

Concession Agreement Template User Guide

*July 2022*

Scaling Mini-Grids

SMG

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CONCESSION AGREEMENT TEMPLATE USER GUIDE

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CHAPTER 1

# HOW TO USE THIS GUIDE

This user guide (the “**User Guide**”) aims to assist users of the Concession Agreement Template (the “**Agreement**”) and related documentation made available to the public by the International Finance Corporation (“**IFC**”) on the terms and conditions you agreed to by accessing the webpage that hosts these documents and otherwise as set forth in this User Guide and these documents, in understanding the terms of the Agreement.

The Agreement and related documentation were developed by IFC in connection with its Scaling Mini-Grid Program (the “**SMG Program**”).

This User Guide should be read together with the Agreement. Any capitalised terms in this User Guide have the meaning given to them in the Agreement, unless otherwise defined in this User Guide.

This User Guide does not contain, and is not intended to be, a summary of the provisions of the Agreement, nor is it intended to constitute legal, financial or any other type of advice. It sets forth some of the thinking behind the provisions contained in the Agreement and indicates where the Agreement may need to be modified or completed depending on the jurisdiction in which it is contemplated to be used.

## Optionality

The Agreement includes optionality, which relates to:

### Jurisdiction

The Agreement contains notes relating to which provisions may be subject to the application of mandatory law in certain jurisdictions, and which consequently may need to be adapted by the Parties where the provisions of the Agreement conflict with the local legal framework, in order to reflect the prevailing legal framework in that jurisdiction. These notes do not constitute legal advice and any user of the Agreement is responsible for obtaining its own legal advice and ensuring that the Agreement complies with the legal requirements of a jurisdiction within which it is used or by which its terms are governed.

The existence and role of, and regulatory regime governing, a Regulator in a relevant jurisdiction will likely require changes to the provisions of the Agreement. The Agreement contains concepts and principles which IFC believes improve the bankability of a mini-grid concession. However, such concepts and principles require completion and perhaps amendments to the requirements of a particular mini-grid program and the related local regulatory regime, particularly in respect of the rules governing the setting and adjustment of tariffs and the consequences of failing to meet service standards. Whether or not any mini-grid concession based on the Agreement can be financed by IFC will depend on the outcome of standard due diligence of related projects, an analysis of the final project-specific concession and other project-related documents, and IFC management and board approval.

### The structure of the Concession

The Agreement assumes that a mini-grid project will involve either a small number of large Mini-Grids within a defined Concession Area (“**Large Mini-Grid Sites**”) or a series of multiple smaller Mini-Grids grouped together to form Mini-Grid Lots within the defined Concession Area (“**Small Mini-Grid Sites**”).

The Agreement will need to be amended depending on the configuration of the mini-grid project, namely the size and number of sites and relevant grouping. The Agreement provides for a differing level of support from the Grantor for certain elements of the project preparation depending on the size and configuration of the various Mini-Grids located in the Concession Area to be tendered. The size and configuration of the Mini-Grids included in one Concession Area also leads to differences in the treatment of some practical matters under the Agreement, such as testing and commissioning and the form of the environmental and social action plans.

# Recitals, Definitions and INcorporation

## Who signs the Agreement?

### The Agreement is expected to be entered into by the Concessionaire and the Government of the Host Country (the “**Host Government**”). IFC expects that the Agreement will be signed by the Ministry of Energy and/or Ministry of Finance, or their equivalent in any jurisdiction, on the basis that the Agreement grants rights in respect of the generation, distribution and sale of electricity, and contains financial obligations on the part of the Grantor, in particular with respect to an early termination of the Agreement and/or a removal/transfer of all or some of the Mini-Grids within the Concession Area to the Grantor. Due diligence will have to be conducted to ascertain that such ministries are the entities authorised to undertake the Grantor’s obligations set forth in the Agreement.

### The drafting of the Agreement assumes that the Concessionaire will be incorporated in the Host Country.

### For the purpose of the Agreement, we have assumed that the Concession will be awarded by a federal, rather than a regional, government. In jurisdictions where concessions relating to the design, construction, operation and maintenance of Mini-Grids are issued by a regional governmental entity, the creditworthiness of such entity will have to be reviewed, and potential federal government credit support (in the form of a guarantee or a put and call option agreement) will need to be looked into. The definition of Project Agreement provides optionality for a “*Government Guarantee*” to be provided for the benefit of the Concessionaire in respect of the Grantor’s payment obligations under the Agreement where the creditworthiness of the Grantor is insufficient.

## Recitals/Viability Gap Funding

The Agreement is drafted on the assumption that the Concessionaire will be the beneficiary of Viability Gap Funding, and the Recitals reflect this. Where this is not the case, the italicised language in the Recitals will need to be modified.

## Definitions

### The Agreement includes drafting notes for certain definitions, and in this User Guide definitions are discussed in the context of the clauses where they are used.

### Certain definitions refer to a clause but not to the sub-clause where the definitions are to be found. To avoid confusion with clause numbering where drafting options are included, the options have been numbered so that they can be deleted without affecting the numbering of the Agreement.

# Concession Period (Clause 2)

## When does the Agreement start? (clause 2.1)

The Initial Provisions become effective on the Signing Date. The other provisions will not be effective until the Concession Effective Date.

## What is the Concession Effective Date? (clause 2.1)

This will be the date when the Conditions Precedent set forth in Schedule 2 (*Conditions Precedent*) of the Agreement are satisfied or waived by the applicable party. Such conditions include the procuring of relevant consents and financing, and the delivery of the necessary Project Agreements by the Parties.

Schedule 2 (*Conditions Precedent*) of the Agreement includes a select list of items typically found in conditions to effectiveness clauses. Schedule 2 will need to be amended for a particular project, jurisdiction and related legal requirements. For example, if obtaining an Attorney General opinion is not feasible in a particular jurisdiction, evidence of authority to enter into the Agreement may need to be provided by way of a local counsel legal opinion. Note, depending on the jurisdiction, parliamentary, Cabinet or other Governmental approvals, including budget appropriations, may need to be obtained.

# Award of the Concession (clause 4.1)

## Grant of the Concession

### The purpose of clause 4.1 (*Grant of the Concession*) is to award the right to build, own and operate the Mini-Grids included in the Concession Area to the Concessionaire. Clause 4.1 of the Agreement assumes that the Grantor is empowered to grant the following rights to the Concessionaire:

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

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

#### to provide Additional Services to Customers.

### If the Grantor is not authorised to grant such rights to the Concessionaire, or such rights must be granted by way of permits or licences rather than by way of a concession agreement, related modifications will need to be made to the Agreement, including adding the relevant generation, distribution and sales licences, together with an indication of the issuing Governmental Authority to Schedule 15 (*Initial Consents*) and the conditions precedent, if such permits or licences can be obtained prior to construction.

## Project Agreements

### A Local Community Agreement is included in the definition of Project Agreements. In some jurisdictions, the Mini-Grid regulations may prescribe a form of Local Community Agreement to be entered into between a Mini-Grid developer and the local community that will be served by the Mini-Grid. Where this is the case, such agreement will need to be included in the Agreement where relevant, including in the Grantor default section, such as to allocate a breach by the local community of its obligations under the Local Community Agreement to the Grantor.

# Exclusivity (Clause 4.2)

## What is the Concessionaire Exclusivity? (clause 4.2)

### The Agreement provides exclusivity to the Concessionaire to design, finance, construct, commission, operate and maintain Mini-Grids in the Concession Area and to generate, supply, distribute and sell electricity within the Concession Area, except for any Permitted Generation (as described in the Agreement and below).

