Zambia Renewable Feed-in Tariff (REFIT) Program

License to Engage in the Generation of Electricity (Renewable Energy)

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Submitted by:
USAID Southern Africa Trade Hub / AECOM International Development

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USAID/Southern Africa

and

Zambia Energy Regulation Board

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LICENCE TO ENGAGE IN THE GENERATION OF ELECTRICITY 
(RENEWABLE ENERGY)

1. This License is issued by the Energy Regulation Board (hereinafter referred to as the ‘ERB’) in the exercise of the powers vested in it by the Energy Regulation Act, Chapter 436 of the Laws of Zambia (hereinafter referred to as the ‘Act’).

2. This License is issued to [#] an entity incorporated or registered in Zambia and having its registered office at [#] (hereinafter referred to as the ‘Licensee’) to –

   (a) construct, operate and maintain the generation and associated facilities described in Schedule 1 of this License (the Generation Facilities);

   (b) to generate electricity with the Generation Facilities and sell electricity thus generated to the Customer;

   (c) exercise such powers and perform such duties and functions related thereto as may be necessary (together the Licensed Activity),

   subject to and in accordance with the conditions set out in the Act and this License.

3. This License shall –

   (a) only come into full force and effect when Financial Close is reached; or

   (b) lapse if Financial Close is not reached within [180 days]; and

   (c) remain valid for [#] years from the date of signature hereof in the event that Financial Close is reached as set out in paragraph (a) unless revoked in accordance with the relevant provisions set forth herein.
CONDITIONS FOR LICENCE TO GENERATE AND SELL ELECTRICITY

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COMMON CONDITIONS

Section 1 – Definitions

1.1 In this License, the following terms and words shall have the following meanings hereby assigned to them except where the context requires otherwise:

**Act**

The Energy Regulation Act, Chapter 436 of the Laws of Zambia.

**Associated Business**

Any entity which:

1. is directly or indirectly owned, in whole or in part, by the Licensee;
2. is the holding company of the Licensee;
3. is owned in whole or in part directly or indirectly by the holding company that owns in whole or in part the Licensee; or
4. is owned in whole or in part, directly or indirectly, by a company owned by the Licensee.

**Companies Act**

The Companies Act, Chapter 388 of the Laws of Zambia or its re-enactment.

**Customer**

ZESCO, or such other entity as the ERB may approve of.

**Cross Subsidy**

A transfer of revenue from a Licensed Activity to unlicensed activities within the same company or among associated businesses in order to provide financial support to one activity or business at the expense of another.

**Electricity Act**

The Electricity Act, Chapter 433 of the Laws of Zambia, as amended.

**ERB**

The Energy Regulation Board created by the Act.

**Financial Close**

The reaching of financial closure in terms of a PPA between the Licensee and its customer.

**Grid Code**

Means a set of rules and responsibilities developed and approved by the ERB in terms of the Electricity Act for the
development, maintenance and operation of an efficient coordinated and economical system for the transmission of electricity, and to promote the security and efficiency of the power system as a whole.

**Implementati on Agreement**

An implementation agreement concluded between the Licensee and the Government of Zambia or a representative thereof.

**Installed Capacity**

The maximum aggregate capacity of an electricity generating, transmission or distribution plant.

**License**

This license issued and as may be amended by the ERB from time to time in accordance with the Act.

**Licensee**

The holder of this license issued by the ERB.

**Licensed Activity**

The activit(ies) authorized by the ERB to be undertaken by the Licensee in terms of this License.

**PPA**

The power purchase agreement concluded between the Licensee and its Customer.

**System Operator**

An entity that holds a license granted by the ERB for the operation of the transmission system.

**Transmission System**

A network of electric power lines and associated equipment used for conveying electric energy in bulk between generating stations and voltage transformation stations at voltages as prescribed according to Power Quality Standard ZS 387.

