



# Small Distributed Generation Connection Agreement

(for connections of 4kW or less)

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## Summary of Terms:

Below is a summary of some of the important terms in the Small Scale Distribution Agreement. This summary is only to assist with understanding. You must ensure that you read and understand the full agreement and/or take legal advice before signing the agreement.

### Konga Lalahi 'o e Aleapau

*'I he ngaahi fakamatala 'oku ha atu 'i lalo, 'oku tuku atu ai ha ngaahi makatu'unga mahu'inga nounou ki he aleapau ki hono tufaki 'o e 'uhila. Ko e ngaahi fakamatala nounou ko 'eni 'e ngaue'aki ia ke tokoni ki hono feinga'i ke to e mahino ange 'a e aleapau. 'Oku mahu'inga ke ke lau ke mahino 'a e aleapau kakato, pe ko ho'o kumi fale'i fakalao kimu'a pea toki fakamo'oni 'a e aleapau.*

### Contact us first to discuss your plans

Congratulations on deciding to install generation on your property. Before acquiring or installing any equipment it is important that you contact us first so that we can ensure the equipment is suitable for connection to our **distribution network** and that the installation will be a success. We can provide you with advice and help you to understand the requirements to connect to the **distribution network**.

### 'Uluaki fetu'utaki mai ke alea'i ho'o palani

*'Oku lelei 'aupito 'a ho'o fakakaukau ke fokotu'u 'a e 'uhila 'i ho'o 'api. 'Oku mahu'inga ke ke 'uluaki fetu'utaki mai ki a kimautolu ke tau fengaue'aki ke fakahoko lelei 'a e ngaue ki hono fokotu'u ho'o 'uhila. Te mau lava 'o fale'i ko e ke mahino 'a e ngaahi fiema'u ki he founga hono fokotu'u ho'o 'uhila.*

### Connection and operation standards

When connecting your generation to the **distribution network** you must comply with our **connection and operation standards**. These ensure that we all stay safe and that we do not damage each other's equipment. Our equipment and distribution network has been tested and meets with appropriate standards. During the term of the agreement you must also ensure that your generation is maintained and operated in accordance with **reasonable and prudent operating practices**.

### Fakahoko mo e Tokanga'i hono tufaki e 'uhila

*'I hono fakahoko 'a ho'o 'uhila ki he netiueka, kuopau ke ke talangofua kakato ki he'emaui ngaahi tu'utu'uni ki hono fakahoko mo fakalele 'o e 'uhila. 'Oku fakapapau'i mai ai heni ke tau nofo hao mei he fakatu'utamaki pea 'oku 'ikai ke maumau'i 'a 'etau ngaahi me'angaue 'a ia 'oku ngaue'aki ki hono fakahoko atu ho'o 'uhila. Lolotonga 'a e aleapau kuo pau ke ke fakapapau'i ko e founga hono tufaki ho'o 'uhila 'oku tokanga'i lelei fakatatau ki ha founga ngaue 'oku fakapotopoto pea falala'anga.*

### Interference with each other's plant and equipment and supply interruptions

We must make sure that we do not interfere with each other's equipment. If we find out that someone has we need to report it to the other immediately. We will try to keep your generation connected in accordance with **good industry practice** but we cannot always guarantee that the **distribution network** will be fault free and that your connection will be continuous.

### Fakafe'atungia'i 'o e tu'u'anga 'uhila takitaha , ngaahi me'angaue pea mo hono tufaki

*Kuopau ke fakapapau'i 'oku 'ikai ke fai hano ngaue ta'efakangofua 'aki 'etau ngaahi me'angaue. 'O kapa u leva 'e 'i ai ha taha te ne ngaue'aki te'eki ke 'i ai ha'ane ngofua 'a e ngaahi me'angaue, 'oku fiema'u leva ke lipooti ki he tokotaha 'oku ha'ana 'i he vave taha. Kuopau ke mau fakapapau'i 'oku fakahoko lelei 'a hono fokotu'u ho'o 'uhila fakatatau ki he founga fakahoko ngaue lelei, ka he 'ikai ke mau tukupa atu ko hono tufaki atu ko ia ho'o 'uhila mei he netiueka 'e hao mei ha maumau pea 'e hokohoko atu ai pe.*

### Access Rights

You must provide us with access to your equipment at all reasonable times for the purposes outlined in the agreement. Where circumstances allow we will provide advance notice of the access requirement, however, we require immediate access in emergency or safety situations.

