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| Template Term Sheet |
| Purchase and Sale Agreement - Asset Transfer |
| This term sheet is published as part of the Open Source project by CrossBoundary Access, funded by Shell Foundation. This is an initiative to share the project financing tools used to structure and finance over $80m of mini-grid projects in Africa.  Visit the [CrossBoundary Access Open Source page](https://crossboundary.com/access/open-source-tools-to-accelerate-universal-energy-access/) for more resources. |

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| January 2024 |

**TERM SHEET**

**for the**

**PURCHASE AND SALE AGREEMENT**

**between**

**[INVESTOR] IN [COUNTRY] and [DEVELOPER]**

This Term Sheet sets out the key provisions and risk allocation in relation to the Purchase and Sale Agreement (the “**Agreement**”)to be entered into for theproposed Project (as defined below). They are not exhaustive.

The objective of the relationship is for [Developer] (“**OpCo**”) to develop and sell to [Investor] (“**Owner**”) in [Country]multiple operational mini-grids, each being a “**Mini-grid**”, a group of Mini-grids being a “**Batch**”, and the total Batches being the “**Project**”*.* Owner and OpCo are each a “**Party**” and together the “**Parties**”. The structure of the Agreement assumes that OpCo (or its Affiliate) will provide ongoing operational services under a separate Operating Services Agreement (the “**OSA**”).