### Notwithstanding the Concessionaire Exclusivity described in (a) above, the Agreement allows for:

#### solar 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; and

#### electricity self-production by a party for its own consumption, and which will not be sold or distributed by such person to any other person,

#### to continue in the Concession Area (“**Permitted Generation**”).

## Grid Operations in the Concession Area (clause 4.2)

It is expected that a Host Government, prior to requesting proposals for the construction, ownership and operation of Mini-Grids from private sector participants by way of public tender, will screen the proposed Concession Area for existing Grid Operators, limited Grid connectivity or third parties engaging in the generation, distribution or sale of electricity in the Concession Area (other than any Permitted Generation) and exclude such operations from the Concession Area. The Agreement therefore does not contain provisions as to how to manage such Grid Operators and Grid connections in the Concession Area. However, in the unlikely event that it is discovered post-Signing Date that there is an existing Grid Operator or a third party engaging in the generation, distribution or sale of electricity in the Concession Area (other than any Permitted Generation), clause 4.2(b) has been included in the Agreement to ensure Grantor support in the enforcement of the Concessionaire Exclusivity. Clause 4.2(c) provides a remedy for the Concessionaire where the Grantor has failed to enforce the Concessionaire Exclusivity *vis-à-vis* another Grid Operator or third parties within a period of 30 Days’ notice of such breach of the Concessionaire Exclusivity. Failure by the Grantor to enforce the Concessionaire Exclusivity will constitute a Political Force Majeure Event, allowing the Concessionaire recourse to Terminate the Agreement where such failure is Concession Wide or to Remove an affected Mini-Grid Site/ Lot where such failure is not Concession Wide, and in each case to receive compensation in accordance with Schedule 9 (*Termination*) of the Agreement.

# Grid Expansion (Clause 8)

## Grid Expansion

### Grid Expansion is defined as the event of the main Grid extending to all or parts of the Concession Area. The Agreement provides for the Parties to agree on a reasonable notice period within which the Grantor must notify the Concessionaire of any planned Grid Expansion. The Agreement suggests twelve (12) Months as a reasonable period, although in jurisdictions with Mini-Grid regulations, this notice period may already be prescribed by law.

### The Agreement includes two options for the process that occurs after receipt of a Grid Expansion Notice:

#### Option 1 – on receipt of a Grid Expansion Notice that is Concession Wide, the default position is simply that the Concession Agreement would terminate on the Grid Expansion Termination Date and the Concessionaire would transfer the Concession Assets to the Grantor or its designee for an amount equal to the Grantor Buy-Out Amount. Where the Grid Expansion is not Concession Wide, the affected Mini-Grid Sites/Lots will be Removed and transferred to the Grantor or its designee for an amount equal to the Grantor Partial Buy-Out Amount.

#### Option 2 – Concessionaire Options on Grid Expansion

Option 2, in addition to termination of the Concession as under Option 1, provides three further alternatives for the Concessionaire to determine whether or not to continue with the Concession in a limited capacity, following a Grid Expansion Notice. The Agreement sets out the following three additional scenarios:

##### ***Small Power Producer:*** The Concessionaire elects to continue generating power and to retain its Generation and Storage Assets, in which case the Grantor or its designee (the utility) is required to purchase the Distribution Assets from the Concessionaire for the Distribution Buy-Out Amount. Or, where the Grid Expansion is not Concession Wide, the Concessionaire will retain its Generation and Storage Assets at the affected Mini-Grid Sites/Lots, and the Distribution Assets at the affected Mini-Grid Sites/Lots will be purchased by the Grantor or its designee for an amount equal to the Distribution Partial Buy-Out Amount; or

##### ***Small Power Distributor:*** The Concessionaire elects to continue distributing and selling power and to retain its Distribution Assets, in which case the Grantor or its designee (the utility) is required to purchase the Generation and Storage Assets from the Concessionaire at the Generation and Storage Buy-Out Amount. Or, where the Grid Expansion is not Concession Wide, the Concessionaire will retain its Distribution Assets at the affected Mini-Grid Sites/Lots, and the Generation and Storage Assets at the affected Mini-Grid Sites/Lots will be purchased by the Grantor or its designee for an amount equal to the Generation and Storage Partial Buy-Out Amount; or

##### ***Interconnected Mini-Grid:***The Concessionaire elects to retain all the Concession Assets and to continue as an interconnected Mini-Grid, in which case the Concession Agreement will terminate on the Grid Expansion Termination Date or, where the Grid Expansion is not Concession Wide, the affected Mini-Grid Sites/Lots will be Removed from the Concession; or

##### Where the Concessionaire fails to make an election within the Decision Period, the default option is Termination of the Agreement and the Grantor or its designee (the utility) is required to purchase the Concession Assets from the Concessionaire for an amount equal to the Grantor Buy-Out Amount. Or, where the Grid Expansion is not Concession Wide, the affected Mini-Grid Sites/Lots will be Removed, and handed over to the Grantor or its designee for an amount equal to the Grantor Partial Buy-Out Amount.

These options may have to be adjusted to local law. Applicable Mini-Grid regulations may already provide for grid expansion mechanisms and related compensation. Where such mechanisms and compensation fall short of what is provided in the Agreement, attracting quality sponsors and private sector financing may be difficult.

## Grantor’s Grid Expansion Undertakings (clause 8.3)

The Agreement provides for representations to be given by the Grantor if there are no immediate Grid Expansion plans within the Concession Area. On the Signing Date, the Grantor will warrant that the Concession Area is not currently served by the Grid and that 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. The Agreement suggests five (5) years, but local law may already prescribe a period for which the Grantor should give such a warranty and this will need to be adapted as appropriate for each jurisdiction.

# Generation Sites and land use Rights (Clause 5)

## Generation Site Selection

### As noted above, we would expect the Host Government to screen suitable Generation Sites on a pass/fail basis prior to tendering a Project. An example of a pass/fail factor expected to be applied to a Generation Site would be the screening out of those Generation Sites with high environmental and social risks, according to IFC Performance Standards (the “**IFC PS**”) and national laws. This includes Generation Sites in highly sensitive biodiversity areas, involving significant resettlement, or within the area of influence of indigenous peoples. The objective would be to screen out sites where potentially costly and lengthy mitigation measures would be required to meet IFC PS requirements.

### Once the various Feasibility Studies have been completed, and the location of likely Generation Sites have been selected, it is expected that the Grantor will provide support in procuring the selected Generation Sites and any related required Consents.

## Land acquisition (clause 5)

### The Agreement assumes that the land required for the Generation Sites will be:

#### owned by the Grantor;

#### owned by another Governmental Authority; or

#### privately owned,

### and where the Grantor or another Governmental Authority owns that land, the Agreement provides for the Grantor to procure that land and any associated Consents required for the Concessionaire to carry out the Project on that Generation Site.

### Where Generation Sites are situated on land owned by the Grantor

The Agreement provides that the Grantor shall enter into a Land Lease Agreement with the Concessionaire for the Generation Site, and the Grantor shall obtain or procure all required Consents for the occupation and use of the site (subject to all required assistance by the Concessionaire) for the purposes of the Project.

### Where Generation Sites are situated on land owned by another Governmental Authority

The Grantor is required to render all possible assistance to the Concessionaire and procure that the relevant Governmental Authority that owns the Generation Site makes it available to the Concessionaire by entering into a Land Lease Agreement with the Concessionaire. The Grantor shall obtain, or procure that the relevant Governmental Authority grants, all required Consents for the occupation and use of the site (subject to all necessary assistance by the Concessionaire) for the purposes of the Project.

### Where Generation Sites are situated on privately owned land

The Agreement requires the Grantor, on the request of the Concessionaire, to exercise all rights available to it under Applicable Law to compulsorily acquire the Generation Site and then enter into a lease over it with the Concessionaire, or require that the Private Landowner enters into a lease over it with the Concessionaire. The Grantor shall give or procure all necessary assistance to the Concessionaire or said landowner to obtain all required Consents for the occupation and use of the site (subject to all necessary assistance by the Concessionaire) for the purposes of the Project. This includes exercising its rights of eminent domain to acquire the land from the Private Landowner.

### Access Rights (clause 5.4)

Access Rights for the Generation Sites and the Mini-Grid Sites will be required, particularly for the Distribution Network and the Concession Works, over land that may be both publicly and privately owned. The Agreement provides for the Concessionaire to put together a list of the Access Rights it needs, which must be updated by the Concessionaire where there is any expansion or modification to the Distribution Network during the Concession Period.

The Agreement provides that the Grantor shall grant, and undertake to cause any relevant Governmental Authority to grant, to the Concessionaire all Access Rights, land use rights and easements for works on the ground, above the ground and at the sub-soil level of land 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, prior to the Concession Effective Date.

Where Access Rights are required over private land, the Grantor is expected to 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.

