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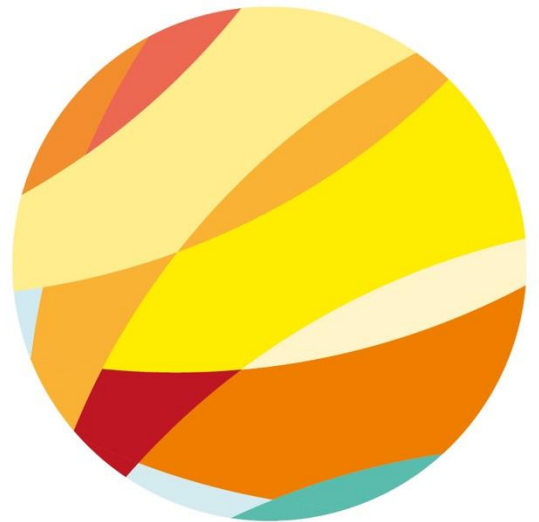
GREEN MINI-GRID
HELP DESK

PREPARED IN PARTNERSHIP WITH:



ENGINEERING PROCUREMENT AND CONSTRUCTION AGREEMENT

TEMPLATE



INTRODUCTION TO THE ENGINEERING PROCUREMENT CONSTRUCTION AGREEMENT TEMPLATE

Notes:

This Engineering Procurement Construction (“EPC”) Agreement template has been created for the purpose of providing countries with a standardized document to accelerate the private sector participation in the rural electrification effort.

This EPC Agreement template assumes that a single contractor would be responsible for the construction of the mini-grid only. However, if the government authority executing the EPC contract desires that the contractor thereafter also provides operations and maintenance services, this can be done through addition of an operations and maintenance article and definition of such service and terms of such service in the Annex.

This EPC Agreement Template further assumes that a single lump sum payment is made upon commissioning of the mini-grid, in which case there is no need for a bank guarantee. Where however the Parties agree to have staggered payments, the authority might ask for a bank guarantee, the optional format of which is provided here. Please note that the authority should not call for a bank guarantee where there is a single lump sum payment.

Instructions:

The template provides a solid foundation for the preparation and execution of Mini-Grid PPP Contracts. With the objective to enhance transparency while allowing flexibility, the EPC Agreement template encourages Mini-Grid transactions.

To adjust the EPC Agreement Template to a specific context:

- For each article please fill in the blank space according to the associated instruction (*as specified in brackets*).
- Please fill in the Annexes with more specific content. Annexes are left intentionally blank to provide more flexibility.
- Please add any additional article relevant to a specific context.

ENGINEERING PROCUREMENT CONSTRUCTION AGREEMENT

N°

DATED

(dd/mm/yy)

BETWEEN

Name of the Contracting Authority

acting on behalf of and duly authorized by the

Government of (*specify the country*)

- AND -

Name of the Company

Represented by

TO SERVE

Name of the locality/localities

OBJECT OVERVIEW:

Generation capacity (<i>if applicable</i>):	kW
Distribution capacity (<i>if applicable</i>):	kW
Technology:	
Locality/localities, District(s), Region(s):	
Contract Period:	

TABLE OF CONTENTS

Introduction to the Engineering Procurement Construction Agreement Template	2
ENGINEERING PROCUREMENT CONSTRUCTION AGREEMENT	3
OBJECT OVERVIEW:	4
Table of Contents	4
DEFINITIONS	6
Article 1 – Definitions	6
PURPOSE AND SCOPE OF WORK	9
Article 2 – Purpose of the Agreement	9
Article 3 – Effective Date and Term	9
Article 4 – Scope of Work	10
RIGHTS AND OBLIGATIONS OF THE PARTIES	10
Article 5 – Contractor’s General Rights	10
Article 6 – Contractors General Obligations	11
Article 7 – Design and Construction	12
Article 8 – Responsibility and Insurance	12
Article 9 – Reporting and Performance	12
Article 10 – Contracting Authority General Rights	12
Article 11 – Contracting Authority General Obligations	13
REPRESENTATIONS AND WARRANTIES	14
Article 12 – Site Inspection by Contractor	14
Article 13- Parties’ General Warranties	14
PAYMENT FOR WORK AND CHANGE ORDERS	15
Article 14 – Maximum Price and Terms of Payment	15
Article 15 – Change Order	15
OWNERSHIP AND INTELLECTUAL PROPERTY	16
Article 16 – Ownership of Mini-Grid Facility and Risk of Loss	16
Article 17 – Intellectual Property	16

PERFORMANCE TESTING AND COMMISSIONING	16
Article 18 – Performance Testing.....	16
Article 19 – Commissioning and Final Completion.....	17
WARRANTIES AND LIMITATION OF LIABILITIES	17
Article 20 – Contractor’s Warranty	17
DEFAULT AND TERMINATION	18
Article 21 – Contractor’s Default.....	18
Article 22 – Contracting Authority’s Default	18
Article 23 – Termination	18
Article 24 – Force Majeure.....	19
DISPUTE RESOLUTION AND ARBITRATION.....	20
Article 25 – Dispute Resolution and Arbitration.....	20
OPERATIONS AND MAINTENANCE (optional)	21
Article 26 – Operations and Maintenance	21
MISCELLANEOUS PROVISIONS	21
Article 27 – Relationship of Parties	21
Article 28 – Indemnities	21
Article 29 – Governing Law	22
Article 30 – Sovereign Immunity.....	22
Article 31 – Waiver.....	22
Article 32 – Entire Agreement.....	22
Article 33 – Survival and Severability	23
Article 34 – Counterparts.....	23
ANNEX 1 – Site.....	25
ANNEX 2 – Assets	26
ANNEX 3 – Specifications	27
ANNEX 4 – Additional Payment Terms.....	28
ANNEX 5 – Termination Compensation	29
ANNEX 6 – Performance Testing.....	30
ANNEX 7 – Work.....	31
ANNEX 8 – Insurance.....	32
ANNEX 9 – Performance and Monitoring	33
ANNEX 10 – Operations and Maintenance	34

This Engineering Procurement Construction (EPC) Agreement No....., dated (“*Agreement*”) is concluded between (“*Contracting Authority*”), represented by (“*Name and position*”), on the one hand, and the (“*Contractor*”), represented by (“*Name and position*”), on the other hand.

