Electricity Concession Contract
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Date: 25 July 2008

PARTIES

The Kingdom of Tonga *(the Kingdom)*

Tonga Power Limited *(the Concessionaire)*

The Electricity Commission *(the Commission)*

BACKGROUND

A The Electricity Act 2007 regulates the Supply of electricity in the Kingdom of Tonga.

B Section 20 of the Electricity Act 2007 enables the Kingdom to enter into a concession contract permitting the Concessionaire to Supply electricity.

C The parties wish to enter into this Electricity Concession Contract *(Agreement)* pursuant to section 20 of the Electricity Act 2007 and to record in this Agreement the terms and conditions on which the Concessionaire will Supply electricity in the Kingdom.

THE PARTIES AGREE as follows:

1 SCOPE OF CONCESSION

1.1 Concession
   (a) Pursuant to section 20(1) of the Act, the Commission grants the Concessionaire a concession to Supply electricity on each of the Island Groups from the Commencement Date, subject to the terms of this Agreement. Subject to clauses 1.2 and 1.3, the Commission will not permit any other person to Supply electricity during the Term on any of the Island Groups.

   (b) This Agreement does not prevent the Concessionaire from purchasing, nor requires the Concessionaire to purchase, electricity from any third party.

1.2 Back up generation
   The Concessionaire acknowledges that third parties may provide for Back Up Generation of electricity, in accordance with the terms of the Act.

1.3 Self generation
   The Concessionaire acknowledges that third parties may Self-Generate electricity, in accordance with the terms of the Act.
2 SERVICE COVERAGE AND TERMS AND CONDITIONS

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

2.2 New connections and reconnections
Subject to clauses 2.3 and 2.6, 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) pay:

(i) a fee that does not exceed the reasonable costs to the Concessionaire of connection or reconnection (as applicable) of that person to the Concessionaire's electricity distribution network (including the reasonable cost of installing any equipment or carrying out any work);

(ii) in the case of reconnection, all reasonable debt recovery and/or account management costs relating to that person;

(iii) the Regulated Tariff; and

(b) comply with the terms and conditions of the Concessionaire’s Customer Contract.

2.3 Right to disconnect
Nothing in this clause 2 shall prevent the Concessionaire from:

(a) disconnecting any Customer from the Concessionaire’s electricity distribution network and ceasing the provision of Standard Service in accordance with the terms and conditions of an applicable Customer Contract (including, for the avoidance of doubt, for reasons of bankruptcy of the Customer); and

(b) charging a fee for disconnection that does not exceed the reasonable costs of disconnection (including any reasonable debt recovery and/or account management costs relating to that person).

2.4 Concessionaire must offer Regulated Tariff
Subject to clauses 2.5 and 2.6, 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 less than the Regulated Tariff for the Supply of electricity.
2.5 **Optional Tariffs and terms and conditions**

(a) Subject to clause 2.5(b), the Concessionaire 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 2.5(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 the 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.

2.6 **Prepay metering and other Customer-Specific Measures**

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 or payment of a refundable bond, provided that:

(a) the terms and conditions of the Customer-Specific Measure are reasonable in the circumstances; 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 may also charge an additional charge that reflects the reasonable cost to the Concessionaire of the Customer-Specific Measure.

2.7 **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 to promptly 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 may charge the Customer a fee
reflecting the reasonable cost to the Concessionaire of checking the
accuracy of the Customer’s electricity meter.

2.8 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 item B2
of Schedule 1.

(b) If the Concessionaire determines that the supply of electricity to a Customer’s
installation:

(i) does not comply with the voltage stability standard set out in item B2 of
    Schedule 1, then the Concessionaire shall, at the Concessionaire’s cost,
promptly take all reasonable steps to comply with the voltage stability
    standard set out in item B2 of Schedule 1 in respect of the supply of
    electricity to the Customer’s installation;

(ii) complies with the electricity quality and reliability standard set out in item
    B2 of Schedule 1, then the Concessionaire may charge the Customer a fee
    reflecting the reasonable cost to the Concessionaire of checking the supply
    of electricity to the Customer’s installation.

2.9 Customer Contract to be consistent with this Agreement
Nothing in a Customer Contract shall be inconsistent with, or otherwise have the
effect of reducing the rights or benefits of a Customer as contemplated by, this
Agreement, and the Concession shall not enforce any right under a Customer Contract if that right is in breach of this clause 2.9.

3 SERVICE STANDARDS AND METERING REPORTING STANDARDS

3.1 Service Standards and Metering Reporting Standards
Subject to clause 16, 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 Schedule 1. For the avoidance of doubt, this means that for each Performance Measure in Schedule 1, the Concessionaire must meet, or perform better than, the corresponding standard.

3.2 Penalties
If the Concessionaire determines, or the Commission determines (in accordance with Schedules 2 and 3), that the Concessionaire must pay a penalty for breach of a Service Standard, then the Concessionaire shall pay the applicable penalty to such person, and in such amount, as set out in Schedule 3. For the avoidance of doubt, no penalties shall be payable for any failure to comply with a Metering Reporting Standard, other than any applicable penalties under paragraph 5 of Schedule 13.

3.3 Process for resolving Service Standards issues
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 Standard, and has not otherwise paid the applicable penalty in accordance with clause 3.2, the provisions of paragraph 2 of Schedule 2 shall apply.

3.4 Initial review of Service Standards
(a) During the period between the Commencement Date and 31 December 2008, the Commission and the Concessionaire shall in good faith review and discuss the Service Standards set out in Schedule 1 as at Commencement Date to determine whether the Service Standards are:

(i) consistent with the standard of service that is sought generally by Customers and their ability to pay;

(ii) technically achievable;

(iii) consistent with Good Industry Practice; and

(iv) 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.
(b) If, having in good faith reviewed and discussed the Service Standards in accordance with clause 3.4(a), both the Commission and the Concessionaire (acting reasonably) agree that the Service Standards set out in Schedule 1 do not satisfy any one of the criteria set out in clause 3.4(a)(i) to (iv), then the Concessionaire and the Commission shall, in good faith and using all reasonable endeavours negotiate with a view to agreeing amendments to the Service Standards set out in Schedule 1 such that the Service Standards satisfy all criteria set out in clause 3.4(a)(i) to (iv), and such amended Service Standards shall apply from 1 January 2009. If the Commission and the Concessionaire, having negotiated in accordance with this clause 3.4(b), fail to agree on amendments to the Service Standards by 31 December 2008, then the Service Standards set out in Schedule 1 shall continue to apply until otherwise amended in accordance with this Agreement.

4 CUSTOMER COMPLAINTS

4.1 Customer complaints
(a) The Commission may only consider a complaint from a Customer or any other member of the public 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 Agreement;

(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 of electricity,

(each, a Customer Complaint).

(b) The Commission may not consider a Customer Complaint if the Commission reasonably considers the Customer Complaint is frivolous or vexatious.

(c) The provisions of Schedule 4 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 2.
5  REGULATED TARIFF

5.1  Regulated Tariff
(a)  The Regulated Tariff for each Island Group at the Commencement Date is set out in paragraph 3 of Schedule 5.

(b)  The Regulated Tariff may only be altered in accordance with the terms of this Agreement.

5.2  Adjustment of Regulated Tariff
The Concessionaire must adjust the Regulated Tariff as at the beginning of each Tariff Period in accordance with Schedule 5.

5.3  Review of non-fuel component of the Regulated Tariff
(a)  The Commission shall instruct an International Consultant to conduct a review of the non-fuel component of the Regulated Tariff no later than six months from the Commencement Date.

(b)  In conducting the review of the non-fuel component of the Regulated Tariff in accordance with clause 5.3(a), the Commission shall direct the International Consultant to:

   (i)  determine the non-fuel component of the Regulated Tariff for each of the Island Groups;

   (ii) apply the Reset Rules in Schedule 11 as are appropriate for a review of the non-fuel component of the Regulated Tariff;

   (iii) consult with both the Commission and the Concessionaire as the Independent Consultant considers fit prior to submitting a determination to the Commission.

(c)  The relevant non-fuel components of the Regulated Tariff for each Island Group determined by the Independent Consultant in accordance with clause 5.3(a) shall take effect from the start of the next Tariff Period following the Independent Consultant’s determination, and the Concessionaire must adjust the Regulated Tariff at the beginning of that Tariff Period accordingly.

6  TARIFF STRUCTURE

6.1  Tariff Structure
The Tariff Structure for the Regulated Tariff as at the Commencement Date shall be the Tariff Structure as set out in paragraph 3 of Schedule 5.
6.2 **Amendment of Tariff Structure**

The Tariff Structure for the Regulated Tariff may only be amended in accordance with Schedule 6.

7 **EXTRAORDINARY ADJUSTMENT**

7.1 **Extraordinary Tariff Adjustments**

(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 7.1(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 six months after an Extraordinary Tariff Adjustment.

(c) If the recipient of an Extraordinary Event Notice (**First Notice**) gives a further Extraordinary Event Notice within 10 Business Days following receipt by it of the First Notice, both Extraordinary Event Notices will be deemed (for the purposes of clause 7.1(a)) to have been given contemporaneously, on the date on which the First Notice was given.

(d) The provisions of Schedule 7 shall apply if an Extraordinary Event Notice is given in accordance with this clause 7.

7.2 **Definition of Extraordinary Event**

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 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 (or in the first Regulatory Period as identified in Schedule 7), exceeds three percentage points.

(c) any Force Majeure Event;

(d) any discriminatory treatment by the government of the Kingdom of Tonga or its agencies which reduces the revenues of the Concessionaire over any 12 month period, or increases the Cost of Service 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 one or more increases or decreases in an existing fee or charge that gives rise to Non-Supply Revenue (including any combination of increases or decreases), or introduction of a new fee or charge that gives rise to Non-Supply Revenue, that changes the Regulatory Revenues of the Concessionaire over any 12 month period;

(g) any other event, which is not reasonably foreseeable, not reasonably under the control of either party, and which neither party was required or reasonably expected to provide against, that changes the revenues of the Concessionaire or the non-fuel cost of service over any 12 month period.

8 CAPITAL INVESTMENTS AND EFFICIENCY ENHANCING INVESTMENTS

8.1 Capital Expenditure Plan
(a) Subject to clause 8.1(b), the Concessionaire shall at all times have an Approved Capital Expenditure Plan and update that plan in accordance with Schedule 8.

(b) If a capital expenditure plan is attached as Schedule 9 of this Agreement as at the Commencement Date, then that capital expenditure plan shall be deemed to be approved by the Commission as an Approved Capital Expenditure Plan. If an capital expenditure plan is not attached as Schedule 9 of this Agreement as at the Commencement Date, then the Concessionaire shall not be in breach of clause 8.1(a), provided that an Annual Capex Proposal is submitted by the Concessionaire to the Commission for approval in accordance with Schedule 8 no later than 31 November 2008.

8.2 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 8.

8.3 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 8.3(a), the Commission is satisfied that:
(i) the costs and benefits submitted by the Concessionaire are reasonable;

(ii) the investment would not be undertaken by the Concessionaire without the sharing because it would not be economically worthwhile;

(iii) there is no alternative investment that could practically be undertaken and performs better on a basic cost/benefit assessment,

then the Commission shall give a notice to the Concessionaire that it will 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. The Commission shall be bound by any such notice.

9 REVIEW AND RESET OF REGULATED TARIFF, EFFICIENCY STANDARDS AND SERVICE STANDARDS

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

9.2 Frequency of Reviews
(a) Subject to clause 9.2(b), the Regulatory Period shall be the period from the Commencement Date until 30 June 2015, and thereafter each subsequent Regulatory Period shall be a period of seven years from the Reset Date in respect of that subsequent Regulatory Period.

(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 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 “Reset 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.

9.3 Initial review of Efficiency Standards
(a) During the period between the Commencement Date and 31 December 2008, the Commission and the Concessionaire shall in good faith review and discuss the
Efficiency Standards set out in paragraphs 21 and 22 of Schedule 5 as at Commencement Date to determine whether the Efficiency Standards are consistent with the following principles:

(i) The Efficiency Standards must take into account the:
   
   (a) fuel types and generation mix set in Step 7 of Schedule 11;
   
   (b) operating conditions in Tonga;

(ii) The long-term benefit to Customers of improving Efficiency Standards must be greater than the long-term costs to Customers;

(iii) The Efficiency Standards must be technically achievable, having regard to Comparable Island Nations.

