



# **STANDARD PACKAGE FOR PPP AGREEMENTS: CONCESSION AGREEMENT**

## **Output 4.3**

# DOCUMENT INFORMATION

**Deliverable code**

Output 4.3

**Deliverable title**

FISH MED NET Standard packages for PPP agreements

**Activity code**

A.4.3.1 (under the WP4)

**Activity title**

Definition of the standard packages for PPPs

**Component code**

**Component title**

**Responsible for  
drafting the  
document**

PP6 - Ministry of Agriculture, Lebanon

**Version**

1

**Date**

01/04/2023

Version	Date	Author	Description of changes
1.0	16/10/2022	PP6	First draft initiated
2.0	06/07/2020	PP6	Definition of the final version

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# INTRODUCTION

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This document is produced in the framework of the FISH MED NET project co-funded by the ENI CBC MED Programme. FISH MED NET involves public and private partner organizations from France (notably Corsica), Italy (notably Sardinia, Liguria and Puglia), Tunisia, Lebanon and Palestine. The project aims to develop Mediterranean Alliances between the enterprises active in the Blue economy following the diversification of artisanal fishing, and to develop public authorities' capacity to encourage sustainable development of the fishing sector. Following the analysis "Mapping of the needs of the Public Authorities related to fishery activities and support schemes in place", as well as the results of the rounds tables held in all partner countries that have engaged both public and private stakeholders from the fishery sector, the Ministry of Agriculture of Lebanon, in cooperation with all partners, has produced some standard packages including procedures and formats that might useful to develop Public-Private Partnerships (PPPs). According to the different national contexts, norms and legislations, the typologies of potential PPPs could change and vary from country to country. Also considering the differences between the fishery sectors in the involved countries at economic, social and legislative level, there is a certain level of heterogeneity within countries. So that, it must be noted that the standard packages should be always adapted to the country's characteristics and norms, and must not in any way be used as a substitute for specific legal advice.

The following standard packages are identified on the basis of existing practices of Public-Private Partnerships (PPPs) in each target territory:

1. The concession agreement
2. The memorandum of understanding
3. Community-led local development initiatives
4. The service agreement

Each standard package includes the same structure:

- Procedures
- Standard template
- Bibliography

This specific document includes a focus on one form of the public private agreement known as the **concession agreement**.

# 1.THE CONCESSION AGREEMENT

The document contains an overview of one form of the public private agreement known as the concession agreement, subsequent documents will take into account two of its variants, the Build Operate Transfer Agreement (BOT) and the Design Build Operate Agreement (DBO). Although the term concession under civil-law refers to a specific contract, such a term may under common-law be used interchangeably with BOT and DBO contracts which are often referred to as concessions. For the sake of clarity this document will distinguish the three contracts and will only use the term concession while referring to the specific contract as defined under civil-law and as such will only refer to concessions over existing utilities and assets. This document will cover the definition of the aforementioned contract the key elements to take into consideration when considering a concession as well as a general checklist for concession agreements. All information in this document is based on the formats and procedures defined by the World Bank for concession agreements. It is of the utmost importance to note that the following document offers the general format and procedures for concession agreements and is in no way project specific and may not be used to substitute professional legal advice on specific projects.

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## 1.1 Procedures: The Concession Agreement

Generally speaking, a concession agreement is a contract entered into between two parties for the sake of operating a business. More specifically and in the context of PPP, a concession agreement is a long-term agreement entered into between a public authority and a concessionaire (the private entity) by which the public authority grants the concessionaire rights to operate specific utilities or assets, related to a public service, over a prolonged period of time. The concession is one of the most traditional forms of public service provision and infrastructure development by means of PPP agreement. Under a concession agreement, although operational rights are delegated to the concessionaire, the contracting public authority remains the sole owner of the question and as such at the expiration or termination of the concession agreement, all assets including assets purchased by the concessionaire in the execution of the concession agreement. As for the financial structure of the concession, outside of project financing, we will distinguish two main relationships, the concessionaire-client relationship and the public authority-concessionaire relationship. Under the terms of a concession agreement the concessionaire often deals directly with the end-customer or service consumer.

The most simplified example would be that of a metro station which is subject to a concession, under that example the concessionaire will sell metro tickets to the customer thus generating its revenue directly from the customer. As for the public authority-concessionaire financial relationship, the concessionaire will pay a concession fee to the public authority. The concession fee is the monetary amount charged by the public authority to the concessionaire as compensation for the privilege provided by the authority under the concession agreement, this concession fee may take various forms, lump sums, percentages on revenue..... depending on domestic legislation and public authority needs, therefore the concession fees, terms and means of payment must be clearly defined. Often public authorities may opt to ring fence the concession fee in order to further develop and enhance the infrastructure subject to the concession, however ring fencing remains optional and is in no way obligatory under a concession agreement.

