## FORM OF LICENCE[[1]](#footnote-1)

**ELECTRICITY GENERATION LICENCE**

**Issued to**

**[Name of licensee]**

**In respect of**

**[Name and/or particulars of undertaking]**

**By**

**[Name of Licensing Authority]**

**Dated**

**Licence Ref No**

**ELECTRICITY** **GENERATION LICENCE**

**(..............Act, Cap.....)**

1. **Definitions and Interpretation**
	1. Any word or expression defined for the purposes of the Act [or the General Interpretations Act], Cap.....of the laws of .......shall, unless the context otherwise requires, have the same meaning ascribed thereto when used in this Licence.
	2. Any reference to a statute shall include any statutory amendments, modification or re-enactment thereof and subsidiary legislation made thereunder after the date when this Licence comes into force and effect
	3. Except where the context otherwise requires, the following terms shall have the following meanings:

“Act” means the .............................Act, Cap........of the laws of.........and includes any subsidiary legislation made thereunder.

“*Commission*” [**insert the name of the licensing authority**] means the ..............established under the Act.

“Force Majeure” means any event, including but not limited to the following events, not within the reasonable control and not due to the failure, negligence or persistent disregard, of the party whose performance is adversely affected or becomes impracticable, and who chooses to invoke Force Majeure:

1. Any Act of God, fire, explosion, excessive rains, flood, tidal wave, epidemic, or earthquake;
2. Any other cause, whether or not similar thereto, beyond the reasonable control of, and without the fault or negligence of, the party claiming Force Majeure;
3. Civil disturbance, insurrection, rebellion, hostilities, public disorder or public disobedience, sabotage, riot, embargo, blockade, quarantine, strikes which are documented, acts of war or the public enemy whether or not war is declared;
4. Confiscation of the assets or authority of the Licensee by any authority of the Government; or
5. Any change in law

“Lenders” means any person or entity, or any agent of or trustee for such person or entity, providing construction or permanent debt and/or equity financing and/or refinancing and/or credit support to the Licensee; and includes their respective transferees and assigns;

“Licensee” means **(Insert name and address of Licensee)**, holder of Certificate of Incorporation **(Insert country of issue and No.)** and includes its successors and permitted transferees;

“Minister” means the Minister for the time being responsible for matters of energy in the Government.

“Power Purchase Agreement” means the Power Purchase Agreement dated the .......day of ........................20....and made between the Licensee and.......................and approved by .......................[licensing authority]

“the Date of Commencement” means the date of this Licence.

“the Government” means the government of the Republic of.....................

“the Interconnection Guidelines” means the interconnection standards and requirements on grid connection relevant to a Small Power Project facility interconnection to the transmission or distribution grid into which the facility connects.

1. **Grant of Licence**

**IN EXERCISE** of the powers conferred by the provisions of the Act, the........ **(insert name of licensing authority), HEREBY GRANTS this ELECTRICITY GENERATION LICENCE TO**................. **(insert name of licensee)**, a limited liability company incorporated in the Republic of ..........under certificate of incorporation **(insert certificate no.)** whose registered office is situated at....................................... **(insert physical and postal address)**, (the Licensee), to generate electricity (“the undertaking”)at............(**state location** ) brief particulars of which are specified herein, subject to the terms and conditions set out in this Electricity Generation Licence(“the Licence”) .

1. **Undertaking to which the Licence Relates**

The Licence is specific and limited to the ..........**(describe the undertaking)** situated at (state location)**,** which isprocured, constructed, installed, owned, maintained and operated by the Licensee. For the avoidance of doubt, it is hereby stated that the Licence does not authorize nor entitle the Licensee to carry out any other undertaking except the undertaking herein specified and licensed.

1. **Duration of Licence**

The Licence shall come into force and effect on the date hereof, (which date shall for the purposes of the Act be the Date of the Commencement of the Licence) and shall continue in operation from the Date of Commencement for a duration of **..........**years subject to the provisions of the Act and to the conditions specified herein.