(b) If, having in good faith reviewed and discussed the Efficiency Standards in accordance with clause 9.3(a), both the Commission and the Concessionaire (acting reasonably) agree that the Efficiency Standards set out in paragraphs 21 and 22 of Schedule 5 are not consistent with any of the principles set out in clause 9.3(a)(i) to (iii), then the Concessionaire and the Commission shall, in good faith and using all reasonable endeavours negotiate with a view to agreeing amendments to the Efficiency Standards set out in paragraphs 21 and 22 of Schedule 5 such that the Efficiency Standards are consistent with the principles set out in clause 9.3(a)(i) to (iii). If the Commission and the Concessionaire, having negotiated in accordance with this clause 9.3(b), fail to agree on amendments to the Efficiency Standards by 31 December 2008, then the Efficiency Standards set out in paragraphs 21 and 22 of Schedule 5 shall continue to apply until otherwise amended in accordance with this Agreement.

10 INSURANCE

10.1 Insurance to be maintained in accordance with Schedule 12

Insurance shall be maintained by the Concessionaire in accordance with Schedule 12.

10.2 Concessionaire must disclose insurance policy

The Concessionaire shall disclose to the Commission its insurance arrangements, including providing copies of the Concessionaire’s insurance policy and shall promptly comply with all reasonable requests for information by the Commission relating to the Concessionaire’s insurance arrangements.
11 REPORTING REQUIREMENTS

11.1 Reporting obligations
Subject to clause 11.2, the Concessionaire shall comply with the provisions of Schedule 13.

11.2 Phasing In
Notwithstanding anything in this Agreement, the Concessionaire shall only be required to start reporting on its compliance with the Service Standards and Metering Reporting Standards from 1 July 2009.

12 CUSTOMER INVOICES

12.1 Concessionaire’s invoices shall be consistent with this Agreement
The Concessionaire shall invoice Customers for Standard Service in a manner consistent with Schedule 14.

13 SUBSIDY BY KINGDOM

If the Kingdom, having consulted with the Concessionaire, determines that the Kingdom is to subsidise the Regulated Tariff payable by any Customer or Customer Class, or by Customers generally:

13.1 the Concessionaire will deduct, from the amount payable on the relevant Customer invoices, the amount of the agreed subsidy (and will, to the extent to which this is reasonably possible, show this deduction as a "Government Subsidy" on the Customer invoices); and

13.2 the Kingdom will pay to the Concessionaire the amount deducted under clause 13.1, on or before the due date for payment by the relevant Customer(s) of each invoice from which the deduction is made, or within 20 Business Days after receipt by the Kingdom from the Concessionaire of a statement showing the amount payable by the Kingdom (whichever is the later).

14 DISPUTES

14.1 Negotiation
(a) Subject to this Agreement, if a Dispute arises between the parties, 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 who shall have authority to settle the Dispute.

(b) The parties shall, through their senior representatives, in good faith 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:

(i) if the parties to the Dispute agree in writing, refer the Dispute for determination by an Independent Expert pursuant to clause 14.2; or

(ii) any party to the Dispute (or all parties by agreement) may, by notice in writing to the other party, refer the Dispute for determination by arbitration pursuant to clause 14.3.

14.2 **Independent Expert**

(a) If a Dispute is referred to an Independent Expert (either pursuant to clause 14.1(c) or otherwise pursuant to this Agreement), the parties shall in good faith negotiate to agree on the identity of the Independent Expert and the terms of reference for determination of the Dispute. If the parties cannot agree on the identity of the Independent Expert and his or her terms of reference, then these matters will be determined by the President for the time being of the Institute of Chartered Accountants of Tonga. The Independent Expert shall be independent of all parties, shall be directed in writing by the parties to act impartially and to determine the Dispute in accordance with the terms of this Agreement.

(b) The parties shall within 10 Business Days of the date on which the Independent Expert is appointed, submit to the Independent Expert and to the other party the following documents:

(i) a description of the Dispute;

(ii) a statement of that party’s position; and

(iii) copies of relevant documentary evidence in support.

(c) The Independent Expert may call for such further documentary evidence and/or interview such persons as he or she considers necessary in order to determine the relevant matter.

(d) 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 clauses 14.2(b) and 14.2(c).

(e) The parties shall in all cases continue to perform their respective rights and obligations pursuant to this Agreement, notwithstanding the referral of the dispute to the Independent Expert.
(f) Subject to clause 14.4, the decision of the Independent Expert shall be binding on the parties.

(g) 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.

14.3 Arbitration

If the parties agree to submit a Dispute to arbitration, if either party refers the Dispute to arbitration pursuant to clause 14.1(c)(i), or if any matter is otherwise submitted to arbitration in accordance with this Agreement, the Dispute shall be determined by a sole arbitrator in accordance with the New Zealand Arbitration Act 1996 (including the Second Schedule, other than clauses 4 and 5), except 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 of one party giving notice to the other of one of more suggested candidates, then the arbitrator shall be appointed by the President for the time being of the Tonga Law Society;

(b) the place of the arbitration will be in Nuku’alofa, Tonga, at such location 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 at such location as determined by the arbitrator;

(c) any oral hearings conducted as part of the arbitration shall be open to the public, and any submissions and evidence presented by the parties shall be Publicly Available, unless determined otherwise by the arbitrator applying the principles set out in clause 17.3;

(d) the arbitrator will apply the law of Tonga, other in respect of procedural matters which shall be determined in accordance with the New Zealand Arbitration Act 1996 (including the Second Schedule, other than clauses 4 and 5);

(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 the circumstances and having regard to the general principle that costs follow the event in the award;
(g) subject to clause 14.4, the arbitrator’s decision is final and binding and shall be enforceable in a Tongan court.

14.4 Appeals

(a) A party may appeal to the court against the decision of an Independent Expert given under clause 14.2, or the award of an arbitrator given under clause 14.3, only on the grounds set out in clause 14.4(c).

(b) When determining an appeal pursuant to clause 14.4(a), the parties agree that the court may set aside a decision or an award only on the grounds set out in clause 14(c).

(c) The grounds on which a party may appeal to the court against the decision of an Independent Expert given under clause 14.2, or the award of an arbitrator given under clause 14.3 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 substantially affect the rights of one or more of the parties.

(ii) The decision or the award contains a manifest error, provided that, having regard to all the circumstances, the error substantially affects the rights of one or more of the parties.

(iii) The decision or the award deals with a dispute not contemplated by, or not falling within, the Independent Expert’s or the arbitrator’s terms of reference (as the case may be), 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.
15  **TERMINATION**

15.1 **Termination by the Concessionaire**
Subject to this clause 15, the Concessionaire may terminate this Agreement by notice in writing (a *Termination Notice*) if the Kingdom or the Commission commits an Event of Default.

15.2 **Termination by the Kingdom**
Subject to this clause 15, the Kingdom may terminate this Agreement by notice in writing (a *Termination Notice*):

(a)  at any time, if the Concessionaire is Insolvent;

(b)  at any time, if the Concessionaire commits an Event of Default and:

   (i)  the Kingdom has given a notice to the Concessionaire (a *Default Notice*) specifying the Event of Default and requiring that it be remedied within such period as may be specified in the Default Notice (which period must be not less than 20 Business Days following the date of receipt by the Concessionaire of the Default Notice), and the Concessionaire has failed to remedy the Event of Default in accordance with the terms of the Default Notice; and

   (ii) a Termination Notice given under this clause 15.2 is given within 3 months after the deadline for remedy specified in a Default Notice has ended; or

(c)  at any time, within 3 months of the occurrence of a Sustained Material Breach by the Concessionaire;

(d)  if a Force Majeure Event has occurred and resulted in non-performance of the obligations of the Concessionaire under this Agreement for a period of six months, and a Termination Notice given under this clause 15.2 is given within 10 Business Days after the end of the six month period;

(e)  for any other reason whatsoever at the will of the Kingdom during the period that is not less than three, and no more than six, months prior to a Reset Date.

15.3 **Commission cannot terminate**
The Commission has no right to terminate this Agreement, notwithstanding any rule of law to the contrary.
15.4 **Obligations upon receipt of a Termination Notice**

(a) During the period following receipt of a Termination Notice, given in accordance with clause 15.1 or 15.2, until Exit Settlement:

(i) this Agreement shall remain in effect in all respects, except that no further Termination Notice may be given during this period;

(ii) the Concessionaire shall operate the Electricity Business in accordance with Schedule 15 until the Agreement is terminated under clause 15.5;

(iii) subject to clause 15.4(b), the provisions of Schedule 16 shall apply.

(b) For so long as the Concessionaire is a public enterprise under the Public Enterprises Act 2002:

(a) the provisions of Schedule 16 shall not apply and shall be of no effect; and

(b) in the event a Termination Notice is given in accordance with this clause 15, the Concessionaire and the Kingdom shall negotiate in good faith arrangements for the transfer of the Electricity Business to a third party.

15.5 **Termination of Agreement upon transfer**

This Agreement shall terminate upon the completion of the Exit Settlement.

15.6 **No waiver of rights**

Notwithstanding the termination of this Agreement, each of the parties shall remain liable to one another for all obligations incurred prior to the date of termination, including any right pursuant to an arbitrator’s decision made in accordance with clause 14.3 either before or after termination but which relates to a Dispute referred to arbitration before termination of this Agreement.

15.7 **Survival**

On termination of this Agreement, clauses 14, 15.6, 15.7 and any other clauses that, on their proper construction, are intended to survive termination, will continue in full force and effect notwithstanding termination of this Agreement.

16 **FORCE MAJEURE**

16.1 **Force Majeure**

Notwithstanding any other provision of this Agreement, non-performance by any party of an obligation under this Agreement 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.

16.2 **Obligations upon Force Majeure Event**

If the Concessionaire claims a Force Majeure Event under clause 16.1, 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 Agreement;

(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 the Concessionaire of its obligations under this Agreement.

17 **PUBLIC DISCLOSURE**

17.1 **Concession Contracts to be Publicly Available**

The Commission shall make this Agreement (including any amendments thereto) Publicly Available. For the avoidance of doubt, this Agreement (including any amendments thereto) shall not be withheld under clause 17.3.

17.2 **Commission to make other information Publicly Available**

Subject to clause 17.3, the Commission shall make Publicly Available any information, documents and evidence received under or in connection with this Agreement, not later than 10 Business Days after receipt thereof.

17.3 **Grounds for withholding information**

The Commission shall not make Publicly Available any information, document or evidence received under, or in connection with, this Agreement if the Commission (acting reasonably) considers that the withholding of such information, document or evidence (as the case may be) is necessary to:

(a) protect the privacy of natural persons, including that of deceased natural persons; or

(b) protect information where the making available of the information:
(i) would disclose a trade secret; or

(ii) would be likely unreasonably to prejudice the commercial position of
the person who supplied or who is the subject of the information; or

(c) protect information which is subject to an obligation of confidence or which
any person has been or could be compelled to provide under the authority
of any enactment, where the making available of the information:

(i) would be likely to prejudice the supply of similar information, or
information from the same source, and it is in the public interest
that such information should continue to be supplied; or

(ii) would be likely otherwise to damage the public interest.

18 REGULATORY LEVY

18.1 Commission may require Concessionaire collect Regulatory Levy
The Commission may require the Concessionaire to collect on behalf of the
Commission Regulatory Levies payable by a Customer in accordance with the Act
(and any regulations made under the Act). The Commission must consult with
the Concessionaire on the form of the Regulatory Levy.

18.2 Collection of Regulatory Levy
Where required by the Commission under clause 18.1, the Concessionaire shall
act as the Commission’s agent for collection of all Regulatory Levies payable by a
Customer in accordance with the Act (and any regulations made under the Act).
The agency shall be upon the following terms and conditions:

(a) The term of the agency shall be the earlier of:

(i) the date the Concessionaire ceases to be a party to this Agreement;

(ii) the date the Regulatory Levy is repealed (unless the Regulatory
    Levy is immediately replaced with a new levy set by regulation
    under the Act); or

(iii) such other date as agreed by the Concessionaire and the Kingdom.