The Contracting Authority and the Contractor are individually referred to as “Party”, and collectively as “Parties”.

WHEREAS:

1. The Contracting Authority has a mandate to (*Specify general mandate of the agency*), and is desirous of engaging a private sector entity to undertake the engineering, construction, and operation (if applicable), of a Mini-Grid Facility (as defined below) to provide Services to underserved and unserved Users,
2. The Contractor is a company with experience in developing, constructing and operating (if applicable) Mini-Grids and is desirous and capable of developing and constructing a Mini-Grid Facility at the Site,
3. The Parties have therefore entered into this Agreement to set up the terms and conditions of their arrangement.

It is hereby agreed as follows:

DEFINITIONS

ARTICLE 1 – DEFINITIONS

<p>“Applicable Laws”</p>	<p>means any and all statutes, legislations, directives, regulations, standards, guidelines, rules, codes, judgements or orders of a court of competent jurisdiction, proclamations, directives, executive orders, other legislative measures, binding actions or enactments of (<i>please specify the executive authority</i>) or any other relevant authority, for the time being in force, in (<i>please specify the country</i>);</p>
<p>“Assets”</p>	<p>means the Mini-Grid Facility(s) and installations, including all relevant documents (such as manual, permits, licenses and certifications) required to operate, manage and maintain the Mini-Grid Facility(s), as may be developed, constructed and installed by the Contractor under this Agreement and listed under Annex 2;</p>

“Change Order”	means Change Order as defined under Article 15;
“Effective Date”	means the date on which this Agreement comes into force as specified in and in accordance with Article 3;
“Commissioning”	means the readiness of the Mini-Grid Facility to commence commercial operation after Performance Testing;
“Commissioning Date”	means the date on which the Mini-Grid Facility achieved commercial operation after Performance Testing, as specified in Article 4;
“Final Completion”	means completion of all Unfinished Work after Commissioning has been achieved and certified by an Independent Auditor;
“Force Majeure Event”	<p>means any unpredictable, unavoidable event beyond the control of the Parties, making it impossible to execute this Agreement in whole or in part, and which is not attributable to the fault or negligence of the Party claiming such Force Majeure, and which includes without limitation:</p> <ol style="list-style-type: none"> a. Any natural calamity, Act of God, adverse weather conditions, fire, earthquake, or any other unforeseen extreme weather; b. Any epidemic, plague or public health emergency; c. Acts of strikes, riots, rebellion, civil commotion, war or armed conflict in (<i>Specify name of place, state</i>) or any other part (<i>Specify name of state or country</i>); d. Any expropriation, nationalisation, confiscation of the Assets, or any boycott, penalty or restriction imposed upon the Contracting Authority or the Contractor;
“Good Industry Practice”	<p>means those practices, skills, diligence, prudence, methods, equipment, specifications and standards of safety and performance</p> <p>expected from a skilled and experienced professional engaged in the same or similar undertaking under the same or similar circumstances and conditions, which in the exercise of reasonable judgement in the light of the facts known at the time the judgement was made, are considered good, safe and prudent practice commensurate with standards of safety, performance, dependability, efficiency and economy.</p>

“Independent Auditor”	means a certified auditor which is accredited by the national accreditation body for auditors;
“kW”	means kilowatt;
“Mini-grid”	means any system generating electricity connected to a distribution network that supplies electricity to a small, localised group of customers at the Site;
“Performance Tests/ Testing”	means the performance tests, to be performed on the Mini-Grid Facility and as described in Annex 6, to check if the Mini-Grid Facility is ready for Commissioning as per the terms of this Agreement;
“Recognized Insurance Provider”	means <i>(please provide a list of Insurance Providers as recognized by the Granting Authority);</i>
“Services”	means the supply of electrical energy from the Mini-Grid Facility to Users under the conditions set out in this Agreement;
“Site”	means the geographical area of land as defined in Annex 1;
“Specifications”	means the minimum requirements and standards for the design and construction of the Mini-Grid Facility(s) and provision of Services (if applicable), envisaged under this Agreement, and as defined in Annex 3;
“Termination Compensation”	means the compensation to be paid by the Contracting Authority to the Contractor upon termination of this Agreement pursuant to Articles 22(2), 22(3)(a), 22(3)(b), and 22(4), and which shall be determined as per the schedule provided in Annex 5;
“Unfinished Work”	means any remaining Work, for instance paint jobs or cosmetic additions, which do not affect the operation of the Mini-Grid Facility, left unfinished when Commissioning is achieved;

“Users”	means any natural or legal person who purchases, receives or uses the Services for its own needs and who does not deliver or resell these Services to any third parties;
“Work”	means all design, engineering, procurement, construction, erection, installation, training, start-up and testing activities and services necessary for a complete and operable Facility as per the terms of this Agreement, and includes all activities and services detailed in Article 4 and Annex 7;

