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**THE SECOND ELECTRICITY CONCESSION CONTRACT**

**II**

**The REGULATORY ADDENDUM**

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*The First Electricity Concession Contract came into force on 25<sup>th</sup> July 2008. This Second Electricity Concession Contract which replaces it will come into force on 1<sup>st</sup> September 2015.*

THE BOARD OF DIRECTORS OF THE COMPANY

THE BOARD OF DIRECTORS OF THE COMPANY

THE BOARD OF DIRECTORS OF THE COMPANY

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Effective Date : 1<sup>st</sup> September 2015

**PARTIES to the ADDENDUM**

- 1: **TONGA POWER LIMITED** (*the Concessionaire*)
- 2: **THE ELECTRICITY COMMISSION** (*the Commission*)

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**INASMUCH** as the Parties desire to enter into this Regulatory Addendum following the recent Reset to record (ONE) the terms and conditions upon which the Concessionaire henceforth will Generate, Distribute and Supply electricity to consumers of electricity in the Kingdom of Tonga; and (TWO) other regulatory arrangements entered into by the Parties.

**NOW THEREFORE** the Parties have agreed and do hereby agree as follows, namely :-

**1. DURATION**

Without prejudice to the termination provisions of the Second Concession Contract (Clause 5 and Schedules 1-3 of the Agreement), this Addendum shall remain in full force and effect thereafter unless any of the provisions thereof are amended in writing by the parties hereto under and in terms of the provisions set forth in this Addendum.

**2. GENERAL PROVISIONS**

**Amendments**

2.1 Subject to any other Clause in this Addendum, no amendment to this Addendum will be effective unless it is in writing and signed by a duly authorised representative of each party.

**Governing Law**

2.2 This Addendum is to be governed by and construed in accordance with the laws of the Kingdom of Tonga.

**Severability**

2.3 If any provision of this Addendum is held to be invalid, illegal or unenforceable, the invalidity, illegality or unenforceability of that provision is not to affect the operation, construction or interpretation of any other provision of this

Addendum, with the intent that the invalid, illegal or unenforceable provision is to be treated for all purposes as severed from this Addendum.

**Counterparts**

- 2.4 This Addendum and any amendment to this Addendum may be executed in two or more counterparts (including facsimile copies) each of which will be deemed an original, but all of which together will constitute one and the same instrument. A party may enter into this Addendum by signing any counterpart.

**No Waiver**

- 2.5 A waiver of any provision of this Addendum shall not be effective unless given in writing, and then it shall be effective only to the extent that it is expressly stated to be given. A failure, delay or indulgence by either party in exercising any power or right shall not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right shall not preclude further exercises of that power or right or the exercise of any other power or right.

**Schedules**

- 2.6 The Schedules annexed hereto form part of this Addendum.

**Notices**

- 2.7 (a) Any notice or communication, which a party gives to any other party concerning any thing relating to this Addendum, must be in writing. Notices by one party to the other are to be delivered by hand to the designated address of that party.
- (b) A notice or other communication delivered by hand will be deemed to have been received at the time of delivery. However, if the delivery is not made on a Business Day or is made after 4:00 p.m. on a Business Day, then the notice or other communication will be deemed to have been delivered on the next Business Day.
- (c) A designated address for the purpose of this Addendum is that specifically designated in this Clause, or such other address specifically designated by a party by notice given to the other party to this Addendum. The addresses designated pursuant to this Clause are :

**The Concessionaire**

Tonga Power Limited

Address Power Board Head Office, Hala Taufa'ahau, Nuku'alofa,  
Kingdom of Tonga

Telephone (676) 27.390

Contact Person The Chief Executive

### **The Electricity Commission**

**Address** Commission Head Office, Tu'atakilangi, Nuku'alofa, Kingdom of  
Tonga  
**Telephone** (676) 23.632  
**Attention** The Chief Executive

#### **Remedies**

- 2.8 The rights, powers and remedies provided in this Addendum are cumulative and are not exclusive of any rights, powers of remedies provided by law.

#### **Assignment**

- 2.9 Except only in relation to the Exit Sale Process provided for in the Agreement neither party to this Addendum may assign or otherwise transfer any of its rights or obligations under this Addendum to any third person, without the prior written consent of the other party to this Addendum.

#### **Language of Agreement**

- 2.10 If there is any inconsistency between this English language version of this Addendum and any other version or any translation (into any other language) of this Addendum, this English language version will have precedence. All amendments to and all communications and notices under this Addendum must, in order to be effective, be in English.

#### **Costs**

- 2.11 Unless otherwise stated in this Addendum, each party will bear its own costs and expenses incurred in connection with the negotiation, preparation and implementation of this Addendum.

#### **Further Assurances**

- 2.12 Each party will do all things and execute all documents reasonably required to give effect to the provisions and intent of this Addendum.

#### **Special Circumstances**

- 2.13 On cause shown, the parties hereto by agreement in writing may dispense with any of the provisions of this Addendum.

**Kingdom of Tonga**



- 2.14 The parties hereto recognize the legitimate interest of the Government of the Kingdom of Tonga as political guardians of the general public interest and for that reason undertake to consult said Government in respect of any proposal to amend the provisions of this Addendum; to review or reset the electricity tariff (including any extraordinary review of the tariff); or to review Non-Tariff Charges.

#### **Hedging**

- 2.15 The Concessionaire shall not undertake any hedging activity in respect of the price of fuel used by them to generate electricity without the prior written approval of the Commission. Should they wish to do so they may apply therefor to the Regulator by submitting a detailed proposal therefor.

#### **Power Purchase Agreements**

- 2.16 Within six months of the coming into force of this Regulatory Addendum the Commission after consultation with the Concessionaire and the Kingdom shall propose a Protocol for the review of proposed Power Purchase Agreements and any Protocol agreed to in writing by the Commission, the Concessionaire and the Kingdom shall be deemed to be an integral part of the Regulatory Addendum.

### **3. REVIEW AND RESET ARRANGEMENTS**

#### **Review and Reset**

- 3.1 The Commission shall conduct a review of the matters set out in paragraph 1 of Schedule 10 in accordance with Schedule 11 prior to the expiration of each Regulatory Period (the *Reset*).

#### **Frequency of Reviews**

- 3.2 (a) Subject to Clause 3.2(b), the Regulatory Period shall be the period from 1<sup>st</sup> September 2015 until 1<sup>st</sup> July 2020, and thereafter each subsequent Regulatory Period shall be a period of Five years.
- (b) The Commission shall use its best endeavours to make the Reset Decision on or before the scheduled expiration of the current Regulatory Period. If the Commission does not make or is unable to make the Reset Decision on or before the scheduled expiration of the current Regulatory Period, then the Regulatory Period shall continue until the Reset Decision is made.

- (c) The "Rest Date" shall be the first day of the new Regulatory Period, or the date on which the Reset Decision is made in respect of that new Regulatory Period, whichever is the later.
- (d) The Commission and the Concessionaire may, at any Reset, agree to amend the length of the Regulatory Period.

#### **4. EXTRAORDINARY REVIEW AND ADJUSTMENT**

##### **Extraordinary Tariff Adjustments**

- 4.1 (a) If an Extraordinary Event has occurred, and if either the Concessionaire or Commission considers that that Extraordinary Event may create grounds for an Extraordinary Tariff Adjustment, then, subject to Clause 4.1(b), that party may submit to the other party a notice (Extraordinary Event Notice) requesting an Extraordinary Tariff Adjustment.
- (b) An Extraordinary Event Notice may not be given within (a) six months immediately before a Reset; or (b) within six months after an Extraordinary Tariff Adjustment.
- (c) The provisions of Schedule 8 shall apply if an Extraordinary Event Notice is given in accordance with this Clause 4.

##### **Definition of Extraordinary Event**

4.2 Extraordinary Event means the occurrence of any of the following :

- (a) a material change in the definition of any of the indices used in adjusting the non-fuel component of the Regulated Tariff;
- (b) in any one calendar year, where the difference between actual growth in total kWh of electricity billed and the forecast growth in total kWh of electricity billed for that year as determined at the most recent Reset exceeds three percentage points.
- (c) any Force Majeure Event;
- (d) any discriminatory treatment by the Government of the Kingdom of Tonga or any instrumentality of the Government which materially [i] reduces the revenues of the Concessionaire over any 12 month period or [ii] increases the Cost of Service to the Concessionaire over any 12 month period;
- (e) any change in the tax rate applicable to the Electricity Business of the Concessionaire greater than three percentage points;

- (f) any increase or decrease (or combination of increases or decreases) in an existing fee or charge, or introduction of a new fee or charge, that changes the Regulatory Revenues of the Concessionaire over any 12 month period by in excess of three percentage points;
- (g) any cancellation or postponement of approved CAPEX projects; or any aid funding for such a project becoming available;
- (h) any other event, that materially changes the revenues of the Concessionaire or the non-fuel cost of service over any 12 month period; and
- (i) otherwise as the Commission and the Concessionaire may agree upon in writing.

## **5. SERVICE COVERAGE, TERMS AND CONDITIONS**

### **5.1 Standard Service**

The Concessionaire must provide Standard Service to all Customers, subject to this Addendum.

### **5.2 New connections and reconnections**

Subject to Clauses 5.3 and 5.6, the Concessionaire must offer to provide Standard Service to any person on a Island Group willing, and whom the Concessionaire (acting reasonably) is satisfied is able, to:

- (a)
  - (i) pay a fee approved by the Commission that does not exceed the reasonable costs to the Concessionaire of connection or reconnection (including reconnection after have been disconnected) of that person to the Concessionaire's electricity distribution network (including the reasonable cost of installing any equipment or carrying out any work);
  - (ii) pay, in the case of reconnection, all reasonable debt recovery and/or account management costs relating to that person approved by the Commission;
  - (iii) pay the Regulated Tariff; and
- (b) Comply with the terms and conditions of the Concessionaire's Customer Contract from time to time in force in accordance with the provisions of Schedule 1 to this Addendum.

### **5.3 Right to disconnect**

Nothing in this Clause 5 shall prevent the Concessionaire from:

- (a) Disconnecting any Customer from the Concessionaire's electricity distribution network and ceasing the provision of Standard Service (i) under the provisions of Clause 17 of this Addendum or (ii) in accordance with the terms and conditions of an applicable Customer Contract (including, for the avoidance of doubt, for non-payment or due to the bankruptcy of the Customer); and
- (b) Charging a fee for reconnection after disconnection that does not exceed the reasonable costs of disconnection and reconnection (including any

reasonable debt recovery and/or account management costs relating to that person), provided always that said fee and costs has been approved by the Commission in writing.

**5.4 Concessionaire must offer Regulated Tariff**

Subject to Clause 5.5 and 5.6, the Concessionaire must offer all Customers a tariff for Standard Service that is no more than the Regulated Tariff. For the avoidance of doubt, the Concessionaire may offer, and may charge, Customers a tariff other than the Regulated Tariff for the Supply of electricity (*an Optional Tariff*) as provided for in Clause 5.7.

**5.5 Tariff Structure**

The Tariff Structure for the Regulated Tariff shall be as provided for in this Addendum, and not otherwise except in accordance with Schedule 7 regulating Adjustment to the Tariff Structure.

**5.6 Regulated Tariff**

The Regulated Tariff for each Island Group as from 1<sup>st</sup> September 2015 shall be as set forth in Schedule 6 : and may be adjusted only as set forth in Schedule 7 (Adjustment of Regulated Tariff) or Schedule 8 (Extraordinary Tariff Adjustment).

**5.7 Optional Tariff**

(a) Subject to Clause 5.7(b), the Concessionaire, with the prior written consent of the Commission, may offer:

(i) tariffs for the provision of Standard Service to Customers that are different from, and may exceed, the Regulated Tariff (*an Optional Tariff*);

(ii) additional services in relation to electricity Supplied via the Distribution Network, in addition to Standard Service (*Optional Services*).

(b) The Concessionaire may only offer an *Optional Tariff* and/or *Optional Services* under Clause 5.7 (a) where :

(i) the Customer is informed at the time the Customer is offered the *Optional Tariff* that Standard Service at the Regulated Tariff is also available; and

- (ii) the provision of Standard Service at the Regulated Tariff, and the differences between the Optional Tariff and Regulated Tariff, and the Optional Services and Standard Service, are fully explained to the Customer in a manner that is transparent and easily understood.
- (c) For the avoidance of doubt, the Customer Specific Standards shall apply to the provision of Standard Service or Optional Services.

#### **5.8 Prepay metering and other Customer-Specific Measure**

Where it is reasonably necessary to secure the payment to the Concessionaire of applicable charges for Standard Service, the Concessionaire may require a Customer to agree to a measure specific to that Customer as a condition of provision of Standard Service (a Customer-Specific Measure), including, without limitation, prepay metering, payment of a bond or otherwise as provided for in the Customer Contract, provided that :

- (a) the terms and conditions of the Customer-Specific Measure are reasonable in the circumstances and approved in writing by the Commission; and
- (b) charges for Standard Service provided to that Customer are no greater than the Regulated Tariff or the Optional Tariff (as applicable), except that the Concessionaire, with the prior written consent of the Commission, in addition may charge a further charge that reflects the reasonable cost to the Concessionaire of the Customer-Specific Measure.

