parties have agreed an extension to that date or that date is automatically extended, and the Concessionaire Development Bond will expire prior to the extended Target Concession Effective Date, the Concessionaire undertakes to:

#### extend the existing Concessionaire Development Bond; or

#### provide a new Concessionaire Development Bond,

in each case, no later than thirty (30) Business Days prior to such expiry.

## Grantor Development Bond

### On or prior to the Signing Date, the Grantor shall provide and maintain an irrevocable bank guarantee for a total amount of …………… [*insert relevant amount*], substantially in the form appended at Annex 2 (*Grantor Development Bond*) of Schedule 13 (*Development* Bonds), issued by an Acceptable Bank (the “**Grantor** Development Bond”).

### The Concessionaire shall be entitled to call on the Grantor Development Bond if this Agreement is terminated prior to the Concession Effective Date, in accordance with Clause 3.2 (Failure to Achieve Concession Effective Date – Grantor Delay Event), to cover the costs of the Concessionaire related to the development of the Project or the performance of any of its obligations under this Agreement or its efforts in connection with the satisfaction of the Condition Precedents or the termination of the Concession. The recovery of such costs to be limited to an amount equal to the amount of the Grantor Development Bond.

### The Grantor Development Bond will be returned in full upon the earlier to occur of:

#### the achievement of the Concession Effective Date; or

#### a termination of this Agreement prior to the Concession Effective Date as set out in Clause 3.3 (Failure to Achieve Concession Effective Date – Concessionaire Delay Event) or 3.4 (*Failure to Achieve Concession Effective Date – Natural Force Majeure Event*).

### The Grantor Development Bond shall have an expiry date no earlier than the Target Concession Effective Date. In the event that the Parties have agreed an extension to that date, or that date is automatically extended, and the Grantor Development Bond will expire prior to the extended Target Concession Effective Date, the Concessionaire undertakes to:

#### extend the existing Grantor Development Bond; or

#### provide a new Grantor Development Bond,

in each case, no later than thirty (30) Business Days prior to such expiry.

# Award of the Concession

## Grant of the Concession

The Grantor grants to the Concessionaire for the Concession Period the exclusive right within the Concession Area*:*[[21]](#footnote-22)

### to design, finance, construct and commission the Mini-Grids to be developed in accordance with this Agreement;

### to operate and maintain the Mini-Grids, including generating and storing electricity;

### to sell and distribute the electricity generated by the Mini-Grids to Customers within the Concession Area; and

### to provide directly, or through an Affiliate, Additional Services to Customers.

## Exclusivity

### The Grantor undertakes for the Concession Period that:

#### no other Person shall be permitted to design, finance, construct, commission, operate or maintain Mini-Grids in the Concession Area, and shall procure that no other Governmental Authority or local community shall, directly or indirectly, permit any Person, or take any action, to solicit, initiate, encourage or assist in the submission of any proposal, negotiation or offer from any Person to design, finance, construct, commission, own, operate or maintain Mini-Grids in the Concession Area; and

#### no other Person shall be permitted to generate, supply, distribute or sell electricity to any Persons within the Concession Area other than Permitted Generation, and shall procure that no other Governmental Authority or local community shall, directly or indirectly, permit any Person, or take any action, to solicit, initiate, encourage or assist in the submission of any proposal, negotiation or offer from any Person to generate, supply, distribute or sell electricity to Persons within the Concession Area other than Permitted Generation,

the “**Concessionaire Exclusivity**”.

### In the event that either Party becomes aware that a Grid Operator or any other Person is generating, supplying, distributing or selling electricity in the Concession Area (other than Permitted Generation), it shall immediately notify the other Party in writing, and the Grantor shall take all action to enforce the Concessionaire Exclusivity.

### In the event that either Party becomes aware that a Grid Operator or any other Person is generating, supplying, distributing or selling electricity in the Concession Area (other than Permitted Generation), and it has notified the other Party in writing as set forth in Clause 4.2(b) above, and the Grantor has not succeeded in restoring the Concessionaire Exclusivity, within [*thirty (30)*] Days of such notice, such failure to restore the Concessionaire Exclusivity shall constitute a Political Force Majeure Event and the Concessionaire shall be entitled to Terminate this Agreement where such failure to restore the Concessionaire Exclusivity is Concession Wide, or to Remove any affected Mini-Grid[*Site/Lot*] where such failure is not Concession Wide, in each case in accordance with Clause 19.6 (*Termination or Removal for Prolonged Force Majeure Events after the Concession Effective Date)*.[[22]](#footnote-23)

# Generation Sites and land use Rights[[23]](#footnote-24)

## Generation Sites owned by the Grantor

* 1. The Grantor confirms that the Generation Sites marked as Grantor property in Annex 2 (*Generation Sites*) of Schedule 1 (*Concession Area*) are owned by the Grantor.
  2. In respect of each Generation Site owned by the Grantor, the Grantor agrees that it shall:
     1. enter into a Land Lease Agreement with the Concessionaire, in the form appended to this Agreement at Schedule 14 (*Form of Land Lease Agreement*), pursuant to which the Grantor shall procure that the Concessionaire has exclusive access to such Generation Site, control, quiet enjoyment, and can occupy and use such Generation Site free and clear of any Liens for the performance of the Concession Works and the Concession Services in respect of the related Mini-Grid for the Concession Period and that such Generation Site is free of any Environmental Liabilities;
     2. in respect of any Consents required under Applicable Law for the Concessionaire to have control, quiet enjoyment, occupy and use of the Generation Site:[[24]](#footnote-25)
        1. obtain and provide copies of such Consents, and ensure that such Consents are and remain in full force and effect and valid for the duration of the Concession Period, to the Concessionaire; or
        2. where the Concessionaire is required to apply for such Consents, provide and, where applicable, procure that any relevant Governmental Authority shall provide all assistance necessary to enable the Concessionaire to procure such Consents, including by way of issuing a power of attorney, if necessary,

in each case for the performance of the Project and the Concession Services in respect of the related Mini-Grid for the Concession Period.

## Generation Sites owned by another Governmental Authority

* 1. The Grantor confirms that the Generation Sites marked as property of *[insert name of relevant Governmental Authority*] in Annex 2 (*Generation Sites*) of Schedule 1 (*Concession Area*) are owned by such Governmental Authority.
  2. In respect of each Generation Site owned by such Governmental Authority, the Grantor agrees that it shall:
     1. procure that such Generation Site shall be made available to the Concessionaire for the Project by the relevant Governmental Authority that owns such Generation Site;
     2. procure that the relevant Governmental Authority enters into a Land Lease Agreement with the Concessionaire, in the form appended to this Agreement at Schedule 14 (*Form of Land Lease Agreement*), pursuant to which the Concessionaire shall have exclusive access to such Generation Site, control, quiet enjoyment, and can occupy and use such Generation Site free and clear of Liens for the performance of the Concession Works and the Concession Services in respect of the related Mini-Grid for the Concession Period and that such Generation Site is free of any Environmental Liabilities; and
     3. in respect of any Consents required under Applicable Law for the Concessionaire to have control, quiet enjoyment, occupy and use of such Generation Site for the performance of the Concession Works and the Concession Services in respect of the related Mini-Grid for the Concession Period, and, where applicable, it shall procure that any other relevant Governmental Authority shall provide the Concessionaire with all necessary assistance in procuring such Consents in accordance with Clause 9.1 (*Applications by the Concessionaire for Consents*) of this Agreement.

## **Generation Sites on Private Land**

### The Grantor confirms that the Generation Sites marked as property of a Private Landowner [*insert name of Private Land Owner*] in Annex 2 (*Generation Sites*) of Schedule 1 (*Concession Area*) are not owned by the Grantor or any other Governmental Authority.

### In respect of each Generation Site owned by a Private Landowner, the Grantor undertakes, upon the request of the Concessionaire, to exercise all rights available to it under Applicable Law, including the right to eminent domain, to:

#### compulsorily acquire the land identified for each Generation Site and to make it available to the Concessionaire in accordance with the terms set forth in Clause 5.1(b) above; or

#### compulsorily require the sale of the Generation Site by the Private Landowner to the Concessionaire, free and clear of Liens and any Environmental Liabilities; or

#### [*grant to the Concessionaire the right to compulsorily require the sale by any Private Landowner of the Generation Site to the Concessionaire*][[25]](#footnote-26); or

#### procure that the Private Landowner shall enter into a Land Lease Agreement in the form appended to this Agreement at Schedule 14 (*Form of Land Lease Agreement*) with the Concessionaire in respect of such Generation Sites, with such Land Lease Agreement, pursuant to which the Private Landowner shall procure that the Concessionaire shall have exclusive access to such Generation Site, control and quiet enjoyment, and can occupy and use such Generation Site free and clear of Liens for the performance of the Concession Works and the Concession Services in respect of the related Mini-Grid for the Concession Period; and that such Generation Sites are free of any Environmental Liabilities; and

#### in respect of any Consents required under Applicable Law for the Concessionaire to have control, quiet enjoyment, occupy and use the Generation Site to carry out the Concession Works and the Concession Services in respect of the related Mini-Grid for the Concession Period:

* + - 1. provide all assistance necessary, or procure that any other relevant Governmental Authority shall give all assistance necessary, to assist the Concessionaire in obtaining such Consent, in accordance with Clause 9.1 (*Applications by the Concessionaire for Consents*) of this Agreement; and/or
      2. provide all assistance necessary or procure that any other relevant Governmental Authority shall provide all assistance necessary, to assist the Private Landowner in obtaining such Consents (as applicable).

## Access Rights

### The Grantor hereby grants, and undertakes to cause any relevant Governmental Authority to grant, to the Concessionaire all necessary access rights, land use rights and easements. Such rights shall extend to works on the ground and sub-soil level of land (the “Access Rights”) over public land as are necessary for the Concessionaire to perform the Concession Works and Concession Services on public land free and clear of any restrictions.

### The Concessionaire shall prepare a list of the necessary Access Rights over public and private land that it will need for the Concession Works and the Concession Services and the establishment of the Mini-Grids (the “**Access Rights List**”).

### The Access Rights List must be updated by the Concessionaire upon any proposed extension or modification to the Distribution Network during the Concession Period.

### Where any Access Rights are required with respect to private land, the Grantor shall exercise all rights available to it under Applicable Law, including the right to eminent domain, to make those Access Rights available to the Concessionaire, or to delegate to the Concessionaire the right to compulsorily require that those Access Rights be made available to the Concessionaire by any relevant Private Landowner.

## Environmental and Social Liabilities – Generation Sites and Land Use Rights

### The Generation Sites shall be made available to the Concessionaire free of any Environmental Liabilities (other than as specified in the Feasibility Studies), and each Land Lease Agreement shall include indemnities for the Concessionaire in respect of any Environmental Liabilities found to have been existing or caused prior to the date of the Land Lease Agreement.

### Where a Private Landowner is to be expropriated with respect to a Generation Site or an Access Right prior to any of it being made available to the Concessionaire, the Grantor shall carry out the expropriation process at its cost, in accordance with the Environmental and Social Requirements.

### Where there are any disused distribution assets and/or materials already within the Concession Area, the Concessionaire shall be entitled to dismantle those disused assets and materials. The cost of dismantling the disused distribution assets and materials will be for the account of the Grantor. The Concessionaire shall not be required to use or accept any disused distribution assets or materials already in place within the Concession Area.

## Other Governmental Authorities

The Grantor undertakes that neither it nor any other Governmental Authority shall act in a manner that will adversely affect the Concession.

# Concessionaire Obligations

## Compliance with Applicable Laws and Agreements

The Concessionaire shall perform its obligations under this Concession Agreement and design, procure, build, install, commission, insure, operate and maintain the Mini-Grids and provide any Additional Services in compliance with:

### Applicable Laws;

### the Design;

### the Technical Standards;

### the Service Standards;

### the Environmental and Social Requirements;

### the Consents; and

### Good Industry Practice,

together, the “Concession Standards”.

## General Obligations

### The Concessionaire represents and warrants to the Grantor that it has the technical skills and expertise necessary to perform its obligations under this Agreement.

### The Concessionaire shall:

#### carry out the Concession Works in accordance with this Agreement;

#### carry out the Concession Services in accordance with this Agreement;

#### place and maintain the Insurances in accordance with Clause 15 (*Insurance*); and

#### establish communication between the Electronic Operating Platform and each Mini-Grid to enable monitoring in accordance with the requirements for the Electronic Operating Platform remote monitoring set forth in Annex 1 (*Equipment Standards*) of Schedule 4 (*Technical Standards*).

## Design

### The Concessionaire may modify the Design provided that any modification to the Design:

#### shall be accompanied by an explanation in writing to the Grantor of the changes to the Design;

#### must, if material, be submitted by the Concessionaire for approval to the Grantor, with a copy to the Independent Engineer; and

#### must not have the effect of increasing the Tariff Cap.

### Where, within [fifteen (15)] Business Days of submission of a new or modified Design that requires Grantor approval:

#### the Concessionaire does not receive an approval of or a refusal to approve the new or modified Design from the Grantor, it shall be deemed approved by the Grantor; or

#### the Grantor refuses to approve such new or modified Design, and has provided reasons for such refusal, if the Concessionaire does not agree with such refusal, the matter may be referred to an Expert in accordance with Clause 20.3 (*Expert Referral*); and

#### where the Grantor approves any new or modified Design submitted by the Concessionaire, or there is deemed approval of the Design in accordance with Clause 6.3(b)(i) above, that Design shall be added to or replace the previous Design.

## Construction Programme

### The Concessionaire shall construct the Mini-Grids in accordance with the Milestone Schedule set forth in Schedule 11 ( *Milestone Schedule*) and shall ensure that the Mini-Grids meet the Equipment Standards.

### The Concessionaire shall achieve Concession Completion on or prior to the Target Concession Completion Date and no later than the Longstop Concession Completion Date.

### Where the Concessionaire becomes aware that it will not meet the Target Concession Completion Date, it will inform the Grantor as soon as possible and will provide the Grantor with the following information:

#### the reason for the delay to the Target Concession Completion Date;

#### what measures it plans to implement to minimise this delay; and

#### the date on which it expects to reach actual Concession Completion (as applicable),

and shall keep the Grantor regularly informed of the progress of the work undertaken.

### Where there is a delay to the Target Concession Completion Date as a result of an Excusing Event, the Parties agree to extend such Target Concession Completion Date and the Longstop Concession Completion Date on a day-for-day basis.

### Where it is not possible to achieve the Target Completion Connections required to achieve the Concession Completion by the Target Concession Completion Date due to a Demand Event, such failure shall not constitute a Concessionaire Event of Default and, if the Concessionaire so elects, Concession Completion shall be deemed to have occurred and the Concessionaire shall issue the Concession Completion Certificate on or before the Longstop Concession Completion Date.

## Contracting

### The Concessionaire may:

#### subcontract its responsibilities to construct the Mini-Grids to one or more Contractors; and/or

#### subcontract its responsibility to operate and maintain the Mini-Grids and/or to provide the Additional Services to one or more Contractors,

provided that the Concessionaire shall at all times remain liable for the performance of its obligations under this Agreement, notwithstanding any subcontracting to any Contractor.

### The Concessionaire shall, and shall procure that any Contractor shall, employ only personnel (management, supervisory and other personnel), directly or indirectly, who are adequately qualified and trained for the tasks that they are to perform.

## Mini-Grid Testing and Commissioning

### The Concessionaire shall develop the Commissioning and Testing Plan, which shall at minimum reflect the standard set forth in Annex 1 of Schedule 6 (*Commissioning and Testing*), and submit it for the approval of the Grantor and the Independent Engineer no later than [two (2)] Months prior to the target date for the first Mini-Grid *[Site/Lot]* Technical Commissioning Date.

### The Grantor shall, and the Concessionaire shall instruct the Independent Engineer to, respond to the Concessionaire no later than [*five (5)*] Business Days following receipt of the Commissioning and Testing Plan from the Concessionaire, and either:

#### approve the Commissioning and Testing Plan; or

#### refuse to approve the Commissioning and Testing Plan and provide the Concessionaire with the reasons for such refusal and recommendations for modifications to the Commissioning and Testing Plan.

### Where either the Grantor or the Independent Engineer has refused to approve the Commissioning and Testing Plan, the Concessionaire shall be entitled to submit further drafts of the Commissioning and Testing Plan to the Grantor and Independent Engineer for approval in accordance with Clause 6.6(b) above, until such time as both the Grantor and the Independent Engineer approve the Commissioning and Testing Plan.

### In the event that the Grantor or the Independent Engineer fails to respond to the Concessionaire within the [*five (5)*] Business Days period set forth above, the non-responding party shall be deemed to have approved the Commissioning and Testing Plan.

### The Concessionaire shall carry out the Mini-Grid *[Site/Lot]* Technical Commissioning tests in respect of each Mini-Grid [*Lot*] in accordance with the testing and commissioning procedures set forth in the Commissioning and Testing Plan.

### The Concessionaire shall give each of the Grantor and the Independent Engineer no less than [fifteen (15)] Business Days’ notice of the date proposed for the Mini-Grid[*Site/Lot*] Technical Commissioning tests and shall invite the Grantor and the Independent Engineer to witness the Mini-Grid[*Site/Lot*]Technical Commissioning tests. In the event that either the Independent Engineer or the Grantor is unable to attend the proposed date of the Mini-Grid [*Site/Lot*] Technical Commissioning tests, the Concessionaire shall provide alternative dates, which must be no later than [seven (7)] Business Days following the initial proposed testing date (the “**Initial Reschedule Period**”). Where it is not possible for either the Independent Engineer or the Grantor to attend the rescheduled Mini-Grid *[Site/Lot]* Technical Commissioning tests within the Initial Reschedule Period, the Parties will have a further [seven (7)] Business Days from the end of the Initial Reschedule Period within which to further reschedule and carry out the Mini-Grid [*Site/Lot*] Commissioning tests. Where either the Independent Engineer or the Grantor is still unable to attend within [seven (7)] Business Days from the end of the Initial Reschedule Period, the Concessionaire shall be entitled to go ahead and complete the Mini-Grid *[Site/Lot]* Technical Commissioning tests without either the Independent Engineer or the Grantor, as applicable, being present.

### Upon completion of the Mini-Grid[*Site/Lot*]Technical Commissioning tests:

#### where the Independent Engineer determines that there is pending or incomplete work to be implemented in respect of the Mini-Grid [*Sites within the Mini-Grid Lot*] (the “**Outstanding Works**”) before Mini-Grid [*Site/Lot*] Technical Commissioning can occur, but that the Mini-Grid [*Sites within the Mini-Grid Lot*] [*is/are*] operationally functional:

##### the Independent Engineer shall instruct the Concessionaire to issue a Provisional Acceptance Certificate for [*that Mini-Grid/the Mini-Grid Lot*];

##### the Independent Engineer shall countersign that Provisional Acceptance Certificate and document in the Provisional Acceptance Certificate the Outstanding Works to be completed by the Concessionaire; and

##### the Concessionaire shall complete the Outstanding Works and, on completion, re-run the Mini-Grid [*Site/Lot*] Technical Commissioning tests in accordance with Clause 6.6(f), before re-submitting a Final Acceptance Certificate to the Independent Engineer for approval in accordance with Clause 6.6(h) [*and where any Outstanding Works relate to the failure of a specific Mini-Grid Site or a limited number of Mini-Grid Sites, the Concessionaire shall be entitled to re-run the Mini-Grid Lot Technical Commissioning tests in respect of that specific Mini-Grid Site or those limited Mini-Grid Sites (as applicable) only, rather than in respect of each of the Mini-Grid Sites within the Mini-Grid Lot*]; or

#### where the Independent Engineer determines that there are no Outstanding Works required in respect of the Mini-Grid [*Site*/*Lot*] or where Outstanding Works were required and have been completed to the satisfaction of the Independent Engineer:

##### the Independent Engineer shall instruct the Concessionaire to issue a Final Acceptance Certificate in respect of that Mini-Grid; and

##### the Independent Engineer shall countersign the Final Acceptance Certificate; or

#### where the Independent Engineer:

##### does not respond to any request of the Concessionaire to confirm the Mini-Grid [*Site/Lot*] Technical Commissioning by instructing the Concessionaire to issue the Final Acceptance Certificate within [*seven (7)*]Business Days of the completion of the initial Mini-Grid *[Site/Lot]* Technical Commissioning test or any subsequent Mini-Grid Lot Technical Commissioning tests following the completion of Outstanding Works;

##### does not countersign the Final Acceptance Certificate issued by the Concessionaire upon the instruction of the Independent Engineer within [*seven (7)*]Business Days of the completion of the initial Mini-Grid [*Site/Lot*] Technical Commissioning tests or any subsequent Mini-Grid Lot Technical Commissioning tests following the completion of Outstanding Works; or

##### does not instruct the Concessionaire to issue a Provisional Acceptance Certificate confirming any Outstanding Works within [*seven (7)*]Business Days of the completion of the initial Mini-Grid [*Site/Lot*] Technical Commissioning tests,

##### the Mini-Grid [*Site/Lot*] Technical Commissioning shall be deemed to have occurred and the Concessionaire shall inform the Grantor and the Independent Engineer of such deemed Mini-Grid [*Site/Lot*] Technical Commissioning. The date of such deemed Mini-Grid [*Site/Lot*]Technical Commissioning shall be the date the Final Acceptance Certificate was issued by the Concessionaire. Notwithstanding the deemed Mini-Grid *[Site/Lot]* Technical Commissioning, the Concessionaire shall instruct the Independent Engineer to countersign the Final Acceptance Certificate for the Mini-Grid [*Lot*] as soon as possible thereafter; or

#### where the Independent Engineer instructs the issue of a Provisional Acceptance Certificate and has identified for the Concessionaire the Outstanding Works, but does not countersign such Provisional Acceptance Certificate within [*seven (7)*]Business Days of such instruction, the Provisional Acceptance Certificate shall be deemed to have been issued and the Concessionaire shall proceed in accordance with Clause 6.6(h).

### Following the issue of any Provisional Acceptance Certificate, upon completion of the Outstanding Works in respect of a Mini-Grid by the Concessionaire, the Concessionaire shall, where necessary, repeat the Mini-Grid[*Site/Lot*] Technical Commissioning tests in respect of that Mini-Grid in accordance with the procedure for testing set out in paragraphs (f) and (g) above.

### Once:

#### Mini-Grid [*Site/Lot*] Technical Commissioning has occurred in respect of the last Mini-Grid [*Site/Lot*] to achieve a Final Acceptance Certificate; and

#### Concession Commissioning has occurred,

the Concessionaire shall issue a Concession Commissioning Certificate, instruct the Independent Engineer to countersign such Concession Commissioning Certificate and provide a copy of the Concession Commissioning Certificate to the Grantor. Where the Independent Engineer does not respond to any request of the Concessionaire to confirm the Concession Commissioning by countersigning the Concession Commissioning Certificate or confirming any Outstanding Works within [*seven (7)*]Business Days of the issue by the Concessionaire of the Concession Commissioning Certificate, Concession Commissioning shall be deemed to have occurred and the Concessionaire shall inform the Grantor and the Independent Engineer of such deemed Concession Commissioning. The date of such deemed Concession Commissioning shall be the date the Concession Commissioning Certificate was issued by the Concessionaire. Notwithstanding the deemed Concession Commissioning, the Concessionaire shall instruct the Independent Engineer to countersign the Concession Commissioning Certificate as soon as possible thereafter.

## Concession Completion

### Prior to the Target Concession Completion Date, where the Concessionaire has met the Target Completion Connections, it shall submit a Concession Completion Certificate to the Independent Engineer for approval, which shall confirm:

#### the number of Completed Connections;

#### the breakdown of the Completed Connections within each Customer Category; and

#### the target Connections for that Customer Category.

### Within [*seven* *(7)*]Business Days of receipt of the Concession Completion Certificate, the Independent Engineer shall notify the Concessionaire:

#### that it believes the information in the Concession Completion Certificate to be correct, and shall countersign the Concession Completion Certificate; or

#### that it believes the information in the Concession Completion Certificate to be incorrect (and shall provide the Concessionaire with a detailed explanation of why it believes such information to be incorrect), and request the Concessionaire to rectify the errors before resubmitting a Concession Completion Certificate for validation in accordance with this Clause 6.7.

### Where the Independent Engineer does not respond to any request of the Concessionaire to confirm the Concession Completion by countersigning the Concession Completion Certificate or confirming any Outstanding Works within [*seven (7)*]Business Days of the issue by the Concessionaire of the Concession Completion Certificate, Concession Completion shall be deemed to have occurred. The Concessionaire shall inform the Grantor and the Independent Engineer of such deemed Concession Completion. The date of such deemed Concession Completion shall be the date the Concession Commissioning Certificate was issued by the Concessionaire. Notwithstanding the deemed Concession Completion, the Concessionaire shall instruct the Independent Engineer to countersign the Concession Completion Certificate as soon as possible thereafter.

## Concession Works and Services

### The Concessionaire shall maintain the Concession Equipment in accordance with the Equipment suppliers’ maintenance specifications provided to the Concessionaire and shall obtain and maintain equipment warranties in respect of the Concession Equipment for periods no less than those set forth in Annex 2 (*Equipment Warranties*) of Schedule 4 (*Technical Standards*).

### Following the Commissioning of each Mini-Grid, the Concessionaire shall comply with the following obligations in respect of the Concession Services being provided to Customers:

#### its obligations under each Customer Agreement; and

#### the Service Standards.

## Emergency Works

### The Concessionaire shall be entitled to take any emergency or precautionary measures required within the Concession Area, including the temporary interruption of all or part of the Concession Works and/or the Concession Services, upon the occurrence of an Emergency, provided that the Concessionaire notifies the Regulator of such emergency or precautionary measures as soon as reasonably possible and no later than [five (5)] Business Days following such Emergency.

### The Parties agree that:

#### the taking of any emergency or precautionary measures pursuant to this Clause 6.9 (*Emergency Works*) shall not constitute a Concessionaire Event of Default and shall not give rise to any downward adjustment to the Tariff Cap; and

#### where any Emergency also constitutes a Force Majeure Event, the provisions of Clause 17 (*Force Majeure*) of this Agreement shall apply in conjunction with this Clause 6.9 (*Emergency Works*) and, in the event of any conflict, this Clause 6.9 (*Emergency Works*) shall prevail.

## Concession Assets[[26]](#footnote-27)

On or prior to the Concession Effective Date, the Grantor shall:

**OPTION 1**

[*Transfer ownership of the Existing Assets to the Concessionaire, free and clear of Liens and encumbrances, on terms and conditions to be agreed between the Parties.*]

### OR

### **OPTION 2**

[*Grant to the Concessionaire, free and clear of Liens and encumbrances, the right to use and take possession of the Existing Assets for the Concession Period. The Concessionaire shall be permitted to assign the rights to such assets for the benefit of its Lenders under the Financing Agreements.*]

## Independent Engineer

### The Parties shall jointly appoint an Independent Engineer to carry out the scope of work set forth in Annex 1 (*Role of Independent Engineer*) of Schedule 16 (*Independent Engineer*).

### The Independent Engineer shall be a consulting engineer of international renown, with relevant experience in the design, construction and operation of hybrid solar-storage diesel Mini-Grids and electricity distribution, and capable of carrying out the role assigned to the Independent Engineer under the Project, as set forth in Annex 1 (*Role of Independent Engineer*) of Schedule 16 (*Independent Engineer*).

### The Independent Engineer shall be appointed by the Parties prior to the Concession Effective Date from among the independent engineering companies on the list agreed by the Parties and attached to Annex 2 (*Independent Engineer List*) of Schedule 16 (*Independent Engineer*), being the “**Independent Engineer** **List**”, following a call for tenders by the Parties to those companies on the Independent Engineer List and subject to terms of reference agreed by the Parties.

### The Parties shall ensure that the appointment of an Independent Engineer is maintained for the Concession Period, with an option for the Parties to review the appointment of the Independent Engineer on an [*annua*l] basis from the initial appointment date. A new call for tenders must be launched by the Parties to those entities on the Independent Engineer List no later than [*three (3*)] Months prior to each [*anniversary*] of the initial appointment date.

### In the event that:

#### the Independent Engineer resigns its appointment; or

#### the Parties agree that the appointment of the Independent Engineer should be terminated, in accordance with the terms of its contract of appointment,

#### the Parties shall follow the procedure under this Clause 6.11 to appoint a replacement Independent Engineer from the Independent Engineer List.

### The Parties shall be permitted to agree amendments to the Independent Engineer List.

### The costs of the Independent Engineer will be borne by the Concessionaire.

### Any disagreement between the Parties relating to the designation and/or role of the Independent Engineer will be submitted to the Expert for determination in accordance with Clause 20.3 (*Expert Referral*) of this Agreement.

## Customer Connection Point

### The Customer Connection Point will be installed at the site of each Customer upon or prior to its connection to the Distribution Network.

### Electricity shall be considered delivered by the Concessionaire to the Customer when the electrical energy is delivered to the Customer Connection Point.

### The Concessionaire shall ensure that the Customer Connection Point is installed in accordance with the technical standards in Annex 4 (*Interconnection Standards*) of Schedule 4 (*Technical Standards*).

## Responsibility for the Internal Wiring and installations[[27]](#footnote-28)

### The Concessionaire shall be responsible for the installation, commissioning and maintenance of the Customer Connection Point.[[28]](#footnote-29)

### The Parties agree and acknowledge that [*insert relevant responsible authority*] shall be responsible for ensuring that the Internal Wiring conforms with the Internal Wiring Standards. The Concessionaire shall request that a potential Customer with existing Internal Wiring that will connect to the Distribution Network present or obtain a certificate from [*insert relevant responsible authority*] confirming conformity of the Internal Wiring to the Internal Wiring Standards, except that:

#### for the purpose of facilitating Connections, where [*insert relevant responsible authority*] is not able to verify the Internal Wiring of a Customer in a timely manner, the Concessionaire shall be authorised by the Grantor[[29]](#footnote-30) to carry out preliminary Internal Wiring checks of the Internal Wiring of that Customer and, where it is satisfied, shall be authorised to issue a certificate approving the connection of the Internal Wiring to the Distribution Network (a “**Preliminary Compliance Certificate**”[[30]](#footnote-31));

#### following the issue of any Preliminary Compliance Certificate, the Concessionaire shall request [*insert relevant responsible authority*] to carry out the Internal Wiring checks as soon as possible thereafter, and upon completion by [*insert relevant responsible authority*] of the Internal Wiring checks, the certification of [*insert relevant responsible authority*] approving the Internal Wiring shall replace the Preliminary Compliance Certificate issued by the Concessionaire pursuant to Clause 6.13(b)(i) as the formal approval of the Internal Wiring; and

#### notwithstanding Clause 6.13(b)(i), the Concessionaire shall have no liability hereunder for the Internal Wiring or any damage caused to any property or injury to any Person due to faulty or inadequate Internal Wiring.

### Pursuant to the Customer Agreements:

#### the costs of connection, commissioning and maintenance of the electrical installation downstream of the Customer Connection Point must be borne by the Customers; and

#### where a Customer has existing Internal Wiring that:

##### does not conform with the Internal Wiring Standards; and/or

##### the Concessionaire considers to be unsafe,

the Concessionaire shall be entitled to refuse to connect the Customer.

## Street Lighting[[31]](#footnote-32)

### The Concessionaire shall be required to construct, operate and maintain the Street Lighting within the areas identified in Annex 5 (*Street Lighting Areas and Standards*) of Schedule 4 (*Technical Standards*) in accordance with the Street Lighting Standards.

### The construction, operation and maintenance costs of the Street Lighting are a cost of the Concessionaire.

## Reporting

### The Concessionaire shall report on the progress of the Concession Works of each Mini-Grid [*Site/Lot*] every …………… [*three (3)*] Months up to and including the relevant Mini-Grid [*Site/Lot*] Technical Commissioning Date.