## Schedule 1 – Concession Area

### Annex 1

It is anticipated that a map of the Concession Area, setting out the Mini-Grid Sites/Lots within that Concession Area, will be appended to the Agreement.

### Annex 2

Clause 5 of the Agreement requires the Parties to have a pre-agreed list of Generation Sites, and we would expect the co-ordinates of those Generation Sites to be attached to the Agreement. We have suggested that the relevant co-ordinates be included in a table in annex 2 (*Generation Sites*) of Schedule 1 (*Concession Area*) of the Agreement, and a distinction be made between Generation Sites situated on public and private land.

# Concessionaire Obligations

## Compliance with Applicable Laws and General Obligations (clause 6.1–6.2)

Clauses 6.1 and 6.2 of the Agreement set out the general obligations that apply to the Concessionaire for the Concession Period, and the standards that are expected to apply to its performance of those obligations. These obligations and standards are to be amended if circumstances so require.

## Design (clause 6.3)

The Concessionaire is expected to submit a Design at the bid stage, which it is anticipated will be appended to Schedule 3 (*Design*) of the Agreement. The submission of the Design, and its approval by the Independent Engineer, are included as a condition precedent to the Concession Effective Date. It is anticipated that the Design will be subject to modification from time to time during the Concession Period, and the Concessionaire will be required to submit a copy of any modified Design to the Grantor and Independent Engineer. The Grantor will only be entitled to approval rights under the Agreement if the modifications proposed by the Concessionaire are deemed material.

## Construction Programme (clause 6.4)

The Agreement proposes a timetable for the Concessionaire to meet certain construction milestones. Where the Concessionaire benefits from a Grant Agreement, these milestones will coincide with payments from the Viability Gap Funding if eligibility criteria are met.

### Target Concession Completion Date

The Concession Completion Date must be reached by the Target Concession Completion Date, and no later than the Longstop Concession Completion Date. Where the Concession Completion Date does not occur before the Longstop Concession Completion Date, this will trigger an immediate Concessionaire Event of Default which would entitle the Grantor to terminate the Agreement, except where such failure is caused by a Demand Event.

The Target Concession Completion Date will be determined depending on the Project specifics, and it is anticipated that the Longstop Concession Completion Date will be a date falling between 90 and 180 Days after the Target Concession Completion Date, depending on the size and number of the Mini-Grids proposed for the Concession Area. If an Excusing Event[[1]](#footnote-2) occurs, the Target Concession Completion Date will be extended on a day-for-day basis.

### Demand Event

1. The Agreement includes the concept of a Demand Event, which is defined as, at the time of determination:

#### consumption of electricity by Connections within the Concession Area does not reach the projected demand assumed in the Demand Predictions; and

#### 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.

The Agreement provides for the Demand Predictions for the Project to be appended to Schedule 18 (*Demand Prediction*) of the Agreement. The Demand Predictions will be included in the Financial Model and will set out the projected demand for, and consumption of, electricity within the Concession Area by each category of Customer.

The occurrence of a Demand Event will entitle the Concessionaire to be excused for any delay in achieving the Target Concession Completion Date, and such failure will not trigger a Concessionaire Event of Default. If, as a result of a Demand Event, it is not possible to achieve the Target Completion Connections required to achieve the Concession Completion by the Target Concession Completion Date, the Concessionaire may elect that Concession Completion is deemed to have occurred and shall issue the Concession Completion Certificate on or before the Longstop Concession Completion Date.

### Milestone Schedule

### The Milestone Schedule appended as a schedule to the Concession Agreement will include the construction and target Connection milestones. The Milestone Schedule is intended to mirror the milestones set forth in the Grant Agreement, which will allow the Concessionaire to apply for disbursements of the Viability Gap Funding thereunder (the “**Grant**”), namely:

#### Milestone 1 – each Mini-Grid [Site/Lot] Technical Commissioning – which will entitle the Concessionaire to an advance payment of an allocated percentage of the total Grant amount available under the Grant Agreement prior to achieving the Concession Commissioning Date.

#### Milestone 2 – an “interim” Concession Commissioning milestone, which is only used as a milestone in the Grant Agreement, which is the achievement of 50% of the Target Commissioning Connections (25% of the Target Completion Connections) – which would entitle the Concessionaire to an allocated percentage of the total Grant amount available under the Grant Agreement prior to achieving the Concession Commissioning Date.

#### Milestone 3 – Concession Commissioning, which would be the achievement of 100% of the Target Commissioning Connections (being 50% of the Target Completion Connections) – which would entitle the Concessionaire to an allocated percentage of the total Grant amount available under the Grant Agreement, which together with Milestone 1 and Milestone 2, would equal an aggregate amount of 50% of the total Grant amount available under the Grant Agreement.

#### Following Milestone 3, 50% of the total Grant amount available under the Grant Agreement would remain available, and the Concessionaire would be entitled to apply for a Grant amount for each new Connection made after Concession Commissioning on a rolling basis, until such time as it has received the total Grant amount available under the Grant Agreement. The total Grant amount is based on a per connection amount for the Target Completion Connections so there will be no further Grant payments after Concession Completion is achieved.

#### Milestone 4 – Concession Completion. Pursuant to the Agreement, failure to achieve Concession Completion by the Longstop Concession Completion Date will result in a Concessionaire Event of Default.

## Testing and Commissioning (clause 6.6)

### Large Mini-Grid Sites will be individually commissioned. Small Mini-Grid Sites will be grouped into Mini-Grid Lots to facilitate the testing and commissioning process by commissioning on a Mini-Grid Lot basis, rather than on an individual Mini-Grid Site basis.

### Where a Mini-Grid [*Site/Lot*] has achieved Mini-Grid [*Site/Lot*] Technical Commissioning, the Independent Engineer will instruct the Concessionaire to issue a Final Acceptance Certificate, which the Independent Engineer will counter-sign. Where a Mini-Grid [*Site/Lot*] has achieved operational functionality but Mini-Grid [*Site/Lot*] Technical Commissioning has not occurred, the Independent Engineer will instruct the Concessionaire to issue a Provisional Acceptance Certificate, and the Independent Engineer will provide the Concessionaire with details of the outstanding works to be completed before Mini-Grid [*Site/Lot*] Technical Commissioning can occur. The Concessionaire will carry out these outstanding works and then repeat the process for issuance of the Final Acceptance Certificate where it believes it has completed the outstanding works and that Mini-Grid [*Site/Lot*] Technical Commissioning has occurred.

### In circumstances where there is no response to requests for the countersignature of the Independent Engineer on a Final Acceptance Certificate issued by the Concessionaire within the prescribed period, deemed Mini-Grid [*Site/Lot*] Technical Commissioning will occur.

Once:

* + 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. the Design and the Technical Standards are complied with;
    4. the Environmental and Social Requirements are complied with; and
    5. the Target Commissioning Connections have been achieved, and such Connections:

##### comply with the required Customer Category Targets that apply for such Connections; and

##### are Completed Connections,

the Concessionaire will issue a Concession Commissioning Certificate for countersignature by the Independent Engineer (with an option for the Independent Engineer to approve the Concession Commissioning and countersign such certificate, or to confirm outstanding works that need to be completed before Concession Commissioning can occur). In circumstances where there is no response from the Independent Engineer to requests for their countersignature within a prescribed period, deemed Concession Commissioning will occur.

### Certificates

### Basic template forms of Concession Commissioning Certificate, Final Acceptance Certificate and Provisional Acceptance Certificate have been appended to Schedule 6 (*Commissioning and Testing*) of the Agreement.

### Commissioning and Testing Plan

The Parties will need to agree on an appropriate testing and commissioning plan for the Concession. A basic minimum standards provision for commissioning and testing is set forth in annex 1 (*Commissioning and Testing*) of Schedule 6 (*Commissioning and Testing*) of the Agreement.

Please refer to Section 8 (*Commissioning and decommissioning*) of the Technical Standards Framework[[2]](#footnote-3) for a discussion of the minimum requirements expected for commissioning and testing.