1. **Renewal of the Licence**
	1. The Licence may be renewed in accordance with the provisions of the Act.
	2. If the Licensee wishes to renew the Licence after its expiration date, the Licensee shall submit to the .................[**insert name of the licensing authority**] an application for renewal not later than thirty six (36) months prior to the expiration of the Licence.
	3. The .................shall have the right to accept or reject the application for renewal in light of the Licensee’s performance during the period preceding the application for renewal.
2. **Alteration, suspension or revocation of the Licence**
3. The Conditions of the Licence are subject to modification, alteration, revision or amendment in accordance with the terms herein specified or with the provisions of the Act.
4. The Licence may not be altered, revised or modified by the ............. [**insert name of licensing authority**] except with the consent of the Licensee.
5. The Licence may be suspended or revoked in accordance with the provisions of the Act, and is further subject to the conditions as to revocation specified in Condition 25 hereof.
6. **Exceptions and limitations on the Licensee’s obligations**

If the Licensee is prevented from performing any of its obligations under the Licence because of a Force Majeure event:

1. the Licensee shall notify the ............[**insert name of licensing authority**] the obligations he is prevented from performing as soon as reasonably practicable; and
2. the . ............[**insert name of licensing authority**] may suspend those obligations and the Licensee will not be liable thereon, for so long as the Force Majeure event continues, only if and to the extent that the inability to perform could not have been prevented by taking steps specifically required under the Licence, or other reasonable precautions and the inability cannot reasonably be circumvented by the Licensee at his expense through the use of alternative sources, work-around plans or other means.
3. **Liability under tort and contract**

Notwithstanding any provisions of the Licence, the Licensee is liable in tort or contract in accordance with the laws of................