### Financial Information

#### The Concessionaire shall provide the Grantor with the Initial Financial Model, in a form and substance satisfactory to the Grantor, no later than the Concession Effective Date. Where the Initial Financial Model is delivered to the Grantor no later than [•] Days prior to the Target Concession Effective Date, any failure of the Grantor to approve the Initial Financial Model prior to the Target Concession Effective Date shall not constitute a Concessionaire Delay Event.

#### The Concessionaire shall update the Financial Model no later than [*ten (10)*]Business Days following:

##### the Concession Effective Date;

##### any Expansion Financing;

##### any Additional Funding;

##### Concession Completion;

##### each Tariff Review Date; and/or

##### the assessment of any Supplemental Tariff that the Concessionaire is authorised to charge in accordance with Clause 17.11 (*Extraordinary Tariff Events*),

and shall provide the Grantor with a copy of the updated Financial Model.

## Environmental and Social Requirements

The Concessionaire, through its employees, agents, Contractors and subcontractors, shall ensure that the Design, construction, operation, maintenance, management and monitoring of the Mini-Grids, the Mini-Grid Sites and all other Concession Assets and the provision of any Additional Services shall comply with the Environmental and Social Requirements.

**OPTION 1 – LARGE MINI-GRID SITES**

### The Concessionaire shall implement the Environmental and Social Scoping Study and, in accordance with the Environmental and Social Scoping Study, develop:

#### an ESIA for each Mini-Grid Site; and

#### a Stakeholder Engagement Plan.

### Following the finalisation of the ESIA for each Mini-Grid Site and the Stakeholder Engagement Plan, the Concessionaire shall comply with each ESIA and the Stakeholder Engagement Plan.

### From the Mini-Grid *[Site/Lot]* Technical Commissioning Date for each Mini-Grid Site, the Concessionaire shall, on [*a semi-annual*/*an annual*] basis, provide to the Grantor an E&S Monitoring Report in respect of that Mini-Grid Site.[[32]](#footnote-33)

1. **OPTION 2 – MULTIPLE SMALL MINI-GRID SITES**
   1. The Concessionaire shall:
      1. implement the ESMF developed for the Concession Area; and
      2. shall develop an ESMP, which shall cover each Mini-Grid Lot, and which shall be developed and implemented by the Concessionaire based on the recommendations set forth in the ESMF.
   2. Following the finalisation of the ESMP, the Concessionaire shall comply with the ESMP.
   3. From the Mini-Grid Lot Technical Commissioning Date for each Mini-Grid Lot, the Concessionaire shall, on [*a semi-annual*/*an annual*] basis, provide to the Grantor an E&S Monitoring Report in respect of that Mini-Grid Lot.

## Access to Mini-Grids

### The Grantor shall have the right to inspect any part of a Mini-Grid Site, comprising the Generation and Storage Assets, Distribution Network, Customer Connection Point or Mini-Grid Delivery Point [*or to inspect any Internal Wiring work undertaken by the Concessionaire*], and request the presence of the Independent Engineer:

#### prior to a Mini-Grid [*Site*/*Lot*] Technical Commissioning Date, on [five (5)] Business Days’ prior notice to the Concessionaire; and

#### after a Mini-Grid *[Site/Lot]* Technical Commissioning Date, on [*twenty-four (24) hours’*] prior notice to the Concessionaire,

(except, at all times, that no notice shall be required during an Emergency), in each case at the Grantor’s own cost, to observe the progress of the construction of a Mini-Grid and its operation, as applicable. Such inspections of a Mini-Grid shall not be construed as an endorsement by the Grantor of the design, construction or operation of such Mini-Grid nor as a warranty by the Grantor of the safety, durability or reliability of such Mini-Grid.

### The Concessionaire shall accommodate all reasonable access requests of the Grantor for, and assist in arranging, any inspections described in Clause 6.17(a) to any Mini-Grid.

### All Persons visiting a Mini-Grid on behalf of the Grantor shall comply with the reasonable instructions and directions of the Concessionaire or its Contractors.

# Concessionaire Service Obligations

## Service Standards[[33]](#footnote-34)

### Following each Mini-Grid [*Site/Lot*]Technical Commissioning Date [*or, where the Concessionaire starts to supply Customers from a Mini-Grid Site that has achieved Mini-Grid Site Technical Commissioning within a Mini-Grid Lot prior to the Mini-Grid Lot Commissioning Date, from that Mini-Grid Site Technical Commissioning Date onwards*], the Concessionaire shall be required to comply, with respect to the operations of such Mini-Grid, with:

#### the Service Standards applicable to each Customer Category served by that Mini-Grid; and

#### the Reporting Requirements for each of the Service Standards set forth in Schedule 7 (*Reporting Requirements*).

### Service Standards and Reporting Requirements

#### For those Service Standards that are not Remote Monitoring Standards, the Concessionaire shall provide the Grantor on a Quarterly basis with a report in respect of any non-compliance with the Service Standards for the preceding Quarter.

#### For those Reporting Requirements that are not Remote Monitoring Standards, the Concessionaire shall provide the Grantor with the results of the Reporting Requirements, in accordance with the frequency and method of reporting set out in Schedule 7 (*Reporting Requirements*).

### **OPTION 1**

### In the event of a Persistent Service Standard Failure, Clause 18.1(i) (*Concessionaire Events of Default*) shall apply.

**OPTION 2**

### In the event of any Service Standard failure:

**OPTION 1**

#### *the Tariff Cap shall be reset on the next Automatic Tariff Cap Adjustment Date, in accordance with Clause 3 (Tariff Cap and Indexation) of Schedule 8 (Tariff Regulation).*

**OR**

**OPTION 2**

#### *the Concessionaire shall be required to compensate its Customers affected by the Service Standard failure through a rebate on the affected Customer’s [pre-]payment account with the Concessionaire for the measurement and payment of electricity generated and supplied to it under the Customer Agreement in an amount equal to the compensation set by the Regulator for such Service Standard failure.*

### *Where there is no information available in respect of a suspected Service Standard failure due to the technical failure of, or errors in, the Electronic Operating Platform, the Concessionaire will be required to provide offline data to evidence compliance with the Service Standards. Where the accuracy or availability of any information is uncertain or not agreed, the Independent Engineer shall be instructed by the Parties to confirm or investigate the Concessionaire’s compliance with the Service Standards.*

## Customers

### The Concessionaire shall enter into a Customer Agreement with each Customer. Each Customer Agreement shall include the Customer Provisions.[[34]](#footnote-35)

### Each Customer must be designated a Customer Category, and the Concessionaire shall ensure that the criteria for each Customer Category is defined clearly, objectively and rationally, so that each Customer can be assigned a Customer Category and shall ensure that all Customers who satisfy the same criteria are included in the same Customer Category.

### Subject to paragraphs (d) and (e) below and provided that any prospective Customer has paid in full the connection fee required from that Customer, the Concessionaire shall be required to connect to the Distribution Network any natural or legal Person within the Concession Area and shall levy a tariff on that Customer as set forth in the Tariff Schedule, provided that such Person enters into a Customer Agreement, except that:

#### the Concessionaire shall be entitled to charge Special Customers a tariff bilaterally agreed between the Concessionaire and the Special Customer pursuant to a Bilateral Contract, in accordance with Clause 11.4 (*Bilateral Contracts and Special Customers*)*[[35]](#footnote-36)*; and

#### the Concessionaire may, but shall not be required to, connect Off-Grid Customers.

### The Concessionaire will have the option to remove or disconnect any illegal connection or to suspend supply to any Person illegally connected to the Distribution Network, in compliance with Applicable Law.

### Where the balance of any prepaid Customer account has reached zero and the Customer does not make any further prepayment on that account for a period of no less than [twelve (12)] Months, the Concessionaire shall be entitled to disconnect such Customer and remove and redeploy the respective Customer Connection equipment.

### [W*here any Customer has not met their payment obligations under the Customer Agreement for a period of [thirty (30)] Business Days from such payments becoming due and payable, the Concessionaire shall be entitled to disconnect such Customer or suspend supply to such Customer.*][[36]](#footnote-37)

## Solar Home Systems

The Concessionaire shall be entitled to connect Off-Grid Customers by way of providing a Concessionaire Solar Home System, provided that:

### each Concessionaire Solar Home System complies with the requirements set forth in Annex 3 (*Solar Home Systems*) of Schedule 4 (*Technical Standards*); and

### the Concessionaire Solar Home Systems do not comprise more than [*insert percentage*][[37]](#footnote-38) of the Connections within the Concession Area.

## Generation Fuel Source

### From each Mini-Grid *[Site/Lot]* Technical Commissioning Date, at least [*ninety per cent (90%)*] of the aggregate energy generated by all Mini-Grids in the Concession Area in each calendar year must come from renewable energy sources.

### The Concessionaire shall maintain records of the annual energy generation mix of each Mini-Grid, and these records may be reviewed by the Independent Engineer upon request.

# Grid Expansion

## Grid Expansion Notice[[38]](#footnote-39)

### The Grantor shall give the Concessionaire no less than [twelve (*12)*] Months prior written notice (“**Grid Expansion Notice Period**”) of any Grid Expansion (“Grid Expansion Notice”).

### Each Grid Expansion Notice will include a date by which such Grid Expansion will occur and the provisions of Clause 8.2 (*Grid Expansion Options*) below shall apply in respect of the election made by the Concessionaire thereunder (being the “**Grid Expansion Termination Date**” where any Grid Expansion is Concession Wide, and the “**Grid Expansion Removal Date**” for any Grid Expansion that is not Concession Wide).

### In the event that a Grid Expansions occurs without notice being given to the Concessionaire, this shall be treated as an Expropriation and Clause 19.8 (*Termination or Removal upon Grid Expansion*) shall apply.

## Grid Expansion Options

1. OPTION 1
   1. Following receipt by the Concessionaire of a Grid Expansion Notice that is Concession Wide, this Agreement shall Terminate upon the Grid Expansion Termination Date set out in the Grid Expansion Notice, in accordance with Clause 19.8 (*Termination or Removal upon Grid Expansion*)*.*
   2. Following receipt by the Concessionaire of a Grid Expansion Notice that is not Concession Wide, the affected Mini-Grid [*Sites/Lots*] shall be Removed on the Grid Expansion Removal Date set out in the Grid Expansion Notice, in accordance with Clause 19.8 (*Termination or Removal upon Grid Expansion*)*.*
2. OPTION 2

### Upon receipt of a Grid Expansion Notice the Concessionaire shall have [*nine (9)*] Months within which to elect to[[39]](#footnote-40):

#### Terminate this Agreement in accordance with Clause 19.8 (*Termination or Removal upon Grid Expansion*)*;* or

#### 

##### continue to operate the Generation and Storage Assets of the Mini-Grids in the Concession Area, or, where such Grid Expansion is not Concession Wide, continue to operate the Generation and Storage Assets in the affected Mini-Grid [*Sites/ Lots*], and

##### transfer the Distribution Assets of the Mini-Grids, or, where such Grid Expansion is not Concession Wide, transfer the Distribution Assets in the affected Mini-Grid [*Sites/ Lots*] only, to the Grantor or its designee,

##### in each case in accordance with Section II (*Small Power Producer*), Annex 2 (*Compensation and Transfer on Grid Expansion*) of Schedule 9 (*Termination*), such election being to continue as a “**Small Power Producer**”; or

#### 

##### continue to operate the Distribution Assets of the Mini-Grids in the Concession Area, or, where such Grid Expansion is not Concession Wide, continue to operate the Distribution Assets in the affected Mini-Grid [*Sites/Lots*], and

##### transfer the Generation and Storage Assets of the Mini-Grids, or, where such Grid Expansion is not Concession Wide, transfer the Generation and Storage Assets in the affected Mini-Grid [*Sites/Lots*] only, to the Grantor or its designee,

##### in each case in accordance with Section III (*Small Power Distributor*), Annex 2 (*Compensation and Transfer on Grid Expansion*) of Schedule 9 (*Termination*), such election being to continue as a “**Small Power Distributor**”; or

#### continue to operate and maintain the Mini-Grids, in accordance with Section IV (*Interconnected Mini-Grid),* Annex 2 (*Compensation and Transfer on Grid Expansion*) of Schedule 9 (*Termination*), such election being to continue as an “**Interconnected Mini-Grid**”, whereupon this Agreement shall Terminate, or, where such Grid Expansion is not Concession Wide, Remove the affected Mini-Grid [*Sites/Lots*] from the Project, and continue to operate and maintain the affected Mini-Grid [*Sites/Lots*] as Interconnected Mini-Grids.

### [*The Concessionaire shall ensure that on or prior to the Grid Expansion Termination Date the Mini-Grids meet the Interconnection Standards*].[[40]](#footnote-41)

### Where the Concessionaire makes any election under Clause 8.2(a)(i)–(iv) above, the Parties shall meet prior to the Grid Expansion Termination Date to agree a handover process for the Relevant Concession Assets to be transferred.

### Where the Concessionaire fails to elect to become a Small Power Producer, Small Power Distributor or Interconnected Mini-Grid within the [*nine* *(9)*] Month period from receipt by the Concessionaire of the Grid Expansion Notice as set forth in Clause 8.1 (*Grid Expansion Notice*), the Concessionaire shall be deemed to have elected to Terminate this Agreement in accordance with Clause 19.8(a) (*Termination or Removal upon Grid Expansion*).

### It will be the responsibility of the Concessionaire to remove and recycle (if possible) or dispose of the Concession Assets that are fully depreciated in accordance with the Environmental and Social Requirements.

## Grantor’s Grid Expansion Undertakings[[41]](#footnote-42)

The Grantor represents and warrants that as at the Signing Date:

### the Concession Area is not currently served by the Grid; and

### the Concession Area is not part of an existing expansion plan of a Grid intended to be implemented in the [*five (5)*] years following the Target Concession Effective Date.

# Consents

## Applications by the Concessionaire for Consents

### The Concessionaire shall make or cause to be made to the relevant Governmental Authority, in a timely fashion, all required or appropriate applications (whether initial or renewal applications) for all Consents it is obligated to obtain pursuant to this Agreement or Applicable Law for purposes of the Concession Works or Concession Services or the implementation of the Project, and shall ensure the payment in full of all fees required to be paid by the Concessionaire in respect of such Consent applications. The information supplied in the applications shall be complete and accurate in all material respects and shall satisfy the requirements of Applicable Law.

### Subject to the Concessionaire’s compliance with Clause 9.1(a) (Applications by the Concessionaire for Consents), the Grantor shall, or shall cause each Governmental Authority to, grant or issue in a timely manner the Consents applied for by the Concessionaire in accordance with Clause 9.1(a), including renewals of such Consents or re-issuances of such Consents following the occurrence of a Lapse of Consent.

### Where a Consent is not to be granted by either the Grantor or a Governmental Authority, the Grantor shall provide all necessary support to the Concessionaire in obtaining Consents, including with respect to the Generation Sites and any Access Rights, as set forth in Clause 5 (*Generation Sites and Land Use Rights*).

### On request by the Concessionaire, the Grantor shall provide support to the Concessionaire in the performance of its obligations under this Clause 9.1 (Applications by the Concessionaire for Consents).

### Such support shall include:

#### liaising with and between the Concessionaire and the relevant Governmental Authority as to the progress of any applications; and

#### the issue by the Grantor of a letter or other written communication to the relevant Governmental Authority that expresses the Grantor’s support, as set forth in this Clause 9.1 (*Applications by the Concessionaire for Consents*).

### The Grantor shall not, and shall procure that each Governmental Authority does not repudiate, terminate or cancel any Consent, whether obtained before or after the Signing Date, provided that the Concessionaire is not in material breach of any of the terms and conditions of such Consent (except where such breach is a result of a Change in Law, in which case the provisions of Clause 17 (*Force Majeure*) shall apply).

## No Interference

The Grantor undertakes not to, and shall procure that each Governmental Authority does not, do anything that materially prevents or adversely affects the Concessionaire’s ability to perform its obligations or the enjoyment of its rights and benefits under the Project Agreements and Consents.

## Right to Import

Subject to compliance with Applicable Laws (including the payment of applicable Customs Duties) and provided that the Concessionaire shall make or cause to be made all applications required to be made by the Concessionaire for the importation of goods in a timely manner, and shall ensure the payment in full of all fees required to be paid by the Concessionaire in respect of such applications, the Grantor shall ensure, and shall cause all relevant Governmental Authorities to ensure, that the Concessionaire and its Contractors shall be entitled to import without restriction all equipment required for the design, construction, installation, operation and maintenance of the Mini-Grids, including spare parts and replacements to the spare parts inventory.

## Export and Reimport

Subject to compliance with Applicable Laws and provided that the Concessionaire shall make or cause to be made all required applications in a timely manner, and shall ensure the payment in full of all fees required to be paid by the Concessionaire in respect of such applications, the Grantor shall ensure, and shall cause all Governmental Authorities to ensure, that the Concessionaire and its Contractors shall be entitled to export without restriction all items of plant and machinery imported by it or them under Clause 9.3 (*Right to Import*) for the purpose of repair or refurbishment, or sale of obsolete equipment, outside the Host Country and, in the case of repaired or refurbished equipment, to reimport the same.

## Immigration

### Subject to the Applicable Laws relating to immigration, and provided that the Concessionaire and the Contractors submit timely applications in the prescribed form and with any fees stated to be due and payable paid by the Concessionaire and/or the Contractor (as applicable), the Grantor will expeditiously issue, or cause each applicable Governmental Authority to expeditiously issue (as applicable), work permits, employment passes, visas and other associated permits to technically qualified individuals involved in the design, financing, construction, installation, insuring, operation or maintenance of the Mini-Grids on behalf of the Concessionaire and/or any Contractor (as applicable).

### Notwithstanding the foregoing, the Grantor or any competent Governmental Authority may, in any individual case, decline to grant an application, or expel a Person previously admitted, to protect the national security interests and public health and safety of the Host Country, for reasons considered by the Grantor or such Governmental Authority, as the case may be, in its reasonable discretion to justify such action in accordance with, and to the extent permitted under, Applicable Law.

## [Mini-Grid Licence/Generation and Distribution Licence(s)]

*[The Grantor shall procure that the [insert Licence name] is issued to the Concessionaire for a period at least equal to the Concession Period and, where it is not possible to procure such [insert relevant Licence name] for the Concession Period, shall ensure it is renewed or re-issued to the Grantor upon its expiry, for as long as is necessary for the Concessionaire to maintain the [insert Licence] for the Concession Period, provided that the Concessionaire is not in breach of its material obligations thereunder.][[42]](#footnote-43)*

# Covenants

## Change of Ownership Interests

### As at the Signing Date, the Ownership Interests in the Concessionaire are owned in the proportions set forth below:

|  |  |
| --- | --- |
| Shareholders’ percentages/ Number of Shares[[43]](#footnote-44) | ……………/……… [*to be inserted for each transaction*] |
| Ownership Interest of Sponsors in Concessionaire[[44]](#footnote-45) | …………… [*to be inserted for each transaction*] |

### No Change of Control of the Concessionaire shall be permitted[[45]](#footnote-46) during the Concession Period without the prior written consent of the Grantor except for any Change of Control as a result of:

#### any transfer required by any Applicable Law or by the operation of Applicable Law or by order of a court, tribunal, or government authority or agency with appropriate jurisdiction;

#### any transfer resulting from the creation or enforcement of a security interest by the Lenders pursuant to the Financing Agreements;

#### any transfer to a political risk insurance provider resulting from the enforcement of a political risk insurance policy;

#### any transfer between a Sponsor and any Affiliate of such Sponsor that is, directly or indirectly, wholly owned by the Sponsor or owns one hundred per cent (100%) of the Ownership Interests in the Sponsor (a “**Sponsor Affiliate**”); or

#### where any Ownership Interest has been transferred to an Affiliate of the Sponsor in accordance with (iv) above, any transfer by that Affiliate to another Sponsor Affiliate.

### Any change to the Ownership Interest of the Concessionaire that does not require the prior written consent of the Grantor under Clause 10.1(b) (*Change of Ownership Interests)*:

#### must be notified to the Grantor in writing by the Concessionaire; and

#### must not be made to a Prohibited Person.

## Scope of Activities

The Concessionaire agrees that its sole activities shall be the design, financing, construction, installation, insuring, operation and maintenance of the Mini-Grids included in the Concession Area and the provision of Additional Services, and that it will not engage in any other activities without the prior written consent of the Grantor (which the Grantor may exercise in its sole discretion).

## 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 in competing for the Concession or otherwise in connection with the Project.

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

### [No Party shall engage in (and shall not 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.][[46]](#footnote-47)

## Change in Ownership of the Grantor

## No change shall be permitted to the direct or indirect ownership of the Grantor without the prior written approval of the Concessionaire [(*such approval not to be unreasonably withheld)*].

# Tariffs[[47]](#footnote-48)

## Tariff Schedule

### Subject to Clause 11.4 (*Bilateral Contracts and Special Customers*), the Concessionaire shall charge its Customers for the sale and supply of electrical power and the provision of any Additional Services in accordance with the tariffs set forth in the Tariff Schedule.

### The Concessionaire shall set its Tariff Schedule and the Tariff Cap shall be set and reset in accordance with this Clause 11 (*Tariffs*) and the tariff setting and adjustment formulas and methodology set forth in Schedule 8 (*Tariff Regulation*).[[48]](#footnote-49)

### Subject to Clause 11.1(b) and 11.1(f), the Concessionaire shall determine its Tariff Schedule and shall ensure that its Tariff Schedule[[49]](#footnote-50) differentiates the tariffs according to the differences in:

#### Customer Categories;[[50]](#footnote-51) and

#### the applicable Service Standards being offered,[[51]](#footnote-52)

and the Concessionaire may create additional customer categories for purposes of the Tariff Schedule, provided that the criteria for any additional customer category and services are defined clearly, objectively and rationally, so that each Customer can be assigned a Customer Category and all Customers who satisfy the same criteria are included in the same Customer Category.

### The Concessionaire shall be permitted to revise the Tariff Schedule in accordance with this Clause 11 (*Tariffs*) and Schedule 8 (*Tariff Regulation*), provided that it may not revise the Tariff Schedule more than once during each Quarter.

### The Concessionaire shall publish its Tariff Schedule[[52]](#footnote-53) [*on its website*] no later than [*ninety (90) days*] prior to the first Mini-Grid [*Site/Lot*] Technical Commissioning Date and shall thereafter maintain the Tariff Schedule [*on its website*], ensuring that the published Tariff Schedule is updated to reflect any changes to such Tariff Schedule permitted in accordance with this Agreement.

### The Concessionaire shall ensure that the Average Tariff for a Quarter does not exceed the Tariff Cap applicable for that Quarter. Any Supplemental Tariff shall be excluded from the calculation of the Average Tariff for a Quarter.

## Tariff Cap Adjustments and Supplemental Tariff

The Tariff Cap shall be set and reset as follows:

### Starting Tariff Cap

### The Starting Tariff Cap shall be set in accordance with Clause 3.1 (*Tariff Cap*) of Schedule 8 (*Tariff Regulation*).

### Automatic Tariff Cap Adjustment[[53]](#footnote-54)

#### Pursuant to Clause 3.2 (*Indexation of Tariff Cap*) of Schedule 8 (*Tariff Regulation*), the Tariff Cap shall be reset on each Automatic Tariff Cap Adjustment Date to allow for changes to the Exchange Rate, CPI and Fuel Price.[[54]](#footnote-55)

### Periodic Tariff Review

#### The Tariff Cap shall be reset periodically following each Tariff Review Date, in accordance with the formulas set forth in Clause 4 (*Periodic Reset of Tariff Cap*) of Schedule 8 (*Tariff Regulation*).

### Extraordinary Tariff Event Supplemental Tariff

#### Following the occurrence of an Extraordinary Tariff Event that causes a Cost/Revenue Impact, the Concessionaire shall be entitled to charge a Supplemental Tariff in accordance with Clause 17.11 (*Extraordinary Tariff Events*) and Clause 5 (*Extraordinary Tariff Event*) of Schedule 8 (*Tariff Regulation*).

## Compensation in lieu of a Tariff Cap Adjustment or the charging of a Supplemental Tariff

### In the eventthat:

#### within [•] Days of any request, the Regulator fails to respond or prevents a reset of the Tariff Cap (in whole or in part) or the charging of a Supplemental Tariff (in whole or in part) to which the Concessionaire is entitled in accordance with the provisions set forth in this Clause 11 (*Tariffs*), Clause 17.11 (*Extraordinary Tariff Events*) and Schedule 8 (*Tariff Regulation*); or

#### the Grantor or any Governmental Authority requests that any items (including tariffs and Supplemental Tariffs) set forth in the Tariff Schedule are set at a lower level than the level to which the Concessionaire is entitled in accordance with the provisions set forth in this Clause 11 (*Tariffs*), Clause 17.11 (*Extraordinary Tariff Events*) and Schedule 8 (*Tariff Regulation*),

### (each of (i) and (ii) above a “**Reduction Event**”), the Grantor shall compensate the Concessionaire for that Reduction Event, in accordance with Clause 11.3(b) below.

### Upon the occurrence of a Reduction Event, the Grantor shall pay to the Concessionaire on each Automatic Tariff Cap Adjustment Date falling after the occurrence of a Reduction Event the Loss Amount notified to it by the Concessionaire at least [*three (3)*] Business Days prior to each Automatic Tariff Cap Adjustment Date.

## Bilateral Contracts and Special Customers

* + - 1. Where a Large Customer requires a service level that is higher than the Service Standards that it is entitled to under Schedule 5 (*Service Standards*), the Concessionaire and that Large Customer may enter into a contract for the provision by the Concessionaire of such higher levels of service to that Large Customer. The contract shall specify:
         1. the service levels and standards to be provided by the Concessionaire to that Large Customer; and
         2. the charges that the Large Customer shall pay for those service levels and standards,

and, subject to Clause 11.4(b), such contract shall be a “**Bilateral Contract**” and any Large Customer thereunder shall be a “**Special Customer**” for the purposes of this Agreement.

* + - 1. To qualify as a Bilateral Contract, any contract entered into in accordance with Clause 11.4(a) above:[[55]](#footnote-56)
         1. must be in writing; and
         2. prior to entering into such contract, the Concessionaire must disclose to the Large Customer the tariffs and Service Standards that would be applicable to that Large Customer pursuant to the Tariff Schedule if no Bilateral Contract was concluded.
      2. The service levels and standards applicable to a Special Customer shall be governed by the Bilateral Contract and not by Schedule 5 (*Service Standards*).
      3. The tariffs applicable to a Special Customer shall be governed by the Bilateral Contract and not by the Tariff Schedule and shall, for the duration of its term, be excluded:
         1. when calculating the Average Tariff for a Quarter; and
         2. from the restriction of the Tariff Cap [; *and*
         3. *may be billed in Foreign Currency[[56]](#footnote-57).*]
      4. Notwithstanding the request of a Large Customer to enter into a Bilateral Contract, the Concessionaire shall not be obligated to accept a Large Customer as a Special Customer.

## Currency and Billing

### Tariffs will be billed in [*insert relevant currency*], as provided for in Schedule 8 (*Tariff Regulation*).

# Financing and Project Support[[57]](#footnote-58)

## Financing

### The Concessionaire may procure funding for the design, construction, operation and maintenance of the Mini-Grids under this Agreement by way of Debt and Equity.

## Expansion

### Following Concession Completion, where:

#### demand for electrical energy from existing Customers; and/or

#### demand from new Customer Connections

exceeds the current generating and distribution capacity of the Mini-Grids within the Concession Area (a “**Demand Increase**”), the Concessionaire shall be entitled to modify the Design and expand the Mini-Grids within the Concession Area to meet such Demand Increase and shall notify the Grantor of its expansion plans [*following approval for such Expansion from the Regulator*][[58]](#footnote-59) (an “**Expansion**”).

### The Concessionaire shall be permitted to incur additional Debt and raise additional Equity during the Concession Period to fund an Expansion (an “**Expansion Financing**”) and shall notify the Grantor in writing of such additional Expansion Financing.

## Additional Funding

### If the Concessionaire determines that additional Debt is necessary during the Concession Period to fund additional costs not related to an Expansion Financing or to refinance its Debt during the Concession Period (any “**Additional Funding**”), it shall be permitted to incur such Additional Funding.

## Lender Security[[59]](#footnote-60)

The Concessionaire shall be permitted to:

### [*charge/pledge*] to the Lenders all the Concession Assets; and/or

### assign in favour of its Lenders:

#### the right to use and the ownership of the Concession Data, to the extent permitted by Applicable Law, in particular with regard to privacy laws in respect of Customer information; and

#### its rights under this Agreement.

## Direct Agreement

The Grantor shall, as soon as reasonably practicable following a request by the Lenders or their agent, enter into the Direct Agreement with the Lenders (or their agent) and the Concessionaire to enable Financial Close to occur.

## Viability Gap Funding[[60]](#footnote-61)

The Grantor agrees and confirms that the Concessionaire shall be entitled to receive payments of the Viability Gap Funding free and clear of any and all corporate taxes and withholding, stamp duties, registration fees and any other taxes or duties under Applicable Law.[[61]](#footnote-62)

# Representations and Warranties

## Grantor Representations and Warranties

The Grantor hereby represents and warrants to the Concessionaire, on the Signing Date and the Concession Effective Date, that:

### [*The Ministry of Energy and Ministry of Finance*[[62]](#footnote-63)] each have full power and authority to execute and deliver this Agreement on behalf of the Grantor, and the Grantor has full power and authority to perform its obligations under this Agreement;

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

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

#### will not violate Applicable Law;

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

### to the best of its knowledge, after reasonable inquiry, and save as otherwise disclosed to the Concessionaire in writing by the Grantor prior to the Signing Date, the Grantor 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;

### to the best of its knowledge, after reasonable inquiry, and save as otherwise disclosed to the Concessionaire in writing by the Grantor prior to the Signing Date, there is no action, suit, proceeding or investigation pending or threatened against the Grantor, 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; and

### this Concession has been awarded to the Concessionaire in compliance with Applicable Law [*and the Grantor has the right and full authority to grant the Consents, the right to occupy the Mini-Grid Sites and the Access Rights set out herein[[63]](#footnote-64)*].

[Additional representations to be included as required]

## Concessionaire Representations and Warranties

The Concessionaire hereby represents and warrants to the Grantor, on the Signing Date and the Concession Effective Date, that:

### the Concessionaire 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 Concessionaire:

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

#### will not violate Applicable Law;

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

### it has procured all of the Consents required under Applicable Law to be in place at such date, in each case as set forth in Schedule 15 (*Initial Consents*), and such Consents are in full force and effect;

### to the best of its knowledge, after reasonable inquiry, and save as otherwise disclosed to the Grantor in writing by the Concessionaire prior to the Signing Date:

#### the Concessionaire 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;

#### the Shareholders and Sponsors are 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 the Concessionaire;

### to the best of its knowledge, there is no action, suit, proceeding or investigation pending or, to the Concessionaire’s knowledge, threatened:

#### for the dissolution of the Concessionaire or any of its Shareholders or the Sponsors; or

#### against the Concessionaire, 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.

### Neither the Concessionaire, any Shareholder or any Sponsor nor any party to a Transaction Document is a Prohibited Person and each of the Concessionaire, the Shareholder and the Sponsor are in compliance with all Anti-Corruption Laws.

### Neither the Concessionaire, any Shareholder or any Sponsor nor any of its or their Affiliates, nor any Person acting on its or their behalf, has committed or engaged in, with respect to the Project or any transaction contemplated by this Agreement, any Sanctionable Practice.