## Emergency Works (clause 6.9)

The purpose of the emergency provision in clause 6.9 (*Emergency Works*) of the Agreement is to allow the Concessionaire to carry out work or implement emergency measures that may be required to protect the Mini-Grids or any threat to life or the environment, without the Concessionaire breaching its obligation to generate and deliver power and meet the Service Standards under the Agreement.

## Independent Engineer (clause 6.11)

The Parties will be required to jointly appoint an Independent Engineer, no later than the Concession Effective Date, at the cost of the Concessionaire.

An Independent Engineer must be appointed for the duration of the Concession Period although the terms of the appointment should allow for the Independent Engineer to be replaced when necessary, and for the Parties to re-tender the appointment during the Concession Period.

The Agreement sets out the proposed scope of work for the Independent Engineer for the Project, as set forth in the table appended to annex 1 (*Independent Engineer Role*) of Schedule 16 (*Independent Engineer*) of the Agreement.

Prior to the Signing Date, the Parties will agree upfront a list of acceptable parties to fulfil the Independent Engineer role, and the Independent Engineer shall be selected from this list, which will be appended to annex 2 (*Independent Engineer List*) of Schedule 16 (*Independent Engineer*) of the Agreement, and which may be modified from time to time by the Parties.

## Internal Wiring (clause 6.13)

The Agreement includes provision for Internal Wiring. Internal Wiring is not included in the definition of Mini-Grids as it is not the intention for the Agreement to confer an obligation on the Concessionaire to provide wiring that is on the Customer side of the Customer Connection Point[[3]](#footnote-4).

The Parties will need to identify the local authority or other relevant body within the Host Country responsible under local law for inspecting and approving the quality and safety of Internal Wiring prior to a Customer being connected to the Distribution Network.

The Agreement anticipates that a local competent authority will conduct safety inspections of Internal Wiring. Where the inspection process within the Host Country is inadequate, the Agreement allows for a two-stage process whereby:

### the Concessionaire will be authorised by the Grantor under the Agreement (if it is possible for such authorisation to be granted under Applicable Law) to carry out the necessary checks on Internal Wiring prior to connecting a Customer, and if it is satisfied, issue a Preliminary Compliance Certificate to enable the Concessionaire to connect the Customer; and

### the local competent authority would then complete its inspection of the Customer’s Internal Wiring as soon as possible thereafter, which would replace the preliminary checks of the Concessionaire.

Certain jurisdictions may require the Concessionaire to be licensed to install, inspect and approve Internal Wiring. Where it is required that the Concessionaire be so licensed but such licence cannot be granted to the Concessionaire, the two-stage process provided for in clause 6.13(b) (*Responsibility for Internal Wiring and Installations*) of the Agreement will not apply and the relevant sections should be removed from the Agreement.

Internal Wiring matters will need to be discussed with the relevant (local) Governmental Authority to ensure that responsibility for the Internal Wiring does not (unless this is expressly agreed) fall on the Concessionaire.

The provisions on Internal Wiring were added to enable the Concessionaire to implement a Mini-Grid on schedule in cases where local capacity may be weak or not exist.

## Technical Standards (Schedule 4)

The definition of Mini-Grid sets out the technical elements of the Mini-Grid. The definition will need to be modified depending on the size of the Mini-Grids being constructed and operated, in particular where the Mini-Grids exceed the capacity to be designated as small scale.

The Concessionaire is expected to meet the Technical Standards set out in the Agreement for the Mini-Grids, which are included in Schedule 4 (*Technical Standards*) of the Agreement, and as summarised below:

### Equipment

For a detailed explanation of how to complete the Equipment Standards for the Mini-Grids, set out in annex 1 (*Equipment Standards*) of Schedule 4 (*Technical Standards*) of the Agreement, we refer you to Section 7 (*Equipment Standards*) and annex 2 of the Technical Standards Framework. This explains the various levels of technical requirements depending on the size of the Mini-Grid.

### Equipment Operating Platform

It is expected that the Concessionaire will ensure that its data system connects to the Electronic Operating Platform. This system will operate to monitor the meter consumption and to report on the Remote Monitoring Standards. It is intended that the Equipment Standards table set out in annex 1 (*Equipment Standards*) of Schedule 4 (*Technical Standards*) of the Agreement will include the Remote Monitoring Standards for the Electronic Operating Platform. For a detailed explanation of the applicable Remote Monitoring Standards, we refer you to Section 7 (*Equipment Standards*) and annex 2 of the Technical Standards Framework.

### Equipment Warranties

For a detailed explanation of how to complete and apply the minimum equipment warranties, which are appended to annex 2 (*Equipment Warranties*) of Schedule 4 (*Technical Standards*) of the Agreement, we refer you to Section 7 of the Technical Standards Framework.

### Solar Home Systems

For a detailed explanation of how to complete annex 3 (*Solar Home Systems*) of Schedule 4 (*Technical Standards*) of the Agreement, and the selection of applicable standards for Solar Home Systems, we refer you to Section 7 (*Equipment Standards*) and annex 2 of the Technical Standards Framework.

### Interconnection Standards

For a detailed explanation of how to complete annex 4 (*Interconnection Standards*) of Schedule 4 (*Technical Standards*) of the Agreement and a detailed summary of the range of interconnection standards, we refer you to Section 4 *(Interconnection*) of the Technical Standards Framework.

The definition of Mini-Grid includes in brackets an assumption that the Mini-Grids will have the technical capability to be interconnected to the Grid. Where this is not intended to be the case, this bracketed assumption in the Mini-Grid definition, and the covenant in clause 8.2(b) (*Grid Expansion*) of the Agreement with respect to the compliance of the Mini-Grids with the Interconnection Standards, will need to be deleted.

### Street Lighting Standards

For a detailed explanation of how to complete annex 5 (*Street Lighting Areas and Standards*) of Schedule 4 (*Technical Standards*) of the Agreement and the applicable Street Lighting Standards, we refer you to Section 9 (*Other Provisions and Requirements*) of the Technical Standards Framework.

## Ownership Interests

The Agreement will set out the Ownership Interest of each of the Concessionaire Shareholders on the Signing Date and, where any Sponsor holds its Ownership Interest through another company, it will indicate the indirect and ultimate beneficial Ownership Interest of the Sponsor in the Concessionaire. The table has been left blank to be completed by the Concessionaire.

# eNVIRONMENTAL AND SOCIAL REQUIREMENTS (Clause 6.16)

## SMG Program Requirements

The environmental and social (“**E&S**”) requirements to be included in the Agreement will depend on whether the Concession comprises Large Mini-Grids or Small Mini-Grids. Clause 6.16 (*Environmental and Social Requirements*) of the Agreement provides for optionality depending on whether the Project comprises Large Mini-Grid Sites or Small Mini-Grid Sites. In each case, the Concessionaire will be required to comply with the defined Environmental and Social Requirements (as defined in clause 1 of the Agreement).

## Large Mini-Grid Sites

For a Project that comprises Mini-Grid Sites only rather than Mini-Grid Lots, the Host Government is expected, as noted in Section 7, to identify and select land for the Generation Sites and to prepare the Environmental and Social Scoping Study for each Generation Site. On the award of the Concession and signing of the Agreement, the Concessionaire is expected to develop the Project based on the Environmental and Social Scoping Study, which it will use to develop an E&S impact assessment (ESIA) for each Mini-Grid Site, and a Stakeholder Engagement Plan, which, once finalised, will replace the Environmental and Social Scoping Study, and must be complied with by the Concessionaire for the Concession Period, in addition to the compliance by the Concessionaire with the Environmental and Social Requirements.

## Small Mini-Grid Sites

For Projects that comprise multiple Small Mini-Grid Sites within Mini-Grid Lots, the Host Government is expected to prepare an E&S management framework (ESMF) for the Project. On the award of the Project and signing of the Agreement, the Concessionaire is expected to then develop an E&S management plan (ESMP) for each of the Mini-Grid Lots, based on the recommendations set out in the ESMF. Once the ESMPs have been finalised, they will replace the ESMF as the E&S document to be complied with by the Concessionaire, in addition to the Environmental and Social Requirements.

# Concession Assets

## Existing Assets (clause 6.10)

In the event that there are Existing Assets owned by the Grantor or any other Governmental Authority situated within the Concession Area, and which the Concessionaire will require to carry out the Project and perform the Concession Works and Concession Services, the Existing Assets should be transferred to the Concessionaire.