#### **5.9 Right to request testing of meter**

- (a) Any Customer Contract must include, and the Concessionaire agrees that any Customer Contract shall be deemed to include, a right for a Customer to request the Concessionaire promptly to check the accuracy of the Customer's electricity meter.
- (b) If the Concessionaire determines that the Customer's electricity meter:
  - (i) Is not measuring the supply of electricity to the Customer to a reasonable degree of accuracy, having regard to reasonable electricity industry standards, then the Concessionaire shall, at the Concessionaire's cost, promptly:

- [A] repair the Customer's electricity meter so that the meter measures the supply of electricity to the Customer to a reasonable degree of accuracy, having regard to reasonable electricity industry standards; or
  - [B] replace the Customer's electricity meter with a meter that measures the supply of electricity to the Customer to a reasonable degree of accuracy, having regard to reasonable electricity industry standards;
- (ii) is measuring the supply of electricity to the Customer to a reasonable degree of accuracy, having regard to reasonable electricity industry standards, then the Concessionaire<sup>2</sup> may charge the Customer a fee to be approved by the Commission reflecting the reasonable cost to the Concessionaire of checking the accuracy of the Customer's electricity meter.

**5.10 Right to request testing of voltage stability**

- (a) Any Customer Contract must include, and the Concessionaire agrees that any Customer Contract shall be deemed to include, a right for a Customer to request the Concessionaire to promptly check the supply of electricity to a Customer's installation for compliance with the voltage stability standard set out in Schedule 2 of this Addendum.
- (b) If the Concessionaire determines that the supply of electricity to a Customer's installation:
  - (i) does not comply with the said voltage stability standard then the Concessionaire shall, at the Concessionaire's cost, promptly take all reasonable steps to comply with the said voltage stability standard in respect of the supply electricity to the Customer's installation;
  - (ii) complies with the said voltage stability standard then the Concessionaire<sup>2</sup> may charge the Customer a fee to be approved by the Commission reflecting the reasonable cost to the Concessionaire of checking the supply of electricity to the Customer's installation.



- (c) The provision of Clause 5.10(b)(i) shall apply only if the voltage instability is attributable to the Concessionaire's network equipment or operations.

## **6. SERVICE STANDARDS AND METERING REPORTING STANDARDS**

### **6.1 Service Standards and Metering Reporting Standards**

Subject to Clause 7, the Concessionaire shall comply with, and shall carry on the Electricity Business in a manner consistent with the Service Standards and Metering Reporting Standards set out in this Addendum. For the avoidance of doubt, this means that for each Performance Measure set out in this Addendum the Concessionaire must use their best endeavours to meet, or perform better than, the corresponding standard.

### **6.2 Penalties**

Where the Commission determines that the Concessionaire has failed to meet the Service Standards and Metering Reporting Standards, according to the procedures set forth in this Addendum, then the Concessionaire must pay a penalty for breach of a Service Standard, to such person, and in such amount, as is provided for in this Addendum. Any such penalty shall be paid by means of a credit applied to the electricity account of the affected customer or customers.

### **6.3 Reporting Service Standards Issues**

The Concessionaire must without delay inform the Commission of any failure by them to meet the required Service Standards and Metering Reporting Standards and may *ex proprio motu* pay the applicable penalty to anyone entitled thereto. Any such penalty shall be paid by means of a credit applied to the electricity account of the affected customer or customers.

## **7. FORCE MAJEURE**

### **7.1 Force Majeure**

Notwithstanding any other provision of this Addendum, non-performance by any party of an obligation under this Addendum shall be excused, without liability for non-performance, during the time and to the extent that such performance of the particular obligation is prevented, wholly or substantially, by a Force Majeure Event. For the avoidance of doubt, the Concessionaire shall continue to perform, and shall not be excused for non-performance of, any obligation that is not prevented, or that part of the obligation that is not prevented, by the Force Majeure Event.

### **7.2 Obligations upon a Force Majeure Event**

If the Concessionaire claims a Force Majeure Event under this Clause 7.1, it will :

- (a) Give notice and full details of the relevant cause to the Commission as soon as practicable after it occurs;
- (b) Use all best endeavours to limit the effects of the Force Majeure Event on the performance by the Concessionaire of its obligations under this Addendum;
- (c) If the Force Majeure Event prevents the provision of Standard Services, use reasonable endeavours to advise affected Customers of the fact of the cause, and the likely impact of the cause, on the provision of Standard Service; and
- (d) Strive to resume, as soon as reasonably possible after the Force Majeure Event has ended, performance by them of their obligations under this Addendum.

## **8. CUSTOMER COMPLAINTS**

### **8.1 Customer Complaints**

- (a) The Commission may only consider a complaint from a Customer (*a Customer Complaint*) or from any other person that is :
  - (i) An allegation that the Concessionaire has breached the terms of a Customer Contract;
  - (ii) A dispute over a refusal by the Concessionaire to connect or reconnect a person to the Concessionaire's electricity distribution network and provide Standard Service to that person, including a dispute over whether the cost of connection, disconnection and/or reconnection, or debt recovery and/or account management charged by the Concessionaire is reasonable;
  - (iii) An allegation that a Customer-Specific Measure does not comply with this Addendum;
  - (iv) An allegation that the Customer is being required to pay more than a Regulated Tariff or an agreed Optional Tariff (as the case may be) for the supply electricity.
- (b) The Commission shall not require to consider a Customer Complaint if the Commission (acting reasonably) considers the Customer Complaint to be frivolous, vexatious or *de minimis*.
- (c) The provisions of Schedule 5 shall apply to any Customer Complaint received by the Commission. For the avoidance of doubt, complaints by a Customer that the Concessionaire has breached a Customer-Specific Standard shall be dealt with in accordance with Schedule 3.

## **9. INSURANCE**

### **9.1 Insurance Cover**

The Concessionaire at all times shall maintain with a reputable Underwriter Insurance that is sufficient to cover, at a minimum :

- (a) Loss or damage to such Transmission and Distribution assets of the Electricity Business, as from time to time may be agreed in writing between the Concessionaire and the Commission ;
- (b) Loss or damage to all other assets of the Electricity Business (except motor vehicles) of an amount equal to or greater than the replacement cost of all said assets;
- (c) Comprehensive motor vehicle cover for all motor vehicles owned or used by the Concessionaire of an amount equal to or greater than the replacement cost of all said vehicles;
- (d) Business Interruption Costs for an amount reasonable for a comparable business;
- (e) Third Party claims for loss or damage to property, or for death or personal injury, for an amount reasonable for a comparable business;
- (f) Loss of Money, for an amount reasonable for a comparable businesses;
- (g) Fidelity guarantee insurance for all staff handling money;
- (h) Death or personal injury to employees in the course of their employment;
- (i) In place of the foregoing, or any part thereof, such cover as is agreed in writing from time to time between the Concessionaire and the Commission.

### **9.2 Definition**

For the purposes of Clause 9.1 the term "money" includes Coin and Notes of any currency; Cheques; Postal Orders; Money Orders; Travellers Cheques; and Credit or Cash Card Payment Vouchers.

### **9.3 Concessionaire must disclose Insurance policies**

The Concessionaire shall disclose to the Commission in respect of the matters described in Clause 9.1 all its insurance arrangements, including providing copies of the Concessionaire's insurance policies and promptly shall comply with all

reasonable requests for information by the Commission relating to the Concessionaire's insurance arrangements.

## **10. CAPITAL INVESTMENTS AND EFFICIENCY ENHACING INVESTMENTS**

### **10.1 Capital Expenditure Plan**

The Concessionaire shall at all times have an Approved Capital Expenditure Plan and update that plan in accordance with Schedule 9.

### **10.2 Capital expenditure by Concessionaire**

Capital expenditure undertaken by the Concessionaire in relation to the Electricity Business shall be added to the Regulatory Asset Value only in accordance with the provisions of Schedule 9.

### **10.3 Concessionaire may apply for sharing of efficiency gains**

- (a) The Concessionaire may submit an application to the Commission for a ruling on whether the Concessionaire will be entitled to share in the efficiency gains that will occur in the next Regulatory Period resulting from an efficiency enhancing investment made in the current Regulatory Period in accordance with an Approved Capital Expenditure Plan. The submission must include the cost of the investment and a reasonable forecast of its benefits.
- (b) If, having reviewed the application submitted in accordance with Clause 10.3(a), the Commission is satisfied that:
  - (i) the costs and benefits submitted by the Concessionaire are reasonable; and
  - (ii) the investment would not be undertaken by the Concessionaire without the sharing because otherwise it would not be economically worthwhile; and,
  - (iii) there is no alternative investment that practically could be undertaken and performs better on a basic cost/benefit assessment,

then the Commission shall permit the Concessionaire to share the efficiency enhancing benefits of the investment set out in the application during the next Regulatory Period. The Concessionaire shall have the benefit of 50% of the forecast efficiency enhancing benefits relating to

the next Regulatory Period, unless the Commission and the Concessionaire agree a different proportion.

- (c) On cause shown the Commission may defer consideration of any such application until a date, subsequent to the Reset, agreed between the Commission and the Concessionaire in writing.

**11. REPORTING REQUIREMENTS**

The Concessionaire shall comply with the reporting provisions of Schedule 13.

**12. CUSTOMER INVOICES**

The format and content of Invoices issued by the Concessionaire to Customers for Standard Service shall comply with the requirements of Schedule 14.

**13. PUBLIC DISCLOSURE**

The Public Disclosure provisions of Clause 7 of the Agreement shall apply *mutatis mutandis* to this Addendum and in the interests of brevity they are deemed to have been repeated herein *ad longum*.



## **14. DISPUTES**

### **14.1 Negotiation**

- (a) Subject to this Addendum, if a Dispute arises between the Commission and the Concessionaire, which cannot expeditiously be resolved by Consultation between the Commission and the Concessionaire, or by reference to an Independence Expert, then either party may notify the other party in writing giving details of the Dispute. Each party shall appoint a senior representative to attend to resolution of the Dispute and such representative shall have authority to settle the Dispute.
- (b) The parties, through their senior representatives, in good faith then shall negotiate with a view to a prompt resolution of the Dispute.
- (c) If a Dispute is not resolved in accordance with Clause 14.1(b) within 20 Business Days of written notice of the Dispute being given in accordance with Clause 14.1(a), then either party to the Dispute (or both parties by agreement), by Notice in writing to the other party may refer the Dispute for determination by Arbitration pursuant to Clause 14.2.

### **14.2 Arbitration**

Any Dispute referred to Arbitration in terms of Clause 14.1(c) shall be determined by a sole arbitrator in accordance with the general civil law to be applied in the Kingdom under Sections 2 and 3 of the Civil Law Act Provided Always that :

- (a) the sole arbitrator shall be a suitably qualified person as agreed by the parties, or if they do not agree on the identity of the arbitrator within 10 Business Days, then the arbitrator shall be appointed by a Judge of the Supreme Court of Tonga upon the application of either party;
- (b) the place of the arbitration will be in Nuku'alofa, Tonga, or elsewhere as the parties and the arbitrator agree, and if the parties and the arbitrator do not agree within such time as the arbitrator may specify, the place of the arbitration will be in Nuku'alofa, Tonga or elsewhere at such location as determined by the arbitrator;
- (c) the arbitrator's decision shall be Publicly Available;
- (d) all procedural matters shall be determined by the arbitrator;

- (e) the Courts of Tonga will have exclusive jurisdiction in relation to any matters referred by either party or the arbitrator to the Courts;
- (f) the costs of the arbitration, as determined by the arbitrator, shall be allocated in such manner as the arbitrator sees fit in all the circumstances;
- (g) subject to Clause 14.3, the arbitrator's decision is final and binding upon the parties to the arbitration and shall be enforceable in a Tongan Court.

### **14.3 Appeals**

- (a) A party may appeal to the Lord Chief Justice of Tonga (*the Court*) against the award of an arbitrator given under Clause 14.2, or the decision of The Independent Expert under Clause 14.4 only on the grounds set out in Clause 14.3(c).
- (b) When determining an appeal pursuant to Clause 14.3(a), the parties agree that the Court may set aside a decision or an award only on the grounds set out in Clause 14.3(c).
- (c) The ground on which a party may appeal to the Court under Clause 14.3 (b) are as follows :
  - (i) A question of law arises out of a decision or an award, provided that, having regard to all the circumstances, the determination of the question of law concerned could affect substantially the rights of one or other of the parties.
  - (ii) The decision or the award contains a manifest error, provided that, having regard to all the circumstances, the error substantially affected the rights of one or other of the parties.
  - (iii) The decision or the award deals with a dispute not contemplated by, or not falling within, the arbitrator's or Independent Expert's terms of reference or contains decisions on matters beyond the scope of the terms of reference, provided that, if the decisions on matters in the terms of reference can be separated from those not within the terms of reference, only that part of the decision or

award which contains decisions on matters not within the terms of reference may be set aside.

- (iv) The making of the decision or award was induced or affected by fraud or corruption.
  - (v) A breach of natural justice occurred, either during the proceedings, or in connection with the making of the decision or the award.
- (d) The decision of the Lord Chief Justice of Tonga in respect of any Appeal under this Clause is final and binding upon the parties to the Appeal.

