



LESOTHO ELECTRICITY AND WATER AUTHORITY

**RENEWABLE ELECTRICITY GENERATION LICENCE
TEMPLATE**

EFFECTIVE DATE – 01 MAY 2016



LESOTHO ELECTRICITY AND WATER AUTHORITY

pursuant to the provision of the Lesotho Electricity Authority Act, 2002 as amended,
hereby issues a

RENEWABLE ELECTRICITY GENERATION LICENCE

to

[INSERT NAME OF LICENSEE] (The Licensee)

Authorising the conduct by licence, in accordance with said Act and the conditions of
this Licence and its Annexes.

Dated at Maseru this [INSERT DATE]

Chairman of the LEWA Board

GENERATION LICENCE CONDITIONS

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CONDITION 1 - DEFINITIONS AND INTERPRETATION

1. In the general conditions unless the context otherwise requires:

"the Act" means the Lesotho Electricity Authority Act, 2002 as amended;

"affiliate" in relation to any person means any holding company of such person, any subsidiary of such person or any subsidiary of a holding company of such person, in each case within the meaning of the Companies Act, 2011;

"ancillary services" means: (a) such services as the Licensee may be required to have available in association with any generation set pursuant to Grid Code; and (b) such services as the Licensee may have agreed to have available in association with any generation set pursuant to any agreement made with a transmission company, and which may be offered for sale to a transmission company for the purpose of securing stability of operation on a transmission system and/or a distribution system of any authorised electricity operator;

"auditors" means the Licensee's auditors for the time being holding office in accordance with the requirements of the Companies Act, 2011;

"authorised" in relation to any business or activity means authorised by licence granted or treated as granted under section 50 or exemption granted under section 48 of the Act;

"authorised electricity operator" means any person (other than the Licensee) who is authorised to generate, transmit, distribute or supply electricity and, for the purposes of the general conditions shall include any person who has made an application to be so authorised which application has not been refused and any person lawfully transferring electricity to or from or across the Kingdom of Lesotho or any part thereof or to or from across an interconnector (or who has made application for use of an interconnector which has not been refused);

"Authority" means the Lesotho Electricity and Water Authority established under section 3 of the Act;

"change in control" means the sale of all or substantially all the assets of the Licensee, any merger, consolidation or acquisition of Licensee with, by or into another undertaking, entity or person; or any change in the ownership of more than fifty percent (50%) of the voting capital stock of the Licensee in one or more related transactions;

"commissioned" means, in relation to the Facility, that it has:

- (a) been substantially completed and is ready for operations in accordance with this Licence
- (b) met all the requirements for synchronisation and delivery of electricity to the Grid as set out in the Grid Code; and
- (c) received the required Permits from the System Operator and any relevant Government Authority to allow it to commence generation and delivery of electricity to the Grid.

"commissioning Date" means the date on which the Facility has been Commissioned or deemed to have been Commissioned in accordance with the PPA;

"commercial Agreements" means Power Purchase Agreement (PPA), Implementation Agreement (IA), Connection Agreement and other commercial agreements required to operate the production facility and sell electricity generated by the facility;

"core Business" means the generation of electricity from the production facilities specified in Annex 1, as revised from time to time, for the purpose of giving a supply to the Lesotho Electricity Company;

"customer" means any person supplied or requiring to be supplied with electricity at any premises in the Kingdom of Lesotho but shall not include any authorised electricity operator in its capacity as such;

"disposal" in relation to assets means any sale, gift, lease, licence, the grant of any right of possession, loan, security, mortgage, charge or the grant of any other encumbrance or the permitting of any encumbrance to subsist or any other disposition to a third party and "dispose" shall be construed accordingly;

"distribution and supply license" means a distribution and supply licence granted or treated as granted under section 50 of the Act;

"distribution system" means the system consisting (wholly or mainly) of electric lines owned or operated by an authorised distributor and used for the distribution of electricity from grid supply points or generation sets or other entry points to the point of delivery to customers or authorised electricity operators but shall not include any part of a transmission system;