As such the key takeaways for a concession agreement (stricto sensu) are as follows:

- 1- The concessionaire under a concession agreement is responsible for operation and maintenance of asset and utilities as well as financing and investment management as defined under the concession agreement and as such will bare the risk related to the hereto, although large asset replacement is often the responsibility of the authority.
- 2- A concession in the strict sense only covers existing assets and utilities which also includes rehabilitation, extension and expansion.
- 3- A concession is a long-term agreement and must at least be long enough to allow the concessionaire to generate ROI (usually 20 to 30 years).
- 4- The awarding public authorities remain sole owner of the assets and utilities subject to the concession, assets acquired by the concessionaire during the concession period will revert back to the public authorities unless otherwise stated in the agreement.
- 5- The concessionaire will deal directly with the general public and will generate its revenue directly from the end-consumer.
- 6- The concession agreement is an output focused management agreement rather than an input focused agreement, which means that the main focus of the concession agreement is the end result of the agreement which is often the delivery of a public service in accordance with specific standards or in response to a specific need. The means by which such and output is achieved are often left to the sole discretion of the concessionaire although general provisions and specific conditions may be included in the agreement such as provision pertaining to asset renewal or maintenance.
- 7- Should the public sector targeted by the concession be deemed a low income sector, meaning that the income generated by the operation does not cover the expenses of operation, alternative means of funding and cost recovery must be clearly set and may include subsidies, taxation, governmental loans etc.....

## CONCESSION CONTRACTS QUESTIONNAIRE AND CHECKLIST

Between Public and Private Sector

(as provided by the WORLD BANK PUBLIC-PRIVATE PARTNERSHIP LEGAL RESOURCE CENTER)

1. Civil Law/Common Law Jurisdictions
2. If Civil Law:
  - 2.1 Does law provide for adjustment of terms in the event of change in circumstances?
  - 2.2 Does the purpose behind the project constitute public service obligations/public interest and what is effect of this in relation to:
    - (a) change in cost structure;
    - (b) use of assets;
    - (c) compensation on termination.
  - 2.3 Can the private sector acquire land/assets/land use consents in its own right?  
And if so, how onerous is this?
  - 2.4 Does State have continuing liability for services carried out (e.g. public service obligation or public interest)?
  - 2.5 Is contract or are assets used for project alienable?
3. Is there a Concession Law or similar?
  - 3.1 If so does it restrict:
    - (a) ownership of project company;
    - (b) control of project company;
    - (c) assignment by lenders to the project company;
    - (d) change in assets (renewal or replacement);
    - (e) payment for services (does it restrict profit element in payment);
    - (f) use of assets owned by State.
4. Is there procurement legislation?
  - 4.1 If so does it permit:
    - (a) change in ownership of project company;
    - (b) assignment of project agreement;
    - (c) negotiated procedure or similar for letting contract;
    - (d) prequalification of bidders and restricted number of bidders;
    - (e) sufficient time to run a complex tender – if not what are the restrictions;
  - 4.2 What approvals during the tender process are required and from whom?
  - 4.3 If there is a concession law what is the relationship between the two laws?
5. Is there any legislation which impacts upon the proposed project and which:
  - 5.1 requires the public sector to exercise certain functions;
  - 5.2 restricts delegation down to private sector of certain functions.
6. How long does the use of land consents procedure take and what are the stages?

7. How long does the compulsory acquisition of land procedures take and what are the stages?
8. What is the position of lenders to the project or project company:
  - 8.1 are step-in rights by lenders recognised;
  - 8.2 can the lenders obtain protection from claims by third party creditors so as to protect the use of assets for and income stream from the project;
  - 8.3 can administrators of an insolvent project company prevent the project assets from being used by:
    - (a) the public sector; and/or
    - (b) the lenders or their nominee;
  - 8.4 are there restrictions in using a charge or pledge over assets so as to enable those assets to be used for revenue earning in relation to the project – e.g., must the holder of the pledge auction those assets subject to a pledge?
9. Are different classes of shares recognised under corporate law?
10. Can a holding company of the project company be based off-shore?
11. Can security packages be created off-shore and be subject to English or New York law?
12. What is the tenor of debt in the debt market?
13. What is the availability of hedging:
  - (a) interest;
  - (b) foreign currency, if applicable.
14. How are changes in cost of living reported and what are the indices used?
15. Are there restrictions on the remittance of currency to outside the host country?
16. What is the incidence of tax (including VAT and Stamp Duty) on transfer of project assets between the public and private sector?
17. If the projected assets are vested in the State:
  - 17.1 can the project company obtain writing down allowances against tax on the capital value of the project assets;
  - 17.2 is a leasehold interest sufficient to obtain writing down allowances?
18. In real property law is there the concept of stratified title – namely buildings and structures can be in separate ownership to the land on which they are erected?
19. Are utilities state owned?
20. Do the administrators (civil servants) change with the Government?
21. Is the concept of an indemnity understood and permitted in law?