**Section 2 – Interpretation**

2.1 Unless the context requires otherwise, a reference made in this License to any law, regulation, proclamation or other document includes all laws, regulations,
proclamations and other documents varying, consolidating, re-enacting, extending, or replacing them.

2.2 Unless the context requires otherwise, any reference made in this License to an entity which ceases to exist or whose functions are transferred to another entity includes a reference to the body which replaces or substantially succeeds its functions, powers or duties.

2.3 Unless the context or intent requires otherwise, all the terms defined in the Act shall have the same meaning when used in this License.

2.4 A term in this License which uses the singular may be read to include the plural and vice versa, and a term which imports gender may be read to include both the masculine and feminine.

2.5 In this License, headings are for reference purposes only and shall not affect the construction or interpretation of this License.

2.6 Nothing in this License shall be interpreted so as to relieve, supersede, or otherwise replace any obligations the Licensee may have under any other law. Such requirements as set out in this License are in addition to such other legal obligations.

2.7 This License supersedes any license previously issued to the Licensee by the ERB.

Section 3 – General Obligations of the Licensee

3.1 The Licensee shall:

(a) Comply with the conditions of this License and the requirements of its Licensed Activity in accordance with the Act and the Electricity Act;

(b) Maintain adequate financial, technical and managerial resources and capabilities to allow the Licensee to carry out its Licensed Activity in accordance with the various codes, rules, service standards, and other documents referred to in this License;

(c) Comply with all relevant Zambian laws and regulations including but not limited to those related to the prohibition of monopolistic or unfair business or competitive practices, occupational health and safety, electrical safety, and environmental standards and requirements;

(d) Comply with all standards approved by the Zambian Bureau of Standards related to the provision of electricity service;

(e) Comply with the Grid Code and all procedures, regulations, rules, codes and standards prescribed or approved by the ERB in accordance with the
ERB’s statutory duty to monitor the efficiency and performance of licensees;

(f) Comply with any order, directive, notice to appear, breach notice or any other direction issued by the ERB to the Licensee;

(g) Comply with all procedures prescribed or approved from time to time by the ERB and obtain all approvals required under those procedures or by the conditions of this License.

Section 4 – Request for Relief

4.1 If the Licensee identifies any requirement within any of the obligations referred to in Section 3.1 (e) which might otherwise be applicable to the Licensee in accordance with the conditions of this License, but which in the opinion of the Licensee is either inappropriate or inapplicable, the Licensee may apply to the ERB and present sufficient justification for relief from such requirement. Unless and until the ERB grants terms for such specific relief, all such regulations, rules, codes and standards as established shall apply in full.

Section 5 – Notice of other Business Activities

5.1 The Licensee shall ensure that none of the other business activities it engages in, or that its associated businesses engage in, will operate in such a manner or commit to any liability that may materially affect the ability of the Licensee to maintain adequate financial, technical, and managerial resources and capabilities necessary to carry out its Licensed Activity in accordance with the Act, the Electricity Act and the conditions of this License.

5.2 The Licensee shall notify the ERB if the Licensee or its associated businesses enter into new business activities or change the scope of their existing business activities that are not already licensed by the ERB. The Licensee shall also provide sufficient information to assure the ERB that these new or changed business activities do not have potential to:

(a) Materially compromise the financial integrity of the Licensee;

(b) Impose materially adverse burdens on the relevant technical capabilities of the Licensee.

5.3 If the ERB finds that such new or changed business activities do not meet the criteria referred to in this Section the ERB may require the Licensee to take such actions as are necessary to prevent adverse effects on customers.

5.4 The Licensee shall not provide any cross-subsidies from its Licensed Activities to its other business activities or to its associated businesses.
Section 6 – Expansion of Generation Facility

6.1 The Licensee shall not without the prior approval of the ERB expand its Generation Facilities.

6.2 The licensee shall provide to the ERB on an agreed basis, but not less than bi-annually, its load forecasts and plans for the next agreed period.

