

ELECTRICITY ACT

AUXILIARY CONNECTION LICENCE

1. SHORT TITLE

This licence may be cited as the “[name of person/entity being authorised] Auxiliary Connection Licence, 2017” (hereinafter called “**this Licence**”).

2. INTERPRETATION

2.1 In this Licence -

“**Acts**” shall have the meaning set out in Clause 2.2 of this Licence.

“**Auxiliary Connections**” means the connection of a self generator’s Facility, as hereinafter defined, to the National Grid for a purpose other than net billing or electric power wheeling.

“**Auxiliary Connection Contract**” or “**ACC**” means the contract that is executed between self generators and the Single Buyer to govern Auxiliary Connections.

“**Blocking Device**” means a zero export limiter that does not allow the export of electricity to the System, as defined in the EA.

“**Connection Date**” means the date when the Licensee is authorised to connect to the National Grid by the executed Auxiliary Connection Contract.

“**Control**” or “**Controlled**” in relation to the Licensee or any other company, means the power of a person(s) (whether acting alone or jointly with another, who holds or is beneficially entitled to fifty per centum or more of the votes in the Licensee or other company) to secure by means of those voting rights that the business and affairs of the Licensee or other company are conducted in accordance with the wishes of that person and “Controlled” shall be construed accordingly.

“**EA**” means the Electricity Act, 2015.

“**Facility**” means the power generation system, with a rated capacity of [XXXXX], together with building and auxiliary equipment, located on lands situated in [XXXXX], in the Parish of [XXXXXX], Jamaica.

“**Government**” means the Government of Jamaica.

“Governmental Requirements” means any Acts of Parliament, or subsidiary legislation made thereunder, and shall include inter alia, Government guidelines, policies and ministerial directives.

“Licensee” means the [name of person/entity being authorised and address]

“Licensed Activity” means the connection to the National Grid for the purpose of [stabilizing the Facility] in accordance with this Licence, the Auxiliary Connection Contract and any other licence required by Jamaican law.

“Minister” means the Minister with the portfolio responsibility for electricity.

“National Grid” means the transmission lines and / or distribution lines as defined in the EA.

“OUR” means the Office of Utilities Regulation established pursuant to the OUR Act, as hereinafter defined in this Licence.

“OUR Act” means the Office of Utilities Regulation Act and all amendments thereto.

“Power Purchaser” or **“Single Buyer”** means the Jamaica Public Service Company Limited or its successor or permitted assignee, or any other entity licensed to operate the National Grid.

- 2.2 This Licence shall be read and construed, subject in all respects to the provisions of the EA, the OUR Act and any other applicable legislation (**“the Acts”**).
- 2.3 References to any Act or statutory provision includes a reference to:
- (i) that Act or statutory provision as may from time to time be amended, extended, replaced or re-enacted or consolidated; and
 - (ii) all regulations or orders made pursuant to it.
- 2.4 Unless the context otherwise requires, expressions in this Licence which are not defined herein shall bear the same meanings ascribed to those expressions under the Acts.

3. CONDITION PRECEDENT

This Licence shall not come into effect until an ACC is executed between the Licensee and the Power Purchaser.

4. GRANT OF LICENCE

4.1 The Minister hereby grants the Licensee a non-exclusive licence to establish an Auxiliary Connection of the Facility to the National Grid for the purpose of [XXXXXX], subject to the terms and conditions of this Licence, the provisions of the EA, the OUR Act, and any other applicable legislation, regulation, standard, licence (or any statutory modification, consolidation or re-enactment thereof after the date of this Licence).

4.2 The Licensee shall operate the Facility for the purposes of this Licence.

5. DURATION OF THIS LICENCE

5.1 Subject to the provisions contained herein, this Licence shall have full force and effect from the date of execution of the ACC and shall be valid for a period of ten (10) years from the Connection Date.

5.2 Nothing in this Licence shall prevent the Licensee from making a new application in respect of the Licensed Activity and the Facility prior to the expiration of this Licence.

6. ASSIGNMENT OF LICENCE & TRANSFER

6.1 This Licence shall not be assigned or transferred by the Licensee without the prior, written consent of the Minister.