## 1.2 Standard template: Concession contract between public and private sectors<sup>[1]</sup>

This template aims to provide a general framework for the concession agreement and must not in any way be used as is for a specific project nor does it act as a substitute for specific legal advice.

### CONCESSION AGREEMENT

N° .....

### BETWEEN

Name of the Conceding 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

[1]As provided by the WORLD BANK PUBLIC-PRIVATE PARTNERSHIP LEGAL RESOURCE CENTER

## OBJECT OVERVIEW:

Generation capacity (if applicable):

Distribution capacity (if applicable):

Technology:

Locality/localities, District(s), Region(s):

Concession Period:

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[1]As provided by the WORLD BANK PUBLIC-PRIVATE PARTNERSHIP LEGAL RESOURCE CENTER

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This Concession Agreement (“Agreement”) No. \_\_\_\_\_, dated \_\_\_\_\_ is concluded between \_\_\_\_\_ (“Conceding Authority”), represented by \_\_\_\_\_ (“Name and position”), and the \_\_\_\_\_ (“Concession Holder”), represented by \_\_\_\_\_ (“Name and position”).

### WHEREAS:

- 1.The Conceding Authority has a mandate to \_\_\_\_\_ (Specify general mandate of the agency), and is desirous of engaging a private sector entity to undertake the construction, operation, and maintenance of a \_\_\_\_\_ and provide Services to the Community and Users in the Concession Area.
- 2.The Concession Holder is a company with experience in developing, operating and maintaining \_\_\_\_\_ and is desirous and capable of developing and operating a \_\_\_\_\_ Facility in the Concession Area.
- 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><b>“Applicable Laws”</b></p>	<p>means the ..... (please specify place of jurisdiction) legislations, directives, regulations, standards, guidelines, rules, codes, judgments or orders of a court of competent jurisdiction, proclamations, directives, executive orders, other legislative measures, binding actions or enactments of ..... (please specify the executive authority) or any other relevant authority, being in force in ..... (please specify the country);</p>
<p><b>“Assets” or “Concession Assets”</b></p>	<p>means</p> <ul style="list-style-type: none"> <li>• (in the case of a Lease Agreement) the .....Facility and installations required for the operation of the .....Facility, including Privately Financed Assets as may be developed, constructed and installed by the Concession Holder, or, (in the case of a Concession Agreement) any assets handed over to the Concession Holder by the Conceding Authority for the duration of this Agreement, either paid for by the Conceding Authority or the Concession Holder</li> <li>• and listed in Annex 2 of this Agreement and updated from time to time, including all relevant documents (such as manual, permits, licenses and certifications);</li> </ul>

<b>“Asset Rehabilitation”</b>	means improvements, additions, alterations and replacements of the Assets undertaken during the Concession Period;country);
<b>“Effective Date”</b>	means the date on which this Agreement comes into force as specified in and in accordance with Article 3;
<b>“Concession”</b>	means the Concession Area and its Assets by which the Conceding Authority allows the Concession Holder to establish, operate and maintain the .....Facility;
<b>“Concession Area”</b>	means the area of land as defined in Annex 1 as well as the associated buildings, fixtures, installations and non-movable assets with rights attached hereto, as listed in Annex 2;
<b>“Concession Period”</b>	means the period set out in Article 3 or as may be extended pursuant to this Agreement;
<b>“Depreciated Value of Assets”</b>	means the value of the equipment (except granted Assets) which includes the amount of depreciation not yet incurred plus the salvage or residual value;

<b>“Expiry Date”</b>	means the end date of the Concession Period, whereby the Concession Agreement gets renewed automatically in accordance with Article 18, unless terminated by one of the Parties in accordance with Articles 18 or 19;
<b>“Extraordinary Termination”</b>	means a termination of this Concession Agreement other than on the Expiry Date in accordance with Article 18 (3);
<b>“Force Majeure Event”</b>	<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> <p>a. Any natural calamity, Act of God, adverse weather conditions, fire, earthquake, or any other unforeseen extreme weather;</p> <p>b. Any epidemic, plague or public health emergency;</p> <p>c. Acts of strike, riot, rebellion, civil commotion, war or armed conflict in ..... (Specify name of place, state) or any other part (Specify name of state or country);</p> <p>d. Any expropriating, nationalisation, confiscation of the Concession Assets, or any boycott, penalty or restriction imposed upon the Conceding Authority or the Concession Holder;</p> <p>e. Any act of terrorism, sabotage or piracy;</p> <p>f. Explosion, fire, destruction of machines, equipment, factories and all types of installations considered as Concession Assets</p>