Section 7 – Sale of Electricity

The Licensee shall not –

7.1 enter into or materially amend the PPA without the prior approval of the ERB;

7.2 without the prior approval of ERB sell electricity to any person other than in accordance with the provisions of the PPA contemplated under clause 7.1.

Section 8 - Businesses

8.1 The Licensee shall for each of its separate businesses maintain accounting and reporting systems and procedures that enable separate financial statements to be prepared for and accurately show the financial performance of:

(a) The Licensed Activity as if it were a separate entity;

(b) Any other Licensed Activity conducted by the Licensee,

(c) Any line of business or activity other than the Licensee’s Licensed Activities; and

(d) The aggregated corporate business of the Licensee.

8.2 The Licensee shall:

(a) Obtain annual, or as otherwise specified by the ERB, opinions prepared by independent auditors that the financial statements prepared by the Licensee give a fair and true view of the revenues, costs, assets, liabilities and other relevant data of the Licensed Activity;

(b) Deliver to the ERB a copy of the accounting statements required to be prepared under this Section together with the reports of the independent auditors as soon as reasonably practical, but in any event within 4 months following the end of the financial year of such Licensee.

8.3 In the event that the Licensee has changed the basis by which revenues, costs, or other values are charged, apportioned or presented for a particular financial year, the Licensee shall, in addition to preparing the accounting statements
identified in this Section, also prepare such accounting statements reflecting the changed accounting principles for the immediately preceding financial year.

Section 9 – Competitive Practices

9.1 The Licensee shall not engage in any form of "anti-competitive trade practices" as defined in the Competition and Consumer Protection Act No. 24 of 2010

9.2 The Licensee shall not:

(a) Enter into any agreement or arrangement for the supply of goods or services or otherwise deal with any of its associated businesses except where the Licensee can demonstrate that the transaction has been at arm's length;

(b) Unduly discriminate in favor of its associated businesses.

9.3 The Licensee shall not give cross subsidies to associate businesses at the expense of the Licensed Activity or receive cross subsidies from associate businesses for the Licensed Activity.

9.4 The Licensee shall ensure that any associated business does not use any information in the Licensee's possession to gain a competitive advantage, and shall ensure that it does not disclose any information to any other entity (including those of another associated business) that could enable that entity to obtain any kind of commercial advantage.

Section 10 – Risk Management and Insurance

10.1 The Licensee shall adopt reasonable and prudent risk management policies, including self-insurance when appropriate, relative to risks associated with the Licensed Activity and shall procure adequate insurance policies on plant and equipment sufficient to protect other Licensees or customers from any major eventuality on the system.

Section 11 – No Transfer

11.1 The Licensee shall not be entitled to cede, assign or otherwise transfer this License without the prior approval of the ERB, unless such transfer has been pre-approved in terms of the PPA.

Section 12 – Change of Ownership

12.1 Unless and to the extent otherwise agreed in the PPA or IA, the Licensee is obliged to inform the ERB within 15 days of the following changes in the ownership:

(a) Any changes in its ownership exceeding 5% of the issued share capital;

(b) Any increase in issued share capital exceeding 5%;
unless and to the extent the shares in question are listed on the Lusaka Stock Exchange

Section 13 – Disposal of Assets

13.1 The Licensee shall give to the ERB not less than 2 months’ prior written notice of any intention to sell, dispose of, or relinquish operational control over any asset, whose gross book value either exceeds or represents more than 5% of the total value of assets held by the Licensee. The Licensee shall also provide such further information as the ERB may request relating to such asset or the circumstances of such intended disposal or the intentions of the entity proposing to acquire such asset or operational control of such asset.

Section 14 – License Fees

14.1 The Licensee shall pay to the ERB such license fees in accordance with the Act and in such manner as shall be determined by the ERB from time to time.

Section 15 – License Amendment

15.1 This License may be amended upon the request of either the ERB or the Licensee in accordance with the Act and procedures established by the ERB.