6.2 The Licensee shall not transfer the Facility without the prior, written consent of the Minister.

7. USE OF SYSTEM CHARGE & FEES

7.1 The Use of System Charge to be paid by the Licensee to the Single Buyer in respect of the Auxiliary Connection contemplated by this Licence shall be approved by the OUR.

7.2 It shall be a condition of this Licence that the Licensee shall pay the prescribed fee on the grant of this Licence pursuant to section 10(5)(a)(i) of the EA.

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8. OBLIGATIONS OF THE LICENSEE

8.1 The Licensee shall:

- (i) Discharge its obligations and perform the duties imposed or authorized as set out in this Licence, the ACC, the Acts, and any applicable codes or standards;
- (ii) Comply with any Order made by the Minister pursuant to this Licence or to powers vested in him by the Acts with all reasonable promptitude;
- (iii) Comply with any memorandum, determination, Order or directive made by the Generation Procurement Entity and/or the OUR pursuant to this Licence with all reasonable promptitude;
- (iv) Maintain and keep in good repair the Facility and all equipment used in carrying out the Licensed Activity;
- (v) Within twelve (12) months of coming into effect of this Licence, in accordance with clause 3 of this Licence, install the necessary infrastructure required to comply with the terms of this Licence;
- (vi) Ensure that the Facility is inspected and certified by the Government Electrical Inspectorate or a Licensed Electrical Inspector; and
- (vii) Ensure that the Blocking Device that is being utilised by the Licensee at the Facility complies with any list of approved blocking devices published by the Bureau of Standards Jamaica or any other competent authority.

8.2 The accounts and records of the Licensee shall be maintained in such manner as may be prescribed by the OUR from time to time.

8.3 The Licensee shall separate the accounts and records kept in relation to the Licensed Activity from any other business of the Licensee.

8.4 The Licensee shall provide such information, reports, and records as may be reasonably requested by the Minister or the OUR from time to time.

9. **FORCE MAJEURE**

The Licensee shall be excused for any non-compliance with this Licence caused by “**Force Majeure**”, which, for the purpose of this Licence, means any event or circumstance or combination of such events or circumstances that:

- (i) occurs inside Jamaica, except as provided in paragraph (h) below;
- (ii) is outside the reasonable control of the Licensee;
- (iii) cannot be prevented or overcome by the exercise of reasonable diligence; and
- (iv) materially and adversely affects the performance by the Licensee of its obligations under this Licence, to the extent that such event(s) or circumstance(s) meet all the foregoing requirements and any of the requirements listed at (a) through (h) below:
 - (a) acts of God, fire, explosion, chemical contamination, earthquakes, lightning, drought, tsunami, flood, torrential rain, storm, cyclone, typhoon, or tornado, pestilence or other natural catastrophes, epidemics or plague that directly affect the Facility;
 - (b) obligations under licences (other than this Licence), concessions or permits or other Governmental Requirements that are necessary for the Licensee to conduct its business and which will adversely impact performance under this Licence;
 - (c) any strikes, work to rule, go-slows or other labour disturbances that extend beyond the Facility, are widespread, nation-wide or are of a political nature, including labour actions associated with or directed against a political party, or those that are directed against the Licensee (or its contractors or suppliers) as part of a broader pattern of labour actions against companies or facilities with foreign ownership or management;
 - (d) expropriation, requisition, confiscation, nationalization or compulsory acquisition by a Governmental Authority of the Licensee or any substantial portion of the Facility;

- (e) acts of war (whether or not declared), invasion, blockade or embargo;
- (f) acts of terrorism or threat from terrorists, widespread riot, violent demonstrations, widespread armed insurrection, widespread rebellion or revolution;
- (g) the closing or drastic reduction in capacity of public harbours, ports, docks, canals, roads, airports or other infrastructure, the rationing thereof or any import or export restrictions; or
- (h) to the extent that they result in disruption of the Licensee's ability to receive shipments of fuel, major equipment or critical spare parts, any strikes, work to rules, go-slows, other labour disturbances, natural disasters, terrorist attacks or similar events that occur outside of Jamaica.

10. AMENDMENT TO LICENCE

This Licence may be modified at any time by written agreement between the Licensee and the Minister.