<b>“Good Industry Practice”</b>	means those practices, skills, diligence, prudence, methods, equipment, specifications and standards of safety and performance 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 judgment in the light of the facts known at the time the judgment was made, are considered good, safe and prudent practice commensurate with standards of safety, performance, dependability, efficiency and economy.
<b>“Independent Verification Auditor”</b>	means a certified auditor which is accredited by the national accreditation body for auditors;;
<b>“Material Breach”</b>	<u>means a</u> breach by either Party of any of its Obligations under this Agreement which has or is likely to have an adverse effect on the provided Services and which such Party shall have failed to remedy, including bankruptcy and any legal cases stopping either Party or any Affiliates to meet their Obligations;
<b>“Ordinary Termination”</b>	means a termination of this Concession Agreement on the Expiry Date in accordance with Article 18 (2);

<b>“Outstanding Debt”</b>	means the aggregate of the following sums: a.the amount required to repay in full the principal amount of the debt outstanding; b.all accrued but unpaid interest and financing fees; c.any costs and expenses of enforcement incurred by the Lenders from the date of termination of this Agreement to the date of payment of the compensation by the Conceding Authority.
<b>“Party or Parties”</b>	means Concession Holder or Conceding Authority, singularly or together;
<b>“Performance Indicators”</b>	<u>means all figures, rates and descriptions as set out in Annex 4;</u>
<b>“Privately Financed Assets”</b>	means any generation or distribution assets of the .....Facility under this Concession Agreement which are paid for using the Concession Holder’s equity or debt to be repaid by the Concession Holder to its lender;

<b>“Recognized Insurance Provider”</b>	means (please provide a list of Insurance Providers as recognized by the Granting Authority);
<b>“Services”</b>	means the supply of electrical energy from the .....Facility by the Concession Holder to Users under the conditions set out in this Agreement;
<b>“Signature Date”</b>	<u>means the date this Agreement is signed by both Parties:</u> ..... (please specify);
<b>“Specifications”</b>	means the minimum requirements and standards for the provision of (insert service) services envisaged under this Agreement;
<b>“Termination Compensation”</b>	means the compensation to be paid by the Conceding Authority to the Concession Holder upon Ordinary or Extraordinary Termination. The computation of the compensation will be performed in accordance with Annex 8, and verified by an Independent Verification Auditor.
<b>“Users”</b>	means any natural or legal person who purchases, receives or uses the Services provided by the Concession Holder for its own needs and who does not deliver or resell these Services to any third parties.

<b>“Written Notice”</b>	means a written message or letter sent by one Party of this Agreement to the other Party by either registered mail, or email or any other means which allow the sending Party to verify that the receiving Party has received the message or letter.
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(Add additional Definition, if necessary)

## CONCESSION

### ARTICLE 2 – OBJECT OF THE AGREEMENT

1.The object of this Agreement relates to the construction (if applicable), operation and maintenance of the (technology).....(s),  
in (specify the localities, districts, regions),  
by (name of the Concession Holder) and the  
supply of  
.....Services to (indicate the overall number of customers)  
customers, over a period as defined in the present Agreement.

2.The Agreement aims to set the rights and obligations of the Parties in the construction (if applicable), operation and maintenance of the .....Facility within the Concession Area.

## ARTICLE 3 – ENTRY INTO FORCE AND DURATION

1. The Agreement shall enter into force on  
 ("Effective Date") upon (specify the process of  
 Entry into Force),  
 and shall remain in force for an initial period of  
 years ("Concession Period") .

2. The Conceding Authority shall be obliged to notify the Concession Holder no later than  
 ..... (numbers of days) days after the Concession has been granted and at  
 least ..... (number of days) prior to the Effective Date.

## ARTICLE 4 – CONCESSION AREA

The Conceding Authority mandates the Concession Holder, for the duration of the present  
 Agreement to supply (insert service) to Users using the ..... Facility within the delimited  
 Concession Area as defined under Annex 1, according to the conditions set out and  
 specified by the present Agreements and its annexes.

## ARTICLE 5 – CONCESSION ASSETS

### 1. Permitted use of the Assets

a. The Conceding Authority shall, upon the Effective Date, hand over the Concession  
 Assets, including land and facilities, as detailed in Annex 2, to the Concession Holder, and  
 the use of the Assets by the Concession Holder shall be limited to the scope of the  
 Concession.

b. Prior to the Effective Date, the Conceding Authority and the Concession Holder shall  
 draw up inventories of the Concession Assets, including the ..... Facility, any other  
 facilities and land, and shall specify their location, mode of operation, production or  
 transmission capacity, commissioning date, general condition, residual life and estimated  
 value. The inventory shall be signed by both Parties, and a copy shall be kept as record by  
 both the Conceding Authority and the Concession Holder for the duration of this Agreement  
 or such other time as may be agreed upon by the Parties.

## 2. Asset Rehabilitation and Addition:

a. Any improvements, additions, alterations and replacements of the Assets undertaken during the execution of the present Agreement shall form an integral part of the Concession Assets, and upon the expiry or termination of this Agreement for any reason, in accordance with the terms herein contained, the Concession Holder shall hand over all Concession Assets to the Conceding Authority, including:

- i. The .....Facility
  - ii. The land and any other facilities (if applicable);
  - iii. The movable and immovable assets, including any that were not originally a part of the Concession Area, which have been acquired for the purpose of operating and managing the Concession.
- b. The Concession Holder shall ensure that the inventories are kept up-to-date throughout the Concession Period and shall periodically keep the Conceding Authority informed. The inventory shall be updated (frequency of the inventory update) by the Concession Holder at its own expense and a copy shall be submitted to the Conceding Authority.