"electricity supplier" means any person authorised to supply electricity;

"estimated costs" for the purposes of Condition 4 (Payments by the Licensee to the Authority) only, has the meaning given in that condition;

"extension" shall be construed in accordance with Condition 8 (Compulsory Use of Land etc.);

"facility" means the electricity generating plant and equipment located at the Site, comprising generating equipment, substation and all protective, connecting, associated or ancillary plant, equipment or buildings, with the specifications set out in Schedule 1 of this Agreement;

"generation business" means the authorised business of the Licensee or any affiliate or related undertaking of the Licensee in the generation of electricity and the provision of ancillary services;

"generation set" means any plant or apparatus for the production of electricity and shall where appropriate include any production facilities comprising more than one generation set;

"Grid Code" means as appropriate the transmission code which the transmission system operator is required to prepare and have approved by the Authority and the distribution code which each distribution Licensee is required to prepare and have approved by the Authority, both as revised from time to time with the approval of the Authority;

"grid supply point" means any point at which electricity is delivered from a transmission system to any distribution system;

"information" shall include any documents, accounts, estimates, returns or reports, records and any data in verbal, written or electronic form and information in any form or medium whatsoever;

"interconnector" means the electric lines and electrical plant and meters owned or operated by a transmission or distribution company solely for the transfer of electricity to or from a transmission or distribution system into or out of the Kingdom of Lesotho;

"Lesotho Electricity Company" means the Lesotho Electricity Company (Pty) Limited, a company established under the Companies Act, and which is the holder of a Composite transmission, distribution and supply licence granted by the Authority;

"Lesotho Highlands Development Authority" means the Lesotho Highlands Development Authority, a statutory body established in terms of the Lesotho Highlands Development Authority Order, 1986, a holder of the Generation Licence granted by the Authority;

"Minister" means the Minister of the Government of Lesotho responsible for the licensed activity;

"operational control" means the management and operational control of the transmission system assets but for the avoidance of doubt the compliance by the Licensee with the instructions of the Transmission System Operator according to the Grid Code shall not be construed as relinquishment of operational control;

"relevant asset" means any asset for the time being forming part of the Licensee's generation portfolio, any control centre for use in conjunction therewith and any right, title or interest in land upon which any of the foregoing is situated;

"relevant proportion" for the purposes of Condition 4 (Payments by the Licensee to the Authority) means the proportion of the costs attributable to the Licensee in accordance with principles determined by the Authority for the purposes of this condition generally and notified to the Licensee;

"relevant year" for the purposes of Condition 4 (Payments by the Licensee to the Authority) only, means a year beginning on 1st April of each calendar year and ending on 31st March of the following calendar year;

"separate business" means each and any of:

- (a) the generation business of the Licensee;
- (b) any supply business of the Licensee;
- (c) any distribution business of an affiliate or related undertaking of the Licensee;

- (d) any transmission business of an affiliate or related undertaking of the Licensee taken separately from one another (but so that where all or any part of such business is carried on by an affiliate or related undertaking of the Licensee, such part of the business as is carried on by that affiliate or related undertaking shall be consolidated with any such other business of the Licensee and of any other affiliate or related undertaking of the Licensee so as to form a single separate business).

"statutory accounts" means the accounts that the Licensee prepares under the Companies Act, 2011;

"subsidiary" has the meaning given in the Companies Act, 2011;

"Transmission company" means the holder for the time being of a transmission licence;

"transmission licence" means a transmission licence granted or treated as granted under section 50 of the Act; and

"transmission system" means a system consisting (wholly or mainly) of high voltage electric lines owned or operated by the holder of a transmission licence.

