

DATED

1 October

2019

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**ELECTRICITY SUPPLY LICENCE**

granted to **ENERGY FIJI LIMITED** IN RESPECT OF  
THE RETAIL SUPPLY OF ELECTRICITY IN THE  
REPUBLIC OF FIJI

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Licensee: **Energy Fiji Limited**  
Address: **EFL Head Office, 2 Marlow Street, Suva, Fiji**  
Licence Number: **S001/10/2019**  
Issue Date: **2 October 2019**

Area to which Licence will apply: Viti Levu, Vanua Levu, Ovalau and Taveuni



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The Fijian Competition and Consumer Commission established under section 7 of the Fijian Competition and Consumer Commission Act 2010, as amended from time to time (“**FCCCA**”), acting as the regulator of the Fijian electricity industry (“**Regulator**”), in exercise of the powers conferred by the Electricity Act 2017 (“**EA**”) hereby grants to Energy Fiji Limited (“**Licensee**”) an exclusive licence (“**Licence**”) to engage in the retail supply of electricity subject to the Conditions of this Licence, the EA, the FCCCA, and any regulations, orders and directions made or issued in accordance with the EA, FCCCA and the Laws of Fiji.

## 1 DEFINITIONS AND INTERPRETATION

1.1 In this Licence, unless the context otherwise requires:

“**Affiliate**” means, in relation to the Licensee, any entity that the Licensee directly or indirectly Controls, is Controlled by, or is under common Control with another legal person;

“**Auditors**” means the Licensee’s auditors holding office in accordance with the requirements of the Companies Act 2015;

“**Authorised Area of Supply**” means the area designated as such in Schedule 1, as appended to this Licence;

“**Authorised Premises**” means, subject to any variation of this Licence pursuant to section 9(2) of the EA, any Premises located in the Authorised Area of Supply;

“**Bulk Generation**” means the generation of electricity using a system with an installed capacity at or above 1 MW, or at or above the capacity prescribed by Regulations;

“**Bulk Generation Business**” means the business of the Bulk Generation Licensee in or ancillary to Bulk Generation, but does not include any other business of the Bulk Generation Licensee;

“**Bulk Generation Licence**” means a licence granted by the Regulator under the EA in respect of Bulk Generation in Fiji;

“**Bulk Generation Licensee**” means any person that is granted a Bulk Generation Licence by the Regulator;

“**Business Day**” means a day other than a Saturday, Sunday or public holiday in Fiji;

“**Change of Control**” means, in relation to the Licensee, that the person who Controls the Licensee from time to time, stops having Control;

“**Commencement Date**” means the date on which this Licence is executed by the Regulator;

“**Condition**” means a term or condition of this Licence including the transitional conditions as set out in section 62 of the EA;

**“Control”** means, in relation to a company by a person:

- (a) the person determines the composition of the board of directors of the company;
- (b) the board of directors of the company is accustomed to act in accordance with the instructions, directions or wishes of the person; or
- (c) the person holds or owns (alone or with its associates or related bodies corporate):
  - (i) the majority of the issued shares of the company;
  - (ii) the majority of the issued shares of the ultimate holding company of the company; or
  - (iii) the majority of any securities or other rights granted by the company entitling holders to distributions based on the profits, earnings or net liquidation proceeds of the company,

and **“Controls”** and **“Controlled”** are construed accordingly;

**“Customer”** means unless expressly stated otherwise, Domestic Customers and Non-Domestic Customers;

**“Deemed Contract”** means, as between the Licensee and a Customer, a contract deemed to have been made, on such terms as agreed between the parties;

**“Disconnect”** in relation to the supply of electricity only, means to stop that supply to a Domestic Premises and related expressions are construed accordingly;

**“Distribution Business”** means the business of the TD Licensee in or ancillary to the transport of electricity through the TD Licensee’s Distribution System and includes: (i) any business in providing connections to the TD Licensee’s Distribution System; (ii) operations; (iii) management; and (iv) investment, but does not include any other business of the TD Licensee.

**“Disposal”** includes any sale, gift, lease, licence, mortgage, charge or the grant of any Encumbrance or any other disposition to a third party and **“Dispose”** is construed accordingly;

**“Dispute”** has the meaning provided in Condition 30;

**“Domestic Customer”** means a customer supplied or requiring to be supplied with electricity at a Domestic Premises but excludes such customer in so far as the customer is supplied or requires to be supplied at any Premises other than a Domestic Premises;

**“Domestic Premises”** means any premises at which a supply of electricity is taken wholly or mainly for a domestic purpose except where that premises is a Non-Domestic Premises;

**“Domestic Supply Contract”** means a contract for the supply of electricity to a Domestic Premises;

**“Encumbrance”** means an interest or power:

- (a) reserved in or over an interest in any asset, including any retention of title; or
- (b) created or otherwise arising in or over any interest in any asset under a security agreement, bill of sale, mortgage, charge, lien, pledge, trust or power,

by way of, or having similar commercial effect to, security for the payment of a debt, any other monetary obligation or the performance of any other obligation, and includes, but is not limited to, any agreement to grant or create any of the above;

**“Environmental Law”** means those Laws, in force from time to time, whose purpose is the protection of the environment, including the protection of human health, flora, fauna and the eco-systems on which they depend, and for the avoidance of doubt, includes all relevant legislation relating to the assessment of environmental impact and the protection of air, land and water and including without limitation the Environment Management Act 2005, Endangered and Protected Species Act 2002 and the Ozone Depleting Substances Act 1998;

**“Event of Force Majeure”** has the meaning given to that term in Condition 29.1.

**“Fiji”** means the Republic of Fiji;

**“Government”** means the Government of Fiji;

**“Grid Code”** means the Grid Code 2014 developed by the TD Licensee (with the approval of the Regulator) pursuant to the terms of the TD Licence and any subsequent successor code or variation to such code from time to time in force;

**“Historic Consumption Data”** means:

- (a) except where a Domestic Customer has held its Domestic Supply Contract for less than 12 months, the quantity of electricity supplied to the Domestic Customer’s Domestic Premises during the previous 12 months; or
- (b) where the Domestic Customer has held its Domestic Contract for less than 12 months, the quantity of electricity supplied to the Domestic Customer’s Domestic Premises during the duration of the Domestic Contract;

**“Industry Code”** means the Grid Code, Public Electricity Supply Code (Schedule 3 to the EA) and all related codes used in regard to this Licence and those derived from the AS/NZ Standards;

**“Information”** means any documents, records, accounts, estimates, returns or reports (whether or not prepared specifically at the request of the Regulator) of any description and in any format specified by the Regulator;

**“Insolvency Event”** means, in relation to an entity:

- (a) the entity is unable to pay its debts as and when they fall due or has stopped or suspended, or threatened to stop or suspend, payment of all or a class of its debts;
- (b) the entity goes, or proposes to go, into liquidation;
- (c) an order is made or an effective resolution is passed for the winding up or dissolution without winding up (otherwise than for the purposes of reconstruction or amalgamation) of the entity;
- (d) a receiver, receiver and manager, judicial manager, liquidator, administrator or like official is appointed, or threatened or expected to be appointed, over the whole or a substantial part of the undertaking or property of the entity;
- (e) the holder of an Encumbrance takes possession of the whole or substantial part of the undertaking or property of the entity;
- (f) a writ of execution is issued against the entity or any of the entity's assets;
- (g) the entity proposes or takes any steps to implement a scheme or arrangement or other compromise with its creditors or any class of them; or
- (h) the entity is declared or taken under the applicable Law to be insolvent or the entity's board of directors resolve that it is, or is likely to become insolvent;

**“Law”** means the laws of Fiji;

**“Minister”** means the Minister responsible for administering the EA from time to time;

**“Modification”** includes any addition, omission, amendment and substitution of this Licence;

**“Non-Domestic Customer”** means a customer supplied or requiring to be supplied with electricity at a Non-Domestic Premises but excludes such customer in so far as the Non-Domestic Customer is supplied or requires to be supplied at any Premises other than a Domestic Premises;

