

Transpower Works Agreement

Transpower New Zealand Limited

[*Customer*]

[PROJECT / SITE]

draft

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draft

TRANSPOWER WORKS AGREEMENT

Date:

PARTIES

Transpower New Zealand Limited at Wellington (*Transpower*)

[*Customer*] at [*location*] (*Customer*)

BACKGROUND

- A Transpower owns and operates New Zealand's electricity transmission system – the National Grid.
- B Transpower wishes to provide, and the Customer wishes to pay for, the Works on the terms and conditions of this Agreement.
- C [*insert for CIC only For the purpose of clauses 12.70 and 12.71 of the Code, this Agreement is an investment contract agreed between Transpower and a transmission customer.]

THE PARTIES AGREE as follows:

1 SCOPE OF AGREEMENT

Transpower will carry out the Works and the Customer will pay Transpower for the Works on the terms and conditions set out in this Agreement.

2 TRANSPOWER OBLIGATIONS

2.1 Works

Transpower will:

- (a) use reasonable endeavours to achieve the Project Outcomes and meet the project timeframe set out in Schedule 1;
- (b) provide the Works (and anything carried out under clause 3.2) and carry out testing and commissioning in accordance with Good Engineering Practice;
- (c) perform its obligations under this Agreement in accordance with the Law;
- (d) perform any Transpower obligations set out in Schedules 3, 5 and 6 (Conditions, and Property and RMA Considerations);
- (e) use reasonable endeavours to provide the Works within the Budget; and
- (f) provide the reports set out in Schedule 4.

2.2 Replacement Works

- (a) If any component of the Works fails then Transpower may repair, reinstate or replace it, at its discretion and cost and the updated component will be deemed to be the same asset component for the purposes of clause 5.2(b)). When Transpower makes a decision under this clause 2.2(a) (including as to the standard of any repair or replacement) it must:
 - (i) act reasonably; and
 - (ii) ensure that the Project Outcomes continue to be achieved.

- (b) If Transpower considers that the component should not be replaced, then the parties will attempt to agree how to respond to the component failure in order to achieve the Project Outcomes. If the parties have not reached agreement within 60 Business Days of the date of the component failure, the Agreement will terminate in accordance with clause 8.2(j).
- (c) This clause 2.2 does not apply when Transpower enhances or upgrades a component of the Works during the term of this Agreement as part of its general grid improvement program. When this occurs, the component will be deemed to be a new asset component and clauses 5.2(b) and 5.2(c) will not apply from the start of the pricing year immediately following its connection.

3 CUSTOMER OBLIGATIONS

3.1 Access

When reasonably requested by Transpower for the provision of the Works (where possible, by prior written notice), the Customer must:

- (a) make its Personnel and systems available to Transpower;
- (b) provide safe and unobstructed access onto any premises under the Customer's control; and
- (c) obtain any consents, licences and approvals necessary for that access.

3.2 Conditions and compliance with laws

The Customer must:

- (a) perform its obligations under this Agreement in accordance with the Law and not knowingly do anything or omit to do anything that would cause Transpower to breach any Law;
- (b) perform any Customer obligations set out in Schedules 3, 5 and 6 (Conditions, and Property and RMA Considerations); and
- (c) comply with clause 7 of the Access and Occupation Schedule to the Benchmark Agreement if it intends to construct any structures or equipment (including upgrading or improving existing equipment) in support of the Works on Transpower land.

4 HEALTH AND SAFETY

4.1 Transpower's obligations

Where the Works will be carried out on Transpower land Transpower will be the PCBU with the primary duty of care under the Health and Safety Law.

4.2 Both parties' obligations

- (a) Where the Works will be carried out on land owned by the Customer, both parties will be PCBUs under the Health and Safety Law (neither being primary). The Customer will provide Transpower with its health and safety policy and Transpower will comply with it in accordance with Transpower's PCBU Policy, which is available on the Transpower website.
- (b) When both parties have obligations as PCBUs under the Health and Safety Law, each party will aim to ensure the health and safety of persons on or in the vicinity of the Site to the extent of its influence or control.

- (c) Where the parties have a duty in relation to the same matter, each party will actively consult, cooperate and coordinate with the other party to ensure the health and safety of persons on or in the vicinity of the Site.

5 WORKS PART OF GRID

5.1 Property of Transpower

All Works will be the property of Transpower and nothing in this Agreement confers upon the Customer any title, rights or interest in any part of the Works.

[Any Works that are to be transferred to the Customer in specific cases can be detailed here. The new clauses will need to state that Transpower's obligations under clauses 2.2 and 5.25.2(d) cease to apply from the date of transfer.]

5.2 Works Part of Grid after Commissioning

Any Works connected to the Grid after commissioning will be part of the Grid for the purposes of that Transmission Agreement and in relation to those Works:

- (a) the Charge will be in addition to any charges payable by the Customer under the Transmission Agreement;
- (b) for the purposes of calculating the connection charge under the Transmission Pricing Methodology, the value of the asset component A_{CONN} will be \$0;
- (c) the asset component of the connection charge will be determined by and recovered under this Agreement; and
- (d) Transpower will maintain the Works as part of the Grid in accordance with the Transmission Agreement and for the purposes of calculating the connection charge under the Transmission Pricing Methodology, the value of the asset component IO_{CONN} , M_{CONN} and O_{CONN} will be unchanged by this Agreement.