## 3. Property regime

All materials or equipment, including the .....Facility, whether existing or to be built, as well as the associated relevant documents shall be deemed to remain and will remain the entire property of the Conceding Authority

(Add additional Article if necessary)

# RIGHTS AND OBLIGATIONS OF THE PARTIES

## ARTICLE 6 – CONCESSION HOLDER GENERAL RIGHTS

1. The Concession Holder shall have the right to:

- a. design, construct, operate and maintain the Concession Assets;
- b. produce, distribute and sell the (insert service) and related Services from the .....Facility operated by the Concession Holder within the Concession Area;
- c. be entitled to terminate the Agreement and receive the associated Termination Compensation payments in the cases provided for in this Agreement;
- d. (Add additional Concession Holder General Rights if necessary);
- e. (Add additional Concession Holder General Rights if necessary).

2. The Concession Holder shall have the exclusive rights to use the Concession Area and the related Assets established within the Concession Area throughout the term of this Agreement, starting from the Effective Date.

## ARTICLE 7 – CONCESSION HOLDER GENERAL OBLIGATIONS

### 1. General Obligations

The Concession Holder shall have the obligation to:

- a. apply for and obtain all necessary permits and authorisations necessary to operate the Concession Assets, as per Applicable Laws;
- b. operate, manage and maintain the Assets during the Concession Period at its own expense and in accordance with the terms of this Agreement and Specifications detailed under Annex 3;
- c. rehabilitate existing Assets after obtaining the consent of the Conceding Authority to ensure adequate Services may be rendered to the Users;
- d. provide Services in compliance with the Applicable Laws and inform the Conceding Authority about service management;
- e. provide customer service management as set out in the Agreement and its Annexes;
- f. keep updated inventory and records of Assets under the Concession;

- g. inform the Conceding Authority in case of any grant-funded Assets being decommissioned or replaced together with a proof of disposal of such Assets in conformity with applicable environmental guidelines;
- h. comply with the Specifications as given under Annex 3;
- i. 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 Concession Holder, as set out in Annex 6;
- j. ensure general liability, property damage and “all-risk” hazard insurance, aligned with its responsibilities towards the Conceding Authority, Users and third parties in accordance with the requirements set out under Annex 5;
- k. fulfil performance and maintenance indicators as set out in this Concession Agreement and its Annexes;
- l. publish reports and provide relevant information to the Conceding Authority as per the terms of this Agreement or at such intervals as may be specified by the Conceding Authority;
- m. .... (Add additional Concession Holder General Obligations if necessary);
- n. .... (Add additional Concession Holder General Obligations if necessary).

## 2. Service quality

The Concession Holder agrees to provide Users with sustainable Services following generally applicable regulations regarding tariffs, quality of service and technical standards as per the terms of this Agreement, and as detailed under Annexes 3 and 4.

## ARTICLE 8 – DESIGN AND CONSTRUCTION

1. As per the terms of this Agreement and in compliance with Applicable Laws, the Concession Holder has the right to undertake any construction works deemed to be necessary for the well-functioning of the Concession Assets including the .....Facility within the Concession Area.
2. The Concession Holder shall present the construction plans to the Conceding Authority through a ..... (specify the document of reference), and shall not undertake any proposed changes unless the Conceding Authority presents a no objection letter within (specify number of days) of receipt of the construction plans.
3. The construction works shall be completed as per the timelines presented in the aforementioned ..... (specify the document of reference).
4. The installations and changes undertaken during the term of this Concession Agreement shall form an integral part of the Concession Assets.

## ARTICLE 9 – RESPONSIBILITY AND INSURANCE

1. Starting from the Effective Date, the Concession Holder shall be fully responsible for all operations within the Concession Area, and the Concession shall be managed and operated by the Concession Holder at its own risk.
2. The Concession Holder shall keep insured the Concession Assets including the .....Facility for comprehensive general liability, property damage and “all-risk” hazards, at all times throughout the Concession Period from a Recognized Insurance Provider in accordance with Annex 5.

## ARTICLE 10 –REPORTING AND PERFORMANCE

1. Activity reports, including ..... (specify covered dimensions within reports: financial, accounting, technical and/or legal) statements, shall be published and submitted ..... (frequency of the reports) by the Concession Holder at its own expense to the Conceding Authority.
2. The Concession Holder shall maintain its books and records regarding all activities associated with the Concession in accordance with Good Industry Practice and Applicable Laws, or in such form and format as agreed between the Parties, and shall permit the Conceding 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 Concession Holder shall keep a record of incidents under the conditions set forth in the Specifications under Annex 3. Upon request, the Concession Holder shall make available to its customers and third parties a record of complaints, which may be consulted at any time.
4. In accordance with the Concession Agreement and the Applicable Laws or Regulations, the Conceding Authority shall exercise its rights to monitor activities and performance of the Concession based on the parameters detailed under Annex 4.