(b) The Concessionaire shall only be required to collect Regulatory Levies in a
manner consistent with its business as usual customer billing and debt
collection processes.

(c) All Regulatory Levies received by the Concessionaire shall be held on trust
for the Commission, and shall be payable by the Concessionaire to the
Commission into a bank account nominated by the Commission, free of any deduction or commission, on the next Business Day after receipt of the Regulatory Levy.

18.3 Until such time as the Regulatory Levy is shown separately on a Customer’s invoice in accordance with Schedule 14, the Concessionaire may show on its invoices a single charge equal to the sum of the applicable charge for the Supply of electricity to that Customer plus the amount of Regulatory Levy payable by that Customer.

18.4 For the avoidance of doubt, where the Concessionaire is required to collect consumption tax on electricity or the Regulatory Levy, this may be invoiced as an additional charge in the manner consistent with the treatment of Regulatory Levies under clause 18.3.

19 MISCELLANEOUS TERMS

19.1 Amendments
Subject to any other clause in this Agreement, no amendment to this Agreement will be effective unless it is in writing and signed by a duly authorised representative of each party.

19.2 Governing law
This Agreement is to be governed by and construed in accordance with the law of the Kingdom of Tonga.

19.3 Severability
If any provision of this Agreement 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 Agreement, with the intent that the invalid, illegal or unenforceable provision is to be treated for all purposes as severed from this Agreement.

19.4 Counterparts
This Agreement and any amendment to this Agreement 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 Agreement by signing any counterpart.

19.5 No Waiver
A waiver of any provision of this Agreement 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.

19.6 **Schedules**

The schedules form part of this Agreement.

19.7 **Notices**

(a) Any notice or communication, which a party gives to any other party concerning any thing relating to this Agreement, must be in writing. Notices to a party are to be delivered by hand to the designated address of that party or sent by post with postage prepaid or by facsimile to that party. A designated address of a party shall be deemed to be 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 5.00 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 notice or other communication delivered by pre-paid post will be deemed to have been received on the 3rd Business Day after posting.

(d) A notice or other communication sent by facsimile will be deemed to have been received on the day of transmission. However, if the date of transmission is not a Business Day or the transmission is sent after 5.00 p.m. on a Business Day then the notice or other communication will be deemed to have been given on the next Business Day after the date of transmission.

(e) A designated address for the purpose of this Agreement is that specifically designated in this clause or such other address specifically designated by a party by notice given to the other parties to this Agreement. The addresses designated pursuant to this clause are:

**The Concessionaire**
Tonga Power Limited
Address PO Box 87, Vuna Road, Nuku’alofa, Tonga
Telephone +676 28 714
Fax +676 28 145
Contact person(s) The Chief Executive

**The Electricity Commission**
Address
Telephone
Fax
Contact person(s)
The Kingdom of Tonga
Address PO Box 87, Vuna Road, Nuku’alofa, Tonga
Telephone +676 28 714
Fax +676 28 145
Contact person(s) The Minister for Finance

19.8 Remedies
Subject to clause 14.1, the rights, powers and remedies provided in this Agreement are cumulative and are not exclusive of any rights, powers or remedies provided by law.

19.9 Assignment
Except as provided in Schedule 16, no party may assign or otherwise transfer any of its rights or obligations under this agreement to any other person, without the prior written consent of each other party.

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

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

19.12 Further Assurances
Each party will do all things and execute all documents reasonably required to give effect to the provisions and intent of this Agreement.
EXECUTED as an agreement at the date first written above:

Signed on behalf of The Kingdom of Tonga by the Minister for Finance and National Planning, Public Enterprises and Information in the presence of:

[Signature]

Name: O. Afu'alo Matala
Occupation: Minister for Finance and National Planning, Public Enterprises and Information
Address: Ministry of Finance and National Planning, Nu'uausala, Tonga

Signed for Tonga Power Limited by:

[Signature]

Director

Signed for the Electricity Commission by:

[Signature]

Commissioner 30.07.08
EXECUTED as an agreement at the date first written above:

Signed on behalf of The Kingdom of Tonga by the Minister for Finance and National Planning, Public Enterprises and Information in the presence of:

___________________________  ______________________________
Name:  
Occupation:  
Address:  

Signed for Tonga Power Limited by:

___________________________
Director  

Signed for the Electricity Commission by:

___________________________
Commissioner
### A - Customer-Specific Standards

#### A1 – Connections

<table>
<thead>
<tr>
<th>Item</th>
<th>Performance Measure</th>
<th>Units</th>
<th>Standard</th>
<th>Penalty (pa‘anga)</th>
</tr>
</thead>
<tbody>
<tr>
<td>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.</td>
<td>i) Maximum time to connect a customer after the customer's payment has been received - when electricity supply and meter are already installed</td>
<td>Working Days</td>
<td>4</td>
<td>70</td>
</tr>
<tr>
<td></td>
<td>ii) Maximum time to connect a customer after the customer's payment has been received - when service drop and meter need to be installed</td>
<td>Working Days</td>
<td>10</td>
<td>70</td>
</tr>
<tr>
<td>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.</td>
<td>i) Maximum time to provide works estimate</td>
<td>Working Days</td>
<td>10</td>
<td>70</td>
</tr>
<tr>
<td></td>
<td>ii) Maximum time to complete construction - after customer acceptance of estimate and payment</td>
<td>Working Days</td>
<td>20</td>
<td>70</td>
</tr>
<tr>
<td>Disconnection of supply due to overdue payments</td>
<td>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.</td>
<td>Working Days</td>
<td>5</td>
<td>40</td>
</tr>
</tbody>
</table>
## 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.

<table>
<thead>
<tr>
<th>Item</th>
<th>Performance Measure</th>
<th>Units</th>
<th>Standard</th>
<th>Penalty (pa'anga)</th>
</tr>
</thead>
<tbody>
<tr>
<td>i) Urban areas</td>
<td>Maximum time to restore supply after payment is made:</td>
<td>Working Days</td>
<td>1</td>
<td>30</td>
</tr>
<tr>
<td>ii) Rural areas</td>
<td></td>
<td>Working Days</td>
<td>2</td>
<td>20</td>
</tr>
</tbody>
</table>

### A2 - Customer Service and Billings Standards

<table>
<thead>
<tr>
<th>Item</th>
<th>Performance Measure</th>
<th>Units</th>
<th>Standard</th>
<th>Penalty (pa'anga)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Billing punctuality</td>
<td>Maximum time for first bill to be delivered after service connection</td>
<td>Calendar Days</td>
<td>60</td>
<td>30</td>
</tr>
<tr>
<td>Billing period</td>
<td>Maximum time between bills</td>
<td>Calendar Days</td>
<td>45</td>
<td>30</td>
</tr>
<tr>
<td>Response to customers’ queries</td>
<td>Maximum time to respond to a customer’s query.</td>
<td>Working Days</td>
<td>5</td>
<td>40</td>
</tr>
</tbody>
</table>
## A3 - Continuity of Supply

<table>
<thead>
<tr>
<th>Item</th>
<th>Performance Measure</th>
<th>Units</th>
<th>Standard</th>
<th>Penalty (pa‘anga)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Temporary disconnection of supply for maintenance or other works</td>
<td>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.</td>
<td>Advertisements</td>
<td>4</td>
<td>30</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Working Days</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>First advertisement – 5 Working Days</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Second advertisement – 1 Working Day</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Response to emergency and service calls (single events affecting the distribution system), other than where more than 5 Customers are affected</td>
<td>Maximum time to restore supply to all affected customers</td>
<td>Working Days</td>
<td>2</td>
<td>30</td>
</tr>
</tbody>
</table>

## A4 – Testing of voltage stability

<table>
<thead>
<tr>
<th>Item</th>
<th>Performance Measure</th>
<th>Units</th>
<th>Standard</th>
<th>Penalty (pa‘anga)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Responding to a request by Customer under clause 2.8(a) relating to voltage fluctuations</td>
<td>Maximum period to complete a spot check of the Customer’s voltage after a Customer request</td>
<td>Working Days</td>
<td>5</td>
<td>0</td>
</tr>
</tbody>
</table>
### Performance Measure

<table>
<thead>
<tr>
<th>Item</th>
<th>Performance Measure</th>
<th>Units</th>
<th>Standard</th>
<th>Penalty (pa'anga)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Following a Customer request, maximum time to complete voltage sampling for at least 24 hours</td>
<td>Working Days</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Customer-specific Voltage stability (tested in response to request by a Customer under clause 2.8(a))</td>
<td>Voltage to be measured at the demarcation point. In respect of each sample, fluctuations in long duration voltage (greater than 60 seconds) outside of a nominal voltage of 230 volts, in urban areas only. The voltage standard relates to the demarcation point between network and the customer installation which is at the point of entry to the customer’s building unless otherwise agreed.</td>
<td>%</td>
<td>+/-10%</td>
</tr>
</tbody>
</table>

### B - Overall Standards

#### B1 - Customer Service and Billings Standards

<table>
<thead>
<tr>
<th>Item</th>
<th>Performance Measure</th>
<th>Units</th>
<th>Standard</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of complaints to the service provider</td>
<td>Total telephone and written complaints per 1,000 customers per annum</td>
<td>Number</td>
<td>Report</td>
</tr>
<tr>
<td>Customer invoices</td>
<td>Invoices must be consistent with Schedule 14 of Electricity Concession Contract</td>
<td>-</td>
<td>Schedule 14 of Electricity Concession Contract</td>
</tr>
</tbody>
</table>
B2 – Electricity Quality and Reliability

<table>
<thead>
<tr>
<th>Item</th>
<th>Performance Measure</th>
<th>Units</th>
<th>Standard</th>
</tr>
</thead>
<tbody>
<tr>
<td>Voltage fluctuations are to be tested in the following ways: (a) <em>Sampling of High-Voltage Lines</em></td>
<td>In respect of each sample, fluctuations in long duration voltage (greater than 60 seconds) outside of a nominal voltage of 230 volts, in urban areas only. The voltage standard relates to the demarcation point between network and the customer installation which is at the point of entry to the customer’s building unless otherwise agreed.</td>
<td>%</td>
<td>+/- 10%</td>
</tr>
</tbody>
</table>
Item | Performance Measure | Units | Standard
--- | --- | --- | ---
(b) Sampling of CT metered installations | In respect of each sample, fluctuations in long duration voltage (greater than 60 seconds) outside of a nominal voltage of 230 volts, in urban areas only. The voltage standard relates to the demarcation point between network and the customer installation which is at the point of entry to the customer’s building unless otherwise agreed. | % | +/- 10% |
Frequency Stability | Maximum deviation from nominal frequency of 50 Hertz, as measured at the Concessionaire’s relevant power station | % | +/- 1.5% |

C - Metering Reporting Standards

<table>
<thead>
<tr>
<th>Item</th>
<th>Performance Measure</th>
<th>Units</th>
<th>Standard</th>
</tr>
</thead>
</table>
Frequency of meter testing | Report on the percentage of Customers’ meters that are tested for accuracy or replaced annually | % | Report |
SCHEDULE 2: ALLEGED BREACH OF SERVICE 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 Standard, and has not otherwise paid the applicable penalty in accordance with clause 3.2, 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 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 17.

2.3 The Commission shall give the Concessionaire not less than 5 Business Days to respond to any submission received from any Customer or group of Customers 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 3 (Penalty Notice).

2.5 On receipt of a Penalty Notice, the Concessionaire shall promptly calculate the applicable penalty in accordance with Schedule 3, and pay such penalty to the Commission 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 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 Agreement shall apply.
2.8 The penalty (if any) determined by the arbitrator or Independent Expert pursuant to the dispute resolution provisions shall be immediately payable by the Concessionaire as directed by the arbitrator or Independent Expert and such penalty shall be enforceable against the Concessionaire in the courts of Tonga as a debt in favour of the Commission.