#### **14.4 Independent Expert**

- (a) It is the intention of the parties that matters of a technical or specialist nature upon which they are unable to reach agreement be referred for decision to a many of skill, hereinafter referred to as the Independent Expert provided always that they are agreed upon the identity of the Independent Expert.
- (b) The Independent Expert shall be independent of the Commission, the Concessionaire and the Kingdom and shall act impartially and in accordance with the rules of natural justice in resolving any matter referred to him for a decision.
- (c) The parties shall within 10 Business Days after the date on which the Independent Expert is appointed, submit to the Independent Expert the following documents :
  - (i) a description of the Dispute;
  - (ii) a statement of each party's position in respect of the dispute; and
  - (iii) copies of relevant documentary evidence in support.
- (d) The Independent Expert may call for such further documentary evidence and/or interview such persons as he considers necessary in order to determine the relevant matter.
- (e) The Independent Expert shall be engaged by the parties on the basis that the Independent Expert shall give a written determination within 20 Business Days of receipt of the documents provided under Clause 14.4 (c) or (d).

- (f) The parties shall in all cases continue to perform their respective rights and obligations pursuant to the Regulatory Addendum, notwithstanding the referral of the dispute to the Independent Expert.
- (g) Subject to Clause 14.3 above the decision of the Independent Expert shall be binding on the parties.
- (h) The costs of the Independent Expert shall be borne equally by the parties to the Dispute, and each party shall bear its own costs related to using the Independent Expert process.

## **15. REGULATORY PAYMENTS**

### **15.1 Levy**

The Commission may require the Concessionaire throughout a Regulatory Period to collect on behalf of the Commission a Regulatory Levy payable by a Customer in accordance with the Act (and any regulation made under the Act). The Commission must consult with the Concessionaire on the form of the Regulatory Levy and the procedure for its collection and payment.

### **15.2 Fees**

In lieu of payment of a Regulatory Levy under Clause 15.1 of this Addendum the Commission by Notice in writing addressed to the Concessionaire shall require the Concessionaire to pay to the Commission throughout a Regulatory Period on the first Business Day of each month a Regulatory Fee of an amount agreed between the Commission and the Concessionaire in writing. Consumption Tax will be payable on said Fee. Any Regulatory Fee payable to the Commission by the Concessionaire shall be inflation adjusted on the first day of January each year in accordance with the Tongan Consumer Price Index for the immediately preceding twelve months. For the avoidance of any doubt a Notice by the Commission under Clause 15.2 cannot be rescinded after it has been issued.

**16. DEFINITIONS AND CONSTRUCTION**

The Definitions and Construction provisions of Schedule 4 of the Agreement shall apply *mutatis mutandis* to this Addendum and in the interests of brevity they are deemed to have been repeated herein *ad longum*.


**17. ELECTRICAL SAFETY**

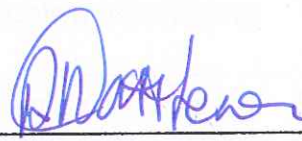
- 17.1 The paramount consideration of the Commission and the Concessionaire is electrical safety and to that end they shall take all reasonable and practical measures (insofar as within their control) to prevent electrical hazards being hazards which cause or are likely to cause danger to person, livestock or property from electricity.
- 17.2 Where the Commission becomes aware of an electrical hazard at any premises supplied with electricity by the Concessionaire they shall forthwith by notice in writing order the Concessionaire to disconnect electrical power to said premises and not to restore power thereto until they are advised in writing by the Commission that the said hazard has been eliminated.
- 17.3 Where the Concessionaire becomes aware (a) of an electrical hazard at any premises supplied by them with electricity or (b) any failure by one of their customers at the customer's premises to comply strictly with the Concessionaire's technical connection requirements, forthwith they shall suspend the supply of electricity to said premises pending the removal of said hazard (as certified in writing by the Commission) or the resumption of full compliance with their technical connection requirements (as certified in writing by the Concessionaire's own technical staff).



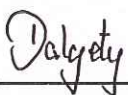
**EXECUTED** as The Regulatory Addendum at Nuku'alofa on the 20<sup>th</sup> day of August 2015

**Signed for Tonga Power Limited by their Company Chairman Mr. Carl Sanft in the presence of Mr. Robert Matthews as Witness.**

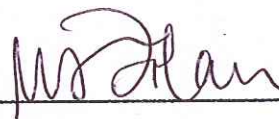
  
\_\_\_\_\_  
(Chairman)

  
\_\_\_\_\_  
(Witness)

**Signed for The Electricity Commission by Rt. Hon. Lord Dalgety Q.C., the Commission's Chief Executive, in the presence of Ms. Meleseini Ve'a Folau as Witness.**

  
\_\_\_\_\_  
(Chief Executive)



  
\_\_\_\_\_  
(Witness)



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**SCHEDULE - 1 : CONCESSIONAIRE'S CUSTOMER CONTRACT**

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1. At all times the Concessionaire shall have a Customer Contract wherein are set forth the terms and conditions upon which they will supply electricity to their customers, and shall provide a copy thereof to their customers.
2. The Customer Contract in force as at 1<sup>st</sup> September 2015 shall be that in force as at 31<sup>st</sup> August 2015. No alteration whatsoever may be made thereto without the prior written consent of the Commission.
3. All customers of the Concessionaire shall be provided with a copy of any such alteration together with their next electricity invoice.



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**SCHEDULE - 2 : SERVICE STANDARDS**

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**SCHEDULE 2 : SERVICE AND OTHER STANDARDS**

**A – Customer Specific Standards**

**A1 – Connections**

Item	Performance Measure	Units	Standard	Penalty (pa'anga)
<p>Connection to supply for connection points within 30 meters of the road frontage (when no network extension or the installation/upgrade of a transformer is required). If the Commission must approve a connection under any applicable regulation, the Performance Measure applies after it is approved.</p>	<p>i) Maximum time to connect a customer after the customer's payment has been received – when electricity supply and meter are already installed.</p> <p>ii) Maximum time to connect a customer after the customer's payment has been received – when service drop and meter need to be installed.</p>	<p>Working Days</p> <p>Working Days</p>	<p>4</p> <p>10</p>	<p>70</p> <p>70</p>
<p>Connection to supply for connection points between 30 and 250 meters (when no network extension or the installation/upgrade of a transformer is required). If the Commission must approve a connection, the Performance Measure applies after it is approved.</p>	<p>i) Maximum time to provide works estimate.</p> <p>ii) Maximum time to complete construction – after customer acceptance of estimate and payment.</p>	<p>Working Days</p> <p>Working Days</p>	<p>10</p> <p>20</p>	<p>70</p> <p>70</p>
<p>Disconnection of supply due to overdue payments.</p>	<p>Minimum notification given prior to disconnection. Notification includes a widespread reminder in the media, so long as notice of the disconnection period is given on the previous bill.</p>	<p>Working Day</p>	<p>5</p>	<p>40</p>
<p>Reconnection after payment of overdue amounts and reconnection fee (note that reconnection fee must be received before 2pm or time begins from 2pm the following working day). If a connection permit is required from the Commission under any applicable regulation then time begins once the permit is approved.</p>	<p>Maximum time to restore supply after payment is made :</p>	<p>Working Days</p> <p>Working Days</p>	<p>1</p> <p>2</p>	<p>30</p> <p>30</p>

## A2 – Customer Service and Billings Standards

Item	Performance Measure	Units	Standard	Penalty (pa'anga)
Billing punctuality	Maximum time for first bill to be delivered after service connection.	Calendar Days	50	30
Billing Period	Maximum time between bills.	Calendar Days	45	30
Response to customers' queries	Maximum time to respond to a customer's query.	Working Days	5	40

## A3 – Continuity of Supply

Item	Performance Measure	Units	Standard	Penalty (pa'anga)
Temporary disconnection of supply for maintenance or other works	Minimum notification prior to disconnection. Notification must include a minimum of four advertisements in widespread media, including one advert in the day prior to the shutdown.	Advertisements Working Days	4 First advertisement – 5 Working Days Second advertisement - 1 Working Day	30 30 30
Response to emergency and service calls (single events affecting the distribution system), other than where more than 5 customers are affected.	Maximum time to restore supply to all affected customers.	Working Days	2	30

#### A4 – Testing of Voltage Stability

Item	Performance Measure	Units	Standard	Penalty (pa'anga)
Responding to a request by Customer under Clause 5.10 relating to voltage fluctuations.	Maximum period to complete a spot check of the Customer's voltage after a Customer request.	Working Days	5	10
	Following a Customer request, maximum time to complete voltage sampling for at least 24 hours.	Working Days	10	10
Customer specific Voltage stability (tested in response to request by a Customer under Clause 5.10)	Voltage to be measured at the demarcation point : expected to be 240 v. (Single Phase), 415 v. (Three Phase) [See also Clause 5.10(c)]	%	Single Phase $\pm$ 10% Three Phase $\pm$ 5%	30 30

**A5 – Meter Testing**

**B. Reliability Standards**

Item	Performance Measure	Units	Standard	Penalty (pa'anga)
Responding to a request by Customer for a meter reading under Clause 5.9 (a)	Maximum period to complete meter reading and report result to Customer	Working Days	10	10

**B – Metering Reporting Standards**

Item	Performance Measure	Units	Standard
Frequency of meter testing	Report on the percentage of Customers' meters that are tested for accuracy or replaced annually.	%	Report





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**SCHEDULE - 3 : BREACH OF SERVICE AND OTHER STANDARDS**

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**SCHEDULE 3 : BREACH OF SERVICE AND OTHER STANDARDS**

**1 Suspected Breach of Service Standards**

If the Commission reasonably suspects (including as a result of information given to the Commission by any person) that the Concessionaire has breached any Service or Other Standard, and has not otherwise paid the applicable penalty in accordance with Clause 6, the provisions of paragraph 2 of this Schedule shall apply.

**2 Process for determination by the Commission of breach of Service Standard**

2.1 The Commission shall notify the Concessionaire in writing of the alleged breach of a Service Standard and give the Concessionaire not less than 10 Business Days to demonstrate that the Service Standard has been met.

2.2 The Commission may (if it believes appropriate) consult with third parties, including affected Customers. Any submissions or documentary evidence provided to the Commission by any third party must be given to the Concessionaire, unless the Commission believes on reasonable grounds that the submissions or documentary evidence (or any part thereof) should be withheld on the grounds set out in Clause 7 of the Agreement.

2.3 The Commission shall give the Concessionaire not less than 5 Business Days to respond to any submission received from any Customer or any other third party.

2.4 If, after considering any information or submission provided by the Concessionaire, any Customers and any third parties, the Commission is satisfied that the Concessionaire has breached or failed to meet a Service Standard, then the Concessionaire shall be required to pay, and the Commission must notify the Concessionaire that the Concessionaire is required to pay, the applicable penalty as determined in accordance with Schedule 4 of the Addendum.

- 2.5 On receipt of a Penalty Notice, the Concessionaire shall promptly calculate the applicable penalty in accordance with Schedule 4 and credit such penalty to the Customer's Electricity Account within 20 Business Days of receipt of the Penalty Notice.
- 2.6 If requested, the Concessionaire shall provide the Commission with relevant documentation and evidence used to calculate the penalty and/or demonstrate that payment has been made.
- 2.7 If the Concessionaire disputes that a failure to meet, or a breach of, a Service Standard has occurred, or the Commission disputes the Concessionaire's calculation of the penalty, the dispute resolution procedure provided in Clause 14 of this Addendum shall apply.
- 2.8 The penalty (if any) determined by the arbitrator pursuant to the dispute resolution provisions shall be payable immediately by the Concessionaire as directed by the arbitrator and such penalty shall be enforceable against the Concessionaire in the Courts of Tonga as a debt in favour of the Customer.
- 2.9 If any amount falls overdue for payment pursuant to a Penalty Notice, the overdue amount will bear interest from the date on which payment of that amount falls overdue until the date on which the overdue amount is paid in full. Default interest will be calculated daily at the Default Interest Rate and will be compounded monthly. Default interest payable under this paragraph will be payable to the person to whom the relevant penalty is payable under this Addendum.



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**SCHEDULE - 4 : PENALTIES FOR BREACHING SERVICE AND OTHER STANDARDS**

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**SCHEDULE 4 : PENALTIES FOR BREACHING SERVICE AND OTHER STANDARDS**

**1 Customer Specific Standards**

1.1 If the Concessionaire has breached a Customer Specific Standard, the Concessionaire shall :

- (a) Subject to paragraphs 1.2, 1.3 and 1.4 of this Schedule, be liable to pay the penalty provided for in Schedule 2 in relation to that breach; and
- (b) Pay the applicable penalty directly to the Customer, or group of Customers, directly affected by the breach, in accordance with Clause 6.2 of the Addendum.

1.2 For the avoidance of doubt, the Concessionaire shall be liable to pay, and shall pay, a separate penalty for every separate breach of a Customer Specific Standard in accordance with the terms of paragraph 1.1 of this Schedule.

1.3 Where the Concessionaire has breached a Customer Specific Standard and has not provided the service required by the relevant Performance Measure within a period that is twice the standard, the Concessionaire shall be liable to pay, and shall pay, a separate penalty in accordance with the terms of paragraph 1.1 of this Schedule.

1.4 In any given calendar month the Concessionaire shall not be liable to pay to any Customer any amount in excess of TOP70.