11. SUSPENSION OR REVOCATION

11.1 The Minister may, at any time, suspend or revoke this Licence by not less than thirty (30) days' notice in writing (the "**Notice of Suspension or Revocation**") to the Licensee:

- (a) if it shall have been determined that the Licensee has failed to comply with any term or condition of this Licence or to carry out in good faith and with reasonable diligence the activities referred to in this Licence, including compliance with directives, orders, memorandum, or determinations issued by the OUR, which determination shall specify in exact detail the respects in which the Licensee so failed, provided that such failure shall have continued for a period of thirty (30) days and shall have impaired the Licensed Business;
- (b) If this Licence or any portion of the Facility has been transferred without the prior, written consent of the Minister;

- (c) if any fee or financial obligation payable under this Licence or in relation to any Acts or any fine imposed by a court of law is unpaid thirty (30) days after it has become due and after the expiration of this thirty (30) day period it remains unpaid for a further period of thirty (30) days after the Licensee has been given notice in writing that the payment is overdue provided that any fee or financial obligation that is the subject of judicial review proceedings, arbitration proceedings, court or other dispute resolution tribunal shall not be treated as unpaid for the purposes of this clause of this Licence;
 - (d) if the Licensee is convicted of a criminal offence by a court of law, which offence has, in the sole opinion of the Minister, materially impaired the Licensee's ability to conduct the Licensed Activity in accordance with this Licence and the ACC;
 - (e) if the ACC is terminated and the Licensee has not advised the Minister, in writing, of that termination and the reasons therefor within five (5) days of that termination; or
 - (f) if the ACC is breached.
- 11.2 Prior to the expiration of the Notice of Suspension or Revocation, the Licensee shall be given an opportunity to be heard by the Minister, including making oral or written submissions to the Minister as to why this Licence should not be suspended or revoked.

12. DISPUTES

- 12.1 In the event that the Licensee is aggrieved by a decision of or failure to act of the OUR, the Licensee shall appeal to the Tribunal established pursuant to the EA.
- 12.2 In the event that the Licensee is aggrieved by a decision of the Minister in respect of any action taken pursuant to this Licence, the Licensee shall resolve the dispute by arbitration pursuant to the Arbitration Act of Jamaica.
- 12.3 Where there is any dispute between the Power Purchaser and the Licensee, the matter shall be resolved in accordance with the ACC.

13. NOTICES

13.1 Any notice, document or other instrument required or permitted to be given or delivered to any person under any provisions of this Licence shall be in writing and may be delivered or given by registered mail addressed to the person to whom the notice is to be given, or delivery is to be made, at the address below or any such other address as may be specified from time to time by the relevant person; and if so given or delivered by mail shall be deemed to have been given or delivered five (5) days after the date on which it is deposited in the mail as registered mail.

THE MINISTER

Address: Ministry of Science, Energy & Technology,
First Floor
PCJ Building
36 Trafalgar Road
Kingston 10
Jamaica

Attention: The Honourable Minister

THE LICENSEE

Address: XX
XX
XX
XX
Jamaica

Attention: XX

13.2 If notice is given or any document delivered other than by registered mail, as provided in the preceding clause, such notice shall not be deemed to have been given or document delivered until it is actually received by the person to whom the notice is given or delivery is made.

13.3 Any person may change its address for the purposes of this clause by giving notice of such change by hand delivery, or registered mail, which change shall not become effective until it is actually received by the person to whom the notice is addressed.

14. GOVERNING LAW

This Licence shall be governed and construed in accordance with the laws of Jamaica.

15. WAIVER

No failure or delay by the Minister to exercise any right, power or remedy under this Licence will operate as a waiver of it, nor will any partial exercise preclude any further exercise of the same or of some other right, power or remedy.

16. SEVERABILITY

If any term or provision in this Licence is found in whole or in part to be illegal or unenforceable under the laws of Jamaica, that term or provision or part thereof, shall to that extent be deemed not to form part of this Licence and the enforceability of the remainder of this Licence shall not be affected.

17. EXPIRATION OF POWER PURCHASER'S LICENCE

In the event that the licence of the Power Purchaser to operate the National Grid, expires or is otherwise terminated prior to the expiration or termination of this Licence, then the Minister shall use best endeavours to ensure that any other person that will replace the Power Purchaser shall assume the existing rights and obligations of the Power Purchaser under the Power Purchase Agreement for the remaining duration of this Licence.

Dated this **, 2017

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Andrew Wheatley, PhD, MP
Minister of Science, Energy & Technology

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