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 Agreement.
SCHEDULE 3: PENALTIES FOR BREACHING SERVICE STANDARDS

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

(a) subject to paragraphs 1.4 and 1.5 of this Schedule, be liable to pay the penalty provided for in Schedule 1 in relation to that breach; and

(b) pay the applicable penalty directly to the Customer, or group of Customers, directly affected by the breach.

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 Any penalties payable under paragraph 1.1 of this Schedule shall be multiplied by a phase-in factor, as follows:

<table>
<thead>
<tr>
<th>Calendar year in which breach occurred</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012 onwards</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phase-in factor, by which the penalty is multiplied</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0.5</td>
<td>1.0</td>
</tr>
</tbody>
</table>

1.5 In any given calendar month the Concessionaire shall not be liable to pay to any Customer any amount in excess of TOP$140.

2 Overall Standards penalty
2.1 If the Concessionaire has breached an Overall Standard, the Concessionaire shall be liable to pay to the Commission the penalty determined in accordance with paragraph 2.2 of this Schedule 3.

2.2 Subject to paragraphs 2.3 and 2.4 of this Schedule, the penalty payable by the Concessionaire for breach of an Overall Standard shall be determined on the basis of the following rules:
(a) No penalty shall be payable if there are reasonable grounds to believe that the breach of an Overall Standard affects less than 50% of the total number of Customers.

(b) If there are reasonable grounds to believe that the breach of an Overall Standard affects more than 50% but less than 75% of the total number of Customers, the penalty payable shall be TOP$25,000.

(c) If there are reasonable grounds to believe that the breach of an Overall Standard affects 75% or more of the total number of Customers, then the penalty payable shall be TOP$50,000.

(d) If the breach is a breach of a reporting requirement under clause 11, the penalty payable shall be TOP$25,000 payable for each month that the reporting requirement is not complied with.

2.3 Any penalties payable under paragraph 2.1 of this Schedule shall be multiplied by a phase-in factor as follows:

<table>
<thead>
<tr>
<th>Calendar year in which the breach occurred</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012 onwards</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phase-in factor, by which the penalty is multiplied</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0.5</td>
<td>1.0</td>
</tr>
</tbody>
</table>

2.4 The penalties payable to the Commission for breaches of Overall Standards during any six month period shall not exceed TOP$100,000 for that six-month period.
SCHEDULE 4: 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 3). 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 shall promptly 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 Agreement, the Act and any other relevant law. For the avoidance of doubt, the Commission may:
(i) require the Concessionaire to 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 4 the Commission 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 4, then there shall be deemed to be a Dispute between the Concessionaire and the Commission, and the provisions of clause 14 shall apply.
SCHEDULE 5: REGULATED TARIFF

PART A – INTRODUCTION

1 This Schedule 5 provides for the following:

Part A - Introduction

Part B – Initial Regulated Tariff and Components of the Regulated Tariff

Part C – Procedure for Adjustment of Regulated Tariff

Part D – Indexation of non-fuel component of the Regulated Tariff

Part E – Adjustment of the fuel component of the Regulated Tariff

PART B – INITIAL REGULATED TARIFF AND COMPONENTS OF THE REGULATED TARIFF

Components of the Regulated Tariff

2 The Regulated Tariff shall comprise a fuel component and a non-fuel component, calculated in accordance with this Schedule.

Initial Regulated Tariff

3 The Regulated Tariff for each Island Group at the Commencement Date shall be:

<table>
<thead>
<tr>
<th>Island Group</th>
<th>Fuel component (Seniti/kWh sold)</th>
<th>Non-fuel component (Seniti/kWh sold)</th>
<th>Regulated Tariff (Seniti/kWh sold)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tongatapu</td>
<td>40.30</td>
<td>28.21</td>
<td>68.51</td>
</tr>
<tr>
<td>Vava’u</td>
<td>47.83</td>
<td>22.68</td>
<td>70.51</td>
</tr>
<tr>
<td>Ha’apai</td>
<td>58.70</td>
<td>4.81</td>
<td>63.51</td>
</tr>
<tr>
<td>Eua</td>
<td>50.45</td>
<td>13.06</td>
<td>63.51</td>
</tr>
</tbody>
</table>

[Drafting note: Initial regulated tariffs to be confirmed]

PART C – PROCEDURE FOR ADJUSTMENT OF REGULATED TARIFF

4 Concessionaire must adjust the Regulated Tariff in accordance with this Schedule

With effect as of and from the Designated Date, the Concessionaire must adjust the Regulated Tariff at the beginning of each Tariff Period (including for the
avoidance of doubt on the Designated Date) in accordance with Parts D and E of this Schedule (the *Tariff Adjustment*).

5 **Concessionaire must submit Proposed Adjusted Tariff**

5.1 The Concessionaire must submit a proposed new Regulated Tariff, calculated in accordance with this Schedule (the *Proposed Adjusted Tariff*) (including all relevant documents and evidence), to the Commission at least 15 Business Days prior to the commencement of the next Tariff Period (including for the avoidance of doubt at least 15 Business Days before the Designated Date).

5.2 The Commission may reasonably require the Concessionaire to further explain its method of calculating the Proposed Adjusted Tariff, and if so required, the Concessionaire shall promptly provide to the Commission any further information or explanations sought by the Commission.

6 **Approval by the Commission of the Proposed Adjusted Tariff**

6.1 If the Commission advises the Concessionaire in writing within 10 Business Days of receipt of the Concessionaire’s notice under paragraph 5 of this Schedule 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 notified by the Concessionaire under paragraph 5 of this Schedule; or

(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 endeavour 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) they will immediately submit the calculation of the Tariff Adjustment for determination by an Independent Expert under clause 14.2;

(ii) the Concessionaire may charge Customers for the provision of Standard Service up to the Proposed Adjusted Tariff from the beginning of the next Tariff Period, despite the Proposed Adjusted Tariff not being confirmed by the Commission.

6.2 If the Commission does not advise the Concessionaire in writing within 10 Business Days of receipt of the Concessionaire’s notice under paragraph 5 of this Schedule 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 and as notified by the Concessionaire under paragraph 5 of this Schedule.

7 **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 6 of this Schedule:

(a) the Concessionaire shall promptly give notice to the public of the Tariff Adjustment, in such reasonable manner as agreed 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).

8 **Calculation of the new Regulated Tariff**

The Regulated Tariff which is to apply as from the beginning of the next Tariff Period, must be calculated as follows (separately, for each Island Group):

8.1 the non-fuel component shall be calculated in accordance with Part D of this Schedule;

8.2 the fuel component shall be calculated in accordance with Part E of this Schedule.

The Regulated Tariff for each Island Group will then be the aggregate of the relevant non-fuel component and the fuel component for each Island Group.

**PART D - INDEXATION OF NON-FUEL COMPONENT OF THE REGULATED TARIFF**

9 The Non-Fuel Component for the next Tariff Period \( p \) is calculated as follows:

\[
\text{non fuel component}_{p} = \text{non fuel component}_{p-1} \times \frac{\text{CPI}_{p}}{\text{CPI}_{p-1}}
\]

Where:

\( \text{CPI}_{p} \) = the CPI at the start of the next Tariff Period.
\[ CPI_{p-1} = \text{the CPI used in the non-fuel adjustment at the start of the current Tariff Period (provided that for the purposes of the first adjustment of the Regulated Tariff following Commencement Date (being the adjustment on the Designated Date), this shall mean the CPI for the month in which the Commencement Date occurred).} \]

**PART E - ADJUSTMENT OF THE FUEL COMPONENT OF THE REGULATED TARIFF**

10 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; and

(b) return over or under recovered fuel costs during the current Tariff Period.

**Description of Adjustments**

11 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 15 to 18 of this Schedule. However, by way of explanation paragraphs 12 to 14 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 the description and the formulae, the formulae shall prevail).

12 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.

13 Fuel adjustment (1) uses forecasts of fuel prices and demand for electricity to forecast Permitted Fuel Cost for the next six 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 that is collected (kWh collected, which is kWh billed less a pre-determined level of bad debts).
14 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 that is collected.

**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, $kWhs\, billed_m$, for the months in the current Tariff Period;

(b) Forecast kWh of electricity billed, $kWh\, billed_m^\wedge$, for the months in the next Tariff Period, calculated as:

$$kWh\, billed_m^\wedge = kWh\, billed_{m-12} \times (1 + \text{annual growth})$$

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

(c) Actual fuel prices for electricity generation, $fuel\, price_m$, 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 as set at the most recent Reset (for the first Regulatory Period, the fuel type is No. 2 diesel fuel and 100 percent of gross generation is produced with this type of fuel). 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, $fuel\, price_m^\wedge$, 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 as set at the most recent Reset (for the first Regulatory Period, the fuel type is No. 2 diesel fuel and 100 percent of gross generation is produced with this type of fuel). 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, \( \text{system loss target}_m \), as set in at the most recent Reset (targets for the initial Regulatory Period are set out in paragraph 22 below);

(f) Fuel Efficiency Rate targets, \( \text{fuel efficiency target}_m \), as set in at the most recent Reset (targets for the initial Regulatory Period are set out in paragraphs 19 to 21 below);

(g) Bad Debt Percentage, \( \text{bad debt} \), as set in at the most recent Reset (the Bad Debt Percentage for the initial Regulatory Period is set out in paragraph 23 below)

(h) kWh of electricity collected, for the months in the current Tariff Period, calculated as:

\[
kWh \text{ collected}_m = kWh \text{ billed}_m \times (1 - \text{bad debt})
\]

(i) Forecast kWh of electricity collected calculated as:

\[
\text{kWh collected}_m^\wedge = kWh \text{ billed}_m^\wedge \times (1 - \text{bad debt})
\]

(j) Permitted kWh generated, for each month \( m \) in the current Tariff Period, calculated as:

\[
\text{permitted generation}_m = \frac{kWh \text{ billed}_m}{1 - \text{system loss target}_m}
\]

where \( \text{system loss target}_m \) = the System Loss target in month \( m \);

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

\[
\text{permitted generation}_m^\wedge = \frac{kWh \text{ billed}_m^\wedge}{1 - \text{system loss target}_m}
\]

(l) Permitted Fuel Costs, for each month \( m \) in the current Tariff Period, calculated as:

\[
\text{permitted fuel cost}_m = \frac{\text{permitted generation}_m \times \text{fuel price}_m}{\text{fuel efficiency target}_m}
\]

where \( \text{fuel efficiency target}_m \) = the Fuel Efficiency Rate target in month \( m \)
(m) Forecast Permitted Fuel Costs, for each month \( m \) in the next Tariff Period, calculated as:

\[
\text{permitted fuel cost}_m = \frac{\text{permitted generation}_m \times \text{fuel price}_m}{\text{fuel efficiency target}_m}
\]

**Formulae of Fuel Adjustment(1)**

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

\[
\text{fuel adjustment (1)}_p = \frac{\text{NPV} \ (\text{permitted fuel cost}_m)}{\text{NPV} \ (\text{kWhs collected}_m)} - \text{fuel component}_p
\]

Where:

\( \text{NPV} \) means Net Present Value of the values of that variable for each month of the next Tariff Period using the Allowed Rate of Return as the discount rate; and

\( \text{fuel component}_p \) = the fuel cost component of the tariff in the current Tariff Period.

**Formulae for Fuel Adjustment(2)**

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

\[
\text{balance}_m = (\text{balance}_{m-1} + \text{fuel component}_m \times \text{kWh collected}_m - \text{permitted fuel cost}_m) \times (1 + \text{ROR})
\]

Where \( \text{ROR} \) = the Allowed Rate of Return.

(b) Fuel adjustment (2) in Tariff Period \( p \) is calculated as:

\[
\text{fuel adjustment (2)}_p = \frac{\text{balance}_M}{\text{NPV} \ (\text{kWh collected}_m)}
\]

Where \( \text{balance}_M \) = the balance of over/under recoveries in the last month of the current Tariff Period.