### Totonu Ngofua

*Kuopau ke ke 'omi hamau ngofua ke mau ngaue atu ai ki ho'o me'angaue 'a ia 'oku ngaue'aki ki hono tufaki ho'o 'uhila 'i he taimi faingamalie lelei taha, ke fai atu ai ha ngaue ki ai fakatatau ki he ngaahi fiema'u 'oku tuku atu 'i he aleapau. 'I ha ngaahi 'uhinga lelei te ne fakangofua mai, te mau 'oatu leva ha fakatokanga kimu'a, ka kuopau ke fiema'u ha ngofua fakavavevave 'i he taimi fakatu'upake pe fekau'aki mo e malu'i mo'ui.*

### **Metering**

Before we allow connection of your generation you must have metering installed that meets the requirements of our policies for gross metering. We can assist you with this.

### **Fokotu'u Mita**

*Kimu'a pea mau fakahoko atu ho'o 'uhila, kuo pau ke fokotu'u ha'o mita 'a ia 'oku ne fakakakato e ngaahi fiema'u 'o e tu'utu'uni ki he pila. Te mau lava 'o tokoni atu kiate koe 'i he tafa'aki ko eni.*

### **Pricing**

You will pay for the electricity that you take from the **distribution network** and we will pay you for the electricity that you inject into the **distribution network**. Please contact us for the current applicable rates.

### **Totongi**

*Kuopau ke ke totongi e 'uhila 'oku ke ngaue'aki mei he netiueka tufaki 'uhila pea te mau totongi koe ki he 'uhila 'oku ke fakahu ki he netiueka. Katakai 'o fetu'utaki mai ki he ngaahi totongi lolotonga.*

### **Liability**

The agreement outlines the liability that we have to each other. The maximum liability that we have to each other is \$50 per kW of installed capacity up to a maximum of \$50,000. The exceptions to this are if wilful breaches have been made, confidentiality has been broken or fraud has occurred.

### **Fatongia Fakalao**

*'Oku fakaha mai 'i he aleapau 'a e ngaahi fatongia fakalao ki hotau va fengaue'aki. Ko e lahi 'o e pa'anga 'oku tau fengaue'aki mo ia 'i he vaha'a taimi ngaue ko eni 'oku \$50 ki he KW 'e taha 'a e ivi 'uhila 'oku fokotu'u 'o a'u ki he lahi ko e \$50, 000. Ko hono totongi 'o e mahu'inga ko eni 'e hoko ia 'o kapau 'oku 'i ai ha faihala ki he aleapau, pe tukuange 'ikai ha ngofua ki tu'a ha ngaahi fakamatala fakapulipuli pe ko ha kaiha'a kuo hoko.*

### **Dispute Resolution**

We want your generation connection to go smoothly and be problem free. To ensure this good communication is required. If you have any issues please contact us in the first instance and we will try to resolve matters in an amicable manner with you. If the matters cannot be resolved between us, either you or we, may take the issue to the Electricity Commission of Tonga for a determination.

### **Fakalelei'i 'o ha Ta'efemahino'aki**

*'Oku mau fiema'u 'a e founga hono tufaki ho'o 'uhila ke ngaue lelei pea 'ikai ha palopalema 'e hoko. Ke fakapapau'i ko e founga fetu'utaki eni 'oku taau pea fiema'u ke ngaue'aki. Kapau 'oku 'i ai ha'o fehu'i, kataki 'o fetu'utaki mai he vave taha pea te mau feinga ke solova 'a e palopalema 'i ha founga 'e faingofua kia koe. 'O kapau leva he 'ikai ke solova 'eni 'i hotau va pea 'e malava leva 'e koe pe ko kimautilu ke 'ave 'a e launga ki he Komisoni 'Uhila 'a Tonga ke 'omai ha tu'utu'uni mei ai.*

Thank you from the team at Tonga Power Limited.

*Malo mei he timi 'o e Kautaha 'Uhila 'o Tonga.*

The Parties to this Agreement for the connection of small scale distributed generation are:

**AGREEMENT** dated \_\_\_\_\_ 201\_\_

**PARTIES**

<b>Distributor: Tonga Power Limited</b>	<b>Distributed Generator: [Insert full legal name of distributed generator]</b>
<p>Tonga Power Limited</p> <p>Corner Taufa’ahau and Mateialona Roads,</p> <p>P.O. Box 429,</p> <p>Nuku’alofa, Kingdom of Tonga.</p> <p>Tel: (+676) 27390</p> <p>Fax: (+676) 23047</p> <p>Attention: Chief Executive</p> <p>Website: <a href="http://www.tongapower.to">www.tongapower.to</a></p> <p>Prices at Commencement of Contract:</p> <p>Import: [_____]</p> <p>Export: [_____]</p>	<p>Distributed Generator's Details:</p> <p>Street Address:</p> <p>Postal Address:</p> <p>Address of Generation:</p> <p>Type and size of Generation:</p> <p>Tonga Power Account Number:</p> <p>Contact Person's Details:</p> <p>Phone:</p> <p>Mobile Phone:</p> <p>Fax:</p> <p>Email Address:</p>

**COMMENCEMENT DATE:** \_\_\_\_\_ 201\_\_

**SIGNATURES:**

We confirm that we have read, understood and agree to comply with the terms of the Small Scale Distributed Generation Agreement (as attached below):

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of authorised person signing for Distributor

\_\_\_\_\_  
Name of authorised person signing for Distributed Generator

\_\_\_\_\_  
Position

\_\_\_\_\_  
Position if commercial or Owner

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

# Small Distributed Generation Connection Agreement

## 1. Background

The **distributed generator** intends to install generation units for self-generation and/or connection into the electricity **distribution network for supply** on the terms of this Agreement.