(Add additional Definition, if necessary)

PURPOSE AND SCOPE OF WORK

ARTICLE 2 – PURPOSE OF THE AGREEMENT

1. The purpose of this Agreement relates to the design and construction, operation and maintenance (if applicable) of the *(technology)* Mini-Grid(s) with a total capacity of *(installed generation capacity)* kW in *(specify the localities, districts, regions)* (“Mini-Grid Facility”) by the Contractor, and the supply of electricity Services to Users in the aforementioned area (if applicable), over a period as defined in the present Agreement.
2. The Contractor shall perform on behalf of the Contracting Authority the duties to act as general contractor for the design, construction and testing of the Mini-Grid Facility, development of the operations manual(s), and operation *(if applicable)* of the Mini-Grid Facility upon the terms and conditions set forth in this Agreement.
3. Following completion of the Mini-Grid Facility, the Contracting Authority will own the Mini-Grid Facility, and the Contractor will, if applicable, operate and maintain the Mini-Grid Facility pursuant to Article 25 of this Agreement.

ARTICLE 3 – EFFECTIVE DATE AND TERM

1. The Agreement shall enter into force on (“Effective Date”) upon*(specify the process of Entry into Force)*, and shall remain in force for a period of years (“Term”), and unless extended by the Parties in writing, will automatically terminate on *(specify date of expiry)* (“Expiry Date”).

ARTICLE 4 – SCOPE OF WORK

1. The Contractor shall provide or perform the Work or cause the Work to be provided or performed, in accordance with the terms of this Agreement. Without limitations, the Work shall include the following in accordance with the Work specified in Annex 7:
 - a. all design and engineering activities and construction and services necessary to conduct the Work and complete the Mini-Grid Facility in accordance with this Agreement (including Site preparation, digging and grading and proper disposal of all dug materials if and as required in connection with performance of the Work);
 - b. all design and engineering activities and services necessary to obtain all required permits for the construction and operation (if applicable) of the Mini-Grid Facility;
 - c. all materials necessary to conduct the Work (including all necessary transport thereof);
 - d. all work forces necessary to conduct the Work (including all skilled and unskilled labour, supervisory, quality assurance and support service personnel);
 - e. all documents required to direct the Contracting Authority's personnel in the proper start-up, operation and maintenance of the Mini-Grid Facility, including, without limitation, the operations manual and all as-built drawings and as-built wiring diagrams in the (*specify the format*), or in the form and format agreed between the Parties;
 - f. all training adequate to allow an operator to assume responsibility for operation and maintenance of the Mini-Grid Facility, if applicable;
 - g. all other activities, services and items, whether or not specifically described above, included in Annex 7 or elsewhere in this Agreement, if such performance, provision or procurement is necessary for a complete and operable Mini-Grid Facility, provided that the Contractor shall not be responsible for performing, providing or procuring those activities, services and items for which the Contracting Authority bears express responsibility pursuant to Article 11 and this Agreement;
 - h. all design, engineering, materials, work forces needed to perform the Performance Tests;
 - i. all activities necessary to enable the Contractor to achieve the agreed Commissioning Date of (*specify the date of for achieving commissioning*).

RIGHTS AND OBLIGATIONS OF THE PARTIES

ARTICLE 5 – CONTRACTOR'S GENERAL RIGHTS

1. The Contractor shall have the right to:
 - a. receive payments upon successful completion of the Work specified in Annex 7;
 - b. terminate the Agreement and receive the associated Termination Compensation payments in the cases provided for in this Agreement;
 - c. (*Add additional Contractor's General Rights if necessary*);
 - d. (*Add additional Contractor's General Rights if necessary*).
2. Except as otherwise provided, the Contractor shall have the exclusive right to design and construct the Mini-Grid Facility throughout the term of this Agreement, starting from the Effective Date.

ARTICLE 6 – CONTRACTORS GENERAL OBLIGATIONS

1. General Obligations

The Contractor shall have the obligation to:

- a. act as general contractor for the Mini-Grid Facility and be solely responsible for engineering, procurement and construction of the Work, including the general oversight and coordination of construction of the Mini-Grid Facility in accordance with the Specifications given in Annex 3, and environmental, health and safety guidelines as specified in the same Annex;
 - b. undertake the Work, and design, procure and build the Mini-Grid Facility in compliance with the Specifications as specified in Annex 3;
 - c. select any major equipment suppliers in consultation with the Contracting Authority based on cost, performance specifications, environmental impact, performance history, and demonstrated performance of their installed equipment, and facilitate negotiations of the Contracting Authority with the aforementioned major equipment suppliers, if any;
 - d. ensure development of procedures for testing materials, the oversight of materials testing, inspecting field assembled equipment (such as quality control of welding procedures and welding testing), verifying quality of materials used in the manufacture of major equipment and verifying that all equipment and materials delivered to the Site meet the specifications of the Project Engineer and those specified in Annex 3;
 - e. send a quality assurance report to the Contracting Authority on a
(specify frequency for reporting) basis;
 - f. not create any lien on any equipment or materials used for the Work and forming part of the Assets;
 - g. keep updated inventory and records of Assets;
 - h. keep a safe and secure environment and comply with environmental standards and Applicable Laws, and adopt necessary measures and actions to prevent or eliminate environmental damages caused by the Contractor, as set out in Annex 3;
 - i. maintain, at its own expense, such insurance as provided for in this Agreement;
 - j. prepare reports and provide relevant information to the Contracting Authority as per the terms of this Agreement or at such intervals as may be specified by the contracting Authority;
 - k. dispose of any hazardous or waste materials in accordance with Applicable Law and Good Industry Practice;
 - l. coordinate all tasks and responsibilities associated with Performance Testing and Commissioning of the Mini-Grid Facility;
 - m. (Add additional Contractor's General Obligations if necessary);
 - n. (Add additional Contractor's General Obligations if necessary).
2. The Contractor shall not be responsible for any subsurface conditions of the Site which could not have been discovered upon a reasonable inspection of the Site, or for any conditions or matters not disclosed in any drawings or other information provided by the Contracting Authority, which the Contractor reasonably relied upon.