(c) In addition, if an amount is payable by the Concessionaire to the previous operator of the Electricity Business, in accordance with a sale agreement between the Concessionaire and the previous operator of the Electricity Business, reflecting under recovery of diesel fuel costs by the previous operator of the Electricity Business prior to settlement of the sale agreement, then for the purposes of the first calculation of fuel adjustment (2), to be implemented on the Designated Day, \( \text{balance}_M \) shall be deemed
to be an amount determined in accordance with the sale agreement as being the amount payable by the Concessionaire to the previous operator of the Electricity Business in respect of the under recovery of diesel fuel costs.

**Total Fuel Component Adjustment**

18 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).

**Efficiency targets – fuel efficiency**

19 For the period from Commencement Date until 1 January 2011, actual Fuel Efficiency Rates are used as the efficiency targets. In 2011, 50% of the actual Fuel Efficiency Rates are used, plus 50% of the targets prescribed in paragraph 22 of this Schedule below. From 1 January 2012 and until the next Reset, the Fuel Efficiency Rate targets prescribed in paragraph 22 below shall be used.

20 If at any time before 1 January 2012 the Concessionaire uses a fuel type other than No. 2 Diesel Fuel, or introduces a mix of generation that is not 100% fuelled by No. 2 Diesel Fuel, then where paragraph 19 refers to actual fuel efficiency targets, the Fuel Efficiency Rate targets for 2012 prescribed in paragraph 21 shall instead be used.

21 The Fuel Efficiency Rate targets from 2011 shall be as follows:

<table>
<thead>
<tr>
<th>Island Group</th>
<th>Fuel Efficiency Rate (kWh/litre)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tongatapu</td>
<td>4.25</td>
</tr>
<tr>
<td>Vava'u</td>
<td>3.75</td>
</tr>
<tr>
<td>Ha'apai</td>
<td>3.70</td>
</tr>
<tr>
<td>'Eua</td>
<td>3.70</td>
</tr>
</tbody>
</table>

**Efficiency targets – System Losses**

22 For the period from the Commencement Date until 31 December 2011, the applicable System Losses target shall be actual System Losses. For the period from 1 January 2012 until 30 June 2015, the applicable System Losses target shall be 13%.

**Bad debts**

23 For the period from the Commencement Date until determined otherwise in accordance with this Agreement, the applicable Bad Debt Percentage shall be 3%.
SCHEDULE 6: ADJUSTMENT OF TARIFF STRUCTURE

1 Application
The provisions of this Schedule shall apply to any proposal to change the Tariff Structure of the Regulated Tariff.

2 Criteria
(a) Any proposed new Tariff Structure must comply with the following criteria (the Tariff Structure Criteria):

(i) The proposed date of implementation of the proposed Tariff Structure must not be less than six months prior to the next scheduled Reset.

(ii) Any proposed Tariff Structure must identify a proposed pricing arrangement for each Customer Class.

(iii) Any proposed Tariff Structure must not result in the Concessionaire’s best estimate of the expected revenue for the remainder of the Regulatory Period under the proposed Tariff Structure exceeding the best estimate of the expected total revenue under the current Tariff Structure (in both cases excluding any revenue from a Customer-Specific Measure or a Customer who has accepted an Optional Tariff, and in both cases using the forecast growth expected for the remainder of the Regulatory Period if the current Tariff Structure was to apply).

(iv) The proposed Tariff Structure must be transparent and easily understandable by Customers.

(v) The proposed Tariff Structure must not discriminate between Customers in the same Customer Class.

(vi) The proposed Tariff Structure must not lead to a group of Customers paying less than the marginal cost of supplying electricity, or more than the stand alone cost of supplying electricity.

(vii) The Tariff Structure must not change more than once in any Financial Year.

(b) The Commission acknowledges the Concessionaire may in the future propose Tariff Structures with the following components:

(i) fixed and variable components (including a separate line charge and electricity usage charge, and a line charge for customers who self-generate);

(ii) business and residential charges;
(iii) different Regulated Tariffs for different Customer Classes,

and any such proposal will be considered in accordance with the processes in this Schedule.

3 **Process**

(a) If the Concessionaire wishes to amend the Tariff Structure, it must submit its proposal (*Tariff Structure Proposal*) to the Commission.

(b) The Tariff Structure Proposal must:

   (i) describe the proposed Tariff Structure;

   (ii) explain why the proposed Tariff Structure meets the Tariff Structure Criteria, including providing sufficient evidence to support any claims;

   (iii) identify any changes to this Agreement necessary to give effect to the proposed Tariff Structure, including necessary changes to the adjustment formulae (both fuel component and non-fuel component) while maintaining the principles of the formulae.

(c) Upon receiving the Tariff Structure Proposal, the Commission shall procure an Independent Consultant to report on:

   (i) whether the Tariff Structure Proposal meets the Tariff Structure Criteria;

   (ii) the foreseeable impact of the Tariff Structure Proposal; and

   (iii) whether any changes to this Agreement are necessary to give effect to the proposed Tariff Structure.

(d) The Commission must make the Tariff Structure Proposal available to the public (through a public register and/or web-site) and invite members of the public to submit on the Tariff Structure Proposal and the Independent Consultant’s report.

(e) 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.

(f) After having regard to the Tariff Structure Proposal, the Independent Consultant’s report, any public submissions and any response from the Concessionaire, the Commission must approve the proposed Tariff Structure unless satisfied that it will not comply with the Tariff Structure Criteria.
(g) Where the Commission or the Concessionaire considers the proposed Tariff Structure will require amendments to this Agreement, including rules relating to the Tariff Adjustment (such as inflation indexation), Service Penalties (where the changed Tariff Structure affects the definition of the Customer Classes used to calculate the appropriate penalties) and the Reset, 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, the dispute process in clause 14 shall apply.

(h) 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 Agreement, if any, under paragraph 3(i) of this Schedule.
SCHEDULE 7: 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 clause 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 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 numbers;
(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), where 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 10% 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;

(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 7 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;

(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.

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,

the Commission must promptly 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 5 Business Days following receipt by the Concessionaire of a Request Notice) endeavour to provide any correction, information or clarification requested by the Commission in the Request Notice, and the Commission shall promptly consider any correction, information or clarification.

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 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 determination by an Independent Expert under clause 14.

5 **Failure to respond deemed to be approved**
If the Commission does not notify the Concessionaire in writing, within 20 Business Days following the receipt by the Commission of the Statement of Financial Impact, that the Commission considers that there:

5.1 is non-compliance with any part of clause 7 or this Schedule;

5.2 incompleteness or inaccuracy of any information provided by the Concessionaire under this Schedule; or

5.3 any requirement for clarification under paragraph 4.1(d) of this Schedule,

then the Commission will be deemed to have accepted the Proposed Extraordinary Tariff Adjustment and the Regulated Tariff be adjusted as and when stated in the Proposed Extraordinary Tariff Adjustment.

6 **Forecast demand growth for initial Regulatory Period**
For the purposes of clause 7.2(b), forecast annual growth in total kWh of electricity billed during the initial Regulatory Period from the Designated Date shall be 6% per annum.
SCHEDULE 8: CAPITAL EXPENDITURE

1. **Annual Update of Approved Capital Expenditure Plan**
   By no later than 31 November in each year following the Commencement Date the Concessionaire must submit to the Commission any proposal by the Concessionaire to amend the existing Approved Capital Expenditure Plan (or, if required under clause 8.1(b), a request for approval by the Commission of a proposed new Approved Capital Expenditure Plan) as from 1 December of that year (the *Effective Date*) (in both cases such proposal being an *Annual Capex Proposal*).

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 Capex Item in the 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 Capex Item in the existing Approved Capital Expenditure Plan which the Concessionaire still proposes to incur, but at an updated price;

   2.3 any 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, 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) 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;

(c) asset utilisation and maintenance levels in comparable countries, including Fiji, New Caledonia, Vanuatu, and Samoa; and

(d) 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 may reasonably 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 endeavour 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 the following 1 April, they will immediately submit the disputed aspects of the Annual Capex Proposal for determination by an Independent Expert under clause 14.2.

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 that 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 may reasonably require the Concessionaire to further explain any aspect of the Capex Item, 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 endeavour 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 aspect of the Capex Item within 40 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 an Independent Expert under clause 14.2.

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.
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

(b) the Commission, on application by the Commissionaire, is satisfied that at the time the expenditure occurred it met the Approved Capex Criteria.

7.3 The Initial RAV will be depreciated on a straight line basis over 22 years. All other Regulated Assets included in the RAV will be depreciated at the relevant rate appearing in the Approved Capital Expenditure Plan. The RAV will reduce accordingly. This can be represented as follows:

\[ RAV_{t+7} = RAV_t + \sum_{i} Capex_i - \sum_{i} Depn_i \]

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 Agreement 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 (in accordance with paragraph 7.3 of this Schedule) value of that asset, where that value exceeds zero.

7.5 The Concessionaire will keep a record of the current RAV from time to time and will include details of any change in the RAV, over the preceding 12 months, consistent with this Schedule.

8 **General**

For the avoidance of 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 may be withdrawn subsequently by the Commission.
SCHEDULE 9: INITIAL CAPITAL EXPENDITURE PLAN
SCHEDULE 10: 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,
to be used in Schedule 5, including indexation factors;
1.4  the adjustment formula for the fuel component of the Regulated Tariff, to
be used in Schedule 5, 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 and Bad Debt Percentage used in the fuel cost
adjustment formula as provided in Schedule 5;
1.6  the Service Standards, Metering Reporting Standards and any other
reporting standards, and any penalties for breach thereof;
1.7  the Approved Capital Expenditure Plan;
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). The Concessionaire’s Proposal must contain the
following information and/or address the following matters (without limitation):

(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) non-fuel component of the Regulated Tariff;

(iv) demand for Supply of electricity by the Concessionaire;

(v) Non-Supply Revenue;

(vi) Bad Debt Percentage;

(vii) reasonable non-fuel operating expenses

(viii) the Approved Capital Expenditure Plan for the next Regulated Period;

(c) the Annual Report for each Financial Year that ended in the current Regulatory Period;

(d) any other additional material that the Commission reasonably considers should be included in the Concessionaire’s Proposal and 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 11 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 Consultant 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 Consultant (Independent Report). The Commission shall direct the Independent Consultant to:

(a) address the matters identified in paragraph 1 of this Schedule above;

(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) if any aspect of the Concessionaire’s Proposal does not meet the criteria in, or otherwise comply with, the Reset Rules, then Independent Consultant shall make a recommendation in respect of that matter, and provide reasons for that recommendation;

(d) consult with both the Concessionaire and the Commission as the Independent Consultant considers fit prior to submitting the Independent Report.

3.2 The Commission shall provide the Independent Consultant 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 Consultant, 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 as soon as practicable, and invite the Concessionaire to submit a written response 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 Consultant 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 Publicly Available.

5.4 The dispute resolution process in clause 14 shall apply to any dispute under this Schedule, except that no party may refer the matter to an Independent Expert pursuant to clause 14.2.
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 in the Reset Decision (or otherwise determined in accordance with the dispute resolution process in clause 14) will take effect as from the start of the Reset Date. The Concessionaire will invoice Customers 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).
SCHEDULE 11: RESET RULES

General principle
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 Agreement, including the Service Standards proposed for the next Regulatory Period.

2 The Concessionaire’s Proposal and the Reset Decision at each Reset, as provided for in Schedule 10, must be consistent with these Reset Rules.

3 All forecasts required by the Reset Rules must be in nominal terms using a reasonable forecast of inflation.

4 The matters for review and determination at each Reset are set out in paragraph 1 of Schedule 10.

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

Step 1: Forecast annual growth
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 (without limitation):

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

6.1 consistent with the standard of service that is sought generally by Customers and their ability to pay;
6.2 technically achievable;

6.3 consistent with Good Industry Practice;

6.4 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.

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

7.1 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.

7.2 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**

8 The Regulatory Asset Value (RAV) is a regulatory value of the Concessionaire’s fixed assets. During the Regulatory Period the RAV is updated in accordance with Schedule 8. At each Reset the RAV is forecast according to the following rules.

**Forecasting the Regulatory Asset Value**

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

10 The Approved Capital Expenditure Plan for the next Regulatory Period must meet the Approved Capex Criteria in Schedule 8.

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.

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.