All approved electricity injected to the **distribution network** may be purchased by the **distributor** in accordance with this Agreement.

## 2. Interpretation

Unless the context otherwise requires or specifically otherwise stated:

- (a) headings are to be ignored;
- (b) "including" and similar words do not imply any limitation;
- (c) references to any form of law are to Tongan law, including as amended or re-enacted;
- (d) if a party comprises more than one person, each of those person's liabilities are joint and several;
- (e) references to a party or a person includes any form of entity and their respective successors, assigns and representatives;
- (f) every right, power and remedy of a party remains unrestricted and may be exercised without prejudice to each other at any time;
- (g) amounts are in TOP\$ and exclude every other tax and duty unless otherwise stated;
- (h) Kingdom of Tonga time and dates apply;
- (i) any word or expression cognate with a definition in this agreement has a meaning corresponding or construed to the definition;
- (j) references to sections, clauses, schedules, annexes or other identifiers are to those in this agreement unless otherwise identified;
- (k) references to a document or agreement includes it as varied or replaced; and
- (l) each schedule and any other attachment is part of this agreement.

**"comparable island nation"** means an island nation which is reasonably comparable to the Kingdom of Tonga 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;

**"confidential information"** means all data and other information of a confidential nature provided by one party to the other under this Agreement, but excludes —

- (a) information known to a party before the date it was provided to the other party and that was not obtained directly or indirectly from the first party; and
- (b) information obtained bona fide from another person who is in lawful possession of the information and who did not acquire the information directly or indirectly from a party under an obligation of confidence.

**"connection"** means a point at which the **distributor's distribution network** connects to a customer's electrical system.

**"connection and operation standards"** means requirements, as amended from time to time by the distributor (by whatever name called), that are set out in policies and standards of the distributor and relate to the connection of **distributed generation** and the operation of the **distribution network**, including requirements in accordance with **good industry practice** relating to the planning, design, construction, testing, inspection, and operation and maintenance of assets that are, or are proposed to be, connected to the **distribution network**.

**"distributed generation"** means generation installed at a customer's site of installation that is capable of exporting electricity back into the local **distribution network**.

**"distribution network"** means the equipment utilized by Tonga Power Limited which owns and operates the power lines and associated operating equipment in the Kingdom of Tonga.

**"distribution network"** means Tonga Power Limited's electricity distribution network, located on each of the Islands Groups, including all cables, electrical equipment, poles, ducts, and other items which are owned by Tonga Power Limited and which are connected to or which form an integral part of such networks (but excluding any generation equipment).

**"electricity commission"** means the Electricity Commission established under section 3(1) of the Electricity Act of 2007 or its successors or assigns;

**"good industry practice"** means the exercise of that degree of skill, diligence, prudence, foresight and economic management which would reasonably be expected from a skilled and experienced asset owner with reference to standards in comparable island nations.

**"meters"** means equipment that measures electricity quantity, usually in kilowatt-hours.

**"metering installation"** means **meters**, load and meter control devices (but not their control signals or means of generation), data loggers, test blocks, measuring transformers, error compensation processes, fittings, equipment, wiring and installations used for the measurement and storage of volume information, that is used for the purposes of this Agreement, and that comply with the metering standards set by the **Distributor** in accordance with **good industry practice**.

**"point of connection"** means a point at which electricity may flow into or out of the **distribution network**.

**"reasonable and prudent operating practice"**, in relation to **distributed generation**, includes the industry operating standards and measures in accordance with **good industry practice** to avoid the injection of electricity from **distributed generation** that;

- (a) exceeds the capacity of the **distribution network** at the point of injection; or
- (b) results in excessive power flow at feeder points or a significant adverse effect on voltage levels; or
- (c) results in a significant adverse effect on the quality and reliability of supply to other users of the **distribution network**; and
- (d) the use or proposed use of reasonable and prudent measures to enable the connection of **distributed generation**.

**"Working Day"** means from 8:30am to 4:30pm every day except Saturdays, Sundays and days which are statutory holidays in the Kingdom of Tonga.

