

DATED

2 October

2019

**ELECTRICITY TRANSMISSION AND
DISTRIBUTION LICENCE**

granted to **ENERGY FIJI LIMITED** IN RESPECT OF
THE TRANSMISSION AND DISTRIBUTION OF
ELECTRICITY IN THE REPUBLIC OF FIJI

Licensee:
Address:
Licence Number:
Issue Date:

Energy Fiji Limited
EFL Head Office, 2 Marlow Street, Suva, Fiji
TD001/10/2019
2 October 2019



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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 transmit and distribute electricity within the main islands of Fiji 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;

"Ancillary Services" means:

- (a) such ancillary services as the Licensee may be required to have available in association with its Transmission Business; and
- (b) such ancillary services as are identified by the Licensee as being necessary for the performance by it of its statutory or licence duties pursuant to the Grid Code or any other technical code;

"AS/NZ Standards" are those standards applied from time to time and known as the Australian/New Zealand Wiring Rules or any successor rules adopted by the Licensee in accordance with good industry practice;

"Auditors" means the Licensee's auditors holding office in accordance with the requirements of the Companies Act 2015;

"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;

"Central Dispatch" means the process of scheduling and issuing direct instructions for the dispatch of available Generation Units by the Licensee for the Grid System pursuant to the Conditions of this Licence;

“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;

“Connection Charges” means charges made or levied or to be made or levied for the carrying out (whether before or after the date on which this Licence comes into force) of works and provision and installation of electrical plant, electric lines and ancillary meters in constructing or modifying entry and exit points on the Licensee's Grid System together with charges in respect of maintenance and repair of such items in so far as not otherwise recoverable as Use of System Charges and in respect of disconnection and the removal of electrical plant, electric lines and ancillary meters following disconnection;

“Connection Seeker” means a person seeking access or connection to the Licensee's Grid System;

“Connection Holder” means a person who has been granted access or connection to the Licensee's Grid System;

“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” has the meaning provided in the Licensee's Supply Licence;

“Dispatch Instructions” means the operating instructions of the Licensee to Bulk Generation Licensees in respect of their Generation Units and which must comply with the requirements of all Laws and Relevant Industry Codes;

“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 29.1;

“Distributed Generator” means a residential, commercial or industrial Customer of the Licensee who: (i) has a Generating System on its premises that is connected to the Licensee’s Distribution System; (ii) uses such Generating System to off-set some or all of their energy consumption; and (iii) has a Standard Contract with the Licensee in respect of the sale by such Distributed Generator to the Licensee of any excess electricity from its Generating System;

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

“Distribution System” means the system of medium and low voltage electric lines and electrical plant and meters owned by the Licensee and used for conveying electricity without the use of the Transmission System;

“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 28.1;

“Feed-in Tariff” means the pre-determined rate set from time to time in accordance with any relevant feed-in tariffs stipulated and approved by the Regulator at which renewable electricity (or any other electricity) is purchased by the Licensee from Distributed Generators pursuant to the terms of the Standard Contract between the Licensee and Distributed Generators;

“Fiji” means the Republic of Fiji;

“Generation Unit” means any plant or apparatus for the generation of electricity including a facility comprising one or more plant or apparatus;

“Government” means the Government of Fiji;

“Grid Code” means the Grid Code 2014 and any subsequent successor code or variation to such code from time to time in force;

“Grid System” means: (i) the Transmission System; and (ii) the Distribution System of the Licensee;

“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;

“Land” includes any right, easement or other interest in land and any wayleave;

“Law” means the laws of Fiji;

“Licensee's Supply Licence” means the licence granted by the Regulator to the Licensee to engage in the supply of electricity in Fiji;

“Merit Order” means an order for making available Generation Units which order must have as its aim, the promotion of renewable energy and the optimising of the economy, security, stability and reliability of the Grid System of Fiji; and must give due

consideration to incremental power purchase costs, incremental transmission losses, total system technical constraints and other technical and operational considerations; and must otherwise be determined by the Licensee in accordance with this Licence in relation to Generation Units which are connected to its Grid System, and which comply with the requirements of the relevant Industry Codes;