1. **Establishment of an office in ..............**
2. The Licensee shall at the commencement of this Licence provide to the ............[**insert name of licensing authority**]an electronic, postal and physical address of an office in ............at which communication from the [**insert name of licensing authority]** may be sent or delivered.
3. The Licensee shall maintain such offices until the Licence expires or is revoked under the Act
4. **Acquisition of any property for purposes of the Licence**
	* 1. The Licensee shall ensure that any compulsory acquisition or taking of any land or property by the Licensee for purposes related to the electric power undertaking by virtue of this Licence shall be made in compliance with..... [**insert provision of relevant law**]. In contracting or arranging for the provision of goods, assets and services required to enable the Licensee to carry out his undertaking, the Licensee shall purchase or otherwise acquire such goods, assets and services from the most economical sources available to him, having regard to the quantity and nature of the goods, assets and services required to enable him to discharge his obligations under the Act and the Licence and to the diversity, number and reliability of such goods, assets and services at that time available for purchase or other acquisition.
		2. Any contracts or arrangements for the purchase of goods, assets and services from an associated company or a related undertaking shall be on arm's length terms.
5. **Disposal of assets, change in capital and change in control**
6. The Licensee shall be required, for the duration of the Licence, to notify the [**insert name of licensing authority]** of any of the following:
	1. any action that may lead to a decrease of the Licensee’s share capital existing on the date the Licence was issued;
	2. any acquisition by a third party of more than twenty-five per cent (25%) of the Licensee’s share capital;
	3. a change in control of the Licensee; or
	4. the intention of the Licensee to increase or decrease its authorized capital or its paid up capital.
7. The Licensee shall be required, for the duration of the Licence, to obtain the prior written approval of the [**insert name of licensing authority]** for any of the following:
	* 1. Subject to paragraph (4), disposal of any part of the Licensee’s electric power undertaking (including any of the assets forming part of the undertaking) by means of sale, transfer, merger, lease or any other means; and
		2. any action that may lead to a decrease of the Licensee’s share capital existing at the time the Licence was issued that may affect the financial, technical or operational qualifications on which the granting of the Licence was based.
8. For the purposes of paragraph a (1) (c) above and notwithstanding anything to the contrary contained in the Licence, a person shall be considered to have control of the Licensee if the person exercises, or is able to exercise or is entitled to acquire, direct or indirect control over the Licensee’s affairs, and in particular, but without prejudice to the generality of the foregoing, if the person possesses or is entitled to acquire a majority of the issued share capital of the Licensee or to exercise a majority of the voting rights in the Licensee.
9. For the purpose of paragraph (2) (a), the Licensee shall have the right to dispose of an asset or part of his undertaking without the prior approval of the ....[**insert name of licensing authority]** if the ..............[ **licensing authority]**..has issued a directive granting a general consent for the disposal of the assets of a specified description or below a specified value, and the Licensee has provided, prior to the disposal, the ................[ **licensing authority]**with evidence that the asset or part of undertaking to be disposed of falls within the provisions of such directive.
10. Without prejudice to paragraph (4) above, the Licensee may apply in writing to [**insert name of licensing authority** ] for permission to dispose of assets, specifying assets to be disposed of and the reasons, or for the approval of any of the actions set out in paragraph (2) (b) above.
11. The Licensee may dispose of the relevant assets, or may undertake any of the actions set out in paragraph (2) (b) above, as specified in the notice referred to in paragraph (5), if:
12. the [**insert name of licensing authority**]confirms in writing that it consents to such disposal or action; or
13. the ......................[ **licensing authority]** does not inform in writing of any objection to such disposal or action within thirty (30) days of the notice;
14. paragraph (4) above applies, or
15. the Licensee is obliged by law or final order of a competent court to dispose of the relevant asset or part of its undertaking, but without prejudice to the.............................[**licensing authority]** power to revoke this Licence
16. **Transferability of the Licence**
17. Subject to paragraph (2) herein below, the Licensee shall not transfer or otherwise divest himself of any rights, powers or obligations conferred or imposed upon him by the Licence without the written consent of the………………[**licensing authority]**.
18. The …………… [**licensing authority]** hereby consents to the transfer of the undertaking and the Licence to the Lenders or parties duly nominated by the Lenders under the terms and conditions of the financing agreements relating to the undertaking.
19. Subject to the provisions of the Act and to the Licence, the Licensee may apply for other licences for electric power undertakings in any area within the Republic of …………….
20. The Licensee shall not purchase or acquire any undertaking or associate himself with any public or local authority, company, person or body of persons supplying electrical energy under any licence, except with the authority of the [**insert name of licensing authority]**
21. The ................[ **licensing authority]** may revoke the Licence, in addition to such other action as the ..................... may deem fit, if the Licensee contravenes the provision of paragraph (1) above.
22. **Provision of information to the [insert name of licensing authority]**
23. After the end of each financial year, the Licensee shall submit to the ................... an annual performance report indicating the quality of service and performance of the Licensee during the previous year not later than three (3) months after the close of the previous financial year.
24. The Licensee shall submit the following financial data to the .......[ **licensing authority]** when requested by the.................[ **licensing authority]:**
25. the Licensee’s financial statements for each Financial Year, together with the report of an external auditor and his remarks on such financial statements;
26. any other financial data the .....................may specify with a reasonable prior notice.
27. **Monitoring of Compliance**
28. The Licensee shall give officers of the ................[ **licensing authority]** or any person or persons duly authorized by the ..................[ **licensing authority]** access to the Licensee’s works for the purposes of any inspection under the Act or for ascertaining if the provisions of the Act or the Licence are being complied with.
29. The Licensee shall also comply with the provisions of the Interconnection Guidelines in respect of inspection and testing of his works by other licensees.
30. Entry into the Licensee’s works pursuant to paragraphs (1) and (2) of this condition shall be upon reasonable notice and with the prior permission of the Licensee. Such permission shall not be unreasonably withheld.
31. **Events of which licensee must promptly notify the [insert name of licensing authority]**

The Licensee shall promptly notify the ................in writing of the occurrence of any of the following events:

* + 1. any accident by electric shock, and also of any other accident of such kind as to have caused, or to have been likely to have caused loss of life or personal injury, and of any explosion or fire, which has arisen from and in the course of the generation, transformation, conversion, transmission, distribution or supply of electrical energy by the Licensee, or which has arisen in or about any generating station, substation, switch station, factory, works or electric supply lines of the Licensee and also notice of any loss of life or personal injury occasioned by any such accident, explosion or fire:

Provided that such notice shall be sent within forty- eight (48) hours by the earliest practicable post and/or electronic means, after the accident, explosion or fire occurs, or, as the case may be, after the loss of life or personal injury becomes known to the Licensee.