## 3. General obligations

- (1) The **distributor** and the **distributed generator** must perform all obligations under these terms in accordance with **connection and operation standards** (where applicable).
- (2) The **distributor** and the **distributed generator** must each construct, interconnect, operate, test, and maintain their respective equipment in accordance with the terms of this agreement, the **connection and operation standards** (where applicable) and the Electricity Act 2007 as that may be amended from time to time. Notwithstanding its obligations under the Electricity Act 2007, the **distributed generator** will satisfy and

comply with all applicable statutory and legislative requirements relating to construction, installation and work carried out or undertaken in accordance with this Agreement.

- (3) The **distributed generator** must, subject to sub clause (2), construct, interconnect, operate, test, and maintain its **distributed generation** in accordance with **reasonable and prudent operating practice** and the applicable manufacturer's instructions and recommendations.
- (4) The **distributor** and **distributed generator** must each be fully responsible for the respective facilities they own or operate.
- (5) The **distributor** and **distributed generator** must each ensure that their respective facilities adequately protect each other's equipment, personnel, and other persons and their property, from damage and injury.
- (6) The **distributed generator** must comply with any conditions specified by the **distributor** under its various connection policies including without limitation its Gross-Metering Policy.

#### 4. Installation of meters and access to metering information

- (1) The **distributed generator** must ensure that 1 or more **metering installations** are installed that separately record any inflows of electricity from the **distribution network** and any electricity injected into the **distribution network**. Note that although TPL owns the meter, the customer may be expected to pay for the meter.
- (2) The **distributed generator** must provide to the **distributor**, at no cost to the **distributor**, at the **distributor's** request, the interval data and cumulative data recorded by those **metering installations**.
- (3) The **distributor** may require that **reactive** metering be installed.

#### 5. Right of distributor to access distributed generator's premises

- (1) The **distributed generator** must provide the **distributor**, or a person appointed by the **distributor**, with safe and unobstructed access onto the **distributed generator's land and** premises at all reasonable times;
  - (a) for the purpose of installing, testing, inspecting, maintaining, repairing, replacing, operating, reading, or removing any of the **distributor's** equipment and for any other purpose related to this agreement; and
  - (b) for the purpose of verifying metering information; and
- (c) for the purpose of ascertaining the cause of any interference to the quality of delivery services being provided by the **distributor** to the **distributed generator**; and
- (d) for the purpose of protecting, or preventing danger or damage to, persons or property; and
- (e) for the purposes of reconnecting or disconnecting the **distributed generation**; and
- (f) for any other purpose relevant to either or both of;
  - (i) the **distributor** connecting **distributed generation** in accordance with **connection and operation standards**; and
  - (ii) maintaining the integrity of the **distribution network**.
- (2) The rights of access conferred by this agreement are in addition to any right of access the **distributor** may have under a statute or regulation or contract.

#### 6. Process if distributor wants to access distributed generator's premises

- (1) The **distributor** must exercise its right of access under clause 5 by;
  - (a) wherever practicable, giving to the **distributed generator** reasonable notice of its intention and of the purpose for which it will exercise its right of access; and
  - (b) causing as little inconvenience as practicable to the **distributed generator** in carrying out its work; and
  - (c) observing **reasonable and prudent operating practice** at all times; and
  - (d) observing any reasonable security or site safety requirements that are made known to the **distributor** by the **distributed generator**.
- (2) However, the **distributor** may take all reasonable steps to gain immediate access where it reasonably believes there is immediate danger to persons or property.

#### 7. Distributor must not interfere with distributed generator's equipment

- (1) The **distributor** must not interfere with the **distributed generator's** equipment without the prior written consent of the **distributed generator**.
- (2) However, if emergency action has to be taken to protect the health and safety of persons, or to prevent damage to property, the **distributor**;
  - (a) may interfere with the **distributed generator's** equipment without prior written consent; and
  - (b) must, as soon as practicable, inform the **distributed generator** of the occurrence and circumstances involved.

#### 8. Distributed generator must not interfere with, and must protect, distributor's equipment

- (1) The **distributed generator** must not interfere with the **distributor's** equipment without the prior written consent of the **distributor**.
- (2) However, if emergency action has to be taken to protect the health and safety of persons, or to prevent damage to property, the **distributed generator**;
  - (a) may interfere with the **distributor's** equipment without prior written consent; and
  - (b) must, as soon as practicable, inform the **distributor** of the occurrence and circumstances involved.
- (3) The **distributed generator** must protect the **distributor's** equipment against interference and damage.

#### 9. Obligation to notify if interference with distributor's equipment or theft of electricity is discovered

- (1) If the **distributor** or the **distributed generator** discovers evidence of interference with the **distributor's** equipment, or evidence of theft of electricity, the party discovering the interference or evidence must notify the other party within 24 hours.
- (2) If interference with the **distributor's** equipment at the **distributed generator's** installation is suspected, the **distributor** may itself carry out an investigation and present the findings to the **distributed generator** within a reasonable period.
- (3) The cost of the investigation;
  - (a) must be borne by the **distributed generator** if it is discovered that interference by the **distributed generator**,

or by its subcontractors, agents, or invitees, has occurred, or if the interference has been by a third party, and the **distributed generator** has failed to provide reasonable protection against interference to the **distributor's** equipment; and

(b) must be borne by the **distributor** in any other case.