### [Other concession-specific representations to be included**]**

# Foreign Currency Exchange and Transfer of Funds

## Foreign Exchange Regulation

Subject to Clause 14.2 (Availability of Foreign Currency), the foreign currency exchange and transfer abroad of all funds related to the Concession shall be governed by Applicable Law.

## Availability of Foreign Currency

### The Parties acknowledge and agree that Foreign Currency is required in connection with the Project, including Foreign Currency required for:

#### meeting the Concessionaire’s obligations under [*insert relevant Project Agreements*];

#### the repatriation by or on behalf of the Concessionaire of dividends, payments pursuant to Shareholder Loans or in respect of other Equity, or proceeds upon dissolution or liquidation of the Concessionaire, in each case to Foreign Sponsors;

#### the Foreign Currency expenses of the Concessionaire, including payments under any Project Agreement, EPC Contract or Operating Services Agreement or any other payment to a foreign contractor or any advisor to the Concessionaire, the Sponsors or the Lenders;

#### the payment of premiums and fees to offshore insurers, including the payment of due and payable amounts to any political risk insurance provider;

#### the payments to be made by the Grantor to the Concessionaire (or the Foreign Sponsors or the Lenders (as applicable)) on termination of this Agreement;

#### the payments to be made by the Concessionaire in respect of the Debt or in respect of any fees to be made to the provider of any credit enhancement products to be provided to the Concessionaire to support the Project and/or the availability of Debt for the Project;

#### payments to be made by the Concessionaire to offshore bank accounts, as required by the Financing Agreements, including any escrow, reserve and accrual accounts; and

#### proceeds from the Lenders’ enforcement of security in respect of assets or the realisation of remedies or the enforcement of security.

### If and to the extent that Foreign Currency required in connection with the Concession is not available on demand in sufficient amounts through normal banking channels in the Host Country (subject to the Concessionaire having used its reasonable endeavours to seek the Foreign Currency for a period of no less than [*sixty (60)*]Days), then the Concessionaire shall promptly apply to the Grantor in writing and the Grantor shall, no later than [*thirty (30)*] Days following the date of the Concessionaire’s application, pay to the Concessionaire Foreign Currency:

#### in the amount requested by the Concessionaire and in exchange for the [*insert local currency*] that the Concessionaire could not convert into Foreign Currency, such [*insert local currency*] to be delivered by the Concessionaire to the Grantor or [*the Reserve Bank/Central Bank*] of the Host Country;

#### at the Exchange Rate at 11:00 a.m. on the Day immediately preceding the date on which the Concessionaire first sought to convert the relevant [*insert local currency amount*] to Foreign Currency; and

#### in immediately available funds to an account inside or outside the Host Country nominated by the Concessionaire.

## Bank Accounts

### Foreign Currency provided to the Concessionaire by:

#### Foreign Lenders;

#### Foreign Sponsors;

#### Contractors or suppliers, including in the form of liquidated damages;

#### foreign insurers, including in the form of proceeds of insurance and reinsurance; and

#### any other source outside of the Host Country,

that is to be used to pay Foreign Lenders, Foreign Sponsors, foreign Contractors, suppliers, insurers or reinsurers may be deposited in offshore accounts of the Concessionaire and may be paid directly to such Persons.

### The Grantor shall, notwithstanding Clause 9.1 (*Applications by the Concessionaire for Consents*), ensure that, upon proper application being made by the Concessionaire to the [*Central Bank/Reserve Bank*]of the Host Country, in accordance with the Applicable Laws, the [*Central Bank/Reserve Bank*]of the Host Country and each other Governmental Authority shall:

#### give the Concessionaire and the Contractors all necessary consents for the opening, operation and retention of Foreign Currency bank accounts inside [*insert Host Country*] for the purposes of the Project (including those described in Clause 14.3(a) (Bank Accounts)); and

#### give the Concessionaire and the Contractors permission to maintain bank accounts outside the Host Country and to enable each of them to transfer funds from their bank accounts in the Host Country to their accounts maintained outside the Host Country as are necessary to implement and carry out their obligations and exercise their rights under this Agreement and any Transaction Document, EPC Contract or Operating Services Agreement, including such accounts as are required under any Transaction Document, EPC Contract or Operating Services Agreement,

provided that nothing in this Agreement shall prevent the Concessionaire from opening, operating and retaining moneys in additional Foreign Currency bank accounts outside the Host Country from time to time after the Signing Date if and to the extent that it is or becomes otherwise permitted under Applicable Law.

## Free Transfer of Funds[[64]](#footnote-65)

### The Grantor shall and, notwithstanding Clause 9.1 (Applications by the Concessionaire for Consents), procure that on proper application by the Concessionaire to the [*Central Bank/Reserve Bank*]of the Host Country in accordance with Applicable Law, the [*Central Bank/Reserve Bank*]of the Host Country] and all other relevant Governmental Authorities shall not restrict the free transfer of all funds and financial settlements necessary to carry out the Project or the implementation of this Agreement or any other Transaction Document, EPC Contract or Operating Services Agreement or to make the Foreign Currency payments pursuant to Clause 14.1(*Foreign Exchange Regulation*).

### If any restriction exists on the free and immediate transfer of Foreign Currency outside the Host Country, the Grantor shall (within [*three (3)*] Business Days of receipt of an application from the Concessionaire) remove any such restrictions in respect of the Concessionaire, or procure that any relevant Governmental Authority lifts such restrictions in respect of the Concessionaire, so that all amounts of Foreign Currency currently held by the Concessionaire within the Host Country are capable of being paid to an offshore account nominated for receipt of such Foreign Currency by the Concessionaire.

# Insurance

## General Insurance Provisions

### The Concessionaire shall, in accordance with this Clause 15 (Insurance), obtain and maintain in effect, at its own cost and expense, the insurances required to be put in place by it in accordance with Schedule 10 (*Insurances*).

### The Concessionaire shall take reasonable steps to ensure that its Contractors obtain and maintain in effect at all times such insurance cover as is appropriate for a contractor exercising Good Industry Practice.

### Nothing in this Clause 15 (Insurance) shall prevent the Concessionaire from procuring additional insurance cover, over and above such insurance coverage as it is required to procure pursuant to this Clause 15 (Insurance).

### The Concessionaire shall provide a copy of all Insurances to the Grantor, along with such documentation as may be necessary to evidence that the Insurances are in full force and effect and otherwise in compliance with the other requirements of this Clause 15 (Insurance).

## Availability of Insurance

The Concessionaire shall not be in breach of its obligations to take out and maintain the Insurances in accordance with this Clause 15 (*Insurance*) where:

### any insurance (or a term or condition of any insurance) set out in Schedule 10 (*Insurances*) is not available to the Concessionaire in the international or local insurance market; or

### any insurance (or a term or condition of any insurance) set out in Schedule 10 (*Insurances*) is not available in the international or local insurance market on commercially reasonable terms (including the insurance premium payable) such that it would be reasonable for the Concessionaire, acting in accordance with Good Industry Practice, not to take out or to maintain that insurance,

### and for the purpose of this Clause 15 (*Insurance*), any local insurer must have a credit rating of [*to be agreed for each Concession*].

## Unavailability of Insurance

Where the Concessionaire becomes aware that any insurance (or a term or a condition of any insurance as required under Schedule 10 (*Insurances*)) is not available with an insurer on reasonable commercial terms in the international or local insurance market at the time that the insurance is sought to be obtained or renewed, it shall:

### promptly (and in any event within seven (7) Business Days) notify the Grantor of the same and shall consult with the Grantor on the steps it will take to mitigate such unavailability; and

### upon the reasonable request of the Grantor, approach the international and local insurance market at reasonable intervals, but not less frequently than on a monthly basis, to determine whether the relevant circumstances have ceased to apply and shall keep the Grantor fully informed of such approaches; and

### until such time as the insurance becomes available with an insurer on reasonable commercial terms in the international insurance market, the Grantor agrees that it shall provide the Concessionaire with any shortfall in amounts between:

#### the amounts recoverable by the Concessionaire under the insurance cover then available with an insurer on reasonable commercial terms in the international insurance market; and

#### the amounts that would have been recoverable under the insurance cover required under Schedule 10 (*Insurances*).

## Evidence of Cover

### No later than thirty (30) Business Days after the date any of the Insurance Policies and coverage required to be in effect in accordance with this Clause 15 (*Insurance*) are issued, or renewed in accordance with their terms, the Concessionaire shall cause its insurers or agents to provide the Grantor with copies of such insurance policies and certificates of insurance evidencing the terms and conditions of such policies and coverage.

### The Concessionaire shall provide the Grantor with copies of receipts or statements from the Concessionaire’s insurers or other evidence satisfactory to the Grantor evidencing payment by the Concessionaire of the premiums in respect of such Insurance Policies and cover.

### The Grantor may request (no more frequently than annually) the Concessionaire to provide proof that all relevant premiums have been paid and that the relevant policy or policies remain in existence.

## Compliance with Insurance Obligations

### Failure by the Concessionaire to obtain the insurance coverage or certificates of insurance required by this Clause 15 (*Insurance*) shall not relieve the Concessionaire of its obligations under this Clause 15 (*Insurance*) or in any way relieve or limit the Concessionaire’s obligations and liabilities under any other provision of this Agreement.

## Application of insurance proceeds

### Unless the Grantor otherwise agrees in writing, the Concessionaire shall apply proceeds of any insurance claim made due to Loss to a Mini-Grid or any part of a Mini-Grid (other than claims under business interruption insurance, delay in start-up, any other loss of revenue policies or third-party liability policies) towards reinstatement, reconstruction, replacement, repair or renewal of such Loss in the first instance.

### Notwithstanding paragraph (a) above, it is acknowledged and agreed that the Lenders will have security over and rights under the insurance policies. Further, the Lenders shall have the right to apply insurance proceeds in excess of the amount agreed under the Financing Agreements to prepayment of the outstanding debt under the Financing Agreements.

## Notification and making of claims

The Concessionaire must:

### promptly notify the Grantor of any occurrence that may reasonably give rise to a claim in excess of …………… [*Dollars*] under any Insurance Policy;

### keep the Grantor informed of subsequent developments concerning the occurrence under Clause 15.7(a); and

### diligently pursue any claim which it has under any Insurance Policy which has arisen in connection with the Concession.

# Liability and Indemnification

## Liability

### Except as expressly provided in this Agreement, 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. In respect of a breach of the provisions of this Agreement, neither Party shall have any liability to the other Party except 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 16.1(a) or Clause 16.4 (*Limit of Liability*), each Party shall be liable to the other Party for any Loss or damage arising by virtue of gross negligence or wilful misconduct.

## Mitigation of Damages

Subject to Clause 17.7 (*Responsibilities of the Parties*), each Party shall use reasonable endeavours (with or without incurring expenses reasonable in the circumstances arising) to mitigate or avoid any Loss or damage caused by the failure of the other Party to meet its obligations under this Agreement, whether or not such failure is the result of an Excusing Event.

## Mutual Indemnifications

Subject to Clause 16.4 (*Limit of Liability*) below, each Party shall indemnify, defend and hold harmless the other Party at all times after the date hereof, against any and all Losses, and any and all actions, claims and demands in respect of such Losses, incurred, suffered, sustained, or required to be paid, directly or indirectly, by, or sought to be imposed upon the other Party in respect of: (i) the death or personal injury of any individual, (ii) damage to property, or (iii) any third-party liabilities and damages arising out of the indemnifying Party’s or its Agents’ default under or in connection with this Agreement.

## Limit of Liability

Notwithstanding this Clause 16, the liability of each Party under this Agreement shall be capped to …………… [*insert liability cap threshold*], but such cap shall not, for the avoidance of doubt, apply to any Buy-Out Amount payable under Clause 19 (*Termination*) and any payment to be made to the Concessionaire hereunder by the Grantor in accordance with Clause 11.3 (*Compensation in lieu of a Tariff Cap Adjustment* *or the charging of a Supplemental Tariff*).

## Joint Liability

In the event that any Loss results from the joint or concurrent negligent or intentional acts or omissions of the Parties, each Party shall be liable under Clause 16.3 (*Mutual Indemnifications*) in proportion to its relative degree of fault.

## Default Interest

If there is any delay in the payment of any amount due to a Party under this Agreement (an “**Unpaid Sum**”), such Unpaid Sum shall be adjusted to include interest at [•]% per annum between the date on which the Unpaid Sum became due and payable and the date on which the Unpaid Sum is paid.

# Force Majeure[[65]](#footnote-66)

## Definition of Force Majeure

A “Force Majeure Event” shall mean any event or circumstance or combination of events or circumstances, and the effects thereof, beyond the reasonable control of a Party occurring on or after the Signing Date that materially and adversely affect the ability of that Party to perform any of its obligations or, in respect of the Concessionaire, to enjoy its rights and benefits, under or pursuant to this Agreement (the“Affected Party”) provided that:

### such circumstance, event or condition, despite the exercise of diligence, cannot be reasonably prevented, avoided or overcome by the Affected Party;

### 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; and

### 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 or any other Transaction Document,

and subject to the exclusions in Clause 17.4 (*Exclusions*), “Force Majeure Events” shall include Political Force Majeure Events and Natural Force Majeure Events, provided that with respect to a Political Force Majeure Event, only the Concessionaire may be an Affected Party.

## Political Force Majeure Events

A “Political Force Majeure Event” means any of the following events or circumstances or any combination of events and/or circumstances, and the effects thereof, occurring inside or directly involving the Host Country (provided that they fall within the definition of Force Majeure Event):

### any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, border dispute, embargo, civil war or revolution;

### radioactive contamination or ionising radiation originating from a source in the Host Country or resulting from another Political Force Majeure Event;

### any riot, insurrection, civil commotion, act or campaign of terrorism that is of a political nature, including actions associated with or directed against the Concessionaire (or its Contractors);

### any act of sabotage against the Mini-Grids (excluding any act of sabotage against the Mini-Grids solely by any employee or employees of the Concessionaire or any of its Contractors and where such act of sabotage is not politically motivated);

### an Expropriation;

### any strike, lock-out, work-to-rule or go-slow that extends beyond the Mini-Grids, does not involve solely the workforce of the Concessionaire and its Contractors and is:

#### part of an industry-wide, country-wide or region-wide strike, work-to-rule or go-slow; or

#### by the employees of any Governmental Authority;

### a Lapse of Consent;

### any Change in Law that:

#### makes unenforceable, invalid or void any material obligation of the Grantor under this Agreement or any other Governmental Authority under any Transaction Document;

#### makes it unlawful for the Concessionaire or the Contractors to make or receive any payment, to perform any material obligation or to enjoy or enforce any material right under any Consent, this Agreement or any other Transaction Document; or

#### places material restrictions or limitations on the ability of the Concessionaire to be paid in or to receive Foreign Currency or to pay the Lenders in Foreign Currency, or for any Foreign Sponsors to repatriate any dividends (or distributions of capital or payments in respect of Equity) from the Concessionaire to any Foreign Sponsor, with the restrictions or limitations remaining in place for more than [*one hundred and eighty (180)*] Days without an arrangement being provided to exempt the Concessionaire or its Foreign Sponsors from all such restrictions and limitations; or

### [*any unilateral modification of any Tariff set forth in the Tariff Schedule by a Governmental Authority/Regulator (including, within* [•] *Days of any request for approval, (a) a failure to allow the implementation of a tariff setting or resetting pursuant to the formulas and methodology for tariff setting and adjustment (in whole or in part) or the charging of a Supplemental Tariff (in whole or in part) as set forth in Schedule 8 (Tariff Regulation) or (b) a failure by the Regulator to respond to any such request), except where Clause 11.3 (Compensation in lieu of a Tariff Cap Adjustment or the charging of a Supplemental Tariff) applies*];[[66]](#footnote-67)

### any archaeological or paleontological remains or anything related to the Host Country’s cultural heritage is discovered on or under any Generation Site or an area subject to an Access Right;

### restrictions on exports to the Host Country imposed by other countries or international bodies;

### any action or inaction of a Governmental Authority;

### any Contractor or other counterparty to a Project Agreement, EPC Contract or Operating Services Agreement being affected by an event that would constitute a Political Force Majeure Event specified above (as applied to such Contractor); or

### the occurrence of an event or any combination thereof, the effects of which are similar to, or analogous with, those listed in this Clause 17.2 (*Political Force Majeure Events*), including those occurring under any other Project Agreement.

## Natural Force Majeure Events

A “Natural Force Majeure Event” means any Force Majeure Event or any combination thereof, that does not constitute, or is not caused by, a Political Force Majeure Event, including the following:

### earthquake, flood, tsunami, storm, cyclone, typhoon, tornado, hurricane, extreme weather, meteorite, volcanic eruption, ash cloud, lightning or any other natural calamity;

### fire, explosion, mudslides or chemical contamination (other than as resulting from a Political Force Majeure Event, in which case it shall be a Political Force Majeure Event);

### epidemic, pandemic, drought, famine, disease, pestilence or plague, including any COVID-19 Related Health Event;

### unanticipated environmental, geographical, topographical, subsurface, geological, hydrological or seismic conditions which were unknown and could not have been discovered by a reasonably prudent investigation given the circumstances and location; or

### any Contractor or other counterparty to a Project Agreement, EPC Contract or Operating Services Agreement being affected by an event that would constitute a Natural Force Majeure Event specified above (as applied to such Contractor).

## Exclusions

Notwithstanding anything in Clause 17.1 (*Definition of Force Majeure*), Force Majeure Events shall not include the following conditions:

### normal wear and tear in materials and equipment or breakdowns in equipment due to normal wear and tear;

### any solar resource variability caused by expected and foreseeable changes in meteorological conditions; and

### any failure to make a payment of money in accordance with the Affected Party’s obligations under this Agreement.

## Consequences of Force Majeure

An Affected Party shall be relieved from the duty to perform its obligations under this Agreement (other than an obligation to make a payment when due and payable) and any liability for failure to perform such obligations, in whole or in part, under this Agreement to the extent such non-performance is materially and adversely affected by the occurrence of a Force Majeure Event.

## Notification Obligations

If by reason of a Force Majeure Event a Party is wholly or partially unable to carry out any of its obligations, or the Concessionaire is unable to enjoy its rights and benefits, under this Agreement, the Affected Party shall:

### as soon as reasonably practical and no later than [*five (5)*] Days after becoming aware of such Force Majeure Event, notify the other Party in writing of the Force Majeure Event and how it affects the Affected Party’s ability to perform its obligations under this Agreement (including confirming whether the Force Majeure Event affects all the Mini-Grid [*Sites/Lots*] or some of the Mini-Grid [*Sites/Lots*]), and where such Political Force Majeure Event has a Cost/Revenue Impact, the Concessionaire shall further notify the Grantor and the Regulator, if applicable, of such Cost/Revenue Impact in accordance with Clause 17.11 (*Extraordinary Tariff Events*) and within the notice period set out in Clause 17.11 (*Extraordinary Tariff Events*);

### use all reasonable efforts to:

#### remedy its inability to perform its obligations under this Agreement; and

#### resume full and timely performance of its obligations under this Agreement as soon as practicable;

### keep the other Party apprised of such efforts on a regular basis; and

### provide written notice to the other Party of the resumption of full and timely performance of its obligations under this Agreement.

## Responsibilities of the Parties

The Affected Party shall, as soon as practicable after the commencement of a Force Majeure Event, use reasonable endeavours to expeditiously remedy and mitigate the Force Majeure Event causing the failure and to minimise the interruption of performance of its affected obligations, *provided that:* (i) an Affected Party shall not be required to settle any labour dispute or industrial or public disturbance, except in such manner as it shall in its own judgement consider acceptable; and (ii) an Affected Party shall not be required to incur any extraordinary costs or to act other than in accordance with Good Industry Practice.

## Delay Caused by Force Majeure Event

Neither Party shall be responsible or liable for or deemed in breach hereof because of any failure or delay in complying with its obligations (other than an obligation to make a payment when due) due solely to one or more Force Majeure Events or its or their effects or any combination thereof, and, upon the request of the Affected Party, the periods allowed or dates required for the performance by Parties of such obligations, including the Target Concession Effective Date, Target Concession Completion Date and the Longstop Concession Completion Date (as applicable at such date), shall be extended on a day-for-day basis, *provided that*, no relief shall be granted to the Affected Party pursuant to this Clause 17 (*Force Majeure*) to the extent that such failure or delay would have nevertheless been experienced by that Party had such Force Majeure Event not occurred. Other than for breaches of this Agreement by the Party not claiming the Force Majeure Event, and without prejudice to the rights of the Affected Party to indemnification under this Agreement, the Party not claiming a Force Majeure Event shall not bear any liability for any Loss or expense suffered by the Affected Party as a result of a Natural Force Majeure Event.

## Access

At the request of the other Party, the Affected Party shall provide, or use its reasonable endeavours to procure, access to the areas and facilities affected by the Force Majeure Event, and to its records relating to that Force Majeure Event, for a reasonable number of representatives of the other Party, at that other Party’s sole risk and expense, so that those representatives may verify the impact of that Force Majeure Event on the Affected Party’s performance and the likely duration of its effects.

## Consequences of a Political Force Majeure Event

### Upon the occurrence, and during the continuance, of a Political Force Majeure Event where the Concessionaire has suffered a Cost/Revenue Impact attributable to that Political Force Majeure Event, it shall be entitled to be compensated for that Cost/Revenue Impact, from the start of the Political Force Majeure Event until the earlier to occur of:

#### the Impact End Date; and

#### the Termination Date or Removal Date (as applicable),

#### in accordance with the provisions of Clause 17.11 (*Extraordinary Tariff Events*).

### Where such Political Force Majeure Event is a Prolonged Force Majeure Event, the Concessionaire shall be entitled:

#### for a Political Force Majeure Event that is Concession Wide, to Terminate this Agreement; and

#### for a Political Force Majeure Event that is not Concession Wide, to a Removal of the affected Mini-Grid [*Sites/ Lots*],

in each case in accordance with Clause 19.6 (*Termination or Removal for Prolonged Force Majeure Events after the Concession Effective Date*); and

#### where the Concessionaire is compensated for the Cost/Revenue Impact attributable to any Political Force Majeure Event, as set forth in this Clause 17.10, the receipt of such compensation shall be without prejudice to the right of the Concessionaire to exercise its rights arising under Clause 19.6 (*Termination or Removal for Prolonged Force Majeure Events after the Concession Effective Date*) while such Prolonged Force Majeure Event is continuing.

### Any Dispute under this Clause 17.10 (*Consequences of a* Political Force Majeure Event) shall be referred to arbitration in accordance with Clause 20.4 (Arbitration).

## Extraordinary Tariff Events[[67]](#footnote-68)

### Upon the occurrence of an Extraordinary Tariff Event after the Concession Effective Date, the Concessionaire shall be entitled to be compensated for any Cost/Revenue Impact attributable to that Extraordinary Tariff Event through the charging of a Supplemental Tariff. The Concessionaire, without prejudice to being entitled to be compensated for any Cost/Revenue Impact by charging a Supplemental Tariff, shall notify the Grantor and the Regulator, if applicable, of that Extraordinary Tariff Event no later than [*fourteen (14)*] Business Days after it becomes aware of the occurrence of that Extraordinary Tariff Event.

### Where an Extraordinary Tariff Event has a Cost/Revenue Impact, the Concessionaire shall:

#### determine whether the Extraordinary Tariff Event is a Temporary Extraordinary Tariff Event or a Non-Temporary Extraordinary Tariff Event; and

#### shall establish a TEE Account and/or an EE Account (as relevant) to record the Cost/Revenue Impact attributable to that Extraordinary Tariff Event.

### Temporary Extraordinary Tariff Event

#### Where an Extraordinary Tariff Event is a Temporary Extraordinary Tariff Event, the Concessionaire shall:

##### record the Cost/Revenue Impact attributable to that Temporary Extraordinary Tariff Event in a TEE Account, from the date of the start of the Extraordinary Tariff Event until the Impact End Date, in accordance with Clauses 5.1(a) and (b) (*Compensation for Temporary Extraordinary Tariff Event*) of Schedule 8 (*Tariff Regulation*); and

##### as soon as practicable following the Impact End Date, the Concessionaire shall notify the Grantor and the Regulator, if applicable, of the balance in the TEE Account attributable to the Temporary Extraordinary Tariff Event and the Concessionaire shall be entitled to be compensated for the Cost/Revenue Impact by charging a Supplemental Tariff, in accordance with Clause 5.1(c) (*Disposition of the TEE Account when the Temporary Extraordinary Tariff Event has Ceased*) of Schedule 8 (*Tariff Regulation*).

### Non-Temporary Extraordinary Tariff Event

#### Where an Extraordinary Tariff Event is a Non-Temporary Extraordinary Tariff Event:

##### the Concessionaire shall record the Cost/Revenue Impact attributable to that Non-Temporary Extraordinary Tariff Event in an EE Account, from the date of the start of the Extraordinary Tariff Event until the start of the next Tariff Period, in accordance with Clauses 5.2(a) and (b) (*Compensation for Non-Temporary Extraordinary Tariff Events*) of Schedule 8 (*Tariff Regulation*);and

##### on each Tariff Review Date following the occurrence of a Non-Temporary Extraordinary Tariff Event, the Concessionaire shall notify the Grantor and the Regulator, if applicable, of the balance in the EE Account and the Concessionaire shall be entitled to be compensated for the Cost/Revenue Impact by way of charging a Supplemental Tariff, in accordance with Clause 5.2(c) (*Disposition of the EE Account in the next Tariff Period*) of Schedule 8 (*Tariff Regulation*).

### Upon a Termination after the Concession Effective Date, an amount equal to the balance of the Total Extraordinary Tariff Event Balance on the Termination Date shall be paid to the Concessionaire by the Grantor upon such Termination, in accordance with Annex 1 (*Termination Buy-Out Amounts*) of Schedule 9 *(Termination*).

# Events of Default

## Concessionaire Events of Default

Each of the following events shall be an event of default by the Concessionaire (each, a “Concessionaire Event of Default”), which, if not remedied in full within the time permitted (if any), shall give rise to the right of the Grantor to Terminate this Agreement or, where such Concessionaire Event of Default affects a Mini-Grid Lot or a Mini-Grid Site only, opt for a Lot Removal or Site Removal (as applicable), in each case pursuant to Clause 19.4(a) (Termination or Removal for Concessionaire Event of Default after the Concession Effective Date); provided that no such event shall become a Concessionaire Event of Default if it results substantially from an Excusing Event:

### the occurrence of any material breach by the Concessionaire of this Agreement (other than any breach that is referred to in Clauses 18.1(b)(iii)–(iv), (c) and (i), (*Concessionaire Events of Default*)) that is not remedied within sixty (60) Days after a Remedy Notice from the Grantor in accordance with Clause 18.3 (*Remedy Period and Compensation*);

### the occurrence of any of the following events:[[68]](#footnote-69)

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

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

#### the appointment of a liquidator in a proceeding for the winding up of the Concessionaire after notice thereto and due hearing, where the appointment has not been set aside or stayed within …………… Business Days of such appointment; or

#### the making by a court with jurisdiction over the Concessionaire of an order winding up the Concessionaire that is not stayed or reversed by a court of competent authority within …………… Business Days;

### the Concessionaire does not pay by its payment due date any amount due and payable by the Concessionaire to the Grantor hereunder (and, where applicable, the Grantor has not been able to obtain payment of the amount pursuant to any bond issued on behalf of the Concessionaire pursuant to this Agreement), within a period of …………… [*forty-five (45)*] Business Days from such payment due date;

### the Concession Effective Date has not been achieved by the Target Concession Effective Date as a consequence of a Concessionaire Delay Event, unless Clauses 3.3(a) or 3.3(b)(i) (*Failure to Achieve the Concession Effective Date – Concessionaire Delay Event*) apply;

### subject to Clause 6.4(e), Concession Completion has not occurred by the Longstop Concession Completion Date;

### a Change to the Ownership Interest which is not permitted under Clause 10.1 (*Change of Ownership Interests*);

### transfer of the Concessionaire’s rights and obligations which are not permitted under Clause 21.13 (Assignment and Security);

### Abandonment by the Concessionaire for a period of more than ninety (90) consecutive Days;

### the occurrence of a Persistent Service Standard Failure;[[69]](#footnote-70)

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

### a breach of Clause 10.3 (*Conduct of the Parties*) by the Concessionaire.

## Grantor Event of Default

Each of the following events shall be an event of default by the Grantor (each, a “Grantor Event of Default”), which, if not remedied in full within the time permitted (if any), shall give rise to the right of the Concessionaire to Terminate this Agreement or, where such Grantor Event of Default affects a Mini-Grid Lot or a Mini-Grid Site only, opt for a Lot Removal or Site Removal, in each case pursuant to Clause 19 (Termination); provided that no such event shall become a Grantor Event of Default if it results substantially from a Natural Force Majeure Event, a Concessionaire Event of Default or a breach by the Concessionaire of this Agreement:

### the occurrence of any material breach by the Grantor of this Agreement (other than any breach which is referred to in Clauses 18.2(b),(e),(f), (g), (j) and (l) (Grantor Events of Default) (inclusive)) that is not remedied within sixty (60) Days after a Remedy Notice from the Concessionaire in accordance with Clause 18.3 (*Remedy Period and Compensation*);

### the failure by the Grantor to make any payment to the Concessionaire that it is obliged to make under this Agreement within [*forty-five (45)*] Days of the due date for such payment hereunder, including but not limited to, the payment of any Loss Amount;

### the Concession Effective Date has not been achieved by the Target Concession Effective Date as a consequence of a Grantor Delay Event, unless Clauses 3.2(A) or 3.2(B)(I) (*Failure to Achieve Concession Effective Date – Grantor Delay Event)* apply;

### failure by the Grantor to comply with the obligations arising from the Direct Agreement, where such failure is not remedied within thirty (30) Business Days of notice of such failure;

### any failure by the Grantor or any relevant Governmental Authority to maintain the Concessionaire Exclusivity and to comply with Clause 4.2 (*Exclusivity*) of this Agreement;

### any failure to issue a Transfer Notice following receipt or delivery of a Removal Notice in accordance with Clause 19.9(b) (*Transfer Notice*);

### any breach of Clause 8.1 (*Grid Expansion Notice*) by the Grantor;

### default by any Governmental Authority of its obligations under any Transaction Document to which it is a Party;

### transfer of the Grantor’s rights and obligations which are not permitted under Clause 21.13 (Assignment and Security);

### the failure of the Grantor to procure the co-operation of any Governmental Authority, where such co-operation is required for the Grantor to meet its obligations hereunder;

### any breach of Clause 5 (*Generation Sites and Land Use Rights*);

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

### any change in ownership of the Grantor which is not approved by the Concessionaire in accordance with Clause 10.4 (*Change in Ownership of the Grantor*); and

### [*a unilateral modification of this Agreement][[70]](#footnote-71)*.

## Remedy Period and Compensation

### Remedy Period

#### Upon the occurrence of a Concessionaire Event of Default or Grantor Event of Default that provides for a remedy period in Clause 18.1 (*Concessionaire Events of Default*) or 18.2 (*Grantor Event of Default*), the non-defaulting Party may serve a notice (a “**Remedy Notice**”) on the defaulting Party in accordance with Clause 18.3(a)(ii) (*Remedy Period and Compensation*).

#### The Remedy Notice must:

##### specify the type and nature of the Event of Default that has occurred, giving reasonable details; and

##### confirm the remedy period.

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

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

#### Where a Grantor Event of Default has a Cost/Revenue Impact, the Concessionaire shall be entitled to be compensated by charging a Supplemental Tariff, in accordance with Clause 17.11 (*Extraordinary Tariff Events*), or the payment of compensation, in accordance with Clause 11.3 (*Compensation in lieu of a Tariff Cap Adjustment or the charging of a Supplemental Tariff*).