**“Non-Domestic Premises”** means, unless the context otherwise requires, a premises, at which a supply of electricity is taken and includes:

- (a) a premises where:
  - (i) the person who has entered into a contract with the Licensee for the supply of electricity to the premises is a person who has entered or will enter into an agreement with any other person for the provision of a residential or other accommodation service at the premises; and
  - (ii) the terms of the agreement referred to in subparagraph (i) above are commercial in nature and include a charge for the supply of electricity to the premises (whether such charge is express or implied); and

(b) any other premises that the Regulator determines is to be treated as a Non-Domestic Premises;

**"Non-Half-Hourly Meter"** means an electricity meter other than one which is configured to record the quantity of electricity (calculated in kWh) supplied to a Premises during each half-hour period of supply;

**"notice"** means (unless otherwise specified) notice given in accordance with Condition 32;

**"Pensionable Age"** means, in relation to any person, the age prescribed in the Fiji National Provident Fund Regulations 2014 for the purpose of paragraph (a) of the definition of "entitlement event" in section 4(1) of the Fiji National Provident Fund Act 2011;

**"Premises"** means Domestic Premises and Non-Domestic Premises;

**"Prepayment Meter"** includes any electricity meter operating in a mode which requires a Customer to pay charges in advance, and references to the installation or removal of a Prepayment Meter includes the switching of any electricity meter to or from such a mode;

**"Public Electricity Supply Code"** means the public electricity supply code as set out in Schedule 3 to the EA, as amended from time to time;

**"Regulations"** means regulations prescribed by the Minister under the EA from time to time;

**"Regulator"** means the Fijian Competition and Consumer Commission (or any subsequent entity that performs the role of regulator of the Fijian electricity industry under the EA);

**"Relevant Asset"** means any asset which is necessary to enable the Licensee to comply with its obligations under the EA, the FCCCA and this Licence, including any legal or equitable interest in land;

**"Representative"** in relation to the Licensee, means any person directly or indirectly authorised to represent the Licensee in its dealings with Customers;

**"Resolution Institute"** means the Resolution Institute ACN 008 651 232 and its administrators, successors, assigns and substitutes;

**"Schedule"** means a schedule to this Licence;

**"Security Deposit"** means a deposit of money as security for the payment of charges for the supply of electricity;

**"Special Agreement"** means any special agreement entered into between the Licensee and a Customer pursuant to section 22 of the EA;

**"Supply Business"** means the business of the Licensee to supply electricity to any premises as specified or described in this Licence;



**“Supply Contract”** means a contract that complies with the requirements set out in Conditions 16.4 and 16.5;

**“Tariffs”** means the tariffs and rates which relate to the supply of electricity for the different areas, customer types, cases and circumstances set by the Regulator, as fixed and published on its website from time to time;

**“TD Licensee”** means a person that is granted a Transmission and Distribution Licence (**“TD Licence”**) by the Regulator pursuant to the EA from time to time;

**“Theft of Electricity”** means the circumstances described in section 52(2) of the EA;

**“Transmission and Distribution Business”** means the Transmission Business and the Distribution Business of the TD Licensee taken together;

**“Transmission Business”** means the business of the TD Licensee in or ancillary to the planning and development and the construction and maintenance of the Licensee's Transmission System, including providing connections to the TD Licensee's Transmission System but does not include any other business of the TD Licensee;

1.2 For the purposes of interpreting this Licence:

- (a) unless a different definition is provided in this Licence, words or expressions have the meaning assigned to them in the EA and the FCCCA irrespective of whether the term is capitalised;
- (b) where there is any conflict between the provisions of this Licence and the EA or FCCCA, the provisions of the EA or FCCCA, as the case may be, prevail. For the avoidance of doubt the provisions of the EA take precedence over the provisions of the FCCCA pursuant to section 3(4) of the FCCCA;
- (c) unless the context otherwise requires, any reference in the Conditions of this Licence to an Industry Code, an agreement, or a statement is a reference to that code, agreement, or statement as modified, supplemented, transferred, novated, or replaced from time to time and any reference to a statute or subordinate legislation is a reference to that statute or subordinate legislation as amended or re-enacted from time to time;
- (d) references to any Law or statutory instrument include any modification, re-enactment or legislative provisions substituted for the same;
- (e) references to Conditions, Schedules and Annexes are to Conditions, Schedules and Annexes to this Licence, as modified from time to time in accordance with this Licence and any applicable Law;
- (f) a document referred to in this Licence is incorporated into and forms part of this Licence and a reference to a document is to the document as modified from time to time;
- (g) headings and titles used in this Licence are for reference only and do not affect its interpretation or construction;
- (h) use of the words “include” or “including” is to be construed as being without limitation;

- (i) words importing the singular include the plural and vice versa, and words importing the whole are to be treated as including a reference to any part unless explicitly limited; and
- (j) unless the contrary intention appears, words importing the masculine gender include the feminine.

## **2 SCOPE OF THE LICENCE**

- 2.1 This Licence grants the Licensee the right to engage in the supply of electricity to an Authorised Premises located in the Authorised Area of Supply, including the right to engage in any other activities which directly support, and which are necessary in relation to its right to engage in the supply of electricity within Fiji.
- 2.2 This Licence does not grant the Licensee the right to engage in any other activities without first obtaining the approval of the Regulator or any applicable authority in respect of such additional activities.
- 2.3 Nothing in this Licence relieves the Licensee of its obligations to comply with any other requirement imposed by a provision of Law or practice to obtain any additional consents, permissions, authorisations, licences or permits as may be necessary to exercise the Licensee's right to discharge its rights and obligations under this Licence.

## **3 GRANT AND DURATION OF THE LICENCE**

- 3.1 This Licence is valid and effective from the Commencement Date and remains in effect until the earlier of:
  - (a) 40 years or such period as otherwise agreed with the Regulator from the Commencement Date;
  - (b) the date on which this Licence is surrendered in accordance with Condition 14;
  - (c) the date on which this Licence is revoked pursuant to the EA and in accordance with the terms of this Licence; or
  - (d) the date on which this Licence is revoked due to an Insolvency Event affecting the Licensee.
- 3.2 Provided that the Licensee is not otherwise in material breach of this Licence, the Licensee may request an extension of this Licence by providing the Regulator with a written request no earlier than 180 Business Days prior to the end date of this Licence and no later than 60 Business Days prior to the end date of this Licence pursuant to Condition 3.1. Such extension request may be granted or denied by the Regulator acting in its sole discretion and such extension will be on such terms as agreed in writing between the Regulator and the Licensee.

## **4 MODIFICATION OF LICENCE**

This Licence may be modified:

- (a) with the mutual consent of the Licensee and the Regulator;

- (b) by the Regulator in accordance with section 15 of the FCCCA and section 13 of the EA;
- (c) by the Regulator following any enforcement proceedings initiated pursuant to section 131 of the FCCCA, provided that such Modifications are reasonably adapted to address the relevant conduct to which such enforcement proceedings relate;
- (d) by the Regulator following any Change of Control of the Licensee; and
- (e) by the Regulator and/or the Minister as prescribed by any Regulations or applicable Law from time to time in force.

## **5 CONTINUING EFFECT**

- 5.1 Anything done under or because of a Condition of this Licence, which is in effect before that Condition is modified, has continuing effect for so long as it is permitted or required by or under the modified Condition.
- 5.2 Without prejudice to the generality of Condition 5.1, every direction, consent, determination, designation, approval, decision or other instrument given or made by the Regulator in relation to this Licence, which is in effect before that Condition is modified, has continuing effect for so long as it is permitted or required by or under the modified Condition.

## **6 PERFORMANCE OF OBLIGATIONS**

Where any obligation in this Licence is required to be performed by a specified date or within a specified period and the Licensee has failed to do so, the obligation will continue to be binding and enforceable after such specified period has passed without prejudice to the Regulator's rights and remedies against the Licensee in relation to the Licensee's failure to comply with the specified timeframe.