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| **Topic** | **Description** |
| Owner’s Commitment | Owner shall commit to purchase Mini-grids in line with the criteria detailed in Annexure A (“**Qualifying Criteria**”) up to a total amount of $[•] (the “**Maximum Commitment Amount**”) for [•] years from the effective date of the Agreement (the “**Commitment Period**”); provided that Owner may increase the Maximum Commitment Amount to up to $[•] if a suitable subsidy program applicable to additional Mini-grids in OpCo’s pipeline is in place and reasonably available to OpCo or if OpCo otherwise consents in writing.  Each year the Parties will review in good faith the Commitment Period, the aggregate amount paid by Owner to OpCo for Mini-grids, and OpCo’s projections for the completion and transfer of additional Mini-grids during the remainder of the Commitment Period, and if Owner reasonably determines that OpCo is not expected to deliver to Owner a sufficient number of Mini-grids to fully utilise the remainder of the Maximum Commitment Amount within the Commitment Period, the Maximum Commitment Amount may be reduced by Owner accordingly. Owner’s obligation to acquire Mini-grids from OpCo shall terminate at the expiration of the Commitment Period or, if earlier, once the aggregate amount of the Purchase Price paid by Owner equals or exceeds the Maximum Commitment Amount. |
| Mini-grid Development and Quarterly Reports | OpCo will be wholly responsible for all activities and financing requirements for each Mini-grid up to the sale and transfer thereof to Owner, including, without limitation, Mini-grid development, design, engineering, procurement, construction, permitting, commissioning, provision of relevant documents (including a comprehensive O&M manual and O&M plan), customer acquisition, and all other activities necessary to deliver a Mini-grid to the standards stipulated in Owner’s technical standards book (the “**Technical Standards Book**”), the Qualifying Criteria and generally accepted industry standards.  Commissioning requires (A) testing that the installation: (i) is structurally and electrically safe, (ii) is reasonably expected to operate for the duration of the specified project lifetime, taking into account planned and unplanned maintenance on the system, (iii) operates and performs as specified in the Technical Standards Book, and iv) delivers power to customers; and (B) confirming that customers have the capacity to pay through mobile money platforms.  OpCo shall provide Owner a quarterly written update regarding Mini-grids it is developing, which shall include the expected size of each Mini-grid under development (measured by capacity and number of connections), the location of each such Mini-grid, the estimated timing for commissioning and transfer thereof, any material developments since the last such submission, and the number of direct jobs created during development, disaggregated by gender. |
| Batch Presentation and Review | OpCo will deliver a certificate (“**Batch Presentation Certificate**”) to Owner each quarter requesting Owner to acquire a Batch, subject to satisfaction by OpCo or waiver by Owner of the conditions precedent to such acquisition.  Owner shall have [•] days to review each Batch Presentation Certificate and shall either countersign the certificate or decline Mini-grids in the Batch with either: (A) an explanation of the denial; or (B) a request for resubmission, in compliance with the Qualifying Criteria, Technical Standards Book and applicable conditions precedent.  OpCo shall use commercially reasonable efforts to address the comments of Owner promptly and to resubmit the Batch Presentation Certificate. A Mini-grid shall become a “**Rejected Mini-grid**” if: (A) Owner declines to include the Mini-grid in a Batch; or (B) Owner requests a resubmission of a Mini-grid twice and OpCo and Owner do not agree to an additional cycle of review. |
| Conditions Precedent to Batch Transfer | Owner’s obligation to purchase each Mini-grid approved under a Batch Presentation Certificate shall be subject to OpCo’s satisfaction of standard conditions precedent, including, without limitation, the following:   1. the relevant Batch’s average revenue per user (“**ARPU**”) based on [•] months of consecutive mobile money data is not less than [•][[1]](#footnote-2) percent of the relevant ARPU forecast for such Batch over the corresponding [•]-month period; 2. delivery of satisfactory summary of how a comprehensive long-term operations, maintenance and management plan (including the operations manual, plans for hiring and retaining local staff for O&M and sale of prepaid electricity credits to customers, spare parts management, etc.) will be implemented for the relevant Mini-grid; 3. no event or circumstance shall have occurred that could reasonably be expected to have a material adverse effect on the development, long-term ownership or long-term operation of any Mini-grid; and 4. the OSA is in full force and effect or other arrangements satisfactory to Owner for the operations of the Mini-grid are in place. |
| Batch Transfer | Owner shall assume and acquire from OpCo, pursuant to an Assignment, Assumption and Transfer Agreement for each Batch, all of OpCo’s rights, title and interest in and to each accepted Mini-grid in such Batch, including but not limited to all related assets, equipment and workmanship warranties from subcontractors and suppliers, land leases, customer agreements, environmental licenses, access and usage rights to the operating platform, and distribution and generation licenses necessary for the ongoing sale and provision of power to the Mini-grid customers, in each case free and clear of any liens or encumbrances. |
| Purchase Price | The price (the “**Purchase Price**”) paid by Owner to OpCo for each accepted Mini-grid in a Batch will consist of a predetermined cash payment per connection of $[•], multiplied by the number of connections in the Mini-grid (“**Cash Purchase Price**”).  [The Purchase Price includes VAT, but other applicable sales taxes, property transfer taxes and any other transaction-based taxes or duties payable with respect to the purchase of a Mini-grid will be allocated between the Parties in such proportion as agreed from time to time by the Parties.] Owner shall pay OpCo the Purchase Price within [•] business days following execution by the Parties of the applicable Assignment, Assumption and Transfer Agreement. |
| Purchase Price Revisions | At the halfway point of the Commitment Period or at any other date both Parties agree, the Parties will review in good faith whether the Cash Purchase Price should be reduced, taking into account changes to market and cost conditions, actual performance of Mini-grids that have been transferred, and projected performance of Mini-grids to be transferred in the future. Such review shall be carried out with the intent of sizing the Cash Purchase Price to cover the cost of all physical capex (e.g. poles, panels, meters, batteries, wires, generators, etc.) as well as the related development costs (people/time, land, permits, licenses, etc.) and construction costs (people/time, logistics, transport, works, etc.) required to bring a Mini-grid to commissioning and operation, as set forth in the Technical Standards Book, net of any grants or subsidies received by OpCo.  The relevant financial model will be maintained by Owner but shared with OpCo. Should changes in market and cost conditions result in a material adverse change in Mini-grid economics for either Party based on that model, the Parties agree to negotiate in good faith a mutually agreeable adjustment to the commercial terms herein, [which may include termination of this Agreement by mutual consent of the Parties]. |
| [Developer Earnout] | [In addition to any payments made by Owner of the Purchase Price, and subject to satisfaction or waiver of the conditions to the making of a distribution under any applicable financing documents, Owner shall pay to OpCo an earnout payment (the “**Developer Earnout**”) of an amount to be agreed between the Parties and tied to the long-term performance of the Mini-grids.] |
| Mini-grid Warranties | OpCo will provide a workmanship guarantee for a period of [•] months commencing on the date of Mini-grid purchase. OpCo shall have no warranty obligation for warranty claims arising as a result of any force majeure event or in connection with any third-party activities outside OpCo’s control.  OpCo is responsible for full and unconditional transfer of all original equipment manufacturer warranties to Owner on or before a Mini-grid is acquired.  OpCo will warrant that each Mini-grid is built to the standards required by the Agreement, including the Qualifying Criteria, the Technical Standards Book and the commissioning requirements, and is fit for the purpose for which it is intended. |
| OpCo Representations and Warranties | Standard, including, without limitation, with respect to company organization, authority and qualification, necessary consents and approvals, no conflict, required permits, litigation, taxes, IP matters, compliance with law, title to Mini-grids, full and correct disclosure, environmental matters, and workmanship. |
| Owner Representations and Warranties | Standard, including, without limitation, with respect to company organization, authority and qualification, necessary consents and approvals, no conflict, litigation, taxes, and compliance with law. |
| Insurance, Liability and Exclusions | Each Party shall have defined obligations with respect to insurance.  Neither Party shall be liable to the other Party for any economic, indirect or consequential loss. However, exceptions shall apply (including liquidated damages, indemnities, fraud, etc.) |
| Anti-Bribery and AML Provisions | Owner and its parent organizations comply with the highest standards with respect to Anti Bribery and Anti Money Laundering obligations and will expect OpCo to comply with such standards and any other similar standards imposed by lenders or funders of Owner and the Mini-grids. |
| Force Majeure and Termination | Market standard provisions on events of force majeure and termination and the relevant consequences will apply. Termination for force majeure shall be subject to specific time periods and controls.  Such events may occur in relation to a Mini-grid, a Batch or the whole Agreement. |
| Indemnification | The Agreement will include customary indemnities including but not limited to:   1. liabilities to third parties for death, personal injury and damage to property related to Mini-grids; 2. IP infringement; 3. breaches of the Agreement; and 4. incidents of gross negligence, fraud or willful misconduct. |
| Governing Law and Dispute Resolution | The Agreement will be governed by the laws of England and Wales.  All disputes arising under the Agreement shall be resolved through binding arbitration seated in London and administered by the London Court of International Arbitration. There shall be one arbitrator unless otherwise agreed.  Any hearing, if required, shall be conducted in London, England. |