6 CHARGES AND PAYMENT

Transpower will invoice the Customer, and the Customer will pay Transpower the Charge in accordance with Schedule 7 and the process set out in clauses 10 and 11 of the Benchmark Agreement.

7 VARIATION

7.1 Mutually agreed variations

This Agreement, including changes to the Works in Schedule 1, may only be varied by written agreement between the parties except where specified otherwise in this Agreement.

7.2 Regulatory Change

- (a) If either party proposes a Regulatory Change that is covered by clause 3.2 of Schedule 7, then that change will take effect in accordance with the process set out in Schedule 7.
- (b) If either party proposes a different Regulatory Change, the parties must use all reasonable endeavours to agree on a variation using the dispute resolution process set out in the Transmission Agreement. Their agreement must give effect to the Regulatory Change while maintaining (to the extent possible) their respective positions and the original balance of benefits and burdens under this Agreement.

7.3 **Change in Budget**

Transpower acknowledges that it must follow its approved internal processes when determining cost estimates and the Customer acknowledges that the Budget is indicative only. The process for updated cost estimates and budget changes are set out in Schedule 4.

7.4 **Change in Finance Rate**

The process for changing the Finance Rate is set out in Schedule 4.

8 **TERM AND TERMINATION**

8.1 **Term**

This Agreement commences on the Commencement Date and ends on the Expiry Date unless terminated earlier in accordance with this Agreement.

8.2 **Termination by either party**

Either party may terminate this Agreement by giving not less than 5 Business Days' notice in writing to the other party:

- (a) if that other party commits a material breach of this Agreement that is incapable of being remedied;
- (b) if that other party commits a material breach of this Agreement that is capable of being remedied, but is not remedied within 10 Business Days of receipt of a notice requiring the breach to be remedied;
- (c) if the other party enters into liquidation, except for the purposes of a solvent reconstruction or amalgamation which is on terms previously approved in writing by the first party (not to be unreasonably withheld);
- (d) if the other party enters into any compromise, arrangement or assignment with, or for the benefit of, its creditors whether approved by the Court or not (except as previously approved in writing by the first party);
- (e) if a statutory manager is appointed under the Corporations (Investigation and Management) Act 1989 to the other party or a receiver and/or manager or administrator is appointed to the whole or a material part of the other party's property;
- (f) if the other party is unable to pay its debts as they fall due in the normal course of business or where the value of the other party's assets is less than the value of its liabilities, including contingent liabilities;
- (g) if the other party is not a company and is the subject of an event reasonably analogous to any event described in clauses 8.2(c) to (f);
- (h) if it becomes illegal for either party to perform any provision of this Agreement to an extent which is material, provided that:
 - (iii) the parties agree that there is no practical basis on which this Agreement might be varied; and
 - (iv) the illegality is not the result of a failure by the non-performing party to meet its obligations under this Agreement or to comply with Good Engineering Practice.

This clause 8.2(h) applies despite the incorporation of the severability clause in clause 24.4 of the Benchmark Agreement.

- (i) if a party is subject to an event of Force Majeure that materially affects its performance of this Agreement and continues for more than 20 Business Days, provided that party complies with the provisions of the Benchmark Agreement relating to avoidance and mitigation of effect of force majeure; and/or
- (j) if the parties cannot reach agreement under clause 2.2(b) within the 60 Business Day period set out in that clause.

8.3 Termination by Transpower

Transpower may terminate this Agreement immediately by notice in writing to the Customer if the Customer fails to make payment of any Charge or other sum due to Transpower under this Agreement and that failure is not remedied within 20 Business Days of receipt of a notice from Transpower requiring the non-payment to be remedied.

8.4 Termination by Customer

The Customer may terminate the Agreement immediately by notice in writing to Transpower if the Customer receives a notice issued by Transpower in accordance with clause 2.3(a) of Schedule 4.

8.5 Termination by mutual agreement

The parties may terminate this Agreement by agreement in writing. A party whose consent is needed for termination may impose reasonable conditions including to require the payment of the costs set out in clause 8.6(d).

8.6 Consequences of termination

If this Agreement expires or is terminated for any reason:

- (a) The Agreement will be of no further force or effect and both parties will be released from their obligations under this Agreement (subject to clause 8.8).
- (b) Transpower will invoice and the Customer will pay to Transpower by the 20th day of the month following the date of the invoice:
 - (i) any outstanding Charge;
 - (ii) any condition payment required under clause 10.2(b); and
 - (iii) the Accelerated Payment Charge.
- (c) The Customer is not required to pay the Accelerated Payment Charge:
 - (i) if the Agreement expires or terminates before the Commissioning Date; or
 - (ii) where the Customer satisfies Transpower that it would be unreasonable to pay the full Accelerated Payment Charge in the circumstances (for example, if the Agreement ends under any of clauses 8.2(h), (i) or (j) if the Customer terminates the Agreement under clause 8.2 due to an act or omission of Transpower).
- (d) Where clause 8.6(c)(i) or 10.2(b) applies, the Customer must pay all actual costs and expenses and reasonable funding costs incurred by Transpower up to the date of termination. Where clauses 8.6(c)(ii) or 8.5 applies, the Customer must pay all actual costs and expenses and reasonable funding costs incurred by Transpower up to the date of termination and that part of the Accelerated Payment Charge that Transpower, acting reasonably, considers is appropriate in the circumstances. Transpower must have regard to its implied duty to mitigate cost when calculating the Customer's liability under this clause.