"Minister" means the Minister responsible for administering the EA from time to time;

"Modification" includes any addition, omission, amendment and substitution of this Licence;

"Negotiated Tariff" means such tariff as may have been negotiated on a bilateral basis between the Licensee and its generating counterparty;

"notice" means (unless otherwise specified) notice given in accordance with Condition 31;

"Other Operations" means any operations, other than the Transmission Business and the Distribution Business, which is regulated under the EA;

"Output" means the electricity generated at the generation facilities of any Bulk Generation Licensee and delivered to the Grid System;

"PPA" means a power purchase agreement between the Licensee and a Bulk Generation Licensee in accordance with the provisions of the EA for the sale and purchase of the whole or any part of the available capacity of the generation facilities of such Bulk Generation Licensee and/or the sale and purchase of the whole or any part of the Output by the Licensee from such Bulk Generation Licensee;

"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);

"Related Electricity Supplier" means any of the following:

- (a) a legal entity which is a direct or indirect shareholder in the Licensee or otherwise has a direct or indirect legal or equitable interest in the Licensee;
- (b) a legal entity in which the Licensee is a direct or indirect shareholder or otherwise has a direct or indirect legal or equitable interest;
- (c) a legal entity in which a legal entity referred to in paragraph (a) or (b) is a direct or indirect shareholder or otherwise has a direct or indirect legal or equitable interest; or
- (d) if the Licensee holds a Bulk Generation Licence or a Supply Licence, the Licensee,

that undertakes Other Operations;

consideration to incremental power purchase costs, incremental transmission losses, total system technical constraints and other technical and operational considerations; and must otherwise be determined by the Licensee in accordance with this Licence in relation to Generation Units which are connected to its Grid System, and which comply with the requirements of the relevant Industry Codes;

"Minister" means the Minister responsible for administering the EA from time to time;

"Modification" includes any addition, omission, amendment and substitution of this Licence;

"Negotiated Tariff" means such tariff as may have been negotiated on a bilateral basis between the Licensee and its generating counterparty;

"notice" means (unless otherwise specified) notice given in accordance with Condition 31;

"Other Operations" means any operations, other than the Transmission Business and the Distribution Business, which is regulated under the EA;

"Output" means the electricity generated at the generation facilities of any Bulk Generation Licensee and delivered to the Grid System;

"PPA" means a power purchase agreement between the Licensee and a Bulk Generation Licensee in accordance with the provisions of the EA for the sale and purchase of the whole or any part of the available capacity of the generation facilities of such Bulk Generation Licensee and/or the sale and purchase of the whole or any part of the Output by the Licensee from such Bulk Generation Licensee;

"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);

"Related Electricity Supplier" means any of the following:

- (a) a legal entity which is a direct or indirect shareholder in the Licensee or otherwise has a direct or indirect legal or equitable interest in the Licensee;
- (b) a legal entity in which the Licensee is a direct or indirect shareholder or otherwise has a direct or indirect legal or equitable interest;
- (c) a legal entity in which a legal entity referred to in paragraph (a) or (b) is a direct or indirect shareholder or otherwise has a direct or indirect legal or equitable interest; or
- (d) if the Licensee holds a Bulk Generation Licence or a Supply Licence, the Licensee,

that undertakes Other Operations;

“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 those assets which form part of the Licensee’s Grid System and any legal or equitable interest in Land;

“Representation” includes any objection or other proposal made in writing;

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

“Schedule” means a schedule to this Licence;

“Scheduling System” means a system prepared by the Licensee for, amongst other things, identifying the economic cost of electricity from Generation Units which are available and connected to the Grid System and for the purposes of establishing a Merit Order, which must comply with the requirements of the relevant Industry Codes;

“Self-Supply” has the meaning prescribed in the EA, that is, the generation and supply of electricity within a person’s premises;