2. Any words or expressions used in the Act shall, unless the contrary intention appears, have the same meaning when used in these general conditions.
3. Except where the context otherwise requires, any reference to a numbered general condition reference, and reference to a Section is a reference to that Section or Schedule is a reference to the general condition or Schedule bearing that number in this licence, and any reference to a numbered paragraph is a reference to the paragraph bearing that number in the general conditions or Schedule in which the general conditions apply.
4. These general conditions shall have effect as if in relation to references to a licence holder who is a natural person, the words "it", "its" and "which" there are substituted by the words "he", "him", "his" and "whom", and cognate expressions shall be construed accordingly. Except where the context otherwise requires, a reference in a general condition to a paragraph is a reference to a paragraph of that condition and a reference in a paragraph to a sub-paragraph is a reference to a sub-paragraph of that paragraph.
5. In construing the general conditions, the heading or title of any general condition or paragraph shall be disregarded.
6. Where any obligation under or pursuant to the licence is required to be performed by a specified date or within a specified period, and where the Licensee has failed so to perform by such date or within such period, such obligation shall continue to be binding and enforceable after the specified date or after the expiry of the specified period (but

without prejudice to all rights and remedies available against the Licensee by reason of the Licensee's failure to perform by that date or within that period).

CONDITION 2 - LICENSED ACTIVITY

This licence granted pursuant to section 50 of Act, authorises the Licensee to generate electricity from the production facilities specified in Annex 1 and to sell the generated electricity to LEC throughout the term of this licence.

CONDITION 3 - TERM OF LICENCE

1. This Licence shall enter into force and effect on the [INSERT DATE] and expire on the [INSERT DATE].
2. The term of the Licence may be renewed subject to the conditions and procedures of the Act, provided the Licensee requests a renewal by written notice at the latest 24 months prior to the expiry date.

CONDITION 4 - LICENCE FEE

1. The Licensee shall pay the Authority a Licence Fee for the relevant proportion of the estimated costs of regulation that is incurred by the Authority in the conduct of its functions under the Act in respect of each year that the Licensee holds the Licence.
2. The amounts determined in accordance with paragraph 1 of this Condition shall be paid by the Licensee to the Authority in one installment being due for payment by 31st October in each year, provided that if the Authority has not given notice of the amount of the installment, at least 30 days before the payment date stated above, the Licensee shall pay the amount due within 30 days from the actual giving of notice by the Authority to the Licensee (whenever notice is given).
3. When the Licensee fails to pay the amount determined in accordance with paragraph 1 of this Condition within 30 days of the due date set out in paragraph 2 of this Condition, it shall pay simple interest on the amount at the rate which is from time to time equivalent to the base rate plus 1% of the Central Bank of Lesotho or, if there is no such base rate, such base rate as the Authority may designate for the purposes hereof.

CONDITION 5 - SALE OF ELECTRICITY

1. The Licensee shall be entitled to sell all electricity generated by his production facilities.
2. For the purpose set out in paragraph 1 of this Condition the Licensee shall conclude and maintain in force a Power Purchase Agreement with the buyer setting out the terms and conditions of the sale in detail.

CONDITION 6 - COMMERCIAL AGREEMENTS

1. The Licensee shall be entitled to enter into Commercial Agreements with third parties that are required to conduct the licensed activity.

2. The Licensee shall submit a copy of each Commercial Agreement entered into for the purpose of conducting the licensed activity to the Authority for approval.
3. The Authority shall approve the Commercial Agreements if they comply with the requirements of the Act.
4. The Licensee shall not amend any Commercial Agreement entered into pursuant to paragraph 1 of this Condition or enter into an agreement amending such a Commercial Agreement without obtaining the prior written approval of the Authority.
5. The Licensee shall comply with the relevant provisions of any and all specified agreements entered into pursuant to this Condition.
6. The approval by the Authority shall be deemed granted if the Authority does not inform the Licensee in writing of any objection within a period of 2 months.

CONDITION 7 - LEGAL AND REGULATORY COMPLIANCE

1. The Licensee shall comply with all laws, by-laws, regulations, codes and standards of the Kingdom of Lesotho in so far as they are applicable to the licensed activity.
2. The Licensee shall not enter into any agreement that would breach any such law, by-law, regulation, code, standard or the General Terms and Conditions of this Licence.
3. The Authority may issue directions relieving the Licensee of its obligation under the Licence in respect of such parts of the relevant Grid Code and to such extent and subject to such conditions as may be specified in those directions.
4. The Licensee shall give officers of the Authority or any person or persons duly authorized by the Authority access to the Licensee's facility for the purposes of inspection under the Act.