ARTICLE 7 – DESIGN AND CONSTRUCTION

1. The Contractor shall present the construction plans to the Contracting Authority in a (*specify the document of reference*), and shall not undertake any proposed construction unless the Contracting Authority presents a no objection letter within (*specify number of days*) of receipt of the construction plans.
2. The construction works shall be completed as per the timelines presented in the aforementioned (*specify the document of reference*) and in accordance with the milestones specified in Annex 7.

ARTICLE 8 – RESPONSIBILITY AND INSURANCE

1. Starting from the Effective Date, the Contractor shall undertake the performance of the Work and this Agreement at its own risk.
2. The Contractor shall keep insured the Mini-Grid Facilities, Assets, Site, equipment and materials, for comprehensive general liability, property damage and hazards, at all times from the Effective Date up to the Final Completion from a Recognized Insurance Provider in accordance with Annex 8.
3. In the event of Article 25 being applicable, the Contractor shall after the Final Completion maintain such insurances as specified in Annex 10 for the remaining duration of this Agreement.

ARTICLE 9 –REPORTING AND PERFORMANCE

1. Activity reports, including (*specify content of reports: financial, accounting, technical and/or legal*) statements, shall be prepared and submitted (*frequency of the reports*) by the Contractor at its own expense to the Contracting Authority.
2. The Contractor shall maintain its books and records regarding all activities associated with the Agreement in accordance with Good Industry Practice and Applicable Laws, or in such form and format as agreed between the Parties, and shall permit the Contracting Authority or its representative for monitoring purposes as provided under this Agreement to at any time have access thereto, except where information is deemed Confidential Information.
3. The Contractor shall keep a record of incidents under the conditions set forth in the Specifications set out in Annex 3, including any defective work.
4. In accordance with this Agreement and the Applicable Laws, the Contracting Authority shall exercise its rights to monitor activities and performance of the Agreement based on the parameters detailed in Annex 9.

ARTICLE 10 – CONTRACTING AUTHORITY GENERAL RIGHTS

1. The Contracting Authority shall have the right to:
 - a. collect reports and data related to the Work for the purposes of monitoring the activities under this Agreement;

- b. monitor activities related to the Work as per Annex 9, including safety and environmental practices;
- c. ensure Work carried out by the Contractor complies with the Specifications specified in Annex 3 as well as Performance and Monitoring set out in Annex 9;
- d. upon reasonable prior notice to the Contractor, access the Contractor's books and records with respect to the costs and expenses of the Work, provided such inspection is carried out during normal business hours;
- e. upon reasonable prior notice and subject to adherence to safety procedures at the Site, access the Site to inspect the Work, provided such inspection is carried out during normal business hours;
- f. terminate this Agreement as per the terms herein specified;
- g. (Add additional Contracting Authority General Rights if necessary);
- h. (Add additional Contracting Authority General Rights if necessary).

ARTICLE 11 – CONTRACTING AUTHORITY GENERAL OBLIGATIONS

1. The Contracting Authority agrees to make every effort to help obtain the administrative documents necessary for the execution of this Agreement and perform the Work by the Contractor or its subcontractors, if applicable.
2. The Contracting Authority shall be obliged to:
 - a. hold, at its own expense, all permits and authorisations necessary to design and construct, and operate and maintain (if applicable) the Mini-Grid Facility, and provide the Contractor with the rights to undertake Work and provide operations and maintenance services, if applicable;
 - b. make payment for the Work as per the terms of this Agreement and additional payment terms specified in Annex 4;
 - c. provide necessary temporary construction easements and permanent easements for the Mini-Grid Facility and any necessary support facilities thereof;
 - d. ensure that no public utility or license holder contests or infringes on the Site or Assets defined in Annex 1 and Annex 2 respectively;
 - e. promptly respond at all times, and make available appropriate representatives with decision-making authority, to any and all reasonable requests by the Contractor for meetings, review, comments regarding any relevant documents or material;
 - f. use such commercially reasonable efforts as required to support the Work and milestones;
 - g. ensure exclusivity rights of the Contractor at the Site for engineering and construction Work as per this Agreement for the Term of this Agreement;
 - h. (*Add additional Contracting Authority General Obligations if necessary*);
 - i. (*Add additional Contracting Authority General Obligations if necessary*).

(Add additional Article if necessary)

REPRESENTATIONS AND WARRANTIES

ARTICLE 12 – SITE INSPECTION BY CONTRACTOR

The Contractor represents that the Contractor and Contractor’s agents and representatives have visited, inspected and are familiar with the Site, its physical condition, roads, access rights, utilities, topographical conditions, except for unusual or unknown surface or subsurface conditions, or unusual or unknown soil conditions, and have performed all reasonable investigations necessary to determine that the Site is suitable for the construction and installation of the Mini-Grid Facility, and are familiar with the local and other conditions which may be material to the Contractor’s performance of its obligations under this Agreement (including, but not limited to transportation, seasons and climate, access, the handling and storage of materials and fuel and availability and quality of labour and materials).