## **7 FEES, CONTRIBUTIONS AND PENALTIES**

- 7.1 The Licensee must pay to the Regulator such fees and other sums as may be prescribed pursuant to the FCCCA, the EA and any other applicable Law and this Licence, including the Regulator's fees.
- 7.2 The Regulator must give written notice to the Licensee when any payments are due pursuant to Condition 7.1 and the Licensee has 60 days to pay the Regulator from the date the written notice is issued.
- 7.3 The Licensee must pay to the Regulator on demand interest on any amount which is due and payable under this Licence or the EA (including on unpaid interest under this Condition 7.3) but unpaid:
  - (a) from and including the due date, up to but excluding the date of actual payment; and
  - (b) at 10% per annum.

7.4 The Licensee is liable in accordance with the EA for failure to pay any fees or other sums pursuant to this Condition 7.

## **8 NON-DISCRIMINATION REGARDING SUPPLY OF ELECTRICITY**

The Licensee must offer the supply of electricity to Customers on a non-discriminatory basis.

## **9 CHARGES AND SECURITY FOR ELECTRICITY SUPPLY**

9.1 Without prejudice to any Special Agreement and pursuant to section 18 of the EA, the Licensee must charge Customers for the supply of electricity in accordance with the applicable Tariffs relating to the period during which the supply of electricity was provided.

9.2 The Licensee is entitled to recover expenditure from Customers related to the supply of electricity only as permitted under:

- (a) section 19 of the EA, and/or any regulations prescribed under that section;
- (b) the Public Electricity Supply Code;
- (c) any direction of the Regulator; and
- (d) any Special Agreement.

## **10 COMPLIANCE**

10.1 The Licensee must comply with:

- (a) the EA;
- (b) the FCCCA;
- (c) any Regulations;
- (d) the terms of this Licence, including any Schedules to this Licence;
- (e) the Industry Codes (in so far as these are applicable to the Licensee);
- (f) the Public Electricity Supply Code (in so far as applicable to the Licensee);
- (g) the Grid Code (in so far as applicable to the Licensee);
- (h) the terms of any associated licences, authorisations and permits issued to the Licensee; and
- (i) any other applicable Law, enactment, determination, regulation or order in effect in Fiji to which the Licensee is subject,

and the Licensee must notify the Regulator promptly and without undue delay upon becoming aware of a breach and/or anticipatory breach of any of paragraphs (a) to (i) above.

- 10.2 Where there is an irreconcilable conflict between any of Conditions 10.1(a) to 10.1(i), the following order of precedence applies: the EA, the FCCCA, any other Acts of Parliament, any Regulations, any determination made by the Regulator, this Licence and then any relevant Industry Codes.

**Power to issue direction to relieve certain Industry Code obligations**

- 10.3 The Regulator may from time to time after consulting with the Licensee and any other person or body likely to be affected and after having regard to any guidance issued in accordance with Condition 10.4, give a direction to the Licensee relieving it of its obligations (in whole or in part) to comply with any Industry Code.
- 10.4 The Regulator may issue, and may from time to time revise, guidance regarding the manner in which it will exercise its powers under Condition 10.3.
- 10.5 The guidance issued in accordance with Condition 10.4 may, in particular, set out:
- (a) the process for requesting the Regulator to grant a direction under Condition 10.3;
  - (b) the type of Information that is likely to be required by the Regulator as part of that process; and
  - (c) the criteria the Regulator must have regard to in considering whether and to what extent to exercise its power to give a direction under Condition 10.3.

**11 MATTERS RELATING TO THEFT OF ELECTRICITY**

- 11.1 The objective of this Licence Condition ("**Objective**") is to ensure that:
- (a) the Licensee and any Representative where necessary may:
    - (i) investigate suspected Theft of Electricity;
    - (ii) detect Theft of Electricity (and where it has reasonable grounds to suspect Theft of Electricity);
    - (iii) prevent Theft of Electricity once detected; and
    - (iv) prevent Theft of Electricity by other means such as deterrence and the security of the supply in respect of any Premises supplied by the Licensee; and
  - (b) when taking the steps set out in Condition 11.1(a), the Licensee and any Representative must behave and act towards Customers in a manner which is fair, transparent, not misleading, appropriate and professional.
- 11.2 The Licensee must take (and ensure that any Representative takes) all reasonable steps:
- (a) to secure the achievement of the Objective; and
  - (b) to avoid doing anything which jeopardises its ability to achieve the Objective.

### **Requirement to detect, prevent and investigate Theft of Electricity**

- 11.3 The Licensee must prepare, comply with and maintain a set of procedures in order to give effect to the Objective (“**Theft Arrangement**”).
- 11.4 The Licensee:
- (a) must take such steps as are necessary and within its reasonable control; and
  - (b) must not take any unreasonable steps to prevent or delay,
- to ensure that the Theft Arrangement is implemented by such a date as the Regulator may direct.
- 11.5 The Licensee must take all reasonable steps to secure and implement changes required by the Theft Arrangement and its systems, procedures and processes which are necessary to give full, timely and practical effect to the Theft Arrangement.
- 11.6 The Licensee must take all reasonable steps to cooperate with other licence holders where necessary, to facilitate the achievement of the Theft Arrangement.

### **Standards for Theft of Electricity investigations**

- 11.7 The Licensee must ensure (and procure that any Representative ensures) that the following standards are met when it is taking any of the steps referred to in Conditions 11.1, 11.2, and 11.3:
- (a) the Licensee must take (and procure that any Representative takes) all reasonable steps to identify whether:
    - (i) the Customer and/or the occupant of a Premises is of Pensionable Age and/or disabled and/or chronically sick; and/or
    - (ii) a Customer at the Premises will have difficulty in paying all or part of the charges for the supply of electricity resulting from Theft of Electricity;
  - (b) the Licensee must take into account (and procure that any Representative takes into account) the Customer's ability to pay all or part of the charges for the supply of electricity resulting from Theft of Electricity when calculating instalments, giving due consideration to:
    - (i) relevant Information provided by third parties, where it is available to the Licensee; and
    - (ii) where instalments will be paid using a Prepayment Meter, the value of all of the charges that are to be covered through that meter;
  - (c) where the Licensee or any Representative has identified persons of a category described in Condition 11.7(a), the Licensee or any Representative must before seeking to Disconnect such Premises, as a minimum offer the Customer the ability to pay those charges for the supply of electricity by using a Prepayment Meter, where it is safe and reasonably practicable in all the circumstances of each individual case for the Customer to do so;

- (d) the Licensee must have (and procure that any Representative has) sufficient evidence to establish (on the balance of probabilities) the statutory disconnection power before stopping the supply of electricity to such Domestic Premises on grounds of Theft of Electricity;
- (e) where Theft of Electricity has been established, the Licensee must comply with the relevant requirements of any applicable Law;
- (f) the Licensee must have (and procure that any Representative has) sufficient evidence to establish (on the balance of probabilities) that Theft of Electricity has occurred as a result of a Customer's intentional act or by culpable negligence before requiring payment of all or part of the charges for the supply of electricity relating to that Theft of Electricity; and
- (g) the Licensee must provide (and procure that any Representative provides) in plain and intelligible language, clear, timely and accurate Information and advice to the Customer about:
  - (i) the basis of any assessment made by the Licensee (or its Representative) that Theft of Electricity occurred;
  - (ii) the basis for the calculation of any charges for the supply of electricity associated with the Theft of Electricity made to the Customer;
  - (iii) what steps the Customer should take if they wish to dispute that Theft of Electricity occurred; and
  - (iv) the steps a Customer may take to reinstate supply if the Licensee (or its Representative) has exercised any statutory disconnection power.

11.8 The Licensee must provide to the Regulator, in such manner and at such times as the Regulator may reasonably require, such Information as the Regulator may require or deem necessary or appropriate to enable the Regulator to monitor the Licensee's compliance with this Condition.

11.9 The Licensee is not required to comply with Condition 11.8 if it could not be compelled to produce or give the Information in evidence in civil proceedings before a court.