## ARTICLE 12 – CONCEDED AUTHORITY GENERAL RIGHTS

1. The Conceding Authority shall have the right to:
  - a. collect data related to the activity of the .....Facility for the purposes of monitoring the Concession activities under this Agreement;
  - b. monitor Concession activities, including safety practices as well as Users' requests and complaints;
  - c. ensure (insert service) Services carried out by the Concession Holder comply with the Specifications as well as performance and maintenance indicators under Annex 3 and 4 respectively;
  - d. terminate this Agreement as per the terms herein contained;
  - e. (Add additional Granting Authority General Rights if necessary);
  - f. (Add additional Granting Authority General Rights if necessary).

## ARTICLE 13 – CONCEDED AUTHORITY GENERAL OBLIGATIONS

1. The Conceding Authority agrees to make every effort to help obtain the administrative documents necessary for the execution of this Agreement by the Concession Holder or its subcontractors, if applicable.
2. The Conceding Authority shall:
  - a. ensure that the Concession Area allocated to the Concession Holder is available and accessible;
  - b. ensure that no public utility or license holder contests or infringes on the Assets considered necessary to the Concession and listed in Annex 2;
  - c. ensure exclusivity rights of the Concession Holder over the Concession Area.
  - d. .... (Add additional Granting Authority General Obligations if necessary);
  - e. .... (Add additional Granting Authority General Obligations if necessary).

# REPRESENTATIONS AND WARRANTIES

## ARTICLE 14 – 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 written form 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 an 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 written form 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 15 – WARRANTIES

1. Without prejudice to any warranties or conditions implied by Applicable Law, the Parties represent and warrant as at the date of this Concession Agreement and throughout the Concession Period 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;
  - d. This Agreement constitutes a legal, valid and binding obligation enforceable 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 Concession Holder to any person by way of fees, commission or otherwise for securing the Concession or for entering into this Agreement or for influencing or attempting to influence any officer or employee of the Conceding 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 a 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).

## ARTICLE 16 – CONFIDENTIALITY

1. The Parties shall keep as strictly confidential, this Agreement and all documents and other information related to the Concession including the financing, design, construction, insurance, operation, maintenance and management of the Concession Area, business plans and studies (“Confidential Information”) belonging to the other Party, and which is supplied to it or that it has access to as a result of this Agreement, and shall not publish or otherwise disclose such Confidential Information to any third party, or use the same for any purposes except to perform its obligations under this Agreement without the prior written consent of the disclosing Party.
2. Notwithstanding the provisions of Article 16 (1), Confidential Information may be disclosed without the other Party’s consent if and to the extent that such Confidential Information:
  - a. Is in the public domain at the date of the signing hereof or thereafter, other than through the receiving Party’s or any of its employees’ or agents’ breach of this Agreement;
  - a. Was readily available to the receiving Party on a non-confidential basis prior to its disclosure to the receiving Party; or was already lawfully in the receiving Party’s possession on a non- confidential basis at the date of signing hereof;
  - b. Is communicated to any government agency, court of law or other statutory or governmental body provided such disclosure is required to be made pursuant to provisions of Applicable Laws from such government agency, court, statutory or governmental body;

- d. Is required to be communicated to a Party's affiliates, employees, consultants, agents, subcontractors or staff in connection with the performance of this Agreement, provided that such affiliate, employee, consultant, agent, subcontractor or staff agrees to be bound by confidentiality obligations with respect to such Confidential Information which are not inferior to obligations contained in this Article 16;
- e. Is required to be communicated to any lenders or prospective lenders or their professional advisers provided that such lenders or professional advisers agree to be bound by confidentiality obligations with respect to such Confidential Information which are not inferior to obligations contained in this Agreement;
- f. Becomes available to the receiving Party on a non-confidential basis from a source other than the disclosing Party, provided such source is not itself bound by any confidentiality agreement with the disclosing Party; or
- g. Is disclosed for the purpose of any arbitration or the enforcement of rights and obligations under this Agreement.

## ARTICLE 17 – NOTICES

1. Under the Concession Agreement, any notification, request or demand made by one Party to be given to the other shall be made in writing and shall be transmitted or delivered by hand, mail or e- mail.

2. The notices shall be delivered as follows:

To the Concession Holder  
Concession

(specify the

Holder's contact details);

To the Conceding Authority: ..... (specify the Conceding Authority's contact details).

3. All notifications shall be deemed to have been received on the date of their delivery to the address if delivered by hand or courier, on return receipt requested if delivered by certified mail, and on automated delivery receipt or confirmation of receipt from relevant server if sent by email.