In order for the Concessionaire to be able to provide adequate security to its Lenders, which would enable the Project to continue in a step-in scenario, the Concessionaire would need to either take ownership of those Existing Assets or have a right to use those assets for the Concession Period, and for such right to be secured in favour of its Lenders.

The Agreement does not prescribe how the Parties agree to deal with the Existing Assets, as this will depend on each jurisdiction and the preferred practice therein, and the manner in which the legal regime in that jurisdiction allows for the assets to be effectively ringfenced for the use of the Concessionaire – including allowing them to be freely pledged and the rights to use them to be assigned to its Lenders. The Agreement does, however, provide drafting options for the way in which to achieve a transfer of the Existing Assets to, or the use of those Existing Assets by, the Concessionaire, either by way of:

### agreeing on a list of Existing Assets, and the Grantor or relevant Governmental Authority granting the Concessionaire a right to use those assets for the Concession Period. Possession of those assets will be transferred to the Concessionaire for the Concession Period, and the Grantor or relevant Governmental Authority must agree that the Concessionaire’s right to use and possess those assets may be assigned in favour of the Concessionaire’s lenders; or

### agreeing on a list of Existing Assets, and the Concessionaire and the Grantor, or relevant Governmental Authority, shall agree a transfer of ownership of those Existing Assets to the Concessionaire under a separate agreement, prior to the Concession Effective Date. These Existing Assets will then form part of the Concession Assets funded by the Concessionaire and will be freely assignable to the Lenders.

### Where Lenders take security over the right to use the Existing Assets, they will need to be free to enforce their right to use the Existing Assets without consent of the Grantor or any other Governmental Authority at the time of enforcement, acknowledgment of which will be contained in a Direct Agreement.

# pERFORMANCE sTANDARDs

## Service Standards (clause 7.1)

### The Agreement provides that the Concessionaire will be required to meet certain minimum levels of service under the Agreement. There are four broad sub-categories of Service Standards contemplated under the Agreement:

#### Power quality;

#### Power reliability;

#### Power availability; and

#### Customer service standards.

### The Service Standards will vary for each Customer Category, and the Tariff Schedule is expected to set out each Customer Category and the Service Standard levels applicable to those Customer Categories and the corresponding tariffs. The applicable Service Standards for each Customer Category set out in Schedule 5 (*Service Standards*) of the Agreement are expected to be the minimum standards offered by the Concessionaire to the relevant Customer Categories, and we refer you to Section 3 (*Power Quality*) and Section 4 (*Service Quality*) of the Technical Standards Framework for a detailed description of the various Service Standard levels. The Concessionaire may create additional categories or sub-categories and offer higher levels of services than those set forth in Schedule 5.

## Reporting Obligations (clause 6.15)

Under the Agreement, reporting on the performance of the Mini-Grids and the Concessionaire’s compliance with the Service Standards will be facilitated by the use of the Electronic Operating Platform. The Concessionaire will be required to comply with the Technical Standards to join its Mini-Grid systems to the Electronic Operating Platform to enable the Grantor to monitor the Remote Monitoring Standards. Schedule 7 (*Reporting Requirements*) of the Agreement sets out the various reporting obligations (both technical and Service Standards) that are recommended as a minimum for each Project and indicates the recommended and minimum frequency of the reporting, and whether such reporting can be done remotely through an Electronic Operating Platform or by an alternative method.

The Agreement also provides an obligation on the Concessionaire to update the Financial Model and provide a copy to the Grantor on certain milestone dates, including on: (i) the Concession Effective Date; (ii) any Expansion Funding; (iii) any Additional Funding; (iii) the Concession Completion date; (iv) each Tariff Review Date; and/or (v) the assessment of any Supplemental Tariff as a consequence of an Extraordinary Tariff Event.

## Consequences for Failing to meet the Service Standards

### As a default position, the Agreement provides a concept of Persistent Service Standard Failure, which is defined as a material Service Standard failure that affects [*insert percentage*][[4]](#footnote-5) or more Connections across the Concession Area for a continuous period of at least [six (6)] Months. The occurrence of a Persistent Service Standard Failure gives rise to a Concessionaire Event of Default, which would entitle the Grantor to terminate the Agreement or to Remove any affected Mini-Grid Sites/Lots (as applicable) from the Concession and in effect allow for a replacement of the Concessionaire for the affected Mini-Grid Sites/Lots.

### The way in which breaches of the Service Standards are treated is likely subject to the regulatory regime applicable in the relevant jurisdiction, and clause 7.1 (*Service Standards*) of the Agreement provides optionality, which addresses possible options that may apply under local laws.

### Option 2 of clause 7.1 (*Service Standards*) includes drafting options that address potential ways in which a Regulator/local government may incentivise the Concessionaire to comply with Service Standards, by either providing:

#### for an adjustment to the Tariff Cap in case of a Persistent Service Standard Failure, on the next Automatic Tariff Cap Adjustment Date, in which case the indexation formula in clause 3.3, Box 1 (*Option: Indexation with Quality Factor*) of Schedule 8 of the Agreement should be used in lieu of the formula in clause 3.2 (*Indexation of Tariff Cap*) of Schedule 8 of the Agreement; or

#### that the Concessionaire must compensate its affected Customers by way of a rebate to the affected Customer’s account with the Concessionaire for a pre-agreed amount of liquidated damages, to be used in jurisdictions where the Regulator prescribes a pre-agreed rate of liquidated damages/rebates for Service Standard failures that have to be paid out to affected Customers.

#### Exceptions or exclusions to the mechanisms triggering a tariff adjustment or compensation of the Customers may be considered, based on the specific regulations in the relevant jurisdiction.

### Where the local regulatory regime provides for a penalty regime administered by the Regulator for Service Standard failures, such regime is expected to apply to the Concessionaire in accordance with local law and clause 7.1 should be modified accordingly or deleted to avoid double recovery.

### Market practice for the treatment of Service Standard failures varies significantly depending on jurisdiction, thus as noted above, we have not sought to try to create a new liquidated damages regime for Service Standard failures in the Agreement. However, we have set out below for guidance a table that indicates common Service Standard failures and the corresponding levels/assessment of compensation we have been advised are commonly applied in electricity markets globally.

| **Indicator** | **Unit** | **Standard Value** | **Amount of LDs[[5]](#footnote-6)** |
| --- | --- | --- | --- |
| Daily availability | Hours | See Technical Standards Framework | A predefined amount, differentiated between residential customers and non-residential customers, that can be set based on estimate of economic losses and damages suffered due to lower power availability than planned. |
| Evening availability (7pm to 7am) | 7am | See Technical Standards Framework | A predefined amount, differentiated between residential customers and non-residential customers, that can be set based on estimate of economic losses and damages suffered due to lower power availability than planned. |
| Minimum advance notice of planned outages | Days | [2-4] | A predefined amount, differentiated between residential customers and non-residential customers, that can be set based on estimated economic losses arising from insufficient time to prepare for outage. |
| Deadline for payment of LDs from when Operator has acknowledged the issue | Days | [10] | [x] Local Currency amount per Day |
| Failure of Customer Appliance due to power quality variation outside the allowed range | # Failures | See Section 11.1 of the Technical Standards Framework for power quality standards | Amount to cover the cost of replacing the appliance. The level of LDs may be based on average cost of most appliances. The amounts would vary from Customer Category depending on the type of appliance used. |
| Minimum Power Rating | Watt | See Section 11.1 of the Technical Standards Framework | A predefined amount, differentiated between residential customers and non-residential customers, that can be set based on estimate of economic losses and damages suffered due to variations in power rating (for example, if adding more appliances leads to power tripping frequently). |
| Maximum time to be connected to Mini-Grid from Contract Signature | Days | Urban [10]  Rural [14] | A predefined amount, differentiated between residential customers and non-residential customers, that can be set based on difference in customer expenditure with current sources of energy and with Mini-Grid. |
| Maximum time to answer calls at call centre | Minutes | [5] | [x] Local Currency amount per minute |
| Maximum time to address billing complaints | Days | Urban [5]  Rural [7] | [x] Local Currency amount per Day |
| Maximum time to investigate technical complaint | Days | Urban [15]  Rural [20] | [x] Local Currency amount per Day |
| Maximum time to repair street lighting | Days | Urban [7]  Rural [10] | A predefined amount that can be set based on estimate of externalities of not having street lighting (i.e. increase in criminality). |

## Customer Categories

### Each Customer must be designated a Customer Category, and the Concessionaire shall ensure that the criteria for each Customer Category is clearly defined, 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 Agreement defines four basic categories of Customer:

#### Category 1 (CC1) – residential Customers;

#### Category 2 (CC2) – commercial and industrial Customers;

#### Category 3 (CC3) – public institutions; and

#### Concessionaire Solar Home Systems Customers.

#### The above Customer Categories were included in the Agreement as a starting point and will need to be modified depending on the requirements of the Project.