ANNEXURE A: QUALIFYING CRITERIA

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|  | Eligible locations: As agreed between the Parties |
|  | Partner criteria: OpCo passes KYC to the satisfaction of Owner |
|  | Policy & regulatory framework: Confirmation from Owner’s local legal counsel of no change to legislation permitting cost-reflective tariffs and grid integration and compensation |
|  | Tax and legal: Due diligence carried out prior on pre-agreed countries – confirmation from  Owner’s local tax advisor and legal advisor of no material changes at this stage from due diligence  report, and confirmation of no material changes in real world against due diligence report or other relevant  local law or tax legislation |
|  | Returns: A base case unlevered [•]-year Batch IRR denominated in USD of not less than [•]% based on the agreed financial model |
|  | Contracts: Signed OSA and PSA |
|  | Technical standards: Confirmation that the Batch meets the requirements of the Technical Standards Book and the other technical standards. |
|  | Permits: All required consents, agreements, permits, licenses and approvals required for the Project shall have been obtained. |
|  | ESMS: An IFC-compliant Environmental and Social Management System (ESMS) shall have been provided by the OpCo and adopted for the Project, which shall also comply with the health, safety, environmental and social requirements of the Owner. |
|  | Minimum investment size (excluding grants): The lesser of $[•]m or the remaining funding available. |
|  | Customer type: At least [•]% of customers (by number of connections) are residential or business customers not currently receiving tier 4 power (for the avoidance of doubt this excludes diesel gensets, SHSs, and failing/defunct main grid connections, e.g. availability level below tier 4 main grid connections). |

**DISCLAIMER**

The transaction contemplated by this Term Sheet is subject to due diligence by the Parties and agreement and execution of binding legal documentation satisfactorily reflecting the transaction. Accordingly, and except as specifically set out below, this Term Sheet is not intended to be legally binding or to create legally binding obligations between the Parties.

This Term Sheet is confidential and remains the sole property of Owner notwithstanding disclosure or subsequent negotiation of terms between the Parties. The disclosure of this document is subject to the terms of the Non-Disclosure Agreement already in existence between the Parties.

1. ARPU may be lower than the ARPU forecast (which is based on annual assumptions on consumption and tariffs) in some months due to seasonality and other factors that vary by month. The Parties can therefore agree on a threshold that makes sense depending on the specifics of the Project, and is typically set low (e.g., 25%). [↑](#footnote-ref-2)