## 10. General obligation relating to interruptions

The **distributor** must make reasonable endeavours to ensure that the connection of the **distributed generation** is not interrupted.

## 11. Circumstances allowing distributor to temporarily disconnect distributed generation

Despite clause 10, a **distributor** may interrupt the connection service, or curtail either the operation or output of the generation, or both, and may temporarily disconnect the **distributed generation** in any of the following cases:

- (a) in accordance with the **distributor's** operational policies;
- (b) if reasonably necessary for planned maintenance, construction, and repairs on the **distribution network**;
- (c) for the purpose of protecting, or preventing danger or damage to, persons or property;
- (d) if the **distributed generator** fails to allow the **distributor** access as required by clause 5;
- (e) if the **distributed generator** modifies its **distributed generation**, without prior authorisation from the **distributor**, in such a way that it has a material effect on the **distributed generator's** injection of electricity into the **network**;
- (f) if abnormal physical or economic supply conditions exist. This may include for example, but without limitation, where there are local or national electricity shortages or capacity constraints, instances of extreme fuel prices, or where rationing is required as part of any national rationing plan;
- (f) in accordance with clause 13 (adverse operating effects).

## 12. Obligations if distributed generation temporarily disconnected by distributor

- (1) The **distributor** must make reasonable endeavours to;
  - (a) notify the **distributed generator** before an interruption under clause 11; and
  - (b) co-ordinate with the **distributed generator** to minimise the impact of the interruption.
- (2) The **distributor** and the **distributed generator** must co-operate to restore the **distribution network** and the **distributed generation** to a normal operating state as soon as is reasonably practicable following temporary disconnection.
- (3) In the case of a forced outage, the **distributor** must, subject to the need to restore the **distribution network**, make reasonable endeavours to restore service to the **distributed generator** and to advise the **distributed generator** of the expected duration of the outage.

## 13. Adverse operating effects

- (1) A **distributor** must notify a **distributed generator** as soon as is reasonably practicable if it reasonably considers that operation of the **distributed generation** may;
  - (a) adversely affect the service provided to other **distribution network** customers; or

- (b) cause damage to the **distribution network** or other facilities; or
- (c) present a hazard to a person.

(2) If, after receiving that notice, the **distributed generator** fails to remedy the adverse operating effect within a reasonable time, the **distributor** may disconnect the generation by giving reasonable notice (or without notice when reasonably necessary in the event of an emergency or hazardous situation).

## 14. Permanent disconnections

- (1) Despite clause 10, the **distributor** may permanently disconnect **distributed generation** in the following circumstances:
  - (a) on receipt of a request from a **distributed generator**;
  - (b) without notice, if a **distributed generator** has failed to comply with either the connection or safety requirements of the **distributor** and there is an on-going risk to persons or property;
  - (c) on at least 10 **business days'** notice of intention to disconnect, if;
    - (i) the **distributed generator** has not either injected electricity into or off taken electricity from the **distribution network** or at any time in the preceding 12 months; and
    - (ii) the **distributor** has not been notified by the **distributed generator** of reasons for the non-injection or off take; and
    - (iii) the **distributor** has reasonable grounds for believing that the **distributed generator** has ceased to operate the **distributed generation**.

## 15. General obligations relating to confidentiality

- (1) Each party must preserve the confidentiality of **confidential information**, and must not directly or indirectly reveal, report, publish, transfer, or disclose the existence of any **confidential information**, except as permitted in sub clause (2).
- (2) Each party must only use **confidential information** for the purposes expressly permitted by this agreement.
- (3) Either party may disclose **confidential information** in any of the following circumstances:
  - (a) if the **distributed generator** and **distributor** agree in writing to the disclosure of information;
  - (b) if disclosure is expressly provided for under this agreement;
  - (c) if, at the time of receipt by the party, the **confidential information** is in the public domain or if, after the time of receipt by either party, the **confidential information** enters the public domain (except where it does so as a result of a breach by either party of its obligations under this clause or a breach by any other person of that person's obligation of confidence);
  - (d) if either party is required to disclose **confidential information** by;
    - (i) a statutory or regulatory obligation, body, or authority; or
    - (ii) a judicial or arbitration process; or
    - (iii) the regulations of a stock exchange upon which the share capital of either party is from time to time listed or dealt in;



- (e) if the **confidential information** is released to the officers, employees, directors, agents, or advisors of the party, provided that;
    - (i) the information is disseminated only on a need-to-know basis; and
    - (ii) recipients of the **confidential information** have been made fully aware of the party's obligations of confidence in relation to the information; and
    - (iii) any copies of the information clearly identify it as **confidential information**;
  - (f) if the **confidential information** is released to a bona fide potential purchaser of the business or any part of the business of a party, subject to that bona fide potential purchaser having signed a confidentiality agreement enforceable by the other party in a form approved by that other party, and that approval may not be unreasonably withheld.
- (4) To avoid doubt, a party is responsible for any unauthorised disclosure of **confidential information** made by that party's officers, employees, directors, agents, or advisors.