“Standard Contract” means a contract between the Licensee and a Distributed Generator for the sale of renewable electricity by the Distributed Generator to the Licensee on the terms set out in such Standard Contract, including the purchase of such renewable electricity by the Licensee at the Feed-In Tariff;

“Standby” means the periodic or intermittent supply or sale of electricity by the Licensee to each of: (i) a Distributed Generator; (ii) a Bulk Generation Licensee; and (iii) a Self-Supply entity, to make good any shortfall between such person’s total supply requirements and that met by its own generation such standby supply or sale being provided at such point on the Licensee’s Grid System as each of (i) to (iii) may request;

“Supply Business” means a business to supply electricity to any premises as specified or described in the relevant licence authorising the business activity;

“Supply Licence” means a licence granted by the Regulator under the EA in respect of the supply of electricity to any premises;

“Supply Licensee” means any person that is granted a Supply Licence by the Regulator pursuant to the EA from time to time;

“Tariff” means either the Feed-in Tariff or the Negotiated Tariff or should the context require both taken together;

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

“Transmission Business” means the business of the 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 Licensee’s Transmission System but does not include any other business of the Licensee;

“Transmission System” means the system of high voltage electric lines and electrical plant and meters owned by the Licensee and used for conveying electricity from a

generating station to a sub-station, from one sub-station to another and from one generating station to another; and

"Use of System Charges" means charges made or levied or to be made or levied for the provision of services as part of the Licensee's Transmission and Distribution Business to any person but does not include Connection Charges.

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 transmit and distribute electricity within Fiji and to purchase electricity from Bulk Generation Licensees and Distributed

Generators, including the right to engage in any other activities which directly support, and which are necessary as regards its right to transmit and distribute electricity.

- 2.2 This Licence does not grant the Licensee (unless such Licensee is otherwise licensed) 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 10;
 - (c) the date on which this Licence is revoked pursuant to the EA and in accordance with the terms of this Licence;
 - (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 THE 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 or the Licensee ceasing to Control the Licensee's Bulk Generation Business; 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 COMPLIANCE

- 8.1 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, regulations 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.

- 8.2 Where there is an irreconcilable conflict between any of Conditions 8.1(a) to 8.1(i), the following order of precedence applies: the EA, the FCCCA, any other Acts of Parliament, any Regulations, any determination by the Regulator, this Licence and then any relevant Industry Codes.

Power to issue direction to relieve certain industry code obligations

- 8.3 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 8.4, give a direction to the Licensee relieving it of its obligations (in whole or in part) to comply with any Industry Code.
- 8.4 The Regulator may issue, and may from time to time revise, guidance regarding the manner in which it will exercise its powers under Condition 8.3.
- 8.5 The guidance issued in accordance with Condition 8.4 may, in particular, set out:
- (a) the process for requesting the Regulator to grant a direction under Condition 8.3;
 - (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 8.3.

9 COMPLIANCE ORDER, SUSPENSION AND REVOCATION

Failure of Licensee to meet obligations

- 9.1 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).

9.2 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, and such consent must not be unreasonably withheld by the Regulator.

9.3 Subject to Condition 12, if the Licensee fails to comply with the requirements of the Regulator's notice issued pursuant to Condition 9.2, 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.

9.4 For the purposes of Condition 9.3:

- (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.

9.5 The application of Condition 9.3 or 9.4 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.

9.6 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 9, 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

9.7 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 9.2 (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.
- 9.8 The Regulator may in its sole discretion lift an ongoing suspension or Modification and re-instate this Licence.
- 9.9 Before taking any action pursuant to Condition 9.7, 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 to be unreasonably withheld by the Regulator.
- 9.10 A notice under Condition 9.9 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 9.7 have occurred or arisen; and
 - (c) be served at the principal office of the Licensee and takes effect from the date of service.
- 9.11 Upon being served a notice pursuant to Condition 9.9, 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.
- 9.12 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 9.11; and
 - (b) 20 Business Days from the provision of the notice under Condition 9.9 from the Regulator to the Licensee.