* + 1. any event which threatens the Licensee’s financial ability to discharge his obligations under the Licence or any Power Purchase Agreement;
		2. any forced outage affecting a significant portion of the undertaking which is likely to subsist for a continuous predetermined duration specified in the conditions of the Licence;
		3. changes relating to the physical, electronic and postal address of the Licensee;
		4. any change in the composition or structure of the shareholding of the Licensee affecting the original or subsequent subscribers to the Licensee’s registered memorandum of association; or in the event that the securities of the Licensee become listed on a securities exchange, any transaction with the effect of making a single person control twenty five percent (25%) or more of the voting power at any general meeting of the Licensee; or
		5. any transfer of the undertaking and licence under Condition 12.
1. **Confidentiality and use of information**
2. The Licensee shall maintain the confidentiality of the information and data it possesses on other licensees, in accordance with the agreements with such licensee, where applicable, and may not disclose such information to third parties (other than the [**insert name of licensing authority**]) or in enforcement of a final order of a competent court.
3. The Licensee shall ensure (and shall procure that its affiliates shall also ensure) that all information received by it relating to the undertaking:-
	* 1. is not used by the Licensee or its affiliates for any purpose other than that for which it was provided or for a purpose permitted by the Licence; and
		2. is not used by the Licensee or its affiliates for any commercial advantage in the provision of any service other than a service comprised in the undertaking.
4. The Licensee may request the...... [**insert name of licensing authority**] not to disclose commercially sensitive information provided by the Licensee to the .........[**licensing authority**] pursuant to the Licence. Upon satisfaction of the ...............that the information is commercially sensitive, the ..................shall not disclose any part of or all of such information, as applicable, without the prior approval of the Licensee. These restrictions shall not apply to:
5. information which is in the public domain; or
6. information which is, or becomes, publicly known or available otherwise than through the action of the [**insert name of licensing authority]**; or
7. information relating to performance and the level of compliance of the Licensee with the performance standards.
8. **Environmental, health and safety obligations**
9. The Licensee shall comply with the provisions of all environmental, health and safety laws in force in from time to time.
10. The ........[**insert name of licensing authority**] may, after consultations with the appropriate authorities, issue orders relieving the Licensee of his obligations under paragraph (1) hereof relating to environmental laws to the extent that such exemption is permitted under the applicable environmental laws.
11. The Licensee shall carry out his undertaking in a manner that is designed to protect the health and safety of persons employed by the Licensee at the undertaking and the users of the service and other members of the public who would be affected by his operations.
12. **Insurance**

The Licensee shall adopt and implement reasonable and prudent policies in relation to the management and insurance of risks associated with the undertaking.

