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| Template Term Sheet |
| Purchase and Sale Agreement - Share Purchase |
| 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. |

**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 into a special purpose vehicle (the “**AssetCo**”) a portfolio of operational mini-grids (“**Mini-grids**”) in [Country] and for [Investor] (“**Owner**”) to purchase one hundred percent (100%) of the equity of the AssetCo from OpCo (such development of Mini-grids and sale of the AssetCo, 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 the AssetCo following the completion of an agreed number of Mini-grids in the AssetCo in line with the criteria detailed in Annexure A (“**Qualifying Criteria**”), for 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 and OpCo’s projections for the completion of Mini-grids in the AssetCo during the remainder of the Commitment Period, and if Owner reasonably determines that OpCo is not expected to deliver to Owner an AssetCo containing 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 the AssetCo from OpCo shall terminate at the expiration of the Commitment Period. |
| 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 of the AssetCo to Owner, including, without limitation, Mini-grid development, design, engineering, procurement, construction, permitting, commissioning, provision of relevant documents (including 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, any material developments since the last such submission, and the number of direct jobs created during development, disaggregated by gender. |
| Project Presentation and Review | Upon completion of all Mini-grids contemplated for the Project, all such Mini-grids satisfying the criteria in the Technical Standards Book, OpCo will deliver a certificate (“**Project Presentation Certificate**”) to Owner requesting Owner to acquire all of the shares in the AssetCo subject to satisfaction or waiver by the Owner of the conditions precedent to such acquisition (“**Conditions Precedent to Transfer**”).  OpCo shall then give Owner [•] days to review the Project Presentation Certificate, and before the expiration of such time, Owner shall either countersign the Project Presentation Certificate and commit to purchasing the AssetCo, or decline to make the acquisition with either (A) an explanation of the denial or (B) a request for resubmission, in compliance with the Technical Standards Book and Conditions Precedent to Transfer.  OpCo shall use commercially reasonable efforts to address the comments of the Owner quickly and resubmit the Project Presentation Certificate, which the Owner may accept by executing. During the review process of the Project Presentation Certificate, OpCo will refrain from soliciting or entertaining any third party’s solicitation to acquire the AssetCo or any Mini-grid within until (i) Owner has elected not to purchase the AssetCo due to non-compliance with the Technical Standards Book or the Conditions Precedent to Transfer, (ii) [•] days have elapsed since the resubmission of a revised Project Presentation Certificate, or (iii) the expiration of the Commitment Period.  If Owner countersigns the Project Presentation Certificate, OpCo shall present a notice (“**Transfer Notice and Certificate**”) to Owner following requesting Owner to purchase the AssetCo for the Purchase Price. The Transfer Notice and Certificate shall:   1. Specify a date upon which the transfer of shares will occur (“**Share Transfer Date**”), which shall be a business day that is between [•] and [•] days after the date of the Transfer Notice and Certificate; 2. Specify the Purchase Price, which shall be calculated in accordance with the agreed methodology; 3. Confirm that each of the Conditions Precedent to Transfer (other than those conditions that, by their nature, can only be satisfied on the Closing Date) has been satisfied or waived by each relevant Party in writing. |
| Conditions Precedent to AssetCo Transfer | Owner’s obligation to purchase the AssetCo shall be subject to the satisfaction of standard conditions precedent, including, without limitation, the following:   1. The AssetCo’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 the AssetCo over the corresponding [•]-month period; 2. Delivery by OpCo of a 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 AssetCo; 3. No event or circumstance shall have occurred that could reasonably be expected to have a material adverse effect on the Project; and 4. The OSA is in full force and effect or other arrangements satisfactory to Owner for the operation of the Project are in place. 5. All government requirements, including approvals or other documents required to be filed, registered or recorded prior to AssetCo transfer, have been met |
| AssetCo Transfer | Following the execution by the Parties of the Transfer Notice and Certificate, Owner shall assume and acquire from OpCo, pursuant to a share purchase agreement, all of OpCo’s rights, title and interest in and to all shares of the AssetCo, which in turn shall own all assets of each Mini-grid in the Project, 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. Title shall transfer from OpCo to Owner upon payment of the Purchase Price on the Share Transfer Date. |
| Purchase Price | The price (the “**Purchase Price**”) paid by Owner to OpCo for the AssetCo will consist of a predetermined cash payment per connection of $[•], multiplied by the total number of connections in the Mini-grids in the AssetCo.  [The Purchase Price includes VAT, but other applicable sales taxes, property transfer taxes, any other transaction-based taxes or duties, and costs of obtaining the necessary government approvals required for the purchase of the AssetCo will be allocated between the Parties in such proportion as agreed from time to time by the Parties.] |
| Purchase Price Revisions | 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 a quarterly 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 the AssetCo 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 ensuring that all original equipment manufacturer warranties are obtained in AssetCo’s name.  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 AssetCo, full and correct disclosure, environmental matters, and workmanship. |
| AssetCo 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, the AssetCo and/or 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. |
| 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 and/or the AssetCo; 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: 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 IRR denominated in USD of not less than [•]% based on the agreed financial model |
|  | Contracts: Signed OSA and PSA |
|  | Technical standards: Confirmation that the Mini-grids meets the requirements of the Technical Standards Book and the other technical standards. |
|  | Permits: All required consents, agreements, permits, licenses and approvals shall have been obtained (the Parties may update these requirements from time to time if the regulatory requirements change). |
|  | HSES: The development of the Project shall have been done in compliance with the health, safety, environmental and social (HSES) requirements of the Owner. |
|  | Minimum investment size: $[•]m |
|  | Customer type: At least [•]% of customers (by number of connections) being served by the Mini-grids 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)