- 9.13 If a Dispute arises in relation to a determination made by the Regulator under Condition 9.12, the Dispute must be resolved in accordance with Condition 29. In the event a Dispute in relation to a determination is referred to arbitration in accordance with Condition 29.4, such a referral will act as a stay against the suspension or revocation of this Licence.
- 9.14 Subject to Condition 9.13, where the Regulator suspends or revokes this Licence in accordance with this Condition 9, then this Licence is deemed terminated on the 10th Business Day after the Regulator provides notice of such suspension or revocation to the Licensee under Condition 9.12, and in such circumstances any existing liabilities incurred by the Licensee before such termination continue until satisfied.
- 9.15 Without prejudice to Condition 9.14, 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.
- 9.16 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 Licence under this Condition 9.
- 9.17 In the event of any revocation of this Licence in accordance with this Condition 9 and/or any surrender of this Licence by the Licensee pursuant to Condition 10, the Licensee must without delay provide all reasonable assistance, 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 9 or Condition 10 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 Customer).

Provision where Regulator suspends or revokes Licence

- 9.18 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.
- 9.19 Where, under Condition 9.18 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.

- 9.20 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 9.18, 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.
- 9.21 The Minister may, after receiving the report in accordance with Condition 9.20 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.
- 9.22 All proceeds from the sale of the undertaking under Condition 9.21 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 9.21.
- 9.23 The provisions of Condition 9.22 must not prejudice the rights and interest of any debenture holders or secured creditors of the Licensee.
- 9.24 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.
- 9.25 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 9, 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.

10 SURRENDER OF LICENCE

- 10.1 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.
- 10.2 If the Regulator agrees to the surrender of this Licence, the Licensee must comply with the procedure set out in this Condition 10.
- 10.3 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.
- 10.4 Where, under Condition 10.3 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.

- 10.5 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.
- 10.6 The Minister may, after receiving the report in accordance with Condition 10.5, 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.
- 10.7 All proceeds of the sale of the undertaking under Condition 10.6 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 10.6.
- 10.8 The provisions of Condition 10.7 must not prejudice the rights and interest of any debenture holder or secured creditor of the Licensee.
- 10.9 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.
- 10.10 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 10, 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.

11 PROVISION OF INFORMATION TO THE REGULATOR

- 11.1 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.
- 11.2 Information requested by the Regulator under Condition 11.1 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.
- 11.3 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.

- 11.4 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 Transmission and Distribution Business.
- 11.5 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.
- 11.6 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.

12 SERVICE STANDARDS AND PERFORMANCE STANDARDS

- 12.1 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.
- 12.2 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 12.2 in a manner approved by the Regulator.

- 12.3 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 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.
- 12.4 The Regulator must give the Licensee reasonable time to implement the remedial measures notified by the Licensee to the Regulator pursuant to Condition 12.3.
- 12.5 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 12.3 and 12.4, 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.

12.6 The Regulator must review the service standards referred to in this Condition 12 which the Licensee is required to comply with when conducting any tariff review pursuant to the EA.

13 FUNCTIONS OF THE REGULATOR

13.1 If, after the later of:

- (a) 3 months after the Commencement Date; or
- (b) 3 months after the date of a request from any person entitled or claiming to be entitled to generate electricity ("**Complainant**") to the Licensee to become connected or reconnected to the Grid System to purchase electricity,

the Licensee has failed to enter into an agreement to become connected or reconnected to the Grid System to purchase electricity with the Complainant, the Regulator may and on the application of the Complainant or the Licensee, settle any terms of the agreement in dispute between the Licensee and the Complainant in such manner as appears to the Regulator to be reasonable having (in so far as relevant) regard in particular to the consideration that the Complainant should pay to the Licensee:

- (c) in the case of the provision of Standby, such sum as is determined in accordance with this Licence;
- (d) in the case of provision of use of system, the Use of System Charges determined in accordance with this Licence; and/or
- (e) in the case of provision of a connection, or a Modification to an existing connection, to the Licensee's system, the whole or an appropriate proportion in accordance with this Licence.