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 8) the capital expenditure in the Approved Capital Expenditure Plan for that year and all preceding years, and allowing for depreciation determined under paragraph 15 below.
This can be represented as follows:

\[ \hat{RAV}_{t+1} = \hat{RAV}_t + \hat{Capex}_{t+1} - \hat{Depn}_{t+1} \]

**Step 4: Determining the Depreciation Expense**

At each Reset, the forecast depreciation expense for each year of the next Regulatory Period shall be calculated on the following basis:

15.1 The Initial RAV is to be depreciated on a straight line basis using an asset life of 22 years.

15.2 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 Approved Capital Expenditure Plan applying in respect of the Capex Item.

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

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:

\[
pretax \text{ nominal } ROR = \frac{(1 + posttax \text{ real } ROR) \times (1 + inflation) - 1}{1 - tax}
\]

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

17 The Allowed Rate of Return will be 12.9% (a post-tax real rate of return).

18 At each Reset, the Allowed Rate of Return may be changed if:

18.1 there is reasonable evidence that a change is needed so that the Allowed Rate of Return reflects a reasonable return on capital; and/or

18.2 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.

19 The forecast return on capital must be a pre-tax real rate of return.

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

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.
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:

21.1 generation labour costs;

21.2 other non-fuel generation costs;

21.3 distribution factory supplies/materials;

21.4 distribution repairs/maintenance;

21.5 distribution labour costs;

21.6 other distribution costs; and

21.7 head office costs.

22 The Opex forecasts must be reasonable having regard to:

22.1 historical Opex and the Service Standards and Metering Reporting Standards proposed for the next Regulatory Period;

22.2 the Concessionaire’s performance against service and efficiency standards.

22.3 any statement of justification for forecast Opex submitted by the Concessionaire; and

22.4 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

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.

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 and Bad Debt Percentage**

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

26 The Efficiency Standards must be consistent with the following principles:

26.1 The Efficiency Standards must take into account the:

   (a) fuel types and generation mix set in Step 7 above;

   (b) operating conditions in Tonga;

26.2 The long-term benefit to Customers of improving Efficiency Standards must be greater than the long-term costs to Customers;

26.3 The Efficiency Standards must be technically achievable, having regard to Comparable Island Nations.

27 The Bad Debt Percentage must be determined at each Reset for use in the fuel cost adjustment mechanism.

28 The Bad Debt Percentage must be consistent with the following principles:

28.1 The Bad Debt Percentage must have regard to the historical bad debt recovery performance of the Concessionaire and of operators of electricity assets in Comparable Island Nations;

28.2 The Bad Debt Percentage must incentivise the Concessionaire to use reasonable endeavours to pursue recovery of bad debts.

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

29 The NPV of forecast reasonable non-fuel costs of service for the next Regulatory Period must be calculated by calculating the sum of:

29.1 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

29.2 where the Commission has in the previous Regulatory Period given notice under clause 8.3, 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).
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**

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

31.1 if it applied at the start of the next Regulatory Period; and

31.2 adjustments were made to the price during the Regulatory Period in accordance with this Agreement to reflect forecast inflation; and

31.3 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).

This can be represented as follows:

$$NPV(R) = NPV(C)$$

$$NPV(P \times \text{Demand} + \text{NSR}) = NPV(\text{Opex} + \text{Depn} + RAV \times RoR)$$

Where:

(a) $\hat{\cdot}$ denotes a forecast

(b) $NPV$ means Net Present Value of the values of that variable over each of the seven 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) \(\text{Depn} = \) Regulatory depreciation of assets as calculated at Step 4

(j) \(\text{RAV} = \) The forecast regulatory asset value as calculated at Step 3

(k) \(\text{RoR} = \) 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**

Before determining the non-fuel component of the Regulated Tariff the Commission must consider the rules below relating to Tariff smoothing.

Subject to paragraph 35, if the Regulated Tariff determined by the Reset Decision (or otherwise determined in accordance with the dispute settlement process 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.

(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.

The Commission must not apply, or approve any request for the application of, a smoothing factor under paragraph 34 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**

Reasonable fuel costs are passed through using the fuel cost adjustment mechanism in Part E of Schedule 5. Accordingly, the fuel cost adjustment mechanism in Part E of Schedule 5 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
37 The adjustment formula for the non-fuel component of the Regulated Tariff to be used in Schedule 5, 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
38 The adjustment formula for the fuel component of the Regulated Tariff to be used in Schedule 5, including indexation factors and the 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
39 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:

39.1 likely available information and expertise;

39.2 the cost to both the Commission and the Concessionaire of implementing the Tariff Adjustment formulae;

39.3 the likely impact on Customers.

Duration of the Regulatory Period
40 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.

41 In undertaking this analysis, the Commission must balance:

41.1 the extent that the Concessionaire has the incentive to increase efficiency and decrease costs;

41.2 the requirement that Customers receive the benefits of efficiency gains (in agreed proportions);

41.3 the extent to which the Regulated Tariff remains a reasonable approximation of the reasonably-efficient Cost of Service; and
41.4 The extent to which the Service Standards reflect Good Industry Practice.

**Part A analysis to change in accordance with changes under Part B**

42 Where any change is made under this Part B, the analysis required under Part A shall be changed accordingly.
SCHEDULE 12: INSURANCE

1 Minimum insurance cover
The Concessionaire must have insurance that is sufficient to cover:

1.1 Physical damage to the assets of the Electricity Business, of an amount equal to or greater than the replacement cost of all generating assets and 50% of the replacement costs of all other assets of the Electricity Business;

1.2 Business interruption, for an amount reasonable for comparable businesses.

1.3 Third party claims for damage to property or for personal injury, for an amount reasonable for comparable businesses.
SCHEDULE 13: REPORTING REQUIREMENTS

1 Half-Yearly Performance Reports
1.1 No later than 20 Business Days following 1 April and 1 October in each year, the Concessionaire shall deliver to the Commission a Half-Yearly Performance Report.

1.2 The Half-Yearly Performance Report shall report on the following matters with respect to the previous six month period:

(a) actual performance 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 Schedule 3.

2 Annual Report
2.1 No later than three months following the end of each Financial Year, the Concessionaire shall deliver to the Commission an Annual Report.

2.2 The Annual Report shall contain, in respect of the previous Financial Year:

(a) the Concessionaire’s audited financial statements prepared in accordance with international financial reporting standards;

(b) the Regulated Tariff, any adjustments made, the methodology of any adjustments made and the basis under the Agreement of any adjustments made;

(c) the updated RAV as at the end of the Financial Year;

(d) 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 otherwise approved by the Commission);

(e) a copy of the Half-Yearly Performance Reports;

(f) the Concessionaire’s performance measured against the Efficiency Standards;

(g) the Concessionaire’s invoiced kWh of electricity and Regulatory Revenue by Customer Class;
(h) details of the Concessionaire’s insurance arrangements in relation to the Electricity Business;

(i) the statements by the Concessionaire’s auditor required under paragraph 3 of this Schedule;

(j) details of all Regulatory Levies paid by the Concessionaire to the Commission in accordance with this Agreement, including details of any amounts due, but not paid by the Concessionaire, to the Commission.

2.3 The Commission may, at its discretion appoint Independent Consultants to audit or review all or any aspect of the Annual Report except the audited financial statements required under paragraph 2.2(a) of this Schedule.

2.4 If the Commission appoints an Independent Consultant pursuant to paragraph 2.3 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 Annual Report.

3 Appointment of auditor
The Concessionaire shall appoint an independent auditor to audit the Concessionaire’s financial statements that form part of the Annual Report (and which are referred to in paragraph 2.2(a) of this Schedule. 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 Annual Report:

3.1 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 Agreement;

3.2 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 that form part of the Annual Report 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 Schedule 8.
For the avoidance of doubt, this paragraph 3 of this Schedule does not limit the Concessionaire’s obligation to prepare audited financial statements under applicable law.

4 Commission may require information be provided
The Concessionaire shall provide to the Commission any information reasonably required by the Commission to perform its functions under this Agreement and/or the Act.

5 Reporting requirements shall be an Overall Standard
5.1 The reporting obligations of the Concessionaire under this Schedule shall be an Overall Standard for the purposes of this Agreement.

5.2 If the Concessionaire fails to comply with any reporting obligation, then the Concessionaire shall pay a penalty to the Commission, calculated in accordance with paragraph 2.2 of Schedule 3.
**SCHEDULE 14: CUSTOMER INVOICES**

1 **Customer Invoices**

The Concessionaire:

(a) shall use reasonable endeavours to invoice Customers for Standard Service in a manner that is consistent with the provisions of paragraph 2 of this Schedule from 1 December 2008;

(b) must invoice Customers for Standard Service in a manner that is consistent with the provisions of paragraph 2 of this Schedule from 1 July 2009.

2 **Mandatory principles**

(a) Customer invoices shall:

(i) distinguish between the fuel component and non-fuel component of the tariff payable by that Customer (and identify any adjustments, including the amount of adjustment, to either component made during the billing cycle), and the reason for the adjustment;

(ii) show separately any Government subsidy received by the Customer, or by the Concessionaire, in relation to that Customer;

(iii) show separately the applicable Regulatory Levy (if any) payable by the Customer;

(iv) contain a statement to the effect that complaints about any aspect of the service provided by the Concessionaire can be made to the Commission. All invoices must also include full contact details of the Commission.

(b) If the Concessionaire uses any estimate of electricity usage by a Customer to calculate the charges for that Customer, the Concessionaire must:

(i) inform the Customer that the Customer’s charges are based on estimate usage rather than actual usage; and

(ii) not invoice a Customer for two consecutive billing periods on the basis of estimated rather than actual usage.
SCHEDULE 15: OPERATION OF ELECTRICITY BUSINESS ON TERMINATION

1 Covenants in relation to operation of the Electricity Business
During the period from the date a Termination Notice is given in accordance with this Agreement, until such time as this Agreement is terminated in accordance with clause 15.5, the Concessionaire will:

(a) Compliance with this Agreement: continue to comply in all respects with the terms and conditions of this Agreement;

(b) Conduct of Business: operate and conduct the Electricity Business in the normal course of business and in substantially the same manner as it has done so to date;

(c) Sale of Assets: not dispose of any of the assets employed in the Electricity Business, other than in the normal course of business;

(d) Maintenance of Electricity Business assets: maintain the assets employed in the Electricity Business in as good a state of operating condition and repair as they are in at the date of the Termination Notice except for fair wear and tear arising in the course of normal and proper use;

(e) Capital Assets: not acquire, dispose of or enter into any transaction in connection with any capital assets of the Electricity Business which would commit the Concessionaire to expenditure of more than TOP$20,000 without first obtaining the Kingdom’s written consent;

(f) New Contracts: not enter into any new contracts or arrangements in respect of the Electricity Business (other than in the ordinary course of business) without first obtaining the Kingdom’s written consent;

(g) Claims: promptly notify the Kingdom of any lawsuits, claims, proceedings, investigations or adverse events which may occur, be threatened, brought, asserted or commenced against it, or any of its officers or employees involving the assets employed in the Electricity Business or the Electricity Business in any way or which may adversely affect the assets or the Electricity Business; and not admit, settle, compromise or otherwise deal with any such matter, except in consultation with the Kingdom and with the Kingdom’s prior written consent;

(h) Adverse Events: promptly notify the Kingdom of any events or change in circumstances likely to be adverse to the Assets or the Business or likely to be material to the Kingdom in its intended carrying on of the Business.
1. **Application**
Subject to clause 15.4(b), this Schedule 16 provides for a market sale process in relation to the Electricity Business in event of a Termination Notice is given in accordance with clause 15.

2. **Process for market sale in event of termination**
If the Concessionaire or the Kingdom gives a Termination Notice in accordance with clause 15, then:

(a) The Concessionaire shall in good faith use all reasonable endeavours to sell the Electricity Business, by way of a competitive (if possible) sale process conducted on normal commercial terms in the circumstances (a Market Sale Process).

(b) The parties shall establish, and ensure the adequate maintenance and resourcing of, a physical dataroom or electronic dataspace which will contain all information available to the parties that is, or is likely to be, material to a potential purchaser of the Electricity Business or its financiers in determining the value of the Electricity Business. The parties shall allow potential purchasers of the Electricity Business or its financiers access to the physical data room or electronic data space on reasonable terms and conditions.