## 16. Pricing

- (1) Connection charges that are payable to or by a **distributed generator** are determined in accordance with the pricing principles set out in Schedule 1 and may change from time to time.
- (2) Any change to prices will be notified in advance by the **distributor** using its then current form of price communication.

## 17. General obligations relating to liability

- (1) If a **distributor** or **distributed generator** breaches any of the terms of this agreement (whether by act or omission), that party may be liable to the other.
- (2) The **distributed generator's** and the **distributor's** liability to each other is limited to damages for any direct loss caused by that breach.
- (3) This clause does not limit the liability of either party to pay all charges and other amounts due under this agreement.
- (4) Neither the **distributor** nor a **distributed generator**, nor any of its officers, employees, directors, agents, or advisors, are in any circumstances liable to the other party for;
  - (a) any indirect loss, consequential loss (including, but not limited to, incidental or special damages), loss of profit, loss of revenue (except any liability under clause 17(3)), loss of use, loss of opportunity, loss of contract, or loss of goodwill; or
  - (b) any loss resulting from the liability of the other party to another person; or
  - (c) any loss or damage incurred by the other party if, and to the extent that, this results from any breach of this agreement or any negligent action.
- (5) The **distributor** is not liable, except to the extent caused or contributed to by the **distributor** in circumstances where the **distributor** was not acting in accordance with this agreement, for;
  - (a) any momentary fluctuations in the voltage or frequency of **electricity** conveyed to or from the **distributed generation's point of connection** or nonconformity with harmonic voltage and current levels; or
  - (b) any failure to convey electricity to the extent that;
    - (i) the failure arises from any act or omission of the **distributed generator** or other person, excluding the

**distributor** and its officers, employees, directors, agents, or advisors; or

- (ii) the failure arises from;
    - (A) a failure to convey or a reduction of injection or supply of electricity into the **distribution network**; or
    - (B) an interruption in the conveyance of electricity in the **distribution network** to maintain the stability of the **distribution network** or under a nationally or regionally co-ordinated response to an electricity shortage; or
  - (iii) the failure arises from any defect or abnormal conditions in or about the **distributed generator's** premises; or
  - (iv) the **distributor** was taking any required action in accordance with this agreement; or
  - (v) the **distributor** was prevented from making necessary repairs (for example, by police at an accident scene).
- (6) The **distributed generator** is not liable for;
- (a) a failure to perform an obligation under this agreement caused by the **distributor's** failure to comply with the obligation; or
  - (b) a failure to perform an obligation under this agreement arising from any defect or abnormal conditions in the **distribution network**.

## 18. Limits on liability

- (1) The maximum total liability of each party, as a result of a breach of this agreement, must not in any circumstances exceed, in respect of a single event or series of events arising from the same event or circumstance, the lesser of;
  - (a) the direct damage suffered or the maximum total liability that the party bringing the claim against the other party has at the time that the event (or, in the case of a series of related events, the first of such events) giving rise to the liability occurred; or
  - (b) \$50 per kW of installed capacity up to a maximum of \$50,000.
- (2) The exceptions in clause 17, and the limits on liability in this clause 18, do not apply;
  - (a) if a **distributor** or **distributed generator**, or any of its officers, employees, directors, agents, or advisors, has acted fraudulently or wilfully in breach of this agreement; or
  - (b) to a breach of confidentiality under clause 15 by either party.

## 19. Indemnity

- (1) Each party (the **indemnifying party**) must indemnify the other for damages claimed by third parties to the extent that the loss is caused by a breach of this agreement by the **indemnifying party**, where the loss is materially caused by an action or omission of the **indemnifying party**.
- (2) The indemnity in this clause is subject to the limits on liability specified in clauses 17 to 18.