**2 Reporting Standards**

2.1 If the Concessionaire is in breach of a reporting requirement under Clause 11 and Schedule 12 of this Addendum, the penalty payable shall be a fixed payment of 5,000 Pa'anga in respect of each such breach PROVIDED ALWAYS that no penalty shall be due in respect of failure to provide on time the Monthly Reports

unless there has been a failure to produce any two monthly reports within a six month period.

2.2 In respect of each such breach the Commission shall issue to the Concessionaire a Demand for immediate Payment of the Penalty and any Interest due thereon under and in terms of paragraph 2.3 hereof.

2.3 Interest shall be payable by the Concessionaire to the Commission at the rate of 50 Pa'anga per calendar day (or part thereof) from the date of the Demand until the date of Payment of the Penalty to follow thereon.







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**SCHEDULE - 5 : CUSTOMER COMPLAINTS**

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**SCHEDULE 5 : CUSTOMER COMPLAINTS**

**1 Application**

The provisions of this Schedule apply to any Customer Complaint received by the Commission.

**2 Commission must first determine whether Customer has made reasonable attempt to resolve matter with Concessionaire**

- (a) If the Commission receives a Customer Complaint, the Commission shall first determine whether the person who made the Customer Complaint has made a reasonable attempt to resolve the matter with the Concessionaire, including allowing the Concessionaire not less than 15 Business Days from the date the Customer Complaint was sent to the Concessionaire to consider and respond to the Customer Complaint (including, in the case of a breach of a Customer Specific Standard, paying any applicable penalty under Schedule 4). When determining whether the Customer has made a reasonable attempt to resolve the matter with the Concessionaire, the Commission must provide all relevant details known to the Commission to the Concessionaire and seek the views of the Concessionaire.
- (b) If the Commission is not satisfied the person making the Customer Complaint has made a reasonable attempt to resolve the matter with the Concessionaire, the Commission must refer the person to the Concessionaire for resolution of the Customer Complaint.
- (c) If the Commission is satisfied that the Customer has made a reasonable attempt to resolve the matter with the Concessionaire, and the matter is not resolved the Commission forthwith shall notify the Concessionaire and the person making the Customer Complaint that the Customer Complaint shall be resolved in accordance with the provisions of paragraphs 3 and 4 of this Schedule.

### **3 Resolution of Customer Complaint**

- (a) Upon notification by the Commission that a Customer Complaint shall be resolved by the Commission in accordance with the provisions of this Schedule, the Commission shall allow both the Concessionaire and the person making the Customer Complaint not less than 5 Business Days from the date the Commission gives such notice to provide to the Commission any submissions or documentation supporting its position.
- (b) Following receipt of any submissions or documentation, the Commission shall promptly resolve the Customer Complaint in accordance with Good Industry Practice, the relevant Customer Contract (if any), this Addendum, the Act and any other relevant law. For the avoidance of doubt, the Commission *inter alia* may:

  - (i) Require the Concessionaire to connect or re-connect a person to its electricity Distribution Network;
  - (ii) Determine the reasonable cost of connection or reconnection;
  - (iii) Resolve any billing dispute between the Concessionaire and a Customer;
- (c) Subject to paragraph 4 of this Schedule, the Concessionaire shall be bound by the decision of the Commission.
- (d) For the avoidance of doubt, the provisions of this Schedule do not apply to any claim arising in tort, whether negligence or otherwise.
- (e) Pursuant to section 5(1) of the Act, when resolving a Customer Complaint pursuant to this Schedule 5 the Commission (in its absolute discretion) may, with the consent of a Customer, enforce a Customer Contract on behalf of, and for the benefit of, the Customer.

**4 Reference to dispute resolution**

If the Concessionaire disagrees with the decision of the Commission under paragraph 3 of this Schedule 5, then there shall be deemed to be a Dispute between the Concessionaire and the Commission, and the provisions of Clause 14 shall apply.



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**SCHEDULE - 6 : THE REGULATED TARIFF**

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## SCHEDULE 6 : THE REGULATED TARIFF

### 1. Regulated Tariff

- 1.1 The Regulated Tariff shall comprise two elements (a) a fuel component and (b) a non-fuel component, both elements calculated in accordance with the provisions of this Schedule.
- 1.2 During the Regulatory Period referred to in Clause 3.2(a) of the Addendum (*the period from 1<sup>st</sup> September 2015 until 30<sup>th</sup> June 2020*) the Regulated Tariff for each Island Group shall be the same.
- 1.3 The Regulated Tariff as at the Reset Date of 1<sup>st</sup> September 2015 shall be :-

• Fuel Component (Seniti/kWh billed) -	39.34
• Non-Fuel Component (Seniti/kWh billed) -	<u>44.35</u>
• REGULATED TARIFF (Seniti/kWh billed) -	<u>83.69</u>

### 2. Adjustment of Regulated Tariff

- 2.1 The **Non-Fuel Component** of the Regulated Tariff may be adjusted during the Regulatory Period only :-
- (a) annually on the 1<sup>st</sup> January in each year, commencing 1<sup>st</sup> January 2016, in accordance with the Indexation provisions of paragraph 5 of this Schedule; or
- (b) in the event of an Extraordinary Event having given rise to an Extraordinary Review and Adjustment, all in accordance with Clause 4 and Schedule 8 of this Addendum.
- 2.2 The **Fuel Component** of the Regulated Tariff ordinarily shall be adjusted during the Reset Period on a quarterly basis (on 1 July, 1 October, 1 January and 1 April) in accordance with the provisions of paragraphs 6 to 16 of this Schedule but the Commission, in their absolute discretion may consent to an *ad hoc* request from the Concessionaire to an adjustment within each quarter where there is an upward "spike" in the landed cost of diesel at Nuku'alofa OR may require an



adjustment within each quarter where there is a significant reduction in the landed cost of diesel at Nuku'alofa.

- 2.3 In respect of any proposed adjustment under **paragraph 2.1(a)** of this Schedule the Concessionaire shall submit an Application for such an adjustment, together with all relevant documents and evidence, on or before 15<sup>th</sup> November in each year. The Commission reasonably may require the Concessionaire to explain further its method of calculation of the Proposed Tariff Adjustment and, if so required, the Concessionaire promptly shall provide to the Commission such additional information or explanations sought by the Commission.
- 2.4 In respect of any proposed adjustment under **paragraph 2.2** of this Schedule the Concessionaire shall submit an Application for such an adjustment, together with all relevant documents and evidence, at least one calendar month prior to the quarterly adjustment dates referred to in paragraph 2.2. (e.g. no later than 1<sup>st</sup> June in respect of an adjustment to be effective from 1<sup>st</sup> July).

### **3. Approval by the Commission of the Proposed Adjusted Tariff**

- 3.1 If the Commission advises the Concessionaire in writing within 15 Business Days of receipt of an application under paragraph 2.1(a) or 2.2 of this Schedule to adjust the Regulated Tariff that : -
- (a) The Commission agrees with the Concessionaire's calculation of the Proposed Adjusted Tariff, the Regulated Tariff will, from the commencement of the next Tariff Period, be the Proposed Adjusted Tariff applied for by the Concessionaire;
  - (b) The Commission disagrees with the Concessionaire's calculation of the Proposed Adjusted Tariff [which disagreement must be on reasonable grounds and must specify which aspect(s) of the Concessionaire's calculation the Commission disagrees with], the Concessionaire and the Commission will then endeavor to agree on the correct calculation of the Tariff Adjustment as soon as reasonably possible. If the Concessionaire and the Commission fail to agree on the Tariff Adjustment prior to the commencement of the next Tariff Period:

- (i) Forthwith they will submit the calculation of the Tariff Adjustment for Arbitration under Clause 14.2 of the Addendum; and
- (ii) the Proposed Tariff Adjustment shall not take effect except to the extent that it is approved by the Arbitrator.

3.2 If the Commission does not advise the Concessionaire in writing within 15 Business Days of receipt of an application under paragraph 2.1(a) or 2.2 of this Schedule to adjust the Regulated Tariff that the Commission either agrees or disagrees with the Concessionaire's calculation or that the Commission requires the Concessionaire to further explain the Concessionaire's calculation, the Regulated Tariff will be the Proposed Adjusted Tariff as at the commencement of the next Tariff Period.

**4. New Regulated Tariff to be effective from the commencement of the new Tariff Period**

Once the Tariff Adjustment has been agreed or determined under paragraph 3 of this Schedule:

- (a) The Concessionaire promptly shall give notice to the public of the Tariff Adjustment, in such reasonable manner as has been agreed in writing between the Concessionaire and the Commission; and
- (b) The adjusted Regulated Tariff will take effect as from the start of the next Tariff Period and the Concessionaire may invoice Customers paying the Regulated Tariff accordingly (and, to the extent that this requires any correction to any invoice issued by the Concessionaire to a Customer, for amounts invoiced at the pre-adjustment Regulated Tariff, this correction will be made on the next invoice issued to the Customer).

**5. Indexation of the Non-Fuel Component of the Regulated Tariff**

The annual adjustment of the non-fuel component of the Regulated Tariff shall be calculated according to the following Formula :-

$$\text{Non Fuel Component } p = \text{Non Fuel Component } p - 1 \times \frac{\text{CPI } p}{\text{CPI } p-1}$$

Where :

$p$  = the next Tariff Period;

$CPI_p$  = the CPI at the start of the next Tariff Period.

$CPI_{p-1}$  = the CPI used in the non-fuel adjustment at the start of the current Tariff Period.

## **6. Adjustment of the Fuel Component of The Regulated Tariff**

At the end of each Tariff Period the fuel component of the Regulated Tariff must be adjusted to :

- (a) Account for new fuel prices and demand for electricity in the next Tariff Period;
- (b) Account for fuel savings due to electricity generation by renewable energy (such as Solar PV or Wind) or other than by diesel generations (such as Biomass); and
- (c) Return over or under recovered fuel costs during the current Tariff Period or other agreed period.

## **7. Description of Adjustments**

The total adjustment to the fuel component of the Regulated Tariff is the sum of two adjustments, fuel adjustment (1) and fuel adjustment (2). The fuel cost adjustments are provided for fully in the formula below at paragraphs 11 to 16 of this Schedule. However, by way of explanation paragraphs 8 to 10 of this Schedule below describe how the fuel cost adjustment is intended to operate (such description only to be used as a guide to the formulae, and in the event of an inconsistency between this description and the formulae, the formulae shall prevail).

8. In both adjustments, the fuel component of the Regulated Tariff is adjusted so that the Concessionaire only recovers permitted fuel costs (*Permitted Fuel Costs*). To calculate the Permitted Fuel Cost in a given month, demand for electricity (*kWh billed in the month*) is calculated. Based on this demand, Target System Losses are used to calculate the amount of generation that this should require if the Concessionaire is reasonably efficient (*the amount of generation being the Permitted Generation*). From this level of generation, permitted Fuel Efficiency Rates are used to calculate the litres of fuel that should be required if the Concessionaire is reasonably efficient. These litres of fuel, multiplied by the fuel price, equates to the Permitted Fuel Costs.

9. Fuel adjustment (1) uses forecasts of fuel prices and demand for electricity to forecast Permitted Fuel Cost for the next twelve months. The adjustment to the tariff is then the difference between the current fuel component and Permitted Fuel Cost divided by forecast demand for electricity (kWh) that is billed.
10. Fuel adjustment (2) calculates, for the current Tariff Period, the total difference between Permitted Fuel Costs and revenue collected from the fuel component of the Regulated Tariff. The adjustment to the tariff is then this difference divided by forecast demand for electricity (kWh) that is billed.

**11. Formulae Describing Data Used in the Fuel Cost Adjustment**

Set out below are the inputs used to calculate the adjustment. Subscript *p* refers to the Tariff Period, subscript *m* refers to the month in the Tariff Period, and each Tariff Period begins in month  $m = 1$  and ends in month *M*.

- (a) Actual kWh of electricity billed, *kWh billed<sub>m</sub>* for the months in the current Tariff Period;
- (b) Forecast kWh of electricity billed, *kWh billed<sub>m</sub>* for the months in the next Twelve Months Period, calculated as :

$$\hat{kWh\ billed}_m = \left( 1 + \text{monthly growth}_m \right) \times \frac{1}{12} \sum_{t=m-1}^{t=m-12} kWh\ billed_t$$

Where annual growth is a reasonable estimate of the annual growth in demand for electricity.

- (c) Actual fuel prices for electricity generation, *fuel price<sub>m</sub>* , for the months in the current Tariff Period. Fuel prices are in local currency and are the final price paid to the supplier in each Island Group. Fuel prices are based on the types of fuel and mix of generation.

If the Concessionaire changes its fuel type or mix of generators within a Regulatory Period, and fuel prices for the fuel type set at the previous Reset are no longer available, a reasonable estimate should be used.

- (d) A reasonable forecast of fuel prices for electricity generation, *fuel price<sub>m</sub><sup>^</sup>* for the months in the next Tariff Period. Where better forecasts are not easily available, the fuel price should be calculated as the current fuel price indexed to

Inflation. Forecasts of fuel prices are based on the types of fuel and mix of generation.

If the Concessionaire changes its fuel type or mix of generators within a Regulatory Period, and fuel prices for the fuel type set at the previous Reset are no longer available, a reasonable estimate should be used. Where better forecasts are not easily available, the fuel price should be calculated as the current fuel price indexed to inflation.