8.7 Survival of provisions

The expiry or termination of all or any part of this Agreement will not affect the rights of the parties accrued up to the date of expiry or termination. The following clauses will survive any termination or expiry: 3.1(b) (access), 4 (health and safety) 5 (works part of grid), 6 (charges and payment), 12 (Definitions and Construction), Schedules 1, 7 and 8. *[Consider whether anything specifically added into schedules 5 and 6 needs to survive expiry]*

9 CONSUMER GUARANTEES ACT

The Consumer Guarantees Act 1993 will not apply to this Agreement, because the supply of the Works is for the purposes of a business (as defined in that Act) of the Customer.

10 CONDITIONS

10.1 Conditions

This Agreement is subject to and conditional upon each condition set out in Schedule 3 being satisfied or waived before the corresponding date for satisfaction of that condition (*Condition Date*).

10.2 Consequence of non-satisfaction of a condition

- (a) If a condition is not satisfied or waived prior to its Condition Date in accordance with Schedule 3:
 - (i) the party responsible for meeting the condition must notify the other party of the reasons for the delay and consult with it about its strategy to reduce further delay or reduce the effects or consequences; and
 - (ii) the parties must try to agree an extended Condition Date (which will replace the existing Condition Date from the date of their agreement).
- (b) Either party may terminate this Agreement at any time prior to the date on which all Conditions are satisfied or waived in accordance with Schedule 3.

10.3 If this Agreement is terminated under clause 10.2(b):

- (a) This Agreement will be of no further force or effect;
- (b) subject to clause 8.7 and 10.3(c), both Transpower and the Customer will be released from their obligations under this Agreement (apart from accrued claims); and
- (c) the Customer must promptly pay to Transpower all actual costs and expenses and reasonable funding costs incurred by Transpower up to the date of termination (subject to Transpower's duty to mitigate cost).

11 OTHER AGREEMENTS

Each party agrees that the terms and conditions of this Agreement:

- (a) constitute the entire agreement between the parties and supersede and end all earlier negotiations, understandings whether oral or written between the parties relating to the subject matter of this Agreement *[subject to clause (c)]*; and
- (b) are reasonable, or reflect workable or effective competition for the provision of Works.
- (c) *[Despite clause 11(a), the parties' [insert name of agreement] (Prior Agreement) survives the commencement of this Agreement and all amounts due under the Prior Agreement will now be included in the Charge instead of being paid under the Prior Agreement. The*

process in this Agreement for invoicing, payment and disputes around invoicing or payment will apply to those amounts instead of the process in the Prior Agreement.]

12 DEFINITIONS AND CONSTRUCTION

12.1 Benchmark Agreement

Clauses 10 (Invoicing), 11 (Payment), 13 (Force Majeure), 20 (Liability), 21 (Dispute Resolution), 22 (Confidentiality), 23 (Assignment), 24 (General Legal Terms) and 25 (Notices) of the Benchmark Agreement will apply as if set out fully in this Agreement with such changes as are necessary to give effect to the intention of this Agreement. A reference to “this Agreement” in those provisions will be deemed to be a reference to this Agreement.

12.2 Defined terms

In this Agreement (including the Background), unless the context requires otherwise:

Accelerated Payment Charge means the accelerated payment charge calculated in accordance with Schedule 8.

Agreement means this Transpower Works Agreement between the parties and includes the schedules attached to this Agreement.

Benchmark Agreement means the template benchmark agreement found at <https://www.ea.govt.nz/code-and-compliance/the-code/documents-incorporated-into-the-code-by-reference/> (or any replacement URL). Where a customer is party to a Connection Code rather than a default Transmission Agreement then a reference to a provision of the Benchmark Agreement is deemed to mean the equivalent provision of that Connection Code (with any necessary adjustments).

Budget means the indicative budget set out in Schedule 2.

Business Day has the meaning given to that term in the Benchmark Agreement.

Charge Commencement Date means the date set out as such in Part 2 of Schedule 1.

Charge means the amount payable by the Customer to Transpower, as set out in Schedule 7.

Code means the Electricity Industry Participation Code 2010.

Commencement Date means the date this Agreement was executed by both parties

Commissioning Date means the date on which Transpower issues the Customer with a certificate confirming that all plant has passed all tests and is ready for normal operation.

Configuration means the configuration for the Works, as set out in Schedule 1.

Default Rate has the meaning given to that term in the Benchmark Agreement.

Delay Event means any of the delay events set out in Schedule 1.

Expiry Date means the expiry date set out in Part 2 of Schedule 1.

Finance Rate means [x %] *[Rate to be agreed between the parties prior to execution. TP will insert a recommended rate in the first draft given to the customer. For customers' information, the rate will likely be a combination of our regulatory WACC, plus some component for the risk associated with the investment. At this stage, we are considering that the factors that may increase the riskiness of a customer or investment would be contract duration (longer contracts introduce more risk); counterparty risk (distributors have less exposure to default than certain major users); and possibly asset type (bespoke assets that are hard to redeploy have greater*

risk). It will also include a component for the risk of needing to replace assets under clause 2(a), as the most efficient way of allocating that risk between the parties.]