## **12 ARRANGEMENTS FOR SITE ACCESS**

12.1 The Licensee must take all reasonable steps to ensure that each Representative who visits a Customer's Premises on the Licensee's behalf:

- (a) possesses the skills necessary to perform the required function;
- (b) can be readily identified as a Representative of the Licensee by a member of the public;
- (c) uses any password that the Licensee has agreed with the Customer (if applicable);
- (d) is a fit and proper person to visit and enter the Customer's Premises; and

- (e) is able to inform the Customer, on request, of a contact point for any help and advice that the Customer may require in relation to the supply of electricity.

12.2 The Licensee must:

- (a) prepare a statement that sets out, in plain and intelligible language, its arrangements for complying with its obligations under Condition 12.1;
- (b) publish that statement on and make it readily accessible from its website (if it has one); and
- (c) give a copy of the statement on request and free of charge to any person.

**13 COMPLIANCE ORDER, SUSPENSION AND REVOCATION**

**Failure of Licensee to meet obligations**

13.1 The Licensee must participate in good faith during the procedural requirements as prescribed in section 26 of the EA. Upon finding that the Licensee has contravened this Licence, the Regulator may, among other things, issue a warning, direct the Licensee to remedy the contravention or make restitution, impose financial penalties in accordance with the EA or the Regulations or modify or suspend this Licence (or any combination of such actions).

13.2 If a Licensee fails to meet the Licensee's obligations under this Licence, any Regulations or the EA or any other applicable Law, the Regulator is entitled to serve upon the Licensee a written notice requiring the Licensee to meet those obligations:

- (a) in relation to this Licence, within 21 days; and
- (b) in relation to the EA, within 60 days,

from the date of the notice or such longer period but in any event not exceeding 90 days as consented to by the Regulator in writing, such consent not to be unreasonably withheld by the Regulator.

13.3 Subject to Condition 19, if the Licensee fails to comply with the requirements of the Regulator's notice issued pursuant to Condition 13.2, the Minister or any agents duly appointed by the Minister may, on the recommendation of the Regulator, for the purpose of ensuring the continuity of electricity supply, enter upon and take possession of any undertakings of the Licensee to operate the undertaking(s) for and on account of the Licensee, and at the risk and expense of the Licensee, remitting the balance, if any of the net income derived from the undertaking(s) to the Licensee.

13.4 For the purposes of Condition 13.3:

- (a) the entry and taking of possession by the Minister must not prejudice the security of any debenture-holder or mortgagee of its right of enforcing such security; and
- (b) the Minister must only restore possession of the undertaking(s) at such time when the Minister, in consultation with the Regulator, is satisfied that the circumstances that led to the Minister's possession of the Licensee's



undertaking(s) no longer exist or will no longer hinder the proper functioning of the Licensee's undertaking(s) and that the Licensee has satisfied its obligations under this Licence, the EA, or any other applicable Law.

- 13.5 The application of Condition 13.2 or 13.3 must not prejudice any claims which any Customer or other person may have against the Licensee arising from the Licensee's failure to fulfil its obligations under this Licence.
- 13.6 If the Licensee obstructs or causes obstruction to the Minister (or any person authorised by the Minister) in the execution of the Minister's rights under this Condition 13, the Licensee commits an offence and is liable on conviction to a fine prescribed by Regulations, for each day or part thereof during which the offence continues.

#### **Suspension, Modification or revocation of Licence**

- 13.7 The Regulator may suspend, modify or revoke this Licence where the Regulator (acting reasonably and taking account of all material considerations) has determined that:
- (a) the Licensee has failed to comply with the requirement of an order issued under section 25 of the EA within the time provided in that order;
  - (b) the Licensee has breached a Condition of this Licence and has failed to remedy the breach within the timeframe specified under Condition 13.2 (as extended in accordance with that Condition);
  - (c) the Regulator is satisfied that the Licensee is either wilfully or negligently not operating in accordance with the Conditions of this Licence, the provisions of the EA or any other applicable Law; or
  - (d) an Insolvency Event occurs in respect of the Licensee.
- 13.8 The Regulator may in its sole discretion lift an ongoing suspension or Modification and re-instate this Licence.
- 13.9 Before taking any action pursuant to Condition 13.7, the Regulator must give the Licensee 15 Business Days' notice to show cause as to why this Licence should not be modified, suspended or revoked, or such longer period as consented to by the Regulator in writing, and such consent must not be unreasonably withheld by the Regulator.
- 13.10 A notice under Condition 13.9 must:
- (a) set out the relevant Condition or section of the EA or any applicable Law to which the breach is related;
  - (b) specify the acts, omissions or other facts which in the reasonable opinion of the Regulator, having considered all the circumstances, constitute the applicable contravention specified in paragraph (a) above, and the reason why the Regulator is of the opinion that any of the circumstances mentioned in Condition 13.7 have occurred or arisen; and

- (c) be served at the principal office of the Licensee and takes effect from the date of service.
- 13.11 Upon being served a notice pursuant to Condition 13.9, the Licensee has 10 Business Days within which to submit a proposed cure plan to remedy the applicable contravention, including the anticipated time period for remedying the breach and any comments and actual or planned steps the Licensee has or will take to implement the cure plan and the Regulator must take into account any representations made by or on behalf of the Licensee.
- 13.12 The Regulator must determine whether to suspend or revoke this Licence and provide written notice of this determination to the Licensee within the later of:
  - (a) 10 Business Days from the Licensee providing the proposed cure plan under Condition 13.11; and
  - (b) 20 Business Days from the provision of the notice under Condition 13.9 from the Regulator to the Licensee.
- 13.13 If a Dispute arises in relation to a determination made by the Regulator under Condition 13.12, the Dispute must be resolved in accordance with Condition 30. In the event a Dispute in relation to a determination is referred to arbitration in accordance with Condition 30.4, such a referral will act as a stay against the suspension or revocation of this Licence.
- 13.14 Subject to Condition 13.13, where the Regulator suspends or revokes this Licence in accordance with this Condition 13, then this Licence is deemed terminated on the 10<sup>th</sup> Business Day after the Regulator provides notice of such suspension or revocation to the Licensee under Condition 13.12 and in such circumstances any existing liabilities incurred by the Licensee before such termination continue until satisfied.
- 13.15 Without prejudice to Condition 13.14, where this Licence is suspended or revoked, the Regulator must, take such action as is necessary to ensure that the supply of electrical energy to consumers is not unduly interrupted as a result of any revocation or suspension of this Licence.
- 13.16 The Licensee will remain liable for any penalties or other liabilities for which the Licensee may have become liable under the EA, any Regulations, this Licence or any other applicable Law prior to the suspension or revocation of this Licences under this Condition 13.
- 13.17 In the event of any revocation of this Licence in accordance with this Condition 13 and/or any surrender of this Licence by the Licensee pursuant to Condition 14, the Licensee must without delay provide all reasonable assistance and take all reasonable steps and co-operate fully with any new electricity supplier to transfer its assets to such new provider as provided for under this Condition 13 or Condition 14 so that there is minimum disruption and so as to prevent or mitigate any inconvenience or risk to the health or safety of Customers and all members of the public (and including in so far as is possible taking all reasonable steps to ensure continuity of supply for each of the Licensee's Customers on terms that are the same or similar as possible to the terms in place between the Licensee and the Customers immediately before any revocation or surrender of this Licence).