(c) Any sale by the Concessionaire must be conditional on the consent of the Kingdom in writing. The Kingdom must give its consent as soon as reasonably possible after being requested in writing by the Concessionaire to do so unless the Kingdom (acting reasonably) either:

(i) considers that the relevant purchaser is not capable of performing the obligations of the Concessionaire under this Agreement (as assigned or novated under paragraph 2(d) of this Schedule 16); or

(ii) requests further information to enable it to consider this matter,

and such consent, once given, is irrevocable, unless Exit Settlement does not occur.

(d) Once the Kingdom's consent is given under paragraph 2(c) of this Schedule 16, the Commission and the Kingdom will be deemed to have given their consent (which will be irrevocable, unless Exit Settlement does not occur) to either an assignment or a novation (at the discretion of the Concessionaire) in each case as described below:
(i) the assignment and transfer by the Concessionaire of all its rights and obligations under this Agreement to the purchaser, with effect from the Exit Settlement (on the basis that, following the assignment, the Concessionaire will have no further liability to the Commission or the Kingdom under this Agreement, other than in respect of any obligation of the Concessionaire which remains undischarged at the time of the assignment); or

(ii) the novation of this Agreement by the Concessionaire in favour of the purchaser, on the basis that this Agreement, as novated, will constitute a new contract between the purchaser, the Kingdom and the Commission, on the same terms as this Agreement, except:

(A) the commencement date of the new contract will be the date of the Exit Settlement;

(B) the Term of the new contract will be the period from the time of the Exit Settlement until the Termination Time;

(C) for any incidental changes required in order to give effect to this paragraph,

and the Concessionaire will have no liability to the Commission or the Kingdom in relation to the new contract. The Concessionaire will remain liable to the Commission and the Kingdom for any obligation of the Concessionaire which remains undischarged at the Termination Time.

3 Put option in event of unsuccessful market sale process

3.1 If, having in good faith used all reasonable endeavours, the Concessionaire is unable to sell the Concessionaire’s Electricity Business to a third party within nine calendar months after the Terminating Party gives a Termination Notice in accordance with clause 15, then the Market Sale Process shall terminate and:

(a) the Termination Value of the Electricity Business shall be determined in accordance with Schedule 17; and

(b) as soon as practicable, following delivery of the Valuation Notice delivered pursuant to paragraph 4(b) of Schedule 17, the Kingdom (or its nominee) shall purchase all assets and liabilities of, and settle the purchase of, the Electricity Business from the Concessionaire:

(i) in the case of termination of this Agreement by the Concessionaire under clause 15.1(a), at 100% of the Termination Value stated in the Valuation Notice; or
(ii) in the case of termination of this Agreement by the Kingdom for cause under clause 15.2(b), 15.2(c) or 15.2(d) at 80% of the Termination Value stated in the Valuation Notice; and

(iii) on the basis set out in paragraph 3.2 of this Schedule.

3.2 Any sale of the Electricity Business by the Concessionaire to the Kingdom (or its nominee) shall be on the following basis:

(a) This Agreement will terminate at the time of the Exit Settlement, but the Concessionaire will remain liable to the Commission and the Kingdom for any obligation of the Concessionaire which remains undischarged at the Termination Time.

(b) The Concessionaire shall warrant to the Kingdom (or its nominee), on a full indemnity basis for any loss or damage suffered by the Kingdom in event of breach of warranty, that:

(i) Upon transfer of the Electricity Business, clean and unencumbered legal title shall transfer to the Kingdom (or is nominee);

(ii) Following notification of a Termination Notice, the Concessionaire has operated the Electricity Business in accordance with the provisions of Schedule 15.

(c) Any contracts between the Concessionaire and third parties which form part of the Electricity Business will be assigned to, or novated in favour of, the Kingdom.
**SCHEDULE 17: DETERMINATION OF TERMINATION VALUE**

1 **Application**
   
   The provisions of this Schedule 17 shall apply where the Kingdom (or its nominee) is required to purchase the Electricity Business from the Concessionaire if the Concessionaire’s Electricity Business is not sold to a third party within nine calendar months after the Terminating Party gives a Termination Notice in accordance with clause 15.

2 **Process for appointing Independent Valuer**

   2.1 The Concessionaire and the Commission must, within 5 Business Days of the termination of the Market Sale Process, consult in good faith to agree on and appoint a suitably qualified and experienced Independent Valuer (Independent Valuer) (such person to be suitably qualified and experienced in valuing businesses of a similar nature to the Electricity Business) to undertake an independent valuation in accordance with this Schedule 17.

   2.2 If the Kingdom and the Concessionaire fail to appoint an Independent Valuer within 10 Business Days of commencing consultation under paragraph 2(a) of this Schedule, then the Independent Valuer shall be a person appointed by a person to be agreed by the Kingdom and the Concessionaire.

3 **Independent Valuer to be expert not arbitrator**

   In carrying out its valuation work under this Agreement, the Independent Valuer shall act as an expert and not an arbitrator, and any determination of value by the Independent Valuer shall be final and binding on the parties (save for manifest error or fraud). The parties shall be deemed to agree to the price fixed by the Independent Valuer in respect of any independent valuation required under this Agreement. Other than in respect of manifest error or fraud, no party shall be entitled to challenge a valuation made by an Independent Valuer under this Agreement.

4 **Process for determining valuation**

   4.1 The parties and the Independent Valuer shall adhere to the following process when determining the Termination Value for the purposes of this Agreement:

   (a) No later than 30 Business Days following appointment of the Independent Valuer:

   (i) both of the Concessionaire and the Kingdom shall deliver to the Independent Valuer and to the other party a valuation of what it considers to be the Termination Value for the Electricity Business, together with such supporting analysis and documentation as it considers appropriate;
(ii) the Concessionaire shall deliver the current RAV calculated pursuant to paragraph 7.5 of Schedule 8 and information on all approved and non-approved capital expenditure that has occurred since the date of the RAV was last updated.

(b) No later than 10 Business Days after the expiry of the period referred to in paragraph 4.1(a)(i) of this Schedule 17, each party may deliver to the Independent Valuer (but need not deliver to the other party), comments on the valuations received by the Independent Valuer from the other party.

(c) The Independent Valuer shall independently determine the Termination Value of the Electricity Business in accordance with paragraph 6 of this Schedule 17 and having regard to the valuations presented to the Independent Valuer in accordance with paragraph 4.1(a)(i) of this Schedule 17.

(d) The Independent Valuer must be instructed to make a determination as soon as practicable after the expiry of the period referred to in paragraph 4.1(a)(i) of this Schedule 17, and in any event within 20 Business Days from the expiry of that period (but any failure by the Independent Valuer to deliver a determination within this period shall not in any way invalidate that determination when subsequently delivered).

(e) In making its determination in accordance with paragraph 4.1(c) of this Schedule 17, the Independent Valuer may:

(i) obtain or refer to any documents, information or material and undertake any inspections or enquiries as he or she determines appropriate; and

(ii) engage any assistance which he or she reasonably believes is appropriate.

(f) Immediately upon making its determination in accordance with paragraph 4.1(c) of this Schedule 17 the Independent Valuer must notify the parties in writing of its determination of the Termination Value (Valuation Notice). The Independent Valuer shall not be required to provide the parties with reasons for his or her determination under paragraph 4.1(c) of this Schedule.

(g) The Independent Valuer’s determination in accordance with paragraph 4.1(c) of this Schedule shall be final and binding on the parties (save for manifest error or fraud), and, unless otherwise specified in this Schedule, the parties shall share equally all costs and expenses of the Independent Valuer incurred in respect of the independent valuation.
Termination Value Principles

The Independent Valuer shall have regard to the following principles in determining the Termination Value of the Electricity Business:

(a) It shall be assumed that the regulatory regime as provided by the Act, any regulation made pursuant to the Act, and this Agreement will continue;

(b) This Agreement shall be novated, with the effect that the purchaser becomes the "Concessionaire”, and assumes all rights and obligations as "Concessionaire”, under this Agreement; and

(c) The Concessionaire’s Electricity Business will continue as a going concern.

Termination Value

For the purpose of this Agreement, Termination Value shall be calculated as follows:

Termination Value = $RAV_i$

Where

$RAV_i$ = the updated RAV from the most recent Annual Report in which the Concessionaire’s auditor stated the updated RAV was calculated consistent with the requirements of Schedule 8, updated to:

(i) include capital expenditure that occurred since the date the current RAV was calculated and that is consistent with the Approved Capital Expenditure Plan or in the opinion of the Independent Valuer is consistent with the Approved Capex Criteria; and

(ii) account for depreciation since the date the current RAV was circulated.

Electricity Business information available

Upon appointing an Independent Valuer to undertake a valuation under this Schedule 17, the parties shall make available all information to each other that is, or is likely to be, material in determining the Termination Value of the Electricity Business.

Warranty

The Concessionaire and the Commission shall represent and warrant to the Independent Valuer and the other parties that it is not aware of any document or any information that contains or will contain any untrue statement of a material fact or omits to state a material fact necessary to make the information or data
contained therein, in light of the circumstances in which they are made, misleading.
SCHEDULE 18: DEFINITIONS AND CONSTRUCTION

1 DEFINITIONS AND CONSTRUCTION

1.1 Defined Terms
In this Agreement, unless the context requires otherwise:

*Act* means the Electricity Act 2007;

*Agreement* means this Electricity Concession Contract and the attached schedules;

*Allowed Rate of Return* means an 12.9% post tax real rate of return, or such other post tax real rate of return as may be determined in accordance with this Agreement;

*Annual Capex Proposal* has the meaning given to it in paragraph 1 of Schedule 8;

*Annual Report* means the report prepared in accordance with, and containing the information required by, paragraph 2 of Schedule 13;

*Approved Capital Expenditure Plan* means the capital expenditure plan for the Electricity Business that comprises solely Capex Items approved by the Commission in accordance with Schedule 8;

*Back Up generation* has the meaning given to it in the Act;

*Bad Debt Percentage* means an allowance for bad debts, expressed as a percentage;

*Business Day* means a day on which trading banks are open for business in Nuku’alofa, Tonga;

*Capex Item* means an item of capital expenditure;

*Commencement Date* means the date of this Agreement, or such other date as the parties may agree in writing;

*Commission* means the Electricity Commission established by section 3(1) of the Act;

*Comparable Island Nation* means an island nation which is reasonably comparable to the Kingdom with respect to climatic conditions, population, average income per capita, level of electricity consumption (per capita and in
aggregate), gross domestic product and viable methods of electricity generation, and includes Fiji, New Caledonia, Vanuatu and Samoa;

_Cost of Service_ means the cost to the Concessionaire of providing Standard Service under this Agreement sufficient to meet the Service Standards;

_CPI_ means the all items index of the consumer price index series as published by the Tonga Statistics Department or its successor (or, if that index ceases to be published or otherwise ceases to be available to the parties, such other index that measure inflation or deflation in Tonga, in a manner which most closely resembles the manner in which the all items index of the consumer price index series measures inflation or deflation in Tonga immediately prior to becoming unavailable to the parties or ceasing to be published);

_Customer_ means a purchaser of electricity from the Concessionaire (or, as the context requires, a person wishing to purchase electricity from the Concessionaire);

_Customer Class_ means any group of Customers that share one or more given characteristics, including geographical location, electricity consumption patterns or residential/business designation, and which, in the circumstances, ought reasonably to be considered to be a distinguishable class of Customers;

_Customer Complaint_ has the meaning given to it in clause 4.1(a);

_Customer Contract_ means any written, oral or implied agreement, arrangement or understanding between the Concessionaire and a Customer for the supply of electricity to that Customer;

_Customer-Specific Measure_ has the meaning given to it in clause 2.6;

_Customer-Specific Standards_ means those Service Standards described as customer-specific standards in Schedule 1;

_Designated Date_ means a date determined by the Minister for Finance and notified in writing to the Concessionaire and the Commission;