- (e) System Loss targets, **system loss target<sub>m</sub>** , as set in at the most recent Reset;
- (f) Fuel Efficiency Rate targets, **fuel efficiency target<sub>m</sub>** , as set in at the most recent Reset;
- (g) Permitted kWh generated, for each month *m* in the current Tariff Period, calculated as :

$$\text{Permitted Generation}_m = \frac{\text{kWh billed}_m}{1 - \text{System Loss Target}_m}$$

Where :

System Loss Target *m*, is the system loss target in month *m*

- (h) Forecast permitted kWh generated, for each month in the next Tariff Period, calculated as :

$$\text{Permitted Generation}_m^{\wedge} = \frac{\text{kWh billed}_m^{\wedge}}{1 - \text{System Loss Target}_m}$$

- (i) Permitted Fuel Costs, for each month *m* in the current Tariff Period, calculated as:

$$\text{Permitted Generation Cost}_m = \frac{\text{Permitted Generation}_m \times \text{Fuel Price}_m}{\text{Fuel Efficiency Target}_m}$$

Where :

Fuel Efficiency Target<sub>m</sub> is the fuel efficiency rate target for month *m*

- (j) Forecast Permitted Fuel Costs, for each month *m* in the next Tariff Period, calculated as :

$$\text{Permitted Fuel Cost } \hat{m} = \frac{\text{Permitted Generation } \hat{m} \times \text{Fuel Price } \hat{m}}{\text{Fuel Efficiency Target}}$$

## 12. Formulae of Fuel Adjustment (1)

Fuel adjustment (1) in Tariff Period *p* is calculated as :

$$\text{Fuel Component (1) } p = \frac{\text{NPV (Permitted Fuel Cost } \hat{m} \text{)}}{\text{NPV (kWh billed}_m \text{)}} - \text{Fuel Component } p$$

Where:

**NPV** means Net Present Value of the values of that variable for each month of the next Twelve Month Period using the Allowed Rate of Return as the discount rate; Fuel component <sub>*p*</sub> = the fuel cost component of the tariff in the current period.

## 13. Formulae of Fuel Adjustment (2)

- (a) The balance of over/under recovered fuel costs in month *m* of the current Tariff Period is calculated as :

$$\text{Balance } m = (1 + \text{ROR}) \times \text{Balance}_{m-1} + (\text{Fuel Component }_{m-1} \times \text{kWh billed}_m - \text{Permitted Fuel Cost}_m)$$

Where **ROR** = the Allowed Rate of Return.

- (c) Fuel adjustment (2) in Tariff Period *p* is calculated as :

$$\text{Fuel Adjustment (2) } p = \frac{- \text{Balance } m}{\text{NPV (kWh billed } m \text{ )}}$$



Where **balance**  $m$  = the balance of over/under recoveries in the last month of the current Tariff Period.

**14. Total Fuel Component Adjustment**

The total adjustment to the fuel component of the Regulated Tariff, for each Adjustment Period  $p$ , is calculated as the sum of fuel adjustment (1), and fuel adjustment (2) and the fuel savings adjustment described in paragraph 17 of this Schedule.

**15. Efficiency Targets – Fuel Efficiency**

For the period from 1<sup>st</sup> September 2015 until 30<sup>th</sup> June 2020 the Diesel Fuel Efficiency Rate targets shall be the weighted average from diesel generation throughout the Kingdom of Tonga of NOT LESS THAN 4kWh/litre.

**16. Efficiency Targets – System Losses**

The System Loss Target for the period from 1<sup>st</sup> September 2015 until 30<sup>th</sup> June 2020, being the weighted average throughout the Kingdom of Tonga, shall be no greater than:-

2015/2016	2016/2017	2017/2018	2018/2019	2019/2020
12%	11%	11%	10%	10%

**17. Fuel Savings from Renewable Energy Generation**

Diesel Fuel Savings resulting from renewable energy generation by the Concessionaire shall be calculated outwith the Fuel Model and then brought into the model as a total amount to add to the running overs and unders balance thus reducing the fuel component of the Regulated Tariff. The formula to be applied for achieving this is :-

$$\text{Fuel Adjustment}_m = \frac{-\text{NPV (Fuel Savings values)}}{\text{NPV (kWh billed values)}}$$

Where **Values** = Values (either Fuel Savings or kWh billed) for the next 12 months (i.e. from  $m + 1$  to  $m + 12$ ).



For the avoidance of any doubt such Fuel Savings relate only to renewable energy generating plants operated by the Concessionaire and therefore excludes such as (1) any power passed through to the Grid by consumers from their distributed generation systems; (2) electricity generated by third parties (e.g. independent power producers) and then sold to the Concessionaire.

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**SCHEDULE - 7 : ADJUSTMENT OF THE TARIFF STRUCTURE**

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- 3.3 The Commission must make the Tariff Structure Proposal and the Consultant's Report available to the public and to the Kingdom within 30 Business Days of receiving the Consultant's Report, through advertisement, and invite members of the public and the Kingdom to lodge with the Commission, in writing, their comments thereon within 30 Business Days.
- 3.4 The Commission must allow the Concessionaire not less than 20 Business Days to respond in writing to the Independent Consultant's report and any public submissions received by the Commission.
- 3.5 After having regard to the Tariff Structure Proposal, the Independent Consultant's report, any comments thereon and any response from the Concessionaire, the Commission shall issue in writing their Decision on the Concessionaire's Proposal.
- 3.6 If the Concessionaire is dissatisfied with the Commission's Decision, a Dispute shall be deemed to exist which the Concessionaire may refer to Arbitration under Clause 14 of the Addendum.
- 3.7 Where the Commission or the Concessionaire considers the proposed Tariff Structure will require amendments to this Addendum, the parties shall promptly negotiate in good faith all amendments necessary to give effect to the proposed Tariff Structure. Where the parties cannot agree on the necessary amendments to this Agreement, a Dispute shall be deemed to exist which either party may refer to Arbitration under Clause 14 of the Addendum.
- 3.8 The Concessionaire may give effect to the new Tariff Structure approved under this Schedule as the new Regulated Tariff, at the first Tariff Adjustment following agreement on consequential changes to this Addendum, if any, under paragraph 3.7 of this Schedule.



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**SCHEDULE - 8 : PROCESS FOR EXTRAORDINARY TARIFF ADJUSTMENT**

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**SCHEDULE 8 :           PROCESS FOR EXTRAORDINARY TARIFF ADJUSTMENT**

**1.     Notice of Extraordinary Event**

1.1    In order to be effective, an *Extraordinary Event Notice* must specify the Extraordinary Event in respect of which the Regulated Tariff is to be adjusted, and the process in this Schedule then applies only in respect of that Extraordinary Event.

1.2    An Extraordinary Event Notice may specify more than one Extraordinary Event, in which case the reference in this paragraph to the financial effect of those Extraordinary Events will be deemed to be a reference to their cumulative effect.

**2.     Concessionaire to calculate the financial impact of the Extraordinary Event and propose an Extraordinary Tariff Adjustment**

2.1    No later than 20 Business Days after an Extraordinary Event Notice has been submitted, the Concessionaire must submit to the Commission a statement of financial impact (*Statement of Financial Impact*) that includes the following matters :

- (a)    a description of the Extraordinary Event to which it relates, as set out in the Extraordinary Event Notice;
- (b)    a summary of the impact of the Extraordinary Event on the Concessionaire's Electricity business;
- (c)    an estimate, based on reasonable grounds and using all material information reasonably available to the Concessionaire, of the change in the Cost of Service in real terms resulting from the Extraordinary Event, in each Financial Year from the date in which the Extraordinary Event occurred (or began) to the date on which the next Reset is due;
- (d)    an estimate, based on reasonable grounds and using all material information reasonably available to the Concessionaire, of the change in forecast Regulatory Revenue, in real terms, resulting from the Extraordinary Event, in each Financial Year from the date in which the

Extraordinary Event occurred (or began) to the date in which the next Reset is due;

- (e) calculation of the financial impact on the Electricity Business of the Extraordinary Event in each year (*Annual Financial Impact of the Extraordinary Event*), calculated as the sum of the change in the Cost of Service in sub-paragraph (c) and the change in Regulatory Revenue in paragraph (d) in each year from the date in which the Extraordinary Event occurred (or began) to the date in which the next Reset is due, where revenues are treated as positive numbers and costs are treated as negative.
- (f) an estimate of the net present value (*NPV*) of the Annual Financial Impact of the Extraordinary Event (*NPV Financial Impact of the Extraordinary Event*) is defined as the NPV, at a discount rate equal to the Allowed Rate of Return of the Annual Financial Impact of the Extraordinary Event, over the period from the occurrence (or beginning) of the Extraordinary Event to the next Reset;
- (g) calculation of the materiality threshold (*Materiality Threshold*), where the Materiality Threshold is 5% of the revenue received by the Concessionaire resulting from the non-fuel component of the Regulated Tariff in the year before the Extraordinary Event multiplied by the number of years between the date of the Extraordinary Event and the next Reset; and,
- (h) a statement of whether the NPV Financial Impact of the Extraordinary Event is greater than the Materiality Threshold.

2.2 If the NPV Financial Impact of the Extraordinary Event is greater than the Materiality Threshold (and the other conditions for an Extraordinary Tariff Adjustment in Clause 4 of this Addendum are met), the Concessionaire shall include in the Statement of Financial Impact details of a proposed Extraordinary Tariff Adjustment (*Proposed Extraordinary Tariff Adjustment*), which must include the amount, structure and timing of implementation of, any proposed Extraordinary Tariff Adjustment, provided that :

- (a) the Proposed Extraordinary Tariff Adjustment shall change forecast Regulatory Revenue in such a manner that the NPV of the forecast change in Regulatory Revenue is of equal magnitude but opposite sign to the NPV Financial Impact of the Extraordinary Event;
- (b) the NPV of the forecast change in Regulatory Revenue shall be calculated from the date of the proposed implementation of the Proposed Extraordinary Tariff Adjustment, using a discount rate equal to the Allowed Rate of Return;
- (c) in calculating the timing and structure of the Proposed Extraordinary Tariff Adjustment the Concessionaire shall have regard to:
  - (i) remaining in compliance with covenants and obligations of any lending arrangements, with donor funding obligations or other commitments with independent generators;
  - (ii) reducing the tariff shock to any class of Customer (including, if the Extraordinary Event is caused by a one-off cost, smoothing the effect of the Extraordinary Tariff Adjustment by introducing the Extraordinary Tariff Adjustment over a three year period); and
  - (iii) the principle that the Regulated Tariff (plus any Non-Supply Revenue) should reflect the reasonable Cost of Service, sufficient to meet the proposed Service Standards, during the relevant Regulatory Period.

**3. Commission to accept Concessionaire's proposal if compliant**

**3.1 If the Commission is satisfied that :**

- (a) the Statement of Financial Impact takes into account all material information reasonably available to the Concessionaire;
- (b) the calculation of the NPV Financial Impact of the Extraordinary Event in the Statement of Financial Impact is accurate on the basis of the information available at the time;



- (c) the calculation of the Materiality Threshold in the Statement of Financial Impact is accurate on the basis of the information available at the time;
- (d) it is determined, in accordance with the procedures in this Schedule, that the NPV Financial Impact of the Extraordinary Event is greater than the Materiality Threshold; and
- (e) the Proposed Extraordinary Tariff Adjustment set out in the Statement of Financial Impact, including the amount, structure and timing, is reasonable,

then the Commission must approve the Proposed Extraordinary Tariff Adjustment. On approval by the Commission the Proposed Extraordinary Tariff Adjustment shall become effective as an Extraordinary Tariff Adjustment, and the Regulated Tariff shall be adjusted in accordance with the terms of the Extraordinary Tariff Adjustment.

- 3.2 Before making a determination under paragraph 3.1 of this Schedule the Commission may refer the Concessionaire's proposal for review by an Independent Expert of their choice, the cost of such Expert to be refunded to the Commission by the Concessionaire.

#### **4. Commission may request further information**

- 4.1 If the Commission (acting on reasonable grounds) considers that :

- (a) the Statement of Financial Impact is not accurate;
- (b) the Proposed Extraordinary Tariff Adjustment does not comply with the requirements of paragraph 3.1 of this Schedule;
- (c) the Statement of Financial Impact does not take into account all material information reasonably available to the Concessionaire; or
- (d) the Commission requires clarification of the any aspect of the Statement of Financial Impact, the Extraordinary Adjustment Proposal or any supporting information provided by the Concessionaire,

then the Commission promptly must inform the Concessionaire by written notice which aspect of the Statement of Financial Impact or Proposed Extraordinary Tariff Adjustment it considers to be inaccurate, or non-compliant, incomplete or requires clarification (*a Request Notice*).

4.2 The Concessionaire will as soon as practicable (and in any event within 10 Business Days following receipt by the Concessionaire of a Request Notice) endeavor to provide any correction, information or clarification requested by the Commission in the Request Notice, and the Commission on receipt thereof without delay shall consider any correction, information or clarification provided.