## Termination for Concessionaire Event of Default or Grantor Event of Default

If a defaulting Party fails to implement any rectification programme in accordance with its terms or to remedy the Event of Default within the time period specified in the Remedy Notice, Clauses 19.4 (Termination or Removal for Concessionaire Event of Default after the Concession Effective Date) and 19.5 (*Termination or Removal for Grantor Event of Default after the Concession Effective Date*) shall apply.

# Termination[[71]](#footnote-72)

## Termination prior to the Concession Effective Date – Grantor Delay Event

### Upon the occurrence of a Grantor Delay Event: (i) where the Grantor fails to implement any rectification programme in accordance with its terms; (ii) where the Grantor fails to remedy the Grantor Delay Event within the time period specified in the Remedy Notice; or (iii) where such Grantor Delay Event is not subject to a remedy period, the Concessionaire may Terminate this Agreement by delivering a Termination Notice to the Grantor in accordance with Clause 3.2(B)(II) (Failure to Achieve Concession Effective Date – Grantor Delay Event).

### If the Concessionaire delivers a Termination Notice pursuant to Clause 3.2(B)(II) (Failure to Achieve Concession Effective Date – Grantor Delay Event):

#### the Grantor shall not be entitled to draw upon the Concessionaire Development Bond and must return the Concessionaire Development Bond to the Concessionaire within [*fifteen (15)]* Business Days of the date of the Termination Notice;

#### the Grantor shall indemnify the Concessionaire in respect of its documented Development Termination Costs up to an aggregate amount equal to …………… [*insert Foreign Currency Amount*] (the “**Development** Termination Costs Reimbursement Amount”). Such amount shall be paid to the Concessionaire by the Grantor no later than [*thirty (30)*] Days following the date of the Termination Notice; and

#### all Feasibility Studies carried out by, or on behalf of, the Concessionaire shall become the property of the Grantor and shall be handed over to the Grantor upon payment of the Development Termination Costs Reimbursement Amount by the Grantor to the Concessionaire.

### Where the Concessionaire is entitled to a Development Termination Costs Reimbursement Amount in accordance with Clause 19.1(b)(ii) (*Termination prior to the Concession Effective Date – Grantor Delay Event*):

#### it must include theDevelopment Termination Costs Reimbursement Amount in the Termination Notice delivered pursuant to Clause 3.2(B)(II) (Failure to Achieve Concession Effective Date – Grantor Delay Event), together with documentary evidence of such amount; and

#### where such Development Termination Costs Reimbursement Amount is not paid to the Concessionaire within the [*thirty (30)*] Day period set out at paragraph (b)(ii) above, the Concessionaire shall be entitled to draw upon the Grantor Development Bond to pay such amount and any other amounts owing to the Concessionaire by the Grantor under this Agreement.

## Termination prior to the Concession Effective Date – Concessionaire Delay Event

### Upon the occurrence of a Concessionaire Delay Event that is not the result of an Excusing Event: (i) where the Concessionaire fails to implement any rectification programme in accordance with its terms; (ii) where the Concessionaire fails to remedy the Concessionaire Delay Event within the time period specified in the Remedy Notice; or (iii) where such Concessionaire Delay Event is not subject to a remedy period, the Grantor may Terminate this Agreement by delivering a Termination Notice to the Concessionaire in accordance with Clause 3.3(b)(ii) (Failure to Achieve the Concession Effective Date – Concessionaire Delay Event).

### If the Grantor delivers a Termination Notice pursuant to Clause 3.3(b)(ii) (Failure to Achieve the Concession Effective Date – Concessionaire Delay Event):

#### the Concessionaire shall not be entitled to draw upon the Grantor Development Bond and must return the Grantor Development Bond to the Grantor within [*fifteen (15)*] Business Days of the date of the Termination Notice;

#### the Concessionaire shall indemnify the Grantor in respect of its documented Development Termination Costs up to an aggregate amount equal to …………… [*insert Foreign Currency Amount*] (the “**Development** Termination Costs Reimbursement Amount”). Such amount shall be paid to the Grantor by the Concessionaire no later than [*thirty (30)*] Days following the date of the Termination Notice; and

#### all Feasibility Studies carried out by, or on behalf of, the Concessionaire shall become the property of the Grantor and shall be handed over to the Grantor by the Concessionaire within [*thirty (30)]* Days of the date of the Termination Notice.

### Where the Grantor is entitled to a Development Termination Costs Reimbursement Amount in accordance with Clause 19.2(b)(ii):

#### it must include theDevelopment Termination Costs Reimbursement Amount in the Termination Notice delivered pursuant to Clause 3.3(b)(ii) (Failure to Achieve the Concession Effective Date – Concessionaire Delay Event), together with documentary evidence of such amount; and

#### where such Development Termination Costs Reimbursement Amount is not paid to the Grantor within the [*thirty (30)*] Day period set out in Clause 19.2(b)(ii) above, the Grantor shall be entitled to draw upon the Concessionaire Development Bond to pay such amount and any other amounts owing to the Grantor by the Concessionaire hereunder.

## Termination prior to the Concession Effective Date – Prolonged Force Majeure Event

### Upon the occurrence of a Natural Force Majeure Event that is a Prolonged Force Majeure Event prior to the Concession Effective Date, the Concessionaire may Terminate this Agreement by delivering a Termination Notice to the Grantor in accordance with Clause 3.4(a)(ii) (Failure to Achieve the Concession Effective Date –Natural Force Majeure Event).

### If the Concessionaire delivers a Termination Notice pursuant to Clause 3.4(a)(ii) (Failure to Achieve the Concession Effective Date – Natural Force Majeure Event):

#### the Grantor shall not be entitled to draw upon the Concessionaire Development Bond and must return the Concessionaire Development Bond to the Concessionaire within [*fifteen (15)*] Business Days of the date of the Termination Notice;

#### the Concessionaire shall not be entitled to the Development Termination Costs Reimbursement Amount; and

#### all Feasibility Studies carried out by, or on behalf, of, the Concessionaire shall become the property of the Grantor and shall be handed over to the Grantor within [*thirty (30)*] Days of the date of the Termination Notice.

## Termination or Removal for Concessionaire Event of Default after the Concession Effective Date

### Upon the occurrence of a Concessionaire Event of Default after the Concession Effective Date: (i) where the Concessionaire fails to implement any rectification programme in accordance with its terms; (ii) where the Concessionaire fails to remedy the Concessionaire Event of Default within the time period specified in the Remedy Notice; or (iii) where such Concessionaire Event of Default is not subject to a remedy period, the Grantor may:

#### where that Concessionaire Event of Default is Concession Wide, Terminate this Agreement, by delivering a Termination Notice to the Concessionaire; or

#### where such Concessionaire Event of Default is not Concession Wide and, in the reasonable opinion of the Grantor, is not capable of remedy, the Grantor may elect to remove the affected Mini-Grid [*Site/Lot*] from the Project by delivering a Removal Notice to the Concessionaire.[[72]](#footnote-73)

### If the Grantor delivers a Termination Notice pursuant to Clause 19.4(a) (*Termination or Removal for Concessionaire Event of Default after the Concession Effective Date*):

#### Clause 19.9 (*Transfer Notice*) shall apply; and

#### the applicable Buy-Out Amount shall be the Concessionaire Buy-Out Amount,

and the provisions of Annex 3 (*Transfer of Concession Assets or Share Capital*) of Schedule 9 (Termination) shall apply.

### If the Grantor delivers a Removal Notice pursuant to Clause 19.4(a)(ii) (*Termination or Removal for Concessionaire Event of Default after the Concession Effective Date*):

#### Clause 19.9 (*Transfer Notice*) shall apply; and

#### the applicable Buy-Out Amount shall be the Concessionaire Partial Buy-Out Amount,

and the provisions of Annex 3 (*Transfer of Concession Assets or Share Capital*) of Schedule 9 (Termination) shall apply.

## Termination or Removal for Grantor Event of Default after the Concession Effective Date

### Upon the occurrence of a Grantor Event of Default: (i) where the Grantor fails to implement any rectification programme in accordance with its terms; (ii) where the Grantor fails to remedy the Grantor Event of Default within the time period specified in the Remedy Notice; or (iii) where such Grantor Event of Default is not subject to a remedy period, the Concessionaire may:

#### where the Grantor Event of Default is Concession Wide, Terminate this Agreement by delivering a Termination Notice to the Grantor; or

#### where the Grantor Event of Default is not Concession Wide and, in the reasonable opinion of the Concessionaire, is not capable of remedy, the Concessionaire may elect to remove the affected Mini-Grid [*Site/Lot*] by delivering a Removal Notice to the Grantor.

### If the Concessionaire delivers a Termination Notice pursuant to Clause 19.5(a)(i) (*Termination or Removal for the Grantor Event of Default after the Concession Effective Date*):

#### Clause 19.9 (*Transfer Notice*) shall apply; and

#### the applicable Buy-Out Amount shall be the Grantor Buy-Out Amount,

and the provisions of Annex 3 (*Transfer of Concession Assets or Share Capital*) of Schedule 9 (Termination) shall apply.

### If the Concessionaire delivers a Removal Notice pursuant to Clause 19.5(a)(ii) (*Termination or Removal for Grantor Event of Default after the Concession Effective Date*):

#### Clause 19.9 (*Transfer Notice*) shall apply; and

#### the applicable Buy-Out Amount shall be the Grantor Partial Buy-Out Amount,

and the provisions of Annex 3 (*Transfer of Concession Assets or Share Capital*) of Schedule 9 (Termination) shall apply.

## Termination or Removal for Prolonged Force Majeure Events after the Concession Effective Date

### If a Force Majeure Event continues for a period exceeding one hundred and eighty (180) consecutive Days, or a series of Force Majeure Events continue for a period in aggregate that exceeds one hundred and eighty (180) consecutive Days (being a **“Prolonged Force Majeure Event”**), then:

#### where the Force Majeure Event is a Natural Force Majeure Event that is Concession Wide, either Party may Terminate this Agreement by delivering a Termination Notice to the other Party; or

#### where the Force Majeure Event is a Natural Force Majeure Event that is not Concession Wide and, in the reasonable opinion of the Concessionaire, is not capable of remedy, the Concessionaire may elect to remove the affected Mini-Grid [*Site/Lot*] by delivering a Removal Notice to the Grantor; or

#### where the Force Majeure Event is a Political Force Majeure Event that is Concession Wide, the Concessionaire may Terminate this Agreement by delivering a Termination Notice to the Grantor; or

#### where the Force Majeure Event is a Political Force Majeure Event that is not Concession Wide and, in the reasonable opinion of the Concessionaire, is not capable of remedy, the Concessionaire may elect to remove the affected Mini-Grid [*Site/Lot*] by delivering a Removal Notice to the Grantor.

### If the Concessionaire or Grantor (as applicable) delivers a Termination Notice pursuant to Clauses 19.6(a)(i) and (iii) (*Termination or Removal for Prolonged Force Majeure Events after the Concession Effective Date*):

#### Clause 19.9 (*Transfer Notice*) shall apply; and

#### if:

##### a Termination Notice follows a Natural Force Majeure Event (or a series thereof), the applicable Buy-Out Amount shall be the Natural Force Majeure Buy-Out Amount; or

##### the Termination Notice follows a Political Force Majeure Event (or series thereof), the applicable Buy-Out Amount shall be the Grantor Buy-Out Amount,

and the provisions of Annex 3 (*Transfer of Concession Assets or Share Capital*) of Schedule 9 (Termination) shall apply.

### If the Concessionaire delivers a Removal Notice pursuant to Clauses 19.6(a)(ii) and (iv) (*Termination or Removal for Prolonged Force Majeure Events after the Concession Effective Date*):

#### Clause 19.9 (*Transfer Notice*) shall apply; and

#### if:

##### a Removal Notice follows a Natural Force Majeure Event (or a series thereof), the applicable Buy-Out Amount shall be the Partial Natural Force Majeure Buy-Out Amount; or

##### a Removal Notice follows a Political Force Majeure Event (or series thereof), the applicable Buy-Out Amount shall be the Grantor Partial Buy-Out Amount,

and the provisions of Annex 3 (*Transfer of Concession Assets or Share Capital*) of Schedule 9 (Termination) shall apply.

## Termination for Expropriation

### Upon the occurrence of an Expropriation that is a Share Expropriation, this Agreement shall terminate immediately (without a Termination Notice) and, upon such termination, the Grantor shall pay to the Sponsors the Grantor Buy-Out Amount, in Dollars, to a bank account inside or outside the Host Country designated in writing by the Sponsors, in accordance with Annex 3 (*Transfer of Concession Assets or Share Capital*) of Schedule 9 (Termination) pursuant to the Expropriation Agreement.[[73]](#footnote-74)

### Upon the occurrence of an Expropriation that is an Asset Expropriation, the Concessionaire shall have the option to terminate this Agreement immediately (without first serving a Termination Notice) and, upon such termination, the Grantor shall pay to the Concessionaire the Grantor Buy-Out Amount, in Dollars,to a bank account inside or outside the Host Country designated in writing by the Concessionaire, in accordance with Annex 3 (*Transfer of Concession Assets or Share Capital*) of Schedule 9 (Termination).

## Termination or Removal Upon Grid Expansion [[74]](#footnote-75)

### Upon the date designated as the Grid Expansion Termination Date in a Grid Expansion Notice delivered to the Concessionaire in accordance with Clause 8.1(a) (*Grid Expansion Notice*):

#### where the Grid Expansion Notice is Concession Wide and the Concessionaire does not elect to continue as a Small Power Producer, Small Power Distributor or Interconnected Mini-Grid, this Agreement shall terminate and:

##### Clause 19.9 (*Transfer Notice*) shall apply; and

##### the applicable Buy-Out Amount shall be the Grantor Buy-Out Amount; or

#### where the Grid Expansion Notice is Concession Wide, and, in accordance with Clause 8.2(a)(ii) (*Grid Expansion Options*), the Concessionaire elects to continue as a Small Power Producer:

##### Clause 19.9 (*Transfer Notice*) shall apply; and

##### the Concessionaire shall:

###### continue to operate the Generation and Storage Assets; and

###### transfer the Distribution Assets to the Grantor or its designee; and

##### the applicable Buy-Out Amount shall be the Distribution Buy-Out Amount; or

#### where the Grid Expansion Notice is Concession Wide and, in accordance with Clause 8.2(a)(iii) (*Grid Expansion Options*), the Concessionaire elects to continue as a Small Power Distributor:

##### Clause 19.9 (*Transfer Notice*) shall apply; and

##### the Concessionaire shall:

###### continue to operate the Distribution Assets; and

###### transfer the Generation and Storage Assets to the Grantor or its designee; and

##### the applicable Buy-Out Amount shall be the Generation and Storage Buy-Out Amount; or

#### where the Grid Expansion Notice is Concession Wide and, in accordance with Clause 8.2(a)(iv) (*Grid Expansion Options*), the Concessionaire elects to continue as an Interconnected Mini-Grid Operator, this Agreement shall terminate;

#### where the Grid Expansion Notice is not Concession Wide, and in accordance with Clause 8.2(b) (*Grid Expansion Notice*), the Concessionaire elects to Remove the affected Mini-Grid [*Site/Lot*], the affected Mini-Grid [*Site/Lot*] shall be Removed; and

##### Clause 19.9 (*Transfer Notice*) shall apply; and

##### the applicable Buy-Out Amount shall be the Grantor Partial Buy-Out Amount; or

#### where the Grid Expansion Notice is not Concession Wide and, in accordance with Clause 8.2(a)(ii) (*Grid Expansion Options*), the Concessionaire elects to continue as a Small Power Producer in the affected Mini-Grid [*Site/Lot*]:

##### Clause 19.9 (*Transfer Notice*) shall apply; and

##### the Concessionaire shall:

###### continue to operate the Generation and Storage Assets of the affected Mini-Grid [*Site/Lot*];

###### transfer the Distribution Assets in the affected Mini-Grid [*Site/Lot*] to the Grantor or its designee; and

##### the applicable Buy-Out Amount shall be the Distribution Partial Buy-Out Amount; or

#### where the Grid Expansion Notice is not Concession Wide and, in accordance with Clause 8.2(a)(iii) (*Grid Expansion Options*), the Concessionaire elects to continue as a Small Power Distributor in the affected Mini-Grid [*Site/Lot*]:

##### Clause 19.9 (*Transfer Notice*) shall apply; and

##### the Concessionaire shall:

###### continue to operate the Distribution Assets in the affected Mini-Grid [*Site/Lot*]; and

###### transfer the Generation and Storage Assets in the affected Mini-Grid [*Site/Lot*] to the Grantor or its designee; and

##### the applicable Buy-Out Amount shall be the Generation and Storage Partial Buy-Out Amount; or

#### where the Grid Expansion Notice is not Concession Wide and, in accordance with Clause 8.2(a)(iv) (*Grid Expansion Options*), the Concessionaire elects to continue as an Interconnected Mini-Grid, the Parties shall Remove the affected Mini-Grid [*Site/Lot*] from the Concession.

## Transfer Notice

Subject to Clause 19.7 (Termination for Expropriation):

### The Grantor shall, no later than thirty (30) Days following the date on which the Grantor either delivers or receives (as the case may be) a Termination Notice, a Grid Expansion Notice or a Removal Notice (as applicable), deliver a notice in respect of the handover and transfer of the relevant Concession Assets to the Grantor or its designee upon payment of the relevant Buy-Out Amount. The notice shall identify the transferee of the Relevant Concession Assets (a “**Transfer Notice**”).

### If the Grantor fails to deliver a Transfer Notice following delivery or receipt of a Termination Notice, a Grid Expansion Notice or a Removal Notice (as applicable), in accordance with Clause 19.9(a) (Transfer Notice), such failure shall constitute a Grantor Event of Default.

## Obligations Upon Termination or Removal

### Upon the expiration or early termination of this Agreement, the Parties shall have no further obligations or liabilities under this Agreement except for obligations or liabilities that arose prior to, or arise upon, such expiration or termination and that shall survive until they are fulfilled, and obligations or liabilities that expressly survive such expiration or termination pursuant to Clause 19.10(c) of this Agreement.

### Upon a Mini-Grid [*Site/Lot*] Removal, the Parties shall have no further obligations or liabilities under this Agreement in respect of that Mini-Grid [*Site/Lot*] (as applicable) except for obligations or liabilities that arose prior to, or arise upon such [*Site/Lot*] Removal and that shall survive until they are fulfilled, and obligations or liabilities that expressly survive such expiration or termination of this Agreement pursuant to Clause 19.10(c) of this Agreement.

### Notwithstanding anything to the contrary in this Agreement, the provisions, rights and obligations set out in Clauses 1.1 (*Definitions*), 1.2 (*Rules of Interpretation*), 9 (*Consents*), 14 (*Foreign Currency Exchange and Transfer of Funds),* 16 (*Liability and Indemnification*), 17 (*Force Majeure*), 19 (*Termination*), 20 (*Resolution of Disputes*), 21.2 (*Commercial Acts; Sovereign Immunity*), 21.5(d) (*Confidentiality*), 21.6 (*Choice of Law*) and the Schedules referred to in such Clauses shall survive such termination or expiration until all provisions are fulfilled and all funds payable under this Agreement by the Grantor to the Concessionaire (or in the event of an Expropriation, to the Sponsors) are so paid.

## Exclusive Remedies

Subject to Clause 16 (*Liability and Indemnification*), the Parties’ remedies under Clause 19 (Termination) shall be their sole and exclusive remedies in relation to any Event of Default.

# Resolution of Disputes[[75]](#footnote-76)

## 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 the Concession) (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:

#### if the Dispute is a Technical Dispute, the Parties shall consult with the Independent Engineer and if the Dispute is not resolved for any reason whatsoever within [*seven (7)*] Business Days following consultation between the Parties and the Independent Engineer, then either Party shall have the right to refer the Dispute to an Expert in accordance with Clause 20.3 (Expert Referral);

#### if the Dispute is not a Technical Dispute, either Party shall have the right to refer the Dispute to arbitration in accordance with Clause 20.4 (Arbitration); and

#### to the extent that the claimant Party alleges that the Dispute raises issues both within and outside a Technical Dispute, the Dispute shall be referred to arbitration in accordance with Clause 20.4 (Arbitration).

## Expert Referral

### If the Dispute is to be referred to an Expert for determination pursuant to Clause 20.2(b)(i) (*Resolution by Parties*) or any other provision of this Agreement, then:

#### one Party may give the other a written notice of referral to an Expert determination;

#### no Party shall commence proceedings in any court or before any arbitral tribunal in respect of or otherwise in connection with such a Dispute; and

#### the Parties agree that the Dispute will be submitted to an administered expert proceeding in accordance with the Rules for the Administration of Expert Proceedings of the ICC.

### The expert (the “Expert”) shall be appointed by agreement between the Parties within [*twenty (20)*] Days of the notice of referral or, failing such agreement, by the Centre in accordance with the provisions for appointment of experts under the Rules for Expertise of the International Chamber of Commerce.

### If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this Clause, then:

#### either Party may apply to the Centre to discharge the Expert and to appoint a replacement Expert with the required expertise; and

#### this Clause shall apply to the new Expert as if they were the first Expert appointed.

### The Expert shall have the power to determine a Dispute referred to them pursuant to Clause 20.2(b)(i) (*Resolution by Parties*), which may include any issue involving the interpretation of any relevant provision of this Agreement, their jurisdiction to determine the matters and issues referred to them and/or their terms of reference. The Expert may award interest as part of their decision.

### The Expert shall take into account any information submitted by the Parties. All references to the Expert shall be made in writing by either Party with notice to the other being given contemporaneously, and the Parties shall promptly supply the Expert with such documents and information as they may request when considering any referral.

### To the extent not provided for by this Clause, the Expert shall be entitled to determine the procedure to be followed in arriving at their decision (in the absence of an agreement between the Parties) and to appoint legal or other advisors if the Parties agree.

### The Expert shall produce a written report containing their decision within [*sixty (60)*] Days of their appointment or such other period as the Expert reasonably requires and shall give written reasons for their decision in the written report transmitted to the Parties by email on the date of the report. Any sum ordered to be payable shall be paid within thirty (30) Days of the date of the decision.

### The Expert shall act in the capacity of an expert, not an arbitrator, and shall decide those matters referred to them using their skill, experience and knowledge and with regard to all such other matters as they in their sole discretion consider appropriate.

### Except to the extent otherwise expressly provided herein, pending the determination by the Expert, this Agreement shall continue to the extent possible for the Parties to perform their obligations under this Agreement.

### The costs of the Expert shall be borne as determined by the Expert or, in default of such determination, equally by the Grantor and the Concessionaire.

### Any Party to an Expert determination of a Technical Dispute may challenge the Expert’s determination by referring it to arbitration in accordance with Clause 20.4 (*Arbitration*) as follows:

#### with respect to the Expert’s determination on a Technical Dispute that:

##### involves a claim by either Party of more than [*• Dollars (US$x*)];[[76]](#footnote-77)

##### decides a matter that would entitle any Party to terminate the Concession; or

##### that does not involve a specified monetary claim by either Party,

##### by delivering a written notice of dissatisfaction, together with the Expert’s determination, to the other Party, within thirty (30) Days of receiving the determination; and

#### with respect to the Expert’s determination on a Technical Dispute that involves a claim by either Party of less than or equal to [*• Dollars (US$x)*], solely on the following grounds:

##### a manifest error of fact or law, in which case such Party shall deliver a written notice of dissatisfaction within thirty (30) Days of receiving the determination; or

##### fraud by the Expert or any failure by the Expert to disclose any relevant interest in the Project or either Party, in which case such Party shall deliver a written notice of dissatisfaction within thirty (30) Days of becoming aware of the alleged fraud or failure,

in each case together with the Expert’s determination to the other Party.

### In the event that a Party fails to deliver such notice within the foregoing time periods, such Party waives its right to refer such determination to arbitration thereafter and the Expert’s determination shall become final and binding on the Parties. If a Party refers the Expert’s determination to arbitration pursuant to Clause 20.3(k), then either:

#### with respect to the Expert’s determination on a Technical Dispute that:

##### involves a claim by either Party of more than [*• Dollars (US$x*)];

##### decides a matter that would entitle any Party to terminate the Concession Agreement;

##### does not involve a specified monetary claim by either Party,

##### the Parties shall not be required to comply with the determination of the Expert; or

#### with respect to the Expert’s determination on a Technical Dispute that involves a claim by either Party of less than or equal to [*• Dollars (US$x*)], the Parties shall comply with the determination of the Expert until the resolution of the Dispute by arbitration in accordance with Clause 20.4 (*Arbitration*).

### The determination of the Expert of such Technical Dispute may be admitted into evidence for the purposes of any referral to arbitration in accordance with Clause 20.3 (Expert Referral).

## Arbitration

### Any Dispute that is not to be resolved by expert determination pursuant to Clause 20.2(b)(i) (*Resolution by Parties*) or is otherwise referred to arbitration in accordance with this Agreement shall be referred to and finally resolved by arbitration under the Rules of Arbitration of the International Chamber of Commerce (the “ICC Rules”). The ICC Rules shall be deemed to be incorporated by reference into this Clause 20.4 (*Arbitration*).

### Further:

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

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

#### if the claimant or claimant parties and/or the respondent or respondent parties fail to nominate an arbitrator within thirty (30) Days of receiving a notice of the arbitrator chosen by the parties 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 parties on the other side of the proposed arbitration shall be unaffected, and the remaining arbitrator(s) 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 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 20.4 (*Arbitration*) shall be final and binding upon the Parties and shall be the sole and exclusive remedy between the Parties regarding all Disputes. 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 20.4 (*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 20.4 (*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 20.4 (*Arbitration*).

## Interim Reliefs in the Courts of Host Country

Notwithstanding Clause 20.4 (*Arbitration*), this Clause 20 (*Resolution of Disputes*) is without prejudice to a Party’s right to seek interim relief against another Party through the Host Country 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 Agreements

The arbitration agreement set out in this Clause 20 (*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 each other Party shall have no liability in respect thereof, except as otherwise agreed.

## Commercial Acts; Waiver of Sovereign Immunity

### The Grantor 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 20 (*Resolution of Disputes*), the Grantor 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 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).

## 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.

## 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 Grantor**:

[address]

Telephone:

Email: [●]

Attention: [●]

Telephone:

Email: [●]

Attention: [●]

**If to the Concessionaire**:

[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 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 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 by 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 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), succeeding entities, prospective transferees and assignees and their professional advisors that, in each case, have agreed to be bound by these confidentiality provisions.

### The provisions of Clause 21.5(a) (*Confidentiality*) shall not apply to any information:

#### in the public domain otherwise than by a breach of Clause 21.5(a) (*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 the court, arbitrator, Expert or tribunal to which the disclosing Party is a party; or

#### contained in a document that has been reviewed and cleared for public disclosure by the Party claiming confidentiality in the information.

### The Concessionaire shall cause its Contractors to sign up to confidentiality provisions that are the same as those set forth in this Clause 21.5 (*Confidentiality*).

### The provisions of this Clause 21.5(a) (*Confidentiality*) shall survive for a period of *[five (5) years]* from the termination or Expiry of this Agreement.

## Governing Law

Except as set forth in Clause 20.6 (*Governing Law of Arbitration Agreements*), this Agreement, and any non-contractual obligations arising out of or in connection with it, shall be governed by and construed in accordance with the laws of the Host Country.

## Entire Agreement

This Agreement, together with any other Transaction Document to which the Grantor and the Concessionaire are party, 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

### [*Subject to paragraph (b) below*,] this Agreement can be amended only by written agreement between the Parties.

### [*Any amendments to this Agreement in respect of [insert relevant provisions, likely Tariff-related provisions] shall require the prior approval of the Regulator before they can be amended by the Parties*.][[77]](#footnote-78)

### [*Notwithstanding Applicable Law, the Grantor agrees that it shall not exercise any right to unilaterally modify this Agreement.*]*[[78]](#footnote-79)*

## 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 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 the 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. However, the Concessionaire 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 21.13 (*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, the Parties have caused this Agreement to be executed and delivered as of the date written above.