15.2 The ERB may unilaterally amend this License:

(a) Upon promulgation of changes in the laws of Zambia;

(b) In fulfilment of a decision of any court of competent jurisdiction; and

(c) In line with the provisions of the Act.

Section 16 – License Renewal

16.1 Upon application by the Licensee in the manner set forth herein, this License may be renewed for such further period either on similar terms and conditions including this condition for renewal or on such terms and conditions as the ERB may determine in accordance with the Act.

16.2 If the Licensee intends to renew this License, it shall apply to the ERB in writing in the format prescribed by the ERB at least six (6) months before the expiration of the License.
16.3 The ERB may accept or reject the application for renewal based on the Licensee’s prior performance, record of compliance with license conditions and other criteria for renewal in accordance with the ERB’s licensing procedures.

16.4 If no written application for renewal as stipulated in clause 16.2 is received at least six (6) months prior to the expiration of this License, it shall be deemed that the Licensee does not intend to renew this License, and any application received from the Licensee thereafter may be treated as an initial application for a license.

Section 17 – Provision of Information to the ERB

17.1 The Licensee shall furnish to the ERB, in such manner and at such times as the ERB may require, any information and reports as the ERB may reasonably consider necessary for the purpose of performing its functions, including the monitoring of the Licensee’s compliance with the conditions of this License, the Act and the Electricity Act.

17.3 Notwithstanding the above, the Licensee shall not be compelled to provide information in a manner that would place it in violation of a Law or a legitimate order from a court of competent jurisdiction.

17.5 The Licensee shall report on any circumstances that result, or are likely to result, in a change of information previously provided to the ERB.

17.6 The Licensee shall notify the ERB within 14 days of any change in:

(a) The Registered Office of the Licensee;
(b) Facilities owned or operated by the Licensee;
(c) Statutory documents subject to registration /incorporation or re-registration /re-incorporation with the Registrar of Companies or any other relevant Zambian government agency,

as the case may be.

Section 18 – Provision of Contracts and Agreements to the ERB

18.1 The Licensee shall provide for the ERB’s prior review and approval of all contracts and agreements:

(a) With other Licensees or with wholesale customers, including any and all contracts or agreements for the purchase or sale of electricity being entered into for the purposes of enabling or securing financing for new or expanded capacity;
(b) For the export of power or energy, if applicable; and
(c) PPA and associated approvals and agreements.

18.2 The ERB has the right to retain copies of such contracts and agreements.

Section 19 – Compliance Monitoring

19.1 The Licensee shall designate a compliance officer to establish and operate a system to ensure compliance with the conditions of this License.

Section 20 – License Enforcement

20.1 The Licensee acknowledges that the ERB will enforce the conditions of this License and may impose appropriate penalties and/or sanctions or remedies available under Section 15 of the Act and Section 10 of the Electricity Act for violation of license conditions in accordance with ERB’s licensing procedures.

Section 21 – License Suspension

21.1 The ERB may suspend this License in accordance with the Act and the ERB’s licensing procedures after delivering reasonable notice in writing to the Licensee:

(a) If any license fee invoiced by the ERB remains unpaid 30 days after it is due and the ERB has given the Licensee written notice that such payment is overdue;

(b) If the Licensee fails to abide by the terms of a Breach Notice issued by the ERB in accordance with its licensing procedures; or

(c) If the Licensee fails to pay a fine levied upon it by the ERB.

21.2 In exercise of the powers vested in it under Section 10 of the Electricity Act or any amendment or modification thereof, the ERB may appoint and authorize any other licensee or qualified entity to carry out the activities previously carried out by the Licensee whose license has been suspended.

Section 22 – License Revocation

22.1 The ERB may revoke this License in accordance with the Act and the ERB’s licensing procedures after delivering reasonable notice in writing to the Licensee:

(a) If, following the end of a suspension period, the Licensee has failed to address the cause of the suspension;
(b) If the Licensee repeatedly abuses the conditions of this License or repeatedly demonstrates technical, managerial or financial incompetence affecting the security or financial viability of its operations, the security of supply, the safety of consumers, or the operations or financial viability of other licensees; or

(c) If the Licensee has not commenced to carry out the Licensed Activity within a period of 2 years from the date of issue of this License.