4.3 If :

- (a) the Commission has given an Extraordinary Event Notice; and
- (b) the Commission has given a Request Notice; and
- (c) the Concessionaire has not provided in accordance with paragraph 4.2 of this Schedule any correction, information or clarification requested by the Commission in the Request Notice; or
- (d) the Commission, having taken into consideration any correction, information or clarification received from the Concessionaire in respect of the Request Notice, considers (acting reasonably) that the Proposed Extraordinary Tariff Adjustment does not comply with the requirements of paragraph 3.1 of this Schedule,

then the Commission may determine an appropriate adjustment to the Regulated Tariff in relation to the Extraordinary Event outlined in the Extraordinary Event Notice, provided that any such adjustment is calculated in a manner consistent with the provisions of paragraph 2.2 of this Schedule.

4.4 If :

- (a) the Commission and the Concessionaire fail to agree on any of the matters set out in a Request Notice within 10 Business Days following receipt by the Concessionaire of the Request Notice; or

- (b) the Concessionaire disagrees with the Commission's determination of an appropriate adjustment to the Regulated Tariff under paragraph 4.3 of this Schedule.

those matters which have not been agreed will be submitted immediately by the parties for arbitration under Clause 14 of the Addendum.

## **5. Response by the Commission**

5.1 The Commission shall respond to the Concessionaire's Proposal for an Extraordinary Tariff Adjustment without delay and in any event within 20 working days where no Independent Expert is appointed OR within 20 working days of receipt of the said Expert's advice where they have appointed such an Expert, PROVIDED ALWAYS that the number of working days specified in this Paragraph (or indeed in any provision of this Schedule) may be extended or curtailed by agreement in writing between the Commission and the Concessionaire.

5.2 Failure by the Commission to comply with the provision of paragraph 5.1 will be deemed to amount to acceptance of the Proposed Extraordinary Tariff Adjustment and the Regulated Tariff shall be adjusted as and when stated in the Proposed Extraordinary Tariff Adjustment.

## **6. Forecast demand growth for Regulatory Period**

For the purposes of Clause 4.2 (b), forecast annual growth in total kWh of electricity billed during the Regulatory Period commencing 1 September 2015 is 1.5% for the Kingdom as a whole. ~~1.5~~ 2.37 %

## **7. Extraordinary event begun by Commission**

If the Commission commence an Extraordinary Tariff Adjustment the foregoing provisions of paragraphs 1 and 2 shall apply to them; the Concessionaire may respond thereto in writing within 20 business days and failure to do so will be deemed to amount to acceptance of the Commission's Proposed Extraordinary Tariff Adjustment and the Regulated Tariff shall be adjusted as and when stated in the Proposed Extraordinary Tariff Adjustment.



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**SCHEDULE - 9 : ANNUAL CAPITAL EXPENDITURE PROPOSAL**

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## **SCHEDULE 9 : ANNUAL CAPITAL EXPENDITURE PROPOSAL**

### **1. Annual Update of Approved Capital Expenditure Plan**

The CAPEX maxima set forth in paragraph 1 of Schedule 10 is the Concessionaire's approved Capital Expenditure Plan for the Regulatory period. By no later than 15<sup>th</sup> May in each year effective 15<sup>th</sup> May 2015 the Concessionaire must submit to the Commission an Annual Capex Proposal for the ensuing financial year. The Annual Capex Proposal for 2015-2016 shall be submitted to the Commission by the Concessionaire on or before the commencement of the Second Reset Period on 1<sup>st</sup> September 2015.

### **2. Contents of Annual Capex Proposal**

An Annual Capex Proposal submitted to the Commission must identify the following in relation to the Electricity Business :

- 2.1** any **Material** Capex Item in any existing Approved Capital Expenditure Plan which the Concessionaire proposes to no longer incur, or to incur at a time which differs from that shown in the existing Approved Capital Expenditure Plan;
- 2.2** any **Material** Capex Item in any existing Approved Capital Expenditure Plan the Concessionaire still proposes to incur, but at an updated price;
- 2.3** any **Material** new Capex Item which the Concessionaire proposes to incur but which does not appear in the existing Approved Capital Expenditure Plan; and
- 2.4** the rate at which the Concessionaire proposes to depreciate each asset or class of assets comprising the Capex Item; or
- 2.5** If there is no existing Approved Capital Expenditure Plan:
  - (a)** any Capex Item which the Concessionaire proposes to incur;
  - (b)** the price of the Capex Item the Concessionaire proposes to incur;
  - (c)** the time at which the Concessionaire proposes to incur the Capex Item;

- (d) the rate at which the Concessionaire proposes to depreciate each asset or class of assets comprising the Capex Item, and include all information and documents necessary to enable the Commission to evaluate the Annual Capex Proposal.

### **3. Criteria for Approval by Commission of Annual Capex Proposal**

The Approved Capex Criteria are :

- 3.1** That any Capex Item must be reasonably necessary at this point in time having regard to:
  - (a) the service capabilities required of the Electricity Business, having regard to current service capabilities, demand forecasts and the Service Standards;
  - (b) contractual requirements to support donor or other such funded distribution projects;
  - (c) enabling obligations from donor or other funded renewable generation sources;
  - (d) the condition of the Electricity Business, including how well it has been maintained and the need to ensure the health or safety of any person or the physical security of any asset used in the Electricity Business or connected to the Distribution network;
  - (e) asset utilisation and maintenance levels in comparable countries, including Fiji, New Caledonia, Vanuatu, and Samoa; and
  - (f) efficient solutions, sound technical standards, and reasonable cost estimates.
  
- 3.2** The proposed depreciation rate for each asset or class of asset must result in a depreciation expense that reasonably reflects the decrease in the value of the asset from wear and tear and the passage of time.

### **4. Procedure for approval of Annual Capex Proposal**

- 4.1** The Commission must consider the Annual Capex Proposal and must approve any Capex Item in an Annual Capex Proposal that meets the Approved Capex Criteria. Any such approved Capex Item shall be deemed to be included in the Approved Capital Expenditure Plan.

- 4.2** The Commission reasonably may require the Concessionaire to further explain any aspect of the Annual Capex Proposal, and if so required, the Concessionaire shall promptly provide to the Commission any further information or explanations sought by the Commission. The Concessionaire and the Commission will endeavor to agree on the disputed aspects of the Concessionaire's Annual Capex Proposal, as soon as reasonably possible.
- 4.3** If the Concessionaire and the Commission fail to agree on any aspect of the Concessionaire's Annual Capex Proposal by 30<sup>th</sup> July, they will immediately submit the disputed aspects of the Annual Capex Proposal for determination by Arbitration under Clause 14 of this Addendum.
- 4.4** If the Commission has not advised the Concessionaire, in writing within 20 Business Days after receipt of the Annual Capex Proposal, that the Commission does not approve any aspect of the Annual Capex Proposal or requires clarification by the Concessionaire of any aspect of the Annual Capex Proposal, the Commission will be deemed to have approved the Annual Capex Proposal in all respects.

**5. Cost overruns**

Any approval by the Commission of a Capex Item in an Annual Capex Proposal will be deemed to be an approval of expenditure in respect of the Capex Item up to :

- (a) 130% of that Capex Item in that Financial Year;
- (b) Any amount by which the expenditure on that Capex Item increases as a direct result of any currency exchange movement.

**6. Ad hoc prior approval of capital expenditure**

- 6.1** Notwithstanding paragraph 1 of this Schedule, the Concessionaire may at any time make an application to the Commission for approval of any Capex Item, prior to the capital expenditure being incurred.
- 6.2** The Commission must consider and must approve the Capex Item in an application submitted under paragraph 6.1 of this Schedule if it is satisfied that the Capex Item meets the Approved Capex Criteria (at the time the expenditure



occurs) and any such approved Capex Item shall be deemed to be included in the Approved Capital Expenditure Plan.

- 6.3** The Commission reasonably may require the Concessionaire to explain further any aspect of the Capex Item, and if so required, the Concessionaire promptly shall provide to the Commission any further information or explanations sought by the Commission. The Concessionaire and the Commission will endeavor to agree on the disputed aspects of the Capex Item, as soon as reasonably possible.
- 6.4** If the Concessionaire and the Commission fail to agree on any material aspect of the Capex Item within 20 Business Days of submission of the application for approval under this paragraph 6, they will immediately submit the disputed aspects of the Capex Item for determination by Arbitration under Clause 14 of this Addendum.
- 6.5** If the Commission has not advised the Concessionaire, in writing within 20 Business Days after receipt of the application for approval of the Capex Item, that the Commission does not approve any aspect of the Capex Item or requires clarification by the Concessionaire of any aspect of the Capex Item, the Commission will be deemed to have approved the Capex Item in all respects.

## **7. Adjustments to Regulatory Asset Value**

- 7.1** Whenever capital expenditure is incurred by the concessionaire, the RAV will increase automatically by an amount equivalent to the actual amount of that capital expenditure, but only to the extent that such capital expenditure has been incurred in accordance with the Approved Capital Expenditure Plan.

For the avoidance of any doubt donor funded assets will not be included in the Regulatory Asset Value

- 7.2** The Commission must also approve and add to the RAV any capital expenditure that :
- (a) is not part of an Approved Capital Expenditure Plan; but which
  - (b) the Commission, on application by the Concessionaire, is satisfied that at the time the expenditure occurred it met the Approved Capex Criteria.
- 7.3** As from 1<sup>st</sup> September 2015 assets forming part of the RAV will be depreciated, and the RAV reduced accordingly, according to the formula:

$$RAV_{t+1} = RAV_t + \sum_t^{t+7} Capex_t - \sum_t^{t+7} Depn_t$$

Where :

$RAV_t$  = Regulatory asset value in year t

$Capex_t$  = Approved capital expenditure in year t

$Depn_t$  = Depreciation as approved in the Approved Capital Expenditure Plan

The Addendum begins in year  $t = 0$  and the first Reset occurs in year  $t + 7 = 7$

- 7.4** At the time at which any asset ceases to be a Regulated Asset, the RAV must be reduced by an amount equivalent to the then fully depreciated value of that asset, where that value exceeds zero.
- 7.5** The Concessionaire will keep a record of the current RAV and will include details of any movement in the RAV, over the preceding 12 months.

## **8. General**

For the avoidance of any doubt, each aspect of the Approved Capital Expenditure Plan, or any amendment to it, shall be deemed to have been separately approved by the Commission and no such approval (or deemed approval) once given subsequently may be withdrawn by the Commission.



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**SCHEDULE - 10 : CAPITAL EXPENDITURE MAXIMA**

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**SCHEDULE 10 : CAPITAL EXPENDITURE MAXIMA**

1. The maximum approved amount of capital expenditure (CAPEX) by the Concessionaire during the regulatory period from 1<sup>st</sup> September 2015 to 30<sup>th</sup> June 2020 shall be :

Generation	:	12,180,000	pa'anga
Renewable Generation	:	1,570,000	pa'anga
Distribution	:	27,290,000*	pa'anga
Retail + Corporate	:	1,020,000	pa'anga
<hr/>			
TOTAL	:	42,060,000	pa'anga (nominal)
<hr/>			

2. The Concessionaire shall also indicate in writing to the Commission how much thereof will be expended in each year of the regulatory period, however such indications are not to be regarded as equivalent to the Annual Capex Proposal referred to in Clause 10.1 and Schedule 9 of this Addendum.
3. Within the maxima stated in Paragraph 1 above the Concessionaire each year shall submit to the Commission their capital expenditure proposal in accordance with the requirements of Clause 10.1 and Schedule 9 of this Addendum.

\* Includes Provisional approval only for the second Submarine Cable : a case therefor has yet to be made out to the satisfaction of the Commission.



## **SCHEDULE 11 :        PROCESS FOR RESET**

### **1.        Matters for review at each Reset**

The following matters shall be reviewed, and determined for the forthcoming Regulatory Period, at each Reset :

- 1.1    the non-fuel component of the Regulated Tariff;
- 1.2    the fuel component of the Regulated Tariff;
- 1.3    the adjustment formula for the non-fuel component of the Regulated Tariff, including indexation factors;
- 1.4    the adjustment formula for the fuel component of the Regulated Tariff, including the fuel type and mix of generation to be used in the adjustment formula for fuel price and for setting the Fuel Efficiency Rate targets in the Efficiency Standards;
- 1.5    the Efficiency Standards used in the fuel cost adjustment formula;
- 1.6    the Service Standards, Metering Reporting Standards and any other reporting standards, and any penalties for breach thereof;
- 1.7    the Capital Expenditure Maxima for the next Regulatory Period;
- 1.8    the duration of the next Regulatory Period;
- 1.9    whether the Tariff Period should be changed (by lengthening or shortening the period) for the next Regulatory Period.

### **2.        Concessionaire's Proposal**

- 2.1    No later than six months prior to the scheduled Reset Date, the Concessionaire must submit a proposal on matters to be considered at the Reset (*the Concessionaire's Proposal*). Without limiting the content thereof the Concessionaire's Proposal must contain the following information and/or address the following matters:

- (a) the matters that are the subject of the Reset, as set out in paragraph 1 of this Schedule;
- (b) Forecasts of the following variables for the next Regulatory Period:
  - (i) revenue earned by the Concessionaire from Supplying electricity to Customers, excluding the pass through of fuel costs, and assuming that the Concessionaire charges the full Regulated Tariff for the Supply of electricity;
  - (ii) reasonable non-fuel Cost of Service;
  - (iii) operational non-fuel costs to service renewable assets
  - (iv) the non-fuel component of the Regulated Tariff;
  - (v) demand for Supply of electricity by the Concessionaire;
  - (vi) non-Supply Revenue;
  - (vii) Bad Debts Cost Estimate;
  - (viii) reasonable non-fuel operating expenses; and
  - (ix) the Capital Expenditure Maxima for the next Regulatory Period;
- (c) any other additional material that the Commission reasonably considers should be included in the Concessionaire's Proposal or that the Commission has notified to the Concessionaire at a reasonable time prior to the time the Concessionaire's Proposal is to be submitted.