4. If a Party changes its notice details set out above, it shall provide the other Parties with prompt notice of any such changes.

# TERMINATION AND FORCE MAJEURE

## ARTICLE 18 – RENEWAL AND TERMINATION

### 1. Renewal

On the Expiry Date, this Concession Agreement is renewed automatically for a period of ..... (number of years) and the Expiry Date shall be deemed to be extended till the end of this aforementioned period.

### 2. Ordinary Termination

Notwithstanding the provision of Article 18(1), the Conceding Authority, by Written Notice, may initiate an Ordinary Termination of the Concession Agreement not later than ..... (number of months) months prior to the Expiry Date, by written notice.

### 3. Extraordinary Termination

a. In the event where one of the Parties is in material breach of its obligations which affects the performance of this Agreement, and fails to remedy such breach within ..... (number of days) days from the receipt of a Written Notice of such failure, or fails to execute the directions issued under the Dispute Resolution and Arbitration process under Article 21 within such aforementioned period, the other Party shall be entitled to terminate this Agreement by serving a Written Notice of termination upon the Party in breach, and the termination shall become effective after

(Specify no. of days)

from the receipt of the Written Notice. If the Expiry Date is earlier than the specified number of days from the receipt of the Written Notice, the termination shall become effective on the Expiry Date.

b. Either Party may also terminate this Agreement before the Expiry Date in the event of Force Majeure in accordance with Article 19, or upon arrival of the main grid to the Concession Area as per Article 20.

#### 4. Consequence of termination:

- a. If the Concession Agreement is terminated, all Concession Assets including any improvements, additions, alterations and replacements detailed in the latest inventory maintained in accordance with Article 5, as well as all the associated relevant documents, including but not limited to plans, specifications, engineering documents, operating procedures, licences, permits, contracts shall be handed over to the Conceding Authority, in accordance with the handover guidelines given under Annex 7 of this Agreement, and any other additional procedure agreed between the Parties.
- b. The Conceding Authority shall inform all authorities involved about the termination of the Concession Agreement.
- c. Prior to the anticipated termination of the Concession Agreement, the Parties shall meet and agree on detailed procedures for the handing over of the Concession Assets to the Conceding Authority.
- d. The Conceding Authority shall pay to the Concession Holder a financial Termination Compensation calculated as per the terms of this Agreement and Annex 8.
- e. The Termination Compensation must be paid by the Conceding Authority to the Concession Holder within 20 days following the receipt of the Independent Auditor's report by the Conceding Authority.
- f. The cost of the audit shall be paid by the Concession Holder.
- g. Upon termination the Conceding Authority shall have the right to substitute the Concession Holder to ensure that Users' access to the Services is not disrupted or adversely affected.

### ARTICLE 19 – FORCE MAJEURE

1. On the 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 occasioned by 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 20 – 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 after the 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 21 (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
- e. The Parties renounce any right or appeal from the decision of the arbitral tribunal insofar as such renunciation can validly be made.
- f. 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.

## MISCELLANEOUS PROVISIONS

### ARTICLE 21 – INDEMNITIES

1. From and after the Effective Date and throughout the Concession Period, 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 concession Assets, or resulting from death, 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:
3. A negligent act or omission or wilful misconduct by the other Party; or
4. 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;
5. Violation of any Applicable Laws by the other Party.

### ARTICLE 22 – GOVERNING LAW, FISCAL AND CUSTOM REGIME

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

## ARTICLE 23 – SOVEREIGN IMMUNITY

To the extent that the Conceding Authority may in any jurisdiction claim for itself or its assets immunity from legal proceedings in relation to this Agreement, the Conceding 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 24 – 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 25 – ENTIRE AGREEMENT

1.This Agreement, along with the attached Annexes, constitutes the entire agreement and understanding between the Parties with respect to the Concession. This Agreement cancels and replaces any previous understandings, agreements or arrangements, whether written 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 26 – 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 requirements 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)
- h. (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 27 – COUNTERPARTS

This Agreement shall be executed in 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 representative of the Parties hereto on the day, month and year first above written.

### **Signed for and on behalf of Conceding Authority**

Date:

By:

Name:

Authorized signatory

Seal

### **Signed for and on behalf of the Concession Holder**

Date:

By:

Name:

Authorized signatory

Seal

# ANNEXES

## ANNEX 1 – CONCESSION AREA

Drawing of the Concession Area.