ARTICLE 13- PARTIES’ GENERAL WARRANTIES

1. Without prejudice to any warranties or conditions implied by Applicable Law, the Parties represent and warrant as of the date of this Agreement and throughout its Term that:
 - a. The Parties are duly organised and existing under the laws of (*specify the country*) and have full power and authority to perform their obligations and rights under this Agreement;
 - b. The Parties have the financial capacity to perform their obligations and execute their rights under this Agreement;
 - c. The Parties comply with Applicable Laws in all respect;
 - d. This Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
 - e. There are no actions, suits or legal proceedings pending or, to its knowledge, threatened against it at law or in equity before any court any authority, the outcome of which may result in the default or breach of this Agreement or may result in any impairment of its ability to perform its obligations under this Agreement;
 - f. That no sums, in cash or kind have been paid or will be paid by or on behalf of the Contractor to any person by way of fees, commission or otherwise for securing this Agreement or for influencing or attempting to influence any officer or employee of the Contracting Authority;
 - g. That the Parties shall comply with all their obligations set forth in this Agreement;
 - h. That the Parties shall not, except as permitted by this Agreement, assign or subcontract any interest, benefit, right or obligation under this Agreement to third party without the prior written consent of the other Party;
 - i. That the Parties shall at all times act in good faith in their dealings with each other under this Agreement and do all things reasonably within their power, which are necessary to give effect to this Agreement;
 - j. (*Add any additional warranty that may apply*);
 - k. (*Add any additional warranty that may apply*);
 - l. (*Add any additional warranty that may apply*);

PAYMENT FOR WORK AND CHANGE ORDERS

ARTICLE 14 – MAXIMUM PRICE AND TERMS OF PAYMENT

1. The maximum amount the Contracting Authority is obligated to pay the Contractor for completion of the Work shall be (*specify the fixed price*) (“Maximum Price”). The breakdown of the components of the Maximum Price are detailed in Annex 7, along with the Work.
2. Notwithstanding Article 14 (1), unless expressly provided otherwise, the Contracting Authority shall be obligated to pay any costs in excess of the Maximum Price, upon the occurrence of the following:
 - a. Any incremental costs of the Work resulting from an uninsured Force Majeure Event;
 - b. Any increase in cost of the Work resulting from any additional requirements by any relevant government authority or body;
 - c. Any increase in cost of the Work resulting from a Change Order as set out in Article 15;
 - d. Any increase in cost of the Work resulting from the Contracting Authority’s failure to cooperate with the Contractor and carry out its responsibilities under this Agreement.
3. The Maximum Price shall be paid upon Final Completion.
4. Upon Final Completion the Contractor shall prepare an invoice, along with a final report of the Work, and submit the same to the Contracting Authority.
5. The Contracting Authority shall review the report and invoice and settle the invoice within a period of (*specify the number of the days*) from the receipt of the same.
6. Where the Contracting Authority fails to make the payment for the invoice within the aforementioned period, the Contracting Authority shall be liable to pay interest of (*specify the rate of interest*) on such unpaid amounts, starting from the date on which it first becomes due till the date such payment is made.
7. Further payment terms as detailed in Annex 4 apply.
8. Bank Guarantee. (*optional: only if there is part payment for the Work*) The Contractor shall furnish, upon the Effective Date, an irrevocable bank guarantee of a value of % (*specify the percentage*) of the Maximum Price, in favour of the Contracting Authority in the form and format as specified in Annex 4, valid until Final Completion.

ARTICLE 15 – CHANGE ORDER

1. Either Party may request a change in the scope of Work before or after the construction has commenced (“Change Order”), which may result in a decrease or increase in the cost of Work, and which shall be reviewed by the other Party and be effective only once approved by the other Party.
2. Approved Change Orders shall be attached along with the Work under Annex 7, and shall form part of Annex 7.
3. Changes in cost arising from a Change Order due to an uninsured Force Majeure Event, from any act of any governmental authority, or arising from a request of the Contracting Authority, shall be borne by the Contracting Authority.

4. Changes in the cost arising from a Change Order requested by the Contractor and approved by the Contracting Authority shall be shared equally by the Parties.
5. Changes in the cost arising from a Change Order arising from any error or omission of the Party shall be borne by such Party.
6. No Change Order and change in cost of Work shall be effective unless approved in writing by both Parties.

OWNERSHIP AND INTELLECTUAL PROPERTY

ARTICLE 16 – OWNERSHIP OF MINI-GRID FACILITY AND RISK OF LOSS

1. Upon effecting final payment as per Article 14, ownership of the Mini-Grid Facility and associated risk shall transfer to the Contracting Authority.
2. Except where Article 25 applies, upon successful completion of the Work and this Agreement, and final payment in accordance with Annex 4, the Contractor shall hand over the Mini-Grid Facility, the Assets, and all associated installations, equipment, materials, tools, software, designs, operations and maintenance manuals and guides, training material, to the Contracting Authority or to any such other entity as may be specified by the Contracting Authority.

ARTICLE 17 – INTELLECTUAL PROPERTY

1. The Contractor owns or has the legal right to use all the patents, rights to patents, trademarks, copyrights, and any other intellectual property necessary for the execution of the Work and this Agreement, and shall provide the usage rights to such intellectual property to the Contracting Authority upon handover of Mini-Grid Facility and Assets as per Article 16.
2. Any intellectual property arising out of this Agreement shall vest in the Contracting Authority.