## 20. Force majeure

- (1) A failure by either party to comply with or observe any provisions of this agreement (other than payment of any amount due) does not give rise to any cause of action or liability based on default of the provision if;



- (a) the failure is caused by;
    - (i) an event or circumstance occasioned by, or in consequence of, an act of God, being an event or circumstance;
      - (A) due to natural causes, directly or indirectly and exclusively without human intervention; and
      - (B) that could not reasonably have been foreseen or, if foreseen, could not reasonably have been resisted; or
    - (ii) a strike, lockout, other industrial disturbance, act of public enemy, war, blockade, insurrection, riot, epidemic, aircraft, or civil disturbance; or
    - (iii) the binding order or requirement of a Court, government, local authority, the **electricity commission**, and the failure is not within the reasonable control of the affected party; or
    - (iv) the partial or entire failure of supply or availability of electricity to the **distribution network**; or
    - (v) any other event or circumstance beyond the control of the party invoking this clause; and
  - (b) the party could not have prevented such failure by the exercise of the degree of skill, diligence, prudence, and foresight that would reasonably and ordinarily be expected from a skilled and experienced **distributor** or **distributed generator** engaged in the same type of undertaking under the same or similar circumstances in Tonga at the time.
- (2) If a party becomes aware of a prospect of a forthcoming force majeure event, it must notify the other party as soon as is reasonably practicable of the particulars of which it is aware.
  - (3) If a party invokes this clause, it must as soon as is reasonably practicable notify the other party that it is invoking this clause and of the full particulars of the force majeure event relied on.
  - (4) The party invoking this clause must;
    - (a) use all reasonable endeavours to overcome or avoid the force majeure event; and
    - (b) use all reasonable endeavours to mitigate the effects or the consequences of the force majeure event; and
    - (c) consult with the other party on the performance of the obligations referred to in paragraphs (a) and (b).
  - (5) Nothing in sub clause (4) requires a party to settle a strike, lockout, or other industrial disturbance by acceding, against its judgement, to the demands of opposing parties.

## 21. Dispute resolution process

- (1) A party must give written notice to the other party of the dispute.
- (2) The parties must attempt to resolve the dispute with each other in good faith.
- (3) If the parties are unable to resolve the dispute, either party may complain in writing to the **electricity commission** of Tonga.

## 22. Notices

- (1) Any notice given pursuant to this agreement will be deemed to be validly given if personally delivered, posted or forwarded by facsimile transmission or electronic mail (E-mail) to the address for notice set out on the execution page of this agreement or to such other address as that party may notify from time to time.
- (2) Any notice given pursuant to this agreement will be deemed to have been received:
  - (a) in the case of delivery, when delivered;

- (b) in the case of facsimile transmission, when sent, provided the sender has a facsimile confirmation receipt recording successful transmission;
  - (c) in the case of posting, on the 3rd **Working Day** following the date of posting;
  - (d) in the case of email, the date of deemed receipt shall be at such time as the parties agree in writing. Notices may not be given pursuant to this agreement by email unless such agreement is reached and recorded in writing.
- (3) Any notice in accordance with clause 22(2) that is personally delivered or sent by facsimile either after 4:30 pm on a **Working Day** or on any day that is not a **Working Day** will be deemed to have been received on the next **Working Day**.

## 23. Miscellaneous

- (1) Except where a party has signed an express written waiver of a right under this agreement, no delay or failure to exercise a right under this agreement prevents the exercise of that or any other right on that or any other occasion. A written waiver applies only to the right and to the occasion specified by it.
- (2) This agreement records the entire agreement, and prevails over any earlier agreement concerning its subject.
- (3) The **distributor** may assign any benefit or burden under or in relation to this agreement without the prior written consent of the **distributed generator**. The **distributed generator** may not assign any benefit or burden under or in relation to this agreement without the prior written consent of the **distributor**, such consent not to be unreasonably withheld.
- (4) Any unlawful provision in this agreement will be severed, and the remaining provisions enforceable, but only if the severance does not materially affect the purpose of, or frustrate, this agreement.
- (5) 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.
- (6) 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.
- (7) 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.
- (8) By executing this Agreement, the **distributed generator** and the **distributor** do not intend, and nor should they be understood, to have created any partnership, joint venture or fiduciary relationship between them. They do not confer a right in either of them to enter any commitment on any other party's behalf or to otherwise act as any other party's agent. Each of them is an independent entity and, for the purposes of this Agreement, the employees or agents of one of them will not be considered to be employees or agents of the other, unless as otherwise deemed by law, and each of them shall each pay all costs associated with its respective employees. To avoid doubt, the liabilities and obligations of each of the **distributed generator** and **distributor** under this Agreement are separate, distinct and several, such that **the distributor** is not responsible for the performance of the **distributed generator's** obligations and the **distributed generator**

is not responsible for the performance of **the distributor's** obligations.

- (9) The construction, validity and performance of this Agreement shall be governed by the laws of the Kingdom of Tonga.

## SCHEDULE 1: PRICING METHODOLOGY

This Schedule sets out the methodology to be applied for charging for supply and receipt of electricity.

### 1. Cost of Connection

The Distributed Generator will pay all costs associated with upgrade of the connection to the network facility, including any upgrade or modification required to the distributors network, protection and communication systems, and/or control systems.

Any design and site inspections will be charged at the distributors standard charge-out rates.

### 2. Electricity purchased from the Distributor

All electricity will be charged by the distributor at its published rates.