### The Concessionaire may create additional Customer Categories, provided that the criteria for any additional Customer Category 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 will be at liberty to assign different tariffs to different Customer Categories and related applicable Service Standards (subject to the Tariff Cap).

### Clause 11.4 (*Bilateral Contracts and Special Customers*) of the Agreement provides flexibility for the Concessionaire to bilaterally agree the provision of higher service levels and standards, which exceed those offered in Schedule 5, to Special Customers who require them, and the Concessionaire should be permitted to agree a tariff with that Special Customer that differs from the tariffs set forth in the Tariff Schedule for the provision of such higher service levels and standards. This clause is intended for use in jurisdictions where local law requirements do not restrict the ability of the Concessionaire to negotiate bilateral contracts and tariffs with certain categories of Customer.

# Tariff

## Tariff regulation

### Schedule 8 (*Tariff Regulation*) of the Agreement provides the methodology and formulas for tariff setting, indexation and periodic review. Where there are no regulatory restrictions within a jurisdiction on the setting and resetting of tariffs, it is expected that Schedule 8 (*Tariff Regulation*) will be adopted by the Parties.

### As stated in the drafting notes to Schedule 8 (*Tariff Regulation*), in jurisdictions that regulate tariff setting, indexation and periodic tariff reviews in a manner that differs from Schedule 8, and that do not permit any deviation from such regulation for the Mini-Grids included in a particular Concession, Schedule 8 will need to be amended to reflect such jurisdiction’s tariff setting, indexation and review mechanisms. Clause 11 (*Tariffs*) of the Agreement equally may require amendments to reflect a particular jurisdiction’s tariff setting, indexation and periodic review mechanisms. The Agreement currently envisages quarterly indexation, but monthly periods may be considered depending on the regulations in the country where the SMG 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.

### In the event that 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 Signing Date should be reflected in Schedule 8.

### 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 Schedule 8 (*Tariff Regulation*), and 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 by the parties:

work with the Host 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 included in 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; and

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

## How to use Schedule 8 (*Tariff Schedule*)

## Schedule 8 contains a detailed summary of the tariff setting methodology.

### Tariff Cap

The form of price control reflected in the Agreement is a Tariff Cap to meet the minimum Service Standards. The Tariff Cap means that the Average Tariff for a Quarter charged by the Concessionaire in such Quarter cannot be above a specified level (excluding any “Supplemental Tariff”, as explained below).

The opening Tariff Cap is expected to be defined by the Host Government before the tender. We expect that mini-grid operators will be asked by the relevant government to bid on the minimum subsidy needed to meet the minimum Service Standards at the Starting Tariff Cap. Schedule 8 is expected to include the Starting Tariff Cap, which corresponds with the opening Tariff Cap defined by the Host Government before the tender.

Under Schedule 8, the Concessionaire has the freedom to set the tariffs in the Tariff Schedule as it determines to best suit its business, provided that the Average Tariff for a Quarter does not exceed the Tariff Cap. The Concessionaire will be allowed to set different tariffs for different Customer Categories, times of day or Service Standards. The Concessionaire may also choose to set fixed charges rather than variable charges to reflect the cost structure of the Mini-Grids (high fixed costs and low variable costs) and to mitigate demand risk.

The Host Government may impose additional requirements that would constrain the tariff structure – for example, the Concessionaire may be required to offer a basic needs tariff that would regulate how much the poorest residential customers would spend on electricity.

As noted earlier in this User Guide, the Concessionaire may (subject to local law) bilaterally negotiate contract tariffs with Special Customers who require higher levels of Service Standards than those offered in Schedule 5 (*Service Standards*) of the Agreement. Such bilateral tariffs in the Bilateral Contracts are treated as being outside the Tariff Cap regime in the Agreement, i.e. revenues from these Special Customers are not included in the calculation of the Average Tariff for a Quarter and any bilaterally agreed tariff will not be subject to the restriction of the Tariff Cap.

### Automatic Tariff Indexation Adjustment

#### The Agreement includes a quarterly automatic indexation mechanism and reset of the Tariff Cap. The Tariff Cap will be reset in response to changes in input costs that have a major impact on the cost of the Mini-Grids. This indexation mechanism is meant to be automatic, meaning that the Concessionaire would be entitled to apply the indexation mechanism without approval by the Grantor or the Regulator. On each Automatic Tariff Cap Adjustment Date, the Tariff Cap for the next Quarter will be set using the formula set out in clause 3.2 (*Indexation of Tariff Cap*) of Schedule 8 (*Tariff Regulation*) of the Agreement.

The indexation formula in clause 3.2 (*Indexation of Tariff Cap*) in Schedule 8 (*Tariff Regulation*) of the Agreement provides an illustration of how weights and indexation are expected to be defined. The formula will have to be reviewed against regulatory rules and the country-specific context.

The indexation formula tracks factors that have an impact on costs:

Exchange rate (between the foreign currency in which investments are made and the local currency in which revenues are collected), which has an impact on effective financing costs. For example, depreciation of local currency effectively increases the cost of debt (more local currency is needed to repay the debt in foreign currency);

Local currency inflation, which has an impact on operating and maintenance expenses incurred in local currency;

Fuel price, which impacts fuel costs; and

Foreign currency inflation, only to the extent that operating and maintenance expenses are incurred in foreign currency.

The weights in the indexation formula should reflect the cost structure. The weight of each factor (ai) should equal the share of the cost items that the factor impacts as a proportion of total costs. The sum of ai should equal 1. For example, if operating and maintenance expenses account for 15% of total costs, the coefficient for local currency inflation should be equal to 0.15.

The formula defined in Schedule 8 reflects the following assumptions and simplifications:

All debt and equity are in foreign currency, thus the return on assets as a proportion of total costs is used as weight for indexation to the exchange rate; and

All operating and maintenance expenses as well as replacement investments are incurred in local currency, thus non-fuel operating and maintenance costs and depreciation[[6]](#footnote-7) as a proportion of total costs is used as weight for indexation to local currency inflation.

Where the Agreement provides for a Tariff Cap adjustment for Persistent Service Standard Failures, Box 1 in clause 3.3 of Schedule 8 includes an alternative indexation formula that includes a “Q” or “Quality” factor that can be used to allow for differences in Service Standards in the previous Quarter compared to the targeted Service Standards. The formula is included as a starting point. The Q factor should be determined using a basket of Service Standard indicators, and the level of the Q factor should be defined on a jurisdiction-by-jurisdiction basis, based on the frequency of tariff resetting and the level of incentive and penalty targeted and the Service Standard indicators selected.

## Periodic Tariff Review

### The Agreement provides for periodic Tariff Cap reviews and resets. Each Tariff Period lasts for [*five (5) years*].[[7]](#footnote-8) However, due to variations in the construction schedule for the Mini-Grids (where it is anticipated that construction may be phased), the first Tariff Period shall start on the first Mini-Grid Technical Commissioning Date and end on the date falling [*five (5*)] years thereafter.

### The Tariff Period is designed to coincide with a periodic review of the Tariff Cap every [*five (5*)] years,[[8]](#footnote-9) to bring the Average Tariff back in line with costs. The objective is to reset the Tariff Cap so that it covers reasonable operating and maintenance costs and depreciation and allows the Concessionaire a reasonable return on capital invested.