[GOVERNMENT OF HOST COUNTRY] represented by ………………………… [the [*Minister of Energy*] and the [*Minister of Finance*]]

By:

Name:

Title:

By:

Name:

Title:

[CONCESSIONAIRE][[79]](#footnote-80)

By:

Name:

Title:

1. : Concession Area

ANNEX 1 – CONCESSION AREA**[[80]](#footnote-81)**

OPTION 1

The Concession comprises the Mini-Grid Sites, each as set forth in the plan below

[INCLUDE PLAN OF THE CONCESSION AREA]

OPTION 2

The Concession comprises the Mini-Grid Sites within the Mini-Grid Lot Areas, each as set forth in the plan below

[INCLUDE PLAN OF THE CONCESSION AREA]

ANNEX 2 – GENERATION SITES

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Area** | **Generation Site Co-Ordinates** | **Capacity** |
| 1 |  |  |  |
| 2 |  |  |  |
| 3 |  |  |  |
| 4 |  |  |  |
| 5 |  |  |  |
| 6 |  |  |  |
| 7 |  |  |  |
| 8 |  |  |  |
| 9 |  |  |  |
| 10 |  |  |  |
| 11 |  |  |  |
| 12 |  |  |  |
| 13 |  |  |  |
| 14 |  |  |  |
| 15 |  |  |  |
| 16 |  |  |  |
| 17 |  |  |  |
| 18 |  |  |  |
| 19 |  |  |  |
| 20 |  |  |  |
| 21 |  |  |  |
| 22 |  |  |  |
| 23 |  |  |  |
| 24 |  |  |  |
| 25 |  |  |  |

1. : Conditions Precedent[[81]](#footnote-82)

CONDITIONS PRECEDENT TO CONCESSION EFFECTIVE DATE

PART 1

* + 1. **Concessionaire Conditions Precedent**
       1. The Concessionaire having obtained all of the Initial Consents set forth in Section 2 (*Concession Effective Date – Initial Consents*) of Schedule 15 (*Initial Consents*).
       2. The Concessionaire and the Lenders having entered into the Financing Agreements.
       3. The Concessionaire having provided to the Grantor a copy of all relevant resolutions of the board of directors and shareholders of the Concessionaire authorising the execution, delivery and performance by the Concessionaire of this Agreement, and any other Project Agreement *entered into by the Concessionaire on or prior to the Concession Effective Date*, together with a legal opinion from the counsel to the Project Company in a form and substance acceptable to the Grantor as to the due authorisation, execution and delivery of this Agreement and any other Project Agreement *entered into by the Concessionaire on or prior to the Concession Effective Date*, and the enforceability thereof against the Concessionaire.
       4. The Concessionaire having provided evidence of the appointment of the Independent Engineer on the terms set forth in this Agreement.
       5. The Concessionaire having put in place the Insurances required to be in place for the Concession Works and such Insurances are in full force and effect.
       6. Submission of the Design by the Concessionaire and its approval by the Independent Engineer.
    2. **Grantor’s Conditions Precedent**
       1. The Grantor having entered into, and having procured that any relevant Governmental Authority has entered into, each Land Lease Agreement to which it is a party or, in respect of a Governmental Authority, to which that relevant Governmental Authority is a Party [*and the Grant Agreement*].
       2. The Grantor has granted or, in respect of each relevant Governmental Authority, procured the grant of, all Access Rights to the Concessionaire.
       3. The issue of a legal opinion by [*the Attorney-General[[82]](#footnote-83)*] in respect of
          1. the entry into and the enforceability of the obligations under:

##### this Agreement [, *any Land Lease Agreement/and the Grant Agreement*] against, the Grantor;

##### [*any Land Lease Agreement/and the Grant Agreement]/[Government Guarantee*] against any Governmental Authority party to those agreements; and

* + - * 1. evidence of the approval of this Agreement [*, any Land Lease Agreement/ [Government Guarantee] and the Grant Agreement*] (including any indemnities included in it) by the *[Parliament/Government/President]*.
      1. [*The Grantor having obtained, or having procured that any relevant Governmental Authority has procured, any of the Initial Consents required to be obtained by it or any relevant Governmental Authority at the Concession Effective Date.*]
      2. The [*insert relevant Governmental Authority*] having issued confirmation/evidence, in a form and substance satisfactory to the Concessionaire, that the Viability Gap Funding shall be exempt from all taxes and withholding, stamp duties, registration fees and any other taxes or duties.[[83]](#footnote-84)
      3. [*The [insert relevant authority] having delivered the Government Guarantee to the Concessionaire, in a form and substance satisfactory to the Concessionaire*.]
      4. The Grantor having entered into the Concession Direct Agreement.
      5. The Grantor having entered into the Expropriation Agreement.
    1. **General Conditions Precedent**
       1. The Concessionaire, Grantor, each relevant Governmental Authority and Private Landowner, as applicable, having entered into each relevant Land Lease Agreement.
       2. The Concessionaire and the [*Grantor/relevant Governmental Authority and relevant Private Landowner*] having entered into the Land Lease Direct Agreement.
       3. The Concessionaire and the [*Grantor/relevant Governmental Authority*] having entered into the Grant Direct Agreement.
       4. The Concessionaire having procured all Consents from the [*Central Bank/ Reserve Bank*] required for the maintenance of bank accounts in the Host Country in Local Currency and Foreign Currency, to exchange Local and Foreign Currency and to remit Foreign Currency into and outside of the Host Country.
       5. [*If required under Applicable Law, the approval by the Regulator of the Tariff Schedule having been obtained*.]
       6. The appointment of the Independent Engineer by the Parties.
       7. [*The Private Landowner having obtained all of the Consents required to be obtained by it for the entering into the Land Lease Agreement or the construction, operation and maintenance of a Mini-Grid on its land.*]
       8. [*Any other relevant Conditions Precedent.*]

1. : Design
2. : Technical Standards[[84]](#footnote-85)

**ANNEX 1 – EQUIPMENT STANDARDS**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Equipment | Applicable standard(s) | | | | | | |
| GENERATION EQUIPMENT | | | | | | | |
| **PV modules** | IEC 61215 | Terrestrial photovoltaic (PV) modules – Design qualification and type approval | | | | | |
| IEC 61730-1 and 2 | Photovoltaic (PV) module safety qualification | | | | | |
| IEC TS 62804 | Photovoltaic (PV) modules – Test methods for the detection of potential-induced degradation | | | | | |
| IEC 61701 | Photovoltaic (PV) modules – Salt mist corrosion testing, only if the PV modules will be operating under wet atmospheres with a high concentration of dissolve salt (NaCl) | | | | | |
| **PV support structure** | ……………………. [*to be inserted*] | | | | | | |
| **Diesel generators** | IEC 60034 | Rotating electrical machines | | | | | |
| ISO 3046 | Reciprocating internal combustion engines – performance | | | | | |
| ISO 8528 | Reciprocating internal combustion engine driven alternating current generating sets | | | | | |
| CONVERSION EQUIPMENT | | | | | | | |
| **PV inverters** | IEC 62109-1 | | Safety of power converters for use in photovoltaic power systems – Part 1: General requirements | | | | |
| IEC 62109-2 | | Safety of power converters for use in photovoltaic power systems – Part 2: Particular requirements for inverters | | | | |
| IEC 62894 or EN 50524 | | Data sheet and name plate for photovoltaic inverters | | | | |
| IEC 61683 | | Photovoltaic systems – Power conditioners – Procedure for measuring efficiency | | | | |
| **battery inverters** | IEC 62109-1 | | Safety of power converters for use in photovoltaic power systems – Part 1: General requirements | | | | |
| IEC 62109-2 | | Safety of power converters for use in photovoltaic power systems – Part 2: Particular requirements for inverters | | | | |
| **PV and battery inverters: electromagnetic compatibility and other requirements** | **Standard** | | **Equipment <16A** | | | **Equipment >16A and <75A** | **Equipment >75A** |
| IEC 61000-3-2 | | Required | | |  |  |
| IEC 61000-3-3 | | Required | | |  |  |
| IEC 61000-3-11 | |  | | | Required |  |
| IEC 61000-3-12 | |  | | | Required |  |
| IEC TS 61000-3-4 | |  | | | Required | Required |
| IEC TS 61000-3-5 | |  | | |  | Required |
| IEC 61000-6-1 | | Required | | | Required | Required |
| IEC 61000-6-2 | | Required | | | Required | Required |
| As per the IEC 61000, depending on the power output of the inverter or battery inverter.  Regarding IP rating requirements as per IEC 60529, the inverters must have a minimum of:   * IP65 if installed outdoors * IP20 if installed indoors.   In high-power mini-grids featuring step-up transformers and medium voltage distribution lines, the inverter must be able to black-start the target distribution system. This may be done using a soft start approach, in which the transformers and grid are started at a reduced voltage until the transformers have been magnetised. If this is not possible, an alternative concept shall be proposed (for example: switching on the transformers in cascade or using the diesel generator, etc.).  The inverter shall provide the means of controlling or limiting its power output if required. For example, this could be done by measuring the line frequency or by an external setpoint fixed by the power management system. | | | | | | |
| **PV charge controllers** | IEC 62509 | | Battery charge controllers for photovoltaic systems – Performance and functioning | | | | |
| IEC 62109-1 | | Safety of power converters for use in photovoltaic power systems – Part 1: General requirements | | | | |
| Regarding IP rating requirements as per IEC 60529, the inverters must have a minimum of:   * IP65 if installed outdoors * IP20 if installed indoors.   The charging thresholds must be adjustable and compensated with the measured battery temperature. | | | | | | |
| Electrical Storage | | | | | | | |
| **Lithium ion batteries** | IEC 61427-1 | | | Secondary cells and batteries for renewable energy storage – General requirements and methods of testing – Part 1: Photovoltaic off-grid application | | | |
| IEC 61427-2 | | | Secondary cells and batteries for renewable energy storage – General requirements and methods of testing – Part 2: On-grid applications | | | |
| IEC 62619 | | | Secondary cells and batteries containing alkaline or other non-acid electrolytes – Safety requirements for secondary lithium cells and batteries, for use in industrial applications | | | |
| IEC 62133-2 | | | Secondary cells and batteries containing alkaline or other non-acid electrolytes – Safety requirements for portable sealed secondary lithium cells, and for batteries made from them, for use in portable applications – Part 2: Lithium systems | | | |
| IEC 62485-1 | | | Safety requirements for secondary batteries and battery installations – Part 1: General safety information | | | |
| IEC 62485-2 | | | Safety requirements for secondary batteries and battery installations – Part 2: Stationary batteries | | | |
| UL 1642 | | | Lithium batteries | | | |
| UN 38.3 | | | Transport of Li-ion batteries | | | |
| The battery management system (BMS) must be compatible with the battery inverter, and the Concessionaire should procure a certification that this is the case from both the BMS and the battery inverter manufacturers. | | | | | | |
| **Lead-acid batteries** | IEC 61427-1 | | | Secondary cells and batteries for renewable energy storage – General requirements and methods of testing – Part 1: Photovoltaic off-grid application | | | |
| IEC 61427-2 | | | Secondary cells and batteries for renewable energy storage – General requirements and methods of testing – Part 2: On-grid applications | | | |
| IEC 60896 | | | Stationary lead-acid batteries | | | |
| other | | | | | | | |
| **Transformers** | IEC 60076 | | | Power Transformers | | | |
| IEC 60296 | | | Fluids for electrotechnical applications – Mineral insulating oils for electrical equipment | | | |
| The transformer must always fulfil the national requirements and Good Industry Practice regarding the safety and internal specifications of the local distribution system operator (or equivalent). | | | | | | |
| **Metering** | IEC 62053-21:2020 | | | Electricity metering equipment – Particular requirements – Part 21: Static meters for AC active energy (classes 0.5, 1 and 2). | | | |
| IEC 62053-23:2020 | | | Electricity metering equipment – Particular requirements – Part 23: Static meters for reactive energy (classes 2 and 3). | | | |
| EN 50470-1 | | | Electricity metering equipment (AC) – Part 1: General requirements, tests and test conditions – Metering equipment (class indexes A, B and C) | | | |
| Anti-tampering features must be included in the design of the energy meter.  Prepaid meters must be used. | | | | | | |
| **Electronic Operating platform** | The Electronic Operating Platform and data connection will fulfil the following: | | | | | | |
| Functionality | | | | Description | | |
| Battery Monitoring | | | | Evaluation of the state of charge via an algorithm that considers the initial capacity, measurement of incoming and outgoing Ah at a specific rate, battery efficiency, ageing (increase in internal resistance), voltage, temperature, self-discharge and the specific battery technology. | | |
| Operational Status | | | | Evaluation of the state of charge via an algorithm that considers the initial capacity, measurement of incoming and outgoing Ah at a specific rate, battery efficiency, ageing (increase in internal resistance), voltage, temperature, self-discharge and the specific battery technology. | | |
| Measurements | | | | * Current and voltage of the PV generator, PV inverter, battery, battery inverter, diesel generator and grid. * Solar irradiation, ambient temperature and PV module’s temperature. | | |
| Energy Balance | | | | * Energy supplied by the PV generator, PV inverter, diesel generator, battery and battery inverter (last two including both charging and discharging). * Energy delivered to the grid. * PR if applicable. | | |
| In the event of a failure of the Electronic Operating Platform or the data connection, Remote Monitoring shall be capable of being managed by showing the minimum operating and service parameters through simple on-site screens and displays:   * Battery voltage or state of charge * Instantaneous power delivered to the grid * Total daily energy delivered to the grid * Total cumulative energy produced since commissioning * Maximum daily power delivered by the PV generator   The monitoring system can use the following international standards as a reference:   * IEC 61724: Photovoltaic system performance | | | | | | |
| **Distribution Network** | ……………………. [*to be inserted*] | | | | | | |
| **Minimum requirements for end-user appliances** | ……………………. [*to be inserted*] | | | | | | |
| Customer Connections/ Internal Wiring[[85]](#footnote-86) | The following international standards can serve as a reference where the local safety or electrical codes are not considered to be sufficient: | | | | | | |
| IEC 60364 | | | Low-voltage electrical installations. | | | |
| IEC 60947 | | | Low-voltage switchgear and control gear. | | | |
| IEC 61439-1, -2 and -3 | | | Low-voltage switchgear and control gear assemblies. | | | |
| IEC 61008 | | | Residual current operated circuit-breakers without integral overcurrent protection for household and similar uses (RCCBs). | | | |
| IEC 60898 | | | Electrical accessories – Circuit-breakers for overcurrent protection for household and similar installations. | | | |

**ANNEX 2  
EQUIPMENT WARRANTIES**

The warranties for the Concession Equipment shall be no less than the warranties set out below.

|  |  |
| --- | --- |
| **COMPONENT** | **MINIMUM WARRANTY REQUIREMENTS** |
| PV module | Product warranty of [*5*] years  Performance warranty of [*20*] years |
| Diesel generator | Product warranty of [*1 year/operating hours (5,000* *hours*)] |
| PV inverter | Product warranty of [*5*] years |
| Battery inverter | Product warranty of [*2*] years |
| PV charge controller | Product warranty of [*2*] years |
| Li-ion battery | Product warranty of [*2*] years |
| Lead-acid battery | Product warranty of [*1*] year[[86]](#footnote-87) |
| Solar Home Systems (Size A: P ≤ 10 Wp) | [1] year (whole system) |
| Solar Home Systems (Size B: 10Wp < P ≤ 350 Wp) | [2] years – PV module, control box, cables and lights and main system’s battery  [1] year for the batteries included within the appliances |

**ANNEX 3**

**SOLAR HOME SYSTEMS**

The Concessionaire Solar Home Systems shall be stand-alone PV systems that comply with the following standards:

* IEC TS 62257-9-8: Renewable energy and hybrid systems for rural electrification – Part 9-8: Integrated systems – Quality standards for stand-alone renewable energy products with power ratings less than or equal to 350 W.
* IEC TS 62257-9-5: Recommendations for renewable energy and hybrid systems for rural electrification – Part 9-5: Integrated systems – Laboratory evaluation of stand-alone renewable energy products for rural electrification. IEC TS 62257-9-5 describes the tests to be made to evaluate the requirements set in IEC TS 62257-9-8. The test laboratories involved shall have demonstrated competence, metrological traceability and impartiality, for example, by accreditation to ISO/IEC 17025.

**ANNEX 4**

**INTERCONNECTION STANDARDS**

Each of the Mini-Grids is categorised into three technical readiness levels for main Grid interconnection, from the least ready (category 0) to the readiest (category 2), set forth in the column “Interconnection Readiness Level” below

|  |  |
| --- | --- |
| **Mini-Grid [*Site/Lot*][[87]](#footnote-88)** | **Interconnection Readiness Level** |
| **Mini-Grid [*Site/Lot*] 1** | **IRL [*0/1/2*]** |
| **Mini-Grid [*Site/Lot*] 2** | **IRL [*0/1/2*]** |
| **Mini-Grid [*Site/G Lot*] 3** | **IRL [*0/1/2*]** |

[[[88]](#footnote-89)*Depending on the distance to the Grid and Grid Expansion plans, as well as the rated firm power (kW, MW) served by the Mini-Grid, any given Mini-Grids could be categorised into one of the proposed three categories:*

|  |  |  |  |
| --- | --- | --- | --- |
|  | ***IRL0*** | ***IRL1*** | ***IRL2*** |
| ***Definition*** | *Projects that fall into the long-term rural category of the national rural electrification plans and have a rated firm power that can be served through a low voltage network only* | *For infrastructure that may be interconnected to the Grid at some point in the mid-term or long-term future, but not in the short-term future* | *For large infrastructures (> 1 MW)* |
| ***Notice period*** | *A minimum of 1-year notice from the utility or relevant entity in accordance with the Agreement* | *A minimum of 1-year notice from the utility or relevant entity* | *A minimum of 1-year notice from the utility or relevant entity in accordance with the Agreement* |
| ***Interconnection readiness*** | *Do not need to comply with interconnection procedures or synchronisation protocols and standards, nor with the national distribution network construction standards* | *The Mini-Grid will need to comply with interconnection procedures, synchronisation protocols, and distribution network standards defined in the interconnection or upgrade solicitation requirements.*  *Additionally, the Distribution Network must comply with the LV and MV standards and requirements* | *Readily interconnectable to a larger Grid.*  *The main grid readiness level of the mini-grid should be immediate (regardless of the distance to the Grid)* |

*The Interconnection Readiness Level category assigned to a certain Mini-Grid is not necessarily a static category and can change over time, based on Mini-Grid business model, regulatory framework and grid expansion plans.*]

**ANNEX 5**

**STREET LIGHTING AREAS AND STANDARDS**

**Part I – Physical Coverage of Street Lighting**

[*The physical coverage of the street lighting will have to be agreed by the different relevant parties on a map where the relevant areas or places to be illuminated are clearly outlined.*

* *Urban areas: Main roads, main squares and a percentage of all secondary roads*
* *Rural areas: Main roads, main squares, for public institutions and a percentage of all secondary roads*]

**Part II – Minimum Street Lighting Requirements**

| **Parameter** | **Minimum** |
| --- | --- |
| Service hours | 12 hours, starting 30 minutes before sunset local time |
| Dimming | * Luminaires shall be dimmable and shall allow a dimming factor of at least 50% of the nominal power * Dimming schedule: 25% from 10PM to 12PM and 50% from midnight to 5AM |
| Illuminance on the road/floor surface | Urban areas: X lux  Rural areas: 4 lux |
| Ratio of minimum to average illuminance | 0.3 |
| Minimum Efficacy | 110 lumens/Watt |
| Power Factor | ≥ 0.9 at full load  ≥ 0.8 for 50% dimming |
| Local Regulations, requirements and guidelines on Street Lighting | To comply with Applicable Law in Host Country for Street Lighting[[89]](#footnote-90) |
| IP rating | IP65[[90]](#footnote-91) |

1. : Service Standards

**Service Standards for the Concession[[91]](#footnote-92)**

**customer categories**

To understand the table below and its applicability to each Customer Category, the following shall apply:

|  |  |  |  |
| --- | --- | --- | --- |
| **Customer Category** | **PQ**  **(Power Quality)** | **SQ**  **(Service Quality)** | **PRe**  **(Power Reliability)** |
| **CC1/Residential** | PQII | Tier 4, with minimum power ≥ 200W | PRe-II |
| **CC2/C&I** | PQIII | Tier 5, with minimum power ≥ 800W | PRe-II |
| **CC2/Industrial** | PQIII | Tier 5 | PRe-III |
| **Residential with SHS** | PQI | Tier 3, with minimum power of 50W | N/A |

**Service Standards**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Power** **Quality** | | | | | | | |
| **power quality Categories** | **PQI** | | **PQII** | | | **PQIII** | |
| **Nominal Voltage** | [•] | | [•] | | | [•] | |
| **Voltage variation** | N/A | | < ± 10% | | | < ± 10% | |
| **Voltage imbalance, phase to phase** | N/A | | < 5% | | | < 2% | |
| **Frequency variations** | N/A | | 48 Hz < f < 54 Hz | | | 49 Hz < f < 52 Hz | |
| **Harmonics** | < 10% | | < 5% | | | < 4% | |
| **Transients** | N/A | | Surge Protection | | | Surge Protection | |
| **Short-duration voltage variations** | < 5/day | | < 1/day | | | < 1/week | |
| **Long-duration voltage variations** | < 10/day | | < 5/day | | | < 1/day | |
| **Power factor** | N/A | | > 0.8 | | | > 0.95 | |
| **DC** | | | | | | | |
| **Voltage variation** | < +25%, -10% | | | | | ≤ ±10% | |
| **Transients** | N/A | | Surge protection | | | Surge protection | |
| **Percent ripple** | 50% pk-pk | | 20% pk-pk | | | 10% pk-pk | |
| **DC ripple – switching noise** | Unfiltered | | Transient noise minimised | | | Ripple noise also minimised | |
| **Power Reliability[[92]](#footnote-93)** | | | | | | | |
| **power reliability (PRe) categories** | **PRe-I** | | **PRe-II** | | | **PRe-III** | |
| **Planned and Unplanned SAIDI** | < 876 hours  (90% reliability) | | < 438 hours  (95% reliability) | | | < 175 hours  (98% reliability) | |
| **Planned and unplanned SAIFI** | < 52 per year | | < 12 per year | | | < 6/year | |
| **Power Availability[[93]](#footnote-94)** | | | | | | | |
| **MTF ESMAP** | **Tier 0** | **Tier 1** | **Tier 2** | **Tier 3** | **Tier 4** | | **Tier 5** |
| **Daily availability** | - | > 4 hours | | > 8 hours | > 16 hours | | > 23 hours |
| **Evening availability (7PM to 7AM, hours)** | - | > 1hour | > 2 hours | > 3 hours | > 4 hours | | |
| **Power rating** | - | ≥ 3 W | ≥ 50 W | ≥ 200 W | ≥ 800 W | | ≥ 2 kW |
| **Minimum daily electricity ratings** | - | ≥ 12 Wh/d | ≥ 200 Wh/d | ≥ 1 kWh/d | ≥ 3.4 kWh/d | | ≥ 8.2 kWh/d |
| **Customer Service[[94]](#footnote-95)** | | | | | | | |
| **Maximum time to be connected to mini-grid from contract signature** |  | |  | | |  | |
| **Maximum time to answer calls at call centre** |  | |  | | |  | |
| **Maximum time to address billing complaint** |  | |  | | |  | |
| **Maximum time to investigate technical complaint** |  | |  | | |  | |
| **Maximum time to repair street light** |  | |  | | |  | |
| **Minimum advance notice of planned outages** |  | |  | | |  | |
| **[*Deadline for payment of customer rebate from when operator has acknowledged issue*]** |  | |  | | |  | |
| **Failure of customer appliance due to power quality variation outside the allowed range** |  | |  | | |  | |

1. : Commissioning and Testing[[95]](#footnote-96)

**ANNEX 1**

**COMMISSIONING AND TESTING**

Commissioning and testing procedures to reflect standard IEC 62257-6.

**ANNEX 2**

**FORM OF PROVISIONAL ACCEPTANCE CERTIFICATE**

[*insert place and date*]

This certificate is a Provisional Acceptance Certificate under the CONCESSION AGREEMENT RELATING TO THE [*DESCRIBE PROJECT*] (“**Concession Agreement**”) dated ……….. between …………… (“**Concessionaire**”) and ……………… (“**Grantor**”).

Capitalised terms used in this certificate have the meaning given to them in the Concession Agreement.

This Provisional Acceptance Certificate is given in relation to the following Mini-Grid [Site/Lot]: …………… [*set out details*] (the “**Mini-Grid(s) [*Lot(s*)]**”).

I, …………… [*name of officer*], the undersigned, acting for and on behalf of the Concessionaire, DO HEREBY CERTIFY the following, as of the date hereof:

1. I am authorised to execute this Provisional Acceptance Certificate on behalf of the Concessionaire.
2. The following Outstanding Works must be completed in accordance with the Concession Agreement to achieve *Mini-Grid [Site/Lot] Technical Commissioning* of the Mini-Grid(s) [*Lot(s*)] pursuant to Clause 6.6 (*Mini-Grid Testing and Commissioning*) and Schedule 6 (*Commissioning and Testing*) of the Concession Agreement:

[…………… ***detail Outstanding Works***]

By:

Name:

Title:

as the duly authorised representative of the Concessionaire acting for and on its behalf.

Countersigned this …….. day of …………….

By:

Name:

Title:

as the duly authorised representative of the Independent Engineer acting for and on its behalf.

**ANNEX 3**

**FORM OF FINAL ACCEPTANCE CERTIFICATE**

[*insert place and date*]

This is a Final Acceptance Certificate under the CONCESSION AGREEMENT RELATING TO THE [DESCRIBE PROJECT] (“**Concession Agreement**”) dated ……….. between …………… (“**Concessionaire**”) and ……………… (“**Grantor**”).

Capitalised terms used in this Final Acceptance Certificatehave the meaning given to them in the Concession Agreement.

This Final Acceptance Certificate is given in relation to the following Mini-Grid [*Site/Lot*]: …………… [*set out details*] (the “**Mini-Grid [*Site/Lot*](s)**”).

I, …………… [*name of officer*], the undersigned, acting for and on behalf of the Independent Engineer, DO HEREBY CERTIFY the following, as of the date hereof:

1. I am authorised to execute this *Final Acceptance Certificate* on behalf of the Concessionaire.
2. The relevant requirements have been completed in accordance with the Concession Agreement such that the conditions for Commissioning of the Mini-Grid [*Site/Lot*] have been satisfied pursuant to Clause 6.6 (*Mini-Grid Testing and Commissioning*) and Schedule 6 (*Commissioning and Testing*) of the Concession Agreement.
3. The *Mini-Grid [Site/Lot]* Technical Commissioning Date of the Mini-Grid [*Site/Lot*] will be the date of your countersignature below, unless deemed Commissioning has occurred in accordance with Clause 6.6 (*Mini-Grid Testing and Commissioning*) of the Concession Agreement, in which case the *Mini-Grid [Site/Lot] Technical Commissioning Date* of the Mini-Grid [*Site/Lot*] shall be the date of this Final Acceptance Certificate.

By:

Name:

Title:

as the duly authorised representative of the Concessionaire acting for and on its behalf.

Countersigned this …….. day of …………….

By:

Name:

Title:

as the duly authorised representative of the Independent Engineer acting for and on its behalf.

**ANNEX 4**

**FORM OF CONCESSION COMMISSIONING CERTIFICATE**

This is a Concession Commissioning Certificate under the CONCESSION AGREEMENT RELATING TO THE [*DESCRIBE PROJECT*] (“**Concession Agreement**”) dated ……….. between …………… (“**Concessionaire**”) and ……………… (“**Grantor**”).

Capitalised terms used in this Commissioning Certificate have the meaning given to them in the Concession Agreement.

This Concession Commissioning Certificate is given in relation to each of the following Mini-Grid [*Sites/Lots*]:

[*TO BE INSERTED*]

I, …………… [*name of officer*], the undersigned, acting for and on behalf of the Independent Engineer, DO HEREBY CERTIFY the following, as of the date hereof:

1. I am authorised to execute this Concession Commissioning Certificate on behalf of the Concessionaire.
2. The relevant requirements have been completed in accordance with the Concession Agreement such that the conditions for the Concession Commissioning Date have been satisfied pursuant to Clause 6.6 (*Mini-Grid Testing and Commissioning*).
3. The Concession Commissioning Date will be the date of your countersignature below, unless deemed Concession Commissioning has occurred in accordance with Clause 6.6 (*Mini-Grid Testing and Commissioning*) of the Concession Agreement, in which case the Concession Commissioning Date shall be the date of this Concession Commissioning Certificate.

By:

Name:

Title:

as the duly authorised representative of the Concessionaire acting for and on its behalf.

Countersigned this …….. day of …………….

By:

Name:

Title:

as the duly authorised representative of the Independent Engineer acting for and on its behalf.

**ANNEX 5**

**FORM OF CONCESSION COMPLETION CERTIFICATE**

This is a Concession Completion Certificate under the CONCESSION AGREEMENT RELATING TO THE [*DESCRIBE PROJECT*] (“**Concession Agreement**”) dated ……….. between …………… (“**Concessionaire**”) and ……………… (“**Grantor**”).

Capitalised terms used in this Concession Completion Certificate have the meaning given to them in the Concession Agreement.

I, …………… [*name of officer*], the undersigned, acting for and on behalf of the Independent Engineer, DO HEREBY CERTIFY the following, as of the date hereof:

1. I am authorised to execute this Concession Completion Certificate on behalf of the Concessionaire.
2. The relevant requirements have been completed in accordance with the Concession Agreement such that the conditions for the Concession Commissioning Date have been satisfied pursuant to Clause 6.7 (*Concession Completion*) of the Concession Agreement.
3. The Target Completion Connections have been met. The number of Completed Connections are …………. [*to be inserted*].
4. The target Connections for that Customer Category are as follows ……… [*to be inserted*]. The breakdown of the Completed Connections within each Customer Category is as follows ………………. [*to be inserted*].
5. The date of Concession Completion will be the date of your countersignature below unless deemed Concession Completion has occurred in accordance with Clause 6.7 (*Concession Completion*) of the Concession Agreement, in which case the date of Concession Completion shall be the date of this Concession Completion Certificate.

By:

Name:

Title:

as the duly authorised representative of the Concessionaire acting for and on its behalf.

Countersigned this …….. day of …………….

By:

Name:

Title:

as the duly authorised representative of the Independent Engineer acting for and on its behalf.

1. : Reporting Requirements

| # | Indicator | Unit | Frequency of reporting | | Reporting method | | Minimum requirement or optional |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Minimum | Recommended | On-site data acquisition and reporting | Remote monitoring |
| **SECTION A – TECHNICAL PERFORMANCE INDICATORS** | | | | | | | |
|  | Total electricity out or supplied | kWh | Yearly | Monthly | Yes | Yes | Mandatory |
|  | Electricity generation from solar PV | kWh | Yearly | Monthly | Yes | Yes | Mandatory |
|  | Generation from fossil fuel generator | kWh | Yearly | Monthly | Yes | Yes | Mandatory |
|  | Maximum Power Output | kW or MW | Yearly | Monthly | Yes | Yes | Mandatory |
|  | Solar fraction of generation | % | Yearly | Monthly | N/A | Yes | Optional |
|  | Mini-grid capacity factor | % | Yearly | Monthly | N/A | Recommended | Mandatory |
|  | Total number of outages | Unit | Yearly | Quarterly/Biannual | Recommended | Yes | Mandatory |
|  | System Average Interruption Frequency Index (SAIFI) | Interruptions/customer | Yearly | Quarterly/  Biannual | Recommended | Yes | Mandatory |
|  | System Average Interruption Duration Index (SAIDI) | Hours/customer | Yearly | Quarterly/  Biannual | Recommended | Yes | Mandatory |
|  | Average duration of daily service (for non-24/7 service) | Hours | Yearly | Quarterly/  Biannual | Recommended | Yes | Mandatory |
|  | Evening supply service (for non-24/7 service) | Hours | Yearly | Quarterly/  Biannual | N/A | Yes | Mandatory |
|  | Power Factor | Unit (0 to 1) | Yearly | Monthly | Yes | Yes | Mandatory only for C&I users that demand more than 10% of total power consumption[[96]](#footnote-97) |
|  | Voltage at the power plant output: Minimum and maximum | Volts (V) | Yearly | Monthly | Yes | Yes | Mandatory |
|  | Voltage variation: Minimum and maximum reported at:   * Furthest end-user from the power plant during the peak consumption on a 24-hour cycle * At the end of each feeder, if there are separate feeders for each phase during the peak consumption on a 24-hour cycle | % | Yearly | Monthly | Yes | Yes | Mandatory |
|  | Frequency reported at power plant output; minimum and maximum | Hertz (Hz) | Yearly | Quarterly | Yes | Recommended | Mandatory |
|  | Distribution Losses | In kWh or % of total energy production | Yearly | Quarterly | Yes | Recommended | Optional |
| **SECTION B - COMMERCIAL PERFORMANCE INDICATORS** | | | | | | | |
|  | Total number of customers | Unit | Yearly | Quarterly | Yes | Yes | Mandatory |
|  | Number of connections per tier | Unit | Yearly | Quarterly | Yes | Recommended | Optional |
|  | Number of connections per category | Unit | Yearly | Quarterly | Yes | Recommended | Mandatory |
|  | Payment collection rate | % | Yearly | Quarterly | Yes | Recommended | Mandatory |
|  | Payment collection rate per user tier | % | Yearly | Quarterly | Yes | Recommended | Optional |
|  | Payment collection rate per user category | % | Yearly | Quarterly | Yes | Recommended | Optional |
|  | Total revenues from power sales | Currency Unit | Yearly | Monthly | Yes | N/A | Mandatory |
|  | Revenues per user category | Currency Unit | Yearly | Monthly | Yes | N/A | Optional |
|  | Revenues per user tier | Currency Unit | Yearly | Monthly | Yes | N/A | Optional |
|  | Commercial losses | Currency Unit | Yearly | Monthly | Yes | N/A | Optional |

1. : Tariff Regulation

**Drafting Note**:

For jurisdictions that regulate tariff setting, indexation and periodic tariff reviews in a manner that differs from this Schedule 8, and do not permit any deviation from such regulation for the Mini-Grids included in a particular Concession, this Schedule 8 will need to be amended to reflect such jurisdiction’s tariff setting, indexation and review mechanisms.

Clause 11 (*Tariffs*) equally may require amendments to reflect a particular jurisdiction’s tariff setting, indexation and periodic review mechanisms.

In the event that this Schedule 8 is required to be adjusted to a particular jurisdiction’s tariff regime, such jurisdiction’s tariff setting, indexation and periodic review mechanism as applicable at the date of the signing of this Concession should be reflected in this Schedule 8.

Note that the adjustment of the tariff for indexation has been drafted as a quarterly adjustment, but it is proposed that the frequency of such adjustment be increased to monthly where the local country regulations permit more regular indexation.

1. Where a particular jurisdiction’s tariff setting, indexation and periodic review mechanism does not allow for a contractual tariff setting, indexation and periodic review mechanism such as the one set forth in this Schedule 8, the applicable tariff setting, indexation and periodic review mechanism does not fit the particular circumstances and requirements of the Mini-Grids included in the Concession Area, or does not result in a viable and affordable end-user tariff (after taking into account the available Viability Gap Funding), the following steps should be taken:

Work with the government and regulator of such jurisdiction to develop a suitable tariff regulatory regime for the Mini-Grids to be included in the Concession Area, taking the concepts and formulas of this Schedule 8 into account.