CONDITION 8 - COMPULSORY USE OF LAND

1. The Licensee shall ensure that any compulsory acquisition or taking of any land or immovable property for purposes related to the business undertaking by virtue of this Licence shall be made in accordance with the Land Act, 2010.
2. The powers and rights conferred by or under the provisions of the Land Act, 2010 shall have effect in respect of the Licensee for the purpose of:
 - (a) reconstructing or extending a generating station;
 - (b) activities connected with the extension of a generating station or connected with the operation of a generating station; and
 - (c) installing, maintaining, removing or replacing electric lines, and electrical plant associated with them, connecting a generating station with:
 - (i) a transmission system; or
 - (ii) a distribution system.

CONDITION 9 - REGULATORY ACCOUNTS

1. The Licensee shall keep separate regulatory accounts in respect of the generation business for each financial year.

2. The accounts shall be kept in accordance with the Lesotho Companies Act, 2011 and with such regulatory accounting guidelines as may be issued by the Authority from time to time.

CONDITION 10 - PROHIBITION OF CROSS-SUBSIDIES

1. Unless authorized by the Authority, the Licensee shall ensure that the business licensed by this licence does not give any subsidy or cross-subsidy (direct or indirect) to, nor receive any subsidy or cross-subsidy (direct or indirect) from, any other business of the Licensee and/or any Affiliate or related enterprise of the Licensee and/or any other person.

CONDITION 11 - DISPOSAL OF RELEVANT ASSETS

1. The Licensee shall be obliged to obtain prior written consent from the Authority for the disposal of or relinquishment of operational control over any equipment, immovable property or other asset required to perform the licensed activity unless:
 - (a) the Authority has given prior general consent in written form for the disposal of or a relinquishment of operational control over relevant assets of a specified description; and
 - (b) it is obliged by law or final order of a competent court to dispose of the relevant asset or part of its Generation Business.
2. The consent shall be deemed granted if the Authority does not inform the Licensee in writing of any objection to such disposal or relinquishment of control within the notice period of 2 months.

CONDITION 12 – ENVIRONMENTAL PRESERVATION

1. The Licensee shall comply with and adhere to applicable national and international environmental standards and practices during the term of this Licence to protect and preserve the environment.

CONDITION 13 – CHANGE IN CONTROL

1. The Licensee shall submit the agreement on the Change of Control in respect of generation facility to the Authority for consideration, review and approval.
2. The Authority shall consider, review and approve the agreement between the Parties within 2 months of the receipt of the proposed agreement.

CONDITION 14 - TRANSFER AND ASSIGNMENT OF LICENCE

1. The Licensee may not transfer, assign or otherwise cede control of the Licence without prior written consent of the Authority.
2. The Licensee shall request the consent of the Authority to any transfer, assignment or other ceding of control of the Licence at least two months prior to the envisaged date of the requested transfer, assignment or ceding of control of the Licence.
3. When deciding whether to give its consent the Authority shall apply the same criteria as it would apply if it were deciding on a licence application from the entity to which the Licence shall be transferred, assigned or otherwise ceded.

4. The consent shall be deemed granted if the Authority does not inform the Licensee in writing of any objection to the transfer, assign or otherwise cede control of the Licence within the notice period of 2 months.

CONDITION 15 - CENTRAL DISPATCH

1. The Licensee shall present all generation units available to the Central Dispatch of the Transmission System Operator, when the Central Dispatch is required under the Grid Code.
2. The Licensee shall provide the Transmission System Operator with all information required to enable it to operate the Central Dispatch system, at any time and in the manner provided by the Grid Code.