### Clause 4 (*Periodic Reset of Tariff Cap*) of Schedule 8 (*Tariff Regulation*) of the Agreement sets out the formulas and methodology for the periodic reset of the Tariff Cap, to be calculated on each Tariff Review Date. The Tariff Review Date will need to occur prior to the start of the next Tariff Period, and we expect the local regulations to stipulate the timing for such a review. A placeholder has been included for the Parties to include the actual process for implementing the Tariff Review in the relevant jurisdiction.

## Extraordinary Tariff Events

### Clause 17.11 (*Extraordinary Tariff Events*) and clause 5 (*Extraordinary Tariff Events*) of Schedule 8 (*Tariff Regulation*) provide a mechanism to allow the Concessionaire to be compensated for any increase in the costs incurred by the Concessionaire; and/or a decrease in the revenues received by the Concessionaire resulting from the occurrence of a political force majeure event or a Grantor default (each an Extraordinary Tariff Event).

### The way in which compensation is calculated will depend on whether the Extraordinary Tariff Event is a Temporary Extraordinary Tariff Event or a Non-Temporary Extraordinary Tariff Event. A 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, and a 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 entire Concession Period.

### Where the Extraordinary Tariff Event is a Temporary Extraordinary Tariff Event, the Concessionaire is expected to 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. The way in which that Cost/Revenue Impact should be tracked is set forth in clauses 5.1(a) and (b) (*Compensation for Temporary Extraordinary Tariff Event*) of Schedule 8 (*Tariff Regulation*) of the Agreement. Upon the occurrence of the Impact End Date, the Concessionaire shall notify the Grantor, and the Regulator if applicable, of the balance in the TEE Account and the Concessionaire shall be entitled to charge a Supplemental Tariff in accordance with clause 11 and 17 of the Agreement and the formulas set forth in clause 5.1(c) (*Disposition of the TEE Account when the Temporary Extraordinary Event Has Ceased*) of Schedule 8 (*Tariff Regulation*) of the Agreement, which sets out the formulas to be applied to calculate the recovery of the compensation by the Concessionaire.

### In the event of a Non-Temporary Extraordinary Tariff Event, the Concessionaire shall record the Cost/Revenue Impact attributable to that event in an EE Account, from the date of the start of the event until the start of the next Tariff Period. The way in which that Cost/Revenue Impact should be tracked is set forth in clauses 5.2(a) and (b) (*Compensation for Non-Temporary Extraordinary Tariff Events*) of Schedule 8 (*Tariff Regulation*) of the Agreement. On each Tariff Review Date following the occurrence of the 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 charge a Supplemental Tariff in accordance with clause 11 and 17 of the Agreement and the formulas set forth in clause 5.2(c) (*Disposition of the EE Account in the next Tariff Period*) of Schedule 8 (*Tariff Regulation*), which sets out the formulas to be applied to calculate the recovery of the compensation by the Concessionaire.

### Upon the occurrence of a Termination after the Concession Effective Date, an amount equal to the balance of the Total Extraordinary Event Balance (which is the balance of all outstanding TEE Accounts and EE Accounts) on the Termination Date shall be paid to the Concessionaire by the Grantor, in addition to the Buy-Out Amount for an early termination.

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

## Clause 11.3 (*Compensation in lieu of a Tariff Cap Adjustment* *or the charging of a Supplemental Tariff*) of the Agreement provides that the Grantor may remedy any failure by the Regulator to permit a reset of the Tariff Cap or the charging of a Supplemental Tariff that the Concessionaire is entitled to under the Agreement by compensating the Concessionaire for such “Reduction Event”. A “Reduction Event” will also occur, and be compensated for, if the Grantor requests that certain items included in the Tariff Schedule are set at a lower level than the level to which the Concessionaire is entitled under the Agreement. This may be the case where the Grantor wishes to ensure affordable tariffs for certain Customer Categories.

## For the purpose of clause 11.3 of the Agreement, the Concessionaire is expected to confirm to the Grantor the amounts of any loss (the Loss Amount) at least [3] Business Days prior to each Automatic Tariff Adjustment Date falling after the occurrence of a Reduction Event for the Quarter ending on such Automatic Tariff Adjustment Date and the Grantor will pay the Loss Amount notified to it by the Concessionaire. Clause 6 (*Grantor Compensation Formula*) of Schedule 8 (*Tariff Regulation*) includes the formulas to be applied to calculate the Loss Amounts.

# Financing and Project Support

## Expansion Financing

The Agreement allows flexibility for the Concessionaire to develop the Project. In the event that the capacity of the Mini-Grids is insufficient to meet demand and the number of Connections required exceeds that initially envisaged, clause 12.2 (*Expansion*) allows the Concessionaire to raise additional Equity and incur additional Debt to fund any Expansion.

## Additional Funding

In the event that the Concessionaire requires more capex funding during the Concession Period, which is not being incurred to expand the Mini-Grids, for example to refinance existing Debt, it shall be entitled to incur such Additional Funding.

# Force Majeure and events of default

## Force Majeure

### Any Force Majeure Event has to satisfy the basic test described in clause 17.1 (*Definition of Force Majeure*) of the Agreement, and clauses 17.2 and 17.3 set out a list of certain acts, events or circumstances which, provided they satisfy the basic test, would be considered a Force Majeure Event. The Agreement makes a clear distinction between Natural Force Majeure Events and Political Force Majeure Events.

### Natural Force Majeure Events (clause 17.3)

Natural Force Majeure Events are set out in clause 17.3 of the Agreement and include natural disasters and other significant disturbances. We have included a specific reference to “COVID-19 Related Health Event”. This definition has been included in light of the recent global disruption caused by the COVID-19 pandemic. It can be tailored to relate to pandemics more generally rather than specifically to COVID-19, particularly where the parties consider that other pandemics could be relevant to the countries participating in the SMG Program.

### Political Force Majeure Events (clause 17.2)

Political Force Majeure Events are risks that are in the control of the Host Country, that the Host Country, more so than a private Concessionaire, is better equipped to address, or that due to their nature, should be borne by the Host Country. These include the failure to act or adverse actions carried out by Governmental Authorities and events, such as war and civil disturbance, that affect the Concessionaire’s ability to perform its obligations under the Agreement. Optionality has been included in the Political Force Majeure clause to provide for jurisdictions where it may be possible for unilateral decisions to be taken by the Host Government with respect to the Agreement (clause 17.2(i)). This clause will need to be tailored to the specific jurisdiction.

## Concessionaire Events of Default (clause 18.1)

### Concessionaire Events of Default are included in the Agreement. The time periods with respect to insolvency and administrative type proceedings outlined in clause 18.1(b) have been left blank, to be completed on the recommendation of local legal counsel – as the reasonable time periods for throwing out vexatious actions or hearings can vary significantly from jurisdiction to jurisdiction.

### Persistent Service Standard Failure, as noted earlier in this User Guide, is included as a Concessionaire Event of Default, but where there are other remedies to deal with Service Standard failures prescribed under Applicable Law, it may not be necessary to keep this as a Concessionaire Event of Default.

## Grantor Events of Default (clause 18.2)

Grantor Events of Default are included in the Agreement. The reference to a unilateral modification of the Agreement by the Grantor is to be included on a jurisdiction-by-jurisdiction basis. In jurisdictions that allow unilateral amendments to be made to a contract by a Governmental Authority, any exercise of this right by a Governmental Authority should lead to a right to terminate the Agreement and full compensation for the Concessionaire.

# Early Termination and Mini-Grid Site Removal

## Termination Regime

### The early termination regime in the Agreement provides for three scenarios:

### early termination prior to achieving the Concession Effective Date;

### early termination after the Concession Effective Date; and

### Removals after the Concession Effective Date.

The related provisions in the Agreement are self-explanatory and hence not summarised in this User Guide. However, the practice of “Removal” is a feature included specifically for scaled Mini-Grid development and investments, and intends to avoid a scenario where issues affecting a few Mini-Grid Sites or Mini-Grid Lots would otherwise trigger a termination of the entire Agreement despite the unaffected Mini-Grid Sites or Mini-Grid Lots still being viable.