Amend the regulation of such jurisdiction accordingly and/or provide in the regulation that the tariff setting, indexation and periodic review mechanism for such Mini-Grids can be set by the Grantor in the respective Concession.

Include the tariff setting, indexation and periodic review mechanism so promulgated under that jurisdiction’s law in this Schedule 8.

Refer to section 12 of the Concession Agreement User Guide for a review of the tariff setting and adjustment principles.

# LIMIT ON TARIFFS

The Concessionaire shall ensure that its Average Tariff for a Quarter does not exceed the Tariff Cap.

Where:

“**Average Tariff for a Quarter**” = Total amount billed to all Customers (excluding Special Customers) in the Quarter (LCU) / Total kWh of electricity sold to all Customers (excluding Special Customers) in the Quarter (kWh). Any Supplemental Tariff shall be excluded from the calculation of the Average Tariff for a Quarter.

“**Quarter**” means:

* 1. with respect to the first Quarter, the period from the first Mini-Grid [*Site/Lot*] Technical Commissioning Date up to, and including, the last day of the third Month falling after the Mini-Grid [*Site/Lot*] Technical Commissioning Date; and
  2. in respect of each subsequent Quarter, the period between the last day of the previous Quarter (not including such date) and the date falling *three (3)*Months after such date, except for the last Quarter, which shall end on the earlier to occur of:
     1. the date falling three (3) Months after the last day of the previous Quarter (not including such date); and
     2. the date of expiry or Termination (as applicable) of this Agreement.

# TARIFF PERIODS

## Tariff Periods

There will be several Tariff Periods during the Concession Period.

The first Tariff Period will start on the first Mini-Grid [*Site/Lot*] Technical Commissioning Date and shall end on the date falling [*five (5)*] Years thereafter or, where that date is not an Automatic Tariff Cap Adjustment Date, on the next Automatic Tariff Cap Adjustment Date falling after that date.

Each subsequent Tariff Period will start on the last day of the previous Tariff Period (not including such date) and shall end on the date falling [*five (5)*] Years thereafter, except for the last Tariff Period, which shall end on the earlier to occur of:

* the date falling [*five (5)*] Years after the last day of the previous Tariff Period (not including such date); and
* the date of expiry or Termination (as applicable) of this Agreement.

The Tariff Cap at the start of the first Tariff Period will be the Starting Tariff Cap, as adjusted pursuant to Clause 11.2 (*Tariff Cap Adjustments and Supplemental Tariff*) and Clause 3.1 (*Starting Tariff Cap*) of this Schedule 8 (*Tariff Regulation*).

On each Tariff Review Date, the Tariff Cap will be adjusted in accordance with Clause 4 (*Periodic reset of Tariff Cap*) of this Schedule 8 (*Tariff Regulation*).

[**2.2 Tariff Review Procedure[[97]](#footnote-98)**]

# TARIFF CAP AND INDEXATION

## Starting Tariff Cap

The Starting Tariff Cap is [*price cap defined in the RFP in LCU*] increased using the indexation formula set forth in Clause 3.2 of this Schedule 8, where indexation is calculated based on the change in each variable between the [*Signature Date/Concession Effective Date*] and the date prior to the first Mini-Grid [*Site/Lot*] Technical Commissioning Date.

## Indexation of Tariff Cap

On the date prior to the first Mini-Grid [*Site/Lot*] Technical Commissioning Date and on each Automatic Tariff Cap Adjustment Date, the Tariff Cap for the next Quarter will be set using the following formula:

|  |  |
| --- | --- |
| ***TN*** | Means the Tariff Cap that applies to the Quarter that is starting, set in LCU/kWh |
| ***TN-1*** | Means the Tariff Cap that applied to the Quarter that is ending, set in LCU/kWh |
| **N** | Is the Exchange Rate on the Automatic Tariff Cap Adjustment Date immediately preceding the first day of the Quarter that is starting |
| **N-1** | Is the Exchange Rate on the Automatic Tariff Cap Adjustment Date that immediately preceded the first day of the Quarter that is ending |
| **N** | Is the Consumer Price Index in the [Host Country] on the Automatic Tariff Cap Adjustment Date immediately preceding the first day of the Quarter that is starting |
| **N-1** | Is the Consumer Price Index in the [Host Country] on the Automatic Tariff Cap Adjustment Date that immediately preceded the first day of the Quarter that is ending |
| ***FC*N** | Is the Fuel Price in the [Host Country] in LCU/L on the Automatic Tariff Cap Adjustment Date immediately preceding the first day of the Quarter that is starting |
| ***FC*N-1** | Is the Fuel Price in the [Host Country] in LCU/L on the Automatic Tariff Cap Adjustment Date that immediately preceded the first day of the Quarter that is ending |
|  | A coefficient set as specified in Clause 3.3(a) |
|  | A coefficient set as specified in Clause 3.3(a) |
|  | A coefficient set as specified in Clause 3.3(a) |

On each Tariff Review Date, the Tariff Cap will be set as specified in Clause 4 of this Schedule 8.

The meanings of the terms in the indexation formula are as follows:

* “**Exchange Rate**” is the average buy rate for the purchase of Foreign Currency with Local Currency, published by the Reference Banks each Day.
* “**CPI**” is the national Consumer Price Index defined by the [National Statistics Institute of the Host Country].
* “**Fuel Price**” is the price in LCU/unit of the fuel used by the Concessionaire to generate electricity defined by [*indicate an objective source for fuel price*].[[98]](#footnote-99)

## Weights in the Indexation Formula

* + - 1. First Tariff Period[[99]](#footnote-100)

For the calculation of the Starting Tariff Cap and the First Tariff Period, the values of the weights are as follows:

a1 = [*insert weight – this should be set in the same way as described in Clause 3.3(b) of this Schedule 8 for the reset. For the first Tariff Period these coefficients will be set prior to the tender*]

a2 = [*insert weight – this should be set in the same way as described in Clause 3.3(b) of this Schedule 8 for the reset. For the first Tariff Period these coefficients will be set prior to the tender*]

a3 = [*insert weight – this should be set in the same way as described in Clause 3.3(b) of this Schedule 8 for the reset. For the first Tariff Period these coefficients will be set prior to the tender*]

* + - 1. Subsequent Tariff Periods

On each Tariff Review Date prior to the next succeeding Tariff Period, the weights applicable in the indexation formula in Clause 3.2 of this Schedule 8 for the next Tariff Period will be adjusted in accordance with the following formula:

a1

Where:

* “**ROA**” is the Return on Assets for each Year of the upcoming Tariff Period, as defined in Clause 4.3 of this Schedule 8.
* “**RevReq**” is the revenue requirement in [LCU] for each Year of the coming Tariff Period, as defined in Clause 4.1 of this Schedule 1.
* “**PV**” is the present value to be calculated by discounting using the Rate of Return (ROR) defined in Clause 4.4 of this Schedule 8, and calculated as follows:

PV (ROA) =

Where:

* **i** refers to each Year.
* Year 1 means the period of 12 consecutive months starting on, and including, the first day of the new Tariff Period.
* Year n means the period of 12 consecutive months starting on, and including, the first day of the last Year of the new Tariff Period.

a2

Where:

* “**PV**” is defined as for coefficient a1.
* “**Non-Fuel O&M Expenses**” is the non-fuel operating and maintenance expenses in [LCU] for each Year of the coming Tariff Period, as defined in Clause 4.1 of this Schedule 8.
* “**Depreciation**” is the depreciation in [LCU] for each Year of the coming Tariff Period, as defined in Clause 4.2 of this Schedule 8.
* “**RevReq**” is as defined above.

a3 =

Where:

* “**PV**” is defined as for coefficient a1.
* “**Fuel Costs**” are fuel costs in [LCU] for each Year of the coming Tariff Period, as defined in Clause 4.1 of this Schedule 8.
* “**RevReq**” is as defined above.

|  |
| --- |
|  |
| Box 1: Option: Indexation with Quality Factor[[100]](#footnote-101)  Where the government wishes to incentivise service quality by allowing higher tariffs for better service, the indexation formula used may be as follows:    where Q factor is the allowed tariff adjustment to reflect the difference between quality of service provided in the previous period compared to the target.   * If, on average, service standards are met or exceeded: Q = 0 * If, on average, the service standards are below target: Q is negative.   The formula for setting Q factor should be determined using a basket of service standards indicators. For example, using a basket of indicators with SAIFI and SAIDI only, the following could be designed:   * Above average performance for either SAIFI or SAIDI (e.g. greater than 10% below target) would be worth 0 Quality Points on either SAIDI or SAIFI. * Dead Band performance (+ or – 10% of target) for either SAIFI or SAIDI would be worth 0 Quality Points on either SAIFI or SAIDI. * Below average performance (e.g. more than 10% above target) for either SAIFI or SAIDI would be worth -3 Quality Points on either SAIFI or SAIDI.   The Q factor could be calculated as follows:   * Sum of quality points =[ 0]: then Q= [0%] * Sum of quality points = [-3]: then Q = [-0.30%] * Sum of quality points = [-6]: then Q= [-0.50%]   The level of the Q factor should be defined on a country-by-country basis, based on the frequency of tariff adjustment and the level of incentive and penalty targeted, and the service standards indicators selected. |

# PERIODIC RESET OF TARIFF CAP

On each Tariff Review Date, the Tariff Cap shall be reset to a new Tariff Cap that will apply from the start of the immediately succeeding Tariff Period onward, using the following formula:

Where:

* “**PV**” is calculated as set forth in Clause 3.3 of this Schedule 8.
* “**RevReq**” is the revenue requirement in [LCU] forecast for each year of the coming Tariff Period, calculated as set out in Clause 4.1 of this Schedule 8.
* “**Sales**” are the forecast of sales in kWh for electricity services for each year of the coming Tariff Period.
* “**ROR**” is the allowed rate of return as defined in Clause 4.4 of this Schedule 8.

## Calculation of Revenue Requirement (RevReq) for a Year

The Revenue Requirement for a Tariff Period shall be calculated using the following formula:

**RevReq for any year = Fuel Costs + Non-Fuel O&M Expenses + Depreciation + ROA**

Where:

* “**Fuel Costs**” means the expected reasonable cost of fuel used to generate electricity in the relevant Year.
* “**Non-Fuel O&M Expenses**” means the operating and maintenance expenses (excluding Fuel Costs but including and not limited to staff costs, general repair and maintenance costs, fees paid (if applicable) by the Concessionaire under any revenue guarantee instrument(s) pertaining to the Project, administration costs, all other utility costs, costs of maintaining Insurances, all costs under the Operating Services Agreement and provision for unpaid debts) the Concessionaire is reasonably expected to incur in providing the Concession Services (excluding any Additional Services) to Customers (other than the Special Customers) in the relevant Year.
* “**Depreciation**” is defined in Clause 4.2 of this Schedule 8.
* “**ROA**” is the return on assets as defined in Clause 4.3 of this Schedule 8.

## Depreciation

Depreciation (in any Year) = Depreciation of the Upfront Investment + Depreciation of Other Capital Investment

Where:

* Depreciation of the Upfront Investment =

Where i represents each asset class and Annual Depreciation Rate is the corresponding rate for each asset class, as defined in the table below.

* Depreciation of Other Capital Investment =

Where:

* **i** represents each asset class and Annual Depreciation Rate is the corresponding rate for each asset class, as defined in the table below.
* **Upfront Investment** is defined in Clause 4.5 of this Schedule 8.
* **Other Capital Investment** is defined in Clause 4.5 of this Schedule 8.
* “**P**” is defined in Clause 4.5 of this Schedule 8.

Assets older than their asset life will be removed from the calculation.

Asset classes and their annual depreciation rates and asset lives are as defined below:

| **Asset class** | **Asset life** | **Annual Depreciation Rate[[101]](#footnote-102)** |
| --- | --- | --- |
| Solar PV | 25 | [4]% |
| Solar charge controller | 12 | [8.3]% |
| Storage | 10 | [10]% |
| Battery inverter | 12 | [8.3]% |
| Solar PV inverter | 12 | [8.3]% |
| Fuel generator (genset) | 20 | [5]% |
| Powerhouse | 20 | [5]% |
| Remote monitoring system | 20 | [5]% |
| Balance of systems | 20 | [5]% |
| LV distribution lines | 20 | [5]% |
| MV distribution lines | 20 | [5]% |
| Transformers and accessories | 20 | [5]% |
| Connections | 20 | [5]% |
| Solar Home Systems | 5 | [20]% |

## Return on Assets

### Return on Assets (ROA) for any year = ROR x RAB in that Year

## Rate of Return (ROR)

**ROR** shall be calculated on the Tariff Review Date[[102]](#footnote-103) according to the following formula:

Where:

β is the levered β for the Concessionaire, calculated by adjusting the unlevered β as follows:

and the variables in the formula have the definitions in the table below and shall be assigned values from the sources in the table.

| **Abbreviation** | **Variable** | **Value or Source** |
| --- | --- | --- |
| D | Concessionaire Debt | Total Debt of the Concessionaire according to the most recent audited financial statements |
| E | Equity | Book value of concessionaire’s Equity according to the most recent audited financial statements |
| Rg[[103]](#footnote-105) | [*Host Country*] Government cost of borrowing in USD | [Yield to maturity on recently issued ten-year [*Host Country*] bond in USD, or the best available estimate of what the cost to the government of [*Host Country*] of borrowing in USD on commercial terms would be] |
| RP | Concessionaire risk premium | [*3%*] [country-by-country basis analysis of risk premium from the Concessionaire borrowing compared to the Government borrowing] |
|  | Unlevered beta estimated for electricity distribution businesses (the beta is unlevered to remove the effect of each company’s debt to equity ratio) | [Calculated by Dr. Aswath Damodaran (Professor of Finance at NYU Stern School of Business) for Global Utilities as at [Insert Date], <http://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/Betas.html>][[104]](#footnote-106) |
|  | Market Risk Premium | Amount by which stock market returns are expected to exceed the risk-free rate of return in the long run, calculated as historical annual return on stock market [from S&P 500 index] minus the risk-free rate [yield to maturity of ten-year US government bond in USD] |
| T | Corporate income tax rate applicable to the Concessionaire | Tax code |

## Regulatory Asset Base (RAB)

RAB in any year = Concessionaire Financed Assets + Working Capital + Other assets

Where:

* **Concessionaire Financed Assets** for any year **=**Depreciated Value of Upfront Investment x (1–P)  
  + Depreciated Value of Other Capital Investments
* **Upfront Investment** means the total investment in non-current assets needed to achieve the Target Completion Connections.[[105]](#footnote-107)
* **Depreciated Value of Upfront Investment** will be determined using historic cost accounting conventions, straight-line depreciation, and the asset lives in Clause 4.2 of this Schedule 1.
* **P** = Capital Grants / Upfront Investment.
* **Capital Grants** = sum of all grants that the Concessionaire is entitled to in the period up until Concession Completion.
* **Other Capital Investment** = any investment in non-current assets, other than the Upfront Investment, made to provide services to all Customers (other than Special Customers) in accordance with this Agreement[[106]](#footnote-108).
* **Working Capital** = Current assets – Current liabilities.
* **Other assets** means the funds deposited in any debt service reserve account or any other reserve accounts held by the Concessionaire in accordance with this Agreement or the Financing Agreements, such as a maintenance reserve account or capital expenditure replacement reserve account.
* **Current assets** is defined in accordance with the International Financial Reporting Standards promulgated by the International Accounting Standards Board, applied on a consistent basis.
* **Current Liabilities** is defined in accordance with the International Financial Reporting Standards promulgated by the International Accounting Standards Board, applied on a consistent basis.

Assets are valued using the historic cost accounting conventions. Physical assets are depreciated over their useful lives using straight-line depreciation.

# EXTRAORDINARY TARIFF EVENTS

On the occurrence of an Extraordinary Tariff Event that has a Cost/Revenue Impact, Clause 17.11 (*Extraordinary Tariff Events*) of the Agreement entitles the Concessionaire to charge a Supplemental Tariff, to be calculated and applied in accordance with this Clause 5.[[107]](#footnote-109)

## Compensation for Temporary Extraordinary Tariff Event

The Cost/Revenue Impact of any Temporary Extraordinary Tariff Event will be tracked in a TEE Account (the “**TEE Account**”) as follows.

### **TEE Account in first Quarter**

TEE Accounton the first Automatic Tariff Cap Adjustment Date after the first occurrence of the TEE =

Increase in Operating Expenses (including Fuel)

+ Decrease in Revenue

+ Additional Depreciation

+ Additional ROA

### **TEE Account at the end of each subsequent Quarter**

On each subsequent Automatic Tariff Cap Adjustment Date, the TEE Account will be calculated as follows:

TEE Accountat end of each subsequent Quarter =

TEE Accountat start of each subsequent Quarter

+ Increase in Operating Expenses (including Fuel)

+ Decrease in Revenue

+ Additional Depreciation

+ Additional ROA

+ TEE Account balance at the start of the Quarter x

Where:

* **Increase in Operating Expenses** (including Fuel) means the net increase in all operating and maintenance expenses including Fuel caused by the Temporary Extraordinary Tariff Event. If Operating and Maintenance Expenses (including Fuel) decrease as a result of the Temporary Extraordinary Tariff Event, that decrease shall be recorded as a negative increase.
* **Decrease in Revenue** means the net decrease in revenue caused by the Temporary Extraordinary Tariff Event. If revenue increases as a result of the Temporary Extraordinary Tariff Event, that increase shall be recorded as a negative decrease.
* **Additional Depreciation** means the depreciation on any physical non-current assets that were invested in by the Concessionaire because of the Temporary Extraordinary Tariff Event, consistent with prudent utility management practices. Such depreciation is to be calculated in accordance with historic cost accounting conventions, on a straight-line basis, using the asset lives in Clause 4.2 of this Schedule 8. If depreciation reduces as a result of the Temporary Extraordinary Tariff Event, this will be recorded as a negative increase.
* **Additional ROA** is to be calculated as the ROR, divided by four, times the depreciated historic cost value of physical non-current assets that were invested in by the Concessionaire because of the Temporary Extraordinary Tariff Event, consistent with prudent utility management practices.

### **Disposition of the TEE Account when the Temporary Extraordinary Tariff Event has ceased**

The TEE Account will continue to be calculated as set out above until the Impact End Date. When that occurs, the following shall occur:

* A TEE Adder shall be added to the Tariff Cap for each of the next [N] Quarters
* The TEE Adder for each quarter will be calculated as follows:

TEE Adder in the Quarter =

* The TEE Recovery Charge will be the value returned by the following annuity formula:

TEE Recovery Charge (LCU) =

Where:

N = [20]

R =

* The balance of the TEE Account will be reduced by the TEE Recovery Charge at the end of each Quarter in which the TEE Adder was applied.

## Compensation for Non-Temporary Extraordinary Tariff Events

The Cost/Revenue Impact of any Non-Temporary Extraordinary Tariff Event will be tracked in an Extraordinary Tariff Events Account (“**EE Account**”) as follows.

### EE Account in first Quarter

EE Accounton the first Automatic Tariff Cap Adjustment Date after the first occurrence of the EE =

Increase in Operating Expenses (including Fuel)

+ Decrease in Revenue

+ Additional Depreciation

+ Additional ROA

### EE Account subsequent Quarters

On each subsequent Automatic Tariff Cap Adjustment Date, the EE Account will be calculated as follows:

EE Accounton each subsequent Automatic Tariff Cap Adjustment Date =

EE Accountat start of each subsequent Quarter

+ Increase in Operating Expenses (including Fuel)

+ Decrease in Revenue

+ Additional Depreciation

+ Additional ROA

+ EE Account balance at the start of the Quarter x

Where the terms in the formula have the meanings given in Clause 5.1 of this Schedule 8.

### Disposition of the EE Account in the next Tariff Period[[108]](#footnote-110)

The EE Account will continue to be calculated as set out above until the start of the next Tariff Period. At the start of the next Tariff Period, the following shall occur:

* An EE Adder shall be added to the Tariff Cap for each Quarter of the Tariff Period
* The EE Adder for each Quarter will be calculated as follows:

EE Adderin the Quarter =

* The EE Recovery Charge will be the value returned by the following annuity formula:

EE Recovery Charge (LCU) =

Where:

N is the number of Quarters in the Tariff Period

R =

* The balance of the EE Account will be reduced by the EE Recovery Charge at the end of each Quarter in which the EE Adder was applied.

Where the terms in the formula have the meanings given in Clause 5.1 of this Schedule 8.

## Separate accounts to be kept for each Extraordinary Tariff Event unless otherwise agreed

A separate EE Account or TEE Account (as the case may be) will be kept for each Extraordinary Tariff Event.

However, if the Concessionaire [, the Regulator] and the Grantor all agree, a combined EE Account may be kept for two or more Extraordinary Tariff Events. However, accounts for Temporary Extraordinary Tariff Events shall not be combined with accounts for Extraordinary Tariff Events that are Non-Temporary Extraordinary Tariff Events.

“**Total Extraordinary Tariff Event Balance**” on any date means the sum of the balances of all EE Accounts and all TEE Accounts on that date.

# GRANTOR COMPENSATION FORMULA

The Loss Amount shall be calculated in accordance with the following formula:[[109]](#footnote-111)

Formula for compensating the Concessionaire:

Quarterly compensation =

−

Where:

* **i** corresponds to each Customer Category as defined in the Tariff Schedule.
* **Actual consumption during Quarter** means the billing determinants calculated for the preceding Quarter.[[110]](#footnote-112)
* **Contracted Tariff** means the tariff and Supplemental Tariff that the Concessionaire would have been entitled to charge in accordance with the formulas and methodology for tariff setting and adjustment defined in this Schedule 8.
* **Allowed Tariff** means the tariff and Supplemental Tariff charged by the Concessionaire.

1. : Termination

**ANNEX 1**

**TERMINATION BUY-OUT AMOUNTS**

All Buy-Out Amounts must be paid to the Concessionaire (or, where appropriate pursuant to the Expropriation Agreement, the Shareholders) in Dollars.

* 1. The Buy-Out Amount
     + 1. The **Concessionaire Buy-Out Amount** shall be an amount equal to the sum of:
          1. the Concessionaire Financed Assets as at the date of the Concessionaire Event of Default x 0.[*•*][[111]](#footnote-113) or, if a higher amount, the Debt Outstanding;
          2. the Additional Concessionaire Amounts on the Termination Date;
          3. the Total Extraordinary Tariff Event Balance on the Termination Date; and
          4. the Termination Costs accrued up to the Termination Date (without double counting any amounts included in the Total Extraordinary Tariff Event Balance).
       2. The **Grantor Buy-Out Amount** shall be an amount equal to the sum of:
          1. the Concessionaire Financed Assets x [•][[112]](#footnote-114) or, if a higher amount, the Debt Outstanding,

where the Concessionaire Financed Assets are calculated:

##### in respect of a Grantor Event of Default, as at the date of the Grantor Event of Default;

##### in respect of a Political Force Majeure Event, as at the date immediately prior to the start of the Political Force Majeure Event;

##### in respect of a Grid Expansion, as at the Grid Expansion Termination Date set out in the Grid Expansion Notice; and

##### in respect of an Expropriation, as at the date of the Expropriation;

* + - * 1. the Additional Concessionaire Amount on the Termination Date;
        2. the Total Extraordinary Tariff Event Balance on the Termination Date; and
        3. the Termination Costs accrued up to the Termination Date (without double counting any amounts included in the Total Extraordinary Tariff Event Balance).
      1. The Natural Force Majeure Buy-Out Amount shall be calculated as an amount equal to the sum of:
         1. the Concessionaire Financed Assets, calculated as at the date immediately prior to the Natural Force Majeure Event or, if a higher amount, the Debt Outstanding;
         2. the Additional Concessionaire Amounts on the Termination Date;
         3. the Total Extraordinary Tariff Event Balance on the Termination Date; and
         4. the Termination Costs accrued up to the Termination Date (without double counting any amounts included in the Total Extraordinary Tariff Event Balance).
      2. The **Concessionaire Partial Buy-Out Amount** shall be an amount equal to the sum of:
         1. the Concessionaire Financed Assets x 0.[*•*][[113]](#footnote-115), where the Concessionaire Financed Assets are calculated only in respect of the affected Mini-Grid [*Site/Lot*] as at the date of the Concessionaire Event of Default;
         2. an amount equal to the Transfer Percentage of the Additional Concessionaire Amount on the Removal Date; and
         3. the Termination Costs accrued up to the Removal Date attributable to the Concessionaire Event of Default.
      3. The **Grantor Partial Buy-Out Amount** shall be an amount equal to the sum of:
         1. the Concessionaire Financed Assets x [*•*][[114]](#footnote-116), where the Concessionaire Financed Assets are calculated only in respect of the affected Mini-Grid [*Site/Lot*] and:

##### in respect of a Grantor Event of Default, as at the date of the Grantor Event of Default;

##### in respect of a Political Force Majeure Event, as at the date immediately prior to the start of the Political Force Majeure Event;

##### in respect of a Grid Expansion, as at the Grid Expansion Termination Date set out in the Grid Expansion Notice; and

##### in respect of an Expropriation, as at the date of the Expropriation;

* + - * 1. an amount equal to the Transfer Percentage of the Additional Concessionaire Amounts on the Removal Date; and
        2. the Termination Costs accrued up to the Removal Date attributable to the Grantor Event of Default.
      1. The Natural Force Majeure Event Partial Buy-Out **Amount** shall be calculated as an amount equal to the sum of:
         1. the Concessionaire Financed Assets, where the Concessionaire Financed Assets are calculated only in respect of the affected Mini-Grid [*Site/Lot*] as at the date immediately prior to the Natural Force Majeure Event;
         2. an amount equal to the Transfer Percentage of the Additional Concessionaire Amounts on the Removal Date; and
         3. the Termination Costs accrued up to the Removal Date attributable to the Concessionaire Event of Default.

**ANNEX 2**

**COMPENSATION AND TRANSFER ON GRID EXPANSION**

**Section I – Termination**

Where the Concessionaire elects to terminate the Agreement upon a Grid Expansion, it shall transfer the Relevant Concession Assets to the Grantor for an amount equal to the Grantor Buy-Out Amount.

Section II – Small Power Producer

* 1. Where the Concessionaire elects to become a Small Power Producer upon a Grid Expansion that is Concession Wide, it shall:
     1. transfer the Distribution Assets to the Grantor or its designee for an amount equal to the sum of:
        1. the Concessionaire Financed Assets calculated in respect of the Distribution Assets only as at the Grid Expansion Termination Date;
        2. an amount equal to the Transfer Percentage of the Additional Concessionaire Amounts as at the Grid Expansion Termination Date; and
        3. the Termination Costs accrued up to the Grid Expansion Termination Date attributable to the Grid Expansion Event

##### (the “**Distribution Buy-Out Amount**”); and

* + 1. it shall continue to operate the Generation and Storage Assets.
  1. Where the Concessionaire elects to become a Small Power Producer upon a Grid Expansion that is not Concession Wide, it shall:
     1. transfer the Distribution Assets to the Grantor or its designee for an amount equal to the sum of:
        1. the Concessionaire Financed Assets calculated in respect of the Distribution Assets in the affected Mini-Grid [*Site/Lot*] as at the Grid Expansion Removal Date;
        2. an amount equal to the Transfer Percentage of the Additional Concessionaire Amounts as at the Grid Expansion Removal Date; and
        3. the Termination Costs accrued up to the Grid Expansion Removal Date attributable to the Grid Expansion Event,

##### (the “**Distribution Partial Buy-Out Amount**”); and

* + 1. it shall continue to operate the Generation and Storage Assets of the affected Mini-Grid [*Site/Lot*].

Section III – Small Power Distributor

* 1. Where the Concessionaire elects to become a Small Power Distributor upon a Grid Expansion, it shall:
     1. transfer Generation and Storage Assets to the Grantor or its designee for an amount equal to the sum of:
        1. the Concessionaire Financed Assets calculated in respect of the Generation and Storage Assets as at the Grid Expansion Termination Date;
        2. an amount equal to the Transfer Percentage of the Additional Concessionaire Amounts as at the Grid Expansion Termination Date; and
        3. the Termination Costs accrued up to the Grid Expansion Termination Date attributable to the Grid Expansion Event,

##### (the “**Generation and Storage Buy-Out Amount**”); and

* + 1. continue to operate the Distribution Assets of the Mini-Grids.
  1. Where the Concessionaire elects to become a Small Power Distributor upon a Grid Expansion that is not Concession Wide, it shall:
     1. transfer the Generation and Storage Assets in that Mini-Grid [*Site/Lot*] to the Grantor for an amount equal to the sum of:
        1. the Concessionaire Financed Assets calculated in respect of the Generation and Storage Assets in that Mini-Grid [*Site/Lot*] as at the Grid Expansion Removal Date;
        2. an amount equal to the Transfer Percentage of the Additional Concessionaire Amounts as at the Grid Expansion Removal Date; and
        3. the Termination Costs accrued up to the Grid Expansion Removal Date attributable to the Grid Expansion Event,

(the “**Generation and Storage Partial Buy-Out Amount**”); and

* + 1. continue to operate the Distribution Assets in that Mini-Grid [*Site/Lot*].

1. **Section IV – Interconnected Mini-Grid**
   1. Where the Concessionaire elects to become an Interconnected Mini-Grid upon a Grid Expansion:
      1. the Grantor shall pay to the Concessionaire an amount equal to the sum of:
         1. the Total Extraordinary Tariff Event Balance on the Grid Expansion Termination Date; and
         2. the Termination Costs accrued up to the Grid Expansion Termination Date attributable to the Grid Expansion Event (without double counting any amounts included in the Total Extraordinary Tariff Event Balance); and
      2. this Agreement shall terminate on the Grid Expansion Termination Date.
   2. Where the Concessionaire elects to become an Interconnected Mini-Grid upon a Grid Expansion that is not Concession Wide:
      1. the Grantor shall pay to the Concessionaire an amount equal to the Termination Costs accrued up to the Grid Expansion Removal Date attributable to the Grid Expansion Event; and
      2. the Concessionaire shall remove the affected Mini-Grid [*Site/Lot*] at the Grid Expansion Removal Date.

**ANNEX 3**

**TRANSFER OF CONCESSION ASSETS OR SHARE CAPITAL**

* 1. Introduction

This Annex 3 outlines the procedures to be adopted in the event that all or part of the Relevant Concession Assets are to be transferred pursuant to Clause 19 (*Termination*) and Schedule 9 (*Termination*) of this Agreement.

* 1. Definitions

Wherever the following terms appear in this Annex 3, they shall have the meanings stated below.