2.2 The Concessionaire shall, to the fullest extent possible, apply the Reset Rules as set out in Schedule 12 in preparing the Concessionaire's Proposal. The Concessionaire's Proposal shall disclose any areas where it has not applied the Reset Rules, the reason for not applying the Reset Rules, the reasons supporting the alternative approach in the Concessionaire's Proposal, and provide an estimate of the impact of using the alternative approach.

### 3. Independent Expert Report



3.1 Upon receipt of the Concessionaire's Proposal, the Commission shall as soon as practicable instruct the preparation of a report on the Concessionaire's Proposal from an Independent Expert (*Independent Report*). The Commission shall direct the Independent Expert to :

- (a) address the matters identified in paragraph 1 of this Schedule;
- (b) apply the Reset Rules when preparing the Independent Report, including reporting on whether the Concessionaire's proposed Service Standards meet the criteria in the Reset Rules, and whether the Regulated Tariff reflects the expected reasonable Cost of Service, sufficient to meet the proposed Service Standards, for the upcoming Regulatory Period;
- (c) consider if any aspect of the Concessionaire's Proposal does not meet the criteria in, or otherwise comply with, the Reset Rules, then to make a recommendation in respect of that matter, and provide reasons for that recommendation; and
- (d) consult with both the Concessionaire and the Commission to such extent as the Independent Expert considers fit prior to submitting his Independent Report to the Commission.

3.2 The Commission shall provide the Independent Expert with the Concessionaire's Proposal and all of the information, documents and evidence provided by the Concessionaire to the Commission in support of the Concessionaire's Proposal together with all relevant information in the possession of the Commission.

3.3 The Concessionaire must provide all reasonable assistance to the Independent including complying promptly with all reasonable requests for information, to facilitate the expeditious preparation of the Independent Report.

#### **4. Consultation**

4.1 The Commission shall provide the Independent Report to the Concessionaire within 10 business days of receipt and invite the Concessionaire to submit a written response thereto within a reasonable timeframe (*The Concessionaire's Response*).

4.2 The Commission shall invite public submissions (including from the Kingdom), and may conduct public hearings, on the Independent Report, the Concessionaire's Proposal and the Concessionaire's Response.

**5. Reset Decision**

5.1 Following consideration of all material submitted to it, the Commission shall finalise, with assistance from the Independent Expert where required, the Reset Decision.

5.2 The Reset Decision must be consistent with the Reset Rules.

5.3 Immediately upon making the Reset Decision, the Reset Decision shall be provided to the Concessionaire and all persons who made a submission pursuant to paragraph 4 of this Schedule. The Reset Decision shall be made Publicly Available by the Commission.

5.4 The dispute resolution process in Clause 14 shall apply to any dispute under this Schedule between the Concessionaire and the Commission.

**6. Changes Effective from Reset Date**

The Regulated Tariff (including the fuel component and non-fuel component), Service Standards, Efficiency Standards and Service Penalties and other matters decided to the Reset Decision (or otherwise determined in accordance with the Arbitration process in Clause 14) will take effect as from the Reset Date. The Concessionaire will invoice Customer's accordingly (and, to the extent that this requires any correction to any invoice issued by the Concessionaire to a Customer, for amounts invoiced at the Regulated Tariff applicable prior to the Reset, this correction will be made on the next invoice issued to the Customer.)

**7. Independent Expert**

The cost to the Commission of employing the Independent Expert referred to in this Schedule shall be refunded to the Commission by the Concessionaire.



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**SCHEDULE - 12 : RESET RULES**

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## **SCHEDULE 12 :        RESET RULES**

### **1.        General principle**

- 1.1        The general principle of the Reset Rules, set out below, is that the Regulated Tariff sets a price cap for the next Regulatory Period such that the net present value of the Concessionaire's expected revenue when applying the Regulated Tariff during the Regulatory Period plus any non tariff revenue such as connection fees, disconnection fees and reconnection fees is equal to the net present value of the Concessionaire's forecast reasonable costs of meeting its obligations under this Addendum, including the Service Standards proposed for the next Regulatory Period.
- 1.2        The Concessionaire's Proposal and the Reset Decision at each Reset, as provided for in Schedule 11, must be consistent with these Reset Rules.
- 1.3        All forecasts required by the Reset Rules must be in nominal terms using a reasonable forecast of inflation.
- 1.4        The matters for review and determination at each Reset are set out in paragraph 1 of Schedule 11.

### **PART A :        NON-FUEL COMPONENT OF THE REGULATED TARIFF, SERVICE STANDARDS AND METERING REPORTING STANDARDS, PENALTIES**

#### **Step 1: Forecast annual growth**

- 1.5        For each year in the next Regulatory Period the forecast annual growth in total kWh billed must be determined. The forecast must be reasonable having regard to *inter alia* :
  - 5.1        Previous growth;
  - 5.2        Macroeconomic indicators including expected growth in GDP and incomes;
  - 5.3        Trends in penetration of electrical appliances;
  - 5.4        Trends in growth in comparable island economies.

## **Step 2: Setting Service Standards, metering Reporting Standards and penalties**

1.6 The Service Standards and Metering Reporting Standards set for the next Regulatory Period must be :

- (a) Consistent with the standard of service that is sought generally by Customers and their ability to pay;
- (b) Technically achievable;
- (c) Consistent with Good Industry Practice;
- (d) Sufficient to ensure the Concessionaire will maintain service quality at levels that are consistent with a reasonable operator of the Electricity Business operating in Tonga.

1.7 The penalties for breaching Service Standards must be consistent with the following principles:

- (a) The objective of a penalty is to provide an appropriate incentive on the Concessionaire to meet the Service Standard, without disproportionately impacting on the Electricity Business of the Concessionaire; and
- (b) Penalties should bear a relation to the value Customers place on the service, but are not a full compensation mechanism.

## **Step 3: Determining the Regulatory Asset Value**

1.8 The Regulatory Asset Value (RAV) is a regulatory valuation of the Concessionaire's fixed assets. During the Regulatory Period the RAV is updated in accordance with the provisions of this Addendum. At each Reset the RAV is forecast according to the rules set forth in paragraphs 1.9 to 1.14 below :

### ***Forecasting the Regulatory Asset Value***

1.9 At each Reset an Approved Capital Expenditure Plan for the next Regulatory Period must be determined.

- 1.10 The Approved Capital Expenditure Plan for the next Regulatory Period must meet the Approved Capex Criteria in Schedule 9.
- 1.11 The Approved Capital Expenditure Plan for the next Regulatory Period must, as a minimum level of specificity, identifies the level of capital expenditure in each class of Regulated Asset in each year of the next Regulatory Period.
- 1.12 The Approved Capital Expenditure Plan determined at each Reset must specify the depreciation rules that will apply to each Capex Item during the next Regulatory Period.
- 1.13 The Forecast RAV for each year of the next Regulatory period must be calculated by adding to the current RAV (calculated in accordance with Schedule 9) the capital expenditure in the Approved Capital Expenditure Plan for that year and all preceding years, and allowing for depreciation determined under paragraph 1.15 below.
- 1.14 This can be represented as follows :

$$RAV_{t+1}^{\wedge} = RAV_t + Capex_{t+1} - Depn_{t+1}^{\wedge}$$

Where :  $t = 1$  to 5

#### **Step 4 : Determining the Depreciation Expense**

- 1.15 At each Reset, the forecast depreciation expense for each year of the next Regulatory Period shall be calculated on the following basis :
- (a) The Initial RAV of July 2008 is to be depreciated on a straight line basis using an asset life of 22 years during Reset Period 1 (2008-2015) and thereafter Period One Net Capex is to be depreciated on a straight line basis continuing to use an asset life of 22 years.
  - (b) All other capital expenditure to be depreciated in the year that it occurs and all subsequent years according to the depreciation rules included in the RAV Model applying in respect of the Capex Item.

### **Step 5: Determining the Return on Capital**

- 1.16 The forecast return on capital for each year of the next Regulatory Period shall be equal to the Allowed Rate of Return converted to a nominal pre-tax return using a reasonable forecast of inflation, multiplied by the Forecast RAV for that year (as calculated at Step 3). The Allowed Rate of Return can be converted to a nominal pre-tax return in the following way :

$$\text{Pre Tax Nomal ROR} = \frac{(1 + \text{Post Tax Real ROR}) \times (1 + \text{Inflation}) - 1}{1 - \text{Tax}}$$

Where *inflation* = the forecast of inflation used at the Reset and *Tax* = the tax rate applicable to the Electricity Business at the time of the Reset.

- 1.17 The Allowed Rate of Return will be 8.5% (a post-tax real rate of return).
- 1.18 At each Reset, the Allowed Rate of Return may be changed if :
- (a) There is reasonable evidence that a change is needed so that the Allowed Rate of Return reflects a reasonable return on capital; and/or
  - (b) The tax rate applicable to the Electricity Business or to dividend or interest income of the Concessionaire has changed by greater than 2.9 percentage points since the Allowed Rate of Return was last determined.
- 1.19 The forecast return on capital must be a pre-tax rate of return.

### **Step 6 : Forecasting non-fuel opex**

- 1.20 A forecast must be made of the Concessionaire's reasonable non-fuel costs of operating the Electricity Business (*Non-Fuel Opex*) for each year of the next Regulatory Period.
- 1.21 Forecasts must be made of all Non-Fuel Opex, including the following categories of Non-Fuel Opex, for each year in the next Regulatory Period:
- (a) Generation labour costs;
  - (b) Other non-fuel generation costs;
  - (c) Distribution supplies and materials;



- (d) Distribution repairs and maintenance;
- (e) Distribution labour costs;
- (f) Costs associated with the enabling of renewable or other projects;
- (g) Retail operating costs;
- (h) Other distribution costs; and
- (i) Head office costs.

1.22 The Opex forecasts must be reasonable having regard to :

- (a) Historical Opex; and the Service Standards and Metering Reporting Standards proposed for the next Regulatory Period;
- (b) The Concessionaire's performance against service and efficiency Standard;
- (c) Any statement of justification for forecast Opex submitted by the Concessionaire; and
- (d) Benchmarking against other utilities of a similar size, operating in similar conditions, in Comparable Island Nations.

#### **Step 7: Fuel type and Generation Mix for Use in the Fuel Cost Adjustment Formula**

1.23 The fuel types and mix of different types of generation for the Regulatory Period shall be determined. Fuel type and mix of generation should be set based on a cost-efficient combination of fuel type and mix of generation that is practical and reasonably available to the Concessionaire at the time of the Reset.

1.24 These fuel types and mix of generation will be used as a reference for determining the fuel price and Fuel Efficiency Rates used in the adjustment formula.

#### **Step 8 : Efficiency Standards**

1.25 Efficiency Standards for Fuel Efficiency Rates and System Losses must be determined at each Reset for use in the fuel cost adjustment mechanism.

**1.26 The Efficiency Standards must be consistent with the following principles:**

- (a) The Efficiency Standards must take into account the :**
  - (i) fuel types and generation mix set in Step 7 above;**
  - (ii) operating conditions in Tonga; and,**
  - (iii) grid stability issues arising from an increase in generation**
- (b) the long-term benefit to Customers of improving Efficiency Standards must be greater than the long-term costs to Customers;**
- (c) the Efficiency Standards must be technically achievable, having regard to Comparable Island Nations and the generator manufacturer's recommendations.**

**Step 9 : NPV of forecast reasonable non-fuel costs of service**

**1.27 This must be calculated by calculating the sum of:**

- (a) the net present value of each of the depreciation expense (Step 4), return on capital and return on working capital (Step 5) and Non-Fuel Opex (Step 6) in each year of the next Regulatory Period; and**
- (b) in respect of any decision made in the previous Regulatory Period in respect of Capital Investments and Efficiency Enhancing Investment (see Clause 10 and Schedule 9 of this Addendum), 50% of the net present value of the cost savings resulting from the efficiency gains attributable to the relevant investment (or such other proportion agreed between the Concessionaire and the Commission prior to the capital expenditure occurring).**

**1.28 The discount rate for the NPV calculation must be the Allowed Rate of Return converted to a nominal pre-tax return using a reasonable forecast of inflation.**

### **Step 10 : Preliminary non-fuel component of the Regulated Tariff**

1.29 The preliminary non-fuel component of the Regulated Tariff is the price that :

- (a) if it applied at the start of the next Regulatory Period; and
- (b) adjustments were made to the price during the Regulatory Period in accordance with this Addendum to reflect forecast inflation; and
- (c) having regard to expected annual growth in total kWh billed (Step 1).

would result in expected Regulatory Revenue during the Regulatory Period such that the net present value of the expected revenue is equal to the net present value of the forecast reasonable non-fuel costs of service (Step 9).