### 3. Electricity injected into the Distributors Grid

The price of electricity to be purchased by the Distributor will be based on the total kWh injected into the network in a billing period (currently monthly). It will comprise the following components:

### 4. Payable by the Distributor

- a) Avoided fuel costs:
  - The Fuel Component is an extrapolation between the actual diesel prices going back to July 2008 using the average Fuel Tariff to average Diesel Prices. This works out to an average of 30% of the price of fuel in \$/ltr.
- b) Fixed Non Fuel Component:
  - Opex and Capex for generation for the next 5 years allowable in the current tariff. The charge is 11.61 seniti/kWh.

### 5. Payable by the Distributed Generator

- a) Generation support charges
  - Covering any cost incurred to the distributors centralized generation plant as a result of the introduction of the plant.
- b) Electricity Commission levy
  - Recovering the cost to the distributor for funding the Electricity Commission. The charge is 0.97 seniti/kWh
- c) Reactive support
  - To compensate for the cost of maintaining adequate power factor, and managing network losses. The charge is currently 0.0 seniti/kWh

### 6. Renewable Capacity Offset

The Distributor recognises the value of renewable generation, in avoiding the use of fossil fuel oils for generation. As the amount of connected renewable generation increases, the component of consumers' tariff representing fuel will decrease.

If the fuel component of tariff as calculated in accordance with regulation includes the offset of renewable generation, then no further adjustments are necessary.

If the fuel component of tariff as calculated under regulations does not include the offset from renewable generation, then the amount payable by the distributor to the distributed generator for energy injected into the Grid will be scaled by the ratio of non-renewable generation on Tongatapu to the total volume generation connected to the Tongatapu Grid. This will be calculated once per year, based on the previous twelve months generation statistics.

### 7. Escalation Provisions

Published charges will be changed on an annual basis by the distributor, and will consider the allowable movements under regulation and as approved by the Electricity Commission. Changes to price will be published.

The generation support, reactive support and Electricity Commission levy will be reviewed on a yearly basis, and notified.

### 8. Taxes

All taxes and levies set by Government (with the exception of the Electricity Commission levy) will be applied in addition to the rates specified.

### 9. Locational Incentives

In certain areas the distributor faces investment in the network due to constraints and implications of localized growth. The distributor proposes to identify and make public these localities, and will offer additional pricing incentives to encourage more efficient location of grid connected generation or demand management capabilities. Such incentives will be determined on a case-by-case basis as they are likely to be short to medium term incentives associated with savings through deferring (rather than eliminating) capital expenditure in the network.

### 10. Application of Charges as at June 2016

Following is a summary of the price structure (excluding taxes and prior to any renewable offset), applicable to electricity injected into the distributors grid, based on published rates applicable as at April 2016.

Cost per Litre of Diesel	0.75 (\$/ltr)	1.0 (\$/ltr)
Fixed Non Fuel Component (s/kWhr)	11.61	11.61
Fuel Component (s/kWhr)	11.25	15.00
Generation Support (s/kWhr)	0.0	0.0
Electricity Commission Levy (s/kWhr)	- 0.97	- 0.97
Reactive (KVAr) Support (s/kWhr)	0.0	0.0
Export Tariff (s/kWhr)	22.86	26.61

## SCHEDULE 2: TECHNICAL REQUIREMENTS

The distributed generator must comply with Tonga's electricity regulations and the distributors technical conditions for connection. These are published under separate cover and amended from time to time. Compliance will be managed by the Electricity Commission, but will include compliance with:

### Installation requirement:

- Installation must be undertaken by a licensed electrical contractor
- The installation acts to balance the generation connected to the phases of the supply transformer
- AS/NZS 3000: Electrical Installations (Wiring Rules)
- AS/NZS 5033: Installation and safety requirements for photovoltaic (PV) arrays
- AS/NZS 1170.2: Structural Design Actions – wind actions
- AS 3011: Secondary batteries installed in buildings
- AS 2676: Installation and maintenance guide secondary batteries in a building

### Grid requirement:

- AS 4777: Grid connection of energy systems via inverters
- AS/NZS 1769: Lightning protection
- AS 60038: Standard voltages
- AS/NZS 61000: Electromagnetic compatibility (EMC)
- AS 2067: Substations and high voltage installations exceeding 1 KV AC

### PV module requirement:

- IEC 61730: Photovoltaic (PV) module safety qualification
- IEC 61701: Salt mist corrosion testing of photovoltaic (PV) modules

### Wind turbines requirement:

- AS IEC 61400.2: Wind turbines – Design requirements for small wind turbines (up to 65 kW rated power)
- IEC 61400-1 Wind turbines – Part 1: Design requirements (greater than 65 kW)

The technical conditions are subject to change, as new technology or concepts are developed internationally. The distributor is willing to discuss alternatives if they enhance the robustness and safety of the connection.