1. **“Accountants”** means an independent firm of international chartered accountants agreed between the Parties, which shall not have a significant portion of its international business in the Host Country and shall not represent the Concessionaire, any Concessionaire Party, the Grantor or any Grantor Party. If the Parties are unable to agree within [*fifteen (15)*] Business Days, either Party may request appointment by the Centre.
2. **“Assigned Contracts”** has the meaning given to such term in paragraph 3(a) (*Scope of the Sale*).
3. **“Buy-Out Amount”** means the amount payable by the Grantor in respect of the Buy-Out as certified by the Accountants in accordance with paragraph 10 and being:
   1. the Concessionaire Buy-Out Amount, if all the Relevant Concession Assets are being transferred pursuant to Clause 19.4 (*Termination or Removal for Concessionaire Event of Default after the Concession Effective Date*);
   2. the Concessionaire Partial Buy-Out Amount, if the Relevant Concession Assets in respect of an affected Mini-Grid [*Site/Lot*] only are being transferred pursuant to Clause 19.4 (*Termination or Removal for Concessionaire Event of Default after the Concession Effective Date*);
   3. the Grantor Buy-Out Amount, if the Relevant Concession Assets are being transferred pursuant to Clause 19.5 (*Termination or Removal for Grantor Event of Default after the Concession Effective Date*), Clause 19.6 (*Termination or Removal for Prolonged Force Majeure Events after the Concession Effective Date*) in respect of a Political Force Majeure Event, Clause 19.7 (*Termination for Expropriation*) or Clause 19.8(a)(i) (*Termination or Removal upon Grid Expansion*);
   4. the Grantor Partial Buy-Out Amount, if the Relevant Concession Assets of an affected Mini-Grid [*Site/Lot*] only are being transferred pursuant to Clause 19.5 (*Termination or Removal for Grantor Event of Default after the Concession Effective Date*) or Clause 19.6 (*Termination or Removal for Prolonged Force Majeure Events after the Concession Effective Date*) in respect of a Political Force Majeure Event or Clause 19.8(a)(v) (*Termination or Removal upon Grid Expansion*);
   5. the Natural Force Majeure Buy-Out Amount, if the Relevant Concession Assets are being transferred pursuant to Clause 19.6 (*Termination or Removal for Prolonged Force Majeure Events after the Concession Effective Date*) in respect of a Natural Force Majeure Event;
   6. the Natural Force Majeure Event Partial Buy-Out Amount, if the Relevant Concession Assets of an affected Mini-Grid [*Site/Lot*] only are being transferred pursuant to Clause 19.6 (*Termination or Removal for Prolonged Force Majeure Events after the Concession Effective Date*) in respect of a Natural Force Majeure Event;
   7. the Generation and Storage Assets Buy-Out Amount, if the Relevant Concession Assets are being transferred pursuant to Clause 19.8(a)(iii) (*Termination or Removal upon Grid Expansion*);
   8. the Generation and Storage Assets Partial Buy-Out Amount, if the Relevant Concession Assets in respect of an affected Mini-Grid [*Site/Lot*] only are being transferred pursuant to Clause 19.8(a)(viii) (*Termination or Removal upon Grid Expansion*);
   9. the Distribution Buy-Out Amount, if the Relevant Concession Assets are being transferred pursuant to Clause 19.8(a)(ii) (*Termination or Removal upon Grid Expansion*); and
   10. the Distribution Partial Buy-Out Amount, if Relevant Concession Assets in respect of an affected Mini-Grid [*Site/Lot*] only are being transferred pursuant to Clause 19.8(a)(vi) (*Termination or Removal upon Grid Expansion*).
4. **“Concessionaire Party”** means a Shareholder, Sponsor, director, officer, employee, Contractor, representative, agent, member, manager or Affiliate of the Concessionaire involved in the Concession.
5. **“Environmental Condition”** means any conditions, circumstances or other matters of fact relating to or otherwise affecting the environment that violate the requirements imposed by any Applicable Law related to the environment and the protection and preservation thereof, including with respect to any natural resources (including flora and fauna), soil, surface water, ground water, any present or potential drinking water supply, subsurface strata or the ambient air. Environmental Conditions include:
   1. conditions, circumstances or other matters of fact relating to or arising out of the presence, use, handling, storage, treatment, recycling, generation, transportation, release, spilling, leaking, pumping discharging, injecting, escaping, leaching, disposal (including the abandonment or discarding of ash, barrels, containers and other closed receptacles containing any hazardous material), dumping or threatened release of hazardous materials; and
   2. conditions, circumstances, or other matters of fact resulting in the exposure of any Person to hazardous materials as a result of or otherwise arising from operations, acts, omissions or other conduct,

unless such conditions, circumstances or other matters are caused by reasons outside of the Concessionaire’s control.

1. **“Grantor Party”** means a minister, director, officer, employee, representative, agent, member, manager or Affiliate of the Grantor or any direct contractor of the Grantor involved in the Concession.
2. **“Loss”** means any loss, damage, liability, payment or obligation (excluding any indirect or consequential loss, damage, liability, payment or obligation) and all costs and expenses (including reasonable legal fees) related thereto.
3. **“Outstanding Insurance Claims”** mean claims outstanding and unpaid as of the relevant Transfer Date, and claims that the Concessionaire is entitled to make but has not as of the Transfer Date made, under any insurance policies relating to the Relevant Concession Assets, in each case insofar as such claims relate to physical Loss or damage occurring prior to the Transfer Date except where the Loss or damage has been remedied prior to the Transfer Date at the cost of the Concessionaire.
4. “**Relevant Concession Assets**”means:
   1. with respect to a termination of this Agreement pursuant to Clause 19.4 (Termination or Removal for Concessionaire Event of Default after the Concession Effective Date), Clause 19.5 (*Termination or Removal for Grantor Event of Default after the Concession Effective Date*), Clause 19.6 (*Termination or Removal for Prolonged Force Majeure Events after the Concession Effective Date*), Clause 19.7 (*Termination for Expropriation*) in respect of an Asset Expropriation or Clause 19.8(a)(i) (*Termination or Removal upon Grid Expansion*), all Concession Assets; and
   2. with respect to a Removal, pursuant to Clause 19.4 (Termination or Removal for Concessionaire Event of Default after the Concession Effective Date), Clause 19.5 (*Termination or Removal for Grantor Event of Default after the Concession Effective Date*) or Clause 19.6 (*Termination or Removal for Prolonged Force Majeure Events after the Concession Effective Date*) or Clause 19.8(a)(v) (*Termination or Removal upon Grid Expansion*), only the Concession Assets of each affected Mini-Grid [*Site/Lot*];
   3. with respect to a termination of this Agreement pursuant to Clause 19.7 (*Termination for Expropriation*) in respect of a Share Expropriation, the Ownership Interest in the Concessionaire;
   4. with respect to a Grid Expansion pursuant to Clause 19.8(a)(iii) (*Termination or Removal upon Grid Expansion*), the Generation and Storage Assets of each of the Mini-Grids in the Concession;
   5. with respect to a Removal pursuant to Clause 19.8(a)(viii) (*Termination or Removal upon Grid Expansion*), only the Generation and Storage Assets of each affected Mini-Grid [*Site/Lot*];
   6. with respect to a Grid Expansion pursuant to Clause 19.8(a)(ii) (*Termination or Removal upon Grid Expansion*), the Distribution Assets of each of the Mini-Grids in the Concession;
   7. with respect to a Removal pursuant to Clause 19.8(a)(vi) (*Termination or Removal upon Grid Expansion*), only the Distribution Assets of each affected Mini-Grid [*Site/Lot*];
5. **“Transfer Closing”** has the meaning given to such term in paragraph 12 (*Closing*).
6. **“Transfer Date”** means the Removal Date or the Termination Date (as applicable).
   1. Scope of the Sale
      * 1. On the Transfer Date, the Concessionaire shall, subject to any Permitted Liens, surrender, assign or transfer to the Grantor or its designee all its rights, title and interests in and to the Relevant Concession Assets; *provided that*, if as a consequence of: (i) any action of the Grantor or any Governmental Authority; or (ii) an Excusing Event, the Concessionaire is prevented from performing any of its obligations to surrender or transfer any Relevant Concession Asset (or any part thereof) under this Clause 3 (*Scope of Sale*), the Concessionaire shall have no liability for such failure to perform.

In addition, in the event that a Buy-Out occurs under this Schedule 9, then on the Transfer Date the Concessionaire shall surrender, assign, or transfer (consistent with paragraph 7) to the Grantor or its designee all its rights, title and interests in and to:

* + - * 1. in respect of a Termination, each of the Project Agreements; or
        2. in respect of a Removal, each of the Project Agreements that relate solely to the affected Mini-Grid Lot or Mini-Grid Site (as applicable),

to the extent in force and effect at the time of surrender, assignment or transfer (the “**Assigned Contracts”**) and subject to the consent of the counterparties thereunder in each case (other than with respect to the Customer Agreements), pursuant to reasonable and customary novation agreements among the Parties and the respective parties to those Project Agreements.

* + - 1. The Concessionaire shall not be required to surrender or transfer the following:
         1. the EPC Contract;
         2. the Operating Services Agreement;
         3. the Grant Agreement;
         4. cash in hand and in any account or depository maintained by it or on its behalf (or by the Lenders or on their behalf); and
         5. the benefit of claims under warranties, guarantees, conditions, indemnities and insurance policies howsoever arising out of any events occurring or circumstances arising prior to the Transfer Date, other than any outstanding Insurance claims and any outstanding claims under warranties, guarantees, conditions and indemnities to the extent that such claims relate to physical Loss or damage to or defects in the Relevant Concession Assets occurring prior to but remaining unpaid as of the Transfer Date.
  1. Warranties

No warranties (express or implied) as to the condition of the Relevant Concession Assets shall be given by the Concessionaire at the Transfer Date; provided, however, that, without prejudice to the generality of paragraph 3:

* + - 1. the Concessionaire agrees to assign to the Grantor at Transfer Closing the benefit of any warranties given by third parties in respect of any property or assets to be transferred that are valid as of the Day after the Transfer Date to the extent that the provider of such warranty either agrees to such assignment or is legally obliged to accept such assignment, and to the extent that such warranties are not excluded under the provisions of paragraph 3(b)(v); and
      2. [*in the event of a Grid Expansion, the Concessionaire shall warrant that the Relevant Concession Assets meet the Interconnection Standards]*.
  1. Apportionment of Liabilities
     + 1. Except as otherwise provided in this Agreement, in respect of a termination of this Agreement pursuant to Clause 19.4 (*Termination or Removal for Concessionaire Event of Default after the Concession Effective Date*), the Concessionaire will be responsible for:
          1. all liabilities and obligations in relation to the Relevant Concession Assets; and
          2. the performance of all obligations under agreements with third parties in relation to the Relevant Concession Assets,

that have accrued prior to the Transfer Date, *provided that*, if as a consequence of: (i) any action of the Grantor or any Governmental Authority; or (ii) an Excusing Event, the Concessionaire is prevented from performing any of its obligations in relation to the Relevant Concession Assets or under agreements with third parties in relation to the Relevant Concession Assets under this Clause 5 (*Apportionment of Liabilities*), the Concessionaire shall have no liability for such failure to perform.

* + - 1. Except as otherwise provided in this Agreement, the Grantor shall be responsible for:
         1. all liabilities and obligations in relation to the operation of the Relevant Concession Assets; and
         2. all liabilities and obligations in relation to all agreements with third parties that have been transferred pursuant to this Schedule 9,

that have accrued from and after the Transfer Date and all liabilities in respect of (i) and (ii) above that accrued prior to the Transfer Date as a result of an Excusing Event, in relation to any Relevant Concession Assets and liabilities and obligations under any third-party agreements transferred on the Transfer Date.

* + - 1. Following the Transfer Date, each of the Concessionaire and the Grantor shall indemnify and keep the other fully and effectually indemnified against all liabilities, demands, claims, actions, proceedings, damages, costs and expenses arising as a result of all such liabilities and obligations that are its respective responsibility under paragraph 5(a) and paragraph 5(b).
  1. Encumbrances

Any transfer to the Grantor (or its designee) of the Relevant Concession Assets and Contracts shall be free and clear of all Liens (other than Permitted Liens).

* 1. Closing Process

The Concessionaire and the Grantor agree to effectuate the transfer or surrender of the Concessionaire’s rights, title and interests in and to the Relevant Concession Assets and the payment of the Buy-Out Amount to minimise the transaction costs (including the costs of the Parties and third-party transaction costs) of such transfer or surrender and assignment.

* 1. Maintenance Audit

The following provisions shall only apply in the event of a termination of this Agreement pursuant to Clause 19.4 (Termination or Removal for Concessionaire Event of Default after the Concession Effective Date):

* + - 1. Within [*thirty (30)*] Business Days of termination of this Agreement, the Concessionaire shall, at its sole cost and expense, provide to the Grantor a report by a reputable and qualified engineer or engineering consulting firm reasonably acceptable to both Parties (and, to the extent the Parties cannot agree, then an Expert appointed by the Centre in accordance with the ICC Rules) either:
         1. certifying that, as of the date of the report, the Relevant Concession Assets are in the condition and state of repair and maintenance required by this Agreement (including an adequate spare parts inventory), together with such inspection reports, tests and other data reasonably adequate to substantiate the conclusions reached in such report, or
         2. if this is not the case, providing a list of any discrepancies and/or deficiencies in such condition and a remediation plan and a cost estimate of the work required to remedy such discrepancies and deficiencies as soon as reasonably practicable, except where any such discrepancy or deficiency is a result of an Excusing Event or any action of the Grantor or any Governmental Authority, in which case it shall not be at the cost or liability of the Concessionaire and this Clause 8 shall not apply to any such discrepancy or deficiency.
      2. If such report includes a remediation plan, the Concessionaire, at its sole cost and expense, shall use commercially reasonable efforts to cause any such discrepancies and deficiencies to be fully corrected in accordance with the engineer’s remediation plan, if any, contained in the report prior to the Transfer Date.
      3. Following the completion of any work required to be undertaken under the report, the engineer’s report shall be updated within [*fifteen (15)*] Business Days, and this paragraph 8 shall apply to the updated report.
      4. To the extent the Concessionaire does not complete the required work by the Transfer Date, the costs thereof (as set forth in the consulting firm’s report, as may be updated) shall be deducted from any payments due to the Concessionaire hereunder as calculated in this Schedule 9.
  1. Environmental Audit

The following provisions shall only apply in the event of a termination of this Agreement pursuant to Clause 19.4 (Termination or Removal for Concessionaire Event of Default after the Concession Effective Date):

* + - 1. Within [*thirty (30)*] Business Days of termination of this Agreement, the Concessionaire shall provide to the Grantor an inspection report by a reputable environmental consulting firm reasonably satisfactory to both Parties (and, to the extent the Parties cannot agree, then an Expert appointed by the Centre in accordance with the ICC Rules) either:
         1. certifying that, as of the date of the report, its investigation has revealed no Environmental Conditions present on, in or under the Relevant Concession Assets, or
         2. if such firm cannot so certify due to the presence of Environmental Conditions, providing a list identifying the Environmental Conditions present and the extent of the contamination in reasonable detail and the estimated costs to effectively remediate such contamination and providing a remedial response plan and covering such other environmental matters as the Grantor shall reasonably request in writing,

except where any Environmental Conditions identified are the result of an Excusing Event or any action of the Grantor or any Governmental Authority, in which case it shall not be at the cost or liability of the Concessionaire and this Clause 9 shall not apply to any such Environmental Condition.

* + - 1. If the consulting firm’s report includes a remedial response plan, the Concessionaire shall, within [*thirty (30)*] Business Days of the delivery of the consulting firms’ report or any update thereof, deposit funds into an escrow account sufficient to ensure the full execution of the plan. Funds held in escrow shall only be released from the escrow account to pay for work carried out to effect the remedial response plan. Following the completion of all required remediation work, as certified by the environmental consulting firm, or on the Transfer Closing, any funds remaining in the escrow account shall be released to the Concessionaire.
      2. Following the completion of any remedial action required to be undertaken under the report, the consulting firm’s report shall be updated within fifteen (15) Business Days, and this paragraph 9 shall apply to the updated report.
      3. To the extent the Concessionaire does not complete the required remediation by the Transfer Date, the costs thereof (as set forth in the consulting firm’s report, as may be updated) shall be deducted from any payments due to the Concessionaire hereunder as calculated in this Schedule 9.
  1. Calculation and Verification of Buy-Out Amount
     + 1. The Concessionaire shall submit a statement to the Accountants within [*thirty (30)]* Business Days following the termination date setting out a provisional determination of the Buy-Out Amount due in respect of the Transfer.
       2. The Accountants shall be responsible for reviewing the Concessionaire’s provisional determination of the Buy-Out Amount and shall, within [*fifteen (15)*] Business Days of receiving such determination or such longer period of time as the Accountants reasonably require, issue a certificate to the Concessionaire (with a copy to the Grantor) confirming either:
          1. that the Buy-Out Amount set out therein has been properly determined; or
          2. if, in their opinion, it has not been properly determined, the Accountants’ own determination of the Buy-Out Amount.
       3. If either Party disputes the Accountant’s finding, the Parties shall attempt to come to a mutual agreement on a revised Buy-Out Amount. If the Parties cannot come to an agreement, then the matter shall be referred to Arbitration pursuant to Clause 20.4 *(Arbitration)*.
       4. The Accountants shall act as experts and not as arbitrators. The reasonable costs and expenses of the Accountants shall be borne as follows:
          1. if the Relevant Concession Assets are being transferred pursuant to Clause 19.4 (*Termination or Removal for Concessionaire Event of Default after the Concession Effective Date*), by the Concessionaire;
          2. if the Relevant Concession Assets are being transferred pursuant to Clause 19.5 (*Termination or Removal for Grantor Event of Default after the Concession Effective Date*), Clause 19.6 (*Termination or Removal for Prolonged Force Majeure Events after the Concession Effective Date*) in respect of a Political Force Majeure Event, Clause 19.7 (*Termination for Expropriation*) or Clause 19.8 (*Termination or Removal upon Grid Expansion*), by the Grantor; and
          3. if the Relevant Concession Assets are being transferred pursuant to Clause 19.6 (*Termination or Removal for Prolonged Force Majeure Events after the Concession Effective Date*) in respect of a Natural Force Majeure Event, equally between the Parties.
       5. The Accountants shall be entitled to have access to the Site and to the Concessionaire’s books, records and other documents for the purposes of carrying out their review, and each of the Parties shall promptly, on request, supply to the Accountants all such documents and information as the Accountants may require for the purposes of their functions pursuant to this Schedule.
  2. Set-Off of Other Amounts Owed
     + 1. If the Concessionaire fails to pay any amount that it is obligated to pay to the Grantor under this Agreement, such amount shall be deducted from the relevant Buy-Out Amount; and
       2. if the Grantor fails to pay any amount that it is obligated to pay to the Concessionaire under this Agreement, such amount shall be added to the relevant Buy-Out Amount.
  3. Closing

Closing of the transfer of the Relevant Concession Assets (the “**Transfer Closing”**) shall take place on the Transfer Date at such place in London and at such time as the Concessionaire may notify to the Grantor following the Accountants’ issuance of their certificate. Such notice shall be given no later than 10AM. on the [*fifth (5th)*] Business Day prior to the Transfer Date.

* 1. Payment of Buy-Out Amount
     + 1. The Grantor shall cause the Buy-Out Amount to be paid in Foreign Currency to a bank account of the Concessionaire nominated by the Concessionaire at least [*three (3)*]Business Days prior to the proposed date for the Transfer Closing; provided, however, that the Grantor may on behalf of the Concessionaire deliver, in respect of a Share Expropriation, the Buy-Out Amount directly to the following bank account of the Sponsors, …………… …………… [*insert bank account details*].
       2. If any Tax is imposed on or withheld from payments to be made by the Grantor to the Concessionaire hereunder in connection with a transfer to the Grantor of the Relevant Concession Assets, then such payments to the Concessionaire shall be increased by an amount such that the Concessionaire (or any Person receiving the Buy-Out Amount or any portion of it on its behalf) will receive the same amount that it would in exchange for the Relevant Concession Assets had no such Tax been imposed or withheld.
  2. Delivery of the Concession Relevant Assets

Upon receipt in full of the Buy-Out Amount, the Concessionaire shall:

* + - 1. deliver or make available to the Grantor or its designee such conveyances, transfers, notarial deeds, assignments, novations and other documents [*(and where required, duly sealed or signed as a deed by the Concessionaire and, if so reasonably required by the Grantor*)][[115]](#footnote-117) together with the related documents of title, as the Grantor may reasonably require to give effect to the requirements of paragraph 3 and, subject to any Permitted Liens, vest in the Grantor the full benefit of the property and assets therein referred to; and
      2. shall permit the Grantor to enter into and take possession of the Relevant Concession Assets.

1. : Insurances

PART I – Construction Phase Insurances

The Concessionaire shall ensure that in respect of each Mini-Grid [Site/Lot], the following Insurances are in place upon or prior to the commencement of the Concession Works:

…………… …………… [*List all typical construction phase insurances*]

PART II – Operating Phase Insurances

The Concessionaire shall ensure that in respect of each Mini-Grid [Site/Lot], the following Insurances are in place upon or prior to the commencement of the Concession Services:

…………… …………… [*List all typical operation phase insurances*]

2. : Milestone Schedule

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Milestone Number** | **Construction Milestone** | **Target Connections to be achieved (…… number)(% of Target Completion Connections)** | **% Target Connections**  **CC1** | **% Target Connections**  **CC2** | **% Target Connections**  **CC3** | **Total number/% of SHS Connections** |
|  | Mini-Grid [Site/Lot] Technical Commissioning[[116]](#footnote-118) |  |  |  |  |  |
|  | Interim[[117]](#footnote-119) Completion | [(25%)] | [……%] | [……%] | [……%] | [……/….%] |
|  | Concession Commissioning Date | [(50%)] | [……%] | [……%] | [……%] | [……/….%] |
|  | Concession Completion | [(100%)] | [……%] | [……%] | [……%] | [……/….%] |

1. : Customer Provisions

A Customer Agreement between the Concessionaire and Customer shall contain the following minimum/maximum provisions:

* 1. **Supply**

The purpose of the supply should be specified and confirmation given that the Customer is the lawful owner or occupier of the premises.

* 1. **Contract duration**

The Customer Agreement should provide for the term of the contract, allowing for termination by either party and the possibility to remedy any breaches within a specified period. Such period in the case of payment default shall not exceed thirty (30) days.

* 1. **Electricity service subscription**

The Customer Agreement shall provide for a description of the electricity services being subscribed, on the basis of either:

* + - 1. Electrical Power defined by a maximum number of watts (W) [or kilowatts (KW)] and Electrical Energy defined by a maximum amount of kilowatt hours (kWh) per time period (day/week/month); or
      2. maximum usage time being a maximum number of hours per day/week/month at the specified electrical power (W).
  1. **Quality of electricity supply[[118]](#footnote-120)**

The quality of the electricity supply should be set out in the Customer Agreement with reference to the relevant Service Standards set out in Schedule 7.

* 1. **Meters**
     + 1. The timing for meter reading and the hours of delivery of the electrical energy to the Customer Connection Point shall be clearly set out.
       2. The Customer Agreement should specify that the electricity supply will be provided at an electric meter with details as to where the meter will be installed (e.g., inside or outside the Customer’s house; if outside, where outside).
       3. The Customer shall be responsible for the safety and security of the meter and be held liable for any damage to the unit, except for reasons beyond the Customer’s control.
       4. Access to the meter shall be granted by the Customer so that the Concessionaire can inspect, maintain, repair or replace the meter.
  2. **Indoor installation/Internal Wiring**
     + 1. The Customer Agreement to specify the indoor installation package planned for the Customer, including a list of electrical equipment to be installed (e.g., length of cable, number of light bulbs, bulb sockets, switches, etc.).
       2. The Customer must provide access for the Concessionaire to install the electrical equipment, as well as to inspect, maintain, repair or replace the equipment (upon notice).
       3. The costs of connection, commissioning and maintenance of the electrical installation downstream of the Customer Connection Point will be borne by the Customer.
       4. The Customer Agreement to provide Customer confirmation that the Internal Wiring conforms with the Internal Wiring Standards.
       5. If the Customer has existing Internal Wiring that does not conform with the Internal Wiring Standards, the Concessionaire must have the right to replace that wiring at the Customer’s request and at the cost of the Customer where the Concessionaire does not consider it adequate or safe for connecting to the Customer Connection Point.
       6. The Concessionaire must be entitled to refuse to connect the Customer where it deems the Internal Wiring to be unsafe, to reflect the provisions relating to Internal Wiring set forth in Clause 6.13 of the Concession Agreement.
  3. **Additional Services**

Any Additional Services to be clearly defined.

* 1. **Payments**

The Customer Tariff to be included in the Customer Agreement.[[119]](#footnote-121) The Customer Agreement to set out the payment responsibilities of the Customer and the consequences for failure to pay. Such provisions to include:

* + - 1. **Upfront payment.** Upfront payment of a security deposit to secure payment (whole or partial) for the installation of the electrical equipment (being the Customer Connection Point and, where relevant, the Concessionaire Solar Home System). The security deposit to be used to offset any non-payment by the Customer.
      2. **Energy payments.** Prepayment for energy consumption – the size of such prepayment to be determined based on the Customers’ prior payment history and consumption over a pre-agreed period (plus an additional cushion amount).
      3. **Payment terms.** The Customer Agreement should provide for when (day of the month) the Customer must make its monthly prepayments.
      4. **Non-payment.** If the Customer fails to pay by the due date, the Customer Agreement should set out any grace period for non-payment and any penalty fees and interest that accrue from the original payment due date, subject to (e) below.
      5. **Disconnection and de-installation.** The Customer Agreement to set out the consequences of prolonged failure to pay (after the expiry of the grace period in (d) above, namely the automatic switch-off of the electrical equipment (if technology allows), disconnection and de-installation of the equipment).
      6. **Method of payment.** The Customer Agreement should provide how the Customer should make its payment (bank account; means of payment, such as cash, cheque or mobile money transfer).
  1. **Mode of Operation**

The Customer Agreement to set out the following details:

* + - 1. **Power station.** A short description of the power station providing the electricity to the Customer.
      2. **Operation of the electricity meter.** Description of how the electricity meter operates (e.g., exceeding power and energy limits, balance uploading, etc.)
      3. **Temporary disturbances.** The Customer Agreement should include a provision acknowledging that temporary disturbances in electrical power can occur, due to events such as severe climatic conditions, incidents, vandalism and maintenance of the system. Performance shall be excused for force majeure and the Concessionaire should be entitled to curtail supply in an emergency or in accordance with the [*relevant grid code/relevant regulations*]. In such cases, the Concessionaire shall not be responsible for providing a back-up electricity supply solution to the Customer or any additional protection for electrical appliances used by the Customer.
  1. **Theft of electricity**

The Customer Agreement must terminate if the Customer has attempted to steal electricity and/or tamper with the metering equipment and must also allow the Concessionaire to pursue legal remedies, including pursuing criminal charges.

Any illegal connection should also give rise to an immediate termination right.

* 1. **Concessionaire Liability**
     + 1. The Concessionaire liability will be limited to what is a permissible limit under local law and indirect or consequential damage will be excluded.
       2. Subject to (a) above, the Customer Agreement will provide for limitations on the Concessionaire’s liability. The Concessionaire’s liability will not extend to damage or Loss resulting from the Customer’s own equipment, the Customer’s improper use of the Concessionaire’s equipment or interruptions of the electricity supply that are beyond the control of the Concessionaire.
  2. **Assignability**

The Concessionaire should be able to freely assign the Customer Agreement.

* 1. **Governing law and dispute resolution**

The Customer Agreement must specify the governing law, clear Customer complaints procedure guidelines and a mechanism for how any disputes arising under the agreement will be resolved.

1. : Development Bonds

**ANNEX 1**

CONCESSIONAIRE DEVELOPMENT BOND

[Bank reference number: ………… [●]]

ISSUED on [●] by

………… ………… [***ACCEPTABLE BANK***],

(Hereinafter referred to as the “Bank”)

IN FAVOUR OF:

………… ………… [***CONTRACTING AUTHORITY***],

(Hereinafter, the “Beneficiary”).

**WHEREAS**:

1. Pursuant to a concession agreement dated ………… (the “Concession Agreement”) concluded between the Beneficiary and ………… [*INSERT* *CONCESSIONAIRE*] (the “**Company**”), the Company plans to develop, design, finance, insure, construct, commission, own, operate and maintain a series of Mini-Grids (as defined in the Concession Agreement) and to generate and distribute energy to customers in ………… [*insert region*] in ………… [*insert host country*].
2. The Company is required to provide a development bond to the Beneficiary under clause 3.5 (*Concessionaire Development* *Bond*) of the Concession Agreement.
3. At the request of the Company, the Bank has agreed to issue this development bond (the “**Bond**”) to the Beneficiary.

**NOW THIS [*DEED/AGREEMENT*][[120]](#footnote-122) WITNESSES** as follows:

* 1. Definitions and interpretation

1. In this Bond, unless otherwise indicated, words and expressions shall have the meaning given to them in the Concession Agreement. The following terms have the meaning given to them below when used in this Bond:
2. “Demand” means a demand for payment made in accordance with Clause 4 of this Bond in the form of Schedule 1 (*Form of Demand*).
3. “Expiry Date” means the earlier to occur of:
   1. the achievement of the Concession Effective Date;
   2. the Target Concession Effective Date; or
   3. the event of a termination of the Concession Agreement prior to the Concession Effective Date as set out in clause 3.2 (*Failure to Achieve Concession Effective Date – Grantor Delay Event*) or clause 3.4 (*Failure to Achieve Concession Effective Date – Natural Force Majeure Event*) of the Concession Agreement,
4. except where there are pending claims (including previously notified claims) at such date, in which case the Expiry Date shall be the date that such claims have been finally determined and (if applicable) paid.
5. “Maximum Amount” means ………… ………… Dollars [*insert amount*].
   1. The Bank hereby irrevocably and unconditionally undertakes to pay to the Beneficiary, on the Business Day immediately following that on which it receives a Demand from the Beneficiary in accordance with Clause 4 below, an amount equal to the lesser of:
      * 1. the amount specified in such demand; or
        2. the Maximum Amount less the aggregate of all previous payments made under this Bond.
   2. The Bank’s obligation to make payments under this Bond shall arise on receipt of a Demand made in accordance with the provisions of this Bond, without any further proof or condition and without any right of set-off or counterclaim. The Bank shall not be required or permitted to make any other investigation or enquiry.
   3. The Beneficiary may make one or more demands hereunder. Each demand shall be substantially in the form set out in Schedule 1 (*Form of Demand*) and shall be delivered to the Bank on a Business Day and during normal banking hours at its offices at ………… [*insert address*] (or such other office of the Bank in ………… [*insert jurisdiction*] as the Bank may from time to time notify to the Beneficiary).
   4. The maximum aggregate liability of the Bank under this Bond shall not exceed the Maximum Amount.
   5. This Bond is irrevocable. It will take effect on the date hereof and (unless previously cancelled by the written agreement of the Bank and the Beneficiary) will expire on the earlier of:
      * 1. the Expiry Date; or
        2. the date on which all payments made under this Bond shall first equal the Maximum Amount.
   6. The expiry of the Bond under Clause 6(a) above shall not affect or discharge the liability of the Bank to make payment of any Demand on or before the Expiry Date.
   7. All payments to be made under this Bond shall be made to the account specified in the relevant Demand and within ………… [*five (5)*] Business Days immediately following the date of each Demand becoming effective in accordance with Clause 4, failing which interest shall accrue on the unpaid balance at the rate of two per cent (2%) per annum calculated for the number of Days elapsed from the due date until payment is made in full by the Bank.
   8. Any notices or communications to be made by the Bank or the Beneficiary to the other under or in connection with this Bond (other than Demands made under Clauses 2 and 4) shall be in writing and made to the other at the following addresses:

In the case of the Bank:

Address:

Marked for the attention of: ………… ………… [*insert person’s name/title*]

In the case of the Beneficiary:

Address:

Marked for the attention of: ………… ………… [*insert person’s name/title*]

or at any other address subsequently notified by one of the Parties to the other Party with a notice of at least five (5) Business Days.

* 1. All payments under this Bond shall be made free of any withholding or deduction on account of tax or otherwise.
  2. This Bond cannot be modified or waived without the written consent of the Beneficiary and the Bank.
  3. This Bond and any rights arising under it shall not be capable of assignment or transfer by either Party without the prior written consent of the other.
  4. This Bond shall be governed by and construed in accordance with the laws of ………… ………… [*insert jurisdiction*].
  5. The parties hereto irrevocably agree that the courts of ………… ………… [*insert jurisdiction*] shall have [*exclusive*] jurisdiction to hear and determine any suit, action or proceeding and to settle any disputes that may arise under or in connection with this Bond and for such purposes irrevocably submit to the [*exclusive*] jurisdiction of such courts.