13.2 The Regulator will issue a decision within 60 days after receipt of a complaint pursuant to Condition 13.1. This 60-day period may be extended by a further 60 days where additional Information is sought by the Regulator and by any further period with the written consent of the Complainant. The Licensee is to be provided with notice of any extension under this Condition 13.2 within one Business Day of such an extension.

13.3 If the Complainant wishes to proceed on the basis of the agreement as settled by the Regulator pursuant to Condition 13.1, the Licensee must enter into and implement such agreement in accordance with its terms.

13.4 If either party to an agreement for connection to the Licensee's Grid System, for use of the Grid System proposes to vary the contractual terms of such agreement in any manner provided for under such agreement, the Regulator may, at the request of the

Licensee or other party to such agreement, settle any dispute relating to such variation in such manner as appears to the Regulator to be reasonable.

14 GRID CODE

- 14.1 The Licensee must in consultation with relevant industry participants and stakeholders liable to be materially affected thereby prepare and at all times have in force and (subject to Condition 14.11) must implement and comply with a Grid Code:
- (a) covering all material technical aspects relating to connections to and the operation and use of the Grid System or (in so far as relevant to the operation and use of the Grid System) the operation of electric lines and electrical plant connected to the Grid System; and
 - (b) which is designed so as in relation to the Licensee's Grid System:
 - (i) to ensure that all Fiji residents are provided with access to a supply of electricity in accordance with the EA;
 - (ii) to provide for optimal supply, transmission, distribution and storage of electricity, a balanced consideration of security of supply, consumer protection and sustainable development in accordance with the provisions of the EA and any other applicable Law; and
 - (iii) to give effect to the objectives of the EA as set out in section 4 of the EA.
- 14.2 The Grid Code in force at the Commencement Date must have been approved by the Regulator. Thereafter the Licensee must (in consultation with relevant industry participants and stakeholders liable to be materially affected thereby) periodically review (including upon the request of the Regulator) the Grid Code and its implementation. Following any such review, the Licensee must send to the Regulator:
- (a) a report on the outcome of such review;
 - (b) any proposed revisions to the Grid Code from time to time as the Licensee (having regard to the outcome of such review) reasonably thinks fit for the achievement of the objectives referred to in Condition 14.1(b); and
 - (c) any written Representations or objections from any relevant industry participants and stakeholders (including any proposals by such persons for revisions to the Grid Code not accepted by the Licensee in the course of the review) arising during the consultation process and subsequently maintained.
- 14.3 Revisions to the Grid Code proposed by the Licensee and sent to the Regulator pursuant to Condition 14.2 require the approval of the Regulator.
- 14.4 Having regard to any written Representations or objections referred to in Condition 14.2(c), and following such further consultation (if any) as the Regulator may consider appropriate, the Regulator may issue directions requiring the Licensee to revise the Grid Code in such manner as may be specified in the directions, and the Licensee must forthwith comply with any such directions.

14.5 The Regulator is entitled, in order to implement the requisite arrangements referred to in Condition 14.1(b), to issue directions to the Licensee requiring the Licensee to revise the Grid Code in such manner and with effect from such date as may be specified in the directions, and the Licensee must comply with any such directions.

14.6 The Grid Code must include:

- (a) connection conditions specifying the technical, design and operational criteria to be complied with by the Licensee and by any person connected or seeking connection with the Grid System;
- (b) a set of operating codes specifying conditions and procedures under or in accordance with which the Licensee must operate the Grid System, under which the Licensee must operate its plant and Distribution System, including procedures and conditions relating to outages of Generation Units and associated power station equipment, in so far as is necessary to protect the security and quality of supply and to ensure the proper and safe operation of the Grid System under both normal and abnormal operating conditions;
- (c) a planning code specifying the requirements for the supply of information by persons connected or seeking connection with the Grid System in order for the Licensee to undertake the planning and development of the Grid System and specifying the technical and design criteria and procedures to be applied by the Licensee in the planning and development of the Grid System and to be complied with by the Licensee and other persons connected or seeking connection with the Grid System in the planning and development of their own plant and systems;
- (d) a set of scheduling and despatch codes specifying conditions and procedures for the scheduling and despatch of Generating Units connected to the Grid System, which may include provisions relating to the management of emissions; and
- (e) a metering code setting out requirements and procedures for metering.