CONDITION 15 - ANCILLARY SERVICES

1. The Licensee shall offer the conditions for ancillary services if so requested by the Transmission System Operator.
2. The Licensee shall, in accordance with paragraph 1 of this Condition, upon request of the Authority provide to the Authority a report containing details of:
 - (a) prices offered for the provision of Ancillary Services by each generation unit of the Licensee; and
 - (b) an explanation regarding the cost of the Licensee for the provision of Ancillary Services in conformity with the applicable Grid Code.

CONDITION 17 - HEALTH AND SAFETY OF EMPLOYEES

1. The Licensee shall take all reasonable steps to promote the health and safety of employees and shall consult with appropriate representatives of employees for the purpose of establishing and maintaining an appropriate machinery or forum for the joint consideration of matters of mutual concern in respect of health and safety of those employees. The Licensee shall comply with all occupational health and safety laws of Lesotho.

CONDITION 18 - PROVISION OF INFORMATION

1. Subject to paragraphs 2 and 3 of this Condition, the Licensee shall furnish to the Authority, in such manner and at such times as the Authority may reasonably require, such information and shall provide and furnish to it such reports, as the Authority may reasonably require or as may be necessary for the purpose of performing the functions conferred on it by or under the Act.
2. The Licensee shall, if so requested by the Authority, give reasoned comments on the accuracy and text of any information or advice (so far as relating to its activities as holder of an electricity generation licence) which the Authority proposes to publish pursuant to the exercise of its duties and functions under Sections 21 and 23 of the Act.

3. This condition shall not require the Licensee to produce any documents or give any information which it could not be compelled to produce or give in evidence in civil proceedings before a court.
4. The power of the Authority to call for information under paragraph 1 of this Condition is in addition to the power of the Authority to call for information under or pursuant to any other condition. There shall be a presumption that the provision of information in accordance with any other condition is sufficient for the purposes of that condition, but that presumption shall be rebutted, if the Authority states in writing that in its opinion such further information is, or is likely to be, necessary to enable it to exercise functions under the condition in question.

CONDITION 19 - SUSPENSION

1. The Authority may at any time suspend the Licence by giving not less than 15 days' notice in writing to the Licensee:
 - (a) if any amount payable under Condition 4 (Payments by the Licensee to the Authority) is unpaid 30 days after it has become due and remains unpaid for a period of 30 days after the Authority has given the Licensee notice that the payment is overdue - provided that no such notice shall be given earlier than the sixteenth day after the day on which the amount payable becomes due;
 - (b) if the Licensee fails to comply with a final order (within the meaning of section 73 of the Act) or with a provisional order (within the meaning of section 74 of the Act) which has been confirmed under section 76 of the Act and (in either case) such failure is not rectified to the satisfaction of the Authority within three months after the Authority has given notice in writing of such failure to the Licensee - provided that no such notice shall be given by the Authority before the expiration of the period within which an application under sections 87, 88 or 89 of the Act questioning the order or its validity or before the proceedings relating to any such application are finally determined;
 - (c) if the Licensee fails to pay any financial penalty (within the meaning of section 99 of the Act) by the date for such payment and such payment is not made by the Authority within three months after the Authority has given notice in writing of such failure by the Licensee - provided that no such notice shall be given before any proceedings under Schedule 2 of the Act are finally determined; or
 - (d) if the Licensee fails to pay any due amount to the Authority payable as part of an award (within the meaning of section 9 of Schedule 2 of the Act) or any costs determined as part of an interim award (within the meaning of Schedule 2 of the Act) howsoever payable by the due date specified in either such award; or
 - (e) if the Licensee fails to conduct the licensed activity in accordance with the terms and conditions of the Licence, the provisions of the Act and any regulatory instruments thereunder and does not immediately take all appropriate means to remedy the failure.