PERFORMANCE TESTING AND COMMISSIONING

ARTICLE 18 – PERFORMANCE TESTING

1. Upon completion of the Work, except for minor items of the Work that would not affect the performance or operation of the Mini-Grid Facility such as painting, landscaping and so forth and compiled in a list of Unfinished Work, such that the Mini-Grid Facility is ready to commence Commissioning, the Contractor shall send a status report along with the list of Unfinished Work to the Contracting Authority.
2. The Contracting Authority shall review and approve the status report and the Unfinished Work list, and initiate Performance Testing by an Independent Auditor as per Annex 6 within a period of (*specify the number of days*).

3. The Independent Auditor will provide the Contractor and Contracting Authority with a Performance Testing Report as per Annex 6, and certify that the Mini-Grid Facility is ready for Commissioning.

ARTICLE 19 – COMMISSIONING AND FINAL COMPLETION

1. Upon receipt of the Independent Auditor’s report and certification that the Mini-Grid Facility is ready for Commissioning, it would be deemed that the Commissioning has been achieved.
2. The Contractor shall then undertake to complete any Unfinished Work, and after timely completion shall hand over a final report to the Contracting Authority.
3. The Contracting Authority shall review and approve the final report within a period of (*specify the number of days*), and the approval after physical inspection shall be deemed to be the Final Completion of the Work, and the Contracting Authority shall be liable to render final payments as per Article 14 and Annex 4.

WARRANTIES AND LIMITATION OF LIABILITIES

ARTICLE 20 – CONTRACTOR’S WARRANTY

1. The Contractor shall perform the Work, including its design and engineering services hereunder, and will procure all materials hereunder using its best skill and attention, in accordance with Good Industry Practice associated with engineering and procurement of facilities such as the Mini-Grid Facility, and further warrants that all materials and equipment procured and installed shall be new, unless otherwise agreed between the Parties, of good quality and in accordance with the Specifications in Annex 3.
2. Notwithstanding the aforementioned, the Contractor shall not be liable for deficiencies or defects arising as a result of Force Majeure, normal wear and tear, misuse or negligence by the Contracting Authority or any third party acting on the Contracting Authority’s behalf.
3. Any defect or deficiency in the design, engineering, materials, workmanship or operability in the Min-Grid Facility discovered during the applicable warranty period, and which does not meet the Specifications under Annex 3, shall be promptly corrected, replaced or repaired by the Contractor at its sole cost and expense and subject to a cap of (*specify the amount of defect liability cap*).
4. Apart from the Guarantees and other remedies provided in this Agreement, the Contractor hereby disclaims any other warranties, or performance guarantees, including without limitation, warranties or merchantability, or fitness for a particular purpose.

DEFAULT AND TERMINATION

ARTICLE 21 – CONTRACTOR’S DEFAULT

Any of the following events shall be considered “Contractor’s Default” under this Agreement:

- a. Breach by the Contractor of any of material provision of this Agreement, and failure to remedy such breach within a period of (*specify the number of days*), or such other period as allowed by the Contracting Authority, from the date of receipt of notice of such breach by the Contractor from the Contracting Authority.
- b. Contractor becomes insolvent, or becomes the subject of any bankruptcy, insolvency or similar proceedings, which proceedings have not been dismissed within a period of (*specify the number of days*), thus affecting the Contractor’s ability to perform this Agreement.
- c. Any material representation by the Contractor is found to have been false or misleading in any material respect.
- d. Failure to achieve Commissioning by Commissioning Date.

ARTICLE 22 – CONTRACTING AUTHORITY’S DEFAULT

Any of the following events shall be considered “Contracting Authority’s Default” under this Agreement:

- a. Breach by the Contracting Authority of any material provision of this Agreement, and failure to remedy such breach within a period of (*specify the number of days*) from the date of receipt of notice of such breach by the Contracting Authority from the Contractor.
- b. Failure to make payment as per the payment terms under Article 14 and Annex 4, beyond a period of (*specify the number of days*) days from the date on which such payment falls due.
- c. Failure to obtain any necessary permits, licenses, approvals, under Applicable Law from relevant authorities, which affects the Contractor’s ability to perform this Agreement.
- d. Any material representation by the Contracting Authority is found to have been false or misleading in any material respect.
- e. Failure of the Contracting Authority to cooperate with the Contractor where such cooperation is necessary to undertake the Work and performance of this Agreement by the Contractor, or failure to provide access to the Site to the Contractor, or any of its subcontractors or personnel, to carry out the Work.

ARTICLE 23 – TERMINATION

1. Termination on Expiry

- a. This Agreement shall terminate on the Expiry Date.

2. Mutual Termination

- a. This Agreement may be terminated by the Parties at any time by mutual agreement.

3. Termination for Default

- a. This Agreement may be terminated by the Contracting Authority upon Contractor's Default by serving (*specify the number of days*) days written notice upon the Contractor, and the termination shall be effective from the end of the notice period.
- b. This Agreement may be terminated by the Contractor upon Contracting Authority's Default by serving (*specify the number of days*) days written notice upon the Contracting Authority, and the termination shall be effective from the end of the notice period.

4. Termination for Force Majeure

- a. Either Party may terminate this Agreement in accordance with Article 23.