Force Majeure has the meaning given to that term in the Benchmark Agreement.

Good Engineering Practice means the standards, practices, methods and procedures conforming to law and the degree of skill, diligence, prudence, foresight and economic management which would reasonably be expected from a skilled and experienced contractor or engineer, as the case may be, engaged in the same type of work under the same or similar circumstances and being a contractor or engineer who is familiar with and experienced in the practices which are generally recognised internationally as being applicable to that work.

Grid has the meaning given to that term in the Code.

GST has the meaning given to that term in the Code.

Health and Safety Law means the Health and Safety at Work Act 2015.

Law has the meaning given to that term in the Benchmark Agreement.

Personnel means in respect of an entity, any individual who is a director, officer, employee, contracted staff member or other worker or agent of that entity, or of that entity's contractors; although the fact that one party to this Agreement is a contractor to the other will not result in the Personnel of the first party being treated as Personnel of the second party.

Project Outcomes means the project outcomes set out in Schedule 1.

Regulatory Change means a change to this Agreement that is required by Law.

Transmission Agreement means the default transmission agreement between the Customer and Transpower.

Transmission Pricing Methodology has the meaning given to that term in the Code.

Works means the services and plant provided or to be provided by Transpower under this Agreement, as described in Schedule 1.

12.3 **Construction**

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

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

Currency: A reference to any monetary amount is to New Zealand currency.

Documents: A reference to any document, including this Agreement, the Code and the Benchmark Agreement, includes a reference to that document as amended or replaced from time to time.

Negative Obligations: A reference to a prohibition against doing anything includes a reference to not permitting, suffering or causing that thing to be done.

Parties: A reference to a party to this Agreement or any other document includes that party's personal representatives/successors and permitted assigns.

Person: A reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporated.

Joint and Several Liability: If more than one person is the Customer, any reference to the Customer will be deemed to apply to those persons jointly and severally.

Statutes and Regulations: A reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations.

Signed as an agreement by the parties:

SIGNED by Transpower New Zealand Limited by:

Director/ Authorised Person

Date

SIGNED by [CUSTOMER] by:

Director/ Authorised Person

Director/ Authorised Person

Date

draft

draft

SCHEDULE 1: SPECIFIC DETAILS

1 Details of Works

Site	
Works	
Project Outcomes	
Configuration	

draft

2. Details of Agreement

Anticipated Commissioning Date	<i>[ensure matches Part 2 of Schedule 2]</i>
Charge Commencement Date	<i>[This will not always be the Commissioning Date. The Commissioning Date is the date that <u>everything</u> is commissioned. Consider if there is to be staged commissioning and if so if the charge should commence after a particular milestone. This could be appropriate if the final stage is optional/uncertain/contingent/delayed or where the customer wants to avoid IDC charges continuing to accrue.]</i>
Expiry Date	<i>[either date or x years from the Charge Commencement Date]</i>
Notice Details – Transpower	<p>Transpower New Zealand Limited</p> <p>Address: Transpower House 96 The Terrace Wellington</p> <p>Mailing Address: PO Box 1021 Wellington 6140</p> <p>Contact person: xx</p> <p>Email: xx</p>
Notice Details – Customer	<p>[customer full name] Xx</p> <p>Address: Xx</p> <p>Mailing Address: Xx</p> <p>Contact person: Xx</p> <p>Email: Xx</p>

SCHEDULE 2: INDICATIVE BUDGET AND PROJECT TIMEFRAME

- 1 Indicative Budget** **Any components not relevant to a particular project should be deleted or marked n/a.*

DESCRIPTION	COST (\$)
Investigation costs	
Overheads, Design, Environmental, Property	
Transpower project overheads	
Design & consultants support	
Environmental costs	
Property costs	
Outage costs	
Substations: Material Procurement	
Substation procurement (major plant supply)	
Lines: Material Procurement	
Lines procurement	
SUBSTATION: ENABLING WORKS CONTRACT	
Contractor preliminary & general	
Decommission and remove	
Civil works	
SUBSTATION: MAIN INSTALLATION CONTRACT	
Contractor preliminary & general	
Civil works / site works	
Construct buildings	
Install cables / fibre optics	
Install primary plant	
Install secondary systems	
Test and commission	
LINES: MAIN INSTALLATION CONTRACT	
Contractor preliminary & general	
Siteworks	
Demolition works	
Install primary systems (transmission lines)	
Project financial allowances	
Customer costs & reimbursements	
Subtotal	
Contingency	

IDC	
Total	

2 Indicative Project Timeframe

Milestones	Estimated Timeframe
Plan and design	
Award detailed design contract	[Commencement Date + x months]
Award procurement contract	[Commencement Date + x months]
Outages confirmed	[Commencement Date + x months]
Apply for consents	[Commencement Date + x months]
Property access complete	[Commencement Date + x months]
Construction	
Award construction contract	[Commencement Date + x months]
Construction commences	[Commencement Date + x months]
Protection settings approval request	[Commencement Date + x months]
Construction complete	[Commencement Date + x months]
Commissioning	
Approve commissioning plan	[Construction Complete Date + x months]
Commissioning	[Construction Complete Date + x months]
Project close	
Lessons learnt workshop	[Commissioning Date + x months]
Project closed	[Commissioning Date + x months]

**Any components not relevant to a particular project should be deleted or marked n/a*

**Where commissioning is in stages, insert as many rows for commissioning dates as needed. In this Agreement the "Commissioning Date" is defined as the date on which all equipment is fully commissioned, to allow for this staged approach.*

SCHEDULE 3: CONDITIONS

Blank if no conditions.