**IN WITNESS** whereof this Bond has been executed by the Bank [*as a deed and is intended to be delivered[[121]](#footnote-123)*] and is hereby delivered on the date first written above.

**EXECUTED AND DELIVERED** )

[*as a deed[[122]](#footnote-124)*] for and on behalf )

of ………… [**the Bank**] by )

[                ] )

so authorised [pursuant to a Power of )

Attorney granted by the Bank in )

his favour dated ………… [       ] )

in the presence of:

Witness:

Name:

Address:

Occupation:

**SCHEDULE 1  
Form of Demand**

Date : [●]

To: ………… [*insert details of the Bank*]

Dear Sirs/Madams

**Re: Development Bond dated [insert date] issued by**………… ………… **[*insert Bank*] Bank in favour of** ………… ………… **[*insert Beneficiary*] (“the Bond”)**

* 1. This letter constitutes a Demand under the Bond. The terms used in this Demand have the meaning assigned to them in the Bond.
  2. We hereby certify that:
     + 1. the Concession Effective Date has not been met by the Target Concession Effective Date; and
       2. the Concession Agreement has been terminated prior to the Concession Effective Date in accordance with clause 3.3 (Failure to Achieve Concession Effective Date – Concessionaire Delay Event) of the Concession Agreement.
  3. We confirm that:
     + 1. we have suffered a Loss, cost or expense as a consequence; and
       2. we are entitled under the Concession Agreement to draw upon the Bond in respect of such Loss, cost or expense.
  4. We therefore demand the amount of ………… ………… Dollars [*insert amount of demand*] under the Bond.

Payment should be made to Account Number ………… [*insert number*], designated ………… at ………… [*insert account details*].

Yours faithfully

For and on behalf of   
………… ………… **[*BENEFICIARY*]**

**ANNEX 2**

**GRANTOR DEVELOPMENT BOND**

[Bank reference number: ………… [●]]

ISSUED on [●] by

………… ………… [***ACCEPTABLE BANK***],

(Hereinafter referred to as the “Bank”)

IN FAVOUR OF:

………… ………… [***CONCESSIONAIRE***],

(Hereinafter, the “Beneficiary”).

**WHEREAS**:

1. Pursuant to a concession agreement dated ………… (the “Concession Agreement”) concluded between the Beneficiary and ………… [*INSERT GRANTOR*] (the “**Grantor**”), the Grantor has agreed to support the Beneficiary in its plans to develop, design, finance, insure, construct, commission, operate and maintain a series of Mini-Grids (as defined in the Concession Agreement) and to generate and distribute energy to customers within ………….. [*insert area*] in ………… [*insert host country*].
2. The Grantor is required to provide a development bond to the Beneficiary under clause 3.6 (*Grantor Development Bond*) of the Concession Agreement.
3. At the request of the Grantor, the Bank has agreed to issue this development bond (the “**Bond**”) to the Beneficiary.

**NOW THIS [*DEED/AGREEMENT*][[123]](#footnote-125) WITNESSES** as follows:

* 1. Definitions and interpretation

1. In this Bond, unless otherwise indicated, words and expressions shall have the meaning given to them in the Concession Agreement. The following terms have the meaning given to them below when used in this Bond:
2. “Demand” means a demand for payment made in accordance with Clause 4 of this Bond in the form of Schedule 1 (*Form of Demand*).
3. “Expiry Date” means the earlier to occur of:
   1. the achievement of the Concession Effective Date;
   2. the Target Concession Effective Date; and
   3. the event of a termination of the Concession Agreement prior to the Concession Effective Date as set out in clause 3.2 (*Failure to Achieve Concession Effective Date – Concessionaire Delay Event*) or clause 3.4 (*Failure to Achieve Concession Effective Date – Natural Force Majeure Event*) in the event of a Natural Force Majeure Event of the Concession Agreement,
4. except where there are pending claims (including previously notified claims) at such date, in which case the Expiry Date shall be the date that such claims have been finally determined and (if applicable) paid.
5. “Maximum Amount” means ………… ………… Dollars [*insert amount*].
   1. The Bank hereby irrevocably and unconditionally undertakes to pay to the Beneficiary on the Business Day immediately following that on which it receives a Demand from the Beneficiary in accordance with Clause 4 below, an amount equal to the lesser of:
      * 1. the amount specified in such demand; or
        2. the Maximum Amount less the aggregate of all previous payments made under this Bond.
   2. The Bank’s obligation to make payments under this Bond shall arise on receipt of a Demand made in accordance with the provisions of this Bond, without any further proof or condition and without any right of set-off or counterclaim. The Bank shall not be required or permitted to make any other investigation or enquiry.
   3. The Beneficiary may make one or more demands hereunder. Each demand shall be substantially in the form set out in Schedule 1 (*Form of Demand*) and shall be delivered to the Bank on a Business Day and during normal banking hours at its offices at ………… [*insert address*] (or such other office of the Bank in ………… [*insert jurisdiction*] as the Bank may from time to time notify to the Beneficiary).
   4. The maximum aggregate liability of the Bank under this Bond shall not exceed the Maximum Amount.
   5. This Bond is irrevocable. It will take effect on the date hereof and (unless previously cancelled by the written agreement of the Bank and the Beneficiary) will expire on the earlier of:
      * 1. the Expiry Date; or
        2. the date on which all payments made under this Bond shall first equal the Maximum Amount.
   6. The expiry of the Bond under Clause 6(a) above shall not affect or discharge the liability of the Bank to make payment of any Demand on or before the Expiry Date.
   7. All payments to be made under this Bond shall be made to the account specified in the relevant Demand and within ………… [*five (5)*] Business Days immediately following the date of each Demand becoming effective in accordance with Clause 4, failing which interest shall accrue on the unpaid balance at the rate of two per cent (2%) per annum calculated for the number of Days elapsed from the due date until payment is made in full by the Bank.
   8. Any notices or communications to be made by the Bank or the Beneficiary to the other under or in connection with this Bond (other than Demands made under Clauses 2 and 4) shall be in writing and made to the other at the following addresses:

In the case of the Bank:

Address:

Marked for the attention of: ………… ………… [*insert person’s name/title*]

In the case of the Beneficiary:

Address:

Marked for the attention of: ………… ………… [*insert person’s name/title*]

or at any other address subsequently notified by one of the Parties to the other Party with a notice of at least [*five (5)*] Business Days.

* 1. All payments under this Bond shall be made free of any withholding or deduction on account of tax or otherwise.
  2. This Bond cannot be modified or waived without the written consent of the Beneficiary and the Bank.
  3. This Bond and any rights arising under it shall not be capable of assignment or transfer by either Party without the prior written consent of the other.
  4. This Bond shall be governed by and construed in accordance with the laws of ………… ………… [*insert jurisdiction*].
  5. The Parties hereto irrevocably agree that the courts of ………… ………… [*insert jurisdiction*] shall have [*exclusive*] jurisdiction to hear and determine any suit, action or proceeding and to settle any disputes that may arise under or in connection with this Bond and for such purposes irrevocably submit to the [*exclusive*] jurisdiction of such courts.

**IN WITNESS** whereof this Bond has been executed by the Bank [*as a deed and is intended to be delivered[[124]](#footnote-126)*] and is hereby delivered on the date first written above.

**EXECUTED AND DELIVERED** )

[*as a deed[[125]](#footnote-127)*] for and on behalf )

of ………… [**the Bank**] by )

[                ] )

so authorised [pursuant to a Power of )

Attorney granted by the Bank in )

his favour dated ………… [       ] )

in the presence of:

Witness:

Name:

Address:

Occupation:

**SCHEDULE 1  
Form of Demand**

Date : [●]

To: ………… [*insert details of the Bank*]

Dear Sirs/Madams

**Re: Development Bond dated [insert date] issued by** ………… ………… **[*insert Bank*] Bank in favour of** ………… ………… **[*insert Beneficiary*] (“the Bond”)**

* 1. This letter constitutes a Demand under the Bond. The terms used in this Demand have the meaning assigned to them in the Bond.
  2. We hereby certify that:
     + 1. the Concession Effective Date has not been met by the Target Concession Effective Date; and
       2. the Concession Agreement has been terminated prior to the Concession Effective Date, in accordance with clause 3.2 (Failure to Achieve Concession Effective Date –Grantor Delay Event) or clause 3.4 (*Failure to Achieve Concession Effective Date –Natural Force Majeure Event*), in respect of a Political Force Majeure Event, of the Concession Agreement.
  3. We confirm that:
     + 1. we have suffered a Loss, cost or expense as a consequence; and
       2. we are entitled under the Concession Agreement to draw upon the Bond in respect of such Loss, cost or expense.
  4. We therefore demand the amount of ………… ………… Dollars [*insert amount of demand*] under the Bond.

Payment should be made to Account Number ………… [*insert number*], designated ………… at ………… [*insert account details*].

Yours faithfully

For and on behalf of   
………… ………… **[*BENEFICIARY*]**

1. : Form of Land Lease Agreement

[*Please refer to template document circulated separately*]

1. : Initial Consents
   1. **Signing Date – Initial Consents**

[List to be inserted]

* 1. **Concession Effective Date – Initial Consents**

[List to be inserted]

1. : Independent Engineer

**ANNEX 1**

**ROLE OF INDEPENDENT ENGINEER[[126]](#footnote-128)**

| **Activity** | **Small Mini-Grid Sites within Mini-Grid Lots**  **Minimum Scope of Work** | **Large Mini-Grid Sites**  **Minimum Scope of Work** |
| --- | --- | --- |
| Review of Access Rights | X | X |
| Review of compliance with the Environmental and Social Requirements and ESMP/ESIA (as applicable) | X | X |
| Monitoring of construction progress | Only a sample | X |
| Monitoring of equipment and material compliance with specifications | X | X |
| Engineering design review and review of modifications to design | Only a sample[[127]](#footnote-129) | X |
| Equipment test supervision |  | X |
| Review of Commissioning and Testing Plan | X | X |
| Commissioning test supervision | X | X |
| Provisional and final acceptance after commissioning | X | X |
| Analysis and assessment of project technical deviations | X | X |

**ANNEX 2**

**INDEPENDENT ENGINEER LIST**

1. : Form of Direct Agreement

[*Please refer to template document circulated separately*]

1. : Demand Prediction

1. Please refer to section 2 of the Concession Agreement User Guide to prepare the Recitals. [↑](#footnote-ref-2)
2. The applicable options for this definition will depend on whether there is phased construction or simultaneous construction of Mini-Grid Sites. [↑](#footnote-ref-3)
3. Drafting Note: Monthly indexation may be considered depending on the regulations in the country where the Scaling Mini-Grid Program is implemented. The trade-offs between immediacy of variable cost pass-through, increased complexity for regulatory oversight and administration as well as impact of frequent end-user tariff changes on customers should be considered. [↑](#footnote-ref-4)
4. This threshold will need to be determined on a case-by-case basis. It is meant to be set at a level below which a concession can no longer be considered viable. It is used throughout the Concession to indicate that a termination of the Concession is the more appropriate remedy vs a removal of mini-grids/lots affected by certain circumstances from the Concession. [↑](#footnote-ref-5)
5. See prior footnote. [↑](#footnote-ref-6)
6. Drafting Note: This can be tailored to relate generally to pandemics rather than specifically to COVID-19, particularly if you consider other pandemics could be relevant to the countries participating in the SMG Program. [↑](#footnote-ref-7)
7. Drafting Note: Additional Customer Categories to be created and these definitions to be amended accordingly as the circumstances require. Please see section 11.4 of the Concession Agreement User Guide. [↑](#footnote-ref-8)
8. Drafting Note**:** For the purpose of this template agreement we have assumed that Foreign Currency will be US Dollars, but this can be adapted if lending is to be in any other non-Local Currency. [↑](#footnote-ref-9)
9. Drafting Note: Where the Grantor’s creditworthiness is not satisfactory, the government of the Host Country will be required to backstop the payment obligations of the Grantor hereunder – being primarily the Buy-Out Amounts and any Loss Amounts. [↑](#footnote-ref-10)
10. Drafting Note: We would expect that the Concession Agreement may be drafted to name the Grid Operators where there may not be more than one or two relevant providers. [↑](#footnote-ref-11)
11. A copy of IFC’s Performance Standards can be found at: [http://www.ifc.org/wps/wcm/connect/topics\_ext\_content/ifc\_external\_corporate\_site/ifc+sustainability/our+approach/risk+management/performance+standards/environmental+and+s”Initial Expiorocial+performance+standards+and+guidance+notes](http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/our+approach/risk+management/performance+standards/environmental+and+s). [↑](#footnote-ref-12)
12. Drafting Note: It may not be the case that all Mini-Grids will be Grid ready. [↑](#footnote-ref-13)
13. Full name of relevant Ministry in each Host Country to be included here. [↑](#footnote-ref-14)
14. Full name of relevant Ministry in each Host Country to be included here. [↑](#footnote-ref-15)
15. Since the consequence of a Persistent Service Standard Failure could be a termination of the Concession by the Grantor, this threshold should be set at an appropriately high level commensurate to the consequence. [↑](#footnote-ref-16)
16. Please see section 4.2 of the Concession Agreement User Guide. [↑](#footnote-ref-17)
17. Definitions subject to updates in line with latest IFC standards. [↑](#footnote-ref-18)
18. Drafting Note: This will be determined as part of the Tariff review procedure noted in Clause 2.2 of Schedule 8 (*Tariff Regulation*). [↑](#footnote-ref-19)
19. A copy of the WBG Environmental, Health and Safety Guidelines can be found at: [Environmental, Health, and Safety Guidelines (ifc.org)](https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/ehs-guidelines). [↑](#footnote-ref-20)
20. Drafting Note: This assumes that the time in each Host Country adheres to a common time – but this will need to be modified where more than one time zone applies in any Host Country or region covered by the Concession. [↑](#footnote-ref-21)
21. Drafting Note: Please refer to section 4 of the Concession Agreement User Guide. [↑](#footnote-ref-22)
22. Please refer to section 5 of the Concession Agreement User Guide for guidance on the Exclusivity Provision. [↑](#footnote-ref-23)
23. Please refer to section 7 of the Concession Agreement User Guide for guidance on the Generation Site and Access Rights procurement process. [↑](#footnote-ref-24)
24. Drafting Note: To be included where additional authorisations may be required to assign publicly owned land. [↑](#footnote-ref-25)
25. Please see guidance in section 7 of the Concession Agreement User Guide. [↑](#footnote-ref-26)
26. Drafting Note: Please refer to section 10.1 of the Concession Agreement User Guide for a discussion on Existing Assets and the preferred legal position for securing these assets. We recommend that the Existing Assets be scheduled in the Concession Agreement and transferred to the Concessionaire prior to the Concession Effective Date. In certain jurisdictions, it may be sufficient to grant a right to use those assets under the Concession Agreement, so we have included that option here. [↑](#footnote-ref-27)
27. Please refer to section 8.7 of the Concession Agreement User Guide for an explanation of the Internal Wiring provisions. [↑](#footnote-ref-28)
28. Drafting Note: The scope of work assumes that the Concessionaire will not install the Internal Wiring; however, the Concessionaire could install the Internal Wiring if it elects to include this in its scope of work, although we would not expect the Concessionaire to have any liability under the Agreement for Internal Wiring. [↑](#footnote-ref-29)
29. Drafting Note: Please note it may not be possible for the Grantor to provide such an authorisation to the Concessionaire, in which case this Clause 6.13 will need to be modified accordingly. [↑](#footnote-ref-30)
30. Please note that it may not be possible for the Concessionaire to carry out such a role unless it is licensed. [↑](#footnote-ref-31)
31. Drafting Note: For the purpose of the template Concession Agreement we have assumed that the provision of street lighting will be a requirement of the Concession; however, the decision to include such an obligation should be considered on a case-by-case basis, and should not be considered an absolute requirement for each Project. [↑](#footnote-ref-32)
32. For larger sites this will simply refer to the Mini-Grid Site, and for smaller sites this will be the bundled-up Mini-Grid Lots. [↑](#footnote-ref-33)
33. Please refer to section 11 of the Concession Agreement User Guide for a detailed discussion and examples of customer compensation. The way in which breaches of the Service Standards are treated is subject to the electricity regulatory regime in each jurisdiction, and thus we have not sought to propose a “standard” clause. The example provisions set out above reflect the options that *may* apply on a jurisdiction-by-jurisdiction basis (tariff adjustments and customer rebates). We refer to section 11.3(e) of the Concession Agreement User Guide, which provides a simple template of typical penalties applied for Service Standard breaches. [↑](#footnote-ref-34)
34. Drafting Note: Schedule 12 (Customer Provisions) proposes standard provisions we would expect to see covered in a Customer Agreement, but we have not sought to propose a template form of Customer Agreement. We note that in some areas Customer literacy rates may be limited, so developers may need to propose alternative forms of contract to provide for this. We would expect to see this point covered by the stakeholder engagement plan, which forms part of the E&S requirements under this Agreement. [↑](#footnote-ref-35)
35. Please refer to section 11.4 of the Concession Agreement User Guide. [↑](#footnote-ref-36)
36. Optional: To be used where there may not be prepaid meters – although the default requirements for the SMG Program is that all meters must be prepaid. [↑](#footnote-ref-37)
37. This threshold will need to be determined on a case-by-case basis. The general guidance is that this portion shall be relatively small in the ranges of 20-30%. [↑](#footnote-ref-38)
38. Drafting Note: This section is to be customised based on the preference of the Grantor. Please see section 6 of the Concession Agreement User Guide for an explanation of the Grid Expansion options. [↑](#footnote-ref-39)
39. Please note that not all jurisdictions will allow all the options (ii)–(iv) – to be deleted as appropriate. [↑](#footnote-ref-40)
40. Please see section 8.8 of the Concession Agreement User Guide. [↑](#footnote-ref-41)
41. Please refer to section 6.2 of the Concession Agreement User Guide. [↑](#footnote-ref-42)
42. Please refer to section 4 of the Concession Agreement User Guide for an explanation of the Consents, licensing and authorisation options for the Concession. [↑](#footnote-ref-43)
43. Please see section 8.9 of the Concession Agreement User Guide for assistance in completing this provision. [↑](#footnote-ref-44)
44. Please see section 8.9 of the Concession Agreement User Guide for assistance in completing this provision. [↑](#footnote-ref-45)
45. The requirement prohibiting a change of control over the life of the concession is more stringent compared to other typical infrastructure projects and the possibility for shorter lock-up periods could be discussed on a case-by-case basis. [↑](#footnote-ref-46)
46. Subject to be updated in accordance with IFC standards. [↑](#footnote-ref-47)
47. Please refer to section 12 of the Concession User Guide for an explanation of the Tariff provisions. [↑](#footnote-ref-48)
48. Drafting Note: The tariff setting and adjustment formulas and methodology set out in this template agreement may need to be adjusted to reflect the local regulatory regime. Where this is the case, this Clause 11 and other relevant Clauses of this Concession as well as Schedule 8 (*Tariff Regulation*) will need to be modified to reflect the requirements of the local regulatory regime. [↑](#footnote-ref-49)
49. Drafting Note: It is likely that the local regulatory regime will prescribe the form of the Tariff Schedule. [↑](#footnote-ref-50)
50. Drafting Note: Please see Clause 7.2(b) of the Concession Agreement, which relates to the designation of Customer Categories among Customers. [↑](#footnote-ref-51)
51. Drafting Note: Such services may include peak demand supply, connection to the network, supply during certain times of day, interruptions to supply and back-up supply. [↑](#footnote-ref-52)
52. Drafting Note: The timing and method of publication of the Tariff Schedule will be subject to the local regulatory regime. [↑](#footnote-ref-53)
53. Drafting Note: Monthly indexation may be considered depending on the regulations in the country where the Scaling Mini-Grid Program is implemented. The trade-offs between immediacy of variable cost pass-through, increased complexity for regulatory oversight and administration as well as impact of frequent end-user tariff changes on customers should be considered. [↑](#footnote-ref-54)
54. Drafting Note: Where Option 2 is selected under Clause 7.1, Schedule 8, Clause 3.2 and this Clause 11.2(b) will need to be modified to allow for the application of the optional formulas included in Clause 3.2 of Schedule 8 to allow adjustments for Persistent Service Standard Failures. [↑](#footnote-ref-55)
55. Where the local regulatory regime imposes other requirements, such as filing the Bilateral Contract with the Regulator, this should be included here. [↑](#footnote-ref-56)
56. To be included if it is agreed that commercial and industrial clients with the means to do so can pay in hard currency. [↑](#footnote-ref-57)
57. Please refer to section 13 of the Concession User Guide for an explanation of the financing options proposed in the Agreement. [↑](#footnote-ref-58)
58. To be included if such approval is required under local law. [↑](#footnote-ref-59)
59. Please refer to section 10 of the Concession User Guide for a discussion of the Concession Assets. [↑](#footnote-ref-60)
60. Where the Concessionaire benefits from a minimum revenue guarantee or similar product, express reference to that guarantee should also be included here. [↑](#footnote-ref-61)
61. Drafting Note: Provision has been made for the tax exemption for the Viability Gap Funding in the Grant Agreement, but we have provided a placeholder in the Concession Agreement on the basis that the Grantor may have the authority to confer this exemption rather than the Granting Authority under the Grant Agreement. [↑](#footnote-ref-62)
62. Drafting Note: To reflect signing authorities in each jurisdiction. [↑](#footnote-ref-63)
63. Please refer to the Concession Agreement User Guide for an explanation of the extent of Grantor authority. [↑](#footnote-ref-64)
64. To be modified depending on the foreign exchange regulations and restrictions on offshore remittance in each relevant jurisdiction. [↑](#footnote-ref-65)
65. For a general discussion of the Force Majeure regime, please refer to section 14 of the Concession Agreement User Guide. [↑](#footnote-ref-66)
66. Please refer to section 14.1(b) of the Concession Agreement User Guide. [↑](#footnote-ref-67)
67. Please refer to section 12.4 of the Concession Agreement User Guide for an explanation of the mechanism for compensating Extraordinary Tariff Events. [↑](#footnote-ref-68)
68. Please refer to section 14.2 of the Concession Agreement User Guide. [↑](#footnote-ref-69)
69. Please refer to section 11 of the Concession Agreement User Guide for a discussion of the Concessionaire’s obligations to comply with Service Standards. [↑](#footnote-ref-70)
70. Please refer to section 14 of the Concession Agreement User Guide. [↑](#footnote-ref-71)
71. Please refer to section 15 of the Concession Agreement User Guide for an explanation of the termination and removal provisions set forth in the Agreement. [↑](#footnote-ref-72)
72. Please see section 15.2 of the Concession Agreement Guide for an explanation of the Removal mechanics in the Concession Agreement. [↑](#footnote-ref-73)
73. Please refer to section 15 of the Concession Agreement User Guide. [↑](#footnote-ref-74)
74. Please refer to section 6 of the Concession Agreement User Guide for an explanation of the Grid Expansion provisions. [↑](#footnote-ref-75)
75. Please refer to section 16 of the Concession User Guide for an explanation of the dispute resolution provisions. [↑](#footnote-ref-76)
76. Drafting Note: Threshold to be determined based on the value of each Concession. [↑](#footnote-ref-77)
77. Please refer to section 17 of the Concession Agreement User Guide. [↑](#footnote-ref-78)
78. Please refer to section 17 of the Concession Agreement User Guide. [↑](#footnote-ref-79)
79. Local counsel to advise following the incorporation of the Concessionaire. [↑](#footnote-ref-80)
80. Please refer to section 7.3 of the Concession Agreement User Guide for recommendations on how to complete the Schedule. [↑](#footnote-ref-81)
81. Please note that this is a suggested list of conditions precedent and should be tailored to the specificities of each Concession. [↑](#footnote-ref-82)
82. 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 opinions 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-83)
83. Drafting Note: This will need to be drafted to identify each relevant exemption and the authority that must issue it. [↑](#footnote-ref-84)
84. The template includes the expected equipment and components, and standard parameters such equipment must meet are to be inserted for each Concession. Please see section 8.8 of the Concession Agreement User Guide for guidance on how to complete these values, and how to interpret the Technical Standards. [↑](#footnote-ref-85)
85. Drafting Note – optional – to be included where local standards are not sufficient. [↑](#footnote-ref-86)
86. Two years is preferable. [↑](#footnote-ref-87)
87. Table to be completed for each Project, depending on the interconnection readiness standards that will apply to each Mini-Grid Site or that may apply to all Mini-Grids within a Mini-Grid Site. [↑](#footnote-ref-88)
88. Please see section 8.8(e) of the Concession Agreement User Guide – this includes further guidance on how to complete the Interconnection Standards annex. [↑](#footnote-ref-89)
89. Please refer to section 8.8(f) of the Concession Agreement User Guide. [↑](#footnote-ref-90)
90. As per EU regulations, can be adapted country by country. [↑](#footnote-ref-91)
91. There are multiple options for each of these categories depending on the type of Customer and the capacity of the Mini-Grid. The tables have been left empty for the Parties to complete based on a review of the minimum requirements and suggestions set forth in section 11 of the Concession Agreement User Guide. [↑](#footnote-ref-92)
92. Service interruption due to Force Majeure Events should not be included for in the Power Reliability indicators, nor any interruptions that are part of the agreed electricity service between the Mini-Grid Sponsor and the Customer. [↑](#footnote-ref-93)
93. The table for power availability is based on the existing MTF and IEC 62257-2 categorisation, which defines these service level tiers. [↑](#footnote-ref-94)
94. To be completed for each Concession. [↑](#footnote-ref-95)
95. This represents a general testing process – to be refined in detail for specific projects depending on technology. [↑](#footnote-ref-96)
96. To be amended for each jurisdiction. For a discussion on reporting requirements, please see section 11 of the Concession Agreement User Guide. [↑](#footnote-ref-97)
97. Drafting Note: The procedure for carrying out the Tariff Review at the end of each Tariff Period may need to be adapted and developed depending on the procedure for periodic tariff adjustment in each jurisdiction and reflected in this Schedule 8. [↑](#footnote-ref-98)
98. Drafting Note: An open book approach may be considered on a case-by-case basis during country implementation if fuel price indices are not a good proxy. [↑](#footnote-ref-99)
99. Please refer to section 12 of the Concession Agreement User Guide. [↑](#footnote-ref-100)
100. Drafting Note: Where the Concession Agreement provides for a tariff adjustment for Persistent Service Standard Failures occurring on any Automatic Tariff Cap Adjustment Date, this formula which includes a “Q” Quality factor must be applied in place of the formulas currently proposed in Clause 3.2 of this Schedule 8, adapted as appropriate for the Project. Please see section 12.2 of the Concession Agreement User Guide. [↑](#footnote-ref-101)
101. Drafting Note: Values to be confirmed for each Concession as part of the country implementation of the Scaling Mini-Grid Program. [↑](#footnote-ref-102)
102. Drafting Note: Three options are possible:

     Option 1: All variables comprising the ROR are reset at the start of each Tariff Period – this is as drafted now and is the most common regulatory practice.

     Option 2: All variables comprising the ROR are set or reset at the start of each Tariff Period, except for the unlevered beta and Market Risk Premium.

     Option 3: Only Rg is set or reset at the start of each Tariff Period. [↑](#footnote-ref-103)
103. This metric encompasses risk-free rate, country risk premium and local currency inflation. [↑](#footnote-ref-105)
104. Drafting Note: Estimates of beta are available from various sources. Prof. Damodaran is referenced as the source in the template Concession Agreement as it is based on international data. If data from Prof. Damodaran is not available, other sources for beta could be used. [↑](#footnote-ref-106)
105. This may include investments made by the Concessionaire in assets owned by the Grantor or any other Government entity that are used for delivering the service under the Concession. [↑](#footnote-ref-107)
106. This may include investments made by the Concessionaire in assets owned by the Grantor or any other Government entity that are used for delivering the service under the Concession. [↑](#footnote-ref-108)
107. Please see section 12.4 of the Concession Agreement User Guide. [↑](#footnote-ref-109)
108. Drafting Note: Any expected continuing financial impact of the Non-Temporary Extraordinary Tariff Event will be reflected in the projected costs and sales, as provided for in Clause 4. As a result, the Tariff Cap for the next Tariff Period will allow the Concessionaire an expected return equal to ROR, despite the continuing impact of the Non-Temporary Extraordinary Tariff Event. [↑](#footnote-ref-110)
109. Please see section 12.5 of the Concession Agreement User Guide. [↑](#footnote-ref-111)
110. Drafting Note: Billing determinants must follow the structure of the Tariff Schedule. Billing determinants may be, for example, energy consumption in kWh for the energy consumption charge and peak demand in kW for the capacity charge. [↑](#footnote-ref-112)
111. Drafting Note: The coefficient should be set during country implementation. The coefficient for the Concessionaire Buy-Out Amount, which is payable in the event of an early termination of the Concession due to a Concessionaire Event of Default, should be set below 1 to incentivise the equity provider not to cause an early termination of the Concession by not letting it recover the full value of the assets in such cases. The coefficient should also take into consideration the financing structure and be set at a value sufficient to cover the debt outstanding at the time of termination. [↑](#footnote-ref-113)
112. Drafting Note: The coefficient should be set during country implementation. The coefficient for the Grantor Buy-Out Amount, which is payable in the event of an early termination of the Concession due to a Grantor Event of Default, should be above 1 to incentivise the Grantor not to cause an early termination of the Concession by not allowing it to buy the assets at their value at the time of termination. The value for the premium should be high enough to align incentives and provide reasonable lost profit cover for the equity investor and in all cases cover the debt outstanding at the time of termination. However, it should not be set to compensate the Concessionaire for all foregone profit (as that would be too onerous for many Grantors, and the equity provider is expected to reinvest amounts recovered to generate expected returns in another project). [↑](#footnote-ref-114)
113. Drafting Note: See paragraph 1(a)(i) above. [↑](#footnote-ref-115)
114. Drafting Note: See paragraph 1(b)(i) above. [↑](#footnote-ref-116)
115. Drafting Note: May be relevant for common law jurisdictions.To be determined based on governing law. [↑](#footnote-ref-117)
116. Drafting Note: Construction of Generation and Storage Assets within the Concession Area that achieve a minimum capacity has been included as a construction milestone to enable an initial disbursement of the Viability Gap Funding during construction. This will represent a fixed percentage of the total amount of the Viability Gap Funding, which will be disbursed pro rata on every [insert capacity value of Generation and Storage Assets completed in the Concession Area]. Thereafter the Viability Gap Funding will be disbursed on a per connection basis. [↑](#footnote-ref-118)
117. Drafting Note: Interim Completion is included as it will form part of the construction schedule for the disbursement of the Viability Gap Funding (where applicable), but it will not be a Target Date under the Concession Agreement. [↑](#footnote-ref-119)
118. Note: Technical standards set forth in the Customer Agreements must meet the technical standards set out in Schedule 7 (*Service Standards*) of the Concession Agreement. [↑](#footnote-ref-120)
119. Note: The tariff must comply with Schedule 8 (*Tariff Regulation*) of the Concession Agreement. [↑](#footnote-ref-121)
120. Drafting Note: To be determined based on governing law. [↑](#footnote-ref-122)
121. Drafting Note: To be determined based on governing law. [↑](#footnote-ref-123)
122. Drafting Note: To be determined based on governing law. [↑](#footnote-ref-124)
123. Drafting Note: To be determined based on governing law. [↑](#footnote-ref-125)
124. Drafting Note: To be determined based on governing law. [↑](#footnote-ref-126)
125. Drafting Note: To be determined based on governing law. [↑](#footnote-ref-127)
126. [↑](#footnote-ref-128)
127. Meaning a few examples of the total designs, but a full design review for those chosen samples. [↑](#footnote-ref-129)