### Provision where Regulator suspends or revokes Licence

- 13.18 Where the suspension or revocation of this Licence is likely to interrupt or affect the importation, exportation, generation, transmission, distribution or supply of electricity to Customers, the Minister may, after due consultation with the Regulator and the Licensee:
- (a) declare that the Licensee's undertaking continues; and
  - (b) enter upon and take possession of any undertaking of the Licensee (or appoint a competent person) to operate the undertaking for and on account of the Licensee and at the risk and expense of the Licensee, remitting the balance, if any, of the net income derived from the undertaking to the Licensee.
- 13.19 Where, under Condition 13.18 the Minister declares that an undertaking continues, the Licensee must, within a reasonable time, sell and transfer the undertaking to other persons who have the technical, economic, financial and organisational capabilities to operate the undertaking, provided that the transfer amount is agreed to by the Licensee (being the owner of the undertaking) and the purchasers.
- 13.20 If the Licensee, in its capacity as the legal owner of the undertaking, declines to sell and transfer the undertaking in accordance with the order of the Minister given under Condition 13.19, the Minister may appoint an independent party ("**Valuer**"), at the Licensee's cost to value the undertaking and submit a valuation report to the Minister.
- 13.21 The Minister may, after receiving the report in accordance with Condition 13.20 proceed to sell the undertaking within a period of 180 days through an open tendering system, subject to the reserve price as may be determined by the Valuer.
- 13.22 All proceeds from the sale of the undertaking under Condition 13.21 must be remitted to the Licensee minus any:
- (a) reasonable costs incurred by the Minister or the Minister's authorised representative in effecting the sale; and
  - (b) penalties or other liabilities for which the Licensee became liable under the EA, any Regulations, this Licence or any other applicable Law which are outstanding and payable to the Regulator by the Licensee on the date of completion of the sale of the undertaking under Condition 13.21.
- 13.23 The provisions of Condition 13.22 must not prejudice the rights and interest of any debenture holders or secured creditors of the Licensee.
- 13.24 In the event that after the 180-day period is over, no bidder meets the minimum requirements of the tender, the Minister may appoint a competent person to operate the undertaking until such time as a suitable purchaser is found.
- 13.25 If the Licensee or any other person acting on the authority of the Licensee, without lawful or justifiable cause, obstructs the Minister (or any person authorised by the Minister) in the carrying out of the sale or in operating the undertaking, authorised by this Condition 13, the Licensee commits an offence and is liable on conviction to a fine prescribed by Regulations, for each day or part thereof during which the offence continues.

## Restriction or revocation of Licence

- 13.26 If the Licensee makes an application to the Regulator to restrict the Premises to which it may supply electricity, the Licensee must take all reasonable steps to ensure continuity of supply for each Customer on terms that are the same as or as similar as possible to the terms in place between it and the Customer immediately before the restriction is to have effect.
- 13.27 The Licensee must provide the Regulator with any Information reasonably requested by the Regulator in relation to the Licensee's compliance with Condition 13.26 as soon as reasonably practicable after receiving such request from the Regulator.

## 14 SURRENDER OF LICENCE

- 14.1 The Licensee may surrender this Licence if the Regulator gives its prior written consent to such surrender by the Licensee. The Licensee must submit a request to surrender this Licence no less than 180 days, or such lesser period as the Regulator may allow, in advance of the date on which the Licensee proposes to surrender this Licence.
- 14.2 If the Regulator agrees to the surrender of this Licence, the Licensee must comply with the procedure set out in this Condition 14.
- 14.3 Where the surrender of this Licence is likely to interrupt or affect the importation, exportation, generation, transmission, distribution or supply of electricity to consumers, the Minister may, after due consultation with the Regulator and the Licensee, declare that the Licensee's undertaking continues.
- 14.4 Where, under Condition 14.3 the Minister declares that an undertaking continues, the Licensee must, within a reasonable time, sell and transfer the undertaking to other persons who have the technical, economic, financial and organisational capabilities to operate the undertaking, provided that the transfer amount is agreed to by the Licensee (being the owner of the undertaking) and the purchasers.
- 14.5 If the Licensee, in its capacity as the legal owner of the undertaking, declines to sell and transfer the undertaking in a reasonable time, the Minister may appoint an independent party ("**Valuer**"), at the Licensee's cost to value the undertaking and submit a valuation report to the Minister.
- 14.6 The Minister may, after receiving the report in accordance with Condition 14.5, proceed to sell the undertaking within a period of 180 days through an open tendering system, subject to the reserve price as may be determined by the Valuer.
- 14.7 All proceeds of the sale of the undertaking under Condition 14.6 must be remitted to the Licensee minus any:
- (a) reasonable costs incurred by the Minister or the Minister's authorised representative in effecting the sale; and
  - (b) penalties or other liabilities for which the Licensee became liable under the EA, any Regulations, this Licence or any other applicable Law which are outstanding and payable to the Regulator by the Licensee on the date of completion of the sale of the undertaking under Condition 14.6.

- 14.8 The provisions of Condition 14.7 must not prejudice the rights and interest of any debenture holder or secured creditor of the Licensee.
- 14.9 In the event that after the 180-day period is over, no bidder meets the minimum requirements of the tender, the Minister may appoint a competent person to operate the undertaking until such time that a suitable purchaser is found.
- 14.10 If the Licensee or any other person acting on the authority of the Licensee, without lawful or justifiable cause, obstructs the Minister (or any person authorised by the Minister) in the carrying out of the sale or in operating the undertaking, authorised by this Condition 14, the Licensee commits an offence and is liable on conviction to a fine prescribed by Regulations, for each day or part thereof during which the offence continues.

## **15 METERING AND BILLING BASED ON METER READINGS**

### **Non-Half-Hourly Meter**

- 15.1 This Condition 15.1 applies where the Licensee installs or arranges for the installation of an electricity meter or other apparatus on the Customer's side of a Non-Half-Hourly Meter for the purpose of ascertaining or regulating:
- (a) the amount of electricity supplied;
  - (b) the period of supply; or
  - (c) any other quantity or time connected to the supply.
- 15.2 If Condition 15.1 applies, the power consumed by the electricity meter or other apparatus described in that Condition must not exceed [10] watts when added to the power consumed by any other electricity meter or apparatus installed by or on behalf of the Licensee in a similar position or for a similar purpose in relation to the Customer, except if the Customer otherwise agrees.

### **Services for Prepayment Meters using tokens**

- 15.3 This Condition 15.3 applies where the Licensee supplies or offers to supply a system of services (for this Condition only, "**Prepayment Meter services**") within its supply services area for Prepayment Meters operated by the use of tokens.
- 15.4 If Condition 15.3 applies, when providing or arranging to procure Prepayment Meter services for Prepayment Meters operated by the use of tokens, the Licensee must do so in the most efficient and economical manner that it reasonably can, having regard to the alternatives available and all the other circumstances of each individual case.

### **Billing based on meter readings**

- 15.5 If the electricity meter is read by the Licensee, the Licensee must take all reasonable steps to reflect the meter reading in the next bill or statement of account sent to the Customer.

- 15.6 If the Licensee considers that a meter reading provided by a Customer is not reasonably accurate, the Licensee must take all reasonable steps to contact the Customer to obtain a new meter reading from the Customer.
- 15.7 The Licensee must take all reasonable steps to obtain a meter reading (including any meter reading transmitted electronically from a meter to the Licensee or provided by the Customer and accepted by the Licensee) for each of its Customers at least once every 3 months. *This Condition 15.7 does not apply in relation to any Customer with a Prepayment Meter.*
- 15.8 Where a Customer requests an explanation of how its statement of account was derived the Licensee must comply with that request in plain and intelligible language.
- 15.9 The Licensee must not make a specific charge for the provision of a statement of account or for providing access (in an appropriate way) to the consumption data used to calculate such statement of account provided that the Licensee may charge a reasonable fee to a Customer who makes repeated or frivolous requests for this Information.
- 15.10 Where a Customer requests the Licensee to make available Information on the Customer's energy billing and historical consumption either to the Customer or to any other person designated by the Customer, the Licensee must comply with that request to the extent that such Information is available and the Licensee may impose a reasonable administrative fee for making such Information available.

## **16 DUTY TO OFFER AND SUPPLY UNDER SUPPLY CONTRACT**

### **Licensee's obligations**

- 16.1 If the Licensee supplies electricity to any Premises, it must do so under a Supply Contract or a Deemed Contract.
- 16.2 Within a reasonable period of time after receiving a request from a Customer for a supply of electricity to the Customer's Premises, the Licensee must offer to enter into a Supply Contract with that Customer.
- 16.3 If the Customer accepts the terms of the Supply Contract offered under Condition 16.2, the Licensee must supply electricity in accordance with such Supply Contract.
- 16.4 A Supply Contract must:
- (a) be in writing; and
  - (b) include all the terms and conditions for the supply of electricity, including:
    - (i) a term separately identifying the charges for the supply of electricity and the charge for any other good or service to be provided;
    - (ii) any terms required under this Licence; and
    - (iii) any term otherwise required to be included in such contract by the Regulator.