<p>Conditions</p>	<p><i>If the parties wish to use this schedule, the condition would read, eg,</i></p> <p>“Transpower giving written notice to the Customer that Transpower is satisfied (acting reasonably) that:</p> <p><i>[choose and insert any relevant option below, and provide a condition date]</i></p> <p>(a) any resource consent, certificate of compliance, designation or approval required under Law in relation to the provision of its obligations under this Agreement has been obtained (Consent).</p> <p>(b) any condition on a Consent will not prevent Transpower from performing its obligations under this Agreement.</p> <p>(c) All property and access rights (including, without limitation, unencumbered freehold title and/or easements) so as to enable Transpower to properly perform its obligations under this Agreement have been obtained on terms and conditions satisfactory to Transpower.</p>	<p>Condition Date(s)</p>
<p>Waiver of Conditions</p>	<p>The Condition(s) set out in [insert clauses (x) – (x)] above is/are inserted for the [sole] benefit of [Transpower/the Customer/both parties] and may not be waived except by a written notice of that waiver from [that party/both parties].</p> <p>The parties may mutually agree to change a Condition Date by exchange of email or by other written notice.</p>	
<p>Notice when condition satisfied</p>	<p>The party responsible for a condition must notify the other party as soon as reasonably practicable once the condition has been satisfied.</p>	

SCHEDULE 4: REPORTS, UPDATED COST ESTIMATES AND OTHER VARIATIONS

1. Reporting

1.1 Automatically generated monthly reports

Each month prior to the Commissioning Date, Transpower will report to the Customer on:

- (a) the progress of the Works and a comparison with the project timeframe;
- (b) any change to the Budget (of less than 10%) or to the project timeframe (neither of which will require a variation);
- (c) any proposed change to the details of the Works described in Schedule 1 and the reason for the proposed departure;
- (d) the total expenditure incurred as at the date of the report; and
- (e) the total expenditure incurred as at the date of the report compared with the Budget.

1.2 Transpower's reporting obligation generally

- (a) Transpower will notify the customer as soon as possible after becoming aware of a delay to a significant milestone (particularly the anticipated Commissioning Date).
- (b) Transpower will generally keep the customer up to date with the progress of the Works. Transpower will update the Customer when it becomes aware that a delay has occurred or is likely to occur and when the Budget has been, or is likely to be, exceeded (unless paragraph 2 below applies). Transpower will provide an explanation for the delay or increase in costs and discuss with the Customer its strategy to reduce further delay or cost increases, or reduce the effects or consequences. Transpower will involve the Customer in developing these strategies where possible.

2. Updated Cost Estimates

2.1 Revised budget after detailed design phase

[additional optional clause] Transpower will provide the Customer with an updated Budget on completion of the detailed design phase. This will supersede and replace the Budget set out in Schedule 2 (or its current replacement) subject to clause [2.3].

2.2 Consultation prior to tender

[additional optional clause] In addition to its obligations under clause 1, Transpower will also consult the Customer on the updated costings prior to calling for tenders for the installation or (if tenders are not called) prior to Transpower awarding the contract for the installation of the Works.

[optional] If the Customer requires closer involvement in costing for specific, you would set this out here. [only for non-CIC works.]

2.3 Change in budget

- (a) If Transpower becomes aware that the Budget will be exceeded by an amount of 10% or more, then Transpower must notify the Customer in writing as soon as reasonably practicable of this fact, and provide the Customer with:
 - (i) a revised Budget;

- ii) reasons for any delay or increase in costs incurred or (where applicable) to be incurred in excess of the Budget, together with Transpower's proposals for minimising or mitigating any such delay or increased costs; and
 - (i) details of the mitigation implemented by Transpower to date to minimise the increased costs and the results of that implementation.
- (b) If the Customer wishes to exercise its right to terminate the Agreement after receiving Transpower's notice, it must notify Transpower in writing within 20 Business Days of the date of the notice given under paragraph 2.3(a).
- (c) If the Customer does not issue Transpower with a notice in writing in accordance with paragraph 2.3(b) then the revised budget is deemed to supersede and replace the Budget from the date of the notice given under paragraph 2.3(a).

3. Variation in Finance Rate

- 3.1 The Finance Rate may only be varied during the term in accordance with the process set out in this clause.
- (a) Transpower will issue the Customer with a notice in writing setting out:
 - (i) the proposed new finance rate;
 - (ii) the reasons for the proposed change; and
 - (iii) the date on which the Finance Rate will be deemed replaced by the proposed new finance rate (being no less than 3 months from the date of Transpower's notice).
 - (b) If the Customer objects to the proposed new finance rate, then it must notify Transpower in writing within 20 Business Days of the date of the notice given under paragraph 3.1 and the dispute resolution process in clause 21 of the Benchmark Agreement will apply. The parties agree that when they cannot resolve this dispute it will be referred to expert determination in accordance with clause 21.6 of the Benchmark Agreement.
 - (c) If the Customer does not object in writing by the date set out in paragraph 3.2 then it is deemed to consent to the new Finance Rate taking effect as set out in Transpower's notice.
- 3.2 The new finance rate determined by the appointed expert will take effect on the date of the notice given under paragraph 3.1 unless the expert specifically determines otherwise.
- 3.3 Where as a result of expert determination or agreement on the new Finance Rate one party has either underpaid or overpaid the other, that party will pay or refund the other any amount by which it has under or over paid (as the case may be). That party will also pay interest at the new Finance Rate plus 1.75 per cent per annum, capitalised Monthly, from the date of underpayment or overpayment to the date of the payment or refund (as the case may be).