_Dispute_ means a dispute between the Concessionaire and the Commission of the Kingdom arising out of, or in connection with, this Agreement, including any allegation of breach of this Agreement or a dispute in relation to a decision by the Commission under this Agreement;

_Distribution Network_ means the Concessionaire's electricity distribution network, located on each of the Island Groups, including all cables, electrical equipment, poles, ducts and other items which are owned by the Concessionaire and which
are connected to or which form an integral part of such networks (but excluding any generation equipment);

Efficiency Standards means the Fuel Efficiency Rate targets and/or System Losses targets as determined in accordance with this Agreement, including any efficiency standards determined as part of a Reset;

Electricity Businesses means the electricity generation, distribution and retail of electricity in the Kingdom of Tonga;

Event of Default means either:

(a) the Concessionaire, the Kingdom or the Commission (as applicable) refusing to comply to a material extent, with its obligations under the dispute resolution process under clause 14, including any failure by the Concessionaire or the Kingdom to pay any amount when required to do so, or refusing to accept the decision of an Independent Expert or an arbitral award given pursuant to clause 14, other than if the decision or the award is appealed under clause 14.4;

(b) if decision of the Independent Expert or an arbitral award is appealed under clause 14.4, the Concessionaire, the Kingdom or the Commission (as applicable) refusing to accept the outcome of the judicial proceedings;

Exit Settlement means the settlement of the unconditional transfer of clean and unencumbered legal title to the Electricity Business to either a third party, or to the Kingdom (or its nominee), pursuant to this Agreement;

Extraordinary Event has the meaning given to it in clause 7 of this Agreement;

Extraordinary Tariff Adjustment means an adjustment to the Regulated Tariff during any Regulatory Period pursuant to, and in accordance with, clause 7 and Schedule 7;

Extraordinary Event Notice has the meaning given to it in clause 7;

Financial Year means the financial year of the Concessionaire from time to time;

First Notice has the meaning given to it in clause 7.1(c);

Force Majeure Event means an exceptional event or circumstance:

(a) which is beyond a party's control;
(b) which such party could not reasonably have provided against before entering into this Agreement;

(c) which, having arisen such party could not reasonably have avoided or overcome; and

(d) which is not substantially attributable to the other party,

and may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

(e) war, hostilities (whether war be declared or not), invasion, act of foreign enemies;

(f) rebellion, terrorism, sabotage by persons other than the party’s employees, contractors or subcontractors, revolution, insurrection, military or usurped power, or civil war;

(g) riot, commotion, disorder, strike or lockout by persons other than the party’s employees, contractors or subcontractors;

(h) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the party’s use of such munitions, explosives, radiation or radio-activity; and

(i) natural catastrophes such as earthquake, tsunami, typhoon or volcanic activity;

_Fuel Efficiency Rate_ means the kWh of gross generation per litre of fuel consumed in the production of generation;

_Good Industry Practice_ means the degree of care, skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, reasonable and experienced generator, distributor and retailer of electricity, with reference to standards in Comparable Island Nations;

_Half-Yearly Performance Report_ means the report prepared in accordance with, and containing the information required by, paragraph 1 of Schedule 13;

_Independent Consultant_ means a consultant independent of the parties and of good reputation and standing in the discipline appropriate for the task instructed under this Agreement;

_Independent Expert_ means the independent expert appointed pursuant to clause 14.2;
**Initial RAV** means the RAV as at the Commencement Date, being TOP$30,123,378 million;

**Initial Regulated Asset** is any fixed asset which is owned by the Concessionaire and used by it solely or predominantly in the Electricity Business, and which was purchased by the Concessionaire on or about the Commencement Date;

**Insolvency** in relation to a person, includes:

(a) being declared bankrupt or insolvent; or

(b) having a liquidator or interim liquidator appointed; or

(c) having a receiver appointed over all or any part of the person’s assets; or

(d) entering into a composition for the benefit of creditors;

**Island Groups** means Tongatapu, Vava‘u, Ha‘apai and ‘Eua;

**Kingdom** means the Kingdom of Tonga;

**Market Sale Process** means the sale process undertaken in accordance with Schedule 16;

**Materiality Threshold** has the meaning given to it in paragraph 2.1(g) of Schedule 7;

**Metering Reporting Standards** means the metering reporting standards set out in Schedule 1;

**Non-Regulatory Revenue** means any revenue, income or funds received by the Concessionaire that does not relate to the Supply of electricity via the Distribution Network;

**Non-Supply Revenue** means any revenue, income or funds received by the Concessionaire that relates to the Supply of electricity via the Distribution Network and is:

(a) fees charged to Customers by the Concessionaire for an Optional Service (regardless of whether these are treated by the Concessionaire as fees for service, capital contributions or otherwise);

(b) fees charged to Customers by the Concessionaire for connection or reconnection to the Distribution Network (where the Customer’s premises have previously been disconnected from the Distribution Network in
accordance with the relevant Customer Contract) or for disconnection from
the Distribution Network (in accordance with the relevant Customer
Contract);

(c) fees charged for the purpose of securing payment from a Customer;

(d) revenue received by the Concessionaire for the supply of anything via the
Distribution Network other than electricity; or

(e) capital contributions.

Optional Services has the meaning given to it in clause 2.5(a)(ii);

Optional Tariff has the meaning given to it in clause 2.5(a)(i);

Overall Standards means those Service Standards described as overall standards
in Schedule 1;

Publicly Available means available to any member of the public upon request,
subject to payment of such fee (if any) as the Commission may reasonably
determine appropriate in the circumstances, and, in relation to this Agreement
(and all amendments thereto), includes available for viewing and downloading on
the Commission’s internet website (if any);

Regulated Asset means a fixed asset which is owned by the Concessionaire and
used by it solely or predominantly in the Electricity Business and which either:

(a) is an Initial Regulated Asset; or

(b) is subsequently acquired by the Concessionaire (provided that an asset of
the type described in this paragraph (b) will not become a Regulated Asset
until the time at which the Concessionaire begins using that asset solely or
predominantly in the Electricity Business, or the time at which it is
contemplated by the Approved Capital Expenditure Plan that that asset will
begin to be used in this manner, whichever is the later);

Regulatory Asset Value or RAV means notional value of all Regulated Assets of
the Electricity Business, being the amount provided for under this Agreement as
the Initial RAV and subsequently calculated in accordance with Schedule 10;

Regulatory Levy means a levy which reflects the actual or estimated cost of the
performance or exercise by the Commission of the Commission’s functions,
powers or duties under this Agreement, and is payable by Customers in
accordance with regulations made under the Act;
Regulatory Revenue means the revenue earned or (as the context requires) to be earned by the Concessionaire from the Electricity Business, including Non-Supply Revenue but excluding any Non-Regulatory Revenue;

Regulatory Period means the duration between Resets, as provided for in clause 9.2;

Regulated Tariff means the tariff for the provision of Standard Service to a Customer, as set out in Schedule 5 and adjusted from time to time in accordance with this Agreement;

Reset means the review conducted by the Commission in accordance with clause 9 and Schedules 10 and 11;

Reset Date has the meaning given to it in clause 9.2;

Reset Decision means the final decision by the Commission on matters required to be determined at each Reset as set out in paragraph 1 of Schedule 10;

Reset Rules means the rules in Schedule 11;

Self-Generate has the meaning given to it in the Act;

Service Standards means the Customer-Specific Standards and Overall Standards set out in Schedule 1 (excluding, for the avoidance of doubt, the Metering Reporting Standards), as amended from time to time in accordance with clause 7;

Standard Service means the connection of a Customer’s premises to the Concessionaire’s electricity distribution network, energisation and the supply of electricity to the Customer;

Supply means, in relation to electricity, the generation, distribution and retail of electricity;

Sustained Material Breach means any circumstance where, following regular breaches by the Concessionaire of any obligation under this Agreement (including failure to comply with the Service Standards), the Kingdom, acting reasonably and after consulting (within a reasonable period) with the Concessionaire, is not satisfied that the Concessionaire is taking action that is expected to result in sustained compliance with this Agreement (including sustained compliance with the Service Standards);
System Losses means the difference between gross generation (measured as output from the Concessionaire’s generators before own energy use) and billed generation, divided by gross generation;

Termination Value means the valuation of the Electricity Business determined in accordance with paragraph 6 of Schedule 17;

Tariff Adjustment means the adjustment of the Regulated Tariff at the commencement of each Tariff Period pursuant to clause 5.2, and in accordance with Schedule 5;

Tariff Period means:

(a) the period from the Designated Date and ending 30 September 2008;

(b) thereafter the three-calendar month period commencing 1 October 2008 and ending 31 December 2008; and

(c) thereafter, each successive three-calendar month period commencing on the first day of each three-calendar month period; or

such other period as may be agreed between the Commission and the Concessionaire or otherwise determined by the Commission as part of any Reset conducted in accordance with this Agreement;

Tariff Structure means the categories of tariffs charged by the Concessionaire for the provision of Standard Service, as determined in accordance with clause 6;

Tariff Structure Criteria has the meaning set out in paragraph 2 of Schedule 6;

Valuation Notice has the meaning given to it in paragraph 4(b) of Schedule 17.

1.2 Definitions in Schedule 1
In Schedule 1:

(a) Working days are defined as Monday to Friday, 8:30am to 4:30pm.

(b) Urban areas are defined as the areas within 4 kilometres of Nuku’alofa Post Office and within 2 kilometres of the Post Office on other islands. Rural areas are all other areas in the islands where Standard Service is provided by the Concessionaire.

(c) Payments overdue by three months or more shall be treated as new connections, not a reconnection.
1.3 **Construction**

In the construction of this Agreement, unless the context requires otherwise:

*Business Days:* anything required by this Agreement to be done on a day which is not a Business Day may be done effectually on the next Business Day;

*Clauses and Schedules:* a reference to a clause or a schedule is to a clause or schedule of this Agreement, and a reference in a schedule to a clause is a reference to a clause in that schedule;

*Currency:* a reference to any monetary amount is to Tongan Pa’anga, unless otherwise specified;

*Defined Terms:* words or phrases appearing in this Agreement with capitalised initial letters are defined terms and have the meanings given to them in this Agreement;

*Documents:* a reference to any document, including this Agreement, includes a reference to that document as amended or replaced from time to time;

*Headings:* headings appear as a matter of convenience and do not affect the construction of this Agreement;

*Joint and Several Liability:* any provision of this Agreement to be performed or observed by two or more persons binds those persons jointly and severally;

*Negative Obligations:* a reference to a prohibition against doing any thing includes a reference to not permitting, suffering or causing that thing to be done;

*No Contra Proferentem Construction:* the rule of construction known as the contra proferentem rule does not apply to this Agreement;

*Person:* a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;

*Related Terms:* where a word or expression is defined in this Agreement, other parts of speech and grammatical forms of that word or expression have corresponding meanings;

*Singular, Plural and Gender:* the singular includes the plural and vice versa, and words importing one gender include the other genders;

*Statutes and Regulations:* a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations;
**Time:** a reference to time is to Tongan time;

**Writing:** a reference to "written" or "in writing" includes all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form;

**Forecasts, Projections and Estimates:** any forecast, projection or estimate which are required to be made for the purposes of this Agreement must be made on reasonable grounds, using all relevant available data, and presented in a format which is easy to understand;

**Volumes/Prices:** for the purposes of this Agreement, all volumes of electricity Supplied or to be Supplied under this Agreement must be stated in kWh, all volumes of diesel to be used in Supplying electricity must be stated in litres, and the price of any kWh of electricity or litre of diesel must be stated in seniti;

**Control:** references to one person (First Person) being controlled by another person shall mean that the other person (whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise) has the power:

(a) to appoint and/or remove the majority of the members of the governing body of the First Person;

(b) to appoint a member or members of the governing body of the First Person, with the power to exercise, or control the exercise of, more than 50% of the maximum number of votes that might be cast at a meeting of the governing body or the members of the First Person; or

(c) to control, by any other means, the affairs and policies of the First Person, and control and change in control have corresponding meanings;

**Rounding:** For all calculations under this Agreement, only the Regulated Tariff (once calculated) shall be rounded, such rounding to be to two decimal points of seniti.