16.5 A Supply Contract with a Customer must include:

- (a) the identity and address of the Licensee;
- (b) the services provided, including any maintenance services provided, and any service quality levels that are to be met;
- (c) if a connection is required, when that connection will take place;
- (d) the means by which up to date Information on all applicable Tariffs and maintenance charges may be obtained;
- (e) any conditions for renewal of the Supply Contract; and
- (f) Information concerning the Customer's rights as regards the means of dispute settlement available to them in the event of a dispute with the Licensee including how dispute resolution procedures can be initiated.

#### **Provision of Supply Contracts**

16.6 If a person requests a copy of any form of Supply Contract that the Licensee may offer under Condition 16.2, the Licensee must send a copy of that form of contract to that person within a reasonable period of time after receiving the request.

#### **Provision of Customer Information**

16.7 Where any Customer requests the Licensee to pass on the Customer's Historic Consumption Data either to the Customer or to any other person, the Licensee must comply with that request as soon as reasonably practicable and the Licensee may impose a reasonable administrative fee.

### **17 PAYMENTS, SECURITY DEPOSITS, DISCONNECTIONS AND FINAL BILLS**

#### **Payment methods under Domestic Supply Contract**

17.1 Where the Licensee offers to supply electricity to a Customer under a Supply Contract under Condition 16, it must offer the Customer a choice of payment methods for paying charges and those methods must include (in each case, for the duration of such contract):

- (a) payment by cash to a person and at a place that is reasonable in all the circumstances, including circumstances where a Customer pays in advance using a Prepayment Meter; and
- (b) payment in advance through a Prepayment Meter.

17.2 The Licensee is not required to comply with Condition 17.1:

- (a) if a Customer asks to use a particular payment method for paying charges and the Licensee offers that method to the Customer; or
- (b) the Regulator provides an exception.

- 17.3 Any difference in terms and conditions as between payment methods for paying charges for the supply of electricity must reflect the costs to the Licensee of the different payment methods.
- 17.4 In this Condition 17 only, "terms" means all terms on which a supply of electricity is offered or provided, including terms as to price, which significantly affect the evaluation of that supply.

#### **Security Deposits**

- 17.5 A Licensee must not require a Customer to pay a Security Deposit in relation to the supply of electricity to the Customer's Domestic Premises if the Premises will be supplied through a Prepayment Meter and it is safe and reasonably practicable in all the circumstances for the Premises to be so supplied.
- 17.6 A Security Deposit must not exceed a reasonable amount and the Licensee must, with respect to the Security Deposit, conform to the requirements of section 20 of the EA.
- 17.7 The amount of any Security Deposit must be stipulated in Regulations or published by the Regulator.

#### **Disconnection for unpaid charges**

- 17.8 The Licensee must not Disconnect a Domestic Premises at which the Domestic Customer has not paid charges unless it has complied with the relevant obligations imposed by the EA, the Public Electricity Supply Code and any Regulations.
- 17.9 The Licensee must have regard to guidance which the Regulator may issue from time to time, following consultation with the Licensee.

#### **Provision of final bill**

- 17.10 Where the responsibility for the supply of electricity to a Customer transfers from the Licensee on termination of the Supply Contract for any reason, the Licensee must take all reasonable steps to send a final statement of account of the Customer's account within 6 weeks of the termination of the Supply Contract.
- 17.11 Where subsequent Information becomes available to correct an error in the final bill or statement of account issued pursuant to Condition 17.10, the Licensee must send a corrected statement of account as soon as reasonably practicable after any subsequent Information becomes available.

### **18 PROVISION OF INFORMATION TO THE REGULATOR**

- 18.1 The Licensee must furnish to the Regulator, in such manner and at such times as the Regulator may reasonably require such Information, as the Regulator may reasonably consider necessary in light of the Conditions of this Licence or as it may reasonably require for the purpose of performing the functions assigned to it by or as required in accordance with the EA and the FCCCA.
- 18.2 Information requested by the Regulator under Condition 18.1 will be provided to the Regulator by the Licensee within 10 Business Days following a written request from



the Regulator, unless otherwise extended and consented to by the Regulator in writing, and such consent must not to be unreasonably withheld by the Regulator.

- 18.3 The Licensee must notify the Regulator as soon as possible upon becoming aware that it is in a position in which it may potentially breach any Condition of this Licence or the EA.
- 18.4 The Licensee must permit the Regulator or persons designated by the Regulator to examine, investigate or audit, or procure such assistance that the Regulator may reasonably require to conduct an examination, investigation or audit of, any aspect of the electricity supply business of the Licensee being regulated under this Licence.
- 18.5 The Licensee must permit the Regulator or persons designated by the Regulator to enter the Licensee's premises and must facilitate reasonable access by them to the premises used by the Licensee to conduct an inspection, examination, investigation or audit of the Licensee.
- 18.6 The Licensee must place a complete copy of this Licence on the Licensee's website or, if no such website exists, in a conspicuous place in the Licensee's principal place of business where it is readily available for inspection free of charge by members of the general public during normal office hours.

## **19 SUPPLY STANDARDS**

- 19.1 The Licensee must comply with any applicable service standards including those standards relating to power reliability and power quality applicable to it, and any other standards set out in any Regulations.
- 19.2 The Licensee must report to the Regulator in accordance with the provisions of any Regulations, but within 30 days following the end of each quarter must provide:
  - (a) details as to which applicable service standards and performance standards it has complied with and which standards it has failed to meet; and
  - (b) details regarding any interventions made to rectify any service deficiencies during the last quarter,

and the Licensee must, if required by the Regulator, publish a summary of the report prepared in accordance with this Condition 19.2 in a manner approved by the Regulator.

- 19.3 If the Licensee fails to meet its required service standards as set forth in this Licence, the Grid Code and/or any Industry Code and/or the Public Electricity Supply Code or any other operational code and/or code of practice, the Licensee must:
  - (a) notify the Regulator of such a failure promptly and without undue delay;
  - (b) discuss with the Regulator the reasons for any non-compliance and the steps that the Licensee intends to take in order to remedy such non-compliance; and
  - (c) implement such steps as agreed with the Regulator to remedy the non-compliance as soon as practicable.

- 19.4 The Regulator must give the Licensee reasonable time to implement the remedial measures notified by the Licensee to the Regulator pursuant to Condition 19.3.
- 19.5 If, after the Licensee has been given a reasonable opportunity by the Regulator to implement the steps it has outlined to the Regulator under Conditions 19.3 and 19.4, the Licensee still fails to meet its required service standards, the Regulator is (taking full account of the materiality of any such failure) entitled to impose a financial penalty on the Licensee in respect of its failure to comply with its required service standards as
- (a) prescribed by Regulations; or
  - (b) if no amount is prescribed by Regulations, as reasonably determined by the Regulator.
- 19.6 The Regulator must review the service standards referred to in this Condition 19 which the Licensee is required to comply with when conducting any Tariff review pursuant to the EA.

## **20 HEALTH AND SAFETY**

The Licensee must comply with all applicable Laws with respect to health and safety and:

- (a) acting jointly and in co-operation with the holders of other licences granted under the EA, consider and discuss matters of mutual concern in respect of the health and safety of persons employed by them; and
- (b) establish and maintain appropriate processes for consultation with representatives of the Licensee's employees in respect of the health and safety of those employees.

## **21 COMPULSORY ACQUISITION OF LAND**

Pursuant to section 30 of the EA, at the request of the Licensee as a last resort following failed negotiations between the Licensee and the land owner to purchase the relevant land at market value, the Government may acquire such land compulsorily and lease the land to the Licensee for the purpose of operating this Licence and the provisions of the State Acquisition of Lands Act 1940 will apply to such acquisition.