14.7 The Licensee must give or send a copy of the Grid Code to the Regulator and the Minister.

14.8 The Licensee must give or send a copy of the Grid Code to any person requesting the same, provided the requesting person pays to the Licensee its reasonable costs incurred in providing the copy of the Grid Code.

14.9 In preparing, implementing and complying with the Grid Code (including in respect of the scheduling of maintenance of the Grid System and any generation set or associated power station equipment or combination of generation sets or associated power station equipment) the Licensee must not:

- (a) unduly discriminate against or in favour of any person or class or classes of persons;
- (b) unduly prefer the Licensee in the conduct of its Generation and Supply Businesses; or

(c) unduly restrict or prevent competition in generation.

14.10 The Licensee must keep and maintain such records concerning its implementation of and compliance with the Grid Code as are in accordance with such guidelines as the Regulator may from time to time have given to the Licensee and are, in the opinion of the Regulator, sufficient to enable the Regulator to assess whether the Licensee is complying with its obligations under this Condition 14.

14.11 The Regulator may from time to time (following consultation with the Licensee) issue directions relieving the Licensee of its obligations to implement or comply with, or to enforce against any other person any provision of, the Grid Code in respect of such parts of the Licensee's Grid System to such extent as may be specified in the directions.

15 NON-DISCRIMINATION AND RING-FENCING

15.1 The Licensee must negotiate in good faith regarding requests for connection to its Grid System by Connection Seekers. In such negotiations, the Licensee must not unfairly differentiate between Connection Seekers in a way that materially adversely affects the ability of one or more Connection Seekers to compete with other Connection Seekers or Connection Holders, including Connection Seekers or Connection Holders who are Related Electricity Suppliers.

15.2 In offering connection to its Grid System or providing ongoing Ancillary Services in respect of its Grid System to Connection Seekers or Connection Holders:

(a) in like circumstances, deal or offer to deal with a Connection Seeker or Connection Holder who is a Related Electricity Supplier of the Licensee and a Connection Seeker or Connection Holder who is a competitor or potential competitor of the Related Electricity Supplier, on substantially the same price and non-price terms and conditions;

(b) in like circumstances, provide substantially the same quality, reliability and timeliness of service to a Connection Seeker or Connection Holder who is a Related Electricity Supplier and a Connection Seeker or Connection Holder who is a competitor or potential competitor of the Related Electricity Supplier; and

(c) not disclose to a Related Electricity Supplier confidential or commercially sensitive information the Licensee has obtained through its dealings with a competitor or potential competitor of the Related Electricity Supplier, where the disclosure would, or would be likely to, provide an advantage to the Related Electricity Supplier.

15.3 In dealing or offering to deal with a Related Electricity Supplier, the Licensee must treat the Related Electricity Supplier as if it had no connection or affiliation with the Licensee.

16 PROCUREMENT OF NEW GENERATION

16.1 The Licensee must at all times continue to review the generation needs for the system to allow for it to match demand and supply on an ongoing basis.

- 16.2 The Licensee must produce at least every 3 years a detailed development and investment plan and discuss this with the Regulator.
- 16.3 Except in periods where an emergency or urgent response is required the Licensee is obliged to procure new generation from a third party independent power producer where:
- (a) the Licensee can neither match the terms or price of the best tender;
 - (b) the Licensee cannot provide the optimum form of generation; or
 - (c) the Licensee would be in breach of any Law not to accept the third party offer.
- 16.4 Condition 16.3 only applies in circumstances where the Licensee holds a Bulk Generation Licence in addition to this Licence.
- 16.5 If at any stage the Licensee fails to procure generation in accordance with its plans (and it is not making progress in accordance with good industry practice to remedy that failure) then the Regulator is entitled to run the process of selection itself and require the Licensee to conclude all the legal contracting, consents and licences after the winning tender has been selected, subject to the Regulator acting in a reasonable commercial manner and consulting with the Licensee as part of the process of selection.