CONDITION 20- REVOCATION

1. The Authority may at any time revoke the Licence by giving not less than 30 days' notice (24 hours' notice in the case of a revocation under paragraph (e) of this Condition in writing to the Licensee:
 - (a) If the Licensee agrees in writing with the Authority that the Licence should be revoked;
 - (b) if any amount payable under Condition 4 (Payments by the Licensee to the Authority) is unpaid 30 days after it has become due and remains unpaid for a period of 90 days after the Authority has given the Licensee notice that the payment is overdue - provided that no such notice shall be given earlier than the sixteenth day after the day on which the amount payable becomes due;
 - (c) if the Licensee fails:
 - (i) to comply with a final order (within the meaning of section 73 of the Act) or with a provisional order (within the meaning of section 74 of the Act) which has been confirmed under section 76 of the Act and (in either case) such failure is not rectified to the satisfaction of the Authority within three months after the Authority has given notice in writing of such failure to the Licensee - provided that no such notice shall be given by the Authority before the expiration of the period within which an application under sections 87, 88 or 89 of the Act questioning the order or its validity or before the proceedings relating to any such application are finally determined;
 - (ii) to pay any financial penalty (within the meaning of section 99 of the Act) by more than 90 days following the date for such payment and such payment is not made by the Authority within three months after the Authority has given notice in writing of such failure by the Licensee - provided that no such notice shall be given before any proceedings under Schedule 2 of the Act are finally determined; or
 - (iii) to pay any due amount to the Authority payable as part of an award (within the meaning of section 9 of Schedule 2 of the Act) or any costs determined as part of an interim award (within the meaning of Schedule 2 of the Act) howsoever payable by more than 90 days following the due date specified in either such award.
 - (d) if the Licensee:
 - (i) fails to commence carrying out the licensed activity within.... days from the date of entry into force of the Licence;
 - (ii) has ceased to carry on the licensed activity;
 - (iii) fails to conduct the licensed activity in compliance with the terms and conditions of the Licence, the provisions of the Act and any regulatory instruments thereunder; without remedying such failure within a reasonable period of time and fails to remedy such failure within a reasonable period of time; or
 - (iv) has submitted false information when making its application for the Licence.
 - (e) if the Licensee:

- (i) is unable to pay its debts (within the meaning of Part XVI of the Companies Act, 2011,
- (ii) passes a resolution for Voluntary Winding Up (within the meaning of Part XVIII of the Companies Act, 2011); or
- (iii) is subject to Winding Up by a court of competent jurisdiction (within the meaning of section 173 of the Companies Act, 2011).

CONDITION 21 - CORRESPONDENCE

1. All communication with the Authority must be done in writing unless otherwise directed by the Authority by facsimile transmission or by other electronic means and, in such case:
 - (a) the original instrument or other confirmation in writing shall be delivered or sent by pre-paid post as soon as is reasonably practicable, and,
 - (b) where the means of transmission had been agreed in advance between the parties concerned, in the absence of and pending such confirmation, there shall be a rebuttable presumption that what was received duly represented the original instrument.

CONDITION 22 - WHOLE LICENCE

1. This Licence constitutes the entire license and supersedes all prior understandings and agreements between the Licensee and the Authority.

ANNEX 1

Specified Production Facilities

STATION NAME:

LOCATION:

CAPACITY:

NUMBER OF GENERATION UNITS AND RESPECTIVE
CAPACITY:

HOW THE FACILITY WILL BE FUELLED OR DRIVEN:

DETAILS OF ELECTRIC LINES CONNECTED TO THE
NETWORK

FACILITY CONNECTION POINT:

GENERATION FACILITY LIFE SPAN:

GENERATION FACILITY INFORMATION

Part 1

The Facility has the following outline parameters:

Total nominal capacity: [●] MW

Estimated energy output:

Maximum estimated Energy Output per month: [●] MWh

Minimum estimated Energy Output per month: [●] MWh

Scheduled Commissioning Date: [●]

A more detailed description of the Facility is:

Energy source: [●]

Generation specification:

Type: [●]

Number of generating units: [●]

Output voltage: [●]

Power factor: [●]

Method of output power control:	[●]
Method of output voltage control:	[●]
Transformer:	[●]
Protection equipment:	[●]
Grid Connection	[●]

Part 2 – Interconnection Facilities

The Interconnection Facilities for the Facility comprise the following: [●].

Part 3 – Site details

The details of the Site, including, where relevant, a site plan, coordinates and cadastral details are: [●]