5. Effect of Termination

- a. In the event this Agreement is terminated pursuant to Articles 22(2), 22(3) and 22(4), the Contractor shall promptly submit to the Contracting Authority a statement of the Contractor's actual costs incurred for the Work performed prior to the date of termination.
- b. In the event this Agreement is terminated pursuant to Articles 22(2), 22(3)(a), 22(3)(b), and 22(4), the Contracting Authority shall pay to the Contractor the Termination Compensation as specified in Annex 5.
- c. In the event this Agreement is terminated pursuant to Article 22(3)(a), the Contracting Authority shall be entitled to contract or substitute a third party to this Agreement, to complete the Work and achieve Final Completion, and the Contractor shall be responsible to pay to the Contracting Authority any costs incurred by the Contracting Authority to achieve such Final Completion, which are in excess of the Maximum Price. Such payments may be set-off against the Termination Compensation due to the Contractor from the Contracting Authority.
- d. In the event of termination pursuant to Articles 22(2), 22(3) and 22(4), the Contractor shall deliver any designs, drawings, documents, related to the Mini-Grid Facility, and all equipment, material, data, the ownership of which has passed to the Contracting Authority in accordance with the terms of this Agreement.

ARTICLE 24 – FORCE MAJEURE

1. Upon occurrence of a Force Majeure Event, the affected Party shall immediately give notice to the other Party of the circumstance, event or conditions, within a period of (*specify number of days*) days from the occurrence of such Force Majeure Event.
2. The affected Party shall make all reasonable efforts to reduce and mitigate the effects of the Force Majeure event on the provided Services and the performance of this Agreement, and the Parties shall together take all necessary measures to carry on their obligations under this Agreement, and limit the consequences of the Force Majeure Event.
3. Notwithstanding the aforementioned, in the event of inability to fulfil its obligations due to the Force Majeure Event, the affected Party shall not be liable for any delay or failure in performing its obligations due to a Force Majeure Event for the duration of such Force Majeure Event.

4. If the Force Majeure Event persists for a period of (*specify number of days*) days from the occurrence of such Force Majeure Event, either Party shall be entitled to terminate this Agreement by serving a written notice to the other Party, and such termination shall become effective (*specify number of days*) days from the receipt of the written notice by the other Party, provided, however, that the Force Majeure Event or its consequences persist.

DISPUTE RESOLUTION AND ARBITRATION

ARTICLE 25 – DISPUTE RESOLUTION AND ARBITRATION

1. Amicable procedure

- a. In case of any dispute arising from the terms of this Agreement or its construction or interpretation, or disagreement on the fulfilment of any obligations, the Parties shall first undertake amicable discussions with the aim of amicable agreement to resolve any such disputes.
- b. All disputes arising between the Parties concerning the application or interpretation of this Agreement which are not settled by amicable agreement within (*specify number of days*) days from receipt by either Party of the request for amicable settlement by the other Party, shall entitle either Party to refer the dispute to an arbitration procedure.

2. Arbitration

- a. Any disputes which cannot be amicably resolved as per Article 24 (1), shall be finally settled by arbitration in accordance with the (*specify the law/rule governing this arbitration, national or international*).
- b. The Parties shall nominate one arbitrator by mutual agreement, and where they are unable to agree on the appointment of an arbitrator, recourse shall be made to the (*specify the relevant court or agency with competence to decide*).
- c. The place of arbitration shall be (*specify the city*), and the language of arbitration shall be (*specify the language*). Parties shall bear their own costs for the arbitration.
- d. The award under such arbitration shall be final and binding upon the Parties, save in the event of fraud or manifest error, and judgement thereon may be entered in any court having jurisdiction for its enforcement; and the Parties renounce any right or appeal from the decision of the arbitral tribunal insofar as such renunciation can validly be made.
- e. This agreement to arbitrate constitutes a waiver of any right to sovereign immunity from execution to which a Party might otherwise be entitled with respect to the enforcement of any award rendered by an arbitral tribunal constituted pursuant to this Agreement.

OPERATIONS AND MAINTENANCE (OPTIONAL)

ARTICLE 26 – OPERATIONS AND MAINTENANCE

1. Upon achievement of Final Completion, the Contractor shall continue to provide operations and maintenance services for the Mini-Grid Facility and Services to the Users, in accordance with the parameters set out in Annex 10.
2. In the event this Article 25 applies, the Contracting Authority shall withhold % (*specify the percentage, suggested 10-15%*) of the Maximum Payment, to be paid to the Contractor upon successful completion of the operation and maintenance services as per Annex 10.
3. Notwithstanding the aforementioned, the ownership of the Mini-Grid Facility and Assets would vest in the Contracting Authority from the time of acceptance and payment upon Final Completion, and upon termination of the operation and maintenance services and this Agreement, the Contractor shall hand over the same, along with any training, operations and maintenance guidelines or manuals, to the Contracting Authority in accordance with the handover guidelines set out in Annex 10.
4. If applicable, the Contractor shall collect tariff payments from Users as specified by the Contracting Authority and detailed in Annex 10, and transfer the same to the Contracting Authority.
5. The terms of this Agreement shall apply mutatis mutandi to the provision of operation and maintenance services.

MISCELLANEOUS PROVISIONS

ARTICLE 27 – RELATIONSHIP OF PARTIES

1. Nothing in this Agreement shall be construed to create an association, trust, partnership, or other fiduciary relationship between the Parties or to impose any trust or partnership duty, obligation or liability between the Parties unless it is expressly agreed in writing by the Parties.
2. Neither Party shall by virtue of this Agreement be deemed to be the representative of the other Party for any purpose whatsoever, and neither Party shall have the power or authority as agent or in any other capacity to represent, act for, bind, or otherwise create or assume any obligation on behalf of the other Party for any purpose whatsoever unless it is expressly agreed in writing by the Parties.
3. Except as permitted under this Agreement nothing shall confer any benefit on any person or entity that is not a party to this Agreement.