4. Variation to Works described in Schedule 1

- 4.1 The Works described in Schedule 1 may only be varied by mutual written agreement.
- 4.2 Either party may propose a change to the Works described in Schedule 1 by written request, giving sufficient particulars for the other party to consider the request. The party receiving the change request must consider it in good faith and respond in writing within 10 Business Days agreeing, rejecting, or requesting specific further information. If the parties are not able to reach agreement on a proposed change within 20 Business Days of the date of the initial written change request then either party may issue a dispute notice under clause 21 of the Benchmark Agreement.

SCHEDULE 5: PROPERTY CONSIDERATIONS

[insert details of any property and access rights issues]

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SCHEDULE 6: RESOURCE MANAGEMENT CONSIDERATIONS

[insert details of any property and access rights issues]

draft

SCHEDULE 7: CHARGE

[This schedule will be used for CIC projects. An alternative Schedule 7 will be created for a non-CIC project and will retain part 1 at least, but will be developed after this round of consultation.]

1. Payment Details

Charge Commencement Date	The Charge accrues from the Charge Commencement Date ie <i>[to be inserted]</i>
The Charge includes	all taxes, levies, imposts and duties in respect of the Works, but not GST
GST	Any GST payable must be paid at the same time and in the same manner as the payment for the supply to which the GST relates.
Due Date	By the 20 th day of the month following the date the Customer receives Transpower's invoice.
Method of payment	By direct credit to the bank account notified by Transpower to the Customer from time to time. Payments must be identified with the invoice numbers and other reference details reasonably when requested by Transpower.

2. Definitions

2.1 Defined Terms:

In this Schedule the following terms, being terms not otherwise defined outside this Schedule, mean:

Charge Purpose means the purpose described in paragraph 3.2;

First Payment Date means the first date on which payment is due under this Agreement;

Part has the meaning given to it in paragraph 6.1;

Payment Period means the period from the first payment due date through to the monthly payment due date that immediately follows the Expiry Date;

Tax Rate means the rate of income tax payable by companies in the position of Transpower; and

Total Cost means the total cost described in paragraph 5.

2.2 Integers:

All monetary sums are to be expressed as an integer (with rounding up if required).

3. Charge Purpose and General Methodology

3.1 Charge:

The formula for calculating the Charge is set out in paragraph 3. Terms defined only in this Schedule are listed in paragraph 2.

3.2 Charge Purpose:

The purpose of the Charge is to allow Transpower to recover, on a net of tax basis, the whole of the cost of the Works, including, without limitation, all design, procurement, construction and financing costs (both financing costs during and after construction until the cost of the Works is paid in full under this Agreement) (**Charge Purpose**).

3.3 Levelised Charge:

Customer acknowledges that it wants the Charge to be levelised, that is, to be payable in equal instalments for the Payment Period. However, it further acknowledges that the Charge will need to be adjusted if:

- (a) after the Charge Commencement Date, there is a change in the Finance Rate;
- (b) after the Charge Commencement Date, the final close out cost of the Works is ascertained and that cost is different from that used to calculate the initial Charge;
- (c) prior to the Expiry Date, there is a change in:
 - (i) the Tax Rate;
 - (ii) the rate of depreciation of the Works or any Part that is allowable for tax purposes;
 - (iii) the tax treatment of the transactions underlying this Agreement; or
- (d) a component of the Works needs to be replaced during the term of this Agreement.

Transpower must give at least three months' notice of a recalculated Charge.

3.4 Taxation:

The parties acknowledge that:

- (a) The costs of the Works will be amortised over the Payment Period as part of the levelised charges;
- (b) Although costs of the Works are capital expenditure the Charge is a taxable payment in the hands of Transpower, tax deductible to the payer, and need to be grossed up to reflect that; and
- (c) Transpower may claim for tax purposes the capital cost of the Works by way of depreciation on a diminishing value basis, including beyond the Expiry Date. Transpower will give credit for the tax benefit of its ability to claim that depreciation.

4. Charge

4.1 Calculation:

The Charge payable in any month is calculated as follows (subject to the adjustments provided for in paragraphs 3.2 to 4.3):

$$NIV_M = \frac{TC + TC_{GT} + CF - \Sigma TDB_P}{M_N}$$

Where:

- NIV_M = the Charge for the month.
- TC = the Total Cost as determined under paragraph 5.
- TC_{GT} = is calculated as set out below in this paragraph.
- CF = the cost of funding the Total Cost over the Payment Period as described in paragraph 6.2.
- ΣTDB_P = is calculated in accordance with paragraph 6.
- M_N = the number of months between and including the month in which the first payment due date falls and the month immediately following the Expiry Date.