17 OBLIGATION TO ENTER INTO PPAS

- 17.1 The Licensee must enter into a PPA with any person entitled to generate electricity under the EA (other than, where the Licensee holds a Bulk Generation Licence in addition to this Licence, itself) either on a Feed-in Tariff or Negotiated Tariff.
- 17.2 In producing and entering into each PPA the Licensee must give due regard to the objectives of the EA.
- 17.3 The Licensee does not require the approval of the Regulator to enter into the PPA (subject to the process outlined in Condition 13).
- 17.4 The Licensee must on signing a PPA immediately provide a complete signed copy to the Regulator. The Regulator agrees not to disclose the terms of the PPA to any third party and to keep the terms of the PPA confidential at all times, except where:
- (a) the disclosure is made to the Government;
 - (b) the terms of the PPA are public knowledge (except because of a breach of any obligation of confidence by the Regulator); or
 - (c) the Regulator is required by Law, regulations or an order of a court to disclose the terms of the PPA.

18 OBLIGATION TO ENTER INTO STANDARD CONTRACTS

- 18.1 The Licensee is to promptly enter into any industry contracts that are standard with a licensed Generator in accordance with any applicable Law and relevant regulations.

- 18.2 However, the Licensee is not obliged to enter into any contract if it has good reason to believe the counterparty is not acting in accordance with good industry practice such as would cause any system issue to the Grid System.

19 FEED-IN TARIFF

- 19.1 The Licensee must pay Tariff in accordance with a methodology determined by the Regulator or the Feed-in Tariff or as agreed bilaterally in accordance with the Negotiated Tariff.
- 19.2 The methodology of the Feed-in Tariff referred to in Condition 19.1 is determined in accordance with those principles set out in section 6 of the EA.
- 19.3 The Regulator is entitled to conduct a review of the Feed-In Tariff in accordance with the provisions of the EA and FCCCA.
- 19.4 The Regulator is entitled to conduct a review of the Negotiated Tariff if it believes the Tariff is not in accordance with the objectives set out in the EA or in accordance with Law.

20 CENTRAL DISPATCH AND MERIT ORDER

- 20.1 The Licensee must schedule and issue direct instructions for the dispatch of all available Generation Units of each Bulk Generation Licensee in accordance with the Grid Code.
- 20.2 The Licensee must establish as part of the Grid Code, and must operate, a Merit Order system for Generation Units in Fiji subject to Central Dispatch. The Licensee's Merit Order system must comply with the Grid Code.
- 20.3 The Licensee must provide to the Regulator such Information as the Regulator requests concerning the Licensee's Dispatch Instructions, and/or Scheduling System and/or Merit Order or any aspect of its Operation.

21 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 Transmission and Distribution Business.

22 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.

23 AVAILABILITY OF RESOURCES

- 23.1 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 Transmission and Distribution Business; and
 - (b) comply with its obligations under this Licence and the EA.
- 23.2 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 Transmission and Distribution 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 Transmission and Distribution 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 Transmission and Distribution Business for a period of 12 months from the date of this certificate."
- 23.3 The Licensee must submit to the Regulator together with the certificate referred to in Condition 23.2 a statement of the main factors which the directors of the Licensee have taken into account in giving that certificate.
- 23.4 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 23.2.
- 23.5 The Licensee must use its best endeavours to obtain and submit to the Regulator with each certificate provided for in Condition 23.2 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.