## **22 CHANGE OF CONTROL OF LICENSEE**

A Change of Control of the Licensee must not occur, except with the prior written consent of the Regulator, which must not be unreasonably withheld where the assignee or transferee has the technical, economic, financial and organisational capabilities to operate the Supply Business.

## **23 ASSIGNMENT**

This Licence must not be transferred or assigned without the prior consent of the Regulator, which must not be unreasonably withheld. The Licensee must not sublicense, assign, or grant any right, interest or entitlement in this Licence (including an Encumbrance) nor transfer this Licence to any third party, including an Affiliate of

the Licensee, without the prior written consent of the Regulator which must not be unreasonably withheld.

## **24 AVAILABILITY OF RESOURCES**

- 24.1 The Licensee must at all times act in a manner calculated to secure that it has sufficient management resources and financial resources and financial facilities to enable it to:
- (a) carry on its Supply Business; and
  - (b) comply with its obligations under this Licence and the EA.
- 24.2 The Licensee must submit a certificate addressed to the Regulator, approved by a resolution of the board of directors of the Licensee and signed by a director of the Licensee pursuant to that resolution. Such certificate must be submitted on [31 March] each year and must be in one of the following forms:
- (a) "After making enquiries, the directors of the Licensee have a reasonable expectation that the Licensee will have available to it, after taking into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid, sufficient financial resources and financial facilities to enable the Licensee to carry on the Supply Business for a period of 12 months from the date of this certificate.";
  - (b) "After making enquiries, the directors of the Licensee have a reasonable expectation, subject to the terms of this certificate, that the Licensee will have available to it, after taking into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid, sufficient financial resources and financial facilities to enable the Licensee to carry on the Supply Business for a period of 12 months from the date of this certificate. However, they would like to draw attention to the following factors which may cast doubt on the ability of the Licensee to carry on the Transmission and Distribution Business."; or
  - (c) "In the opinion of the directors of the Licensee, the Licensee will not have available to it sufficient financial resources and financial facilities to enable the Licensee to carry on the Supply Business for a period of 12 months from the date of this certificate."
- 24.3 The Licensee must submit to the Regulator together with the certificate referred to in Condition 24.2 a statement of the main factors which the directors of the Licensee have taken into account in giving that certificate.
- 24.4 The Licensee must inform the Regulator in writing immediately if the directors of the Licensee become aware of any circumstances which cause them no longer to have the reasonable expectation expressed in the most recent certificate given under Condition 24.2.
- 24.5 The Licensee must use its best endeavours to obtain and submit to the Regulator with each certificate provided for in Condition 24.2 a report prepared by its Auditors and addressed to the Regulator stating whether or not the Auditors are aware of any inconsistencies between, on the one hand, that certificate and the statement submitted

with it and, on the other hand, any information which they obtained during their audit work.

## **25 ENVIRONMENTAL MATTERS**

- 25.1 The Licensee must, taking due account of any guidance issued to it by the Regulator and applicable environmental standards prevailing in Fiji, within 6 months of the Commencement Date, establish a written policy designed to protect the environment from the effect of those activities which are licensed under this Licence, together with operational objectives and management arrangements to give effect to such policy. The Licensee must review the policy, the operational objectives and management arrangements periodically and otherwise as appropriate.
- 25.2 The Licensee must, upon the establishment of the policy referred to in Condition 25.1 and any material change to such policy, promptly send to the Regulator a copy of the policy, together with a general description of the operational objectives and management arrangements.
- 25.3 The Licensee must act with regard to the policy and operational objectives and use its reasonable endeavours to operate the management arrangements effectively.
- 25.4 The Regulator may at any time modify or vary the terms and conditions contained in this Licence in order to reflect obligations imposed by any international, regional or domestic Environmental Law:
- (a) following good faith consultation with the Licensee about any Modification or variation; and
  - (b) where such Modification or variation is reasonably required in order to comply with the relevant Law.

## **26 DISPOSAL OF RELEVANT ASSETS**

- 26.1 Subject to Condition 26.3, the Licensee must obtain the prior written consent of the Regulator in order to Dispose of any Relevant Asset and/or to create security over any Relevant Asset and/or to relinquish control over any Relevant Asset, and such consent must not be unreasonably withheld.
- 26.2 The Licensee must give the Regulator not less than 2 months' prior written notice of its intention to create any security in, or effect a Disposal of, or relinquish control over any Relevant Asset, together with such reasonable further Information as the Regulator may request relating to such asset or the circumstances of such intended Disposal or relinquishment of control or to the intentions.
- 26.3 Notwithstanding Conditions 26.1 and 26.2, the Licensee may effect a Disposal of or relinquish operational control over any Relevant Asset where:
- (a) the Regulator has issued instructions for the purposes of this Condition 26 containing a general consent (whether or not subject to conditions) to:
    - (i) transactions of a specified description; and/or

- (ii) the Disposal of or relinquishment of operational control over Relevant Asset(s) of a specified description; and
  - (b) the Disposal or relinquishment of operational control in question is effected pursuant to a transaction of a description specified in the instructions or the Relevant Asset in question is of a description so specified and the Disposal or relinquishment of operational control is in accordance with any conditions to which the consent is subject.
- 26.4 For the purpose of this Condition 26, where any security interest has already been created before the date on which this Licence took effect, consent is deemed given to the creation of that security interest.
- 26.5 Notwithstanding Condition 26.1, the Licensee may Dispose of or relinquish operational control over any Relevant Asset specified in any notice given under Condition 26.2 in circumstances where:
- (a) the Regulator confirms in writing that it consents to such Disposal or relinquishment (which consent may be made subject to the acceptance by the Licensee or any third party in favour of whom the Relevant Asset is proposed to be Disposed or operational control is proposed to be relinquished of such conditions as the Regulator may specify); or
  - (b) the Regulator does not inform the Licensee in writing of any objection to such Disposal or relinquishment of control within the notice period referred to in Condition 26.2.

## **27 ACCOUNTING REQUIREMENTS**

- 27.1 The Licensee must keep:
- (a) such accounting records in respect of its Supply Business as are required to be kept in respect of such business by any provisions of Law;
  - (b) such accounting records as are required to be kept in respect of any reasonable instructions issued by the Regulator; and
  - (c) as requested by the Regulator, such accounting records for its Supply Business as will allow the Regulator to accurately assess any virtual gross subsidisation within the vertically integrated business of the Licensee and/or accurately compare pricing and terms where the Licensee is seeking to compete with any bids by a proposed independent power producer.
- 27.2 Annually, the Licensee must, if reasonably required by the Regulator, provide accounting statements identifying on a best estimated basis the details of the amounts of any revenue, cost, asset, liability, reserve or provision, which has been either:
- (a) received by the Licensee from any other business (including on an estimated basis, if the Licensee is also the TD Licensee and/or the Bulk Generation Licensee, between its different licensed units for activities in connection with its Transmission and Distribution Business and Bulk Generation Business);

- (b) charged from the Licensee or to any other business (including on an estimated basis, if the Licensee is also the TD Licensee and/or the Bulk Generation Licensee those charges which would have applied had the licensed units for the Licensee's Transmission and Distribution Business and Bulk Generation Business not been integrated) together with a description of the basis of that charge; or
- (c) determined by apportionment or allocation between the Licensee and any other business (including on an estimated basis, if the Licensee is also the TD Licensee and/or the Bulk Generation Licensee, that which would have applied had the licensed units for the Licensee's Transmission and Distribution Business and Bulk Generation Business not been integrated) together with a description of the basis of the apportionment or allocation.

27.3 The Licensee must not in relation to the accounting statements in respect of a financial year change the bases of charge, apportionment or allocation referred to in Condition 27.2 from those applied in respect of the previous financial year, unless the Regulator has previously issued directions for the purposes of this Condition 27 directing the Licensee to change such bases in a manner set out in the directions or the Regulator gives it prior written approval to the change in such bases. The Licensee must comply with any directions issued for the purposes of this Condition 27.

27.4 If the Licensee changes the bases of charge, apportionment or allocation from those adopted for the immediately preceding financial year, the Licensee must show a reconciliation of the revised and prior year's methodology.