ARTICLE 28 – INDEMNITIES

1. From and after the Effective Date and throughout the Term of this Agreement, both Parties shall indemnify and hold harmless the other Party against all obligations, losses, damages, costs, penalties, demands and expenses incurred by the other Party, including those in connection with the Mini-Grid Facility and Assets, or resulting from the death or personal injury to a third party or damage to property, arising as a result of a Party's breach, negligent act or omission.

2. The indemnity shall not apply to the extent that such claim, loss, damage, injury or death is attributable to the following:
 - a. A negligent act or omission or wilful misconduct by the other Party; or
 - b. Any breach of warranty, any misrepresentation by the other Party, or any failure to perform any of the terms, agreements, obligations to be performed by the other Party under this Agreement which adversely affects the activities referred to in Article 2;
 - c. Violation of any Applicable Laws by the other Party.
3. Notwithstanding anything contained in this Agreement, the liability of Parties shall not exceed % of the Maximum Price.

ARTICLE 29 – GOVERNING LAW

The Agreement shall be governed by, construed and enforced in accordance with the laws of (*specify the country*).

ARTICLE 30 – SOVEREIGN IMMUNITY

To the extent that the Contracting Authority may in any jurisdiction claim for itself or its assets immunity from legal proceedings in relation to this Agreement, the Contracting Authority hereby agrees not to claim and hereby irrevocably and unconditionally waives such immunity to the full extent permitted by the laws of the relevant jurisdiction.

ARTICLE 31 – WAIVER

1. In the event that one Party has not fulfilled its obligations as set out under this Agreement, the other Party may waive the performance of such obligations to the extent permitted under Applicable Laws.
2. No waiver shall be effective unless expressly provided for in writing and duly signed by each of the Parties hereto or authorized representatives, and no waiver shall be construed as a waiver of any other or subsequent default of obligations by either Party under this Agreement.
3. Under this Agreement, the following shall not constitute a waiver:
 - a. (*specify the default or failure*)
 - b. (*specify the default or failure*)
 - c. (*specify the default or failure*)
 - d. (*specify the default or failure*)

ARTICLE 32 – ENTIRE AGREEMENT

This Agreement, along with the attached Annexes, constitutes the entire agreement and understanding between the Parties. This Agreement cancels and replaces any previous understandings, agreements or arrangements, whether in writing or oral, between the Parties. No amendment or modification of this Agreement shall be valid and effective unless mutually agreed upon by both Parties in writing.

ARTICLE 33 – SURVIVAL AND SEVERABILITY

1. In the event of any contradiction between the articles of the present Agreement and its Annexes, the articles of the present Agreement shall prevail.
2. In case of contradiction between the requirements presented in the Annexes, the Annexes mentioned first in the list below shall prevail over those mentioned later:
 - a. (specify the annex of reference)
 - b. (specify the annex of reference)
 - c. (specify the annex of reference)
 - d. (specify the annex of reference)
 - e. (specify the annex of reference)
 - f. (specify the annex of reference)
 - g. (specify the annex of reference)
3. In the event that any provision of this Agreement is, or becomes, or is declared to be invalid, illegal or unenforceable by any Applicable Laws or court of competent jurisdiction, the Parties shall negotiate an adjustment of such provision reflecting the original intent, and the remaining provisions shall remain unaffected.

ARTICLE 34 – COUNTERPARTS

This Agreement shall be executed in two counterparts and each counterpart shall be considered one and the same Agreement, and each will be deemed an original.

(Add additional Article if necessary)

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

Signed for and on behalf of Contracting Authority

Date:

By:

Name:

Authorized signatory

Seal

Signed for and on behalf of the Contractor

Date:

By:

Name:

Authorized signatory

Seal

ANNEX 1 – SITE

(please add description and map of the Site)

ANNEX 2 – ASSETS

(please specify the list of Assets)

ANNEX 3 – SPECIFICATIONS

Technical Specifications

(please specify)

Construction Specifications

(please specify)

Equipment and Material Specification

(please specify)

Environment Health and Safety Standards

(please specify)

(Please add any additional specifications as required)

ANNEX 4 – ADDITIONAL PAYMENT TERMS

Additional Payment Terms

(please specify)

Bank Guarantee

(please specify)

ANNEX 5 – TERMINATION COMPENSATION

(please define a schedule of how termination compensation will be calculated under different categories of termination)

ANNEX 6 – PERFORMANCE TESTING

(please define how performance testing would be done and the parameters and performance indicators for the same)

ANNEX 7 – WORK

(Please add detailed description of Work, and related milestones and respective payments)

ANNEX 8 – INSURANCE

(please specify the type and cover of insurance to be maintained by the Contractor)

ANNEX 9 – PERFORMANCE AND MONITORING

(please specify the parameters)

ANNEX 10 – OPERATIONS AND MAINTENANCE

Scope of Service

(please specify the scope of service)

Service Level

(please specify the service level)

Standards for Performance of Service

(please specify performance standards and indicators)

Personnel Standards

(please specify personnel standards)

Environment and Safety Standards

(please specify environment and safety standards to be complied with)

Insurance

(please specify the insurance coverage to be maintained by the Contractor)

Permits and Compliance

(please specify the permits and licenses that Contractor should procure)

Records and Reports

(please specify reporting standards to ensure due monitoring of the facility)

Monitoring

(please specify how Contracting Authority would monitor the activities of the Contractor)

Tariff

(please specify the tariffs, if applicable)

Payment and Terms of Payment for Service

(please specify the payment terms)

Transfer of Assets to Contracting Authority

(please specify how assets would be handed over to the Contracting Authority upon termination of Agreement)