1.30 This can be represented as follows :

$$NPV(R)^{\wedge} = NPV(C)$$
$$NPV(P \times Demand^{\wedge} + NSR^{\wedge}) = NPV(Opex^{\wedge} + Depm^{\wedge} + RAV^{\wedge} \times ROR)$$

Where :

- (a)  $\wedge$  = Denotes a forecast;
- (b) *NPV* means the Net Present Value of the values of that variable over each of the five years of the Regulatory Period;
- (c) *R* = Revenue earned by the Concessionaire from Supplying electricity to Customers, excluding the pass through of fuel costs, and assuming that the Concessionaire charges the full Regulated Tariff for the Supply of electricity;
- (d) *C* = Reasonable non-fuel cost of service;
- (e) *P* = Non-fuel component of the Regulated Tariff;
- (f) *Demand* = Demand for Supply of electricity by the Concessionaire;
- (g) *NSR* = Non-Supply Revenue;
- (h) *Opex* = Reasonable non-fuel operating expenses;
- (i) *Depn* = Regulatory depreciation of assets as calculated at Step 4;

- (j) **RAV** = The forecast regulatory asset value as calculated at Step 3; and
- (k) **RoR** = Post tax nominal rate of return on capital equal to the Allowed; Rate of Return converted to a pre-tax nominal return using a reasonable forecast of inflation.

#### **Step 11 : Finalised non-fuel component of the Regulated Tariff**

1.31 The Commission must consider the rules below relating to Tariff smoothing.

1.32 Subject to paragraph 33, if the Regulated Tariff determined by the Reset Decision (or otherwise determined at Arbitration under Clause 14) is :

- (a) lower than the Regulated Tariff which applies immediately before the Reset Date, the Concessionaire may request the Commission and, if so requested, the Commission must apply a smoothing factor by introducing part or all of the resulting reduction in the Non-Fuel Component of the Regulated Tariff progressively after the Reset Date, over a period not exceeding three years; or,
- (b) higher than the Regulated Tariff which applies immediately before the Reset Date, the Commission may (at its discretion) apply a smoothing factor by introducing part or all of the resulting increase in the Non-Fuel Component of the Regulated Tariff progressively after the Reset Date, over a period not exceeding three years,

1.33 The Commission must not apply, or approve any request for the application of, a smoothing factor under paragraph 32 if the application of the smoothing factor would result in a change to the net present value of forecast revenue from the non-fuel component of the Regulated Tariff in the next Regulatory Period.

#### **Step 12: Fuel cost adjustment mechanism**

1.34 Reasonable fuel costs are passed through using the fuel cost adjustment mechanism of Schedule 6 of this Addendum. Accordingly, the fuel cost adjustment mechanism in Schedule 6 shall be reset on the basis of the new

Efficiency Standards determined under Step 8. A forecast of fuel costs is not required for the purpose of a Reset.

## **PART B : OTHER MATTERS FOR REVIEW AND DETERMINATION**

### **Adjustment formula for the non-fuel component of the Regulated Tariff**

1.35 The adjustment formula for the non-fuel component of the Regulated Tariff to be used in Schedule 6, including indexation factors, may be changed where, having regard to the likely available information and expertise, a change would be likely to result in a more complete and/or timely pass through of the non-fuel related costs that are not within the control of the Concessionaire.

### **Adjustment formula for the fuel component of the Regulated Tariff**

1.36 The adjustment formula for the fuel component of the Regulated Tariff to be used in Schedule 5, including indexation factors and the Fuel Efficiency Standards used in the formula, may be changed where, having regard to the likely available information and expertise, a change would be likely to result in a more complete and/or timely pass through of reasonably efficient fuel related costs.

### **Duration of the Tariff Period**

1.37 The duration of the Tariff Period may be changed where the new period would result in a more efficient pass through of inflation and fuel costs, having regard to :

- (a) likely available information and expertise;
- (b) the cost to both the Commission and the Concessionaire of implementing the Tariff Adjustment formulae; and,
- (c) the likely impact on Customers.

### **Duration of the Regulatory Period**

1.38 The duration of the Regulatory Period may be changed where the new period would better balance the need of the Concessionaire to have certainty in order

to make capital investments and the requirement that efficient gains be shared with Customers over time.

1.39 In undertaking this analysis, the Commission must balance:

- (a) the extent that the Concessionaire has the incentive to increase efficiency and decrease costs;
- (b) the requirement that Customers receive the benefits of efficiency gains (in agreed proportions);
- (c) the extent to which the Regulated Tariff remains a reasonable approximation of the reasonably efficient Cost of Service; and
- (d) the extent to which the Service Standards reflect Good Industry Practice.

**Part A and Part B**

1.40 Part A analysis is to change in accordance with any changes made under Part B.



- (j) *RAV* = The forecast regulatory asset value as calculated at Step 3; and
- (k) *RoR* = Post tax nominal rate of return on capital equal to the Allowed; Rate of Return converted to a pre-tax nominal return using a reasonable forecast of inflation.

**Step 11 : Finalised non-fuel component of the Regulated Tariff**

- 1.31 The Commission must consider the rules below relating to Tariff smoothing.
- 1.32 Subject to paragraph 33, if the Regulated Tariff determined by the Reset Decision (or otherwise determined at Arbitration under Clause 14) is :
- (a) lower than the Regulated Tariff which applies immediately before the Reset Date, the Concessionaire may request the Commission and, if so requested, the Commission must apply a smoothing factor by introducing part or all of the resulting reduction in the Non-Fuel Component of the Regulated Tariff progressively after the Reset Date, over a period not exceeding three years; or,
  - (b) higher than the Regulated Tariff which applies immediately before the Reset Date, the Commission may (at its discretion) apply a smoothing factor by introducing part or all of the resulting increase in the Non-Fuel Component of the Regulated Tariff progressively after the Reset Date, over a period not exceeding three years,
- 1.33 The Commission must not apply, or approve any request for the application of, a smoothing factor under paragraph 32 if the application of the smoothing factor would result in a change to the net present value of forecast revenue from the non-fuel component of the Regulated Tariff in the next Regulatory Period.

**Step 12: Fuel cost adjustment mechanism**

- 1.34 Reasonable fuel costs are passed through using the fuel cost adjustment mechanism of Schedule 6 of this Addendum. Accordingly, the fuel cost adjustment mechanism in Schedule 6 shall be reset on the basis of the new



Efficiency Standards determined under Step 8. A forecast of fuel costs is not required for the purpose of a Reset.

## **PART B : OTHER MATTERS FOR REVIEW AND DETERMINATION**

### **Adjustment formula for the non-fuel component of the Regulated Tariff**

1.35 The adjustment formula for the non-fuel component of the Regulated Tariff to be used in Schedule 6, including indexation factors, may be changed where, having regard to the likely available information and expertise, a change would be likely to result in a more complete and/or timely pass through of the non-fuel related costs that are not within the control of the Concessionaire.

### **Adjustment formula for the fuel component of the Regulated Tariff**

1.36 The adjustment formula for the fuel component of the Regulated Tariff to be used in Schedule 5, including indexation factors and the Fuel Efficiency Standards used in the formula, may be changed where, having regard to the likely available information and expertise, a change would be likely to result in a more complete and/or timely pass through of reasonably efficient fuel related costs.

### **Duration of the Tariff Period**

1.37 The duration of the Tariff Period may be changed where the new period would result in a more efficient pass through of inflation and fuel costs, having regard to :

- (a) likely available information and expertise;
- (b) the cost to both the Commission and the Concessionaire of implementing the Tariff Adjustment formulae; and,
- (c) the likely impact on Customers.

### **Duration of the Regulatory Period**

1.38 The duration of the Regulatory Period may be changed where the new period would better balance the need of the Concessionaire to have certainty in order



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**SCHEDULE - 13 : REPORTING REQUIREMENTS**

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**SCHEDULE 13 : REPORTING REQUIREMENTS**

**1. Half-Year Performance Reports**

- 1.1 No later than the 30<sup>th</sup> March in each year the Concessionaire shall deliver to the Commission a Half-Year Performance Report for the period 1<sup>st</sup> July to 31<sup>st</sup> December of the immediately preceding year.
- 1.2 No later than the 30<sup>th</sup> September in each year the Concessionaire shall deliver to the Commission a Half-Year Performance Report for the period 1<sup>st</sup> January to 30<sup>th</sup> June of that year.
- 1.3 Each Half-Year Performance Report shall report on the following, matters in respect of the period covered by the Report, namely : -
- (a) Actual performance achieved relative to the performance standards set out in the then current Service Standards;
  - (b) Details of any actual or alleged breach by the Concessionaire of any Service Standard;
  - (c) Penalties paid or payable to Customers and penalties paid or payable to the Commission, by the Concessionaire pursuant to the provision of this Addendum.

**2. Annual Report and Financial Statements**

No later than 15<sup>th</sup> December in each year the Concessionaire shall deliver to the Commission, for the immediately preceding financial year, their Audited Financial Statements (prepared in accordance with international financial reporting standards) and their Annual Report to Shareholders.

### **3. Regulatory Annual Report**

- 3.1 No later than 15<sup>th</sup> December in each year the Concessionaire shall deliver to the Commission, in respect of the immediately preceding financial year, a Regulatory.
- 3.2 In respect of the period covered by the Report the Regulatory Annual Report shall contain :-
- (a) Details of the Regulated Tariff during the period, any adjustments made, the methodology of any adjustments made and the basis under the Addendum of any adjustments made;
  - (b) The updated RAV as at the end of the Financial Year as certified correct by the Auditors of the Concessionaire;
  - (c) Details of any capital investment undertaken (including identifying the costs and timing of any capital investment and the extent to which such expenditure was in accordance with the Approved Capital Expenditure Plan or as otherwise approved by the Commission);
  - (d) The Concessionaire's performance throughout the year measured against the Efficiency, Service, Metering or other Standards;
  - (e) The Concessionaire's Gross kWh of electricity generated, the invoiced kWh of electricity and Regulatory Revenue by Island Group and Customer Class;
  - (f) Details of the Concessionaire's insurance arrangements in accordance with Clause 9 of the Addendum;
  - (g) The statements by the Concessionaire's auditor required under paragraph 4 of this Schedule;
  - (h) Details of all Regulatory Levies or Fees paid by the Concessionaire to the Commission in accordance with this Addendum, including details of any amounts due, but not paid by the Concessionaire, to the Commission.

3.3 The Commission at its discretion may appoint Independent Consultants to audit or review all or any aspect of the Regulatory Annual Report or Half-Year Performance Reports. The cost to the Commission of employing said Consultants shall be refunded to the Commission by the Concessionaire.

3.4 If the Commission appoints an Independent Consultant pursuant to paragraph 3.3. of this Schedule, the Concessionaire shall provide all reasonable assistance, including complying promptly with all reasonable requests for information, to the independent Consultant, to facilitate the expeditious audit or review of the Regulatory Annual Report or the Half-Year Performance Reports.

#### **4. Appointment of auditor**

The Concessionaire shall appoint an independent auditor approved of by the Auditor General of Tonga to audit the Concessionaire's Annual financial statements. The Concessionaire shall ensure that the auditor submits, in addition to any statements or certificates required by law to be given by the auditor to the Concessionaire or any other person, the following to the Commission as part of the Regulatory Annual Report :

4.1 a statement by the auditor acknowledging that the financial statements may be relied upon by the Commission in carrying out its functions, and performing its obligations, under this Addendum;

4.2 a statement whether, in the auditor's opinion :

- (a) the Concessionaire has kept accounting records in a form that enables identification of the revenues, costs, assets and liabilities of the Concessionaire's Electricity Business;
- (b) the financial statements give a true and fair view of the revenues, costs, assets and liabilities of the Concessionaire's Electricity Business;
- (c) the updated RAV that forms part of the Annual Report is calculated consistently with the requirements of the Addendum.

For the avoidance of doubt, paragraph 4 of this Schedule does not limit the Concessionaire's obligation to prepare audited financial statements under any other applicable law.

**5. Commission may require information be provided**

The Concessionaire shall provide to the Commission any information required by the Commission to perform its functions under this Addendum and/or the Act : the Commission shall be the sole judge of information required by them. The provision of such information shall be a reporting obligation incumbent upon the Concessionaire. Without prejudice to the foregoing generality, the Concessionaire shall provide to the Commission on or before the last day of each month a Progress Report in respect of the immediately preceding month in respect of the matters referred to above in Paragraphs 1.3 and 3.2(a), (c), (d) and (e) : on or before the 15<sup>th</sup> day of May each year their CAPEX PROPOSAL for the following financial year : and on or before the last day of June each year details of the INSURANCE they propose to take out for the ensuing insurance year.

**6. Penalty**

If the Concessionaire fails to comply with any reporting obligations, then the Concessionaire shall become liable to pay a penalty to the Commission, calculated in accordance with the provisions of Schedule 4 of the Addendum, PROVIDED ALWAYS that before issuing a Penalty Notice the Commission shall advise the Concessionaire in writing of the failure to comply with any reporting obligation and allow them Five Business Days to respond thereto in writing. If the Concessionaire disputes the failure the Commission shall proceed to issue a Penalty Notice but shall not enforce payment due under that Notice pending the decision of an Independent Expert appointed under Clause 14.4.