27.5 The Licensee must provide as soon as these are available (to the Regulator) the full audited accounts for each year.

27.6 Without prejudice to any other provision of this Condition 27, the Licensee must, on request, give the Regulator access to the Licensee's accounting records, policies and statements referred to in this Condition 27.

## **28 NO ABUSE OF DOMINANT POSITION**

The Licensee must not engage in conduct in breach of section 66 of the FCCCA.

## **29 FORCE MAJEURE; OTHER EVENTS**

### **Force Majeure**

29.1 If the Licensee is prevented from complying with this Licence by acts of God, war, warlike operations, civil commotion, major strikes or any other significant or protracted industrial action, fire, tempest or any other causes beyond the Licensee's control ("**Event of Force Majeure**"):

- (a) the Licensee must notify the Regulator, as promptly as reasonably practicable, of the obligations of this Licence with which the Licensee cannot comply, the expected duration of the Event of Force Majeure, and the measures the Licensee is taking to overcome the consequences of the Event of Force Majeure; and

- (b) such obligations of this Licence that the Licensee cannot comply with as notified in paragraph (a) above are to be suspended for as long as the Event of Force Majeure continues.

#### **Responsibilities of the Licensee during an Event of Force Majeure**

29.2 If the Licensee becomes aware of any matter likely to constitute an Event of Force Majeure, the Licensee must, within 5 Business Days, give notice of that matter and all relevant particulars to the Regulator.

29.3 Within 10 Business Days after the earlier of:

- (a) the date that the Licensee became aware of the occurrence of an Event of Force Majeure; and
- (b) the date that the Licensee ought reasonably to have become aware of the occurrence of an Event of Force Majeure,

the Licensee must give notice to the Regulator ("**Force Majeure Notice**") of:

- (c) the date of commencement of the Event of Force Majeure;
- (d) the full particulars of the Event of Force Majeure, including the nature and expected duration of the Event of Force Majeure;
- (e) the relevant obligations of the Licensee under this Licence affected by the Event of Force Majeure and the nature, extent and expected duration of the effect of the Event of Force Majeure on the Licensee's ability to perform those obligations; and
- (f) the actions taken or the actions proposed to be taken by the Licensee to remedy, abate, mitigate or minimise the effects of the Event of Force Majeure and to otherwise comply with the requirements of this Condition 29,

together with full supporting documentation.

29.4 If the Licensee does not deliver the Force Majeure Notice in accordance with Condition 29.3, the Licensee is not entitled to any relief from its obligations under this Licence pursuant to this Condition 29.

29.5 Within 5 Business Days after the Licensee delivers the Force Majeure Notice in accordance with Condition 29.3, the Licensee must meet with the Regulator to discuss the actions to be taken by the Licensee to remedy, abate, mitigate or minimise the effects of the Event of Force Majeure.

29.6 The Licensee acknowledges that no meeting under Condition 29.5 or any other obligation under this Condition 29 will in any way lessen or otherwise affect any other obligation of the Licensee in respect of an Event of Force Majeure, whether under this Condition 29, or otherwise according to Law.

29.7 The Licensee must:

- (a) provide regular updates to the Regulator regarding the details referred to in Conditions 29.3(d), 29.3(e) and 29.3(f);
  - (b) use its Reasonable Endeavours to remedy, abate, mitigate or minimise the effects of the Event of Force Majeure as soon as reasonably possible;
  - (c) give written notice to the Regulator when the Event of Force Majeure has terminated or abated to an extent which permits the resumption of performance to occur; and
  - (d) promptly resume performance (and give written notice of such resumption) as soon as reasonably possible after the termination of the Event of Force Majeure and its consequences or after the Event of Force Majeure and its consequences have abated to an extent which permits the resumption of performance to occur.
- 29.8 Within 10 Business Days following the termination of the Event of Force Majeure, the Licensee must submit to the Regulator evidence of the effect of the Event of Force Majeure upon the relevant obligations of the Licensee under this Licence.

#### **Other Events**

- 29.9 In addition to Events of Force Majeure, the Licensee must notify the Regulator of any fact or event likely to affect materially the Licensee's ability to comply with any Condition of this Licence, or an insolvency-related fact or Insolvency Event in respect of the Licensee or any Affiliate, or any preparatory steps being taken that might lead to an Insolvency Event, immediately upon becoming aware of such fact or event.

### **30 DISPUTE RESOLUTION**

- 30.1 A party must not start court proceedings (except proceedings seeking interlocutory relief) in respect of any dispute or difference arising out of or in connection with this Licence ("**Dispute**") unless it has complied with this Condition 30.
- 30.2 A party claiming that a Dispute has arisen must give each party to the Dispute notice setting out details of the Dispute.
- 30.3 Each party to the Dispute ("**Disputant**"), by its respective senior personnel who have the authority to bind the Disputant, must use its best efforts to resolve the Dispute within 5 Business Days after the notice is given under Condition 30.2 (or any longer period agreed by the Disputants) ("**Initial Period**").
- 30.4 If the Disputants cannot resolve the Dispute following the Initial Period, each Disputant agrees that the Dispute must be referred to and finally resolved by arbitration in accordance with the Arbitration Act 1965 and the following:
- (a) each Disputant must appoint one arbitrator, and the two party-appointed arbitrators must designate a third arbitrator;
  - (b) the arbitration will be conducted in accordance with the rules of arbitration of the Resolution Institute.
  - (c) the place of arbitration will be Suva, Fiji; and



- (d) the language to be used in the arbitral proceedings will be English.
- 30.5 Any information or documents disclosed by a Disputant under this Condition 30:
- (a) must be kept confidential; and
  - (b) may not be used except to attempt to resolve the Dispute.
- 30.6 Each Disputant must bear its own costs of complying with this Condition 30 and the Disputants must bear equally the costs of any arbitration process, subject to any direction made by an arbitral tribunal.
- 30.7 A party is not released from any of its obligations under this Licence by reason of a Dispute arising or mediation or arbitration proceedings having been instituted and in particular, performance of obligations under this Licence must not stop during any such proceedings.

### **31 INDEMNIFICATION**

The Licensee must indemnify the Regulator against all actions, claims and demands which may be brought or made by any person in respect of any injury or death of any third party or damage to any property arising from any act or omission of the Licensee permitted or authorised by this Licence. The Regulator will provide the Licensee with notice of any such actions, claims and demands, but the Regulator's failure to do so does not relieve the Licensee of any obligations imposed on the Licensee by this Condition 31.

### **32 NOTICES**

Unless the Regulator determines otherwise, notices to the Licensee under this Licence must be in writing and sent by electronic mail to [\*] at the address communicated to the Regulator from time to time.

### **33 INSURANCE**

- 33.1 Subject to Conditions 33.2 and 33.3, the Licensee must obtain and maintain insurance coverage for:
- (a) physical damage to the Relevant Assets and ancillary equipment and structures;
  - (b) business interruption;
  - (c) public and products liability;
  - (d) any claim in respect of any personal injury to or death of any person employed or engaged by the Licensee; and
  - (e) motor vehicles and equipment.
- 33.2 The Licensee is released from the obligation to maintain insurance under Condition 33.1 if provision for the liability is made through any of the following alternatives, subject to the approval of the Regulator:

- (a) self-insurance which refers to the Licensee's financial capacity to meet any liability to a third party in respect of which the Licensee does not otherwise have insurance; or
- (b) a special Tariff factor in the Tariff methodology through which a factor in the Tariff is applied for a time approved by the Regulator after the disaster until the system is re-built provided the financing and re-building are done under the supervision of the Regulator.

33.3 The Licensee is not required to obtain and maintain insurance if it is not on economic terms. The Licensee must as soon as reasonably possible inform the Regulator if it is of the opinion that such insurance is not on economic terms. The Regulator will consider the Licensee's opinion and if it agrees that the Licensee's opinion is reasonable, confirm to the Licensee that the insurance may be foregone until such time as it may again become available on economic terms.

**SCHEDULE 1**

**Authorised Area of Supply**

Viti Levu

Vanua Levu

Ovalau

Taveuni