## ANNEX 2 – DESCRIPTION AND INVENTORY OF CONCESSION ASSETS

(to be listed)

List of Assets to be handed over and their condition: Shall include but not be limited to:

- a. Short description of the asset;
- b. Location;
- c. Mode of operation;
- d. Production or transmission capacity;
- e. Commissioning Date;
- f. General Condition;
- g. Residual life and estimated value
- h. Amortization of the Asset;
- i. Paid for by ☐ Conceding Authority ☐ Concession Holder

## ANNEX 3 – SPECIFICATIONS

1. Construction Standards (to be filled)
2. Operational Standards (to be filled)
3. Maintenance Standards (to be filled)
4. Tariffs (to be filled)

## ANNEX 4 – PERFORMANCE AND MAINTENANCE INDICATORS

*Assessing the performance on the outputs is strongly recommended.*

### 1. Performance indicators for the Services provided

(to be defined)

Performance indicators could include:

- Capacity (in terms of power and daily capacity or provided services)
- Duration (hours per day, hours per evening)
- Reliability (considering disruptions)
- Quality (in terms of voltage)
- Affordability
- Health and safety (in terms of incidents)

### 2. Maintenance indicators

(to be defined)

Maintenance indicators could consider:

- Maintenance frequency,
- Costs of Maintenance,

## ANNEX 5 – INSURANCE

(Insurance coverage to be defined)

## ANNEX 6 – ENVIRONMENTAL PROTECTION

(to be defined)

## ANNEX 7 – HANDOVER OF ASSETS UPON TERMINATION

This Annex should contain at least the following points:

- Details of the Concession Assets and the associated documents and manuals to be handed back
- Arrangements for the handover
- Compensation payments: methods and process
- The entire handover process

## ANNEX 8 – TERMINATION COMPENSATION

### Instructions:

The following Termination Compensation has been elaborated to provide the private sector with enough and fair termination compensation and to accelerate its participation in the rural electrification effort.

<b>Termination event</b>	Termination compensation
<b>Ordinary Termination</b>	The Conceding Authority shall pay to the Concession Holder: The depreciated value of the Assets at the Expiry Date.
<b>Extraordinary Termination</b>	<b>1. Breach of Concession Holder's Obligations:</b> The Conceding Authority shall pay to the Concession Holder: <ul style="list-style-type: none"> <li>The depreciated value of the Assets at the effective date of termination less [..... % (Please specify the percentage)] of any costs or expenses incurred by the Conceding Authority to procure another entity to replace the Concession Holder, shall be paid by the Concession Authority to the Concession Holder.</li> </ul>
	<b>2. Breach of Conceding Authority's Obligations:</b>  The Conceding Authority shall pay to the Concession Holder the following: <u>Costs related to the Assets:</u> <ul style="list-style-type: none"> <li>The depreciated value of the Assets less all Outstanding Debts calculated at the effective date of termination,</li> </ul>

- Any breakage costs or expenses incurred and justified by the Concession Holder in relation to the termination of any debt agreement on the effective date of termination (including interest and default interest).

Other costs:

- Costs incurred and justified by the Concession Holder for breach of subcontracting contracts on the effective date of the termination,
- Any fees, costs or expenses and other charges incurred by the Concession Holder and the Shareholders in respect to the Agreement prior to the Effective Date,
- Any expenses related to redundancy costs for employees that have been or will be incurred by the Concession Holder due to the termination.

Lost revenues:

- Any loss in revenues incurred by the Concession Holder and Shareholders as a result of the termination, based on the last [..... (Please specify the no. of months)] months of operation.

**3. If the Force Major Event occurs after the Concession Agreement Effective Date:**

The Conceding Authority shall pay to the Concession Holder the following:

Costs related to the Assets:

- The depreciated value of the Assets less all Outstanding Debts calculated at the effective date of termination,
- Any breakage costs or expenses incurred and justified by the Concession Holder in relation to the termination of any debt agreement on the effective date of termination (including interest and default interest)

Other costs:

- Costs incurred and justified by the Concession Holder for breach of subcontracting contracts on the effective date of the termination,
- Any fees, costs or expenses and other charges incurred by the Concession Holder and the Shareholders in respect to the Agreement prior to the Effective Date,
- Any expenses related to redundancy costs for employees that have been or will be incurred by the Concession Holder due to the termination.

Loss of revenues:

- Any loss in revenues incurred by the Concession Holder and Shareholders as a result of the termination, based on the latest [..... (Please specify the no. of months)] months of operation.

Any sums due to be paid by the Conceding Authority to the Concession Holder falling under this Termination Compensation Annex shall be summed up.

## 1.3 BIBLIOGRAPHY

- The World Bank, Concessions Build-Operate-Transfer (BOT) and Design-Build-Operate (DBO) Projects, <https://ppp.worldbank.org/public-private-partnership/agreements/concessions-bots-dbos>
- The World Bank, Public-Private Partnership Legal Resource Center, <https://ppp.worldbank.org/public-private-partnership/>
- The World Bank, The PPP Reference Guide Version 3.0, <https://ppp.worldbank.org/public-private-partnership/library/ppp-reference-guide-3-0>
- The World Bank, The PPP Reference Guide Version 2.0, [The PPP Reference Guide Version 2.0 \(worldbank.org\)](https://ppp.worldbank.org/public-private-partnership/library/ppp-reference-guide-2-0)