For the purposes of the formula above “ TC_{GT} ” is calculated as follows:

$$TC_{GT} = \frac{TC \times I_{TR}}{1 - I_{TR}}$$

Where

- TC = the Total Cost as determined under paragraph 5.
- I_{TR} = the Tax Rate (expressed as a decimal place, e.g. 0.30 for a 30% rate).

4.2 Recalculation

If any change described in the table below occurs prior to the Expiry Date then:

- (a) the formula in paragraph 4.1 will continue to apply but will be recalculated (“amended”) in accordance with the table below and in a manner that achieves the Charge Purpose (taking into account the relevant change); and
- (b) the amended Charge will then be calculated taking into account:
 - (i) the amounts already paid under this Agreement; and
 - (ii) the number of months that remain within the Payment Period.

Change	Recalculation will take into account	Change date
change in Finance Rate	the new Finance Rate and its impact on both CF and on ΣTDB_P	with effect from the date the change in Finance Rate takes effect
change in Total Cost	the new Total Cost and the	with effect from the

	consequential impact on TC_{GT} , CF and ΣTDB_p	Commissioning Date
Change in the Tax Regime	the new tax regime and its impact on each or some of TC_{GT} , CF and ΣTDB_p , as the case requires	with effect from the date the Change in the Tax Regime takes effect

- (c) If the Charge Commencement Date is a 1 April date then the amended Charge will commence on 1 April next following the relevant change date, unless that date is itself a 1 April date in which event the amended Charge will take effect on that 1 April date.
- (d) In any other situation the amended Charge will commence on the anniversary of the Charge Commencement Date next following the date the relevant change date, unless that date is itself an anniversary of the Charge Commencement Date in which event the amended Charge will take effect on that date.

4.3 Certificate:

A bona fide certificate from an authorised officer of Transpower as to any Charge under this paragraph 3 will be final and conclusive between the parties (except for any manifest error).

4.4 Further Information:

The Customer may make a written request to Transpower for details of its Charge calculations. If the Customer does so then Transpower must act in a timely fashion to provide the information that Transpower considers necessary (acting reasonably) to allow Customer to calculate the Charge. Nothing in this paragraph 3.4 derogates from Customer's obligation to pay the Charge.

5. Total Project Cost

5.1 Total Cost:

Transpower will calculate the total cost of constructing the Works ("Total Cost") comprising:

- (a) those costs which should be capitalised in accordance with generally accepted accounting practices; and
- (b) all other costs.

5.2 Items Included:

Total Cost may include:

- (a) feasibility, concept, assessment, development and design costs;
- (b) the cost of all plant;
- (c) preliminary site works, including any necessary removal costs;
- (d) construction costs;
- (e) supervisory costs;
- (f) all associated overhead costs (including costs internal to Transpower);
- (g) interest on the foregoing costs up to the Commissioning Date; and
- (h) the cost of carrying the foregoing costs until the First Payment Date; and

(i) [estimated dismantling/remediation costs].

5.3 Interest:

For the purpose of paragraph 5.2(g), interest will be calculated on a monthly compound interest basis at the capitalised interest rate used by Transpower.

5.4 Carrying Costs:

For the purpose of paragraph 5.2(h), the cost of carrying the cost of construction of the Works is to be calculated as follows:

$$CF_c = TC_{cc} \times \frac{\text{Finance Rate}}{12} \times M_c$$

Where

CF_c = the carrying cost under paragraph 5.2(h).

TC_{cc} = the total cost of all other items in paragraph 5.2.

Finance Rate = as defined in this Agreement.

M_c = the number of months (including if there is a part month at the beginning or end, the appropriate portion of that month) from the Commissioning Date to the First Payment Date.

5.5 Finance Cost:

For the purposes of calculating the Charge, the Total Cost of the Works is to be amortised over the Payment Period on a compound interest basis using the Finance Rate and monthly rests and in a manner that is intended to provide levelised charges (i.e. equal instalments).

5.6 Time of Calculation:

Transpower will calculate the Total Cost as soon as reasonably practicable after the Commissioning Date and, in any event, before the Charge Commencement Date. Transpower may recalculate the Total Cost after this date if it subsequently incurs any additional costs in carrying out the Works (including financing costs).

5.7 Certificate:

Transpower will provide to Customer a certificate as to the Total Cost signed by an authorised officer. The certificate will provide a general breakdown of the cost under convenient headings and will be final and conclusive as between the parties (except for any manifest error).

5.8 Further Information:

The Customer may make a written request to Transpower for details of its calculations of Total Cost. If the Customer does so then Transpower must act in a timely fashion to provide the information that Transpower considers necessary (acting reasonably) to allow Customer to calculate the Total Cost. Nothing in this paragraph derogates from Customer's obligation to pay the Charge.

6. Depreciation Benefit

6.1 Different Parts:

The cost of the Works will be broken down into parts in accordance with the differing rates of depreciation that apply to those parts for tax purposes ("Part").

6.2 Σ TDBp:

For the purpose of the formula in paragraph 4.1, Σ TDBp will be calculated as follows:

$$\Sigma\text{TDBp} = \Sigma\text{LTDp} \times \frac{I_{\text{TR}}}{1 - I_{\text{TR}}}$$

Where:

Σ LTDp = is the sum for each Part of LTDp as described in paragraph 6.3.