## Removals

It is possible that any event that could trigger a termination – Concessionaire or Grantor Event of Default, Force Majeure Event or Grid Expansion – may only affect a limited number of Mini-Grids. For this reason, the Agreement provides some flexibility for the Parties to remove an under-performing or affected Mini-Grid or collection of Mini-Grids, rather than terminate the entire Agreement. The definition of “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/s that has/have, individually or collectively, an impact on Mini-Grids within the Concession Area, which:

### prior to the Concession Technical Commissioning Date, represent [*insert percentage*][[9]](#footnote-10) or more of the projected revenues of the Concessionaire for the next succeeding twelve (12) calendar months in accordance with the Financial Model; and

### after the Concession Technical Commissioning Date, represent [*insert percentage*][[10]](#footnote-11) or more of the revenues of the Concessionaire for the preceding twelve (12) calendar months.

## Concessionaire Financed Assets

## Up to the above thresholds, any affected Mini-Grids may be Removed from the Project to the extent that the effect of the Concessionaire or Grantor Event of Default, Force Majeure Event or Grid Expansion is likely to be permanent and cannot be remedied. Removal is an available option in addition to a resetting of the Tariff Cap or the charging of a Supplemental Tariff in the event of a Grantor Event of Default or a Political Force Majeure Event, which has a Cost/Revenue Impact on the Concessionaire if the conditions set forth in the Agreement are met and the remainder of the Concession is viable.

The assets or shares in the Concessionaire will be transferred to the Grantor on an early termination for a price as set forth in annex 1 (*Termination Buy-Out Amount*) of Schedule 9 (*Termination*) of the Agreement. The price includes the value of the Concessionaire Financed Assets, which in all cases shall not be less than the Debt Outstanding, among other items more specifically set out in annex 1 (*Termination Buy-Out Amount*) of Schedule 9 (*Termination*) of the Agreement.

The Concessionaire Financed Assets are calculated using the definitions and process set forth in clause 4 of Schedule 8 (*Tariff Regulation*) of the Agreement and correspond to the depreciated value of the share of the assets financed by the Concessionaire, to the exclusion of the share of the assets financed by grants. The Agreement assumes that the upfront investment (investment needed to achieve the Target Completion Connections) is partly financed by the Concessionaire, and partly financed by grants; and that all investments beyond the upfront investment are fully financed by the Concessionaire (investments to replace assets or to expand the system).

## Components of the Buy-Out Amounts

* + - 1. Upon a Termination, the Concessionaire shall be entitled to an amount equal to:

#### the Concessionaire Financed Assets multiplied by a coefficient that reflects the risk allocation of such early termination event among the Parties, provided that such amount in no event shall be lower than the Debt Outstanding*; plus*

#### certain working capital amounts, defined as the Additional Concessionaire Amounts, which shall include:

##### the sum of (x) – the balance of all trade and book debts and receivables that have accrued to the Concessionaire but are unpaid, and (y) – the book value of all inventory of the Concessionaire; *minus*

##### the value of any overdraft facility or short-term financial payables of the Concessionaire which are outstanding; *plus*

#### Total Extraordinary Tariff Event Balance on the Termination Date; *plus*

#### the Termination Costs accrued up to the Termination Date (without double counting any amounts included in the Total Extraordinary Tariff Event Balance),

1. where ***Termination Costs*** means the following, calculated as at the Transfer Date:

##### 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 right, title and interest in the Project, the transfer and/or removal of the Relevant Concession Assets and the payment of the Buy-Out Amount;

##### 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;

##### all costs associated with the demobilisation of the construction of the Mini-Grids, including:

###### the cost of work completed but not yet paid for by the Concessionaire;

###### costs associated with removing construction material and equipment and personnel;

##### termination payments under the Project Agreements and other contracts with consultants and Contractors that relate to the construction and operation and maintenance of the Mini-Grids and the provision of the Additional Services; and

##### 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.

* + - 1. Where a Termination is the result of:

#### a Concessionaire Event of Default, the coefficient to be applied to the value of the Concessionaire Financed Assets shall be set during country implementation. The coefficient for the Concessionaire Buy-Out Amount should be set below 1 as the equity provider should be penalised for causing an early termination of the Concession and not recover the full value of the assets. 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;

#### a Grantor Event of Default, a Prolonged Political Force Majeure Event, an Expropriation or a Grid Expansion Event, the coefficient to be applied to the value of the Concessionaire Financed Assets shall be set during country implementation. The coefficient for the Grantor Buy-Out Amount should be above 1 to disincentivise the Grantor from causing an early termination of the Concession and 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 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); and

#### a Prolonged Natural Force Majeure Event, no coefficient shall be applied to the value of the Concessionaire Financed Assets.

#### Where there is a Removal rather than a Termination, the value of the Concessionaire Financed Assets is calculated in respect of the value of the Concessionaire Financed Assets in the affected Mini-Grid Sites/Lots only.

## Grid Expansion

Optionality is provided in the Agreement, as noted earlier, to allow the Concessionaire a choice of how to proceed upon the occurrence of a Grid Expansion. Annex 2 of Schedule 9 (*Termination*) of the Agreement sets out in detail the compensation payable where the Concessionaire elects to become a Small Power Producer, a Small Power Distributor or an Interconnected Mini-Grid and allows for a Removal of affected Mini-Grid Sites/Lots where the Grid Expansion is not Concession Wide. In such circumstances, the Buy-Out Amount payable by the Grantor to the Concessionaire shall be modified to reflect the value of the Concessionaire Financed Assets actually being transferred by the Concessionaire. Where there is no termination of the Agreement, any Total Extraordinary Tariff Event Balance will remain in the TEE/EE Account(s) and will not be paid as part of the Buy-Out Amount.

# DISPUTE RESOLUTION

### The Agreement provides for a three-stage dispute resolution process:

### resolution among the Parties (with input from the Independent Engineer for Technical Disputes prior to escalating to an Expert);

### referral to an Expert for “Technical Disputes”; and

### arbitration.

### The Expert decisions are final and binding in limited circumstances. i.e. those below a certain value threshold (which has been left blank to be determined based on the value of the Concession), as long as it does not involve a matter that could result in a termination of the Agreement. Such Expert decisions can only be challenged on the grounds of fraud or manifest error. All other technical Disputes may be referred to arbitration following an Expert decision. Non-technical disputes go directly to arbitration. Offshore arbitration is key for enabling the Concessionaire to benefit from political risk insurance for breach of contract cover as the insured will require a final arbitral award in respect of a contractual dispute, including regarding termination, in order to access its political risk insurance.

# AMENDMENTS

### In some jurisdictions it may be possible for the Grantor to unilaterally amend the Agreement. For this reason, the Amendment provision in clause 21.8 (*Amendments*) of the Agreement provides an option for the Grantor to give a waiver of any right it may have under Applicable Law to exercise such a right.

### As noted elsewhere in the User Guide, many jurisdictions will require Regulator approval before any Tariff adjustments can be effected, and it is not unusual for the Regulator to be required to approve the Tariff provisions of an agreement before it is signed. A related reminder and placeholder have been added to the Agreement. The Automatic Tariff Cap Adjustment should be carved out from regulatory approval (other than any required initial approval of the Agreement).

1. Excusing Event is any event that is not the fault of the Concessionaire, being a Grantor Event of Default, a Change in Law, a breach by the Grantor of the Concession Agreement or a Force Majeure Event. [↑](#footnote-ref-2)
2. To be provided separately as part of the tender package. [↑](#footnote-ref-3)
3. Please note that although the scope of work under the Agreement assumes that the Concessionaire will not install the Internal Wiring, 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-4)
4. 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-5)
5. Drafting Note: The liquidated damages (LDs) will be predefined amounts and do not necessarily refer to economic loss indicators – jurisdictions often impose a pre-agreed amount per customer for outages; however, we have provided some examples below of factors that can be taken into account when setting those amounts. [↑](#footnote-ref-6)
6. Depreciation might be included either in the weight for exchange rate variation or local currency inflation, depending on whether replacement investments are expected to be in local or foreign currency. [↑](#footnote-ref-7)
7. Five years is a typical regulatory period, but the frequency of periodic adjustments may vary from country to country. [↑](#footnote-ref-8)
8. Five years is a typical regulatory period, but the frequency of periodic adjustments may vary from country to country. [↑](#footnote-ref-9)
9. 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-10)
10. See prior footnote. [↑](#footnote-ref-11)