1. **Licence Fees**
2. The Licensee shall, within thirty (30) days after the commencement of this Licence, the pay to the ...........................a grant of licence fee of ...... (**Insert amount)**.
3. On the anniversary date of the Commencement Date of this Licence in each year, the Licensee shall pay to ..........................an annual fee of ......(**Insert amount)**....to.... within thirty (30) days of the anniversary date.
4. **Payments to the Licensee**
5. The payments to be made to the Licensee in respect of electrical energy sold or ancillary or network services provided by virtue of the Licence shall be in accordance with the Power Purchase Agreement approved by the ..........[**insert name of licensing authority**].
6. Except as stated in the Power Purchase Agreement approved by the ......................no rebate or reduction in the maximum prices will apply in consideration of any stated improvement in the conditions of the demand by reason of load factor, time of the demand or other circumstances of the demand.
7. **Compliance with the Interconnection Guidelines**
	1. In planning, providing connection, operating and maintaining the undertaking, the Licensee shall fully comply with the Interconnection Guidelines.
	2. In case the Licensee finds that it is, or will be, unable to comply with any provision of the Interconnection Guidelines at any time, then he shall make such reasonable efforts as are required to remedy such non-compliance as soon as reasonably practicable and immediately notify the.......[**insert name of licensing authority**] for directives.
8. **Compliance with regulations, decisions and orders of the .........[licensing authority]**
9. The Licensee shall fully comply with the rules, codes, standards, guidelines, directives, decisions or orders issued by the...............[**insert name of licensing authority**] in the discharge of its functions under the Act.
10. The Licensee shall comply with all applicable provisions of the Interconnection Guidelines in respect of his undertaking.
11. At the written request of the.......... [**insert name of licensing authority**] the Licensee shall participate to the extent specified by the .................... in the development and/or review of any rules, codes, standards and guidelines to be prescribed or prescribed by the under the Act.
12. **Review of .......................[licensing authority] Decisions**
	1. The Licensee shall have the right to apply to the ..................... for review of its decisions in relation to revocation or amendment of this Licence or any other decision that affects the Licensee’s undertaking or its rights under this Licence
	2. If requested by the Licensee in the prescribed manner, the ..................may review its decisions that affect the Licensee’s undertaking or its rights under this Licence, including its decision in relation to revocation or amendment of this Licence.
13. **Adherence to the terms of the Licence and Penalties**
14. Where the .......[**insert name of licensing authority]**.is satisfied that the Licensee has contravened any of the conditions of this Licence, the ................ may issue an order requiring the Licensee to take specific actions or to refrain from taking specific actions in order to rectify the contravention.
15. Prior to issuing such order, the .[**licensing authority**] shall inform the Licensee of its intention to issue the order and the grounds upon which the order will be issued and provide the Licensee an opportunity to make a representation in accordance with the procedure, including time period, specified by the [licensing authority]... in a directive.
16. Without limiting any other right or remedy available to the ............[**licensing authority**] under the Act, the .........................may specify in the order a penalty for each day the Licensee is in default of compliance. The penalty specified by the ...................shall not exceed the limits (if any) for such penalties set by the Act or other applicable legislation.
17. **Revocation of licence**
18. Subject to the provisions of the Act, the .............[**licensing authority**] may at any time revoke the Licence if:
19. The undertaking or the execution of the works related thereto has not commenced at the expiry of twenty-four(24)months from the date on which the Licence was granted, except where the ……………………is satisfied that this occurred as a result of events beyond the reasonable control of the Licensee in which case the ……………….. shall substitute such period as it in its sole discretion considers reasonable in all the circumstances) or at the expiry of any extended period which the ………………….may allow;
20. The …………………is satisfied that the Licensee has willfully or negligently failed to operate in accordance with the terms and conditions of this Licence the provisions of the Act or any regulations thereunder;
21. The Licensee at any time after the commencement of this Licence makes representation to the ………………...that the undertaking cannot be carried on with profit, and ought to be abandoned, and, upon inquiry the ………………..is satisfied that the representation is true;
22. The Licensee agrees in writing with the ……………….that this Licence should be revoked;
23. Any amount (unless this is being contested in good faith by the Licensee with recourse to the appropriate administrative and judicial procedures) payable by the Licensee under any of the conditions or regulations issued under the Act is unpaid thirty(30) days after it has become due and remains unpaid for a period of thirty(30)days after the ………………[**licensing authority**] has given the Licensee notice that the payment is overdue;
24. The Licensee is unable to pay its debts (unless this is being contested in good faith by the Licensee with recourse to all appropriate judicial procedures and measures) or has any voluntary arrangement proposed in relation to it or enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the…………..[**licensing authority**]
25. The Licensee fails to comply with a final order of the ………..[**licensing authority** ]issued under the Act and such failure is not rectified to the satisfaction of the ……………. within 60 days after the ……………….. has given notice of such failure to the Licensee.
26. The Licensee ceases to carry on the undertaking authorized by this Licence;
27. The Licensee goes into liquidation or makes arrangement with its creditors’ or a receiver/manager is appointed over the whole or any material part of the Licensee’s assets or undertaking (other than by the Lenders);
28. The Licensee passes any resolution for winding up other than a resolution previously approved in writing by the ………[ **licensing authority** ]
29. The Licensee becomes subject to an order for winding up by a court of competent jurisdiction;
30. It is established that the Licensee submitted information the Licensee knew or had reason to know to be false when making its application for the Licence; and
31. The Licensee purchases or acquires the undertaking of, or associates itself with, any public or local authority, company, person or body of persons generating or transmitting or distributing electrical energy under any licence without the authorization of the…………....

**GRANTED AT .................................... THIS \_\_ DAY OF \_\_ \_\_ \_\_.................................. 20\_ \_**

**IN WITNESS WHEREOF** the Common Seal of the )

[licensing authority]was hereto affixed )

pursuant to the authority of the [licensing authority] given )

on the \_\_ day of \_ \_ \_ \_ \_ \_ 20\_ \_. )

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In the presence of )

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And )

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1. The template for this licence was prepared as part of an EUEI project for the Regional Electricity Regulators’ Association of Southern Africa (RERA) to establish a framework for attracting increased investment in mini-grids employing renewable and hybrid generation in SADC. This project was financed under the Africa-EU Renewable Energy Cooperation Programme (RECP), an integral part of the Africa-EU Energy Partnership (AEEP). [↑](#footnote-ref-1)