I_{TR} = The Tax Rate expressed as a decimal place, e.g. 0.30 for a 30% rate.

6.3 LTDp:

For the purpose of the formula in paragraph 6.2, LTDp is intended to reflect (for each Part) the Charge Purpose when that effect is translated into levelised charges. Without detracting from that concept, LTDp is the sum of the levelised monthly tax depreciation amount over the Payment Period.

The levelised monthly tax depreciation amounts are set so that the net present value of those amounts (calculated at the First Payment Date) will properly allocate, for each Part, the monthly diminishing value depreciation of that Part over the Payment Period which is claimable for tax purposes. It is to be calculated using the assumptions contained in paragraph 6.4.

6.4 Assumptions:

The following assumptions apply for the purpose of paragraph 6.3:

- (a) Depreciation for tax purposes is claimed at the maximum rate permissible under the Income Tax Act 2007;
- (b) Depreciation for tax purposes is calculated from the Commissioning Date down to the month in which the life of the Works expires;
- (c) Any balance in the non-depreciated cost of that Part will be written off in the month in which the Part reaches its end of life date;
- (d) The interest rate used to calculate the net present value is the Finance Rate. As the interest is to be calculated monthly the Finance Rate will be divided by 12;
- (e) In relation to tax depreciation claimable on any Part subsequent to the Expiry Date:
 - (i) the Finance Rate is that prevailing at the time of calculation; and
 - (ii) the Tax Rate and the tax depreciation rates will be the same rates as those applying at the time of calculation; and
- (f) the charge will be levelised (i.e. made equal) over the Payment Period.

SCHEDULE 8: ACCELERATED PAYMENT CHARGE

See clause 8.6 as to when this Schedule applies.

1. Interpretation

1.1 Definitions:

In this Schedule, unless the context otherwise requires:

“Accelerated Payment Charge”

is a charge by which Transpower recovers any investment in the Works which would otherwise be lost by virtue of this Agreement ending early plus any direct costs incurred. The Accelerated Payment Charge will be calculated by Transpower (acting reasonably) using the following formula:

$$a + b + c - d - e$$

Where:

- a = the amount (expressed in dollars) equal to the revenue which would have been derived by Transpower from payment of the Charge if this Agreement had not expired early and continued in force until the Expiry Date (the “remaining term”). This assumes that the Charge for each month over the remaining term is calculated by reference to the Finance Rate discounted to a present value using the corresponding Finance Rate; and
- b = the amount (expressed in dollars) equal to the cost of (or Transpower’s estimated cost of) items of work undertaken (or to be undertaken) by Transpower in respect of the Grid as a consequence of the contract ending early (including dismantling or remediation costs) and compliance with any enactment; and
- c = the amount (expressed in dollars) equal to the cost of (or Transpower’s estimate) Transpower performing its obligation under paragraph (b) above; and
- d = the amount (expressed in dollars) equal to the value (or Transpower’s estimate) of any part of the Works used, or to be used, for any alternative use. This amount, including tax, must ensure that Transpower is no better or worse off by applying the Works to the alternative use. This excludes:
 - the capital expenditure incurred by Transpower to refurbish any part of the Works for that alternative use (or any cost of funding this); or
 - the proceeds (or Transpower’s estimate) of the disposal of any part of the Works.
- e = the amount (expressed in dollars) equal to the amount that (in Transpower’s view, acting reasonably,) the Customer has reimbursed, or will reimburse, Transpower through a mechanism outside this Agreement to the extent that to include it in this calculation would result in double-dipping.

1.2 Rules for Calculation:

The following provisions apply to the calculation of the Accelerated Payment Charge:

(a) Part Months:

If the date of the early expiration of this Agreement falls during a month, the cost of funding the Agreement and depreciation for that part of the month in the remaining life of the Works will be calculated pro rata on a daily basis.

(b) The Charge can be Negative:

If 'd' in the formula for the calculation of the Accelerated Payment Charge is greater than the sum of 'a' + 'b' + 'c' in the formula, then the Accelerated Payment Charge will be negative in which case paragraph 1.3 of this Schedule will apply.

(c) Recalculation of Certain Estimates Used:

If 'b' and/or 'c' in the formula, or the proceeds of disposal referred to in 'd' in the formula is calculated based on estimated cost or proceeds; then Transpower will recalculate the Accelerated Payment Charge (acting reasonably) once it knows the actual cost or proceeds. Transpower will then adjust the Accelerated Payment Charge originally calculated. Any party which has underpaid or been overpaid will pay the amount of the balance yet to be paid or the balance comprising the overpayment (as the case may be). They will also pay interest on it at the Finance Rate, capitalised monthly, from the date of under or overpayment to the date of payment of the balance.

(d) Transpower to Find Alternative Use For/Dispose of plant used in Works:

Transpower must use all reasonable endeavours to both mitigate its costs, and to find an alternative use for, or dispose of, the plant no later than one year after the early expiry of this Agreement.

1.3 Payment by Transpower:

If the Accelerated Payment Charge is negative (by application of paragraph 1.2(b) of this Schedule), then Transpower will refund to Customer the amount by which the Accelerated Payment Charge is negative (plus GST, if any) as soon as is reasonably practicable.