24 ENVIRONMENTAL MATTERS

- 24.1 The Licensee must, taking due account of any guidance issued to it by the Regulator and applicable environmental standards prevailing in Fiji, within 12 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.
- 24.2 The Licensee must, upon the establishment of the policy referred to in Condition 24.1 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.
- 24.3 The Licensee must act with regard to the policy and operational objectives and use its reasonable endeavours to operate the management arrangements effectively.
- 24.4 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.

25 DISPOSAL OF RELEVANT ASSETS

- 25.1 Subject to Condition 25.3, 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.
- 25.2 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.
- 25.3 Notwithstanding Conditions 25.1 and 25.2, 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 25 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.

25.4 For the purpose of this Condition 25, 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.

25.5 Notwithstanding Condition 25.1, the Licensee may Dispose of or relinquish operational control over any Relevant Asset specified in any notice given under Condition 25.2 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 25.2.

26 ACCOUNTING REQUIREMENTS

26.1 The Licensee must keep:

- (a) such accounting records in respect of its Transmission and Distribution 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 Transmission and Distribution 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.

26.2 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 Bulk Generation Licensee and/or the Supply Licensee, between its different licensed units for activities in connection with its Bulk Generation Business and Supply Business);
- (b) charged from the Licensee or to any other business (including on an estimated basis, if the Licensee is also the Bulk Generation Licensee and/or the Supply Licensee those charges which would have applied had the licensed units for

the Licensee's Bulk Generation Business and Supply 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 Bulk Generation and/or the Supply Licensee, that which would have applied had the licensed units for the Licensee's Bulk Generation Business and Supply Business not been integrated) together with a description of the basis of the apportionment or allocation.

- 26.3 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 26.2 from those applied in respect of the previous financial year, unless the Regulator has previously issued directions for the purposes of this Condition 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.
- 26.4 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 prior year's methodology.
- 26.5 The Licensee must provide as soon as these are available (to the Regulator) the full audited accounts for each year.
- 26.6 Without prejudice to any other provision of this Condition 26, the Licensee must, on request, give the Regulator access to the Licensee's accounting records, policies and statements referred to in this Condition 26.

27 NO ABUSE OF DOMINANT POSITION

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

28 FORCE MAJEURE; OTHER EVENTS

Force Majeure

- 28.1 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

- 28.2 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.
- 28.3 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 28,
- together with full supporting documentation.
- 28.4 If the Licensee does not deliver the Force Majeure Notice in accordance with Condition 28.3, the Licensee is not entitled to any relief from its obligations under this Licence pursuant to this Condition 28.
- 28.5 Within 5 Business Days after the Licensee delivers the Force Majeure Notice in accordance with Condition 28.3, 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.
- 28.6 The Licensee acknowledges that no meeting under Condition 28.5 or any other obligation under this Condition 28 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 28, or otherwise according to Law.
- 28.7 The Licensee must:
- (a) provide regular updates to the Regulator regarding the details referred to in Conditions 28.3(d), 28.3(e) and 28.3(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.

28.8 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

28.9 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.

29 DISPUTE RESOLUTION

29.1 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 29.

29.2 A party claiming that a Dispute has arisen must give each party to the Dispute notice setting out details of the Dispute.

29.3 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 29.2 (or any longer period agreed by the Disputants) ("**Initial Period**").

29.4 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.

29.5 Any information or documents disclosed by a Disputant under this Condition 29:

- (a) must be kept confidential; and

(b) may not be used except to attempt to resolve the Dispute.

29.6 Each Disputant must bear its own costs of complying with this Condition 29 and the Disputants must bear equally the costs of any arbitration process, subject to any direction made by an arbitral tribunal.

29.7 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.

30 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 30.

31 NOTICES

Unless the Regulator determines otherwise, notices to the Licensee under this Licence must be in writing and sent by electronic mail to the CEO and the CFO of the Licensee at the address communicated to the Regulator from time to time.

32 INSURANCE

32.1 Subject to Conditions 32.2 and 32.3, 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.

32.2 The Licensee is released from the obligation to maintain insurance under Condition 32.1 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.

32.3 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.