Section 23 – Operational and Compliance Audits

23.1 The Licensee shall undertake audits of its operations and its compliance with the conditions of this License, as well as with its compliance with the Grid Code and other regulations, rules, codes and standards prescribed or approved by the ERB.

23.2 Compliance audits shall be conducted at least annually by the Licensee, and at least once every three years by an independent auditor or other expert appointed by the Licensee.

23.3 The resulting reports on the operational and compliance audits shall be made available to the ERB immediately upon completion of the audits.

23.4 Nothing in this Section precludes the ERB from conducting its own compliance, operational or other auditing or monitoring activities.

Section 24 – Access to Premises

24.1 The ERB and its authorized agents shall have the right of access to inspect the Licensee’s premises, equipment and documents, and the Licensee shall render necessary assistance in the course of inspection of the Licensed Activity in accordance with the provisions of the Act and the ERB’s Rules on Monitoring and Investigation.

24.2 Upon the complaint of any third party or upon its own motion, the ERB may initiate an investigation of the Licensee’s business practices with respect to the Licensed Activity.

Section 25 – Service of Documents, Notices, etc.

25.1 Any notice, document, data or assembled information required to be submitted to the ERB by or under the conditions of this License shall be provided in writing and delivered to the Office of the Executive Director of the ERB. Such notice, documents, data or assembled information may be transmitted by the date due by facsimile or other electronic transmission, as may advised to be acceptable by
the ERB, with the physical form delivered to the ERB as soon as is reasonably practical.

Section 26 – Health and Safety

26.1 The Licensee shall establish and maintain appropriate systems in accordance with prescribed safety regulations and standards to ensure the safety of the public from personal injury or damage to property during the course of performing the Licensed Activity.

26.2 The Licensee shall report accidents in accordance with Section 28 of the Electricity Act and any prescribed regulations. Accidents of a serious nature shall be immediately reported to the ERB, and a comprehensive written report shall be submitted thereafter to the ERB within 7 days of the occurrence.

Section 27 – Compliance to Grid Code

27.1 The Licensee shall at all times adhere to the provisions of the Grid Code and all valid instructions of System Operator in terms thereof.

Section 28 – Severance

28.1 Should any provision of the conditions of this License cease to be effective, that provision shall be deleted from the conditions and the remaining provisions shall continue in full force and effect.
# DETAILS OF GENERATING FACILITIES

1. **NAME:**

2. **TYPE** (Solar, Mini-hydro, Biomass, etc.):

3. **LOCATION:**

4. **CAPACITY:**
   - A. Total Installed Capacity: (MW)
   - B. Present Rated Capacity: (MW)

5. **GENERATOR DETAILS (IF APPLICABLE)**

<table>
<thead>
<tr>
<th>No</th>
<th>Type/Make</th>
<th>Installed Capacity (MW)</th>
<th>Present Ratings (MW)</th>
<th>Year Commissioned</th>
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6. **TURBINE DETAILS (IF APPLICABLE)**

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<th>Type/Make</th>
<th>Installed Capacity (MW)</th>
<th>Present Ratings (MW)</th>
<th>Year Commissioned</th>
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7. TRANSFORMER DETAILS

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<th>Ratio</th>
<th>Present Ratings (MVA)</th>
<th>Year Commissioned</th>
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8. OVERHEAD LINE DATA

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<th>Voltage Level (KV)</th>
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9. AUXILLARY EQUIPMENT

<table>
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<tr>
<th>NAME/MAKE</th>
<th>NOMINAL VOLTAGE (KV)</th>
<th>RATING (KW/MVA)</th>
<th>YEAR COMMISSIONED</th>
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10. ELECTRICAL DRAWING (to be attached)

11. DETAILED GEOGRAPHICAL LOCATION (to be attached)